

THE BENGAL TENANCY ACT

BEING

ACT NO. VIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on
the 14th March 1885).*

[AS MODIFIED BY SUBSEQUENT ENACTMENTS.]

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

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

Headings of Notes.

1. BENGAL TENANCY ACT NOT A COMPLETE CODE.
2. AMEND AND CONSOLIDATE CERTAIN ENACTMENTS :
3. INTERPRETATION AND CONSTRUCTION OF THE ACT :
4. INTERPRETATION OF STATUTES :
5. LANDLORD AND TENANT :
6. LICENSOR AND LICENSEE :
7. MASTER AND SERVANT : BARGADAR : BHAGDAR :
8. PRINCIPAL AND AGENT :
9. AGRICULTURAL AND NON-AGRICULTURAL LEASES :
10. IS A PUTNI TENURE GOVERNED BY THE BENGAL TENANCY ACT?
11. FISHERY :
12. FERRY :

* For certain provisions relating to the law of Landlord and Tenant : see the following Acts :

The Mesne Profits and Improvement Act (XI of 1855) ;

The Opium Act (I of 1878) ss. 4, 5, 9, 11 and 22 (Cultivation of the poppy).

The Transfer of Property Act (IV of 1882) ; Ch. V (Leases).

The Code of Civil Procedure (Act V of 1908) s. s. 4 and 5 ; (suits between landlord and tenant),

PREFACE TO THE SECOND EDITION.

THE numerous changes made in the Bengal Tenancy Act by the B. C. Act of 1907 and the E. B. A. C. Act I of 1908 have necessitated considerable changes in the notes on the amended sections. With regard to these as also the portions of the Act of 1885, which has not been affected by recent legislation, I have deavoured to make the present edition thoroughly up-to-date by reference to cases decided since the publication of the first edition.

The price lists of staple food crops prepared under s. 39 of the Bengal Tenancy Act and published in the local gazettes are of great importance in the termination of suits for enhancement of rent against occupancy raiyats on the ground of rise of prices of staple food crops; I have therefore on the suggestion of some friends, who have great experience in such matters, thought fit to append in this edition a statement of the prices for the year 1887-1909, which I hope will be found useful.

CALCUTTA

13th August, 1909.

SURENDRA CHANDRA SEN.

PREFACE TO THE FIRST EDITION.

I have endeavoured to arrange the notes in such a way as to make them useful to the Bench and the Bar. Notes of cases under the old law which are still applicable or which have a bearing on the present law will be found in their appropriate places. I have also cited some English cases and some important unreported decisions of the Calcutta High Court which, I expect, will be found useful.

In one of the appendices at the end will be found a collection of some important rulings on matters such as *Resjudicata*, *Proof of lease*, &c., &c., which do not appropriately come under any of the sections of the Bengal Tenancy Act. I thought, however, that these rulings might prove useful to the legal profession on questions that often arise in connection with Bengal Tenancy cases.

~~SURENDRA CHANDRA SEN~~ for the alphabetical list of the

FURNISHED
DATE

SOME OF THE SUGGESTIONS OF THE AUTHOR FOR THE
AMENDMENT OF THE BENGAL TENANCY ACT.

(Written on 1st July, 1925.)

[For his other suggestions: see his **Minute of Dissent** published in the *Calcutta Gazette*, January 10, 1923, Part IV, pp. 109—123]

1. In a Resolution passed on the 7th July 1921, the Bengal Legislative Council recommended the Government to appoint a Committee consisting of officials and non-officials to consider and report what amendments are needed in the Bengal Tenancy Act.

2. Orders appointing the Committee were issued in Government Resolution No. 7383 L. R., dated the 20th August, 1921.

3. The Committee held 43 meetings under the able presidency of Hon'ble Sir (now His Excellency) John Kerr. In the Committee the members got every opportunity of placing their views orally and also in writing and all the most important questions were allowed to be freely discussed.

4. I had the honour of being appointed a member of the Committee and was allowed the greatest latitude to place my views in and out of the Committee in the fullest way possible and I had also to take part in some sub-committee meetings.

5. I wrote out three printed books for the help of the Committee explaining my views for certain changes which I had advocated. I should express my thanks that all the points dealt with by me in the printed books were considered and discussed in the meetings.

6. The deliberations of the Committee which the majority arrived at were recorded and printed and from those printed notes Mr. C. Tindall, C.I.E., made the final draft of the Bill with the greatest precision and care, with the help of Babu Pranendra Narain Chaudhuri of the Provincial Judicial Service who was also a member of the Committee.

7. As I was asked by Mr. Tindall on some occasions to assist him I can testify to the great ability with which he finally drafted the Bill.

8. Our Report and the Bill were published in the *Calcutta Gazette*, Part IV, dated the 10th January 1923, and the Bill was circulated for public opinion.

9. But no Bill has been introduced as yet and some more time may be required for the purpose and probably it would be necessary to make certain changes in the final draft before it is introduced into the Council.

10. The last edition of my Bengal Tenancy Act was published in January, 1922, and I am glad to be able to say that the members of the Committee freely used my Book in their deliberations.

11. The last edition of my work being out of print for sometime I have thought it proper to bring out a new edition and I hope the additional notes up to date may be of some help to the deliberations of those who are now in charge of making a final draft Bill for introduction.

12. In view of the intricacy and importance of the proposed legislation I note below certain suggestions for consideration of the gentlemen now in charge of the Bill.

13. With this view and also to be of some help to the profession I venture to make the following comments upon the Bengal Tenancy Act. The members

of my profession may find them to be of some interest in considering the various anomalies which are now to be found in the working of the Act.

14. For the preparation of the final draft Bill I beg to suggest that a Bill for the amendment of certain sections of the Bengal Tenancy Act will not serve the purpose successfully unless the Bill is directed not only to the Bengal Tenancy Act, but to other cognate Acts and Regulations. So it will be useful to make now one draft Bill embodying amendments of the Bengal Tenancy Act, Certificate Procedure Act, Putni Sale Law, and if possible, the Revenue Sale Law and also the Landlord and Tenancy Procedure Act VIII of 1869 (B. C.). All these Acts and Regulations may be combined together and one Bill for amendment of all these laws may be introduced.

15. With the above preliminary observations I first intend to point out that the Bengal Tenancy Act deals with agricultural lands, and the non-agricultural lands are dealt with by the Transfer of Property Act.

16. That the Bengal Tenancy Act deals with agricultural lands is to be found out from the classification of tenants under s. 4 of the Act. S. 4 classifies tenants under the Act under 3 principal classes of tenants.

1. Tenure-holder.
2. Raiyat.
3. Under Raiyat.

The definition of tenure-holder is not very happy. It says primarily the purpose is cultivation or collection of rent. Collection of rent necessarily means collection from raiyats and a raiyat means primarily a person who cultivates. So a tenure-holder is to collect rent from a raiyat who is primarily to cultivate. Consequently the person who is to be in immediate occupation of the land is primarily to cultivate the land.

An under-raiyat is a person who holds immediately or mediately under a raiyat. But an under-raiyat may occupy his land solely for dwelling purposes. Still he may be an under-raiyat within the meaning of the Act.

So ordinarily speaking only tenants for cultivation come within the purview of the Bengal Tenancy Act.

I have already pointed out that the definition of the tenure-holder is not happy. Suppose a putnidar or tenure-holder who has 100 bighas of lands lets out 50 bighas to cultivating raiyats and lets out the remaining 50 bighas to mercantile and manufacturing tenants. If the lands are equally divided for agricultural and non-agricultural purposes how can it be said that the tenure is one governed by the Bengal Tenancy Act and not by the T. P. Act.

If the original purpose is both agricultural and non-agricultural no one of these purposes can be said to be the primary purpose. Under these circumstances it is difficult to say that such a tenure is to be governed by the B. T. Act. There are great differences in the result. If the case is governed by the T. P. Act the period of limitation for bringing a suit for rent is either three years or 6 years according as the contract of lease is registered or not under Art. 116 or 110 of the Limitation Act; whereas if the case is governed by the Bengal Tenancy Act the period of limitation is practically 4 years; i.e., the rent suit is to be brought within 3 years from the last date of the agricultural year.

Moreover, if such a tenure is governed by the Bengal Tenancy Act all the sections of the Act apply.

The law is therefore not very clearly stated in the definitions as to the circumstances which will determine whether a *ganti* or *putni* tenure will be governed by the Bengal Tenancy Act or by the T. P. Act.

It seems that much depends on the meaning of the word "primarily" as used in the definition. It becomes a very difficult question in each case to

determine whether a tenure should be governed by the T. P. Act or by the Bengal Tenancy Act.

17. In regard to raiyati holdings it is understood that the homesteads which are on a part of the agricultural holdings are governed by the Bengal Tenancy Act and it has also been enacted in s. 182 of the Bengal Tenancy Act that where a raiyat holds his homestead otherwise than as part of his holding the incidents of his homestead are governed by the same rules as his occupancy holding. The section is not quite clear whether the homestead of the raiyat and the separate occupancy holding should be under the same landlord or in the same village. The case law on the point does not give reasons satisfactorily and clearly.

18. If a raiyat sublets a portion of the raiyati holding to a tenant exclusively for homestead purposes it has been ruled that the sub-tenant becomes an under raiyat within the meaning of the Bengal Tenancy Act and not under the T. P. Act.

19. It will thus appear that the state of law as is to be found in the statute and as explained by the case-law is in a state of chaos and it requires that the law should be clearly enacted.

20. I should note that the definition of "holding" in section 3, cl. (9), is not satisfactory. I have dealt with this matter in my note of dissent and I have suggested that the definition should be changed. The case-law is in conflict. The cases are noted in the Book.

21. Chap. III relates to "tenures." It will appear that the limit of enhancement of a permanent tenure-holder may be very excessive; and at the same time there is no remedy open to the tenure-holder to relinquish it in favour of the landlord. Moreover, it often happens that for no fault of the permanent tenure-holder, the tenure becomes a losing concern; the landlord should, therefore, be compelled to proceed against the defaulting tenure when he obtains a decree for rent.

22. Non-permanent tenures are not expressly declared to be heritable or transferable. The law should be clearly laid down.

23. Where a permanent tenure-holder dies, the landlord should not be bound to make all the heirs parties to rent suits unless they take care to get their names registered. The case law in this respect is in an unsatisfactory condition.

24. The law relating to trees, so far as the non-permanent tenure-holder are concerned is nowhere defined. These should be made clear.

25. There is one matter which has been left out of consideration in its appropriate place. From the classification of tenants, it appears that one class excludes the other. So a fixed raiyat cannot be an occupancy raiyat and an under-raiyat also cannot be an occupancy raiyat. But it appears that the illustration to s. 183 of the Bengal Tenancy Act and s. 113 recognise that an under raiyat may acquire a right of occupancy by custom.

26. S. 183 lays down that there may be a custom which is not repugnant to the Act, but an under-raiyat's right of occupancy is repugnant to the subject or context of the Bengal Tenancy Act. There was no such custom before the passing of the Bengal Tenancy Act nor do I hardly know of any case where the elements to prove such a custom have been found or laid down.

27. It is true, however, that Revenue Officers in almost all districts of Bengal in preparing Record-of-Rights have entered under raiyats as having right of occupancy; no one knows where they got such authority and no one knows what elements they looked into in getting themselves satisfied that the under-raiyats acquired right of occupancy by custom. When such a right has been thus entered under s. 102 it has been erroneously thought by the Civil Courts that under s. 103B of the Bengal Tenancy Act the entry is presumptive evidence of the proof of such custom.

Decoted By:-

M. Jalim Ullah Fahmi

28. In this connection it should also be pointed out that according to s. 19 of the Act all rights of occupancy created previous to the Bengal Tenancy Act have been recognised. Under the old law a fixed raiyat could acquire right of occupancy and as such his right has been retained under s. 19.

29. But it is erroneous to suppose that a person who acquires the status of a fixed raiyat after the passing of the Bengal Tenancy Act can also acquire a right of occupancy. The case law to the contrary should be considered to have been erroneously decided.

30. There is no necessity in defining the right of occupancy to use the word "village;" simply "land" is sufficient.

31. In regard to the question relating to 'Burgadars,' 'Adhiars,' 'Bhagchasis,' and 'Dhankararidars,' etc., i.e., who are either labourers or, who being tenants, pay a rent in produce merely, the law should be entirely changed.

It is always a vexed question whether such a person is a tenant or a labourer or a licensee. There are numerous decisions of the High Court all of which cannot be reconciled and there has been a long discussion on the subject recently in the country which go one way to show that the law in this respect is in a very unsatisfactory condition. I should suggest that the matter should be entirely left to the free contract of the parties and there should be no commutation of rent and the Bengal Tenancy Act should not apply.

32. Middle class *Bhadralokes* as well as poor widows, and tenants generally during their minority as well as sebaits of idols are compelled to employ *bargadars*, etc., as a means of their subsistence. To consider these cases as cases of tenancy and then to allow a commutation seems to me a great hardship which should be remedied.

33. In regard to trees the law is understood to be that permanent tenureholders and raiyats at fixed rates have the right to cut and appropriate trees but the statutory law on this point is silent.

34. In regard to occupancy raiyats and non-occupancy raiyats, the law as to trees is not well understood.

35. S. 29 of the Bengal Tenancy Act has been interpreted in a way which has caused much mischief to the landlords. It has been uniformly ruled that an agreement to enhance the rent of an occupancy raiyat by more than 2 ans. in the rupee is wholly void and that the part up to 2 ans. cannot be enforced. If this is the interpretation of s. 29, the section should be altered and it should be clearly enacted that where there is an excess of over 2 ans. in the rupee the amount up to 2 ans. should be considered to be valid.

36. The proper meaning of s. 29 has not been clearly understood by the Courts when they have said in certain cases that progressive rents by more than 2 ans. in the rupee cannot be contracted.

37. S. 38 is silent as to whether a tenant can take the plea of reduction in a suit for rent brought by the landlord. This ought to be made clear.

38. The law relating to Aborigines introduced in Chap. VIIA is practically an exception to the general rules contained in the Act. It requires to be revised on all points.

39. As to alteration of rent for alteration of area under s. 52 of the Bengal Tenancy Act, the cases are not uniform in laying down the proposition of law and so they require to be reconsidered and settled by the statute.

40. The Full Bench ruling under cl. (b) of s. 52 which over-rules the Division Bench case seems to have laid down the law which cannot be worked out.

41. The presumption under s. 50 arising under sub-sec. (2) for payment of rent at a uniform rate of 20 years requires modification. The modification which may be suggested should be 20 years anterior to 1850, i.e., when the rule was first enacted.

42. The procedure in rent suits should be as speedy as possible and in this respect s. 148A should be simplified. All that should be made necessary in the case of co-sharers is that they should all be made parties and all such information as are available to the plaintiff should be mentioned without any complications whatsoever. Summonses in all cases should be by registered post. Where a landlord proves by affidavit the truth of his claim he should not be required to give any formal evidence. Such affidavit may be filed along with the plaint and a decree might be passed in *ex parte* cases upon such affidavit merely and it would be necessary for the landlord to prove his case by further evidence only when the tenant appears and insists upon it. The tenures and holdings in the first instance should be attached and sold and there should be no process against the tenants personally which almost always does a great mischief to the tenants.

43. In regard to the Record-of-Rights the practice now is that the *Bazar* land, *Chandina* land and other non-agricultural lands are made the subject of entries under s. 102. This is unnecessary and the Bengal Tenancy Act does not authorize Revenue officers to deal with non-agricultural lands. The Revenue Department know all these but do not change the rules. This vexes the people very much ; they are unnecessarily required to incur large expenses for looking over the works of the Revenue officers in this respect. According to law the entries in regard to these non-agricultural holdings have no value and parties do not derive any benefit therefrom. The High Court however has in certain cases ruled that these entries have some value. It is submitted that these decisions are erroneous in law.

44. I think I ought to point out here that the recent Full Bench case in which it has been decided, that an application under s. 105 withdrawn with liberty to bring a fresh one cannot be maintained requires consideration by the Legislature. Without discussing the correctness or otherwise of this Full Bench decision, it is submitted that for the good of the country the law should be changed by the Legislature.

45. It was generally understood in this country that a tenant cannot be sued for rent except within the jurisdiction of the court where the lands lie but a decision has been rightly or wrongly made by the Calcutta High Court to the effect that a tenant may be sued for rent wherever he resides irrespective of the question as to where the lands lie. This interpretation of the law should be altered.

46. There should be a summary procedure provided for speedy realisation of rent in cases proved to the satisfaction of the Government that there would be no oppression by the landlord. In this respect the Summary Certificate Procedure as provided for in Chap. XIII A should be extended to all cases of registered *kabulyats* and where there has been a record of rights up to the claim of Rs. 50 at least.

47. The question as to transferability of occupancy holdings has always been a vexed question. In my note of dissent.* I have stated my reasons why this right ought not to be given to occupancy raiyats. Neither the economic condition of the country nor the habits of the people have been such that by granting the right of transferability the occupancy raiyats will improve their position. On the contrary the condition of the people will be prejudicially affected if occupancy holdings are made transferable.

48. S. 179 of the Bengal Tenancy Act has been rightly or wrongly interpreted to mean that in granting a *mokurari* lease in a permanently settled area an

* See Calcutta Gazette, January 10, 1923, Part IV, pp. 114—118.

abwab or illegal tax may be levied. This was never the intention of the Legislature when Reg. VIII of 1793 was passed, not was there any such provision in Act X of 1859 or Act VIII of 1869 (B. C.). There is also nothing expressly stated in s. 179 of the B. T. Act but on account of the bad drafting of the section the lawyers have got loopholes to make this argument which has been accepted by the courts, and subsequently when s. 74 was amended the Legislature has accepted the interpretation. I personally know of a case where there was a contract that in the case of any marriage in the family of the landlord the tenant would have to pay a certain tax ; according to s. 179 such an agreement would be valid. The result may be that when the family will be large the tenant would be required to pay large sums of money every year, to the landlord. It is suggested that the law should be made clear.

ABBREVIATIONS.

A and E	...	...	Adolphus and Ellis's Reports, K. B. (King's Bench).
A. I. R.	...	...	All India Reporter.
All.	...	...	Indian Law Reports, Allahabad Series.
App. Cas.	...	...	Law Reports, Appeal Cases.
Bom.	...	...	Indian Law Reports, Bombay Series.
B. and C.	...	...	Barnewall &c. Cresswell's Reports, K. B.
B. L. R.	...	...	Bengal Law Reports.
B. L. R. Sup Vol	...	...	Supplemental Volume to the Bengal Law Reports.
C. L. J.	...	...	Calcutta Law Journal.
C. L. R.	...	...	Calcutta Law Reports.
C. W. N.	...	...	Calcutta Weekly Notes.
Cal.	...	...	Indian Law Reports, Calcutta Series.
F. B.	...	...	Full Bench.
Hay	...	...	Hay's Reports.
I. A.	...	...	Law Reports, Indian Appeals.
I. C.	...	...	Indian Cases.
Ind Jur. N. S.	...	...	Indian Jurist, New Series
K. B.	...	...	King's Bench.
L. J. O. S.	...	...	Law Journal, Old Series.
L. R. Ch.	...	...	Law Reports, Chancery Appeal Cases.
Mad.	...	...	Indian Law Reports, Madras Series.
Mad. L. J.	...	...	Madras Law Journal.
Marsh.	...	...	Marshall's Reports.
Moo.	...	...	Moore's Indian Appeals.
Moo. I. A.	...	...	Moore's Indian Appeals.
M. I. A.	...	...	Moore's Indian Appeals
Pat.	...	...	Indian Law Reports, Patna Series.
Pat. L. J.	...	...	Patna Law Journal.
P. L. T.	...	...	Patna Law Times.
Pat. L. W.	...	...	Patna Law Weekly.
[Pat.]	...	...	Calcutta Weekly Notes, Patna Supplement.
P. C.	...	...	Privy Council.
R. J. P. J.	...	...	Revenue, Judicial and Police Journal.
S. C.	...	...	Same Case.
Sel. Rep.	...	...	Select Reports.
W. R.	...	...	Sutherland's Weekly Reporter.
W. R. P. C.	...	Do. Do.	Privy Council Rulings.
W. R. Act X	...	Do. Do.	Act X Rulings.
W. R. Mis.	...	Do. Do.	Miscellaneous Rulings.

STATEMENT OF REPEALS, AMENDMENTS, &c.

Sections of the B. T. Act repealed, amended, inserted or otherwise affected.	Acts repealing, amending, inserting or otherwise affecting the section of the B. T. Act.
Amendment of ss. 12 (2) and 13 (1) ...	Act VIII (I. C.) of 1886.
Supplemented ...	Act III of 1895 (B.C.) ss. 20, 28 to 32, 36 (c).
Amendment of ss. 30 (a), 31, 39 (b), 52, Ch. X and s. 119.	} Act I (B.C.) of 1903.
Insertion of ss. 31A, 31B.	
Amendment of ss. 1 (3), 3 (5), 3 (10), 12 (2), 12 (3), 13 (1), 13 (2), 15, 16, 19, 22, 40, 52, 58, 67, 69, 75, 88, 101 (2), 102, Chap. X. Part II (heading), ss. 104, 104H (g), 105 (2), 106, 107, 108, 109, 109A, 111, 112, Chap. XI (heading), ss. 116, 120, 148, 153, 158 (1), 161, 168 (1), 169 (1), 170, 174 (2), 178, 189, 192, Sch. III.	} Act I (B.C.) of 1907.
Repeal of—ss. 14, 45.	
Insertion of—Ch. IV (ss. 18A to 18C), ss. 40A, 102A, 103B, 105A, 108A, 109B, 109C, 109D, 111B, 115A, 147A, 147B, 148, 153A, Ch. XIII A (s. 158A), ss. 158B, 186A, 188A.	} Act I of 1908 (B.B. A.)
Repealed in part and Amended—s. 114.	
Repealed in part of Bengal—ss. 149, 150.	} Act I of 1908 (B.B. A.)
Amendment of ss. 1 (3), 3 (5), 3 (10), 12 (2), 12 (3), 13 (1), 13 (2), 15, 16, 19, 22, 40, 52, 58, 67, 69, 75, 101 (2), 102, 103B, Ch. X, Part II (heading), ss. 104, 104H, (3), 105, 106, 107, 108, 109, 109A, 111, 112, Ch. XI (heading), ss. 116, 120, 148, 153, 158 (1), 161, 168 (1), 169 (1), 170, 174 (2), 178, 189, 192, Sch. III.	
Repeal of—ss. 14, 45.	} Act (B.C.) III of 1913 and Act IV of 1914 of the Bihar and Orissa Council.
Insertion of—Ch. IV A, (ss. 18A to 18C), ss. 40A, 102A, 105A, 108A, 109B, 109C, 111B, 115A, 147A, 147B, 148A, 153A, Chap. XIII A, (s. 158A), ss. 158B, 186A, 188A.	
Repeal in part and Amendment of s. 114.	} Act (B.C.) II of 1918.
Repeal in part in East Bengal ss. 149, 150.	
Insertion of—Chap. XIII A, for the former Chap. XIII A.	} Act xxxviii of 1920, (Devolution Act).
Amendment of ss. 158B, 167 (1), 167 (4), 171 (1), 172.	
Insertion of—Chap. VII A.	} Act (B.C.) X of 1923, (Utbandi Act).
Amendments of ss. 39 (7), 101 (1), (2), (3), 112 (1), (3).	
Insertion of ss. 180A, 180B and 180C ...	} Act (B.C.) I of 1925.
Insertion of s. 20 (1A) ...	

CONTENTS.

CHAPTER I. PRELIMINARY.

SECTION.

1. Short title.
Commencement.
Local extent.
2. Repeal.
3. Definitions.

CHAPTER. II. CLASSES OF TENANTS.

4. Classes of tenants.
5. Meaning of "tenure-holder" and "*raiya*."

CHAPTER III. TENURE-HOLDERS. *Enhancement of rent.*

6. Tenure held since Permanent-Settlement liable to enhancement only in certain cases.
7. Limits of enhancement of rent of tenures.
8. Power to order gradual enhancement.
9. Rent once enhanced may not be altered for fifteen years.

Other incidents of tenures.

10. Permanent tenure-holder not liable to ejection.
11. Transfer and transmission of permanent tenure.
12. Voluntary transfer of permanent tenure.
13. Transfer of permanent tenure by sale in execution of decree order than decree for rent.
14. (*Repealed.*)
15. Succession to permanent tenure.
16. Bar to recovery of rent, pending notice of succession.
17. Transfer of, and succession to, share in permanent tenure.

CHAPTER IV. *Raiya*s HOLDING AT FIXED RATES.

18. Incidents of holding at fixed rates.

CHAPTER IV A.

- PROVISIONS AS TO TRANSFER OF TENURES AND HOLDINGS AND LANDLORD'S FEES.
- 18A. Saving as to statements in instruments of transfer where landlord no party.
 - 18B. Saving as to acceptance of landlord's fees.
 - 18C. Forfeiture of unclaimed landlord's fees.

CHAPTER V. OCCUPANCY-*raiya*s. *General.*

19. Continuance of existing occupancy-rights.
20. Definition of "*settled raiya*."

SECTION.

- 21. Settled *raiyats* to have occupancy-rights.
- 22. Effect of acquisition of occupancy-right by landlord.

Incidents of occupancy-right.

- 23. Rights of *raiyat* in respect of use of land
- 24. Obligation of *raiyat* to pay rent.
- 25. Protection from eviction except on specified grounds.
- 26. Devolution of occupancy-right on death.

Enhancement of rent.

- 27. Presumption as to fair and equitable rent.
- 28. Restriction on enhancement of money-rents.
- 29. Enhancement of rent by contract.
- 30. Enhancement of rent by suit.
- 31. Rules as to enhancement on ground of prevailing rate.
- 31A. What may be taken in certain districts to be the "prevailing rate."
- 31B. Limit to enhancement of prevailing rate.
- 32. Rules as to enhancement on ground of rise in prices.
- 33. Rules as to enhancement on ground of landlord's improvement.
- 34. Rules as to enhancement on ground of increase in productive powers due to fluvial action.
- 35. Enhancement by suit to be fair and equitable.
- 36. Power to order progressive enhancement.
- 37. Limitation of right to bring successive enhancement-suits.

Reduction of rent.

- 38. Reduction of rent.

Price-lists.

- 39. Price-lists of staple food-crops.

Commutation.

- 40. Commutation of rent payable in kind.
- 40A. Period for which commuted rents are to remain unaltered.

CHAPTER VI.

NON-OCCUPANCY-*raiyats*.

- 41. Application of Chapter.
- 42. Initial rent of non-occupancy-*raiyat*.
- 43. Conditions of enhancement of rent.
- 44. Grounds on which non-occupancy-*raiyat* may be ejected.
- 45. (*Repealed.*)
- 46. Conditions of ejectment on ground of refusal to agree to enhancement.
- 47. Explanation of "admitted to occupation."

CHAPTER VII.

UNDER-*raiyats*.

- 48. Limit of rent recoverable from under-*raiyats*.
- 49. Restriction on ejectment of under-*raiyats*.

CHAPTER VII A.

Restrictions on alienation of land by aboriginals.

- 49A. Application of Chapter.
- 49B. Restriction on transfer of tenant's rights.
- 49C. Lease by tenure holder.
- 49D. Subletting by *raiyat*.
- 49E. Usufructuary mortgage by tenure-holder, *raiyat* or under-*raiyat*.
- 49F. Application to Collector for transfer in certain cases.

SECTION.

- 49G. Courts not to register or recognise as valid transfer in contravention of this chapter.
- 49H. Power to Collector to set aside improper transfers by tenure-holder, raiyat or under-raiyat.
- 49J. Re-settlement of certain tenancies.
- 49K. Restrictions on sale of tenant's rights under order of Court.
- 49L. Stay of execution of decrees.
- 49M. Appeal and revision.
- 49N. Bar to suits.
- 49O. Saving of certain transfers.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

- 50. Rules and presumptions as to fixity of rent.
- 51. Presumption as to amount of rent and conditions of holding.

Alteration of rent on alteration of area.

- 52. Alteration of rent in respect of alteration in area.

Payment of rent.

- 53. Instalments of rent.
- 54. Time and place for payment of rent.
- 55. Appropriation of payments.

Receipts and Accounts.

- 56. Tenant making payment to his landlord entitled to a receipt.
- 57. Tenant entitled to full discharge or statement of account at close of year.
- 58. Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.
- 59. Local Government to prepare forms of receipt and account.
- 60. Effect of receipt by registered proprietor, manager or mortgagee.

Deposit of rent.

- 61. Application to deposit rent in Court.
- 62. Receipt granted by Court for rent deposited to be a valid acquittance.
- 63. Notification of receipt of deposit.
- 64. Payment or refund of deposit.

Arrears of rent.

- 65. Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.
- 66. Ejectment for arrears.
- 67. Interest on arrears.
- 68. Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Produce-rents.

- 69. Order for appraising or dividing produce.
- 70. Procedure where officer appointed.
- 71. Rights and liabilities as to possession of crop.

Liability for rent on change of landlord or after transfer of tenure or holding.

- 72. Tenant not liable to transferee of landlord's interests for rent paid to former landlord without notice of the transfer.
- 73. Liability for rent after transfer of occupancy-holding.

Illegal cesses, etc.

- 74. *Abwab*, etc., illegal.
- 75. 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.

SECTION.

76. Definition of "improvement."
77. Right to make improvements in case of holding at fixed rates and occupancy-holding.
78. Collector to decide question as to right to make improvement, etc.
79. Right to make improvements in case of non-occupancy-holding.
80. Registration of landlord's improvements.
81. Application to record evidence as to improvement.
82. Compensation for *raiya*t's improvements.
83. Principle on which compensation is to be estimated.

Acquisition of land for building and other purposes.

84. Acquisition of land for building and other purposes.

Sub-letting.

85. Restrictions on sub-letting.

Surrender and abandonment.

86. Surrender.
87. Abandonment.

Sub-division of tenancy.

88. Division of tenancy not binding on landlord without his consent.

Ejectment.

89. No ejectment except in execution of decree.

Measurements.

90. Landlord's right to measure land.
91. Power for Court to order tenant to attend and point out boundaries.
92. Standard of measurement.

Managers.

93. Power to call upon co-owners to show cause why they should not appoint a common manager.
94. Power to order them to appoint a manager if cause is not shown.
95. Power to appoint manager if order is not obeyed.
96. Power to nominate person to act in all cases under clause (b) of last section.
97. The Court of Wards Act, 1879, applicable to management by Court of Wards.
98. Provisions applicable to manager.
99. Power to restore management to co-owners.
100. Power to make rules.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENTS OF RENTS.

Part I.—Record-of-Rights.

101. Power to order survey and preparation of record-of-rights.
102. Particulars to be recorded.
- 102A. Power to order survey and preparation of record-of-rights as to water.
103. Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of *raiya*t's.
- 103A. Preliminary publication, amendment and final publication of record of rights.
- 103B. { (Eastern Bengal.) Certificate of, and presumption as to final publication and correctness of record-of-rights.
(Western Bengal). Presumption as to final publication and correctness of record-of-rights.

SECTION.

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

- 104. Settlement of rents and preparation of Settlement Rent Roll when to be undertaken by Revenue-officer.
- 104A. Procedure for settlement of rents and preparation of Settlement Rent Roll under this Part.
- 104B. (1) Contents of Table of Rates.
(2) Local publication of Table.
(3) Revenue-officer to deal with objections.
(4) Table to be submitted to superior Revenue authority.
(5) Proceedings of confirming authority.
(6) Effect of Table.
- 104C. Application of Table of Rates
- 104D. Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith.
- 104E. Preliminary publication and amendment of Settlement Rent Roll.
- 104F. Final revision of Settlement Rent Roll, and incorporation of the same.
- 104G. Appeal to, and revision by, superior Revenue authorities.
- 104H. Jurisdiction of Civil Courts in matters relating to rent.
- 104J. Presumptions as to rents settled under sections 104A to 104G.

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

- 105. Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being or is not about to be made.
- 105A. Decision of questions arising during the course of settlements of rents under this Part.
- 106. Institution of suit before a Revenue-officer.
- 107. Procedure to be adopted by Revenue-officer.
- 108. Revision by Revenue-officer.
- 108A. Correction by Revenue-officer of mistakes in record-of-rights.
- 109. Bar to jurisdiction of Civil Courts.
- 109A. Appeals from decisions of Revenue-officers.

Part IV—Supplemental Provisions.

- 109B. (Western Bengal.) Power of Revenue-officer to give effect to agreement or compromise.
(Eastern Bengal.) Power of Revenue-officer to presume that agreements or compromises are lawful.
- 109C. (Western Bengal.) Power of Revenue-officer to settle rent on agreement.
(East Bengal.) Note of decisions on record.
- 109D. Note of decisions on record.
- 110. Date from which settled rent takes effect.
- 111. Stay of proceedings in Civil Court during preparation of record-of-rights.
- 111A. Limitation of jurisdiction of Civil Courts in matters, other than rent relating to record-of-rights.
- 111B. Stay of suits in which certain issues arise.
- 112. Power to authorise special settlement in special cases.
- 113. Period for which rents as settled are to remain unaltered.
- 114. Expenses of proceedings under Chapter.
- 115. Presumption as to fixity of rent not to apply where record-of-rights has been prepared.
- 115A. Demarcation of village boundaries.

CHAPTER XI.

NON-ACCRUAL, OF OCCUPANCY AND NON-OCCUPANCY-RIGHTS, AND RECORD OF PROPRIETOR'S PRIVATE LANDS.

- 116. Saving as to certain lands.
- 117. Power for Government to order survey and record of proprietor's private lands.
- 118. Power for Revenue-officer to record private land on application of proprietor or tenant.
- 119. Procedure for recording private land.
- 120. Rules for determination of proprietor's private land.

CHAPTER XII.

DISTRRAINT.

- 121. Cases in which an application for distraint may be made
- 122. Form of application.
- 123. Procedure on receipt of application.
- 124. Execution of order for distraint.
- 125. Service of demand and account.
- 126. Right to reap, etc., produce.
- 127. Sale proclamation to be issued unless demand is satisfied.
- 128. Place of sale.
- 129. When produce may be sold standing.
- 130. Manner of sale.
- 131. Postponement of sale.
- 132. Payment of purchase-money.
- 133. Certificate to be given to purchaser.
- 134. Proceeds of sale how to be applied.
- 135. Certain persons may not purchase.
- 136. Procedure when demand is paid before the sale.
- 137. Amount paid by under-tenant for his lessor may be deducted from rent.
- 138. Conflict between rights of superior and inferior landlords.
- 139. Distraint of property which is under attachment.
- 140. Suit for compensation for wrongful distraint.
- 141. Power for Local Government to authorise distraint in certain cases.
- 142. Power for High Court to make rules.

CHAPTER XIII.

JUDICIAL PROCEDURE.

- 143. Power to modify Civil Procedure Code in its application to landlord and tenant suits.
- 144. Jurisdiction in proceedings under Act.
- 145. *Nalbs or gumashtas* to be recognized agents.
- 146. Special register of suits.
- 147. Successive rent-suits.
- 147A. Compromise of suits between landlord and tenant.
- 147B. Regard to be had by Civil Courts to entries in record-of-rights.
- 148. Procedure in rent-suits.
- 148A. Suits for arrears of rent by co-sharer landlords.
- 149. Payment into Court of money admitted to be due to third person.
- 150. Payment into Court of money admitted to be due to landlord.
- 151. Provisions as to payment of portion of money.
- 152. Court to grant receipt.
- 153A. Deposit on application to set aside *ex parte decree*.
- 154. Date from which decree for enhancement takes effect
- 155. Relief against forfeitures.

SECTION.

- 156. Rights of ejected *raiyats* in respect of crops and land prepared for sowing.
- 157. Power for Court to fix fair rent as alternative to ejectment.
- 158. Application to determine incidents of tenancy.

CHAPTER XIII A.

SUMMARY PROCEDURE FOR RECOVERY OF RENTS UNDER THE BENGAL
PUBLIC DEMANDS RECOVERY ACT, 1913.

- 158A. Recovery of arrears of rent under the certificate procedure in certain areas.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

- 158B. Passing of tenure or holding sold in execution of decree or certificate
- 159. General powers of purchaser as to avoidance of incumbrances.
- 160. Protected interests.
- 161. Meaning of "incumbrance" and "registered and notified incumbrance."
- 162. Application for sale of tenure or holding.
- 163. Order of attachment and proclamation of sale to be issued simultaneously.
- 164. Sale of tenure or holding subject to registered and notified incumbrances and effect thereof.
- 165. Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.
- 166. Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.
- 167. Procedure for annulling incumbrances under the foregoing sections.
- 168. Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.
- 169. Rules for disposal of the sale-proceeds.
- 170. Tenure or 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.
- 171. Amount paid into Court to prevent sale to be in certain cases a mortgage debt on the tenure or holding.
- 172. Inferior tenant paying into Court may deduct from rent.
- 173. Decree-holder may bid at sale; judgment-debtor may not.
- 174. Application by judgment-debtor to set aside sale.
- 175. Registration of certain instruments creating incumbrances.
- 176. Notification of incumbrances to landlord.
- 177. Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

- 178. Restrictions on exclusion of Act by agreement.
- 179. Permanent *Mukarrari* leases.
- 180. *Utbandi*, *char* and *diara* lands.
- 180A. Fixing of uniform annual money-rent in respect of *utbandi* lands.
- 180B. Lands in respect of which a uniform annual money-rent has been fixed under S. 180A to cease to be *utbandi* lands.
- 180C. Period for which rent fixed under S. 180A to remain unaltered.
- 181. Saving as to service-tenures.
- 182. Homesteads.
- 183. Saving of custom.

CHAPTER XVI.

LIMITATION.

- 184. Limitation in suits, appeals and applications in Schedule III.
- 185. Portions of the Indian Limitation Act not applicable to such suits, etc.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. Penalties for illegal interference with produce.

Damages for denial of landlord's title.

- 186A. Damages for denial of landlord's title.

Agents and representatives of landlords.

187. Power for landlord to act through agent.

188. Joint landlords to act collectively or by common agent.

- 188A. Procedure in suits by joint landlords.

Rules under Act.

189. Power to make rules regarding procedure, powers of officers and service of notices.

190. Procedure for making, publication and confirmation of rules.

Provisions as to temporarily-settled districts.

191. Savings as to land held in a district not permanently settled.

192. Power to alter rent in case of new assessment of revenue.

Rights of pasturage, etc.

193. Rights of pasturage, forest-rights, etc.

Savings for conditions binding on landlords.

194. Tenant not enabled by Act to violate conditions binding on landlord,

Savings for special enactments.

195. Savings for special enactments.

Construction of Act.

196. Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

SCHEDULE I.—REPEAL OF ENACTMENTS.

SCHEDULE II.—FORMS OF RECEIPT AND ACCOUNT.

SCHEDULE III.—LIMITATION.

Appendices :

APPENDIX I. Bengal Government Rules.

II. Important Notifications of the Bengal Government.

III. Notifications extending the Act.

IV. Some of the Amending Acts.

V. Registration Rules.

VI. High Court Rules.

VII. Former Chapters X and XIII.

VIII. Forms of Notices.

IX. Scale of Court fees.

X. Final publication of record-of-rights in certain areas.

XI. Notes on Miscellaneous matters.

XII. Price lists.

Examples working out the rateable enhancement of rent under s. 32.

XIII. Extracts from Bihar and Orissa Survey and Settlement Manual, 1927 (containing rules of procedure for Surveys and Settlement under Chapter X of the B. T. Act, scale of Court-fees in Settlement operations in Bihar and Orissa, dates of Settlement operations in the Province of Bihar and Orissa, commutation of produce rents, list of estates in Bihar allowed to recover rent under summary procedure, etc., etc.)

TABLE OF CASES.

*(The figures at the end of the reference indicate the page of
this book where the case has been noted.)*

A

- Abbas Sheikh v. Neyamatennessa, 91 I.C. 662—271.
 Abdool Hossain v. Lalchand, 10 Cal. 36—505.
 Abdul v. Basiruddin, 66 I.C. 220—173.
 Abdul v. Jalal, 65 I.C. 584—157.
 Abdul v. Krishna, 20 Cal. 724—509.
 Abdul v. Krishna, 20 Cal. 724—509.
 Abdul v. Nekbar, 87 C.L.J. 652—805.
 Abdul v. Rajchandra, 10 C.W.N. 104—402, 941.
 Abdul Azahar v. Collector of Backerganj, 44 C.L.J. 569—512, 521.
 Abdul Aziz v. Beharilal, 41 I.C. 711—979.
 Abdul Aziz v. Kantha Mullick, 38 Cal. 512—362, 363, 365.
 Abdul Aziz v. Tafajuddin, 18 C.W.N. 72 (notes)—836.
 Abdul Aziz v. Tauhidunnissa, 52 I.C. 380—384, 392.
 Abdul Gafar v. Umakant, 19 C.W.N. 260—234, 711, 934, 937, 938.
 Abdul Gafur v. Ali Miah, 28 C.W.N. 805—396, 685.
 Abdul Gaffur v. Durgaprasad, 8 P.L.T. 611—516.
 Abdul Gaffur v. Gulam Rahman, 39 I.C. 460—796.
 Abdul Gani v. Makbul Ali, 22 C.L.J. 823—74.
 Abdul Guni v. Dunne, 20 Cal. 488—850.
 Abdul Hakim v. Elahi Baksh, 52 Cal. 43—54.
 Abdul Hakim v. Rajendra, 13 C.W.N. 636—197, 333, 406, 681, 689, 933.
 Abdul Hossain v. Afsaruddin, 44 C.L.J. 481—34.
 Abdul Huq v. Mohini Mohan, 15 Cal. 240—853.
 Abdul Kader v. Sheikh Lal Mahomed, 84 I.C. 25, s.c., 39 C.L.J. 501—994.
 Abdul Karim v. Abdul Rahaman, 15 C.L.J. 671—8, 277, 279, 286, 459,
 462, 464, 466.
 Abdul Karim v. Meajan, 20 C.W.N. 28 (notes)—472, 488.
 Abdul Khair v. Meher Ali, 3 C.W.N. 384—127, 362, 365.
 Abdul Latif v. Jadav Chandra, 25 Cal. 216—
 Abdullah v. Asraf, 7 C.L.J. 152—925, 948, 952.
 Abdul Mazid v. Goshain Das, A.I.R. 1925 Cal. 461—995.
 Abdul Majid v. Kherode Chandra, 42 Cal. 690—415.
 Abdul Manaf v. Sheikh Muslim, A.I.R. 1925 Pat. 426—326.
 Abdul Rahman v. Ahmadar, 43 Cal. 558—789, 799.
 Abdul Rahaman v. Baikuntha, 27 C.L.J. 133—803.
 Abdul Rahaman v. Mateyar, 30 Cal. 425—853.
 Abdul Rahim v. Gujeswar, 52 I.C. 514—862.
 Abdul Rasheed v. Jogesh Chandra, 11 C.W.N. 153—554, 558, 589.
 Abdul Rashid v. Shahar Ali, 46 Cal. 1032—408, 501.
 Abdul Razak v. Promada Sundari, 80 I.C. 22—43.
 Abdul Rub v. Eggar, 35 Cal. 182—388, 396.
 Abdul Sobhan v. Monabali, 15 C.L.J. 170—848.
 Abdul Sobhan v. Nekbar, 17 C.L.J. 652—276.

- Abdulla *v.* Asrafali, 7 C.L.J. 152—5.
 Abdur *v.* Promode, 22 C.L.J. 108—830, 850.
 Abdur *v.* Sheikh Khondkar, 35 C.L.J. 206—31.
 Abdur Razzak *v.* Bajnath, 2 Pat. L.J. 383—24.
 Abeda Khatun *v.* Majubali, 24 C.W.N. 1020—623, 625.
 Abed Molla *v.* Diljan Molla, 29 Cal. 459—852.
 Abhaipada *v.* Atore Dome, A.I.R. 1923 Cal. 294—10, 77.
 Abhai Sarkar *v.* Rajani, 29 C.L.J. 371—224, 297, 302, 309, 312.
 Abhiram *v.* Chintamani, 6 Pat. 343, s.c., 8 P.L.T. 121—554.
 Abhiram *v.* Shyama Charan, 36 Cal. 1003—56, 107, 111.
 Abilak *v.* Dalial, 3 Cal. 557—690.
 Abinash *v.* Fulchand, 50 Cal. 737—398.
 Apinash *v.* Purnanda, 18 C.L.J. 174—470.
 Abhoya *v.* Kamini, 53 I.C. 188—791.
 Abhoy Charan *v.* Dwarkanath, 39 Cal. 53, s.c., 15 C.W.N. 972—948.
 Abhoy Charan *v.* Futtari Dassi, 57 I.C. 838—287, 500.
 Abhoy Charan *v.* Sheikh Titu, 2 C.W.N. 175—991, 992, 996.
 Abhoy Gobind *v.* Hari Charan, 8 Cal. 277—430.
 Abjan Bibi *v.* Raham Ali, 20 C.W.N. 756—275, 457.
 Achha Mian *v.* Durga Charan, 25 Cal. 146—547, 680, 681.
 Achanulla *v.* Salemonnessa, 9 C.W.N. 24 (notes)—191, 192.
 Achulanand *v.* Gayan Chand, 8 P.L.T. 673, s.c., 102 I.C. 981—935.
 Adaypati *v.* Janardan, 68 I.C. 288—366.
 Adhar Chandra *v.* Bipin Chandra, 100 I.C. 167—8.
 Adhirani *v.* Lala Sheo Sankar, 12 Cal. 482—689.
 Adiluddi *v.* Faial Sheikh, 19 C.W.N. 76 (notes)—479.
 Adimulsum *v.* Pir Revutham, 8 Mad. 424—315.
 Adit Singh *v.* Sukhraj, 17 C.L.J. 435—89, 306, 492.
 Administrator General of Bengal *v.* Asrafali, 28 Cal. 227—316, 412, 871.
 Administrator General of Bengal *v.* Mahomed Khalil, 5 C.W.N. 132 (notes)—852.
 Adolphe *v.* Emma Price, 12 C.W.N. 1059—495.
 Afajuddi *v.* Prasanna, 39 Cal. 138—793.
 Afer Moral *v.* Prasanna, 15 C.W.N. 249—255.
 Afiladdi *v.* Satis Chandra, 29 C.L.J. 40—750, 875, 882.
 Afraz *v.* Kulsumennessa, 10 C.W.N. 176—216, 382, 388, 776, 777, 780, 782.
 Afsuroodin *v.* Šorasibala, Marsh 558—334.
 Aftar Ali *v.* Brofendra, 24 C.L.J. 60—799.
 Agar Jan *v.* Panulla, 37 Cal. 687—173, 192, 193, 194, 921.
 Aghorenath *v.* Kalyaneswari, 46 I.C. 383—910.
 Aghorenath *v.* Kamini, 11 C.L.J. 461—416.
 Agin Bindh *v.* Mohan Bikram, 30 Cal. 20—559.
 Agmel *v.* Jardine Skinner & Co., 8 W.R. 501—266.
 Ahadulla *v.* Gagan Molla, 2 C.L.J. 10—61, 392, 784.
 Ahamad Biswas *v.* Benoybhusan, 23 C.W.N. 931—769.
 Ahamadulla *v.* Hakaru, 20 C.W.N. 39—168, 169, 799, 801, 803.
 Ahamadulla *v.* Proyag Saho, 18 C.W.N. 231 (notes)—832.
 Ahamuddin *v.* Girish Chandra, 4 Cal. 350—710.
 Ahinsa Bibi *v.* Abdul Kader, 25 Mad. 26—216, 398.
 Ahmed Ali *v.* Golam Gaffoor, 11 W.R. 432—304.
 Ahmud *v.* Tohi, 13 C.W.N. 267—70, 201, 262.
 Ahmud Sheikh *v.* Nabagopal, 19 C.W.N. 359—740.
 Ahsanulla *v.* Manjura Banoo, 30 Cal. 778—379.
 Ainulla *v.* Rahimulla, 39 I.C. 721—734.
 Ajgar Ali *v.* Asmat Ali, 8 Cal. 110—789.

- Ajimuddin v. Tarasankar, 28 C.L.J. 201—595, 726, 941.
 Ajoodhia v. Emam Bandi, 7 W.R. 528—177..
 Ajodhya v. Jagdeo Singh, 37 I.C. 915—189.
 Ajodhia v. Ram Golam, 13 C.W.N. 661—659, 662, 874.
 Ajuhannessa v. Hakim Biswas, 13 C.W.N. 202 (notes)—222.
 Akbar Ali v. Durga Kripa, 12 C.L.J. 589—255, 272.
 Akbar Ali v. Hira Bibi, 16 C.L.J. 182—326, 327, 328, 630.
 Akhil Chandra v. Amjad Ali—(unreported)—276.
 Akhil Chandra v. Hossain Ali, 19 C.W.N. 246—72, 74, 151, 161, 271, 273, 277, 649, 923, 924.
 Akhil Chandra v. Surendra, 11 C.L.J. 87—794.
 Akram Ali v. Anwar Ali, 24 I.C. 677—276.
 Akram Ali v. Durga Prasanna, 14 C.L.J. 614—29.
 Akshoy Kumar v. Akman Molla, 19 C.W.N. 1197—450, 868, 953.
 Akshoy Kumar v. Akshoy Banerjee, 25 C.W.N. 56 (notes)—253.
 Akshoy Kumar v. Bijoy Chand, 29 Cal. 813—779, 792, 806, 813, 815, 819, 821, 926.
 Akshoy Kumar v. Gopal Kamini, 10 C.W.N. 952—932.
 Aktowli v. Taraknath, 17 C.W.N. 774—311.
 Alamulla v. Surendra, 69 I.C. 57—68.
 Alep Khan v. Raghunath, 1 C.W.N. 310—232.
 Ali Ahammad v. Bepin Behari, 20 Cal. 595—723.
 Ali Haider v. Abdul Howladar—875, 878.
 Alim v. Satis, 25 Cal. 37—316, 413, 871.
 Ali Mahamad v. Aftabuddin, 20 C.W.N. 354—118.
 Ali Mahamed v. Nayan Rajah, 15 C.L.J. 672—286, 466.
 Ali Mahmud v. Bhagabati, 2 C.W.N. 525—316, 411, 413, 871.
 Ali Miah v. Ramjan Khan, 13 C.W.N. 224—828, 847.
 Ali Moolah v. Sahebulla, 15 W.R. 149—153, 201, 340.
 Alimuddin v. Ainuddin, 38 I.C. 534—42, 277, 287.
 Alimuddin v. Chinta Haran, 23 C.W.N. 437—459.
 Alimuddin v. Heera Lal, 23 Cal. 87 (F.B.)—126, 127, 365.
 Alimuddin v. Kali Krishna, 10 Cal. 895—506.
 Alimuddin v. Karim, 41 C.L.J. 135—297.
 Alimuddin v. K. S. Bonnerjee, 29 C.W.N. 500—303, 310.
 Alimuddin v. Rupendra, 19 C.W.N. 140 (notes)—242, 248.
 Alimunnessa v. Shyamacharan, 9 C.W.N. 467—416, 444.
 Ali Newaz v. Karim Baksh, 40 C.L.J. 62—323.
 Ali Quader v. Jogendra, 10 C.L.J. 7—56, 57.
 Allah Baksh v. Lal Khan, 67 I.C. 269—42.
 Allender v. Dwarkanath, 15 W.R. 320—196, 431.
 Aloke Chandra v. Jaluram, 22 C.W.N. 563—392.
 Altab v. Joogal Mandal, 25 W.R. 234—31.
 Altap v. Jarina Bibi, 67 I.C. 871—551.
 Aman Gazi v. Birendra Kishore, 16 C.W.N. 929—562, 682.
 Amanulla v. Ayfarjan, 62 I.C. 444—747.
 Amar Chand v. Prasanna Mayi, 25 C.W.N. 9—132, 959.
 Amar Chand v. Roy Goloke, 4 C.W.N. 770—509, 515, 520.
 Amar Chandra v. Shoshee Bhusan, 8 C.W.N. 225—508, 516 App. (93).
 Amar Nath v. Aghore Nath, 15 C.W.N. 216 (notes)—762.
 Amar Nath v. Hrishikesh, 64 I.C. 829—96.
 Amar Nath v. Krishnadas, 35 C.L.J. 138—133, 233.
 Amar Prasad v. Gagan Chandra, A.I.R. 1922 Cal. 180—344.
 Amatoo v. Sheikh Maksud, 19 C.W.N. 435—153, 154.
 Ambalavana v. Voguran, 19 Mad. 52—983.

- Ambar Ali *v.* Lutfee Ali, 21 C.W.N. 996—550, 557.
 Ambika *v.* Aswini, 21 C.L.J. 485—721.
 Ambika *v.* Chowdhry Keshri, 24 Cal. 642—193, 216, 393, 429, 435.
 Ambika *v.* Day Gazi, 10 C.W.N. 497—152, 791.
 Ambika Charan *v.* Giris Chandra, 68 I.C. 719—576.
 Ambika Charan *v.* Harakishore, 103 I.C. 707—125, 762.
 Ambika Charan *v.* Joy Chandra, 13 C.W.N. 210—558, 577.
 Ambika Charan *v.* Ram Charan, 18 C.W.N. 971 (F.B.)—431.
 Ambika Charan *v.* Ram Charan, (*unreported*)—167.
 Ambika Debi *v.* Swarnamayi, 49 Cal. 989—189.
 Ambika Nath *v.* Aditya Nath, 6 C.W.N. 624—190, 191, 204.
 Ambika Prasad *v.* Baldeo, 1 Pat. L.J. 253—181, 917.
 A. M. Dunne *v.* Nabo Krishna, 17 Cal. 144—881.
 Ameer *v.* Sheo Sahai, 19 W.R. 338—74.
 Aminuddin *v.* Pulin Chandra, 21 C.W.N. 976—946.
 Aminuddin *v.* Ulfutunnissa, 13 C.W.N. 108—988, 993, 996.
 Aminulla *v.* Mahabat, 25 C.W.N. 715—466.
 Amir Ali *v.* Aykup Ali, 41 Cal. 357—29, 685, 687.
 Amir Ali *v.* Basdeo, 5 C.L.J. 204—825.
 Amirennessa *v.* Jinnat Ali, 42 Cal. 751—170, 179, 273, 467, 923.
 Amir Hassan *v.* Sheo Baksh, 11 Cal. 6 (P.C.)—741, 742.
 Amiruddi *v.* Ananda, 21 C.L.J. 507—286.
 Amiruddin *v.* Sankar, 67 I.C. 91—473.
 Amirul Hassan *v.* Jewad Hussain, A.I.R. 1924 Pat. 318—844.
 Amirulla *v.* Nazir, 34 Cal. 104—160, 283, 284, 285, 457.
 Amiya Pal *v.* Sarbamangala, 91 I.C. 657—396, 940.
 Amjad Ali *v.* Ismail, 27 C.L.J. 137—401, 684.
 Amjad Ali *v.* Kade Jan, 13 C.W.N. 269—201, 262.
 Ammu Ammal *v.* Puthiaparambath, 43 I.C. 677—32.
 Amrita Lal *v.* Giridhar, 11 C.W.N. 581—469, 885.
 Amrita Lal *v.* Nemaï Chand, 28 Cal. 382—829.
 Amrita Sekhar *v.* Bejoy Chand, 4 C.L.J. 547—389.
 Amriteswari *v.* Secretary of State, 24 Cal. 504, s.c., 1 C.W.N. 249 (P.C.)—952.
 Amulyaratan *v.* Tarininath, 18 C.W.N. 1280—204, 214, 868.
 Ananda *v.* Haridas, 27 Cal. 545—129, 216, 217, 777.
 Ananda *v.* Kalika, 40 W.R. 59—749.
 Ananda *v.* Kunja Behari, 8 C.L.J. 117—91, 786, 787, 810.
 Ananda *v.* Nafar Chandra, 18 C.W.N. 259—816, 820, 822.
 Ananda *v.* Ratnakar, 7 C.W.N. 572—171, 173, 134, 186, 405, 921.
 Ananda Chandra *v.* Maharam, 10 C.L.J. 144—271, 272.
 Ananda Hari *v.* Secretary of State, 3 C.L.J. 316—385.
 Ananda Kumar *v.* Haridas, 27 Cal. 545?125.
 Ananda Mohon *v.* Gobinda Chandra, 20 C.W.N. 322—917.
 Ananda Mohon *v.* Gurudyal, 22 C.W.N. 965—170, 472.
 Ananda Mohon *v.* Kalidas, 3 Rev. Jud. & P. Journal, 135—308.
 Ananda Mohon *v.* Pramathanath, 25 C.W.N. 863—704.
 Anandamoyee *v.* Lakhi Chandra, 33 Cal. 339—106, 750, 911.
 Anandamoyee *v.* Saudamini, 27 C.W.N. 502—410.
 Ananta Charan *v.* Nirmal, 6 Pat. 266—843.
 Anarulla *v.* Koylash, 8 Cal. 118—470.
 Andrews *v.* Hailes, 2 E. & B. 349—333.
 Annada Chandra *v.* Abraham, 4 C.W.N. 42—104.
 Annada Charan *v.* Dasarath, 40 I.C. 444—110.
 Annada Charan *v.* Mohim, 26 C.L.J. 261—107.

- Annada Coomar *v.* Bissonath, 17 W.R. 416—449.
 Annada Kumar *v.* Haridas, 27 Cal. 545—742.
 Annada Prasad *v.* Mathura, 13 C.W.N. 702—37, 38, 339.
 Annada Prasad *v.* Nibaran Dassi, 11 C.L.J. 380—242.
 Annada Sundari *v.* Kebulram, 7 C.W.N. 542—987.
 Annapurna *v.* Oomachurn, 18 W.R. 55—178.
 Ansar Ali *v.* C. E. Grey, 2 C.L.J. 403—107, 495, 750, 911.
 Anu Mondal *v.* Kamaluddin, 1 C.L.R. 248—430.
 Anunda *v.* Nagendra, 15 C.L.J. 52—725, 746, 747, 947.
 Anunda Chunder *v.* Sidly Gopal, 8 W.R. 112—740.
 Anund Lall *v.* James Hill, 4 W.R. 33—304.
 Anund Lal *v.* Shib Chander, 22 Cal. 477—610.
 Anundo Rai *v.* Kali Prasad, 10 Cal. 677—896.
 Anungo Mohun *v.* Madan Mohun, 1 C.L.R. 147—416.
 Appaya *v.* Kunhali, 30 Mad. 214—851, 852.
 Apurba *v.* Asutosh, 9 C.W.N. 122—101, 419.
 Apurba Krishna *v.* Atarmani, 64 I.C. 889—628.
 Apurba Krishna *v.* Shyamacharan, 24 C.W.N. 223—583, 615, 623, 625.
 Apurna Charan *v.* Kasam Ali, 10 C.W.N. 527—19, 439, 444, 880.
 Aravamader *v.* Sami Yappo, 21 Mad. 385—396.
 A Reed *v.* Sree Kishen, 15 W.R. 430—663.
 Arip Mandal *v.* Ram Ratan, 8 C.W.N. 479—261, 274.
 Arjan Mirdha *v.* Kali Kumar, 68 I.C. 194—686.
 Arjan Molla *v.* Jadunath, 7 C.W.N. 243—853.
 Arjun Das *v.* Ganendra, 20 C.L.J. 341—195, 740, 743.
 Arman Peada *v.* Manik Sardar, 27 C.W.N. 86—994.
 Arpin Khan *v.* Chandi Charan, 95 I.C. 252—113.
 Arsadali *v.* Mansubali, 16 C.L.J. 539—376, 405, 959.
 Arsali Sadagar *v.* Ram Satya, 7 C.L.J. 191—235, 500, 804, 823.
 Arun Chandra *v.* Kamini Kumar, 41 Cal. 685—334, 338, 474, 477.
 Arunadoya *v.* Mahomad Ali, 46 C.L.J. 435—503.
 Asadali *v.* Mahomed Hossein, 43 Cal. 986—510, 512.
 Asadulla *v.* Gagan Molla, 6 C.W.N. 84 (notes)—776.
 Asanulla *v.* Mohini Mohon, 20 Cal. 379—748.
 Asanulla *v.* Tirthabasini, 22 Cal. 680—41.
 Asarfi *v.* Ram Khelawan, 4 Pat. L.J. 115—835.
 Asfarannessa *v.* Heramba, 54 Cal. 114, s.c., 44 C.L.J. 467—542, 610.
 Asharfi Dhiman *v.* Muhammad Dindalal, 88 I.C. 989, s.c., 7 P.L.T. 11—860.
 Ashraf Ali *v.* Arman Khan, 90 I.C. 893, s.c., A.I.R. 1926 Cal. 162—875.
 Ashok Bhuiyan *v.* Karim, 9 C.W.N. 843—216, 387, 388, 431, 435, 777, 780.
 Asimuddi *v.* Sundari, 38 Cal. 339—826.
 Asiruddi *v.* Mokhada, 35 Cal. 543—19, 828, 829, 847, 848, 849.
 Askarali *v.* Gopi Mohan, 18 C.L.J. 257—180, 471.
 Askaran *v.* Pir Bux, 8 C.L.J. 163—467.
 Asmat Ali *v.* Hasmat Khan, 2 C.W.N. 412—789.
 Asmatunnessa *v.* Ashruff Ali, 15 Cal. 488—850, 852.
 Asmatunnessa *v.* Harendra, 12 C.W.N. 721—188, 190, 191, 192, 193.
 Asrafali *v.* Karam Ali, 22 C.W.N. 1025—80.
 Asrafali *v.* Netlal, 23 Cal. 682—861.
 Asraf Pramanick *v.* Saroda, 10 C.W.N. 104 (notes)—226.
 Assabali *v.* Bisseshuri, 8 C.L.J. 554—130.
 Assanulla *v.* Bussurat Ali, 10 Cal. 920—91, 500.
 Assanulla *v.* Mohini Mohon, 26 Cal. 139—320, 341.
 Assanullah *v.* Tirthabasini, 22 Cal. 680—45, 441, 727, 879.
 Asutosh. *v.* Abdool, 28 Cal. 676—616, 639.

- Asutosh *v.* Abinash, 15 Cal. 782—839.
 Asutosh *v.* Akhoy Kumari, 44 I.C. 581—394.
 Asutosh *v.* Amir Molla, 3 C.L.J. 337—44, 47, 445, 874.
 Asutosh *v.* Banomali, 19 C.W.N. 412—160, 285, 457, 462, 797.
 Asutosh *v.* Basanta Kumari, 19 C.W.N. 160 (notes)—
 Asutosh *v.* Behari, 35 Cal. 61—694.
 Asutosh *v.* Behari Lal, 11 C.W.N. 1011—393.
 Asutosh *v.* Dwarikanath, 27 C.W.N. 121—340.
 Asutosh *v.* Haran Chandra, 47 Cal. 133—254, 255.
 Asutosh *v.* Harinarayan, 3 C.L.J. 143—336.
 Asutosh *v.* Haripada, 35 C.L.J. 133—204.
 Asutosh *v.* Ishan Chandra, 9 C.W.N. 279 (notes)—554.
 Asutosh *v.* Joylal, 17 C.L.J. 50—35, 37, 415, 504, 506.
 Asutosh *v.* Upendra, 24 C.L.J. 467—171.
 Aswap Ali *v.* Dula Mia, 92 I.C. 843, s.c., A.I.R. 1926 Cal. 580—918.
 Aswini Kumar *v.* Kamini Kumar, 37 I.C. 708—21.
 Aswini Kumar *v.* Raj Kumar, 103 I.C. 705—745.
 Aswini Kumar *v.* Saroda, 24 C.L.J. 79—605, 606, 612, 625.
 Atal Chandra *v.* Lakhinarayan, 10 C.L.J. 55—197, 265.
 Atafar Ali *v.* Ghulam Mahiuddin, 11 C.W.N. 63 (notes)—313.
 Ataharuddin *v.* Murari Mohon, 47 C.L.J. 21—482, 752.
 A. T. Rickets *v.* Rameswar, 28 Cal. 109—App. (119).
 Attorney General *v.* Ewelme Hospital, 17 Beav. 366—57.
 Atul Chandra *v.* Mritunjoy, 3 Pat. L.J. 427—161.
 Atul Krishna *v.* Nripendra, 1 C.L.J. 114—371.
 Atulya Charan *v.* Tulsi Das, 2 C.W.N. 543—414, 879.
 Aubhoy Churn *v.* Shoshi Bhusan, 16 Cal. 155—731.
 Aubhayeswari *v.* Gauri Sankar, 22 Cal. 859—393.
 Audh Biharee *v.* Dost Mahomed, 22 W.R. 185—232.
 Aukhori *v.* Fahiuinnessa, 2 Pat.L.J. 525—857.
 A. W. N. Wytt *v.* Sheogobind, 1 Pat. L.J. 414—197.
 Ayenuddin *v.* Sris Chandra, 11 C.W.N. 76—190, 191, 192.
 Ayul Ali *v.* Daya Bibi, 12 C.W.N. 105—948, 949.
 Azam Khan *v.* Umed Ali, 85 I.C. 750—843.
 Azgar Ali *v.* Asabuddin, 9 C.W.N. 134—194, 781, 845, 851, 858.
 Azim Sardar *v.* Ramlal, 25 Cal. 324—21, 48, 380, 687, 755, 756, 757,
 App. (115).
 Aziz Khan *v.* Sarajubala, 24 C.W.N. 76 (notes)—329.
 Azizul Huq *v.* Kazimaddin, 32 C.W.N. 68 (notes)—228, 924.
 Azmat *v.* Bishun Bakar, 20 C.L.J. 607—497, 662.

B

- Baban Mayacha Nagu *v.* Shrivacha, 4 Cal. 53—947.
 Babar Ali *v.* Krishna Kamini, 26 Cal. 603—114, 122.
 Babua *v.* Sarli, 20 C.W.N. 1352—735.
 Babu Bodh Narain *v.* Mahomed Mossa, 3 C.W.N. 628—407, 959.
 Babu Dheput Singh *v.* Mathuranath, W.R. 1864 p. 278—435.
 Babu Run Bahadur *v.* Muloram, 8 W.R. 149—489.
 Babul Chandra *v.* Nistarini, 33 Cal. 136—140.
 Babu Lal *v.* Purna Chandra, 10 C.L.J. 602—902.
 Babu Ram *v.* Mohendra, 8 C.W.N. 454—8, 277, 279, 467, 918.
 Babu Ram *v.* Upendra, 44 I.C. 922—159, 160.
 Baccha Lal *v.* Bishanath, 11 C.W.N. 112 (notes)—389.

- Bacharam *v.* Peary Mohun, 9 Cal. 813—500.
 Badam *v.* Ganga Dev, 29 All. 484—166.
 Badan *v.* Rajeswari, 2 C.L.J. 570—159, 160, 161, 284, 470, 475.
 Badarennessa *v.* Alam Gazi, 21 Cal. 650—171, 183, 186, 392.
 Badami Kuar *v.* Dinu Rai, 8 All. 3—742.
 Badaruddin *v.* Herajtulla, 54 I.C. 797—807, 817.
 Badaruddin *v.* Sarafuddin, 68 I.C. 489—643.
 Badlu Pathak *v.* Sibram, 107 I.C. 310, s.c., 7 Pat. 155—769, 793, 796, 814.
 Bagdu Majhi *v.* Durga Prasad, 9 C.W.N. 292—39, 52, 56, 98.
 Bagram *v.* Collector of Bhullon, W.R. 1864 p. 243—947.
 Bahadur Ahmed Moulavi *v.* Hemanta Kumar, 30 C.W.N. 613—61, 231, 873.
 Bahakalim *v.* Rajendra, 64 I.C. 751—402.
 Baharuddin *v.* Dwarikanath, 28 Cal. 160—275.
 Baidik Lachmi Narayan *v.* Najahat, A.I.R. 1927 Pat. 300—736.
 Baidyanath *v.* Dhon Krishna, 5 C.W.N. 516—728.
 Baidyanath *v.* Ghisu Mandal, 30 Cal. 1063—749.
 Baidyanath *v.* Kamini Kant, 6 C.L.J. 573—903.
 Baidyanath *v.* Nandalal, 18 C.W.N. 1206—27, 43, 202, 340.
 Baidyanath *v.* Sheikh Jin, 2 C.W.N. 44—61, 231, 322, 392, 586, 784, 934, 957.
 Baidyanath *v.* Sudharam, 8 C.W.N. 251—61, 85, 140, 152, 231.
 Baijnath *v.* Raghunath, 16 C.W.N. 496—224, App. (121).
 Baikantha *v.* Aghorenath, 21 Cal. 387—681.
 Baikuntha *v.* Basanta, 23 C.L.J. 151—799, 800.
 Baikuntha *v.* Prasanna Kumar, 23 C.W.N. 516—578.
 Baikuntha *v.* Ramapati, 27 C.L.J. 101—715, 717.
 Baikuntha *v.* Thakur Debendra, 11 C.W.N. 676—384, 682, 778, 781, 811, 830.
 Baisnab Charan *v.* Ramkumar, 18 C.W.N. 140—462, 463.
 Baistab Charan *v.* Akhil Chandra, 11 C.W.N. 217—129, 486, 781.
 Balai Ahir *v.* Bhuggobutty, 11 C.L.R. 476—101.
 Balbhadra *v.* Najiban, 4 C.L.J. 370—950.
 Balaram *v.* Kartick, 4 C.W.N. 161— App. (118).
 Balaram *v.* Kangsha, 53 I.C. 548—595, 726.
 Balgobind *v.* Dwarka, 1 Pat. 394—44, 198.
 Bali Mohammad *v.* Janaki, A.I.R. 1924 Cal. p. 535—42.
 Balak Mahton *v.* Mathura, 52 I.C. 267—428.
 Bally Dobey *v.* Ganei Deo, 9 Cal. 388—896.
 Balmukunda *v.* Tarini Singh, 16 C.L.J. 360—979.
 Baluk *v.* Nathuni, 2 Pat. L.J. 24—427.
 Balunki Rout *v.* Kunjabehari, 6 Pat. 698—81, 554.
 Balwan Rai *v.* Kesho Prasad—225.
 Bama Charan *v.* Administrator General, 6 C.L.J. 72—23, 43.
 Bama Charan *v.* Ramkanai, 19 C.W.N. 858—791.
 Bamandas *v.* Nilmadhav, 44 Cal. 771—41, 459, 461.
 Bamandas *v.* Sadhu Majhi, 26 C.W.N. 945—654.
 Bamapada *v.* Midnapur Zemindari Co., 16 C.L.J. 322—84, 96.
 Bamapada *v.* Sakuntala, 30 C.W.N. 494—719.
 Bamasoondari *v.* Radhika, 13 W.R. 11 (P.C.)—90, 91, 93.
 Ban Behari *v.* Khetterpal, 16 C.W.N. 259—387, 395, 771, 796, 807, 808, 813, 814.
 Ban Behary *v.* Raj Chandra, 14 C.W.N. 141—285.
 Banalata *v.* Monmathanath, 11 C.W.N. 821—394.
 Banarashi *v.* Makhan Rai, 30 Cal. 947—723.
 Bande Ali *v.* Amud Sarkar, 19 C.W.N. 415—46, 167, 683, 952.

- Bandiram *v.* Purna, 27 C.L.J. 115—731, 736.
 Banee Madhub *v.* Joy Kissen, 7 W.R. 495—210, 917.
 Baneswari *v.* Umes Chandra, 37 Cal. 626—254, 255, 272.
 Bangshibadan *v.* Kamalakant, 26 C.L.J. 90—128, 362.
 Bangshidhar *v.* Kedarnath, 1 C.W.N. 114—847, 850.
 Bangshiram *v.* Prasannamoyi, 106 I.C. 25—259.
 Banku Behari *v.* Benode Kumar, 13 C.W.N. 264 (notes)—61, 231, 266, 957
 Banku Behari *v.* Gurudas, 40 C.L.J. 157—24.
 Banku Behari *v.* Krishna Chandra, 18 C.W.N. 170—791, 815, 960,
 App. (106).
 Banku Behari *v.* Krishto Gobinda, 30 Cal. 433—65.
 Banku Behari *v.* Raj Chandra, 14 C.W.N. 141—464, 687.
 Banku Behari *v.* Shyama Charan, 25 Cal. 322—393, 700.
 Bansidas *v.* Jagadip, 24 Cal. 152—131, 307.
 Bansidhar *v.* Thakur Asutosh, [1925 Pat.] 22—895.
 Bansiraj Lal *v.* Motilal, 1918 Pat. 21—702.
 Baoli Bibi *v.* Hamijuddi, 12 C.L.J. 267—217, 396.
 Barada *v.* Bhupendra, A.I.R. 1924 Cal. 56—108.
 Barada Charan *v.* Alljan, 25 C.W.N. 72 (notes)—442.
 Baroda Charan *v.* Hemlata, 13 C.W.N. 242—187, 188, 196, 197, 432, 434.
 Baradakant *v.* Chunder Coomar, 23 W.R. 280—346.
 Barada Kant *v.* Govinda Chandra, 7 W.R. 50—788.
 Baradaprasad *v.* Bhupendranath, 50 Cal. 694—132.
 Baradaprasad *v.* Foizuddi, 28 C.W.N. 845—800, 832.
 Baradaprasad *v.* Taraknath, 94 I.C. 147—122.
 Barada Sundari *v.* Annada Sundari, 3 C.W.N. 774—941.
 Baraik Kamal *v.* Lilhu Christian, 8 C.L.J. 170—486.
 Barber Moran *v.* Romana Goundan, 20 Mad. 461—348.
 Barhamdeo *v.* Ramanand, 40 I.C. 594—979.
 Barhamdeo *v.* Ram Narain, 19 C.L.J. 182—786.
 Barkul *v.* Jogendra, 16 C.W.N. 311—19.
 Basanta Kumar *v.* Asutosh, 26 Cal. 67—3, 45, 380, 511, 774, 985.
 Basanta Kumar *v.* Khulna Loan Co., 20 C.L.J. 1—381, 803, 954.
 Basanta Kumar *v.* Pramatha, 26 Cal. 130—414, 892, 879.
 Basanta Kumar *v.* Secretary of State—887.
 Basanta Kumari *v.* Benimadhab, 95 I.C. 788, s.c., A.I.R. 1926 Cal. 1058
 —625.
 Basanta Kumari *v.* Nandaram, 17 C.W.N. 1149—990.
 Basant *v.* Sabutla, 2 C.W.N. 279 (notes)—191.
 Basaratali *v.* Manirulla, 36 Cal. 745—110, 869.
 Bashiram *v.* Srinath, 23 C.W.N. 76 (notes)—732, 734.
 Basi Poddar *v.* Ram Krishna, 1 C.W.N. 135—850.
 Basir *v.* Fazil, 19 C.W.N. 290—595, 726.
 Basiraddi *v.* Afsarennessa, 21 C.W.N. 860—256.
 Basiruddin *v.* Faimulla, 17 C.W.N. 476—861.
 Basiraddin *v.* Jogendra, 64 I.C. 182—235.
 Basiruddi *v.* Kailash, 33 Cal. 113—786.
 Basiruddin *v.* Harimohan, 39 I.C. 720—272.
 Basiruddin *v.* Jhori Singh, 16 All. 140—859.
 Basiruddin *v.* Sahebulla, 32 C.W.N. 160—287, 500.
 Basowan Kurmi *v.* Nokchedi, 27 All. 174—710.
 Basaratulla *v.* Asirunnessa, 11 C.W.N. 190—286, 462.
 Basudeo Narain *v.* Radha Kishen, 1922 Pat. 55—157.
 Basudev *v.* Radha Kishun, 3 P.L.T. 22—158.
 Batai Ahir *v.* Bhuggobutty, 11 C.L.R. 476—109, 212, 497, 661.

- Bhajan *v.* Gangeshwar, 53 I.C. 87—421.
 Bhajan Ahir *v.* Gangeshwar, 1919 Pat. 461—422.
 Bhajanath *v.* Grant, 22 W.R. 13—90.
 Bhajohari *v.* Aka Golam, 16 W.R. 97—196, 433, 690.
 Bharam Chandra *v.* Kanak Sarkar, 26 C.W.N. 359—269.
 Bharat Prasad *v.* Rameswar, 30 Cal. 1066—417, 419.
 Bharut Chunder *v.* Gourmonee, 11 W.R. 31—95.
 Bharut Roy *v.* Gunga Narain, 14 W.R. 211—122, 195, 354, 431, 489.
 Bhawal Sahu *v.* Baij Nath, 12 C.W.N. 249 (P.C.)—942.
 Bhawani *v.* Mathura, 7 C.L.J. 20—763, 764.
 Bhawani Koer *v.* Afzal Hussain, 34 Cal. 381—508, 511.
 Bhawani Koer *v.* Mathura Prosad, 40 Cal. 89—799, 814.
 Bhawni *v.* Irshad, 34 Cal. 51—513.
 Bheka Sing *v.* Nukched, 24 Cal. 40—988.
 Bhekdhari *v.* Badh Singh, 27 Cal. 663—6, 681.
 Bhikaree *v.* Dhakeshwar, 7 C.L.J. 483—107.
 Bhikariram *v.* Maharaj Bahadur, 43 Cal. 195—9, 918.
 Bhikhi Sing *v.* Bhanoo, 3 C.W.N. 231—804, 857.
 Bhikhon Quassab *v.* Mardanali, 56 I.C. 40—538.
 Bhimram *v.* Maharani Harsasundary, 33 C.L.J. 516—186.
 Bhiram Ali *v.* Gopi Kant, 24 Cal. 355—173, 177, 183, 193, 392, 922.
 Bhogha Mower *v.* Ram Lakhan, 27 C.L.J. 107—554.
 Bholai *v.* Raja of Bansi, 4 All. 174—209.
 Bholanath *v.* Chunder Madhab, 6 C.L.J. 212—44, 47.
 Bholanath *v.* Kanti Chandra, 25 Cal. 311—408.
 Bholanath *v.* Midnapur Zemindari Co., 8 C.W.N. 425 (P.C.)—952.
 Bholanath *v.* R. Belchambers, 14 C.L.J. 373—716.
 Bholanath *v.* Uma Charan, 14 Cal. 440—791.
 Bhola Roy *v.* Jung Bahadur, 19 C.L.J. 5—682.
 Bhonulal *v.* W. A. Vincent, 65 I.C. 882—198.
 Bhosal *v.* Aminuddin, 21 C.W.N. 371—322, 709, 726, 937.
 Bhuban *v.* Shamanund, 11 Cal. 699—114.
 Bhuban Mohan *v.* Sheikh Badan, 46 Cal. 766—282, 818.
 Bhubo Soondaree *v.* Kasheenath, 22 W.R. 351—88.
 Bhubaneswar *v.* Dwarkeswar, 34 C.L.J. 508—980.
 Bhudai Sahu *v.* Sheikh Manowar Ali [1920 Pat.] 92—989, 994, 995.
 Bhudar *v.* Nandalal, 40 I.C. 682—233.
 Bhudan Mahton *v.* Wazihunnessa, 44 I.C. 292—245.
 Bhugabat *v.* Lutan, 7 C.W.N. 218—493.
 Bhugeeruth *v.* Ram Narain, 9 W.R. 299—439.
 Bhugwan *v.* Jug Mohun, 20 W.R. 308—663.
 Bhugwan Dutt *v.* Shew Mangal, 22 W.R. 256—90.
 Bhugwan Bhagut *v.* Jug Mohun, 20 W.R. 308—141.
 Bhujanga *v.* Ramayamma, 7 Mad. 387—445.
 Bhukhi Koer *v.* Ram Khelawan, 17 C.W.N. 311—47, 757.
 Bhulu Singh *v.* Nimu, 4 B.L.R. 29—367.
 Bhuneshwari *v.* Sudkeo, 85 I.C. 566—423, 426.
 Bhupendra *v.* Busi Tanti, 40 Cal. 870—179, 189.
 Bhupendra *v.* Harihar, 24 C.W.N. 874—97.
 Bhupendra *v.* Harihar, 24 C.W.N. 874—97.
 Bhupendra *v.* Roman, 27 Cal. 417—321, 726.
 Bhupendra *v.* Upendra, 13 C.W.N. 162 (notes)—375.
 Bhupendra Narain *v.* Monmathanath, 41 I.C. 859—366.
 Bhupendra Narain *v.* Narpate, 53 Cal. 6, s.c., 42 C.L.J. 227 (P.C.)—909.
 Bhupendra Narain *v.* Nemye Chand, 15 Cal. 627—758.

- Bhusan Chandra *v.* Srikanta, 45 Cal. 756—797, 819.
 Bhutnath *v.* Bomkesh, 24 C.W.N. 64 (notes)—734.
 Bhutnath *v.* Manmathanath, 13 C.W.N. 1025—794.
 Bhutnath *v.* Ramanath, 48 Cal. 93—413.
 Bhutnath *v.* Surendranath, 13 C.W.N. 1025—74, 149, 791.
 Bibi Ahmadi *v.* Taraknath, 18 C.L.J. 396—948.
 Bibee Jan *v.* Bhagul Singh, 21 W.R. 438—257.
 Bibee Syefun *v.* Rudder Sohay, 7 Cal. 682—355.
 Bibhudendra *v.* Debendra, 20 C.L.J. 140—82, 84.
 Bibhuti Bhusan *v.* Chinibas, 45 C.L.J. 229—680.
 Bibi Jaroa Kumari *v.* Hanifuddin, 14 C.W.N. 389—4, 389.
 Bibi Kaniz *v.* Sarban Lal, 42 I.C. 414—734.
 Bibi Salcha *v.* Antu Ram, 43 I.C. 972—625.
 Bibi Taibatennessa *v.* Prabhavati, 10 C.L.J. 640—813.
 Bibi Wakilun *v.* Deonandan, 5 Pat. L.J. 681—533, 540, 563.
 Bidhumukhi *v.* Asmatulla, 21 C.W.N. 829—793.
 Bidhumukhi *v.* Bhabasundari, 24 C.W.N. 961—796, 814.
 Bidhumukhi *v.* Gobinda Chandra, 42 C.L.J. 78—9, 79, 81, 280.
 Bilas Kunwar, *v.* Desraj, 19 C.W.N. 1207—42.
 Bimal Jati *v.* Biranja Kuar, 22 All. 238—113.
 Binayak *v.* Somiruddi, 24 C.W.N. 1022—61, 231, 584.
 Binda Bibi *v.* Mum Singh, 50 I.C. 33—999.
 Bindeshwari *v.* Kesho Prasad, 31 C.W.N. 74 (P.C.)—149, 667.
 Bindeswari *v.* I. S. Smith, 5 C.L.J. 27—354.
 Binnaud Lal *v.* Kalu Pramanik, 20 Cal. 708 (F.B.)—45, 78, 262, 660, 901, App. (115).
 Binode Behari *v.* Maizuddin, 49 I.C. 288—729.
 Binode Behari *v.* Tokhi Singh, 1924 Pat. 211—425.
 Binode Lal *v.* Preo Mohan, 20 C.W.N. 53 (notes)—53 App. (121).
 Bipradas *v.* Azam Ostagar, 46 Cal. 441—581.
 Bipradas *v.* Kamini Kumar, 26 C.W.N. 465—800, 819.
 Bipradas *v.* Kedarnath, 47 I.C. 765—555, 812.
 Bipradas *v.* Manorama, 45 Cal. 574—205, 545, 555, 611.
 Bipradas *v.* Ostagar, 22 C.W.N. 116 (notes)—7, 539.
 Bipradas *v.* Panchi Bibi, 5 I.C. 434—127.
 Bipradas *v.* Rajaram, 13 C.W.N. 650—47, 384, 682, 778, 811, 830.
 Bipradas *v.* Sarat Chandra, 16 C.L.J. 209—337.
 Bipradas *v.* Surendranath, 43, I.C. 467—159, 160, 172.
 Bipro Charan *v.* Suchand, 12 C.L.J. 595—256, 272.
 Biraj Mohini *v.* Gopeswar, 27 Cal. 202—18.
 Biraj Mohini *v.* Kedarnath, 35 Cal. 1010—30.
 Birbar Narain *v.* Secretary of State, 14 C.L.J. 151—903, 904.
 Birbhadra *v.* Kalpataru, 1 C.L.J. 388—30.
 Birendra Kishore *v.* Ahmed Ali, 17 C.W.N. 612—773, 798, 809.
 Birendra Kishore *v.* Ali Ahmad, 84 I.C. 86—91.
 Birendra Kishore *v.* Ambika Charan, 31 C.W.N. 860 s.c. 43 C.L.J. 590—589, 594.
 Birendra Kishore *v.* Annadapriya, 22 C.L.J. 151—205, 545.
 Birendra Kishore *v.* Bhoirab Chandra, 20 C.L.J. 295—682.
 Birendra Kishore *v.* Bhubaneswari, 39 Cal. 203—107.
 Birendra Kishore *v.* Chandi Charan, 22 C.L.J. 134—205.
 Birendra Kishore *v.* Daulat Khan, 43 Cal. 59—307.
 Birendra Kishore *v.* Fuljan, 25 Cal. 465—40, 43.
 Birendra Kishore *v.* Gagan Chandra, 22 C.L.J. 132—205.

- Birendra Kishore *v.* Giris Chandra, 22 C.L.J. 154—757.
 Birendra Kishore *v.* Johiruddin, 94 I.C. 26—301.
 Birendra Kishore *v.* Kailas Chandra, 22 C.L.J. 140—557.
 Birendra Kishore *v.* Kalitara, 43 Cal. 547—545, 555, 601.
 Birendra Kishore *v.* Lakshmi, 22 C.L.J. 129—32, 33.
 Birendra Kishore *v.* Ram Chandra, 22 C.L.J. 153—205, 545.
 Birendra Kishore *v.* Ram Charan, 22 C.L.J. 147—205, 245.
 Birendra Kishore *v.* Ram Kumar, 22 C.L.J. 308—205, App. (122).
 Birendra Kishore *v.* Rosan, 9 C.W.N. 931—562, 682.
 Birendra Kishore *v.* Trailokya, 37 C.L.J. 521—728.
 Birendranath *v.* Aghorenath, 25 C.W.N. 525—399.
 Bishen Chand *v.* Parameswar, 15 Cal. 342—51.
 Bishen Narain *v.* Chandra Kant, 37 I.C. 638—286.
 Bishen Pragash *v.* Achaib Dushad, 1 Pat. 459—330.
 Bishen Pragash *v.* Sheo Saran, 1 Pat. 368—557.
 Bisheswar *v.* Husani, 4 Pat. L.J. 282—410, 419, 421.
 Bisheswar *v.* Ali Karim, 63 I.C. 500—473.
 Bishun Dayal *v.* Jagadish, A.I.R. Pat. 513—832.
 Bishun Deo *v.* Mahadeo Prasad, 6 Pat. 274, s.c. 102 I.C. 895—1001.
 Bisseswar *v.* Brajakant, 33 C.L.J. 296—81, 96.
 Bisseswar *v.* Fateh Hossein, 10 C.W.N. 24 (notes)—70.
 Bisseswar *v.* Kali Charan, 44 C.L.J. 27—38.
 Bisseswar *v.* Luchmeswar, 6 I.A. 233—745.
 Bisseswar *v.* Rajendra, 18 C.W.N. 949—306.
 Bisseswar *v.* Sukraj, 15 C.W.N. 95 (notes)—606.
 Bisseswar *v.* Wooma Charan, 7 W.R. 44—304.
 Bissonath *v.* Brajmohon, 10 W.R. 61—43, 205.
 Biswambhar *v.* Nasarat, 32 C.L.J. 46—923.
 Biswanath *v.* Surendra, 19 C.W.N. 102—58.
 Bollye Satee *v.* Akram, 4 Cal. 961—141.
 Bonomali *v.* Delu Sirdar, 24 W.R. 118—469.
 Bonomali *v.* Kailas, 4 Cal. 136—923.
 Bool Chand *v.* Lathoo Mudi, 23 W.R. 387—790.
 Bonwang Raja *v.* Banga Behari, 20 C.W.N. 408—415.
 Bonwari Nath *v.* Land Acquisition Deputy Collector of Bogra, 7 C.W.N. 130—327.
 Bradley *v.* Atkinson, 7 All. 899—481.
 Brahamdeo *v.* Ramdown, 16 C.L.J. 139—194.
 Brahmamoyee *v.* Sheikh Munsur, 32 C.L.J. 37—5.
 Brahmamoyee *v.* Somarali, 68 I.C. 109—348, 413.
 Brahmanunda *v.* Arjun Kant, 1 C.L.J. 310—19, 145, 565, 566, 617, 657.
 Brahunuddi *v.* Mohun Chunder, 8 C.L.R. 511—98.
 Brajadas *v.* Bankim Chandra, 51 Cal. 454—81, 94, 98, 655.
 Brajamohun *v.* Gayaprasad, 30 C.W.N. 761 s.c. 45 C.L.J. 55—App. (116), App. (117).
 Brajanath *v.* Moheswar, 28 C.L.J. 220—470.
 Brindabon *v.* Bhoopal Chandra, 17 W.R. 377—800.
 Brindabon *v.* Bhupati Bhusan, 62 I.C. 743—861.
 Brindabon *v.* Gopal Saran, 104 I.C. 514—561.
 Brindaban *v.* Janendra, 35 C.L.J. 75—517.
 Brindarani *v.* Annada, 16 C.W.N. 94—800, 802.
 Brij Mohun *v.* Rai Umanath, 20 Cal. 8—742.
 Brij Behari *v.* Sheo Sankar, 2 Pat. L.J. 124—230, 236, 239, 342, 559, 642.
 Brojendra *v.* Debnarain, 45 Cal. 765—909, 910.
 Brohmanand *v.* Hem Chandra, 18 C.W.N. 1016—24, 710, 714, 717, 768.
 Brojobasi *v.* Ramsankar, 23 C.L.J. 638—11, 79, 220.

- Brojendra *v.* Arman, 27 C.L.J. 478—407.
 Brojendra *v.* Jadunath, A.I.R. 1925 Cal. 293—844.
 Brojendra *v.* Krishna, 7 Cal. 684—504.
 Brojendra *v.* Lalma, 31 C.W.N. 80 (notes)—833.
 Brojendra *v.* Mohim, 31 C.W.N. 32—556.
 Brojendra *v.* Rakhal, 2 Cal. 791—346.
 Brojendra *v.* Somar Ali, A.I.R. 1923 Cal. 282—559.
 Brojendra *v.* Woopendra, 8 Cal. 706—340.
 Bojendra Kishore *v.* Khalil Nagarchi, 21 C.L.J. 489—538, 640.
 Brojodhabal *v.* Premchand, 91 I.C. 726—429.
 Brojokishore *v.* Saraswati, 6 C.W.N. 333—991, 992, 996.
 Brojolal *v.* Belchambers, 9 C.W.N. 340—315.
 Brojonath *v.* Abdur Rahaman, 89 I.C. 113—280.
 Brojonath *v.* Heeralal, 10 W.R. 120—337.
 Brojonath *v.* Monnessur, 22 C.W.N. 100—457.
 Budhimanta *v.* Sarat Chandra, 13 C.L.J. 672—492, 752.
 Budhia Orawan *v.* Jemadar Baboo, 24 W.R. 4—441.
 Budhu Koer *v.* Hafiz, 18 C.L.J. 274—986.
 Bujrungi *v.* H. M. Mackenzie, 7 C.L.J. 475—146, 149.
 Buloram *v.* Saroop, 21 W.R. 256—473.
 Buswaninath *v.* Land Acquisition Deputy Collector of Bogra, 7 C.W.N. 130—335.
 Bungshidhur *v.* Kedarnath, 1 C.W.N. 114—854, 860.
 Bunwari Mukunda *v.* Bidhu Sundar, 35 Cal. 346—905.
 Burmah Chowdhry *v.* Sreenund, 12 W.R. 29—427, 432.
 Burnamoyi *v.* Burnamoyi, 23 Cal. 191—11, 983.
 Bussun Lall *v.* Chundee, 4 Cal. 686—341.
 Buti Singh *v.* Murat Singh, 20 W.R. 478—177.
 Butayer Rahaman *v.* Karim Ali, 18 C.L.J. 271—389.
 Buzlal *v.* Satis Chandra, 15 C.W.N. 752—174, 175, 200.
 Byji Nath *v.* Ramdour, 7 C.L.R. 369—735.
 Bykunthanath *v.* Amirunnessa, 2 W.R. 191—793.
 Byomkesh *v.* Haladhar, 19 C.W.N. 127—999.
 Byomkesh *v.* Jagadiswar, 22 C.W.N. 304—402.
 Byomkesh *v.* Uday Chand, 43 I.C. 737—999.

C

- Carhma Deo *v.* Sheo Prasad, 41 I.C. 237—833.
 Casperz *v.* Kedarnath, 28 Cal. 738—51.
 Catherine *v.* Huro Chandra, 8 W.R. 248—308.
 Cazee Syed Mahomed *v.* Chundee, 7 W.R. 250—456.
 Chakan Saha *v.* Rup Chand, S.D.A. 680—439, 441.
 Chalo *v.* Jhare, 39 Cal. 995—404.
 Chakatkarini *v.* Triguna, 17 C.W.N. 833—397, 398, 777.
 Champakalatika *v.* Nafar Chandra, 15 C.W.N. 536—69, 70, 753, 868.
 Chander Singh *v.* Krimabai, 22 Bom. 718—726.
 Chandi Charan *v.* Azizernessa, A.I.R. 1922 Cal. 18—97.
 Chandi Charan *v.* Banku Behari, 26 Cal. 449 (F.B.)—854, 855.
 Chandi Charan *v.* Gadadhar, 45 Cal. 336—422.
 Chandi Charan *v.* Meher Banu, 52 Cal. 910—594, 638.
 Chandi Charan *v.* Monoranjan, 17 C.L.J. 416—607, 608.
 Chandi Charan *v.* Samla Bibi, 28 C.L.J. 91—279, 280, 283, 456, 458.
 Chandi Prasanna *v.* Gour Chandra, 19 C.W.N. 1301—190.
 Chandmiya *v.* Tukamiya, 28 C.W.N. 516—544, 561.

- Chandmoni v. Lokenath, 6 C.L.R. 494—334.
 Chandmoni v. Santomoni, 24 Cal. 707 ; 1 C.W.N. 534—842, 844.
 Chand Roy v. Bhagwati, 2 Pat. 814—557.
 Chandra v. Bhola, Roy, 62 I.C. 80—747.
 Chandra v. Parbati Charan, 35 C.L.J. 1—779.
 Chandra Binode v. Ala Bux, 48 Cal. 184—61, 167, 172, 185, 392, 922.
 Chandra Dip v. Mothura, A.I.R. 1922 Pat. 193—157.
 Chandra Jaleah v. Ram Churn, 15 W.R. 212—948.
 Chandradoy v. Bhaguban, 20 C.W.N. 40 (notes)—App. (21).
 Chandra Kant v. Abdul Gafur (unreported)—112.
 Chandra Kant v. Amjad Ali, 48 Cal. 783—459.
 Chandra Kant v. Mirtunjay (unreported)—875.
 Chandra Kant v. Nrityagopal, (unreported)—396.
 Chandra Kant v. Ramnath, 11 C.L.J. 591—35.
 Chandra Kant v. Ramkrishna, 20 C.W.N. 1002—89, 306, 491.
 Chandra Kishore v. Raj Kishore, 15 Cal. 450—987.
 Chandra Kumar v. Jiban Krishna, 29 C.W.N. 290—888.
 Chandra Kumar v. Kamini Kumar, 11 C.W.N. 742—852.
 Chandra Madhav v. Nobin Chandra, 40 Cal. 108—518.
 Chandrama v. Maharaja of Dumraon, 38 I.C. 209—844.
 Chandra Man v. Manmathanath, 11 C.L.J. 68—533, 641.
 Chandra Mohan v. Ramnarain, 17 C.W.N. 80 (notes)—725, 947.
 Chandra Mohini v. Kenaram, 19 C.L.J. 324—771, 900.
 Chandra Mohun v. Bissesswar, 1 C.W.N. 158—265.
 Chandra Mohun v. Manmathanath, 11 C.L.J. 68—616.
 Chandra Mohun v. Meherjan, 44 C.L.J. 311—280, 286, 288, 919.
 Chandra Narain v. Asutosh, 18 C.W.N. 659—895.
 Chandra Nath v. Barodasundari, 22 Cal. 813—393.
 Chandra Nath v. Protap, 18 C.W.N. 170—387, 777.
 Chandra Nath v. Sheikh Inamdi, 34 C.L.J. 369—410, 413.
 Chandra Nath v. Sindar Khan, 18 W.R. 218—211.
 Chandra Sakai v. Kalli Prosanna, 23 Cal. 254—801.
 Chandra Sekhar v. Raneer Manjher, 3 C.W.N. 286—774, 830.
 Chandreswar v. Chuni Ahir, 9 C.L.R. 359—687.
 Chandri v. Daji Bhow, 21 Bom. 501—315.
 Chariter Rai v. Kailash, [1918 Pat.] p. 145—303.
 Charu Chandra v. Sambhu, 3 Pat. L.J. 255—666.
 Chatraput v. Gopi Chand, 26 Cal. 750—4, 385.
 Chatterdhari v. Bereenchi, 15 C.W.N. 88 (notes)—816.
 Chatter Lall v. Thacoor Pershad, 18 Cal. 518—422.
 Chattradhari v. Saraswati, 22 Cal. 156—897.
 Chattra Kumari v. Broncke, 54 I.A. 432—47, 438.
 Chattra Nath v. Babar Ali, 29 C.W.N. 333—207, 556.
 Chuttur Kumari v. Pratapdhuj, A.I.R. 1923 Pat. 176—21.
 Chaturgin v. Tilackdhari, 71 I.C. 470—87.
 Chaturi v. Makund Lal, 7 Cal. 710—316.
 Chaudhuri Mahadeo v. Sk. Azmut, 1920 Pat. 49—833.
 C. H. Edgell v. Biswanath, 62 I.C. 59—149.
 Cheodith v. Quadress, 1 Pat. L.J. 161—379, 797, 814.
 Cheoditti v. Tulsi Singh, 40 Cal. 423—244, 616, 625.
 Chhatrapat v. Gopichand, 26 Cal. 750—705.
 Chhedi v. Chedan, 32 Cal. 422—422, 426.
 Chikhuri v. Beni Prosad, 3 C.L.J. 43—147.
 Chinammal v. Athinathay, 10 Mad. L.J. 228—826.
 Chintamoni v. Rashbehari, 19 Cal. 17—116, 118, 489.
 Chintamoni v. Upendra, 4 C.W.N. 326—988.

- Chooramonee *v.* Howrah Mill Co., 21 Cal. 233—340.
 Choto Bahira *v.* Purna Chandra, 21 C.L.J. 144—52.
 Choudhuri Upendranandan *v.* Umai Set, 30 C.W.N. 974—587.
 Chowdhri Gur Narayan *v.* Sheolal, 46 Cal. 566—404.
 Chowdhury Isharool *v.* Bhoostee, 25 W.R. 201—317.
 Chowdhury Kesa Sahay *v.* Giani Roy, 29 Cal. 626—855.
 Chowdhury Mahodeo *v.* Sheikh Pachuri, 16 C.W.N. 322—187, 189.
 Chowdhury Raghunath *v.* Dadha, 18 Cal. 469—257.
 Chowdhury Ram *v.* Chowdhury Pawan, 18 C.L.J. 97—376.
 Christian *v.* Tekaitmi, 19 C.W.N. 796—58.
 Chunder Kant *v.* Ramlal, 1 C.W.N. 463—651.
 Chundermonee *v.* Debendra, Marsh, 520—447.
 Chundermonee *v.* Shambhoo, 1864 W.R. 270—114.
 Chundy *v.* Balaram, 91 I.C. 763—344.
 Chuttan Mahto *v.* Tilakdhari, 11 Cal. 175—439, 443.
 Chytunno *v.* Kedarnath, 14 W.R. 99—345.
 Colonial Sugar Refining Co. *v.* Irving, (1905) A.C. 369—3.
 Court of Wards *v.* Bungshee Deo, 24 Cal. 149—897.
 Croft *v.* Lumby, 27 L.J. Q. B. 321—753.
 C. R. Macdonald *v.* Babu Lal, 4 C.L.J. 519—558.

D

- Debee Golam *v.* Chunder Kant, 3 W.R. 109—447.
 Debee Rawsi *v.* Hearanman, 8 W.R. 223—396.
 Dakas Khan *v.* Ghulam Kasim, 28 C.L.J. 441—559.
 Dakeshwar *v.* Iswardhari, 22 C.L.J. 57—596.
 Dakhyani *v.* Dole Gobind, 21 Cal. 432—676.
 Dakhyani *v.* Mono Rant, 19 C.W.N. 407—79, 592.
 Dalgleish *v.* Damodar, 8 C.L.J. 533—81, 265, 314, 667.
 Dalgleish *v.* Guzuffar Hossein, 23 Cal. 429—344, 345.
 Damodar *v.* Dalgleish, 38 Cal. 432—82, 659.
 Damodar *v.* Lakhan, 37 Cal. 885—59.
 Damodar *v.* Miller, 6 Pat. L.J. 166—664.
 Damodar *v.* S. A. Miller, 27 C.W.N. 462 (P.C.)—178.
 Damodar *v.* Vinayak, 29 Mad. 40—862.
 Dargahi *v.* Mango Koer, 67 I.C. 869 ; 1 Pat. 779—1001.
 Dassorath *v.* Ramkrishna, 9 Cal. 596—114, 490.
 Dattaraya *v.* Shridhur, 17 Bom. 736—212.
 Daulatram *v.* Mehr Chand, 15 Cal. 70—393.
 Davenport *v.* The Queen, 3 App. Cas. 115—352.
 David *v.* Ramdhun, 6 W.R. 97—332.
 Davies *v.* Bristoe, 3 K. B. 161—753.
 Davis *v.* Kazee Abdul, 8 W.R. 55—799.
 Dayagazi *v.* Ramlall, 2 C.W.N. 355—49, 504, 506, 680.
 Dayal Kundu *v.* Malku Pathak, 5 Pat. L.J. 406—235.
 Dayamoyee *v.* Bholanath, 6 W.R. 77—342, 417, 981.
 Dayamoyee *v.* Narendra, 19 C.W.N. 79—803.
 Dayamoyee *v.* Ananda, 18 C.W.N. 971, (F.B.)—167, 169, 170, 171, 183, 188, 274, 475, 480, 834, 921, 922.
 Deb Coomari *v.* Gungadhar, 17 W.R. 199—740.
 Debendra *v.* Bibhudendra, 45 Cal. 803—76, 81.
 Debendra *v.* Paresb Nath, 4 C.L.J. 119—47, 682, 729.
 Debendra Kumar *v.* Bhupendra, 19 Cal. 182—759, 760, 761.
 Debendra Lal *v.* Nilmoney, 86 I.C. 865—364.

- Debendra Lal *v.* Secretary of State, 46 C.L.J. 322—950, App. (122).
 Debendra Nath *v.* Chunder Moncey, 2 Hay. 519—447.
 Debendra Nath *v.* Mirza Abdul, 10 C.L.J. 150—181.
 Debendra Nath *v.* Nagendra Nath, 43 C.L.J. 106—762.
 Debendra Prosad *v.* Paresch Nath, 21 Cal. 132—728.
 Debidiyal *v.* Gango Kuer, A.I.R. 1926, Pat. 68—544.
 Debiprasad *v.* Official Trustee, 72 I.C. 1012—608.
 Debi Prosad *v.* Dharamjit, 41 Cal. 727—712.
 Debi Raut *v.* Ashutosh, 21 I.C. 55—802.
 Debiruddi *v.* Abdur Rahim, 17 Cal. 196—104, 870.
 Deblal Jha *v.* Kumar Das, [1925 Pat.] 236—788.
 Debnarain *v.* Baidya Nath, 14 C.W.N. 68—7, 150, 201, 434.
 Debnarain *v.* Biharilal, 14 C.W.N. 68—196.
 Debnarain *v.* Jagadish Chandra, 32 C.W.N. 68—596.
 Debnarain *v.* Narendra, 16 Cal. 267—19, 706.
 Debnath *v.* Ramsunder, 19 C.W.N. 1205—6.
 Debo Das *v.* Mohunt Ram Churn, 2 C.W.N. 474—742.
 Debrani *v.* Sarat Kumar, 39 C.L.J. 522—860.
 Dedoyal *v.* Patra Khan, 18 All. 481—740.
 Delaney *v.* Khalil, 9 C.W.N. 123 (notes)—815.
 Delaney *v.* Rahmat Ali, 32 Cal. 710—815, 819.
 Dengu Hazi *v.* Nobin Kisori, 1 C.W.N. 294—547, 610.
 Deodem William *v.* Smith, 5 A. and E. 350—479.
 Deokinandan *v.* Dhian Singh, 8 All. 467—166.
 Deoki Singh *v.* Lakhan Roy, 30 Cal. 880, s.c. 8 C.W.N. 196—365.
 Deoki Singh *v.* Sheo Gobind, 17 Cal. 277—762.
 Deoki Singh *v.* Subhan Roy, 8 C.W.N. 196—129.
 Deolagan *v.* Golabansi, 69 I.C. 616—694.
 Deo De Sheeb Kristo *v.* Ram Narain, 17 C.W.N. 80 (notes)—947.
 Deo Lessee of Rod *v.* Archer, 12 Rev. Rep. 509—494.
 Deonandan *v.* Janki Singh, 44 Cal. 573—845.
 Deonandan *v.* Meghu Mahton, 5 C.L.J. 181—31, 199, 494, 495, 554, 555, 660.
 Deonarain *v.* Kukur Bind, 24 All. 319—65.
 Deonarayan *v.* Ramanand, 63 I.C. 211—481.
 Deonath *v.* Amar Singh, 45 I.C. 418—659.
 Deo on the demise of Cox and others, 6 Rev. Rep. 850—494.
 Devendra *v.* Jhumur, 43 C.L.J. 387—207, 333, 342.
 Davenport *v.* Queen, 3 A.C. 115—753.
 Deo Saran *v.* Bateswar, 23 C.L.J. 559—169, 177.
 Devidoyal *v.* Bhan Pertab, 21 Bom. 248—710.
 Dewan Ram *v.* Atul Mander, 6 Pat. L.J. 202—185, 186.
 Dewan Ray *v.* Sunder, 24 Cal. 160—676.
 Deo Narain *v.* C. R. Webb, 28 Cal. 86—987.
 Dhakeshwar *v.* Gulab Kuer, 53 I.A. 176, s.c. 31 C.W.N. 341 (P.C.)—158, 562, 659, 664.
 Dhakeshwar *v.* Iswardhari, 22 C.L.J. 57—605, 609, 618.
 Dhakeshwar *v.* Rampershad, 43 I.C. 753—46, 380.
 Dhalie *v.* Anund, 5 W.R. 86—439, 443.
 Dhananjoy *v.* Upendra Nath, 22 C.W.N. 686—322, 584, 585, 761, 933.
 Dhanukhari *v.* Baburam, 10 C.L.J. 629—726.
 Dhanukdhari *v.* Nathima, 11 C.W.N. 848—210.
 Dhanukdhari *v.* Saiyad Sirajul, 1 Pat. L.J. 521—558.
 Dharam Chand *v.* Manji Sahu, 16 C.L.J. 436—117.
 Dharani *v.* Asutosh, 40 C.L.J. 34—587, 590.
 Dharanidhar Sen *v.* Wazidunnessa, 16 Cal. 708—127, 365.

- Dharanikant v. Amir Sheikh, 22 C.W.N. 20 (notes)—592, 633.
 Dharanikant v. Gabar Ali, 17 C.L.J. 277—498, 547, 548, 598, 615, 665,
 760.
 Dharanikant v. Ismail Sheikh, 45 I.C. 221—302.
 Dharasigit v. Chandreswar, 11 C.W.N. 504—726.
 Dharma Charan v. Ramesh Chandra, 24 I.C. 820—21.
 Dhiramoyee v. Anantaram, 46 I.C. 748—842.
 Dharendra v. Ahmad Mia, 30 C.W.N. 765—224, 302, 309.
 Dharendra v. Charu Sashi, 90 I.C. 431, s.c. A.I.R. 1925 Cal. 191—723.
 Dharendra v. Nawab Khaje Habibulla, 29 C.W.N. 505—564.
 Dhirendranath v. Gopicharan, 31 C.L.J. 12—305.
 Dhirendranath v. Nischintapur Co., 26 C.L.J. 118—384.
 Dhirendranath v. Purna Chandra, 51 I.C. 904—589.
 Dhirendranath v. Rajendra, 103 I.C. 827—718.
 Dhorakairi v. Ramjeevon, 20 Cal. 101—104, 105.
 Dhubatarini v. Ekabbar, 5 C.L.J. 253—737.
 Dhum Singh v. Chander Kant, 4 W.R. 43—308.
 Dhruvad v. Hari, 22 C.W.N. 826—327.
 Dhunput v. Geoman, 11 M.I.A. 433—51.
 Dhunput v. Mahomed Kazim, 24 Cal. 296—35, 36.
 Dhunput v. Russomoyee, 14 W.R. 108—683.
 Digbijoy v. Sheikh Ata Rahaman, 17 C.W.N. 156—199, 432, 434.
 Digumber v. Ramsoonder, S. D. A. 617—43.
 Djendra Nath v. Sailendra, 24 Cal. 197—760.
 Dinabandhu v. Bonerji, 19 Cal. 774—116, 869.
 Dinabandhu v. Jagabandhu, 63 I.C. 520—739.
 Dinabandhu v. Nabin Chandra, 8 C.W.N. 437—734.
 Dinamonee v. Doorga Pershad, 21 W.R. 70—43, 753.
 Dinamoyi v. Bonbehari, 7 C.W.N. 160—65.
 Dinanath v. Amar Singh, 45 I.C. 418—911.
 Dinanath v. Anadi Krishna, 83 I.C. 873—586, 607.
 Dinanath v. Ganes Chandra, 18 C.L.J. 544—497.
 Dinanath v. Golak Mohini, 1 C.W.N. 183—704, 705.
 Dinanath v. Krishna Bejoy, 9 C.W.N. 379—182, 276, 479.
 Dinanath v. Ramanath, 23 C.L.J. 561—644.
 Dinanath v. Sasimohan, 20 C.W.N. 550—914.
 Dinanath v. Sati Prasad, 27 C.W.N. 115—72, 132, 252, 297.
 Dinanath v. Umes Chandra, 49 I.C. 984—335.
 Dindoyal v. Radhakisori, 8 B.L.R. 526—346.
 Dindoyal v. Raj Keshwar, 98 I.C. 991—425, 426.
 Dindoyal v. Thakroo, 6 W.R. Act X 24—246, 334, 335.
 Dinendra v. Tituram, 30 Cal. 801—51.
 Dintarini v. L. P. D. Broughton, 3 C.W.N. 25—220, 322.
 Dipa Mahton v. Sheonandan, A.I.R. 1924 Pat. 342—770.
 Dip Narayan v. Bhim Mandal, 8 P.L.T. 564—230, 545.
 Dittor Koer v. Harkhoo Singh, 37 I.C. 367—686.
 Diwan Balmukund v. Tarini, 16 C.L.J. 360—381,
 Diwoli v. Apaji, 13 Bom. 342—114.
 Doherty v. Allman (1878) 3 App. Cas. 709—211.
 Donay Das v. Keshub Prahto, 8 C.W.N. 741—601, 607, 608.
 Donzali v. Token Nadaf, 23 W.R. 277—734.
 Doolar Chand v. Lalla Chabeel, 6 I.A. 471—780, 782.
 Doorgadhar v. Haramohini, 13 C.W.N. 270—387, 782.
 Doorga Narain v. Ram Lall, 7 Cal. 330—734.
 Doorga Prasad v. Joynarain, 2 Cal. 474—91.
 Doya Chand v. Anund Chunder, 14 Cal. 382—109.

- Doyal Chandra v. Chuni Lal, 12 C.L.J. 259—112.
 Doyamoyee v. Narendra, 19 C.W.N. 79—788.
 Draper v. Croft, 15 M. M. & W. 166—315.
 Drupad v. Hari, 22 C.W.N. 827—322.
 Ducasse v. Cohen, 24 C.W.N. 1007—112.
 Durga v. Ramdasi, 6 Pat. 80, s.c. 7 P.L.T. 871—769.
 Dukh Haran v. Bibee Sghra, 12 C.W.N. 568—486.
 Dukha Mandal v. W. Grant, 16 C.L.J. 24—310, 312.
 Dukhiram v. Matabi, 39 I.C. 795—496.
 Dulhin Golab v. Dulla Kurmi, 25 Cal. 744—131, 307.
 Dulhin Lachhandrati v. Hodhnath, 48 I.C. 485—154.
 Dulhin Mathura v. Bangshidhar, 16 C.W.N. 904—853, 856.
 Dulli v. Maher, 8 W.R. 131—359.
 Dumre v. Bissessur, 13 W.R. 291—465, 494.
 Dunne v. Nobo, 17 Cal. 144—22.
 Durga v. Bhusan Chandra, 21 C.W.N. 373—949.
 Durga Churn v. Basir, 6 C.W.N. 238—547, 581, 616.
 Durga Charan v. Bishnupada, 46 C.L.J. 172—843.
 Durga Charan v. Hari Charan, 21 Cal. 521—610.
 Durga Charan v. Hatem, 29 Cal. 252—565, 616, 617, 627.
 Durga Charan v. Kalachand, 7 C.W.N. 615—702.
 Durga Charan v. Kaliprasanna, 3 C.W.N. 586—46, 183, 186, 191, 382, 383, 392, 776, 781, 998.
 Durga Charan v. Karamat, 7 C.W.N. 607—193.
 Durga Charan v. Pandabnath, 33 C.L.J. 518—178.
 Durgadas v. Gurudas, 4 C.W.N. 606—361.
 Durgadut v. Rameshwar, 13 C.W.N. 1013—50.
 Durga Hazra v. Samosh Akon, 4 C.W.N. 608—383.
 Durga Mohon v. Sukumal, 19 C.W.N. 825—251, 762.
 Durgapada v. Bhusan Chandra, 21 C.W.N. 373—990, 995.
 Durga Prasad v. A. H. Forbes, [1925 Pat.] 109—513, 515.
 Durgaprasad v. Brajanath, 39 Cal. 696—57, 58, 902.
 Durgaprasad v. Brindaban, 15 W.R. 274—51, 124, 917, 954.
 Durgaprasad v. Doochur Pershad, 3 Agra 188—496.
 Durgaprasad v. Doula Gazee, 1 C.W.N. 160—180, 490.
 Durgaprasad v. Rajendra, 37 Cal. 293—28, 30, 48, 70, 225, 225, 325, 403, App. (120).
 Durgaprasad v. Tribeni Singh, 46 Cal. 362 (P.C.)—897.
 Durgaprasanna v. Ishan Chandra, 44 Cal. 800—518.
 Durgaprasanna v. Kalidas, 9 C.L.R. 449—76, 84.
 Durgapriya v. Nazra Gain, 25 C.W.N. 204—329, 331, 343.
 Durga Sundari v. Brindaban, 11 W.R. 162—177.
 Durga Sundari v. Umadatunnessa, 18 W.R. 234—77.
 Durgati v. Bejoy Chand, 26 C.W.N. 12 (notes)—739.
 Durjon Mahto v. Wazib Hossein, 5 Cal. 135—406, 496.
 Durlav v. Jamiruddin, 90 I.C. 405—956.
 Durlaw Pradhaine v. Mahomed Maniuddi, 13 C.W.N. 100 (notes)—842.
 Dursun Singh v. Fasihun, 6 C.L.J. 369—257.
 Dwarka Chaudhuri v. Iswari, 58 I.C. 46—989, 995.
 Dwarka Dhakai v. Mathura Lal, 18 C.W.N. 942—322, 324, 934.
 Dwarkanath v. Aloke Chunder, 6 Cal. 641—780.
 Dwarkanath v. Atul Chundra, 46 Cal. 870—395, 400.
 Dwarkanath v. Bankutesh, 7 C.L.J. 109—508, 509, 517.
 Dwarkanath v. Dambaru, 38 Cal. 278—27, 45, 382, 566, 616, 774.
 Dwarkanath v. Dwijendranath, 47 Cal. 139—255.
 Dwarkanath v. Hurish Chandra, 4 Cal. 925—173, 180, 921.

- Dwarkanath *v.* Kangali, 29 C.L.J. 416—839.
 Dwarkanath *v.* Kisori Lal, 11 C.L.J. 426—200, 396.
 Dwarkanath *v.* Ledu Sardar, 33 Cal. 502—69, 70.
 Dwarkanath *v.* Mathuranath, 21 C.W.N. 117—111, 480, 752, 937, 940, 975.
 Dwarkanath *v.* Noboo Sirdar, 14 W.R. 193—884.
 Dwarkanath *v.* Peari Mohan, 1 C.W.N. 694—703.
 Dwarkanath *v.* Ramchand, 26 Cal. 428 (F.B.)—755, App. (115), (118).
 Dwarkanath *v.* Rani Dassi, 28 Cal. 310—280, App. (105).
 Dwarkanath *v.* Tafazar Rahaman, 20 C.W.N. 1097—657, 658, 662.
 Dwarkanath *v.* Tarapasanna, 17 Cal. 160—932, 936.
 Dwarkanath *v.* Tarini Sarkar, 34 Cal. 199: 11 C.W.N. 512—173, 184, 186, 192, 196, 921.
 Dwijadas *v.* Dearish, 28 C.W.N. 207 (notes)—303.
 Dwijendra Nath *v.* Aftabuddi, 21 C.W.N. 492—35, 545, 605.
 Dwijendra *v.* Jitendra, 32 C.W.N. 295—338, 880.

E

- E. A. Moore *v.* Gulab Chand, 73 I.C. 5—605.
 Earl of Jersey *v.* Guardian of Pen, 22 Q.B.D. 555—57.
 Earle of Lisburn *v.* Davies, L.R. 1 C.P. 259—333.
 Easin *v.* Intejnessa, 24 C.W.N. 659—817.
 Eastern Mortgage & Agency Co. *v.* Rai Gunput, 9 C.W.N. 23 (notes)—445, 880.
 Ebbs *v.* Boulnois, L.R. 10 Ch. App. 479 (484)—880.
 Edward Dalglish *v.* Sheikh Gazaffar, 24 Cal. 442—174.
 E. H. Ducasse *v.* E. M. D. Cohen, 24 C.W.N. 1007—109.
 Ejel *v.* Felai, 21 C.L.J. 315—89, 235, 320, 326, 331.
 Ekabbar *v.* Harabewa, 15 C.W.N. 335—106.
 Eklal Jha *v.* William Grant, 64 I.C. 332—227.
 Ekradeswar *v.* Janeswari, 18 C.W.N. 1249 (P.C.)—50, 52, 785.
 Ellahee Buksh *v.* Roopun, 7 W.R. 284—300, 303.
 Ellahee Buksh *v.* Shaik Janav, 24 W.R. 386—43.
 Elias Meyer *v.* Manoranjan, 22 C.W.N. 441—113, 469.
 Emoduddin *v.* Danesh, 39 I.C. 240—79, 270.
 Emperor *v.* Indubhusan, 53 Cal. 524, s.c., 30 C.W.N. 524, s.c., 44 C.L.J. 427—951.
 Emperor *v.* Mohant Ram Das, 9 C.W.N. 816—359.
 Emperor *v.* Probhat Chandra, 31 C.W.N. 165, s.c., 45 C.L.J. 323 (F.B.)—950.
 Enat Mandal *v.* Baloram, 3 C.W.N. 581—742.
 Enayatulla *v.* Elahibuksh, 1864 W.R. Act X 42—262, 316, 338.
 Erfan Daroga *v.* Delaladdi, 24 C.W.N. (176 notes)—738.
 Eshan Chander *v.* Burnomoyee, 16 W.R. 233—733.
 Eshan Chandra *v.* Khajah Essanoolah, 16 W.R. 79—346, 981.
 Eshan Chandra *v.* Shama Charan, 11 M.I.A. 7—757.
 Eshaque Sheikh *v.* Matilal, 81 I.C. 1043—86, 99, 133.
 Esubai *v.* Damodar, 16 Bom. 552—32, 333.
 Evans *v.* Envar, 2 K.B. 315; 80 L.J.K.B. 845—753.

F

- Fadu Jhala *v.* Gour Mohon, 19 Cal. 544 (F.B.)—947.
 Faez Rahaman *v.* Ramsukh, 21 Cal. 169—377, 826.
 Faijaddin *v.* Agni Kumar, A. I. R. 1921, Cal. 370—312.

- Faijaddin v. Asrab Ali*, 37 C.L.J. 475—69.
Faijunnessa v. Ramtaran, 26 C.W.N. 138—125, 400.
Faizar Rahaman v. Mimansa Khatun, 18 C.L.J. 111—376.
Faiz Dhali v. Aftabuddin, 6 C.W.N. 675—104.
Fakeer Mondal v. Arshad Molla, 10 C.W.N. 280 (notes)—732.
Fakera Pasban v. Bibi Asimunnissa, 27 Cal. 540—992.
Fakira Sahu v. Anoop Lal, 9 P.L.T. 178—923.
Fakir v. Bonomali, 18 C.L.J. 255—464, 797.
Fakir Chandra v. Alas Bibi, 15 C.L.J. 225—166, 933.
Fakir Chandra v. Khagendra Nath, 27 C.W.N. 68 (notes)—414.
Fakir Chandra v. Ramkumar, 8 C.W.N. 721 (P.C.)—785, 845.
Fakir Lal v. W. C. Bonnerjee, 4 C.W.N. 324—348, 415.
Fani Bhusan v. Pulin Chandra, 35 I.C. 838—990, 992 996.
Farquharson v. Govt. of Bengal, 16 W.R. (P.C.) 29—325.
Fateh Ali v. Ganganath, 8 Cal. 113—391.
Fatik Chunder v. E. G. Foley, 15 Cal. 492—377.
Fazar Ali v. Amir Buksh, 47 I.C. 334—488.
Fazar Ali v. Pooroo Mian, 28 C.L.J. 266—789, 801.
Fazl Ali v. Abdul Majid, 14 Cal. 659—507, 512.
Fazlar Rahaman v. Golam Kader, 30 C.W.N. 689—533, 542, 555, 560, 696.
Fazl Imam v. Sukor Mahton, 19 C.L.J. 333—220, 442, 694, 695.
Fazl Rahaman v. Ramsukh, 21 Cal. 169—348, 390.
Fazl Sheikh v. Keramaddi, 6 C.W.N. 916—29, 94, 131, 283, 285, 459, 462, 465, 687.
Fazlus Rahim v. Dwarkanath, 30 Cal. 453—688.
Fazoo Mia v. Sultan Ahmed, 55 Cal. 108—835, 851.
Ferasat Ali v. Priyambada, 69 I.C. 414—223, 224, 313.
F. A. Cannon v. Kylash Chander, 25 W.R. 117—146.
Fitz Patrick v. Wallace, 11 W.R. 231—11, 141.
Forbes v. Maharaja Bahadur, 41 Cal. 926—4, 381, 383, 384, 386, 400, 405, 955.
Forbes v. Meer Mahomed, 12 B.L.R. 213—101, 499, 788, 895.
Foster v. Mackinon, L.R. 4 C.P. 704—65.
Futzand Ali v. Mohanth Lal, 32 Cal. 268—689.

G

- Gadadhar v. Basanta*, 8 C.W.N. 669—821.
Gadadhar v. Dhanpat, 7 Cal. 262—22, 204.
Gadadhar v. Lalit Kumar, 10 C.L.J. 476—874.
Gadadhar v. Midnapur Zemindari Co., 27 C.L.J. 385—198, 432, 834.
Gagan Chand v. A. Casperoz, 4 C.W.N. 44—739.
Gagan Chandra v. Alak Chand, 17 C.W.N. 698—180.
Gagan Chandra v. Rajeswari, 2 C.L.J. 570—471.
Gagan Sheikh v. Abejan Khatun, 14 C.L.J. 180—388, 389, 777.
Gagan Singh v. Chairman, District Board, Patna, 1919 Pat. 233—2.
Gaghan v. Rameshwar, 18 Cal. 271—654.
Gahar Khalipa v. Kasimaddi, 4 C.W.N. 557—194.
Gajadhar v. Sheonandan, 23 C.W.N. 304—556.
Gajadhar v. Thakur Prasad, 1 Pat. L.J. 506—982, 984.
Gajendra v. Asraf Hossein, 35 C.L.J. 48—31.
Galar Kuer v. Ramratan, 18 C.W.N. 896—550.
Gale v. Maharanee Sreemutty, 15 W.R. 133—266.
Ganadakant v. Prohabati, 20 Cal. 881—514.

- Gananath *v.* Harihar, 48 I.C. 359—170, 431.
 Ganapat *v.* Jasodhar, 17 C.L.J. 590—259.
 Ganendra *v.* Babulla, 22 C.W.N. 124 (notes)—418.
 Ganes *v.* Kedar, 27 Cal. 473—833.
 Ganes Chander *v.* Biraja Sundari, 46 I.C. 975—949, 990, 995.
 Ganesh Chandra *v.* Chandra Mohan, 28 C.W.N. 984—284.
 Ganes Dutt *v.* Lachmi Narain, 23 C.L.J. 209—227, 234.
 Ganes Mondal *v.* Thanda Namasudrain, 24 C.L.J. 539—462, 463, 464.
 Ganga Charan *v.* Sasti Mondal, 8 C.W.N. 614—235.
 Gangacharan *v.* Sashi Bhusan, 32 Cal. 572—743.
 Gangadas *v.* Ananda Chandra, 13 C.W.N. 146—282, 496.
 Gangadas *v.* Jogendra Nath, 11 C.W.N. 403—837, 841.
 Ganga Dei *v.* Badam, 30 All. 134—164, 165.
 Gangadhar *v.* Ayinuddin, 8 Cal. 960—51.
 Gangadhar *v.* Rajendranath, 17 C.W.N. 860—160, 285, 457, 797, 817.
 Gangadhar *v.* Secretary of State, 22 C.W.N. 817—575.
 Gangadhar *v.* Sekharbasini, 20 C.W.N. 967—736, 737.
 Gangamani *v.* Rajabali, 57 Cal. 935 : 40 C.L.J. 512—718.
 Gangaram *v.* Bamapada, 68 I.C. 301—291.
 Gangasingh *v.* Raghunandan, 1 Pat. L.W. 548—733, 734, 735.
 Ganga Singh *v.* Chairman, District Board, Patna, 50 I.C. 8—870, 914, 918.
 Ganoda Kant *v.* Prabhobati, 20 Cal. 881—508.
 Ganpat *v.* Jasodhar, 17 C.L.J. 590—263.
 Ganpat *v.* Rishal, 20 C.W.N. 14—662, 667, 976.
 Ganpat Singh *v.* Moti Chand, 16 C.L.J. 301—120.
 Garbu Mahton *v.* Bibi Khudai Jatunnissa, [1925 Pat.] 206—215.
 Garibulla *v.* Jnanada Sundari, 32 C.L.J. 134—223.
 Gauhar Ali *v.* Samiruddin, 18 C.W.N. 33—735.
 Gaunda Bibi *v.* Jabonulla, 5 C.W.N. 48 (notes)—739.
 Gawher Ali *v.* Enayet Ali, 38 I.C. 777—991.
 Gawher Ali *v.* Enayet Ali, 40 I.C. 774—996.
 Gayratulla *v.* Giris Chandra, 12 C.W.N. 175—96, 132, 440, 444, 877, 959.
 Gazadhar *v.* Raghubar, 12 C.W.N. 60—391.
 Genu Sheikh *v.* Taramoni, 41 I.C. 259—305.
 George Henry Devenport *v.* Her Majesty the Queen, L.R. 3 All. 115—836.
 George Tommy *v.* Soobha Kurim, 2 W.R. Act X 73—317.
 Gholam *v.* Khairan, 31 Cal. 786—213, 501.
 Ghanashyam *v.* Basudev, 60 I.C. 529—769.
 Ghanshyam *v.* Pudmanund, 9 C.W.N. 610—559.
 Ghanshyam *v.* Taraprasad, 8 Cal. 465—90.
 Ghasiti *v.* Abdul, 29 All. 596—860.
 Gilmore *v.* Sarvessuri, W.R. S. P. Act X 72—69.
 Giribala *v.* Rani Mina, 4 C.W.N. 497—349.
 Giridhari *v.* Court of Wards, 10 W.R. 368—345.
 Giridhari *v.* Meghlal, 44 I.A. 246, s. c., 45 Cal. 87 (P.C.)—57.
 Girindra Chandra *v.* Sreenath, 3 C.L.J. 141—23, 161, 932.
 Girindra Sunder *v.* Sri Krishna, 10 C.L.J. 538—382.
 Girinarain *v.* Madhu Sudan, 17 C.W.N. 324—757.
 Girish *v.* Apurba, 21 Cal. 940—19, 849.
 Girish Chander *v.* Bhabataran, 37 C.L.J. 524—914.
 Girish Chander *v.* Chatradhar, 3 C.L.J. 379—932.
 Girish Chander *v.* Ganga Durga, 25 W.R. 60—790.
 Giris Chandra *v.* Giribala, 45 I.C. 937—987, 989.
 Giris Chandra *v.* Hem Chandra, 5 C.L.J. 28—907.
 Giris Chandra *v.* Juramani, 5 C.W.N. 21 (notes)—202.

- Giris Chandra v. Kedar Chandra, 27 Cal. 473—159, 172.
 Giris Chandra v. Khagendra Nath, 16 C.W.N. 64—27, 66, 116, 117, 387, 821.
 Giris Chandra v. Kunjabehari, 12 C.W.N. 628—391, 779, 983.
 Giris Chandra v. Narendra Nath, 23 C.W.N. 654—395, 779.
 Giris Chandra v. Satis Chandra, 12 C.W.N. 622—361.
 Girish Chandra v. Sri Krishna, A.I.R. 1924 Cal. 168—40.
 Giris Chandra v. Sris Chandra, 9 C.W.N. 255—57, 108, 209, 213.
 Giriza Nath v. Chandi Charan, 38 C.L.J. 307—206.
 Girizanath v. Miaulla, 22 Cal. 744 (note)—164.
 Girraj Singh v. Hargobind, 32 All. 125—177.
 Giriza v. Patani, 17 Cal. 263—982.
 Gitaprasad v. Emperor, 81 I.C. 535—25.
 G. L. Hays v. Ghina Barhi, 33 Cal. 459—150.
 Gnanada v. Nalinibala, 43 C.L.J. 146—685, App. (120).
 Gnanadayini v. Gunamoni, 105 I.C. 52—371.
 Gobinda v. Akhil, 64 I.C. 858—994.
 Gobinda v. Hurogopal, 11 W.R. 537—983.
 Gobinda v. Manmatha, 62 I.C. 677—630.
 Gobinda v. Sidut, 33 Cal. 878—395, 786, 813.
 Gobinda v. Thakur Prasad, A.I.R. 1922 Pat. 481—559.
 Gobinda Chander v. Basanta Kumar, 4 C.W.N. 384—390, App. (121).
 Gobinda Chandra v. Chaudhury Ram, 13 C.W.N. 95—409, 873.
 Gobinda Chandra v. Ishan Chandra, 25 Cal. 787—128, 366.
 Gobinda Chander v. Joy Chunder, 12 Cal. 327—788, 789.
 Gobinda Chandra v. Kamijuddi, 16 C.L.J. 127—450, 451, 933.
 Gobinda Chandra v. Lalit Mohon, 22 C.L.J. 571—28, 44, 47.
 Gobinda Chandra v. Nandadulal, 27 C.L.J. 523—502.
 Gobinda Mandar v. Banarasi Prasad, 18 C.L.J. 74—220, 258, 264.
 Gobinda Mani v. Dinabandhu, 15 W.R. 87—153 201, 340.
 Gobinda Nath v. Suraj Kanta, 26 Cal. 460—114.
 Gobinda Priya v. Ratan Dhupi, 4 C.L.J. 37—304.
 Gobinda Sundar v. Chand Meah, 17 C.W.N. 602—836, 839.
 Gobinda Sundar v. Sri Krishna, 10 C.L.J. 533—48, 757.
 Goburdhone v. Karuna, 25 Cal. 77—317.
 Godai Molla v. Aminaddi, 18 C.L.J. 509—35.
 Goghun v. Rameshur, 18 Cal. 271 (F.B.)—455, 680, 959.
 Goher Sheikh v. Alifuddin, 30 C.L.J. 13—475.
 Gohur Sheikh v. Ahmed Mia, 105 I.C. 768—480, 752.
 Gokool Pershad v. Etwaru Mahto, 20 W.R. 138—713.
 Gokul v. Debendra, 14 C.L.J. 136—780.
 Gokul v. Gobinda, 17 Cal. 721—27.
 Gokul v. Pudmanund, 29 Cal. 707—590.
 Gokul Saha v. Jadunandan, 17 Cal. 721—544.
 Golab Koer v. Ramratan, 18 C.W.N. 896—551, 557.
 Golab Misser v. Kumar, 14 C.W.N. 884—299.
 Golak Nath v. Mothuranath, 20 Cal. 273—114.
 Golam Ali v. Gopal Lal, 9 W.R. 68—331, 417.
 Golam Ali v. Kali Krishna, 8 C.L.J. 341—340.
 Golam Husain v. K. S. Bonnerjee, 30 C.W.N. 520—299.
 Golam Kheruji v. Ershine & Co., 11 W.R. 445—505.
 Golam Mowla v. Abdul, 13 C.L.J. 255—8, 151, 918.
 Golam Rahaman v. Gurudas, A.I.R. 1923 Cal. 505—53, 86, 96, 233.
 Golam Yusuf v. Ram Prosad, 27 C.W.N. 180 (notes)—1001.
 Golap Chand v. Ashutosh 11 Cal. 602—760.

- Golapdi v. Purno Chan'dra, 21 C.W.N. 774—178, 195, 432.
 Golap Jan v. Dil Mahmad, 54 I.C. 394—922.
 Goluck v. Sandes, 5 W.R. Act X 32—304.
 Goluck Monee v. Huro Chunder, 8 W.R. 62—762.
 Goluck Rana v. Nabo Soondari, 21 W.R. 344—133, 164.
 Goluck Chandra v. Ram Sunker, 4 C.W.N. 264—818.
 Gonapat Mahlon v. Rishal Singh, 20 C.W.N. 14—931.
 Goohi Sheikh v. H. Mathewson, 11 C.W.N. 661—211.
 Gooroo Das v. Issur Chandra, 22 W.R. 246—32, 333.
 Gooroo Das v. Ramnarain, 7 W.R. 186—493.
 Gopal v. Nubo Kissen, 5 W.R. Act X 83—298.
 Gopal Chandra v. Bhuban Mohon, 30 Cal. 536—822.
 Gopal Chandra v. Bhutnath, 42 C.L.J. 520—10.
 Gopal Chandra v. Harendra, 63 I.C. 483—69.
 Gopal Chandra v. Krishua, 9 C.L.J. 595—37.
 Gopal Chandra v. Mahomed Soleman, 22 C.W.N. 126—300.
 Gopal Chandra v. Muthoor Mohun, 3 W.R. Act X 132—304.
 Gopal Chandra v. Prosannamayee, (unreported)—256.
 Gopal Chandra v. Ram Lall, 21 Cal. 554—843.
 Gopal Chandra v. Umesh Narain, 17 Cal. 695—324, 782, 783, 932, 934, 937, 940.
 Gopaldas v. Gopinath, 12 C.L.R. 28—App. (118).
 Gopal Krishna v. Hari Nath, 34 C.L.J. 157—287, 870.
 Gopal Krishna v. Lakhiram, 16 C.W.N. 634—31, 33.
 Gopal Lall v. Golam Ali, 19 W.R. 141—95.
 Gopal Lall v. Hitnarain, 3 Pat. L.J. 145—833.
 Gopal Lal v. Kumar Ali, 6 W.R. 85—340.
 Gopal Lal v. Teluk Chandra, 10 M.I.A. 183—51.
 Gopal Mondal v. Eshan Chandra, 29 Cal. 148—459, 464.
 Gopal Mondal v. Tapai Sankhari, 48 Cal. 43 : 22 C.W.N. 618—151, 273, 288, 543, 649, 923, 924.
 Gopal Ojha v. Ramadhar, 82 I.C. 204—108, 112.
 Gopal Saran v. Sheikh Mahomed, 14 C.W.N. 1096—378, 782.
 Gopenath v. Ram Huree, 9 W.R. 476—325.
 Gopendra Chandra v. Mokaddam, 21 Cal. 702—461.
 Gopendra Chandra v. Taraprasanna, 37 Cal. 598—907, 910.
 Gopeswar v. Jadab Chandra, 22 C.L.J. 352—415.
 Gopeswar v. Jiban Chandra, 41 Cal. 1125 : 18 C.W.N. 804—986.
 Gopeswar v. Peary Sundary, 27 C.W.N. 168 (notes)—33.
 Gopi Mohan v. Nawab Bahadur of Murshidabad, 29 C.W.N. 723—305.
 Gopi Narain v. Bansidhar, 9 C.W.N. 557 : 32 I.A. 123—710.
 Gopinath v. Adait, 21 Cal. 776—532, 536, 610, 615.
 Gopinath v. Bhajahari, 68 I.C. 472—994.
 Gopinath v. Iswar Chandra, 22 Cal. 800—862.
 Gopinath v. Kasinath, 13 C.W.N. 412—377, 813, 814.
 Gopinath v. Radhasyam, 4 C.W.N. 80 (notes)—776, 816, 817, 820.
 Gopinath v. Sajani Kant, 11 C.W.N. 249—389, 687, 781, 851.
 Gopinath v. Uma Kant, 24 Cal. 169—931.
 Gopini Devi v. Ramratan, 19 C.W.N. 140—102, 499.
 Gopnund v. Lall Gobind, 12 W.R. 109—36.
 Gora Chand v. Prafulla, 53 Cal. 166, s.c., 42 C.L.J. 1 (F.B.)—694.
 Gora Chand v. Rakhal Chandra, 37 C.L.J. 473—257.
 Gorbur v. Jeolal, 16 Cal. 181—784.
 Gossain Das v. Mritunjoy, 18 C.L.J. 541—329.
 Gosto Behari v. Hem Chandra, 51 Cal. 1022 : 29 C.W.N. 124—246, 334.

- Harihar *v.* Madhab Chandrà, 8 B.L.R. 566—101.
 Harihar *v.* Ram Shashi, 23 C.W.N. 77—502.
 Harihar Pande *v.* Chowdhury Keramut, 9 C.L.J. 493—685.
 Harikant *v.* Bibi Nurannessa, 53 I.C. 625—611.
 Hari Kishore *v.* Barada Kishore, 31 Cal. 1014 : 8 C.W.N. 754—203, 449.
 Hari Kishun *v.* Tilakdhari, 7 C.W.N. 453—489.
 Hari Krishna *v.* Brindaban, 1 C.W.N. 72—127, 365.
 Hari Mohan *v.* Asutosh, 4 C.W.N. 776—430.
 Hari Mohan *v.* Atul Krishna, 19 C.W.N. 1127—109, 132, 456, 817, 833, 868, 958, 959.
 Hari Mohon *v.* Muhammad Rashidul, 84 I.C. 130—995.
 Hari Mohon *v.* Prannath, 4 C.W.N. 128—531, 542, 544.
 Hari Mohon *v.* Purnendra, 90 I.C. 955—718, 793.
 Hari Mohon *v.* Sasi Mohan, 18 C.W.N. 168—761.
 Hari Mohon *v.* Secretary of State, 18 C.L.J. 566—573.
 Hari Mohon *v.* Sri Mohun, 18 C.W.N. 168—144.
 Hari Mohon *v.* Surendra, 34 Cal. 718 (P.C.)—8, 10.
 Hari Moni *v.* Moti Sheikh, 16 C.W.N. 779—787, 802.
 Hari Narain *v.* Mukunda Lal, 4 C.W.N. 814—901, 905, 906.
 Hari Narayan *v.* Sriram, 37 Cal. 723—56, 58, 902.
 Hariprasad *v.* Damri Singh, 2 Pat. L.J. 367—410, 870.
 Haripada *v.* Baradaprasad, 51 Cal. 1014 : 28 C.W.N. 154 (notes)—844.
 Hari Priya *v.* Ram Churn, 19 Cal. 541—933, 940.
 Haris Paik *v.* Jaharuddi, 2 C.W.N. 475—113.
 Hari Sundari *v.* Sashi Bala, 1 C.W.N. 195—861.
 Hari Vithal *v.* Joyram, 14 Bom. 557—780.
 Harmer *v.* Bean, 3 C. & K. 307—27.
 Harmonoge *v.* Ganour, 37 I.C. 360—72.
 Harnandan *v.* Kesho Prasad, 2 Pat. L.J. 553—584.
 Haro Chandra *v.* Umes Chandra, 14 C.W.N. 71—190, 191, 192.
 Harrington *v.* Dwarkaprosad, [1920 Pat.] 11—157.
 Harris *v.* Ryding, 5 M. & W. 60—57.
 Hurro Kumar *v.* Kali Krishna, 17 Cal. 251—342, 983.
 Harro Kumari *v.* Purna Chandra, 28 Cal. 188—36.
 Harro Narain *v.* Shoodha Krishna, 4 Cal. 893—424.
 Harro Prosad *v.* Gopal Dass, 3 Cal. 817—346.
 Hartel *v.* Blackler, 61 L.J. 470—753.
 Hasani Bibi *v.* Sadir Mahmud, (unreported)—471.
 Hashin Ali *v.* Abdul Rahman, 28 All. 698—177.
 Hasiswari *v.* Harinath, 40 I.C. 100—29, 50, 68, 89.
 Hassamali *v.* Gobind Lal, 9 C.W.N. 141—538.
 Hassan Kuli *v.* Nakchhedi, 23 Cal. 200—264.
 Hassan Mastaba *v.* Motbar Mahto, 11 C.L.J. 147—364.
 Hayat *v.* Hazari, 63 I.C. 424—980.
 Hayes *v.* Ghina, 33 Cal. 459—213, 315.
 Hayes *v.* Moneerooddeen, 24 W.R. 6—109.
 Hazari Lal *v.* Ambika Gir, [1923 Pat.] 273—575, 589.
 Hazari Lal *v.* Khannish Chandra, 22 C.L.J. 290—913.
 Hazari Ram *v.* Badai, 1 C.W.N. 279—851, 852.
 Hazra Sardar *v.* Kunja Behari, 25 C.L.J. 635—687, 799.
 Hedayetali *v.* Kamalananda, 14 C.L.J. 411—7.
 Hemanginee *v.* Srigovindo, 6 C.W.N. 69—281, App. (105).
 Hemanta *v.* Jagadindra, 22 Cal. 214—416.
 Hemanta Kumar *v.* Belatali, 30 C.W.N. 642—326.
 Hemanta Kumar *v.* Rajendra Bala, 13 C.L.J. 454—838.

- Hemanta Kumari v. Midnapur Zemindari Co., 35 C.L.J. 493—31.
 Hem v. Atul, 19 C.W.N. 386, s.c. 19 C.L.J. 113—207, 342.
 Hem Ban v. Bihari Gir, 28 All. 58—393.
 Hem Chandra v. Binayak, 86 I.C. 538—310.
 Hem Chandra v. Chand Akund, 12 Cal. 115—211.
 Hem Chandra v. Chandra Mohan, 24 C.W.N. 136 (notes)—695.
 Hem Chandra v. Giris Chandra, 92 I.C. 107—305.
 Hem Chandra v. Kali Prasanna, 9 Cal. 255—980.
 Hem Chandra v. Kali Prasanna, 26 Cal. 852—90, 91, 99, 403, 939.
 Hem Chandra v. Monmohini, 3 C.W.N. 604—4, 385, 704, 774, 776.
 Hem Chandra v. Purna Chandra, 44 Cal. 667—352.
 Hem Chander v. Radha Pershad, 23 W.R. 440—281.
 Hem Chandra v. Satya Kumar, 43 C.L.J. 171—254.
 Hem Chandra v. Surendra Mohun, 5 C.W.N. 482—360, 361.
 Hem Chandra v. Tafazzal, 8 C.W.N. 832—813, 818.
 Hemendra Nath v. Kumarnath, 32 Cal. 169—3, 46, 116, 117, 774, 775, 985.
 Hemendra Nath v. Upendra Narain, 18 C.W.N. 1036—902.
 Hem Nath v. Ashgar Sardar, 4 Cal. 894—142, 211, 334.
 Henry Hill v. Shebaj, A.I.R. 1922 Pat. 9—163, 951.
 Herbert Manners v. Chatter Mahto, 13 C.W.N. 664—662.
 Hill v. Saunders, 4 B. & C. 529—41.
 Hill v. Tupper, 2 H. & C. 121—5.
 Hira Koer v. Lachman Gope, 19 C.W.N. 1141—639.
 Hiralal v. Mothura Mohun, 15 Cal. 714—345.
 Hiralal v. Neelmonee, 20 W.R. 383—113.
 Hiralal v. Tripura Charan, 40 Cal. 650 (F.B.)—48.
 Hiramoti v. Ananda, 7 C.L.J. 553—102, 109, 115, 274, 500.
 Hiranmay v. Ramjan Ali, 20 C.W.N. 48—403, 684, App. (119).
 Hirendra v. Harimohon, 18 C.W.N. 860—153, 336.
 Hitendra v. Rameshur, 18 C.W.N. 42—49, 780, 785.
 H. Manners v. Harihar Koer, 19 C.W.N. 149—83, 149, 499, 661.
 H. Hanners v. Satroghan, 36 I.C. 178—161.
 Hochanuddi v. Abdul, 90 I.C. 816—158.
 Hochen Sardar v. Poreshnath, 54 I.C. 647—456.
 Hodgskin v. Queenborough, Willes 129—35.
 Holder v. Coates, (1827) 31 R.R. 724—166.
 Holmes v. Russel, 9 Dowl 487—694, 769.
 Honeywood v. Honeywood, L.R. 18 Eq. 306—165.
 Horish Chandra v. Ananta Charan, 2 C.W.N. 127—862.
 Hossain Bux v. Matoodharee, 14 Cal. 312—507, 512, 681.
 Hossein Ali v. Hati Charan, 4 C.W.N. 321 : 27 Cal. 476—268.
 Hossein Ally v. Donzette, 5 Cal. 906—853.
 Hossein Jan v. Mirza Mahafedzuddin, 62 I.C. 619—223, 686.
 Hossein Mahomed v. Fakir Mahomed, 10 C.L.J. 618—194, 432, 501.
 Hridoy v. Jayram, 4 C.L.J. 402—46, 384, 682.
 Hridoy Nath v. Krishna Prasad, 34 Cal. 298 : 11 C.W.N. 497—384, 682, 778, 811, 812, 830.
 Hridoy Nath v. Ram Chandra, 48 Cal. 138, s.c. 24 C.W.N. 723, 31 C.L.J. 482 (F.B.)—694.
 Hrishikesh v. Sadhu Charan, 2 C.W.N. 80—941.
 H. Ruston v. W. L. Atkinson, 11 W.R. 485—153.
 Hulodhar Sen v. Gooroo Das Roy, 20 W.R. 126—213, 501.
 Huronath v. Ameer Biswas, 1 W.R. 230—303, 304.
 Huronath v. Goluck Nath, 19 W.R. 18—347, App. (116).
 Hureehur v. Biressur, 6 W.R. Act X 17—142.

- Huree Mohun v. Gorachand*, 2 W.R. 25—490.
Huree Mohun v. Goreebullah, 22 W.R. 417—497.
Hurish Chunder v. Gungadhar, 25 W.R. 181—141, 661.
Huro Kissen v. Joy Kissen, 1 W.R. 299—336.
Huro Prasad v. Chundee Churn, 9 Cal. 505—95.
Huro Pershad v. Gopal Dass, 9 Cal. 255—981.
Huro Prosad v. Gopal Dass, 3 Cal. 817—346, 981.
Huro Prosad v. Sreedam, 20 W.R. 15—735.
Huro Sundari v. Brojohari, 13 Cal. 86—20, 741.
Huro Sundaree v. Gopee Sundaree, 10 C.L.R. 559—340.
Hurribole v. Tasimuddin, 2 C.W.N. 680—61, 142, 231, 392, 490, 957.
Hurrogobinda v. Ram Rutno, 4 Cal. 67—141, 495, 902, 907.
Huro Mohun v. Woomesh Chunder, 1 R.J.P. 116—419.
Hurry Churn v. Rajah Ranjit, 1 C.W.N. 521—61, 142, 231, 392, 490, 776, 782, 784, 957.
Hurryhar v. Madhub Chunder, 14 M.I.A. 152—500, 788.
Hurry Mohan v. Dwarkanath, 18 W.R. 41—733.
Hurry Ram v. Nursing, 21 Cal. 189—7, 77, 140.
Husainnara v. Rahamannessa, 13 C.L.J. 3—348.
Hussan v. Nakchhed, 33 Cal. 200—220.
Hyder Ali v. Jafas Ali, 1 Cal. 183—676.
Hyder Buksh v. Bhubendro Deb, 17 W.R. 179—146.

I

- Ichhamoyi v. Kailas Chandra*, 18 C.W.N. 358—73, 132, 139, 142.
Idu Gazi v. Chandra Kali, 8 C.W.N. 139—279.
Imambandi v. Kamaleswari, 14 Cal. 106—113, 337, 469.
Imril v. Sudhari, 17 C.W.N. 108, s.c. 15 C.L.J. 7—App. (116).
Imrit Mahton v. Bahadur Singh, 34 I.C. 857—550, 554.
Indra Bhusan v. Goluk Chunder, 12 W.R. 350—325.
Indra Bhusan v. Jonardan (unreported)—563.
Indra Chandra v. Surendra Narain, 1 Pat. 449—378.
Indra Narain v. Nobin Chandra, 47 I.C. 847—796, 813.
Indra Narain v. Sarbaseva, 41 C.L.J. 341—396, 685, App. (122).
Indra Nath v. E. G. Rooke, 37 Cal. 81 : 14 C.W.N. 101—690.
Indu v. Sheikh Mahammad, 23 C.W.N. 208 (notes)—595, 726.
Indu Bhusan v. Annapurna, 16 C.L.J. 216—20, 507, 508, 511, 517, 959.
Indu Bhusan v. Atul Chandra, 42 C.L.J. 276—334.
Indu Bhusan v. Jatindra Nath, 32 C.W.N. 244—701.
Indu Bhusan v. Jatu Mullick, 35 C.L.J. 161—341.
In re Purmanandas v. Jeewsnadas, 7 Bom. 109—57.
In re Saramonanda, 7 Bom. 109—56.
In re Shew Golam & Others, 42 I.C. 482—426.
Irshad Ali v. Kanta Pershad, 21 Cal. 835—531, 610.
Ispali v. Satis Chandra, 65 I.C. 504—915.
Ishan Chandra v. Benimadhav, 24 Cal. 62—194, 781, 851.
Ishan Chandra v. Chunder Kant, 13 C.L.R. 55—338.
Ishan Chandra v. Momraj Khan, 30 C.W.N. 941, s.c. 45 C.L.J. 24—694.
Ishan Chandra v. Nishi Chandra, 19 C.W.N. 1—274.
Ishan Chandra v. Rajah Ram Ranjan, 2 C.L.J. 125—32, 33, 328.
Ishan Chandra v. Ram Prasad, 65 I.C. 656—243.
Ishan Chandra v. Safatulla, 26 C.W.N. 703—800.
Ishan Chandra v. Upendra, 12 C.W.N. 559—949.
Ishwar Chandra v. Ramkrishna, 5 Cal. 902—369, 401, 430, 487, 488.
Ishwari Pershad v. Crowdy, 17 Cal. 469—925, 982.

- Ismail v. Ali Mahomed*, 13 C.W.N. 104 (notes)—70.
Ismail v. Aghore Nath, 7 C.W.N. 734—52, 55.
Ismail v. Joygoon Bibee, 27 Cal. 570—52, 55, 212.
Ismail v. Kali Krishna, 6 C.W.N. 134—449, 916.
Ismail v. Kundan Lal, 3 C.W.N. 503, s. c., 26 I.A. 58—919.
Ismail v. Nanigopal, 8 C.L.J. 513—53.
Ismail v. Nilratan, 6 C.W.N. 352—916.
Ismail Mahomed v. Asmatulla, 8 C.W.N. 297—52, 55.
Ismail Mahomed v. Mrinmoyi, 8 C.W.N. 301—52, 55.
Ismail Mia v. Sures Chandra, 53 Cal. 442—335.
Ismail Pramanick v. Khedia, 43 C.L.J. 242—272.
Issur Chander v. Nittanand, 6 W.R. Act X 3—309.
Iswar Chandra v. Gour Sundar, 39 C.L.J. 337—461.
Iswar Chandra v. Jogendra, 98 I.C. 137—524.
Iswar Chandra v. Kalicharan, 27 C.L.J. 434—128.
Iswar Chandra v. Kamiraddi, 28 C.W.N. 4 (notes)—619.
Iswar Chandra v. Murary Lal, 26 C.L.J. 88—918.
Iswar Chandra v. Ram Krishna, 5 Cal. 902—936.
Iswar Chandra v. Satis Chandra, 7 C.W.N. 126—676.
Iswar Dalin v. Girindra Kumar, 48 I.C. 726—710.
Iswardhari v. Ram Brich, 7 C.L.J. 106—979.
Iswar Sant v. Tarendra, 42 C.L.J. 560—72, 218, 228, 288, 924.

J

- Jabed Ali v. Surendra Nath*, 42 C.L.J. 477—770.
Jabeda Khatun v. Tulshi Charan, 36 C.L.J. 472—800.
Jadab Chandra v. Joygopal, 19 C.L.J. 81—842.
Jadav Chandra v. Gobinda Chandra, 34 I.C. 912—284, 285.
Jadav Chandra v. Gopal Chandra, 28 C.W.N. 848—253, 423.
Jadav Chandra v. Kailas Chandra, 15 C.L.J. 332—App. (120).
Jadav Chandra v. Manik Sarkar, 29 C.L.J. 313—684.
Jadeo Nath v. Pratap Udainath, A.I.R. 1924 Pat. 339—400.
Jadoo Nath v. Schœnne Kilburn & Co., 9 Cal. 671—113.
Jadub Lal v. Khemankari, 8 C.W.N. 248—722.
Jadunandan v. Tirbhuban, 1 C.W.N. 164 (notes)—386.
Jadu Nath v. Prankrishna, 45 Cal. 769—251, 257.
Jadunath v. Rajnarain, 17 C.W.N. 459—201.
Jadu Nath v. Ruplal, 33 Cal. 969, s. c., 10 C.W.N. 650—117.
Jadu Rai v. Darbari Singh (unreported) 854.
Jafaruddin v. Jamini Bullav, 28 C.L.J. 249—901.
Jafer Ahmed v. Birendra Kisore, 22 C.L.J. 126—43, 205.
Jafruddin v. Brindaram, 23 C.W.N. 136—901.
Jagabandhu v. Abdul Hamid, 28 C.W.N. 757—717.
Jagabandhu v. Amrita, 22 Cal. 767 (F.B.)—19.
Jagabandhu v. Dinoo Pal, 4 C.W.N. 732—829.
Jagabandhu v. Jadu, 15 Cal. 47—46, 742, 776, 942, 998.
Jagabandhu v. Magnamoyi, 44 Cal. 555, s. c., 22 C.W.N. 89—81, 298.
Jagabandhu v. Radhakrishna, 36 Cal. 920—105.
Jagabandhu v. Rasho Monjon, 5 C.W.N. 272—816.
Jagadamba v. Protap, 14 Cal. 537—721.
Jagadamba Prosad v. A. V. Sham, 1919 Pat. 88—470.
Jagadananda v. Amrita Lal, 22 Cal. 767—742, 849, 859.
Jagadindra v. Secretary of State, 30 I.A. 44, s. c. 30 Cal. 291—950.
Jagadish v. Rameswar, [1920 Pat.] 241—728.
Jagadish v. Sridam, 44 I.C. 26—390.

- Jagadiswar v. Collector of Goalpara, 39 C.L.J. 574—22.
 Jagadiswari v. Jaymani, 25 Cal. 533—196.
 Jagonmohan v. Brojendra Kumar, 53 Cal. 197, s.c. 29 C.W.N. 1000—217, 396, 398.
 Jagannath v. Bhajahari, 96 I.C. 360—288.
 Jagannath v. Mohiuddin, 37 Cal. 747—384.
 Jagannath v. Watson & Co., 19 Cal. 341—389.
 Jagannath v. Janki Singh, 26 C.W.N. 833 (P.C.)—21, 263, 664, 985.
 Jagattara v. Daulati Bewa, 37 Cal. 75 s.c., 13 C.W.N. 1110—216, 388, 777.
 Jagattarini v. Nabagopal, 34 Cal. 305—350, 372, 411.
 Jagdeo v. Baldeo, 27 C.W.N. 915—40, 206, 556.
 Jagdeo v. Bhagwan, 54 I.C. 672—654.
 Jaggut Chunder v. Panioty, 6 W.R. 48—340.
 Jago Singh v. Chooa Singh, 22 Cal. 480—422.
 Jagoon Pershad v. Pasun Sahoo, 8 C.W.N. 172—175, 184, 186.
 Jagneswar v. Kailash, 28 C.W.N. 821—178, 186.
 Jagut Jiban v. Sarat Chandra, 7 C.W.N. 728—677.
 Jahander v. Ramlal, 14 C.W.N. 470—147, 227, 264, 533, 887.
 Jahurnal v. Keramutuka, 45 I.C. 196—197, 433.
 Jaidev v. Jamahir, 69 I.C. 565—124.
 Jai Kissen v. Collector of East Burdwan, 18 C.L.J. 102—909.
 Jaimangalbat v. Jharu Lal, 2 Pat. L.J. 567—988, 996.
 Jakher Mahmud v. Khatir Mahmud, 23 C.W.N. 76—282.
 Jaladhar v. Amrita Lal, 105 I.C. 641—461.
 Jallaloodeen v. Major James Burne, 18 W.R. 99—691.
 Jamader Sirighi v. Jagot Kisore, 23 C.L.J. 557—727, 728.
 James Erskine v. Manick Singh, 6 W.R. 10—900.
 James Erskine v. The Government, 8 W.R. 232—900.
 James Hillo v. Huro Lal, 3 W.R. Act X 135—89, 306.
 Jamini Sundari v. Rajendra Nath, 11 C.W.N. 519—274.
 Jamna Das v. Ram Autar, 39 I.A. 7—533.
 Jamna Das v. Guni Meah, 21 W.R. 124—45, 423.
 Janabali v. Port Canning & Land Improvement Co., 84 I.C. 735—64, 148.
 Janardan v. Kali Krishto, 23 Cal. 393—829, 847, 848.
 Janardhan v. Haradhan, 9 W.R. 513—266, 493.
 Janendra v. Umesh, A.I.R. 1922, Cal. 554—765.
 Jang Bahadur v. Mahadeo, 31 Cal. 207—860.
 Jang Bahadur v. Mahadeo, 8 C.W.N. 116—860.
 Jang Bahadur v. Ram Sundar, 38 I.C. 817, s.c., 1 Pat. L.W. 194—170.
 Jankhi v. Prabhasini, 44 Cal. 178—160, 285.
 Janki v. Debinandan, 15 C.W.N. 776—376.
 Janki v. Gobin, 2 W.R. Act X 33—325.
 Janki v. Mahant Jagannath, 3 Pat. L.J. 1—663.
 Janki Ballav v. Enat Mondal, 72 I.C. 136—223.
 Janki Koer v. Kukur Dusadh, [1918 Pat.] 347—243.
 Janki Keor v. Saudagar, [1920 Pat.] 177—165, 544, 550.
 Janki Koer v. Usman Sain, 62 I.C. 417—605.
 Janki Kuer v. Hiranand, 58 I.C. 25—654.
 Jankinath v. Baikunthanath, 27 C.W.N. 259, s.c., 36 C.L.J. 140—994.
 Jankinath v. Provasini, 43 Cal. 178, s.c., 19 C.W.N. 1077—271, 285, 459, 797.
 Janki Roy v. Kalanand, 2 Pat. 192—762.
 Janki Sahu v. Thakur Run Bahadur, 2 Pat. L.J. 231—197, 433.
 Janki Singh v. Jagannath, 44 I.C. 94—71, 974.
 Janki Singh v. Mahant Jagannath, 3 Pat. L.J. 1—261, 266.
 Jarao Kumari v. Hanifuddin, 14 C.W.N. 389—1037, 830.

Mr. Salim Ullah Fahmi

- Jardine Skinner & Co., *v.* Rani Sarat Sundari, 3 C.L.R. 140—61, 141, 152, 231, 784, 957.
- Jarip Khan *v.* Durfa Bewa, 17 C.W.N. 59—283, 459, 461, 797, 868.
- Jasimaddin *v.* Beni Madhav, 17 C.W.N. 881—159, 887.
- Jatindra *v.* Kedarnath, 15 C.L.J. 2 (n)—8.
- Jatindra Mohan *v.* Abala Nath, 27 C.W.N. 817—830.
- Jatindra Mohan *v.* Bijoy Chand, A.I.R. 1924 Cal. 396—820.
- Jatindra Mohan *v.* Bibi Jaroa Kumari, 10 C.W.N. 201 (P.C.)—45, 46, 379, 382, 775.
- Jatindra Mohan *v.* Durga Dobey, 10 C.W.N. 438—832.
- Jatindra Mohan *v.* Jugal Kishore, 7 Cal. 357—779.
- Jatindra Narain *v.* Malu Haji, 51 I.C. 969—599, 612.
- Jatindra Nath *v.* Azizar Rahaman, 71 I.C. 307—610, 628.
- Jatindra Nath *v.* Benode Behari, 52 I.C. 289—431, 436.
- Jatindra Nath *v.* Muzaffar Ali, 16 C.W.N. 31 (notes)—376, 687.
- Jatindra Nath *v.* Prasanna Kumar, 38 Cal. 702 (P.C.)—234, 938.
- Jatindra Nath *v.* Trailakhya, 105 I.C. 737—32, 333.
- Jatiram *v.* Dinanath, A.I.R. 1922 Pat. 163—743.
- Jatiram *v.* Janaki Nath, 20 C.W.N. 258—18, 23, 139, 262, 976.
- Jatra Mohon *v.* Aukhil Chandra, 24 Cal. 334—812.
- Jatra Mohon *v.* Pitambar, 9 C.L.J. 385—735.
- Jawadul *v.* Ram Das, 24 Cal. 143—156, 157, 388.
- Jeatoolah *v.* Jugodindra, 22 W.R. 12—441.
- Jeebun Mundal *v.* Taramonee, 6 W.R. 98—372.
- Jeenab Ali *v.* Allahuddin, 1 C.W.N. 151—43.
- Jeolal *v.* Gongaprasad, 10 Cal. 996—387, 401, 779.
- Jeonath *v.* Bishambhar, 8 P.L.T. 495—233.
- Jessore Loan Co. *v.* Gopal Hari, 30 C.W.N. 366—App. (121).
- Jhansi Sao *v.* Bibi Aliman, 5 Pat. 281—158.
- Jharu Charan *v.* Sridam, 23 C.W.N. 88 (notes)—429.
- Jharu Mandal *v.* Kshettra Mohan, 54 Cal. 15, 30 C.W.N. 729, s.c., 43 C.L.J. 554 (F.B.)—172, 831.
- Jibanessa *v.* Majudunnessa, 17 C.W.N. 581—517.
- Jibanti *v.* Gokool Chander, 19 Cal. 760—153, 936.
- Jiban Krishna *v.* Broja Lal, 30 Cal. 550—382, 394, 782, 939.
- Jiban Naskar *v.* Muralidhar, 97 I.C. 513—300.
- Jillor Rahaman *v.* Ebrahim Khan, 44 I.C. 558—737.
- Jitendra *v.* Asutosh, 27 C.W.N. 381—335, App. (116).
- Jitendra Kumar *v.* Mohendra, 24 C.L.J. 61—799.
- Jitendra Nath *v.* Abijannessa, 30 C.W.N. 1038—303, 309.
- Jitendra Nath *v.* Bankubehari, 96 I.C. 565, s.c. A.I.R. 1926 Cal. 1177—874.
- Jit Lal *v.* Kamaleswari, 18 C.W.N. 92—427.
- Jnanada Sundari *v.* Amudi Sarkar, 43 Cal. 603, s.c. 20 C.W.N. 428—632.
- Jnanada Sundari *v.* Atul Chandra, 32 Cal. 972—45, 380, 774, 838.
- Jnanendra *v.* Bhubaneswari, 33 C.L.J. 494—839.
- Jnanendra *v.* Dukhiram, 28 C.W.N. 865, s.c., 82 I.C. 386—273.
- Jnanendra *v.* Gopal Das, 31 Cal. 1020, s.c., 8 C.W.N. 923—484, 485.
- Jnanendra *v.* Nasea Dasi, 39 C.L.J. 526—54.
- Jnanendra *v.* Roymann, 31 C.W.N. 580—458, 797, 834.
- Jnanendra *v.* Umesh, 26 C.W.N. 985—800.
- Jagadindra *v.* Hemanta Kumari, 32 Cal. 129, s. c., 8 C.W.N. 809, s. c., 31 I.A. 203.—23, 711.
- Jogdhari *v.* Langot Gope, 75 I.C. 676—830.
- Jogendra *v.* Aparas Prasad, 45 I.C. 616—47.
- Jogendra *v.* Crawford, 32 Cal. 1141—949.

- Jogendra v. Jagadindra, 34 C.L.J. 133—563.
 Jogendra v. Janaki, 21 C.W.N. 427—575, 583, 595, 611.
 Jogendra v. Kesho Prasad, 77 I.C. 929—79, 658.
 Jogendra v. Kurpalharsi & Co., 35 C.L.J. 175—31.
 Jogendra v. Monmohini, 105 I.C. 290—460.
 Jogendra v. Nagendra, 11 C.W.N. 1020—216, 397, 778, 980.
 Jogendra v. Pabon, 8 C.W.N. 472—708, 716, 737, 768, 942, 943, 980.
 Jogendra v. Rajendra, 13 C.L.J. 262—22.
 Jogendra v. Secretary of State, 17 C.W.N. 835—573, 575, 583.
 Jogendra v. Shajar Ali, A.I.R. 1923 Cal. 373—157.
 Jogendra v. Sheikh Akbar, 67 I.C. 998—330.
 Jogendra Deb v. Fanindra Deb, 14 M.I.A. 367—324.
 Jogendra Nath v. Chandra Kumar, 42 Cal. 28—50, 79.
 Jogendra Nath v. Kali Charan, 9 C.W.N. 663—898, 899.
 Jogendra Narain v. Kiran Chandra, 46 Cal. 730—790.
 Jogendra Nath v. Krishnapramada, 12 C.W.N. 1032—560, 603, 618.
 Jogendra Nath v. Tincowri, 10 C.L.J. 147—183, 480.
 Jogendra Nath v. Uma Charan, (unreported)—737.
 Jogesh v. Moniruddi, 35 Cal. 417—783, 939.
 Jogesh v. Nibaran, 50 I.C. 276—735.
 Jogesh Chandra v. Ananda, 26 C.W.N. 368—47.
 Jogesh Chandra v. Asaba Khatun, 44 C.L.J. 220—868.
 Jogesh Chandra v. Izzat Ali, 40 C.L.J. 585—95.
 Jogesh Chandra v. Mokhal, 25 C.W.N. 857—81.
 Jogesh Chandra v. Rohini Kumar, 21 C.L.J. 65—787, 812, 813.
 Jogesh Chandra v. Secretary of State, 18 C.W.N. 531—21, 51, 80.
 Jogesh Chandra v. Sharfuddin, 54 Cal. 799, s.c., 32 C.W.N. 81—443.
 Jogesh Chandra v. Tazar Ali, 87 I.C. 757—76, 86.
 Jogeshur v. Aisane, 14 Cal. 553—142, 150.
 Jogeshuri v. Mahomed Ebrahim, 14 Cal. 33—406.
 Jogeshwar v. Abed Mahomed, 3 C.W.N. 13—203, 473, 795.
 Jogeshwar v. Jhapal Santal, 28 C.W.N. 556—294.
 Jogeshwar v. Nath Koeri, 1 Pat. 317—185.
 Jogeswar v. Kesho Prasad, 1 Pat. L.J. 190—217.
 Joggeshwari v. Chandi Charan, 22 C.W.N. 47 (notes)—688.
 Jogmaya v. Girindra Nath, 4 C.W.N. 590—129, 487.
 Jognarain v. Badridas, 16 C.L.J. 156—796, 803.
 Jognesh Prakash v. Maniraddi, 35 Cal. 417—505, 933, 935, 941.
 Jogneswer v. Nibaran Mandal, 28 C.W.N. 63 (notes)—185.
 Jogunnessa v. Satis Chandra, 51 Cal. 690—736.
 Johara Banoo v. Ganga Chandra, A.I.R. 1922 Cal. 222—97, 788.
 Jatindra Mohan v. Chandra Nath, 6 C.W.N. 360—341, 343, 438.
 Johu Pier Paul v. Ramjee Ram, [1920 Pat.] 168—931, 976, 985.
 John Rudd Rainey v. Nubo Coomar, 24 W.R. 128—372.
 Johoory v. Bullab, 5 Cal. 102—417.
 Johur Mull v. Jatindra Nath, 34 C.L.J. 79—78.
 Jowhar Ali v. Alarakhu, 63 I.C. 481—994.
 Jonab v. Shivakumari, 46 C.L.J. 253—94, 312.
 Jonab Ali v. Rakebuddin, 9 C.W.N. 571, s.c., 1 C.L.J. 303—664, 901, 903.
 Jonardan v. Sambhunath, 16 Cal. 809—43.
 Jonna v. Guni, 21 W.R. 124—5.
 Jonardi v. Anadi Nath, 39 C.L.J. 334—727, 728.
 Jonoo v. Brija, 22 W.R. 548—663.
 Jotiram Gyan Das v. Dinanath, (unreported)—744.
 Joy Chandra v. Arun Chandra, 67 I.C. 241—330.
 Joy Churn v. Sarajubala, 23 C.W.N. 876—382.

- Joy Durga *v.* Srikante, 11 C.W.N. 984—350.
 Joy Dutt *v.* Baijeeram, 7 W.R. 40—663.
 Joy Gobind *v.* Monmotho Nath, 33 Cal. 580—117, 396.
 Joy Krishen *v.* Raj Kishen, 5 W.R. 157—114.
 Joymangal *v.* Sarafat Ali, A.I.R. 1925 Cal. 299—735.
 Joynal *v.* Kazem, 22 C.W.N. 67 (notes)—797, 817.
 Joy Narain *v.* Badridas, 16 C.L.J. 156—796.
 Joypal *v.* Mohunt Palukdhari, 2 C.W.N. 491—610.
 Joytara *v.* Prankrishna, 15 C.W.N. 512, s.c., 13 C.L.J. 257—842, 857.
 Jubraj *v.* W. Mackenzie, 5 C.L.J. 231—494.
 Jugal Mohini *v.* Srinath, 12 C.L.J. 609—834, 835.
 Jugat Chandra *v.* Eshan Chandra, 25 W.R. 200—449.
 Jugdeo *v.* Padarath, 25 Cal. 285—676, 677.
 Juggernath *v.* Jumman Ali, 29 Cal. 247—320, 321, 326, 748.
 Juggobundhu *v.* Promotha Nath, 4 Cal. 767—141.
 Jugmahan *v.* Pailonjee, 22 Bom. 1—212.
 Jugut Chandra *v.* Goloke Chandra, 23 Cal. 522—508, 513, 515, 516.
 Jugodish *v.* Turki Koolah, 24 W.R. 90—439, 441.
 Juhoree Lal *v.* Dear, 23 W.R. 399—52, 919.
 Jummat Ali *v.* Chowdhury Chulturdharee, 16 W.R. 185—316.
 Jumma Prasad *v.* Basdeo, 4 P.L.J. 548—475.
 Jung Singh *v.* Dularchand, 96 I.C. 495—362.
 Juttoo Moor *v.* Mussamat Basmuttee, 15 W.R. 479—142.
 Jyati Prasad *v.* Dasrath, 36 C.L.J. 73—301.
 Jyoti Prasad *v.* George Mathew Darby, 38 Cal. 845—56, 58.
 Jyoti Prasad *v.* Lachipur Coal Co., 38 Cal. 845—5, 58.
 Jyoti Prokash *v.* Bagala, 36 C.L.J. 124, s.c., 70 I.C. 822—578.

K

- Kalvilasho *v.* Raghunath, 81 Cal. 481—857, 859, 862.
 Kabil Sardar *v.* Chunder Nath, 20 Cal. 590—178, 180, 479.
 Kadambinee *v.* Kasinath, 13 W.R. 338—35.
 Kade Mandal *v.* Ahaduli Molla, 14 C.W.N. 629—5, 6, 45.
 Kadir Baksh *v.* Sheo Prasad, 2 Pat. L.J. 713—24, 494.
 Kadir Bux *v.* Birendra Kisore, 22 C.L.J. 119—40, 43.
 Kailash Chandra *v.* Darbaria, 20 C.W.N. 347—48, 255, 264, 403, App. (121).
 Kailash Chandra *v.* Harimohon, 13 C.W.N. 541—175, 179, 183.
 Kailash Chandra *v.* Jubbar Ali, 22 W.R. 29—785, 810.
 Kailas Chandra *v.* Meheruddin, 97 I.C. 604, s.c., A.I.R. 1927 Cal. 51—759.
 Kailash Chandra *v.* Padmakishore, 45 Cal. 285—177.
 Kailash Chunder *v.* Tarak Nath, 25 Cal. 571—46, 729, 732.
 Kailas Mandal *v.* Baroda, 24 Cal. 711—App. (119).
 Kailaspati *v.* Ganga Singh, 10 C.L.J. 599—426.
 Kailaspati *v.* Muneshwar, 43 I.C. 965, s.c., 4 Pat. L.W. 109—271.
 Kalanand *v.* Chandra Kishore, 14 C.W.N. 971, s.c., 12 C.L.J. 92—1000.
 Kalanand *v.* Eastern Mortgage Agency Co., 18 C.L.J. 83—442.
 Kalanand *v.* Gunpat, 16 C.W.N. 104—406.
 Kalar Singh *v.* Mathuraprasad, 19 C.L.J. 402—440.
 Kalee Chunder *v.* Ramgutty, 25 W.R. 95—489.
 Kalee Kamal *v.* Jummat Ali, 11 W.R. 452—975.
 Kalee Kishen *v.* Jankee, 8 W.R. 250—140.
 Kalibur *v.* Jaffer Pitwari, 24 Cal. 241—126, 958.
 Kali Chandra *v.* Kali Kumar, 34 I.C. 537—750.

- Kali Charan *v.* Arman Bibi, 13 C.W.N. 220—182, 189, 481.
 Kali Charan *v.* Debendra Nath, 10 C.L.J. 458—611.
 Kali Charan *v.* Harendralal, 6 C.L.J. 553—926, 983.
 Kali Charan *v.* Mahammad Ismail, 51 Cal. 139—585, 586.
 Kali Charan *v.* Parbati, 4 C.L.J. 564—508, 513, 515.
 Kali Charan *v.* Ram Chandra, 30 Cal. 783—30.
 Kali Charan *v.* Shashee Dassee, 1 W.R. 248—303.
 Kalidas *v.* Nathu, 7 Bom. 217—932, 936.
 Kalidas *v.* Sheikh Nasarath, 32 C.L.J. 130—923.
 Kali Doyal *v.* Nagendra, 24 C.W.N. 44, s.c., 30 C.L.J. 217—726.
 Kali Dayal *v.* Umesh Prasad, 1 Pat. 174—706.
 Kalikananda *v.* Biprodas, 19 C.W.N. 18, s.c., 21 C.L.J. 265—794, 798, 799, 801, 819.
 Kali Kishore *v.* Gopi Mohon, 10 C.W.N. 166; s.c., 9 C.L.J. 574—496, 631, 686.
 Kali Krishna *v.* Fuzle Ali, 9 Cal. 843—352, 856.
 Kali Krishna *v.* Izzatunnesa, 1 C.W.N. lxviii—46.
 Kali Krishna *v.* Ram Chandra, 19 C.W.N. 823, s.c., 21 C.L.J. 487—251, 729, 762.
 Kali Kumar *v.* Bidhu Bhusan, 16 C.L.J. 19—129, 380.
 Kally Dassi *v.* Monmohini, 24 Cal. 440—107.
 Kalim Sheikh *v.* Mocham, 24 C.L.J. 113—180, 182.
 Kali Mohon *v.* Birendra Kisore, 22 C.L.J. 309x205.
 Kali Mondal *v.* Ram Sarbeswar, 9 C.W.N. 721, s.c., 32 Cal. 957—743, 744, 745, 857.
 Kalimuddin *v.* Reajuddin, 14 C.W.N. 295—113.
 Kalinath *v.* Kefatulla, 1 C.W.N. 119 (notes)—736.
 Kalinath *v.* Kumar Upendra, 24 Cal. 212—182, 265, 478, 479, 481.
 Kalinath *v.* Trailokyanath, 26 Cal. 315, s.c., 3 C.W.N. 194—413, 414, 871, 872.
 Kalipada *v.* Satiprasad, 27 C.W.N. 372, s.c., 36 C.L.J. 234—706, 941.
 Kalipada *v.* Sekharbasini, 23 C.L.J. 235—731, 732, 736, 737.
 Kaliprasanna *v.* Bhagaban Mali, 17 C.W.N. 438—21, 588, 687, 756, App. (115).
 Kaliprasanna *v.* Dhananjai, 11 Cal. 625—321.
 Kaliprasanna *v.* Mathuranath, 34 Cal. 191—36.
 Kaliprasanna *v.* Secretary of State, 23 C.W.N. *383—574.
 Kali Ranjan *v.* Rajeswar, 51 Cal. 396—686.
 Kali Roy *v.* Pratab Narain, 5 C.L.J. 92—251, 314, 532, 558, 561.
 Kali Sundari *v.* Dharani Kant, 33 Cal. 279—129, 130, 489.
 Kali Sundari *v.* Giriza Sankar, 15 C.W.N. 974—541, 603, 606.
 Kalru Carki *v.* Jangli Choudhri, 1 Pat. L.J. 273—262.
 Kamala *v.* Tarapada, 15 C.L.J. 498—762.
 Kamalldhari *v.* Rameshur, 17 C.W.N. 817, s.c., 19 I.C. 545—992, 993, 996.
 Kamalanand *v.* Jarao Kumar, 17 C.L.J. 96—838.
 Kamala Pershad *v.* Jhonti, 13 C.W.N. 276 (notes)—267.
 Kamalesh *v.* Dwarika Nath, 28 C.W.N. 967—711.
 Kamaleswar *v.* Kanhari, 17 C.W.N. 1159—421.
 Kamaleswari *v.* Haribullabh, 2 C.L.J. 369—180, 209, 749.
 Kamaleswari *v.* Ramphari, 19 C.L.J. 348—558.
 Kamal Krishna *v.* Kedarnath, 10 C.L.J. 517—380, 381, 390, 681, 927.
 Kamal Kumari *v.* Kiran Chandra, 2 C.W.N. 299—21, 213, 501.
 Kamala Prasad *v.* Chandranath, 106 I.C. 300—757.
 Kamaluddin *v.* Kumar Ramanand, [1924 Pat.] p. 1—654, 655.
 Kameswari *v.* Sishuram, 39 C.L.J. 414—26.
 Kamini *v.* Prosonno, 24 C.W.N. 685—72.

- Kamini Prasad *v.* Khadada Khan, 9 C.W.N. 287 (notes)—266, 269.
 Kamini Sundari *v.* Abdul Habin, 28 C.L.J. 254—206, 244, 625.
 Kamini Sundari *v.* Kaliprasanna, 12 Cal. 225—414.
 Kamola Kant *v.* Kanoo Mahomed, 11 W.R. 395—439.
 Kanai Lal *v.* Basanta Behari, 29 C.W.N. 1020—116, 117, 119, 121.
 Kanai Lal *v.* Midnapur Zemindari Co., 5 C.L.J. 48 (n)—336.
 Kanai Lal *v.* Nitai, 12 C.L.J. 612—48.
 Kanailal *v.* Rajendra Lal, (unreported)—416, 419.
 Kanai Mahaldar *v.* Madhusudan, 6 C.L.J. 669—947.
 Kanchan Mandar *v.* Kamala Prasad, 21 C.L.J. 441—172, 181, 193.
 Kangali Charan *v.* Surja Narain, 65 I.C. 305, s.c., [1922 Pat.] 9—895.
 Kani *v.* Madhu, 6 C.L.J. 669—725.
 Kaniz Fatma *v.* Sarbon Lal, 42 I.C. 415—733.
 Kanna Pisharady *v.* Narayanan, 3 Mad. 234—401.
 Kanoraddi *v.* Monmohini, 21 C.W.N. s.c., 29 C.L.J. 234—255, 271, 272.
 Kansalia *v.* Gulab Koer, 21 All. 297—166.
 Kanta Mohan *v.* Gopinath, 32 C.W.N. 91 (notes)—402, App. (121).
 Kanta Mohan *v.* Jadav Chandra, 32 C.W.N. 100 (notes)—402, 729.
 Kantheppa *v.* Seshappa, 21 Bom. 501—315.
 Kapil Roy *v.* Sheobadan, 21 I.C. 120—814.
 Karamali *v.* Tamijuddin, 32 C.L.J. 12—855, 860.
 Kareri *v.* Anatpayaya, 10 Mad. 1929—393.
 Karim *v.* Aswini, 25 C.W.N. 658—751.
 Karim Buksha *v.* Abdul Jabbar, 47 I.C. 416—459.
 Karim Chakladhar *v.* Sahoraunessa, 25 C.W.N. 717—186.
 Karim Chowkidar *v.* Sundar Bewa, 1 C.W.N. 89—261, 496.
 Kariman *v.* Nirmal Kumar, 52 I.C. 181—901, 905, 912.
 Kari Newaj *v.* Surendra Nath, 5 C.L.J. 33—908.
 Karkata *v.* Raja Venkata, 29 Mad. 24—177.
 Karma Uravan *v.* Barai Debi, 36 Cal. 115, s.c., 13 C.W.N. 287—691.
 Karmi Khan *v.* Brojonath, 22 Cal. 244—544, 602, 798.
 Karoona *v.* Shib Chunder, 6 W.R. Act X 50—303.
 Karoonamoy *v.* Surendra Nath, 2 C.W.N. 327 (notes)—390, 703.
 Karuna *v.* Secretary of State, 100 I.C. 466—81, 340, 565.
 Kartik Chandra *v.* Jitendra Nath, 28 C.W.N. 188 (notes)—236, 595.
 Kartik Mondal *v.* Bama Charan, 20 C.W.N. 182—458, 461.
 Kartik Nath *v.* Padmanand, 11 Cal. 496—408.
 Karuna Moyee *v.* Surendra Nath, 26 Cal. 176—703.
 Karuppa Goundan *v.* Pariatambi, 30 Mad. 397—786.
 Kasem Sheik *v.* Harek Chand, 33 Cal. 596, s.c., 10 C.W.N. 598—909.
 Kasem Sheik *v.* Tarkeswar, 85 I.C. 793—868.
 Kaseenath *v.* Bamasundari, 10 W.R. 429—306.
 Kashee Kant *v.* Rohini Kant, 6 Cal. 325—349, 983.
 Kashu Ram *v.* Moharanee Sham Mohinee, 23 W.R. 227—733, 734.
 Kashigir *v.* Jogendra, 27 All. 136—29.
 Kashikinkar *v.* Satyendra, 12 C.L.J. 642—216, 397, 398, 778, App. (116).
 Kashim *v.* Prosunno, 10 C.W.N. 598, s.c., 33 Cal. 596—908.
 Kasimali *v.* K. S. Bonnerjee, 101 I.C. 347—307, 311.
 Kashi Mahton *v.* Iswari Prasad, 6 C.L.J. 727—258.
 Kashinath *v.* Brindabon, 10 Cal. 649—418.
 Kashinath *v.* Durgaprasad, 1 Pat. L.J. 604—26.
 Kastoor Koomari *v.* Binode Ram, 4 W.R. Mis. 5—896.
 Kastoor Koomari *v.* Manohur Deo, W.R. 1864 p. 39—894, 898.
 Kathusheri *v.* Vallotil, 3 Mad. 234—712.

- Kattyani *v.* Soonduree, 2 W.R. Act X 60—300.
 Katyani *v.* Udooy Kumar, 52 Cal. 470 (P.C.)—34, 38, 39, 335, 339, 772.
 Kazee Abdool *v.* Baroda Kant, 15 W.R. 394—325.
 Kazee Khoda Newas *v.* Nabakisore, 5 W.R. Act X 53—87, 89, 306.
 Kazemani *v.* Manik Chandra, A.I.R. 1924 Cal. 156—77.
 Kazi Inus *v.* Kazi Inus, 8 Bom. 576—393.
 Kazi Mahamed *v.* Sheikh Kadir, 11 C.W.N. 128 (notes)—361.
 Kazi Newas *v.* Radha Charan, 34 Cal. 109, s.c., 11 C.W.N. 201—905.
 Kazi Newas *v.* Ram Jadu, 11 C.W.N. 201, s.c., 34 Cal. 109—908, 910.
 Kazi Newas *v.* Surendranath, 5 C.L.J. 33—908.
 Kazi Nural Huq *v.* Birendra Kisore, 38 C.L.J. 121—88.
 K. B. Dutt *v.* Gostha Behari, 16 C.L.J. 379, s.c., 16 C.W.N. 1006—710,
 716, 768, 775, 998.
 Keamuddi *v.* Haramohon, 7 C.W.N. 294—43.
 Kedar Mondal *v.* Ahad Ali Molla, 14 C.W.N. 629—80.
 Kedar Nath *v.* Amar Chandra, 28 C.W.N. 168 (notes)—108.
 Kedarnath *v.* Ardha Chandra, 5 C.W.N. 763—737, 776, 957, 998.
 Kedarnath *v.* Biprodas, 23 C.W.N. 182, s.c., 47 I.C. 765—802.
 Kedarnath *v.* Gobinda Chandra, 32 C.W.N. 366—133, 165.
 Kedarnath *v.* Huro Proshad, 32 W.R. 227—740.
 Kedarnath *v.* Kamini Sundari, 28 C.W.N. 482—995.
 Kedarnath *v.* Madhusudan, 37 C.L.J. 478—53.
 Kedarnath *v.* Manindro Chandra, 11 C.L.J. 106—221.
 Kedarnath *v.* Mohesh Chandra, 28 C.L.J. 216—927, 989, 995.
 Kedarnath *v.* Saday Chandra, 19 C.L.J. 13—195.
 Kedarnath *v.* Sritirutno, 6 Cal. 34—210, 975.
 Kedarnath *v.* Uma Charan, 6 C.W.N. 57—852, 858, 859.
 Kenaram *v.* Kinu Mandal, 50 Cal. 508—185, 222.
 Kerr *v.* Pawson, 25 Beav. 394—57.
 Kesav Lal *v.* Heraset, 12 C.L.J. 126—110.
 Keshab Chandra *v.* Ajahar, 23 C.L.J. 428—114.
 Keshab Lal *v.* Jnanendra Nath, 20 C.L.J. 332—751.
 Keshab Pandu *v.* Bhowani, 18 C.L.J. 187—603.
 Keshab Lal *v.* Jnanendra Nath, 20 C.L.J. 332—751.
 Kesho Prasad *v.* Bhagawat, [1924 Pat.] 18—338, 584, 627.
 Kesho Prasad *v.* Jirdhan Ojha, 2 Pat. L.J. 43—142, 887.
 Keshoprasad *v.* Lalji Ray, 1 Pat. L.J. 138—376, 687.
 Keshoprorad *v.* Parameswari, 2 Pat. 414—149.
 Keshoprasad *v.* Paranjote, 6 Pat. L.J. 354—378.
 Keshoprasad *v.* Ramdas, 2 Pat. 92—654.
 Keshoprasad *v.* Ramdhani, 2 Pat. 183—44, 334, 400, 995.
 Keshoprasad *v.* Tribhuan, 2 Pat. L.J. 276—331, 343.
 Keshoprasad *v.* Troilokenath, 82 I.C. 841—723.
 Keshwar Bhagat *v.* Sheoprasad, 18 C.L.J. 166—26, 27, 562.
 Keshobati *v.* Mohan Chandra, 39 Cal. 1010 : 16 C.W.N. 802—897.
 Kesto Prasad *v.* Issur Dubey, 71, I.C. 15—301.
 Ketudas *v.* Surendra Nath, 7 C.W.N. 596—41.
 Khagendra *v.* Sonaton, 20 C.W.N. 149—118.
 Khaguram *v.* Ram Sankar, 42 Cal. 652 : 19 C.W.N. 775—415.
 Khairamal *v.* Daim, 32 Cal. 396 : 9 C.W.N. 201—394.
 Khantamani *v.* Bijoy Chandra, 19 Cal. 187—798.
 Kharaz Narain *v.* Dwarka Prasad, I.L.R. 3 Pat. 465—73, 148.
 Khatajan Bewa *v.* Aswini Mohon, 9 C.L.J. 82 (notes)—82.
 Khafer Mistri *v.* Sadruddin Khan, 34 Cal. 922—105.
 Khellat Chandra *v.* Nussibunnissa, 16 W.R. 47—691.

- Khellat Chandra *v.* Umrito, 1 Ind. Jur. N.S. 426—141.
 Kherode Chunder *v.* D. M. Gordon, 23 W.R. 237—146.
 Khetra Nath *v.* Mahmud Uzir, 13 C.L.J. 525—830, 839.
 Khetrapal *v.* Kritarthamoyee, 33 Cal. 566 (F.B.)—3, 380, 385, 704, 705, 774, 776, 829.
 Khetter *v.* Dinendra, 3 C.W.N. 144—22.
 Khettermani *v.* Jiban Krishna, 21 C.L.J. 315—64, 246, 325, 339, 880, 881, 933, 939, 946.
 Khettermohon *v.* Prankristo, 3 C.W.N. 371—124, 216, App. (120).
 Khetra Mohan *v.* Mohim, 17 C.W.N. 518—998.
 Khetra Nath *v.* Lakhan Sardar, 95 I.C.—991.
 Khetro *v.* Biswanath, 51 Cal. 972—931.
 Khirode Chimder *v.* Hashan Ali, 6 C.W.N. 28 (notes)—475, 482.
 Khired Gobinda *v.* Gour Gopal, 27 C.L.J. 281—309.
 Khitish Chandra *v.* Khulna Loan Co., 13 C.W.N. 804—384.
 Khmul Lochun *v.* Moran & Co., 2 W.R. 82—349.
 Khojeh Habibulla *v.* Umed Ali, 47, Cal. 266 : 31 C.L.J. 68—343.
 Khondkar Abdul Hamid *v.* Mohinikant, 4 C.W.N. 508—32, 323, 332, 785, 934, 938.
 Khondkar Abdul Rahman *v.* Ali Hafez, 3 C.W.N. 531—113, 469, App. (105)
 Khondkar Mehti Hossein *v.* Umesh Chandra, 27 C.L.J. 494—910.
 Khoodeeram *v.* Rookhinee Boistobee, 15 W.R. 197—199, 434.
 Khubi Mahton *v.* Mahunt Lachmi Das, 2 Pat. 118—885.
 Khuni Lal *v.* Madan Mohan, 6 A.L.J. R. 293—315.
 Khurshed *v.* Dinanath, 29 C.L.J. 492—845.
 Khyanta Kali *v.* Kedar Nath, 14 C.W.N. 138 (notes)—819.
 Kingsmill *v.* Milliard, 11 Ex. 313—333.
 Kinuram *v.* Mozafier Hossani, 14 Cal. 809—862.
 Kinu Sheikh *v.* Raj Kumar, 96 I.C. 588—480.
 Kiran Chandra *v.* Dutt & Co., 40 C.L.J. 500—25, 345.
 Kiran Chandra *v.* Nirod Bhusan, (unreported)—592.
 Kiran Chandra *v.* Naimuddi, 30 Cal. 498—789, 790.
 Kiran Chandra *v.* Srinath, 31 C.W.N. 135—206, 555.
 Kiran Sashi *v.* Ananda, 32 C.L.J. 15—909.
 Kirtibash *v.* Umes Chandra, 16 C.W.N. 96—509, 515.
 Kirtyanand *v.* Rampal, 6 Pat. 134, s.c., 8 P.L.T. 20—158.
 Kiseswar Nath *v.* Kali Sankar, 10 C.W.N. 343—799.
 Kishen *v.* Barnes, 2 Cal. 374—406.
 Kishen *v.* Hurry Jeebun, 10 W.R. 324—App. (116).
 Kishen Dutt *v.* Mumtaz, 6 I.A. 145—868.
 Kishen Narain *v.* Chandra Kant, 37 I.C. 658—408.
 Kishen Ojha *v.* Bujrangi, 13 C.W.N. 180 (notes)—314.
 Kishen Prasad *v.* Harinarayan, 33 All. 272—401.
 Kishore Chandra *v.* Kali Kinkar, 20 W.R. 338—376.
 Kishore Lal *v.* Administrator General of Bengal, 2 C.W.N. 303—31, 316, 411, 412, 870, 871.
 Kishore Manikya *v.* Bande Ali, 12 C.W.N. 904—341.
 Kishore Mohan *v.* Nund Kumar, 24 Cal. 720—281.
 Kishori *v.* Sarodamoni, 1 C.W.N. 30—45, 849, 859.
 Kishori Lal *v.* Krishna Kamini, 37 Cal. 377—919.
 Kishori Manikya *v.* Umed Ali, 12 C.W.N. 904—333.
 Kishori Mohon *v.* Osi Pramanik, 48 I.C. 536—398.
 Kishori Mohan *v.* Sheikh Uzir, 37 Cal. 610—220, 258.
 Kishori Paul *v.* Sheikh Bhusai, 14 C.W.N. 106—203.
 Kishori Ram *v.* Ananta Ram, 10 C.W.N. 270—111, 117, 130, 489.

- Kishun Doyal *v.* Iswarnath, 8 P.L.T. 74—260, 428.
 Kishwar Nath *v.* Kali Sankar, 10 C.W.N. 343—39, 315.
 Koilas Mondal *v.* Baroda Das, 24 Cal. 711—444.
 Komal *v.* Ramanath, 21 W.R. 322—480.
 Komoruddi' *v.* Sreenath, 8 C.W.N. 136—279.
 Koonj Beharee *v.* Bukshee Luchman, 19 W.R. 188—497.
 Koonjo Behary *v.* Purna Chunder, 9 Cal. 450—662.
 Koowar Singh *v.* Gour Sundar, 24 Cal. 887—787.
 Kotappa *v.* Valur, 25 Mad. 50—983.
 Koylash *v.* Goluk Chandra, 2 C.W.N. 61—44, 369, 686, 720.
 Koylash Bashinee *v.* Gocoolmani, 8 Cal. 230—500.
 Koylash Chunder *v.* Jabul Ali, 22 W.R. 29—775.
 Koylash Chunder *v.* Jadu Nath, 14 Cal. 380—706.
 Kripa Moyee *v.* Dropudee, 24 W.R. 203—733.
 Kripamoyee *v.* Durga Gobind, 15 Cal. 89—109.
 Kripa Nath *v.* Ram Lakshmi, 1 C.W.N. 703—857, 858, 860.
 Kripa Nath *v.* Sahib Amir, 4 C.L.J. 332, s.c., 10 C.W.N. 944—8, 917.
 Kripa Sindhu *v.* Annada Sundari, 35 Cal. 34—2, 350, 368, 372, 411.
 Kripa Sindhu *v.* Jogendra, 5 C.L.J. 78 (n)—728.
 Kripa Sindhu *v.* Nanda, 11 C.W.N. 983, s.c., 35 Cal. 34—349.
 Kripa Sindhu *v.* Surendra Nath, 30 C.L.J. 4, s.c., 51 I.C. 285—754.
 Krishna *v.* Jadu, 19 C.W.N. 914—8, 918, 919.
 Krishna *v.* Khiban, 10 C.W.N. 499—833.
 Krishna *v.* Mahomed, 23 C.L.J. 563—24.
 Krishna *v.* Mohomed, 21 C.W.N. 93—79.
 Krishna *v.* Mohunt Bhagwan, 7 C.L.J. 85—905.
 Krishna Chandra *v.* Dinanath, 54 Cal. 1064—830, 955.
 Krishna Chandra *v.* Khiran Bajnia, 10 C.W.N. 499, s.c., 3 C.L.J. 222—188, 471.
 Krishna Chandra *v.* Mahendra Nath, 13 C.L.J. 212—44, 874.
 Krishna Chandra *v.* Satis Chandra, 20 C.W.N. 872—925, 988, 993.
 Krishna Chandra *v.* Sushila Sundari, 26 Cal. 611, s.c., 3 C.W.N. 608—439, 444, 879, 959.
 Krishnadas *v.* Kalitara, 22 C.W.N. 289—216, 397, 398.
 Krishnadas *v.* Mahendra Chandra, 62 I.C. 779—450, 751, 976.
 Krishnadayal *v.* Amiral Hossin, 19 C.W.N. 942—App. (120).
 Krishna Gobind *v.* Banka Behari, 13 C.W.N. 608—32.
 Krishna Gobind *v.* Hari Charan, 9 Cal. 367—39.
 Krishna Gobind *v.* Hari Charan, 13 Cal. 101—39.
 Krishna Gopal *v.* Barnes, 2 Cal. 374—410.
 Krishna Kalyani *v.* Braunfield, 20 C.W.N. 1028—797.
 Krishna Kamini *v.* Nilmadhab, 36 C.L.J. 382—307.
 Krishna Kamini *v.* Pratapendra, 85 I.C. 790—817.
 Krishna Kant *v.* Jadukasya, 21 C.L.J. 475—277, 279.
 Krishna Kant *v.* Krishna Chandra, 9 C.W.N. 303—919.
 Krishna Kinikar *v.* Mohanto Bhagban, 35 Cal. 18, s.c., 12 C.W.N. 161—906.
 Krishna Kumar *v.* Piru Fakir, 35 C.L.J. 159—253, 272.
 Krishna Kumari *v.* Nagendra Prasad, 50 Cal. 807—706.
 Krishna Lal *v.* Salim Mahamed, 19 C.W.N. 514—414, 952, 978.
 Krishna Pramad *v.* Sheikh Parasulla, 15 C.W.N. 216 (notes)—735.
 Krishna Sardar *v.* Paresht Sardar, 10 C.L.J. 305—941.
 Krishna Sahoy *v.* Palakdhari, 20 C.W.N. 1157, s.c., 22 C.L.J. 42—246.
 Krishnendra *v.* Kusum Kamini, 76 I.C. 324—80.

- Krishnendra v. Kusum Kamini, 54 I.A. 48, s.c., 31 C.W.N. 514—94, 99, 877, 878.
- Kristalhan v. Golam Mandal, 37 I.C. 862—223.
- Krishtadhane v. Bhoja Govinda, 1 C.W.N. 442, s.c., 24 Cal. 895—226.
- Kristamma v. Chapa Nanda, 17 Mad. 410—742.
- Kristo Bullav v. Krito Lal, 16 Cal. 642—116, 489.
- Kristo Bunahoo v. Rotish, 25 W.R. 307—423.
- Kristoo Coomar v. Anund Coomar, 19 W.R. 307—740.
- Kristodas v. Jitendra Nath, 16 C.W.N. 561—792, 793.
- Kristo Gobind v. Hem Chandra, 16 Cal. 511—394.
- Kristanath v. Brown, 14 Cal. 176—211.
- Kristo Soondar v. Chunder Nath, 15 W.R. 230—35.
- Kshemananda v. Rashamaya, 32 C.W.N. 132—639.
- Kshettra Mohan v. Akhil Chandra, 100 I.C. 427 I.C. A.I.R. 1927 Cal. 431—721.
- K. S. Bonnerjee v. Mahomed Faiz, 96 I.C. 884—309.
- Kshettra Mohan v. Lakhikanta, 44 C.L.J. 271—140, 901.
- Kshettra Nath v. Nityananda, 96 I.C. 667—271.
- Kshettra v. Prohlad, 101 I.C. 800—590.
- Kshirode Chandra v. Rajendra, 38 I.C. 94—132.
- Kshirode Goovinda v. Gour Gopal, 27 C.L.J. 281—607, 633.
- Kshitish Chandra v. Bhikan Mamad, 19 C.L.J. 448—109, 110.
- Kudlip v. Chhatur, 3 C.L.J. 285—146, 149, 152.
- Kuldip v. Gillanders, 4 C.W.N. 738, s.c., 26 Cal. 615—193, 431.
- Kuldip Pandey v. Emperor, 1 Pat. L.J. 353—427.
- Kuldip Saran v. Raghunandan, 97 I.C. 436, s.c., 7 P.L.T. 540—588.
- Kullum Sheikh v. Pachu Mandal, 11 W.R. 128—28.
- Kulwant v. Babu Ram, 43 I.C. 940—86.
- Kuman Das v. Kachali, 105 I.C. 20—224, 263.
- Kumar Banwari v. Bidhu Sundar, 35 Cal. 346—905.
- Kumarish v. Ramtaran, 31 C.W.N. 436—730.
- Kumar Kalananda v. Chandra Kishore, 12 C.L.J. 192—706.
- Kumar Praphulla Krishna v. Nasibanness, 24 C.L.J. 331—385, 740.
- Kumar Prasanna Deb v. Uddhab Chandra, 28 C.W.N. 752 (F.B.)—309.
- Kumar Rameswar v. Ramnath, 33 Cal. 462—57.
- Kumar Rameswar v. Ram Tarak, 14 C.W.N. 268—28.
- Kumar Sankar v. Secretary of State, 29 C.W.N. 166—402.
- Kumeda Kumar v. Dilsook Roy, 45 C.L.J. 138, App. (117).
- Kumban v. Moorthi, 7 I.C. 422—711.
- Kumeda Prasanna v. Secretary of State, 19 C.W.N. 1017—80, 83, 85, 574, 643.
- Kumud Nath v. Sabitri Devi, 18 C.W.N. 190 (notes)—681.
- Kumudini v. Surendrabala, 82, I.C. 22—502.
- Kundhammed v. Narayanam, 12 Mad. 320—212.
- Kunja v. Raj Kumar, 12 I.C. 940—226.
- Kunja Behari v. Bhupendra, 12 C.W.N. 151—862.
- Kunja Behari v. Charan Singh, 72, I.C. 40—694.
- Kunja Behari v. Durgaprasad, 42 Cal. 346—57, 58.
- Kunja Behari v. Sitaram, 42 I.C. 101—921.
- Kunja Behari v. Sombher Chandra, 8 C.W.N. 232—829, 848.
- Kunja Kisore v. Bamasundari, 43 Cal. 878—180.
- Kunjilal v. Umes Chandra, 18 C.W.N. 1294—172, 204, 215, 868.
- Kunja Mohan v. Manindra Chandra, 27 C.W.N. 42—685.
- Kunja Singh v. Bahro Roy, 73 I.C. 12—836.
- Kunti Dai v. Jaharulal, 40, I.C. 907—988, 995.

Kuppa v. Thingnana, 31 Mad. 461—41.
 Kurani Dassi v. Sajanikant, 12 C.W.N. 539—176.
 Kurban Ali v. Jafar Ali, 28 Cal. 471—550.
 Kurmi Khan v. Brojonath, 22 Cal. 244—App. (101).
 Kuttimna v. Madhavamenon, 11 Mad. L.J. 186—416.

L

Lachmi Narayan v. Satya Narayan, 1 Pat. L.J. 197—896, 897.
 Lachmi Pershad v. Ekdeshwar, 13 C.W.N. 181—226, 558.
 Laidly v. Gour, 11 Cal. 501—84, 146.
 Lakh Chand v. Pear Chand, 2 Pat. L.J. 283—415.
 Lakhan Narain v. Joynath, 34 Cal. 516; s.c., 11 C.W.N. 626—261.
 Lakhatulla v. Biswambhar, 12 C.L.J. 646—248, 252, App. (121).
 Lakhi Charan v. Hamid Ali, 27 C.L.J. 284—74, 139.
 Lakhi Charan v. Mokar Ali, 27 C.L.J. 293—74, 149.
 Lakhi Kant v. Balbhadra, 19 C.L.J. 400—159.
 Lakhmeer v. Collector of Rajshaye, S.D.A. 1851 p. 116—798.
 Lakhmi Narain v. Secretary of State, 45 Cal. 866—442.
 Lakhu Kowar v. Ram Hari, 3 B.L.R. A.C. 226 (1869)—876.
 Lakshan Bar v. Nara Narain, 43 Cal. 1086—422.
 Lakshan v. Takim Dhali, 39 C.L.J. 90—69.
 Lakshidhar v. Sarada Charan, 20 C.L.J. 41—538, 788.
 Lakshi Narayan v. Jharu Mohan, 31 C.W.N. 140 (notes)—735.
 Lakshinath v. Nabadwip, 31 C.W.N. 192—164, 556.
 Lakshmana v. Ram Chandra, 10 Mad. 351—209.
 Lakshmidar v. Ratnakar, 48 Cal. 811, s.c. 25 C.W.N. 1009, s.c. 38 C.L.J. 29 (F.B.)—860.
 Lakshmikanta v. Emperor, 29 C.L.J. 328—449.
 Lal Bahadur v. Mackenzie, 19 C.W.N. 229—87.
 Lal Bahadur v. Solano, 10 Cal. 45—159.
 Lal Behari v. Akhil Chandra, 27 C.W.N. 315—739.
 Lal Dharee v. Brojohall, 10 W.R. 401—898, 899.
 Lal Ghosh v. Nilkantha, A.I.R. 1925 Cal. 340—86.
 Lal Gopal v. Khororia Mejozilla Zemindari Syndicate, 16, C.W.N. 987—23.
 Lal Gopal v. Monmotha Lal, 32 Cal. 258, s.c., 9 C.W.N. 175 (F.B.)—414, 872.
 Lal Mahmad v. Arbutta, 1 C.W.N. 198—478, 479.
 Lal Mahomed v. Jagir Shekh, 13 C.W.N. 913—153, 285, 286.
 Lal Mohan v. Jogendra Chandra, 14 Cal. 636—19, 849.
 Lal Singh v. Kristo Khulya, [1924 Pat.] 364—896.
 Lalla Barhmdeo v. Sheo Prasad, 2 Pat. L.J. 561—195, 835.
 Lalla Beni Ram v. Kundan Lal, 3 C.W.N. 502—52, 55.
 Lalla Bhagwan Sahay v. Sungeswar, 19 W.R. 431—773.
 Lala Deo Saran v. Bateswar, 20 C.W.N. 83 (notes)—191, 194.
 Lala Dhanukdhari v. Baburam, 10 C.L.J. 629—206.
 Lala Gosuman v. Mr. Hugh Grant, 11 W.R. 292—897.
 Lalla Joynath v. Lutchen Christian, 16 W.R. 158—662.
 Lalla Khanda Pershad v. Lalla Lal Behary, 25 Cal. 872—740.
 Lalla Kirat Narayan v. Plukdhari, 17 Cal. 326—606, App. (101).
 Lala Murlidhar v. Sarat Lal, A.I.R. 1922 Pat. 555—202, 796.
 Lala Ram v. Narayan, 6 C.W.N. 327—936.
 Lala Sahoo v. Deo Narain, 3 Cal. 781—209.
 Lala Saligram v. Mohunt Ramgir, 3 C.W.N. 311—251.
 Lala Surabh Narain v. Catherine Sophia, 1 C.W.N. 248—29, 285, 464.

- Lala Suraj Prasad v. Golab Chand*, 28 Cal. 517—712.
Lalanmonee v. Sonamonee, (1874) 22 W.R. 334—756.
Lalit Koer v. Hitnarain, 15 C.W.N. 56 (notes)—233, 239.
Lalitmohon v. Chukkan Lal, 24 Cal. 834—458.
Lalitmohon v. Gopali Chuck Coal Co., 39 Cal. 284—30, 48, 70.
Lalitmohon v. Haran Chandra, 36 I.C. 243—217, 398.
Lalita Sundari v. Surnamoyi, 5 C.W.N. 353—35, 36.
Laliteswar v. Rameswar, 13 C.W.N. 118—785.
Lalji Pandey v. Brahameo, 16 C.W.N. 89—6, 45, 48, 381, 682, 775.
Lalji Singh v. Lakshmi, 97 I.C. 708—158, 598.
Lalu Dome v. Bijoy Chand, 20 C.W.N. 404—902, 903.
Lani Mia v. Muhammad, 20 C.W.N. 948—459, 466.
Lekhranj v. Kunhya, 3 Cal. 210—51.
Lilanand v. Bengal Government, 6 M.I.A. 101—894, 896, 898, 900.
Lilanand v. Munorunjun, 13 B.L.R. 124—841, 876, 877.
Lilaranda v. Thakoor Munrunjun, L.R.I.A. Sup. Vol. 181—913.
Lilanand v. Thakoor Munrunjun, 3 Cal. 255—894, 900.
Lodai v. Kally Dass, 8 C.W.N. 238—396.
Lokenath v. Petambar, 3 C.W.N. 215—991.
London S. W. Ry. Co. v. Gomm, 20 Ch. D. 562—113.
Lopez v. Mudhun Mohon, 13 M.I.A. 467 (1870)—885, 888.
Luchman v. Hoolas Mahtoon, 11 W.R. 151—422.
Luchman v. Kailash, 11 W.R. 151—5, 423.
Luchmee v. Ram Golam, 2 W.R. Act. X 30—308.
Luchmi v. Deokari, 19 C.W.N. 174—46.
Luchmipat v. Mandil Koer, 3 C.W.N. 333—804.
Luke v. South Kensington Hotel Co., L.R. 11 Ch. D. 121—936.
Lukhmeer v. Collector of Rajshaye, S.D.A. 1851 p. 116—798.
Lukhee Kant v. Sumeroddi, 13 B.L.R. 243 (F.B.)—47, 756.
Lukhi Narain v. Khetterpal, 13 B.L.R. 146—123.
Lukhi Narain v. Sri Ram Chandra, 15 C.W.N. 921—326, 329, 589.

M

- Mabatulla v. Nalini Sundari*, 10 C.W.N. 42—23, 127, 234, 509.
Macdonald v. Tek Narain, 75 I.C. 997—874.
Macdonald v. Tek Narain, A.I.R. 1925 Pat. 113—148, 874.
Mackenzie v. Hazi Syed, 19 Cal. 1—926, 982, 984.
Mackintosh v. Gopimohan, 4 W.R. 24—266.
MacPherson v. Debi Bhuson, 42 I.C. 36, s.c., 2 Pat. L.J. 530—171, 184, 186, 921.
Madan Chandra v. Jaki Karikar, 6 C.W.N. 377—279, 459, 464.
Madaneswar v. Mahamaya, 15 C.W.N. 672—517.
Madan Mandal v. Mohima, 33 Cal. 531—276, 478, 479, 481, 921.
Madan Mohan v. Holloway, 12 Cal. 555—349.
Madan Mohon v. Priyanath, 64, I.C. 362—198.
Madan Mohon v. Raj Kishori, 20 C.W.N. 88—78.
Madan Mohon v. Rameshar, 7 C.L.J. 615—315.
Madan Mohon v. Sheikh Habi, 2 C.W.N. 182 (notes)—493.
Madan Mandal v. Tarini, 54 I.C. 625—459.
Madhavananda v. Madhu Mahto, 27 I.C. 812—675.
Madheva v. Awadh, 65 I.C. 349—585.
Madhu v. Sabar Ali, 14 C.W.N. 681—78, 201, 262.
Madhub Chandra v. Bijoy Chand, 4 C.W.N. 574—178.
Madhub Chander v. Promotha Nath, 20 W.R. 264—300, 354.

- Madhu Malu *v.* Alfzuddin, 13 C.W.N. 962—414.
 Madhu Pathan *v.* Jagu Jena, 51 I.C. 139—921.
 Madhu Ram *v.* Doyal Chand, 25 Cal. 445—111, 430, App. (4).
 Madhusudan *v.* Brae, 16 Cal. 300 (F.B.)—App. (118).
 Madhusudan *v.* Devendra Nath, 7 C.L.J. 23—4, 28, 77.
 Madhusudan *v.* E. G. Kookes, 25 Cal. 1—355, 369, 374.
 Madhusudan *v.* Jamiruddin, 21 C.W.N. 116 (notes)—301, 305.
 Madhusudan *v.* Jeolal, A.I.R. 1926 Pat. 606—920.
 Madhusudan *v.* Kamini Kant, 32 Cal. 1023, s.c., 9 C.W.N. 895—176, 178, 916.
 Madhusudan *v.* Midnapur Zemindary Co., 45 Cal. 940—772, 820, 881.
 Modhusudan *v.* Moran, 11 W.R. 43—690.
 Madhusudan *v.* Piroo Ram, 2 C.W.N. 94—781.
 Madhusudan *v.* Radhikaprasad, 16 C.L.J. 349—59.
 Mafedul *v.* Maharaddin, 44 I.C. 49—281.
 Mafizuddin *v.* Asutosh, 11 C.L.J. 140—390, 774, 802, 819.
 Magniram *v.* Jiwa Lal, 7 All. 336—742.
 Magniram *v.* Sheocharan, 1 C.W.N. 179 (notes)—230, 363.
 Mahabali *v.* Manu Mandal, A.I.R. 1924 Pat. 416—166.
 Mahabir *v.* Bejulal, 2 Pat. L.J., s.c., 39 I.C. 230—768, 806, 810.
 Mahabir *v.* Charles Fox, 9 C.L.J. 467—299.
 Mahabir *v.* Nanda Kissore, 27 C.L.J. 83—695.
 Mahabarir *v.* Shah Malikuddin, 38 I.C. 32—630.
 Mahadeo *v.* Basggit [1925 Pat.] 106—282.
 Mahadev *v.* Bhagala, 39 I.C. 596, s.c., 1 Pat. L.W. 405—181.
 Mahadeo *v.* Dharam Nath, 72 I.C. 662—915.
 Mahadeo *v.* Keshoprasad, 2 Pat. L.J. 97—382.
 Mahadeo *v.* Langat, 2 Pat. L.J. 457—172, 795, 800, 831.
 Mahadeo *v.* Pargash, 97 I.C. 629, s.c., A.I.R. 1927 Pat. 43—992.
 Mahadeo *v.* Sheogulam, 2 Pat. L.J. 634—449, 450, 754.
 Mahadeo *v.* Thakur Pershad, 14 C.W.N. 677, s.c., 11 C.L.J. 528—796.
 Mahadeo *v.* Vasudeo, 23 Bom. 181—853.
 Mahadeo Prasad *v.* Gajadhar, A.I.R. 1924 Pat. 362—801.
 Mahamaya *v.* Abdul Hamid, 18 C.W.N. 266—927.
 Mahamaya *v.* Kishori, 18 C.W.N. 738, s.c., 18 C.L.J. 502—222, 225.
 Mahamedan *v.* Brajasundari, 18 Cal. 360—119, 121.
 Mahammad *v.* E. F. Sandes, 30 C.L.J. 263—518, 522.
 Mahamad *v.* Kishari Mohun, 22 Cal. 209, s.c., 22 I.A. 192—181.
 Mahammad *v.* Krishna Gobinda, 28 C.L.J. 77—502.
 Mahammad *v.* Naffer Chandra, 9 C.W.N. 803—66.
 Mahammad Abu Zafar *v.* Ram Pershad, 37 I.C. 937—910.
 Mahammad Askari *v.* Radha Ram, 22 All. 307—216.
 Mahammad *v.* Hosain *v.* Hiramou Rout, 24 I.C. 118—735.
 Mahammad Kasiruddin *v.* Banikant, A.I.R. 1923 Cal. 520—198.
 Mahammad Reajuddin *v.* Basuda Sundari, 28 C.L.J. 278—874.
 Mahammad Shay *v.* Saidunnessa, 8 C.L.J. 278—977.
 Mahammad Sahay *v.* Saidunnessa, 8 C.L.J. 525—47, 874, 878.
 Mahammad Zahoor *v.* Thakornee, 9 W.R. (P.C.) 9—710.
 Mahanth Ram *v.* Nandijha, 5 Pat. 393, s.c., 7 P.L.T. 784, s.c., 96 I.C. 937—557.
 Mahanti Lal *v.* Harkissen, 19 C.W.N. 196 (notes)—800.
 Maharaj Bahadur *v.* Bhupendra, 44 C.L.J. 182—904.
 Maharaj Bahadur *v.* Forbes, 35 Cal. 737—381, 384, 704, 775.
 Maharaj Bahadur *v.* Makhan Chandra, 29 C.L.J. 436, s.c., 51 I.C. 385—750.

- Maharaj Bahadur *v.* Bhagwan Das, 45 L.C. 781—541.
 Maharaj Bahadur Keshorprasad *v.* Triloke Nath, 4 Pat. 304—723.
 Maharaj Bahadur Singh *v.* Kurani Mai, 32 C.W.N. 57 s.c., 45 C.L.J. 566—744.
 Maharajadhiraj Bejoychand *v.* Khoka Singh, 40 C.L.J. 97—980.
 Maharajadhiraj of Durbhanga *v.* Commissioner of Income Tax, [1925 Pat.] p. 49—950.
 Maharajadhiraj Mahtab Chand *v.* Chitro Coomaree, 16 W.R. 201—246, 341.
 Maharaj Kumar Manmothnath *v.* Shakh Ameer Khan, 3 Pat. L.J. 394—532.
 Maharaj Kumar Sri Newas *v.* Buksh Harihar, 14 C.W.N. 75 (notes)—35.
 Maharam Chaprasi *v.* Telamaddin, 16 C.W.N. 567—53, 54.
 Maharanee *v.* Harendra Lal, 1 C.W.N. 498—123, 382, 837.
 Mahendra *v.* Ashutosh, 91 I.C. 478, s.c., A.I.R. 1926 Cal. 545—999.
 Mahendra *v.* Doorga Charan, 15 C.W.N. 515—803.
 Mahendra *v.* Giris Chandra, 3 Pat. L.J. 379—626.
 Mahendra *v.* Parbutty, 8 C.W.N. 136—459, 464.
 Mahendra *v.* Prabal Chandra, 53 Cal. 475—624.
 Mahendra Lal *v.* Krishen Kumari, 46 I.C. 656—917.
 Mahendra Narain *v.* Giris Chandra, 3 Pat. L.J. 379—598.
 Mahendra Narain *v.* Lalit Kumar, 18 C.W.N. 64 (notes)—779, 807, 808.
 Mahendra Nath *v.* Baidya Nath, 26 C.W.N. 167, s.c., 70 I.C. 127—833.
 Mahendra Singh *v.* Joka Singh, 19 W.R. 211—911.
 Maherunnessa *v.* Shyam Sundar, 40 Cal. 89—814.
 Mahesh Chandra *v.* Arikar, 9 C.W.N. 376—677.
 Mahesh Jha *v.* Maubharan, 5 C.L.J. 522—77, 86, 152.
 Mahesh Narain *v.* Maharaja Bahadur, 17 C.W.N. 70—176, 188, 199.
 Mahim Chandra *v.* Suryya Kumar, (unreported)—819.
 Mahomed *v.* Biroja Sundari, 11 Cal. 360—954.
 Mahomed Ali *v.* Asadunissa, 9 W.R. 1—27.
 Mahomed Ashruff *v.* Asutosh, 2 C.L.J. 10(n)—531.
 Mahomed Askur *v.* Mahamed Wasuck, 22 W.R. 413—474.
 Mahomed Ayefiuddin *v.* Pradyat Kumar, 25 C.W.N. 13—112, 317, 627.
 Mahomed Bahadur *v.* Raja Rajkishen, 15 W.R. 522—505.
 Mahomed Fayez *v.* Jamoo, 8 Cal. 730—440.
 Mahomed Hamidar *v.* Ali Fakir, 10 C.L.J. 25—165, 166.
 Mahomed Jamad *v.* Gopal Narain, 5 C.L.J. 48(n)—379.
 Mahomed Janer *v.* Majub Ali, 27 C.W.N. 328—97.
 Mahomed Jeallya *v.* Sukheunessa, 14 C.W.N. 446—36.
 Mahomed Kaem *v.* Naffar Chandra, 9 C.W.N. 803, s.c., 31 Cal. 911—821.
 Mahomed Khalil *v.* Hirendra Nath, 5 C.L.J. 650—991, 996.
 Mahomed Muzahar *v.* Ali Bewa, 3 C.L.J. 93(n)—361.
 Mahomed Rashid *v.* Jadov, 20 W.R. 201—494.
 Mahomed Shunsoodeen *v.* Abdul Huq, 1864 W.R. 397—411.
 Mahomed Soleman *v.* Birendra, 27 C.W.N. 749 (P.C.) s.c., 50 Cal. 243—789.
 Mahomed Taqui *v.* Choa Lal, 13 C.L.J. 499—462.
 Mahomed Yacob *v.* Sheikh Chowdry Wahed, 4 W.R. 23—252.
 Mahomed Yusuf *v.* Abdul Rahman, 16 Cal. 749—742.
 Mahtab Chand *v.* Chitro Coomaree, 16 W.R. 201—341.
 Mahtab Khan *v.* Sheobarat, 37 I.C. 353—558.
 Mahund *v.* Arpan, 2 C.W.N. 47—317.
 Maizuddi *v.* Ishan Chandra, 15 C.W.N. 706, s.c., 13 C.L.J. 293—798.
 Majed Hossein *v.* Raghobar, 27 Cal. 187—194.
 Majhi *v.* Prankrishna, 1 C.L.J. 138—153.

- Makar Ali *v.* Shyama Charan, 3 C.W.N. 212—790.
 Makbul Ahmed *v.* Bezb Sabhan, 25 Cal. 609—854, 855.
 Makkhul Ahmed *v.* Rakhal Das, 4 C.W.N. 734—829.
 Makbul Ali *v.* Ali Ahmed, 40 Cal. 514—416.
 Makbul Ali *v.* Joges Chandra, 21 C.W.N. 534—47, 225, 649.
 Makhan *v.* Baisakhi, 50 I.C. 591—42.
 Makhan Das *v.* Ram Chandra, 17 C.W.N. 1064—794, 820.
 Makhan Lal *v.* Arunbala, A.I.R. 1924 Cal. 465—53, 86.
 Makhan Lal *v.* Bejoy Gopal, 32 C.W.N. 92 (notes)—816.
 Makhan Lal *v.* Debendra, 19 C.W.N. 203 (notes)—68.
 Makmooda *v.* Hairidhun, 5 W.R. Act X 12—308.
 Makul Ali *v.* Ameer Rai, 17 Cal. 538—934, 941.
 Malik *v.* Aklu, 35 W.R. 140—5, 423.
 Malika *v.* Lingamurti, 12 Mad. L.J., 679—853.
 Mallika *v.* Makhan, 9 C.W.N. 928—105, 106, 107.
 Mammikkuttis *v.* Fuzhakhal, 29 Mad. 353—5.
 Mamtazal Huq *v.* Nirbhai Singh, 9 Cal. 711—
 Manananda *v.* Mogla, 31 Cal. 937—948.
 Manbharan *v.* Babu Nowhat, 1920 Pat. 257—348, 393, 771.
 Mangan Jha *v.* Dulhin Golab Koer, 25 Cal. 692—166, 677.
 Manick Lal *v.* Kadambini, 43 C.L.J. 272—753.
 Manik Borai *v.* Bani Charan, 13 C.L.J. 649—286, 461, 797.
 Manindra *v.* Asar Muhomed, 12 C.W.N. cxliv—45, 46, 825.
 Manindra *v.* Durgasundari, 20 C.W.N. 680—48, 225, App. (120).
 Manindra *v.* Narendra, 46 Cal. 956—38.
 Manindra *v.* Upendra, 9 C.L.J. 353—226.
 Manindra Chandra *v.* Bhagabati, 30 C.W.N. 45—726.
 Manindra Chandra *v.* Durgaprasad, 21 C.W.N. 707—83, 118.
 Manindra Chandra *v.* Jamaher, 9 C.W.N. 670—382.
 Manindra Chandra *v.* Kaulat Singh, 50 Cal. 957, s. c., 28 C.W.N. 264—
 330, 331.
 Manindra Chandra *v.* Srinibash, 39 I.C. 1—225.
 Manindra Chandra *v.* Asutosh, 21 C.W.N. 1132—4, 386, 772.
 Maniruddi *v.* Ambika, 91 I.C. 668—458.
 Maniram *v.* Akloo Ahir, 1918 Pat. 36—544.
 Manjalali *v.* Kailashnath, 44 I.C. 24—326.
 Manmatha *v.* Kaliprasanna, 28 Cal. 744—
 Manmath *v.* Rai Kishore, 17 C.L.J. 70 (n)—533.
 Manmatha *v.* Surendra, A.I.R. 1925 Cal. 463—320.
 Manmatha Kumar *v.* Jasoda Lal, 28 C.W.N. 300—481.
 Manmathanath *v.* Abinas Chandra, 27 C.W.N. 521—397.
 Manmatha Nath *v.* Anath Bandhu, 23 C.W.N. 201—81, 175, 199, 306,
 380, 487, 772.
 Manmatha Nath *v.* Anath Bandhu, 25 C.W.N. 106—799, 802, 820.
 Manmatha Nath *v.* Chuni Lal, 26 C.W.N. 173—112.
 Manmatha Nath *v.* Probodh Chandra, 73 I.C. 416—72, 132, 198, 252, 297.
 Manmatha Nath *v.* Sarat Chandra, 21 C.L.J. 429—838.
 Manmohon *v.* Collector of Chittagong, 40 Cal. 64—22.
 Manmohon *v.* Watson & Co., W.R. F.B. 22 ; s. c., 1 Hay 232—309.
 Manners *v.* Satroghan, 20 C.W.N. 800—159.
 Manohar *v.* Paresh Chandra, 18 C.L.J. 176—417.
 Mansab Ali *v.* Abdul Karim, 10 C.L.J. 189—102, 213, 501, 682.
 Manurattan *v.* Harinath, 1 C.L.J. 500—3, 135, 702, 703, 706, 781.
 Maqbul *v.* Hargobinda, 8 C.L.J. 470—21, 51, 80.
 Maqbul Ahmed *v.* Giris Chandra, 22 Cal. 634—129, 366, 509, 516.

- Mastulla v. Gyan Mahmud*, 4 C.W.N. 735, s. c., 28 Cal. 12—818, 819.
Masud Ahmed v. Jagan Singh, 68 I.C. 625—717.
Masudan v. Goodar, 1 C.L.J. 456—660, 667.
Matab Ehan v. Radha Benode, 8 W.R. 517—727.
Matangini v. Brajeswar, 20 C.L.J. 205—391.
Matangini v. Manmatha, 4 C.W.N. 542—852.
Matangini v. Sreenath, 7 C.W.N. 552—815, 825, 960.
Mathur v. Ganga Charan, 33 Cal. 1219; s. c., 10 C.W.N. 1033—179, 479.
Mathura v. Babu Mandil, 1921 Pat. 165—636.
Mathura v. Jadubis, 28 All. 277—5.
Mathura Mohon v. Nabin Chandra, 20 C.L.J. 749—382, 395.
Mathura Mohon v. Ram Kumar, 43 Cal. 790; s. c., 20 C.W.N. 370—117, 118.
Mathura Mohon v. Uma Sundari, 25 Cal. 34—609, 629.
Mathura Nath v. Basanta Kumar, 6 Cal. 510—629, 632.
Mathura Nath v. Kristo Kumar, 4 Cal. 369—277, 391.
Mathura Nath v. Ratneswar, 23 I.C. 917—790.
Mathura Nath v. Sib Chandra, 12 C.W.N. 334—949.
Mathura Nath v. Umes Chander, 1 C.W.N. 726—742.
Mathura Prasad v. Tate Singh, 40 Cal. 806—440.
Mathurapur Zemindari Co. v. Bhasaram, 28 C.W.N. 26; s. c., 39 C.L.J. 373—704.
Mathura Singh v. Ratan Barhi, 54 I.C. 662—729.
Mathewson v. Shyam Sundar, 33 Cal. 786—349.
Matihari Concern v. Luchmi Prasad, 42 I.C. 826—369, 432.
Matilal v. Darjeeling Municipality, 17 C.L.J. 167—314, 757.
Matilal v. Lalu Mandal, 19 C.L.J. 321—753, 756.
Matilal v. Nripendra Nath, 2 C.W.N. 172—216, 386, 684.
Matookdhari v. Jugdeep, 19 C.W.N. 1319—196.
Matookdhari v. Narain, 19 C.W.N. 1319 s.c., 21 C.L.J. 261—835.
Matta Majhi v. Gopinath, 89 I.C. 951—228, 594.
Matungini v. Makrura, 5 C.W.N. 433 (F.B.)—414, 418, 872, 879, 959.
Matungini v. Ramdas, 7 C.W.N. 93—323, 504, 505, 935, 940.
Mayar v. Harding, L.R. 2 K.B. 410—853.
Maydhanessa v. Satis, 70 I.C. 895—636.
Mazhar Rai v. Ramgat, 18 All. 290—334.
Mazharub Ekbal v. Gopal Lal, [1924 Pat.] 213—533, 561.
McEacharn v. Cotton L.R. App. Case, (1902) p. 104—211.
Meajan v. Alimaddi, 44 Cal. 130—686.
Meajan v. Jogendra Nath, 63 I.C. 949—398.
Medhi Hossein v. Umesh Chandra, 45 Cal. 685—910.
Megh Lal v. Raj Kumar, 11 C.W.N. 527—52, 53, 56, 878.
Mehdilal v. W. M. Grant, 15 C.L.J. 54 (notes)—159.
Mehar Ali v. Kalai Khalasi, 16 C.W.N. 1129—94, 132, 274, 878.
Mengur v. Huree Mohun, 23 W.R. 447—439.
Meshbahuddin v. Abdul, 34 C.L.J. 119—38, 128, 339, 364.
Meyajan v. Joymala, 34 I.C. 32, s.c., 21 C.W.N. 546—566, 649.
Meyo Lal v. Gobinda Sundar, 49 I.C. 679—164, 165, 167.
Meyrick v. Dipa Pandey, 84 I.C. 361; s.c., 3 Pat. 825—224.
Miajan v. Akram Ali 8 C.L.J. 541—201, 262.
Mia Raja Patwari v. Ram Kumar, 41 I.C. 846—279, 283.
Midnapur Zemindari Co. v. Abinash, 29 C.L.J. 297—508, 516.
Midnapur Zemindari Co. v. Ajambar, 1 Pat. L.J. 601—896.
Midnapur Zemindari Co. v. Bamapado, 13 C.L.J. 485—83, 84.
Midnapur Zemindari Co. v. Dinanath, 22 C.W.N. 766—1001.

- Midnapur Zemindari Co. v. Hrishi Kesh, (F.B.), 18 C.W.N. 829; s.c., 19 C.L.J. 505—146 215, 261, 275, 453.
- Midnapur Zemindari Co. v. Jagat Chandra, A.I.R. 1925 Cal. 139—133.
- Midnapur Zemindari Co. v. Joyram, 1 Pat. L.J. 185—407.
- Midnapur Zemindari Co. v. Kristo Prosad, 46 I.C. 544—592, 632.
- Midnapur Zemindari Co. v. Muktakeshi, 40 Cal. 402—9.
- Midnapur Zemindari Co. v. Naresh Narayan, 29 C.W.N.. 34 (P.C.)—26, 80, 148, 205, 502.
- Midnapur Zemindari Co. v. Pandav Sardar, 2 Pat. L.J. 506—33.
- Midnapur Zemindari Co. v. Ramkanai, [1926 Pat.] 254—881.
- Midnapur Zemindari Co. v. Sadhumoni, 54 Cal. 681—72, 74, 791.
- Midnapur Zemindari Co. v. Secretary of State, 44 Cal. 352—645.
- Midnapur Zemindari Co. v. Shamlal, 15 C.W.N. 218—11, 82, 83.
- Midnapur Zemindari Co. v. Shib Narayan, 105 I.C. 741—335.
- Midnapur Zemindari Co. v. Sridhar, 49 Cal. 866; s.c., 36 C.L.J. 96—93, 630.
- Midnapur Zemindari Co. v. Trailakya, 40 C.L.J. 238—951.
- Midnapur Zemindari Co. v. Uma Charan, 24 C.W.N. 201—772.
- Mikhduman v. Khairat Ahmed, 43 I.C. 182—429.
- Millis v. Meghnath, S.D.A. 4—439.
- Mina Kumari v. Ichamoyee, 27 C.L.J. 587—175.
- Mir Dildar v. Kusum Kumari, A.I.R. 1924 Pat. 256—863.
- Mir Tapurah v. Gopi Narayan, 7 C.L.J. 251—372, 401, 423, 424, 439, 711, 978.
- Mirtunjoy v. Gopal Chandra, 10 W.R. 466—199, 433.
- Mirzan Biswas v. R. T. Hills, 8 W.R. Act X, p. 159 at p. 160.
- Mirza Shamser v. Munshi Kunj Behari, 12 C.W.N. 273—496.
- Misri Chowdhury v. Rameshwar, 14 C.W.N. 275 (notes)—582.
- Miterjeet v. Toondon, 13 W.R. 14—304.
- Mitu Sheikh v. Amrita Lal, 42 I.C. 546—261.
- Miyajan v. Srimari, 21 C.W.N. 546—553.
- Modee Huddin v. Sandes, 12 W.R. 439—325.
- Mofiz Sheikh v. Rasik Lal, 37 Cal. 815; s.c., 14 C.W.N. 952—133, 165, 754.
- Mofizuddin v. Asutosh, 14 C.W.N. 352—819, 820.
- Mofizuddin v. Rajendra, 29 C.W.N. 209; s.c., 40 C.L.J. 248—230, 542.
- Mohabat Singh v. Umatul, 28 Cal. 66—67, 821.
- Mohabir v. Dioki, 52 I.C. 137—754.
- Mohamed Nazirul Hussain v. Chuni Kamti, 2 Pat. L.J. 151—490.
- Mohamaya v. Abdul Hamid, 18 C.W.N. 266—1000.
- Mohamed v. Aghore Kumar, 19 C.W.N. 250—118.
- Mohanund v. Lalla Gobind, 12 W.R. 109—337.
- Mohanund v. Saidunnessa, 8 C.L.J. 525—44, 51.
- Moharamdi v. Asmae, 91 I.C. 493—990.
- Moharani Beni Pershad v. Gobardhon, 6 C.W.N. 823—487.
- Moharani Benipersad v. Ramdohin, 10 C.W.N. 216—485.
- Moharane Shibessoure v. Mothura Nath, 13 M.I.A. 270—59.
- Mohebut Ali v. Mahomed, 2 C.W.N. 455—45, 101.
- Mohendra v. Bhuban, 14 C.W.N. 945, s.c., 12 C.L.J. 566—862.
- Mohendra v. Girish Chandra, 3 Pat. L. J. 379—614, 626.
- Mohendra v. Kailash, 4 C.W.N. 605—3, 45, 704, 736, 773, 926, 983.
- Mohendra v. Parbatya, 8 C.W.N. 136—279.
- Mohendra Nath v. Biswanath, 29 Cal. 231—65, 281.
- Mohendra Nath v. Paresh Chandra, 40 I.C. 506—706, 709.
- Mohendra Nath v. Syam Lal, 19 C.L.J. 308—532.

- Mohesh v. Gangamonee, 15 W.R. 59—346, 981.
 Mohesh v. Prankrishna, 1 C.L.J. 138—901.
 Mohesh v. Sheikh Basir, 25 C.W.N. 714—246, 253, 257.
 Mohesh v. Umatara, 16 Cal. 638—45, 728.
 Mohesh Chunder v. Bishonath, 24 W.R. 402—141.
 Mohesh Chunder v. Gangamoni, 2 Hay 495—334.
 Mohesh Chunder v. Hari Mohon, 7 C.W.N. 388—122, 134.
 Mohesh Chandra v. Hemendranath, 46 C.L.J. 575—78, 753.
 Mohesh Chander v. Saradaprasad, 21 Cal. 433—111, 129 App. (116).
 Moheswar v. Sheobaran, 14 Cal. 621—20, 869.
 Mohima v. Hazari, 17 Cal. 45—45, 78.
 Mohim Chandra v. Baidyanath, 21 C.L.J. 478—283, 459, 868.
 Mohim Chandra v. Kalitara, 11 C.W.N. 939—353, 617, 627, 946.
 Mohim Chandra v. Mirza Ahmad, 22 C.L.J. 564—727.
 Mohima Chunder v. Mohesh, 16 Cal. 473—101, 499.
 Mohima Chunder v. Ram Lochan, 7 C.W.N. 591—122, 134.
 Mohinee Das v. Ram Coomar, 1864 W.R. Act X 76—669.
 Mohini v. Nagendra, 30 C.L.J. 261—507, 511.
 Mohini v. Sankar, 39 C.L.J. 532—166.
 Mohini Chandra v. Peary Lal, 25 C.L.J. 99—799.
 Mohini Kant v. Preonath, 49 Cal. 661 ; 35 C.L.J. 307—299, 310.
 Mohini Mohon v. Ram Das, 28 C.W.N. 271—112.
 Mohipal v. Lalji Singh, 17 C.W.N. 166—5, 26.
 Mohit Narayan v. Kamal Nath, [1923 Pat.] 23—317.
 Mohorum v. Tukka, 9 C.W.N. 231 (notes)—988.
 Mohun Narain v. Gour Taran, 23 W.R. 368—424.
 Mohunt Bhagwan v. Khettermanni, 1 C.W.N. 617—742.
 Mohunt Jannath v. Chundrakumar, 5 C.W.N. 421—App. (101).
 Mohunt Padmalay v. Lakmi Rani, 12 C.W.N. 8—550, 603, 610.
 Mohunt Lakhnan Narain v. Jainath, 34 Cal. 516 ; s.c., 11 C.W.N. 626—146, 453.
 Mohur Ali v. Ram Rutton, 21 W.R. 400—141.
 Mokbul Hossain v. Ameer Sheikh, 25 Cal. 131—914.
 Mokhoda v. Umesh, 7 C.L.J. 381 ; s.c., 12 C.W.N. 23 (notes)—897.
 Mokhoda Sundaree v. Kureem Sheikh, 23 W.R. 11—733.
 Mokru Rai v. Surjug Prasad, 4 Pat. L. J.—856.
 Monindra v. Upendra, 36 Cal. 604 ; s.c., 9 C.L.J. 343—221.
 Mon Mohon v. Hateem Mukbul, 29 C.L.J. 473—314.
 Monmohon v. Nowbat, 5 Pat. L. J. 641—768.
 Moni Chandra v. Baikanta Chandra, 9 C.W.N. 856—43, 44.
 Moni Mohon v. Ausraddi, 24 C.W.N. 52 (notes)—734.
 Monmohini v. Lakhinarain, 28 Cal. 116—740, 743.
 Monmohini v. Priyanath, 8 C.W.N. 640—45, 380, 979.
 Monmohini v. Raghunath, 23 Cal. 209—164.
 Monmotha v. Gadadhar, 45 Cal. 638—631, 632.
 Monmotha v. Mohendra, 65 I.C. 469—157, 325, 491.
 Monmotha v. Rakhal Chandra, 10 C.L.J. 496—703, 705, 707.
 Monmothanath v. Nobin Chandra, 14 C.W.N. 1100—411.
 Monohar Pal v. Anantamoyee, 17 C.W.N. 802—188, 477, 478.
 Monohar v. Harromohon, 3 Rev. J. P. J. 150—21.
 Monohar Mukerjee v. Khetra Nath, 17 C.W.N. 820—344, 417, 870.
 Monomohon Ghosh v. Eqtatable Coal Co., 18 C.W.N. 596—133, 435.
 Monoranjan v. Rajah Lilla Nund, 13 B.L.R. 124—51.
 Monsoor Ali v. Bunna Singh, 7 W.R. 282—303.
 Mookta Keshee v. Koylash Chunder, 7 W.R. 493—351.
 Moolook Chand v. Modhoosoodhun, 16 W.R. 126—505.

- Morrison v. Chadwick, 7 C.B. 266—35.
 Mosafir Lal v. Ganesh Jha, [1922 Pat.] 347 ; s.c., 71 I.C. 473—839.
 Moss v. Barton, 35 Beav. 197—466.
 Mosudan v. Satis Chandra, 44 I.C. 658—36.
 Mothur v. Tara Sankar, 7 C.W.N. 440—632.
 Mothura Mohun v. Mati Sarkar, 25 Cal. 78—221, 226.
 Mothura Mohon v. Umasundary, 25 Cal. 34—App. (102).
 Mothura Nath v. Steel, 12 Cal. 555—446.
 Moti v. Bhowani Kurmi, 6 C.W.N. 836—801.
 Moula Buksh v. Jadoonath, 21 W.R. 267—487.
 Moyenuddin v. Baharuddin, 90 I.C. 557—330.
 Mozam Hassain v. Bhoudin, 5 C.W.N. 190—214.
 Mrigendra v. Krishna, 33 C.L.J. 334—739.
 Mittunjoy v. Bholanath, 18 C.L.J. 81—998, 999.
 Mittunjoy v. Kenatulla, 5 C.L.J. 53—85, 152, 901 910.
 Mittunjoy v. Shyama Charan, 28 C.W.N. 106 (notes)—728.
 Muhammad Ismail v. Satyesh Chandra, 26 C.W.N. 170 (notes)—832.
 Muhammad Kazem v. Nafar Chandra, 9 C.W.N. 803—792.
 Muhammad Mir v. Faizal Hassan, 47 I.C. 416—458.
 Muhammad Sadik v. Khedan Lall, 1 Pat. L. J. 154—401.
 Mukadilal v. Crowdy, 8 B.L.R. App. 95—159.
 Mukbusor v. Raj Lakhi, 39 C.L.J. 102—24, 148.
 Mukhaduman v. Khairat Ahmed, 43 I.C. 182 ; s.c., 3 Pat. L. W. 245—364.
 Mukhram v. Sadasi, 47 I.C. 132—921.
 Mukta Keshi v. Giribala, 47 I.C. 1006—407.
 Mukta Keshi v. Pulin Behari, 13 C.W.N. 12—64, 161, 215.
 Mukti Nath v. Rameswar, 15 C.W.N. 57—604.
 Mul Chand v. Gobinda, 30 Bom. 575—851.
 Mullick Muktear v. Kali Charan, [1921 Pat.] p. 357—140.
 Mulluk v. Satis Chandra, 14 C.W.N. 335—147, 226, 306,—384, 484, 811, 867.
 Mumtaz Ali v. Mohan Singh, 28 C.W.N. 840 (P.C.)—40, 102.
 Muneeroodeen v. Mahomed Ali, 6 W.R. 67—178.
 Munjhoori v. Akel Mahmud, 17 C.L.J. 316—986.
 Munranjan v. Lelanund, 3 W.R. 84—895, 899.
 Munsabali v. Arsadulla, 16 C.W.N. 831 ; s.c., 16 C.L.J. 539—277, 405, 773, 810, 819.
 Munshi Salimuddin v. Rahim Shaikh, 30 C.W.N. 850, s.c., 44 C.L.J. 414—731.
 Munsur Ali v. Abdul Karim, 10 C.L.J. 197 ; s.c., 1 I.C. 753—753.
 Muralidhar v. Radhamohon, 51 I.C. 552—654.
 Margussa v. Chinna Thambi, 24 Mad. 421—8, 10, 11.
 Mussamat Afzalunnessa v. Abdul Karim, 47 Cal. 1—51.
 Musuzah v. Brojendra, 20 C.L.J. 210—798.
 Muthu Ayyar v. Ramasami, 20 Mad. 158—856.
 Muthuvak Koothevan v. Orr., 35 Mad. 618—33.

N

- Nabadeep v. Lalla Sheel, Marsh 325—262.
 Nabadip v. Bhairab Chandra, 13 C.W.N. 97—474, 840.
 Nabadurga v. Dwarkanath, 24 W.R. 401—51.
 Naba Kumar v. Rudra Narain, 28 C.W.N. 589 (P.C.)—108.
 Naba Kumari v. Behari Lal, 34 Cal. 902 ; s.c., 11 C.W.N. 865—52, 196, 199, 432.
 Nabin v. Banga, 15 I.C. 705—158.

- Nabin v. Bepin*, 19 C.W.N. 953 ; s.c., 22 C.L.J. 244—743, 744.
Nabin v. Gooroo, 25 W.R. 8—439, 444, 447.
Nabin v. Wazid, 31 C.L.J. 199—992, 993, 996.
Nabin v. Wazid, 24 C.W.N. 382—993, 994.
Nabin Chand v. Bansinath, 21 Cal. 722—45, 380, 730.
Nabin Chandra v. Abdul Aziz, A.I.R. 1926 Cal. 337—392.
Nabin Chandra v. Nil Kamal, 36 I.C. 11—195.
Nabin Chandra v. Radha Kishore, 11 C.W.N. 859—556, 590, 639, 656.
Nabin Chandra v. Radha Pearee, 6 W.R. 17—949.
Nabin Chandra v. Surendra Nath, 7 C.W.N. 454—429, 430.
Nabin Mondal v. Cholin Mullick, 25 Cal. 896, s.c., 2 C.W.N. 205—917.
Nabo Coomar v. Oozir, 23 W.R. 238—101, 497.
Nabo Kishore v. Atul Chandra, 17 C.W.N. 846—517, 518.
Nabo Kishore v. Dhananjoy, 20 C.W.N. 610—263, 471.
Nabo Kishore v. Taramonee, 12 W.R. 320—91.
Nabo Kumar v. Syed Abdul, 21 C.W.N. 112—872, 879.
Nabo Mullick v. Cholim, 25 Cal. 896—916.
Nabu Sheikh v. Jogendra Nath, [unreported]—728.
Naddiyar Chand v. Meajan, 10 Cal. 820—32.
Nadia Chand v. Birendra Chandra, 20 C.W.N. 1067—412, 418.
Nadio Sundari v. Girindra Narayan, 7 C.L.J. 24 (notes)—344, 348, 414, 872.
Nadir Chand v. Birendra, 38 I.C. 126—23.
Nadiram v. Srinath, 24 C.W.N. 93—80, 132, 274, 466, 878.
Nafar v. Rahaman, 23 C.L.J. 580—867.
Nafar Chandra v. Bejoy Chand, 22 C.W.N. 487—904.
Nafar Chandra v. Bhushi Molla, 65 I.C. 581—403.
Nafar Chandra v. Hazari Nath, 22 Cal. 748—164.
Nafar Chandra v. Jyoti Kumar, 11 C.W.N. 57—45, 979.
Nafar Chandra v. Rahaman, 23 C.L.J. 580—147, 223, 226.
Nafar Chandra v. Rajendra Lal, 25 Cal. 167—798.
Nafar Chandra v. Ramlal, 22 Cal. 742—133, 164, 165.
Nafar Chandra v. Shukur Sheikh, 46 Cal. 189 (P.C.)—630.
Nagendra v. Bhuban Mohan, 6 C.W.N. 91—702, 704.
Nagendra v. Sadhuram, 48 Cal. 65 ; s.c., 25 C.W.N. 945—980.
Nagendra v. Satadal, 3 C.W.N. 294—45.
Nagendrabala v. Amrita Lall, 47 I.C. 753—380.
Nagendrabala v. Gurudoyal, 30 Cal. 101—444, 447, 690.
Nagendra Lal v. Nabab Ali, 10 C.W.N. 503—91.
Nagendra Lal v. Nazir Ali, 10 C.W.N. 503—787.
Nagendra Lal v. Raju Bibee, 17 C.W.N. 374—446.
Nagendra Nath v. Chandra Sekhar, 5 C.L.J. 59—394.
Nagendra Nath v. Satadalbasini, 3 C.W.N. 294—128, 366.
Nagnarain v. Jung Bahadur, 34 I.C. 905—395.
Naharulla v. Madan, 1 C.W.N. 133—280 App. (105).
Naigor v. Bhaskar, 10 Bom. 144—435.
Naik Pandey v. Bidya Pandey, 1 Pat. L. J. 149—359.
Naik Pandey v. Rajdhari Lal, 42 I.C. 843—206.
Naimuddin v. Maniruddin, 32 C.W.N. 299, 47 C.L.J. 82—612.
Naimuddin v. Ram Rangini, 13 C.W.N. 220—632.
Nainapillai v. Ramanathan, 28 C.W.N. 809 (P.C.)—40, 53, 101, 174, 287.
Nakul v. Rajendra, 104 I.C. 196—769.
Nalini Behary v. Fulmoni, 16 C.W.N. 421 ; s.c., 15 C.L.J. 388—199, 832, 836.
Nalini Bhusan v. Ali Mia, 51 Cal. 463—442.
Nam Narain v. Lala Raghunath, 22 Cal. 467—408.
Nam Narain v. Raghunath, 19 Cal. 678 (P.C.)—689.

- Parbatti v. Raj Kishna, B.L.R. Sup. Vol. 162—500.
 Parbati v. Tulshi Kapri, 18 C.W.N. 604—611, 615, 618, 619.
 Pareshmōni v. Naba Kishore, 8 C.W.N. 193—129, 732, 734, 737.
 Paresh Nath v. Ismail, 6 C.W.N. 486 ; s. c., 34 C.L.J. 195—1001.
 Paresh Nath v. Nabagopal, 5 C.W.N. 321 ; 29 Cal. 1—848, 850, 859.
 Parshman Koer v. Tulsri Koer, 39 I.C. 638—57.
 Partab Narayan v. Nathan Singh, [1924 Pat.] 173—39.
 Parushulla v. Sital Chandra, 19 C.W.N. 1110—270, 271, 285, 817.
 Parutty v. Sheikh Mandari, 5 Cal. 594—740.
 Pashupati v. Narayan Dasi, 1 C.W.N. 519 ; 24 Cal. 537—795, 837.
 Pattia v. Sadasiv, 7 Bom. 40—43.
 Patcowrie v. Preonath, 18 C.W.N. 672—771.
 Pati Haripur v. Shekhar, 4 Mad. 141—932.
 Patit Shahu v. Harimati, 27 Cal. 789—123.
 Peary Lel v. Hem Chandra, 16 C.W.N. 730—106.
 Peary Lal v. Madhaji, 17 C.L.J. 372—348, 369.
 Peary Mohon v. Ali Sheikh, 20 Cal. 249—759, 760, App. (118).
 Peary Mohon v. Ameer Ali, 8 C.W.N. 239—120, 135.
 Peary Mohon v. Audhiraj, 10 C.L.R. 526—336.
 Peary Mohon v. Badal Chandra, 5 C.W.N. 310 ; 28 Cal. 205—72, 160, 274, 283, 457, 797, 817.
 Peary Mohon v. Barada, 19 Cal. 485—455.
 Peary Mohon v. Brojomohon, 21 W.R. 36—346.
 Peary Mohon v. Gopal Paik, 25 Cal. 531 (F.B.)—484.
 Peary Mohon v. Joti Kumar, 11 C.W.N. 83—176, 183.
 Peary Mohon v. Kedarnath, 26 Cal. 409 ; s. c., 3 C.W.N. 271—711.
 Peary Mohon v. Kumares Chander, 19 Cal. 790—218, 470.
 Peary Mohon v. Madhab Chunder, 23 W.R. 385—729, 732.
 Peary Mohon v. Maheswari, 25 Cal. 551—812.
 Peary Mohon v. Radhika Mohon, 8 C.W.N. 315—78, 146, 151, 203, App. (115).
 Peary Mohon v. Raj Krishto, 20 W.R. 385—505.
 Peary Mohon v. Sreeram Chandra, 6 C.W.N. 794—378, 382, 384.
 Pecha Mondal v. Bhairabendra, 91 I.C. 846—231.
 Peclat v. Boosey, 31 L.J. C. P. 281—35.
 Peer Bux v. Mowzahally, 1 Hay 89—501.
 Pelaram v. Nund Coomar, 6 W.R. Act X 45—232.
 Penton v. Barnett, 1898 Q.B. 276—501, 753.
 Pergash v. Balgobinda, 19 Cal. 735—716.
 Pergash v. Akhowri, 19 Cal. 735—937.
 Perry v. Clissold, (1907) A.C. 73—22.
 Pershad v. Ram Pertab, 22 Cal. 77—749, 960.
 Petambar v. Bhagabat Lal, 24 I.C. 860—993.
 Peter Nicholl v. Tarinee Churn, 23 W.R. 298—210.
 Peter Gharami v. Rama Kelawan, 18 Cal. 667—615.
 Phanindra v. Emperor, 17 C.W.N. 671 ; s. c., 40 Cal. 495—66, 359.
 Phulabati v. Maheswari Prasad, 74 I.C. 668—895.
 Phulchand v. Nursing, 28 Cal. 73—858, 861.
 Pifulañdi Naskar v. Ambika Charan, 5 C.W.N. 121—701.
 Pirthichand v. Basarat Ali, 37 Cal. 30 ; 13 C.W.N. 1149 ; s. c., 10 C.L.J. 343—297, 532, 536, 560, 611, 641, 659.
 Pirchichand v. Sheikh Muhamed, 2 Pat. L.J. 67—557, 653.
 Pita v. Chunilal, 31 Bom. 207—858.
 Pitambar v. Ram Charan, 28 C.W.N. 157—282.
 Pitambar v. Sheikh Rahamat, 1 Pat. 218—379.

- Poolin Behary v. Neemaye Chand, 7 W.R. 472—308.
 Poran Matia v. Indra Seni, 47 Cal. 128—470.
 Port Canning and Land Improvement Co. v. Acchruddi, 43 C.L.J. 45—268, 983.
 Port Canning Land Improvement Co. v. Narayan Chandra, 45 I.C. 284—269.
 Port Canning Land Improvement Corporation v. Katyani Devi, 47 Cal. 280 (P.C.)—97, 99.
 Powell v. Kempton Park Race Course Co. (1889) A.C. 143—2.
 Prabhas Chandra v. Prativabala, 63 I.C. 337—112.
 Prabhat Chandra v. Bijoy Chand, 50 Cal. 572—42.
 Prabhat Chandra v. Jadupati, 37 Cal. 724 ; s. c., 6 C.L.J. 26—826.
 Prabodh Chandra v. Harish Chandra, 48 Cal. 1078 ; s. c., 27 C.W.N. 888—719.
 Pradyot Kumar v. Maharulla, 39 I.C. 497—225.
 Pradyot Kumar v. Sarat Chandra, 21 C.W.N. 809—52, 76, 80.
 Pradyot Kumar v. Umesh Chandra, 72, I.C. 640—147.
 Prafulla v. Palku, 46 Cal. 90 ; s. c., 20 C.W.N. 860—577, 578.
 Prafulla v. Samiruddin, 22 Cal. 337—124.
 Prafulla v. Secretary of State, 26 C.W.N. 100—573, 577.
 Prafulla v. Shitalkhan, 22 C.W.N. 788—382, 778, 817.
 Prafulla v. Twedie, 35 C.L.J. 14—577.
 Prafulla Kumar v. Salimulla, 23 C.W.N. 590—387.
 Prafulla Nath v. Matabuddin, 26 C.W.N. 322, s. c., 22 C.W.N. 323—825.
 Prahlad v. Kedarnath, 25 Cal. 502—32, 332.
 Pamada v. Sarakhatun, 16 C.W.N. 31 (notes)—687.
 Pramada Nath v. Asiruddin, 15 C.W.N. 896—84, 85, 487, 574, 642.
 Pramada Nath v. Ramani Kant, 12 C.W.N. 249 (P.C.) s. c., 35 Cal. 331—3, 147, 378, 381, 609, 716, 738, 932, 935.
 Pramada Nath v. Ramani Kant, 9 C.W.N. 34—782.
 Pramada Nath v. Srigobind, 9 C.W.N. 463—919.
 Pramada Sundari v. Kanai Lal, 27 Cal. 178—128, 366.
 Pramatha v. Kaligunga, 45 (notes)—582.
 Pramatha v. Krishna, 30 C.W.N. 1092—App. (116).
 Pramatha Bhusan v. Ram Chandra, 22 C.L.J. 124—274.
 Pramathanath v. Raja Bijoy Singh, 44 C.L.J. 587—301.
 Pramatha Nath v. Krishna Chandra, 28 C.W.N. 1092—(116), App. (117).
 Pramatha Nath v. Nilmoni, 14 C.L.J. 38—80, 82, 85.
 Pranal Anni v. Lakshmi, 22 Mad. 508—30.
 Pranesh v. Banawarilal, 86, I.C. 533—239.
 Pran Kissen v. Monmohinee, 17 W.R. 33—325.
 Pran Krishna v. Atul Krishna, 22 C.W.N. 662—796, 806, 813, 833.
 Prankrishna v. Kripa Nath, 21 C.W.N. 209—646.
 Prankrishna v. Muktasundari, 18 C.L.J. 193—297, 457, 468.
 Prankrishna v. Ofal Pramanik, 35 I.C. 76—646.
 Prankrishna v. Troilokya, 19 C.W.N. 911—541, 606.
 Prasanna v. Bamacharan, 13 C.W.N. 652—836.
 Prasanna v. Rachimuddin, 17 C.W.N. 153—570, 575, 577, 648.
 Prasanna v. Srinath, 15 Cal. 231—731.
 Prasanna Dassi v. Amar Chand, 57 I.C. 580—455, 817.
 Prasanna Dev. v. Achhiruddin, 82 I.C. 953—587.
 Prasanna Dev. v. Mahanand, 40 I.C. 553—303.
 Prasanna Kumar v. Arun Chandra, 29 C.W.N. 353—341.
 Prasanna Kumar v. Durga Charan, 49 Cal. 919—297, 586, 654.
 Prasanna Kumar v. Ibrahim,—400.

- Prasanna Kumar *v.* Srikant, 40 Cal. 173—40, 687, 899.
 Prasannamoyee *v.* Kalidas, 9 C.L.R. 347—799.
 Pratap *v.* Biraj, 19 C.L.J. 77—108.
 Pratap *v.* Bisseswari, 9 C.W.N. 416—369, 917, 919.
 Pratap *v.* Judhistir, 19 C.W.N. 143—102, 498.
 Pratap *v.* Mussr. Wazirunnessa, [1925 Pat.] 125—322, 762, 933.
 Pratap *v.* Secretary of State, 3 C.L.J. 530—904.
 Pratap *v.* Secretary of State, 10 C.W.N. 637—910.
 Pratap Chandra *v.* Mahomed Ali, 18 C.W.N. 592—411.
 Pratap Chandra *v.* Raja Jagadish, 40 C.L.J. 331—81, 542.
 Pratap Narain *v.* Harihar, 36 Cal. 927—495.
 Pravat Chandra *v.* Amulya Chandra, 45 C.L.J. 146—396.
 Prem Chand *v.* Mokshada, 14 Cal. 201—46, 383, 776, 939, 998.
 Prem Chand *v.* Official Trustee, 27 C.W.N. 56 (notes)—402.
 Prem Raj *v.* Narayan, 6 Bom. 215—461.
 Preobast *v.* Murat Bai, 13 C.W.N. 204 (notes)—582, 631.
 Preonath *v.* Kiran Chandra, 27 Cal. 290—21.
 Priyag Lal *v.* G. G. Brockman, 9 W.R. 83—232.
 Prince Mahomed *v.* Rani Dhojmani, 2 C.L.J. 20—56.
 Prio Nath *v.* Kusum Kumari, 47 I.C. 332—188, 477.
 Prithi *v.* Hazari, 5 I.C. 453—301.
 Priyambada *v.* Monohar, 29 C.W.N. 328—909, App. (117).
 Priyambada *v.* Priyanath, 30 C.W.N. 826, s. c., 43 C.L.J. 327—623.
 Priyanath *v.* Official Trustee, 105 I.C. 133, s. c., 1928 A.I.R. Cal. 43—759.
 Priyanath *v.* Tarachand, A.I.R. 1924 Cal. 341 ; s. c., 27 C.W.N. 982—577,
 578.
 Priyanath *v.* Tarini Charan, 24 C.L.J. 373—230.
 Probbabati *v.* Taibutunnessa, 17 C.W.N. 1088—196, 200, 201, 432, 434.
 Probodh *v.* Benoy Kumar, 27 C.W.N. 548—555.
 Probodh *v.* Bir Sinha, 71 I.C. 319—455.
 Probodh Chandra *v.* Harish, A.I.R. 1924 Cal. 124—366.
 Probol Chandra *v.* Cherag Ali, 11 C.W.N. 62 ; s. c., 33 Cal. 607—221, 227.
 Prodyat Kumar *v.* Baigobind, 41 C.L.J. 31—643.
 Prodyat Kumar *v.* Chundra Mohun, 44 I.C. 574—225.
 Prodyat Kumar *v.* Gopikrishna, 37 Cal. 322 ; 165, 166, 203, 794, 797.
 Profulla *v.* Baburam, 34 C.L.J. 462—717, 994, 995.
 Prohlad *v.* Sashadhar, 14 C.W.N. 994—12, 951.
 Promada *v.* Basiruddi, 51 Cal. 250 ; s. c., 15 C.W.N. 896—639.
 Promoda Nath *v.* Kinno Molla, 13 C.W.N. 167—26.
 Promoda Nath *v.* Sree Gobindo, 9 C.W.N. 463—52.
 Promoda Ranjan *v.* Aswini Kumar, 18 C.W.N. 1138—111, App. (116).
 Promotho *v.* Bejoy Singh, 44 C.L.J. 587—App. (117).
 Promotha *v.* Kaligunga, 19 C.W.N. 44 (notes)—582.
 Promotho *v.* Monmotho, 52 Cal. 231—512, 515.
 Promotho Nath *v.* Kali Prosonna, 28 Cal. 744—153.
 Promotha Nath *v.* Kishore Lal, 21 C.W.N. 304—160.
 Prosad Kumar *v.* Surendranath, 31 C.W.N. 107 (notes)—744.
 Prosunno *v.* Bamacharan, 13 C.W.N. 652—194.
 Prosunno *v.* Chunder Nath, 10 W.R. 361—505.
 Prosunno *v.* Doyamoyee, 22 W.R. 275—321, 342.
 Prosunno *v.* Jaganath, 10 C.L.R. 25—449.
 Prosunno *v.* Jogut Chander, 3 C.L.J. 159—153.
 Prosunna Kumar *v.* Ananda Chandra, 30 C.W.N. 231—480.
 Prosunno Kumar *v.* Jamaladdi, 18 C.W.N. 327—277, 391.
 Prosunnomoyee *v.* Soondur, 7 W.R. Act X 30—336.

- Protab Chander *v.* Secretary of State, 49 Cal. 1026 ; s. c., 35 C.L.J. 304—577.
- Protap Chandra *v.* Kamalakant, 10 C.W.N. 818—488, 939.
- Provas Chandra *v.* Jaharaddin, 32 C.L.J. 77—125.
- Puchhalal *v.* Kunj Behari, 18 C.W.N. 445—118.
- Pudmanund *v.* Baijnath, 15 Cal. 828—441.
- Puddo Monee *v.* Paramanand, 7 W.R. 158—95.
- Puhlwan *v.* Moheshar, 16 W.R. (P.C.) 5—325.
- Punchanun *v.* Peary Mohun, 2 W.R. 225—95.
- Pundit Luchmi Narayan *v.* Sheikh Muzhor Hossain, 18 C.W.N. 650—664.
- Panuk Lal *v.* Thakur Prasad, 25 Cal. 747—128, 366.
- Puriag *v.* Feku, 19 W.R. 160—691.
- Purmeshur *v.* Brijolal, 17 Cal. 256—461.
- Purna *v.* Chandra, 23 C.L.J. 304 (F.B.) ; s. c., 20 C.W.N. 586—170, 191, 194.
- Purna *v.* Narendra, 29 C.W.N. 755 (F.B.)—622.
- Purna Chandra *v.* Ali Mahammad, 37 C.L.J. 548 ; s. c., 70 I.C. 999—282.
- Purna Chandra *v.* Joylal, 25 C.W.N. 55 (notes)—287.
- Purna Chandra *v.* Mothura, Mohon, 36 C.L.J. 89—162.
- Purna Chandra *v.* Rasik Chandra, 13 C.L.J. 119—36.
- Purna Chandra *v.* Soudamini, 28 C.L.J. 283—896.
- Purna Rai *v.* Bungshidhar, 3 C.W.N. 15—759.
- Pursid *v.* Honooman, 5 Cal. 845—393.
- Purusottam *v.* Panchanon, 42 C.L.J. 197, s. c., A.I.R. 1926 Cal. 373—919.
- Pusothum *v.* Khetra Pershad, 5 C.L.J. 143—911.
- Pusamal *v.* Mukdum, 31 All. 514—315.
- Pyari Lal *v.* Narayan Mandal, 22 Cal. 746—164.

Q

- Queen *v.* The Justices of Kent, 8 Q.B. 305—65.

R

- Rabiddin *v.* Iswar Rout, 17 C.W.N. 535—153.
- Rabiram *v.* Umakant, 2 C.W.N. 238—281.
- Rabiya Khatun *v.* Kitashmoni, 8 C.L.J. 299—365.
- Rachhea Singh *v.* Upendra, 27 Cal. 239—48, 757.
- Radha Bullabh *v.* Panchkari, 46 C.L.J. 552—166.
- Radha Benode *v.* Nitai Chand, 38 C.L.J. 147—832.
- Radha Charan *v.* Golok Chandra, 31 Cal. 834—440.
- Radha Charan *v.* Maharaja Ranjit, 28 C.L.J. 532—909.
- Radha Gobind *v.* Kyamtollah, 21 W.R. 401—301, 303, 305.
- Radha Gobind *v.* Prokash, 10 W.R. 461—683.
- Radha Gobind *v.* Prakash, 14 W.R. 108—43.
- Radha Kant *v.* Rurro Kant, 1864 W.R. Act X p. 14—355.
- Radhakant *v.* Ramanand, 39 Cal. 513—184, 185, 187, 192, 405.
- Radha Kishan *v.* Bhagwat 38 I.C. 72—181.
- Radha Kishunji *v.* Lalji Sahu, 37 I.C. 821—193.
- Radhakisore *v.* Ananda Pria, 8 C.W.N. 235—175, 184, 186.
- Radhakisore *v.* Umed Ali, 12 C.W.N. 904—244, 343, 557, 653.
- Radhamadhab *v.* Monohur, 15 Cal. 756—App. (18).
- Radhamoni *v.* Collector of Khulna, 4 C.W.N. 597—39.
- Radhanath *v.* Chandrakumar, 43 C.L.J. 152—886.
- Radhanath *v.* Emperor, 22 C.W.N. 742—554.

- Radha Pershad *v.* Bidhu Doshad, 22 Cal. 938—495, 907, 911, 912.
 Radha Pershad *v.* Essef, 7 Cal. 414—213, 940.
 Radha Prosad *v.* Balkowar, 17 Cal. 726,—438, 439, 441, 443.
 Radha Raman *v.* Bhowani Prosad, 6 C.W.N. 61—246, 258.
 Radha Singh *v.* Upenda, 27 Cal. 239—951.
 Radha Shyam *v.* Dinabandhu, 18 C.W.N. 31—853, 926, 928.
 Radhay Koer *v.* Ajodhya Das, 7 C.L.J. 262—816, 817, 819.
 Radhika *v.* Satnarain, A.I.R. 1924 Cal. 307—App. (117).
 Radhika *v.* Satya Narain, 74 I.C. 96—329, App. (117).
 Radhikanath *v.* Rakhal Raj, 10 C.L.J. 473 ; s. c., 13 C.W.N. 1175—838, 839.
 Radhikanath *v.* Samir Fakir, 21 C.W.N. 636—133, 164.
 Rafiuddin *v.* Iswar, 17 C.L.J. 585—145, 146, 657.
 Raghoonath *v.* Juggut Bundhoo, 7 Cal. 214—341.
 Raghubar *v.* Manners, 13 C.L.J. 568—159, 662.
 Raghubar *v.* Ram Gulam, 1 Pat. L.J. 502—201, 480.
 Raghubar Dayal *v.* Jadunandan, 16 C.W.N. 736 ; s. c., 15 C.L.J. 89—741, 853, 857, 858.
 Raghur v. Bhajan, 40 I.C. 987—558.
 Raghu Buns *v.* Kokil Sing, 17 Cal. 872—422.
 Raghunandan *v.* Garju Mondal, 4 Pat. 718, s. c., [1925 Pat.] 193—858.
 Raghunandan *v.* Ram Sunder, [1924 Pat.] p. 355—49.
 Raghunath *v.* Bafeshwar, 105 I.C. 484—399.
 Raghunath *v.* Chowa Mahaton, A.I.R. 1922 Pat. 602—183.
 Raghunath *v.* Durgaprasad, 47 Cal. 95 (P.C.)—59.
 Raghunath *v.* Rai Chatrapat, 1 C.W.N. 633—742.
 Raghunath *v.* Ram Behara, 75 I.C. 427—273, 555.
 Raghunath *v.* Sundar Das, 42 Cal. 72 ; s. c., 12 C.W.N. 1058 (P.C.)—769.
 Raghunath *v.* William Cox, 19 C.W.N. 268—471, 474.
 Raghu Ram *v.* Mohesh Chandra, 7 C.W.N. 111—844.
 Raghu Sing *v.* Misri Singh, 21 Cal. 825—841.
 Ragpojirao *v.* Lakshminaran, 17 C.L.J. 17 (P.C.)—57.
 Rahamat Khan *v.* Sheikh Sudhu, 24 C.W.N. 28 (notes)—772.
 Rahmatulla *v.* Isabuddin, 40 I.C. 616—286.
 Rahim Bux *v.* Nandalal, 14 Cal. 321—742, 856.
 Rahimaddi *v.* Amina Bibi, 43 C.L.J. 132—279.
 Rahimuddin *v.* Jagat Kishore, 12 C.W.N. 987—607.
 Rahimuddin *v.* Nirodebarani, 40 C.L.J. 107—5.
 Rahimuddin *v.* Nalini, 10 C.W.N. 407—799.
 Raicharan *v.* Administrator General of Bengal, 36 Cal. 856—36, 339.
 Raicharan *v.* Kanai Kumar, 24 C.L.J. 21—167.
 Raicharan *v.* Kumud Mohon, 1 C.W.N. 687—416.
 Raicharan *v.* Kumud Mohon, 2 C.W.N. 297 ; s. c., 25 Cal. 571—729, 730, 732.
 Raicharan *v.* Sib Ram, 46 I.C. 489—918.
 Rai Kiran Chandra *v.* Srinath, 31 C.W.N. 135—60.
 Rai Komal *v.* Laidley, 4 Cal. 957—146.
 Raimoni *v.* Mathura Mohun, 39 Cal. 1016—29, 37, 339.
 Rai Romoni *v.* Surendra Nath, 1 C.W.N. 80—393.
 Raja *v.* Srinivas, 11 Mad. 319—860.
 Rajab Ali *v.* Dinanath, 19 C.W.N. 1305—190.
 Raja Bhupendra Narayan *v.* Rajeswar Prosad, 32 C.W.N. 16—56, 57.
 Raja Gopal Roy *v.* Taj Muhammad, 7 Pat. 28—245.
 Raja Mohammad Mumtaz Ali *v.* Mohari Singh, 28 C.W.N. 840 (P.C.)—

- Raja Nilmonnee v. Soudamini, 28 C.L.J. 283—857.
 Raja Rishikesh v. Mandakini, 44 C.L.J. 7—913.
 Rajani v. Ekkari, 34 Cal. 689—182, 194, 276, 921.
 Rajani v. Hafisonnissa, 4 C.W.N. 573—751.
 Rajani v. Panchanon, 90 I.C. 793—989.
 Rajani v. Uzir Bibi, 7 C.W.N. 170—388, 780.
 Rajani Kant v. Hajilal, 21 C.W.N. 628—833, 839.
 Rajani Kant v. Jageshwar, 20 Cal. 254—727, 729.
 Rajani Kant v. Lala Rout, 47 I.C. 298—923.
 Rajani Kan vt. Raj Kumari, 31 C.W.N. 1099—459.
 Rajani Kant v. Ramanath,, 19 C.W.N. 458—391.
 Rajani Kant v. Secretary of State, 46 Cal. 90 ; s. c., 23 C.W.N. 649—76, 557, 576.
 Rajani Kant v. Secretary of State, 47 I.C. 820—643.
 Rajani Kant v. Sheikh Rahman, 27 C.W.N. 765 ; s. c., 27 C.L.J. 447—765.
 Rajani Kant v. Yusuf Ali, 21 C.W.N. 188—80, 86, 269.
 Rajaram v. Sheo Pershad, 3 C.L.J. 63(n)—641.
 Raja Ram Narain v. Amir Khan and others (unreported)—876.
 Raja Sahib Perhlad Sein v. Durga Prasad, 12 M.I.A. 286—101, 109, 498.
 Raja Singh v. Kishun Behari, 41 I.C. 499—631.
 Raja Srinath v. Dinabandhu, 20 C.L.J. 385—949.
 Raj Chandra v. Sheikh Basir, 24 W.R. 476—787.
 Rajendra v. Bassidar, 2 Cal. 146—281.
 Rajendrá v. Chandra Bhusan, 9 C.W.N.—327, 332.
 Rajendra v. Gagan, 2 Pat. L.J. 623—402, 786.
 Rajendra v. Hiralal, 13 C.W.N. XIX—702, 906, 910.
 Rajendra v. Mahindra, 24 C.L.J. 126—338.
 Rajendra v. Nandlal, 19 C.L.J. 595—756.
 Rajendra v. Phady, 15 Cal. 482—848, 849.
 Rajendra v. Sheikh Kalim, 26 C.W.N. 758—226, 628.
 Rajendra Narain v. Mohes Chandra, 83 I.C. 203—836.
 Rajendra Nath v. Hiralal, 14 C.W.N. 995—906.
 Rajendra Nath v. Nilratan, 23 Cal. 958—861.
 Rajendra Kisore v. Chandra Nath, 12 C.W.N. 878—175, 188, 471, 921.
 Rajendra Kumar v. Mohim Chandra, 3 C.W.N. 763—101, 212, 498.
 Rajessuree v. Shibnath, 4 W.R. 41—355.
 Rajeswar v. Anil Kumar, 55 Cal. 35—12.
 Rajeswar v. Burta Koer, 21 Cal. 807—759.
 Rajgiri Singh v. Jadunath, [1922 Pat.] 355—717, 719, 730.
 Rajiva v. Kirat Narain, 1918 Pat. 55—684.
 Rajkisore v. Girijakant, 25 W.R. 66—687.
 Raj Kishore v. Huree Hur, 10 W.R. 117—306.
 Raj Kishore v. Bunshidhar, 23 Cal. 873—896.
 Raj Kisore v. Rajani Kant, 24 C.L.J. 185—202.
 Raj Kissen v. Pearee Mohun, 20 W.R. 421—101, 109, 212, 497, 734.
 Raj Kissen v. Pearee Mohun, 24 W.R. 114—734.
 Raj Kissen v. Radha Madhav, 21 W.R. 349—(App. 115).
 Raj Krishna v. Phakir, 19 C.W.N. 478—911.
 Raj Kumar v. Abdullah, 22 C.W.N. 891—App. (118).
 Raj Kumar v. Alimuddi, 17 C.W.N. 627—684, 823.
 Raj Kumar v. Faizuddi, 22 C.L.J. 81—222.
 Raj Kumar v. Meghlal, 45 Cal. 87 (F.B.)—29.
 Raj Kumar v. Mohesh Chandra, (unreported)—538.
 Raj Kumar v. Naya Chetoo, 6 C.W.N. 960—131, 234.
 Raj Kumar v. Prabhal Chandra. 8 C.W.N. 656—28. 16. 77. 280.

- Raj Kumar *v.* Ramani Mohon, 104 I.C. 150—132, 295.
 Raj Kumar *v.* Ramlal, 5 C.L.J. 538—328, 329, 332, 629, 630.
 Raj Kumar *v.* Surendra Nath, 27 C.W.N. 166—335.
 Raj Kumari *v.* Barkatulla, 39 Cal. 283—278, 279, 958, App. (105).
 Raj Kumari *v.* Shyama Bibi, 25 C.W.N. 163 (notes)—29, 69, 687, App. (122).
 Raj Krishna *v.* Phakir, 19 C.W.N. 478—757.
 Raj Kristo *v.* Bata Kristo, 90 I.C. 114—7.
 Raj Mahomed *v.* Banoo Rasma, 12 W.R. 34—300, 354.
 Raj Mohini *v.* Nagendra, 94 I.C. 310—74, 298.
 Raj Mohon *v.* Alam Gazi, 17 C.W.N. 625, s. c., 16 C.L.J. —550, 620.
 Raj Mohon *v.* Anund Chunder, 10 W.R. 166—417.
 Raj Mohon *v.* Guru Charan, 6 W.R. Act X 106—332.
 Raj Mohon *v.* Matilal, 22 C.L.J. 546—501.
 Raj Mohon *v.* Taraprasanna, A.I.R. 1923 Cal. 354—53.
 Raj Mohini *v.* Nagendra, 94 I.C. 310—791.
 Raj Narain *v.* Anath Tarai, 10 C.W.N. 908—554.
 Raj Narain *v.* Ekadasi, 4 C.W.N. 494 ; s.c., 27 Cal. 479—430, 486, 709, 784, 936.
 Raj Narain *v.* Olivia Atkins, 3 R.J.P.J. 161—300.
 Raj Narain *v.* Panna Chand, 7 C.W.N. 203—46, 871.
 Raj Narain *v.* Panna Chand, 30 Cal. 213—46, 347, 353, 413, 443.
 Rakhal Chandra *v.* Bhabadev, 53 I.C. 271—955.
 Rakhal Chandra *v.* Dwarkanath, 13 Cal. 346—850.
 Rakhal Chandra *v.* Hemangini, 3 C.L.J. 347—927, 1000.
 Rakhal Chandra *v.* Secretary of State, 10 C.W.N. 841—65, 495.
 Rakhal Chandra *v.* Umapada, 18 C.W.N. 629—119, 130, 955.
 Rakhal Dass *v.* Kinooram, 7 W.R. 242—308.
 Rakhal Das *v.* Madhab Chandra, 15 C.W.N. 61 ; s.c., 13 C.L.J. 109—906.
 Rakhit Mohanta *v.* Puddo Bauri, 9 C.W.N. 54—988.
 Rakhori *v.* Bipradas, 31 Cal. 975—837.
 Rakmijan *v.* Amar Krishna, A.I.R. 1925 Cal. 404—561.
 Raktoo Singh *v.* Sudharam, 25 C.L.J. 60—33.
 Ram Autor *v.* Shonaman, 27 Cal. 167—547, 616.
 Ramanath *v.* Hurish Chandra, 32 C.W.N. 62 (notes)—718.
 Ramanath *v.* Jagannath, 106, s.c., 136—302, 313, 329.
 Ramanath *v.* Rudia Mahati, 18 C.L.J. 142—836.
 Ramanath *v.* Sankar Singh, 30 All. 269—27.
 Ramani Pershad *v.* Mahant Adaitya, 31 Cal. 380—629.
 Ramanuj *v.* Midnapur Zemindari Co., 16 C.W.N. 725—75, 82, 89, 93, 96.
 Rama Pershad *v.* Shorup, 8 Cal. 712—733.
 Ram Asis Upadhay *v.* Ramdhani, 14 C.W.N. 56 (notes)—314.
 Ram Barman *v.* Sanat Kumar, 25 C.L.J. 24—417.
 Ram Behari *v.* Surendra Nath, 19 C.L.J. 34—416, App. (120).
 Ram Bilas *v.* Lal Bahadur, 30 All. 311—177.
 Ram Bishen *v.* Rajab Ram, 33 Cal. 832—631.
 Ram Chandra *v.* Bhikambar, 37 Cal. 674—315.
 Ram Chandra *v.* Bholanath,—180.
 Ram Chandra *v.* Dwarkanath, 1918 Pat. 26—386, 683.
 Ram Chandra *v.* Ganesh Chandra, 21 C.W.N. 404—58.
 Ram Chandra *v.* Giridhar, 19 Cal. 755—220, 322, 785, 933, 937.
 Ram Chandra *v.* Madho Kumari, 12 Cal. 484—687.
 Ram Chandra *v.* Nandananda, 18 C.W.N. 938 ; s.c., 19 C.L.J. 197—541, 603.
 Ram Chandra *v.* Pramatha, 35 C.L.J. 146—42.
 Ram Chandra *v.* Rakmabi, 23 Boff. 450—853.

- Ram Chandra *v.* Secretary of State, 20 C.W.N. 1245—907.
 Ram Charah *v.* Administrator-General of Bengal, 9 C.L.J. 578—35.
 Ram Charan *v.* Ekadeshi, 10 C.L.J. 87—220.
 Ram Charan *v.* Raniganj Coal Association, 26 Cal. 29; s.c., 2 C.W.N. 697 (P.C.)—113, 469.
 Ram Coomer *v.* Beejoy Gobind, 7 W.R. 535—499.
 Ramdas *v.* Bipradas, 19 C.W.N. 35—7, 539, 581, 631, 960.
 Ramdasi *v.* Asutosh, 14 C.W.N. 152 (notes)—321.
 Ramdayal *v.* Genda Tewari, 1 Pat. L. J. 479; s.c., 37 I.C. 641—583, 626.
 Ramdayal *v.* Midnapur Zemindari Co., 15 C.W.N. 263—93, 96.
 Ramdayal *v.* Upendra Nath, 17 C.W.N. 501—266, 493.
 Ramdeo *v.* Babu Moheswar, 21 C.L.J. 483—232, 241.
 Ramdev *v.* Newaj Prosad, 10 C.L.J. 196—701.
 Ramdhan *v.* Ram Kumar, 17 Cal. 926—986, 987.
 Ramdhan *v.* Surja Narain, 9 C.W.N. 67 (notes)—821.
 Ramdhari *v.* Hill Mackenzie, 10 C.W.N. 351—87, 146, 151.
 Ramdheyen *v.* Bhulo Tan, 72 I.C. 705—157.
 Ramdhone *v.* Sarup Chandra, 17 C.W.N. 313—120.
 Ramdhyen *v.* Pardip Singh, 4 Pat. L. J. 500—715, 716.
 Ramdyal *v.* Midnapur Zemindari Co., 15 C.W.N. 264—75.
 Ram Ekbal *v.* Baldeo Singh, 19 C.L.J. 419—689.
 Ram Gobinda *v.* Rajani Kant, 53 I.C. 570—817.
 Ramesh Chandra *v.* Daiba Charan, 28 C.W.N. 602—482, 752.
 Ramesh Chandra *v.* Golam Nath, 9 C.W.N. 867—874.
 Rameshwar *v.* Basudev, 1923 Pat. 95—166.
 Rameshwar *v.* Bikan Mamin, 36 I.C. 600—684, 953.
 Rameshwar *v.* Bhooboneswar, 4 C.L.J. 133—244, 631.
 Rameshwar *v.* Dulpin, 7 C.L.J. 202—23, 43.
 Rameswar *v.* Gobordhan, 7 C.L.J. 202—441.
 Rameswar *v.* Janeswari, 18 C.W.N. 129—49, 785.
 Rameshwar *v.* Joydev, 12 C.L.J. 591—216, 778.
 Rameshwar *v.* Kanchan Saha, 1 C.L.J. 78 (n)—222.
 Rameshwar *v.* Mahabir, 38 I.C. 832—172.
 Rameshwar *v.* Puran Chandra, 95 I.C. 303, s.c., 7 P.L.T. 717—770.
 Rameshwar *v.* Raghunandan, 38 I.C. 337; s.c., 1 Pat. L.J. 403—172, 797, 832.
 Rameshwar *v.* Ram Janak, 6 Pat. L. J. 109—366.
 Rameshwar *v.* Ram Tayak, 14 C.W.N. 268—325.
 Rameshwar *v.* Sheikh Mohammad, 2 Pat. L. J. 722—410, 826.
 Rameshwar *v.* Wazul Haque, A.I.R. 1925 Pat. 294—49.
 Ram Gobind *v.* Dushoobhoojah, 18 W.R. 195—196, 431.
 Ram Gobind *v.* Shashi Sekhar, [1925 Pat.] 153—761.
 Ram Gopal *v.* Nurumuddin, 20 Cal. 446—948.
 Ram Gopal *v.* Ranjan Sadagar, 6 C.L.J. 43—193.
 Ram Gulam *v.* Bishun Pargash, 11 C.W.N. 48—559, 604, 639, 642.
 Ramgati *v.* Pranhari, 3 C.L.J. 201—104, 106.
 Ramgati *v.* Syama Charan, 6 C.W.N. 919—283, 465.
 Ramgatty *v.* Baroda Charan, 11 Cal. 696—200.
 Ramhari *v.* Jabarali, 6 C.W.N. 861—921.
 Ramhari Chand *v.* Biranji, A.I.R. 1923 Pat. 295—165.
 Ramijuddin *v.* Radha Kant, A.I.R. 1924 Cal. 245, s.c., 80 I.C. 987—98, 586.
 Ramijulla *v.* Ishab Dhali, 6 C.W.N. 702 (F.B.); s.c., 39 Cal. 610—989.
 Ramjadoo *v.* Luckee Narain, 8 W.R. 488—354.
 Ramjant *v.* Amjad, 20 Cal. 903—640.
 Ramjaneer *v.* Amoo Beparee, 15 Cal. 317—987.

- Ramjanum v. Khublal, 1919 Pat. 151—478.
 Ramji Prasad v. Mohammad Anwar, 43 I.C. 377—177, 179, 182.
 Ramjiram v. Bansi Raut, 4 Pat. 89—9, 73, 561, 664.
 Ramjiram v. Lal Sadhu, 2 Pat. L. J. 403—562, 642, 644.
 Ramjiram v. Ram Kumar, [1924 Pat.] 345—241.
 Ramjiram v. Ramsre Raut, 83 I.C. 124—245.
 Ramjoy v. Kali Mohun, Marsh 282—675.
 Ramkali v. Madan Mohon, 8 P.L.T. 224—230, 385.
 Ram Kanai v. Fakir, 8 C.W.N. 438—4, 28, 78, 734.
 Ram Kanai v. Gones Chandra, 33 C.L.J. 513—502.
 Ram Kanta v. Chowdhury Shamnand, 9 C.L.J. 497—904.
 Ram Khalwan v. Musst. Soondra, 7 W.R. 152—315.
 Ram Khelwan v. Kumar Roy, 6 C.L.J. 667—441.
 Ram Khelwan v. Sambhoo, 2 C.W.N. 758—87, 151.
 Ram Kinkar v. Akhil Chandra, 11 C.W.N. 350—812.
 Ram Kinkar v. Sthiti Ram, 27 C.L.J. 528—993, 996.
 Ram Kishen v. Dele, W.R. 1864 Act X 36—309.
 Ram Kishen v. Mahabir, 39 I.C. 219 ; s.c., 1 Pat. L. J. 342—768.
 Ram Kishore v. Akhil Chandra, 11 C.W.N. 350—777.
 Ram Kishore v. Krishnamonee, 23 W.R. 106—196, 432.
 Ram Kissen v. Binraj, 50 Cal. 419—502.
 Ram Kristo v. Abdul Karim, 34 C.L.J. 35—339.
 Ram Kristo v. Sheikh Haran, 9 Cal. 517—360, 364.
 Ram Kumar v. Birendra Kishore, 22 C.W.N. 449—561.
 Ram Kumar v. Jakur Ali, 8 Cal. 716—927, 1000.
 Ram Kumar v. Rameshwar, 38 I.C. 523—474.
 Ram Kumar v. Ram Newas, 8 C.W.N. 860—140, 147.
 Ram Kumar v. Ram Newas, 31 Cal. 1021—900.
 Ram Kumar v. Robert Watson & Co., 9 C.W.N. 334—95, 99.
 Ram Lachi v. Herbert Ridge, 11 C.W.N. 397—151.
 Ram Lal v. Bandiram, 26 C.W.N. 511—825.
 Ram Lal v. Bhelu Gazi, 37 Cal. 709 ; s.c., 14 C.W.N. 814—147, 158,
 161, 262, 263, 455, 773, 775, 793, 796.
 Ram Lal v. Dendhari, 74 I.C. 781—185.
 Ram Lal v. Dinanath, 23 Cal. 200—494.
 Ram Lal v. Khiroda Mohini, 18 C.W.N. 113—391.
 Ram Lal v. Kul dip, 75 I.C. 841—189.
 Ram Lal v. Satis Chandra, 53 I.C. 511—592.
 Ram Lal v. Satya Niranjana, [1921 Pat.] 49—54.
 Ram Lal v. Lalla Pecumba Lall, Marsh 48—308.
 Ram Lal v. Rao Jogendra, 18 W.R. 329—349.
 Ram Lochun v. Beniprasad, 36 Cal. 252—427.
 Ram Lochan v. Jagarnath, 1 Pat. L. J. 270—181.
 Ram Mohan v. Badan Barai, 8 C.W.N. 436—734.
 Ram Mohan v. Sheikh Kacha, 32 Cal. 286 (F.B.) 156, 157, 277.
 Ram Mon v. Ahmuedhen, 20 W.R. 374—101, 109, 212, 496.
 Ram Money v. Omesh Chunder, 7 Cal. 379—202.
 Ram Moyi v. Rupai Pramanik, 13 C.L.J. 267—129, 130, 486, 489.
 Ram Narain v. Choto Nagpur Banking Association, 43 Cal. 332—877.
 Ram Narain v. Lachmi Narain, 17 C.L.J. 239—638.
 Ram Narain v. Lal Das, 12 C.W.N. 55, s.c., 6 C.L.J. 595—838, 839.
 Ram Narain v. Mongro Urao, 4 C.W.N. 792—494, 495.
 Ram Narain v. Pulin Behary, 2 C.L.R. 5—334, 335, 342.
 Ram Narain v. Satis Chandra, 22 C.W.N. 72 (notes)—839.
 Ram Narain v. Tekait Garujhe, 12 C.W.N. 178—902.

- Ram Nath v. Official Trustee of Bengal*, 29 C.W.N. 517—557.
Ram Nath v. Siba Sundari, 25 C.L.J. 332—912.
Rammidhi v. Parbutty, 5 Cal. 823—340.
Ram Nursingh v. Dwarkanath, 23 W.R. 10—211.
Romoni Mohon v. Sheikh Kalimuddi, 17 C.W.N. 1102—480.
Rampada v. Kanai Rai, 44 C.L.J. 167—377.
Rampado v. Atore Dome, 40 C.L.J. 307 ; s.c., 84 I.C. 743—915.
Rampadrath v. Sohrai Koeri, 4 Pat. L.J. 667 ; s.c., 1920 Pat. 114—69, 223, 695.
Ram Pershad v. Jawhir, 12 C.W.N. 899 ; s.c., 7 C.L.J. 72—179, 187, 200, 478, 479.
Ram Pershad v. Ramtohum, Marsh 655—447.
Ram Pratap v. Jhoomak Jha, 39 I.C. 943 ; s.c., 1 Pat. L.W. 400—821.
Ramput v. Ram Golam, 20 C.W.N. 48 (notes)—630.
Rampyrabi v. Balaji, 28 Bom. 294—312.
Ram Raj Tewari v. Girinandan, 15 All. 63—689.
Ram Ram v. Biri Wazirunnessa, 49 I.C. 439—490.
Ram Ranjan v. Jankinath, 4 C.W.N. 64 (notes)—904.
Ram Ranjan v. Jayanti Lal, 44 C.L.J. 449—39.
Ram Ranjan v. Ram Narain, 22 Cal. 533 (P.C.)—403.
Ram Ranjan v. Sunwari Lal, 16 C.L.J. 211—337.
Ram Ratan v. Aswini Kumar, 14 C.W.N. 849 ; s.c., 37 Cal. 559—822.
Ram Ratan v. Jang Bahadur, 62 I.C. 47—162.
Ram Ratno v. Chunder Mookhee, 2 W.R. Act X 74—303.
Ram Renu v. Midnapur Zemindari Co., 67 I.C. 1001—583.
Ramrup v. H. Mannors, 4 C.L.J. 209—156, 159.
Ram Sankker v. Bejoy Gobind, S.D.A. 1852 p. 824—798.
Râm Saran v. Gyan Sing, 6 C.L.J. 637—441.
Ram Saran v. Mahamad Aradut, A.I.R. 1925 Pat. 181—654.
Ramsaran v. Ram Narayan, 42 Cal. 305—50, 52, 458.
Ramsaran v. Syed Mahammad, 80 I.C. 926—629.
Ram Sadoy v. Dwarkanath, 22 Cal. 644—999.
Ram Sebak v. Ram Lall, 6 Cal. 185—932.
Ram Sewak v. Mahont Bansi, 13 C.W.N. 1151—653.
Ramsden v. Dyson, L.R. 1 H.L. 129—212.
Ramsundar v. Satindra, 85 I.C. 190—93, 632.
Ramsundar v. Sheikh Lochan, 38 I.C. 942—171, 184, 186.
Ramtaran v. Ashmatulla, 6 C.W.N. 111—98, 216, 778.
Ramupal v. Prakash, 20 C.W.N. 59 (notes)—190.
Ramyad Pandey v. Genda Tewari, 56 I.C. 933—599.
Ranjit v. Bhagabati, 7 C.W.N. 720—372.
Ranjit v. Jogendra Nath, 16 C.L.J. 546—848.
Ranee Sarat Soondaree v. Collector of Mymensingh, 5 W.R. 69—350.
Rangalal v. Abdul Gofur, 4 Cal. 314—687.
Ranalal v. Kali Sankar [1923 Pat.] 353—395.
Ranga Roy v. Ferederic Holloway, 4 C.W.N. 95 ; s.c., 26 Cal. 842—446, 680, 681, 685.
Rangayya Appa v. Bobba Siramalu, 31 I.A. 17, s.c., 8 C.W.N. 162—410.
Rangasami v. Girasami, 18 Mad. 477—849.
Rangaswami v. Grana Samanta, 22 Mad. 264—498.
Raniganj Coal Association v. Judoo Nath, 19 Cal. 489—538, 983.
Rani Dassi v. Asutosh, 14 C.W.N. 152 (notes)—339.
Rani Hemanta Kumari v. Rejendra Kisore, 97 I.C. 306 s.c., A.I.R. 1926 Cal., 236—854.
Rani Lalita Sundari v. Rani Surnamoyi, 5 C.W.N. 353—35, 36.

- Salatudass v. Jadunath, 8 C.W.N. 774—75.
 Sali Bewa v. Ajivuddin, 104 I.C. 196—223.
 Saligram v. Paluk Pandey, 6 C.L.J. 149—140, 142.
 Salim Sheikh v. Mocham Mondal, 24 C.L.J. 113—922.
 Salimulla v. Kaliprasanna, 21 C.W.N. 371 ; s. c., 22 C.L.J. 569—337, 338.
 Salimulla v. Rahenuddi, 21 C.L.J. 659 ; s. c., 20 C.W.N. 156 ; s. c., 43 Cal. 263—771, 807, 808, 814.
 Samanta Sadha v. Ananta Prasad, 4 C.L.J. 521—101, 376, 874.
 Samba Siva v. Ramasami, 22 Mad. 179—408.
 Sambhu Chandra v. Puran Chandra, 35 Cal. 176—550, 553, 582, 611, 618, 631.
 Sambhu Nath v. Hurro Sundari, 11 C.L.R. 140—874.
 Sambhu Nath Singh v. Sheo Prasad Singh, 17 C.W.N. 276 ; s. c., 17 C.L.J. 227 ; s. c., 40 Cal. 462—703.
 Samed Sheikh (Chamed Sheikh) v. Naba Naba Nepal Ghose, 19 C.L.J. 310 ; s. c., 19 C.W.N. 359—680, 740.
 Samiruddin v. Benga Sheikh, 13 C.W.N. 630—191.
 Samundar v. Mekhlal, 37 I.C. 935—107.
 Samunjan v. Munshi Mahton, 4 C.W.N. 493—184, 477, 479.
 Sanjib v. Santosh, 26 C.W.N. 329—69.
 Sankarmani v. Mathura Dhupini, 15 Cal. 327—739.
 Santiram v. Bykant, 19 W.R. 280—505.
 Santosh Kumar v. Rakhal, 43 C.L.J. 104—298.
 Sarada v. Gonee, 10 W.R. 419—133.
 Sarada v. Nabin, 54 Cal. 333, s. c., 31 C.W.N. 231—915.
 Sarada v. Uma Sankar, 44 C.L.J. 385—90, 91, 93.
 Sarada Charan v. Iswar Samli, 11 C.W.N. 1154—231, 321.
 Sarada Charan v. Juraram, 44 I.C. 473—407.
 Sarada Kripa v. Bepin Chandra, 37 C.L.J. 538—112.
 Saradaprasad v. Khaja Mahammad, 24 C.L.J. 158—949.
 Saradaprasad v. Manmatha, 19 C.W.N. 870—37.
 Sarada Sundari v. Hazee Mohamed, 5 W.R. 783—470.
 Saradindu v. Collector of Rangpur, 11 C.W.N. 1143—507, 509, 511, 959.
 Saradindu v. Giris Mohini, 21 C.W.N. 240—511.
 Sarajubala v. Kamini Kumar, 43 C.L.J. 142—320, App. (121).
 Sarajubala v. Saradanath, 23 C.W.N. 336—352, 927, 979.
 Sarandhari v. Bikram, 18 C.W.N. 539—1000.
 Saraswati v. Dhanpat, 9 Cal. 43—360, 364.
 Saraswati v. Haritaran, 16 Cal. 741—987.
 Sarat Chandra v. Abbas Mondal, 21 C.W.N. 140 (notes)—255.
 Sarat Chandra v. Asiman Bibi, 8 C.W.N. 601 ; s. c., 31 Cal. 725—142, 152, 791, 956.
 Sarat Chandra v. Bibhabati, 34 C.L.J. 302—400.
 Sarat Chandra v. Jadav Chandra, 44 Cal. 214—30, 70.
 Sarat Chandra v. Kalaram, 33 Cal. 1349—949.
 Sarat Chandra v. Motilal, 23 C.W.N. 597—829.
 Sarat Chandra v. Monmohon, 46 C.L.J. 46—624, 742.
 Sarat Chandra v. Monorama, 68 I.C. 295—186.
 Sarat Chandra v. Nriyagopal, 13 C.L.J. 284—470.
 Sarat Chandra v. Rajendra Lal, 18 C.W.N. 420—466.
 Sarat Chandra v. Raj Kumar, 82 I.C. 327—517.
 Sarat Chandra v. Ramnidhi, 2 C.L.J. 69 (n)—742.
 Sarat Chandra v. Ratabuddin, 16 C.L.J. 271—27.
 Sarat Chandra v. Secretary of State, 21 C.W.N. 238—91.
 Sarat Chandra v. Shyam Chand, 39 Cal. 663 ; s. c., 16 C.L.J. 71—30, 190, 200, 222, 313, 442, 681.

- Sarat Chandra *v.* Tarapasanna, 36 C.L.J. 333—309, 631, 873.
 Sarat Sundri *v.* Anund Mohan, 5 Cal. 223—785.
 Sarat Sundari *v.* Somiruddin, 22 W.R. 530—785.
 Sarbananda *v.* Rana Gazi, 18 C.L.J. 334—791.
 Sarba Sundari *v.* Harendra Lal, 12 C.L.J. 549—830.
 Sarbeswar *v.* Bejoy Chand, 49 Cal. 280 ; s. c., 26 C.W.N. 15 ; s. c., 34 C.L.J. 15 ; s. c., 34 C.L.J. 203—72, 73, 74, 149, 252, 299, 791.
 Sarbeswar *v.* Rajani Kant, 51 I.C. 981—565.
 Sadar *v.* Miajan, 21 Cal. 378—App. (101).
 Sardar Singh *v.* Emperor, 44 I.C. 451—163, 164, 165.
 Sariatulla *v.* Prannath, 26 Cal. 184—921.
 Sarifunnessa *v.* Saferaddi, 56 C.W.N. 276 (notes)—321, 584, 960.
 Sarifunnessa *v.* Sasodhar, 14 C.W.N. 364—559.
 Sarif Hechan *v.* Tilattamma, 42 I.C. 3—769.
 Saripjan *v.* Aftabuddin, 13 C.L.J. 115—36.
 Sarjod Prosad *v.* Nonno Rai, 1 Pat. L.J. 459—855.
 Sarjugsharan *v.* Duksit Mahato, 17 C.W.N. 496—694.
 Sarojendra *v.* Sanyasi Charan, 14 C.W.N. 183 (notes) ; s. c., 12 C.L.J. 551 834.
 Sarkies *v.* Kali Coomar, W.R. 1864 Act X—126.
 Saroj *v.* Umed, 35 C.L.J. 19 ; s. c., 25 C.W.N. 1022—626, App. (116).
 Sarojini *v.* Lakshi Priya, 29 C.W.N. 253—App. (117).
 Saroj Bandhu *v.* Matilal, 105 I.C. 756—255.
 Sarup Ray *v.* Srikant Prosad, 55 I.C. 922—551.
 Sarup Sahu *v.* Jagarnath, 2 Pat. L.J. 194—4, 768.
 Sasheemukhee *v.* Nades Ali, 11 W.R. 164—95.
 Sasi *v.* Salim, 50 Cal. 126—626.
 Sasibala *v.* Amali Devi, 25 C.W.N. 378—10.
 Sasi Bhusan *v.* Amadullah, 69 I.C. 1005—179.
 Sasi Bhusan *v.* Khiroda Sundari, 95 I.C. 42—719.
 Sashi Bhusan *v.* Aswini Kumar, 19 C.W.N. 637—623.
 Sashi Bhusan *v.* Beni Madhav, 8 C.L.J. 519—730.
 Sashi Bhusan *v.* Chandra, 33 Cal. 861—65,
 Sashi Bhusan *v.* Denomoyee, 34 I.C. 301—739.
 Sashi Bhusan *v.* Jyoti Prasad, 44 Cal. 585, s. c., 21 C.W.N. 377 (P.C.)—58.
 Sashi Bhusan *v.* Kali Prasanna, (unreported)—719.
 Sashi Bhusan *v.* Sheikh Eshabar, 19 C.W.N. 636—583, 604, 623, 625.
 Sashi Bhusan *v.* Uma Kant, 19 C.W.N. 1143 ; s. c., 20 C.L.J. 153—370, 371, 372, 373, 959, 978.
 Sasi Kant *v.* Genda Sheikh, 82 I.C. 970—202, 223.
 Sasi Kant *v.* Sandhyamoni, 26 C.W.N. 483—9, 539, 561.
 Sasi Kumar *v.* Sitanath, 7 C.L.J. 425—3, 710, 716, 935.
 Sashi Mahton *v.* Iswari Prasad, 6 C.L.J. 727—252.
 Sasti Charan *v.* Akubjan Bibi, 26 C.W.N. 639 ; s. c., 35 C.L.J. 30—400, 485, 718.
 Satcowrie *v.* Preonath, 18 C.W.N. 672—794, 810.
 Satcowrie *v.* Secretary of State, 22 Cal. 252—948.
 Satglhuri *v.* Majidun, 15 Cal. 107—741.
 Satindra *v.* Ram Sundar, 88 I.C. 534, s. c., A.I.R. 1926 Cal. 239—594.
 Satiprasad *v.* Brojogopal, 31 C.W.N. 499—644.
 Satiprasad *v.* Mahesh Bhunia, 31 C.W.N. 552—912.
 Sati Prasad *v.* Monmotho Nath, 18 C.W.N. 84—348, 370, 978.
 Sati Prasad *v.* Radhanath, 16 C.L.J. 427—324, 712, 937.
 Sati Prasad *v.* Sonaton Jhara, 25 C.W.N. 38—402, 593, 712.
 Satis *v.* Rameswari, 20 C.W.N. 665—395.

- Satis Chandra v. Amanuila, 40 I.C. 113—225.
 Satis Chandra v. Debendranath, 85 I.C. 636—200, 299, 501.
 Satis Chandra v. Gopal Chandra, 15 C.W.N. 110—608.
 Satis Chandra v. Hasemali, 54 Cal. 450, s. c., 31 C.W.N. 634—988, 996.
 Satis Chandra v. Jatindra Chandra, 7 C.L.J. 248—336.
 Satis Chandra v. Kabiruddin, 26 Cal. 233—220.
 Satis Chandra v. Kali Charan, 29 C.W.N. 221—491.
 Satis Chandra v. Munjamati, 17 C.W.N. 340—770, 797, 798.
 Satis Chandra v. Natabar, 28 C.L.J. 281—904.
 Satis Chandra v. Nil Madhav, 73 I.C. 77 ; s. c., 37 C.L.J. 598—300.
 Satis Chandra v. Nitya Gopal, 40 I.C. 419 ; s. c., 21 C.W.N. 978—989, 990, 996.
 Satis Chandra v. Umes Narain, 34, C.L.J. 501—371.
 Satis Chandra v. Upendra Nath, 63 I.C. 592—72.
 Satis Ranjan v. Nasaraddi, 34 L.C. 145—999.
 Satya Bhupal v. Rajnandini, 83 I.C. 144—351.
 Satya Charan v. Dinanath, 21 C.W.N. 1130—391.
 Satyanand v. Harokishore, 15 W.R. 474—91.
 Satya Narain v. Satya Niranjan, 28 C.W.N. 351 (P.C.)—895.
 Satya Niranjan v. Ebrahim, 95 I.C. 843—985.
 Satya Niranjan v. Ram Lal, 52 I.A. 109, s. c., 20 C.W.N. 725—56, 57.
 Satyaranjan v. Ramlal, 4 Pat. 244—App. (114)
 Satya Sankar v. Monmohon, 22 C.W.N. 131—378, 798, 826.
 Satyastri Ghoshal v. Karttik Chandra, 15 C.L.J. 227—59.
 Satyendra v. Krishna Sakha, 25 C.L.J. 185—901, 903.
 Satyendra Nath v. Nilkantha, 21 Cal. 383—348, 349, 390, 826.
 Satyesh v. Dhunput, 24 Cal. 20—70.
 Satyesh v. Jillar Rahaman, 27 C.L.J. 438—369, 401.
 Sauravi Namasudrani v. Nabadwip Chandra (unreported)—778.
 Savi v. Panchanon, 25 W.R. 503—159.
 Secretary of State v. Anandamohon, 34 C.L.J. 205—512, 519.
 Secretary of State v. Bejoy Kumar, 40 C.L.J. 303—24.
 Secretary of State v. Digambar, 46 Cal. 160 ; 27 C.L.J. 334—82, 83, 85, 574.
 Secretary of State v. Forbes 16 C.L.J. 217—316, 466.
 Secretary of State v. Gangadhar, 27 C.L.J. 374 ; s. c., 45 Cal. 934—575, 927, 928.
 Secretary of State v. Girijabai, 46 C.L.J. 420—912.
 Secretary of State v. Gobinda, 21 C.W.N. 505—6, 29, 77, 83, 139, 593.
 Secretary of State v. Jadav Chandra, 21 C.W.N. 452—77, 79, 84.
 Secretary of State v. Jatindranath, 29 C.W.N. 1 (P.C.)—885.
 Secretary of State v. Jyoti Prosad, 30 C.W.N. 745 (P.C.)—895.
 Secretary of State v. Kalimuddi, 26 Cal. 617—609.
 Secretary of State v. Kajimuddy, 23 Cal. 527—615.
 Secretary of State v. Kamal Krishna, 44 I.C. 222—337, 338.
 Secretary of State v. Karuna, 35 Cal. 82—5, 26, 953.
 Secretary of State v. Krishnamoni, 6 C.W.N. 617 (P.C.)—App. (102).
 Secretary of State v. Kritibas, 19 C.W.N. 65 (P.C.) ; s. c., 42 Cal. 719—906, 909, 910.
 Secretary of State v. Lakhinarain, 46 I.C. 899—575.
 Secretary of State v. Luckmeswar, 16 Cal. 223—51.
 Secretary of State v. Maharaja of Burdwan, 48 I.A. 565 s.c., 49 Cal. 103, s.c., C.W.N. 619—885.
 Secretary of State v. Nitaya Singh, 21 Cal. 38—544, 944.
 Secretary of State v. Paran Singh, 5 Cal. 740—899.
 Secretary of State v. Purnendra Narayan, 40 Cal. 123—536, 537, 641, 650,

- Secretary of State *v.* Radhakanta, 53 Cal. 952, s.c., 30 C.W.N. 774 (F.B.)—885.
- Secretary of State *v.* Rahamuddinessa, 17 D.A. 40, s.c., 17 Cal. 590 (P.C.)—885.
- Secretary of State *v.* Ramcharan, 70 I.C. 207—301, 576.
- Secretary of State *v.* Ram Charan, A.I.R. 1924 Cal. 464—574, 576.
- Secretary of State *v.* Sarat Chandra, 40 C.L.J. 235—301.
- Secretary of State *v.* Sibaprasad, 27 C.L.J. 447—316.
- Secretary of State *v.* Shibnarayan, 22 C.W.N. 802—575.
- Secretary of State *v.* Ram Taruck, 21 Cal. 38—App. (100).
- Seemi Chettiar *v.* Sonatha Nathan, 20 Mad. 58—5.
- Sekandar Sheikh *v.* Arun Sarkar, 38 I.C. 69—988, 996.
- Sekraj *v.* Grugadayal, 6 Pat. L.J. 665—339.
- Sepajan *v.* Ram Div, 23 C.W.N. 135 (notes)—922.
- Serajgungè Jute Co. *v.* Torabde, 25 W.R. 252—441.
- Seriathulla *v.* Prannath, 26 Cal. 184—174.
- Seshmamna *v.* Chickaya, 25 Mad. 507—39.
- Seturatnam *v.* Venkata Chela, 43 Mad. 567—287.
- Sevadas *v.* Nirod Bala, 63 I.C. 602—604.
- Shadhas Singh *v.* Ramanoograha, 9 W.R. 83—232, 239.
- Shajiwan *v.* Gulap Chand, 1 Pat. L.J. 409—233.
- Shaizuddin *v.* Mathura Mohan, 18 C.W.N. 333—111, 119, 130, 484.
- Shakoti *v.* Jatindra Mohan, 1 C.W.N. 132—856.
- Shakaruddin *v.* Hemangini, 16 C.W.N. 420—171, 184.
- Shama *v.* Bakroda, 28 Cal. 146—22.
- Shama *v.* Umacharan, 2 C.W.N. 106—101, 210.
- Shamabati *v.* Jago Bibi, 29 Cal. 749—65.
- Shama Churn *v.* Abdul Kabir, 3 C.W.N. 158—461.
- Shama Churn *v.* Abhiram, 33 Cal. 511—56.
- Sham Chand *v.* Brojo Nath, 21 W.R. 123.
- Sham Jha *v.* Doorga, 7 W.R. 122—333.
- Sham Charan *v.* Dwarkanath, 12 W.R. 100—308.
- Sham Lal *v.* Baistab, 7 W.R. 407—308.
- Sham Narain *v.* The Court of Wards—23 W.R. 432—141.
- Shamsar *v.* Lochin Das, 23 Cal. 853—164, 167.
- Sham Singh *v.* Kishan Sahai, 6 C.L.J. 890—710, 711, 716, 933, 935.
- Shangser Ali *v.* haikh Hadamulla, 17 C.W.N. xlviii (48 notes)—284.
- Sharada Soondari *v.* Gonee Sheikh, 10 W.R. 419—164.
- Sharoop Das *v.* Jogeswar, (F.B.) 3 C.W.N. 464 ; s.c., 26 Cal. 564—210, 266, 750.
- Shashadhar *v.* Bishnu Narain, 43 C.L.J. 279—863.
- Shawali *v.* Hussaini Begam, 2 P.L.J. 595 ; 26, 496, 501, 753.
- Shazada Begum *v.* Kokila, 1 Pat. 38—801.
- Sheeb Chandra *v.* Brojo Nath, 14 W.R. 301—325.
- Sheikh Abdul *v.* Dataram, W.R. 1864 p. 367—165.
- Sheikh Abdul *v.* Musst. Kubun, 1 C.W.N. clxxi (171 notes)—915.
- Shirkh Abdul *v.* Downing, 5 Cal. 415—956.
- Sheikh Abdulla *v.* Kutban, 21 C.L.J. 413—994.
- Sheikh Abdul Guffur *v.* Downing, 5 Pat. 415—119.
- Sheikh Amir *v.* Yusuf Ali, 22 W.R. 439—355.
- Sheikh Amiruddin *v.* Sheikh Sadrar Rahman, 1 Pat. L.J. 73—642.
- Sheikh Arub *v.* Ashruf, 24 W.R. 335—317.
- Sheikh Ashruff *v.* Ram Kishore, 23 W.R. 288—141, 498.
- Sheikh Azim *v.* Golok Singh, (S. A. 2388 of 1908)—167.
- Sheikh Azmat *v.* Bibi Tamzan, 5 Pat. L.J. 83—833.

- Sheikh Chand *v.* Ramoni Mohon, 17 C.W.N. 1105—176, 179, 200.
 Sheikh Dastur Ali *v.* Ram Kumar, 22 C.W.N. 972—170, 177, 472.
 Sheikh Dena Gazee *v.* Mohinee Mohun, 21 W.R. 157—232.
 Sheikh Dilbur *v.* Issur Chander, 21 W.R. 36—733, 734.
 Sheikh Elahi *v.* Sheikh Aukum, 18 C.W.N. 38—70.
 Sheikh Elahi *v.* Sheikh Hukum, 19 C.L.J. 462—431.
 Sheikh Enayatulla *v.* Sheikh Elahi Buksh, W.R. (1864) p. 42—31, 316.
 Sheikh Faijuddin *v.* Tara Sundari—19 C.W.N. 156—181.
 Sheikh Fakir *v.* Biraj Mohini, 11 C.W.N. 116—855.
 Sheikh Eradut *v.* Daloo Sheikh, 1 C.W.N. 573—989.
 Sheikh Faiza *v.* Sheikh Joman, 19 C.L.J. 455—611.
 Sheikh Golab *v.* Janki Koer—5 Pat. L.J. 472—633.
 Sheikh Guzaffar *v.* E. Dalgiehs, 1 C.W.N. 162—180, 265, 490.
 Sheikh Haboo *v.* Sheikh Kariman, 1 Pat. L.J. 230—428.
 Sheikh Hunai *v.* Sarat Chandra, 21 C.W.N. 749—407.
 Sheikh Hussain *v.* Goberdhone, 20 Bom. 1—212.
 Sheikh Intaz *v.* Dinanath, 53 Cal. 615, s.c., 30 C.W.N. 803—403.
 Sheikh Isaf *v.* Gopal Chandra, 12 C.L.J. 593—255.
 Sheikh Jamahar *v.* Sheikh Nazir, 18 C.L.J. 592—193.
 Sheikh Jarip *v.* Ramkumar, 3 C.W.N. 747—183, 186, 379, 392, 774, 776, 781.
 Sheikh Janab Ali *v.* Rakibuddin, 6 C.W.N. 571 ; s.c., 1 C.L.J. 503—901.
 Sheikh Karban *v.* Sheikh Jafar, 5 C.W.N. 798—549.
 Sheikh Kabis *v.* Baikuntha, 15 C.W.N. 680—469.
 Sheikh Ketubuddi *v.* Nafar Chandra, 44 C.L.J. 562—App. (117).
 Sheikh Latafat *v.* Kumar Ganganand, 3 Pat. L.J. 361—606, 642.
 Sheikh Latafat *v.* Kumar Kaliker, 1918 Pat. 225—538, 560.
 Sheikh Latifer *v.* A. H. Forbes, 14 C.W.N. 372—11, 141, 147, 791.
 Sheikh Mahomed *v.* Durga Prasad, 21 C.W.N. 342—812, 845.
 Sheikh Maidhar *v.* Rajani Kant, 14 C.W.N. 339—106.
 Sheikh Milar *v.* Mahomed Ali, 10 C.W.N. 434—101, 500.
 Sheikh Mongole *v.* Maharaja Kumud Chandra, 5 C.W.N. 60—307.
 Sheikh Mulla *v.* Wake, 2 C.W.N. 51 (notes)—725.
 Sheikh Munsar *v.* Lokenath, 4 C.W.N. 10—737, 773.
 Sheikh Munbulla *v.* Sheikh Brulla, 9 C.W.N. 972—192.
 Sheikh Murdad *v.* Sheikh Tufuzzal, 16 W.R. 78—371.
 Sheikh Naimuddin *v.* Srimanta, 6 C.W.N. 124—775, 939.
 Sheikh Nazimuddin *v.* Momtazuddin, 5 C.W.N. 263—104, 107.
 Sheikh Peer Bux *v.* Mowzah Ally, 1 May 89—406.
 Sheikh Pokhan *v.* Rajani, 23 C.W.N. 614—6, 251.
 Sheikh Safait *v.* Sheikh Waziuddin, 20 C.W.N. 1207—47, 729, 730.
 Sheikh Sarafuddin *v.* Chandramoni, 5 C.W.N. 505—989.
 Sheikh Sahad *v.* Krishna, 24 C.L.J. 371—216, 398.
 Sheikh Tamiz Munshi *v.* Brojendra, 22 C.W.N. 967—472.
 Sheikh Uzir *v.* Harioharan, 37 I.C. 671—710.
 Shelly Bonnerji *v.* Raj Chandra, 37 Cal. 552—44, 369, 720.
 Sheo Barat *v.* Pai Arat, 52 I.C. 473—976.
 Sheobarat *v.* Naurangadeo 28 Cal. 364—410, 669, 670, 675.
 Sheo Bux *v.* Shib Chunder, 13 Cal. 225—742.
 Sheo Charan *v.* Bansi Singh, 44 I.C. 129—361.
 Sheodhani *v.* Beni Pershad, 9 C.L.J. (n)—547, 589, 626.
 Sheodheni *v.* Chaturbhoj, 12 C.L.J. 376—102, 497.
 Sheogobind *v.* Gouri Prasad, 4 Pat. 43—25, 48.
 Sheogobind *v.* Mahabir, [1922 Pat.] 319 ; s.c., 17 I.C. 143—695.
 Sheogobind *v.* Mohipal, 81 I.C. 321—79, 148.

- Sheogobind v. Mohipat, 2 Pat. 913—658.
 Sheo Karan v. Parbhu Narain, 31 All. 276—30, 42, 48.
 Sheonandan v. Ajodh Ray, 26 Cal. 546—660.
 Sheonandan v. Bacha Rani, 9 C.L.J. 284—557.
 Sheonandan v. Darbari Mahton, 2 C.W.N. 207—120.
 Sheonandan v. Kesho Prasad, 8 P.L.T. 798—207.
 Sheonandan v. Rámhit, 15 C.L.J. 647—286.
 Sheoprasad v. Sishen Pargash, 15 C.W.N. 760—741, 743, 746.
 Sheoprasad v. Barhamdeo, 38 I.C. 366—835.
 Sheoprasad v. Kalidas, 5 Cal. 547—51,
 Sheoprasad v. Lal Babu, 39 I.C. 505—557.
 Sheopratab v. Sheogolam, 72 I.C. 781—643.
 Sheo Pursun v. Bahoo Ram, 1 W.R. 361—493.
 Sheoraji v. Dhani Mian, 1923 Pat. 305—473.
 Sheo Sasay v. Beechan, 22 W.R. 32—31, 316.
 Sheo Sahoy v. Ram Rachia, 18 Cal. Cal. 333—221.
 Sher Bahadur v. Mackenzie, 7 C.W.N. 400—611, 666, 933, 941.
 Sheriff v. Dina Nath, 12 Cal. 258—342.
 Sheriff v. Jogemaya, 27 Cal. 535—127.
 Shewbarat v. Nirpat, 16 Cal. 596—615, 616.
 Shibakali v. Chunilal, 31 C.W.N. 1007—3, 7, 18, 139, 140, 262.
 Shiba Kumari v. Bipradas, 12 C.W.N. 167—246, 334.
 Shibaprasad v. Amarendra Nath, 41 I.C. 431—368.
 Shib Charan v. Bepin Behary, 27 C.W.N. 144—751.
 Shib Das v. Baman Dass, 15 W.R. 360—216.
 Shib Chandra v. Surendra Chandra, 45 Cal. 515, 27 C.L.J. 560—907.
 Shibendrapada v. Secretary of State, 5 C.L.J. 390—119.
 Shibnath v. Annada, 11 C.L.J. 382—729.
 Shib Prasad v. Vaktar, 33 Cal. 605—379, 683, 951.
 Shibu Halder v. Gopi Sundari, 1 C.W.N. (notes)—683, 688, 948.
 Shilabati v. Roderigues, 12 C.W.N. 448, s.c., 35 Cal. 547—725, 727, 733.
 Shital Mandal v. Prossuñnomoyi, 21 Cal. 986—233.
 Shivjiram v. Krishnuvaman, 2 Bom. 121—712.
 Shoma Metha v. Rajani Biswas, 1 C.W.N. 55—6, 45, 423.
 Shoorasoondaree v. Golamoli, 19 W.R. 141—88, 92.
 Shorusoti v. Parbutti, 6 C.L.R. 362—340.
 Shoshi Bhushan v. Gagan Chander, 22 Cal. 364—378, 384, 810.
 Shoshi Bhushan v. Gobinda Chandra, 18 Cal. 231, 396—853.
 Shoshi Bhushan v. Kramatulla, 10 C.W.N. 148—785, 810.
 Shoshi Mohan v. Bepin Behari, 15 C.W.N. 79 (notes)—475, 478.
 Shukruddin v. Rani Hemangini, 16 C.W.N. 420—173.
 Shurendra Narain v. Tarini Kanta, 9 C.W.N. 505—547.
 Shusee Bhushan v. Nubo Coomer, 8 W.R. 96—506.
 Shyama v. Fakir, 101 s.c., 45—301, 541.
 Shyam Chand v. Bhangal Del, 23 I.C. 777—371.
 Shyam Charan v. Akhoy, 3 C.L.J. 627—783.
 Shyama Churn v. Debendra Nath, 4 C.W.N. 269, 27 Cal. 484—740.
 Shyama Churn v. Jogesh Chandra, 16 C.W.N. 774—430, 709, 716.
 Shyama Charan v. Mokhuda, 15 C.W.N. 706 ; s.c., 13 C.L.J. 293—190,
 192, 788.
 Shyama Charan v. Mustafizar Rahaman, 41 I.C. 769—364.
 Shyama Charan v. Sham Molla, 1 C.W.N. 415—939.
 Shyama Soonduree v. Mallyut Mundal, 11 W.R. 101—676.
 Shyama Chandra v. Secretary of State, 12 C.W.N. 569—948.
 Sibakumari v. Shoshi Ghosain, 46 C.L.J. 555—630.

TABLE OF CASES

- Shyam Sundar v. Gobardhan, 7 Pat. 129—990.
 Sibnarain v. Baikuntha, 11 C.W.N. 857—393, 680, 686, 700.
 Sibnarayan v. Bhutnath, 22 C.W.N. 422—47, 164, 177, 338, 543.
 Sibo Jelya v. Gopal Chandra, 19 W.R. 200—141.
 Sibosundari v. Rajmohan, 8 C.W.N. 214—175, 184, 186, 509, 515.
 Sibsuhai v. Bejoy Chand, 5 Pat. 157, s.c., 7 P.L.T. 375—331, 343.
 Sibusant v. Nitai Charan, 15 C.L.J. 114—727, 930.
 Singaram Coal Syndicate v. Indra Nath, 10 C.W.N. 173—210.
 Singheswar v. Parbal, 103 I.C. 471—280, 283, 543.
 Sipernnessa v. Ramdeb, 24 C.W.N. 117—482.
 Sita Kant v. Bipradas, 27 C.L.J. 556—901.
 Sital Chandra v. Manik Chandra, 13 C.W.N. 60, s.c., 9 C.L.J. 331—709.
 Sital Chandra v. Parbati, 35 C.L.J. 1—796.
 Sital Chandra v. Sheikh Afiuddin, 13 C.W.N. 793—738.
 Sital Das v. Pertab Chundra, 11 C.L.J. 2—710.
 Sital Prasad v. Nawab Dildar, 1 Pat. L.J.I.—110.
 Sital Rai v. Dubal Nagesia, 6 C.L.J. 218—164, 950.
 Sital Rai v. Nanda Lal, 13 C.W.N. 591, s.c., 11 C.L.J. 202—741, 858, 861.
 Sitanath v. Atmaram, 4 C.W.N. 571—46, 183, 383, 776, 782.
 Sitanath v. Basudev, 2 C.L.J. 540—275, 406, 958.
 Sitanath v. Harinarain, 21 C.L.J. 644—145, 263, 658.
 Sita Nath v. Kartick, 8 C.W.N. 434—29, 734.
 Sitanath v. Pelaram, 21 Cal. 869—160, 935.
 Sitanath v. Shamchand, 17 W.R. 418—337.
 Sivadas v. Birendra Krishna, 41 C.L.J. 330—246, 334.
 Smith v. Raleigh, (1914) 3 Camp 513—38.
 S. M. Meherunnissa v. Sham Sundar, 6 C.W.N. 834—377.
 Sobha Ram v. Moheswar Sarma, 13 C.W.N. 100—863.
 Sobhan Baksh v. Birendra Kiron, 22 C.L.J. 144—545.
 Sobut Ali v. Abbas Ali, 3 C.W.N. 151—255.
 Soman Gope v. Raghubar, 24 Cal. 160 ; 1 C.W.N. 223—209, 210, 266.
 Samir Jama v. Mahabharat Raktu, 16 C.W.N. 777—783, 787.
 Sonatan v. Chaka Sheikh, 10 C.L.J. 89—990.
 Sonaula v. Bhagabati Debya, 28 C.L.J. 144—222.
 Sonet Kooer v. Himmur, 1 Cal. 391—115, 215.
 Sonnum v. Sookool, 7 W.R. 453—439.
 Sooharam v. Doorga Charan, 5 C.L.J. 264—785, 790, 802, 810.
 Soora Soondare v. Golam Oli, 19 W.R. 141—90, 95.
 Soorjimonney v. Saddanand, 20 W.R. 377—615.
 Soshi Bhusan v. Mahadeb, 2 C.W.N. 499—119.
 Soudamini v. Secretary of State, 50 Cal. 822—885.
 Souravy Namasudrani v. Nabadip Chandra, (unreported S.A. No. 1116 of 1900)—98, 778.
 Sourendra v. Rajendra Nath, 22 C.W.N. 660—909.
 Sourindramohon v. Sournamoyee, 26 Cal. 103 ; 3 C.W.N. 38—379, 383.
 Spoor v. Green, L.R. 9 Each 99—57.
 Sreechand v. Budhoo, 13 W.R. 501—App. (116).
 Sreekanta v. Itshad Ali, 16 C.L.J. 225—324, 440.
 Sreemant v. Kookoor Chand, 15 W.R. 481—810.
 Sreemutty Altub Bibee v. Jugal Mundul, 25 W.R. 234—316.
 Sreemati Jogemaya v. Girindranath, 4 C.W.N. 590—129, 394.
 Sreemati Zlfun v. Radhika, 3 Cal. 560, s.c., 1 C.L.J. 388—78.
 Sreenath v. Dwari Dhalie—5, 45.
 Sreenath v. Hurnath, 18 W.R. 240—376.
 Sreenath v. Kasor Sheikh, 18 C.W.N. 110—720.

Donated By:-

Mr. Jalim Ullah Fakmi

- Sreenath *v.* Mohes Chandra, 13 C.L.J. 553—489.
 Sreenath *v.* Haranath, 18 W.R. 240—772.
 Sreenath *v.* Secretary of State, 11 C.L.J. 158—608, 645.
 Sreeram *v.* Guroodas, 3 C.W.N. civ (104 notes)—842.
 Sreeram *v.* Nagendra, 82 I.C. 958—181.
 Sreesh Chandra *v.* Madhab Mochee, (1857) S.D.A. 1772—912.
 Sreestidhar *v.* Durga Narain, 17 W.R. 462—408.
 Sridhar *v.* Rameshwar, 15 Cal. 166—370, 978.
 Srihari *v.* Khittish, 1 C.W.N. 509—App. (117).
 Srikant *v.* Jogsha, 9 L.R. 3 Pat. 818—109.
 Srikant *v.* Sarodakant, 26 Cal. 46—465.
 Srikishun *v.* Jeohasi, 45 I.C. 294—484, 485.
 Srikishun *v.* Sheobalak, 44 I.C. 638—227.
 Srimanta *v.* Mahadeo, 31 Cal. 551—3, 4, 379, 380, 383, 775, 778.
 Srimanta Kumar *v.* Sabar Ali, 52 I.C. 702—878.
 Srimati Moharani *v.* Harendralal, 1 C.W.N. 458—394.
 Srimati Moni *v.* Kalachand, 9 C.W.N. 871—36.
 Srimati Nissa' Debi *v.* Radhakisore, 11 C.W.N. 312—194, 195.
 Srinarain *v.* Bhutnath, 22 C.W.N. 422—684.
 Srinarain *v.* Luchmeshwar, 6 C.W.N. 562—759.
 Srinarain *v.* Maharaja Rameswar, 6 C.W.N. 592—341.
 Srinarain *v.* Ram Sahi, 13 C.W.N. cclxxvi (276 notes)—874.
 Srinath *v.* Maharaja Pratap, 28 C.W.N. 145 (P.C.)—556.
 Srinibas *v.* Ram Chandra, 14 C.L.J. 146—329, 590.
 Srinibush *v.* Ram Raj, 18 C.W.N. 598—337, 885.
 Srinivasa *v.* Ayyathoral, 21 Mad. 416—850, 859.
 Srinivasa *v.* Marthessami, 24 Mad. 246—39.
 Srinivasa *v.* Pickakaran, 29 Mad. 184—710.
 Sripati *v.* Kalachand, 1 C.W.N. 178 (notes)—730.
 Sripati *v.* Palavo, 11 C.L.J. 86—854.
 Sriprati Sarkar *v.* Harikar, 9 C.L.J. 109—677.
 Sriram *v.* Harinarayan, 33 Cal. 54—56.
 Sriram *v.* Hriday, 29 C.L.J. 461, 595.
 Sris Chandra *v.* Jadu Nath, 45 I.C. 532—417.
 Siris Chandra *v.* Nasim Quazi (F.B.) 4 C.W.N. 357, s.c., 29 Cal. 827—3, 45, 383, 737, 773, 984.
 Sristidhar *v.* Madan Sardur, 9 Cal. 941—180, 276.
 Stalt Kart *v.* Gurudas, 21 Cal. 370.
 Starter *v.* Hersh, 1 K.B. 438 ; 91 L.J.K.B. 263 : 126 L.T. 346—753.
 Stokes *v.* Cooper, (1814) 3 Camp 514n—34, 38.
 Stonewigg *v.* Dwarkanath, 45 I.C. 161.
 Stonewigg *v.* Ramessur, A.I.R. 1923 Pat. 340—207.
 Stonewigg *v.* Sheo Rachhaya, 35 I.C. 622—74, 149.
 Strong *v.* Stringer, 42 L.T. 359, s.c., 44 T. P. 457—753.
 Subadini *v.* Durga Charan, 4 C.W.N. 790—751.
 Subasini *v.* Raj Krishna, 23 C.W.N. 27 (notes)—398.
 Subbo Chunder *v.* Woomanund, 11 W.R. 412—447.
 Subh Narain *v.* Goroke, 3 C.W.N. 334—859.
 Subh Narain *v.* Kumar, 2 C.W.N. ccxliii—859.
 Subharaya *v.* Krishna, 6 Mad. 159—110, 211.
 Subodhini *v.* Cunmr Ganada, 14 Cal. 400—658.
 Suchand *v.* Baloram, 30 Cal. 1—394, 862.
 Sudamund *v.* Nowrutton, 16 W.R. 289—114.
 Sudhanya *v.* Basanta Kumar, 49 Cal. 538, s.c., 34 C.L.J. 579, s.c., 46 C.W.N. 96—731, 732.

- Sudhmukta v. Ramgati, 120 W.R. 419—306.
 Sudhanya Kumar v. Saik Ismail, 29 C.W.N. 733—218, 228, 273, 924, 958.
 Sudhaundu v. Gopal, 32 Cal. 518—547.
 Suduman Jamadar v. Behari Mahtoi, 15 C.W.N. 953—197, 433, 435.
 Sujjad Ahmed v. Ganga Charan, 9 C.W.N. 460—102, 495.
 Sujanddin v. Jadu Nath, 18 C.L.J. 167 (notes)—100, 244.
 Sujauddin v. Reajuddin, 27 Cal. 415—859.
 Sukam Sahoo v. Karu Mahta, 5 Pat.L.J. 87—663.
 Sukchand v. Giridhari Das, 44 C.L.J. 127—834.
 Sukhoda v. Sasi, 17 C.W.N. 132 (notes)—158.
 Sukhlal v. Prosanna Kumar, 44 C.L.J. 302—918.
 Sukhraj v. Ganga Dayal, 6 Pat.L.J. 665—246, 334.
 Sukumari v. Bharat Mondal, 20 C.L.J. 148—118, 370, 720.
 Sukumari v. Kinu, 46 C.L.J. 250—323.
 Sukraj v. Lal Bahadur, 29 C.L.J. 243—236, 329.
 Sukurulla v. Bama Sundari, 1 C.W.N. 363.
 Sulatu v. Jadunath, 8 C.W.N. 774—82, 93, 494.
 Sultan Khan v. Radha Krishna, 4 C.L.J. 500—379.
 Sumbhoo Lall v. Collector of Surat (unreported S. A. 44 of 1912)—442.
 Sumera v. Babu Gopal Lall, 1 W.R. 58—417.
 Sumeroodin v. Huronath, 2 W.R. Act X 93—303.
 Sumitra Bewa v. Gopal Chandra, (unreported S.A. 2237 of 1911)—463.
 Sumutra Khatoon v. Gopal Lal, 1 W.R. 58—232.
 Sundar v. Parbutty, 16 I.C. 186—461.
 Sundar Das v. Charitter, 1 C.W.N. 163 (notes)—361.
 Sundar Mall v. Laddhuram, A.I.R. 1924 Cal. 240—317.
 Suker Singh v. Huree Mohan, 22 W.R. 460—407.
 Superintendent and Remembrancer of Legal Affairs v. Kojal Howladar, 62 I.C. 187—669.
 Suraj Deo v. Panchhnarain, 2 Pat. L. J. 225—182, 490.
 Suraj Deo v. Partap, 2 Pat. 739—185, 475.
 Suraj Prasad v. Kara Singh, 4 Pat.L.J. 325—421, 426.
 Sarat Lal v. Muralidhar, 4 Pat.L.J. 362—797, 813.
 Surbo Lal v. J. M. Wilson, 33 Cal. 682—380, 486, 777.
 Surendra v. Hari Mohon, 9 C.W.N. 87—8, 10, 209.
 Surendra v. Kali Kant, 14 C.W.N. 207 (notes)—36.
 Surendra v. Lakshan, 87 I.C. 744—842.
 Surendra Krishna Ray Chowdhury v. Abbas Ali, 85 I.C. 760—739.
 Surendra Krishna v. Pearymohun, 41 I.C. 698—604.
 Surendra Mohon v. Bansidhar, 12 C.W.N. 114—390, 812.
 Surendra Mohon v. Surnamoyi, 26 Cal. 103—216.
 Surendra Narain v. Bejoy Singh, 52 Cal. 656—12.
 Surendra Narain v. Bhari Lall, 22 Cal. 752—48, 757.
 Surendra Narain v. Dinanath, 43 Cal. 554—41, 337, App. (116).
 Surendra Narain v. Gopi Sundari, 9 C.W.N. 924—387.
 Surendra Narain v. Joynath, 1 C.W.N. 140 (notes)—362.
 Surendra Narain v. Jugul Kisor, 20 C.W.N. 849—199, 835.
 Surendra Narain v. Lachmi Koer, 43 Cal. 100—848.
 Surendra Narain v. Souravini, 10 C.W.N. 535—407.
 Surendra Nath v. Brojonath, 13 Cal. 352—941.
 Surendra Nath v. Dinabandhu, 13 C.W.N. 595—287, 465.
 Surendra Nath v. Dawarka Nath, 44 Cal. 119, s.c., 21 C.W.N. 530—75.
 Surendra Nath v. Jobedali, 25 I.C. 747—768.
 Surendra Nath v. Nakoore Chandra, 64 I.C. 716—450, 915.
 Surendra Nath v. Rajendra Chandra, 27 C.L.J. 289—897.

- Surendra Nath *v.* Tincourie, 20 Cal. 247—119, 122, 123.
 Suresh *v.* Madhub (1857) S.D.A. 772—911.
 Suresh Chandra *v.* Silaram, 57 I.C. 126—543.
 Suresh Chandra *v.* Srimati Nisa Bibi, 11 C.L.J. 433—482.
 Surja Kant *v.* Banerwar, 24 Cal. 521—300, 327, 352, 354.
 Surja Kant *v.* Hemanta Kumari, 16 Cal. 706, 5 C.L.J. 87 (notes)—100, 127, 365.
 Surja Kant *v.* Hemanta Kumari, 20 Cal. 498—231.
 Surja Kant *v.* Sarat Chandra, 20 C.L.J. 563—798, 803.
 Surja Kant *v.* Sarat Chandra, 18 C.W.N. 1281 (P.C.)—803.
 Surja Narain *v.* Nanda Lal, 22 Cal. 212—153.
 Surja Prasad *v.* Midnapur Zemindari Co., 38 C.L.J. 372—86, 97, 99, 233.
 Surnomoyi *v.* Burnomoyi Chowdhurani, 23 Cal. 61—937.
 Surnomoyee *v.* Dina Nath Gir, 1883, I.L.R. 9 Cal. 908—48, 756, 757.
 Surnamoyil *v.* Jahar Mahomed, 10 C.L.R. 545—311.
 Surnomoyee *v.* Pares Narain, 4 Cal. 576—874.
 Surnomoyee *v.* Sateesh Chunder, 10 M.I.A. 123, s.c., 2 W.R. (P.C.)—810.
 Surnomoyee *v.* Shosheemukhi, 11 W.R. 5 (P.C.), s.c., 12 M.I.A. 244, s.c., 2 B.L.R. 10 (P.C.), 12 Moo 244—346.
 Surrapati *v.* Ramnarayan, 50 Cal. 680, s.c., 73 I.C. 293—116.
 Suryya Kumar *v.* Ratan Choura, 31 C.W.N. 450—233.
 Susila *v.* Nitharani, 21 C.W.N. 108 (Notes)—392.
 Susil Kumar *v.* Rajani Kanta, 31 C.W.N. 990—34, 339.
 Susila Sundari *v.* Tarak, 97 I.C. 489—125.
 Sutto Churan *v.* Obhoy Nund, 2 W.R. Act X, 33—342.
 Swarna Kumar *v.* Pralhad, 26 C.W.N. 874—879.
 Swarna Moyi *v.* Gayratulla, 21 C.W.N. 103 (notes)—61, 171, 182.
 Swarna Moyee *v.* Haridas, 6 C.W.N. 903—391.
 Swarnamoyi *v.* Sourindranath, 42 C.L.J. 14—404.
 Symlal *v.* Brindaban, 72 I.C., 655—739.
 Syam Mandal *v.* Sati Nath, 21 C.W.N. 776—213, 408, 752, 753, 754.
 Syed Abdulla *v.* Hurkishen, 2 C.L.J. 490—421, 426, 689.
 Syed Ajam Sahib *v.* Madura, 21 Mad. L.J. 202—29.
 Syed Ali *v.* Nawabali, 11 C.W.N. 143—934, 941.
 Syed Gholam *v.* Khairam, 31 Cal. 786—934, 940.
 Syed Golam *v.* Lala Dwki, 6 C.L.J. 472—364.
 Syed Hussan *v.* Gobind Lal, 9 C.W.N. 141—7, 20, 63, 141, 147, 151.
 Syed Khalilur *v.* Rupan, 13 C.W.N. 436—659, 661, 664.
 Syed Kutubali *v.* Azibulla, 7 C.W.N. 905—435.
 Syed Latif *v.* Basdeo, 20 C.W.N. 1177.
 Syed Mohammad *v.* Khana Gazi, 32 C.W.N. 84 (notes)—694.
 Syed Mohommed *v.* Ram Narain, 7 C.L.J. 90—51.
 Syed Mohsenuddin *v.* Baikuntha, 48 Cal. 605, 25 C.W.N. 29—473.
 Syed Muhammad Amirul *v.* Syed Muhammad Jewad, 44 I.C. 769—84.
 Syed Nawabali *v.* Hemanta Kumari, 8 C.W.N. 117—80, 82, 773, 812, 845.
 Syed Shah Nazaruddin *v.* Zahid Hossin, 8 C.L.J. 300—367.
 Syed Serapat *v.* Tarini Prasad, 11 C.W.N. 141—128, 363, 366.
 Syed Sha *v.* S. Zahid, 8 C.L.J. 300—778.
 Syed Surdar *v.* Amzad Ali, 7 Cal. 903—70.
 Syedunnessa Khatum *v.* Amiruddin, 45 Cal. 294—4, 386.

T

- Taharat Karim *v.* Balkuar, 64 I.C. 515—686.
 Taher Mondal *v.* Tarfdi Gharami, 20 C.W.N. 661—750.

- Tajuddin *v.* Ram Pershad, 1 All. 217—5, 45, 423.
 Tamijannessa Khalun *v.* Purna Chandra, 47 C.L.J. 66—747.
 Tamiranessa *v.* Kachimar Bibi, 32 C.W.N. 98—843.
 Tamijuddi *v.* Ashgar Howladar, 36 Cal. 256, s.c., 13 C.W.N. 183—462,
 463, 464, 492.
 Tamasha Bibi *v.* Asutosh, 4 C.W.N. 513—64, 304, 305, 945.
 Tamay *v.* Temps, 7 Bom. 262—211.
 Tamizuddin *v.* Khoda Nawaz, 16 C.L.J. 16—789, 795, 800, 801.
 Tapanidhi *v.* Pitambar, 5 C.L.J. 67—533, 563, 641.
 Taracharan *v.* Ameer Mondul, 22 W.R. 394—31.
 Tara Charan *v.* Paresh Chandra, 14 C.L.J. 116—368.
 Taradas *v.* Ram Doyal, 2 C.W.N. 125—281, App. (105).
 Tarak Chandra *v.* Prasanna Kumar, 28 C.W.N. 679, s.c., 39 C.L.J. 389
 —310.
 Tarak Das *v.* Harish Chandra, 16 C.L.J. 548, s.c., 17 C.W.N. 163—832, 834.
 Tarakishore *v.* Nobin Chunder, 21 C.L.J. 637—803.
 Tarakumar *v.* Arun, 38 C.L.J. 389—307.
 Taramonee *v.* Sheikh Elim, 92 s.c., 714, s.c., A.I.R. 1926 Cal. 582—594.
 Taramonee *v.* Kali Churn, 1864 W.R. Act X p. 14—355.
 Taran Chandra *v.* Ganendra, 16 C.W.N. 235—32, 207, 333.
 Taranath *v.* Iswar Chandra, 16 C.W.N. 398, s.c., 14 C.L.J. 598—81, 147,
 986.
 Tarapada *v.* Shyama Charan, 8 C.L.R. 50—51.
 Tarapershad *v.* Soorja Kant, 15 W.R. 152—146.
 Tarap Sheikh *v.* Kunja Behari, 44 C.L.J. 191—38.
 Tarasanker *v.* Basiraddi, 19 C.W.N. 970, s.c., 22 C.L.J. 589—747.
 Tareenee Pershad *v.* Kale Churn, Mars. 215—683.
 Tarini Chandra *v.* Bishen Chand, 22 C.W.N. 505—786.
 Tarini Charan *v.* Chandra Kumar, 14 C.W.N. 788—128, 742.
 Tarini Charan *v.* Sambhoo Nath, 3 W.R. 139—677.
 Tarini Pershad *v.* Narayan Kumari, 17 Cal. 301—377, 777.
 Tarini Singh *v.* Satnarain, 6 P.L.T. 787—76, 458.
 Tarip Dafadar *v.* Khotijunnessa, 10 C.W.N. 981—595, 726.
 Taruk Chandra *v.* Modhoosudan, 5 W.R. Act X 80—94, 96.
 Taylor *v.* Paldwell, (1863) 3 B. & S. 826—5.
 Tejchandra *v.* Sarikant, 3 M.I.A. 261, s.c., 6 W.R. 48—109.
 Tejendra Narain *v.* Bakai Singh, 22 Cal. 659—226, 263, 264, 785.
 Tekait *v.* Darshan, I.L.R. 3 Pat. 403—23.
 Telam Pramanick *v.* Adu Sheikh, 17 C.W.N. 468—283, 462, 868.
 Telemán *v.* Portfury, 7 O.B. 344, s.c., 41 L.J. Q.B. 98—753.
 Tepe Khan *v.* Rajani Mohon, 25 Cal. 522 (F.B.)—403, 941.
 Tepe Muhammad *v.* Tefayet, 19 C.W.N. 772—78, App. (116).
 Thakamoni *v.* Mohendra, 10 C.L.J. 463—998, 999.
 Thakooranee *v.* Bissheesur, 3 W.R. 29—43.
 Thakoor Das *v.* Nobin Kishen, 15 W.R. 552—798.
 Thakoo Ghunde *v.* Ramdhone, 6 W.R. 228—212.
 Thakur Baronha *v.* Jeeban Ram, 42 Cal. 590—786.
 Thakur Magundeo *v.* Thakur Mahadeo, 18 C.W.N. 647—685.
 Thakur Singh *v.* Pardip Singh, 2 Pat. L.J. 183—427.
 Thamal Marap *v.* Rani Abhoyossuri, 13 C.W.N. 1060—408.
 Thamasha Bibi *v.* Mathuranath, 6 C.W.N. 67—App. (4).
 The Collector of 24 Parganas *v.* Joy Narain, W.R. Spl. No. p. 17—793.
 Thomas Barclay *v.* Syed Hossin, 6 C.L.J. 601—199, 432, 834, 840.
 Thomas Savi *v.* Panchanon, 25 W.R. 503—153.
 Tilakdhari *v.* Chaturgan, I.L.R. 3 Pat. 266—87, 272, 277.

- Tilakdhari v. Chaturgan, [1924 Pat.] 4—87.
 Tilakdhari v. Chulhan, 17 Cal. 131—445.
 Tiluk Chandra v. Jasodakumar, 11 C.W.N. 215—414, 872.
 Tincowri v. Satya Niranjan, 19 C.L.J. 263, s.c., 18 C.W.N. 158—367, 906.
 Tinkari Bose v. Nagendraprasad, 27 C.W.N. 716—706.
 Tirmal Rao v. Syed Dastaghiiri, 22 Mad. 286—855.
 Tirthabasi v. Purna Chandra, 15 C.L.J. 501, s.c., 16 C.W.N. 558—721, 722.
 Tirthanund Thakoor v. Hardu Jha, 9 Cal. 252—304.
 Tirthanund Thakoor v. Mutty Lal, 3 Cal. 774—193, 490.
 Tituram v. Cohen, 2 C.L.J. 408—56.
 Tokhon Singh v. Girivar Singh, 32 Cal. 494—393.
 Toki Sahu v. Tori Munda, 13 C.W.N. 111—559.
 Tomaya v. Jimaha Ganjaya, 7 Bom. 262—110.
 Tomizaddin v. Ashrub Ali, 8 C.W.N. 446, s.c., 31 Cal. 647—493, 986.
 Topa Lal Das v. T. W. Partridge, I.L.R. 4 Pat. 285—373.
 Toree Mohomed v. Mahomed Mahbood, 6 Cal. 730—927, 1000.
 Trailoya v. McLeod, 28 Cal. 28—604, 609, 638.
 Trailokya Mohini v. Kaliprasanna, 11 C.W.N. 380—722.
 Trailokyanath v. Durganath, 46 I.C. 686—521.
 Troilokya v. Secretary of State, 17 C.L.J. 426—574.
 Troilokya Tarini v. Mohima Chandra, 7 W.R. 400—687.
 Tribeni v. Bhagwat, 34 Cal. 1037—700.
 Trimbak v. Ram Chandra, 23 Bom. 723—856.
 Tripura Sundari v. Juggernath, 24 W.R. 321—113, 869.
 Troyucho v. Mahima Chunder, 7 W.R. 400—43.
 Tulsi Mahton v. Jhañdoo Panday, 2 Pat. L.J. 188—557.
 Tulsi Panday v. Bucha Lall, 9 Cal. 596 (F.B.), s.c., 12 C.L.R. 223—739.
 Tulsi Pershad v. Ram Narain, 12 Cal. 117—876, 877.
 Tupsee v. Ramesurum, 15 Cal. 376—142, 150.
 Turof Sahib v. Esuf, 30 Mad. 322—29.
 Turquand v. Board of Trade, L.R. 11 App. 286—2.
 Tweedie v. Atkinson, 1 B.L.S. 393—533.
 Tweedie v. Joges Chandra, 51 I.C. 999—519.
 Tweedie v. Ramnarain, 9 W.R. 151—504.

U

- Uday v. Mahomed Ali, 65 I.C. 589—301.
 Uday Chand v. Jang Bahadur, 40 I.C. 500—659.
 Uday Chandra v. Haridas, 13 C.W.N. 937, s.c., 10 C.L.J. 608—214, 262.
 Uday Chandra v. Nripendra Narayan, 36 Cal. 287—59, 89, 306, 491.
 Uday Kumar v. Katyani, 35 C.L.J. 292—800.
 Uday Kumari v. Hari Ram, 28 Cal. 493—896.
 Uday Pratap v. Jagat Mohon, 6 Pat. 638—58.
 Uday Pratap v. Jagatmohon, 9 P.L.T. 25—913.
 Udit Singh v. Kashiram, 14 All. 185—43.
 Ugra Lal v. Radha Prasad, 18 Cal. 255—855.
 Ugramohon v. Bedeshi, 5 C.W.N. 360—129, 367.
 Ujalbi Bibi v. Umakant, 9 C.W.N. 32—941.
 Ulfat Hassain v. Gagni Dassi, 36 Cal. 802—153.
 Uma Charan v. Bijari Bewa, 15 Cal. 177 (F.B.)—683, 913.
 Uma Charan v. Lakshmi Narayan, 98 I.C. 498—577.
 Uma Charan v. Mjdnapur Zemindari Co., 20 C.L.J. 11, s.c., 19 C.W.N. 270—376, 772.
 Uma Charan v. Moniram, 8 C.W.N. 192—141, 152, 725.

- Uma Charan *v.* Narendra Nath, 33 Cal. 273—23, 31.
 Uma Singh *v.* Tarini Prasad, 19 C.L.J. 451—327, 342, 343.
 Uma Soondury *v.* Brojonath, 16 Cal. 347—19, 705.
 Uma Sunkar *v.* Tarini Chandra, 9 Cal. 571—336.
 Umatul *v.* Kulsoom, 35 Cal. 120—364.
 Umatul *v.* Nemai, 6 C.L.J. 952—838.
 Umed Ali *v.* Nawab Khaja Habibulla, 31 C.L.J. 68, s.c., 47 Cal. 266.
 . 311, 343.
 Umedulla *v.* Ramchandra, 14 C.W.N. 812—73, 532, 536, 542, 606, 611, 959
 Umesh Chander *v.* Adarmani, 15 Cal. 221—982.
 Uma Chandra *v.* Bepin Behari, 97 I.C. 546—305.
 Umesh Chandra *v.* Joynath, 22 C.W.N. 474—172, 195, 204.
 Umesh Chandra *v.* Matilal, 39 C.L.J. 431—337.
 Umesh Chandra *v.* Nasir, 14 Cal. 203—932.
 Umrao Bibi *v.* Syed Mahomed, 27 Cal. 205—7, 11, 77, 99, 538, 983.
 Umide Rajahan *v.* Pemmasamy, 7 M.I.A. 128—912.
 Unnopurna *v.* Oomachuron, 18 W.R. 55—178.
 Upadhay Thakur *v.* Pershidh Singh, 23 Cal. 723—615, 633.
 Upendra *v.* Ismail, 32 Cal. 41—52, 55.
 Upendra *v.* Pratap, 8 C.W.N. 320—78, App. (115).
 Upendra *v.* Pratap, 8 Cal. 703—901.
 Upendra *v.* Ramnath, 33 Cal. 630—153, 901.
 Upendra *v.* Shamlal, 34 Cal. 1020—595.
 Upendra Chandra *v.* Sheikh Sobhan, 15 C.L.J. 6—501.
 Upendra Kumar *v.* Sham Lal, 11 C.W.N. 1100—341, App. (117).
 Upendra Lal *v.* Joges Chandra, 22 C.W.N. 275—96, 99.
 Upendra Lal *v.* Mehraj Bibi, 21 C.W.N. 112—438, 439, 872.
 Upendra Nath *v.* Anath Bandhu, 52 I.C. 406—545, 582, 599.
 Upendra Nath *v.* Dwarkanath, 22 C.W.N. 322—302, 306, 309.
 Upendra Nath *v.* Gopicharan, 22 C.W.N. 321—302, 306, 309.
 Upendra Nath *v.* Jamini Mohan, 18 C.W.N. 268—582, 588, 598, 603, 960.
 Upendra Nath *v.* Taraprasanna, 30 Cal. 794—837.
 Upton *v.* Townend, 17 C. B. 30—35.
 Urjoon Dutt *v.* Ramnath, 21 W.R. 123—493.
 Uttim Sahu *v.* Abzani, 26 I.C. 229—695.
 Uzir Ali *v.* Ram Komal, 15 Cal. 383—19, 849.

V

- Veera Samy *v.* Liladhari, 8 Mad. 110—861.
 Venkata *v.* Krishna Bhatta, 81 I.C. 1006—108, 112.
 Venkata *v.* Sobhanadri, 10 C.W.N. 161—912.
 Venkayya *v.* Ramasami, 22 Mad. 39—209.
 Vyankataraya *v.* Shiormbhat, 7 Bom. 256—114.

W

- Wahid Ali *v.* Rehat Ali, 12 C.W.N. 1029—785, 790, 810.
 Wahid *v.* Mahammad Ansar, 47 I.C. 147—195, 479.
 Wajibunnissa *v.* Babulal, 5 Pat. 46—269, 371.
 Wajuddi Pramanik *v.* Balaki Moral, 30 C.W.N. 63—726, 731, 732, 736.
 Walsh *v.* Lonsdale, L.R. 21 Ch. D. 9—118.
 Walter *v.* Yalden, L.R. 2 K.B. 804—471.
 Walerton *v.* Baker, L.R. 3 Q.B. 173—853.
 Watson *v.* Nistarini, 10 Cal. 544—336, 338.

- Watson *v.* Sreekristo, 21 Cal. 132—45, 345, 419, 727, 728.
 Watson & Co. *v.* Chota Jhora, Mash 80—308.
 Watson & Ca. *v.* Dhondra, 3 Cal. 6—346, 983.
 Watson & Co. *v.* Ranee Shurut Soondaree, 7 W.R. 395—145, 687.
 Watson & Co. *v.* Sham Lall, 15 Cal. 8—226.
 Wazir Ali *v.* Mahimunnissa, 43 I.C. 777, s.c., 4 Pat. L.W. 72—729.
 W. H. Broncke *v.* Panch Rani Chhatar Kumari, 1925 Pat. 89—438.
 Whitmore *v.* Humphries, L.R. 7 P.C. 1—333.
 Whitham *v.* Kershaw, 16 Q.B.D. 613—451.
 William Grant *v.* Robinson, 11 C.W.N. 242—52.
 William Love *v.* Ainsworth, 22 W.R. 336—489.
 William Rekha *v.* Ram Rekha, 14 C.L.J. 110—867.
 Williams *v.* Bertholemew, 1 B.L.R. 326—41.
 Williams *v.* Earle, L.R. 3 Q.B. 739—110.
 Williamson *v.* Wootten, 3 Drew, 210—57.
 Winterscale *v.* Sarat Chandra, 8 C.W.N. 155—52, 55.
 Woman Hari *v.* Hari Vithal, 31 Bom. 128—416, 444.
 Wood *v.* Reily, L.R. 3 C.P. 26—880.
 Wooma Charan *v.* Huree Prasad, 10 C.W.N. 101—350, 372.
 Wooma Churan *v.* Rajluckee, 25 Cal. 19—487.
 Woomakant *v.* Gopal Singh, 2 W.R. Act X 19—141.
 Woomesh *v.* Baroda, 28 Cal. 17—443, App. (119).
 Woomesh Chander *v.* Bama Dassi, 7 W.R. 15—355.
 Woomesh Chandra *v.* Raj Narain, 10 W.R. 15—153, 335, 798.
 Woomesh Chunder *v.* Surjukant, 5 Cal. 713—349.
 W. M. Grant *v.* Eklal Jha, 67 I.C. 49—229.
 W. M. Grant *v.* Harshai Singh, 18 C.L.J. 76—303.
 W. M. Grant *v.* Ram Rekha, 14 C.L.J. 110—484, 632.
 W. W. Broncke *v.* Chhatar Kumari, 4 Pat. 404—438.
 Wyatt *v.* Sheogobind, 1 Pat. L. J. 414—433, 434, 485, 488.

Y

- Yerokola *v.* Mudiya Kamadu, 4 I.C. 34—710.
 Young *v.* Adams, (1898) A.C. 469—3.
 Yukub Ali *v.* Meajan, 43 Cal. 164—161, 277.
 Yukub Ali *v.* Raj Kumar, 65 I.C. 527—93, 555.
 Yusuf Guzi *v.* Asmat Molla, 17 C.W.N. 440, s.c., 16 C.L.J. 131—960, App. (106).

Z

- Zamin Mandal *v.* Gopi Sundari, 32 Cal. 463 (note)—887.
 Zamir Munshi *v.* Bisseswari, 25 C.L.J. 480—471.
 Zemindar of Virnagram *v.* Behara, 35 Mad. 507—983.
 Zukheroddin *v.* Campbell, 4 W.R. 3 Rul 57—201, 339.
-

13. TERRITORIES UNDER THE ADMINISTRATION OF THE LIEUTENANT-GOVERNOR OF BENGAL :

14. SAVINGS FOR SPECIAL ENACTMENTS :

Bengal
Tenancy Act
not a com-
plete Code.

I. Bengal Tenancy Act not a complete Code :—The Bengal Tenancy Act is not a complete Code: *Chandra Binode v. Sheikh Ala Bux*, 48 Cal. 184, (*Special Bench*), 24 C.W.N. 818 at p. 848, s. c., 31 C.L.J. 510. See also *Kripa Sindhu v. Annada*, 35 Cal. 34 (F.B.), s. c. 11 C.W.N. 983, s. c. 6 C.L.J. 272. It does not profess to incorporate the general principles of the law of contract, and the doctrines of equity jurisprudence in so far as they may have to be applied in the determination of disputes between landlords and tenants; 44 Cal. 771; s. c. 20 C.W.N. 1340; s. c. 24 C.L.J. 541 (*Mookerjee and Cuming, JJ.*).

Preamble
indicates
the general
scope of
the Act.

Entire law
of landlord
and tenant
has not been
amended.

2. Amend and Consolidate certain enactments :—“.....the preamble of the Bengal Tenancy Act, which may be referred to as indicating its general scope [See Maxwell on the Interpretation of Statutes, 3rd edition p. 59, and *Turquand v. Board of Trade*, L.R. 11 App. Cas. 286] shows that the Act is intended to amend and consolidate, not the entire law of landlord and tenant, but only certain enactments relating to that law. The old law (see Act X of 1859, secs. 105 and 108, and Act VIII of 1869 B. C., secs. 59 and 64) contained provisions for the execution of rent-decrees obtained by co-sharer landlords for their separate shares of the rent as well as those obtained by all the joint-landlords acting in concert. But the Bengal Tenancy Act* contains provisions only in respect of rent-decrees of the latter sort.....” Per BANERJEE, J., (MACLEAN, C. J., concurring) in *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763 (at p. 766).† The preamble of an Act cannot be made use of to control the enactments themselves when they are expressed in clear and unambiguous terms: *Powell v. Kempton Park Race Course Co.*, [1889] A.C. 143, see *Nepra v. Sajer*, 31 C.W.N. 128 (notes), s. c., 103 I.C. 662 (*Per Mitter, J., Panton, J., agreeing*).

Design of
the Act—
Observa-
tions of
Jenkins,
C. J.

“It was not the design of the Act, as I understand it, to deprive a tenant of the rights that he otherwise possesses against a third person between whom and himself there was no relationship of landlord and tenant. It was only intended to deal with such rights as existed between landlord and tenant”: (*Per Jenkins C.J., N. R. Chatterjea, J., agreeing*, 4 April, 1915): *Krishna Chandra v. Satish Chandra*, 20 C.W.N. 872; see notes under sch. III art 3.

Patna High
Court bound
to interpret
Bengal
Tenancy Act
according to
the Calcutta
High Court

3. Interpretation and Construction of the Act: Duty of Patna High Court :—By the *Cursus Curia* of judicial authority laid down by the Calcutta High Court, the Patna High Court is bound, in cases where the facts are in *para materia* with such current of authority and more specially so in interpreting and construing an Act such as the Bengal Tenancy Act which applies to Bengal as well

* Article 6 of Schedule III has since this decision been amended.

† The correctness of the decision in the case of *Kedarnath v. Ardha Chandra* was doubted and it was held that under sch. III art 6 as amended by Act I. (B. C.) of 1907, a decree for rent obtained before the passing of Act I, (B. C.) of 1907 in a suit by a co-sharer landlord is subject to the same period of limitation as a decree in a suit by the entire body of landlords: *Thakuram v. Mahendra Nath Dey Sarkar*, 10 C.L.J. 463—A contrary view seems to have been taken in the case of *K. B. Dutt v. Gostha Behary*, 16 C.W.N. 1006 s. c., 16 C.L.J. 379; see notes under sch. III. art 3.

as to the province of Bihar which was formerly within the jurisdiction of the Calcutta High Court: * *Ganga Singh v. The Chairman of the District Board, Patna*, [1919 Pat.] p. 235, (Atkinson and Manuk J. J., 10 Feb. 1919).

4. Interpretation of Statutes:—One Act is not to be considered to take away the rights and privileges conferred by a former Act unless it is quite clear from the provision that it does so: *Shiba Kali v. Chuni Lal*, 31 C.W.N. 1007 (Cuming & Mallik, J.J.). It is a well established principle of law that retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language: *Ibid.* Enactments which are declaratory in form are not necessarily retrospective in their operation: *Young v. Adams*, (1898) A.C. 469. If an Act touches a right in existence at the passing of an Act no retrospective effect should be given to the Act unless a clear intention to that effect is manifested: *Colonial Sugar Refining Co. v. Irving*, (1905) A.C. 369; see *Nepra v. Sajer*, 31 C.W.N. 128 (notes) s. c., 103 I.C. 662. It is not permissible to refer to a Bill which is not passed into law for the purpose of construing what an earlier Act meant: *Ibid.*

5. Landlord and Tenant:—The Bengal Tenancy Act, according to its preamble, is an Act relating to the law of Landlord and Tenant, and therefore all its provisions must be applicable only to suits in which the parties stand in the relation of landlord and tenant and therefore Art. 2 of Pt. I, Sch. III, is not applicable to a suit for rent by an assignee of the arrears from the landlord as the assignee is not the landlord of the defendant, *Mahendra v. Kaliash*, 4 C.W.N. 605; (see notes under Schedule III article 2), but the assignee stands in the shoes of the landlord, and such a suit is a rent-suit for the purpose of jurisdiction of the Court in which such suit is to be brought; *Sris Chandra v. Nasim Quazi*, 4 C.W.N. 357 (F. B.); s. c., 27 Cal. 827. The person to whom the land, the rent for which is claimed, as also the arrears of rent are transferred, is an assignee of the whole interest of the landlord and is a "landlord" within the meaning of this Act: *Sashi Kumar v. Sita Nath*, 7 C.L.J. 425; See also *Pramada Nath v. Ramani Kanta*, 7 C.L.J. 139; s. c.; 35 Cal. 331, s. c., 12 C.W.N. 249. A sale held at the instance of an assignee of a rent-decree who is not an assignee of the landlord's interest in the land has at most the effect of a sale held in execution of decree for money under the Civil Procedure Code; *Munarattan v. Harinath*, 1 C.L.J. 500.

Suit for rent by an assignee.

Limitation in such suits.

Jurisdiction.

Assignee of decree but not assignee of land.

Where a landlord brought a suit for an amount reserved in the lease and which was payable to the superior landlord and which he had not paid, held that the suit was for the purpose of limitation, one not for rent under the Bengal Tenancy Act but for damages: *Hemendra Nath v. Kumarnath*, 32 Cal. 169, s. c., 9 C.W.N. 96, but see *Basanta Kumar v. Ashutosh*, 27 Cal. 67; see notes under s. 3 cl. (5).

Rent payable to superior landlord—limitation.

A landlord after losing his interest in the land may bring a suit for rent against the tenant under the provisions of this Act: *Srimonto v. Mahadeo*, 31 Cal. 550; s. c., 8 C.W.N. 531; at p. 533, and where a landlord after obtaining a decree for arrears of rent, loses his interest in the estate, he can still execute his decree as a landlord and as a rent-decree, *Khetra Pal v. Kriharthamoyi*, 10 C.W.N. 517 (F. B.); s. c. 33 Cal. 566, (which overruled the case of *Hem*

Out-going landlord.

Chander v. Monmohini, 3 C.W.N. 604) ; see also *Manindra Nath v. Ashutosh*, 25 C.L.J. 626, s. c., 21 C.W.N. 1132. Where a decree for rent under which a holding was sold had been obtained by the decree-holders and the decree covered a period during which they were not sole landlords but merely co-sharer landlords, *held* that the decree was a rent-decree and could be executed as such and the holding passed by the sale ; *Sarup Sahu v. Jagarnath*, 2 Pat. L. J. 194 (Chapman and Roe J. J., Feb., 9, 1917).

Where the landlord lost his interest before the institution of the suit for arrears of rent, *held* that the decree was not a decree for rent : *Forbes v. Maharaj Bahadur*, 41 Cal. 926, s. c., 18 C.W.N. 747 (P.C.). But where a landlord after executing the decree which he obtained for rent loses a part of his interest, the sale is one under the Bengal Tenancy Act : *Syedunnissa Khatun v. Amiruddi*, 45 Cal. 294, s. c., 21 C.W.N. 847 s. c., 25 C.L.J. 629 where all the cases have been discussed : (Mookerjee and Beachcroft J. J., 23 April 1917). But when a *ticcadar* after the termination of his *ticca* brought a suit for rent and subsequently sold a holding in execution of the decree and in the meantime the landlord in possession has obtained a decree for rent falling due after the termination of the *ticca*, *held* that there could not be two charges, and the landlord in possession was entitled to the first charge : *Srimanto v. Mahadeo*, 31 Cal. 550 s. c., 8 C.W.N. 531. A landlord after he has sold the tenure in execution of a decree for arrears of rent cannot sue the auction-purchaser of the tenure for rent which has fallen due between the date of the decree and the date of the auction purchaser's purchase under that decree : *Faez Rahaman v. Ram Sukh*, 21 Cal. 169. A trustee is not precluded from executing a decree as a rent-decree by reason of the fact that the landlord's interest in the land has not become vested in him : *Chhatrapat v. Gopichand*, 4 C.W.N. 446 : s. c. 26 Cal. 750.

Rent falling due after date of decree

There cannot be two first charges.

Trustee.

Cessation of landlord's interest.

Lease of the same land to two persons.

Interest between Zemindari and *putni*.

Conflicting rulings.

As to the history of judicial opinion on the question of the effect of the cessation, *partial or entire*, of the interest of a landlord on his right to enforce realisation of arrears of rent by sale of the tenancy under the Bengal Tenancy Act, see notes under s. 65.

When two persons obtain leases of the same land, the subsequent lessee cannot treat the former as a tenant without any assignment from the landlord his right to receive or enhance the rent ; *Kullum Sheikh v. Pachu Mandal*, 11 W.R. 128 ; see also *Ram Kanai v. Fakir Chand*, 8 C.W.N. 438.

An intermediate interest can be created between a *zemindari* and a *putni* : *Raj Kumar v. Prabal Chandra*, 9 C.W.N. 656 ; *Modhusudan v. Devendra Nath*, 7 C.L.J. *notes portion* p. 23 ; consequently the intermediate holder is the landlord of the *Putnidar*. A contrary view has been taken in the case of *Bibi Jarao Kumari v. Hanifuddin*, 14 C.W.N. 389. The question came up for decision before Carnduff and Richardson J. J., who held, following the case in 9 C.W.N. 656 and disagreeing with the view taken in 14 C.W.N. 389, that an intermediate interest can be created between a *zemindari* and *putni* ; *unreported second appeal* No. 2604 of 1913, *Nilambar Ghose v. Mir Mahachanuddin* decided on the 2nd Jan., 1914. See notes under s. 3 cl. (4) and also notes under s. 65.

Although this Act applies to landlords and tenants, s. 157 provides that in a suit for possession against a trespasser, the plaintiff may claim an alternative relief for rent.

but it is open to the landlord to repudiate the relation to treat him as a trespasser and to evict him as such ; on the other hand, it is open to the tenant to indicate at the time he encroaches, that he intends to hold the encroached lands for his own exclusive benefit and not to hold them as he held the lands to which they are adjacent ; in this event, the landlord, though willing to treat him as a tenant, may be driven by an assertion of a hostile title, to a suit to eject him as a trespasser. The question arises what period of limitation, if any, is applicable to a suit for ejectment by the landlord.....In my opinion, in the first class of cases, art. 142 of the second schedule of the Limitation Act would apply, and the landlord, if he wishes to eject the defendant must bring his suit within 12 years of the dispossession ; if he does not do so, his title to recover actual possession would be barred, although his title to receive fair rent would not be barred, because the possession of the tenant, so far as the latter right is concerned, has never been adverse."

Encroachment as tenant.

Character of encroachment—intention.

Hostile title. Limitation.

Possession by a person will be presumed to be held in his own right and adversely to the true owner, but while a tenant taking advantage of his position as such, takes possession of lands belonging to his landlord not included in his holding, the presumption is that such lands are added to the tenure and form part thereof for the benefit of the tenant so long as the holding continues and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit: *Muthuvakkoothavan v. Orr*, 35 Mad. 618 approving the case of *Gooroodas v. Issur Chandra*, 22 W.R. 246 ; it is not necessary that the tenant trespasser should prove that his trespass was known to his landlord to justify this presumption: *Muthuvakkoo v. Orr*, 35 Mad. 618.

Possession *prima facie* adverse.

Where a tenant to the knowledge of the landlord asserted a hostile title to an encroachment made by the tenant, *held* that the landlord had no enforceable title under art. 144 of sch. I of the Limitation Act: *Birendra Kishore v. Lakshmi*, 22 C.L.J. 129.

Hostile title.

Where a proprietor sued a tenure-holder for recovery of possession of land and proved that he had a good title to the land prior to 12 years before the institution of the suit, *held* that he was entitled to claim the presumption that he was in possession at that time and that his possession continued till within 12 years of the institution of the suit and that art. 144 of sch. I of the Limitation Act applied: *Midnapur Zemindary Co. v. Pandav Sardar*, 2 Pat. L. J. 506 (Mullick and Atkinson J. J.) ; see in this connection *Gopal Krishna v. Lakshiram*, 9 Cal. 745 (F.B.) ; *Ishan Chandra v. Raja Ramranjan*, 7 C.L.R. 364 (P.C.) ; *Raktoo Singh v. Sudharam*, 25 C.L.J. 60 (P.C.).

Presumption.

Where a tenant encroaches upon the land of his landlord and is in adverse possession of the absolute interest for twelve years, then the landlord's rights should be held to be completely extinguished ; but if the adverse possession is in respect of a limited interest, as tenant, then the landlord is entitled only to claim rent: *Midnapur Zemindary Co. Ltd. v. Pandav Sardar*, 2 Pat. L. J., 506 at p. 511 (Mullick and Atkinson J. J., 20 April 1917).

Adverse possession.

Where a tenant encroached upon the land of the landlord in his character as a tenant, the landlord is dispossessed only in a limited sense who should bring a suit for *khas* possession within 12 years: *Gopeswar v. Peary Sundary*, 27 C.W.N. clxviii (168 notes portion) :

Landlord dispossessed in a limited sense—Limitation.

Landlord may get additional rent or recover possession.

(Newbould J.), confirmed on Letters Patent appeal, (Sanderson C.J. and Richardson J., 18 July 1923). If a tenant encroaches upon the adjoining waste of his landlord, the landlord may either sue him for possession within 12 years of his knowledge or he may treat him as a tenant and get additional rent: *Abdul Hossain v. Afsaruddin*, 34 C.L.J. 481; the case of *Ishan v. Ramranjan*, 2 C.L.J. 125 was followed.

Suspension of rent.

16. Dispossession by Landlord : Suspension of Rent : Apportionment of Rent :—The doctrine of suspension of rent, where the tenant has not been put in possession of part of the subject leased, has been applied where the rent was a lump rent for the whole land leased treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per acre or bigha: *Katayani v. Uday Kumar*, 52 I.A. 160 s. c., 52 Cal. 470 s. c. 30 C.W.N. 1.

Apportionment of rent even where rent reserved is a lump sum for the whole land: *Katayoni's Case* explained.

In the case of *Susil Kumar v. Rajani Kanta*, 31 C.W.N. 990 July 22, 1927, their Lordships (B. B. Ghose and Roy J.J.), upon a review of authorities, observed that even where the rent reserved is a lump sum for the whole land there may be apportionment of rent: their Lordships observed that in the Privy Council case of *Katayani v. Uday Kumar*, 52 I.A. 160, their Lordships of the Judicial Committee did not lay down that where the rent is fixed in a lump there would be suspension of rent on the ground of dispossession of a part of the demised premises by the landlord and there should not be any apportionment in any case and that it was not necessary for their Lordships of the Judicial Committee to express either disapproval or approval of the application of the doctrine of suspension of rent in the cases in which it has been applied, but their Lordships only stated the circumstances in which it has been applied.

B. B. Ghose and Roy, J. J., in the case of *Susil Kumar v. Rajanikanta*, 31 C.W.N. 990 observed as follows:—"The rule that rent is suspended on account of dispossession of the tenant from a portion of the demised premises is one derived from the English common law. An application of this rule to this country in its rigid form can hardly lead to justice. The origin of the rule in England has its historical basis. The application of this rule may be salutary in certain circumstances but it can only be applied in this country as a rule of equity, justice and good conscience. Whatever may be the law in England I do not think that the technicalities of the English common law should be imported in this country, particularly in the mofussil irrespective of any consideration whether the application of such rule would meet the ends of justice. To hold that in every case of dispossession of the tenant from a part there should be an entire suspension of rent.....seems to me hardly consistent with justice. We may apply any rule of English law as a rule of equity, justice and good conscience with reference to the circumstances of a case, but such a rule must be applied with caution. I do not see why he (the tenant) should not pay rent for the land of which he remains in possession. The Court should always endeavour to apportion the rent whenever possible and be very careful in applying rule of suspension of rent which can only be allowed in exceptional cases having regard to the circumstances of the case." The cases of *Reeve v. Bird*, 1 Cr. M. & R. 31 (1834); *Stokes v. Cooper*, 3 Camp 514n; s. c. 14 R.R. 829n (1814); *Neale*

v. *Mackenzie*, 1 M. & W. 747, s. c. 46 R.R. 478 (1836) and *Upton v. Townend*, 17 C.B. 30, s. c. 104 R.R. 562 (1855) were explained.

It has been held in a series of cases that where a tenant dispossesses his tenant from a part of his leasehold lands, the landlord's right to claim rent is suspended in respect of the entire leasehold: *Dhunput v. Mahomed Kazim*, 24 Cal. 296, *Lalita Sundari v. Surnamoyi*, 5 C.W.N. 353; *Ramcharan v. The Administrator General of Bengal*, 9 C.L.J. 578; *Chandrakanta v. Ramanath*, 11 C.L.J. 591; *Asutosh v. Joylal*, 17 C.L.J. 50; *Godai Mulla v. Aminuddi*, 18 C.L.J. 509; *Dwijendra Nath v. Aftabuddi*, 21 C.W.N. 492.

The tenancy is not terminated by eviction: *Dwijendra Nath v. Aftabuddi*, (*Narendra v. Dwijendra*), 21 C.W.N. 492 at page 494 col. 2, s. c. 25 C.L.J. 53; the true position is that the eviction of the tenant, whether from part of the demised premises or from the whole, entails a suspension of the entire rent, while the eviction lasts, whether the tenant remains in possession of the residue or not; the tenancy is not terminated, nor is the tenant discharged from the performance of his covenants other than payment of the rent, such as covenant to repair: *Ibid*.*

Effect of
eviction
from a part
or whole.

To constitute an eviction, it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises: any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction: *Dwijendra v. Aftabuddi*, 21 C.W.N. 492 at p. 496 col. 1; s. c. 25 C.L.J. 53.

What
constitutes
an eviction.

Where a landlord evicted the tenant from a part of the lands demised, held that in a record of rights, it is competent to a settlement officer to record that no rent is payable: *Ibid*.

Entry in
Record of
rights.

The real right of the zemindar to receive rent from the tenants depends upon his securing to the latter quiet possession and giving them proper and lawful means of realising rents from the raiyats; *Kristo Soonder v. Chundra Nath*, 15 W.R. 230. Where the tenant defendant was dispossessed of the land leased to him by a third party to whom the landlord, (plaintiff) had given a lease of the same land and assisted him in the dispossession, it was held that the landlord was precluded from suing the tenant for rent during the period of such dispossession, though the latter had recovered a decree for possession with mesne profits: *Kadambinee v. Kasee Nath*, 13 W.R. 338. Where in execution of the decree for arrears of rent A., the landlord, put to sale the holding of the tenant and the auction-purchaser who purchased the holding could not get possession on account of the acts of the landlord's servants, held in a suit for rent by the landlord that it should be dismissed: *Maharaj Kumar Sri Newas v. Buksh Harihar*, 14 C.W.N. lxxv. (notes portion p. 75) A landlord is not entitled to rent when the landlord has not actually ejected the lessee, but interfered in the collection of rents and encouraged the raiyats to deposit their rents with him as superior landlord: *Kristo Soonder v. Chandra Nath*, 15 W.R. 230. See

Tenant not
liable for
rent when
landlord dis-
possesses.

Sale in
execution of
decree—if
purchaser
does not get
possession.

Interference
in collection
of rent.

* The following cases were relied on: *Hodgskin v. Queenborough, Willes*, 129; *Peclat v. Boosey*, 31 L.J.C.P., 281; 8 Jur. N. S. 1107; 136 R. R. 862; *Morrison v. Chadwick*, 7 C.B. 266; 78 R. R. 627 and *Newtoa v. Allin*, 1 Q. B. 518.

also *Gopnund Jha v. Lall Govind*, 12 W.R. 109. Where the act of the landlord is not merely a trespass but something of a grave character interfering substantially with the enjoyment by the tenant of the property demised to him, there is a suspension of rent during such interference though there may not be an actual eviction; and if such interference be in respect of even a portion of the property, there should be no apportionment of the rent, the whole rent being equally chargeable upon every part of the land demised; but if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed there should be apportionment, *Dhanpat v. Mahomed Kazin*, 24 Cal. 296; and when the lease reserves rent at a certain rate per bigha, it cannot be said that each bigha of land is separately assessed and separately charged with rent, and therefore a landlord is not entitled to recover rent for the lands in the possession of the tenant when he has dispossessed the tenant from the other lands of the tenure: *Harro Kumari v. Purna Chandra*, 28 Cal. 188. See also *Saripjan v. Aftabuddin*, 13 C.L.J. 115; but it has been held in the case of *Surendra v. Kalikant*, 14 C.W.N. ccvii, (207 notes portion), that the rule that partial eviction causes suspension of entire rent applies even where the rent was settled at a certain rate per unit of measurement. The law does not require that there should be a complete eviction of the lessee in order that he may be exempted from liability to pay rent: *Rani Lalita v. Rani Surnomoyi*, 5 C.W.N. 353. See also *Mahomed Jeallya v. Sukheannessa*, 14 C.W.N. 446, s. c. 11 C.L.J. 606. Where a landlord took kabuliyats from the under-tenants of his tenant but the latter was not dispossessed, held that the tenant was liable to pay rent when as a matter of fact he was not dispossessed and was never disturbed: *Srimati Moni v. Kalachand*, 9 C.W.N. 871. A tenant is not entitled to claim suspension of rent when he is dispossessed not by the landlord but by the other lessees of the landlord, *Kaliprasanna v. Mathuranath*, 34 Cal. 191.

Substantial interference with the tenant's enjoyment.

Complete eviction not necessary.

Tenant liable for rent when not actual dispossession.

A tenant's right to suspension of entire rent for eviction from a substantial portion of land continues till effective steps are taken by the landlord to restore him to possession: *Purna Chandra v. Rasik Chandra*, 13 C.L.J. 119.

A tenure-holder is entitled to withhold rent where his landlord is directly or indirectly concerned in the dispossession: *Mosudan v. Satis Chandra*, 44 I.C. 658 (Patna).

Partial eviction.

Where lessee did not get possession of a part.

The rule of law that partial eviction by the landlord causes the entire suspension of rent was not extended to a case where a part of the land comprised in a tenancy, was lost by diluvion, and on reformation of the same, was settled by the landlord with a third person: *Raicharan v. Administrator General of Bengal*, 36 Cal. 856; s. c. 13 C.W.N. 853. The tenant in such a case may claim a proportionate abatement of rent: *Ibid*; the rule that when a landlord is responsible for the partial eviction of his tenant from the demised premises, there is a suspension of the entire rent, has been adopted in England not without considerable divergence of opinion. It would not be right to extend the application of such a rule, which may often operate harshly to cases to which the principle on which it is founded is clearly inapplicable: (*Ibid*) *Per Mookerjee J.* The rule of law that partial eviction by the landlord causes the suspension of entire rent has been held also inapplicable to a case where the tenant did not get possession of a portion

of the land demised, in the beginning of the tenancy : *Annada Prasad v. Mathuralal Nag*, 13 C.W.N. 702, s. c., 9 C.L.J. 585 ; in such a case the tenant is bound to pay proportionate rent : *Ibid.* In this case the lessee was prevented from taking possession of a portion of the demised land by another lessee to whom the said portion was demised by a subsequent lease, and it was *held* that as the landlord was found not to have acted *mala fide*, and the lessee so far from repudiating the lease kept possession of the remaining portion and even paid rent subsequently to the creation of the second lease, the lessee could not, in a suit for rent by the landlord, ask for a suspension of the whole rent, and was bound to pay proportionate rent. The principle laid down in the case of *Annada Prasad v. Mathura Nath*, 13 C.W.N. 702, s. c., 9 C.L.J. 585, was followed by D. Chatterjee and Beachcroft J. J., in the case of *Sarada Prasad v. Manmatha Nath*, 19 C.W.N. 870, in which case the facts found were as follows : the tenant had not been put in actual possession of a portion of the demised land notwithstanding this the tenant went on paying the full rent ; it was held upon these facts that the tenant was not entitled to suspension of rent but was entitled to abatement.

Abatement of rent.

There should be an apportionment of rent where a comparatively small portion of the demised lands was found to have originally belonged to the lessee and to have been included in the lease by mutual mistake ; the whole lease should not be set aside : *Raimoni Dasi v. Mathura Mohon*, 16 C.W.N. 606 ; s. c., 15 C.L.J. 665 ; s. c., 39 Cal. 1016.

Apportionment where mutual mistake.

Where a landlord put a holding to sale and purchased the same, and the tenant subsequently got the sale set aside and was at liberty to go back to the possession of the land as a matter of fact was invited by the landlord to take possession and notwithstanding the tenant did not take possession and there was nothing to shew that the landlord obstructed the tenant in any way, *held* that the landlord was not required before suing for rent to put the tenant into possession : *Gopal Chandra v. Krishna Chandra*, 9 C.L.J. 595.

Where after setting aside of sale tenant did not go to take possession.

Where a landlord dispossessed the tenant from a portion of the land demised and afterwards handed over possession of the portion dispossessed of by him, *held* that the landlord after handing over the possession is not entitled to claim any rent even for the portion which was in the possession of the tenant, for the period antecedent to the date of the handing over of possession by the landlord : *Ashutosh v. Joy Lal*, 17 C.L.J. 50 ; to hold otherwise would be to render absolutely nugatory the rule as to suspension of rent as punishment for the dispossession by the landlord of the tenant from a portion of the land demised ; *Ibid.*

Rent for period antecedent to restoration to tenant of dispossessed portion.

A vendor is bound to give possession to his vendee ; so also as a general rule the lessor is bound to give possession to his lessee ; *Gopal Chandra v. Krishna Chandra*, 9 C.L.J. 595 ; where a putni was sold under Reg. VIII of 1819 and purchased by the landlord and subsequently the sale having been set aside at the instance of the putnidar, the landlord gave notice to the former to resume possession of the putni taluk and the Putnidar did not take possession and there was nothing to shew that the landlord in any way obstructed the tenant, *held* that a suit by the landlord for rent is maintainable and that the landlord was not bound to put the unwilling tenant into possession before bringing a suit for rent, *Ibid.*

Lessor bound to give-possession to lessee. Landlord before bringing a rent-suit is not bound to put unwilling tenant into possession of land which landlord dispossessed.

A tenant is not entitled to suspension of the entire rent when a landlord did not on account of a *bona fide* mistake put the tenant in possession, the lands being largely jungle and little known: *Katyani Dasi v. Uday Kumar*, 49 Cal. 257 (affirmed on appeal, 52 I.A. 160, s. c. 52 Cal. 417). The entire rent will not be suspended when the tenant knew in the beginning of the tenancy that some portion was in possession of another; he is entitled to a reduction of rent of that portion: *Narendra Chandra v. Manindra Chandra*, 49 Cal. 1019, s. c. 26, C.W.N. 826, (N. R. Chatterjee and Pearson J. J.). Where the landlord having let out a portion of a land to an earlier lessee lets it out again with other lands to a subsequent lessee and fails to deliver to the subsequent lessee possession of the entire land to him the entire rent is suspended: *Manindra Chandra v. Narendra Chandra*, 46 Cal. 956, (Fletcher and Cuming J. J.): the cases of *Neale v. Mackenzie* (1836), 1 M.L.W. 747, S. S. 46, R. R. 478 and *Smith v. Raleigh*, (1814) 3 Camp. 513, S.C., 14 R. R. 829 were followed, and the case of *Stokes v. Cooper*, (1814) 3 Camp. 514n, S.C., 14 R. R. 829n and *Annada Prasad v. Mathura Nath*, 13 C.W.N. 702 were distinguished.

In the absence of a contract to the contrary the lessor is bound on lessee's request to put him in possession of the property and the lessee has a good defence in an action for rent: *Udai Kumar v. Katyayani*, 49 Cal. 257, s. c., 35 C.L.J. 292, (Mookerjee, Newbould and Pearson J. J.). A person who has been deprived of possession of part of the demised premises should not be held liable for the whole rent; the principle applies with greater force where the dispossession took place by any act of the landlord: *Mesbahuddin v. Abdul*, 34 C.L.J. 119, (N. R. Chatterjee and Panton J. J.).

The rule of law as regards suspension of rent has been introduced into this country as a rule of equity, justice and good conscience or rule of policy.

In order to apply the rule of law regarding suspension of rent on account of eviction by landlord the court must look to the circumstances of each case and the facts necessary to cause suspension of rent must be distinctly found. The facts necessary to cause suspension of rent on account of an alleged eviction of landlord by the landlord must be distinctly found in order to bring into operation this rule which has been applied as a punishment to the landlord for his illegal acts.

"Eviction" signifies that there must be something done by the landlord with the intension of depriving the tenant of the enjoyment of the demised premises. In this case the rent was apportioned: *Bisweswar v. Kali Charan*, 44 C.L.J. 27 (Cuming & B. B. Ghose, J. J.). The cases of *Upton v. Townend*, 17 C.B. 30 and *Dhunpat v. Muhammad Kazim*, 24 Cal. 296 were referred to.

To apply the doctrine of suspension of rent on account of eviction by landlord the finding must be clear that there has been an eviction in fact and the question must be tried whether the lessor was a party to the eviction and it must also be found as a fact as to whether the act was done by the landlord with the object of depriving the tenant of the peaceful enjoyment of any portion of the demised premises: *Tarap Sheikh v. Kunja Behari*, 44 C.L.J. 191 (B. B. Ghose & Panton, J. J.). The doctrine of suspension of rent has been applied where the rent was fixed in a lump for the whole land leased, treated as an indivisible subject, and it cannot be applied where the rent is to

be fixed according to the area in possession of the tenant: *Ibid.* The principle of suspension of rent is inapplicable where the tenant is liable to pay according to the stipulation at so much per *bigha* per year: *Ibid.* (*Katyayani v. Uday*, 52 I.A. 160, s. c., 52 Cal. 470, s. c., 30 C.W.N. 1 (P.C.) followed.)

Actual physical ouster by a title paramount is not necessary to prove eviction; there must be clear proof of title of the person claiming paramount title and consequently proof of absence of title of the lessor: *Ram Ranjan v. Jayantilal*, 44 C.L.J. 449. (Walmsley & Chakravarti, J.J.).

In the absence of a contract or custom there is no obligation on the part of the landlord to provide the tenants with the means to cultivate their lands, *held* that the tenants in this case were not entitled to suspension of the *nagdi* rent on the ground that the landlord did not provide the necessary irrigation facilities: *Partab Narayan v. Nathan Singh*, [1924 Pat.] p. 173, s. c. A.I.R. 1924 Pat. 605.

17. Dispossession by a third person of land in tenant's possession :—Where there is a current lease and the tenant is dispossessed by a third party, time does not commence to run against the landlord in a suit for possession until the expiration of the lease: *Kishwar Nath v. Kali Sankar*, 10 C.W.N. 343; *Krishnagovind v. Hari Charan*, 13 Cal. 101; see also *Krishna Govind v. Hari Charan*, 9 Cal. 367. But when the lease has expired and the tenant is holding over with the landlord's consent, and the possession of such third party is adequate in continuity, in publicity and in extent so as to shew that it is possession adverse to the landlord, the latter is not precluded from determining the tenancy and suing the trespasser in ejectment, and his right to sue will be barred after 12 years of such possession: *Kishwar Nath v. Kali Sankar*, 10 C.W.N. 343; see also *Radhamoni v. The Collector of Khulna*, 4 C.W.N. 597.

Right of suit by landlord for recovery of possession when tenant is dispossessed

18. Adverse claim by tenant :—The possession of a tenant for life is not rendered adverse within the meaning of the Limitation Act by a notice from the tenant that he claims to be holding on a perpetual or hereditary tenure so as to bar a suit for possession on the expiration of the life-tenancy: *Beni Pershad v. Dudhnath*, 27 Cal. 157. If during the continuance of the tenancy of a person he sets up as against the landlord a higher interest in himself it cannot operate to create in him by prescription an indefeasible right in respect of such interest: *Seshamma v. Chickaya*, 25 Mad. 507. A suit for ejectment brought 12 years after the repudiation of the tenancy by the tenant is not barred by limitation: *Srinivasa v. Muthusami*, 24 Mad. 246. It has been held in the case of *Bagdu Manjhi v. Durga Prasad*, 9 C.W.N. 292 that a farmer may acquire by prescription the right of permanent tenant by setting up such higher right adversely to the Zemindar. See notes under heading No. 14.

Life tenancy.

Setting up of a higher interest.

Repudiation of tenancy.

A lessee after entering into possession under a lease cannot acquire any title by adverse possession against his lessor unless he distinctly asserts such a title to his knowledge and give him notice that he asserted such a title: *Reajaddi v. Chand*, 24 C.L.J. 453 but the lessee cannot dispute the title of his landlord without first going out of occupation: *Ibid*; see notes under heading *Estoppel*, heading no. 19. Failure to pay rent to the lessee does not alone

Assertion of adverse title against the lessor.

operate to create in favour of the lessee a title by adverse possession : *Reajeddi v. Chand*, 24 C.L.J. 453.

Denial of liability for more than 12 years.

While a contract of tenancy is in force neither party can practically obtain a variation thereof, by persisting for a long period in his assertion that the term is otherwise than what it really is : *Birendra Kishore v. Fuljan Bibi*, 25 C.L.J. 467 ; in this case the denial of liability to pay rent for more than 12 years was held as not to secure a variation of the terms of the contract and the suit for assessment was held not to be barred by limitation : *Ibid*.

Adverse possession.

In a suit for khas possession with an alternative prayer for assessment of rent, held that long possession by the defendant on his own account far beyond the statutory period and that no rent had been paid are elements that are required for a plea in bar by reason of adverse possession : *Kadir Bux v Birendra Kisore*, 22 C.L.J. 119. (Jenkins C. J., Mookerjee and Beachcroft J. J.).

Title by prescription, cannot be claimed against the landlord.

No tenant of lands can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands : *Nainapillai v. Ramanathan*, 28 C.W.N. 809 (P.C.).

Assertion of hostile title by tenant. Limitation Act s. 28.

A person who is, in fact, in possession of land under a tenancy or occupancy title cannot, by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged (the possession remaining all the while on the same footing), obtain a title as an under proprietor to the land. Sec. 28 of the Limitation Act has no application to such a case : *Raja Mohammad Mumtaz Ali Khan v. Mohan Singh*, 28 C.W.N. 840 (P.C.).

Adverse possession encroachment.

If the person encroaching upon other land is not a tenant, then the mere fact of his open and continuous encroachment would *prima facie* be possession adverse to the fullest extent against the landlord. As a tenant it is presumed in the landlord's favour that the possession is only under a claim of a limited right. If the possession is under a claim which is adverse to the landlord though only to a limited extent then for the purpose of the right which the tenant is claiming the possession of the tenant is no longer the possession of the landlord. The landlord coming into Court must show that he has been dispossessed not in the full sense of the word but in its limited sense within twelve years of the suit : *Nekjannessa v. Abbas Molles*, 40 C.L.J. 160 (Rankin and B. B. Ghose J.J.).

Non-payment of rent, effect of.

Mere non-payment of rent or discontinuance of the payment of rent does not create adverse possession : **Giris Chandra v. Sri Krishna*, A.I.R. 1924 Cal. 168 (Mookerjee and Walmsley J.J.).

As a general rule, the possession of the tenant is that of his landlord and will be so deemed until the contrary appears : *Ibid*.

To enable a tenant to hold adversely to his landlord, it is necessary for him to renounce the idea of holding a tenant and to set up and assert an exclusive right in himself : *Ibid*.

It is essential that tenant's acts of ownership, should be of such an open, notorious, and hostile character that the landlord must have known of it : *Ibid*.

Eviction by title paramount.

19. Dispossession by title paramount :—See notes under s. 52.

In a suit for rent, the tenant can set up eviction by title paramount of that of his lessor as an answer ; and if the tenant is evicted

* The cases of *Prasanna Kumar v. Srikanth*, 40 Cal. 173, s. c. 17 C.W.N. 137 and *Jagdeo v. Baldeo*, 27 C.W.N. 915 s. c. 36 C.L.J. 499 were followed

from part of the land, and apportionment of the rent may take place : *Surendra Narain v. Dinanath Bose*, 43-Cal. 554 ; the onus is on the lessee to shew what is the fair rent of the lands from which the tenant has been evicted : *Ibid*.

Eviction by title paramount is a good defence to a suit for rent ; to constitute such a defence three conditions must be fulfilled (1) the eviction must be from something actually forming part of the premises demised, (2) the party evicting must have a good title and (3) the tenant must have quitted against his will : *Noorijan Sardar v. Bimola Sundari Gupta*, 18 C.W.N. 552 ; it has been held by all English authorities that forcible dispossession is unnecessary ; all that is necessary is that the landlord should claim the rent and the tenant on such notice attorns to him because he is not entitled to resist the claim : *Ibid* ; see also *Hill v. Saunders*, 4 B. and C. 529 (1825).

20. Estoppel :—"It is well-settled that the creation of the complete relation of landlord and tenant has the effect in law of estopping the tenant to deny the validity of the title which he has admitted to exist in the landlord ; the estoppel arises, not by reason of some fact agreed or assumed to be true, but as the legal effect of carrying the contract into execution, of the tenant taking possession of the property from the hand of the lessor : *Bamandas v. Nilmadhav Saha*, 44 Cal. 771 at p. 777 s. c., 24 C.L.J. 541 ; enjoyment by permission is the foundation of the rule that a tenant shall not be permitted to dispute the title of his landlord : *Bhaiganta v. Himmatt Bidyakar*, 24 C.L.J. 103, s. c., 20 C.W.N. 1335. Principle.

Where a tenant came into possession under a former owner and entered into an agreement with the defendant to pay him rent in ignorance of the defect in the defendant's title he may shew that the defendant is not his landlord : *Gregory v. Doidge*, 3 Bing. 474 ; see also *Rogers v. Pitcher*, 6 Taunt 202 ; *Williams v. Bertholomew*, 1 B. & P. 326. Where tenant can prove that landlord has no title.

The rule that a tenant is estopped from denying the title of his landlord applies only to the title of the landlord who lets the tenant in. If the tenant did not obtain possession from a person who was only recognised as landlord either by express agreement or by attornment or formal acknowledgment by payment of rent he may always shew that his conduct was due to mistake or ignorance of facts relating to title, misrepresentation or fraud : *Ketu Das v. Surendra Nath*, 7 C.W.N. 596. Where in a suit for rent the tenant denied the execution of the *kabuliyat* propounded by the plaintiff, pleaded that it was forged and denied payment of rent under it to the plaintiffs, and failed to establish his pleas, *held* that the tenant was not entitled to prove that the plaintiffs were not his landlords, although he had not been inducted into the hand by the plaintiffs : *Ibid*. Where a deed is executed by a tenant in favour of a person, the real owner and not the benamidar is the landlord whose title the tenant is estopped from denying under s. 116 ; in a suit by such *benamidar* for rent, the tenant can deny his right to sue on the ground that he is not the person entitled : *Kuppa v. Thinugnana*, 31 Mad. 461 ; where in a rent-suit the defendant pleaded that there was no patta (lease), although there was a *kabuliyat* and therefore the tenancy was not proved, *held* that the suit might be treated as one for occupation and the defendant could not be heard to say that he was not *patta*. Rule of estoppel works against a tenant who got possession from the landlord. Rent suit. Benamidar. Want of a patta.

liable for use and occupation : *Sheokaran v. Parbhu Narain*, 31 All. 276. See sec. 115 of the Evidence Act

Complete relation of landlord and tenant.

Tenant cannot deny landlord's title without restoring possession to landlord by surrender.

Tenant to restore possession before denial of title.

The creation of complete relation of landlord and tenant in law estops the tenant from denying the validity of the title which he has admitted to exist in the landlord : *Bamandas v. Nilmadhab*, 44 Cal. 771 ; the estoppel arises not by reason of some fact agreed or assured to be true, but as the legal effect of carrying the contract into execution of the tenant taking possession of the property from the hand of the lessor : *Ibid* ; see also *Bhaiganta v. Himmat Bidyakar*, 24 C.L.J. 103. S. 116 of the Evidence Act rests on the principle that a tenant who has been let into possession cannot deny his landlord's title however defective it may be, so long as he has not openly restored possession by surrender to his landlord : *Bilas Kunwar v. Desraj Ranjit*, 22 C.L.J. 516 (P.C.).

A tenant who has been let into possession cannot deny his landlord's title, however defective it may be so long as he has not openly restored possession by surrender to his landlord : *Bilas Kunwar v. Desraj Ranjit*, 19 C.W.N. 1207 (P.C.).

A tenant cannot dispute the landlord's title without first going out of occupation and thereby making it clear that he intended to dispute the title of his landlord : *Reajaddi v. Chand*, 24 C.L.J. 453 (Sanderson C.J., and Mookerjee J.).

A lessee, so long as he retains the possession he obtained from the lessor, cannot even after his term has expired set up in the lessor's suit for ejectment the defence that the lessor had no title at the time the lease was granted : *Bhaiganta v. Himmat Badyakar*, 20 C.W.N. 1334 s. c. 24 C.L.J. 103 ; this rule has not been affected by s. 116 of the Evidence Act : *Ibid*. See also *Alimuddin v. Ainuddin*, 38 I.C. 534.

Benami plea.

Possession must be surrendered before tenant denies title.

Attornment to person claiming under title paramount.

Estoppel.

Where a person executed a *kabuliyat* and got possession of a portion of the demised land, he is estopped in a rent-suit to deny the title of the landlord and say that the latter is a *benamidar* of another person : *Prabhat Chandra v. Bijoy Chand*, 50 Cal. 572, (C. C. Ghose and Panton J.J.). Once the relationship of landlord and tenant has been established the tenant must surrender possession before he can set up a claim to be the real owner : *Allah Bakhsh v. Lal Khan* (Lahore case), 67 I.C. 269. The case of *Makhan v. Baisakhi*, 50 I.C. 591 was followed. It is open to the tenant to prove a subsequent lesser of the landlord's title, the estoppel mentioned in s. 116 of the Evidence Act refers to the beginning of the tenancy : an eviction by title paramount may be proved and it is not necessary for the tenant to go out of possession, and he may consent to change his title by attornment to a person with title paramount : *Ram Chandra v. Pramatha Nath*, 35 C.L.J. 146.

Plaintiff landlord is not competent to eject the defendants* as trespassers where he accepted rent from them for the lands in suit in the name of the deceased raiyats. The effect of this acceptance of rent is to constitute the defendants tenants under the plaintiff : *Bali Mohammad v. Janaki Nath*, A.I.R. 1924 Cal. 535 (Mookerjee and Rankin J.J.)

Payment of rent where no-estoppel.

Mere payment of rent to a person does not prevent the tenant in a suit brought by the latter to show that the plaintiff was not the person who acquired the interest of the previous landlord and thus

title can be denied: *Abdul Razak v. Promada Sundari*, 80 I.C. 22 (*Per Mukerjee*, J. 24 March 1924.)

21. Pleading:—It is open to a party to plead tenancy and limitation in the alternative: *Keamuddi v. Haramohon*, 7 C.W.N. 294; see also *Jonardan v. Sambunath*, 16 Cal. 806 and *Dinomonee v. Doorga Pershad*, 12 B.L.R. 274, s. c. 21 W.R. 70 (F.B.) Where plaintiff and defendant both claimed under the same landlord and defendant further took a plea that plaintiff's suit was barred by limitation, the Lower Appellate Court found plaintiff's title proved and that defendant's alleged tenancy was not proved and refused to go into the question of limitation raised by the defendant: *held* that the question of limitation must be decided: *Keamuddi v. Haramohon*, 7 C.W.N. 294; see notes under "*Estoppel*", ante, heading No. 20.

Tenancy and limitation.

Question of limitation.

22. Effect of non-payment of rent:—It is well settled that when the relation of landlord and tenant exists between two persons in respect of any property, the mere non-payment of rent, though for many years, is not sufficient to show that the relationship of landlord and tenant has ceased: *Rameshar Koer v. Dalpin Saheba*, 7 C.L.J. 202; see also *Troylucho v. Mahima Chunder*, 7 W.R. 400; *Elahee Buksh v. Shaik Janav*, 24 W.R. 386; *Rungo Lall v. Abdool Guffoor*, 4 Cal. 314; *Patia v. Sadashiv*, 7 Bom. 40; *Bama Charan v. Administrator-General*, 6 C.L.J. 72. In the case last mentioned, a decree for rent was made although there was no payment of rent for nearly half a century; see also the observations in the case of *Digumber Mitter v. Ramsoonder Mitter*, S. D. A. 617, referred to with approval by Peacock C.J. in *Thakooranee Dasee v. Bisshesur Mookerjee*, B.L.R. Sup. F.B. 202 at pp. 321, 322; s. c., 3 W.R. Act X 29 at p. 104 (Great Rent case).

Relationship of landlord & tenant does not cease for non-payment of rent.

As to the effect of non-payment of rent: see notes under heading No. 18: *Birendra Kishore v. Fuljan*, 25 C.L.J. 467.

Failure to pay rent to the lessee by the lessor does not alone operate to create in favour of the lessee a title by adverse possession, *Reajaddi v. Chand*, 24 C.L.J. 453.

Failure to pay rent does not create title by adverse possession.

In a suit where assessment of rent was prayed, the defendant proved long possession beyond the statutory period and during that period there was no payment of rent by the defendant, *held* that there were the elements for a plea in bar by reason of adverse possession: *Kadir Bux v. Birendra Kisore*, 22 C.L.J. 119 (Jenkins C.J., Mookerjee and Beachcroft J.J.).

Assessment of rent.

A rent-free grant may reasonably be inferred from long possession without payment of rent: *Nawab Ali v. Birendra Kisore*, 22 C.L.J. 124 (Mookerjee and Beachcroft J.J.); see also *Bissonath v. Brajomohan*, 10 W.R. 61 and *Radha Gobind v. Prakash*, 14 W.R. 108; see also *Jafer Ahmed v. Birendra Kisore*, 22 C.L.J. 126. See notes under s. 24.

Rent-free grant.

The holder of a rent-free holding is entitled to possession of all lands forming accretions thereto, but he is not entitled to hold the same rent-free: *Baidyanath v. Nandalal*, 18 C.W.N. 1206.

Accretion to rent-free holding.

23. Easement—Prescription:—A tenant of land cannot acquire an easement by prescription in other lands of his lessor: *Moni Chandra v. Baikanta Nath*, 9 C.W.N. 856. See also *Udit Singh v. Kashiram*, 14 All. 185 and *Jeenab Ali v. Allahuddin*, 1 C.W.N. 151. It does not make any difference if the tenant has permanent rights

A tenant cannot claim easement against a landlord

even if
tenant is
permanent
tenant.

S. 41
Cess Act.

in the land ; a tenant always derives his rights from the lessor and as the latter cannot have the right of enjoyment of an easement as of right against himself, so neither can have his tenant against him : *Moni Chandra v. Baikanta Nath*, 9 C.W.N. 856.

24. Payment of cess :—It is open to the zemindar and the tenure-holder to contract themselves out of the provisions of s. 41 of the Bengal Cess Act : *Mohanund Sahay v. Saidunnessa*, 8 C.L.J. 525.

A contract by a tenant to pay to the superior malik the whole of the road-cess payable by the landlord is not illegal : *Ashutosh v. Amir Molla*, 3 C.L.J. 337, see also *Bholanath v. Chunder Madhob*, 6 C.L.J. 212 ; see also *Krishna v. Mohendra*, 13 C.L.J. 212 ; *Gobinda Chandra v. Lalitmohon*, 22 C.L.J. 571.

A tenant
cannot
bring an
interpleader
suit against
his land-
lord.

25. Interpleader suit by tenant :—An interpleader suit, with a prayer for declaration of the titles of the several sets of defendants in the disputed land, by the tenant against the landlords in whose favour he has executed several *kabuliyats* is not maintainable : *Shelly Bonnerjee v. Raj Chandra*, 37 Cal. 552 ; a tenant has no right to bring a suit to have it determined which of two defendants, both of whom claimed rent from him, is his landlord : *Kaylash Chandra v. Goluk Chandra*, 2 C.W.N. 61 ; see also *Nanji v. Umatul*, 15 C.L.J. 653. See notes under s. 61 and s. 149.

26. Service tenure :—See notes under s. 181.

27. Decree by a Co-sharer Landlord for Use and Occupation :—See s. 65 : *Kesho Prasad v. Ram Deni*, 2 Pat. 183.

Settlement
by one co-
owner—
Right of
others.

28. Effect of Settlement by one Co-owner :—Where a tenant is inducted on the land by a co-sharer landlord, the other landlord has the right to sue for joint possession : *Balgovind v. Dwarka Prasad*, 1 Pat. 394, s. c., 66 I.C. 55.

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

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

Headings of Notes.

1. ALTERATIONS AND AMENDMENTS.
2. DEFINITION.
3. MONEY RECOVERABLE AS RENT.
4. WHAT IS RENT.
5. WHAT IS NOT RENT.
6. STIPULATION FOR FUTURE RENT.
7. HAJABAD RENT.
8. CESS IN EXCESS OF TENANT'S PORTION.
9. CESS : RENT IN KIND.
10. LAWFULLY PAYABLE.

11. SUIT FOR DAMAGES FOR USE AND OCCUPATION.
12. ARREAR OF RENT: ACTIONABLE CLAIM.
13. MISCELLANEOUS CASES.

1. Alterations and amendments:—The word and figures “Chapter XIV” were inserted by both Bengal Act I of 1907 and the Bengal Tenancy Amendment Act (1 of 1908) of the East Bengal and Assam Council.

2. Definition:—The word “rent” has been defined in the sense in which it would be understood without any statutory definition: *Jotindra Mohan v. Bibi Jaroa Kumari*, 33 Cal. 140 s. c., 10 C.W.N. 291 (P.C.).

3. Money recoverable as rent:—See Act V of 1875 (B.C.) Money recoverable as rent. sec. 38; Act IX of 1880 (B.C.) secs. 47, 64A; Act II of 1882 (B.C.), sec. 74; and Act V of 1871 (B.C.) Money payable under sec. 42 (b) of the Bengal Drainage Act (VI of 1880) is money recoverable as rent within the meaning of this section: *Monmohini v. Priya Nath*, 8 C.W.N. 640. See also *Nafar Chandra v. Jyoti Kumar*, 11 C.W.N. 57.

4. What is rent:—Where a proprietor of an estate made a grant of certain villages and the grantee agreed to pay to the grantor a proportionate share of the Government revenue, *held* that the amount payable by the grantee is rent: *Dwarkanath v. Dambaru-dhar*, 33 Cal. 278 (Carnduff and Richardson J.J., July 28, 1910.) Cess. ‘Rent’ includes cess,—*Nobin v. Bansinath*, 21 Cal. 722; *Mohesh v. Umataara*, 16 Cal. 638; *Kishori v. Sarodamani*, 1 C.W.N. 30. Chowki-dari tax payable by the putnidar under the putni settlement is rent: *Asanulla v. Tirthabasini*, 22 Cal. 680. Dak-cess claimed under the contract by which rent is payable is rent within the meaning of s. 153: *Watson v. Sreekristo*, 21 Cal. 132. Produce rent payable by a burgadar is rent.—*Shoma Mehta v. Rajani*, 1 C.W.N. 55; *Taj-uddin v. Ram Prashad*, 1 All. 217 (F.B.); *Jamna Das v. Guni Meah*, 21 W.R. 124; *Sreenath v. Dwary Dhallie*, Suth: Ref. S. C. C. 113. See also *Lalji Panday v. Barhamdeo*, 16 C.W.N. 89. But see *Kade Mondal v. Akadali*, 14 C.W.N. 629. See notes under the Preamble and under s. 69. The term “rent” in s. 162 includes S. 169. rent: *Bejoy Chand v. S. C. Mookerjee*, 5 C.L.J. 27, notes, but see *Manindra Chandra v. Asar Mahumed*, 12 C.W.N. cxliv. A sum of money agreed to be paid to a third person on behalf of the landlord is rent: *Mohebut Ali v. Mahomed*, 2 C.W.N. 455 approved of in *Basanta Kumari v. Asutosh*, (F.B.) 4 C.W.N. 3: s. c., 27 Cal. 67. See also *Jnanada Sundari v. Atul Chandra*, 32 Cal. 972. Rent, when Assignment of rent. assigned, continues to retain the character of rent, and a suit for rent is a rent-suit for the purpose of jurisdiction: *Sris Chandra v. Nasim Quazi*, 27 Cal. 827, s. c., 4 C.W.N. 347, although the provisions as to limitation as provided in this Act do not apply to such a suit: *Mohendra v. Kailash*, 4 C.W.N. 605. A suit for rent by a person as heir of his father is a suit for rent, and no succession certificate is required as the ‘debt’ sued for is rent: *Nagendra v. Satadal*, 3 C.W.N. 294. Liability to pay to a person with whom the occupier has no relationship of landlord and tenant is liability to pay rent within the meaning of s. 3, cl. (5)—*Mohima v. Hazari*, 17 Cal. 45; *Binad Lal v. Kalu Pramanick*, 20 Cal. 708 (F.B.). See notes under sec. 5. Suit by an heir. Tenancy originating under a trespasser.

Revenue payable by putnidar. The revenue payable by the Zemindar and agreed to be paid by the *Putnidar* is rent: *Gour Gopal v. Gosta Behari*, 21 C.W.N. 214.

Mogli. "Mogli" is a word of doubtful meaning and at the best imports no more than that the rent assessed represents a proportion of the Government revenue: *Nawagarh Coal Co. v. Beharilal*, 20 C.W.N. 1135.

Grant of forest rights. A grant for cutting and removing trees is a grant of forest rights and the consideration payable is rent and such a suit for rent should be instituted under s. 148 B. T. Act: *Bande Ali v. Amud Sarkar*, 12 C.W.N. 415.

Rent in *sicca* rupees. A contract to pay rent in *sicca* rupees should be maintained whether its date is prior or subsequent to 1836: *Dhakeswar v. Ram Pershad*, 43 I.C. 753.

Damages for use and occupation interest. S. 169. **5. What is not rent:**—Damages for use and occupation are not rent: *Kali Krishna v. Izzatunnissa*, 1 C.W.N. lxxviii. Interest payable upon an over-due instalment is not rent: *Kailas v. Taraknath*, 25 Cal. 517; 1 C.W.N. lxiii. The term "rent", in s. 169 does not include interest: *Monindra Chandra v. Asar Mohamed*, 12 C.W.N. cxliv, but see *Bejoy Chand v. S. C. Mookerjee*, 5 C.L.J. 27 notes.

Decree by a co-sharer landlord. A decree by a co-sharer landlord for his share of the rent is not decree for rent under the Bengal Tenancy Act: *Durga Charan v. Kali Prasanna*, 3 C.W.N. 586; *Prem Chand v. Mokshoda*, 14 Cal. 201; *Jagabandhu v. Jadu*, 15 Cal. 47; *Beni Madhub v. Joad Ali*, 17 Cal. 390 (F.B.); *Sita Nath v. Atmaram*, 4 C.W.N. 571. As to the effect of assignment, see notes in the previous para and notes under the preamble. The word "rent" does not necessarily include interest; *Bhugabati v. Basanta Kumari*, 11 C.W.N. 110: s. c. 5 C.L.J. 69.

Sum agreed to be paid for the landlord. A sum agreed to be paid by a *putnidar* as Government-revenue is not rent: *Jotindra Mohan v. Jaroa Kumari*, 10 C.W.N. 201 (P.C.); where a tenant agreed to pay a particular sum as rent to the superior malik and the remaining sum to the landlord as profit, *held* that a suit for money payable to the superior landlord but not paid is a suit not for rent but for damages: *Hemendra Nath v. Kumar Nath*, 32 Cal. 169 s. c., 9 C.W.N. 96.

An amount kept in deposit to the tenant for payment to a third party is not rent: *Luchmi v. Deokari*, 19 C.W.N. 174.

A suit upon an agreement by the defendant to pay a certain sum to the creditor of defendant's landlord for the rent due to the landlord is not a suit for rent: *Hridoy v. Jayram*, 4 C.L.J. 402.

Interest created between a Zemindari and a *Putni*. Where there was a *putni* and subsequently a lease was given by the zemindar above the *putni*, *held* that the sum payable by the previous *putnidar* to the subsequent lessee is rent: *Raj Kumar v. Probal Chandra*, 9 C.W.N. 656. See also *Madhusudan v. Devendranath*, 7 C.L.J. 23 notes. See notes under the Preamble; also see notes under s. 3 Cl. 4, and s. 65.

Out-going landlord. Where a certain sum was mentioned in the lease as rent and there was a further stipulation to pay a certain quantity of molasses and in lieu thereof Rs. 10, *held* that this sum was not recoverable as rent as it was a mere personal undertaking of the tenant: *Rajnarain v. Panna Chand*, 7 C.W.N. 203; where a decree-holder mentioned in the sale proclamation a certain sum as rent, *held* that in additional sum agreed to be paid by the lessee cannot be claimed as rent against the purchaser of the holding; *Ibid*.

Personal undertaking.

Rent assigned to be paid to the superior landlord cannot be sued for by the immediate landlord as long as the arrangement of assignment subsists: *Debendra v. Paresh Nath*, 4 C.L.J. 119. Rent assigned by whom to be paid.

A decree for rent due in respect of two holdings is not a decree for rent: *Bipra Das v. Rajaram*, 13 C.W.N. 650. See notes under s. 65. Rent for two holdings.

Mafi is not rent; it is a deduction from the rent allowed to *jeth* raiyats by the landlord, in consideration of their performing certain duties; *Sheikh Safait v. Sheikh Wazuddin*, 1 Pat. L. J. 504. Mafi

The word *Malguzari* cannot be rendered as rent much less as actual rent. It ordinarily means revenue: *Chattra Kumari v. Broucke*, 54 I.A. 432, s. c. 47 C.L.J. 90 (P.C.)—per Lord Sinha. Malguzari.

As to what is an *awab* and not rent, see notes under s. 74.

6. Stipulation for future rent :—Where there is a stipulation for future rent it accrues automatically: *Makbul Ali v. Joges Chandra*, 21 C.W.N. 534; see under s. 29 under heading “effect of realisation of rent at a reduced rate.”

7. Hajabad rent :—Where the custom pleaded was that the entire rent for the *hajabad* lands must be remitted, irrespective of the extent of the destructive effect of the inundation of the crops, held that the custom was unreasonable and uncertain: *Sibnarain Mookerjee v. Bhutnath*, 28 C.L.J. 148, s. c. 22 C.W.N. 422. The custom of total or partial remission of rent was recognised in the case of *Bejoy Chandra v. Akhil*, 51 Cal. 314 (N. R. Chatterjee and Panton J. J.)

8. Cess in excess of tenant's portion :—A contract by a tenant to pay to the superior malik the whole of the road-cess payable by the landlord is not illegal: *Asutosh v. Amir Molla*, 3 C.L.J. 337, see also *Narendra v. Gora Chand*, 3 C.L.J. 391, see also *Bhola-nath v. Chunder Madhub*, 6 C.L.J. 212. It is open to the Zemindar and the tenure-holder to contract themselves out of the provisions of s. 41 of the Bengal Cess Act: *Mahamud Sahay v. Saidunessa*, 8 C.L.J. 525. Contract to pay cess in excess of tenant's portion.

The liabilities of the parties in respect of cesses are to be determined according to the statute, unless there is a clear provision in the lease to shew that the parties have contracted themselves out of the provisions of s. 41 of the Bengal Cess Act: *Gobind Chandra v. Lalit Mohan*, 22 C.L.J. 571; where a landlord lets out a tenure at Rs. 90 per annum including cesses, held that the landlord took upon himself to bear the cesses: *Jogendra Nath v. Apara Prasad*, 45 I.C. 616.

9. Cess: Rent in kind :—Cess is payable in respect of all lands held by a raiyat whether he pays rent in money or in kind: *Joges Chandra v. Ananda*, 26 C.W.N. 368.

10. Lawfully Payable :—See notes under sec. 74.

11. Suit for damages for use and occupation :—In a suit for rent where no alternative claim is made for use and occupation, no rent can be decreed on that footing: *Lukhee Kant v. Sumeerooddi*, 13 B.L.R. 243 (F.B.); *Bhukhi Koer v. Ram Khelwan*, 17 C.W.N. 311. The landlord is entitled to rent or compensation for the use of the land, where he is unable to prove the *kabulivat* under Use and occupation. Where landlord unable to prove lease.

which rent is claimed ; see also *Surnomoyee v. Dino Nath*, 9 Cal. 908 ; see also *Azim Sirdar v. Ramlall*, 25 Cal. 324 : *Ibid*.

Where in a suit for rent the landlord could not prove the lease for want of a *patta*, and the tenant pleaded non-liability, held that the landlord was entitled to treat the suit as one for use and occupation : *Sheo Karan Sing v. Maharajah Parbhu Narain*, 31 All. 276 ; but the question whether the landlord is entitled to rent for use and occupation depends upon the claim which is stated in the plaint and where a claim for rent on account of such occupation is not made in the plaint the landlord is not so entitled : *Ibid* ; see also *Surendra Narain v. Bhai Lall*, 22 Cal. 752, *Rachhea Singh v. Upendra Chandra*, 27 Cal. 239 and *Gobinda Sundar v. Srikrishna*, 10 C.L.J. 538. A suit for damages for use and occupation can be maintained against a tenant who has occupied the premises by the permission or sufferance of the landlord, though the terms of the tenancy have not been settled with precision : *Lalji Panday v. Barhamdeo*, 16 C.W.N. 89 at p. 91 ; see also *Rochester v. Pierce*, 1 Campbell 466 *Kanailal v. Nitai Chand*, 12 C.L.J. 612 ; in these circumstances, the law implies a contract or promise by the tenant to pay to the landlord a reasonable sum for such use and occupation : *Lalji Panday v. Barhamdeo*, 16 C.W.N. 89 at p. 91.

* Where claim for use and occupation is not made in the plaint.

Tenant by sufferance.

Implied contract.

The mere fact that the landlord accepted rent at a reduced rent from that stipulated for in the kabuliyat for some time does not bind the lessor to accept rent at that rate in future, at the reduced rent in future, as the reduced rent might have been accepted as a matter of indulgence which might be put an end to at any time : *Manindra Chandra v. Durga Sundari*, 20 C.W.N. 680 ; see also *Baijnath and Raghunath*, 16 C.W.N. 496, *Kailash Chandra v. Darbaria*, 20 C. W. N. 347. *Durga Prosad v. Rajendra Narain*, 37 Cal. 293, on P. C., 41 Cal. 493, s. c., 18 C.W.N. 66. Under S. 92, proviso 4 of the Evidence Act any variation of rent reserved by a registered lease must be made by a registered instrument and oral evidence is inadmissible to prove such variation ; an agreement is none the less oral because it is inferred from the conduct of the parties : *Manindra Chandra v. Durga Sundari*, 20 C.W.N. 680 ; see also *Lalit Mohan v. Gopali Chack Coal Co.*, 39 Cal. 284. Evidence of payment of rent at a lower rate than that stated in the kabuliyat is admissible to shew that the intention of the parties was that the kabuliyat from the very first was not intended to be acted upon or that there had been a waiver of the strict terms of the lease : *Ibid* ; see also *Beni-Madhab v. Lalmoti*, 6 C.W.N. 242 ; see also *Kailash Chandra v. Darbaria*, 20 C.W.N. 347. See notes under s. 29.

12. Arrear of Rent : Actionable claim :—An arrear of rent in respect of land subject to the Bengal Tenancy Act, 1885, is moveable property and is also "debt" in the sense in which that word is used in the definition of "actionable claim" in sec. 3 of the Transfer of Property Act. Where a purchaser of a proprietary interest in land acquires at the same time and under the same instrument a right to recover the rent in arrear at the time of the purchase, the right to recovery of such rent is an actionable claim within the meaning of secs. 3 and 136 of the Transfer of Property Act : *Sheo Gobind Singh v. Gouri Prasad*, 4 Pat. 43. (Dawson Miller, C.J. and Foster, J.). See also the case of *Hiralal Singh v. Tripura-charan Roy*, 40 Cal. 650, (F.B.)

13. Miscellaneous cases :—A custom, whereby a landlord is entitled to a certain rent for fruit trees in addition to the ordinary rent payable in respect of the land, is not illegal : *Rameshwar Singh v. Wazul Haque*, A.I.R. 1925 Pat. 294.

The right to *Bankar*, *Jalkar*, and *Phalkar* was always an exception from the abolitions made by the Regulation which have abolished *abwabs*. Rent in respect of fruit trees or other classes of trees may well be charged in addition to the ordinary rent for the land : *Ibid.*

Amaldastaks are not leases. An *Amaldastak* does not create ordinarily any tenancy right but is an order or *hookoomnama* to the people to go and take possession : *Hargobind v. Keshwa Prasad*, [1924 Pat.] p. 297 (Jwala Prasad, A. C. J. and Kulwant Sahay J.).

Mahanunda rent is a fixed amount not depending upon the out-turn of the crops grown : *Raghunandan v. Ram Sunder*, [1924 Pat.] p. 355, s. c., A.I.R. 1925 Pat. 299 (Dawson Miller C.J. and Mullick J.).

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

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

Headings of Notes.

1. UNDIVIDED SHARE OF LAND.
2. BABUANA :
3. MISCELLANEOUS : *Chukani*, *Jagir*.

1. Undivided share of land :—An undivided share of land is not a *holding*, for a *holding* has been defined to be "a parcel or parcels of land held by a raiyat and forming the subject of separate tenancy" [see S. 3 cl. (9)], and it has been held that the words "a parcel or parcels of land" mean an *entire parcel* or *entire parcels* of land. See the cases noted under S. 3 cl. (9). But an undivided share of land may constitute a distinct tenure, for, in the definition of tenure we find it stated that a tenure means the *interest* of a tenure-holder, and the definition excludes the idea that an undivided share of land cannot be a distinct tenure. An undivided share of land may be an entire estate ; see notes under S. 3 cl. (1) ; and if a tenure is created of the land comprised in an estate which may happen to comprise an undivided share of land, it will be a distinct tenure ; if a separate tenancy is created by a separate lease it is a distinct tenure ; see notes under s. 159 under heading "*what constitutes a separate tenancy.*"

2. Babuana :—Holders of *Babuana* property in the Darbhanga Raj are liable to pay Government-revenue and cesses to the Raj ; *Hitendra v. Rameshur*, 18 C.W.N. 42.

The condition in a *Babuana* grant to a junior member of the Darbhanga Raj family that the grantee shall regularly pay the Government revenue and cesses due from the portion of the estate given in *babuana*, to the Raj treasury, does not create a charge in favour of the Raj in respect of overdue arrears of revenue and cesses upon the property granted : *Rameshwar Singh v. Janeswari*, 18 C.W.N. 129.

Kulachar. *Babuana* and *Sohag* grants differ essentially in their nature from absolute grant and are subject to the *Kulachar* under which they are authorised and in accordance with which they are made:

Descent. *Ekradeswar Singh v. Janesswari*, 18 C.W.N. 1249 (P.C.). *Babuana* and *Sohag* grants descend in the family of Durbhanga not in one male heir only but to all the existing male heirs in the male line of the grantee as co-parceners: *Ibid*; see also *Durgadut v. Rameshwar*, 36 I.A. 176, s. c., 13 C.W.N. 1013. See notes under S. 3 cl. (8).

Chukani. **3. Miscellaneous**:—A *chukani* tenure in the district of Rungpur is not a temporary tenure under the Transfer of Property Act terminable at six months' notice but a raiyati leasehold which may develop into occupancy right: *Jogendra Nath v. Chandra Kumar*, 42 Cal. 28.

Jagir. A grant of a *jagir* is a grant for life only, but in the absence of any contract to the contrary, the addition of the words *putra poutradi kramé* to the grant implies an absolute and heritable estate and passes an estate of inheritance: *Ram Saran v. Ramnarayan*, 42 Cal. 305.

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

Headings of Notes.

1. HOW A PERMANENT TENURE IS CREATED.
2. NOABAD.
3. HERITABILITY.
4. PERMANENT TENANT.
5. UNDER-GROUND RIGHTS: MINERALS.
6. SPLITTING UP.
7. SUIT BY SHEBAIT FOR RECOVERY OF POSSESSION.
8. DEBUTTUR.
9. BRAHMOTTAR: RENT FREE GRANT.

1. How a permanent tenure is created:—Although S. 107 of the Transfer of Property Act requires that a permanent tenure under that Act must be created by a document in writing, and registered, the Bengal Tenancy Act nowhere says that a written document is necessary to create a permanent tenure.

But it has been held that one cannot get a permanent tenure under the Bengal Tenancy Act or under any other Act except by a registered document: *Hasiswari* (Kasiswari) v. *Harinath*, 40 I.C. 100 (*Per* Fletcher and Newbould J.J.). It is submitted with great respect that the decision, so far as regards permanent tenures of agricultural lands, is not in accordance with law, for no documents are required to be in writing unless there is any special or specific law to that effect. S. 107 of the Transfer of Property Act, which provides as to what leases are required to be in writin, has no application to agricultural lands in Bengal (s. 117 T. P. Act). Therefore a permanent tenure which consists of agricultural lands is not required to be in writing.

2. Noabad:—"A term which literally means land newly cultivated, i.e., since 1764 but is generally used to denote not only cultivated lands but even hills, rivers, roads, etc. which were not included in one or other of the estates according to the measurement of 1764", District Gazetteer of Chittagong, Vol. I, p. 139.

The designation *Noabad* has long been loosely employed to denote all lands in which the proprietary interest vests in the State, including not only cultivated lands, but even hills, rivers, roads, etc., which are not susceptible of cultivation—*Ibid* at p. 147.

The *Noabad* taluqs comprise a number of tenures of widely varying character. The *Noabad* taluqdars are the most important class of tenants found upon the Government estates. They hold directly under the Government as landlord for a term of years and at the expiry of that term are entitled to resettlement of such portion of the taluq as is cultivated, the uncultivated portion being at the absolute disposal of the Government. *Ibid*, at p. 148.

A *noabad* mahal held under Government implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation. *Jogesh Chandar v. The Secretary of State*, 18 C.W.N. 531. A *noabad* is not necessarily temporarily settled; it may be a permanently settled one: *Maqbul Ahmed v. Hargobinda*, 8 C.L.J. 470. Government is in the same position as an ordinary zemindar in respect of *Noabad* lands and is not bound to grant a *patla*: 35 C.L.J. 580.

Noabad mahal.

3. Heritability:—The rule of construction that a grant made to a man for indefinite term enures only for the life of the grantee and passes no interest to his heirs, does not apply to cases where the term can be definitely ascertained by reference to the interest which the grantor purports to convey.—*Lekhraj v. Kunhya*, 3 Cal. 210 (P.C.). The word “*mokurari*” may import perpetuity, but this is not the necessary meaning of the word.—*The Bengal Government v. Nawab Juffer Hossein*, 5 Moo. I.A. 467. The word “*mokurari*” alone raises no presumption that a tenure is intended to be hereditary.—*Sheo Prosad v. Kali Das*, 5 Cal. 543; *Bishen Chand v. Parameswar*, 15 Cal. 342. The words “*mokurari istemrari*” may mean either permanent during the life of the person to whom the grant is made or permanent as regards hereditary descent: *Monoranjan v. Rajah Lilla Nund*, 13 B.L.R. 124. A *mokurari istemrari* tenure shall be presumed to be heritable until the contrary is proved, *Lukee v. Roy Hari*, 3 B.L.R. 226. The words “*istemrari*” and “*makurari*” are interchangeable expressions, and the word “*istemrari*” does not *per se* convey an estate of inheritance and not necessarily a perpetual hereditary tenure: *Pandit Agin Bind v. Mohon Bikram*, 30 Cal. 20 s. c., 7 C.W.N. 314. A perpetual *mokurari* lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity: *Mohanand v. Syedunnessa*, 12 C.W.N. 154. When a grant did not contain any words expressly limiting the grant to the life of the grantee nor making the tenure descendible to heir, and the grant of land was made as a present for the purpose of planting a garden and was made as a present for the purpose of planting a garden and was made ‘subject’ to “faithful service,” held that the grant was only a life grant: *Syed Mohamed v. Ram Narain*, 7 C.L.J. 90. See notes under secs. 7 and 179.

Grant for indefinite term.

Mokurari.

Istemrari.

Where grant did not contain words limiting to life.

Long possession of a tenant, succession and transfer may give rise to the inference that a holding is a permanent one. A sale-certificate which was the origin of the defendant's title and which expressly declared that the holding was a *maurasi* one would be a relevant fact, although the plaintiff was no party to the suit in which the sale-certificate was obtained as having taken place in the

Long possession, succession, transfer &c. &c.

transaction by which the transfer was effected; *Handas Tanti v. Upendra Nuruin Shaha*, 16 C.W.N. 74.

Generation to generation.

The tenant who claims a hereditary right under a document which does not contain the words from "generation to generation" has a heavy onus to discharge: *Pradyot Kumar v. Sarat Chandra*, 21 C.W.N. 809.

Jagir.

A grant of *jagir* is a grant for life only, but in the absence of any custom to the contrary the addition of the word ("পুত্র পৌত্রাদি") *putra poutradi*, in the grant implies an absolute or heritable estate and passes an estate of inheritance: *Ramsaran v. Ramnarayan*, 42 Cal. 305.

Babuana.

Except that a *Babuana* grant is made to a male and a *Sohag* grant is made to a female there is no difference so far as the right to succession: *Ekradeshwar v. Janeshwari*, 21 C.L.J. 9 (P.C.) these grants differ essentially in their nature from absolute grants and are subject to the family custom under which they are authorised and in accordance with which they are made: *Ibid*; as to family custom in the Darbhanga family: *Ibid*.

Darbhangaj Raj.

Maintenance grant in Pachete Raj.

A maintenance grant in the Pachete Raj is for the life of the grantee but is liable to be resumed by the successor of the grantor, should the latter die during the life time of the grantee: *Choto Bahira v. Purna Chander*, 21 C.L.J. 144.

See notes under s. 3 cl. (7).

Acceptance of rent at the same rate for a long period.

Each case governed by its own merits.

Where origin of tenancy not known.

Lease for building purposes.

4. Permanent tenant:—The mere fact of an acceptance of rent at the same rate for a long period of years would not be conclusive against the landlord to shew that the lease was of a permanent nature, if the origin of the lease be known; *J. Winterscale v. Sarat Chandra Banerjee*, 8 C.W.N. 155. But the circumstances of a particular case may properly lead to such an inference, each case depending upon its own circumstances: *Ibid*. Where the origin of a tenancy cannot be traced but it is proved that the rent has been paid for a long period at the same rate and that there has been no attempt to enhance the rent, that a pucca building has existed for a long time and that the tenure has on many occasions been transferred, *held* that the tenancy was permanent at the date of its creation: *Ismail Mahmud v. Asmatulla*, 8 C.W.N. 297. But each case depends upon its own circumstances: *J. Winterscale v. Sarat Chandra*, 8 C.W.N. 155. See also on this subject, *Ismail Mahomed v. Mrinmoy Dasi*, 8 C.W.N. 301; *Upendra Krishna v. Ismail Mahomed*, 8 C.W.N. 889: s. c., 32 Cal. 41; *Nilratan Mandal v. Ismail Khan Mahomed*, 32 Cal. 51; 8 C.W.N. 895; 31 I.A. 149 *Ismail Mahomed v. Joygoon Bibee*, 4 C.W.N. 210: s. c., 27 Cal. 570; *Ismail Khan v. Aghore Nath*, 7 C.W.N. 734; *William M. Grant v. Robinson*, 11 C.W.N. 242: s. c., 5 C.L.J. 178; *Meg Lal v. Raj Kumar*, 11 C.W.N. 527; *Nabakumari v. Behari Lal*, 11 C.W.N. 865 (P.C.): s. c., 34 Cal. 902: s. c., 6 C.L.J. 122; *Bipin Behari v. Lala Bhagwat*, 9 C.W.N. 699; *Bagha Majter v. Durga Prasad*, 9 C.W.N. 292; where a lease is given for building purposes the Court may well presume that it was intended to be a perpetual grant: *Promoda Nath v. Sreegovindo*, 9 C.W.N. 463; see also *Juhoree Lal v. Dear*, 23 W.R. 399; *Ismail Mahomed v. Joygoon Bibi*, 4 C.W.N. 210: s. c., 27 Cal. 570; *Lala Beni Ram v. Kundan Lal*, 3 C.W.N. 502: s. c., 26 I.A. 58; *William M. Grant v. Robinson*, 11 C.W.N. 242: s. c., 5

C.L.J. 178; *Ismail Khan Mahomed v. Nani Gopal Mukerjee*, 8 C.L.J. 513; *Nemai Chandra Bose v. Mohamed Basir*, 9 C.L.J. 475; also see the case of *Maharam Chaprasi v. Telamaddin Khan*, 15 C.L.J. 220: s. c., 16 C.W.N. 567, where Mookerjee and Carnduff J. J., have reviewed the cases on the subject. See also *Nemai Chandra v. Mohamed*, 9 C.L.J. 475, where Mitra and Caspersz J. J., held that there would arise a presumption of permanent tenancy from the circumstances of the case although there was a stipulation in the kabuliyat that on a transfer by assignment one-fourth of the purchase money should be paid to the landlord.

Presump-
tion.

As to leases of dwelling houses, see notes under s. 182.

Dwelling
houses.

Where a mokurari lease contained a clause that the lease would be cancelled on default of payment of rent, held that the forfeiture clause in no way affected its permanent character: *Megh Lal v. Raj Kumar*, 11 C.W.N. 527: s. c., 34 Cal. 358: s. c., 5 C.L.J. 208; as to what is a *mokurari* lease, see notes under s. 189.

Forfeiture
clause.

The long possession of a tenant, succession and transfer of an interest in a tank, may give rise to the inference that the holding is permanent: *Haridas Tanti v. Upendra Narain*, 22 C.L.J. 75.

Long
possession,
succession
etc.

Where a tenancy was held for three generations, the rent had remained unchanged, there were buildings on the land and at the inception of the tenancy *nazar* was paid, held that a legitimate inference might be drawn that the tenancy was of a permanent character at its inception: *Binodelal v. Preo Mohan*, 20 C.W.N. liii (53 notes portion).

Permanent
character.

Mere long possession and uniform payment of rent are not by themselves sufficient to make a tenant a permanent one. The material elements are—the land has been let out for purposes of residence, that it had been so occupied and there had been instances of transfer and succession and that structures were erected on the land: *Kedar Nath v. Madhusudan*, 37 C.L.J. 478, (Mookerjee and Chotzner J.J.).

Long
possession
and uni-
form rent
not suffi-
cient;

A permanent tenancy created before the passing of the T. P. Act, for the purpose of habitation, is not transferable by custom, except by custom or express contract to that effect or unless pucca structures are erected thereon: *Safarali v. Abdul Rashid*, 29 C.W.N. 428: s. c. 39 C.L. 585.

A permanent tenancy cannot be acquired by prescription: *A. S. N. Nainapilli v. Ramanathan*, A.I.R. 1924 P.C. 65 (Madras Case).

Held, on a construction of a lease that it was a tenancy at a fixed rent: *Golam Rahaman v. Gurudas*, A.I.R. 1923 Cal. 505.

Held, upon a construction of a lease that the tenancy is permanent and heritable: *Rajmohan v. Tara Prasanna*, A.I.R. 1923 Cal. 354.

Where the origin of the tenancy is not known but the tenant and his successor have been in occupation of the land for over 60 years and the rent was never varied and the tenancy was treated as heritable and the land was let out for residential purposes, held that the tenancy was permanent: *Makhan Lal v. Arun Bala*, A.I.R. 1924 Cal. 465.

Where
origin not
known.

It does not matter that there was no pucca structure: *Ibid*.

A dwelling house need not be brick-built in order to indicate

that the tenancy was intended in its inception to be of a permanent character : *Ibid.*

The question as to whether permanent tenancy can be presumed is a mixed question of fact and law : *Ibid.*

Where
original
tenancy,
not known.

In a suit for ejectment in which the defendant claimed a permanent tenure in the disputed land, the date of the lease is known, but the terms are to be inferred from the subsequent conduct of the parties, the original purpose of letting was not known and there were successions and transfer and uniform payment of rent, *held* that the burden of proof was on the tenant to show such facts as make the inference of the permanence of the tenure a reasonable inference : *Jnanendra v. Nasea Dasi*, 39 C.L.J. 526 (Rankin J., 18 June 1924).*

An assertion in the *kobala* executed by a tenant in favour of his transferee, that his right in it was a permanent one, was admissible in evidence in such a suit, under sec. 13 of the Evidence Act : *Ibid.*

Facts neces-
sary to
establish
perma-
nency.

In order that the presumption of permanency may be drawn it must be established that the origin of the tenancy was unknown and that substantial pucca structures were built without objection by the landlord : *Abdul Hakim v. Elahi Baksha*, 52 Cal. 43,† s. c., 29 C.W.N. 138. (*Per* Chakravarti J., Greaves J. agreeing, 9 June 1924) ; Pucca stairs and pucca privy within a Municipality are not structures which a reasonable landlord can object to so long as the tenancy subsists : *Ibid.*

The fact that the tenant is allowed to continue in possession of lands for generations, without alteration of rent, is of common occurrence in this country and is usually attributable to the reluctance of the landlord to eject a tenant from his home so long as he does not make himself objectionable and regularly pays his rent. Mere forbearance to enhance the rent or eject the tenant, where the right exists, means nothing : *Ibid.*

The tenancy in the absence of proof of any definite terms of permanency, would be at best one from year to year : *Ibid.* Absence of written lease could not improve the position of the tenant, because he must know under what terms he held the land of his lessor : *Ibid.*

The circumstances of each case must determine whether the presumption of permanency should be made or not : *Ibid.*

The question as to whether upon the facts found, the presumption of permanency can be raised, is a question of law and is open to correction in second appeal : *Ibid.*

Before the Transfer of Property Act there was no statute dealing with homestead land as distinguished from agricultural land—No person, after the Transfer of Property Act came into operation, can claim to hold a permanent tenancy in what is called *bastu* land, unless it was created by a written and registered lease : *Ibid.*

In such cases where the terms of the original tenancy cannot be directly proved, the inference of permanency of the tenancy is made upon two broad principles (1) the first principle is, that in cases where the origin of the tenancy is unknown and its inception is lost in antiquity, the principle of a lost grant is invoked by the tenant

* The case of *Nilratan v. Ismail*, 32 Cal. 51 was followed.

† The case of *Maharam Chaprasi v. Telamuddin*, 16 C.W.N. 567; s. c. 15 C.L.J. 220 not followed.

and from the conduct of the parties and the surrounding circumstances the court is asked to presume that the tenancy was a permanent one—the conduct of the landlord in recognising succession, transfer and in standing by, when *pucca* buildings have been raised upon the land are mainly relied on in finding out the terms of the lease at its inception. (2) The second principle is that of equitable estoppel against the landlord shewing that the lease was a terminable one: *Ibid.*

Decided cases shew the existence of the following elements, in order that the presumption of permanency of a tenancy, may be raised:—(1) The origin of tenancy for residential purposes must be unknown; (2) existence of permanent *pucca* buildings on the lands built long before any controversy arises and that to the knowledge of the landlord; (3) uniform payment of rent; (4) recognition of succession and transfer by the landlord: *Ibid.*

Absence of either of the first two elements will be ordinarily fatal to any claim of permanency on the theory of a lost grant. Absence of the 3rd and the 4th elements usually will raise difficulties in the way of raising the presumption, but may not be decisive if there are other circumstances in aid of the presumption: *Ibid.*

The following is a collection of the principal cases on the point: Collection of cases on the point.
 26 I.A. 58=3 C.W.N. 502 *Lala Beniram v. Kundun Lal*; 4 C.W.N. 210=27 Cal. 570 *Ismail v. Joygoon*; 7 C.W.N. 734 *Ismail v. Aghorenath*; 8 C.W.N. 155 *Winterscale v. Saratchandra*; 8 C.W.N. 297 *Ismail v. Asmatulla*; 8 C.W.N. 301 *Ismail v. Mrinmoyee*; 8 C.W.N. 889=32 Cal. 41 *Upendra v. Ismail*; 8 C.W.N. 895=s.c., 32 Cal. 51=32 I.A. 149 *Nilratan v. Ismail*; 9 C.W.N. 292 *Bagha Majter v. Durga Prasad*; 9 C.W.N. 463 *Promode Nath v. Sree Gobindo*; 9 C.W.N. 699 *Bepin Behari v. Lala Bhagwat*; 11 C.W.N. 242=5 C.L.J. 178 *Grant v. Robinson*; 11 C.W.N. 527 *Meghlal v. Raj Kumar*; 11 C.W.N. 865=34 Cal. 902=6 C.L.J. 122 (P.C.) *Nabakumar v. Behari Lal*; 16 C.W.N. 567=15 C.L.J. 220 *Maharam Chaprasi v. Telamuddin*; 20 C.W.N. 111 (53 notes) *Benode Lal v. Prio Mohon*; 25 C.W.N. 485=43 Mad. 567=47 I.A. 76 *Seturatnam v. Venkatachela*; 28 C.W.N. 809=51 I.A. 83 *Nainapillai v. Ramanathan*.

8 Cal. 960 *Gangadhar v. Ayinuddin*; 27 Cal. 144, *Dunne v. Nabakristo*; 34 Cal. 902=11 C.W.N. 865=6 C.L.J. 122, (P.C.) *Nabakumar v. Beharilal*; 47 Cal. 1=I.A. 131=30 C.L.J. 152 (P.C.) *Mussamat Afzalunnessa v. Abdul Karim*; 28 Cal. 738 *Casperz v. Kedarnath*; 25 Cal. 896 *Nabo Mandal v. Cholim Mullick*; 16 Cal. 223=16 I.A. 6 *Secretary of State v. Luckmeshar Singh*; 3 Cal. 696 *Prosunno Coomaree v. Rutton*; 16 Cal. 652 *Rakhal Das v. Dinamoyee*; 30 Cal. 801 *Dinendra v. Tituram*.

I.L.R. 37 Mad. 1 *Narasayya v. Raja of Venkatagiri*.

23 W.R. 399 *Juhoree Lal v. Dear*; 24 W.R. 401 *Nabadurga v. Dwarkanath*; 12 W.R. 495=7 B.L.R. 152, *Beni Madhub v. Jai Krishna*; 15 W.R. 274=7 B.L.R. 159 *Durgaprosad v. Brindabon*.

12 B.L.R. 229 *Ram Chandra v. Jogesh Chandra*.

8 C.L.R. 50 *Tarapada v. Shyama Charan*; 10 C.L.R. 25 *Prosanna v. Jagannath*.

10 M.I.A. 183 *Gopal Lal v. Teluk Chandra*; 11 M.I.A. 433, *Dhunput v. Gooman*; 12 M.I.A. 263, *Suttosurrin v. Moheshchandra*.

8 C.L.J. 513 *Ismail v. Nanigopal*; 9 C.L.J. 475 *Nemai Chandra v. Mohamed Basir*; 16 C.L.J. 26 *Raimala v. Shibosundary*; 22

C.L.J. 75 *Haridas Tanti v. Upendra Narain* ; 32 C.L.J. 85 *Sarashi v. Bhagloo Shaha* ; 35 C.L.J. 421=49 I.A. 54 (P.C.) *Bawa Magniram v. Kasturbhai*.

Agricultural land.

5. Underground rights :—It must be presumed that the zemindar is the owner of the underground rights appertaining to a tenure granted by him in the absence of evidence that he parted with them : *Harinarayan Singh v. Sriram Chakravarti*, 37 Cal. 723, s. c., 14 C.W.N. 746 (P.C.) s. c., 11 C.L.J. 653 ; reversing the ruling in the case of *Sriram Chakravarti v. Harinarayan Singh*, 33 Cal. 54, s. c., 10 C.W.N. 425 ; s. c., 3 C.L.J. 59. The holder of a permanent tenure in the absence of all evidence of the terms of the lease should not be presumed to own the underground right : *Jyoti Prashad v. George Methew Darby*, 38 Cal. 845.* s. c., 16 C.W.N. 241. There is no difference in principle between a lessee for years and a lessee in perpetuity when nothing is known or can be inferred about the intention of the parties at the inception of the lease : *Ibid*, see also *Abhiram v. Shyama Charan*, 14 C.W.N. 1 ; s. c., 36 Cal. 1003.

Lease for years and lease in perpetuity.

A permanent lease including "all rights of various kinds" with the exception only of homestead would include the minerals : *Shamia Charan v. Abhiram*, 10 C.W.N. 738 ; s. c., 33 Cal. 511 ; s. c., 3 C.L.J. 306.

Sub-soil.

As to sub-soil right, see also *Bagdu Majhi v. Durga Prosad*, 9 C.W.N. 292, *Tituram v. Cohen*, 2 C.L.J. 408 ; *Megh Lal v. Raj Kumar*, 11 C.W.N. 527 ; s. c., 34 Cal. 358 ; s. c., 5 C.L.J. 208.

Temporary interest.

The cases of *Prince Mohomed Baaktiar Shaha v. Rani Dhojomonni*, 2 C.L.J. 20 and *In re Saramonanda Das*, 7 Bom. 109 "deal solely with the rights of persons who possess temporary interests in the land and the rights of lessees for years ; and it is well established that such persons have no right to the minerals underlying their land and can only work mines, quarries or pits which are open when they come into possession of the land." (*Per Pratt and Pargiter, J.J.*, in *Sriram v. Kumar Harinarain*, 10 C.W.N. 425 at p. 428 : s. c., 33 Cal. 54).

Putni :
Right to Minerals.
Durbust zemindari hakuk.

A grant of a *putni* containing the words *Durbust Zemindari Hakook* includes the mining rights : *Ali Quader v. Jogendra Narain*, 16 C.L.J. 7 (Prinsep and Hill, J.J.).

There is no substantial difference between *Durbust Zemindari hakuk* and *Durbust hakuk* so far as a *putni* lease is concerned : *Raja Bhupendra Narayan Sinha v. Rajeswar Prosad Bhakat*, 32 C.W.N. 16, s. c., 46 C.L.J. 307 (B. B. Ghose and Roy J.J.). The word '*Durbast*' means "all" 'entire' and '*hakuk*' is plural of '*hak*' which means 'right' and when the zemindar grants '*Durbust hakuk*' he grants '*Durbust hakuk*' of his zemindari right. *Ibid*. "*Mai hak hakuk*" only refers to the rights that were granted previously and not to all the rights of the grantor : *Ibid*.

In the case of *Satya Niranjan Chakravarti v. Ram Lal Kabiraj*, 52 I.A. 109 at p. 117, s. c., 29 C.W.N. 725 at p. 731 it was held by their Lordships of the Judicial Committee that the question whether or not a *putni* lease as such conveys the minerals to the

* The names of the case as reported in 38 Cal. 845 are JYOTI PRASAD v. LACHIPUR COAL CO.

Putnidar is, so far as the Judicial Committee is concerned, still open. The judgment of Prinsep and Hill, J.J. in the case of *Ali Quader v. Jogendra Narain*, 16 C.L.J. 7 has not been overruled by the decision of the Judicial Committee in *Giridhari Singh v. Megh Lal Pandey*, 44 I.A. 246, s. c. 45 Cal. 87, s. c. 22 C.W.N. 201, which was a case of a *mokurari* and not a putni lease.

Where in a putni lease no reservations were made about minerals but only about some other insignificant matters and the mahal in question was leased "without any deduction the *Chhyarad* land and water, mal and *sayers*, etc., *darabast hakuk*," it was held that the putnidar and the darpatnidar as grantee were entitled to all the minerals included within the putni grant: *Raja Bhupendra Narain Singh v. Rajeswar Prosad Bhakat*, 55 Cal. 35, s. c., 32 C.W.N. 16, s. c. 46 C.L.J. 307.

B. B. Ghosh, J., in his judgment in this case in 32 C.W.N. 16 at p. 21 observed: "The next question is whether by the grant of a *putni* taluq underground rights have been conveyed. I will rest content by referring to the observations of their Lordships of the Judicial Committee in the case of *Satya Niranjan Chakravartty v. Ramlal Kaviraj*, L.R. 52 I.A. 109, s. c. 29 C.W.N. 725, 731. Their Lordships did not agree with the dictum of the Patna High Court that the judgment of Prinsep and Hill, J.J., in *Ali Quader Hossein v. Jogendra Narayan Roy*, 16 C.L.J. 7, has been overruled by the decisions of the Privy Council cited in the judgment. It follows therefore that that case decided by the learned judges of this Court is still good law so far as we are concerned; unless we are prepared to differ from it and refer the question decided there to a Full Bench, we are bound to follow it. We are not prepared to differ from what was laid down in that case, so we are bound to follow the law laid down in it."

The owner of the underground right is justified in doing all such acts as may reasonably be necessary: *Kumar Rameswar v. Ram Nath*, 10 C.W.N. 17; s.c., 33 Cal. 462; *Kerr v. Pawson*, 25 Beav. 394; *Williamson v. Woolten*, 3 Drew. 210; *Harris v. Ryding*, 5 M. & W. 60; s.c., 52 R.R. 622; *Spoor v. Green*, L.R. 9 Each 99; *Earl of Jersey v. Guardians of Pen*, 22 Q.B.D. 555; *Attorney General v. Ewelme Hospital*, 17 Beav. 366; *In re Purmanandas v. Jeewndas*, 7 Bom. 109; *Tituram v. Cohen*, 2 C.L.J. 408; *Girish Chandra v. Sris Chandra*, 9 C.W.N. 255. Extent of underground rights.

In the absence of proof that the mineral rights were vested in the holder of a *Digwari* tenure before or at the time of the Permanent settlement, the zemindar with whom the estate in which the tenure was permanently settled by Government would have the rights to the minerals: *Durga Prasad v. Braja nath*, 16 C.W.N. 482; s.c., 39 Cal. 696. Mineral rights—Digwari tenure.

Grant of *jagir* land implies no grant of the soil but a personal grant only of the revenue thereof to the grantee: *Ragpojirao v. Lakshimanvad*, 17 C.L.J. 17 (P.C.). Jagir.

A *bemiadi* patta (lease without a term) does not make the lease a permanent one although rights to minerals were granted and although it was heritable: *Parshman Koer v. Tulsi Koer*, 39 I.C. 638 s.c., 2 Pat. L.J. 180. Bemiadi patta.

Mogoli Brahmottur grant of a mouja does not pass any minerals under it to the grantee: *Kunja Behari v. Durga Prasad*, 42 Cal. 346 Mogholi Brahmottur

(Fletcher and Richardson J.J.). (*Harinarain v. Sriram*, 37 Cal. 123 and *Jyoti Prasad v. Lachipur*, 38 Cal. 845 followed).

Where a mouja was held under a *Mogholi Brahmattar* grant of which the origin of the tenancy is not known, and it did not appear that at the date of the grant any mines had been opened or that right to minerals had been acquired by the grantee, *held* that minerals did not pass: *Kunja Behari v. Durga Prasad*, 19 C.W.N. 203 (Fletcher and Richardson J.J., 7 May 1914); where the mineral rights were never in contemplation of the parties when the lease was granted (in the year 1830) the presumption is that no subsoil rights passed by the grant: *Nawabgunj Coal Co. v. Beharilal*, 20 C.W.N. 1135 s.c., 1 Pat. L.J. 275 s.c., 2 Pat. L.W. 324. (Patna High Court: Atkinson and Kingsford J.J.).

Minerals Minerals will not be held to have formed part of the grant, in the absence of express evidence to that effect: *Shashi Bhusan v. Jyoti Prasad*, 44 Cal. 585 (P.C.), s.c., 21 C.W.N. 377, s.c. 25 C.L.J. 265.

Absence of express words in a grant. The case of *Jyoti Prasad v. Lachipur Coal Co.*, 14 C.L.J. 361, s. c., 38 Cal. 845, s. c., 16 C.W.N. 241 was affirmed and the cases of *Harinarayan v. Sriram*, 11 C.L.J. 653, s. c., 37 Cal. 723 and *Durga Prasad v. Brajanath*, 15 C.L.J. 461, s. c., 39 I.A., 133, s. c., 39 Cal. 695 were followed in the Privy Council case of *Sashi Bhusan v. Jyoti Prasad*, 44 Cal. 585 (P.C.) and it was held that although a tenure may be permanent, heritable and transferable, and at a fixed rent, minerals will not pass as forming part of a grant in the absence of express evidence to that effect. The cases of *Jyoti Prasad v. Lachipur Coal Co.*, *Harinarayan v. Sriram* and *Durga Prasad v. Brajanath* were also followed in the case of *Kunja Behari v. Durga Prasad*, 20 C.L.J. 304, s.c., 42 Cal. 396* and it was held that minerals did not pass in a *Mogholi Brahmottur* grant.

Brahmottur The effect of a grant of a rent-free brahmottur of the whole of a moujah made before or after the Permanent Settlement is not to transfer any mining rights: *The Nawabgunj Coal Co. v. Sashi Bhusan Ray*, 42 Cal. 346 s. c., 19 C.W.N. 203 (Stephen and Mullick J.J.).

Maintenance grant. In a maintenance grant for life there was no express provision authorising the grantee to open new mines and to appropriate the minerals therefrom, *held* that the grantee had no right to grant a mining lease for the purpose of opening and working new mines: *Christian v. Tekaitmi*, 20 C.L.J. 527; s. c., 19 C.W.N. 796 (*Mookerjee and Beachcroft J.J.*).

The interest of a *khorphosdar* (i.e., of a maintenance grant) heritable in the male line is resumable on the failure of heirs and therefore does not carry with it the subsoil rights: *Biswanath v. Surendra*, 19 C.W.N. 102 (*Chitty and Teunon J.J.*).

In the case of a maintenance grant (*Khorphosh*) heritable in the male line, where the reversion remains in the grantor, the mineral rights do not pass without words of express grant or by clear implication: *Udai Pratap v. Jagat Mohan*, 6 Pat. 638 (*Dawson Miller, C.J. & Kulwant Sahay, J.*).

* See *Ram Chandra v. Ganesh Chandra*, 21 C.W.N. 404; this case relates to the case of a contract for working coal out of *Mogholi Brahmottur* land.

The minerals do not pass if the lease does not contain clearly the terms that the subsoil right is granted ; this principle applies as well as to rent-free grants as to grants of tenures at fixed rents : *Raghunath v. Durga Prasad*, 47 Cal. 95 (P.C.). The following cases were followed : *Hari Narayan v. Sriram*, (1910) I.L.R. 37 Cal. 723 ; *Durga Prasad v. Brajnath*, (1912) I.L.R. 39 Cal. 696 ; s.c., I.L.R. 39 I.A. 133 ; *Sashi Bhushan v. Jyoti Prasad*, (1916) L.K. 44 I.A. 46.

Rent-free grants and tenures at fixed rents.

6. Splitting up :—Where a tenure which was held from long before the Permanent Settlement was in the year 1884 split up into two tenancies, held that the old tenure did not exist in the shape of the two new tenancies, the land held by the tenure-holder being affected by the division under cl. (3) of s. 50 of the Tenancy Act : *Uday Chandra v. Nripendra Narayan*, 36 Cal. 287, s. c. 13 C.W.N. 410 ; but it has been subsequently held in another case that the subsequent splitting up of a permanent tenure into more than one will not affect the permanent nature of the tenancies : *Jyoti Prasad v. George Mathew Darby*, 16 C.W.N. 241. The case of *Uday Chandra v. Nripendra Narayan*, 36 Cal. 287, s. c. 13 C.W.N. 410, was distinguished on the ground that the case proceeded on the special wording of s. 50 of the Tenancy Act and had therefore no application to a tenancy which had been divided long before that enactment ; moreover the case in 16 C.W.N. 241, was one in which s. 50 of the Bengal Tenancy Act had no application.

Effect of splitting up.

7. Suit by shebait for recovery of possession :—A suit by a shebait for recovery of possession of land covered by a permanent lease, granted by his predecessor in interest without any legal necessity and not for the benefit of the endowment, is barred by limitation, if brought more than 12 years after the grant ; each succeeding shebait does not acquire a fresh start for the purpose of limitation ; *Madhusudan v. Radhika Prasad*, 16 C.L.J. 349 (Mookerjee and Beachcroft J.J., 30 Aug. 1912), following the case of *Damodur v. Lakhan*, 37 Cal. 885.

Suit for possession barred, if brought 12 years after grant of a permanent lease.

8. Debuttur :—In the case of *Satyasri Ghosal v. Kartik Chandra Das*, 15 C.L.J. 227 Jenkins C.J. observed (N. Chatterjee J. agreeing, Jan. 29, 1912) : "The presumption in favour of a permanent tenancy implies, that there is ground for inferring that the tenure was always intended to be and always intended to be and always was hereditary, or that it acquired that character by subsequent grant. But a presumption in favour of a transaction assumes its regularity : it cannot be made in favour of that which offends legal principle. It is this that prevents our accepting the view of the lower appellate court as final, for it would seem that the property to which the presumption has been applied is debuttur. If it was debuttur at the time the tenancy originated, then this would affect the applicability of the presumption, for, to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time would be a breach of duty in a shebait and is not, therefore presumable." See also *Moharanee Shibessouree v. Mothura Nath*, 13 M.I.A. 270 (275).

Presumption.

Presumption—Permanent tenancy—Debuttur.

9. Brahmottar : Rent-free grant :—In Bengal Rajas and rich zemindars in ancient days made numerous rent-free brahmottar grants to learned Pandits and Brahmins of saintly character for their

9942
GR 1911

maintenance. At this distance of time most of the original grants recorded in country papers have been lost. Long possession by the grantees and their successors under a claim of rent-free *brahmottar* grant is all that can be expected after a long lapse of time in proof of a legal origin of such grant. Whether a presumption of a lost grant should arise or not must depend upon the circumstances of each case. Care must always be taken to see that long possession is clearly established to have been enjoyed under a definite claim of right in such a manner that in the circumstances it was likely to have attracted the notice of the person or persons whose rights are adversely affected by such a claim; *Rai Kiran Chandra Roy Bahadur v. Srinath Chakravarti*, 31 C.W.N. 135 (Per Chakravarti, J., Panton, J., agreeing).

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

Headings of Notes.

1. GENERAL EXPLANATION.
2. "PARCEL OR PARCELS OF LAND."
3. LAND HELD BY AN UNDER-RAIYAT.

I. General explanation :—The following illustration will explain the section :

A and B are joint proprietors of an estate. A lets out his one-half share *as a tenure* of a parcel of land by one lease ; B lets out his one-half share of that parcel separately by another lease ; there become two *distinct tenures* ; A or B may sue alone for ejectment or enhancement and the decree obtained for rent is a rent-decree. *But if A lets out his one-half share of land as a rayati tenancy and there are stipulations that A alone will be entitled to sue for rent or enhancement or ejectment, and B lets out by a separate lease his undivided share with all rights of enhancement, ejectment &c., still according to the case-law A or B cannot alone sue for enhancement or ejectment ; it has been held that the tenancy under A or B is not a holding. The case-law is to the effect that a parcel or parcels of land means "an entire parcel" or "entire parcels of land."*

The practical difficulty is that the landlord cannot, although there is a separate lease, bring a suit for enhancement of rent under s. 30, for it is the landlord of a "holding" who can bring such a suit ; it is not possible to bring a suit jointly with his co-sharer landlord for the leases are separate, the rent is separate and the stipulations are different. Likewise the decree for rent is not a *rent-decree* but a money decree.

It is suggested therefore that the definition of "holding" should be altered and in this respect the definition of "tenure" should be looked into, and the definition may be altered thus :

"Holding" means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy.

The word used in s. 30 is "holding" and the word in s. 105 is "land" ; it has therefore been held that although the landlord of an undivided share of a parcel of land which has been let out by a

separate lease cannot bring a suit for enhancement under s. 30, but he can make an application for settlement of rent under s. 105, as the word used in s. 105 is "land" and not, "holding."

2. "Parcel or Parcels of Land" means entire parcel or entire parcels and therefore an undivided share in the lands comprised in a holding is not a holding: *Hurry Charan v. Rajah Runjit*, 25 Cal. 917, s. c., 1 C.W.N. 521; *Baidya Nath v. Sheikh Jin*, 2 C.W.N. 44; *Hurribole v. Tassimuddin*, 2 C.W.N. 680; *Ahadulla v. Gagan Molla*, 2 C.L.J. 10; *Parbatty Debya v. Mathuranath*, 16 C.W.N. 877, s. c., 16 C.L.J. 9; *Binayak v. Sominuddi*, 24 C.W.N. 1022; *Bahadur Ahmed Moulavi v. Hemanta Kumar Roy*, 29 C.W.N. 613 (Cumming & B. B. Ghose, J.J.). Under Act VIII of 1869 (B.C.) a raiyat could acquire a right of occupancy in a share of an undivided property: *Baidyanath v. Sudharam*, 8 C.W.N. 751; see also *Jardine Contra. Skinner & Co. v. Rani Sarat Sundari*, 3 C.L.R. 140.

Undivided share cannot be holding.

Where a raiyat executes a *kabuliyat* in favour of A, an eight annas landlord, and another *kabuliyat* in favour of B, the other eight annas landlord, held that the sale of the 8-ans. which the tenant holds under A, does not give the latter a right to *khas* possession, *Swarnamoyi v. Gayratulla*, 20 C.W.N. ciii (103 notes portion, Fletcher and Newbould J.J.).

Right to Khas possession.

It is submitted that an undivided share in an entire parcel of land may be a distinct holding, for the term "holding" means a parcel or parcels of land &c., &c., unless there is something repugnant in the subject or context (as will be found in the earlier part of s. 3). If an undivided share of a plot of land which has been separately settled and for which a separate *kabuliyat* is given is not considered to be a holding, the landlord is practically without any remedy to recover rent, for the decree cannot be executed as a rent-decree under s. 65; and as a money-decree it cannot be executed, as the *holding*, not being transferable, cannot be sold.* Unless therefore an undivided share forming a separate tenancy is not considered to be a *holding* within the meaning of this section there will be a repugnancy in the subject or context in interpreting s. 65. It has already been pointed out above that an occupancy right could be acquired in an undivided share of a holding under the old law. Petheram, C.J. observed in the case of *Hurry Churan v. Runjit*, 25 Cal. 917, s. c. 1 C.W.N. 521 that an undivided share of a plot of land forming the subject of a distinct tenancy may be a holding and that the words parcel or parcels of land do not exclude the idea that a share though undivided cannot be a holding.

Whether an undivided share in a holding may be a holding as defined in this section.

Observations of Petheram, C. J.

It has been held by Richardson J., that there can be a raiyati interest in an undivided share or part of land: *Banku Behari v. Benode Kumar*, 13 C.W.N. notes portion cclxiv (264). See notes under s. 65.

3. Land held by an under-raiyat:—Land held by an under-raiyat is not a holding within the meaning of s. 3 Cl. (8): *Arsadulla v. Mansubali*, 16 C.L.J. 539 (D. Chatterjea and N. Chatterjea J.J.).

Bengal and Bihar.

Eastern Bengal.

(10) "Village" means the area defined, survey- (10) "Village" means the area defined, survey-

ed and recorded as a distinct and separate village in—

(a) the general land-revenue survey which has been made of the Province of Bengal, or

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

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.

ed and recorded as a distinct and separate village in—

(a) the general land-revenue survey of the districts which heretofore formed part of the Province of Bengal, or

(b) any survey made by the Government which may be adopted by notification in the *Eastern Bengal and Assam Gazette* as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village;

Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the

Eastern Bengal & Assam Gazette, declare that in such local area, estate, tenure or part thereof "village" shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue officer with the sanction of the Board of Revenue as the unit of survey and record.

Headings of Notes.

1. ALTERATION.
2. NON-URBAN AREA.
3. CL. (b).

1. Alteration : These clauses have been substituted for the former clause by the Bengal Tenancy Amendment Acts of Bengal and Eastern Bengal : the former clause was as follows :—

(10) "*Village*" means an area included in a village map of the revenue survey within the same exterior boundary, 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. Former village (10)

2. Non-urban area : The term "village" as defined in sub-sec. (10) before amendment by Act 1 (B.C.) of 1907 was held to be not confined to non-urban areas : *Syed Hassan Ali v. Gobind Lal Basak*, 9 C.W.N. 141. Village.

3. Cl. (b) : The Collector of the 24 Parganas in exercise of the power conferred by this clause and with the sanction of the Board of Revenue declared certain areas to constitute villages within the meaning of this Act. A list of the said villages will be found in the Appendix.

Several notifications have been published in the Local Gazette to the effect that the surveys carried out under the orders of Government under s. 3 of the Bengal Survey Act, 1875 (Beng. Act V of 1875), and sub-sec. (1) of s. 101 of the Bengal Tenancy Act, be adopted as defining village for the purpose of cl. (10) (b) of s. 3 in several areas of several districts. A list of the said notifications and areas is to be found in the Appendix.

Village.

The word "village" is to be found in ss. 20 (1), 21 (1) and 115A. According to s.s 20 (1) and 21 (1) a person who does not hold land in a village cannot be a settled raiyat and cannot acquire a right of occupancy.

Where a certain area was declared as village in the year 1912 and the tenant held that land for 12 years a part of which was subsequent to 1921, held that the tenant did not acquire a right of occupancy: *Janabali v. The Port Canning and Land Improvement Company*, 40 C.L.J. 167 (Rankin and B. B. Ghose J.J.) ; this was decided before the Amending Act of 1925.

See notes under sec. 21.

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

The Bengali and the Vilayati (or Armlī) year are solar: the Fasli is a lunar year.

The Bengali year commences on the 1st of Baisakh which generally corresponds to the 12th or 13th April.

The Fasli year commences on the 1st of Aswin which generally corresponds to some day in September; this being a lunar year, an intercalary month is inserted every third (sometimes second) year in order that the year may commence in the same season.

The Vilayati or Amli year commences on variable dates in Bhadra or Aswin.

See notes under Sch. III, art. 2.

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

(S. 50 Cl. 2) **Date of the Permanent Settlement :** When a question arises as to whether a tenant is entitled to the presumption under s. 50, cl. (2) the fact that the estate within which the tenure in question is situated was not permanently settled in the year 1793, does not make any difference: *Tamasha Bibi v. Asutosh Dhar*, 4 C.W.N. 513.

Sunderbans.

This case was relied on by D. Chatterjee and Mullick J.J., in the case of *Khettermani v. Jiban Krishna*, 21 C.L.J. 315, and it was held that a part of the Sunderbans would be a permanently settled area even if settled after 1793, the definition in cl. 12 of s. 3 of the Bengal Tenancy Act notwithstanding.

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

Occupancy raiyat, death of, without heir

Vesting of occupancy holding on the landlord after death of raiyat :—The word, "succession" does not include the case of the vesting of an occupancy holding on the landlord on the death of an occupancy raiyat: *Mukta Keshi v. Pulin Behari*, 13 C.W.N. 12.

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

Headings of Notes.

1. SIGNED :
2. NOTICE UNDER S. 49 :
3. PLAINT ON BEHALF OF GOVERNMENT :
4. COLLECTOR SIGNING FOR GOVERNMENT :
5. DEPUTY COLLECTOR SIGNING FOR THE COLLECTOR :
6. S. 187 :

I. Signed :—Where an illiterate attesting witness to a deed who witnessed the execution of the deed only touched the pen and another person affixed his name to it ; *held* that the deed was properly attested : *Sasi Bhusan v. Chandra*, 33 Cal. 861 : s. c. 4 C.L.J. 41 ; it is not necessary for an attesting witness to put his mark at the deed : *Ibid* ; where an enactment provides that a document should be signed by the executant, that alone does not make it indispensable that the signature should be affixed by the executant himself : *Ibid* ; see in this connection *The Queen v. The Justices of Kent*, L.R. 8 Q.B. 305 ; *Deonarain v. Kukur Bind*, 24 All. 319, *Dinomoyi v. Bonbehari*, 7 C.W.N. 160 ; *Shamabati v. Jago Bibi*, 29 Cal. 749.

The signature by a person of another's name in a document does not amount to forgery if it is made under an assurance that the person whose name was signed gave authority for it : *Unreported Civil Rule* No. 1973 of 1903, decided by Bannerjea and Handley, J.J., on 21st July 1903.

Where the executant of a deed signed on the first page and did not sign on the other pages having discovered that the deed had not been drawn up in accordance with the terms agreed upon, *held* that the document was a nullity : *Banku Behari v. Krishto Govindo*, 30 Cal. 433 ; see also *Foster v. Mackinnon*, L.R. 4 C.P. 704, 711. But one signature made with the intention of authenticating the whole instrument is sufficient though the whole document be contained in several sheets of paper : *Sagore Chandra v. Degambar*, 14 C.W.N. 174.

2. Notice under s. 49 :—A notice to quit under sec. 49 to an under-raiyat need not be actually signed by the landlord, if the notice is at the instance of the landlord calling upon the under-raiyat to quit the land : *Mohendranath v. Biswanath*, 29 Cal. 231.

3. Plaintiff on behalf of Government :—Where a plaintiff on behalf of Government was signed by the Collector and by a Pleader who was not the Government Pleader but who generally acted for Government, and verification was signed by the Collector and the Government Pleader ; *held* by Rampini, J., that the plaintiff was properly presented : *Rakhal v. The Secy. of State*, 10 C.W.N. 841.

4. Collector signing for Government :—Where a notice to quit was given on behalf of Government, *held* that the Collector was competent to sign on behalf of Government and it was not necessary that the Secretary of State should sign it : *Rakhal v. The Secy. of State*, 10 C.W.N. 841.

Deputy
Collector
in charge
signing for
Collector.

5. Deputy Collector signing for the Collector :—Where a Deputy Collector *in charge* signed for the Collector, *held* that there was no irregularity : *Mahammad v. Naffar Chandra*, 9 C.W.N. 803. The mere circumstance that the notice was signed by a Deputy Collector would not invalidate it, if he acted on behalf of the Collector : *Giris Chandra v. Khagendra Nath*, 16 C.W.N. 64.

S. 187.

6. S. 187 :—Every document required by this Act to be signed by a landlord, except an instrument appointing or authorising an agent may be signed by an agent of the landlord authorised in writing in that behalf. See s. 187, sub-sec. (3).

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

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

Headings of Notes.

1. DEPUTY COLLECTOR SIGNING FOR COLLECTOR.
2. POWERS OF A COLLECTOR.
3. WHETHER COLLECTOR CAN DELEGATE POWERS.

Deputy
Collector
in charge
signing for
Collector.

1. Deputy Collector signing for Collector :—Where a Deputy Collector *in charge* signed for the Collector, *held* that there was no irregularity : *Mahammad v. Nafar Chandra*, 9 C.W.N. 803. See notes under s. 3 cl. (14).

".....in the mere circumstance that the notice was signed by a Deputy Collector would not invalidate it, if acted on behalf of the Collector" : *Giris Chandra v. Khagendra Nath*, 16 C.W.N. 64.

See notes under s. 3, sub-sec. (14) and s. 167.

Subdivi-
sional
officer.

Under s. 3 sub-sec. (16) and Govt. notification of the 19th Sept. 1910, a subdivisional officer is a collector and is authorised to hold an enquiry under s. 58, (3) ; a Collector of the District has power, on complaint made to him, to transfer such enquiry for disposal to a sub-divisional officer who is under ss. 20 and 21 of Reg. IX of 1833, subordinate to the Collector, and is required to perform all the duties assigned to him by that functionary : *Phanindro v. Emperor*, 40 Cal. 465 ; s. c., 17 C.W.N. 571.

Functions
of Collector
Sub-divi-
sional
officers.
Notifica-
tions.

2. Powers of a Collector :—All officers in charge of sub-divisions have been invested with the powers of a Collector for the purpose of discharging the functions referred to in ss. 12, 13, 15 and 69 to 71 of this Act (*Calcutta Gazette*, 1886, Pt. 1, pp. 466, 1892). The Deputy Collector of Howrah and the Senior Deputy Collector of Gaya have also been invested to exercise the functions of ss. 69 to 71 : *Calcutta Gazette* 1886, Pt. I, p. 652 ; and 1893, Pt. I, p. 274).

No. 2446 L. R.—The 22nd Aug. 1910. In exercise of the power conferred by cl. (16) of s. 3 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Lieutenant Governor is pleased to appoint all officers in charge of sub-divisions in the province of Bengal, except those in the Chota Nagpur Division, to discharge in their respective sub-

divisions the functions of a Collector under Section 58 of that Act. See Calcutta Gazette, Part I, Aug. 24, 1910, Page 1198.

No. 1579 L.R.—The 19th Sep. 1910—In exercise of the power conferred by cl. (16) or s. 3 of the Bengal Tenancy Act 1885 (VIII of 1185), the Lieutenant Governor is pleased to appoint all officers in charge of sub-divisions in which section 58 of that Act is in force to discharge in their respective sub-divisions the functions of a Collector under the said section 58.

2. The following notifications are hereby cancelled, namely :—
 - (1) Notification No. 2978 L. R. dated the 4th August 1908, published at page 1391 of Part I of the Calcutta Gazette of the 5th idem, and
 - (2) Notification No. 2446 L. R. dated the 23rd August, 1910, published at page 1198 of Part I of the Calcutta Gazette of the 24th idem. See Calcutta Gazette, Part I, Page 1323 Sep. 28, 1910.

See Appendix.

When by a notification all the officers in charge of sub-divisions were appointed to discharge the functions of a Collector under ss. 12, 13, 13, and 15, such appointment creates the officer a Collector under this clause for the purpose of carrying out the duties under those particular sections, and do not make him a Collector "for all purposes of the Act": *Mohabat Singh v. Umatul Futima*, 28 Cal. 66. Ss. 12, 13, 15 and 69 to 71.

3. Whether Collector can Delegate Powers :—It seems that when a Collector is appointed by the Local Government to discharge any of the functions of a Collector under this Act, he has no power to delegate the said powers to any other officer.

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

Appointment of Deputy Collectors to discharge the functions of Revenue officers :—See Appendix. See also notes under s. 3 clause (16).

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

Headings of Notes.

1. DOCUMENTS WHICH ARE REQUIRED TO BE IN WRITING AND REGISTERED UNDER THE BENGAL TENANCY ACT.
2. AMALNAMA.
3. DOCUMENT VARYING RENT.
4. REDUCTION OF RENT.
5. TRANSFER OF PROPERTY ACT, S. 107.

I. Documents which are required to be in writing and registered :—(1) The following documents are required to be in writing and registered under the Bengal Tenancy Act : Documents required to be in writing

under the
Bengal
Tenancy
Act ;

- (a) Transfer of a permanent tenure or share thereof, and raiyati holdings at fixed rent or rate of rent, or share thereof, by sale, gift or mortgage. See ss. 12, 17 and 18.
- (b) Agreement enhancing money-rent of occupancy raiyat under s. 29.
- (c) Agreement for enhancement of rent of a non-occupancy raiyat under ss. 43 and 46.
- (d) Leases by an under-raiyat by virtue of which the landlord of the under-raiyat is entitled to recover increased rent under s. 48 cl. (a).
- (e) Subleases by a raiyat under s. 85 (1).
- (f) A sublease of a raiyati holding in respect to which the benefits under cl. (4) of s. 87 may be obtained.
- (g) Notified incumbrances within the meaning of s. 161.

under the
Transfer of
Property
Act.

(2) Documents which come within the meaning of ss. 54, 59 and 123 of the Transfer of Property Act: (s. 107 of the Transfer of Property Act does not apply to agricultural leases ; see s. 117 of that Act ; and consequently leases under the Bengal Tenancy Act do not require to be in writing, but if they are reduced into writing they are required to be registered if they come within the meaning of s. 18 of the Indian Registration Act.

Permanent
tenure.

A permanent tenure under the Bengal Tenancy Act or under any other Act is to be made by a registered instrument: *Hasiswari (Kasiswari) v. Harinath*, 40 I.C. 100. It is submitted with great respect that this decision is open to doubt in as much as the Bengal Tenancy Act nowhere provides that a permanent tenure is required to be in writing, and consequently no writing and registered document is necessary.

Putni
tenure

It should be pointed out however that a *patni* lease is required to be in writing under Reg. VIII of 1819 and as such is required to be registered.

Registra-
tion Act
s. 90.

A lease attested by any officer engaged in making a settlement or revision of settlement of land-revenue and which forms part of the record of such settlement, is exempted from registration under s. 90 cl. (a) of the Indian Registration Act.

Registra-
tion Act.

Also leases coming within cl. (d) of s. 90 of the Indian Registration Act do not require registration. Certain resumed *balagasti paikan* lands in the district of Midnapur were leased out in the year 1906 by an *unregistered patta* by the Collector on behalf of the Secretary of State ; the lower appellate court held that the patta did not require registration under cl. (d) of the Registration Act, *held* by Jenkins C. J. and Holmwood J., that the patta did not require registration: *Makhanlal v. Debendra*, 19 C.W.N. cciii (203 notes) but see the case reported in 12 All. L. J., p. 219.

Registra-
tion Act,
s. 90.

(3) Documents which are not required by the Bengal Tenancy Act to be in writing, if reduced into writing, are required to be registered if they come within the meaning of s. 18 of the Indian Registration Act, and not exempted under s. 90 of that Act.

Oral lease.

The letting out of agricultural land need not be by a document only ; it may be by oral agreement or even by conduct of parties: *Alamulla v. Surendra Kumar*, 69 I.C. 57. The fact that the tenant has the option at the end of the term of one year to continue his tenancy does not make the lease a lease for more than a year and

Option to
continue at
the end of
the year.

as such the lease does not require registration: *Faijuddin v. Asrab Ali*, 37 C.L.J. 475.

A compromise in a rent suit fixing payment of rent for future years does not require registration: *Ram Pedarath v. Shorai Koery*, [1920 Pat.] p. 114; such a compromise is admissible in evidence: *Ibid.* Compro-
mise.

An agreement to lease intended to operate as a present demise is a lease within the meaning of clause (d) of s. 17 of the Registration Act and as such inadmissible in evidence in a suit for specific performance of its terms if it is not registered, even though the tenant is in possession: *Sanjib v. Santosh*, 26 C.W.N. 329; (*Rankin J.*). The relationship of landlord and tenant may be proved without production of lease, by proof of payment of rent and acceptance by the landlord: *Raj Kumari v. Shyama Bibi*, 25 C.W.N. clxiii, (163 notes portion). Agreement
to lease.

Lease not
necessary.

An amalnama being neither a lease, nor an agreement to lease within the meaning of s. 3 of the Registration Act, is admissible in evidence without registration: *Lakshan Chandra v. Takim Dhali*, 39 C.L.J. 90. Amalnama.

The case of *Dwarka Nath v. Ledu Sikdar*, 33 Cal. 502 was referred to. Apart from s. 17 (3) of the Registration Act an amalnama authorising a grantee to take possession and intended to be followed by a formal *Kabuliyat* even if deemed compulsorily registrable is inadmissible only for the limited purpose mentioned under s. 49 of the Registration Act, as evidence of a transaction affecting immoveable property comprised therein: *Lakshan Chandra v. Takim Dhali*, 39 C.L.J. 90.

No writing is necessary for surrendering a tenancy. But when the original lease is registered the surrender of a portion of the tenancy with an abatement of rent must be by a registered instrument: *Gopal Chandra v. Harendra Nath*, 63 I.C. 483. See notes under s. 3 cl. (4). Surrender
when to
be in writ-
ing and
registered.

2. Amalnama:—An agreement by a landlord to grant a lease upon the tenant fulfilling certain conditions is not a lease or an agreement to lease requiring registration: *Dwarkanath v. Ledu Sikdar*, 33 Cal. 502. Where an amalnama recited that the tenant verbally applied for grant of certain lands and that he was permitted to hold and clear the jungle (the lands being then covered with jungle), that he should be allowed to hold without payment of any rent for nine years, that on the expiration of that period of time, the lands would be measured and assessed at a certain rate and that upon the execution of a *kabuliyat* by the tenant a patta would be granted to him, and that if the grantee fails to reclaim the lands within nine years for which he was allowed occupation it would be in the power of the landlord to settle the land with any body he pleases, held that the document was neither a lease nor an agreement to lease within the meaning of sec. 3 of the Registration Act and did not require registration: *Ibid.* Amalnama
not a lease.

Construc-
tion of an
amalnama.

The question whether an instrument made a present demise or was merely an agreement to make a future demise must depend upon the paramount intention of the parties: *Champakalatika v. Nafar Chandra*, 15 C.W.N. 536. A *dastak* which merely allows a tenant Intention of
the parties.

- Dowl. to take possession of the land and to cultivate it does not require registration: *Ahmud v. Tohi*, 13 C.W.N. 267; when a *dowl* i.e. a memorandum showing the rents payable by the tenants bearing their signatures merely evidences that the rent which was previously payable partly in kind and partly in cash would hereinafter be paid in cash only, it is not an instrument relating to an interest in immovable property and does not require registration: *Haraprasad v. Ramnarayan*, 11 C.L.J. 22; the case of *Narain Coomary v. Ramkrishna*, 5 Cal. 864 was considered and applied in this case; also *Satyesh Chunder v. Dhunput*, 24 Cal. 20; *Obai Goundan v. Ramlinga*, 22 Mad. 217. The case of *Syed Surdar v. Amzad Ali*, 7 Cal. 703, *Dwarkanath v. Ledu Sikdar*, 33 Cal. 502; *Narayanan v. Mutheah Servai*, 35 Mad. 63 and *Champaklatika v. Nafar Chandra*, 15 C.W.N. 536 were all discussed in the case of *Sheikh Elahi v. Sheikh Hukum*, 18 C.W.N. 38, where a document described the land intended to be demised and set out the boundaries thereof and proceeded to say that "according to your prayer I grant this amalnama to you for creating houses after reclaiming the said homestead. You will dwell thereon on payment of rent Rs.....from year to year.....you will abide the survey and settlement within a month on executing a *kabuliyat* you will take a patta which I shall grant," and it was held that it was compulsorily registrable.
- Compulsory registration. *
- Rights by words of mouth. When the rights claimed by a person may legally be created by words of mouth, those rights cannot be disturbed by the granting afterwards of a registered *kabuliyat*: *Ismail v. Ali Mahomed*, 13 C.W.N. notes portion p. 104 (civ.)
- Document varying rent. **3. Document varying rent:**—A document varying the rent reserved in a registered lease requires registration: *Lalit Mohan Ghose v. The Gopali Chuck Coal Co., Ltd.*, 39 Cal. 284, s. c., 16 C.W.N. 55 (F.B.).
- Reduction of rent. **4. Reduction of rent:**—A subsequent agreement reducing rent requires registration: *Durga Prasad v. Rajendra Narain*, 18 C.W.N. 66 (P.C.).
- Transfer of Property Act. **5. Transfer of Property Act s. 107:**—The terms of a tenancy which do not come within s. 107 of the Transfer of Property Act can be proved by oral evidence: *Sarat Chandra v. Jadav Chandra*, 21 C.W.N. 206.

CHAPTER II.

CLASSES OF TENANTS.

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

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

and the following classes of raiyats (namely):—

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

Headings of Notes.

1. CLASSIFICATION.
2. ACT X OF 1859—ACT VIII B.C. OF 1866—RAIYAT AND UNDER-RAIYAT.
3. RAIYAT AT FIXED RENT.
4. OCCUPANCY RIGHT UNDER A HINDU WIDOW.
5. WHETHER AN UNDER-RAIYAT MAY ALSO ACQUIRE A RIGHT OF OCCUPANCY.
6. STATUS OF FIXED RAIYAT AND OF OCCUPANCY RAIYAT IN THE SAME PERSON.
7. TENANT FROM YEAR TO YEAR.
8. STATUS OF UNDER-RAIYAT WHEN RAIYAT ACQUIRES THE SUPERIOR RIGHT.
9. POSSESSION AS A TICCADAR.
10. TENANT HOLDING IMMEDIATELY OR MEDIATELY UNDER RAIYATS : S. 4, CL. (3).

1. Classification :—The classification of tenants in s. s. 4 and was not intended to be scientific or precise: *Janki Singh v. Rannath*, (Per Chapman J., 44 I.C. 94) (Patna case).

2. Act X of 1859—Act VIII B. C. of 1866—Raiyat and der-raiyat :—The distinction between a raiyat and an under-raiyat is recognized from before the passing of the Bengal Tenancy Act. Distinction between raiyat and under

raiyat—
Old law.

The previous Acts (X of 1895 and VIII B. of 1865) contemplate the existence of the under-raiyat; under Act VIII B.C. of 1869 an under-raiyat cannot acquire a right of occupancy: *Kamini v. Prosunno*, 24 C.W.N. 685.

A fixed
raiyat may
also be an
occupancy
raiyat.

Raiyat
paying
fixed
quantity
of produce.

Fixed rent.

3. Raiyat at fixed rent:—A raiyat at fixed rent or rate of rent may also be an occupancy raiyat: *Sarbeswar v. Bijaychand*, 49 Cal. 280, s. c., 24 C.W.N. 15; see also *Midnapur Zemindary Co. v. Sadhumoni*, 54 Cal. 681 (Duval & Mitter, J.J.), s. c., 34 C.L.J. 233, (Sanderson C.J. and Richardson J.). A raiyat paying as rent a fixed quantity of paddy is a raiyat at fixed rent: *Manmatha Nath v. Probodh Chandra*, 73 I.C. 416, (Mookerjee and Rankin J.J.); see also *Dinanath v. Sati Prasad*, 36 C.L.J. 220, s. c., 27 C.W.N. 115, (Mookerjee and Chotzner J.J.).

A tenant whose rent is fixed in perpetuity is a raiyat at fixed rate: *Satish Chandra v. Upendra Nath*, 63 I.C. 592, (N. R. Chatterjea and Panton J.J.).

See notes under heading No. 6 and under ss. 18, 21 and 160.

4. Occupancy right under a Hindu widow:—An occupancy right acquired by a raiyat when an estate was in the hands of a Hindu widow cannot be questioned by a reversioner: *Harmonoge v. Ganour*, 37 I.C. 360 (Patna) *Roe and Jwala Prasad J.J.*

Under-
raiyat-
Right of
occupancy.

5. Whether an under-raiyat may also acquire a right of occupancy:—From the classification of tenants it seems that a raiyat can acquire an occupancy right and that an under-raiyat cannot do it.

But it appears from s. 183, ill. (2) that an under-raiyat cannot acquire a right of occupancy by custom or usage: See *Rajah Peary Mohan v. Badal Chunder*, 28 Cal. 205, s. c., 5 C.W.N. 310, this case was remanded for the determination of the question whether the defendant who was an under-raiyat could claim a right of occupancy. It also appears from sec. 113 that an under-raiyat may acquire a right of occupancy.

It was observed by Mookerjee J., in the case of *Akhil Chunder v. Hossain Ali*, 19 C.W.N. 246 that by a special usage or custom an under-raiyat might acquire a right of occupancy. See also the case of *Isvar Sant v. Torendra*, 42 C.L.J. 560 (Newbould & Graham J.J.). Fletcher J. (Shamsul Huda J., concurring) stated in the case of *Gopal Mondal v. Tapai Sankhari*, 46 Cal. 43, s. c., 22 C.W.N. 618, that the opinion expressed by Mookerjee J., seems to be in accordance with the provisions of the Bengal Tenancy Act. It was further decided in that case that an under-raiyat can acquire a right of occupancy by custom or usage, and on acquisition of such occupancy right continues to be an under-raiyat and is not liable to be ejected under s. 49 Bengal Tenancy Act.*

* From s. 113 and s. 183, illustration (2) it appears that the Act recognises right of occupancy in an under-raiyat, but the Act is silent as to the provisions which will apply to an under-raiyat (having a right of occupancy) in regard to enhancement, ejectment, transfer or succession and also as regards other matters. S. 183 provides that nothing in the Bengal Tenancy Act shall affect any custom, usage or customary right *not inconsistent with* or not expressly or by necessary implication modified or abolished by its provisions. Now, according to the classification of tenants in s. 4, one class excludes the other, and therefore occupancy raiyats who are a distinct class of tenants exclude the under-raiyats who are another class of tenants; so it is submitted that s. 183 excludes the idea of an under-raiyat with a right of occupancy; it is no

Under the old law a sub-tenant of a cultivating raiyat could Old law.
not acquire a right of occupancy.

See notes under secs. 49, & 183.

A person who enters into possession of land under a *Zuripeshghi* lease, the primary object of the lease not being to create the relationship of landlord and tenant but to provide a security as between debtor and creditor, cannot acquire occupancy rights in the land during the period of the lease: *Kharag Narayan v. Dwarka Prasad*, 3 Pat. 465, s. c. A.I.R. 1924 Pat. 580, (Das and Ross J.J.). See notes under Preamble and s. 116: *Ramjiram v. Bansi Rahut*, 4 Pat. 89.

Zurpeshghi
lease.

6. Status of fixed raiyat and of occupancy raiyat in the same person :—According to the classification of tenants in this section it seems that a person cannot be both an occupancy raiyat and a fixed raiyat. According to the old law (Act X of 1859, and Act VIII B. C. of 1869) a fixed raiyat, if he was in possession of land for twelve years continuously as a raiyat, became an occupancy raiyat as well. In s. 37 of the Revenue-sale Law we find the words “fixed raiyat with right of occupancy.” According to s. 19 of the Bengal Tenancy Act, a person who had an occupancy right in respect to any land before the passing of this Act “shall have a right of occupancy in that land”; so, fixed raiyats, who had occupancy right before the passing of the Bengal Tenancy Act, are still occupancy raiyats, and consequently they are protected from ejectment by a purchaser at a sale for arrears of rent, inasmuch as an occupancy right is a protected interest under s. 161. See *Ichhamoyi v. Kailas*, 18 C.W.N. 358.

Status of
a fixed
raiayat and
occupancy
raiayat in
the same
person.

Upon an interpretation of Secs. 20, 21 and 160 (f) of the B. T. Act of 1885 it has been held that after the passing of that Act, a person may have at the same time in respect of the same land a right of occupancy and also the right of a raiyat holding at a fixed rate. In other words the two status may exist in the same person at the same time even though the incidents of two kinds of holding may be diverse in character: *Sarbeswar v. Bijoy Chand*, 49 Cal. 280, s. c., 26 C.W.N. 15, s. c., 34 C.L.J. 233 (Sanderson, C. J. & Richardson J.). The status of a raiyat at a fixed rate can be satisfactorily or logically combined with that of an occupancy raiyat. The higher status would supersede so much of the lower as might be inconsistent

doubt true that illustration (2) of s. 183 recognises right of occupancy in an under-raiyat, and that illustration assumes (and it is submitted wrongly assumes) that right is not inconsistent with the provisions of the Act. So, the illustration is against the provision of s. 183, and against the spirit of the other provisions of the Act. It is true that s. 113 speaks of an under-raiyat with a right of occupancy; but that part of the section was an addition by the Bengal Council long after passing of the Bengal Tenancy Act which is an Act of the India Council. The Bengal Council might have introduced the matter on account of the erroneous illustration of s. 183. [s. 113 occurs in chap. X of the Act, and in regard to the drafting of this chapter X which was enacted by Bengal Act III of 1898] Jenkins C. J. observes in the case of *Umedulla v. Ramchandra*, 14 C.W.N. 812 “of the careless drafting which mars this very important Act.”

No rule has been laid down anywhere as to what elements are necessary for an under-raiyat to acquire a right of occupancy by custom or usage.

Moreover, a right of occupancy is a creature of the statute and can only be acquired under ss. 20 and 21 of the Bengal Tenancy Act and the corresponding sections of Act X of 1859 (s. 6) and Act VIII B.C. of 1869. See notes under ss. 19, 21 and 48.

with it and either status might be used as a shield so far as it extended : *Ibid.*

A person who has already acquired an occupancy right does not by obtaining a grant of a fixed rent lose that occupancy right. Similarly a raiyat holding at a fixed rate from the inception of the tenancy may subsequently acquire a right of occupancy, e.g., by continuous occupancy, for twelve years so as to be protected under sec. 160 of the B. T. Act : *Ibid.*

The contrary view taken by Mukerjee, J. (Jenkins, C. J. not expressing any opinion) in *Bhutnath v. Surendranath*, 13 C.W.N. 1025, s. c., 11 C.L.J. 298) was considered to be *obiter*, and the cases of *Abdul Gani v. Makbul*, 42 Cal. 745, s. c., 20 C.W.N. 185, *Lakhi v. Mokal Ali*, 27 C.L.J. 293, *Lakhi v. Hamid Ali*, 27 C.L.J. 284 were discussed : *Ibid.*

In the case of *Midnapur Zemindary Co. v. Sadhumoni*, 54 Cal. 681 (Duval & Mitter J.J.), *Sarbeswar v. Bijoy Chand*, 49 Cal. 280 was followed, and the dictum of Mukerjee J. in *Bhutnath v. Surendranath*, 13 C.W.N. 1025 was not followed. See also *Rajmohini v. Nagendra*, 94 I.C. 310 (Suhrawardy & Mukerji, J.J.).

Tenant
from year
to year.

7. Tenant from year to year :—Under the Bengal Tenancy Act there is no raiyat who holds from year to year : 20 C.W.N. 258.

Status of
under-
raiyat.

8. Status of under-raiyat when the raiyat acquires the superior right :—Where A was an under-raiyat under B, an occupancy raiyat, who purchases the superior tenure subsequently, held that A continued to be an under-raiyat : *Akhil Chandra v. Hassan Ali*, 19 C.W.N. 246 : see notes under s. 22.

Ticcadar.

9. Possession as a Ticcadar :—Possession as a *ticcadar* and not as a cultivating tenant does not confer occupancy right : *Stonewigg v. Sheo Rachhaya*, 35 I.C. 622 (Patna).

Sublessee
by under-
raiyat.

10. Tenants holding immediately or mediately under raiyats : cl. (3) of s. 4 :—The words “immediately or mediately” shew that an under-raiyat may also sublet and the sublessee is an under-raiyat.

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

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

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of

cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

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

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

(a) local custom; and

(b) the purpose for which the right of tenancy was originally acquired.

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

Headings of Notes.

1. NATURE OF TENANCY WHETHER A QUESTION OF LAW.
2. TENURE HOLDER OR RAIYAT.
3. DEFINITION OF TENURE-HOLDER NOT EXHAUSTIVE.
4. DEFINITION OF RAIYAT NOT EXHAUSTIVE.
5. IS A PUTNI TENURE GOVERNED BY THE BENGAL TENANCY ACT?
6. INTERMEDIATE INTEREST BETWEEN A ZEMINDARI AND A PUTNI.
7. CREATION OF INTERMEDIATE TENURE BETWEEN TWO INTERESTS, OR CONCURRENT LEASES.
8. RAIYAT : ACQUIRED A RIGHT TO HOLD LAND : TENANCY UNDER A TRESPASSER.
9. CERTAIN TERMS.
10. AGRICULTURAL PURPOSE.
11. PRESUMPTION.
12. STANDARD BIGHA.
13. TENANT OF HOMESTEAD LAND UNDER A RAIYAT.
14. ORIGINAL PURPOSE FOR WHICH TENANCY IS CREATED.
15. BURGADAR.
16. ZURIPESHGI LEASE.

I. Nature of Tenancy whether a question of law :—The question as to the nature of a tenancy is a question of law : *Salatudass v. Jadunath*, 8 C.W.N. 774 (F.B.) : also see *Ramdyal v. Midnapur Zemindari Co., Ltd.*, 15 C.W.N. 26. According to Jenkins C. J., the Full Bench (*Salatudass v. Jadunath*, 8 C.W.N. 774) does not seem to lay down that when a question arises as to the nature of a tenancy all questions of fact which are necessary for the decision of that point can be dealt with in second appeal : *Ramanuj v. Midnapur Zemindari Co., Ltd.*, 16 C.W.N. 725 (Jenkins C.J., N. Chatterjee J. concurring).

Nature of tenancy, a question of law.

The question whether a tenancy is to be regarded as one at will or one of a permanent nature is a matter in which a substantial question of law is involved : as to what inference may legitimately be drawn from the facts found is clearly a mixed question of fact and law : *Surendra Nath Roy v. Dwarkanath Chakravarti*, 44 Cal. 119, s. c., 21 C.W.N. 530 (Sanderson C.J. and Mookerjee J.).

The question whether a tenure was permanent or not is not merely one of fact: *Pradyot Kumar v. Sarat Chandra*, 21 C.W.N. 809.

Though a substantial question of law may, and generally does arise in determining whether the tenant is a raiyat or a tenure holder, the point depends ultimately on questions of fact: *Tarini Singh v. Satnarain*, 6 Pat. L.T. 787, s. c. 90 I.C. 895, s. c. A.I.R. 1926 (Pat.) 190 (Dawson-Miller C. J. and McPherson J.). The case of *Rajani Kant v. The Secretary of State*, 45 I.A. 190, s. c., 46 Cal. 90, s. c., 23 C.W.N. 649 referred to.

A question as to the nature of a tenancy is a question of law and may be dealt with in second appeal and the High Court is entitled to draw its own conclusions and inferences as to the legal incidents of the tenancy in order to judge the character of the tenancy and the status of the tenant: *Jogesh Chandra Roy v. Tazar Ali*, 85 I.C. 757 (*Per Mukerji J.*, Walmsley, J. agreeing).

Attendant
circum-
stances
must be
looked into.

Reclaiming
lease.

2. Tenure-Holder or Raiyat:—Whether a person is a tenure-holder or a raiyat depends on questions of fact; one must look to the attendant circumstances to judge of the purpose: * *Rajani Kant v. The Secretary of State*, 45 I.A. 190, s. c., 46 Cal. 90 (P.C.), s. c., 23 C.W.N. 649 (P.C.); (affirming the decision of the Calcutta High Court—Chitty and Teunon J.J.); in this case the tenant reclaimed the land in order to make money out of it by letting land to cultivators; the original tenant was not a cultivator; he was by caste a *Kayestha*, by occupation a petty Government official, when he took the land originally there was no tenant on the land; at some later date actual cultivation was being done by peasants who paid rent to the original tenant; upon these or other facts the High Court held that the tenancy was a tenure and not a raiyati holding. The Privy Council affirmed the decision of the High Court.

Though reclamation of the whole jote by the settlement holders and cultivation by their own ploughs may not be absolutely inconsistent, it is entirely contrary to experience in this province in cases where the tenancy is a tenure or the tenant proposes to settle raiyats upon the land and become a rent receiver, more specially where the settlement holder belongs to an agricultural caste or tribe: *Tarini Singh v. Satnarain*, 6 Pat. L.T. 787; s. c. 90 I.C. 895.

The judgment of Field J. in *Durga Prasanna Ghose v. Kali Das Dutt*, 9 C.L.R. 449 does not support the proposition that the definition of "raiya" and tenure-holder given in the Bengal Tenancy Act did not reproduce the meaning which they had previously borne: *Rajani Kant v. The Secretary of State*, 46 Cal. 90 s. c., 23 C.W.N. 649 (P.C.) (affirming the decision of the Calcutta High Court—Chitty and Teunon J.J.).

Original purpose for which the land is let out determines the nature of the tenancy: *Beni v. Trailakhya*, A.I.R. 1922 Pat. 425 (Jwala Prasad and Bucknill J.J.).

The word *thika* was held to mean the creation of a tenancy, and *mokra* to mean *mokurari* i.e. rent fixed in perpetuity: *Rishikesh v. Satis*, A.I.R. 1922 Cal. 123. (The document was written in Oriya character).

* The case of *Debendra Nath v. Bibudhendra*, 45 I.A. 72, s. c., 45 Cal. 803, s. c., 22 C.W.N. 674, s. c., 27 C.L.J. 543 was relied on.

The status of a tenant may be determined by subsequent conduct if the terms of the creation of the tenancy cannot be proved by direct evidence: *Abkaipada v. Ator Dome*, A.I.R. 1923 Cal. 294 (Newbould J.). See also *Kazemani v. Manik Chandra*, A.I.R. 1924 Cal. 156 (C. C. Ghose and Panton J.J.).

A *kabuliyat* by a tenure-holder to his own landlord is no evidence as to status of his own under-tenant: *Bhajan v. Balai*, A.I.R. 1923 Cal. 375.

3. Definition of tenure-holder not exhaustive :—The definition of a tenure-holder does not seem to be exhaustive; the occupants of the land from whom rent is to be collected must occupy lands used for agricultural or horticultural purposes.—*Umrao Bibi v. Syed Mahomed*, 27 Cal. 205, s. c., 4 C.W.N. 76. See also *Durga Sundari v. Umdatunnessa*, 18 W.R. 234, s. c., 9 C.L.R. 10. See also *Mahesh Jha v. Manbharan*, 5 C.L.J. 522.

Definition of tenure-holder not exhaustive.

The definition of "tenure-holder" merely formulates the pre-existing law and the insertion of the words "bringing it (the land) under cultivation by establishing tenants on it" introduced no change in the law: *The Secretary of State v. Jadav Chandra*, 21 C.W.N. 452; see also *The Secretary of State v. Gobind Prashad*, 21 C.W.N. 505.

Pre-existing law.

4. Definition of raiyat not exhaustive :—The definition of raiyat is not exhaustive, and it seems that a tenant holding land for horticultural purposes is not excluded by it: *Hurry Ram v. Nursingh*, 21 Cal. 129; *Umrao Bibi v. Syed Mahomed*, 4 C.W.N. 76: s. c., 27 Cal. 205. Neither the definition of tenure-holder nor the definition of raiyat is exhaustive: *Mahesh Jha v. Manbharan*, 5 C.L.J. 522.

Definition of tenure-holder not exhaustive.

The word "*raiya*" does not necessarily indicate a *jote* within the meaning of the B. T. Act: *Safarali v. Abdul Majid*, 47 C.L.J. 27 (Duval & Mitter J.J.).

5. Is a Putni tenure governed by the Bengal Tenancy Act :—See notes under the Preamble heading No. 10.

6. Intermediate interest between a Zemindari and a Putni :—In the case of *Raj Kumar v. Probal Chandra*, 9 C.W.N. 656, it has been decided that an intermediate interest can be created between a Zemindari and a *Putni*. Also see *Madhusudan v. Devendranath*, 7 C.L.J. notes portion, p. 23.

Intermediate interest between a Zemindari and a Putni.

It is submitted with great respect to the learned Judges who decided this case that the decision is contrary to the spirit of law. Having regard to the provisions of the Putni Regulation it appears that there cannot be any intermediate tenure between a Zemindari and *Putni*. So, where a Zemindar grants a lease above a *Putni*, it should be construed to be only an assignment of the rent payable to the Zemindar and there is no relationship of landlord and tenant between the so-called *lessee* and the *Putnidar*.

These decisions are contrary to the spirit of Reg. VIII of 1819.

It has been held in *Jaroakumari v. Hanifuddin*, 14 C.W.N. 389 that a zamindar cannot lawfully create a permanent tenure between his own interest and a *putni* taluk of the first degree: (Caspersz & Doss J.J.); but this view of the law has been dissented from by Carnduff & Richardson J.J. in unreported SA. No. 2694 of 1913, *Nilambar Ghosh v. Mir Maha Chanuddin*, decided on the 2nd January 1914: see notes at p. 4.

7. Creation of Intermediate Tenure between two interests, or concurrent leases :—A zemindar or tenure-holder who carves out a tenure is competent to interpose between himself and his tenant an intermediate holder who may realise the rent payable to himself by his original tenant ; but he cannot prejudice the position of the first tenant, take away or destroy the value or effect of the prior interest or limit its extent : *Johur Mull v. Jatindra Nath*, 34 C.L.J. 79 J. 163, (Richardson and Suhrawardy J.J.) The case of *Ramkanai v. Fakir*, 8 C.W.N. 438, was followed.

Occupancy right under a trespasser.

8. Raiyat : Acquired a right to hold land : Tenancy under a Trespasser :—When a person acquires a right to hold land *bona fide* from one whom he *bona fide* believes to have the right to let him into possession of the land, he is a raiyat, although the person under whom he holds may be a trespasser : *Binad Lal Pakrasi v. Kalu Pramanick*, 20 Cal. 708 (F.B.) ; *Mohima Chunder v. Hazari*, 17 Cal. 45. A raiyat who occupies land for a period of 12 years acquires a right of occupancy therein, whether the person under whom he holds has any title to the land or not : *Sreemutty Zulfun v. Radhika*, 3 Cal. 560, S.C. 1 C.L.J. 388 : *Ameer v. Sheo Sahai*, 19 W.R. 338—*Peary Mohon v. Radhika Mohan*, 8 C.W.N. 315 and *Upendra v. Pratab*, 8 C.W.N. 320, where the case of *Binad Lal v. Kalu Pramanik*, 20 Cal. 708 (F.B.), has been discussed and distinguished : also see *Madhu v. Sabar Ali*, 14 C.W.N. 681 at p. 685.

Binad Lal Pakrasi case discussed and distinguished.

The rule laid down in the case of *Binad Lal Pakrasi*, is based upon the assumption, that the tenant entered upon the land and held under a *de-facto* proprietor who might not be the real owner in good faith ; when that element is wanting, the rule laid down there does not apply : *Peary Mohan v. Radhika Mohan*, 8 C.W.N. 315 ; (on Letters Patent appeal) 5 C.L.J. 9. It is a general principle of law that no one can confer upon another person any right in property which is not his own ; this is the general rule and cases like that of *Binad Lal Pakrasi* are exceptions to the general rule : *Ibid.* The law as laid down in the case of *Binad Lal Pakrasi* made a great encroachment on the strict law : *Upendra v. Pratab*, 4 C.W.N. 320.

The principle of the decision in *Binod Lal Pakrasi* only applies where raiyats are settled upon land by a person in *defacto* possession as landlord who is afterwards found to have no title. It is not applicable in every boundary dispute or in every case where a question of parcel and no parcel arises : *Tepu Mahammad v. Tefayet Mahammad*, 19 C.W.N. 722, (Richardson and Mullick J.J.). This case was followed in *Mohesh Chandra v. Hemendranath*, 46 C.L.J. 575 (Mitter J., Rankin C.J., agreeing, June 24, 1927). The question as to whether a settlement *bona fide* or not depends on the circumstance as to whether the settlement was taken from a person who although was ultimately found to have no title, was at any rate in actual possession of the lands in suit : *Ibid.*

The principle of the decision in *Binad Lal's* case should not be extended so as to affect the application of the doctrine of *lis pendens* ; *Madan Mohan v. Raj Kishori*, 20 C.W.N. 88, but tenants who were settled on the land by the mortgagor before the mortgage suit, but after the mortgage, can keep their lands against a mortgagee purchaser upon proof that the leases in their favour were granted on

the usual terms in the ordinary course of management: *Ibid*; the burden of proof is upon the leases: *Ibid*. Want of good faith either on the part of the lessor or the lessee makes the rule in the case of *Binad Lal* inapplicable: *Krishnanath v. Muhomed Wafiz*, 21 C.W.N. 93, s.c., 23 C.L.J. 563; the principle cannot be applied to the case of a person who took a lease from the owner after his interest had been sold in execution of a decree: *Ibid*.

The principle in the case of *Binad Lal* is an encroachment upon the ordinary rule of law that a grantor is not competent to confer upon the grantee a better title than he himself possesses and must be cautiously applied and is not to be extended: *Ibid*.

Where a person took a lease of land (partly jungle and partly waste) from one of several co-owners and afterwards that land fell in the exclusive share of another co-sharer in the partition of the parent estate, *held* that the lessee was a tenant of the latter, and his position was not worse than what it would have been, if he in good faith accepted settlement from a trespasser in actual occupation of the land: *Dakhayani v. Mono Raut*, 19 C.W.N. 407.

A raiyat who has occupied and cultivated land for more than 12 years under a landlord who has no title to the land, acquires a right of occupancy under s. 6 of Act X of 1859 and Act VIII (B.C.) of 1869: *Brajobasi v. Ram Sankar*, 23 C.L.J. 638.

Where a raiyat entered into possession illegally under a *Ticca*. *thikkadar*, and after the expiry of the *thikka*, the superior landlord took no step to eject him, *held* that by lapse of time the raiyat acquired occupancy right: *Sheogobind v. Mahipal*, [1924 Pat.] 191, s.c., 81 I.C. 321, (Mullick and Bucknill J.J.); the case of *Binad Lal v. Kalu* 20 Cal. 708 was relied on and the case of *Jogendra v. Kesho Prasad*, 77 I.C. 929 distinguished.

9. Certain terms: It is well-known that the word "raiyyat" Raiyat. is loosely used as synonymous to *praja* (i.e., a tenant).

The word "raiyyat" does not necessarily mean an agricultural tenant. It is often used in the *mofussil* in its wider sense as meaning a tenant in general. A lessee of a piece of homestead land is ordinarily a tenant and not a raiyat: *Bidhumukhi v. Gobinda*, 42 C.L.J. 78 (Chakravarty, J., Cuming, J., agreeing).

It has also been held that the word "raiyyat" is sometimes used in official documents to mean tenants in general: *The Secretary of State v. Jadav Chandra*, 21 C.W.N. 452, (Teunon and Chaudhuri J.J.), casual mention of the tenants as 'raiyyats' in judgments in suits in which no issue had been framed or question raised as to the status of the tenants cannot be regarded as recognition by courts of the tenants' status as raiyyats: *Ibid*.

The word "praja" means a tenant: *The Secretary of State v. Praja. Gobind*, 21 C.W.N. 505.

A *Korfa* tenant is not necessarily an under-tenant of a raiyat; *Korfa*. he is a sub-lessee, whether of a talukdar or of a raiyat: *The Secretary of State v. Jadav Chandra*, 21 C.W.N. 452; see also *Emoduddin v. Danesh*, 39 I.C. 240 (Fletcher and Richardson J.J.).

A *Chukani* jama in the district of Rungpur is a raiyati lease-hold *Chukani* which may develop into occupancy right: *Jogendra Nath v. Chandra Kumar*, 42 Cal. 28 (Holmwood and Chapman J.J.). "The chukanidars too have often raiyyats under them, and in some cases, especial-

ly in the larger jotes there are four or more degrees before you get to the actual cultivator" (Report of the Rent Commission in 1876: (see 42 Cal. 28 at p. 32).

Jote.

The description of a property as a jote does not necessarily shew that it is not a tenure: *Syed Nawab Ali v. Hemanta Kumari*, 8 C.W.N. 117.

The word "Jote" does not necessarily mean the interest of a cultivator: *Rajani Kanta v. Yusuf Ali*, 21 C.W.N. 188 (N. Chatterjea and Richardson J.J.).

'Jote' is a general term and is not equivalent to 'raiyaati jote': *Midnapur Zemindary Co. v. Naresh Narain Ray*, 48 I.A. 49, s. c., 48 Cal. 460 (P.C.), see also *Krishnendra v. Kusum*, 76 I.C. 324.

It is undoubtedly open to strangers to shew that, although the tenancy is described as a jote, its real character is that of a tenure. (Per Mookerjee, J., Teunon, J., concurring), *Promatha Nath v. Nilmani*, 14 C.L.J. 38 at p. 42.

Mahal.

The word "Mahal" is not used in connection with the interest of a raiyat: *Rajani Kantha v. Yusuf Ali*, 21 C.W.N. 188.

"Without right jote mahal."

Where in a kabuliyat the description was in the words "*without right jote mahal*", held that it was not clear to shew that the tenant admitted that the lessor was a raiyat: *Ibid*.

*Bhadro-
logue—
cultivation.*

".....the fact that the plaintiffs are *bhadrologues*, does not by itself shew that the lands were not acquired for the purpose of cultivation, as most *bhadralogues* in the village in this country carry on cultivation by servants or labourers..." *Ibid* (Per N. Chatterjea, J., p. 191, col. 2, bottom.)

Sarasari.

Whether the word "*Sarasari*" refers to the variability of the rent or the nature of the tenancy is one of construction: *Pradyat Kumar v. Sarat Chandra*, 21 C.W.N. 809.

Bhagchasis.

Bhagchasis are not necessarily tenants. *Kedar Mondal v. Ahod Ali Molla*, 14 C.W.N. 629, see also *Kumeda Prasanna v. The Secretary of State*, 19 C.W.N. 1017. See notes at p. 6.

Bargadar.

As to whether a bargadar is a tenant, see notes under the preamble at p.p. 5 and 6.

Noabad.

A Noabad Mehal implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation: *Jogesh Chandra v. The Secretary of State*, 18 C.W.N. 531. A Noabad *taluk* may or may not be a permanently settled *taluk*: *Ashraf Ali v. Karam Ali*, 22 C.W.N. 1025; see also *Maqbul Ahmod v. Hara Gobinda*, 8 C.L.J. 470. See notes under Sec. 3.

Sarbarkari.

On a construction of a *patta* creating a *sarbarakari* jama whereby the grantee was conferred the power to realise the rents &c., payable by the putnidars and sue the latter on behalf of the grantor and using the grantor's name, held that it did not create any interest in land as that of a tenure-holder but only a personal obligation between the grantor and the grantee: *Jaroa Kumari v. Hanifuddin*, 14 C.W.N. 389.

*Kaimi and
mokurari.*

For the meaning of the word "*Kaimi*" see notes under s. 18 and for the meaning of the word *mokurari* see notes under s. 179.

Kayemi: Where a raiyat in granting a sub-lease describes himself as a *Kayemi* raiyat he thereby necessarily does not imply that he is a fixed raiyat: *Nadiram v. Srinath*, 24 C.W.N. 93.

Where a tenure was recorded as *Kaimi* and not *mokrari* it was *Kaimi*. held that the landlord was entitled to enhance the rent: *Broja Das v. Bankim Chandra*, 51 Cal. 454.

The expression "*Kaimi Mourashi raiyati*" in a lease of homestead land means a permanent heritable tenancy of homestead land. *Bidhumukhi v. Govinda*, 42 C.L.J. 78, (Chakravatry, J., Cuming, J. agreeing.)

'*Mahatran*' is heritable, transferable and non-resumable grant: '*Mahatran*.' *Pratap Chandra v. Raja Jogadish Chandra*, 40 C.L.J. 331.

The term "*itnam*" as applied to the permanently settled area in Chittagong imports a permanent, heritable and transferable tenure; and it is well settled that the word "*taluk*" primarily imports permanency: *Jogesh Chandra v. Mokhal*, 25 C.W.N. 857. A grant for an indefinite term enures at least for the life time of the grantee: *Ibid*. See notes under Sec. 6. *Itnam*.

"*Ticca*" tenancy means interests which are not permanent: '*Ticca*.' *Manmatha Nath v. Anath Bandhu*, 23 C.W.N. 201.

The word "*borokta*" used in a *kabuliyat* means in due and proper time" and does not import any fixity as to rent: *Bisseswar v. Braja Kanta*, 33 C.L.J. 296, s.c., 62 I.C. 49. '*Borokta*.'

10. Agricultural purpose:—See notes under the heading No. 9, Agricultural and non-agricultural leases, pp. 7 to 9.

11. Presumption: Cl. (5) is a provision not of substantive but adjective law; *Jagabandhu v. Magnamayi*, 44 Cal. 555, s.c., 24 C.L.J. 363, s. c., 22 C.W.N. 89; the presumption applies to tenancies created under the old law, *Ibid*; the fact that a tenancy has been subdivided into two tenancies before the Bengal Tenancy Act would not prevent the application of Cl. (5): *Ibid*. This clause is not restricted in its application to suits or proceedings between landlords and tenants under the Act; *Ibid*. Cl. (5)—adjective law.

The presumption arising under Sec. 5 (5) of the B.T. Act, 1885 applies to all cases whether the interest was created before or after the Act was passed: *Balunki Rout v. Kunja Behari*, I.L.R. 6 Pat 698 (F.B.).

The law assumes that "ordinarily a larger area than 100 bighas would make cultivation by the personal agency of the tenant improbable. The presumption provided in sub-sec. (5) of s. 5 is founded on that hypothesis": *Debendra v. Bibhudendra*, (Per Right Hon'ble Mr. Ameer Ali): 45 I.A. 72, s. c., 45 Cal 803, s. c., 22 C.W.N. 674, s. c., 27 C.L.J. 543 at p. 546. Assumption that tenure consists of a larger area than 100 bighas.

The presumption under s. 5 sub-sec. (5) is a rebuttable one: *Dalglish v. Damodar*, 8 C.L.J. 533. There is no provision in cl. (5) of sec. (5) or the Bengal Tenancy Act that when the area held by a tenant is less than 100 bighas, the tenant is to be presumed a raiyat until the contrary is shown: *Tara Nath v. Iswar Chandra*, 16 C.W.N. 398. Presumption rebuttable.

In order to determine whether the presumption under Sec. 5 is rebutted the real and the true test is to see for what purposes the tenancy was created, and where the lease is equivocal the attendant circumstances have to be looked to to judge of the purpose for which the tenancy was created: *Karuna v. Secretary of State*, 100 I.C. 466, s. c., A.I.R. (1927) Cal, 413. Duval and Mitter J.J.).

The presumption under cl. (5) is not rebutted by shewing that a tenant has reserved a portion of the land to be cultivated by himself or by his servants: *Bibhudendra v. Debendra*, 20 C.L.J. 140 (Sanderson C. J. and Mookerjee, J.) ; affirmed in P.C., 45 I.A. 72 s. c., 45 Cal. 803).

Presumption when not applicable.

Area in excess of statutory limit.

The presumption laid down in sub-sec. (5) is not applicable when the terms of the original grant are known: *Secretary of State v. Digambar*, 27 C.L.J. 334.

Where the land held in tenancy was from the first in excess of the statutory limit it was held that the tenants were not raiyats within the meaning of this Act: *Bengal Indigo Co. v. Raghubar Das*, 23 I.A. 158 s. c., 1 C.W.N. 83 (P. C.). This case was distinguished in the Privy Council case of *Damodar v. Dalglish*, 38 Cal. 432 on the ground that in the latter case there was no finding of fact to rebut the presumption under s. 5 cl. (5).

Jote not necessarily a raiyati holding.

The description of a property as a jote does not necessarily shew that it is not a tenure and that it is simply an ordinary cultivating "jote" or holding. If the area of a jote exceeds one hundred bighas, the presumption in the Bengal Tenancy Act should be applied under which, until the contrary is shown, the holding must be regarded as a tenure: *Nawab Ali v. Hamanta Kumari*, 8 C.W.N. 117 ; see also *Gokul v. Pudmanund*, 29 I.A. 196 s. c., 29 Cal. 707. If the area of a jote exceeds one hundred bighas the presumption should be applied that it is a tenure: *Nawab Ali v. Hemanta Kumari*, 8 C.W.N. 117.

It is undoubtedly open to strangers to shew that, although the tenancy is described as a jote its real character is that of a tenure *Promatha Nath v. Nilmani*, 14 C.L.J. 38 at p. 42.

Area exceeding 100 bighas, if conclusive evidence of tenancy being a tenure.

The words of s. 5 cl. (5) afford no ground for holding that the fact that the land exceeds 100 bighas is not conclusive evidence that the tenancy is a tenure ; in cases of this description the final determination depends upon the facts as disclosed in each case ; *Midnapur Zemindary Co. v. Sham Lal Mitra*, 15 C.W.N. 218.

Second appeal.

Intention of the Full Bench in regard to a question as to the nature of a tenancy.

Where the lower Appellate court held that the presumption under sec. 5, cl. (5) of the Bengal Tenancy Act that a holding comprising an area of more than 100 bighas of land was a tenure and not a raiyati holding had not been displaced by the contrary being shown, held—that it was not open to the High Court in second appeal to interfere with the finding of the lower Appellate Court that the holding was a tenure: *Ramanuj v. The Midnapur Zemindari Co.*, 16 C.W.N. 725. "I do not think that it was the intention of the Full Bench in the case of *Sulatu v. Jadu Nath*, 8 C.W.N. 774 to lay down that when a question arises as to the nature of a tenancy questions of fact which are necessary for the decision of that point can be dealt in second appeal." *Ibid.* The presumption contained in s. 5 sub-sec. (5) arises even in the case of tenancy created before the Act came into force ; the test of a raiyati interest is to see in what condition that land was when the tenancy was created: *Khatajan Bewa v. Aswini Mohan*, 9 C.L.J. 82 notes.

In a reclamation lease, the area of the land being 2,000 bighas, the grantee was to bring the lands under cultivation at a progressive rent and he was to enjoy the profits of the lands by bringing them under cultivation either by himself or by making settlements with

tenants, *held* that the grantee was a raiyat: *Secretary of State v. Digambar*, 27 C.L.J. 334.

Where a *prajagiri* settlement was made of land far in excess of 100 bighas and the full rent was payable after a period, *held* that the presumption was that the lease was a tenure and was not negated by the fact that the lessee undertook to reclaim the jungles: *The Secretary of State v. Gobind Prashad*, 21 C.W.N. 505. Prajagiri settlement.

Where a *jumma* which consisted of more than 100 bighas of land and was entered in the record of rights, *held* that the presumption was rebutted by shewing that the holding was originally created at its inception for cultivating purposes although the lands were in the possession of *bhagchasis* (who are not necessarily tenants): *Kumeda Prosunna v. The Secretary of State*, 19 C.W.N. 1017. Origin of tenancy.

Where a *ticcadar* took a lease of lands exceeding 100 bighas in area "to cultivate by sowing indigo or other crops either by means of *khas* cultivation or through tenants, *held* that it was a tenure: *H. Manners v. Harihar Koer*, 19 C.W.N. 149. Ticcadar.

A tenure-holder does not become a raiyat with regard to all land that comes into his direct possession, because the lease authorises him to cultivate these lands: *Ibid.* Tenure holder—raiya.

12. Standard bigha : One standard bigha is equal to 14,400 square feet or 1,600 square yards—100 bighas are therefore equal to 33 acres (an acre being considered to be equal to 4,840 square yards. Standard Bigha.

13. Tenant of homestead land under a raiyat : See notes at p. 8 and also under sec. 182.

14. Original purpose for which tenancy is created : **Nature of tenancy :** In determining the status of a tenant, the court must not, when the terms of a lease are ambiguous, confine its attention solely to the terms of the lease, but must also consider the evidence or surrounding circumstances and the subsequent conduct of the parties in regard to the subject matter of the lease: *Midnapur Zemindari Co. v. Bamapada Roy*, 13 C.L.J. 485. Original purpose of tenancy.

In construing the terms of a deed, the question is not what the parties may have intended, but what is the meaning of the words which they used: *Manindra Chandra v. Durga Prasad*, 21 C.W.N. 707.

Where the language of a written instrument is clear reference is permissible for its interpretation to the conduct of the parties: *Rohim Buksh v. Shajed Ahmad*, 19 C.W.N. 1311. Construction of deed—conduct.

In deciding the question of the character of a tenancy not only the origin but also the subsequent conduct of the parties should be taken into consideration: *Midnapur Zemindary Co. Ltd. v. Sham Lal Mitter*, 15 C.W.N. 218. Where the original area of the lands was considerably more than what could be cultivated by the tenant himself or by members of his family or hired labour and the tenant was not a member of the cultivator class, and where subsequent settlements were also of large areas and the total area held by the tenants exceeded 1300 bighas, *held* that those circumstances led to the conclusion that those lands were taken for the purpose of settling tenants on them and that the lease was a tenure: *Ibid.* Where a lease stated that "you shall enjoy the jungle land on bringing the same under cultivation and causing the same to be held Area exceeding statutory limit.

meaning of. in jote by other persons (আবাদ করিয়া ও জোতাইয়া) held, that there is nothing in these words to render it improbable that the intention was that the land should be brought under cultivation by establishing tenants thereon: *Ibid*.

Rule of law in the case of *Midnapur Zemindari Co.* too broadly laid down.

Subsequent conduct of, the tenants, if it alters the nature of tenancy.

Rule laid down by N. Chatterjee, J.

Ambiguous terms of lease.

Land cultivated by subtenants.

Cultivation Tenure—holder.

Reclamation lease.

True test to determine

The rule of law stated in the case of the *Midnapur Zemindari Co.* 15 C.W.N. 218, that in deciding the question of the character of a holding, not only the origin of the tenancy, but also the subsequent conduct of the parties should be taken into consideration, is, according to the opinion of Mookerjee and Teunon J.J., (15 C.W.N. 902, footnote), too comprehensively formulated, and one of the cases (*Midnapur Zemindari Co. v. Bamapada Ray*, 13 C.L.J. 485) upon which reliance was placed by the learned judges deciding the case in 15 C.W.N. 218 does not furnish any authority for the proposition. According to Mookerjee and Teunon J.J., in the case in 15 C.W.N. 902, s. c., 14 C.L.J. 38 where the terms of the original grant are unambiguous, it cannot be laid down as an invariable proposition of law that the nature of the tenancy is necessarily altered by the subsequent conduct of the parties. Their Lordships further say "It would be very difficult to hold, that by subsequent conduct of the parties the nature of the tenancy might be altered to the detriment of the under-tenants." All these cases were discussed by N. Chatterjee J., (*Pramada Nath v. Asiruddin*, 15 C.W.N. 896 at p. 905, 20th June, 1911) and his Lordship lays down this Rule:—I think that it is only in cases where the terms of the lease creating the tenancy are ambiguous or in cases where there is no written lease and it is not clear what the original purpose of tenancy was that the courts should look into the subsequent conduct and surrounding circumstances to determine the nature of the tenancy. Any other view may lead to anomalous results.

Where the terms of the original grant are ambiguous or the terms upon which the tenancy was created cannot be proved by direct evidence, the subsequent conduct of the parties may be considered with a view to determine the nature of the tenancy: *Bamapada Ray v. Midnapur Zemindari Co.*, 16 C.L.J. 322 (Mookerjee and Beachcroft J.J.). Where it was found that a considerable portion of the land was brought under cultivation not by the defendants but by tenants settled by them on the land: held, that the defendants were tenure-holders and that the tenancy in its inception was created for agricultural purposes: *Ibid*; see also *Durga Prasanno v. Kalidas*, (1881) 9 C.L.R. 449 and *Laidly v. Gour Gobinda*, (1885) 11 Cal. 501.

It is possible for a person to be a tenure-holder although a part of the land in his occupation is cultivated by himself, and was intended to be cultivated by himself: *Bibhudendra v. Debendra*, 20 C.L.J. 140 (Sanderson C. J., and Mookerjee J.), (affirmed in P. C., 45 I.A. 72 s. c., 45 Cal. 803. That a tenure-holder may retain lands in his own possession will appear from cl. (4) of s. 7.

Where by the terms of *amalnamas* the grantees were authorised to "enter upon and by cutting jungle and otherwise to reclaim the lands, held that the leases were reclamation leases as may be granted to actual cultivators or to middlemen—but the terms relating to subsequent re-newals suggested that the tenancies were regarded as tenures: *The Secretary of State v. Jadav Chandra*, 21 C.W.N. 452.

The true test to determine the question is to see in what condition the land was when the tenancy was created; if raiyats were

already in possession of the land and the interest created was a right not to the actual physical possession of the land, but to collect rents from those raiyats, that is not a raiyati interest: *Pramatha v. Nilmoni*, 14 C.L.J. 38, s. c., 15 C.W.N. 902 footnote, (Mookerjee and Teunon J.J. February, 1911). Where the plaintiffs purchased a tenancy at a sale held in execution of a decree for arrears of rent and after their purchase executed a *kabuliyat* (lease) in favour of their superior landlords, the nature of the tenancy must be determined primarily with reference to the lease, *Ibid*; when a lease recited that there were resident tenants on the land demised, that it was a lease for a term of 12 years and yet was regarded as temporary tenancy and that the lessee was to hold the land either in *khas* or by letting it out to tenants, *held*, that each of these three elements serves to indicate that the interest created in favour of the lessees was that of tenure-holders, *Ibid*. Subsequent conduct, while it may throw light upon the nature and origin of a tenancy, cannot be taken to affect its terms: *Ibid*.

whether a tenant is tenure-holder or raiyat.

The cases of *Promotha v. Nilmani*, 14 C.L.J. 38, *Promada v. Asiruddin*, 15 C.W.N. 896 and *Bamapada v. Midnapur Zemindary Co.*, 16 C.L.J. 322 were considered in the case of *Secretary of State v. Digambar*, 27 C.L.J. 334 and it was held by Mookerjee and Walmsley J.J., that in cases where the origin of the tenancy is unknown the mode of user of the land may furnish a valuable clue to determine the original purpose of the tenancy and where the terms of the grant are ambiguous, evidence of conduct subsequent may also be admissible.

Where origin of the tenancy not known.

The mere fact that a tenant has sublet his lands, does not by itself establish conclusively that he is a tenure holder, the intention of the parties is to be looked at: *Ibid*. Where a tenancy was originally created for cultivating purposes at its inception (the area was more than a hundred bighas), and the lands were in the possession of *bhagchasis*, held that *bhagchasis* were not necessarily tenants and the tenancy was a raiyati holding and not a tenure: *Kumeda Prosanna v. The Secretary of State*, 19 C.W.N. 1017.

Effect of subletting.

A tenancy which was originally created for the purpose of cultivation and not collection of rent was partly held *niz-jote* and partly let out to tenants, *held* that this did not change the original character of the grant (which was raiyati) even in respect of the portion let out: *Baidya Nath v. Sudharam*, 8 C.W.N. 517.

Land held as niz-jote and also through sub-tenants.

There is nothing to prevent the landlord and tenant notwithstanding the existence of an unambiguous lease to alter the original nature of a tenancy by agreement, and there may possibly be cases where subsequent conduct may be set up as evidence of such agreement; but where no such agreement is set up and it is clearly proved that the land was originally acquired by the tenant for cultivating it by himself or by hired seryants or by members of his family the character of the tenancy is not affected by the mere fact that land was subsequently let out to tenants: *Pramada Nath v. Asiruddin*, 15 C.W.N. 896 at p. 905 (*Per N. Chatterjea, J.*).

Subsequent express or implied agreement altering the nature of the tenancy.

If at the inception of a certain tenancy it was not a middleman's interest, subsequent letting out of the lands would not convert the nature of the tenancy: *Mrittunjoy v. Kenatullah*, 5 C.L.J. 53 see notes under s. 181.

Tenancy originally for cultivation,

"S. 5 of the Bengal Tenancy Act defines the status of a tenure-holder as also of a raiyat, but neither the definition of a tenure-

if may be converted

for collec-
tion of rent.

holder nor that of a raiyat, as has been repeatedly held is exhaustive, and nothing has been shewn to us to lead us to the conclusion that a person who may have originally acquired a large tract of land ostensibly with the object of cultivating it himself or by his servants or members of his family, may not afterwards convert himself, so far as third parties are concerned, into a rent-receiver and give those persons as against himself the right to remain upon the land without being liable to be ejected at his instance." *Per Ameer Ali, J. (Pratt, J., concurring): Mahesh Jha v. Maubhaan*, 5 C.L.J. 522, at p. 526. No principle has been laid down in this case which may have the effect of binding the landlord.

Where a raiyat treats his holding as a tenure and lets the land to tenants, *held* that as between the lessor and the lessee the land may be taken to have been acquired for the purpose as stated in the lease but it is open to a person who is no party to the contract to shew the real purpose of the tenancy: *Rajani Kanta v. Yusuf Ali*, 21 C.W.N. 188; (*Per N. Chatterjea J.*).

Where at the inception of the lease the character of the tenancy is *raiya*, it is not altered to a tenure if subsequently it is let out to tenants; *Ibid.* See also *Kulwant v. Babu Ram*, 43 I.C. 940 (Patna case.)

Origin of
tenancy
not known
effect of

Where the origin of the tenancy is not known or the terms of the documents are ambiguous, what has to be considered is the attendant circumstances and in such a case the method in which the tenancy has been and is enjoyed can also be considered in order to come to a proper solution of the question relating to the tenure; *Lal Ghosh v. Nilkantha*, A.I.R. 1925 Cal. 340, (Walmsley and Mukerji J.J.).

The presumption arising under sec. 5 (5) of the Bengal Tenancy Act though of considerable importance in a case where the origin of the tenancy is not known, is of little consequence where the terms of grant are known and are not ambiguous. In cases where the terms of the grant are equivocal, the Court must rely upon the attendant circumstances and evidence of subsequent conduct is also admissible: *Jogesh Chandra Roy v. Tazar Ali*, 85 I.C. 757 (*Per Mukherji, J., Walmsley, J., agreeing*).

15. Burgadar. As to whether a burgadar is a tenant, see notes at pp. 5, 6.

When the origin of the tenancy is not known evidence of the mode of dealing with the land demised and the acts and conditions of the parties generally constitute the evidence as to the status of the tenant: *Makhan Lal v. Arun Bala*, A.I.R. 1924 Cal. 465.

The purpose of tenancy may be altered by consent of parties: *Ibid.*

instruc-
tion of
the.

Where in a *patta* there was a stipulation that the tenancy will be heritable and that there will be excess rent assessed upon excess area, *held* that this stipulation alone is not sufficient to establish that the tenancy is a tenancy at a fixed rent: *Eshaque Sheikh v. Matilal*, 81 I.C. 1043, s. c., A.I.R. 1925 Cal. 294. The cases of *Golam Rahaman v. Gurudas*, 38 C.L.J. 350; *Bhairab Chandra v. Midnapore Zemindary Co.*, 38 C.L.J. 372, *Surja Prasad v. Midnapore Zemindary Co.*, 38 C.L.J. 369 were discussed. See notes under s. 3, cl. (5) and also *Hargobind v. Keshwa Prasad*, [1924 Pat.] p. 297.

16. Zuripeshgi Lease: A *zuripeshgi* lease is not a mere contract for the cultivation of the land let, but it is also intended to constitute a real and valid security to the tenant for the principal sums which he advances and interest thereon; the tenant's possession is, in part at least not that of cultivator merely but that of creditor operating repayment of the debt, by means of security and therefore a right of occupancy cannot be created.—*Bengal Indigo Co. v. Raghubur Das*, 23 I.A. 158; s. c., 24 Cal. 272; s. c., 1 C.W.N. 83 (P. C.), where the plaintiff granted to the defendants a *zuripeshgi pattah* which provided for a lease for five years, and that the whole of the rent for that period was to be taken by the *zuripeshgidar* on account of the profits of their *zuripeshgi* with the exception of one rupee which was to be paid yearly to the proprietors; and that if the *zuripeshgi* money was not paid at the end of five years, the *zuripeshgidars* would remain in possession until payment, it was held that this did not create a raiyati holding—*Ram Khelawan v. Sambhoo*, 2 C.W.N. 758. Neither of these cases is authority, for the proposition that a raiyat by taking a *zuripeshgi* lease of land of which he was previously or then put in possession as a raiyat, loses his raiyati status or divest himself of his right to acquire a right of occupancy in the land: *Ramdhari v. Hill Mackenzie*, 10 C.W.N. 351.

It was held in the Privy Council case of *Damodar v. Dalglish*, 38, Cal. 432 that the tenant's possession under a *zuripeshgi* lease which merely provided for a part of the rent to be paid in advance—there being no stipulation for the payment of interest on the money so advanced—was that of cultivators and not of creditors as well; and the lands being found not to be proprietor's private lands there was nothing to prevent the tenants acquiring occupancy right therein.

A raiyat by taking a *zuripeshgi* lease of land of which he was previously in possession as raiyat does not lose his raiyati status or divest himself of his right to acquire a right of occupancy in the land: *Lal Bahadur v. Mackenzie*, 19 C.W.N. 229. Although in a *zuripeshgi* lease power was given to cultivate the land or to get it cultivated, it was held upon a construction of the lease that no raiyati interest was created: *Ibid*.

A *zuripeshgi* may be both a lease and a mortgage: *Chaturgan v. Tilakdhari*, 71 I.C. 470, (Ross J.).

A *zuripeshgidar* is not a tenant but a mortgagee where the contract was not merely for cultivation but also constituted a real and valid security: *Tilakdhari v. Chaturgun*, [1924 Pat.] 4.

Where a raiyat executes an usufructuary mortgage of his holding and then takes a lease of the holding from the mortgagee, he does not cease to be a raiyat holding under the proprietor and is not an under-raiyat: *Tiludkhari v. Chaturgun*, 3 Pat. 266; s.c., A.I.R. 1925 Pat. 118.

Where a *zuripeshgi* transaction in respect of a holding is not merely a contract for the cultivation of the land but also constitutes a real and valid security to the transferee for the principal sum advanced by him and for the interest thereon, the position of the transferee is not merely that of a cultivator but of a creditor holding the land as security, and therefore, he is not a raiyat within the meaning of s. 5 cl. (3) of the B.T. Act: *Ibid*.

Zuripeshgi lease.

Tenant's possession under a *zuripeshgi* lease.

Zuripeshgi —previous raiyati right.

Zuripeshgi transaction when not a contract, effect of.

CHAPTER III.

TENURE-HOLDERS.

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

Enhancement of rent.

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

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

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

Headings of Notes.

1. WHAT IS NECESSARY TO BE PROVED.
2. WHETHER ANY DOCUMENT IS NECESSARY TO CREATE A PERMANENT TENURE.
3. "ENHANCEMENT OF RENT" AND "ADDITIONAL RENT."
4. S. 51 OF REGULATION VIII OF 1793.
5. IDENTITY OF PERMANENT TENURE.
6. SPLITTING UP OR CONSOLIDATION.
7. WHAT TENURE ARE LIABLE TO ENHANCEMENT.
8. SUIT FOR BOTH ENHANCEMENT AND ARREARS OF RENT.
9. ENHANCEMENT SUIT DIFFERENT FROM A SUIT FOR RENT AT OLD RATE.
10. ENHANCEMENT SUIT; PRESUMPTION.
11. PARTITION OF TENURE.
12. TENURE HELD FROM THE PERMANENT SETTLEMENT.
13. TENURES NOT HELD FROM THE PERMANENT SETTLEMENT.
14. ONUS.
15. ENHANCEMENT OF RENT BY IJARADAR.
16. RECEIVING REDUCTIONS.
17. ETMAM (ITMAM).

Essentials necessary in absence of proof of custom.

Permanent tenure, if required to be in

1. What is necessary to be proved :—Where local custom is not proved the Court has to determine 1st, whether the tenure has been held from the time of the Permanent Settlement ; and 2ndly, what are the conditions under which the tenure is held : *Kazi Nural Huq v. Birendra Kishore*, 38 C.L.J., 121.

2. Whether any document is necessary to create a permanent tenure :—"One cannot get a permanent tenure under the Bengal Tenancy Act or under any other Act except by a registered

document : " *Hasiswari (Kasiswari) v. Harinath* 40 I.C. 100 (Fletcher writing and Newbould J.J.). It is submitted with great respect that the decision so far as regards a permanent tenure of agricultural lands, is not in accordance with law ; unless there is any specific law no transaction is required to be in writing. S. 107 of the Transfer of Property Act which lays down the provision as to what leases are required to be in writing and registered has no application to tenures of agricultural lands (see S. 117 T.P. Act). and registered.
S. 107 T. P.
Act.

As to what documents under the Bengal Tenancy Act are required to be in writing see notes under s. 3 cl. (17) *ante*.

3. "Enhancement of rent" and "additional rent." :—A Decree for decree for enhancement of rent can never have retrospective operation and back-rent cannot be claimed at enhanced rate in the suit in which enhancement is claimed, but a tenant is entitled to claim back-rent for additional area : *Ejel v. Felai*, 21 C.L.J. 315 (Mookerjee and Beachcroft J.J.). enhancement has no retrospective operation.

4. S. 51 of Regulation VIII of 1793 :—Section 6 is founded upon the first sub-section of s. 51 of Reg. VIII of 1793. S. 51 has now been repealed ; see Schedule I.* Reg. VIII
of 1793
s. 51.

5. Identity of permanent tenure :—The mere fact that rent was once enhanced by mutual agreement does not destroy the identity of the tenure ; where there was an agreement that rent would not be enhanced but subsequently to buy peace the tenant agreed to pay enhanced rent, *held* that the same tenancy continued subject to the same provisions as were contained in the original tenancy : *Ramanuj v. The Midnapur Zemindary Co. Ltd.*, 16 C.W.N. 725 (Jenkins C.J. and N. R. Chatterjea, J.). Identity of tenure is not destroyed by enhancement of rent by agreement.

6. Splitting up or Consolidation :—See under heading Splitting up, under sec. 3 cl. (8), and also notes under s. 52. Splitting up or consolidation.

A part of a *taluk* (tenure) which was existing at the date of the Permanent Settlement was assigned to a certain person and the assignment was confirmed by the landlord, *held* that it was not a new tenure and the rent was not liable to enhancement except under cl. (a) and cl. (b) to s. 6 : *Chandra Kanto v. Ramkrishna*, 24 C.L.J. 275 s. c., 20 C.W.N. 1002 (Sandersen C. J. and Mookerjee J.). Mookerjee J. remarked as follows at p. 1005 of 20 C.W.N. : "Now, it is well settled that the continuity of a transferable tenure is not affected by subdivision or by consolidation [*James Hills v. Huralal Sein*, 3 W.R. Act X Rul. p. 135 ; and *Kazee Khoda Nawaz v. Naba Kishore Rai*, 5 W.R. Act X Rul. p. 53]. The decision in *Udaychandra v. Nripendra Narayan*, 36 Cal. 287, s. c., 13 C.W.N. 410 which is apparently an authority in support of the contrary view, overlooks, as I had occasion to point out in *Adit Singh v. Sukharaj* 17 C.L.J. 435 the pre-existing law on the subject in this Court. Besides, as it turned upon the construction of cl. (3) of s. 50 of the Bengal Tenancy Act it has no bearing upon the case before us."

*S. 51, sub-sec. I was as follows :—

No *zemindar* or other actual proprietor of land shall demand an increase from the *talukdars* dependant on him, although he should himself be subject to the payment of an increase of *jama* to Government, except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the *talukdar* holds his tenure, or that the *talukdar*, by receiving abatements from his *jama*, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

7. What tenures are liable to enhancement :—See notes under s. 7.

8. Suit for both enhancement and arrears of rent :—A suit for both enhancement and arrears of rent is maintainable. The causes of action, although separate may be joined under s. 45, C.C.P. (Act XIV of 1882) ; *Gudar Tewari v. Brijnandan* (unreported second appeal No. 2268 of 1899).

9. Enhancement suit different from a suit for rent at old rate :—A suit to enhance is very different from a suit to recover arrears of rent at the rate originally fixed ; and when a suit for enhancement of rent is dismissed the plaintiff is not entitled to decree, at the old rent : *Soorasoondare v. Golam Oli*, 19 W.R. 141, (P.C.) but the rule prescribed in this case does not apply to cases where the suit is not simply a suit for enhancement, but a suit for rent at the old rate as regards some years and at enhanced rate for others : *Ghunshyam v. Tara Prasad*, 8 Cal. 465. See also *Bhajanath v. Grant*, 22 W.R. 13 ; *Bhugwan Dutt v. Shew Mungal*, 22 W.R. 256 ; *Bhubo Soondaree v. Kasheenath*, 22 W. R. 351.

Presump-
tion that
zemindar is
entitled to
enhance.

10. Enhancement suit : Presumption :—A suit to enhance proceeds on the presumption that a zemindar holding under the perpetual settlement has the right, from time to time, to raise the rents of all the rent-paying lands within his zemindari, according to the *Pergunna* or current rates, unless either he be precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognised by Reg. VIII of 1793 ; and it also assumes that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit : *Bamasoondari v. Radhika Chowdhurani*, 13 W.R., 11 s.c., 5 B.L.R. (P.C.) 8, s. c., 13 M.I.A. 248. See also *Sarada v. Uma Sankar*, 44 C.L.J. 385. See also notes under Sec. 7, heading No. 2.

II. Partition of tenure :—When by the original arrangement there was one tenancy under one holding, *held* that it came to an end when the parent estate was partitioned and the effect of the partition was to create separate and distinct tenancies under the proprietors of each of the estates, and s. 188 would not preclude one of the proprietors of each of the distinct estates from maintaining a suit for enhancement : *Hem Chandra v. Kali Prasanna*, 26 Cal. 832.

Proof of a
tenure
existing
from the
time of the
Permanent
Settlement.

12. Tenure held from the time of the Permanent Settlement : Proof :—In order to prove that a tenure has been held from the time of the Permanent Settlement it is sufficient if it is shown that it existed and was capable of being registered in the zemindar's *sheristha* at the time of the Decennial Settlement. *Bamasoondari v. Radhika Chowdhurani*, 13 W.R. (P.C.) 11. The fact of a tenure not having been registered under the provisions of Reg. VIII of 1793, s. 48 does not deprive a tenure-holder of the benefit of s. 51 : *Rajah Nilmoney v. Ram Chuckerbutty*, 21 W.R. 439, s. c., 4 B.L.R. P.C. 8.

Onus dis-
charged, if
tenure is
shewn to
have been
held from a

In a suit for ejectment brought by a purchaser of an entire estate under Act XI of 1859, Defendant set up that his tenure existed from the time of the Permanent Settlement *held*, that the onus in the first instance lies on the defendant and it is discharged when defendant proves possession for a long time and the suit was dismissed on the

proof by the defendant that his tenure existed in the year 1798-99 : very long
Nityanund v. Banshi Chandra, 3 C.W.N. 341 ; no hard and fast rule time.
 can be laid down as to when the burden of proof shifts from one
 side to the other and each case must be governed by its own merits :
Ibid ; see also *Nagendra Lal v. Nabab Ali*, 10 C.W.N. 503. It is
 not necessary that direct evidence should be given to prove the
 existence of a tenure from before the Permanent Settlement ; a
 presumption in favour of its existence arises from the proof of the
 existence of a tenure for a very long time, say from 1824 : *Ananda*
Chandra v. Kunjo Behari, 8 C.L.J. 177.

A suit for the enhancement of the rent of a tenure held from Suit for
 before the Permanent Settlement is governed by s. 6 of the B. T. enhance-
 Act.—In the absence of the local custom, if the landlord does not ment, sec. 6
 prove the fact that by the conditions under which the tenure is held, B. T. Act.
 he is entitled to enhance the rent, his suit must fail : *Birendra Kisore*
v. Ali Ahmad, 84 I.C. 86 (Newbould and B. B. Ghosh J.J.) The
 question whether the landlord has succeeded in proving the necessary
 conditions under s. 6 of the B. T. Act is primarily a question of
 fact : *Ibid*. No inference can be drawn in favour of the landlord
 as to the conditions of the tenancy by reason of an assessment which
 was never accepted by the talukdar and to which the talukdar sub-
 mitted under compulsion : *Ibid*.

The owner of taluks formed long before the Zemindari in s. 5
 cl. (3) of Reg. VIII of 1793, which was not repealed when the
 Zemindari was created. The rent of such a taluk cannot be
 enhanced : *Birendra Kisore v. Ali Ahmed*, 39 C.L.J. 605.

13. Tenures not held from the Permanent settlement :—
 The Act is silent as to the grounds of enhancibility of tenures not
 held from the time of the Permanent Settlement—There are no legal
 restrictions on the enhancement of the rent of such tenures except
 such as may be imposed by the terms of the leases under which the
 tenures are held : *Bamasundari v. Radhika*, 1 W.R. 172 ; *Satyamand*
v. Haro Kishore, 15 W.R. 474. When a tenure is not held from
 the time of the Permanent Settlement the Zemindar has a *prima facie*
 right to ask for enhancement of the tenure unless there is anything
 to prevent him from doing so : *Saroda v. Umasankar*, 44 C.L.J.
 385. The case of *Bama Sundari v. Radhika*, 13 M.I.A. 248 was
 relied on. See also notes under Sec. 7, heading No. 2.

14. Onus : The plaintiff is to start his case by proving that Plaintiff to
 the existing rent is below the customary rate : *Hem Chandra v. Kali* prove that
Prasanna, 26 Cal. 832. Where the defendant claimed to hold as a existing
 dependent talukdar held, the onus was upon the zemindar to shew rate is
 that the land was included in the zemindari at the time of the below
 Permanent Settlement : *Assanulla v. Bussarat*, 10 Cal. 920. customary
 rate.

15. Enhancement of Rent by Ijaradar : Unless there is an *Ijaradar*.
 express stipulation against the enhancement of rent by an ijaradar he
 can exercise that power : *Doorga Prasad v. Joy Narain*, 2 Cal. 474 ;
Rushton v. Girdharee, 21 W.R. 46.

16. Receiving reductions : When there was a simple state-Reg. VIII
 ment of the plaintiff that by degrees the rents became less and he of 1793,
 was entitled to claim an enhancement, held that this was not the s. 51.
 abatement contemplated by s. 51 of Reg. VIII of 1793 : *Nabo Kristo*
v. Taramanee, 12 W.R. 320.

Limits of
enhance-
ment of
rent of
tenures.

17. Etmam (Itmam): See notes under s. 7.

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

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

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

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

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

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

Headings of Notes.

1. NATURE OF TENANCY.
2. LIABLE TO ENHANCEMENT.
3. PERMANENT TENANCY ACQUIRED BY PRESCRIPTION.
4. SUSPENSION OF DECREE FOR ENHANCEMENT BY CONDUCT.
5. AGREEMENT TO PAY ENHANCED RENT BY ONE OF SEVERAL JOINT TENANTS.
6. CIRCUMSTANCES UNDER WHICH THE TENURE WAS CREATED—
BROUGHT UNDER CULTIVATION.
7. ROAD-CESS RETURN.

8. STAY OF THE OPERATION OF LIMITATION OF RENT SUIT FOR PENDENCY OF AN ENHANCEMENT SUIT.
9. FAIR AND EQUITABLE RENT.
10. JOINT LANDLORD MUST SUE TOGETHER FOR ENHANCEMENT.
11. COLLECTION CHARGES.
12. ETMAM (ITMAM).

1. Nature of tenancy.: The question as to the nature of a tenancy is a question of law: *Ramdayal Giri v. Midnapur Zemindary Co.*, 15 C.W.N. 263; also see *Sulata Das v. Jadunath*, 8 C.W.N. 774 notes at p. 57 and *Ramanuj v. Midnapur Zemindary Co.*, 16 C.W.N. 725. See notes under s. 5. Nature of tenancy, question of law.

2. Liable to enhancement:—A suit to enhance rent proceeds on the presumption that zemindar holding under the Permanent Settlement has the right from time to time to raise the rents of all the rent-paying lands within his zemindari, according to the Pergunna or current rates, unless either he is precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognised by law: *Bama Sundari v. Radhika*, 13 M.I.A. 248, s. c., 13 W.R. (P.C.) 11; s. c., 4 B.L.R. 8 (P.C.). Presumption in a suit for enhancement.

When a tenure is not held from the time of the Permanent Settlement, the Zemindar has a *prima facie* right to ask for an enhancement of rent of the tenure, from time to time, unless there is anything to prevent him from doing so: *Saroda Prasad v. Uma Sankar*, 44 C.L.J. 385 (Sanderson, C. J. & B. B. Ghose J.): The case of *Bama Soondery v. Radhika*, 13 M.I.A. 248; s. c., 13 W.R. 11 (P.C.) relied on.

Enhancibility of rent of a tenure, where there is no direct evidence as to what the actual terms are, can be inferred from other circumstances of the case *Ibid.* The onus of proving in the first instance that the rent is a fixed one, is on the tenant—*Ibid.* The grant of a *Putni* connotes that the rent is fixed. Mere mention of a *talug* as a *putni talug* does not create a *putni talug*; there may be other terms in the document which may shew that although the word "*putni*" was used it was not really a *putni talug*—*Ibid.*

For the enhancement of rent it is first necessary to show that the rent is liable to enhancement, and then whether there is a customary rate and when this has been negatived then only there may be enhancement up to such limit as the Court may think fair and equitable: *Midnapur Zemindary Company v. Sridhar Mahata*, 49 Cal. 866, s. c., 36 C.L.J. 96, (Mookerjee and Cuming J.J.). See also *Jogesh v. Izzat Ali*, 40 C.L.J. 585 (Suhrawardy and Cuming, J.J.). Essentials necessary for proof.

Before a Court can take action under sub-sec. (2) it must be definitely found that no customary rate exists. The finding that the Plaintiff has failed to prove the customary rate is not sufficient to give customary jurisdiction to the Court to proceed to determine to what extent the rent should be enhanced: *Ram Sundar v. Satindra Mohan*, 85 I.C. 190 (Cal.) (Suhrawardy and Cuming, J.J.).

Every tenure whether permanent or otherwise is subject to the incident of enhancibility of rent: *Yakub Ali v. Raj Kumar*, 65 I.C. 527, (Suhrawardy and Cuming J.J.) where at the inception of the tenancy there was no condition excluding the tenure from the operation of the ordinary liability for enhancement of rent, the same state Incident of enhancibility attaches to every tenure.

Uniform
payment
of rent.

of things should be held to exist on the date of the publication of the record of rights: *Ibid.* The mere fact of payment of rent at a uniform rate for any number of years apart from the presumption under s. 50, does not raise any presumption of fixity of rent: *Ibid.*

Effect of
forbearance.

Mere forbearance on the part of a landlord does not justify the inference that the tenure is not enhanceable: *Bhairab Chunder v. Midnapur Zemindary Company*, 38 C.L.J. 372, (Mookerjea and Chotzner J.J.).

It cannot be held in a case brought under the Bengal Tenancy Act that any presumption arises as to the fixity of rent from mere payment of the same rate of rent for a number of years apart from the presumption arising under sec. 50 of the Act. To hold otherwise would be to require every landlord to enhance the rent of every tenant under him at certain intervals of time which he might not himself desire to do: *Brajodas v. Bankim*, 51 Cal. 454.

The word usually employed in creating a fixed rent in perpetuity is the word "mukurari" though no doubt the absence of such word is not conclusive if other words are found in the grant which clearly show that such a rent was intended to be created: *Krishnendra v. Kusumkamini*, 54 I.A. 48, s. c., 31 C.W.N. 514, s. c., 45 C.L.J. 305 (P.C.).

Where the terms of a patta provided *inter alia*, that "all profits and losses shall be yours and you shall on no account be competent to pray for any reduction of the rent. You shall abide by the survey and Settlement of rent to be made by me when necessary," held that there were no terms from which it could be inferred that the landlord abandoned his right to enhancement, whilst the express provision that the rent would not be reduced negatived the contention. *Ibid.*

Prima facie
rent liable
to enhance-
ment.

Prima facie the rent is liable to enhancement unless the landlord has precluded himself by contract from such enhancement. There should be definite materials in the patta before a court comes to the conclusion that the common law has been excluded.

A landlord is not precluded from enhancing the rent of his tenant although in the patta it was stated that the tenant was to hold from 'generation to generation,' that he was not to get remission of rent and that he should pay cesses separately and in addition to rent: *Jonab v. Shivakumari*, 46 C.L.J. 253 (Rankin, C.J. and Mitter J., June 24, 1927). The case of *Krishnendra v. Kusum Kamini*, 54 I.A. 48 was referred to.

Kaimi.

The word *Kaimi* does not import fixity of rent: *Fazel v. Keramaddi*, 31 Cal. 960: *Meherali v. Kalai Khalasi*, 19 C.W.N. 1129.

As to the meaning of the words *istemrari* and *mukurari* see notes under s. 179; as to the meaning of the word *Kaimi* see notes under s. 18.

Mourasi.

Where the patta is a *mourasee* one, but the rent fixed in the lease does not appear to have been fixed and invariable, its terms do not protect the tenant from enhancement: *Taruck Chandra v. Madhoo Soodan*, 5 W.R. Act X 80. The term "tika mohito" can never be construed as conferring a permanent or *mourasee* lease at a fixed rate. The words are not tantamount to "mourasee" or "istemrari": *Nuffer Chandra v. Gossan Joysingh*, 3 W.R. Act X 144.

Tika mohito.

Lease of
progressive
rent,

Where by an *amalnama*, the tenant, for clearing and cultivating the land, was to pay no rent for 3 years, then 4 annas per *bigha* for one year, 6 for another, and 8 for third, until the rent from 1267, reached

the rent of 10 annas at which it was to remain, but no period was fixed for the duration of this rent of 10 annas a bigha, *held* that there was nothing to prevent the landlord from putting in force any claims to an enhanced rent: *Puddo Monee v. Paramanund*, 7 W.R. 158. Where the terms of a document were that the lands covered by the deed "shall be held rent-free for five years and then for the year 1255 at the rate of five annas per bigha for the year 1256 at the rate of 10 annas per bigha and from the year 1257, the rate to be paid every year shall be the *poora dastoor* or full customary rate of 14 annas", *held* that by such a condition the landlord did not bind himself never to exercise the privilege of enhancing the rents: *Bhurut Chunder v. Gourmonee*, 11 W.R. 31; see also *Sasee mukhee v. Nades Ali*, 11 W.R. 164. But where it appeared from the *kabuliyat* that a *how-ladaree* amulnama had been granted without any rent for the first year, at varying rates less than Rs. 5 a kanee up to 1264 and in the year 1264 and after at the full customary rate of 5 rupees per kanee *held* that the rent was not liable to enhancement beyond the rate of Rs. 5: *Gopal Lall v. Golam Ali*, (P.C.) 19 W.R. 141. A similar question arose in a case which came up for hearing before Wilson and Maclean J.J., and their Lordships in delivering Judgment said as follows:—"Now, the question is shortly this: When land is let for the purpose of clearing jungle or other reclamation and on this ground or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at such and such rate, a sum as the full rent—does that mean, as the word seems to import that the full rent is to be the full rent as long as the tenure subsists, or is such a rent liable to enhancement under the provisions of the Rent Law? We agree with the lower Appellate Court in thinking that the decision of the Privy Council in *Sooru Soondery Debee v. Golam Ali*, (9 W.R. 65) is an authority for holding that the former view is the true one, and that in the present case that rent cannot be enhanced: *Huro Prasad v. Chundee Churn*, 9 Cal. 505. Where the words in the *pattah* were as follows:—"Having, according to the instalment, paid the rent, year after year, you may continue to enjoy the profits. After this, in no manner shall enhancement be demanded." *Held*, there could not be any enhancement during the existence of the *pattah*: *Punchanun v. Pearymohun*, 2 W.R. 225. See notes under s. 179. Where the *kabuliyat* was in the following words: "We will get no remission of *jama* on drought, inundation and *patit*. If in addition to the land mentioned in this *kabuliyat* any excess be found on measurement we will pay separately at the rate of etc., etc." *Held* that the terms of the *kabuliyat* did not prevent the landlord to sue for enhancement: *Ram Kumar v. Robert Watson & Co., Ltd.*, 9 C.W.N. 334.

when liable to enhancement.

Poora dastoor, or customary rate.

Lease for clearing jungle or reclamation

Agreement barring enhancement.

Agreement to pay rent on excess land.

Where the facts were as follows:—(1) The tenancy was for the purposes of reclamation, but when it originated is not known; (2) The tenancy is not limited in its duration, and has descended from father to son and from son to grandson; (3) The rent fixed in respect of the lands originally comprised in the tenancy has never been altered; (4) Excess lands reclaimed from time to time have been included in the tenancy and rent has been assessed on such additional lands: but at each settlement the rent assessed at the previous settlement has been left untouched; the rent has so continued invariable for at least half a century before the date of the suit; (5) in two of the leases, the rent was made progressive, the full amount being

Construction of a lease for reclamation.

reached in the fourth year, and it being agreed that the lessee should thenceforth continue to pay the full amount; and (6) two of the leases entitled the lessee to hold excess lands at a rate which was fixed in the contract: *held* that from these circumstances the inference might be legitimately drawn that the tenure was permanent, the rent had been fixed in perpetuity and that the rent was not liable to enhancement: *Robert Watson and Co. v. Radhanath*, I.C.L.J. 572. Where the same rate of rent prevailed over 60 years, though the total rent went on increasing with the increase in the area, *held* that the proper inference was that the rent was fixed: *Ramdoyal v. Midnapur Zemindari Co.*, 15 C.W.N. 263 following the case of *Robert Watson & Co. v. Radha Nath Singh*, I. C.L.J. 572. From the mere fact that rent had been once enhanced by compromise it does not follow that it can be enhanced again: *Ramanuj Das v. The Midnapur Zemindary Co.*, 16 C.W.N. 725; it was further held that the same tenancy continued subject to the same provisions. But the fact that rent was once enhanced and the tenant submitted to such enhancement negatives the inference as to the fixity of rent: *Bama-pada v. Midnapur Zemindary Co.*, 16 C.L.J. 322.

Same rent
sixty years

Effect of
enhance-
ment
by com-
promise

The use of the words "*Taluka pattah*" would *prima facie* shew that the interest granted to the lessee was intended to be a permanent one. But in this country, the grant of a permanent lease does not mean that the rent is fixed in perpetuity; the decisions in this Court which have come down from the old Sudder Dewani Court show that the rule has always been in this country that generally, when the lease is a permanent one, the rent is liable to enhancement, unless the landlord has precluded himself by a contract or is by law precluded from claiming an enhancement: *Upendra Lal v. Jogesh Chandra*, 22 C.W.N. 275 (Per Fletcher J., Richardson J., agreeing); see also *Taruck Chandra v. Modhoosudan*, 5 W.R. Act X Rul. p. 80 *Gayratulla v. Girish Chunder*, 12 C.W.N. 175, *Mehar Ali v. Kalai Khalasi*, 19 C.W.N. 129. A permanent mokurari lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity: *Mahanand v. Syadmuss*, 12 C.W.N. 154, s. c., 8 C.L.J. 525. The word "mokurari" means 'with fixed rent,' that is to say, when applied to a tenure, it means a tenure held at a fixed and permanent rate of rent: *Goyratulla v. Giris Chandra*, 12 C.W.N. 175.

Mokurari.

Where it was stipulated that the tenant should in addition to rent pay the cess as may be settled by Government in future and should further pay standard rent for all additional land to be found on measurement, *held* that the tenancy was at fixed rent: *Golam Rahaman v. Gurudas*, 38 C.L.J. 350.

Standard
rent for
additional
land.

The word '*Barokta*' meaning in due and proper time does not import any fixity as to rent: *Biseswar v. Braja Kant*, 33 C.L.J. 296 (N. R. Chatterjea, Newbould, J.J.).

Barokta.

Where variableness of *jumma* is the normal condition, the mere naming a sum certain in connection with the grant of a descendible tenure, does not import of itself fixity to that sum, in the absence of positive words, or of other words to show that such was the original design: *Ibid.*

Variability
of rent,
normal
condition.

It was held upon the facts in the case of *Amarnath v. Hrishikesh* 64 I.C. 829 that the tenure was held at a fixed rent: (Mookerjee and Pantou J.J.)

Construction
of lease.

Where it was stipulated that the tenant would cultivate from generation to generation and was to pay a *ticca mokra* rent, *held* that the tenant held at a fixed rent, although no premium was paid : *Reshee Case v. Satischandra*, 64 I.C. 774, (Mookerjee and Panton J.J.)

Where there was a stipulation that the tenant would have to pay additional rent for additional land at the *kabuliyat* rate, *held* that thereby the tenancy was not exempted from enhancement : *Surja Prasad v. Midnapur Zemindary Co.*, 38 C.L.J. 369. This case was followed by Mookerjee and Chotzner J.J. in the case of *Bhairab Chunder v. Midnapur Zemindary Company*, 38 C.L.J. 372.

As to enhancibility where the terms of the lease are ambiguous the rights of the parties may be regulated by subsequent conduct ; unless the landlord is precluded from the terms of the contract and the lands cannot be brought within the exceptions under Reg. VIII of 1793, he is entitled to sue for enhancement, the mere fact that a tenure is hereditary does not shew that it is not enhancible : *Bhupendra v. Harihar*, 24 C.W.N. 874 ; (Mookerjee C.J. and Fletcher J.) ; the expression *putni taluk* in the contract did not import that the tenure was not merely hereditary but was held on a rent fixed in perpetuity : *Ibid.*

In order to ascertain the effect of a grant resort must be had to the terms and the whole circumstances ; where the words used were *saliana jama kamel harshal*, *held* that the meaning of the word *saliana* being "annual," and that of *jama kamel* being "the full amount of rent" and that of *harshal* being "all years to come," the tenure was not liable to enhancement : *Mahomed Janu v. Majub Ali*, 27 C.W.N. 328, (Mookerjee and Chotzner J.J.).

Where the arrangement was that the tenure should not be liable to rent for the first four years, after that it would carry on a progressive scale until in 1298 it reached one rupee one anna per bigha, and since there was no enhancement by operation of law, *held* that the maximum rent reached in 1298 and it was the fixed rent of the tenure so long as it would last : *Port Canning Land Improvement Corporation v. Katyani Debi*, 47 Cal. 280, (P.C.), (19 June, 1919), s. c., 24 C.W.N. 368.

If there is an indication in the lease that there will be no enhancement and that for excess area an additional rent would be levied at the rate at which the original area is held, *held*, that the rent is not enhancible although the word *mokurari* is not used in the lease : *Chandi Charan v. Azizernessa*, A.I.R. 1922 Cal. 18 ; the interest stipulated although high is enforceable at law.

Where a lease stipulated that if in future any enhancement of rent or cesses be made according to law by the superior landlord or collectorate the landlord would be entitled to recover the enhanced rent and cesses from the tenant, *held* that the lease cannot be said to be held at a fixed rent or rate of rent : *Johara Banoo v. Ganga Chandra*, A.I.R. 1922 Cal. 222, (Greaves and Ghose J.J.).

See notes under s. 3, cl. (8).

Where a tenant was recorded as having *kaimi interest* and not *mokurari* and the tenant did not bring a suit for correction of the entry under s. 106, *held*, that the tenant was not entitled to rely upon s. 50, cl. (2) of the Bengal Tenancy Act, and no presumption arose under s. 50 even if it was shown that the rent was not varied for

more than 20 years before the institution of the suit: *Brajadas v. Bankim Chandra*, 51 Cal. 454 (Newbould and B. B. Ghosh J.J.).

Reclamation and cultivation by grantee.

Where a lease lays down that the grantee would enjoy the land by reclamation and cultivation from generation to generation and that the *jama* would be paid into the office of the landlord from year to year, *held* that the rent is fixed in perpetuity: *Reshee Case v. Bhuvan Mohan*, A.I.R. Cal. 1924, p. 361.

Presumption as to *mokurari*.

The mere fact that a certain rate is mentioned with respect to excess land that may be found in possession of the tenant does not create a presumption as to the *mokurari* nature of the holding: *Ramijuddin v. Radhakant*, 80 I.C. 987, (Suhrawardy and Duval J.J.).

Assertion of title as permanent tenant.

3. Permanent tenancy acquired by prescription :—Where a tenant set up a permanent tenancy but the landlord obtained a decree for *khas* possession and obtained symbolical possession merely, and the tenant continued to be in possession for more than 12 years by asserting on several occasions his title as permanent tenant to the knowledge of the landlord, *held* that the tenant acquired by prescription a right to hold lands as a permanent tenant: *Bagdu Majhi v. Durga Prasad*, 9 C.W.N. 292.

Effect of fresh arrangement superseding a decree for enhancement.

4. Suspension of decree for enhancement by contract :—Where the landlord had obtained a decree for enhancement of rent and subsequently the landlord and the tenant made a fresh arrangement between themselves and in pursuance of this arrangement a *kabuliyat* was executed by the tenant by virtue of which the tenant was allowed to hold a lease at a less rent, for a certain number of years on certain conditions and if the conditions were not fulfilled then the whole rent fixed by the decree would be levied, *held* that the arrangement embodied in the *kabuliyat* had the effect of superseding the enhancement decree; and that, upon the expiry of the term of the *kabuliyat*, if the landlord sought to enhance the rent he must do so by having recourse to the procedure laid down by the Rent law: *Nobin Chunder v. Gour Chunder*, 6 Cal. 750, s. c., 8 C.L.R. 161.

Acquiescence where enhanced rent agreed to be paid by one of several joint tenants is paid for some time. One of several joint tenants agreeing to pay enhanced rent liable for his share only; but other tenants liable to pay original rent.

5. Agreement to pay enhanced rent by one of several joint tenants :—Where one of several joint tenants had agreed to pay an enhanced rent and the rent had been paid for four years; *held* that it might be assumed that the co-sharers had acquiesced in the arrangement made; *Brahunuddi v. Mohun Chunder*, 8 C.L.R. 511; but where one of several joint tenants executed a *kabuliyat* at an enhanced rent for the entire tenure; *held* that he could not be made liable for enhanced rent in respect of any share exceeding his own share: *Ram Taran v. Asmatulla*, 6 C.W.N. 111. Where a co-tenant executes a separate *kabuliyat* for his share in the tenancy, the landlord cannot sue the other tenants on the basis of the new arrangement without proving that they agreed to the division of the tenancy: unreported Second Appeal No. 116 of 1900: *Sourav Nama Sudrani v. Nabadi Chunder* (decided on the 17th February 1903). See notes under s. s. 65 and 159.

6. Circumstances under which the tenure was created—brought under cultivation :—Cl. (a) of sub-sec. 3 clearly indicates that a tenure-holder within the contemplation of the Act must be a person who holds land which is used for agricultural or

horticultural purposes: *Per Banerjee J., Umrao Bibi v. Syed Mahomed*, 27 Cal. 205, s. c., 4 C.W.N. 76: see notes under s. 5.

7. Road-cess return :—In a suit for enhancement of rent by a fractional shareholder the road-cess returns which had been filed by another share-holder were considered to raise a presumption that the existing rate was not fair so as to shift the onus on the tenant to rebut the presumption: *Hem Chandra v. Kali-Prasanna*, 8 C.W.N. 1 (P.C.); under sec. 114, cl. (g) of the Evidence Act the Court awarded an enhanced rate upon such return: *Ibid.*

Road-cess return by one share-holder, if binding upon others

8. Stay of the operation of limitation of rent-suits for pendency of an enhancement suit :—Where a suit for the recovery of arrears of rent was brought more than three years after the due date, *held* that the fact that a suit for enhancement had been brought by the plaintiff within that period and in that suit the plaintiff had claimed enhanced rate for the year in question stayed the operation of the law of limitation: *Hem Chunder v. Kali Prasanna*, 8 C.W.N. 1.

9. Fair and equitable rent :—Where in an enhancement suit under this section the rent assessed by the lower Court amounted to 70 per cent. on the net assets after deducting collection charges, *held* that the rent settled was somewhat larger than what was fair and equitable: *Ram Kumar v. Robert Watson & Co., Ltd.*, 9 C.W.N. 334.

10. Joint landlords must sue together for enhancement :—See notes under s. 188.

11. Collection Charges :—Allowing a profit of 40 per cent. for the costs of collection to the tenure-holder in assessing enhancement of rent is not a low rate: *Surja Prosad v. Midnapur Zemindary Co.*, 38 C.L.J. 369, *Eshaque Sheikh v. Matilal*, 81 I.C. 1043. See also notes under ss. 5 and 18.

Collection charges—40 per cent.

12. Etmam (Itmam) :—*Itmam* (properly *ihitam*, meaning "entrusted to") is a class of under tenure in the District of Chittagong. Generally speaking, the *taluqdar* under whom there are *itmamdars* occupies the position of a mere rent receiver with respect to the land included in the *itmam*. During the recent settlement *itmamdars* have been recorded, and the status of each, whether as tenure-holder or as ryot, has been determined; but the rent has been revised in each case, being assessed, in cases where the *itmandar* is a tenure-holder, upon the basis of the rents paid to him by his ryots: See in this connection District Gazetteer of Chittagong, Vol. I, pp. 149-151. An *etmam* (*itmam*) tenure in Chittagong which has not been proved to have existed from the time of the Permanent Settlement is excluded from the operation of Sec. 6 of the B. T. Act and its rent is enhancible under Sec. 7 of the B. T. Act. No presumption of fixity of rent in favour of the tenant can arise from the fact of a tenure, e.g., *etmam* tenure in Chittagong, being permanent, heritable and transferable: *Upendra Lal v. Jogesh Chandra*, 47 C.L.J. 112 (*Per Mukerji, J., Cuming J.*, agreeing, July 27, 1927). The case of *Port Canning Land Improvement Company v. Katyani* 47 Cal. 280 (P.C.) s. c., 32 C.L.J. 1, was distinguished and the case of *Krishniendra v. Kusum Kamini*, 54 I.A. 48, s. c., 31 C.W.N. 514, s. c., 45 C.L.J. 305 (P.C.), was referred to.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that

Power to order gradual

enhance-
ment.

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.

I. Analogous law :—S. 36 provides a similar rule relating to occupancy raiyats ; it has been held that that section has no application to the case of a tenant who was in possession of the land for some years without paying rent : *Sujauddin v. Jadunath*, 18 C.L.J. clxvii (167 notes).

2. Date from which decree for enhancement takes place :—See s. 154.

Rent once
enhanced
may not be
altered for
fifteen
years.

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

Headings of Notes.

1. CALCULATION OF FIFTEEN YEARS.

2. PERIOD WITHIN WHICH A SUIT FOR ENHANCEMENT MAY BE BROUGHT.

Period to be
calculated
from decree
of first
court.

I. Calculation of fifteen years :—Where a decree for enhancement was passed by the Sub-Judge originally and the decree was affirmed by the High Court and then also by the Privy Council on appeal, *held* that the period of fifteen years was to be calculated from the date of the decree of the Sub-Judge : *Surja Kanta v. Hemanta Kumari*, 5 C.L.J. 87, notes portion.

Distinction
between
this section
and S. 37.

2. Period within which a suit for enhancement may be brought :—This section unlike s. 37 is silent as to the period within which a suit for enhancement cannot be brought ; s. 37 which applies to the enhancement of rent of an occupancy raiyat provides that a second suit for enhancement cannot be brought within 15 years, but s. 9 only says that the court will not pass a decree within 15 years but is silent as to whether suit instituted within 15 years is maintainable. It seems, therefore, that a suit may be brought within the time, and if 15 years expire during the pendency of the suit, a decree may be then passed.

Other
incidents
of tenures.
Permanent
tenure-
holder not
liable to
ejectment.

Other incidents of tenures.

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

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

Headings of Notes.

1. NON-PAYMENT OF RENT.

2. NOTICE TO QUIT.



3. ONUS.
4. SUIT FOR RENT FOR A PERIOD PRIOR TO EJECTMENT SUIT
5. EJECTMENT : DENIAL OF LANDLORD'S TITLE.
6. INCIDENTS OF A PERMANENT TENURE.

1. Non-payment of rent :—A stipulation in a *putni* lease that by reason of non-payment of rent by the *putnidar* he would forfeit his tenancy is not valid,—*Mohebut Ali v. Mahomed*, 2 C.W.N. 455. Such a stipulation by a permanent tenure-holder is not valid : *Samant Radha v. Ananta Prasad*, 4 C.L.J. 521. Non-payment of rent does not determine the relation of landlord and tenant : *Apurba Krishna v. Asutosh*, 9 C.W.N. 122. See notes under ss. 65 and 76.

2. Notice to quit :—A notice to quit which directs the tenant to vacate a certain quantity of land under his landlord is not bad in law merely because it includes some land which the tenant is found to hold under the landlord : *Shama v. Charan*, 2 C.W.N. 106. See notes under ss. 89 and 155.

3. Onus :—When a landlord sues for possession of land lying within the ambit of his estate on the ground that it is mal and not lakhiraj of the defendant, the burden of proof in the first instance is upon the plaintiff ; the reason of the rule is mainly that where possession for a long time by a defendant is admitted to be undisturbed, the plaintiff must give affirmative proof of the land being part of his estate : *Sheikh Milan v. Mahomed Ali*, 10 C.W.N. 434 ; also see *Hari Har v. Madhab Chandra*, 8 B.L.R. 566. Where a defendant claims to be a permanent tenure-holder and not a raiyat the onus lies upon him to prove this : *Nilmani v. Mathura Nath*, 5 C.L.J. 413. In a suit by a landlord for *khas* possession of land in defendant's possession, the defendants set up and proved an intermediate tenure, held that it was on the plaintiffs to shew that the parcel of land sought to be resumed was outside such tenure. In this respect it makes no difference whether the plaintiff admits the existence of the under-tenure or the defendant proves such tenure to exist, although denied by the plaintiff : *Rajendra Kumar v. Mohim Chandra*, 3 C.W.N. 763. Possession by the defendant of a tenure of limited extent within the plaintiff's *putni* raises no presumption of title upon his seizure of a piece of land and claiming it as part of his tenure, and the onus lies upon the defendants to prove that the land is included in their *mokurari* holding and not upon the plaintiffs to shew that it is not : but where a tenant has been in long and peaceable occupation of land as part of an admitted tenure, it lies upon the landlord in a suit for ejectment to prove in the first instance that the land is his *khas* property and not the tenant's : *Nanda Lal v. Jajneswar*, 6 C.W.N. 105*.

When a tenant of land claims a permanent tenancy the onus is upon him to prove that he has such a right upon the tenant : *Nainapillai v. Ramanathan*, 28 C.W.N. 809 (P.C.)

* See the case of *Rajah Sahib Perhiad Sein v. Durga Persad*, 12 M.I.A. 286; *Ram Mon v. Ahmuedhen*, 20 W.R. 374; *Raj Kissen v. Pearee Mohun*, 20 W.R. 421, *Huree Mohun v. Goreebullah*, 22 W.R. 417; *Nobocoomar v. Oozir*, 23 W.R. 238; *Beharee v. Paryag*, 23 W.R. 291; *Rhedoy v. Nobin*, 12 C.L.R. 457; *Balai Ahir v. Bhuggobutty*, 11 C.L.R. 476; *Mohima Chunder v. Mohesh*, 16 Cal. 473; *Forbes v. Mahomed*, 12 B.L.R. 210; *Huryhur v. Madub*, 14 M.I.A. 152.

No tenant of lands can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands: *Ibid.*

A person who is, in fact, in possession of land under a tenancy or occupancy title cannot, by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been challenged successfully (the possession remaining all the while on the same footing) obtain a title as an under-proprietor to the land. Sec. 28 of the Limitation Act has no application to such a case: *Mumtaz Ali v. Mohan Singh*, 28 C.W.N. 840 (P.C.).

Onus ordinarily on defendant.

The two aforesaid cases *i.e.*, the cases in 3 C.W.N. 763 and 6 C.W.N. 105 as well as the case of *Sheodeni v. Chaturbhuj*, 12 C.L.J. 376, were considered by Mookerjee and Beachcroft J.J., in the case of *Protap Chandra v. Judhistir*, 19 C.W.N. 143, and it was held that it is not the law that because a defendant is found to be a tenant of some land under the plaintiff, the burden is thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant; the burden would ordinarily be on the defendant to prove the tenancy under which he claims to hold it.

The mere fact that the defendant holds some land under the plaintiff as tenant would not be sufficient to throw upon the plaintiff the burden of showing that in respect of any other land in the zemindari which the defendant may be found to be in possession of, he has no right as tenant; the burden of proof in a case like this is on the tenant: *Gopini Debi v. Ram Taran*, 19 C.W.N. 140, the principle laid down in *Rhidoy Krista's case* 12 C.L.R. 457 throwing the onus on the plaintiff should be held applicable to cases where the land sought to be recovered is admitted by the plaintiff to be contiguous to the holding of the defendant or that it has come to his possession by encroachment: *Ibid.*

Party in possession.

Where the owner of land seeks to recover possession on the allegation that the party in possession has no right to continue in it and his title to possession is proved or admitted he can claim a decree unless the party in possession proves the existence of a tenancy which entitles him to retain possession: *Narsing v. Dharani*, 9 C.W.N. 144; where neither party set up a tenancy in an ejectment suit the Court cannot go behind the pleading and find that the defendant is a tenant: *Sujjad v. Ganga Charan*, 9 C.W.N. 460. See notes under s. 89.

Onus upon defendant when plaintiff proves to be owner.

Where in a suit for ejectment the defence set up a tenure by purchase from a former tenant, and the plaintiff proved that he was the owner of the land, *held* that it lay upon the defendant to make out that he is a tenure-holder and was entitled to remain upon the land: *Hiramoti v. Annada*, 7 C.L.J. 553.

Suit for rent instituted after ejectment decree in respect to arrears prior to ejectment decree.

4. Suit for rent for a period prior to ejectment suit:— A decree-holder who has obtained a decree for ejectment is entitled to bring a suit for the arrears of the period prior to the ejectment decree and cannot by such conduct be regarded as having waived the rights he had obtained under his ejectment decree: *Mansar Ali v. Abdul Karim*, 10 C.L.J. 189.

5. Ejectment: Denial of landlord's title*:—The follow-

* Under the Bengal Tenancy Act no tenant can be ejected except in execution of a decree and upon the grounds provided for in the Act; [See

ing is a summary of the decision noted below in regard to the question as to whether a denial of landlord's title is a ground of forfeiture under the Bengal Tenancy Act :—

1. *Denial of landlord's title is no ground of forfeiture under the Bengal Tenancy Act.*
2. *A denial before the Bengal Tenancy Act was passed operates as a forfeiture.*
3. *The rule that a denial does not entail a forfeiture does not apply where the denial is given effect to by a decree of a court, and the tenant is estopped as a matter of record to set up a tenancy in the ejectment suit.*
4. *There are observations to the contrary in certain cases, and in those cases the correctness of the rule in para 3 has been doubted.*
5. *Where a tenant denies the title of his landlord in a suit for*

Summary
of the
case-law.

ss. 11, 18, 25, 44, 49, 89 and s. 178 (1) (c)]. Denial of landlord's title is not a ground of forfeiture under any of the aforesaid sections; so denial of landlord's title under no circumstances can be a ground of forfeiture. When the Bengal Tenancy Bill was passed into law there was an amendment proposed that the following be added to s. 44 as a ground for eviction :—

"on the ground that he has disclaimed the title of his landlord before any public officer or Court."

The Hon'ble Mr. Reynolds said :—"I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable."

The Hon'ble Mr. Ilbert said :—"I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English Law. I will not call it an obsolete doctrine, because it still appears in the text-book. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it the Courts regard with disfavour and limit its application in every possible way.

"And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section enabled a tenant who entertains a *bonafide* doubt as to the person entitled to his rent to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court. And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land in his possession rent at a rate to be fixed by the Court. By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further."—*Extract from the Proceedings of the Council of the Governor-General of India; dated 6th March 1885.*

rent and the rent-suit being dismissed the landlord brings a suit for khas possession, the landlord is entitled to succeed in as much as the question as to the relationship of landlord and tenant is barred by the rule of res judicata.

Sections providing grounds for ejectment.

The sections providing the grounds upon which a landlord may eject a tenant are ss. 10, 18, 25, 44 and 49. Denial of landlord's title is no ground of ejectment under any one of the provisions of those sections. All these sections provide that a tenant cannot be ejected except upon the grounds mentioned therein. So a tenant denying his landlord's title is not liable to ejectment under the Bengal Tenancy Act.

Denial of title, no ground of forfeiture under the Bengal Tenancy Act.

Denial of landlord's title is no ground of forfeiture under the Bengal Tenancy Act: *Debiruddin v. Abdur Rahim*, 17 Cal. 196; *Sheikh Nizamuddin v. Momtazuddin*, 5 C.W.N. 263; see also *Dhora Kairi v. Ram Jewan*, 20 Cal. 101; but a denial before the Bengal Tenancy Act was passed operates as a forfeiture of the tenant's right whether the case is governed by the Transfer of Property Act or by the ordinary Rent Law which was in force before the passing of the Bengal Tenancy Act: *Ananda Chandra v. Abraham Soleman*, 4 C.W.N. 42; A tenant denying his landlord's title under Act VIII (B.C.) of 1869 forfeit his tenancy: *Nizamuddin v. Momtazuddin*, 28 Cal. 135, s.c., 5 C.W.N. 263; and the rule that a denial of the relationship of landlord and tenant does not entail a forfeiture, does not apply where the denial is given effect to by a decree of Court. The plaintiff, owner of a durputni taluk, had sued defendant No. 1 for rent; the defendant having denied plaintiff's title, the plaintiff withdrew the suit and a subsequent suit for rent which was met by the same defence was dismissed on the ground that there was no relationship of landlord and tenant; plaintiff then brought a suit for khas possession and defendant again denied relationship of landlord and tenant; it was held that plaintiff was entitled to khas possession and the rule that the denial of relationship of landlord and tenant does not entail a forfeiture, did not apply to the case: *Nilmadhub v. Anantram*, 2 C.W.N. 755, followed in *Ramgati v. Pranhari*, 3 C.L.J. 201.

When denial of title is a ground of forfeiture.

Denial of landlord's title given effect to by a decree of Court.

Conflicting views.

The case of *Nilmadhub v. Anantaram*, which seems to be in conflict with the case of *Deberuddi v. Abdur Rahim*, 17 Cal. 196, which was followed in the case of *Faiz Dhali v. Aftabuddin*, 6 C.W.N. 575, where in a suit for rent defendant denied plaintiffs' title, and the suit having failed, the plaintiffs sued to eject the defendants on the ground of denial of landlord's title and it was held that the rule that denial of landlord's title does not work as forfeiture did not apply and plaintiff was entitled to a decree for khas possession and that defendant was estopped by a matter of record from pleading, that he was plaintiff's tenant. Rampini, J., in delivering the Judgment of the Court observed as follows:—

Observations of Rampini, J.

"The facts of the case are these: In a previous rent suit between the parties it was decided that the defendants were not the plaintiff's tenants. The plaintiffs now brought this suit to eject the defendants.

"The Court of first instance held that, as a matter of fact, the defendants were the plaintiffs' tenants; and so relying on the case of *Dhora Kairi v. Ramjeevan Kairi*, 20 Cal. 101, it dismissed the plaintiffs' suit for khas possession.

"The Subordinate Judge has, however, given effect to the ruling *Dhora Kairi v. Nilmadhub Bose v. Anantram Bagdi*, 2 C.W.N. 755 (1898), to the effect that 'the rule that a denial of the relation of landlord and tenant does not entail forfeiture' does not apply where that denial is given effect to by a decree of Court. *Ramjeevan* distinguished.

"The learned pleader for the appellants contends that the Subordinate Judge should not have followed this ruling, and that the decision in this case is in conflict with that in the case of *Dhora Kairi v. Ramjeevan Kairi* 20 Cal. 101 (1890), and he invites us to refer the matter to a Full Bench. We, however, think that there is no conflict between the two cases and that the Subordinate Judge has rightly followed the more recent ruling. It has been found, as a matter of fact, that in the previous suit between the parties the defendants were not tenants of the plaintiffs, and the parties in this suit, that is to say, both the plaintiffs and the defendants plead that the defendants are not tenants of the plaintiffs. That being so, it seems to us that the Munsif should not have found in favour of the defendants a fact which they themselves in their pleadings deny. Furthermore, we think that the defendants are now estopped by a matter of record from pleading that they are the plaintiffs' tenants; and that being so, the plaintiffs are quite entitled to turn them out and take *khas* possession of the land."

Also see *Ramgati v. Pranhari*, 3 C.L.J. 201, where the same view has been taken. See also *Hara Nath v. Kamini Kumar*, 3 C.L.J. 25n, where it was further held that the question of title decided in the rent suit does not operate as *res-judicata* in the subsequent suit for ejectment.

It is submitted that the principle of estoppel cannot be invoked to defeat the plain provisions of a statute. (See *Jagabandhu v. Radhakrishna*, 36 Cal. 920). Estoppel.

Although their Lordships deciding *Faiz Dhali's* case did not give effect to the argument of the vakil that the case of *Nilmadhub v. Anantram*, 2 C.W.N. 755, was in conflict with *Dhora Kairi v. Ramjeevan* 20 Cal. 101, the same question when it arose for discussion in the case of *Malika v. Makhan*, 9 C.W.N. 928, s. c., 2 C.L.J. 389, was answered by their Lordships (Stephens and Mookerjee, J.J.), in a different way; their Lordships say:—"But, in our opinion, the decision in those two cases (*Nilmadhub v. Anantram*, 2 C.W.N. 755 and *Faiz Dhali v. Aftabuddin*, 6 C.W.N. 575) is not consistent with the principle deducible from the cases of *Debiruddi v. Abdur Rahim*, 17 Cal. 196 and *Dhora v. Ramjeevan*, 20 Cal. 101, in which it was pointed out that there cannot be any eviction from an agricultural holding governed by the Bengal Tenancy Act on the ground of forfeiture incurred by denial of the landlord's title inasmuch as such ground is not specified in ss. 25, 44 and 49 of that Act which enumerate the grounds of ejectment of occupancy raiyats, non-occupancy raiyats and under-raiyats respectively." (For further reasons, see 9 C.W.N. at pp. 932 and 933). Conflicting opinions.

But in *Khater Mistri v. Sadruddi Khan*, 34 Cal. 922; the cases of *Nilmadhub v. Anantram*, 2 C.W.N. 755 and *Faiz Dhali v. Aftabuddin*, 6 C.W.N. 575 and *Ramgati v. Pranhari*, 3 C.L.J. 201, were followed, and according to their Lordships who decided the case of *Khater v. Sadruddi* "the learned Judges who decided the case of

Sremati Mallika v. Makhan do not expressly say that the case of *Nilmadhub v. Anantram* and *Faiz Dhali v. Aftabuddin*, have been wrongly decided."

The case of *Nilmadhub v. Ananta Ram*, 2 C.W.N. 755, *Faiz Dhali v. Aftabuddin* 6 C.W.N. 575, *Ramgati v. Pranhari*, 3 C.L.J. 201 and *Khater Mistri v. Sadruddi*, 34 Cal. 922 were followed by Chitty and Richardson J.J., in the case of *Sheikh Miadhar v. Rajanikant*, 14 C.W.N. 339; the case of *Mallika v. Makhanlal*, 9 C.W.N. 928 was distinguished and the observations in the latter case were considered *obiter*.

In suits for
ejectment
on dismissal
of rent suit
for denial
of land-
lord's title,
question of
relation-
ship of
landlord
and tenant
barred by
the rule *res-
judicata*.
Previous
cases dis-
cussed.
Estoppel.

Where in a rent-suit the tenant denied the relationship of landlord and tenant and got an adjudication to that effect, *held* in a suit subsequently brought by the landlord for *khas* possession that the question as to the relationship of landlord and tenant was *res judicata* and the defendant could not assert his title as tenant in such suit: *Ekabbar Sheikh v. Hara Bewa*, 15 C.W.N. 335; *Jenkins, C. J.*, in delivering judgment said as follows:—"what was held in *Sreemati Mallika Dasi v. Makhan Lal Chowdhury*, 9 C.W.N. 928 was based on what was decided in *Debiruddi's case* 17 Cal. 196 and *Dhora's case* 20 Cal. 101. But turning to those cases, it becomes apparent from the facts that in neither of them could the plea of *res judicata* arise.....Therefore, I venture to think that so far as this case can be rested on the plea of *resjudicata* those cases do not touch the matter."

In the case of *Ramgati v. Pranhari*, 3 C.L.J. 201 their Lordships followed the decisions in *Nilmadhub v. Ananta Ram*, 2 C.W.N. 755 (1898) and *Faij Dhali v. Aftabuddin*, 6 C.W.N. 575 (1902) and held that where denial of landlord's title is followed by a decree of Court such denial operates as a forfeiture.* Their Lordships said:—"We are of opinion that the defendant is really estopped by a matter of record from setting up his tenancy under the plaintiff, his denial of the relationship of landlord and tenant having been given effect to by a decree of the Court, which affirmed such denial; and that this would make the matter *res judicata*." Ghose J., however in discussing the case of *Mallika Dasi v. Makham Lal*, 2 C.L.J. 389 said that some of the observations made by the learned Judges who had decided the case of *Mallika Dasi* are "somewhat in conflict" with the view expressed in the case of *Nilmadhub v. Anantram*, 2 C.W.N. 755 and *Fayz Dhali v. Aftabuddin*, 6 C.W.N. 575.

*Res-
judicata.*

Conflict.

Effect of
withdrawal
of suit for
rent in the
appellate
stage when
rent suit
was dis-
missed in
the first
court—
Denial in
such a case
does not
operate as a
forfeiture.

Where a suit for rent was dismissed on the denial by the tenant of the landlord's title and on appeal by the landlord, the suit was withdrawn by him with liberty to bring a fresh suit, *held* in a subsequent suit by the landlord for *khas* possession that the only decree that could be relied on was a decree which ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant did not work any forfeiture as it was not given effect to by a decree of the court: *Pyari Lal v. Hem Chundra*, 16 C.W.N. 730.

A lessee of a service tenure incurs a forfeiture of his tenancy by denial of the landlord's title: *Anandamayee v. Lakhi Chandra*, 33 Cal. 339; notice to quit is necessary but it must be shewn that

* See also *Haranath v. Kamini Kumar*, 3 C.L.J. 25 n.

the landlord, by some act or other, declared his intention to determine the tenancy before the suit: *Ibid.* See also *Haidari v. Nathu*, 17 All. 45 and *Ansar Ali v. O. E. Grey*, 2 C.L.J. 403. See also notes under s. 181.

In a suit for ejectment based on the ground of forfeiture by reason of the denial of landlord's title, it was found that the denial was by the recorded tenant and not by the unrecorded co-sharers in the tenancy; held that a person, representing the tenancy in the books of the landlord, was entitled to bind his co-sharers for the purposes of the tenancy; but when he repudiated the tenancy, he must be taken to have acted beyond the scope of his authority; his disclaimer consequently could not operate as a forfeiture of the tenancy: *Birendra Kishore v. Bhubaneswari*, 39 Cal. 203.

In a case under the Transfer of Property Act it was held by Rampini and Sharfuddin J.J., that a denial of the existence of the relationship of landlord and tenant and setting up a third party as landlord in a previous rent-suit by some of the landlords amounts to renunciation of all by the tenant, and the latter, therefore, incurs a liability to have his tenancy forfeited: *Bhikharee v. Dhakeswar*, 7 C.L.J. 483.

A permanent tenant is liable to forfeiture on the ground of disclaimer of the landlord's title: *Annada Charan v. Mohim Chandra*, 26 C.L.J. 261. In this case it was assumed that the case was one under the Transfer of Property Act. See also *Kally Dasi v. Monmohini*, 24 Cal. 440; *Abhiram Goswami v. Shyama Charan*, 36 Cal. 1003 (P.C.) s. c., 10 C.L.J. 284.

To constitute a disclaimer, it must be the renunciation by a party of his character as tenant by setting up a title in a third person or by claiming title in himself: *Annada Charan v. Mohim Chandra*, 26 C.L.J. 261.

In order to involve forfeiture of the tenant's interest for denial of landlord's title, the denial must be expressed and not implied and must precede the institution of the suit for ejectment on the ground of denial of title: *Samundar v. Mekhlal*, 37 I.C. 935 (Patna High Court.)

There is no disclaimer of the relationship of landlord and tenant where the tenant puts the landlord to the proof of his alleged title of purchase, nor where the tenant merely questions the extent of the landlord's interest and his title to receive the entire rent: *Mallika v. Makhan Lal*, 9 C.W.N. 928, s. c., 2 C.L.J. 387. A disclaimer contained in the written statement of the defendant cannot be made the basis of a decree for ejectment in the suit: *Ibid.*; the disclaimer must be before the date of the ejectment suit: *Ibid.*; see also *Nizamuddin v. Mamtazuddin*, 28 Cal. 135, s. c., 5 C.W.N. 263.

A plea of non-liability for rent on the ground of not obtaining possession of the land is not a repudiation or rescission of the lease: *Harasundari v. Jogendro Nath*, 9 C.W.N. 387. A denial of the existence of landlord and tenant and setting up a third party as landlord in a previous rent-suit by some of the landlords amounts to renunciation of all the landlords by the tenant; the latter therefore incurs forfeiture and makes himself liable to be ejected: *Bhikharee v. Dhakeswar*, 7 C.L.J. 483: all the landlords must show their intention under s. 111 of the Transfer of Property Act before they can succeed in a suit for ejectment: *Ibid.*

Repudiation of tenancy by a recorded tenant does not bind an unrecorded tenant. Denial of landlord's title in a suit for rent brought by some of several joint landlords. Service tenure.

Disclaimer.

Express denial necessary.

Putting the landlord to proof of his title is no disclaimer.

Act VIII, B.C. of 1869.

Plea of non-liability of rent.

Denial in a suit for rent by some of several landlords.

Disclaimer.

A disclaimer must be a renunciation by the party of his character of tenant either by setting up a title in another or by claiming title in himself: *Pratap v. Biraj*, 19 C.L.J. 77. A mere renunciation of tenancy without denial of the landlord's title, though it may operate as a surrender, cannot amount to a disclaimer; *Ibid.* Where in a rent-suit, the tenant defendant repudiated the plaintiff's allegations that there was some land recorded in his name in the books of the plaintiff and that he had paid rent in respect thereof and asserted that there was no relationship of landlord and tenant between the plaintiff and himself in respect of such land, *held*, that such allegations were not a disclaimer of the title of the landlord and did not terminate the tenancy; *Ibid.*

Renunciation of tenancy without denial of landlord's title.

Waiver of forfeiture for denial of landlord's title.

In the case of *Kedarnath v. Amarchandra*, 28 C.W.N. clxviii (168 notes), a notice to quit was held to have waived the forfeiture for denial of landlord's title by notice to quit.

6. Incidents of a permanent tenure :—There is nothing in the law which prevents tenants having permanent heritable rights at a fixed rent from using the land in any manner they think fit so long there is no risk to the right of the landlord to recover the rent payable. A tenant is therefore entitled to make excavations: *Barada v. Bhupendra*, A.I.R. 1924 Cal. 56 (Walmsley and B. B. Ghose J.J.).

*Sunderbans :—*Where in a lease granted by Government in respect of Sunderbans lands for forty years there was a stipulation that if the tenant would not make a certain area cultivable within a certain time he would forfeit the tenancy, and that the Government would be able to measure the land to ascertain if the said area was made cultivable, *held* that Government was entitled to resume if the area stipulated be not cultivated and that Government was not bound to make the measurement: *Nabakumar v. Rudra Narain*, 28 C.W.N. 589 (P.C.).

Perpetual grant effect of.

Where according to the terms of the grant of lands to two brothers, the grant was perpetual; the grantees and their descendants were to pay a fixed rent and enjoy the lands generation after generation; the descendants of the grantor were to realise the fixed rent generation to generation; and in the event of default of payment of the fixed rent for three kists, the fixed lease was to be void; *held* that the grant was permanent in its duration, fixed in the rental, descendible to heirs, and was to be held generation after generation: That is to say, the grant was an absolute perpetual, heritable, and transferable grant, and that the grant was not resumable: *Gopal Ojha y. Ramadhar*, 82 I.C. 204 (Pat.). (Jwala Prasad and Macpherson J.J.).

A tenant holding under a lease of a permanent character has no power to make excavations of such a nature as to cause substantial damage to the property demised, although by the terms of the lease he has power to make excavations: *Girish Chandra v. Sirish Chandra*, 9 C.W.N. 255.

Clause as to alienation must be express.
Brit tenure

A clause of forfeiture should be strictly construed, so a covenant not to alienate would not affect the right of the tenant to alienate a part or portion: *Venkataramana v. Krishna Bhatta*, 81 I.C. 1006.

A *brit* tenure does not escheat to the Crown on the death of the holder without heirs unless it is shown to be a permanent tenure:

Srikanta v. Jag Sah, 3 Pat. 818. (Dawson Miller C.J. and Mullick J.).

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

Transfer and transmission of permanent tenure

Headings of Notes.

1. ONUS.
2. HERITABILITY OF NON-PERMANENT TENURES.
3. TRANSFER.
4. TRANSFERABILITY.
5. WHAT COVENANTS RUN WITH LAND AND WHAT DO NOT.
6. SURRENDER AND RELINQUISHMENT.
7. SALE TO BE IN STRICT CONFORMITY TO THE CONDITIONS WHICH THE ACT PRESCRIBES.
8. ASSIGNMENT BY OPERATION OF LAW.
9. NON-TRANSFERABLE TENURE.
10. ESCHEAT.
11. RIGHT OF REVERSION.

I. Onus.—Where the defendant alleges that he holds a permanent tenure, the burden of proving that fact lies on him and it is not for the plaintiff to shew that he is not a tenure-holder, but a raiyat,—*Nilmani v. Mathura Nath*, 5 C.L.J. 413. There is no presumption that any tenure held is not a transferable tenure, and in a suit by a landlord to recover *khas* possession on the ground that the defendants purchased in execution of a decree the rights of the other defendants (who were her tenants) which were not transferable; held that the plaintiff was bound to start his case: *Doya Chand v. Anund Chunder*, 14 Cal. 382. But this case was dissented from in the case of *Kripamoyi v. Durga Gobind*, 15 Cal. 89, where in a suit brought to recover possession of certain lands forming part of the *putni* of the plaintiffs and constituting the raiyati holding of one M. which lands were sold in execution of a money decree and purchased by the defendant, the latter set up that the tenure held by M. was of a permanent and transferable nature, it was held that the defendant was to prove the transferability of the tenure.*

Onus on defendant.

Presumption of transferability.

Contra.

2. Heritability of non-permanent tenures :—Where a lease is created for a definite term it is heritable: *Khitish Chandra v. Bhikan Mamad*, 19 C.L.J. 448; see also *Tejchand Bahadur v. Srikanta Ghose*, 3 M.I.A. 261, s. c., 6 W.R. (P.C.) 48.

3. Transfer :—The word “transfer” in s. 11 includes a lease: *Harimohon v. Atulkrishna*, 19 C.W.N. 1127. Non-permanent tenures seem to be non-transferable: *Hiramati v. Annada Prasad*, 7 C.L.J. 553. (Maclean C.J. and Coxe J., concurring, observed as follows: “It is noticeable that s. 11 of the Bengal Tenancy Act enacts that every

Non-permanent tenures non-transferable.

* See also *Perlhadd Sein v. Doorga Pershad*, 12 Moore 322; *Suhodva v. Smith*, 12 B.L.R. 82: s. c. 20 W.R. 138; *Ram Monee v. Almodgen*, 20 W.R. 374; *Raf Kishen v. Peareemohan*, 20 W.R. 421; *Hyes v. Moneerooddeen*, 24 W.R. 6; *Beharee v. Puryag*, 23 W.R. 291; *Batai Ahir v. Bhuggobutty*, 11 C.L.R. 476.

permanent tenure shall, subject to the provisions of the Act, be capable of being transferred: nothing however, is said about non-permanent tenures. If it had been also intended to make them heritable, we might have expected the legislature to have said so. This section seems to import that non-permanent tenures are not to be regarded as transferable: (*Ibid* at page 555): 'This case was distinguished in the case of *Bhagaban Das v. Bisweswar*, 44 C.L.J. 435 at p. 439 (Mukerji J., Greaves agreeing) where it has been held that unless there is some special provision in the B. T. Act or in some other Act which prohibits the transfer of non-permanent tenure the general provisions contained in sec. 6 of the T. P. Act as to the transferability of tenures will hold good.

Contra.

But it has been held in the case of *Khitish Chander v. Bhikan Mahmud*, 19 C.L.J. 448 that a granting of a lease for general purposes and for a term of 105 years is sufficient to show that the interest is assignable; it was further held that such a lease is transferable when the conduct of the parties points to its having been regarded on both sides as transferable and treated as such. See notes under heading No. 8.

Stipulation by lessee not to transfer void under s. 10 of the Transfer of Property Act. Involuntary transfer.

By a clause in a lease it was stipulated that the lessee would not transfer in writing the land leased to him, and that if he did so, the sale to be void; the land was sold to the defendants in execution of a decree obtained against the lease; in a suit for ejectment by the assignee of the lessors: *held*, that the condition was void under sec. 10 of the Transfer of Property Act (IV of 1882), no right of re-entry being reserved by the lease to the lessors: *held* also that the land having been sold against the will of the lessee by the act of the court, the lessee could not be said to have voluntarily transferred his interest: *Nilmadhab Sikdar v. Narathan Sikdar*, 17 Cal. 826. See also *Tomaya v. Jimaha Ganpaya*, 7 Bom. 262 and *Subharaya v. Krishna*, 6 Mad. 159. When there is no condition of forfeiture in a lease a covenant by the tenant not to transfer cannot restrain the latter from transferring: *Annada Charan v. Dasarath*, 40 I.C. 444.

Assignment operative although agreement not to transfer Stipulation not to transfer; absence of a clause as to right of re-entry. S. 11 of the Transfer of Property Act, not repealed by ss. 10 and 11 of the B. T. Act

Where a tenant agreed not to transfer the land in any way without a letter from the landlord, *held* that the assignment was operative notwithstanding the covenant: *Basarat Ali v. Manirulla*, 36 Cal. 745.

In the absence of any right of re-entry reserved in a lease, an assignment by a lessee is operative against the lessor notwithstanding a covenant restraining the lessee from transferring without the written permission of the lessor: *Basarat Ali v. Manirulla*, 36 Cal. 745 s. c., 10 C.L.J. 49; the remedy lies in a suit for damages; *Ibid*; see also *Williams v. Earle*, L.R. 3 Q.B. 739.

A condition in a permanent lease restraining alienation is not void: s. 11 of the Transfer of Property Act has not been repealed by ss. 10 and 11 of the Bengal Tenancy Act: *Kesav Lal v. Haraset*, 12 C.L.J. 126; where the tenure-holder alienated the land in breach of his contract, the court did not enforce the clause of re-entry but ordered him to pay compensation under s. 155 of the Bengal Tenancy Act; *Ibid*.

Where there was a stipulation in a lease not to sublet without the permission of the lessor, without any clause for re-entry, *held* that it was a covenant and not a condition and that a sublease without consent of the lessor was valid but the lessor was entitled to damages: *Sital Prasad v. Nawab Dildar*, 1 Pat. L.J. 1; a condition in general terms against subletting is not sufficient to prove that the condition is for the benefit of the lessor within the meaning of s. 10 of the Transfer of Property Act; there must be something in the circumstances of the case or in the nature of the property or in the wording of the lease from which it might be inferred that the provision was intended directly for the benefit of the landlord: *Ibid.*

A lease in perpetuity is forfeitable for breach of a covenant notwithstanding that it is permanent: *Dwarkanath v. Mathuranath*, 21 C.W.N. 117 at p. 121 col. 2 (Per Mookerjee J.); s. c., 24 C.L.J. 40; see also *Abhiram v. Syama Charan*, 36 I.A. 148, s. c., 36 Cal. 1004; s. c., 14 C.W.N. 1.

A covenant for re-entry by the landlord upon an involuntary sale is valid: *Dwarkanath v. Mathuranath*, 21 C.W.N. 117, s. c., 24 C.L.J. 40. Where in a permanent lease of agricultural land there was a covenant for re-entry in case of voluntary sale, and the property was sold in execution of a mortgage decree, *held* that the landlord was entitled to re-enter and that s. 155 B. T. Act had no application and one of two or more co-sharer landlords was competent alone to sue for joint possession and a previous notice was not necessary: *Ibid.*

Where there was a covenant in a lease that in case the tenant (*nimhowladar*) find it necessary to transfer he would transfer it to the landlord, *held* that the purchaser at an involuntary sale acquired a good title: *Promode Ranjan v. Aswini Kumar*, 18 C.W.N. 1138.

Where a dur-putnidar, to the knowledge of his landlord, transferred a portion of the dur-putni to one person on one date and the remainder to another person on a subsequent date, *held* that after the second transfer, the liability of the *dur-putnidar* for rent ceased and the two transferees became jointly and severally liable to the landlord for the same: *Kishori Ram v. Ananta Ram*, 10 C.W.N. 270. Where the holder of a permanent tenure transferred a portion of it, and the transferee held that portion separately and was allowed to pay proportionate rent for the same to the landlord for a great many years: *held* that upon sale by the transferee of that portion of the tenure, his liability for rent to the landlord ceased and his act had not the effect of sub-dividing the tenure: 10 C.W.N. 272.

Ss. 17 and 18 of the Bengal Tenancy Act recognise the transfer of a share of a tenure and entitle the transferee to be regarded as one of the tenants in respect of the holding: *Mohesh Chandra v. Saroda Prasad*, 21 Cal. 433. An alienation of the interest in any portion of the *putni taluk*, such portion not being an aliquot part or share, but being a portion of the land composing the *putni* can be made: *Madhub Ram v. Doyal Chand*, 25 Cal. 445. See notes under s. 17.

The Putni Regulation provides rules for the alienation of the whole or a part of a *putni taluk* and that cannot be affected by anything in the Bengal Tenancy Act, by force of s. 195. (e) : *Shaizuddin v. Mathura Mohan*, 18 C.W.N. 338.

Custom of transferability excluded by agreement. Covenant not to assign without landlord's consent.

Agreement to pay selami on transfer.

Agreement to pay money in case of transfer. Covenant running with land—Agreement not to transfer.

Where covenant does not run with land.

Covenants running with land.

Pre-emption, stipulation as to, in a conveyance.

Pre-emption clause in a lease.

Temporary lease.

4. Transferability :—Evidence of custom of transferability is excluded by an express stipulation in the lease that there is no right of sale, gift or transfer without the landlord's consent: *Mahomed Ayeffuddin v. Pradyat Kumar*, 25 C.W.N. 13.

Where there was a stipulation in a lease that the lessee would not assign without the landlord's consent and that such consent would not be unreasonably withheld, *held* that a suit is maintainable for the relief that the consent had been unreasonably withheld: *E. H. Ducasse v. E. M. D. Cohen*, 24 C.W.N. 1007, (C. C. Ghose J., 4 June, 1920).

Where there was a stipulation in a kabuliyat that in every transfer a certain selami should be paid, *held* that it did not cover the case of an involuntary sale: *Manmathanath v. Chunilal*, 26 C.W.N. 173.

A clause in *mourasi mokurari* lease that in the event of sale of the tenure by the tenant, the purchaser will pay one quarter of the purchase money is not illegal: *Probhas Chandra v. Prativabala*, 63 I.C. 337.

A covenant not to transfer the land without the permission of the landlord runs with the land; so a stipulation in a lease creating a permanent tenure that the landlord would not recognise a transferee unless 25 *per cent.* of the purchase money was paid *nazar*, *held* that the covenant was good: *Saradakripa v. Bepin Chandra*, 37 C.L.J. 538.

There is no such thing as between a vendor and purchaser as a covenant to pay money running with the land: *Mohini Mohon v. Ram Das*, 28 C.W.N. 271.

See notes under s. 10: *Venkataramana v. Krishna Bhatta*, 81 I.C. 1006; *Gopal Ojha v. Ramadhar*, 82 I.C. 204.

5. What covenants run with land and what do not :—As to what covenants run with the land, see the case of *Doyal Chandra v. Chunilal*, 12 C.L.J. 259 and also the cases therein discussed.

In a conveyance there was a stipulation that the vendee, in case of settling the property would be bound to give preference to the vendor, *held* that the contract was not binding on the vendee's heir after the vendee's death: *Nobin Chandra v. Nabab Ali*, 5 C.W.N. 343.

Where in a lease of a permanent tenure there was a stipulation that the lessee should first offer to the lessor if the former wants to sell, *held* that the contract was personal and the lessor's successor cannot enforce the right of pre-emption: *Chandra Kant Bhattacharjee v. Abdul Gafur Khan*; unreported second appeal No. 2145 of 1910, decided by Holmwood and Chapman J.J., on the 26th Nov. 1912.

Where in a temporary lease there was a stipulation by virtue of which the lessee agreed that the latter would not purchase any jote right of the under-tenants, and if he would do so, the same would be null and void and after the expiry of the term of the lease the *ijara mehals* would come to the *khas possession* of the lessor, *held* that such a stipulation was valid and after the expiry of the *ijara*, the

lessor was entitled to get khas possession of the *jotes* which had been purchased by the *ijaradar*: *Robert Watson & Co. v. Ramchand Dutt*, 1 C.W.N. 174.

A right of pre-emption reserved in a partition deed is valid as between the co-owners themselves: *Kalimuddin v. Reazuddin*, 14 C.W.N. 295. As to whether a covenant of such a nature offends against the rule of perpetuity, see *Nobin Chandra v. Nawab Ali*, 5 C.W.N. 343; where the covenant was purely of a personal character it does not bind the representative of the deceased covenantor: *Ibid*; see also *London and South Western Railway Co. v. Gomm*, 20 Ch. D. 562 (1882); even if it was intended to bind the representatives of the covenantor and others deriving title under him it is not binding in law: *Ibid*; see also *Tripura Sundari v. Juggernath*, 24 W.R., 321. A covenant in a lease which involves a forfeiture must be construed strictly as against the lessor: *Arpin Khan v. Chandi Charan*, 95 I.C. 252.

Partition deed.

Personal covenant.

The case of an agreement by a mortgagor to give the mortgagee a preference of pre-emption in case of sale has been upheld and has been enforced against the covenantor: See the cases of *Haris Paik v. Jaharuddi*, 2 C.W.N. 475 and *Bimal Jati v. Biranja Kuar*, 22 All. 238.

Mortgage.

.6. Surrender and Relinquishment:—There is no provision for surrender of a tenure but there is such a provision with respect to a holding (see s. 86). So it seems that tenure cannot be surrendered except by consent of the landlord.

No provision of surrender or tenure.

There is no law requiring that a surrender should be in writing; it can be inferred from the acts of the parties: *Elias Meyer v. Manoranjan*, 22 C.W.N. 441; see also *Nyabhusan v. Shambhu Chandra*, 1864 (W.R.) 270.

Document in writing not necessary to relinquish.

Where a *dur-mokurari* lease has been granted and then relinquished for a valuable consideration to the grantors, no formal reconveyance is necessary to revert the title to the latter—the receipt of the money and the relinquishment of the possession sufficiently shewing what had become of the *dur-mokurari* interest: *Imambandi v. Kamleswari*, 13 I.A. 160, s. c., 14 Cal. 109. It has been decided in the case of *Khondakir Abdur Rahaman v. Ali Hafez*, 3 C.W.N. 531 that the surrender by a raiyat need not be in writing.

The right of relinquishment is a privilege given to tenants, by means of which they may restrict the lease and establish their tenure upon a new basis or may extinguish the lease altogether: and the tenants cannot avail themselves of that privilege to any extent, unless they strictly observe the conditions which are either expressed or implied in the lease: *Ram Chdram v. Ranigunge Coal Association*, 26 Cal. 29, s. c., 2 C.W.N. 697 (P.C.).

Relinquishment condition.

It was not open to a putnidar to surrender the *putni* which he holds at any time, and to plead such surrender in answer to a suit for rent: *Heera Lal v. Neelmonee*, 20 W.R. 383. The principle of this case is applicable to all intermediate tenures between the zemindar and the cultivator of the soil; *Jadoonath v. Schœnne, Kilburn and Co.*, 9 Cal. 671. A landlord is not bound to accept any relinquishment by the putnidar, and when a zemindar finds that the putnidar or other permanent tenure-holder, after having allowed a trespasser to hold adverse possession of any land included in the

Putni.

Other tentures.

Landlord not bound to accept

relinquish-
ment.

permanent tenure for more than 12 years, offers to relinquish it, the zemindar can always refuse to accept the relinquishment; but if he accepts such relinquishment, it operates only as a transfer and in a suit by the zemindar for recovery of possession against the trespasser limitation runs when the possession of the latter became adverse to the tenure-holder and not from the date of relinquishment: *Gobinda Nath v. Suraj Kanta*, 26 Cal. 460. Although where a tenure is a permanent and transferable one, mere abandonment is not a valid relinquishment, yet a voluntary abandonment for a long period without any inevitable force, major or other cause beyond the power of the holder, must be considered to be equal to an express relinquishment, and if a man so abandons his tenure for years, neither he nor any one under him can reclaim it: *Chundermonee v. Shambhoo*, 1864 W.R. 270.

Abandon-
ment

7. Sale to be in strict conformity to the conditions which the Act prescribes :—The law has effected considerable changes in the law relating to the sale of permanent tenures, dispensing as it does with the recognition of the sale by the landlord, as a condition to its validity: and the more unfettered freedom of transfer conferred by the Act was intended to be exercised, if at all, in strict conformity to the conditions which the Act prescribes, and unless those conditions are substantially complied with, the transfer is invalid, and ineffectual: *Babar Ali v. Krishna Kamini*, 26 Cal. 603, s. c., 3 C.W.N. 541. See additional notes to ss. 12, 13, 17 & 18.

General
restriction
on
assign-
ment.

8 Assignment by operation of law :—A general restriction on assignment does not apply to an assignment by operation of law taking effect *in invitum*, as a sale under execution: *Golak Nath v. Mothura Nath*, 20 Cal. 273; followed in *Keshab Chandra v. Ajahar*, 23 C.L.J. 428; see also *Diwoli v. Apaji*, 13 Bom. 342.

Where a lease contained a clause stipulating that the tenant would not let the lands to be attached and sold in satisfaction of judgment debts, and that if he did, that would give the landlord a right of re-entry, held that if the lessee allowed the land to be attached and sold by not taking measures to satisfy his judgment debt, there would be a breach, both according to the letter and spirit of the proviso in the lease: *Vyankatraya v. Shivrambhat*, 7 Bom. 256.

Sarborakaree
tenure.

9. Non-transferable tenure :—The alienation of a *sarborakaree* tenure in Cuttack, and *a fortiori* of any portion of it, is invalid without the consent of the landlord and any acts of one or more of several joint tenants which possibly might operate as a forfeiture of tenancy would not entitle the landlord to exact that penalty as against all tenants: *Dassuroth Huri v. Ram Krishna*, 13 C.L.R. 114, s. c., 9 Cal. 526: *Bhuban v. Shamanund*, 11 Cal. 699: but see *Sudanund v. Nowrutton*, 16 W.R. 289, s. c., 8 B.L.R. 280, where it was held that a *sarborakaree* tenure is a permanent and transferable one.

Transfer of
non-trans-
ferable
tenure.

Where a tenant, who holds a tenure not transferable without the consent of the landlord, transfers the tenure without such necessary consent, such transfer is incomplete and a nullity and as against the zemindar, the purchaser can have no rights, but the zemindar has no right to take actual possession so long as the rent is paid by the recognised tenant or his heirs and not by a stranger: *Joy Krishen v. Raj Krishen*, 5 W.R. 147. Non-permanent tenures seem

to be non-transferable. *Hiramati v. Annada Prasad*, 7 C.L.J. 553. See under heading No. 3, TRANSFER. Non-permanent tenure.

10. Escheat:—A hereditary mokurari tenure does not, on the death of the grantee without heirs, revert to the zemindar but the Crown will take the property by escheat: *Sonet Kooer v. Himmul*, 1 Cal. 391 (P.C.).

II Right of reversion:—When a landlord grants a permanent and heritable tenure in land, he has no estate left in him unless he reserves to himself a right of re-entry or reversion: *Nilmadhab Sikdar v. Narattam Sikdar*, 17 Cal. 826. See also *Sonet Koer v. Himmat Bahadur*, 1 Cal. 391 (P.C.).

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

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

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

(b) when rent is not payable in respect of the tenure, a fee of two rupees; together with the costs necessary for the transmission of the landlord’s fee to the landlord.

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

Headings of Notes.

1. AMENDMENTS.
2. FORMS OF NOTICE UNDER SS. 12 & 13.

3. SERVICE OF NOTICE AND TRANSMISSION OF LANDLORD'S FEE.
4. RULES OF THE REGISTRATION DEPARTMENT.
5. TRANSFER WHEN COMPLETE.
6. TRANSFER OF A SHARE.
7. PUTNI TENURE.
8. RULES AS TO TRANSFER IN THE TRANSFER OF PROPERTY ACT.
9. COLLECTOR.
10. REGISTRATION.
11. PARTITION.
12. ACT I, B. C. OF 1903.
13. SUB-DIVISION OF A TENURE.

Words added by Act VIII of 1886. Amendments by Act I (B. C.) of 1907 and Act I (E. B. and A.) of 1908.

I. Amendments :—The word 'usufrutuary' in sub-sec. (2) was inserted by Act VIII of 1886, s. I. By Act I of B.C. of 1907 and by the E. B. & A. Act I of 1908 the following additions were made :—To sub-sec. (2) the following was added: "together with the costs necessary.....to the landlord."

In sub-sec. (3) after the words "landlord's fee" the words "the costs necessary.....of the same" were inserted ; for the word "paid" the word "transmitted" was substituted and after the word "landlord" the words "named in the notice" were inserted.

2. Forms of Notice Under ss. 12 & 118 :—See Appendix I, Rules of the Local Government, Form Nos. 2 & 3.

3. Service of notice and transmission of landlord's fee.—See Appendix F Rules of the Local Government, Chapter V.

4. Rules of the Registration Department :—See Appendix V.

Transfer complete on registration. Transferor not liable for rent after transfer.

5. Transfer when complete :—The transfer is complete as soon as the document is registered and the transferee is no longer liable for rent: *Surapati v. Ramnarayan*, 50 Cal. 680 (P.C.), s. c., 28 C.W.N. 517, s. c., 39 C.L.J. 26, which approved the cases of *Kristo Bullav v. Kristo Lal*, 16 Cal. 642 ;* *Giris Chandra v. Khagendra Nath*, 16 C.W.N. 64 s. c. 13 C.L.J. 613. A transferor is not liable for rent after such transfer although the landlord has not obtained notice of such transfer: *Chinta Moni v. Rash Behari*, 19 Cal. 17 ; *Rup Chand v. Narendra*, 19 C.W.N. 112 ; *Hemendra v. Kumar nath*, 12 C.W.N. 478, but transfer is not binding when security is not furnished in accordance with agreement to that effect: *Dina-bandhu v. Bonerjee*, 19 Cal. 774.

Sec. 12 provides a limit as to the mode in which the transfer is to be made. As soon as the document by which the transfer is made is registered—and the registration is not to take place until a condition precedent mentioned in s. 12 is fulfilled—the transfer is complete. When the tenure is transferred and the vendor ceases to have any estate, then if the vendor's liability is a liability consequent on privity of estate that liability ceases: *Kanai Lal v. Basanta Behari*, 29 C.W.N. 1020, s. c., 42 C.L.J. 490 (Mukerji, J., Walmsley, J., agreeing). The cases of *Kristo Bullav v. Kristo Lal*,

* The duration of liability of a lessee to pay rent to the lessor lasts as long as his estate remains in his possession and no longer ; and after an assignment of the lease, the privity of estate between him and the lessor ceases, and the assignee becomes liable for the rent: *R. D. Mehta v. Gadadhar Rai*, 37 Cal. 683. This case was under the Transfer of Property Act.

16 Cal. 642, and *Giris Chandra v. Khagendra*, 16 C.W.N. 64 were followed.

The same principle having been applied to the original lessee, the liability of the lessee for the rent ceases upon such transfer. But the fact that by transfer the transferror ceases to be a tenant does not imply that he is absolved from liability under the terms of the contract between him and his lessor; a person may cease to be a tenant and yet continue liable to the landlord for his personal covenant—*Ibid.* The cases of *Hemendra v. Kumarnath*, 12 C.W.N. 478, and *Rup Chand v. Narendra*, 19 C.W.N. 112 were referred to. Personal covenant.

Where the lessee by his kabuliyat hypothecated certain other properties to secure the due payment for all time of the rent reserved and the performance of the other obligations arising thereunder, and there was nothing in the kabuliyat to indicate that the security would be extinguished on the lessee's liability to pay rent ceasing with the transfer of the lease, held that the security created by the kabuliyat was not extinguished in consequence of the transfer and the acceptance of rent by the lessor from the transferee. *Kanai Lal v. Basanta Behari*, 29 C.W.N. 1020, s. c., 42 C.L.J. 490. Security of this description which is to last for all times to come is not repugnant to the rule of perpetuities and can be validly created. *Ibid.* The case of *Bijoy Chand v. Sarat Chandra*, 29 C.L.J. 476 was distinguished.

Where a dur-putnidar to the knowledge of his landlord, transferred a portion of the *dur-patni* to one person on one date, and the remainder to another person on a subsequent date, held that after the second transfer the liability of the *dur-putnidar* for rent ceased and the two transferees became jointly and severally liable to the landlord for the same: *Kishori Raman v. Ananta Ram*, 10 C.W.N. 270. Transfer of portions on different dates.

"A transfer of a permanent tenure" means a transfer of a permanent tenure held by a recorded or unrecorded tenant. So where A a permanent tenure-holder sold the tenure before the passing of the B. T. Act, and the transferee B whose name was not recorded in the landlord's books transferred the tenure to C after the passing of the Bengal Tenancy Act, held that the transfer was complete on the payment of landlord's fee and the landlord was bound to look for rent to C: *Giris Chandra v. Khagendra Nath*, 16 C.W.N. 64, s. c., 13 C.L.J. 613. A decree for rent in a suit in which the transferee is not a party is not a rent decree: *Ibid.* In order to give effect to the transfer, the transfer should be a valid one and not colorable and benami: *Joygobind v. Monmolha Nath*, 33 Cal. 580. But it is doubtful whether a deed of release will exonerate a person from liability to rent. It seems, however, that it should do so, since it is a transfer of interest, but it has been held in the case of *Jadu Nath v. Ruplal*, 33 Cal. 969, s. c., 4 C.L.J. 22, s. c., 10 C.W.N. 650, that the title to a property cannot pass by release. admission when the statute requires a deed, and that a deed of relinquishment does not operate as a conveyance or even as a contract to convey the interest of the person executing it, nor does it operate by way of estoppel. (See the observations of Mookerjee, J., at p. 36, 4 C.L.J.). See also *Mathura Mohan v. Ram Kumar*, 43 Cal. 790 s. c., 20 C.W.N. 370; *Dharam Chand v. Manji Sahu*, 16 C.L.J. 436; *Naraklal v. Mangoalal*, 22 C.L.J. 380. Transfer by recorded or unrecorded tenant.

Deed of release.

Conflicting views.

Although as a consequence of transfer the transferee becomes by operation of law the tenant of the tenure and the transferor ceases to be the tenant, yet he is not thereby necessarily absolved from liability under the terms of the contract between him and his landlord: *Rup Chand v. Narendra Krishna*, 19 C.W.N. 112.

Where A for consideration relinquished a property to B who was and continued to be in possession but no conveyance was executed, held that in as much as B could have sued A for specific performance of the contract and B could have successfully resisted a suit to recover possession by C, the equitable doctrine of part performance applied and A was precluded from setting up any title against C: *Khagendra v. Sonatan*, 20 C.W.N. 149, which distinguished the case of *Jadu Nath v. Ruplal*, 33 Cal. 967, s. c., 4 C.L.J. 22, s. c., 10 C.W.N. 650. See also the case of *Walsh v. Lonsdale*, L.R. 21 Ch. D. 9, *Puchhala v. Kunj Behari*, 18 C.W.N. 455 and *Mohamed v. Aghore Kumar*, 42 I.A., p. 1, s. c., 19 C.W.N. 250.

Disclaimer.

The case of *Hemendra Nath v. Kumar Nath*, 12 C.W.N. 438 was thus explained by Mookerjee and N. Chatterjea J.J., in the case of *Mathura Mohan v. Ram Kumar*, 43 Cal. 790 (at page 807), s. c., 20 C.W.N. 370:—"The decision in *Hemendra Nath v. Kumar Nath* is distinguishable: there this court held upon a construction of all the terms of the particular instrument that though called a deed of disclaimer it created as a deed of transfer: the court did not formulate any general proposition of universal application that a deed of release has always the same operation as a conveyance."*

Where a landlord brought a suit for rent and the tenant set up the title of another defendant who admitted plaintiff's title, held that plaintiff was entitled to a decree: *Sreemati Sukumari Gupta v. Bharat Mondal*, 20 C.L.J. 148.

Transfer without any registered instrument.

Although under s. 12 all transfers of permanent tenures are to be made by registered instruments, it was held in a case where a purchaser under an unregistered conveyance paid the agreed price to his vendor and was placed in possession, that in the absence of circumstances shewing that such purchaser was not entitled to sue his vendor for specific performance a subsequent purchaser of the property under a registered conveyance could not succeed in a suit to recover possession of the property from the former purchaser: *Puchha Lal v. Kunj Behari*, 18 C.W.N. 445.†

As to liability for rent after transfer, see notes under s. 65.

6. Transfer of a share :—See notes under s. 11.

Transfer, when complete.

The transfer of a portion of a tenure is complete upon registration, although the landlord's fee was not paid and no notice of the transfer was given to him: *Ali Mahamud v. Aftabuddin*, 20 C.W.N. 354†, but where the purchaser allowed his vendor to represent him

* In construing the terms of a deed evidence of the intention of the parties thereon is admissible; for the question is not what the parties may have intended, but what is the meaning of the words which they used: *Manindra Chandra v. Durga Prasad*, 25 C.L.J. 567.

† See in this connection *Walsh v. Lonsdale*, L.R. 21 Ch. D. 9 (1882); *Khagendra v. Sonatan*, 20 C.W.N. 149; *Mohamed v. Aghore*, 42 I.A. 1, s. c., 19 C.W.N. 250.

† See also *Kristo Bulluv v. Kristo Lal*, 16 Cal. 642; *Chintamani v. Rash Behary*, 19 Cal. 17; *Hemendra Nath v. Kumar Nath*, 12 C.W.N. 478; *Giris Chandra v. Khagendra Nath*, 16 C.W.N. 61.

before the landlord, paying rent in the latter's name, the landlord may sue the old tenant without impleading the purchaser, and the sale in execution of the decree passes the entire tenure: *Ibid.*

7. Putni Tenure :—Nothing in this Act shall affect any enactment relating to *putni tenures*, in so far as it relates to those tenures. [s. 195 cl. (e)]. The Patni Regulation (VIII of 1819) provides rules relating to transfer of Patni tenures; therefore ss. 12 and 13 have no application to such tenures. But ss. 15 and 16 which relate to the rules of succession apply to Patni tenures as there are no rules of succession in Reg. VIII of 1819. Putni-tenure
ss. 12 and 13 do not apply to Putni tenures but ss. 15 and 16 apply.

"The Regulation (VIII of 1819) provides rules for the alienation of the whole or a part of a *paini* taluk, and that cannot be affected by anything in the Bengal Tenancy Act by force of s. 195 (e). The appellant's argument therefore, which is that the Bengal Tenancy Act applies to the alienation of part of a *putni* taluk, because its operation is consistent with the provisions of Reg. VIII of 1819 must fail, in so far as it is sought to show that alienation of a part of a *putni* is valid without the registration with the zemindar"—Per Stephen and Mullick J.J., *Shaizuddin v. Mathura Mohon*, 18 C.W.N. 338. The registration of the sale of the whole or a part of a *putni* taluk under s. 12 does not give the purchaser an interest in the land by force of ss. 12 and 17: *Ibid.* A partial transferee of a *putni* tenure is not entitled to be recognised by the zemindar, *Rakhal Chandra v. Umapada*, 1 C.W.N. 629; it is a form of transfer which under the terms of ss. 5 and 6 of Reg. VIII of 1819 the zemindar is not bound to recognise, and, under s. 195 (e) of the Bengal Tenancy Act the transferee cannot claim recognition by reason of ss. 12 and 17: *Ibid.* This Act is not applicable to transfer of a *putni* tenure: *Gyanoda v. Brohmomoy*, 17 Cal. 162; *Surendra Nath v. Tincourie*, 20 Cal. 247, but applies to the transfer of *dur-putni* tenures: *Mahamedan v. Brajasundari*, 18 Cal. 360.* A *durputni* is a permanent tenure governed by the provisions of the B. T. Act: *Kanai Lal v. Basanta Behari*, 29 C.W.N. 1020 at p. 1024, s. c., 42 C.L.J. 490. Reg. VIII of 1819.
Partial transfer.
Dar-putni.

Until the transfer of a Patni tenure has been transferred the original Patnidar remains the tenant and there is no relationship of landlord and tenant between the landlord and the transferee. The obligation imposed by s. 5 of the Patni Regulation on the transferee of a Patni tenure to have his name recorded in the landlord's sherista, applies to a purchaser in execution of a decree, other than a decree for arrears of rent due from the tenure: *Shaikh Abdul Guffur v. Downing*, 5 Pat. 415.

8. Rules as to transfer in the Transfer of Property Act :—The provisions of s. 59 of the Transfer of Property Act must be held to be subject to this section and therefore a mortgage of a permanent tenure not exceeding Rs. 100 in value can only be effected by a registered instrument: *Soshi Bhusan v. Mahadeb*, 2 C.W.N. 499. It seems that the provisions of s. 54 of the Transfer of Transfer of Property Act ss. 54, 59.

*According to s. 54 of the Transfer of Property Act, where a property not exceeding Rs. 100 was sold not by a registered instrument, it was held that the sale was invalid as there was no transfer by delivery of property although the vendee had been in possession from before: *Shibendrapada v. Secretary of State*, 5 C.L.J. 390. s. 54, Tr. P. Act.

Property Act and s. 17 of the Indian Registration Act are also subject to this section.†

9. Collector :—All officers in charge of sub-divisions have been invested with the powers of a Collector for the purpose of discharging the functions referred to in ss. 12, 13, and 15 of this Act: *Calcutta Gazette*, 1886, (Pt. I., p. 1092). See notes under s. 3 cl. (16).

Mere registration may not pass title where the parties intend otherwise.

10. Registration :—Though no title passes except upon registration of the conveyance, yet mere registration may not be sufficient to pass a good title; if the parties intend that no title shall pass upon registration till the consideration money has been paid and the deed delivered, the law will give effect to such intention. Registration is *prima facie* proof of intention to transfer the title and the party who alleges the existence of a collateral agreement must strictly prove it: *Sheo Nandan Singh v. Darbari Mahton*, 2 C.W.N. 207.

Transfer of Property Act, s. 123.

The words “registered instrument” as used in s. 123 of the Transfer of Property Act mean a document registered under the Indian Registration Act and are not limited to a document registered by the donor, so where a deed of gift executed by a person was registered after his death by his widow, held that it was a valid registered instrument: *Bhabatosh v. Soleman*, 4 C.L.J. 340.

II. Partition :—S. 12 does not apply to a case of transfer by partition: *Ramdhone v. Sarup Chandra*, 17 C.W.N. 313.

When transfer not invalid for non-payment of landlord's fee.

12. Act I. (B. C.) of 1903 :—The Act is printed under s. 18.

A decree passed before the passing of Bengal Act I of 1903 but pending in appeal at the commencement of that Act is governed by s. 1 of that Act as not being final, so that Plaintiff's claim for rent would not be liable to dismissal on the ground that the transfer to the Plaintiff was invalid by reason of the landlord's fee not having been paid as required by s. 12 of the Bengal Tenancy Act: *Peary Mohun v. Ameer Ali*, 8 C.W.N. 239. See additional notes to ss. 12 to 18, under sec. 18 and notes under s. 13 under heading :—EFFECT OF NON PAYMENT OF LANDLORD'S FEE.

13. Sub-division of a tenure :—See notes under s. 17.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale under sec. 312 of the Code of Civil Procedure, or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into

Effect of omission of the purchaser of a Putni to pay fee and security to the landlord..

† The omission by a transferee from a putnidar to pay a fee and security to the Zamindar does not affect in any way his title. His rights are perfected upon the transfer by the putnidar and are not in any way contingent for their validity upon the payment of the fee and the security. The only effect of the failure of the transferee to secure registration of his name is that the landlord is not bound to recognise his purchase, and may sell up the tenure in execution of a decree for arrears of rent obtained against the registered tenant. The status of a Putnidar or Darputnidar does not depend upon registration by or consent of the zemindars: *Ganpat Singh v. Moti Chand*, 16 C.L.J. 301.

Court the landlord's fee prescribed by the last foregoing section, together with the costs necessary for its transmission to the landlord, and such further fee for service of notice of the sale or final foreclosure on the landlord as may be prescribed. XIV of 1882.

(2) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's fee, the costs necessary for the transmission of the same, and a notice of the sale or final foreclosure in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice, in the prescribed manner.

Headings of Notes.

1. * AMENDMENTS.
2. NOTICE IN THE PRESCRIBED FORM AND RULES AS TO SERVICE OF NOTICE.
3. PERMANENT TENURE.
4. DECREE FOR ARREAR OF RENT.
5. TRANSFER WHEN COMPLETE &C.
6. EFFECT OF NON-PAYMENT OF LANDLORD'S FEE.
7. EFFECT OF NON-SERVICE OF NOTICE.
8. EFFECT OF NON-REGISTRATION OF NAME IN THE LANDLORD'S SHERISTA.
9. PURCHASER AT EXECUTION SALE PURCHASES THE TENURE CHARGED WITH THE RENT WHICH IS DUE.
10. SUIT FOR RENT WHEN A PUTNI IS SOLD.

1. Amendments :—The following words and clauses were inserted by Act VIII of 1886 :—“Or when a mortgage of a permanent tenure other than an usufructuary mortgage thereof, is foreclosed,” “or making a decree or order absolute for the foreclosure,” “or mortgage” “or final foreclosure,” “or the decree or order absolute for the foreclosure has been made,” and “or final foreclosure.” Amend-ments

Amendments by Act I. B. C. of 1907 and Act I. of 1908 of the East Bengal Council :—In sub-sec. 1 (after the words “foregoing section” the “words together with costs.....to the landlord” were inserted. In sub-sec. 2 after the words “landlord's fee” the words “the costs necessary.....of the same” were added ; for the word “paid” the word “transmitted” was substituted and after “landlord” the word “named in the notice.”

2. Notice in the prescribed form and Rules as to service of notice :—See Appendix I. Notice.

3. Permanent Tenure :—This section applies to dur-putni tenures,—*Mahomed v. Braja Sundari*, 18 Cal. 360 ; *Kanailal v. Basanta Behari* 29 C.W.N. 1020 at p. 1024, s. c., 42 C.L.J. 490, but when a putni is sold in execution of a decree for money and the auction-purchaser does not get his name registered in the zemindar's *sheristha*, a suit for rent against the previous putnidar will lie for Dur-putni tenures.

rent previous to the sale, as the rights of the zemindar are not affected by the existence of the remedy provided by sec. 7 of Rg. VIII of 1819: *Surendra Nath v. Tin Cowrie*, 20 Cal. 247.

What is a decree for rent.

4. Decree for arrears of rent :—What is a decree for arrears of rent ; see notes under sec. 3, cl. (5) and s. 65.

5. Transfer when complete &c. :—See notes under s. 12, heading No. 5 ,

Previous holder liable for rent if fee not paid.

Law altered by Act I (B. C.) of 1903. Old Act.

Payment of land lord's fee after confirmation of sale.

Confirmation of sale without payment of landlord's fee.

6. Effect of non-payment of landlord's fee :—This section prohibits the confirmation of sale unless prior to the confirmation the purchaser pays into Court the fee prescribed by this section, and where a sale is confirmed although such fee is not paid, the previous holder of the tenure is liable for rent accruing subsequent to the confirmation, the sale being invalid ; the legislature intended by enacting s. 13 to prohibit the confirmation of a sale such as is contemplated by the section unless prior to the confirmation the purchaser pays into Court the fees for which the section provides : *Babar Ali v. Krishna Kamini*, 26 Cal. 603, s. c., 3 C.W.N. 531. But it has been enacted by s. 1 of Act I (B.C.) of 1903 that no transfer "shall be deemed to be invalid merely on the ground that the landlord's fee prescribed.....has not been paid." It was however decided under the old Act that a transfer is not invalid because a purchaser has not got his name registered in the landlord's *sheristha* : *Bharut Roy v. Gunga Narain*, 14 W.R. 211.

A Court has jurisdiction to take landlord's fee after confirmation of sale when it was not paid before : *Mohesh Chunder v. Hari Mohon*, 7 C.W.N. 388. Maclean C.J., in delivering judgment in this case observed as follows :—It was the duty of the Court to confirm the sale after seeing that the landlord's fee had been paid. The Court failed in that. There is no limit of time within which an application must be made, if an application be necessary for the confirmation of the sale, and no question of limitation arises. The Court has only done now what it ought to have done before, and no question of amending a decree or order, and no question, of review really arises. There is nothing in the practice of the Court to prevent it from doing what it has done, and as has been pointed out by the Privy Council, it is the duty of the Court to be vigilant not to allow the act of the Court itself to do wrong to a suitor.

Where a sale is confirmed without payment of landlord's fee the judgment-debtor cannot object to the auction-purchaser's taking possession : *Mohim Chunder v. Ram Lochan*, 7 C.W.N. 591 ; such an objection comes within s. 244, C.P.C. ; *Ibid*. See notes under s. 1 of Act I (B.C.) of 1903 under heading ADDITIONAL NOTES TO ss. 12, 13, 17 and 18 under sec. 18 ; and also Act I (B.C.) of 1903 under sec. 18.

7. Effect of non-service of notice :—The mere failure to serve the notice under the provisions of sec. 13 of the B. T. Act does not invalidate the auction sale. *Barada Prasad v. Taraknath*, 94 I.C. 147 s. c., 1926 A.I.R. (Cal.) 844. (Greaves and Dival J.J.). The payment of the landlord's fee and the payment of the fee for service of notice are really one and the same transaction. *Ibid*.

8. Effect of non-registration of name in the landlord's sheristha :—In a case under Act X of 1859 it was held that a purchaser of a transferable tenure who had not registered his name

in the landlord's *sheritha* had no right to maintain a suit to have it declared that a sale of the tenure at the instance of the landlord against the recorded tenant was null and void and that he had no *locus standi* against the auction-purchaser and had no right to impugn the title of the auction-purchaser under the sale: *Patit Shahu v. Harimati*, 27 Cal. 79; see also *Sham Chand v. Braja Nath*, 21 W.R. 94, s. c., 12 B.L.R. 484.

Effect of non-registration of name in landlord's *sheristha*—Case under Act X of 1859.

9. Purchaser at execution sale purchases the tenure charged with the rent which is due:—A person who purchases a tenure at an execution sale must, in the absence of anything to denote the contrary, be taken to purchase it, charged with the rent which is due in respect of it at the time of its purchase and there being no privity between him and the judgment-debtor, he cannot recover from the latter the money which he is obliged to pay for the rent so due at the time of the purchase; so where a plaintiff in execution of a mortgage decree purchased the tenure mortgaged, and then paid the money due under a decree obtained by the landlord against the tenure-holder for arrears of rent for the period anterior to the confirmation of sale, held that the plaintiff was not entitled to recover the money paid by him for satisfying the rent decree: *Maharanee v. Harendra Lall*, 1 C.W.N. 408. See notes under s. 65.

Purchaser at execution sale cannot recover from the former holder of the tenure the arrear of rent paid by him.

10. Suit for rent when a *putni* is sold:—Where a purchaser of a *putni* at an execution sale did not get his name registered in the zemindar's *sheristha*, it was held that a suit for rent by the zemindar against the old tenant lay and that the right of the zemindar was not affected by the existence of the remedy under s. 7 of Reg. VIII of 1819: *Surendra Nath v. Tincowri*, 20 Cal. 247; see also *Lukminarain v. Khetter Pal Singh*, 13 B.L.R. 146.

Execution sale of a *putni*.

14. [Transfer of permanent tenure by sale in execution of decree for rent. Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 2; and in Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, (E. B. Act I of 1908), s. 2.]

S. 14 stood as follows:—

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

*Note:—*The object of the framers of the Bengal Tenancy Act in inserting the section was to facilitate the registration of tenures by the Collectors. Since all idea of such registration was abandoned, the retention of the section was no longer considered necessary.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, together with the costs necessary for its transmission to the landlord, and the Collector shall cause the landlord's fee to be transmit-

Succession to permanent tenure.

ted to, and the notice to be served on, the landlord named in the notice, in the prescribed manner.

Headings of Notes.

1. AMENDMENTS.
2. WHEN SPCCESSION OPENED OUT BEFORE THE ACT CAME INTO EFFECT.
3. PUTNI TENURE.
4. NOTICE OF SUCCESSION.
5. SUCCESSION: REGISTRATION OF NAME.
6. SUCCESSION OF A SHEBAIT IN REGARD TO PROPERTY OF A HINDU IDOL.
7. TRANSFER OF AND SUCCESSION TO A SHARE OF A PERMANENT TENURE.
8. NOTICE IN THE PRESCRIBED FORM.

1. Amendments :—By Act I, B.C. of 1907 and the East Beng. T. Amendment Act I of 1908 after the word and figures "section 12" the words "together with.....landlord" were inserted ; for the word "paid" the word "transmitted" was substituted and after the word 'landlord' the words "named in the notice" were inserted.

2. When succession opened out before this Act came into effect :—This section and the following section are not retrospective in their effect: *Prafulla v. Samiriddin*, 22 Cal. 337.

Putni
tenure.

3. Putni tenure :—This section and the following section apply to a *putni tenure*: *Durga v. Brindaban* 19 Cal. 504 ; it was held in *Gyanda v. Brahmamoye*, 17 Cal. 162, that Reg. VIII of 1819, i.e., the Putni Regulation is not affected by this Act but as the Putni regulation does not provide rules for the registration of names of the opening out of succession, ss. 15 and 16 of this Act are applicable to Putni tenures ; (see *Durga v. Brindaban*, 19 Cal. 504).

Notice of
succession.
Liability of
one of
several
heirs.

4. Notice of succession :—A landlord is not bound to find out who all the heirs of a deceased tenure-holder are, and where the defendant was admittedly one of the heirs and in possession as such he is liable for the rent, and he cannot defeat the plaintiff's suit by shewing that there were other heirs equally liable, unless he also shews that their names were notified to the landlord as successors of the original holder, or that they have been paying rent and getting receipts as successors: *Khetter Mohan v. Pran Kristo*, 3 C.W.N. 371.

Decree for
rent against
the tenure
who regis-
ters his
name,
binds the
other
tenants.

5. Succession: Registration of name :—The Bengal Tenancy Act makes it obligatory upon the tenants to have their names recorded in the landlord's *shereshta* whenever they became entitled to them by succession ; when therefore one of the tenants gets his name registered, it may be presumed that he represents the other tenants. But this rule applies only to tenures and not to holdings: *Jaideb Thakur v. Jamahir*, 69 I.C. 565, s. c., [1923 Pat. 57].

Observa-
tions.

It is submitted that the decision is based upon an erroneous assumption that on the death of a permanent tenure-holder all the heirs are bound to register their names in the landlord's office. There is no such law. The only penalty for non-registration is as provided in s. 16. Non-registration of the name of an heir does not

render him liable to the landlord for any decree in which he is not a party. The rule of representation is based on a different principle, and it is a question of fact in each case to be decided as to whether the registered tenant represents others.

The mere failure of the heirs of a recorded permanent tenure holder to cause their names to be registered in the landlord's office, does not entitle the landlord to affect their interest by sale in execution issued in a suit against a person who to the knowledge of the landlord, had no interest in the property to which he did not cause his name to be registered under s. 15 but simply registered his name in the landlord's office: *Provas Chandra v. Jaharaddin*, 32 C.L.J. 77.

An heir not bound by a decree in which he is not a party.

Where no notice was given under s. 15 by the heirs of a permanent tenure-holder, *held* that a decree for arrear of rent against one of the heirs would not bind the other heirs, and their interest is not affected by the sale of the tenure: *Faijunnessa v. Ramtaran*, 26 C.W.N. 138. In order to bind all the tenants, it is to be established that all the tenants have held one of them as their representative in their transactions with the landlord: *Ibid*. Failure on the part of heirs to comply with the requirements of s. 15 does not necessarily entitle the landlord to treat one of the several heirs of the original tenure-holder as representative of the tenancy: *Ibid*.

Suit for rent against one of the heirs.

The case in 26 C.W.N. 138 was followed in the case of *Ambika Charan v. Hara Kishore*, 103 I.C. 707, s. c., 1927 A.I.R. (Cal.) 825.

The omission to notify succession to a permanent tenure has only the result that the person succeeding to the tenure shall not be entitled to recover by a suit or any other proceeding any rent payable to him by the subordinate tenants, but it does not effect his interest in the tenure in any other way. The landlord, however, is entitled to sell the tenure in execution of a rent decree against his recorded tenants: but if, one of the recorded tenants is dead, he cannot by omitting his name in a suit brought for the rent of the tenure affect the interest of the heirs of the deceased tenant. The landlord must do one of two things. He must proceed either against the real tenants who are in actual occupation of the tenure or against the recorded tenants: *Susila Sundari v. Tarak*, 97 I.C. 489 s. c., A.I.R. (1927) Cal. 81 (B. B. Ghosh and Graham J.J.).

See notes under ss. 16; 65, 148A.

6. Succession of a shebait in regard to property of a Hindu idol:—See notes under s. 17.

7. Transfer of and succession to share of a permanent tenure:—See notes under s. 17.

8. Notice in the prescribed form:—See Appendix.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has

Bar to recovery of rent pending notice of succession.

received the notice, fees and costs referred to in the last foregoing section.*

Headings of Notes.

1. AMENDMENTS.
2. WHEN SUCCESSION OPENED OUT BEFORE THIS ACT CAME INTO EFFECT.
3. PUTNI TENURES.
4. RECOVER BY SUIT.
5. GIFT OF A PUTNI TENURE.
6. CONSTRUCTION.
7. WHEN THE SECTION APPLIES AND WHEN IT DOES NOT.
8. EFFECT OF REGISTRATION OF NAME IN THE LANDLORD'S SHERISTHA WITHOUT PAYMENT OF LANDLORD'S FEE TO THE COLLECTOR.
9. RENT DUE FOR TENANCIES CREATED AFTER SUCCESSION OPENS OUT.
10. NON-COMPLIANCE OF SS. 15 AND 16 BY SOME OF SEVERAL CO-SHARERS.
11. PENAL SECTION: THIS SECTION DOES NOT APPLY TO A TRANSFEREE.

1. Amendments:—The words “fees and costs” have been substituted for the words “and fees” by the B. T. Amendment Act I of 1907, B.C. and by the B. T. Amendment Act I of 1908 of the East Bengal Council.

2. When succession opened out before this Act came into effect:—See notes under s. 15.

3. Putni tenures:—See notes under s. 15.

“Recover by suit,” meaning of.

4. Recover by suit. :—This section is no bar to the institution of a suit but to the obtaining of a decree: *Kalibur v. Jaffer Patwari*, 24 Cal. 241, s. c., 1 C.W.N. 98, see also *Alimuddin v. Heera Lal*, 23 Cal. 87 (F.B.). An objection taken under s. 15 not being seriously pressed the suit was decreed and when the defendant appealed, the plaintiff was allowed pending the appeal to comply with the provisions of s. 15: *Narayan Prasad v. Gajo Mahtan*, 2 Pat. L.J. 701. It was decided under the old Act that mere cognizance by the landlord of the fact of a party having purchased a tenure is not sufficient to cure the defect of non-registration: *Sarkies v. Kali Coomar*, W.R. 1864 X 1898.

Gift.

5. Gift of a Putni tenure:—Where a person claimed a putni tenure by virtue of a gift in the year 1902, it was held that the land

S. 78 of the Land Registration Act.

* S. 78 of the Land Registration Act which is in some respects analogous to s. 16 of the Bengal Tenancy Act is as follows:—

No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee unless the name of such claimant shall have been registered under this Act; and no person being liable to pay rent to two or more such proprietors, managers, or mortgagees holding in common tenancy, shall be bound to pay to any one of such proprietor, manager or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager or mortgagee is registered bears to the entire estate or revenue-free property.

lord was not bound to accept any rent from the donee unless the latter got his name registered after the alleged gift: *Sailesh Chandra v. Kumar Bonwari*, 13 C.W.N. ccxlix (299 notes); as the judgment has not been fully reported, it does not appear whether there was any argument addressed to the court that the landlord was bound to register the donee's name on the registration of the deed of gift.

6. Construction :—This section is a penal one and ought to be strictly construed: *Shariff v. Jogemaya*, 27 Cal. 535. Section penal.

7. When the section applies and when it does not :—In a case where the plaintiffs brought a suit as reversionary heirs to their father's estate after their mother's death the suit was maintainable so far as it related to the claim during their mother's lifetime although their mother had not complied with the provisions of s. 15 of the Act: *Sheriff v. Jogemaya*, 27 Cal. 535. Suit by successor when previous owner did not comply with s. 15. Suit by shebait on the death of another shebait.

The right to provision and management is a dedicated property belongs to the *shebait* and the right to bring a suit for rent is invested in the *shebait* and not in the *idol*; consequently when on the death of one *shebait* another *shebait* succeeds to a permanent tenure and does not according to s. 15 of the Bengal Tenancy Act give a notice of succession to the landlord, s. 16 is an effective bar to the recovery of a decree for rent: *Mabatulla v. Nalini Sundari*, 10 C.W.N. 42 s. c., 2 C.L.J. 377.

S. 16 does not apply to a suit for rent brought by a surviving administrator (*Bipro Das v. Pachi Bibi*, 5 Ind. Cas. 434) or by a receiver appointed in a partition suit: *Harendra v. Abanish*, 7 Ind. Cas. 761. Surviving administrator.

See notes under s. 15.

8. Effect of registration of name in the landlord's sheristha without payment of landlord's fee to the Collector :—It seems from the wording of the section that it is compulsory on a person succeeding to a permanent tenure to act in accordance with s. 15 to enable him to recover rent by suit, distraint or other proceeding. Although the landlord may recognise the successor as his tenant without receiving the fees through the Collector, yet the terms of the section seem to be imperative. Non-payment of landlord's fee.

1. Suit by unregistered proprietor maintainable and it is sufficient if the registration is made before decree :—The rule laid down in the case of *Dharani Dhar Sen v. Wazidunnissa Khatoon*, 16 Cal. 708 note, and *Surya Kanta Acharya v. Hemanta Kumari Devi*, 16 Cal. 706, that it is a condition precedent under this section that a person must be registered as proprietor or manager before he can bring a suit for arrears of rent, has not been, according to the decision in the case of *Abdul Khair v. Meher Ali*, 3 C.W.N. 384, expressly overruled by the Full Bench case of *Alimuddin v. Hira Lal*, 23 Cal. 87, but the effect of the decision of the majority of the Judges was that apart from the provisions of s. 60 of the Bengal Tenancy Act, ss. 78 and 79 of the Land Registration Act, did not prevent an unregistered proprietor from bringing a suit for arrears of rent, and following this principle it was held that a suit for arrears of rent cannot be dismissed merely on the ground of the plaintiff's name not being registered under the Land Registration Act at the time the suit was brought and it is sufficient if the name is registered before the decree is made: *Abdul Khair v. Meher Ali*, 3 C.W.N. 381; see also *Harekrishna v. Brindaban*, 1 C.W.N. 72; *Alimuddin v. Hira Lal*, 23 Cal. 87 (F.B.); *Belchambers v. Nawab Syed Hussain*, 2 C.W.N. 493. Dharani Dhar v. Wazidunnissa, not expressly overruled by the Full Bench case of Alimuddin v. Hira Lal.

2. Suit by legal representative of deceased proprietor :—The provisions of this Act relating to registration do not apply to the case of a person who is seeking to recover rent as the representative of a deceased proprietor whose name was registered, the rent having become due during the lifetime of that When this section does not apply.

Tenancies created after succession opens out.

9. Rent due for tenancies created after succession opens out :—After succession opens out, if any new tenancies are created by the tenure-holder, it seems that this section should be no bar to a suit for rent of such tenancies in as much as these tenancies were no part of the tenure when succession opened out.

Suit not to be dismissed if one of several plaintiffs does not comply with ss. 15 and 16.

10. Non-compliance of s. s. 15 and 16 by some several co-sharers :—S. 16 of the Bengal Tenancy Act was not intended to defeat in its entirety a suit brought by one of several land-holders, who is not in default, merely by reason of the failure of his cosharer to comply with the requirements of s. 15 ; in a suit to obtain a decree in respect of the entire rent payable to the co-sharers who are not disqualified under s. 16, and if the other co-sharers do not comply with the requirements of s. 15 before the decree is made, the remainder of the claim should not be dismissed : *Tarini Charan v. Chandra Kumar*, 12 C.L.J. 1, s. c., 14 C.W.N. 788. See footnote para No. 3 under s. 16.

II. Penal section : this section does not apply to a transferee :—This section is a penal section and must be strictly construed, and it does not apply in the case of a transferee from an heir of a permanent tenure-holder when the transferee brings a rent suit for the period which became due to the transferor : *Mesbahuddin v. Abdul Barkat*, 34 C.L.J. 119 ; the case of *Iswar Chandra v. Kali Charan*, 27 C.L.J. 434 was dissented from and the decisions in the case in 24 I.C. 866 and unreported S.A. 1624 of 1919 were followed.

A co-sharer landlord, if competent to bring a suit.

If a co-sharer landlord is incompetent to bring a suit for not having served a notice under s. 15 of the B. T. Act the other co-sharer may bring a suit for his share of the rent by making the former a party defendant although such co-sharer ordinarily has no right to bring a suit for his share of the rent : *Nibaran Chandra v. Nabin Chandra*, A.I.R. 1925 Cal. 297.

proprietor : *Belchambers v. Sir Syed Hussain*, 3 C.W.N. 494. Where an arrear of rent fell due during the life time of A whose name was registered under the Land Registration Act, a suit for rent by B, his son, for that rent due to his father is maintainable although B's name is not registered, the principle being that B is suing not as a proprietor but as the legal representative of the late registered proprietor, *Nagendra Nath v. Satadalbashini*, 3 C.W.N. 294, and the same rule applies where a registered proprietor after bringing the suit dies and his legal representative gets himself substituted : *Pramada Sundari v. Kanai Lal*, 27 Cal. 178.

When some of several joint proprietors are registered.

3. Suit by proprietors of whom some are registered :—If some of several joint landlords get their names registered under the Land Registration Act in respect of fractional shares, all the landlords may jointly sue for the entire rent but will get a decree only for a share of the rent proportionate to the share in respect of which their names are registered : *Gobinda Chandra v. Ishan Chandra*, 2 C.W.N. 609 ; s. c. 25 Cal. 787.

4. Suit in case of previous amicable payment of rent :—Section 78 of the Land Registration Act does not cease to be applicable merely because the plaintiff establishes that defendant has previously paid rent to him amicably, or because he brought the defendant upon the land there is no question of estoppel : *Bangshi Badan v. Kamalakant*, 26 C.L.J. 90.

5. Suit for rent by assignee from unregistered proprietor :—S. 78 of the Land Registration Act has no application to the case of a person to whom rent has been assigned by a proprietor whose name has not been registered under the Act : *Syed Serapat Hossein v. Tarini Prasad*, 11 C.W.N. 141.

6. Transfer of proprietorship :—Under s. 78 of the Land Registration Act it is immaterial how the transfer of proprietorship is effected, whether it is a case of transfer by purchase or a case of transfer by succession : *Punuk Lal Mundur v. Thakur Prasad*, 25 Cal. 747.

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

Transfer of and succession to, share in permanent tenure.

Headings of Notes.

1. TRANSFER OF, OR SUCCESSION TO, A SHARE.
2. RIGHT OF A TRANSFEREE.
3. AMOUNT OF LANDLORD'S FEE.
4. LIABILITY FOR RENT ON TRANSFER OF A PORTION.
5. DECREE FOR RENT EXCLUDING THE TRANSFEREE.

1. Transfer of, or succession to, a share :—Ss. 17 and 18 recognise the transfer of a share of a holding and entitle the transferee to claim to be regarded as one of the tenants in respect of the holding and therefore the transferee is entitled to sue for possession by setting aside a sale in execution of a decree to which he was not a party: *Mohesh Chandra v. Saroda Prasad*, 21 Cal. 433 ; in respect of a permanent tenure, an heir as well as a transferee, even though of a part, is entitled to compel the landlord to recognise him under ss. 15 and 17: *Ananda Kumar v. Hari Das*, 27 Cal. 545 (at p. 549) ; and if the transfer is of a part only of the tenure the transferee and the original tenant are jointly liable for the rent ; *Sreemutty Jogemaya v. Girindra Nath*, 4 C.W.N. 590. A landlord is bound to recognise the transfer of a portion although in the absence of his written consent as required by s. 88 he is not bound to recognise any subdivision of the tenancy: *Baistab Charan v. Akhil Chandra*, 11 C.W.N. 217. A subdivision of the holding or distribution of rent is not binding on the landlord unless the provisions of s. 88 are complied with: *Rammoyi v. Rupai Pramanick* 13 C.L.J. 267.

Transferee of a share entitled to be recognised by landlord.

2. Right of a transferee :—A person who purchases a share in a permanent transferable tenure is entitled to a declaration of his right to that share and for possession of the same after setting aside the sale held in execution of a decree to which he was not made a party although the landlord may not be obliged to recognise the division of the tenancy he may yet be obliged to recognise the transfer: *Kali Kumar v. Bidhu Bhusan* 16 C.L.J. 19 ; see also *Mohesh v. Saroda*, 21 Cal. 439 ; *Kali Sundari v. Dharani Kant Lahiri*, 33 Cal. 279 ; *Ananda Kumar v. Hari Das*, 27 Cal. 545.

Transferee of a share

“The landlord is not bound to recognise any subdivision of the holding, unless the provisions of ss. 12 and 17 of the Act have been strictly complied with, or to sue to recover rent of the holding from

7. Manager under the Bengal Tenancy Act :—A manager appointed under the provisions of s. 95 of the Bengal Tenancy Act must have his name registered before he can recover rent: *Maqubul Ahmed v. Girish Chandra* 22 Cal. 634.

8. Actual Registration necessary :—The Land Registration Act requires actual registration of name in order to enable a person to recover rent, and a mere order of the Civil Court for registration is not sufficient: *Ugramohun Bedeshi*, 5 C.W.N. 360.

9. Registration in specific mouzahs not necessary :—The Land Registration Act does not require the co-sharers of an estate registration in the several mauzahs comprising the estate but only in the estate: *Paresh Mont v. Naba Kishore*, 8 C.W.N. 193. See also *Deokisingh v. Subhan Roy*, 8 C.W.N. 196. See notes under s. 6.

any body except the persons whom the landlord has recognised as the tenants." *Rammoyi Dasi v. Rupai Pramanick*, 13 C.L.J. 267.

The registration of a sale of the whole or a part of a *putni* tenure under s. 12 does not give the purchaser an interest in the land by force of ss. 12 and 17: *Shaiuddin v. Mathura Mohun*, 18 C.W.N. 338. A partial transferee of a *putni* tenure is not entitled to be recognised by the Zamindar: *Rakhal v. Umapada*, 18 C.W.N. 629: see notes under s. 12.

Landlord's
fee when an
undivided
share is
transferred.

3. Amount of landlord's fee :—When an undivided share or a portion of an entire tenure is transferred, it seems that the landlord's fee should be assessed upon the entire rent of the tenure and not upon the unassessed proportionate amount of rent, for s. 12 provides that the landlord's fee is to be paid upon the rent of the tenure, and therefore it seems that the landlord's fee is not to be assessed upon the proportionate rate which may be assessed upon the portion transferred. The transferee of a portion or of an undivided share is jointly and severally liable for the entire rent to the landlord; therefore it seems that he is not entitled to pay the landlord's fee upon a proportionate share of the rent.

Liability
for rent on
transfer of
a portion.

4. Liability for rent on transfer of a portion :—When a permanent tenure-holder transferred in succession portions of his tenure, *held* that his liability for rent ceased after the last transfer: *Kishori Raman v. Ananto Ram*, 10 C.W.N. 270. The transferee of a portion cease to have any liability after the transfer of that portion: *Kali Sundari v. Dharani Kant*, 10 C.W.N. 272. But where a tenure-holder sold a portion of his tenure, *held* that the landlord was not bound in a suit for rent to make the transferee a party: *Rammoyi, v. Rupai Pramanick*, 9 C.W.N. cxxiii (123 notes), since fully reported 13 C.L.J. 267.

Where a share of a *putni* is sold, the purchaser is liable for rent if the landlord chooses to recognise him: *Aosabali v. Bisseshuri*, 8 C.L.J. 554.

See notes under s. 12.

5. Decree for rent excluding the transferee :—Where a share of a permanent tenure is sold the landlord is bound to recognise the transferee as one of the joint tenants, and unless there has been a division of the tenure under s. 88, all the joint tenants including the transferee are jointly and severally liable to pay the rent.

As to whether a suit for rent lies against one or some of several joint tenants, and as to the effect of such a decree: see notes under s. 65.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

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

Incidents
of holding
at fixed
rates.

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

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

Headings of Notes.

1. FIXED RATE.
2. INCIDENTS OF A RAIYATI HOLDING AT FIXED RATE.
3. PRODUCE RENT. ...
4. STATUS OF A RAIYAT AT FIXED RATE AND THAT OF AN OCCUPANCY RAIYAT IN THE SAME PERSON.
5. PERMANENT RAIYATI LEASE BY A WIDOW.
6. TREES.
7. RIGHT OF THE ASSIGNEE OF A PERMANENT TENANT FOR DECLARATION AS SUCH.
8. ADDITIONAL RENT FOR ADDITIONAL AREA : RATE OF RENT.
9. ADDITIONAL NOTES TO SS. 12, 13 17 & 18: ACT I (B.C.) OF 1903.

I. Fixed Rate :—The rule of law laid down in *Bansi Das v. Jagadip*, 24 Cal. 152, that the presumption, according to s. 50, will not convert an occupancy raiyat into a raiyat at fixed rate has been overruled by the decision in the case of *Dulhin Golab v. Dulla Kurmi*, 25 Cal. 744, s. c.; 2 C.W.N. 580 (decided by a Special Bench of five Judges). Where a tenant proved that he had been holding at a uniform rental for a period exceeding 20 years, held that apart from s. 50 of the Bengal Tenancy Act it can be presumed he is a raiyat holding at a rent fixed in perpetuity. *Gulab Misser v. Kumar Kalanand* 12 C.L.J. 107. Also see *Nandlal v. Atarmani*, 36 Cal. 763, s. c.; 12 C.W.N. 432; see notes under s. 50 under heading "Where the presumption under this section applies and where not."

Where in a kabuliyat the stipulation was "Whatever increase in the production of the soil you may effect and whatever measurement and jamabandi you may make, I shall abide by the same," held that the raiyat was not a raiyat at fixed rate: *Raj Kumar v. Naya Chetoo*, 6 C.W.N. 960.

The word "Kaimi" does not import fixity of rent: *Fazal v. Sheikh Keramaddi*, 6 C.W.N. 916. The use of the term 'Kaimi'

Kaimi.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

Note:—Nothing in this chapter shall confer a right of occupancy in proprietor's private lands. See s. 116. But the provisions of this chapter are not inapplicable to all tenancies in proprietor's private lands: they do not apply only when it is proved that the land is held under a lease for a term of years or under a lease from year to year: *Denonath v. Meghu Mahton*, 5 C.L.J. 181.

(Bengal and Bihar.)

(East Bengal.)

Continuance
of existing
occupancy-
rights.

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

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section I, of any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area, or the inclusion of any area in the town of Calcutta

19. (1) 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.

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area, shall not affect any right, obligation or liability pre-

imports not fixity of rent but only permanence of occupation of the land: *Meher Ali v. Kalai Khalasi*, 10 C.W.N. 1129; see also *Gayratulla v. Girish*, 12 C.W.N. 175; *Nadiram v. Srinath*, 24 C.W.N. 93.

As to the meaning of the word *mokurari*: See notes under s. 179.

Sthayee Karsha স্থায়ী কর্ষা Kabulyat does not necessarily imply that the grantee was intended to have a permanent heritable interest: *Meher Ali v. Kalai Khalasi*, 19 C.W.N. 1129.

Presump-
tion.

A raiyat who under the presumption under s. 50 (2) is deemed to have held at a rent which has not been changed from the time of the Permanent settlement comes within the definition of a raiyat holding at a fixed rate within the meaning of s. 4 sub-sec. (3): *Kshirod Chandra v. Rajendra Narayan*, 38 I.C. 94.

Incidents.

2. Incidents of a raiyati holding at fixed rate :—This section does not make all the incidents of a permanent tenure applicable to a *raiya*ti holding at fixed rates, but makes only the provisions with respect to transfer and succession applicable. *Nilmony v. Mothura Nath*, 4 C.W.N. clxx (159 notes;) s. c., 5 C.L.J. 413.

The word "transfer" includes "lease" also, and therefore s. 85 is controlled by this section, and a fixed raiyat can therefore grant leases in the same way as a permanent tenure holder: *Harimohan v. Atul Krishna*, 19 C.W.N. 1127; *Amar Chand v. Prasanna Dassi*, 25 C.W.N. 9. See also notes under sec. 85. A raiyat at fixed rate can make a deposit under s. 170, cl. (3): *Harimohan v. Atul Krishna*, 19 C.W.N. 1127.

"There is nothing in the law which prevents tenants having permanent heritable rights at a fixed rent from using the land in any manner they think fit so long as there is no risk to the right of the landlord to recover the rent payable, and I think it is now settled that unless there are any reservations, the landlord has no right in the case of such tenures other than the right to receive the stipulated rent": *Barada Prasad Banerjee v. Bhupendra Nath Mookerjee*, 50 Cal. 694, (*Per B. B. Ghose J., Walmsley J., agreeing*).

See notes under s. 85.

The restriction imposed by s. 48 on the amount of rent that a raiyat can recover from *an* under raiyat has no application in the case of a raiyat at a fixed rate of rent, the section being governed by s. 18. In other words, s. 18 controls s. 48 as it does s. 85: *Raj Kumar v. Ramani Mohon*, 104 I.C. 150, s. c., 1927 A.I.R. (Cal.) 878. A raiyat at fixed rate can cut and appropriate trees. See notes under heading No. 6.

Rent here
includes
produce
rent.

3. Produce rent :—The word "rent" in this section includes "rent in kind." A raiyat paying as rent a fixed quantity of paddy is a raiyat at fixed rent: *Dinanath v. Sati Prasad*, 27 C.W.N. 115, s. c., 36 C.L.J. 220; *Manmatha v. Probodh*, 73 I.C. 416. See notes under ss. 4 and 50.

Fixed
raiya-
t—
occupancy
raiya.

4. Status of a raiyat at fixed rate and that of an occupancy raiyat in the same person :—See notes under sec. 4, heading No. 7 and under sec. 160.

5. Permanent raiyati lease by a widow :—A permanent *raiya*ti lease of land in which the grantor has the qualified interest of a Hindu female heir is invalid: but the lessees would nevertheless acquire occupancy right in the holding after 12 years possession as raiyat: *Ichamoyi v. Kailash Chandra*, 18 C.W.N. 358.

6. Trees :—A raiyat holding at fixed rent or rate of rent has the right to cut and appropriate trees: *Radikanath v. Samir Fakir*, 21 C.W.N. 636 (Fletcher and Richardson J.J.). See also *Sarada v. Gonee*, 10 W. R. 419 and *Goluck v. Naba Soondari*, 21 W.R. 344. See also *Midnapur Zemindary Co. v. Jagat Chandra*, 1925 A.I.R. (Cal.) 139 (Walmsley and Suhrawardy, J.J.) and *Eshaque Sheikh v. Matilal*, 81 I. C. 1043. S. 23 of this Act which provides the rule relating to the right to trees applies only to occupancy raiyats. The Act is therefore silent in this respect in regard to fixed raiyati holdings.

Right of raiyat at fixed rate to cut and appropriate trees.

It was decided in a case in regard to a holding which was neither agricultural nor horticultural and which was created before the Transfer of Property Act, that the property in the trees planted by the lessee after a *kaimi* lease had been granted does not rest in the landlord: *Mofiz Sheikh v. Rasik Lal Ghose*, 37 Cal. 815, s. c. 14 C.W.N. 952, s. c. 12 C.L.J. 246.

This case was distinguished and dissented from by Suhrawardy and Graham JJ. in the case of *Kedarnath Bose v. Gobinda Chandra Dass*, 32 C.W.N. 366, who following the case of *Nafar Chandra v. Ramlal*, 22 Cal. 742, held, that in the case of non-permanent tenancies which were created before the Transfer of Property Act, the property in the trees standing on the land when the tenancy was created as also in the trees planted and grown by the tenant, is in the landlord and the tenant can have a right to them only if there be any custom or usage to the contrary.

In the case of tenancies created after the Transfer of Property Act and governed by it, the ownership of trees is in the tenant except of those standing on the land at the time the tenancy was created. The prohibition contained in sec. 108 cl. (o) of the Transfer of Property Act against felling timber applies only to timber that stood on the land at the time of the lease; to timber subsequently grown, the lessee will be entitled under cl. (h) of the section.—*Ibid*.

See notes under s. 23, Heading No. 2, Trees.

7. Right of the assignee of a permanent tenant for declaration as such :—An assignee of a lease has the right to bring a suit for a declaration that the lease is permanent, heritable, transferable and that the rent is fixed in perpetuity and that the lessor is bound to recognise the plaintiff as a tenant: *Monomohan Ghose v. Equitable Coal Co.*, 18 C.W.N. 596.

8. Additional rent for additional area : Rate of Rent :—Where rent was originally fixed at the rate of two annas *per* bigha and subsequently on the discovery of an additional area the excess area was assessed at two annas *per* bigha and it was agreed that on the discovery of further excess land the same would be assessed at the same rate, held that the rent was fixed in perpetuity at two annas *per* bigha: *Amarnath v. Krishna Das*, 35 C.L.J. 138, (Mookerjee and Panton J.J.).

9. Additional notes to ss. 12, 13, 17 and 18 : Act I (B. C.) of 1903.

Mistake in payment of landlord's fee :—An auction sale was confirmed by the Court overlooking through mistake the fact that no landlord's fee was paid under s. 13 of the Bengal Tenancy Act. Subsequently on the discovery of the mistake the purchaser applied for the confirmation of the sale after payment of the landlord's fee, and the Court passed an order to that effect: held that the order was

Non-payment of landlord's fee : Courts' jurisdiction, to

take it
subse-
quently.
Non-pay-
ment of
landlord's
fee : s.s.
244 & 318,
C. P.C.

Non-pay-
ment does
not affect
the position
of the judg-
ment-debtor

good and the Court has jurisdiction to pass such an order : *Mohesh v. Hari Mohon*, 7 C.W.N. 388.

Confirmation of sale without previous payment of landlord's fee :—Where the sale of a permanent tenure was confirmed without previous payment of the landlord's fee in the manner required by sec. 13 of the Bengal Tenancy Act, and the judgment-debtor objected to the auction-purchaser's application for being put into possession under sec. 318, C.P.C., on the ground that the sale was invalid : *Held*—That the question was one under sec. 244, C.P.C., and a second appeal lay : that the payment of the landlord's fee does not affect the position of the judgment-debtor but affects the right of the landlord to object to a transfer of a tenant's right without payment of the fee, and it was not competent to the judgment-debtor to raise an objection to the delivery of possession under sec. 318, C.P.C. : *Mohim v. Ram Lochan*, 7 C.W.N. 591.

Act (B. C.) of 1903 :—The Preamble to this Act explains why this Act was passed : the Preamble and ss. 1 to 3 of the Act are as follows :—

VIII of
1885.

WHEREAS doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17 and 18 of the Bengal Tenancy Act, 1885, as regards the payment of the prescribed landlord's fee, and the effect of the non-payment of such fee ;

And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid ;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing ;

55 & 56
Vict., c. 14.

And whereas the said Act having been passed by the Governor General of India in Council, the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892 to the passing of this Act ;

It is hereby enacted as follows :—

Validation
of transfers
of tenures
and hold-
ings and
shares in
the same.

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has not been paid.

Provided always that, subject to the *Explanation following*, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee, shall not bar a suit for rent which became payable subsequently to such claim.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement of this Act,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

3. Nothing in section 1 shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885. Saving of section 88.

Note :—For the remaining portion of this Act (I of 1903, B.C.) See Appendix, IV.

Notes to s. I Explanation.

A decree which has become final :—A decree passed before the passing of Bengal Act I of 1903 but pending in appeal at the commencement of that Act is governed by s. 1 of the Act as not being final: *Peary v. Arsad Ali*, 8 C.W.N. 239. Final—decree—pendency of appeal.

S. 1 validates all transfers questioned in appeals pending when the Act was passed: *Manurattan v. Harinath*, 1 C.L.J. 500.

CHAPTER IV A.

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

Note :—This chapter was inserted by Act I (B.C.) of 1907 and by Act I (E. B. and A. Council) of 1908.

(Bengal and Bihar).

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

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

Saving as to acceptance of landlord's fees.

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

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

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

(East Bengal).

18A. Notwithstanding anything contained in section 13 of the Indian Evidence Act, nothing contained in any instrument or transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument.

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

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

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

18C. All landlord's fees paid under Chapter III or Chapter IV, which are held in deposit on or after the commencement of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, may, unless accepted or claimed by the landlord within three years from such commencement or from the date of service of the notice prescribed in section 12, section 13 or section 15 (as the case may be), whichever is later, be forfeited to the Government.

Forfeiture
of unclaim-
ed land-
lord's fees

Note :—The object of these sections is explained in the Notes on clauses to Bengal Tenancy (Amendment) Bill, 1906, as follows : "The working of sections 12 to 17 of the present Act, relating to the transfer of permanent tenures, is not satisfactory. They induce tenants to register transfers of tenures which are not really permanent, in the hope that the acceptance of the fee by the landlord will operate as an admission of the permanence and transferability of the tenure. The landlords, on the other hand, are reluctant to accept the fees, and the result is that a very large amount of unclaimed fees has accumulated in different districts in the province. This state of things is not only a source of embarrassment to Government, but also creates doubts and difficulties in regard to the position of the transferees of tenures. It is hoped that the amendments now proposed will overcome the reluctance of landlords to accept the fees in the case of tenures which are really permanent, and the tenants will be deterred thereby from registering transfers of tenures which are not of this character.

The same considerations apply to transfer of, and succession to, holdings at fixed rents or rates of rent, and under section 18 (a) of the Act, these are governed by the same conditions. Clauses 5 and 6 have been so framed as to make the proposed amendments applicable to the case of holdings at fixed rents or rates of rent. A clause has been added to sec. 189, empowering the local Government to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 and 18 clause (a), may be declared to be forfeited, and the mode in which such fees when so forfeited shall be dealt with."

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

Note:—Nothing in this chapter shall confer a right of occupancy in proprietor's private lands. See s. 116. But the provisions of this chapter are not inapplicable to all tenancies in proprietor's private lands: they do not apply only when it is proved that the land is held under a lease for a term of years or under a lease from year to year: *Denonath v. Meghu Mahlon*, 5 C.L.J. 181.

(Bengal and Bihar.)

(East Bengal.)

Continuance
of existing
occupancy-
rights.

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

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section I, of any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area, or the inclusion of any area in the town of Calcutta

19. (1) 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.

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area, shall not affect any right, obligation or liability pre-

by notification under section 637 of the Calcutta Municipal Act, 1899, shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area.

viously acquired, incurred or accrued in reference to such area.

Headings of Notes.

1. AMENDMENTS.
2. RIGHT OF OCCUPANCY ACQUIRED UNDER THE OLD LAW CONTINUES.
3. NON-OCCUPANCY RIGHT :
4. AGREEMENT BEFORE THE PASSING OF THE ACT.
5. RIGHT EXTINGUISHED UNDER THE OLD LAW.
6. CASES UNDER THE OLD LAW.
7. SUBMERGED LAND.
8. PENDING SUIT.
9. REVENUE SALE LAW : RIGHT OF OCCUPANCY.
10. RAIYAT AT FIXED RENT.
11. EFFECT OF NON-PAYMENT OF RENT.

I. Amendments :—Sub-sec. (2) was added by Act I (B.C.) of 1907, in Bengal and Act I of 1908 of the East Bengal Council in East Bengal. The figure (1) in sub-sec. (1) was added by the same amending Acts.

In sub-sec. (1) in Bengal the words "or the Bengal Tenancy (Amendment) Act, 1907" were inserted by Act I, B.C. of 1907.

The Bengal Tenancy (Amendment) Act (I of 1907) is not an Act of a declaratory nature and is not retrospective in operation and pre-acquired non-occupancy rights in lands added by that Act to the Town of Calcutta have not been extinguished by its amendment of sec. 19 of Act VIII of 1885: *Shibakali v. Chuni Lal*, 31 C.W.N. 1007 (Cuming and Mallik, J.J.). The case of *Jotiram v. Jonaki*, 20 C.W.N. 258 followed.

2. Right of occupancy acquired under the old law continues :

S. 19 can refer only to persons who, being raiyats within the meaning of s. 5, had acquired a right of occupancy prior to the passing of the Act: *The Secretary of State v. Gobind Prashad*, 21 C.W.N. 505.

A raiyat at fixed rate could acquire a right of occupancy under the old law and as such the said right continues after the Bengal Tenancy Act under s. 19: *Ichhamoyi v. Kailash Chandra*, 18 C.W.N. 358; see also *Lakhicharan v. Hamid Ali*, 27 C.L.J. 284.

A raiyat who acquired a right of occupancy before the passing of the Bengal Tenancy Act can retain the privileges of an occupancy raiyat although his rent has been fixed in perpetuity by virtue of which he becomes a raiyat holding at fixed rates: *Lakhicharan v. Hamid Ali*, 27 C.L.J. 284 (N. Chatterjee and Richardson J.J.) ; see also *Ichamoyi v. Kailas Chandra*, 18 C.W.N. 358.

As to the status of a fixed raiyat and of an occupancy raiyat in the same person : see notes under ss. 4, 18 and 160.

If an occupancy raiyat acquired *makurari* right in the lands in which he had occupancy right before the passing of the Bengal Tenancy Act his right of occupancy merged : *Mullick Muktear v. Kali Charan*, [1921 Pat.], p. 357, (Coutts and Macpherson J.J.).

Occupancy right acquired before the passing of the Act is maintained : *Bhajan v. Balai*, A. I. R. 1923 Cal. 375.

Act VIII
B. C. of
1869.
Undivided
share of
land.

There is nothing in the Bengal Tenancy Act to take away a right of occupancy acquired under leases granted at a time when Act VIII, B.C. of 1869, was in force ; *Baidyanath v. Sudharam*, 8 C.W.N. 751; so it seems that a right of occupancy acquired in an undivided share of a holding under that Act continues after the passing of this Act.

Act X of
1859.
Act VIII
B. C. of
1869.

The right of occupancy acquired before 1859 would be maintained under Act X of 1859 as also under Act VIII B.C. of 1869 and would continue to exist under s. 19 of the Bengal Tenancy Act : *Ram Kumar v. Ram Newas*, 8 C.W.N. 860.

A right of occupancy acquired under the old Act is not forfeited by its repeal : *Hurry Ram v. Nursing Lal*, 21 Cal. 129.

If occupancy rights were acquired in *chakran* lands held under a service tenure before 1885, they are protected under sec. 19 of Bengal Tenancy Act. Under sec. 181 they cannot be protected after the passing of the Act : *Kshettra Mohon v. Lakhikanta*, 44 C.L.J. 271 (Greaves and Panton J.J.).

3. Non-occupancy right :—Act VIII of 1885 read with Act I of 1907 has saved non occupancy rights where there were such rights to be saved. By sec. 19, the Act of 1885 saved only occupancy rights because non occupancy rights began to accrue only after that Act by which they were created. The fact that a later amendment of sec. 19, while putting down occupancy rights as saved from Act I of 1907, has not so saved non-occupancy rights, does not mean that such rights are destroyed by implication. Besides sub-sec. (2), added to sec. 19 by Act I of 1907, expressly saves all rights : *Shiba Kali v. Chuni Lal*, 31 C.W.N. 1007. The case of *Jotiram v. Jonaki*, 20 C.W.N. 258 followed.

4. Agreement before the passing of the Act :—An agreement before the passing of the Bengal Tenancy Act that a tenant would not acquire a right of occupancy during his lifetime is valid and does not come within the prohibitory terms of s. 178 sub-sec. 1 (a) or sub-sec. (3) (a) : *Babul Chandra v. Nistarini*, 33 Cal. 136.

5. Right extinguished under the old law :—The present Act cannot revive rights which had already been extinguished : *Saligram v. Puluk Pandey*, 6 C.L.J. 149.

6. Cases under the old law :—The occupation intended to be protected by s. 6, Act X of 1859, was occupation of land considered as the subject of agricultural or horticultural cultivation and used for purposes incidental thereto, such as for the site of the homestead, the raiyat or Malli's dwelling-house and so on, but it did not include occupation, the main object of which was the dwelling-house itself, and where the cultivation of the soil, if any, was entirely subordinated to that : *Kalee Kishen v. Jankee*, 8 W.R. 250 ; *Mohur Ali v. Ram*,

Rutton, 21 W.R. 400; *Khellut Chander v. Umirto*, 1 Ind. Jur. N. S. 426; but *bastoo* land in an ordinary cultivator's holding was the subject of the provisions of Act X of 1859 and Act VIII, B. C. of 1869 and a right of occupancy could be acquired therein: *Mohesh Chunder v. Bishonath*, 24 W.R. 402. See also *Syed Hassain v. Gobind Lal*, 9 C.W.N. 141. According to the old law there was nothing *per-se* in the fact of the land being *niz-jote* which prevented a cultivator from acquiring rights of occupancy: *Gour Huree v. Beharee*, 12 W.R. 278; *Shaikh Ashraff v. Ram Kishore*, 23 W.R. 288. The *niz-jote* referred to in Act X of 1859 and Act VIII of 1869 referred to the *niz-jote* of the Zemindar, and not of a Surbarakar holding under a Zemindar, so a right of occupancy could be acquired in such land: *Obhoy Churn v. Kanaye Rawat*, 1 C.L.R. 394. The word "Khamar" referred to any parcel of land, whether cultivated or uncultivated, belonging to the Zemindar, and which Zemindar chose to keep in his own possession and no right of occupancy could be acquired therein: *Hurish Chunder v. Gungadhur*, 25 W.R. 184; where *Khamar* land was let by the Zemindar for a term, and then on the expiration of the term from year to year throughout a long period, held that the tenant had not thereby acquired a right of occupancy; *Bhugwan Bhagut v. Jug Mohun*, 20 W.R. 308; A right of occupancy could be acquired in land used for grazing horses: *W. Fitzpatrick v. George Wallace*, 11 W.R. 231 followed in *Sheikh Latifar v. A. H. Forbes*, 14 C.W.N. 372 at p. 376 col., 2; where land was let for cultivation and there was a tank upon it, it was held that the tank would go with the land: and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant to the land but where the tank was the principal subject of the lease, and only so much land passed with the tank as was necessary for it, namely for the banks there could not be any right of occupancy in it: *Nidhi Krishna v. Ram Das*, 20 W.R. 341; *Sibo Jelya v. Gopal Chunder*, 19 W.R. 200. It was held on a finding that a share in a tank formed an integral portion of an agricultural holding situate on its bank that a right of occupancy could be acquired as such share and when acquired would be protected under s. 37 of the Revenue Sale Law: *Uma Charan v. Moniram*, 8 C.W.N. 192; also see *Jardine Skinner & Co., v. Surat Soondari*, 3 C.L.R. 140.

A right of occupancy could not be created in a fishery or a julkur: *Juggobundhu v. Promotha Nath*, 4 Cal. 767; *Bolloye Satee v. Akram*, 4 Cal. 961; *Sham Narain v. The Court of Wards*, 23 W.R. 432; *Wooma Kunt v. Gopal Singh*, 2 W.R. Act X., p. 19. No right of occupancy could be acquired in lands held under a service tenure: *Hurrogobind v. Ramrutno*, 4 Cal. 67; Mitter, J., in delivering his judgment in the case of *Narain v. Ohnil Misser*, 9 Cal. 367, s. c., 11 C.L.R. 417, said as follows:—"It is clear from the language of the section" (s. 6, Act VIII B. C. of 1869) "that for the acquiring of the right of occupancy two conditions only are necessary *viz.*, (1) the cultivation or holding of land for a period of 12 years and (2) that the person holding or cultivating the land should be a raiyat. No doubt in many cases the fact of non-payment of rent would be a valid ground for holding that the land was held not as a raiyat but as a trespasser. But where notwithstanding non-payment of rent the holding or cultivation as raiyat is established for 12 years, the essential conditions of the section are fulfilled." A raiyat who paid

Land held at rent in kind.

rent in kind but who had held a cultivated land for a period of 12 years, had a right of occupancy in the land so held or cultivated by him so long as he paid the rent (though in kind) for the same: *Jutloo Moar v. Basmatee*, 15 W.R. 479; *Hureehur v. Biressur*, 6 W.R. Act X, p. 17.

Permanent raiyati lease by a Hindu widow.

A permanent raiyati lease of land was created by a Hindu widow in the year 1873 i.e. long before the passing of the Bengal Tenancy Act, *held* that a Hindu widow having only a qualified interest, is invalid, *held* further that apart from the question as to whether the Bengal Tenancy Act operates to prevent the acquisition of right by a person claiming to be a raiyat at fixed rates or not, in this case occupancy right had been acquired before the Bengal Tenancy Act came into force and was saved by s. 19 of the Act; *Ichhamoy v. Kailash Chandra*, 18 C.W.N. 358.

Submerged land—effect of non-payment of rent.

7. Submerged land :—Under s. 6 of Act VIII B. C. of 1869, a raiyat retained his right of occupancy only so long as he paid rent, but although mere non-payment of rent might not be conclusive evidence of abandonment, non-payment of rent taken with submergence of land is sufficient to indicate an extinguishment of the right of occupancy: *Saligram Singh v. Paluk Pandey*, 6 C.L.J. 149; see also *Hem Nath v. Achgur Siandr*, 4 Cal. 894.

Chur-land—Submersion.

Where certain *chur* lands formed part of a raiyati holding for which the raiyat had paid rent continuously for 12 years and the *char* lands had occasionally been submerged during that period, *held* that the mere part of submersion did not destroy the right of the tenant to acquire occupancy right therein: *Kesho Prasad v. Jirdhan Ojha*, 2 Pat. L.J. 48.

8. Pending suit :—This section and the following section apply to suit pending at the time this Act came into force: *Jogesur v. Aisani*, 14 Cal. 553; see also *Tupsee v. Ramesurum*, 15 Cal. 376.

S. 37 of Act XI of 1859.

9. Revenue Sale Law : Right of occupancy :—The expression “right of occupancy,” in s. 37 of the Revenue Sale Law is not limited to the right that could be acquired under the rules laid down in Act XI of 1859 but also covers “right of occupancy” that might be acquired under law promulgated since 1859: *Sarat Chandra v. Asiman*, 8 C.W.N. 601, s. c., 31 Cal. 725.

10. Raiyat at fixed rent—Occupancy right :—See notes under s. 4, heading no. 7 and 160.

II. Effect of non-payment of rent :—Non-payment of rent by an occupancy raiyat for a period of 12 years before the Bengal Tenancy Act with regard to submerged lands was held sufficient to indicate an extinguishment of the right of occupancy: *Saligram v. Puluk Pandey*, 6 C.L.J. 149, although mere non-payment of rent might not be conclusive evidence of abandonment: *Ibid.* The present Act cannot revive rights which had already been extinguished.

Definition of “settled raiyat.”

20. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as

a raiyat land* situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(Bengal & East Bengal.)

(Bihar.)

(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

There is no such section in Bihar as sub-sec. (1A). Amend-
ment of
section 20
of Act
VIII of
1885.

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

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

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

*It ought to be noted here as to whether a person holding an undivided share of land can acquire a right of occupancy. It often happens in this country that agricultural leases are taken from co-sharer landlords by separate documents. It has been held upon an interpretation of the meaning of the word 'holding' as defined in clause (9) of sec. 3 that a holding is not intended to include an undivided share in a parcel or parcels of land; see *Jari Charan v. Ranjit Singh*, 25 Cal. 917, s. c., 1 C.W.N. 521; *Baidya Nath v. Ilum*, 2 C.W.N. 44; *Haribol v. Tasimuddin*, 2 C.W.N. 680; *Badulla v. Gogan Mollah*, 2 C.L.J. 10; also see notes under sec. 3 clause (9), the word used in sub-sec. (1) of s. 20 is *land* and not 'holding'; it is therefore submitted that these rulings have no application to the determination of the question as to the status of a settled raiyat, and consequently a right of occupancy may be acquired in respect to an undivided share of land; the word used in this section is not "holding," nor the words used are "parcel of land"; the word used in this section is "land"; and the word "land" includes an undivided share of land; it therefore seems that the status of a settled raiyat, and consequently a right of occupancy, may be acquired in respect to an undivided share of land, although the tenancy in such undivided share may not amount to 'holding' as defined in the Act. The principle underlying the decision in the case of *Sartfenussa Khatoon v. Safaraddi*, 16 C.W.N. 276. (note 5)

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

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

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

Headings of Notes.

1. AMENDMENT.
2. EXTENSION OF SS. 20, 21.
3. SUB-SEC. 1.
4. A FIXED RAIYAT IF MAY BE A SETTLED RAIYAT.
5. 12 YEARS.
6. SUB-SEC. 3. WHOSE HEIR HE IS.
7. SUB-SEC. (4).
8. SUB-SEC. (7).
9. CHOWKIDARI CHAKRAN LAND.
10. SERVICE TENURE.
11. VILLAGE.
12. S. 22, CL. 2.
13. USAGE.
14. EFFECT OF SPLITTING UP.
15. THE LAND NEED NOT BE IDENTICAL.
16. OCCUPANCY RIGHT.

I. Amendment :—S. 20 (1A) was inserted by Bengal Act No. I of 1925.*

portion) decided by (D. Chatterjee J.), 21 C.L.J. 592 at p. 595 (confirmed in Letters Patent appeal) will show the correctness of the view of law stated above. That decision explains the meaning of the word "land" as used in s. 105. See notes under s. 105.

Coxe, J., in the case of *Harimohun v. Srimohun*, 18 C.W.N. 168 says as follows :—"How is it possible to take a lease of an undivided share of land for the purpose of cultivation?.....How can any body cultivate a undivided share of land?"

It is submitted that it is possible to grant leases of undivided shares of land for cultivation purposes, and it is usual in this country to do so; take the following examples : X and Y are the owners of a certain estate; X grants a raiyati lease of his one-half share of the land to A; Y grants a raiyati lease of his one-half share of the same plot to B; A and B under these circumstances may enjoy the land either by partition or they may jointly cultivate and divide the crops; if they jointly cultivate and hold the land for twelve years continuously, each of them will be a settled raiyat of the village. Sub. (4) of this section also favours the aforesaid view of the law.

(3) of section 81 of the Government of India Act, Act I of 1925, dated Calcutta the 20th March 1925. In pursuance of

2. Extension of Ss. 20, 21 :—The extension of ss. 20 and 21 Extension. to Orissa has the effect of repealing s. 6 and its proviso (Act X of 1859) : *Brahmanand v. Arjun*, 1 C.L.J. 310.

A tenant of *nij jote* land, was in occupation continuously for more than 12 years after the introduction of ss. 20 and 21 of the Bengal Tenancy Act to Orissa, held that he acquired the status of a settled raiyat : *Rafiuddin v. Iswar*, 17 C.L.J. 585. Effect of introduction of s.s. 20 and 21.

Where a lessee holds over after the expiry of the term of a lease for 5 years and remains in occupation for a period of four years more of agricultural land in a district to which sections 20 and 21 of the B. T. Act were, before the grant of the lease, made applicable, he acquired the status of a non-occupancy raiyat ; the status cannot be retrospectively affected by the subsequent extension of s. 116 : *Sitanath v. Haranarain*, 21 C.L.J. 644, the cases of *Brahmananda v. Arjun*, 1 C.L.J. 310 and *Rafiuddin v. Iswar*, 17 C.L.J. 585 were followed. Status cannot be retrospectively affected.

“The result of the extension of s. 20 and 21 to a district (Cuttuck) was to make section 6 of Act X of 1859 inapplicable, as laid down by this Court in the case *Brahmananda Mahapatra v. Arjun Raut*, 1 C.L.J. 310 which was accepted as good law in *Rafiuddin v. Iswar Rowt*, 17 C.L.J. 585 ; *Sitanath v. Haranarain*, 1 C.L.J. 644. Extension of s.s. 20 and 21.

3. Sub-sec I :—‘Every person’ does not include a vendor, and a raiyat is not entitled to add to his own possession the possession of his vendor : *R. Watson & Co. v. Ranee Shurut Soonduree*, 7 W.R. ‘Every person’ does not include vendor.

of the Local Legislature of Bengal having been assented to by the Governor General on the 14th March, 1925, was published for general information in the Calcutta Gazette.

Statement of objects and reasons in introducing the Bill was stated to be as follows by the Hon’ble Member in charge :—(See Calcutta Gazette 15th January 1925).

In an area of about 390 square miles in the Sundarbans of Khulna district, notifications constituting villages within the meaning of clause (10) of section 3 of the Bengal Tenancy Act were not published until the years 1914 and 1916. In connection with the settlement operations now being carried on in Khulna district the question arose whether tenants who have held lands in the area for more than 12 years have acquired occupancy rights. In a suit between the Port Canning and Land Improvement Company and some of their tenants, the High Court have held that occupancy rights have not accrued, and that in order that an occupancy right may be acquired the land must be held in a village for a period of 12 years, and that if the land has not been comprised in any village in the statutory sense, the condition of acquisition of the occupancy right has not been complied with. Statement of objects and reasons.

The result of this ruling is that, unless legislation be undertaken, tenants who have held lands in this area for more than 12 years cannot be shown as possessing occupancy rights in the record-of-rights which is now being prepared. The object of the Bill is to confer the status of a settled-raiyat on such tenants and thereby to make it possible for the Settlement Officer to show in the record-of-rights that they have occupancy rights. The declarations constituting villages in this area under clause (10) of section 3 of the Bengal Tenancy Act were made with the object of enabling the tenants to acquire occupancy rights and it is considered just that they should not be deprived of these rights by the interpretation which has been given to the existing law by the High Court.

The matter is urgent, because the Director of Land Records reports that the record-of-rights of part of the area affected is now being printed. It has therefore been decided to introduce this Bill without waiting for the introduction of the Bill amending other sections of the Act.

Sd. K. C. Roy.

The 15th December, 1924.

395; *Tara Persad v. Soorja Kanta*, 15 W.R. 152, s. c., 13 B.L.R. 281, note; *Hyder Buksh v. Bhubendro Deb*, 17 W.R. 179, s. c., 13 B.L.R. 276, note; *Kherode Chunder v. D. M. Gordon*, 23 W.R. 237; see also *Narendra Narain v. Ishan Chunder*, 22 W.R. 22: s. c., 13 B.L.R. 274. There is no authority for the proposition that a raiyat by taking a *zuripeshgi* lease of land of which he was previously or then put in possession as a raiyat, loses his raiyati status or divests himself of his right to acquire a right of occupancy in the land: *Ramdhari v. M. A. Mackenzie*, 10 C.W.N. 351.

Zuripeshgi lease.

Indigo concern.

Firm of capitalists.

A right of occupancy can only be recognised in particular individuals but not in an indigo-concern or firm: *F. H. Cannon v. Kylash Chundra*, 25 W.R. 117. A firm of capitalists transferring their rights to the changing members of the firm could not by any length of occupation acquire occupancy rights under Act X of 1859 and Act VIII B. C. of 1869: *Raikomal v. Laidley*, 4 Cal. 957. But it was held in the case of *Laidley v. Gour Gobind*, 11 Cal. 501, that a firm acquired a right of occupancy and the lease was considered to be one to the individual members of the firm.

All these cases have been discussed in the case of *Bajrunji Rout v. H. M. Mackenzie*, 7 C.L.J. 475, in which however the facts are different.

4. If a fixed raiyat may be a settled raiyat :—See notes under s. 4, heading no. 7.

Computation of 12 years after date of notice to quit.

Tenancy originating under Act X of 1859.

Non-occupancy raiyati right heritable.

5. 12 years :—In a case under the Chota Nagpur Landlord and Tenant Procedure Act of 1879, it was held that the completion of twelve years after service of a valid notice to quit would not make a non-occupancy raiyat acquire a right of occupancy: *Nathwin Ram v. Pareshnath*, 14 C.W.N. 297.

A tenant whose tenancy originated at a time when sec. 6 of Act X of 1859 was in force, becomes a settled raiyat by occupation for twelve years ending at a time when the Bengal Tenancy Act is in force: *Rafiuddin v. Iswar Rout*, 17 C.L.J. 585.

6. Sub-sec. 3. Whose heir he is :—From this clause it appears that the holding of a non-occupancy raiyat is heritable, or else, the "heir" would not have been used. See the observations of Brett and Mitra J.J., in *Mohunt Lukhin Narain v. Jainath Panday*, 34 Cal. 516, s. c., 11 C.W.N. 626: See also *Midnapore Zemindary Co., Ltd. v. Hrishikesh*, 18 C.W.N. 829, (F.B.), s. c., 19 C.L.J. 505. See notes under s. 41.

Relinquishment.

7. Sub-sec. (4) :—The relinquishment by one of several joint tenants does not enlarge the rights of others by giving them an interest over the whole holding: *Peary Mohun v. Radhika Mohun*, 5 C.L.J. 9.

Presumption.

8. Sub-sec. (7) :—"The presumption in s. 20 is stated to be for the purpose of that section and in our opinion it cannot be extended for the purpose of s. 180 and that being so the ordinary rule of law would obtain, namely, that the person, who alleged that he had been for twelve continuous years "in possession," would have to prove that allegation." (*Per* Harington and Pratt, JJ., in *Beni Parsad v. Chuturi*, 33 Cal. 444: s. c., 4 C.L.J. 63).

The presumption arises only when the raiyat holds other occupancy holdings under the same landlord. *Per* Rampini, J., in *Kuldip v. Chhatur*, 3 C.L.J. 285.

The presumption cannot be applied to *Diara* lands; *Chikhuri v. Beni Prosad*, 3 C.L.J. 43, notes.

• A suit for rent is not a proceeding under the Bengal Tenancy Act : *Promoda Nath v. Ramani Kanta*, 35 Cal. 331; s. c., 7 C.L.J. 139 ; s. c., 12 C.W.N. 249 ; so the presumption under this section does not arise in a suit for rent : *Mulluk v. Satis Chundra*, 14 C.W.N. 335, s. c., 11 C.L.J. 56. This case was followed in the case of *Jahander Baksh v. Ram Lal*, 14 C.W.N. 470, s. c., 11 C.L.J. 364.

A suit by a tenant to recover lands from the landlord of which he alleges he has been dispossessed is not a proceeding under the Bengal Tenancy Act within the meaning of clause 7, sec. 20 ; *Tara Nath v. Iswar Chandra*, 16 C.W.N. 398 ; s. c., 14 C.L.J. 598. Suit by tenant for recovery of possession.

9. Chowkidari Chakran Land:—A right of occupancy may be acquired in chowkidari chakran land ; *Ram Kumar v. Ram Newaj*, 31 Cal. 1021 ; see notes under s. 181. Chowkidari land.

10. Service Tenure:—See notes under s. 181. Service tenure.

II. Village :—The term “village” is not confined to non-urban areas ; *Syed Hussan v. Govind Lal*, 9 C.W.N. 141. Village.

The word “village” has been defined in cl. (3) of s. 10; where there has been no survey made the Collector with the sanction of the Board of Revenue may constitute any specified area a “village”; where there has been no survey the status of a settled raiyat cannot be acquired in such area which has not been constituted a village.” See notes under s. 3 cl. (10). A list of the areas which have been constituted as villages will be found in Appendix III.

12. S. 22, Cl. 2:—When by operation of sec. 22, Cl. (2) an occupancy-right is extinguished a new occupancy right cannot be acquired in the same tenancy by the co-sharer proprietor by whose action the occupancy-right has ceased to exist : *Ram Lal v. Bhela Gazi*, 37 Cal. 709. Co-sharer—right of occupancy.

13. Usage:—A right of occupancy cannot be acquired by local usage : *Sheikh Latifar Rahaman v. A. H. Forbesh*, 14 C.W.N. 372, at page 375 Col. 2, last line. Local usage.

14. Effect of splitting up :—In the absence of an intention of the parties to that effect the division of one tenancy into two or more has not the effect of creating new tenancies and thus of taking away the pre-existing occupancy right : *Nafarchandra v. Rahaman*, 23 C.L.J. 580 ; see also *Mulluckchand v. Satis*, 11 C.L.J. 56 and *Grant v. Ram Rekha*, 14 C.L.J. 110. Under s. 178 Cl. (1) (b) an occupancy right in existence cannot be taken away by contract : *Nafarchandra v. Rahaman*, 23 C.L.J. 580. Pre-existing occupancy-right

15. The land need not be identical :—But it must be held in the character of a raiyat, to hold it as a raiyat does not necessarily require that the land should be cultivated ; it may be used as homestead within the meaning of S. 182 : *Pradyat Kumar v. Umes Chandra*, 72 I.C. 640, s. c., A.I.R. 1924, Cal. 367 ; (*Mookerjee and Rankin J.J.*). Land must be held in the character of a raiyat but the land need not be identical

See notes under Ss. 20, 21, 116, 160 and 182.

16. Occupancy right:—In Bengal a co-sharer has no more power to confer a right of occupancy on a raiyat than a middleman would have and in Bengal a middleman cannot obtain as a middleman a right of occupancy himself, much less can he create in his

No right of occupancy under a co-sharer.

tenant a right of occupancy in lands held by him as a middleman : *Midnapur Zemindari Co. v. Naresh Narain*, 51 Cal. 631 (P.C.), s. c., 29 C.W.N. 34.

As to acquisition of occupancy right—see notes under s. 4. *Kharag Narayan v. Dwarka Prasad*, 3 Pat. 465, s. c., A.I.R. 1924 Pat. 580.

See notes under s. 178, *Macdonald v. Teknarain*, A.I.R. 1925 Pat. 113.

See notes under s. 3 cl. (5), *Mukbusor v. Raj Lakhi*, 39 C.L.J. 102.

See notes under s. 3 cl. (10), *Janabali v. The Port Canning & Land Improvement Co.*, 40 C.L.J. 167.

See notes under s. 5, *Sheogovind v. Mahipal*, 81 I.C. 321.

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

Settled raiyats to have occupancy rights.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Headings of Notes.

1. LAND HELD BY A TENURE-HOLDER AS A RAIYAT.
2. TICCADAR.
3. STATUS OF A SETTLED RAIYAT.
4. FIXED RAIYAT—RIGHT OF OCCUPANCY.
5. GRANT OR CONTRACT.
6. SUITS PENDING AT THE TIME THE ACT CAME INTO FORCE.
7. TRANSFEREE OF A NON-TRANSFERABLE HOLDING.
8. SUB-SEC. 2—"EVERY PERSON."
9. SUB-SEC. 2 : RETROSPECTIVE EFFECT.
10. HOMESTEAD LAND.
11. 2ND OF MARCH 1883.
12. ZURIPESHGI LEASE BY A RAYAT.
13. VILLAGE.
14. KHAS POSSESSION BY LESSEE : OCCUPANCY RIGHT.
15. RELINQUISHMENT BY ONE OF SEVERAL JOINT OCCUPANCY TENANTS.
16. RIGHT OF OCCUPANCY BY AN UNDER-RAIYAT.
17. OCCUPANCY RIGHT IN AN UNDIVIDED SHARE OF A HOLDING.
18. ACT XI OF 1859.
19. DISTINCTION BETWEEN AN OCCUPANCY RAIYAT AND A SETTLED RAIYAT.
20. RIGHT OF OCCUPANCY ACQUIRED UNDER THE OLD ACT.
21. ORIGINAL PURPOSE OF TENANCY.
22. HOLDING-OVER.

23. ACCRETION.
24. SERVICE TENURES.
25. GHATWALI LANDS.
26. S. 178.
27. ORISSA.

1. Land held by a tenure-holder as a raiyat:—If a person is a tenure-holder in respect of certain lands in a village, the fact that he is a settled raiyat of any particular land in the village will not give him a right of occupancy in the other lands which he holds: *Bujrangi v. M. H. Mackenzie*, 7 C.L.J. 475. If he holds the whole of the lands he holds in a village as a settled raiyat he acquires a right of occupancy in the other lands which he holds as a raiyat: *Ibid.*

2. Ticcadar:—Possession as a *ticcadar* and not as a cultivating tenant does not confer occupancy right: *Stonewigg v. Sheo Rachhaya*, 35 I.C. 622. (Patna case).

An occupancy right cannot be acquired by a person who was in possession as a *ticcadar*. A right of occupancy under the Bengal Rent Act (X of 1859) was a personal right and could not be transferred: *C. H. Edgell v. Biswanath*, 62 I.C. 59, (Ross and Dass J.J.).

3. Status of a settled raiyat:—The mere fact that a person has an occupancy holding in a village does not give him a right of occupancy in his other holdings in the same village unless he is also a settled raiyat, and the status of a settled raiyat cannot be transferred and consequently though every settled raiyat has a right of occupancy, every occupancy raiyat is not necessarily a settled raiyat: *Kuldip v. Chatur*, 2 C.W.N. cccii: s. c., 3 C.L.J. 285.

A settled raiyat of a village is entitled to occupancy right in other lands if he holds these lands as a raiyat: *H. Manners v. Harihar*, 19 C.W.N. 149.

A was a settled raiyat of a village and in the village of which he is a settled raiyat he has land under the terms of a permanent lease at a fixed rate of rent, *held* that A acquired a right of occupancy in the land which he holds at fixed rate and therefore protected from being annulled by a purchaser at a sale for arrears of revenue under s. 37 of the Revenue Sale Law: *Lakhicharan v. Mokar Ali*, 27 C.L.J. 293.

4. Fixed raiyat—Right of occupancy:—The status of a fixed raiyat can be combined with that of an occupancy raiyat: A fixed raiyat may acquire a right of occupancy under ss. 20 and 21, and his interest is a protected interest within the meaning of s. 160: *Sarbeswar v. Bijoy Chand*, 49 Cal. 280., s. c., 24 C.W.N. 15, s. c., 34 C.L.J. 233. (Sanderson C. J. and Richardson J.). But see *Bhutnath v. Surendra*, 13 C.W.N. 1025, s. c., 11 C.L.J. 298. See notes under secs. 4, and 160.

5. Grant or contract:—Rights of occupancy cannot be created by grant or contract; *Kesho Prasad v. Parameswari*, 2 Pat. 414. (Das and Kulwant Sahay, J.J.).

A right of occupancy under the B. T. Act is a statutory right and is not conferred by a gift from a proprietor: *Bindeshwari v. Kesho Prasad*, 31 C.W.N. 74 (P.C.).

6. Suits pending at the time the Act came into force:—This section applies to suits pending at the time the Act came into force; ;

Tenure holder does not get the benefit of this section if he holds raiyati land.

Ticcadar.

Act X of 1859.

Settled raiyat—Right of occupancy.

Occupancy right in lands of a permanent lease.

Fixed raiyat may have a right of occupancy.

No right of occupancy by contract.

Suits pending at the

time of
passing of
the Act.

Jogessur Dass v. Aisani Koyburto, 14 Cal. 553, followed in *Parbuty Chrun v. Komoruddin*, 14 Cal. 556, note (1); *Tupsee Singh v. Ram Sarun*, 15 Cal. 376 (F.B.).

7. Transferee of a non-transferable holding :—Where a non-transferable occupancy holding was sold and the transferee paid rent as *marfaldar* of the former-tenant, he *i.e.*, the transferee may acquire a right of occupancy if he is in possession for twelve years by assertion of a right to possess the land as a raiyat adversely to the landlord. This view seems to have been taken by Chitty and Vincent, J.J., in deciding the case of *Deb Narain v. Baidyanath*; 14 C.W.N. 68.

Sub-section (2) is retrospective in effect.
Act VIII
1869, B.C.

8. Sub-sec. (2)—“Every person.....” to “.....then in force :”—“It is clear from this part of the sub-section that the Legislature provided that a settled raiyat as defined in the Act should be deemed to have acquired a right of occupancy in the land occupied by him as a raiyat in the village of which he is a settled raiyat between the 2nd of March, 1883, and the commencement of the Act, that is to say, the 1st November 1885, not under the new Act but under the Act then in force, that is to say, Bengal Act VIII of 1869. It is clear, therefore, that this part of the section was intended to modify the provisions of Bengal Act VIII of 1869, as regards the class of suits specified therein during the period mentioned above. Then follow words, which in our opinion indicate that the provisions already referred to were to apply to all suits instituted before the Act came into operation, and which had not resulted in a decree. These words are: ‘but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act. That is to say that the retrospective operation provided in the first part of the sub-section should have this exception only, *viz.*, that where a decree or order has been passed by a Court before the commencement of this Act relating to the rights of parties, such decree or order should not be affected by the provisions regarding the retrospective operation of the section. It follows, therefore, that if a suit commenced before the Act came into operation has not resulted in a decree, it would be governed by the section. Therefore, although on general principles a change in the law affecting the rights of parties does not ordinarily govern pending suits, yet, in this particular instance, the Legislature having made a provision to the contrary we are bound to carry out the law.” *Jogessur Das v. Aisani Koyburto*, 14 Cal. 553, followed in *Parbutty Churn v. Komoruddin*, 14 Cal. 556, note (1); see also *Tupsee Singh v. Ram Sarun*, 15 Cal. 376 (F.B.).

Retrospective operation.

9. Sub-sec. 2 : Retrospective effect :—“The first part of the section deals with the case of lands held by a settled raiyat at or after the date from which the Act speaks, that is to say, the date at which it came into operation, and it declares that such holding shall give a right of occupancy. Sub-sec. 2 deals with the case of lands held by a settled raiyat at an early period, namely, between the 2nd of March, 1883, and the commencement of the Act, and it says that such holding shall be deemed to have given a right of occupancy. This sub-section is therefore in express terms retrospective.” *Per Wilson, J.* (Pigot, O’Kinealy and Ghose, J.J., concurring): *Tupsee Singh v. Ram Saran*, 15 Cal. 376; see also *Jogessur Das v. Aisani*, 14 Cal. 553; and Second Appeal No. 2240 of 1886, *unreported*, (Prinsep and Beverley, J.J.).

10. Homestead land:—A settled raiyat acquires a right of occupancy in *bastu* (homestead) and which he holds in the village of which he is a settled raiyat, although he holds the homestead land otherwise than as a part of his holding as a raiyat: *Golam Mowla v. Abdool Sowar*, 13 C.L.J. 255 (Rampini J, sitting singly); there was no appeal against this judgment under the Letters Patent; see observation of the Editor of the Calcutta Law Journal, 13 C.L.J. at p. 257. See notes under s. 182.

11. 2nd of March 1883:—The date on which the motion was made in the Legislative Council for leave to introduce the Bill.

12. Zuripeshgi land by a raiyat:—Neither of the cases, *Bengal Indigo Company v. Raghubar Das*, 24 Cal. 272, and *Ram Khelwan Roy v. Sambhoo Ray*, 2 C.W.N. 758, is authority for the proposition that a raiyat by taking a zuripeshgi lease of a land of which he was previously or then put in possession as raiyat, loses his raiyati status or divests himself of his right to acquire a right of occupancy in that land: *Ramdhari v. M. H. Mackenzie*, 10 C.W.N. 351.

13. Village:—Before the passing of Act I. B. C. of 1907, it was held that this Act applied to all urban areas outside Calcutta: *Syed Hassan v. Gobind Lal*, 9 C.W.N. 141. A right of occupancy could be acquired in urban areas also under Act X of 1859: *Ibid*.

The word "village" has been defined in cl. (10) of s. 3. Where there has been no survey made, an area may be constituted a village by an order of the Collector with the sanction of the Board of Revenue; where no such order has been passed, a right of occupancy cannot be acquired in land in such area which has not been thus constituted a village. See notes under s. 3 cl. (10).

14. Khas possession by lessee: occupancy right:—Where a lessee of lands in the occupation of raiyats who had jote rights obtained khas possession of the lands with the consent of the raiyats for the purpose of indigo cultivation, held that the lessee being merely a landlord in occupation did not acquire occupancy right in the lands and the lessor became entitled to khas possession on the expiry of the lease: *Ram Lachi v. Herbert Cotting Ridge*, 11 C.W.N. 397.

15. Relinquishment by one of several joint occupancy tenants:—A relinquishment made in favour of the landlord by one of several joint occupancy tenants does not enlarge the right of others: *Peary Mohun v. Radhika Mohun*, 8 C.W.N. 315; judgment of Banerjee, J., affirmed in Letters Patent Appeal by Maclean, C. J., Bodilly and Mookerjee, J.J., 5 C.L.J. 9.

16. Right of occupancy by an under-raiyat:—An under-raiyat can obtain a right of occupancy by usage or custom: *Gopal Mondal v. Japai Sankhari*, 46 Cal. 43, 22 C.W.N. 618, s.c., 28 C.L.J. 84; (Fletcher and Shamsul Huda, J.J.); see also *Akhil Chandra v. Husain Ali Sowdagar*, 19 C.W.N. 246, s.c., 18 C.L.J. 262.

See notes under ss. 4 and 48.

17. Occupancy right in an undivided share of a holding:—See notes under s. 3 cl. (9). It is submitted that a right of occupancy may be acquired in an undivided share of land, for the word "land" is not equivalent to "holding"; the word used in ss. 20 and 21 is 'land' and not 'holding.' See footnote under s. 20 where the question has been fully discussed; also see notes under s. 105.

S. 37 of the Revenue Sale Law. Right of occupancy.

18. Act XI of 1859 :—The words “right of occupancy” in s. 37 of Act XI of 1859 are not limited to right of occupancy acquired under Act X of 1859 but extended to a right of occupancy under the Bengal Tenancy Act; *Sarat Chandra v. Asiman Bibi*, 31 Cal. 725, s. c., 8 C.W.N. 601.

Share in a tank.

A share in a tank was held to form an integral portion of an agricultural holding situate on its bank, and it was further held that a right of occupancy could be acquired in such share and when acquired would be protected under s. 37 of the Revenue Sale Law: *Umacharan v. Moniram*, 8 C.W.N. 192. Under Act VIII, B. C. of 1869, a raiyat could acquire a right of occupancy within the meaning of the proviso to s. 37 of the Revenue Sale Law, in a share of an undivided property: *Baidya Nath v. Sudharam*, 8 C.W.N. 751; see also *Jardine, Skinner & Co. v. Rani Surut Soondari*, 3 C.L.J. 140.

Act XI of 1859.

Act VIII B.C. of 1869.

See notes under s. 19.

Onus.

Where a purchaser of an estate under the Revenue Sale Law brought a suit to eject for recovery of some lands which were situated within the ambit of the plaintiff's estate, held that the onus was upon the defendant to shew that he held the land within the meaning of s. 21 of the Bengal Tenancy Act: *Ambika v. Day Gazi*, 10 C.W.N. 497.

Occupancy right may be acquired by purchase.

19. Distinction between an occupancy raiyat and a settled raiyat :—“There is a distinction between an occupancy raiyat and a settled raiyat. An occupancy right may be acquired by purchase but the rights of a settled raiyat can only be acquired by a continuous holding of land in the village for 12 years.” (*Per* Rampini, J., in *Kuldip v. Chhatur*, 3 C.L.J. 285 at p. 287: s. c., 2 C.W.N. cccii). All settled raiyats are occupancy raiyats, but all occupancy raiyats are not settled raiyats; a raiyat who acquires the status of a settled raiyat under s. 20 becomes an occupancy raiyat; 12 years' possession within the meaning of s. 20 is essential to the acquisition of the status of a settled raiyat, but a right of occupancy may be acquired by purchase; suppose A is a settled raiyat and consequently an occupancy raiyat, and suppose his holding is transferable by custom or local usage; B purchases it: as soon as B purchases it he becomes an occupancy raiyat, although he is in possession of the holding for one day; so he is an occupancy raiyat without being a settled raiyat.

Act VIII B.C. of 1869.

20. Right of occupancy acquired under the old Act :—There is nothing in the Bengal Tenancy Act to take away a right of occupancy acquired under leases granted at a time when Act VII, B. C. of 1869, was in force: *Baidya Nath v. Sudharam*, 8 C.W.N. 751: see notes under s. 19.

Original purpose of tenancy.

21. Original purpose of tenancy :—A tenancy originally created for the purpose of cultivation and not collection of rent cannot be converted into a tenure by letting it out to a tenant: *Baidya Nath v. Sudharam*, 8 C.W.N. 751; see also *Mritynjay v. Kenatulla*, 5 C.L.J. 53, but so far as regards a third person the character of the tenancy may be changed: *Mahesh Jha v. Mubhuram*, 6 C.L.J. 522. See notes under s. 5.

Holding over.

22. Holding over :—A right of occupancy can be acquired by holding over after the expiry of a lease: *G. L. Hays v. Ghina Barhi*, 33 Cal. 459.

Accretion.

23. Accretion :—An occupancy raiyat is entitled to the benefit of s. 4, cl. (1) of Reg. XI of 1825 and when there is an accretion to

his holding he is entitled to hold the lands as an accretion to his jote; *Gour Hari v. Bhala Kaibarta*, 21 Cal. 233; *Gobind Manic v. Dina Bandhu*, 15 W.R. 87; *Ali Moolah v. Sahebulla*, 15 W.R. 149; *Bhagabat v. Dur Bijai*, 8 B.L.R. 73: s. c., 16 W.R. 95; but where there is no pre-existing right to the land as an occupancy raiyat no right is annexed to the accretion to it: *Beni Pershad v. Chaturi*, 33 Cal. 444: s. c., 4 C.L.J. 63. See notes under s. 23.

24. Service Tenures:—See notes under s. 181.

25. Ghatwali lands:—Occupancy right cannot be acquired in Ghatwali. ghatwali lands: *Upendra Nath v. Ram Nath*, 33 Cal. 630, but see *Majhi v. Pran Krishna*, 1 C.L.J. 138. See notes under s. 181.

26. S. 178:—An agreement before the passing of the Bengal S. 178. Tenancy Act that the tenant would not acquire a right of occupancy during his life-time does not come within the prohibitory terms of s. 178 (3) Cl. (a) s. 178 (1), cl. (a): *Baul Chandra v. Nistarini*, 33 Cal. 136.

27. Orissa:—A tenant of a *nij-jote* land who was in occupation continuously for more than 12 years after the introduction of ss. 20 and 21 of the Bengal Tenancy Act to Orissa, acquired the status of a settled raiyat: *Rabiddin v. Iswar Rout*, 17 C.W.N. 535.

See notes under s. 20.

Bengal and Bihar.

East Bengal.

***22. (1) When the immediate landlord of an**

***22. (1) When the immediate landlord of an**

Effect of acquisition of occupancy right by landlord.

***LAW OF MERGER**:—"My own impression is that the doctrine of merger does not apply to lands in the Mofussil in this country." *Per* Peacock, C. J. in *Womesh Chander v. Rajnarain*, 10 W.R. 15: Jackson, J., said in the same case as follows:—"I must fully concur in all that has fallen from the Chief Justice in respect of the doctrine of merger. I am not aware of any solid foundation for the opinion that that doctrine is any part of our Mofussil law." See also *Amatoo v. Sheikh Maksud*, 19 C.W.N. 435. Markby, J., is reported to have said in the case of *H. Rushton v. W. L. Atkinson*, 11 W.R. 485, as follows:—".....but upon the question of merger, what the Judge would have to do, assuming the English law to be applicable that would have been not to apply the dry rule of the English Common Law, but the rule as modified by all the equities which an English Court of Chancery would import into the consideration of the case." The doctrine of merger does not apply in this country: *Thomas Savi v. Punchanan*, 25 W.R. 503. It is at least doubtful whether the doctrine of merger applies to lands in the mofussil; (*Per* Jenkins C. J. *Mookerjee J.*, concurring) *Lal Mahomed v. Jogin Sheekh*, 13 C.W.N. 913. "No authority has been shown to us for holding that the doctrine of merger applies to such a case as this in India, that is, that a putni interest must merge in the zemindari interest if they come into the same hands, and we do not think that we should, for the first time, so far as we are aware, apply the doctrine to such a case." : *Jibanti v. Gokool Chander*, 19 Cal. 760; followed in the case of *Harendra Nath v. Harimohon*, 18 C.W.N. 860, but see *Prosonno Nath v. Jogut Chander*, 3 C.L.R. 159; see also s. 111, cl. (d) of the Transfer of Property Act (IV of 1882). A putni interest created after the passing of the Transfer of Property Act is determined on a purchase of the same by the zemindar: *Promotha Nath v. Kali Prosonna*, 28 Cal. 744. On a *shikimi* and *mokurari* interest becoming vested in the same person it was held that the *mokurari* interest merged in the superior tenure: *Surja Narain v. Nanda Lal*, 22 Cal. 212. In this case it was doubtful whether the lease was agricultural. In a case governed by the Transfer of Property Act it was held that the *mokurari* interest merged in the proprietary interest: *Ulfat Hussain v. Gagni Das*, 36 Cal. 802; see also *Surjanarain v. Nandalal*, 22 Cal. 212. All these cases were discussed by Fletcher and N. Chatterjee J. J. in the

Law of merger does not apply to this country. Where the law of merger applies and where

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

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

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

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same.

case of *Harendra v. Hari Mohan*, 18 C.W.N. 860, and it was held that where a *mokurari* tenure has all along been treated as a distinct sub-tenure, there was no merger, by the acquisition of a *putni* tenure and *mokurari* tenure by the same person, apart from the provisions of the Transfer of Property Act.

When a *malguzari* tenure-holder directly under the 16 annas *Zemindar* afterwards took a *mokurari* lease from the *putnidar* of 8 annas 1 ganda *malik*, held that there was no merger: *Amatoo v. Shelkh Muksud*, 10 C.W.N. 435.

Assuming, but not deciding, that the law of merger applied to the *maffusil* before the Transfer of Property Act a *mokurari* lease granted in 1846 did not become merged in a *putni* granted in 1856: *Dulhah Lachhandrati v. Hodhnath Thwari*, 48 I.C. 485.

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

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

(3) In determining from time to time what is a fair and equitable sum under sub-section (2), regard shall be had to the rent payable by the occupancy raiyat at the time of the transfer, and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy raiyats.

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

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

Headings of Notes.

1. AMENDMENTS.
2. OLD LAW.
3. SUB-SEC. (2) : (BENGAL).
4. SUB-SEC. (2) : (EAST BENGAL).
5. EFFECT OF THE AMENDMENTS OF SUB-SECS. (1) AND (2).

*S. 22 as it stood before the passing of Act I (B. C.) of 1907 was as follows :—

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

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

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

S. 22 as it stood before amendment. Effect of acquisition of occupancy right by landlord.

6. APPLICABILITY OF THE SECTION TO TRANSFERABLE OCCUPANCY HOLDING.
7. PROPRIETOR OF A PERMANENT TENURE-HOLDER.
8. IJARADAR OR TICCADAR.
9. PURCHASE BY A CO-SHARER.
10. RIGHTS OF ANY THIRD PERSON.
11. SUB-SEC. (1)—TRANSFER, SUCCESSION OR OTHERWISE.
12. PROPRIETORS IN SEPARATE POSSESSION OF HOLDINGS AS PURCHASERS.
13. PURCHASE BY RAIYAT.
14. RENT SUIT: EFFECT OF A PURCHASE OF A PORTION BY A CO-SHARER.
15. EFFECT OF EXCLUSIVE POSSESSION BY A CO-SHARER PURCHASER.

I. Amendments:—Bengal: The words in sub-sec. (1) in Bengal “such person shall have no right to hold the land as a tenant but shall hold it as a proprietor or permanent tenure-holder (as the case may be)” were substituted for the original words “the occupancy right shall cease to exist.”—In sub-sec. (2) for the words “he shall be entitled” to.....the end of the illustration was substituted for the original words. In sub-sec. (3) after the word “acquire” the words “by purchase or otherwise” were inserted. The former section as it stood before the amending Act I, B. C. of 1907 & Act I of 1908 (E. B. A.), is printed in the foot-note.

East Bengal: For alterations compare the former section printed in the foot-note.

Object of amendment.

The object of the amendment of sec. 22, as explained in the Notes on Clauses of the Bengal Tenancy (Amendment) Bill, 1906, was to counteract the ruling in *Jawadul Haq v. Ramdas*, 24 Cal. 143 and the Full Bench ruling in *Rammohon v. Sheikh Kachu*, 32 Cal. 286 (F.B.). These decisions, it was said, laid down a rule opposed to the policy of the authors of Act VIII of 1885, which was to discourage the acquisition of occupancy holdings by landlords. The provisions of sub-sec. (2) were greatly modified by the Select Committee and in their Report it was observed that “the amendments made by them in the section will give effect to the intention of the framers of the Act, by providing that, where a sole landlord acquires an occupancy holding of his raiyat, the interests of such landlord and tenant merge into a landlord’s interest; and that where one of several co-sharer landlords or joint tenure-holders acquires an occupancy right of a tenant of all the co-sharers or joint tenure holders, such landlord cannot thereby acquire an occupancy right, or by sub-letting, bar the acquisition of raiyati rights by the sub-lessees. At the same time, under the section as modified by us, the landlord will not be prevented from cultivating the land himself, though the holding will not become proprietor’s private land. We have inserted an illustration to make the meaning of the section quite clear. Our attention has been called to a ruling of the High Court (*Ramrup Mahto v. Manners*, 4 C.L.J. 209) to the effect that the word ‘acquire,’ in sub-sec. (3) of section 22, does not include ‘purchase.’ In order to prevent the acquisition of a right of occupancy by an *ijaradar* during the period of his lease through a purchase behind the back of the landlord, we have inserted the words ‘by purchase or otherwise’ after the word ‘acquire.’ ”

2. Old law :—Under Cl. (2) of s. 22 before amendment under Act I (B. C.) of 1907 upon a co-proprietor purchasing an occupancy holding, the holding did not cease to exist but the right of occupancy ceased ;* *Jawadul Huq v. Ramdas*, 24 Cal. 143, s. c., 1 C.W.N. 166, approved of in *Ram Mohan v. Sheikh Kachu*, 32 Cal. 386 (F.B.), s. c., 9 C.W.N. 249, s. c., 1 C.L.J. 1.

In a collectorate partition subsequently made the other co-sharer was allotted the holding in question, held that the previous purchaser could not be ejected : *Basudeo Narain v. Radha Kishen*, [1922 Pat.] p. 55, (Das and Adami, J.J.).

A co-sharer purchaser is not liable to be ejected if on collectorate partition the holding falls to the share of another co-sharer : *Chander Dip v. Mathura*, A.I.R. 1922 Pat. 193 (Jwala Prasad C. J. and Das J.).

An occupancy right was not held to have been merged by the subsequent acquisition of taluki right by the raiyat : *Jogendra v. Shajar Ali*, A.I.R. 1923 Cal. 373 (Mookerjee and Chotzner J.J.).

Where an occupancy raiyat in repayment of *takkavi* loan gave up his holding to the *ijaradar*, held that the transaction amounted to a sale and not an abandonment or surrender : the word "acquire" under the former s. 22 implied the accrual to a raiyati tenancy rights conferred by the statute rather than the transfer of right by another tenant : *Ram Dheyan v. Bhulo Tan*, 72 I.C. 705, (Dawson Miller C. J.).

An *ijaradar* could purchase an occupancy holding during the subsistence of the *ijara* prior to the amendment of s. 22 sub-sec. (3) by the amending Act I (B. C.) of 1907 : *Harrington v. Dwarka Prasad*, [1920 Pat.] p. 11 (Atkinson and Adami J.J.).

Where a tenure-holder purchased a raiyati holding before the Amendment Act of 1907, the holding did not cease to exist by the alteration of the law : *Abdul v. Jalal*, 65 I.C. 584, (Suhrawardy and Cuming J.J.).

3. Sub-sec. (2) (Bengal) :—The alterations made in this subsection have created a great anomaly ; for, it is not laid down anywhere as to what will be the status of a co-sharer (to whom an occupancy holding is transferred) in relation to the other co-sharer ; the illustration shews that when such co-sharer (who is the transferee of the occupancy holding) lets out the land for the purpose of collecting rent the sub-tenant becomes a tenure-holder ; but what is his own position as regards his co-sharer is not clear ; he cannot be a raiyat, for, if he is so, how can his lessee be a tenure-holder ; and if he is a tenure-holder under his co-sharer that would be an anomaly, for the latter never let it out to him as a tenure ; he had let it out to his predecessor as a raiyati holding. But is such co-sharer purchaser a tenant ? It seems to be so, for, "a tenant" means a person who holds land under another person and is.....liable to pay rent for that land to that person [s. 3, clause (3)]. Now such co-sharer transferee according to sub-sec. (2) of s. 22 holds land under his co-sharer and is subject to the payment of rent to the latter. Accordingly he must be a tenant under his co-sharer.

* There will be no merger under the Transfer of Property Act by the purchase by a proprietor of the interest of a tenure-holder unless the proprietary interest and the interest as tenure-holder are co-extensive : *Monmotha v. Mohendra*, 65 I.C. 469, (N. R. Chatterjee and Newbould J.J.).

*Purchase by
a co-proprietor.

Following the case of *Ramlal v. Bhela Gazi*, 37 Cal. 709 it was held that a co-proprietor purchasing an occupancy holding is not a raiyat and the person to whom the co-proprietor settles the land is a raiyat or a tenure-holder as the case may be: *Roshan Ali v. Chandra Mohan*, 50 Cal. 749, s. c. 27 C.W.N. 759, (Walmsley and B. B. Ghose J.J.).

Sub-sec. (2) of Sec. 22 of this Act applies only when there has been a transfer of land in which an occupancy right is shown to exist; *Dhakeshwar v. Gulab Kuer*, 53 I.A. 176; s. c., 31 C.W.N. 341 (P.C.).

S. 22 (2) is not concerned with the raiyat—*Kasht* of a proprietor or permanent tenure-holder which he held before he became proprietor or permanent tenure-holder, but with land the occupancy right in which was transferred to him after he became jointly interested as proprietor or permanent tenure-holder: *Lalji Singh v. Lakshmi Narayan*, 97 I.C. 708 (Jwala Prasad & Macpherson J.J.).

A co-proprietor acquiring an occupancy holding by purchase is entitled to retain possession of the holding on payment of rent to his co-sharers even after the estate in which the land is situate has been partitioned among the co-proprietors. *Jhapsi Sao v. Bibi Aliman*, 5 Pat. 281, s. c., 7 P.L.T. 170. (Das and Ross J.J. Dec. 1925).

Where, after a purchase by a co-sharer, there is a partition between the co-sharers and part of the holding is allotted to the purchaser co-sharer and the remainder to the other co-sharers, the status of the purchaser co-sharer in the part allotted to the other co-sharers is not affected; the interest conferred by section 22 (2) on a transferee co-sharer is not affected merely by his making a settlement with a tenant. *Kirtyanand v. Rampal*, 6 Pat. 134, s. c., 8 P.L.T. 20 (Das and Ross, J.J.). The cases of *Jhapsi v. Bibi Aliman*, 7 P.L.T. 170; *Nandkishore v. Mathura*, 3 P.L.T. 13; *Basudev v. Radha Kishun*, 3 P.L.T. 22—referred to.

4. Sub-sec. (2): East Bengal:—According to this sub-section the co-sharer transferee of an occupancy holding is not a raiyat; this creates the same kind of anomaly as pointed out above in respect to sub-sec. (2) of Bengal.

Under sec. 22 sub-sec. (2) of the B. T. Act applicable to East Bengal, on the purchase of an occupancy holding by the proprietor the raiyati interest is merged in the *taluki* interest and the previous under-raiyats by such change are raised to the position of raiyats: *Hochanuddi v. Abdul*, 90 I.C. 816, s. c., 1926 A.I.R. (Cal.) 158.

S. 22 cl. (2) has no retrospective operation and a co-sharer landlord purchasing a holding before the Amending Act came into operation is entitled to hold the land as a raiyat: *Nabin v. Banga*, 15 I.C. 705; *Sukhoda v. Sasi*, 17 C.W.N. 132 (notes portion).

5. Effect of the Amendments of sub-secs (1) and (2):—“Under both clauses (1) and (2) in their original form the effect was that only the occupancy right and not the entire interest of the transferring raiyat came to an end and the transferee landlord (whether a sole landlord or fractional landlord) could not say that the whole tenancy had been extinguished. Some intermediate interest still remained and derived by the landlord from the raiyat which prevented the landlord from insisting upon any right which he might otherwise have had under section 85 (1) to treat the under-raiyat as

a mere trespasser": *Babu Ram v. Upendra Nath*, 44 I.C. 922 ; (Richardson and Walmsley J.J.). The fractional landlord still appears to acquire from the raiyat some sort of tenancy or intermediate interest with the same effect as regards the right to treat the under-raiyat as a trespasser as before: *Ibid.*

6. Applicability of the section to transferable occupancy holding :—This section applies to transferable occupancy holdings and not to non-transferable holdings: *Grish Chandra v. Kedar Chandra*, 27 Cal. 473, s. c., 4 C.W.N. 569 ; *Lakhi Kant v. Balbhadra*, 19 C.L.J. 400 ; (Jenkins C. J., and Mookerjee J.). See also *Bipradas v. Surendranath*, (Teunon and Newbould J.J.) 43 I.C. 467, s.c., 22 C.W.N. (24 notes portion). Transferable occupancy holdings.

7. Proprietor or a permanent tenure holder :—A jotedar under the Government is not necessarily a "proprietor or a permanent tenure-holder within the meaning of s. 22,"—*Badan v. Rajeswari*, 2 C.L.J. 570 ; where a temporary lessee of a village purchased an occupancy holding it does not merge in his interest but enures to his benefit even on the expiry of his lease: *Ramrup v. H. Manners*, 4 C.L.J. 209 which was explained and doubted in *Raghubar v. Manners*, 13 C.L.J. 568. Jotedar.

8. Ijaradar or Ticcadar :—Where a person came into possession of certain *chur* lands as a raiyat from the year 1884 and continuously held possession till 1908, but from 1890 to 1898 he also held the same land as well as other lands as an *ijaradar*, held that he acquired occupancy right in the land under sec. 180: *Jasimuddin v. Benimadhab*, 17 C.W.N. 881 ; during the currency of the *ijara* the active operation of the possession or a means of acquiring the right of occupancy was suspended, and remained in abeyance, but there was no interruption of the possession by the possession of any other raiyat: *Ibid.* See also *Mukadilal v. Crowdy*, 8 B.L.R., App. 95 ; *Savi v. Panchanon*, 25 W.R. 503 ; *Lal Bahadur v. Solano*, 10 Cal. 45. Ijaradar.

An *ijaradar* cannot acquire a right of occupancy in any land comprised in the *ijara* by purchase or otherwise: *Raghubar v. H. Manners*, 13 C.L.J. 568: the case of *Ramrup v. H. Manners*, 4 C.L.J. 209 was doubted and explained in the case in 13 C.L.J. 568.

An *ijaradar* who purchases an occupancy holding and settles the same with another, the sub-tenant is an under-raiyat: *Sheonandan v. Rambit*, 15 C.L.J., 647. An *ijaradar* who purchases in execution of a decree for rent an occupancy holding is in the position of a raiyat and his under-tenant an under-raiyat: *Mehdial v. W. M. Grant*, 15 C.L.J. 54 notes.

A *ticcadar* is liable to eviction after the expiry of the period of his lease, even though it is found that he was a cultivating raiyat with respect to the lands of the *ticca* prior to the *ticca* ; his interest as a raiyat became merged into the rights he acquired under the lease: *Manners v. Satroghan*, 20 C.W.N. 800. Ticcadar
—Merger.

Where after the expiry of an *ijara* the landlord brought a suit to eject a tenant who was inducted on the land by the *ijaradar* after having purchased a holding under the *ijara*, held that having regard to cl. (3) the holding continued and that the tenant sought to be ejected was an under-raiyat: and a notice to quit was necessary under s. 49 cl. (b): *Nayanjan Bibi v. Durga Das*, 33 C.L.J. 575, (Teunon and Newbould J.J.).

9. Purchase by a co-sharer :—Where possession can be referred to a lawful title, it cannot be said that it was illegal and that it was adverse to a co-owner. In order to have the statute of limitation run against a co-owner, there must be actual ouster or some act equivalent to ouster. Where no one of the co-sharers had a right to take actual possession of the land and where he purchased the non-transferable occupancy right ; *held* such purchase did not confer any title on him, and when he went into possession, such possession was illegal as against his co-sharers and he can acquire limited interest by adverse possession : *Bhairabendra v. Rajendra*, A.I.R. 1924, Cal. 45. (Walmsley and B. B. Ghosh, J.J.).

10. Right of any third person :—These words mean rights which are valid ; so a landlord purchasing the holding of a raiyat in execution of a decree for arrears of rent is entitled to take *khas* possession by ejecting an under-raiyat whose lease is not created by a registered instrument as provided in s. 85 ; the rights under such an under-raiyati lease are not protected by sub-sec. 1 : *Peary Mohun v. Badul Chandra*, 28 Cal. 205, s. c., 5 C.W.N. 310. Where a landlord in execution of a decree for arrears of rent put to sale a raiyati holding, he is entitled to eject an under-raiyat who held under a permanent lease under the raiyat, and the under-raiyat is not protected by s. 22 sub-sec. (1) : *Gangadhar v. Rajendra Nath*, 17 C.W.N. 860 (Jenkins C. J., and Ray J.) ; see also *Ashutosh v. Banomali*, 19 C.W.N. 412, s. c., 18 C.L.J. 252 : but if a stranger becomes the purchaser at a sale in execution of a decree for arrears of rent it is necessary for him to annul the incumbrance by a notice under s. 167 : *Jankhi v. Prabhasini*, 44 Cal. 178 at p. 189. But a landlord who purchases an occupancy holding at a private sale cannot eject an under-raiyat existing on the land without a notice to quit under the provisions of s. 49 of the Act, although the occupancy holding merges in the landlord's interest : *Amirulla v. Nazir*, 34 Cal. 104 : s. c. 3 C.L.J. 155. But no notice to quit is necessary where a raiyat surrendered his holding and the landlord who was a jotedar under Government wanted to eject the under-raiyat set up on the land by the raiyat without the landlord's consent ; *Badan v. Rajeswari*, 2 C.L.J. 570. The third person includes every person interested other than the transferer and the transferee : *Sitanath v. Pelaram*, 21 Cal. 869.

Where a person claimed both the rights of a tenure-holder and of an occupancy raiyat, *held* that the two interests not having been kept alive and the occupancy right having been treated as no longer existent he could not turn round and set up the latter right to the detriment of the auction-purchaser of the tenure-right : *Promotha Nath v. Kishore Lall*, 21 C.W.N. 304.

"The landlord who purchases at a sale in execution of a decree for money is in no better position than the landlord who purchases under a private alienation. In both cases the purchaser is the purchaser of the right, title and interest of the raiyat" (Per Richardson J., Walmsley J., agreeing) *Babu Ram Dheng v. Upendra Nath Koley*, 44 I.C. 922.

A co-sharer landlord by purchasing a non-transferable occupancy holding in execution of a decree for his share of the rent cannot retain exclusive possession as against his co-sharer landlord : *Biprodas v. Surendra*, 43 I.C. 467 (Teunon and Newbould, J.J.).

Rights
referred to
are valid

S. 49

Right of
an under-
raiyat.

Notice
to quit.

Interests
not kept
alive.

Purchase by
a co-sharer
landlord.

A co-sharer landlord purchasing the entire holding in execution of a decree for rent for his share of the rent and re-settling the entire holding to the tenant is not entitled to the entire rent, if he cannot secure to the tenant peaceful possession and the tenant continues to be liable to the other co-sharer landlord for the latter's proportionate share of rent: *Naranarain v. Kali Mohan*, 43 I.C. 47; (Fletcher and Newbould J.J.).

It was held in the case of *Stonewigg v. Dwarkanath*, 45 I.C. (Dawson Miller C. J. and *Jwala Prasad J.*) that cl. (2) of s. 22 was intended to prevent a co-proprietor from acquiring occupancy rights in the lands transferred to him: (the case of *Ramlal v. Bhelagazi*, 37 Cal. 709, s. c., 14 C.W.N. 814, s. c., 12 C.L.J. 15 was relied on).

Where a landlord purchased an occupancy holding in execution of a decree for rent, held following the principle of the case of *Akhil Chandra v. Hasan Ali*, 19 C.W.N. 246 that the occupancy holding still continued to exist: *Yakub Ali v. Meajan*, 43 Cal. 164, when in such a case the landlord after his purchase sold the raiyati right to another person and who also took a lease from the landlord, held that the purchaser from such person was entitled to eject upon notice the under-lessee who had been brought upon the land by the mortgagee of the original tenant; such under-lessee continued to be an under-raiyat: *Ibid.*

Ejectment
of under-
lessee.

II. Sub-sec. (I)—Transfer, succession or otherwise:—The expression “or otherwise” as used in the section means “or in a similar way”; the words “transfer, succession or otherwise” do not mean and include a “surrender”: *Badar v. Rajeswari*, 2 C.L.J. 570. The words “transfer, succession or otherwise” do not include the case of the vesting of the interest in the landlord on the death of an occupancy raiyat without heirs: *Mukta Keshi v. Pulin Behari*, 13 C.W.N. 12: s. c., 8 C.L.J., 324: the expression “otherwise” means “in a similar way: *Ibid.* so where an occupancy raiyat dies without heirs the landlord gets it free from all incumbrances created on it by the raiyat in favour of a third person: *Ibid.*

Transfer &c.
does not
include
surrender,

nor devolu-
tion after
death.

12. Proprietors in separate possession of holdings as purchasers:—Where certain co-sharer zemindars were in separate possession of separate portions of the land comprised in the zemindari and purchased raiyati holdings and were in separate possession of them, held that there was no relationship of landlord and tenant: *Girindra v. Sreenath*, 3 C.L.J. 141.

Landlords
in separate
possession,
effect of
purchase

13. Purchase by a Raiyat:—Where a raiyat acquires temporarily the interest of the tenure under which the raiyati holding is situated, held that he ceases to hold the land as a raiyat: *H. Mannars v. Satroghan*, 36 I.C. 178.

Raiyat's
temporary
interest as
tenure-
holder.

Where an occupancy raiyat acquires a proprietary right to only a share in the estate, there is no merger: *Atulchandra v. Mrityunjoy*, 3 Pat. L.J. 427 (Mullick and Atkinson, J.J.).

Share.

Where an occupancy raiyat purchased the superior tenure and brought a suit for ejectment against the purchaser from the under-raiyat of the holding, held that the effect of the purchase was to vest the holding in the plaintiff subject to the limitation that the occupancy right ceased to exist, and not that the holding itself ceased to exist: *Akhil v. Hasan Ali*, 19 C.W.N. 246. In sub-sec. (1) a distinction is made between “occupancy holding” and “occupancy right” and when the occupancy holding ceases to exist, it does not follow that

the holding also vanishes: *Ibid.* See also *Yakub Ali v. Meajan*, 43 Cal. 164.

14. Rent-suit—Effect of a purchase of a portion by a co-sharer :—S. 22 (2) : One co-sharer is entitled to bring a suit for the entire rent payable to him and the other co-sharers, when the others do not join in the suit. He cannot, however, maintain the suit for his share only, in the absence of proof of such an arrangement between himself, his co-sharers and the tenants: *Ram Ratan v. Jang Bahadur*, 62 I.C. 47 (Jwala Prosad J.). The right of a co-sharer to bring a suit for the entire rent is not affected by one co-sharer purchasing a portion of the holding. *Ibid.*

15. Effect of Exclusive possession by a co-sharer purchaser :—A co-sharer purchasing an occupancy holding, if he keeps exclusive possession, is bound to pay fair and equitable rent to the other co-sharer: *Purna Chandra v. Mathura Mohun*, 36 C.L.J. 89.

Incidents of occupancy-right.

Rights of
raiyyat in
respect of
use of land.

23. When a raiyyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Headings of Notes.

1. INCIDENTS OF OCCUPANCY RIGHT.
2. TREES.
3. TRANSFERABILITY OF OCCUPANCY HOLDINGS: SUMMARY OF THE LAW LAID DOWN BY THE FULL BENCH IN THE CASE OF DAYAMOYEE.
4. FULL BENCH CASE OF DAYAMOYEE AS MODIFIED BY THE SPECIAL BENCH CASE OF CHANDRA BENODE.
5. USAGE OR CUSTOM TO TRANSFER OCCUPANCY HOLDINGS.
6. RIGHT TO TRANSFER BY SALE.
7. EJECTMENT FROM A PART.
8. EJECTMENT SUIT—ESTOPPEL.
9. RIGHT TO KHAS POSSESSION BY LANDLORD ON TRANSFER OF OCCUPANCY HOLDING.
10. SALE AND SUB-LEASE.
11. SURRENDER AFTER TRANSFER.
12. COMPULSORY SALE: EXECUTION OF MONEY-DECREE.
13. INVOLUNTARY TRANSFER WITH CONSENT OF LANDLORD.
14. MORTGAGE OF OCCUPANCY HOLDINGS AND SALE IN EXECUTION OF MORTGAGE DECREE.
15. TRANSFER BY USUFRUCTUARY MORTGAGE.
16. PRESUMPTION.
17. WHERE QUESTION OF TRANSFERABILITY CAN OR CANNOT BE RAISED.
18. RIGHT OF TRANSFEREE.
19. RECOGNITION OF TRANSFEREE BY LANDLORD.
20. WHAT DOES NOT AMOUNT TO RECOGNITION.
21. PARTY: SUIT FOR KHAS POSSESSION.
22. S. 188 DOES NOT APPLY TO A SUIT FOR EJECTMENT ON THE GROUND OF UNAUTHORISED ALIENATION.

23. LIMITATION IN REGARD TO A SUIT FOR KHAS POSSESSION AGAINST THE TRANSFEREE OF AN OCCUPANCY RAIYAT.
24. RIGHT TO ACCRETION.
25. RIGHT TO REDEEM A MORTGAGE.
26. EXCAVATION OF A TANK.
27. DENIAL OF LANDLORD'S TITLE.
28. UNFIT FOR THE PURPOSE OF TENANCY.
29. WHICH DOES NOT MATERIALLY IMPAIR THE VALUE OF THE LAND.
30. RELINQUISHMENT BY A CO-TENANT.
31. CONSTRUCTION OF BUILDING.
32. RIGHT OF SUIT.
33. REGULATION VIII OF 1819: INCUMBRANCE.
34. RIGHT TO BEQUEATH.
35. RIGHT TO SHARE IN THE COMPENSATION UNDER THE LAND ACQUISITION ACT.
36. LAND ACQUISITION.
37. CHAPTER VII A.
38. MISCELLANEOUS CASES.

I. Incidents of occupancy-right:—Some of the principal Incidents. incidents are as follows:—An occupancy holding is heritable (see sec. 26) and transferable by custom and usage (see sec. 183 and notes thereunder; also see notes under this section): it may be surrendered (sec. 86); improvements may be made on the holding by erecting a dwelling-house, digging a well, &c., (see secs. 76, 77); an occupancy raiyat can grant sub-leases under certain restrictions; (see section 85); and an occupancy right cannot be annulled by a purchaser of the superior tenure at a sale in execution of a decree for arrears of rent; (sec. 160).

Julkur:—An occupancy raiyat has also the right to fishery in the water over it when there is inundation unless the right has been restricted in the grant or when the landlord has acquired such right by adverse possession or custom: *Henry Hill v. Shebaj*, A.I.R. 1922 Pat. 9 (Mullick and Ross J.J.); the case of a tenure-holder is even stronger, he possesses all the rights of a landlord: *Ibid*.

Nothing in a contract made after the passing of this Act shall take away or limit the right of an occupancy raiyat to use land as provided by this section—see sec. 178 (3) (b).

2. Trees :

Trees.

Sub-Headings—(i) *Right of a permanent-tenure-holder or of raiyat at fixed rate*; (ii) *Custom; Burden of proof*; (iii) *Custom; Reasonableness*; (iv) *Property in trees*; (v) *Landlord's right to cut down trees*; (vi) *Acquiescence: Incumbrance*; (vii) *Limitation in a suit to recover compensation*; (viii) s. 188: *Suit for damages for value of trees*; (ix) *suit for price of trees cut by tenant if lies in small cause court*; (x) *Agacha or valueless tree*; (xi) *Trees of a prescribed size*; (xii) *Phul-Phal i.e., flowers and fruits: shellac*; (xiii) *Injunction*; (xiv) *Non-agricultural lease*.

(i) *Right of a permanent tenure holder or of a raiyat at fixed rate*: A permanent tenure-holder is entitled to what he grows upon the land: *Sardar Singh v. Emperor*, 44 I.C. 451; s. c., 4 Pat. L.W. holder. 291. (Per Jwala Prasad, J.).

A raiyat holding at a fixed rent or rate of rent has the right to

Raiyats
holding at
fixed rate.

cut and appropriate trees : *Radhika Nath v. Samir Fakir*, 21 C.W.N. 636 (Fletcher and Richardson J.J.) ; see also *Sharada Sundari v. Gonee Sheikh*, 10 W.R. 419 and *Goluk Rana v. Nubo Sundari*, 21 W.R. 344.

Burden of
proof to cut
down trees
—custom.

(ii) *Custom : Burden of proof* : The burden of proof lies on the landlord to establish a custom prohibiting the cutting down of trees by an occupancy tenant and not on the tenant to establish the contrary : *Nafar Chandra v. Ram Lal*, 22 Cal. 742 ; *Nafar Chandra v. Hazari Nath*, 22 Cal. 748, note ; *Giriza Nath v. Mia Ulla*, 22 Cal. 744, note ; *Samsar v. Lochin Das*, 23 Cal. 853 ; and *Meyo Lall v. Gobindo Sunder*, 41 I.C. 679 ; *Sardar Sing v. Emperor*, 44 I.C. 451 ; but it was held in the case of *Pyari Lal Pal v. Narayan Mandal*, 22 Cal. 746, note, that the onus is upon the tenant to prove a custom to cut down a mango tree.

Cutting down trees is one of the uses of land provided by sec. 23 B. T. Act. If an occupancy raiyat covenants that he will not be entitled to cut down trees, where there is no custom to the contrary, that contract will not take away his right to cut down trees. It is otherwise with regard to the right of appropriating trees. If there is a custom that raiyats can appropriate trees on their holdings, sec. 178 (3) (b) is no bar to the raiyat's entering into a covenant with the landlords that they would not appropriate trees cut down. If kabulyats simply contain a covenant by the tenant not to cut or appropriate trees, that covenant does not amount to any evidence of custom : *Lakshinath v. Nabadwip Chandra*, 31 C.W.N. 192 (B. B. Ghose and Cammiade J.J.).

Reasonable-
ness or un-
reasonable-
ness of
custom—
a question
of law.

(iii) *Custom ; Reasonableness* : The reasonableness or unreasonableness of a custom is a question of law, and a customary right to cut and appropriate timber trees is not unreasonable : *Gurai Kar v. Rani Kuaroni*, 19 C.W.N. 1188. In order that a custom may be valid it must be reasonable and certain ; if the validity of a custom is challenged on the ground, that it is against reason, the reason referred to is not to be understood as meaning every unlearned man's reason, but artificial and legal reason, warranted by authority of law. A custom which is prejudicial to a class and is beneficial only to a particular individual is repugnant to the law of reason : *Sibnarain v. Bhutnath*, 45 Cal. 475 ; s.c., 22 C.W.N. 422 ; s.c., 28 C.L.J. 148, (Mookerjee and Walmsley J.J.).

Property
in trees—
custom.

(iv) *Property in trees* : The property in the trees is by the general law vested in the zemindar ; his proprietary rights are subject to modification, or it may be to complete extinction by custom ; but failing the proof of such a custom, his right, as it existed before the passing of this Act, seems to subsist unimpaired, and the onus is upon the tenant to show that he is entitled by local custom to appropriate the trees when felled.—*Nafar Chandra v. Ram Lal*, 22 Cal. 742 ; *Sitab Rai v. Dubal Nagesia*, 6 C.L.J. 218 ; *Nuffer Chandra v. Nundo Lal*, 22 Cal. 751, note ; *Kausalia v. Gulab Kuar*, 21 All. 297 ; *Ganga Dei v. Badam*, 30 All. 134 ; *Ruttonji Edulji v. The Collector of Tanna*, 11 M.I.A. 295 ; *Meyo Lall v. Gobinda Sunder*, 41 I.C. 679 ; but where a lease was given for the express purpose of clearing and bringing the land under cultivation and the proprietary right was conferred in the entire mouzah by the lessors upon the lessee, it was held that the lessee had the right to cut and appropriate the trees.—*Monmohini v. Raghoonath*, 23 Cal. 209.

Whatever the tenant (be he a tenure-holder or lessee) grows upon the land, he is entitled to it: *Sardar Singh v. Emperor*, 4 Pat.L.W. 291; s.c., 44 I.C., 451 (Jwala Prasad J.).

It is well settled that property in trees is by the general law vested in the Zemindar, the tenant is entitled to cut down trees, provided there is no local custom to the contrary, but he can appropriate the trees when felled only if such appropriation is sanctioned by local custom; *Prodyote Kumar v. Gopi Krishno*, 37 Cal. 322, at p. 327, s.c., 14 C.W.N. 487, s.c., 11 C.L.J. 209; see also *Nafar Chandra v. Ramlal*, 22 Cal. 742, *Sitabrai v. Dubal*, 6 C.L.J. 218, *Kausalia v. Gulab Kuar*, 21 All. 227, *Ganga Dei v. Badam*, 30 All. 134, *Ruttonji Edaljee v. Collector of Tanna*, 11 M.I.A. 295, and *Honywood v. Honywood*, L.R. 18 Eq., 306.

Property in trees—
Right to cut down trees.

As a general rule the property in timber growing on a tenant's holding vests in the zemindar, and the tenant has no right to cut and remove such timber; but as a general rule also the Zemindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding so long as the relation of landlord and tenant subsists; *Ganga Dei v. Badam*, 30 All. 134; see also *Sheikh Abadul v. Dalaram*, W.R., 1864, p. 367.

Property to timber growing on a tenant's holding.

In the case of non-permanent tenancies not governed by the B. T. Act, the law established by the authorities is that before the T. P. Act was passed, the property in the trees was in the landlord and the tenant had the right to them only if there was any custom or usage to the contrary. In respect of such tenancies the property in the trees would be in the landlord whether the trees were grown by the tenant or were on the land at the time of the lease: *Kedar Nath Bose v. Govinda Chandra Das*, 32 C.W.N. 366 (Suhrawardy and Graham J.J.); (The case of *Nafar Chandra v. Ram Lal*, 22 Cal. 742 at 750 followed, and the case of *Mofiz Sheikh v. Rasik Lal*, 37 Cal. 815 distinguished and dissented from). In the case of tenancies created after the T. P. Act and governed by that Act (the ownership of trees is in the tenant except of those standing on the land at the time of the lease. The prohibition contained in Sec. 108, cl. (o) of the T. P. Act against felling timber applies only to timber that stood on the land at the time of the lease; the lessee is entitled under cl. (h) of that section to timber subsequently grown: *Ibid*.

Tenancies before the Transfer of Property Act.

In the absence of a custom to the contrary, the right to appropriate any trees on the land after they have been cut down is in the landlord; this is quite a different thing from the right to cut down trees: *Mahomed Hamidar v. Ali Fakir*, 10 C.L.J. 25; the onus to prove local custom to the contrary is on the tenant: *Ibid*. See also *Meyon Lall v. Gobinda Sunder*, 41 I.C. 679.

Custom—
Right to appropriate trees.

The ordinary law is that the tenant has the right to cut but the landlord the right to appropriate trees: *Janki Koer v. Saudagar*, [1920 Pat.] p. 177, (Mullick and Sultan Ahmed J.J.).

Right to cut and appropriate trees.

The tenant has to prove an exception to the general law in the form of local custom entitling him to the timber of the trees. If he does this by producing the record-of-rights this throws the burden on the landlord; *Ramharichan v. Biranji*, A.I.R. 1923 Pat. 295 (Ross J.).

Property in trees or in that which is likely to become timber is in the landlord, and the property in bushes in the tenant; if no custom is set up and proved the case must be governed by the general law.

modified by admissions: *Rameshwar v. Basudev*, 1923 Pat. 95, (Das and Ross J.J.); bamboos are timber in as much as they are used in building and repair of houses: *Ibid*.

Portion of the tree on stranger's property.

The owner of the property where the tree stands is bound to remove that portion of the tree which has fallen on stranger's property and if he does not do so the stranger can remove it himself: *Mahabali v. Manu Mandal*, A.I.R. 1924 Pat. 416, (Bucknill and Kulwant Sahay J.J.). The case of *Holder v. Coates*, [1827] 31 R.R. 724 referred to.

Landlord's right to cut down trees.

(v) *Landlord's right to cut down trees*:—In the absence of special agreement a tenant has, as against his landlord, a right to insist that so long as his tenancy continues the landlord shall not cut down trees standing on the tenant's holding: *Badam v. Ganga Dei*, 29 All. 484; see also *Deokinandun v. Dhian Singh*, 8 All. 467; *Kausolia v. Gulab Kunder*, 21 All. 297; *Ruttonji v. The Collector of Tanna*, 11 M.I.A. 295.

Right to appropriate trees,

(vi) *Acquiescence: Incumbrance*:—When a landlord acquiesces in a certain course of conduct by his tenants, for instance, an appropriation by them of the trees in their holding and such acquiescence as led to the growth of a custom or usage which is binding upon him, the position of the parties is the same as if the landlord has expressly granted to them a right to appropriate the trees; *Prodyote Kumar v. Gopi Krishno*, 37 Cal. 322 at p. 329; s.c., 14 C.W.N. 487; s.c., 11 C.L.J. 209.

an encumbrance under Reg VIII of 1819.

A customary right of this description in favour of a resident and hereditary cultivator must be regarded as a bona-fide engagement with him which the auction purchaser at a putni sale is not entitled to also abrogate; *Ibid* at p. 330. A customary right to cut and appropriate trees is however an incumbrance within the meaning of sec. 11 of Reg. of 1819, *Ibid*, at pp. 328, 329.

Limitation

(vii) *Limitation in a suit to recover compensation*:—The period of limitation for a suit to recover compensation for removal of trees after they have been cut down is that mentioned by art. 48 or 49 of Sch. II of the Limitation Act (XV of 1877) and not that in art. 36: *Mohamed Hamidar v. Ali Fakir*, 10 C.L.J. 25; see also *Mangan Tha v. Dulhin Gulab Koer*, 25 Cal. 692.

S. 188.

(viii) *S. 188: Suit for damages for value of trees*:—S. 188 of the Bengal Tenancy Act has no application to a suit by a co-sharer landlord against an occupancy raiyat for damages for value of trees alleged to have been improperly cut and appropriated; *Fakir Chandra v. Alas Bibi*, 15 C.L.J. 225.

(ix) *Suit for price of trees cut by tenant if lies in Small Cause Court*:—A suit by landlord for price of trees cut by tenant without having any right to do so and without the permission of the landlord, is not excluded from the cognisance of the Court of Small Causes under the provision of Art. 35 cl. (ii) Schedule II of the Provincial Small Cause Courts Act.

The fact that such a suit which was valued at less than Rs. 100/- was tried by a Munsiff vested with the powers of a Small Cause Court Judge to try suits up to the value of Rs. 100/-, in his ordinary jurisdiction, did not take away the prohibition of an appeal contained in the Small Cause Court Act, and hence no appeal lay from his decision: *Radha Ballabh v. Panchkari*, 46 C.L.J. 552. The case of *Mohini v. Sankar*, 39 C.L.J. 532 was followed.

(x) *Agacha or valueless trees*:—When a raiyat cut down and appropriated some *agacha* trees, held that the zemindar did not suffer any damage and had no cause of action—*Samsar v. Lochin*, 23 Cal. 854. A tamarind tree is not an *agacha* or a shrub, and a landlord is entitled to its value if it is cut and appropriated by a tenant having no right to do so; *Nilmoni v. Mothura*, 5 C.L.J., 413.

(xi) *Trees of a prescribed size*:—A grant under which the grantee becomes entitled to cut and remove during a specified period trees which might during that period attain a prescribed size (whether it creates an interest in land or not) is a grant of forest rights within the meaning of s. 193 of the Bengal Tenancy Act: *Bande Ali v. Amud Sarkar*, 19 C.W.N. 415.

(xii) *Phul Phal* (फूलफल) i.e. flowers and fruits: shellac:—A lessor reserved property in the trees growing on the leasehold land and the lessee was prohibited from taking them away; the latter was given enjoyment of the *phul phal* (flowers and fruits) of the trees only at the lessor's permission, held that this ownership did not carry with it a right to go on the lessee's land to cultivate shellac on the trees reserved: *Rai Charan v. Kanai Kumar*, 24 C.L.J. 21, (Sanderson C. J., and Woodroffe J.). Fruits and flowers of the trees would in the ordinary meaning of the word include the natural products of the trees: *Ibid.* (Per Sanderson, C.J.).

(xiii) *Injunction*:—Where an occupancy raiyat could not prove a special custom entitling him to appropriate the timber growing on the land and a perpetual injunction was granted to the landlord restraining the tenant from cutting down and appropriating the trees growing on the holding, held that the injunction granted was much too wide and that the landlord's right would be amply protected if a simple declaration were made that the tenant was not entitled to appropriate any tree felled by him and growing on the land: *Meya Lall v. Gobinda Sundar*, 41 I.C. 679 (Fletcher and Smither J.J.).

(xiv). *Non-agricultural lease*:—See notes under subheading (iv) at p. 165.

3. Transferability of occupancy holding: Summary of the law laid down by the Full Bench in the case of Dayamayi*:—In the Full Bench cases of *Dayamayi v. Ananda Mohan* (appeal from order 455 of 1907), *Sheikh Azim v. Golok Singh* (Second appeal 2388 of 1908) and *Ambika Charan v. Ram Charan*, (Second appeal 2379 of 1908), 42 Cal. 172; s.c., 18 C.W.N. 971; s.c., 20 C.L.J. 52; their Lordships (Jenkins C.J., Stephen J., Woodroffe J., Mookerjee J., and Holmwood J., 2 June 1914) laid down a summary of the law on the subject as to the question of transferability of occupancy holdings; their Lordships say as follows:—

"The weight of modern authority establishes the following propositions regarding the transfer for value of occupancy holdings apart from custom or local usage:

"(1) The transfer of the whole or a part is operative as against the raiyat.

"(a) where it is made voluntarily,

* The rule laid down in the Full Bench case of *Dayamayi v. Ananda Mohan* has to a certain extent been modified by a later Special Bench case by seven Judges: See *Chandra Binode v. Sheikh Ala Buksh*, 48 Cal. 184, which is discussed in heading No. 4.

Summary
of law laid
down by the
Full Bench
Case of
Dayamoyi.

“(b) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside.

“A sale is made involuntarily where it is in execution of a money-decree, but not of a decree founded on a mortgage or charge voluntarily made.

“(2) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat, provided the landlord has given his previous or subsequent consent. Where the transfer is a sale of the whole holding, the landlord, in the absence of his consent, is ordinarily entitled to enter on the holding ; but where the transfer is of a part only of the holding, or not by way of sale, the landlord, though he has not consented, is not ordinarily entitled to recover possession of the holding, unless there has been (a) an abandonment within the meaning of sec. 87 of the Bengal Tenancy Act, or (b) a relinquishment of the holding, or (c) a repudiation of the tenancy.*

“Whether there has been a relinquishment or repudiation or not, depends on the substantial effect of what has been done in each case.

“(3) The transfer of the whole or a part is operative as against all other persons, where it is operative against the raiyat.

“Applying then these propositions to the questions propounded, we answer them as follows :—

QUESTIONS.

ANSWERS.

“Questions in A. O. 455 of 1907 :—Is a person, who without the landlord's consent purchased from a raiyat, the whole or a portion of an occupancy holding, which is not transferable by local custom or usage, entitled to apply under sec. 244 of the Civil Procedure Code as a representative of the raiyat to have a sale of the holding in execution of a decree for arrears of rent set aside on the ground of fraud?

“(1) The question in the appeal from Order No. 455 of 1907 is answered in the affirmative. We accordingly hold that the Appellant is a person whose immovable property has been sold and is a representative of the judgment-debtor under sec. 244 of the Civil Procedure Code of 1882. This appeal must, therefore, be allowed and an order made as prayed.

“Question in Second appeal 2388 of 1908 :—The question, whether in the case of a transfer of a portion of an occupancy holding, such transfer not binding the landlord, unless made with his consent, the transferee can by suit recover possession from the landlord who has forcibly dispossessed him.

“(2) The question in Appeal from Appellate Decree No. 2388 of 1908 is answered in the affirmative. The decree of the lower Appellate Court is set aside and a decree will be passed in favour of the Plaintiff for possession.

* A lessee from a co-sharér landlord of any occupancy raiyat can question transferability of an occupancy holding : *Rasik Mandal v. Kaimi Gazi*, unreported Second Appeal No. 1341 of 20 (Newbould and Rankin J.J., 14 June 1923).

"Questions in second appeal 2379 of 1908:—(i) Whether a right of occupancy which is not transferable by custom or local usage is a right which can be transferred at all.

"(ii) If not, whether the holding apart from the right of occupancy can be transferred.

"(iii) In either cases whether the validity of the transfer can be questioned by any person other than the landlord of the holding.

"We would only add that the uncertainty as to the transferability of holdings has been one of the most fruitful sources of litigation, and is urgently necessary that it should be set at rest by the legislature."

It seems that the Full Bench case of *Dayamayi* does not lay down any new rule of law; at the commencement of their Lordships' judgment they say that "*the weight of modern authority establishes the propositions*" which they have laid down. It must however be taken that such of the former rulings which laid down rules contrary to the Full Bench have now been over-ruled. It is submitted that in order to apply the Full Bench decision to particular cases the interpretation put upon it in subsequent cases has not been uniform, and in some of them the rules which have been considered to have been *impliedly* laid down by the Full Bench case cannot be deduced from the latter. In order to have a clear idea how the Full Bench has been understood or interpreted a summary of some of the subsequent decisions given below may be of use:

[Sub-headings of the summary: (i) *Validity of transfer against all persons other than the landlord*; (ii) *What is relinquishment or abandonment*; (iii) *Transfer of whole or part and abandonment*; (iv) *Effect of transfer of a part*; (v) *Involuntary sale without tenant's consent*; (vi) *Estoppel*; (vii) *Devise by will* (viii) s. 22 (2): (ix) *Right of deposit of rent by transferee*. Interpretations of the Full Bench case in subsequent decisions.

(i) *Validity of transfer against all persons other than the landlord*: "The decision of the Full Bench in the case of *Dayamayi v. Ananda* is an authority for the proposition that in cases of transfers for value, the title passes from the transferer to the transferee, although the validity of the transfer is liable to be questioned by the landlord who is not a party to the transaction": (Per Mookerjee J., Walmsley J., concurring, 4 May, 1917); 45 Cal. 434; s.c., *Behari v. Sindhubala*, 27 C.L.J. 497, s.c., 22 C.W.N. 210; the principle is also applicable to the case of a transfer by gift; *Ibid*. Transfer operative against the raiyat and against all persons other than the raiyat.

"From the decision of the Full Bench of this Court in *Dayamayi v. Ananda Mohan*, it is clear that the voluntary transfer by the original raiyat is operative against the raiyat and also operative against all persons other than the landlord including obviously a subsequent purchaser from the same raiyat": *Deo Saran v. Bateswar*, 23 C.L.J. 559; (Sharfuddin and Teunon J.J.); the fact that the subsequent purchaser is a co-sharer landlord does not affect the question: *ibid*.

Summary of law laid down by the Full Bench case of *Dayamayi*.

See notes under this section under HEADING No. 6, RIGHT TO TRANSFER BY SALE, AND ALSO HEADING No. 9 RIGHT TO KHAS POSSESSION BY LANDLORD ON TRANSFER OF OCCUPANCY HOLDING.

Relinquishment or abandonment—effect of what has been done Under-raiyati holding.

(ii) *What is relinquishment or abandonment*: What is relinquishment or abandonment has been held by the *Full Bench* to depend on the substantial effect of what has been done in each case: *Amirunnessa v. Jinnat Ali*, 20 C.L.J. 548, (Holmwood and Chapman J.J.) ; in the same case it was held relying upon the *second heading of the Full Bench* that a raiyat is entitled to *khass* possession on the transfer of an under-raiyati holding, (20 C.L.J. at p. 450) ; see notes under s. 49.

See notes under this section under HEADING No. 9, RIGHT TO KHAS POSSESSION BY LANDLORD ON TRANSFER OF OCCUPANCY HOLDING.

Effect of transfer of whole or part and abandonment.

(iii) *Transfer of whole or part and abandonment*: It is not disputed that according to *Dayamayi's* case when the raiyat of a non-transferable holding transfers the whole or a portion, and then abandons, relinquishes, or repudiates the tenancy in its entirety, the landlord is entitled to re-enter and eject the transferee ; (1 Richardson J.) : *Sheikh Dastur Ali v. Ram Kumar*, 22 C.W.N. 972.

See notes under this section under HEADING No. 9, RIGHT TO KHAS POSSESSION BY LANDLORD ON TRANSFER OF OCCUPANCY HOLDING.

Transferee of a share may sue landlord for possession.

(iv) *Effect to transfer of a part*: Mookerjee J. observes in the *Full Bench* case of *Purna v. Chandra*, 23 C.L.J. 304 (at p. 309) ; s. c., 20 C.W.N. 586, that the *Full Bench* decision in the case of *Dayamayi v. Ananda Mohan* "shows that the plaintiff, as purchaser of a share of an occupancy holding, is entitled to possession even as against the landlord, in-as-much as the tenancy has not yet terminated and interposes a barrier between him and the landlord."

Transfer of part does not cause forfeiture.

The effect of the purchase of a portion of an occupancy holding does not cause a forfeiture of the tenancy. "This is settled by a long series of decisions in this Court and is now finally confirmed by a *Full Bench* in the case of *Dayamayi v. Ananda Mohan Ray Chowdhury* : (Per Mookerjee J., Roe J., concurring) : *Kalim Sheikh v. Mocham Mandal*, 24 C.L.J. 113.

D. Chatterjee J., has observed as follows: "It has been held by the *Full Bench* that the mere fact of the transfer of a part of an occupancy holding does not entitle the landlord to evict the purchaser although the sale is not binding upon him and he is not bound to recognise the purchaser as a tenant": *Ananda Mohan v. Gurudayal*, 22 C.W.N. 965 (at p. 966).

Transferee of a part—rent suit.

The transferee of a part of a non-transferable holding has no right to obtain a declaration from prohibiting the landlord from proceeding with an action (*suit for rent*) against his recorded tenant: the *Full Bench* case is no authority for the contention that the transferee has any such right: *Gananath v. Harihar*, (*Patna High Court*), 48 I.C. 359 at p. 361 (Miller and Mullick JJ.). But it had been previously held on the authority of the *Full Bench* case that a transferee of a portion of an occupancy holding has *locus standi* to bring a suit for stay of sale of the holding at the instance of the landlords on the ground that the tenant against whom the rent-decree had been obtained was not the real tenant: *Jang Bahadur v. Ram Sundar*, 38 I.C. 817, s.c. 1 Pat. L. W. 194 (Chapman J.).

Where A and B are joint tenants of an occupancy holding, and A transfers his share to C, it was held, following the *Full Bench*, that the landlord is not entitled to maintain a suit for possession of A's share which has been transferred to C, in-as-much as the holding is one entire holding so far as regards the tenant is concerned: *Swarnamoyi Dasi v. Gayratulla Sardar*, 21 C.W.N. ciii (103 notes portion) (decided by Fletcher and Newbould J.J.).

The decision in the case of *Saferaddi v. Durga Prasad*, 16 C.L.J. 135 is founded on a view of the relative rights of a landlord and a transferee of a portion of a non-transferable occupancy holding and this has been subsequently negated by the *Full Bench Case of Dayamoyi v. Ananda*: see the case of *Ashutosh v. Upendra*, 24 C.L.J. 467 at p. 474 (Mookerjee and Cuming, J.J.).

See notes under this section under Heading No. 9, RIGHT TO HAS POSSESSION BY LANDLORD ON TRANSFER OF OCCUPANCY HOLDING.

(v) *Involuntary sale without tenant's consent*: The *Full Bench* has impliedly laid down that a sale of an occupancy holding cannot be held in execution of a money-decree if the tenant objects to the sale although the decree-holder has obtained the consent of the landlord: the principle laid down in the case of *Ananda v. Ruitnagar*, 7 C.W.N. 572 and *Shakaruddin v. Hemangeni*, 16 C.W.N. 420 is no longer good law: see the case of *Narayani v. Nabin*, 25 C.L.J. 351, s.c., 21 C.W.N. 400, s.c., 44 Cal. 720. (N. R. Chatterjee and Sheepshanks J.J.). The case of *Narayani v. Nabin Chandra* was followed in the case of *J. A. J. Mac Pherson v. Debi Bhuson*, 2 Pat. L.J. 530; s.c., 42 I.C. 36; (*Sharfuddin and Roe J.J.*). Also see *Ramsunder v. Sheikh Lochan*, 38 I.C. 942.

Following the *Full Bench* it has been held by the Patna High Court that the holder of a money-decree against an occupancy raiyat whose holding is not transferable by custom, is not entitled to bring to sale a portion of the raiyat's holding: (it was conceded in this case that the entire holding could not be put to sale): *Sadavi Kunwar v. Palknath*, 1 Pat.L.J. 257 (Chamier C.J. and Jwala Prasad J.).

"And the recent *Full Bench* in the case of *Dayamoyi v. Ananda Mohan Ray Chowdhari* has laid down that an involuntary transfer i.e., a sale in execution of a money-decree of the whole or part of an occupancy holding, apart from custom or local usage, is operative against the raiyat, where the raiyat with knowledge fails or omits to have the sale set aside. It is true the question whether a raiyat is entitled to have the sale set aside, or has the right to object to the sale before it takes place, was not in terms decided by the *Full Bench*—the *Full Bench* decision by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place, and that the holding cannot be sold in execution of such a decree where the raiyat objects to the sale before it takes place: *Badarennessa v. Alam Gazi*, 21 C.L.J. 650 at pp. 651, 652 (N. R. Chatterjee and Greaves J.J.; s.c., 19 C.W.N. 814, followed in *Narayani v. Nabin Chandra*, 25 C.L.J. 351; s.c., 21 C.W.N. 400 (N. R. Chatterjee and Sheepshanks J.J.).

See notes under this section under Heading No. 13, Involuntary sale with consent of landlord.

(vi) *Estoppel*: An execution purchaser of a non-transferable occupancy holding cannot raise a question of the validity of a transfer

Transfer of
a part—
rent-sale.
Transfer
by one of
two joint
tenants.

Sale in
execution
of money-
decree
where
landlord
consents
but tenant
objects.

Execution
purchaser
—estoppel.

by the debtor in favour of a third person ; the contention that he can do so cannot be supported in view of the principles laid down by the Full Bench in *Dayamayi v. Ananda* : see *Kanchan Mandar v. Kamala Prasad*, 21 C.L.J. 441, at p. 444 (Mookerjee and Beachcroft J.J.). See notes under this section under heading No. 17.

Will.

(vii) *Devise by will* : In holding that a portion of a non-transferable holding cannot be devised by a will (*Umesh Chandra v. Joy Nath*, 22 C.W.N. 474, Fletcher and N. R. Chatterjea J.J.) Fletcher J., remarked as follows : Reliance in the present case has been placed by the appellant on the decision of a Full Bench of this Court. But as Mookerjee J., points out, the validity as against the raiyat of transfers by him of his holding for value depends on the doctrine of estoppel and in cases of involuntary transfer by sale in execution where the raiyat does not apply to have the sale set aside, on the doctrine of acquiescence or waiver. It is suggested that the decision of the Full Bench above referred to has modified considerably the remarks of the learned Judge, but I am unable to agree to this view.

The Full Bench did not deal with the power of an occupancy raiyat to bequeath his holding : *Kunja Lal Ray v. Umesh Chandra Ray*, 18 C.W.N. 1294 (Fletcher and Richardson J.J. See notes under this section under heading No. 29, and also notes under s. 26.

S. 22 (2).

(viii) S. 22 (2) : In the case of *Beprodas v. Surendra*, 43 I.C. 467 Teunon and Newbould J.J., have held that the Full Bench case in no way affects or impairs the authority of the prior decision reported in *Girish Chandra v. Kedar Chandra*, 27 Cal. 472, s.c., 4 C.W.N. 569 where it was held that s. 22 (2) applies only to the case of a transferable occupancy holding.

S. 170
Right to
deposit.

(ix) *Right of deposit by transferee* : "It appears to me with reference to the decision of the Full Bench in *Dayamoyi v. Ananda* that the unregistered transferee of an entire holding who has not been recognised in any way by the landlord acquires no interest against landlord.....he is not entitled to make a deposit under s. 170 sub-sec. (3) of the Bengal Tenancy Act." (Per Chamier C.J., Sharfuddin J., concurring : *Rameshwar v. Raghunandan*, 38 I.C. 337 followed in *Rameshwar v. Mahabir*, 38 I.C. 832 Roe and Jawala Prasad, J.J.). It was held by the majority of a Special Bench of the Patna High Court relying upon the Full Bench case of *Dayamoyi* that the purchaser of a non-transferable holding has no right to make deposit under s. 170 : *Mahadeo Lal v. Longat*, 2 Pat.L.J. 457. See also *Jharu Mandal v. Kshettra Mohan*, 54 Cal. 15 (F.B. ; s.c., 30 C.W.N. 729 ; s.c., 43 C.L.J. 554.

As to the other cases where the Full Bench has been discussed see notes under s. 86 and 170 and also notes under the other headings of this section.

Full Bench
case of
Dayamoyi
modified by
a Special
Bench.
(*Chandra
Binode v.
Shaikh Ala
Bux*).

4. Full Bench Case of Dayamoyee as modified by Special Bench Case of Chandra Binode :—The decision in the Full Bench case of *Dayamoyi v. Ananda Mohan*, 42 Cal. 172, s. c., 18 C.W.N. 971, s. c., 20 C.L.J. 52 was considered in the case of *Chandra Binode v. Sheikh Ala Buksh*, 48 Cal. 184, s. c., 24 C.W.N. 818, s. c., 31 C.L.J. 510, by a Special Bench of seven Judges, (Mookerjee C. J., Fletcher, N. R. Chatterjea, Teunon, Richardson, Chaudhuri and Shamsul Huda, J.J., 1st June, 1920). The Special Bench have partially modified the decision of the Full Bench in the case of *Dayamoyi* as is explained below :

The question which was referred to (by Mookerjee and Panton, J.J., 21 Aug. 1919), for the decision of the Special Bench was as follows:

Is the sole landlord of a raiyat competent to sell in execution of a money-decree against the raiyat his occupancy holding, unless the holding is transferable by usage or custom?

The result of the decision was summed up in the following words by Mookerjee C. J., who delivered the judgment of the Court ;*

(1) *The case of Bhiram Ali v. Gopi Kanth*, 24 Cal. 355,† was erroneously decided.

(2) *The decision of the Full Bench in Dayamayi v. Ananda Mohan*, 42 Cal. 172, s.c., 18 C.W.N. 971, s.c., 20 C.L.J. 52 requires partial modification, viz., the following should be substituted for the first proposition‡ enunciated therein regarding the transfer for value of occupancy holdings apart from custom or local usage :—

“1. The transfer of the whole or a part is operative against the raiyat, whether it is made voluntarily or involuntarily.”

The principle enunciated in the Full Bench of *Dayamoyi v. Ananda Mohan*, 42 Cal. 172 “that a transfer of an occupancy holding is operative against the raiyat where it is made involuntarily and the raiyat fails or omits to have the sale set aside” can no longer be maintained in view of the Special Bench case of *Chandra Benode*, 48 Cal. 184, see *Abdul v. Basiraddin*, 66 I.C. 220, (N. R. Chatterjee and Panton, J.J.).

Modification of *Dayamoyi's* case. Raiyat cannot object to involuntary sale.

The effect of the proposition laid down in the Special Bench case of *Chandra Benode*, 48 Cal. 184, that a transfer of the whole or part of an occupancy holding apart from the legal estate is operative against the raiyat, whether it is made voluntarily or involuntarily, is, that the tenant is not entitled to question the validity of the purchase by the purchaser. But this case does not go so far as to hold that the tenancy passes to the purchaser against the landlord and vests in the purchaser without the landlord's consent: *Suk Chand v. Giridhari*, 44 C.L.J. 127.

The purchaser in a money-decree against the tenant, a non-transferable occupancy raiyat, takes only the tenants interest and so far as the landlord is concerned, obtains no interest or title, *Ibid*.

* The following cases were discussed: *Agar Jan Bibi v. Panulla*, 37 Cal. 687 at p. 693, s.c., 14 C.W.N. 779, s.c., 12 C.L.J. 169; *Dwarka Nath v. Hurish Chander*, 4 Cal. 925, s.c., 4 C.L.R. 130; *Narayani v. Nabin Chandra*, 25 C.L.J. 351, s.c., 21 C.W.N. 400, s.c., 44 Cal. 720; *Ananda Das v. Ratnakar*, 7 C.W.N. 572; *Shukraddin v. Rani Hemangini*, 16 C.W.N. 420, and *Dwarka Nath v. Tarini Sankar*, 34 Cal. 199, s.c., 11 C.W.N. 513.

† The Rule which was laid down in the case of *Bhiram Ali v. Gopi Kanth*, 24 Cal. 355 was as follows:

In the absence of custom or local usage to the contrary, a raiyati holding in which the raiyat has only a right of occupancy is not saleable at the instance of the occupancy raiyat or any creditor of his, other than his landlord seeking to obtain satisfaction of his decree for arrears of rent.

‡ The first proposition which was laid down in the case of *Dayamoyi* was as follows:

1. The transfer of the whole or a part is operative as against the raiyat,
(a) where it is made voluntarily.
(b) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside.

A sale is made involuntarily where it is in execution of a money-decree, but not of a decree founded on a mortgage or charge voluntarily made.

Local usage.

Custom—
transfer-
ability.

5. Usage or Custom to transfer occupancy holdings :

Sub-headings : (i) *General* : (ii) *What facts are necessary to prove custom or usage of transferability* : (iii) *Burden of Proof* : (iv) *Custom as to recognition by landlord on payment of Nazar* : (v) *Marfatwari Dakhilas* : (vi) *Effect of purchase by landlord* : (vii) *Reasonableness or unreasonableness of a custom* : (viii) *Whether evidence sufficient to prove custom is a question of law* : (ix) *Transfer by piecemeal* : (x) *Usage in Comilla* :

(i) *General* : A permanent right of occupancy in land is a heritable right and in some places, transferable by the tenant to a stranger. It can only be obtained by a tenant by custom, or by a grant from an owner of the land who has power to grant such a right, or under an Act of the Legislature : *A. S. N. Nainapilliai v. T. A. R. A. Rm. Ramanathan*, 28 C.W.N. 809 (P.C.). No tenant of lands can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands : *Ibid*.

(ii) *What facts are necessary to prove custom or usage of transferability* : Mookerjee, J. (Teunon, J. concurring) has laid down the following rule on discussing all the cases on the point :—

In order to prove a custom or usage of transferability of occupancy holdings, what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord and that they have been recognised by him either without payment of a nazar or upon payment of a nazar, also fixed by custom. It is not necessary to prove that the landlord has actually made an objection to a transfer and has been unsuccessful.

The usage to be effective must not be a growing usage but one which has already grown up.

A usage of transferability, after it has grown up, affects not merely tenancies created there-after but also existing tenancies : Buzal Karim v. Satis Chandra Giri, 15 C.W.N. 752 at p. 756 ; s. c., 13 C.L.J. 418.

To establish that occupancy holdings are transferable in accordance with local usage, it is necessary to adduce evidence of purchases or transfers by persons other than the landlords made with the knowledge but without the consent of the latter and to which no objection was made by the latter. The words 'custom' and 'usage' are not synonymous terms, and the same kind of evidence as would be required to prove a custom is not necessary when the existence of a 'local usage' is in question. A long period of time must elapse before a custom in respect of the transferability of occupancy holdings can grow up ; but this is not the case with regard to the growth of usage in respect of the matter : *Edward Dalgleish v. Sheikh Gazaffer*, 24 Cal. 442, s. c., 3 C.W.N. 21 ; see also *Seriathulla v. Pran Nath*, 26 Cal. 184 : *Palak Dhari v. Manners*, 23 Cal. 179, (see notes under sec. 183). In order to prove a custom or usage of transferability of occupancy holdings what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord and that they have been recognised by him either with or without the payment of *nazar* also fixed by custom. It is not necessary to prove that the landlord has actually made an objection to a transfer and has been unsuccessful : *Buzal Karim v. Satis Chandra*, 15 C.W.N. 752. To prove a custom or usage of the transferability of an occupancy holding it is not sufficient to show that such holdings

Rules laid down by Mookerjee J., as to what facts are necessary to prove custom or local usage.

Custom and usage are not synonymous terms.

Proof of custom or usage.

are sold in the village or neighbouring villages ; the essence of transferability is that transfers made to the knowledge of but without the consent of the landlord are valid and must be recognised by them : *Ibid*. Where the usage of transferability of occupancy holdings was found to have been growing up in other *puttis* than that of the plaintiff landlord, *held* that he could retard the usage in his *putti* which was separate estate by refusing to acknowledge the validity of transfers in that *putti* : *Jagoon Pershad v. Pasun Sahoo*, 8 C.W.N. 172 : A growing usage of transferability of occupancy holdings is of no effect against the landlord : *Rajendra Kishore v. Chandra Nath*, 12 C.W.N. 878. The usage to be effective must not be a growing usage but one which has already grown up : *Bazal Karim v. Satis Chandra*, 15 C.W.N. 752. A usage of transferability, after it has grown up, affects not merely tenancies created thereafter but also existing tenancies : *Ibid*. See notes under s. 183.

(iii) **BURDEN OF PROOF OF TRANSFERABILITY** :—It is for a tenant who claims his holding of agricultural land to be transferable to prove it ; there is no onus of proving non-transferability on the landlord : *Manmotha Nath v. Anath Bandhu*, 23 C.W.N. 201 (N. R. Chatterjea and Greaves, J.J.).

(iv) *Custom as to recognition by landlord on payment of Nazar* : Custom of transferability on payment of nazar. There may be a custom that landlords recognise transferees on payment of nazar : *Radha Kishore v. Ananda Pira*, 8 C.W.N. 235 ; where there is such custom a raiyat can sell his holding without reference to the landlord and the transferee acquires a title on payment of nazar : *Ibid* : In order to prove such a custom it is not sufficient to prove that tenants transfer their rights of occupancy without the landlord's consent : *Ibid* ; when nazar is not paid the landlord is entitled to eject the transferee : *Ibid*. Where according to custom a transferee of a non-transferable holding was to pay a certain sum as fee to the landlord, *held* that non-payment of such renders the transfer invalid : *Sibo Sundari v. Rajmohun*, 8 C.W.N. 214. A raiyat can sell his non-transferable holding without reference to his landlord provided that the purchaser pays to the landlord a customary fee, if the custom allow such transfer on payment of a nazar to the landlord : *Radha Kishore v. Ananda*, 8 C.W.N. 235. The fact that tenants do transfer their holdings without their landlord's consent does not of itself establish a usage in this respect so as to affect the right of the landlord : *Ibid*.

The observations made in the case of *Radhakishore v. Ananda*, 8 C.W.N. 255 were not approved in the case of *Kailash Chandra v. Hari Mohon*, 13 C.W.N. 541 ; in this case it was held that instances of sales of holdings which the landlord recognises only upon receiving *nazarana* cannot go to prove the existence of a usage to transferability, and that the usage to be proved is usage of sale without the landlord's consent. Where *nazars* were as a rule paid to the landlord and on payment of the nazar the purchaser was usually recognised by the landlord, *held* that it was not evidence of any custom or usage by which an unwilling landlord was bound, or evidence that the landlord was compelled, to recognise the purchaser on payment of nazar whether he wished to do so or not : *Bhagirath v. Sital Chandra*, 16 C.W.N. 955. Payment of nazarana does not prove usage. Payment of nazar—no evidence of custom or usage.

After considering the cases of customary nazar cited above Richardson and Walmsley, J.J. have laid down the following rule in the case of *Mina Kumari v. Ichamoyee*, 27 C.L.J. 587 :— Principle of the cases laying down

the rule relating to customary *nazar*.

"The principle of the cases is clearly this that in order to establish a custom of transferability subject to the payment of a customary *nazar* the evidence must show that the landlord is bound to recognise the transfer when *nazar* of the amount, or at the rate, determined by custom is tendered to him. There is all the difference between a fixed *nazar*, which the landlord is obliged to accept whether he likes it or not and a *nazar* which is bargained for and paid as the price of a consent which he may give or withhold as he pleases. A practice or course of business in a zemindary office according to which a transferee is recognised provided that the amount of the *nazar* is satisfactory to the landlord is not sufficient."

"Obviously a custom which leaves the amount or rate of *nazar* indefinite must be void for uncertainty. The position is no whit better than when the *nazar* is determined by agreement. No one knows what he has to pay and the landlord can demand what he pleases and refuse his consent unless he is satisfied: *Ibid*.

Marfat-wari dakhilas :

(v) *Marfatwari Dakhilas* : Where it was proved by evidence that for 15 or 16 years before suit, occupancy holding had been transferred in the pergunna as also in the village, and the landlords had allowed the transferees to hold possession and pay rent as *marfatdars* and granted them receipts as such, but would not substitute their names in the *sherista* unless some payment was made by way of *selami* or *nazar*, held that the evidence was insufficient to establish a custom of local usage of transferability of occupancy holdings: *Kurani Dasi v. Sajani Kant*, 12 C.W.N. 539. See also *Jugoon Pershad v. Pasun Sahoo*, 8 C.W.N. 173. See also *Pearymohun v. Jote Kumar*, 11 C.W.N. 83. Unless *nazar* is fixed by custom, the landlord is not bound to recognise a transfer upon payment of *nazar*: *Sheikh Chand Pramanick v. Romoni Mohan*, 17 C.W.N. 1105.

As to the effect of *marfatwari dakhilas*, see notes under this section under headings Nos. 19 and 20.

Purchase by landlord.

(vi) *Effect of purchase by landlord* : A landlord himself can purchase or take a mortgage of a non-transferable holding of his tenant and therefore the fact that the plaintiff himself took a mortgage of a non-transferable holding is no evidence of transferability: *Mahesh Narain v. Maharaja Bahadur*, 17 C.W.N. 70 ; where a non-transferable occupancy holding was mortgaged to the landlord and he assigned the mortgage to a purchaser of the holding ; held that the landlord was estopped from denying that the purchaser had acquired a valid title: *Ibid*.

Non-agricultural tenancies.

The incidents of non-transferability was common to ordinary tenancies of agricultural lands and tenancies from year to year of homestead lands before the passing of the Transfer of Property Act and the party alleging transferability had to prove a custom to that effect: *Madhu Sudan v. Kamini Kanta*, 32 Cal. 1023, s. c., 9 C.W.N. 895.

Reasonableness or unreasonableness of custom—a question of law.

(vii) *Reasonableness or unreasonableness of a custom* : The reasonableness or unreasonableness of a custom is a question of law, and a customary right to cut and appropriate timber trees is not unreasonable: *Gurai Kar v. Rani Kuarmani*, 19 C.W.N. 1188. In order that a custom may be valid it must be reasonable and certain ; if the validity of a custom is challenged on the ground that it is against reason, the reason referred to is not to be understood as meaning every unlearned man's reason, but artificial and legal reason

warranted by authority of law. A custom which is prejudicial to a class and is beneficial only to a particular individual is repugnant to the law of reason: *Sibnarayan v. Bhutnath*, 45 Cal. 475, s. c., 22 C.W.N. 422, s. c., 28 C.L.J. 148.

(viii) *Whether evidence sufficient to prove custom is a question of law*: Where the question was as to the custom in regard to the transferability of a holding, held that the High Court in second appeal has jurisdiction to consider the evidence given in support of the alleged custom and to determine whether or not that evidence is sufficient in point of law to establish the custom set up: *Girraj Singh v. Hargobind Sahai*, 32 All. 125; see also *Hashin Ali v. Abdul Rahman*, 28 All. 698 and *Ram Bilas v. Lal Bahadur*, 30 All. 311.

Question as to custom—a question of law.

The question whether the facts found in any given instance prove the existence of the essential attributes of a custom or usage is a question of law which may be discussed in second appeal; the question whether such a state of facts has been proved by the evidence is merely a question of fact: *Kailash Chandra v. Padmakishore*, 45 Cal. 285; s. c., 25 C.L.J. 613; the case of *Kakarta v. Raja Venkata*, 29 Mad. 24 was dissented from.

Essential attributes of custom or usage.

(ix) *Transfer by piece-meal*: The existence of a custom by which rights of occupancy are transferable does not entitle a raiyat to transfer his holding piece-meal to different persons: *Ramji Prasad v. Mohammad Anwar*, 3 Pat. L.W. 299, s. c., 1917 Pat. 360; s. c., 43 I.C. 377.

Transfer by piece-meal.

(x) *Usage in Comilla*: There is no usage in Comilla, under which tenants are entitled to sell their holdings without the consent of the Maharaja of Tipperah: *Kailash v. Harimohon*, 10 C.L.J. 113.

Comilla.

6. Right to transfer of sale:—See notes under this section under heading No. 3 sub-heading No. (i).

Occupancy holding not transferable except by local custom or usage. Transfer not void.

The transfer of occupancy holding is valid against all persons except the landlord: *Behari v. Sindhubala*, 45 Cal. 434, s. c., 27 C.L.J. 497, s. c., 22 C.W.N. 210; *Deo Saran v. Bateswar*, 23 C.L.J. 559. "What is called a non-transferable occupancy holding or an untransferable right of occupancy" [Transfer of Property Act, sec. 6 (i), sec. 108, cl. (j)] is not in every respect property which cannot be transferred. The transfer of such a holding even without the consent of the landlord is not expressly prohibited. It is not void for all purposes. It may be validated by the subsequent consent of the landlord. The transfer of occupancy holding cannot be said to be contrary to the policy of the law. The Bengal Tenancy Act expressly recognises as legal a custom of transferability where it exists": (*Per Richardson, J.*). *Sheikh Dastur Ali v. Ram Kumar*, 22 C.W.N. 972 at p. 976.

A transfer of an occupancy holding in accordance with usage is valid even without the consent of the landlord: *Palak Dhari v. Manners*, 23 Cal. 180. A holding of an occupancy raiyat is not transferable except by custom or local usage: *Bhiram Ali v. Gopi Kant*, 25 Cal. 355; see also the cases of *Buti Singh v. Murat Singh*, 13 B.L.R. 284, note; s. c., 20 W.R. 478; *Durga Sundari v. Brindaban Chandra*, 2 B.L.R. Ap. 37; s. c., 11 W.R. 162; *Ajoodhia Persad v. Emam Bandi Begum*, B.L.R. Sup. Vol. 725; s. c., 7 W.R. 528. See also notes under sec. 183.

Transfer in accordance with usage.

Homestead and agricultural lands.

The incident of non-transferability was common to tenancies from year to year of homestead land and agricultural lands, created before the passing of the Transfer of Property Act in the absence of a custom to the contrary: *Ram Charan v. Hari Charan*, 7 C.L.J. 107; see also *Madhub Chandra v. Bijoy Chand*, 4 C.W.N. 574 and *Madhu Sudan v. Kamini Kanta*, 32 Cal. 1023: s. c., 9 C.W.N. 895.

Presumption.

The existence of the power to transfer cannot be presumed where there is no special stipulation about it in the lease: *Annopurna v. Oomachuron*, 18 W.R. 55.

Consent by karta of joint family.

A consent by the karta of a joint Hindu family to a transfer of non-transferable occupancy holding, held by the tenants under the joint family as landlords, is binding on the other members of the family: *Golapdi Meah v. Purna Chandra*, 27 C.L.J. 129. (The case came from the Faridpur district and it therefore seems that the family is a Dayabhaga Family).

Where a purchaser at a sale in execution of a money decree of non-transferable holding obtained possession and the tenant judgment-debtor subsequently dispossessed the auction purchaser and in a suit for ejectment by the auction purchaser, the tenant judgment-debtor pleaded that the sale was bad on account of fraud and irregularity in the publication of sale proclamation etc., held that such a defence was not allowable as no application was made by him under Or. 21 r. 90 C. P. C.; *Jagneswar v. Kailash*, 28 C.W.N. 821.

Ejectment of a part of a holding.

7. Ejectment from a part:—When the tenants are in possession of the land leased to them, the landlord cannot put an end to the tenancies as regards part of the land and maintain them as regards the rent—the holdings are not necessarily forfeited because the raiyats have transferred parts of the holding: *Durgacharan v. Pandabnath*, 33 C.L.J. 518, (*Petheram C. J.*, and *Macpherson J.* 1 Aug., 1893).

Adding of transferees as parties.

8. Ejectment Suit—Estoppel:—Where in an ejectment suit certain persons who purchased from the successors of the defendant were added as defendants, held that this did not estop the plaintiffs to treat the transferees as tenants: *Damodar v. S. A. Miller*, 27 C.W.N. 462 (P.C.).

Right to Khas possession.

9. Right to khas possession by landlord on transfer of occupancy holding:—See notes under this section under heading No. 3 sub-heading Nos. (i), (ii), (iii), and (iv).

Abandonment.

The reason why the zemindar is entitled to obtain khas possession of the land of a holding which has been sold, and of which possession has been given to the purchaser is fully explained in the judgment of the Full Bench in the case of *Narendra v. Ishan*, 13 B.L.R. 274: s. c., 22 W.R. 22, and as the sale and transfer of possession to the purchaser conveys no title to him, and as the raiyat has left the holding and disclaims interest in it, he must be held to have abandoned it and the land remains a piece of land within the zemindari, to which the person in possession has no title and which has been abandoned by the owner: *Kabil Sardar v. Chunder Nath Nag*, 20 Cal. 590. Where a tenant transfers his non-transferable holding and abandons possession of it, the landlord is entitled to eject the transferee: *Robert Wilson v. Radha Dulali*, 2 C.W.N. 63. It is evident that it is essential to such a case that the owner of the land i.e., the raiyat must have abandoned it altogether: *Kabil Sardar v.*

Abandonment after transfer.

Chunder Nath Nag, 20 Cal. 590 ; *Bhupendra Nath v. Busi Tanti*, 40 Cal. 870.

When a holding is not transferable by custom the landlord does not sue to eject the transferer ; he sues to eject the transferee, and the transferee having acquired against the landlord no title by the transfer has no defence to offer in a suit in ejectment : *Ramji Prasad v. Mohammed Anwar*, 3 Pat. L.W. 299 ; s.c., 43 I.C. 377 at p. 378. The principle underlying all suits for ejectment of transferees is based not on the Bengal Tenancy Act but on the common law, whereby the landlord is entitled to enter into possession of all lands secured to the payment of revenue : *Ibid.*

Suit for ejectment lies against transferee.
Ejectment suit, not a suit under B. T. Act.

Abandonment is the effect of the act of the tenant in vacating the holding without making arrangement for payment of his rent as it falls due and for cultivating the land : *Ram Pershad v. Jawahir Roy*, 12 C.W.N. 899.

Where upon a transfer of a non-transferable occupancy holding and after the transferee is in possession for 9 years and the original tenant has no concern with the tenancy and has not paid rent thereof, nor has made arrangement for its payment, held, it constitutes an abandonment : *Sasi Bhusan v. Ahmadullah*, 69 I.C. 1005. See notes under heading No. 6.

What constitutes an abandonment.

What is relinquishment or abandonment has been held by the Full Bench in *Dayamoyi's* case to depend on the substantial effect of what has been done in each case : *Amirunnessa v. Munat Ali*, 20 C.L.J. 548.

In a suit to eject a transferee of a non-transferable holding it is not necessary to prove abandonment and disclaimer by the transferer, as it is a direct inference from the fact that possession was given to the transferee ; it is not necessary to prove distinct repudiation or refusal to pay rent : *Sheikh Chand Paramanick v. Ramoni Mohon*, 17 C.W.N. 1105.

Abandonment and disclaimer.

There may be a sale of the entire holding and yet there may not be abandonment, *viz.*, (1) the sale may not be operative at all ; (2) the tenant may, after transferring his holding take a sub-lease ; (in regard to the second case the rulings are not uniform) ; (3) the tenant may sell a portion of the holding and may remain in possession of the other portion.

Where there is no abandonment.

Where a tenant of a non-transferable holding sold his holding, held in a suit by the landlord for recovery of possession from the transferee that if the transaction of sale was not meant to be an operative one the title to the property still continued with the tenant ; that the true question was whether there was an absolute abandonment of the holding by the tenant such as would entitle the landlord to treat the purchaser as a trespasser ; if the defendant was holding possession on behalf of the tenant he could not be evicted : *Mathur v. Ganga Charan*, 33 Cal. 1219 ; s.c., 10 C.W.N. 1033.

Whether sale operative.

Where a tenant transfers his non-transferable holding, and gives up possession of all the culturable lands of the holding but remains in possession of the homestead lands only by permission of the purchaser, it was held that this was sufficient indication that the raiyat has abandoned his holding, and in such a case the landlord is entitled to eject the raiyat and the purchaser : *Sailabala Debi v. Sritam*, 11 C.W.N. 873, s.c., 7 C.L.J. 303.

Abandonment of all lands except a small portion.

Tenant, if still on land after transfer cannot be ejected.

A tenant does not lose his right in his holding by an unauthorised alienation if he is still on the land ; and the landlord will not be entitled in such a case to enter upon the land merely by reason of the unauthorised transfer by the tenant who still continues in possession unless there is a clause for forfeiture and re-entry in the contract by which the tenancy was created : *Nedhu Mondal v. Kartick Mondal*, 9 C.W.N. 56.

Sale of a portion.

Where the entire holding of an occupancy raiyat has not been transferred it cannot be said that there has been a forfeiture of the tenancy : *Gagan Chandra v. Alak Chand*, 17 C.W.N. 698 ; see also *Kamaleswari Pershad v. Harbullabh*, 2 C.L.J. 369. *Kalim Sheikh v. Muclum Mandal*, 24 C.L.J. 113.

Where an occupancy raiyat *after* the sale of a portion of the holding *paid* rent to the landlord for that portion only which remained in his possession, *held* that the part transferred was at the disposal of the landlord : *Kunja Kishore v. Bama Sundari*, 43 Cal. 878.

Subsisting tenancy.

As long as the tenancy subsists, the landlord is not entitled to eject the transferee of portion of the holding : *Askarali v. Gopimohan*, 18 C.L.J. 257.

Transfer of a part of holding, not a ground of forfeiture.

The sale or parting with possession of the whole or part of the holding is not made a ground of forfeiture under the Bengal Tenancy Act, and where a part of a holding was sold and the raiyat paid into the Collectorate the rent and always cultivated a portion of the holding, it was held that the landlord was not entitled to *khas* possession ; *Kabil Sardar v. Chandra Nath Nag*, 20 Cal. 590. The transfer by a raiyat with a right of occupancy of a part of his holding does not entitle the landlord to recover possession of the land transferred by ejecting the transferee, in the absence of evidence to show that by custom such transfer is allowed—*Durga Prasad v. Doula Gazee*, 1 C.W.N. 160 ; although the landlord in such a case is not entitled to *khas* possession, he is yet entitled to a declaration, that the transfer of a portion of his holding which has not been made with his written consent as is provided by sec. 88, is not binding on him : *Sheikh Gazaffer v. E., Dalgleish*, 1 C.W.N. 162. An occupancy raiyat who asserts a transferable right in his lands and sells that right to a stranger without giving up his occupation is not liable to ejectment by the superior landlord whom, he may have repudiated in a suit brought against him for arrears of rent, and set himself up as a tenant of the purchaser : *Srishtee Dhur v. Madan Sirdar*, 9 Cal. 648 ; their Lordships (Wilson and Maclean, J.J.) in deciding this case considered the cases of *Narendra Narain Roy Chowdhry v. Isan Chandra Sen*, 13 B.L.R. 274 ; s.c., 22 W.R. 22, and the case of *Dwarka Nath Misser v. Hurriah Chandra*, 22 W.R. 200, and observed as follows :—“In *Narendra Narain Roy Chowdhry v. Isan Chandra Sen*, it was ruled that the transferee of occupancy rights, illegally sold, could be ejected if he had entered into actual possession of the land. The principle involved in that case was the abandonment by the tenant of his connection with the land, and the landlord’s consequent right to re-enter. This principle is re-asserted in *Ram Chandra Roy Chowdhry v. Bhola Nath Lushkur*, and is also referred to in a recent judgment delivered on 17th January 1883. (Appeal from Appellate Decree No. 1655 of 1881, Mitter and O’Kinealy J.J.). In *Dwarka Nath Misser v. Hurriah Chandra*, 4 Cal. 925, there is a remark which seems to indicate that occupancy raiyats who after sale remain upon the land by permission

Sale without giving up possession.

Abandonment by tenant.

of the transferee, as his tenants, do so under circumstances amounting to an abandonment of their right of occupancy and the result of that case shows that neither they nor the transferee can resist an action to eject them: but it must be remarked that in that case the raiyats did not question the decree of their ejectment by appeal to this Court, and therefore we need not consider the judgment as deciding anything contrary to the other cases quoted above. We accordingly follow those decisions and dismiss the appeal with costs."*

When a tenant having no transferable interest transfers his interest and puts the transferee in possession, the original tenancy may be treated as abandoned, and when the transferee takes possession of the land he is no better than a trespasser as against the landlord: *Sreeram v. Nagendra*, 82 I.C. 958.

In the event of a sale of non-transferable occupancy holding the purchaser can be evicted by any of the co-sharer landlords to the extent of his own share, and if possession of the entire holding has been acquired by some of the co-sharers, the other co-sharers are entitled to joint possession thereof: *Kanchan Mandar v. Kamala Prasad*, 21 C.L.J. 441; it is now well settled that a purchaser at an execution sale is bound by the same rule of estoppel as the judgment debtor, on principle that the former has purchased merely the right, title and interest of the land does not consequently occupy a position of greater advantage: *Ibid*; see also *Debendra Nath v. Mirza Abdul*, 10 C.L.J. 150; *Mahammad v. Kishori Mohun* (P.C.) 22 I.A. 129; s.c., 22 Cal. 209.

Right of khas possession by a co-sharer.

Execution purchaser estoppel.

In a suit for khas possession against a trespasser who sets up a transfer from a tenant the onus is upon him to prove both the tenancy and the validity of the transfer: *Ambika Prasad v. Baldeo*, 1 Pat.L.J. 253.

Suit for khas possession—onus.

Where a village was in the possession of a *ticcadar* and the raiyats transferred their occupancy holdings held that the landlord is not entitled to immediate (*khas*) possession (the village being in the possession of the *ticcadar*) but is entitled to a declaration that the transfer is not binding on him and he will be entitled to khas possession on the expiry of the *ticca*: *Mahadeo v. Bhagala*, 1 P.L.W. 405; s.c., 39 I.C. 596.

Where land is in possession of *ticcadar*.

Where parts of occupancy holdings are transferred, and on a subsequent partition between the maliks one of the holdings transferred was allotted to the *patti* of one of them, held (relying upon the Full Bench) that the latter was not entitled to treat the transfer as a transfer of the entire holding: *Radha Kishan v. Bhagwat*, 1 P.L.W. 19; s.c., 38 I.C. 72.

Transfer of parts—Partition between landlords.

A sale by the tenant of an entire separated tenancy constitutes abandonment: *Ram Lochan v. Jagernath*, 1 Pat. L.J. 270. Where a non-transferable occupancy holding is subdivided and transferred, different portions to different persons—the landlord is entitled to treat the transferee as a trespasser: *Shaikh Faijuddin v. Tara Sundari*, 19 C.W.N. 156.

Separated tenancy.

When A and B are joint tenants of an occupancy holding, and A transfers his share to C, it was held, following the Full Bench case of *Dayamayi* that the landlord is not entitled to maintain a suit for

Transfer of a part.

* See also the cases of *Hanu Atr v. Jadu Nath*, 7 W.R. 114 and *Beni Madhab v. Joy Krishna*, 7 B.L.R. 152.

possession of A's share : *Swarnamayi v. Goyratulla*, 21 C.W.N. ciii (103 notes).

Effect of
partition.

Where a part of a holding was transferred and subsequently by a partition one of the co-sharer landlords obtained that part as allotted to his *puttee*, held on the authority of the Full Bench that he was not entitled to claim to eject the transferee : *Suraj Deo v. Pachhnarain*, 2 Pat. L.J. 225 ; s.c., 1 Pat. L.W. 443 ; s.c., 39 I.C. 98, the case of *Radha Kissan v. Bhagawat Prasad*, 1 Pat. L.W. p. 19 ; s.c. 38 I.C. 72 was followed ; the case of *Suraj Deo v. Pachhnarain*, 2 Pat. L.J. 225 was distinguished in the case of *Ramji Prasad v. Mohammad Anwar*, 3 Pat. L.W. 299 ; s.c., 1917 Pat. 360 ; s.c., 43 I.C. 377.

Sub-lease by
transferee,
—Landlord
entitled to
khas posses-
sion

A raiyat holding a non-transferable holding having sold it to a third person took an under-raiyati lease under him and refused to pay rent to the landlord of the raiyati holding who dispossessed him. In a suit by him to recover possession and for declaration of his title as an under-raiyat under the purchaser, held on a review of the authorities* that plaintiff's suit ought to fail and it was accordingly dismissed : *Rajani Kanta v. Ekkari*, 34 Cal. 689 ; s.c., 11 C.W.N. 811. See notes under s. 87.

A landlord is not entitled to get *khas* possession when his tenant sells his non-transferable holding and takes a sub-lease ; the transferee will be ejected but not the original tenant who had transferred : *Dinanath v. Krishna Bejoy*, 9 C.W.N. 379 ; s.c., 5 C.L.J. 224 : see also *Madan Mondal v. Mohima*, 33 Cal. 531 : s.c., 3 C.L.J. 343.

Where no
abandon-
ment.

There is no abandonment of the holding, if the original tenant after parting with a portion of the holding remains in actual possession of it as an under-raiyat from the purchaser : *Kalim Sheikh v. Macham Mondal*, 24 C.L.J. 113.

Contra.

But it has been held in another case that in a transfer of a non-transferable holding the original tenant took a sub-lease, and set up transferability and sub-lease under the transferer, held that the landlord is entitled to eject both the transferer and transferee : *Kali Charan v. Arman*, 13 C.W.N. 220.

Sublease
taken by
transferee
after trans-
fer.

Where a tenant transfers his non-transferable holding he must be taken to have abandoned the holding if he ceases to pay rent to his landlord and accepts a new tenancy from the transferee and the landlord is therefore entitled to eject the transferee as a trespasser : *Kali Nath v. Kumar Upendra*, 24 Cal. 212 ; s.c., 1 C.W.N. 163.

10. Sale and Sublease :—See notes under sec. 87.

11. Surrender and Transfer :—See notes under sec. 86.

Occupancy
holding not
transferable
by-compul-
sory sale
except by
local custom
or usage.

12. Compulsory sale : Execution of money decree :—As to whether a non-transferable occupancy holding can be sold in execution of a money decree where the landlord consents but the tenant objects, see notes under the next heading i.e., heading No. 13. In the absence of custom or local usage to the contrary a raiyati holding in which the raiyat has only a right of occupancy is not saleable at the

* The following cases were discussed : *Sristdhar v. Madan Sardar*, 9 Cal. 648, *Kalimath v. Upendra Chandra*, 24 Cal. 212, *Narendra Narain v. Ishan Chandra*, 22 W.R. 22, *Dwarkanath v. Harish Chandra*, 4 Cal. 225, *Samunjar v. Munshi Mahton*, 4 C.W.N. 493, *Robert Wilson v. Radha Dulali*, 2 C.W.N. 63, *Dinanath v. Krishna Bejoy*, 9 C.W.N. 379, *Mathur Mondul v. Ganga Charan*, 10 C.W.N. 1033, *Madan Mondal v. Mahima Chandra*, 33 Cal. 531.

instance of any creditor : *Bhiram Ali v. Gopi Kant*, 24 Cal. 355 ; see also *Dwarka Nath v. Harish Chunder*, 4 Cal. 925 ; s.c., 4 C.L.R. 130 ; but it may be sold at the instance of the landlord in execution of a decree for arrears of rent : *Bhiram Ali v. Gopi Kant*, 24 Cal. 355. An occupancy holding which is not transferable by custom or usage can- Sale in not be sold in execution of a decree for arrears of rent obtained by a execution. fractional co-sharer : *Sitanath v. Atmaram*, 4 C.W.N. 571.

When occupancy holdings are not transferable by custom the Purchaser person who purchases them in execution of a money decree purchases in execution of nothing ; they are not transferable as between the judgment-debtor of money-decree and the creditor : *Peary Mohun v. Jote Kumar*, 11 C.W.N. 83. purchases nothing.

Where a non-transferable occupancy holding was sold in Sale in execution of a decree for money and the purchaser obtained execution of a decree for money. possession of the land through Court and pulled down the huts of the tenant, and it was found that the tenant had obtained possession of the holding, it was held that the landlord was entitled to *khas* possession without a notice under s. 87 ; *Bhagawan v. Biseswari*, 3 C.W.N. 46.

A non-transferable occupancy holding cannot be sold in execution Sale in of a decree obtained by one of several joint landlords against the tenant execution of a decree for his share of the rent separately payable to him in respect of the for rent holding : *Sadagar v. Krishna Chandra*, 26 Cal. 937 ; s.c., 3 C.W.N. by a co- 742 ; *Durga Churn Mondul v. Kali Prasanna Sarkar*, 26 Cal. 727, for, sharer, or a fractional shareholder selling a non-transferable occupancy holding in execution of a decree for his share of the rent is in no better position of money-decree. than an outsider selling the holding in execution of a money decree.—*Sheik Jarif v. Ram Kumar*, 3 C.W.N. 747 ; see also *Badarrennessa v. Alam Gazi*, 21 C.L.J. 650 ; “The Full Bench case of *Dayamayi v. Ananda*, 20 C.L.J. 52 lays down by implication that a Rule raiyat is entitled to have a sale of a non-transferable occupancy holding impliedly in execution of a money decree set aside after it takes place, and that laid down by the Full Bench— the holding cannot be sold in execution of such a decree where the the Bench— raiyat objects to the sale before it takes place ; the principle deducible Setting aside a from the Full Bench ruling is applicable to an involuntary transfer of sale. the whole as well as a part of the holding” : *Ibid*.

Where a non-transferable occupancy holding is sold in execution Landlord's of a decree for money, and even if the purchaser obtain the landlord's recognition, recognition the purchaser does not get any right : *Bhiram Ali v. Gopi Kant*, 24 Cal. 355. effect of.

Property which is not transferable without the landlord's consent S. 266 C. is not saleable within the meaning of s. 266, C. P. C. Act XIV of P. C. 1882) : *Kailash v. Hari Mohon*, 10 C.L.J. 110.

When after a sale in execution of a decree for money of a non- Sale in transferable occupancy holding, the tenant did not abandon but was execution of still in occupation of a portion of the holding, the landlord is not money-decree entitled to re-enter, as there was no abandonment : *Jogendra Nath v. Tincowri*, 10 C.L.J. 147. where tenant has not abandoned.

Involuntary Sale :—Following the Full Bench Case of *Jugeshwar Nath Koeri*, 1 Pat. 317 it was held that a decree-holder (not the landlord) is entitled to put to sale a part of a non-transferable occupancy holding : *Raghunath v. Chowra Mahakton*, A.I.R. 1922 Pat. 62 (Coutts and Das J.J.).

13. Involuntary transfer with consent of landlord :—See Consent of notes under this section under heading No. 3, sub-heading No. (✓). landlord.

Non-transferable occupancy holding cannot be sold unless both landlord and raiyat concur.

The Full Bench decision in *Dayamoyi v. Ananda Mohan*, 42 Cal. 172; s.c., 18 C.W.N. 971; s.c., 20 C.L.J. 52 has impliedly laid down that in execution of a decree for money a non-transferable occupancy holding cannot be sold if the raiyat objects, even if the landlord gives his consent to the sale; the two must concur in order that the transfer may be valid; *Narayani v. Nabin Chandra*, 44 Cal. 720; s.c., 21 C.W.N. 400; s.c., 25 C.L.J. 351; this case was followed in the case of *Ramsundar v. Shaikh Lochan*, 38 I.C. 942; in these cases their Lordships have dissented from the earlier cases of *Ananda Das v. Rutnakar*, 7 C.W.N. 572 and *Shakaruddin v. Hemangini*, 16 C.W.N. 420 where the contrary rule was laid down; and according to the learned Judges who dissented from these cases the view taken in these cases, "can no longer be maintained having regard to the decision of the Full Bench."

The case of *Narayani v. Nabin Chandra*, 44 Cal. 720 decided by N. Chatterjea and Sheepshanks J.J., has been followed at Patna by Sharfuddin and Roe J.J., in the case of *MacPherson v. Debi Bhusan*, 2 Pat.L.J. 530.

The same view was taken in one of the earlier cases which had been decided before the Full Bench, D. Chatterjea J., having held that in regard to a non-transferable holding the tenant alone cannot confer any title by transfer, nor the landlord by his own act and without the concurrence of the tenant can do so; the two jointly can confer title by transfer: *Radhakant v. Ramanand*, 39 Cal. 513 at p. 519 (12 Feb., 1912).

The other earlier cases laying a contrary rule must now be considered to have been over-ruled. Those cases are all to be found in the foot-note below where the annotations on this subject are reprinted from the previous edition of this work.*

Sale in execution with consent of landlord. Settlement with landlord after execution-sale.

Decisions noted above are open to doubt.

Effect of landlord's consent.

Sale with consent of landlord.

*** Sale with consent of landlord or subsequent recognition:**—A sale in execution of a money decree of an occupancy holding not transferable by local custom or usage is valid and effectual, if the creditor sells it with the consent of the landlord: *Ananda Das v. Rutnakar*, 7 C.W.N. 572.

Where a settlement is made by the landlord with the auction-purchaser of a non-transferable holding as soon as can reasonably be expected after the sale and the landlord recognises the purchaser and receives rent from him, it is sufficient to render the sale valid in law: *Dwarkanath v. Tarini Sanker*, 35 Cal. 499; 11 C.W.N. 513, s.c., 5 C.L.J. 294; it is not necessary that the consent of the landlord should be obtained prior to the execution proceedings: *Ibid.*

It is submitted with great respect that these two decisions do not lay a sound proposition of law. In both these decisions it is assumed that it is the landlord who can give consent to the transfer of a holding even when the tenant is unwilling; the rule that occupancy holdings are not transferable is a protective measure so far as regards the raiyats are concerned; it is a benefit to a raiyat which he cannot be deprived of by the act of the landlord; it is quite true that a landlord may grant if he so likes, the right of transferability to a raiyat, but from that it does not follow that a landlord can by his consent create title in a purchaser when the raiyat is unwilling to have his holding sold in execution.

The transfer of an occupancy holding which is not transferable by custom or usage may be validated by the consent of the landlord: *Haridas v. Uday Chandra*, 8 C.L.J. 261; see also *Jagun Prasad v. Posun Sahoo*, 8 C.W.N. 172; *Sibosundari v. Rajmohan*, 8 C.W.N. 214; *Radhakishore v. Ananda Priya*, 8 C.W.N. 235. When the landlord recognises the transfer as valid, he recognises the transfer of the existing occupancy right as a valid transaction: *Haridas v. Uday Chandra*, 8 C.L.J. 261.

Where a decreeholder who attached a non-transferable occupancy holding obtained the consent of 15% ans. co-sharer landlords for the sale of the

A non-transferable occupancy holding is saleable in execution of a money decree obtained by some of the co-sharer landlords against the tenants: *Surajdeo v. Partap*, 2 Pat. 739. Sale by co-sharer landlord.

A landlord without the consent of his raiyat may sell the holding in execution of a money-decree: *Ram Lal v. Dendhari*, 74 I.C. 781.

The case of *Chandra Benode* decided by a Special Bench of the Calcutta High Court (48 Cal. 184) was distinguished by the Patna High Court and it was held that an occupancy raiyat can object to the sale of his non-transferable holding in execution of a money decree obtained by a creditor who is not his landlord: *Dewan Ram v. Atul Mander*, 6 Pat. L.J. 202; where a portion of occupancy holding was sold in execution of a mortgage decree, the remainder represents the remainder of the holding and the sale of the remainder is a sale of an entire holding: *Ibid*; the tenant is not estopped from denying the custom of transferability when a portion is sold in execution of a money-decree, in view of the fact that a portion was sold in execution of a mortgage decree: *Ibid*. Chandra Binode's case distinguished by the Patna High Court.

A non-transferable occupancy holding may be sold in execution of a money-decree obtained by a person even if he is not the landlord of the holding: *Jugeshar v. Nath Koeri*, 65 I.C. 335, (Dawson Miller C. J. and Das J.); the Full Bench Case of *Dayamayi v. Ananda Mohan*, 42 Cal. 172 was referred to; see also *Kenaram v. Kinu Mandal*, 50 Cal. 508. Sale in mortgage decree.

Where a non-transferable occupancy holding was sold in execution of a decree for money or in execution of a mortgage decree by a third person (who was not the landlord) and the auction purchaser brought a suit for recovery of possession, held that the plaintiff was entitled to get decree and it was not competent by way of defence to question the validity of sale on the ground of irregularity etc.: *Jogneswar v. Nibaran Mandal*, 28 C.W.N. 1xiii (63 notes portion); Suit for possession by a purchaser at an execution sale.

A non-transferable occupancy holding in Sylhet where Act VIII of 1869 is in force can be sold in execution of a rent decree by the 16 ans. landlords: *Nripendra v. Nadir Khan*, 25 C.W.N. 554. Act VIII (B. C.) of 1869.

A sale in execution of a money-decree of a portion of an occupancy holding is valid against the tenant: *Jogeswar v. Nath Koeri*, 1 Pat. 317, s. c., (1922 Pat.) p. 49, (F.B.); Dawson Miller C. J., Das and Adami J.J.). This Full Bench practically over-rules the decision in the case of *Dewan Ram Chowdhry v. Atul Chandra* (1921 Pat.) p. 197, s. c., 6 Pat. L.J. 202. Execution sale of a portion binding on raiyat.

A person (who is not the landlord) can put to sale a portion of a non-transferable occupancy holding: 67 I.C. 882.

holding, held that the holding to that extent share may be sold notwithstanding the objection of the raiyats (judgment-debtors): *Shuhuruddin v. Rani Hemangini*, 16 C.W.N. 420:

It was also held in *Ananda Das v. Ratnakar*, 1 C.W.N. 572 that a sale in execution of a money decree of a non-transferable occupancy holding is valid, if the creditor takes the consent of the landlord.

It is submitted that these decisions are open to doubt, for, the non-transferability which attaches to an occupancy holding is not only for the benefit of the landlord but of the tenant too, and therefore a landlord should not be allowed to deprive the tenant of a valuable right by giving his consent to the sale.

In regard to a non-transferable holding the tenant alone cannot confer any title by transfer, nor the landlord by his own act and without the concurrence of the tenant can do so; the two jointly can confer title by transfer: *Radhakant v. Ramananda*, 39 Cal. 513 at p. 519. Landlord and Tenant both may confer title.

Effect of sales of portions piece meal.

Where a portion of the holding has already been transferred, and then the remaining is sold, it represents the entire holding: *Dewan Ram Chowdhry v. Atul Chander*, [1921 Pat.] p. 197, s. c., 6 P.L.J. 202.

Separate portions held separately.

Where separate portions of one entire holding are in separate possession of each of the several tenants, each of these portions does not constitute a separate holding, and the transfer of one of these portions does not operate as an abandonment so as to entitle the landlord to re-enter that portion: *Karim Chakladar v. Sahorannessa*, 25 C.W.N. 717.

No ejectment where a portion is sold.

A suit for ejectment of a tenant from a portion of the holding transferred is not maintainable as he holds the remainder: *Bhimram v. Maharani Hara Sundary*, 33 C.L.J. 516, (Pigot and Beverley J.J., 16 April 1883).

Voluntary sale of a share.

The sale of a share of a non-transferable holding does not entitle the landlord to *khas* possession unless it is shewn that there has been an abandonment: there can be no abandonment of a holding where there has been all along payment or offer of payment of rent by the tenant: *Sarat Chandra v. Manorama*, 68 I.C. 295.

Involuntary sale.

A non-transferable occupancy holding is saleable in execution of a money decree: *Jagneswar v. Kailash*, 28 C.W.N. 821. See also *Kenaram v. Kinu*, 50 Cal. 508.

Sale in execution of a decree by a co-sharer landlord.

N. R. Chatterjea and Greaves J.J., held in the case of *Badrannessa v. Alam Gazi* (19 C.W.N. 814) that "an occupancy holding which is not saleable by custom or usage, cannot be sold in execution of a decree obtained by a co-sharer landlord for his share of the rent, and that in this respect a co-sharer landlord for his share of the rent, is in the same position as an ordinary execution creditor.† Their Lordships say: "we are accordingly of opinion that the Full Bench decision (*Dayamayi's* case) by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place, and that the holding cannot be sold in execution of such a decree where the raiyat objects to the sale before it takes place."

Conflict of rulings relating to the question whether tenants' interest can pass by involuntary sale when landlord alone consents but tenant objects.

Cases which may be relied on in support of the proposition that the sale in execution of a money decree of a non-transferable occupancy holding cannot pass any title unless both the landlord and the tenant concur; the landlord's consent alone is not sufficient to pass title: *Narayani v. Nabin Chandra*, 44 Cal. 720; s.c., 21 C.W.N. 400; s.c., 25 C.L.J. 351, (*N. R. Chatterjea and Sheepshanks J.J.*): *Ram Sundar v. Shaikh Lochan*, 38 I.C. 942 (*N. R. Chatterjea and Newbould J.J.*); *Mac Pherson v. Debi Bhusan*, 2

Cases which may be relied on in support of the proposition that the landlord's consent alone will pass title in case a non-transferable occupancy holding is sold in execution of a money decree even if the tenant objects: *Ananda Das v. Ratnakar*, 7 C.W.N. 572; *Dwarka Nath v. Tarini Sanker*, 35 Cal. 499; s.c., 11 C.W.N. 513; s.c., 5 C.L.J. 294; *Haridas v. Uday Chandra*, 8 C.L.J. 261; *Jagur Prasad v. Posun Sahoo*, 8 C.W.N. 172; *Sibosundari v. Rajmohan*, 8 C.W.N. 214; *Radha Kisore v. Ananda Priya*, 8 C.W.

† The following cases were relied upon: *Durga Charan v. Kali Prasanna*, 26 Cal. 727, s. c., 3 C.W.N. 586, *Sadagar Sirkar v. Krishna Chandra*, 3 C.W.N. 742, *Sheikh Jarif v. Ramkumar*, 3 C.W.N. 747.

Pat. L.J. 530 (Sharfuddin and Roe J.J.); [these cases were all decided after the Full Bench case of *Dayamayi*, 42 Cal. 172; s.c., 18 C.W.N. 971; s.c., 20 C.L.J. 52]. Before the Full Bench a similar view had been taken in the case of *Radhakant v. Ramanand*, 39 Cal. 513 at p. 519).

After the Full Bench case of *Dayamayi* it has been held that both the landlord and the tenant must concur in order that the title to a non-transferable occupancy holding should pass in a sale in execution of a money-decree. The first of those decisions *Narayani v. Nabin Chandra* referred to above and which has been followed in the subsequent cases cited in the left hand column above says that the Full Bench case of *Dayamayi* has impliedly laid down this Rule. *It is submitted with great respect that the Full Bench case is no authority for this.* In the Full Bench the questions which were raised were altogether different. The true reason however why both the landlord and the tenant should concur for passing title to the purchaser is, it is submitted, as follows: an occupancy right is not and cannot be conferred on a raiyat by a grant from the landlord; it is a creature of the statute; when such a right is acquired by the tenant he gets along with it *certain privileges*; one of them is that it is non-transferable; for commercial purposes it may not be a privilege, but the agricultural people of this country are not commercial people, and it is a great privilege to them that *it is not saleable* and cannot consequently be sold in execution for their debts; the landlord should not be allowed to thrust upon them the right of transferability which they may be unwilling to take.

14 Mortgage of occupancy holding and sale in execution of mortgage decree:—It seems that the creation of a simple mortgage by an occupancy raiyat (without subsequent sale of his interest and abandonment) does not render him liable to be ejected, for the tenant still remains on the land. If, however, a mortgage is created in contravention of an agreement which makes him liable to ejectment the landlord is entitled to get *khas* possession under cl. (b) of s. 25 of the Act.

The creation of mortgage by a raiyat in respect of a non-transferable occupancy holding would not entitle a landlord to recover *khas* possession, because, in such a case there is no transfer of possession: *Baroda Charan Dutt v. Hemlata*, 13 C.W.N. 242.

The execution by a raiyat of a mortgage of his non-transferable holding does not by itself amount to an abandonment: *Chowdhry Mahodeo v. Shaikh Pachuri*, 16 C.W.N. 322.

When an occupancy raiyat mortgages his non-transferable holding and the mortgagee enforces the mortgage, has the holding sold and purchases it himself, the possession of the raiyat completely ceases and there is an abandonment of the holding by him: *Ram Pershad v. Jawahir Roy*, 12 C.W.N. 899.

Where a person purchases an occupancy holding in execution of a decree upon a mortgage the landlord is entitled to eject him if the holding is non-transferable: *Ram Pershad v. Jawahir*, 7 C.L.J. 72.

Claim of mortgagee against landlord.

A landlord purchasing a non-transferable occupancy holding in execution of a money decree can raise the question of transferability and resist the claim of the mortgagee of the holding : *Asmatunnessa v. Harendra Lal*, 12 C.W.N. 721.

Where landlord is the mortgagee.

A landlord himself can purchase or take a mortgage of a non-transferable holding of his tenant and therefore the fact that the plaintiff himself took a mortgage of a non-transferable holding is no evidence of transferability : *Mohesh Narain v. Muharaja Bahadur*, 17 C.W.N. 70, where a non-transferable occupancy holding was mortgaged to the landlord and he assigned the mortgage to a purchaser of the holding, *held* that the landlord was estopped from denying that the purchaser had acquired a valid title : *Ibid*.

Transfer by usufructuary mortgage operates as a forfeiture ;

15. Transfer by usufructuary mortgage :—On usufructuary mortgage of a non-transferable occupancy holding it was held on the authority of the Full Bench case of *Dayamoyi v. Ananda Mohan*, 42 Cal. 172, a landlord is not entitled to *khas* possession unless there has been

- (a) an abandonment within the meaning of s. 87 Bengal Tenancy Act, or
- (b) a relinquishment of the holding, or
- (c) a repudiation of the tenancy. See *Priyanath v. Kusum Kumari*, 47 I.C. 332 (Fletcher and Huda J.J.).

By creating a usufructuary mortgage, an occupancy raiyat, not authorised to transfer his holding, makes himself liable to ejectment by the landlord : *Krishna Chandra v. Khiran Bajania*, 10 C.W.N. 499 : s. c., 3 C.L.J. 222. This case was under Act VIII, B. C. of 1869 ; under the Bengal Tenancy Act also the same rule has been laid down : *Rasik Lal v. Bidhu Mukhi*, 10 C.W.N. 719, s. c., 4 C.L.J., 306. In the case of *Rajendra Kishore v. Chandra Nath*, 12 C.W.N. 878, Brett, J., held that the so-called usufructuary mortgage deed was really a deed of sale and the landlord was therefore entitled to get *khas* possession. It was further held in Letters Patent Appeal in this case by Rampini (Acting C. J.) and Mitra, J., that even if the document was a usufructuary mortgage deed and not a deed of sale, still the landlord is entitled to *khas* possession in-as-much as the tenant after executing the mortgage-deed relinquished the holding in favour of the landlord.

In a suit brought against a raiyat and his usufructuary mortgage the landlord obtained a decree for *khas* possession against which the raiyat did not appeal, *semble*, that it is doubtful whether the mortgagee can successfully resist the suit of the landlord : *Barada Charan v. Hemlata*, 13 C.W.N. 242.

Death of a raiyat without heirs.

If an occupancy raiyat after having executed a usufructuary mortgage dies without heirs the landlord is entitled to *khas* possession : *Harapalai v. Rajabali*, 44 I.C. 721 (Richardson and Beachcroft J.J.).

Where no abandonment.

The mere execution of a usufructuary mortgage may not be sufficient to establish abandonment ; whether there has been abandonment is principally a question of fact : *Monohor Pal v. Ananta Moyee*, 17 C.W.N. 802 ; where upon a usufructuary mortgage the mortgagee continued in possession even after the expiry of the term of the mortgage deed, and it was found that the raiyat did not live in the village and cut off connection with the holding, *held* that these findings

amounted to holding that the raiyat had abandoned the jama ; *Ibid* : ^{Abandonment.} see *Bhupendra v. Bansī Tanti*, 40 Cal. 870.

Mere execution of a usufructuary mortgage and delivery of ^{Ss. 23, 87.} possession to the mortgagee in his holding by a tenant who continues ^{Usufructuary mortgage.} to reside in the village does not entail forfeiture : *Ajodhya Prasad v. Jagdeo Singh*, 37 I.C. 915, nor does it amount to an abandonment of the holding within the meaning of s. 87 : *Ibid*.

The current of authorities shows that the unauthorised transfer ^{Unauthorised transfer} of a holding or the parting with the possession of it, in whole or in part, does not *per se* work as a forfeiture under the Bengal Tenancy Act—There must be something in the nature of an abandonment by the tenant or something of that kind.....There appears to be no reason why the principle above referred to should not be applied to the case of a transfer by way of usufructuary mortgage in the same way as to other partial transfers. In the case before us there ^{Where no} is a clear finding by the lower appellate court that there has been ^{abandonment.} no abandonment by the defendants, and with that finding we are unable to interfere in second appeal : (Per Richardson and Newbould J.J.) ; *Bhupendra v. Bansī Tanti*, 40 Cal. 870.

Where an occupancy raiyat executed a usufructuary mortgage of his holding but continued to pay rent to the landlord and remained in possession of a portion of the holding as a sub-tenant under the mortgage, *held* that the landlord was not entitled to treat the raiyat as a trespasser and to sue him for ejectment : *Chowdhury Mahadeo v. Shaik Pachuri*, 16 C.W.N. 322.*

Transfer by way of usufructuary mortgage stands on the same ^{Usufructuary mortgage.} footing as other partial transfers : *Bhupendra Nath v. Bansī Tanti*, 40 Cal. 870 (Richardson and Newbould J.J., 25 Aug., 1913).

Mere execution of usufructuary mortgage followed by possession ^{Abandonment.} does not entitle a landlord to re-enter ; where the tenant did not abandon, the mortgagee was held to recover possession from the landlord who had dispossessed him : *Ambika Debi v. Swarnamaji*, 49 Cal. 989 : the case of *Dayamayi v. Ananda Mohan*, 42 Cal. 172 (F.B.) was followed.

The mere fact that an occupancy raiyat has created a usufructuary mortgage and given up possession does not shew that he has abandoned the holding : *Ram Lal v. Kuldip*, 75 I.C. 841, (Dawson Miller C. J., and Mullick J., the cases of *Samujan v. Munshi Mahton*, 4 C.W.N. 493 and *Monohor v. Ananta Moyee*, 17 C.W.N. 802 were distinguished.

16. Presumption :—Where in a proceeding under s. 105 for ^{Presump-} enhancement of rent of an occupancy raiyat, the vendee of the latter ^{tion under} was brought on the record and the case was proceeded against him, ^{s. 50 may} *held* that the vendee was entitled to avail of the presumption under ^{be claimed} s. 50 cl. (2) : *Paran Chandra v. Kanta Mohan*, 39 C.L.J. 437 : s. c., ^{by a vender} A.I.R. 1924 Cal. 875 (Walmsley and Mukerji J.J., 28 Feb., 1924). It ^{of an occu-} seems that this decision underlies the principle that the recognition ^{pancy} by the landlord of the vendee as a tenant has not the effect of a ^{Raiyat} creation of a new tenancy. This principle seems to be somewhat in ^{against} ^{whom pro-} ^{ceeding} ^{was con-} ^{tinued.}

* But see *Kalicharan v. Arman Bibi*, 13 C.W.N. 220 where it was held that the landlord is entitled to *Khash* possession when the raiyat on transfer of his holding remains in possession as an under-raiyat and repudiates the tenancy of the landlord.

conflict with the principle of the case in *Sarat Chandra v. Shyam Chand*, 39 Cal. 663, s. c., 16 C.L.J. p. 71 where it was decided that where a non-transferable occupancy holding was sold and the transferee was recognised by landlord it became a new tenancy and rent by more than 2 annas in the rupee could be enhanced and s. 29 did not apply.

Tenant
estopped
by his
own act.

17. Where question of transferability can or cannot be raised by the raiyat or does not arise :—Where a non-transferable holding is sold by a tenant by a *kabala* he is estopped from setting up the invalidity of the sale by him: *Bhagnath v. Sheikh Hafizuddin*, 4 C.W.N. 679: when a non-transferable occupancy holding is mortgaged, the mortgage is operative as between the mortgagor and mortgagee although it is inoperative against the landlord: *Ram Pershad v. Jawahir Roy*, 7 C.L.J. 73.

Where a non-transferable occupancy holding was sold in execution of a money decree and the raiyat did not object to the sale, held that as against the auction purchaser, the vendee of the raiyat was estopped: *Ramu Pal v. Prakash*, 20 C.W.N. lix (notes portion p. 59).

Who can
object to
sale.

Objection as to the validity of the gift of a non-transferable occupancy holding can only be taken by the landlord or his representative in interest: *Behari Lal v. Sindhubala*, 45 Cal. 434; s. c., 22 C.W.N. 210; the Full Bench case of *Dayamayi v. Ananda Mohan*, 42 Cal. 172 was relied on.

Question
between
rival ten-
ants where
landlord
is not a
party.

A certain *jote* was sold in execution of a decree for arrears of rent obtained against the recorded tenant, and the purchaser of a portion of the *jote* from the latter claimed the surplus sale-proceeds representing the portion purchased by him; the Defendant objected to the same on the ground that he was the purchaser of the *jote*, the lower Courts held that Defendant could not prove his purchase; the landlord was not a party; held—That the question of the transferability of the *jote* did not arise: *Ambika Nath v. Adityanath*, 6 C.W.N. 624. In a suit for recovery of *khas* possession by the plaintiff who had purchased an occupancy holding in execution of a mortgage decree the defendant claimed under a lease from a co-sharer landlord who also had purchased the holding in execution of a decree for his share of the rent, held that question of transferability did not arise: *Ayenuddin Nasya v. Sris Chandra*, 11 C.W.N. 76 followed in *Haro Chandra v. Umesh Chandra*, 14 C.W.N. 71; s. c., 11 C.L.J. 20; in this case a co-sharer landlord purchased an occupancy holding in execution of a decree of his own, it was held that he was not competent to resist a suit brought by a mortgagee of the holding, on the ground that the holding was non-transferable.

Suit bet-
ween two
rival pur-
chasers.

This case (14 C.W.N. 71) was followed by Jenkins, C. J. and Woodroffe, J., in the case of *Chandi Prasanna v. Gour Chandra*, 19 C.W.N. 1307.

See also *Shyama Charan v. Mokhoda*, 15 C.W.N. 703. The case of *Ayenuddin*, 11 C.W.N. 76, was distinguished in the case of *Bibi Asmatunnessa v. Harendra Lal*, 12 C.W.N. 721, where the landlords purchasers in execution of a money decree were held to be entitled to raise the question of transferability.

Co-sharer
landlord.

The case of *Ayenuddin*, 11 C.W.N. 76, was referred to in the case of *Rajab Ali v. Dinanath*, 19 C.W.N., 1305, and it was held that no question of transferability arises between the purchaser of a share of a non-transferable holding (who has been recognised by a co-sharer

landlord) and the heir of the former tenant by some of the co-sharer landlords with respect to the entire holding.

A purchaser of a share of an occupancy holding is entitled to possession even as against the landlord: *Purna Chandra v. Chandra Mohon*, 20 C.W.N. 586 (F.B.), s. c., 23 C.L.J. 304; Mookerjee, J., remarked as follows: ".....The rights of the parties must be governed by the rules formulated by the Full Bench in *Dayamoyi v. Ananda Mohon*, 42 Cal. 172. That decision shews that the plaintiff, as purchaser of a share of an occupancy holding is entitled to possession even as against the landlord, in-as-much as the tenancy has not yet terminated and interposes a barrier between him and the landlord."

Purchaser
of a share

A co-sharer landlord is in no better position than a stranger and hence the transfer of a non-transferable holding is binding against him: *Lala Deosaran v. Batesvar*, 20 C.W.N. lxxxiii (notes portion p. 83).

Co-sharer
landlord.

The cases of *Ambika Nath v. Aditya Nath*, 6 C.W.N. 624, and *Ayenuddin v. Srish Chandra*, 11 C.W.N. 76, were followed in the case of *Samiruddin v. Benga Sheikh*, 13 C.W.N. 630, and it was held that in cases between rival claimants of holdings, neither of whom is either the landlord or original tenant, the question of transferability does not arise and the one who would have the best title if the holding were transferable is entitled to succeed.

Case
between
rival
claimants

A co-sharer landlord who has purchased an occupancy holding in execution of a decree of his own cannot resist a mortgagee's suit to enforce his mortgage on the holding on the ground that the holding was non-transferable, he himself being a purchaser without the landlord's consent, taking the word landlord in its proper signification of the whole body of landlords: *Haro Chandra Paddar v. Umesh Chandra Bhattacharjee*, 14 C.W.N. 71. But see *Achanulla Sarkar v. Salemonnessa*, 9 C.W.N. xxiv (24 notes); the landlord who purchases a non-transferable holding at a sale in execution of a money decree can resist the claim of a mortgagee: *Asmatunnessa v. Harendra Lal*, 8 C.L.J. 29.

Co-sharer
landlord.

The question of transferability may be raised by the landlord but cannot legitimately be raised by a trespasser: the transferee has right to be protected in the enjoyment of his purchase against all the world except possibly his landlord: *Basarat v. Sabutla*, 2 C.W.N. cclxxix (279, note).

Trespasser
cannot
raise
question
of transfer-
ability.

The confirmation of sale is no bar to an application by the judgment-debtor to have it declared that, in execution of the decree the property which has been sold could not be sold, that he had, no disposing power in it, and that therefore the sale passed no interest to the purchaser, and the enquiry which should have to be made upon an application like this would be an enquiry under the provision of s. 244 uncontrolled by ss. 311 and 312, C. P. C.

Confirma-
tion, if a
bar to the
raising
of the
question.

When an order for sale is made, and in furtherance of that order the sale held, the judgment-debtor, if he was a party to that order or was aware of it and did not appeal against it, is precluded from questioning the propriety of that order and consequently the sale, but if the judgment-debtor is not aware of the proceedings in attachment of the property nor of the proceedings in connection with the sale thereof, he cannot be said to be a party to the order for sale and therefore can question the propriety of the sale: *Durga Charan v. Kali Prosanna*, 3 C.W.N. 586.

Tenant
cannot
raise the
question
if aware
of sale.

After a judgment-debtor with full knowledge of the execution proceedings and full opportunity of raising an objection to the effect that the holding is an occupancy holding and non-transferable fails to raise an objection at the time of the sale, it is not competent to him to resist the purchaser after the confirmation of the sale and as between the purchaser and the judgment-debtor the title to the property vests in the purchaser on the confirmation of the sale: *Dwarka Nath v. Tarini Sankar*, 35 Cal. 199, s. c., 11 C.W.N. 513: s. c., 5 C.L.J. 294; see also *Sheikh Murbulla v. Sheikh Burullah*, 9 C.W.N. 972.

As to where a raiyat is estopped from questioning an execution sale, see notes under headings "COMPULSORY SALE" and "SALE WITH CONSENT OF LANDLORD."

See notes under s. 183.

A question as to invalidity of a transfer of a non-transferable holding can be raised by landlord or his representative in interest: *Rahim Jan v. Imam Jan*, 17 C.L.J. 177.

Landlord
can raise
question of
transfera-
bility.

When a non-transferable occupancy holding was mortgaged by the raiyat to A and since the mortgage the raiyat sold a portion of the holding to B with the consent of the landlord who also gave a fresh lease to B, *held* in a suit by A to enforce the mortgage that B was estopped from raising the plea of non-transferability: *Radha Kant v. Ramananda*, 39 Cal. 512.

Transferee.

The transferee of a share of an occupancy holding from one of several co-tenants can not claim joint possession as against his transferor's co-sharers, there being no room in such a case for the application of the doctrine of Estoppel: *Agar Janu Bibi v. Pana Ulla*, 37 Cal. 687, s. c., 14 C.W.N. 779.

Purchaser
of occu-
pancy
holding
bound by
mortgage
and sale.

A purchaser of an occupancy holding from the raiyat after, a decree for sale has been passed in favour of a mortgagee of the holding, but before the sale thereof, is bound by the sale, both on the ground of estoppel and of the rule of *lis pendens*: *Shyama Charan v. Mokhada*, 15 C.W.N. 703; s. c., 13 C.L.J. 481.

Purchase
subsequent
to mort-
gage.

Where a mortgagee of an occupancy holding brought a suit to enforce the mortgage, *held* that a person who had purchased subsequent to the date of mortgage a portion of the holding is estopped from questioning the validity of the mortgage, although he had purchased with the landlord's consent and although he had taken a fresh settlement from the landlord at an enhanced rent: *Radha Kant v. Ramendra*, 16 C.W.N. 475, s. c., 15 C.L.J. 369 (per Chitty and Chatterjee, JJ., Coxe, J., dissenting).

Landlord
purchaser.

The landlord of a non-transferable occupancy holding, who purchased the holding at a sale held in execution of a money decree, can resist the claim of the mortgagee of the said holding on the ground of its non-transferability without his *i.e.* the landlord's consent: *Asmutunnessa Khatun v. Harendra Lal*, 8 C.L.J. 29.

Co-sharer
landlord
purchaser.

Following the case of *Ayenuddin v. Sris Chandra*, 11 C.W.N. 76 it was held that a co-sharer landlord who purchased the holding in execution of a decree of his own cannot raise the question of the transferability of the holding in a suit by the mortgagee: *Harachandra v. Umeshchandra*, 11 C.L.J. 20; the case of *Achannulla v. Solemonnessa*, 9 C.W.N. 24 (notes portion xxiv), s. c., 13 C.L.J. 479 was not followed.

A transferee of a non-transferable holding cannot be heard to say that his transferrer had no right to transfer the holding: *Sheikh Jamahar v. Sheikh Nazir*, 18 C.L.J. 512. Estoppel—
Transferee.

Where a portion of a non-transferable holding was sold, held that it is open to tenants in occupation of a portion to question the validity of transfer: *Agarjan Bibi v. Panaulla*, 37 Cal. 687; s. c., 14 C.W.N. 779. Tenant in
occupation.

Relying upon the Full Bench case of *Dayamoyi*, 42 Cal. 172 it has been held by the Patna High Court in the case of *Sadari v. Palknath*, 1 Pat. L.J. 257 that an occupancy raiyat can object when the holder of a money decree seeks to put to sale a portion of his holding. Execution
sale of a
portion.

Where a mortgagee purchased a non-transferable holding and brought a suit to recover possession, the landlord can raise the question although he was a party to the mortgage suit, the court having declined to decide the question in that suit: *Durga Charan v. Karamat*, 7 C.W.N. 607. The question of transferability may arise as well between landlord and tenant as between a tenant and a third party: *Ramgopal v. Rajan Sadagar*, 6 C.L.J. 43; *Bhiramali v. Gopikant*, 24 Cal. 355. A landlord purchasing in execution of a money decree of a non-transferable occupancy holding can resist the claim of a mortgagee on the ground of non-transferability: *Asmatun-nisa v. Harendra Lal*, 12 C.W.N. 721. See notes under s. 183. Mortgagee
purchaser.

Third party
Landlord
purchaser.

An execution purchaser of a non-transferable occupancy holding in execution of a money decree cannot raise a question of the validity of a transfer by the debtor in favour of a third person; *Kanchan Mandar v. Kamala Prosad*, 21 C.L.J. 441. Execution
purchaser.

A fractional co-sharer landlord who purchased a non-transferable occupancy holding is not entitled to raise the question of transferability as against a mortgagee of the holding: *Radha Kishnuji v. Lalji Saha*, 37 I.C. 821 (Patna Case). Fractional
co-sharer
landlord.

18. Right of transferee :—See notes under section 170.

When occupancy-rights, transferable by custom, have been transferred, it is open to the transferee to sue under the Specific Relief Act to have it declared that they have acquired certain rights; but it is clear that if it is the object of such a suit to have it declared that the old tenant is no longer responsible for the rent, and that the transferee is so responsible to the landlord, such a declaration cannot be obtained without the service of the notice prescribed by s. 73; *Ambika Pershad v. Chowdry Keshri*, 24 Cal. 644, but it has been held that the transfer of a portion of an occupancy holding is contrary to the spirit of s. 88, and the existence of a custom in a particular place by which such a holding is transferable is immaterial and gives no right to the transferee as against the landlord: *Kuldip v. Gillanders*, 26 Cal. 615; s. c., 4 C.W.N. 738. Right of
suit by
transferee
s. 73.

Transfer
of portion.

Even where occupancy-rights are transferable, an occupancy-raiyat cannot transfer different parts of it to different persons and in case of such transfers the landlord is entitled to treat the transferees as trespassers and eject them: *Tirthanund Thakoor v. Mutty Lal*, 3 Cal. 774. Transferees
of different
portions to
different
persons.

Where a raiyat having a non-transferable holding takes an under-lease under the transferee and then as an under-raiyat brings a suit against the landlord of the holding for recovery of possession and Under-lease
under a
purchaser.

establishment of title, held that they cannot obtain any decree whatsoever ; *Rajani Kant v. Ekkiari Das*, 34 Cal. 689, s. c., 11 C.W.N. 811 : s. c., 7 C.L.J. 78 ; if the plaintiff in the suit had recanted and resiled and sued for possession as a raiyat under the landlord offering to pay rent to him he would be entitled to obtain a decree. *Ibid.*

Purchaser
of a
portion.

The purchaser of a portion of a *raiya*ti jote which is not transferable without the landlord's consent, and where there is no finding of such consent is not entitled to have joint possession of the jote : *Agarjan Bibi v. Panaulla*, 37 Cal. 687 ; s. c., 14 C.W.N. 779.

It has been held by a Full Bench (*Purna Chandra v. Chandra Mohon*, 20 C.W.N. 586, s. c., 23 C.L.J. 304) that a purchaser of a share of an occupancy holding has a right to recover possession even against the landlord. Following the Full Bench it has been held in the case of *Lala Deo Saran v. Bateswar*, 23 C.L.J. 559, s. c., 20 C.W.N. 1xxxiii (notes portion p. 83) that a co-sharer landlord is in no better position than a stranger and hence the transfer by a raiyat of his non-transferable holding is binding against him.

Co-sharer
Landlord.

When some of several joint landlords have assented to a transfer of a non-transferable holding, the other co-sharers are entitled to recover joint possession of their share ; *Hossein Mahomed v. Fakir Mahomed*, 10 C.L.J. 618 : (referred to in *Radha Kissen v. Bhagdwat*, 38 I.C. 72).

Suit for
declaration
that rent-
decree is in
—operative.

A suit for a declaration by a mortgagee of a non-transferable holding that a decree obtained by the landlord against the vendor of the plaintiff for arrears of rent was fraudulent and inoperative against the plaintiff is maintainable : *Brahamdeo v. Ramdown*, 16 C.L.J. 139.

S. 47 C.P.C.

A person to whom a transferable occupancy holding was mortgaged before its sale in execution of a rent-decree is a representative of the judgment-debtor within the meaning of s. 244 of the former Civil Procedure Code, (s. 47 of the New Code) and may apply to set aside a sale under that section : *Srimati Nissa Debi v. Radhakishore*, 11 C.W.N. 312, following the principle in the cases of *Ishan Chandra v. Beni Madhab*, 24 Cal. 62 (F.B.), and *Azgar Ali v. Asabaddin*, 9 C.W.N. 134.

When an application is made to execute a decree for money by attachment and sale of an occupancy holding the judgment-debtor is entitled under s. 244, C. P. C., (s. 47 of the New Code) to raise the question as to whether the holding is saleable according to custom or usage and to have the question determined by the Court executing the decree : *Majed Hossein v. Rahubar*, 27 Cal. 187 ; also see *Peary Mohan v. Jote Kumar*, 11 C.W.N. 83 : *Gahar Khalipa Bepari v. Kasimaddi Jamadar*, 4 C.W.N. 557.

Decree for
rent against
the record-
ed tenant.

s. 47 C.P.C.

A purchaser in execution of a decree against an unregistered transferee of an occupancy holding as well as the unregistered transferee himself are bound by a decree for rent subsequently obtained against the recorded tenant. The purchaser is therefore a representative of the judgment-debtor within the provisions of s. 244 C. P. C., and may apply to set aside a sale held in execution of the rent-decree on the ground of fraud ; *Haradhan v. Girish Chandra*, 13 C.W.N. 98 ; see also *Ishan Chander v. Beni Madhab*, 24 Cal. 62. But it was held in the case of *Prosunno v. Bama Charan*, 13 C.W.N., 652

that a transferee from an occupancy raiyat cannot apply as the representative of a judgment-debtor to have a sale in execution of a decree for rent obtained against the recorded tenant set aside under s. 244 and 311 C. P. C. (XIV of 1882) if the holding was not transferable. See also *Srimati Nisa Bibi v. Radha Kishore*, 11 C.W.N. 312. See notes under s. 170.

As to whether a transferee may apply for setting aside sale under Or. 21 rr. 89 and 90 C. P. C., see notes under s. 174.

A transferee of an occupancy holding who has been allowed under ss. 170 and 171 to deposit the rent is competent to maintain a suit to challenge a decree obtained by the landlord collusively against the recorded tenant enhancing the rent: *Lala Barhmdeo Lal v. Sheo Prasad Lal*, 2 Pat. L.J. 561.

An application by a purchaser of a non-transferable occupancy holding from whom rent has been received by the landlord, to set aside an execution sale in favour of the landlord decree-holder held in execution of proceedings initiated and carried on against a judgment debtor is governed by s. 47 of the Code of Civil Procedure: *Arjun Das v. Ganendra*, 20 C.L.J. 341.

A portion of a non-transferable holding apart from custom or Will. local usage cannot be devised by will: *Umesh Chandra v. Joynath*, 43 I.C. 779. See notes under section 26.

Where in execution of a decree for arrears of rent an occupancy holding was sold and purchased by A, and A was resisted from taking possession, as B a mortgagee from the tenant being in possession opposed, *held* that a mortgagee is in possession of the holding on his own account within the meaning of Rule 101 of order 21 C.P.C.: *Kedar Nath v. Saday Chandra*, 19 C.L.J. 13.

When a purchaser of a holding alleging the same to be permanent brought a suit against the landlord for declaration of a permanent tenancy and stating that he was in adverse possession for 12 years *held* that he is not entitled to get a declaration that he has been a holder of a non-transferable occupancy holding: *Nabin Chandra v. Nil Kamal*, 36 I.C. 11.

Where A purchased a non-transferable occupancy holding from the heirs of the original tenant and a few days later B purchased the same holding from a person having no title and both A and B obtained settlement of the land from the landlord, B's settlement being prior to that of A, *held* that A had the preferential title and not B who had got the transfer from the pretended owner: *Wahid v. Mahamad Ansar Ali*, 47 I.C. 147.

19. Recognition of transferee by landlord:—The karta of a joint Hindu family has authority to consent on behalf of the joint family to the transfer of an occupancy holding: *Golapdi v. Purno Chandra*, 21 C.W.N. 774.* The landlord if he accepts rent, assents to the transfer of the holding, and it would make no difference in the application of this rule if the sale is a part of the holding: *Bharut Roy v. Gunga Narain*, 14 W.R. 211. Where the purchaser for a period of 18 years paid rent without the slightest objection on the part of the landlords, *held*, that this acted as a full and complete acknowledgment by the proprietor of the estate that he accepted the new tenant in the

Adverse possession.

Rival claims.

Karta of a joint family.

Rent deposited allowed by landlord to be carried to his credit.

* The case seems to be a case of a Dayabhaga family as it came from Faridpur.

- place of the old one: *Allendar v. Dwarkanath*, 15 W.R. 320. Where a landlord allowed the sums paid into the Collectorate by a third party to be carried to his credit, *held* that he had recognised the transfer from the tenant to the third party, although such transfer had not been registered: *Ram Gobind v. Dushoobhoajoh*, 18 W.R. 195. Where a landlord made a transferee a party to a rent-suit and accepted a decree against him jointly with other persons, *held* that the landlord had recognised the transferee as a tenant: *Ram Kishore v. Krishno Monee*, 23 W.R. 106. See notes under s. 73.
- Transferee.**
when made a party in a rent suit.
- Dakhilas**
to an occupier.
- When upon a transfer of a tenure *dakhilas* which were granted by the landlord did not describe the transferee as tenant but the *dakhilas* described the rent paid as the rent of the holding and the person paying as occupier of the holding and as paying on her own account, *held* that it was quite a sufficient recognition of the transferee as tenant: *Naba Kumari v. Behari Lal*, 6 C.L.J. 122, s.c., 11 C.W.N. 865, s.c., 39 Cal. 902. This case was distinguished in the case of *Debnarain v. Bihari Lal*, 14 C.W.N. 68.
- Marfatdar.**
- The mere fact that in rent-receipts the word *marfatdar* is used, is not conclusive to shew that there was no recognition and the court should determine in each case whether, on a consideration of all the facts, not merely by giving undue weight to words used, a legal inference is or is not to be drawn that there has been a recognition: *Prabhabati v. Taibutunessa*, 17 C.W.N. 1088, but see notes under the next heading.
- Effect of Marfatwari dakhilas.**
- As to the effect of *Marfatwari* or *Sarbarakari* or similar *dakhilas* see notes at the end of the notes under the next heading.—*What does not amount to recognition.* As to custom or local usage of transferability and *Marfatwari dakhilas*, see notes at page 176.
- Where a settlement is made by the landlord with auction-purchaser of a non-transferable holding as soon as can reasonably be expected after the sale and where the landlord afterwards recognises the purchaser and receives rent from him it is sufficient to render the sale valid in law: *Dwarka Nath v. Tarini Sanker*, 11 C.W.N. 513. See notes under s. 73.
- Receipt of rent "through the mortgagee."**
- In the case of *Baradacharan Dutt v. Hemlata*, 13 C.W.N. 242. Doss, J., sitting singly *held* that a landlord is entitled to get khas possession when a raiyat having a non-transferable holding creates an usufructuary mortgage, and the fact that the landlord granted a receipt acknowledging the receipt of rent "through the mortgagee," had not the effect of recognition by the landlord; but on Letters Patent appeal the decision was reversed on the ground that there was recognition by the landlord: (13 C.W.N. 833; s.c., 10 C.L.J. 610).
- A rent receipt reciting that rent was received through a mortgagee was held to be recognition by the landlord: *Barada Charan Dutt v. Hemlata*, 13 C.W.N. 833; s.c., 10 C.L.J. 610.
- This case was followed in the case of *Matook Dhari v. Jugdeep*, 19 C.W.N. 1319 and it was held that receipt of rent from a mortgagee of a tenant who deposited the rent amounts to recognition, even if the receipt of rent was under protest:
- Whether landlord bound by**
- After considering the cases *Bhojohuree v. Aka Golam*, 6 C.W.N. 823, *Jagadiswari v. Jaymani*, 25 Cal. 533, and *Beni Parsad v. Ramdohim*, 10 C.W.N. 266, *Mookerjee* and *Teunon*, J.J. have laid

down the following rule relating to the effect of a receipt granted by a *gomasta* :— the acts of
gomastha.

It cannot be laid down as an inflexible rule of law that a landlord is not bound by the act of a gomastha in recognising a transferee of an occupancy holding. The question of the gomastha's power to bind his landlord is one which must be decided on the particular facts of each case.

The burden of proof is in the first instance upon the landlord to prove the extent of the authority of the gomastha as a matter peculiarly within his knowledge. Where therefore a gomastha of the landlords accepted rent from a transferee of a jote and the landlords failed to show that the gomastha acted beyond the scope of his authority ; held that the facts constituted sufficient recognition of the transferee by the landlord : Suduman Jamadar v. Bahari Mahton, 15 C.W.N. 953.

This case (15 C.W.N. 953) was not approved of by Chapman and Roe I.J., (*Janki Sahu v. Thakur Run Bahadur*, 2 Pat. L.J. 231). Their Lordships have held that in order to rely upon a receipt granted by a landlord's *gomastha* as evidence of recognition by the landlord of a transfer of a holding it is necessary for the transferee to shew that the *gomastha's* duties ostensibly included at least some of the duties of management. *Contra.*

The presumption is that the granting of receipts by a *gomastha* would not be binding upon the landlord as a recognition of a transfer : *Ibid.*

It is not within the scope of the authority of a *patwari* or rent-collector to consent on behalf of his master to the transfer of a non-transferable occupancy holding : *A. W. N. Wyatt v. Sheogobind*, 1 Pat. L.J. 414 (Per Chamier, C.J.).

Independently of the question whether a *gomastha* had authority to grant an *amalnama* or settle a holding, the receipt of rent by him on behalf of his employer from the person in occupation of a holding is sufficient to prove the tenancy of the latter : *Jahurmāl v. Kera-mutuka*, 45 I.C. 196 (Richardson and Beachcroft, J.J.). The case of *Suduman v. Behari Mahton*, 15 C.W.N. 953 was considered in this case. Receipt of rent by gomastha, when sufficient for recognition.

A plaintiff suing for compensation for use and occupation and not asking for ejectment must be taken to have recognised the defendant as a tenant : *Abdul Hakim v. Rajendra*, 13 C.W.N. 636 ; such a suit was treated as a suit for rent. Suit for compensation.

A purchaser of a non-transferable occupancy holding who obtained recognition of his purchase by the landlord has no right to eject a tenant who had, prior to the purchaser's recognition, lawfully entered into occupation of the holding as a raiyat under authority from the landlord's *ijaradar* for a term ; his raiyati interest would continue even after the expiry of the *ijara* ; he can only be ejected on one or more of the grounds mentioned in s. 44 of the B. T. Act : *Atul Chandra v. Lakhi Narain*, 10 C.L.J. 55. Tenant settled by an ijaradar.

A landlord who gave receipt of rent in which the person from whom rent has been said to have been received is described as a mortgagee, cannot bring a suit for *khas* possession on the ground that the holding is non-transferable : *Baroda Churn v. Hemlata*, 13 C.W.N. 833. Rent-receipt to a mortgagee.

Where money was deposited by a transferee to have a sale of a holding set aside under s. 310 A.C.P.C. (Act XIV of 1882) and the

Acceptance of deposit

s. 310A
C.P.C.

sale was set aside upon a notice to the decree-holder to shew cause why the sale should not be set aside, and the landlord decree-holder withdrew the money deposited, *held* that the decree-holder could not be permitted to urge that the transfer was inoperative: *Gadadhar v. Midnapore Zemindary Co.*, 27 C.L.J. 385.

Withdrawal of money deposited by the transferee of a non-transferable holding under s. 310A. (Act XIV of 1882) to have the sale set aside amounts to recognition of the transferee: *Gadadhar v. Midnapur Zemindary Co.*, 43 I.C. 742.

Ticcadar.

Acceptance of rent by a ticcadar from the transferee amounts to recognition by the landlord: *Bhagloo v. Mahodeo*, 38 I.C. 283.

Effect of
receipt by
gomostha
of landlord
Landlord
not generally
bound.

A landlord is not bound to recognise a transferee of a non-transferable holding if his *gomostha* or *patwari* accepted rent from the transferee; in such cases the landlord would not generally be bound unless he accepted the rent knowing the source from which it came: *Bhonulal v. W. A. Vincent*, 65 I.C. 882, (Dawson Miller C. J. and Das J.).

Demand
of rent.

Where a person purchased a holding on the assumption that it was transferable and professed to be a tenant in occupation, and the landlord demanded for rent, *held* that it was good evidence of mutual consent to the creation of a tenancy unless the landlord was able to explain that the demand was not unqualified: *Monmotha Nath v. Probode Chandra*, 37 C.L.J. 52.

Onus.

Where the question is as to whether the landlord's *gomostha* had the right to recognise a tenant, *held* that in the first instance the onus is upon the landlord to shew what the precise authority of his agent is: *Madan Mohan v. Priyanath*, 64 I.C. 362.

Where a *tahsildar* not authorised to do so grants a receipt, there is no recognition: *Gobind v. Dwaraka*, A.I.R. 1922 Pat. 279.

Where rent was received by an *ijaradar* from the transferee of a non-transferable holding, *held* that the *ijaradar* after his acquisition of the proprietor's interest is not entitled to eject the transferee if he has not repudiated the receipt of rent of his *gomostha*: *Mahammad Kasiruddin v. Banikant*, A.I.R. 1923 Cal. 520 (Walmsley and B. B. Ghose J.J.).

Where a tenant took settlement from a co-sharer, the other co-sharer is entitled to get a decree for joint possession: *Bal Gobind v. Dwaraka*, A.I.R. 1922 Pat. 279 (Coutts and Ross J.J.).

Landlord
taking out
money
deposited
by tenant
stating
that he
procured
the money
by sale
of the
holding.

20. What does not amount to recognition :—Where a non-transferable holding was advertised for sale in execution of a decree for arrears of rent and the judgment-debtor put in the money due under decree stating that he had procured the money by selling his holding to another person and the landlord took out the money out of Court, *held* that it could not be inferred from the above circumstances that the landlord had given his consent to the transfer, inasmuch as the landlord had a right to draw the money out of Court without regard to the manner in which or the source from which the judgment-debtor had procured it; *Robert Wilson v. Radha Dulri*, 2 C.W.N. 63. When a party wishes to make known to the zemindar that he has a right to a holding the rent of which the landlord refuses to take from him, he should distinctly state what is the interest he claims, and the notice to the zemindar should comprise this information; it is not sufficient for a man wishing to protect his special interest of which the zemindar may have no knowledge, to make a deposit of

Deposit
of rent by
transferee in
the name of
the record-
ed tenant

the rent in the name of the recorded tenant along with his own, and his without stating what his claim is ; for unless he does so, the landlord own. is not obliged as to his status : *Mirtunjoy v. Gopal Chandra*, 10 W.R. 466. A receipt given by a gomastha does not bind the landlord : *Bhajaharee v. Akogosan*, 16 W.R. 67. Receipt by Gomostha.

A demand to give up possession coupled with a demand to pay the produce of the land or the price thereof is not a demand for rent and cannot be regarded as a recognition by the landlord of the person from whom the demand is made as his tenant ; *Deonandan v. Meghu Mahton*, 5 C.L.J. 181. Demand to pay produce.

A deposit of the amount of a rent decree by the purchaser of a non-transferable holding in the name of the tenant, and the withdrawal of the deposit by the landlord does not amount to the landlord's recognition of the purchaser as the tenant : *Maheshnarain v. Maharaja Bahadur* : 17 C.W.N. 70. Deposit.

Withdrawal by the landlord of money deposited by the purchaser of a non-transferable occupancy holding in execution of a money decree to prevent a sale in execution of a rent decree does not amount to recognition : *Surendra Narain v. Jugal Kishore*, 20 C.W.N. 849 ; the case of *Thomas Barclay v. Syed Hossein Ali*, 6 C.L.J. 601 and *Nalini Behary v. Fulmani*, 15 C.L.J. 388 were distinguished. Withdrawal of deposit.

Marfatwari or Sarbarkari or similar Dakhilas :—The acceptance of rent from the transferee of a non-transferable holding not as transferee but as the agent or representative of the original tenant does not amount to a recognition of the validity of the transfer : *Digbijoy v. Shaikh Ata Rahaman* : 17 C.W.N. 156. Acceptance of rent from agent.

The receipt by the landlord of rent from a transferee of a holding, not on his own account but as agent of the transferor is not a recognition of the transfer : *Debnarain v. Baidyanath*, 14 C.W.N. 68 ; see also *Khoodeeram Chatterjee v. Rookhinee Boistobee*, 15 W.R. 197 ; *Rasamay v. Srinath*, 7 C.W.N. 132. The Privy Council case of *Nabakumari v. Behari Lal*, 11 C.W.N. 865, s.c., 34 Cal. 932, s.c., 6 C.L.J. 122, was distinguished in the case of *Debnarain v. Baidyanath Madak*, 14 C.W.N. 68. Receipt from agent.

“The effect of the use of the word ‘*Marfatdar*’ may vary according to the circumstances of each case on a consideration of all the facts of the case, but having regard to the fact that rent receipts were asked for in the name of the purchaser and the landlord expressly refused to grant receipt in his name, and gave receipt in the name of the old tenant (the purchaser being described merely as *Marfatdar*) negatives any idea of recognition of the purchaser as the tenant” : *Manmatha v. Anath Bandhu*, 23 C.W.N. 201 (at p. 214, Col. 2) :

When a non-transferable occupancy holding is transferred by sale or usufructuary mortgage, and the tenant abandons, the landlord is entitled to get *khas* possession and consequently he does not agree to recognise the transferee as a tenant. As long as the tenant cannot satisfy the landlord by payment of *Nazar* or *Selami*, the arrangement generally is to the effect that the transferee will continue to pay rent on the express understanding that the payment will not be on his own behalf but on behalf of the transferer (*i.e.*, the original tenant), and consequently there will be no recognition of the transferee as tenant ; where therefore the *dakhila* (rent receipt, describes the transferer as *tenant* and the transferee as *marfatdar*, (*i.e.*, through whom the rent is paid), it is reasonable to think that the landlord by granting such *dakhilas* does not admit the transfer and does not acknowledge the Whether *Marfatwari dakhilas* amount to recognition.

marfatdar as a tenant ; in fact the transferee *marfatdar* is estopped from saying that he has been recognised as a tenant ; the earlier decisions were to the effect that *marfatwari dakhilas* cannot be evidence of recognition but in a later decision in the case of *Prabhabati v. Taitab-ennessa*, 17 C.W.N. 1088 it has been laid down that the fact that in rent receipts the word "*marfatdar*" is used is not conclusive to shew that there was no recognition and the court should determine in each case whether on a consideration of all the facts, not merely by giving undue weight to words used, a legal inference is or is not to be drawn that there has been a recognition.

It is submitted with great respect that in this decision the true intention of the landlord and the tenant in the grant and acceptance of *dakhilas* was not given effect to.

Marfatdari Rent receipts: Recognition :—Where the landlord has expressly refused to grant receipts in the name of the transferee and granted them in the name of the old tenant describing him as *marfatdar*, it may at once be said there is not recognition. Where a recognition of tenancy is set up the Court should determine in each case whether on a consideration of all the facts, not merely by giving undue weight to words used, a legal inference is or is not to be drawn that there has been a recognition establishing the relationship of landlord and tenant between one who has paid and another who has received rent for a number of years : *Satish Chandra Ghose v. Debendra-nath Dey*, 85 I.C. 1925.

Tenant not a necessary party in a suit for khas possession against a transferee.

21. Party—suit for khas possession :—A tenant is not a necessary party in a suit for ejectment when there is an unauthorised alienation and when the tenant is no longer upon the land : *Ram Pershad v. Jowahir Ray*, 7 C.L.J. 72 at p. 78 ; if the tenant is made defendant in such a suit he is entitled to ask for dismissal of the suit as against him on the ground of want of cause of action : *Ibid*. In a suit to eject a transferee of a non-transferable holding the transferer is not a necessary party : *Sheikh Chand Pramanick v. Romoni Mohan*, 17 C.W.N. 1105.

When a necessary party.

Where on a conveyance by an occupancy raiyat of a non-transferable holding, the landlord brought a suit for *khas* possession, against the transferee, and the raiyat (the transferor) made an application to be made a party on the allegation that the transfer was a mortgage by conditional sale, *held* by the High Court on revision that the order of the lower court refusing the application was wrongly made and that to prevent multiplicity of suits he ought to be made a party : *Dwarkanath v. Kisorialal*, 11 C.L.J. 426.

See notes under the following heading *i.e.*, heading No. 22.

Such a suit is not a suit under the Bengal Tenancy Act and therefore s. 188 does not apply.

22. S. 188 does not apply to a suit for ejectment on the ground of unauthorised alienation :—Where an occupancy raiyat holding land under several co-sharers transfers his holding and abandons the land and the transferee is in possession, it is not necessary that all the landlords must join together in bringing a suit for ejectment and s. 188 is no bar to a suit by one of the co-sharer landlords alone ; for, the joint landlords are not required or authorised to bring such a suit under the Bengal Tenancy Act.

A suit for ejectment on the allegation that a tenant of non-transferable holding sold it to the defendant and has abandoned the land is not a suit or proceeding under the Bengal Tenancy Act : *Bazlul Karim v. Satis Chandra Giri*, 15 C.W.N. 752 ; s. c., 13 C.L.J. 418 ; See also *Sarat Chandra v. Syam Chand*, 10 C.W.N. 930 ; s. 50 of



the Bengal Tenancy Act has therefore no application to such a suit. See notes under s. 50.

A suit for *khas* possession against a transferee of a non-transferable occupancy holding is not a suit based upon the provisions of the Bengal Tenancy Act but a simple action in ejectment: *Raghubar v. Ramgulam*, 1 Pat. L.J. 502.

Sec. 188 does not apply to a suit against a trespasser: *Reajaddin v. Syed Abdul* [A.I.R. 1924, Cal. 445] (Sanderson, C. J. and Ghose J.).

23. Limitation in regard to a suit for khas possession against the transferee of an occupancy raiyat:—A suit for ejectment brought by a landlord against the transferee of a non-transferable occupancy holding is not barred by limitation although the suit might be brought more than 12 years after the date of sale by the raiyat: *Jadu Nath Belel v. Rajnarain Mukherjee*, 17 C.W.N. 459; in this case the transferee had been in possession for more than 12 years and had once during that period paid rent to the landlord on behalf of the old tenant and taken a receipt in which he was described as a *marfatdar*. No limitation even if suit is brought 12 years after.

But it was held by Jenkins C. J. and Mookerjee J., in the case *Contra. of Probbabati v. Tarbatunnessa*, 17 C.W.N. 1088 (reversing the decision of Coxe J.), that a plaintiff suing for ejectment of a purchaser of a non-transferable occupancy holding cannot succeed where his right to possession accrued long before 12 years of the commencement of the suit, and such a suit is barred unless he makes out a case under s. 18 of the Limitation Act. In this case it was held that the statute of the limitation created a limited interest of tenancy. In this case the transferee was in possession for 30 years and obtained *marfatdari* rent receipts from the landlord.

The case of *Probbabati v. Tarbatunnessa*, 17 C.W.N. 1088 was followed in the case of *Panchkari v. Maharaj Bahadur*, 19 C.W.N. 136.

It was held in the case of *Debnarain v. Baidya Nath*, 14 C.W.N. 68 that a transferee of a non-transferable occupancy holding who paid rent as *marfatdar* of the former tenant may acquire a right of occupancy if he is in possession for 12 years by assertion of his raiyati right adversely to the landlord.

24. Right to accretion:—An occupancy raiyat is entitled to the benefit of s. 4, cl. (1) of Reg. XI of 1825, and when there is an accretion to his holding he is entitled to hold the lands as an accretion to the jote: *Gour Hari v. Bhola Kaibarto*, 21 Cal. 233; *Gobind Monee v. Dina Bundhoo*, 15 W.R. 87; *Ati Mollah v. Sahebullah*, 15 W.R. 149; *Bhagabat v. Durg Bijai*, 8 B.L.R. 73; s. c., 16 W.R. 95. But where there is no right of occupancy in the parent land s. 4 of Reg. XI of 1825 cannot apply to the accretion: *Beni Pershad v. Chaturi*, 33 Cal. 444; s. c., 4 C.L.J. 63. See notes under s. 52. See also *Zukheroddin Paikar v. Campbell*, 4 W.R., C. Rulings 57, but it has been held in the cases of *Ahmud v. Tohi Mahomed*, 13 C.W.N. 267 and *Amjad Ali v. Kade Jan*, 13 C.W.N. 269 that non-occupancy raiyat can claim the benefit of s. 4 of Act XI of 1825 and is entitled to claim an accretion to his holding, see also *Madhu v. Sabar Ali*, 14 C.W.N. 680 and *Mia Jan v. Akramali*, 8 C.L.J. 541; their Lordships Stephen and Doss J.J., in deciding the case reported Non-occupancy raiyat.

in 13 C.W.N. 269 distinguished and explained the cases of *Zukheraddin Paikar v. Campbell*, 4 W.R. C. Rul. 57 and *Beni Pershad v. Chaturi*, 33 Cal. 444, s. c., 4 C.L.J. 63 as follows:—

Tenant
from year
to year.

The appellant relies on the decisions in *Zuheroddin Paikar v. Campbell*, and *Beni Pershad Koeari v. Chaturi Tewari* to show that it does not. The former case referred to a tenant from year to year and was held that he was not entitled to the benefit of the section. In the latter a fresh agreement from a year's tenancy was actually made every year, so that the tenant never had any interest in the land beyond the end of the current year. Neither of these cases, therefore, touch the case of non-occupancy tenant.

The holder of a rent-free holding is entitled to possession of all lands forming accretions thereto, but he is not entitled to hold the same rent-free: *Baidyanath v. Nandalal*, 18 C.W.N. 1206*

A party to a contract enjoying the benefit under it cannot, when the right to get either rescission or reformation of the contract is barred, say that he is not bound by one of its terms: *Sasikant v. Genda Sheikh*, 82 I.C. 970 (Chakravarti J.).

Redemp-
tion of
mortgage.

25. Right to redeem a mortgage :—The words "any person having any interest in or charge upon the property" in sub-section (a) of s. 91 of the Transfer of Property Act do not include a raiyat and he is not therefore entitled to redeem mortgage of his superior interest, although the raiyati lease was created after the date of the mortgage: *Giris Chunder v. Juramoni*, 5 C.W.N. xxi.

A purchaser in execution of a mortgage decree has no right to redeem against the purchaser of a non-transferable occupancy holding at a rent-sale: *Lala Muralidhar v. Sarat Lal*, A.I.R. 1922 Pat. 555 (Coutts and Ross J.J.); the interest of the mortgagee purchaser is not a lien *i.e.*, not an interest in limitation of the tenant's interest.

26. Excavation of Tank :—See notes under s. 76 and under s. 194.

27. Denial of landlord's title :—See notes under s. 10.

28. Unfit for the purposes of tenancy :—See notes under s. 25.

S. 23 of the Bengal Tenancy Act is applicable not only where the land is made permanently unfit for cultivation but also where it is made temporarily unfit: *Raj Kishore v. Rajani Kant*, 24 C.L.J. 85.

The withdrawal of one-tenth portion of an occupancy holding from actual cultivation for a non-agricultural purpose (establishment of a market) renders the holding unfit for the purpose of the tenancy: *Raj Kishore v. Rajani Kant*, 37 I.C. 249; where a co-sharer landlord took a release of a portion of an occupancy holding for enabling to hold a market and after obtaining possession thereof attempted to erect structures and hold a market thereon, the other co-sharer landlord was entitled to restrain from executing the design: *Ibid*.

29. Which does not materially impair the value of the land &c. :—See notes under s. 25.

* See the case of *Mea Jan v. Akram*, 2 C.L.J. 508, s. c., 10 C.W.N. 527, *Gourhari v. Bholanath*, 10 C.L.J. 420, s. c., 13 C.W.N. 1197; *Golam Ali v. Kali Krishna*, 8 C.L.J. 541; *Chooramonee v. Howrah Mill Co.*, 21 Cal. 233; *Ram Money v. Omesh Chunder*, 7 Cal. 479; *Ram Gutty v. Baroda Churn*, 11 Cal. 696.

30. Relinquishment by a co-tenant :—A relinquishment by a co-tenant does not operate by way of enlarging the rights of the other co-tenants: *Peary Mohan v. Radhika Mohan*, 5 C.L.J. 9.

31. Construction of Building :—An occupancy raiyat may erect a building consisting of masonry walls with a corrugated iron roof: *Hari Kishore v. Baroda Kishore*, 31 Cal. 1014; he may also build a *pucca* house, *Nyamatoollah v. Gobind Churn*, 6 W.R. (Act 76 X) 40: See notes under s. 76.

An occupancy raiyat does not exceed his right in building a *pucca* dwelling house on an insignificant portion of his holding taken for the purpose of gardening: *Narain Chandra v. Manindra*, 37 I.C. 999; such building need not be *suitable to the holding* but it must be suitable *under the circumstances of the raiyat*: *Ibid*.

32. Right of suit :—Where a Hindu widow transfers the property which she inherited from her husband and the said transfer is without any legal necessity, the transferee is competent to maintain a suit for ejectment against the transferee of a non-transferable occupancy holding. *Kishori Paul v. Shaikh Bhushai*, 14 C.W.N. p. 106.

33. Regulation VIII of 1819: Incumbrance :—An occupancy *Khudkast* or non-occupancy holding if not held by a *khudkast* raiyat, i.e., a raiyat. resident and hereditary cultivator, is an incumbrance and not protected from ejectment by the terms of cl. 3, s. 11 of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation: *Jogeshwar v. Abed Mahomed*, 3 C.W.N. 13.

When a landlord acquiesces in a course of conduct by his tenants for instance, an appropriation by them of the trees in their holding and such acquiescence has led to the growth of a custom or usage which is binding upon him, the position of the parties is the same as if the landlord has expressly granted to them a right to appropriate the trees: *Prodyote Kumar v. Gopi Krishno*, 37 Cal. 322 at page 327, s. c., 14 C.W.N. 487; s. c., 11 C.L.J. 209. A customary right of this description in favour of a resident and hereditary cultivator must be regarded as a bonafide engagement with him which the auction purchaser at the Putni Sale is not entitled also to abrogate; *Ibid* at p. 350. A customary right to cut and appropriate trees is however an incumbrance within the meaning of sec. 11 of Reg. VIII of 1819. *Ibid*.

34. Right to bequeath :—A raiyat has no right to transfer or bequeath his holding except by local usage or custom; see s. 178, sub-sec. 3, cl. (d). Where a raiyat makes a bequeath by a will of his non-transferable holding, the legatee has no right to take the bequest but the heir would be entitled to inherit as if the raiyat had died intestate; but if the legatee takes possession of the holding, the heir has right to recover it from him; but if the heir, instead of doing so, abandons the holding, the landlord has the right to re-enter treating the legatee as a trespasser.

The heir of an occupancy raiyat in respect to a non-transferable occupancy holding is bound by a bequest of the holding made by the latter in favour of a stranger: *Haridas v. Uday Chandra*, (Per Doss J., sitting singly), 8 C.L.J. 261. It is submitted with great respect that this proposition of law is open to doubt. A non-transferable holding is not a proper subject matter of a bequest; therefore when an occupancy raiyat makes a bequest, it is to be considered as a pro-

Customary
right to
cut tree.

Heir not
bound by
bequest.

Contra.

Observation in regard to the above case.

perty in respect to which the testator died intestate ; a will takes effect after the testator's death. The heir is not bound by the rule of estoppel to question the title of the legatee. So, when there is a bequest of a non-transferable holding, the heir inherits it as a part of the undisposed of assets ; but if he acquiesces in the legatee taking possession of the same, he abandons it, and the landlord is entitled to get *khas* possession.

Contra.

The aforesaid case (8 C.L.J. 261 ; s. c., 12 C.W.N. 1086) has been dissented from by Mookerjee and Beachcroft, J.J., in the case of *Amulyaratan v. Tarini Nath*, 18 C.W.N. 1290, s. c., 21 C.L.J. 187 in which it has been laid down that except under a local usage a raiyat is not competent to make a testamentary disposition of a non-transferable occupancy holding and that the heir-at-law of the raiyat is not estopped from questioning the validity of the devise. This case was followed in the case of *Kunjolal v. Umesh Chandra*, 18 C.W.N. 1294 where Fletcher and Richardson J.J., have taken the same view. It has also been held that the testamentary disposition of a *part* of a non-transferable occupancy holding like that of the whole holding is invalid : *Umesh Chandra v. Joy Nath*, 22 C.W.N. 474 (Fletcher and Chatterjee J.J.).

Right of occupancy raiyat to a share in the compensation.

35. Right to share in the compensation under the Land Acquisition Act :—An occupancy raiyat is a person interested within the meaning of the expression "person interested" in s. 3, cl. (b) of the Land Acquisition Act : *Gadadhar v. Dhunput*, 7 Cal. 585. Garth, C. J., in delivering judgment in this case observed as follows :—The parties who usually suffer most from lands being taken for Government purposes are either the raiyats with right of occupancy, or the holders, whoever they may be, of the first permanent interest above the occupancy raiyats. The actual occupier is of course turned out by the Government, and if he is a raiyat with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere ; and the holder of the tenure immediately superior to the occupancy raiyats, whatever the nature of his holding may be, loses the rent of the land taken during the period of his holding. These two classes, therefore, would, generally speaking, be entitled to the larger portion of the compensation.

When the Government acquires land under the Land Acquisition Act the occupancy tenant is usually allowed a portion of the market value as compensation without reference to the question whether the occupancy right is transferable or not : *Per Gupta, J., Ambikanath v. Adityanath*, 6 C.W.N. 624.

Agreement that tenant is not to share in Land—Acquisition money.

36. Land Acquisition :—An agreement that an occupancy raiyat will not be entitled to share in the compensation for acquisition of land is valid : *Asutosh v. Haripada*, 35 C.L.J. 133 ; such a contract is not affected by cl. (a) of s. 178. *Ibid.*

37. Chap. VIIA :—As to right of transfer by aboriginals, see Chap. VIIA.

A mortgage of a non-transferable holding not invalid.

38. Miscellaneous cases :—A mortgage of a non-transferable holding is not invalid and does not confer any right on the landlord to have such mortgage declared invalid or not binding on the mortgagors ; and where the landlord has acquired the interest of the mortgagors he is bound by the mortgage : *Sajedar v. Rakhal Chandra* A.I.R. 1924 Cal. 529 (Walmsley and B. B. Ghosh J.J.).

No co-sharer can, as against his co-sharers, obtain any *jote* right, rights of permanent occupancy, in the lands held in common, nor can he create by letting the lands to cultivators as his tenants any right of occupancy of the lands in them : *Midnapur Zemindari Co. v. Naresh Narayan*, 51 Cal. 631 ; s. c., 29 C.W.N. 34.

If a co-sharer purchases any *jote* rights in lands held in common by the co-sharers, such a purchase would in law be held to have been a purchase for the benefit of all the co-sharers, and the *jote* rights so purchased would by the purchase be extinguished : *Ibid*.

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

Headings of Notes.

1. FAIR AND EQUITABLE.
2. SUIT FOR ASSESSMENT OF RENT.
3. WHETHER ONE OF TWO OR MORE JOINT LANDLORDS CAN MAINTAIN A SUIT FOR ASSESSMENT : S. 188 :
4. RENT FREE TITLE.

I. Fair and Equitable :—S. 27 says that the rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

The expression "fair and equitable rates" is apparently taken from Sec. 5 of Act X of 1859 and of Act VIII of 1869 (B. C.) which laid down as is now provided under sec. 27 of the present Act.

2. Suit for assessment of rent : miscellaneous matters :—

A suit lies in the Civil Court for assessment of rent : *Berhamdut v. Ramji Ram*, 18 C.W.N. 466. In a proceeding under s. 106 of the Bengal Tenancy Act the Revenue Officer directed that certain lands entered in the record-of-rights as held rent-free be recorded as liable to payment of rent : *held* that a suit lay in the civil court for assessment of rent : *Ibid*. the cause of action in the suit arose after the decree under s. 106 : *Ibid*.

In a suit for assessment of rent a rent-free grant was inferred from long possession without payment of rent : *Nawab Ali v. Birendra Kisore*, 22 C.L.J. 124 ; see also *Bissonath v. Brojo Mohun*, 10 W.R. 61 and *Radha Gobind v. Prokash*, 14 W.R. 108 ; *Jafer Ahmed v. Birendra Kishore*, 22 C.L.J. 126 ; *Birendra Kishore v. Chandi Charan*, 22 C.L.J. 134 ; *Kali Mohon v. Birendra Kishore*, 22 C.L.J. 309 ; *Biprodas v. Manorama*, 45 Cal. 574. Where a tenant in the course of settlement proceedings set up a rent-free grant and disclaimed all liability to pay rent, *held* that a suit for assessment of rent brought more than 12 years after the disclaimer by the defendant was barred by limitation : *Birendra Kishore v. Gagan Chandra*, 22 C.L.J. 132 ; see also *Birendra Kishore v. Ram Kumar*, 22 C.L.J. 308 ; a suit for assessment brought after 12 years of the date of the defendant's setting up a rent-free grant is barred by limitation : *Birendra Kishore v. Ram Charan*, 22 C.L.J. 147 ; where the plaintiff who was out of possession for more than 12 years based his claim on the ground that the defendants were trespassers and did not elect to treat them as tenants on receipt of rent from them, *held* that the claim for assessment of rent in respect of the disputed land was barred by limitation : *Birendra Kishore v. Ananda Priya Baishnavi*, 22 C.L.J. 151 ; see also *Birendra Kishore*

A co-sharer cannot acquire a right of occupancy under another co-sharer. If he purchases the *jote* it becomes the property of all the co-sharers.

Suit for assessment of rent lies in a Civil Court.

Mere non-payment of rent is no bar to the landlord's right to

assessment
and
recovery
of rent.

v. *Ram Chandra*, 22 C.L.J. 153. The mere non-payment of rent for a certain period does not bar a landlord's right to have the rent assessed and to recover rent from his tenant: Art 130 of Sch. I of the Limitation Act, applies after the tenure is found to be rent-free: *Kamini Sundari v. Abdul Habin*, 28 C.L.J. 254.

Where the landlord's papers shewed that rent was payable but rent was never realised, and opposite the entry of the amount payable was sometimes entered the word "*mof*" and sometimes the word "*majra*" held that the remission of rent was resumable: *Naik Pandey v. Rajdhari Lal*, 42 I.C. 843. (*Patna Case*).

It seems reasonable that in a suit for assessment of rent back rent may be recovered if not barred by limitation.

A suit in which assessment of fair and equitable rent and then recovery of rent so assessed is prayed for, is not a suit for rent as contemplated by sec. 153 of the B. T. Act: *Bijoy Chand v. Beni Madhab*, 52 Cal. 689 (Chakravarti, J.). See also *Lala Dhanukdhari Lal v. Baburam Ahir*, 10 C.L.J. 629.

Suit for
assessment
of rent—
not a suit
under the
B. T. Act.

3. Whether one of two or more joint landlords can maintain a suit for assessment of rent s. 188:—S. 188 does not seem to be a bar to the maintainability of a suit for assessment of rent at the instance of one of two or more joint landlords. A suit for assessment of rent is not a suit under the Bengal Tenancy Act; it is under the general law of the country and the landlord is not under the Bengal Tenancy Act required or authorised to bring such a suit and therefore s. 188 has no application.

Long
possession
without
payment
of rent.

4. Rent-Free Title:—The mere fact of a person being in possession for a long series of years without payment of rent does not justify the inference that he held under rent-free title, specially where the fact of possession may be attributed to a lawful origin: *Giriza Nath v. Chandi Charan*, 38 C.L.J. 307, (*Mookerjee and Beachcroft, J.J.*); in this case the person claiming a rent-free title was a part proprietor.

Onus.

Once a landlord has proved that the land which is sought to be held rent-free lies within his estate, the onus is shifted: *Jugdeo v. Baldeo*, 39 I.A. 399; s.c., 27 C.W.N. 925; s.c., 36 C.L.J. 499; s.c., 2 Pat. 38.

A person who claims to hold as a tenant land within the ambit of a Zemindary must prove his right to hold it without payment of rent by a grant by the Zemindar, the production of the grant itself is not however the only way of proving the grant: The presumption of a lost grant arises in case of long possession under the claim of a definite right. In the circumstances of this case the presumption of a lost grant arose. *Kiran Chandra v. Srinath*, 31 C.W.N. 135 (*Chakravarti J., Panton J. agreeing*). The case of *Jagdeo Narain v. Baldeo Singh*, 39 I.A. 399; s.c., 27 C.W.N. 925; s.c., 36 C.L.J. 449 referred to.

Long possession without payment of rent may in certain circumstances justify the inference of rent free title. An open and adverse assertion by a tenant that the land which he has held is rent free may, after the lapse of the period of limitation, create a presumption that the tenure has been held without payment of rent as against the landlord. The tenant may by assertion of adverse title acquire a limited

interest in the land which he holds: *Chattra Nath v. Babar Ali*, 29 C.W.N. 333 (Suhrawardy and Chotzner J.J.).

The plaintiffs were in actual physical possession of suit lands as tenants without payment of rent to the landlord for more than 12 years. The contention was that the plaintiffs have acquired a rent-free holding by operation of law, *held* that as there was no allegation and no evidence that the plaintiffs ever refused to pay rent to the landlord, or asserted in his presence a right to hold the lands rent-free, the mere failure of the landlord to realize rent even for more than 12 years would not confer a rent-free title. A rent-free title can be only acquired by adverse possession: *Sheonandan v. Kesho Prasad*, 8 P.L.T. 798; s.c., 1928 A.I.R. (Pat.) 63. The case of *Taranchandra v. Ganendra*, 16 C.W.N. 235 was distinguished.

The decision of the Judicial Committee in *Jugdeo v. Baldeo*, 39 I.A. 399 does not support the extreme contention that although the record-of-rights is in favour of the tenant it is still necessary for the tenant to establish by clear evidence that the entry in the record-of-rights is correct: *Stonewigg v. Ramessur*, A.I.R. 1923 Pat. 340.

The starting point for the period of limitation for assessment of rent with regard to lands held by the plaintiff as *nishkar* must be from the time he or his predecessor came into possession of the lands and the plaintiff is entitled to succeed in his claim that the lands are *nishkar* on proving that the defendant was debarred from instituting suit for assessment of rent by lapse of time: *Sailaja v. Risheecase*, 51 Cal. 135; s.c., 39 C.L.J. 380 (Rankin and B. B. Ghose, J.J.). See notes under s. 106.

Where a co-sharer purchased a holding from a tenant which was alleged to be rent-free and who had been holding it for more than 12 years without payment of rent and the co-sharer purchaser also did not pay any rent, *held* that the possession of the tenant vendor being adverse to other co-sharers, the possession of the purchaser co-sharer was also adverse to the other co-sharers and the starting point for the period of limitation for assessment of rent with regard to these lands was from the time when the co-sharers and their predecessors came into possession of the lands: *Ibid.*

Rent free title claimed by a co-sharer purchaser.

Limitation for assessment of rent.

If a tenant is in adverse possession of the absolute interest for over 12 years, then the landlord's right is completely extinguished. If a tenant is in adverse possession for such a period in respect only of a limited interest as tenant, then whatever may be the effect of it on the question of landlord's right, to *khas* possession, a claim for assessment of rent will not be barred unless as provided for in article 130 or 131 Schedule I of the Limitation Act. A suit to establish a right to assessment is governed by article 131. Limitation under this article does not run until there has been a proper demand and a refusal and mere exclusion from enjoyment does not cause time to run unless there has been refusal as a result of a demand properly made: *Devendra Narayan v. Jhumur Pramanik*, 43 C.L.J. 387 (Suhrawardy and Mukerji, J.J.).

Suits for assessment of rent-free lands are governed by article 130 schedule I to the Limitation Act and have to be instituted within 12 years from the time when the right to assess the land first arises and this right may arise upon a distinct notice of the tenants' claim to hold it rent-free: *Ibid.* The case of *Hem v. Atul*, 19 C.W.N. 386; s.c., 19 C.L.J. 113 referred to.

Protection
from eviction.

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

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

Headings of Notes.

1. NOTICE BEFORE EJECTMENT SUIT.
2. ONE CONSOLIDATED JAMA FOR AGRICULTURAL AND NON-AGRICULTURAL LANDS.
3. SUIT MUST INCLUDE ENTIRE LAND.
4. REVERSIONER.
5. UNFIT FOR THE PURPOSES OF THE TENANCY.
6. ACQUISCENCE.
7. NOTICE.
8. LIMITATION.
9. TRANSFER OF NON-TRANSFERABLE OCCUPANCY HOLDING WHETHER A GROUND OF FORFEITURE.
10. NON-PAYMENT OF RENT.
11. BREACH OF CONDITION.
12. RIGHT TO COMPENSATION.
13. SUIT FOR EJECTMENT: BURDEN OF PROOF.
14. INJUNCTION.
15. SUIT FOR EJECTMENT BY ONE OF SEVERAL CO-SHARERS.
16. SUIT FOR RENT FOR PERIOD PRIOR TO EJECTMENT DECREE.
17. DENIAL OF LANDLORDS TITLE: FORFEITURE.
18. S. 155: EXTENSION OF TIME.

Notice
before
ejectment
suit.

1. Notice before Ejectment. Suit :—Before an ejectment suit can be brought under this section, the landlord must serve a notice as provided in sec. 155 of this Act. See notes under s. 155.

Nothing in any contract made before or after the passing of the Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act. See s. 178, sub-sec. (1), cl. (c).

Land
turned
into an
orchard.

2. One consolidated Jama for agricultural and non-agricultural lands :—When a ghat with certain jote lands were let out for a certain term at an annual jama, *held* that after the expiry of the term the landlord was entitled to eject the tenant from the ghat lands although the tenant had acquired a right of occupancy with respect to the jote lands: *G. S. Hayes v. Ghina*, 33 Cal. 459.

Ejectment
suit must
be for entire
holding.
Suit by re-
versioner.

3. Suit must include entire land :—A suit for ejectment must be for the whole and not for a part of a holding: *Bhagloo v. Mahadeo*, 36 I.C. 283 (Per Atkinson, J.).

4. Reversioner :—A reversioner is not entitled to bring a suit for ejectment as he has no right to immediate possession: *Bhagloo Shah v. Mahadeo Chaudhuri*, 36 I.C. 283.

5. Unfit for the purposes of the tenancy :—When the land was admittedly let for agricultural purposes but the tenant turned it into an orchard and the lower Appellate Court found that the land had been rendered unfit for the purposes of tenancy, *held* in second appeal that the finding could not be interfered with: *Soman Gope v. Raghubar*, 24 Cal. 160; s.c., 1 C.W.N. 223; and where a tenant planted trees on one of the plots of land constituting an act which rendered him liable to ejectment, *held* that the tenant was liable to ejectment, not merely from the plot on which he had planted the trees but from his entire holding: *Bholai v. The Rajah of Bensi*, 4 All. 174. In Madras it has been held that where an occupancy tenant planted cocoanut trees, his acts do not constitute waste or breach of the terms of his tenancy: *Venkayya v. Ramasami*, 22 Mad. 39. But it has been held that tenants are not entitled to convert land under cultivation into a mango grove: *Lakshamana v. Ram Chandra*, 10 Mad. 351. The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land subject only to the payment of a rent liable to be enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted; and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment: *Lal Sahoo v. Deo Narain*, 3 Cal. 781; s.c., 2 C.L.R. 294.* The cultivation of indigo is an agricultural purpose but the manufacture of indigo cakes out of indigo plants cannot be said to be an agricultural purpose: *Surendra Narayan v. Harimohan*, 31 Cal. 174; s.c., 9 C.W.N. 87. The question whether the erection of an indigo factory will render land unfit for agriculture is a question of fact: *Ibid*, (on appeal to P.C.), 34 Cal. 718; s.c., 11 C.W.N. 795 (P.C.): s.c., 6 C.L.J. 17.

Status of
occupancy
rakyat.

Cultivation
of indigo
and erection
of
indigo
factory.

A tenant holding under a lease of a permanent character has no power to make excavations of such a character as to cause substantial damage to the property demised, although by the terms of the lease he has power to make excavations: *Girish Chandra v. Sirish Chandra*, 9 C.W.N. 255.

In a suit for ejectment on the ground that the raiyat has used the land in a manner which has rendered it unfit for the purposes of tenancy, the claim must include the whole of the lands of the tenancy: *Kamaleswari v. Hurbullubh*, 2 C.L.J. 369.

6. Acquiescence :—Where upon land let out for the purpose of tillage and cultivation of crops, the tenant without the permission of the landlord enclosed the land and planted mango grafts thereon, *held* that the landlord being aware of the fact, having stood by for 3 years, and allowed the defendant to spend his labour and capital upon the land without taking action in the matter, no injunction should be issued: *Noyna Misser v. Ruptikun*, 9 Cal. 609. A landlord is not entitled to turn the tenant out of the land when the landlord stands by and sees the tenant erecting *pucca* building on the land without any objection whatever, although in the *kabuliyat* there was a

* "No authority has been cited to us, nor any reasoning satisfactory to our minds tending to shew that where a tenant has been guilty of a breach of duty in the use of his land, such as making a tank in it, building on it improperly, or changing the character of the cultivation, this operates necessarily as a forfeiture and renders him liable to the ejected." *Per* Wilson J., *Noyna Misser v. Ruptikun*, 9 Cal. 609.

stipulation restraining the tenant from erecting a *pucca* house : *Banee Madhub v. Joy Kissen*, 7 W.R. 495. If a landlord, instead of objecting to the erection of a brick house on land let out for the purpose of cultivation, were to remain passive and allow a house to be built he cannot afterwards say that the tenant did wrong in erecting the house : *Shib Das v. Bamun Dass*, 15 W.R. 360. Where there was a continued use of the land in making bricks for 25 years, held that it raised a strong presumption of acquiescence on the part of the landlord : *Peter Nicholl v. Tarinee Churn*, 23 W.R. 298. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of the facts which would enable him to take effectual action for the enforcement of such rights : *Dhanukdhari v. Nathima*, 11 C.W.N. 848. The burden of proof is on the person who relies on the waiver : *Ibid.* Where a temporary injunction was granted as the lands were being rendered unfit for cultivation on account of mining operations by the defendant, held that the balance of convenience was in favour of the defendant who was allowed to continue the mining operations and that as the plaintiff stood by for a considerable time while the defendant was spending a large sum of money, this was a circumstance of considerable importance in dealing with an application for injunction : *Singaram Coal Syndicate v. Indra Nath*, 10 C.W.N. 173.

Making of bricks. Presumption.

When no waiver.

Onus.

Landlord standing by.

7. Notice:—A notice to quit which directs the tenant to vacate a certain quantity of land under his landlord is not bad in law merely because it includes some land which the tenant is found not to hold under the landlord ; where a notice to quit stated the area of the defendant's holding to be 1 bigha and 5 Chittaks, but the true area was $1\frac{3}{4}$ cottas less and no boundaries were given—*Held*, that it was not a defect which would make the notice bad in law : *Shama Charan v. Uma Charan*, 2 C.W.N. 106.

Mis-statement as to area in notice.

8. Limitation:—The period of limitation for a suit in ejectment under cl. (a) of the section is two years under Art. 32 of Sch. II of the Limitation Act : *Soman Gope v. Raghubar*, 24 Cal. 160 ; s.c., 1 C.W.N. 223.

Period of Limitation : Suit under cl. (a).

The Bengal Tenancy Act deals specifically with the question of limitation in certain cases, and this supports an inference that the Legislature intended that any other cases should be left to the general law : *Sharooop Das v. Jogeswar*, 26 Cal. 565 (F.B.) ; s.c., 3 C.W.N. 464.

The period of limitation for a suit in ejectment under cl. (b) of this section is one year : see Sch. III, Art. I of this Act.

Suit under cl. (b).

Where the primary relief sought was in effect a mandatory injunction directing the defendant to fill up a tank and to pay the plaintiff compensation for his alleged wrongful act, and the secondary relief was for ejectment which could not follow save upon failure of the defendant to comply with that order, held that Art. 32 of Sch. II of the Limitation Act applied : *Sharooop Dass v. Jogessar*, 26 Cal. 565 (F.B.).

Where primary relief is not ejectment.

A suit to compel the defendant to remove trees from certain lands leased to him for agricultural purposes is governed by Art. 120, Sch. II of the Limitation Act : *Gunesh v. Gondour*, 9 Cal. 147 ; s.c., 12 C.L.R. 418 ; see also *Kedar Nath v. Sritirutno*, 6 Cal. 34.

Suit to remove trees.

In a suit to eject a lessee on the ground for not fulfilling a condi-

tion of the lease, the condition being that the tenant would be liable to be ejected on failure to cause his lands measured and rent settled after a certain period, *held* that the suit was governed by Art. 143 and not by Art. 139 of Sch. II of the Limitation Act: *Goohi Sheikh v. H. Mathewson*, 11 C.W.N. 661. Limitation Act, Art. 143.

9. Transfer of non-transferable occupancy holding whether a ground of forfeiture:—See notes under s. 23.

10. Non-payment of rent:—Non-payment of rent is no ground for ejection of an occupancy raiyat, see ss. 65, 66. Non-payment of rent.

Mere non-payment of rent does not extinguish or amount to a relinquishment of, the right of occupancy: *Nilmony v. Bishu*, 15 Cal. 17. But where land held by tenants with rights of occupancy was completely submerged for a number of years, and during the period of such submersion no rent was paid by the tenants, *held*, that the tenants had, by non-payment of rent during the period of submersion, forfeited their rights of occupancy: *Hem Nath v. Ashgar Sardar*, 4 Cal. 894. Where a raiyat for years previous to his dispossession had failed to pay rent, *held* that he had no subsisting title at the time when he instituted his suit for recovery of possession and consequently his suit must fail: *Hem Chunder v. Chand Akund*, 12 Cal. 115. When the relationship of landlord and tenant has once been proved to exist, mere non-payment, though for many years, is not sufficient to show that it has ceased. A tenant who alleges this must prove it particularly if he is in possession of the land: *Runglal v. Abdul Goofer*, 4 Cal. 314; s.c., 3 C.L.R. 119. Submerged land.
Mere non-payment.
Onus.

II. Breach of condition:—A condition of forfeiture should not be extended beyond its words, unless, it is impossible to give a reasonable construction to the instrument in which it appears without doing so: *Ram Nursingh v. Dwarkanath*, 23 W.R. 10. There is nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a lease: *Chander Nath v. Sindar Khan*, 18 W.R. 218. Where there is a stipulation that the lessee would not transfer the land leased to him, *held* that when the land is sold against the will of the lessee by the act of a Court the lessee could not be said to have voluntarily transferred his interest: *Nilmadhub v. Narattam*, 17 Cal. 826; *Tamay v. Tempa*, 7 Bom. 262; *Rungo Lal Mondol v. Abdul Goofur*, 4 Cal. 314; and *Subbaraya v. Krishna*, 6 Mad. 159. A covenant by a lessee not to assign without the lessor's consent runs with the land, and applies to a re-assignment to the original lessee: *McEacharn v. Cotton*, L. R. App. Cas. (1902), p. 104; see also *Doherty v. Allman*, (1878) 3 App. Cas. 709. Construction.
Damages and forfeiture.
Involuntary transfer.
Covenant not to transfer runs with land.

Where a covenant reserved to the lessor a power of re-entry, there being no mention of a similar power being reserved to his "heirs, successors or assigns," *held* that the lessor's vendees could take advantage of the covenant: *Krista Nath v. Brown*, 14 Cal. 176. Power of re-entry,

A valid contract of tenancy providing that the tenant, a raiyat, should hold the land for his life-time and that the landlord would have the right to re-enter on his death, could be created before the passing of the Bengal Tenancy Act: such a contract does not come within the terms of the provisions in cl. (a) sub-sec. (1) or cl. (a), sub-sec. (3) of s. 178 of the Bengal Tenancy Act, and is therefore enforceable: *Baul Chandra v. Nistarini*, 10 C.W.N. 533. S. 178, sub-sec. (3).

Buildings attached to the soil are not the property of the owner of the soil.

Right to compensation.

Right to remove building.

When tenant not entitled to compensation.

When tenant entitled to compensation.

Ejectment suit : Onus.

12. Right to compensation for improvement made without authority :—According to the usages and customs of this country, buildings and other such improvements made on land do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil and if he who makes the improvements is not a mere trespasser, but is in possession under any *bond fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil—the option of taking to the building, or allowing removal of the material remaining with the owner of the land in these cases in which the building is not taken down by the builder during the continuance of any estate he may possess; *Thakoo Ghunde v. Ramdhione*, 6 W.R. 228; s.c., B.L.R. Sup. Vol. 595. A tenant who has erected buildings and effected improvements is not entitled to be paid their value on the determination of the tenancy merely because he has acted under the mistaken belief shared by his landlord that he had a larger interest in the property than he really had: *Jugmahan Das v. Pailonjee*, 22 Bom. I. If a tenant builds on his landlord's land he does not, in the absence of special circumstances, acquire any right to prevent the landlord from taking possession of the land and buildings when the tenancy has determined: *Ramsden v. Dyson*, L.R. 1 H.L. 129; see also *Naunilal v. Rameshwar*, 16 All. 328; *Shaik Husain v. Goverdhone Das*, 20 Bom. 1; *Ismali Khan v. Jaigun Bibi*, 4 C.W.N. 210; s.c., 27 Cal. 570, but where the land-owner stood by in silence while the tenant spent money on his land, *held*, that the plaintiff could not recover possession of the land, or require the removal of the buildings, without recouping the tenant the money he had expended: *Dattatraya v. Shridhur*, 17 Bom. 736: where land was leased out for cultivation and the lessee changed the character of the holding by making improvements inconsistent with the purpose for which the land was leased out; *held* that the landlord having stood by and thereby caused a belief that the change had his approval, the lessee was entitled to compensation for his improvement: *Kundhammed v. Narayanan*, 12 Mad. 320; see also *Ravi Varma v. Mothisgen*, 12 Mad. 323, note.

13. Suit for ejectment : Burden of proof :—When a tenant has been in long and peaceable occupation of land as part of an admitted tenure it lies upon the landlord in a suit for ejectment to prove in the first instance that the land is his *khas* property and not the tenant's. But where a tenant cut a tree standing upon a piece of land and within a few months of that occurrence the landlord brought a suit for ejectment and it was found that neither party had possession of the tree and its site: *held*, that the fact of defendant's possession of a tenure of limited extent within the plaintiff's putni, raises no presumption upon the defendant's seizure of a piece of land and claiming it as part of his tenure: *Nanda Lal v. Jajneswar*, 6 C.W.N. 185; see also *Rhidoy Kristo v. Nobin Chunder*, 12 C.L.R. 457; *Batai Ahir v. Bhuggobutty*, 11 C.L.R. 476; *Ram Monee v. Aleemooddeen*, 20 W.R. 374; *Rajkishen Mookerjee v. Peare Mohun Mookerjee*, 20 W.R. 421; and *Rajendra Kumar v. Mohim Chandra*, 3 C.W.N. 763.

See notes under s. 10 and under s. 89.

14. Injunction :—A suit lies to restrain a tenant of permanent character from making excavations of such a character as to cause

substantial damage to the property demised, although by the terms of the lease he has power to make excavation: *Girish Chandra v. Sirish Chandra*, 9 C.W.N. 255.

15. Suit for ejectment by one of several co-sharers Ejectment suit by co-sharer.

Where the tenant was originally put into possession by all the co-sharers, held that in order to justify any individual co-sharer to eject him it must be shown that the tenancy so created was determined by all of them; *Gholam v. Khairan*, 31 Cal. 786; in their Lordships' judgment the cases of *Hulodhar Sen v. Govroo Das Ray*, 20 W.R. 126; *Radha Pershad v. Essef*, 7 Cal. 414 and *Kamal Kumari v. Kiran Chandra Ray*, 2 C.W.N. 229, were distinguished on the ground that these were cases in which an individual co-sharer let a person into the possession of the land as tenant without the consent of the co-sharer seeking to eject that person from the land.

A suit for ejectment of an occupancy raiyat from lands included in his jote for non-agricultural purposes after the expiry of lease is maintainable although the tenant cannot be ejected from the agricultural land as he acquires a right of occupancy therein; *Hayes v. Ghina*, 33 Cal. 459. Agricultural and non-agricultural lands.

16. Suit for arrears of rent for a period prior to ejectment decree :—A decree-holder who has obtained a decree for ejectment is entitled to bring a suit for the arrears of the period prior to the ejectment decree and cannot by such conduct be regarded as having waived the rights under his ejectment decree: *Mansar Ali v. Abdul Karim*, 10 C.L.J. 187. No waiver when rent for a period prior to ejectment decree is sued.

Where a decree for ejectment provided as required by s. 155 that the tenant do fill up the tank within a certain time or in the alternative do pay to the plaintiff a certain sum and if he fails to carry out either of the two alternative directions, he would be ejected, held that the institution of a suit for rent by the landlord for a period antecedent to the date mentioned in the decree for performance of the obligations did not render the decree for ejectment incapable of execution: *Syam Mondal v. Satinath*, 21 C.W.N. 776; an objection that forfeiture has been waived may be taken in execution of the decree for ejectment: *Ibid.*

17. Denial of landlord's title: Forfeiture :—See notes under sec. 10.

18. S. 155: Extension of time :—The time allowed in a decree under s. 155 for performance of the obligations as mentioned in the said section may be extended by the court even when such application is made in execution: *Syam Mondal v. Satinath*, 21 C.W.N. 776 at p. 783. Extension for performance of obligation —s. 155.

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

Headings of Notes.

1. INHERITANCE.
2. RIGHT TO BEQUEATH.
3. REVERSION TO LANDLORD.
4. PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ORDINARY HOLDING.
5. SUIT FOR RENT AGAINST ONE OR SOME OF SEVERAL HEIRS OF AN OCCUPANCY RAIYAT.
6. LIABILITY FOR RENT WHEN HEIRS ARE NOT IN POSSESSION.
7. UNDER-RAIYAT WITH RIGHT OF OCCUPANCY BY CUSTOM.

Partial acceptance of inheritance.

I. Inheritance :—There cannot be a partial acceptance or renunciation of an inheritance, nor can one of several heirs accept a part only of an inheritance to the prejudice of the other heirs and of the creditors of the deceased. An acceptance in part has the effect of an acceptance of the whole and carries with it the same liability. If a person accepts the inheritance in whole or in part he is bound to discharge the liabilities which attach to the late tenants from whom he inherits unless he can prove that he has since made a formal surrender of the holding to the landlord: *Mozam Hassain v. Bhouldin*, 5 C.W.N. 190.

A suit brought for *khas* possession based on the provisions of sec. 26 of the Bengal Tenancy Act fails as soon as it is found that the occupancy raiyat died leaving an heir.

It is not necessary for the court to decide who is preferential heir or whether there has been an abandonment and base its decision upon the same: *Harendra v. Khemada Kinkar*, 44 C.L.J. 282.

Custom or usage.

2. Right to bequeath :—In the absence of a local usage an occupancy raiyat has no right to bequeath his holding: see s. 178 sub-sec. 3 cl. (d). It is not transferable except by custom and it cannot also be bequeathed in the absence of custom or local usage.

Heir of an occupancy raiyat bound by bequest made by the raiyat.

Doss, J., sitting singly held in the case of *Hari Das v. Uday Chandra*, 8 C.L.J. 261; s.c., 12 C.W.N. 1086, that the heir of an occupancy raiyat in respect to a non-transferable holding is bound by a bequest of the holding made by the latter in favour of the stranger. The judgment of Doss, J., was appealed against under Letters Patent but their Lordships (Jenkins, C.J. and Mookerjee, J.) who decided the case did not express any opinion on this point: *Uday Chandra v. Hari Das*, 10 C.L.J. 608.

This view of the law seems to be open to doubt.

It is submitted with great respect that the view of law expressed by Doss, J., is open to doubt; for, an occupancy holding not being transferable except by local custom or usage, cannot also be the subject of a bequest; the legatee does not acquire any title, and therefore the heir inherits it. The question of estoppel does not arise in such a case.

Landlord entitled to *khas* possession where legatee takes possession with consent of heir.

But where there is a bequest of a non-transferable occupancy holding, and the legatee is allowed by the heir of the raiyat to take possession, the landlord seems to have a right to get *khas* possession for, as the legatee is a trespasser, and the raiyat's heir who has allowed the legatee to take possession may be considered to have abandoned.

The case of *Haridas v. Uday Chandra*, 8 C.L.J. 261; s.c., 12 C.W.N. 1086 was dissented from in the case of *Amulyaratan v. Tarini Nath*, 42 Cal. 254; s.c., 18 C.W.N. 1290; s.c., 21 C.L.J. 187 and

it was held (by Mookerjee and Beachcroft, J.J.), that except under local usage a raiyat is not competent to make a testamentary disposition of a non-transferable holding and the heir-at-law of the raiyat is not estopped from questioning the validity of the devise; this case was followed in the case of *Kunjilal v. Umesh Chandra*, 18 C.W.N. 1294; *Amullya v. Tarini*, 18 C.W.N. 1290; s.c., 21 C.L.J. 187.

3. Reversion to landlord:—On a failure of heirs occupancy right reverts to the landlord. In similar circumstances tenures escheat to the Crown; *Sonnet Koer v. Himmat*, 1 Cal. 391 (P.C.); s.c., 15 W.R. 549.

S. 26 of the Bengal Tenancy Act seems to mean that although the other property of an occupancy raiyat dying intestate escheats to the Crown, his occupancy right does not escheat to the Crown but is extinguished. This does not mean that the holding ceases to exist but only that the occupancy right is terminated as in the case of a transfer of an occupancy right to a person jointly interested in the land as proprietor. The holding is then without a tenant and must revert to the landlord. This right of the landlord to the reversion where there are no heirs is clear on principle and is recognised in Courts: *Garbu Mahton v. Bibi Khudai Jatunnissa*, [1925 Pat.] 206 (Mullick and Ross, J.J.). Where a tenant can legally alienate or encumber the holding and that holding reverts to the landlord on the death of the tenant intestate without heirs, what reverts is the estate that was in the tenant as encumbered by him, diminished of course by virtue of sec. 26 of the Bengal Tenancy Act by the loss of the occupancy right: *Ibid*.

Where an occupancy raiyat mortgages his non-transferable holding and then dies without any heir, and the holding reverts to the landlord, the mortgage does not subsist: *Muktakeshi v. Pulin Behari*, 8 C.L.J. 324; s.c., 13 C.W.N. 12.

4. Provisions of this section do not apply to an ordinary holding:—S. 26 deals with the devolution of a right of occupancy, not of a holding pure and simple. This provision as regards right of occupancy, which is a creature of the statute, in section 26 will not apply to the ordinary holding of a raiyat which is not a creature of the Act, though some protective provisions are applied to it which make for fixity of tenure: *The Midnapur Zemindary Co., Ltd. v. Hrishikesh*, 18 C.W.N. 828 (F.B.); s.c., 19 C.L.J. 505.

5. Suit for rent against one or some of several heirs of an occupancy raiyat:—Ss. 15, 16 and 17 provide rules as to notifications to the landlord of the succession on the death of permanent tenure-holders; the same rules apply to raiyats at fixed rent by virtue of s. 18 of the Bengal Tenancy Act. But there are no such rules relating to occupancy raiyats; it therefore often happens that a landlord being ignorant as to who the heirs of an occupancy raiyat are, brings suits for recovery of rent against some of several heirs, and the question arises as to whether the decrees obtained in such suits are rent decrees. It seems that a decree obtained by a landlord against one of several heirs of an occupancy raiyat should be considered to be a rent decree where the whole body of heirs by their acquiescence allowed one of them to represent all, or where one only got his name registered and the others did not. But where a landlord being aware as to who the heirs are, brings a suit against one or some of the several heirs,

Heir-at-law not estopped to deny legatee's title.

Mortgage does not subsist when reversion to landlord.

Ordinary holding.

Decree against one or some of several heirs, when is or is not a rent-decree.

the decree should be considered as a money decree ; **see notes under s. 65.**

Decree
against
recorded
tenant.

Where an occupancy raiyat died leaving several heirs, and the landlord put the holding to sale in execution of a decree for rent obtained against the recorded tenant only, *held* that the entire holding passed by sale as the recorded tenant represented the holding on behalf of all the co-sharers : *Jagattara v. Daylati Bewa*, 37 Cal. 75* (Richardson and Chatterjea J.J.). See notes under s. 65.

Rent suit
against
one of
several joint
tenants—
Nature of
the decree.
Rent suit
against
some of the
several
heirs of a
tenant if
maintain-
able—

A suit for rent against one of several joint tenants (where by virtue of the contract to pay rent the liability is joint and several) is maintainable, but it seems that the decree will be a money decree and not a rent decree.

Where a suit for rent is brought against some of the several heirs of a tenant, such a suit is not maintainable : *Sheikh Sahad v. Krishna*, 24 C.L.J. 371 ; their Lordships observed that the landlord "having brought his suit against all the heirs he has recognised them all as his tenants and they must all be taken as one body of registered tenants holding one single holding. There is no case of joint contract which might be enforced against any of the joint contractors, because the defendants have not made any joint contract. Section 43 of the Contract Act speaks of two or more persons making a joint promise and can have no application where parties become jointly interested by operation of law in a contract made by a single person."

Rent-suit
against
one of
some of
several joint
tenants.

Their Lordships in deciding the aforesaid case placed reliance upon the case of *Kasi Kinkar v. Satyendra Nath*, 12 C.L.J. 642 ; s.c., 15 C.W.N. 191, where the same view was taken. The case of *Rameswar Singh v. Jaideb Jha*, 12 C.L.J. 591 was distinguished on the ground that "the observation that 'it was competent to the plaintiff to bring his suit against any number of several joint tenants' must be read as applying to the facts of that case and for all that we know that case may have been one in which the contract of tenancy was entered into jointly by the several tenants." The case of *Jogendra Nath v. Nagendra Narain*, 11 C.W.N. 1026 was also distinguished on that ground.

Money
decree.

In the case of *Krishna Das v. Kalitara*, 22 C.W.N. 289, where the plaintiff had brought a suit for rent against six persons three of whom were dead, and obtained a decree, it was *held* that the decree was not a nullity but could be executed as a money-decree.

[See the cases of *Mahammad Askari v. Radha Ram*, 22 All. 307 *Joy Gobinda v. Manmatha Nath*, 33 Cal. 580, *Jogendra Nath v. Nagendra Narain*, 11 C.W.N. 1026, *Rameswar v. Jaideb*, 12 C.L.J. 591, *Kashi Kinkar v. Satyendra*, 12 C.L.J. 64 ; s.c., 15 C.W.N. 191, *Ahinsā Bibi v. Abdul Kader*, 25 Mad. 26 at p. 35, *Roopnarain v. Jaggo*, 10 W.R. 304, *Khetler Mohan v. Prankristo*, 3 C.W.N. 37, *Ramtaran v. Asmatulla*, 6 V.W.N. 111, *Ananda Kumar v. Haridas*, 27 Cal. 545 ; s.c., 4 C.W.N. 608 ; *Surendra Mohan v. Surnamoyi*, 26 Cal. 103, s.c., 3 C.W.N. 38].

* See in this connection *Ashok Bhuiyan v. Karim Bepari*, 9 C.W.N. 843 ; *Nitayi Behari v. Harigovinda*, 26 Cal. 677 ; *Mati Lal v. Nripendranath*, 2 C.W.N. 172 ; *Ananda v. Haridas*, 27 Cal. 545 ; *Ruprum v. Iswar*, 6 C.W.N. 302 ; *Rajani v. Uzir Bibi*, 7 C.W.N. 170 ; *Afraz v. Kulsumennessa*, 10 C.W.N. 176 ; *Ambika v. Chowdhry Keshri*, 24 Cal. 642.

A rent-suit is not properly constituted unless it is brought against all the recorded tenants ; there is no presumption that in every joint tenancy in the province of Bihar and Orissa there is also a several promise by which each tenant agrees to be bound for the whole rent : *Jogeswar v. Kesho Prasad*, 1 Pat. L.J. 190.

In a case where A and his brothers were entitled to a holding and after A's death the suit for rent was brought against A's brothers and some of the heirs of A, and no portion of the rent had accrued during A's lifetime, *held* that the suit for rent was maintainable although all the heirs of A were not made parties : *Lalit Mohan v. Haran Chand*, 36 I.C. 243 (Fletcher and Teunon J. J.) (the case of *Kashi Kinkar v. Satyendra*, 12 C.L.J. 642 was distinguished on the ground that the rent sued for became due in the lifetime of the father and some of the heirs were sued) ; Fletcher and Teunon J.J. relied on the case of *Chamatkarini v. Triguna Nath*, 17 C.W.N. 833 decided by Jenkins C.J. and Mullick, J.

The heirs of the last recorded tenant with respect to an occupancy holding are entitled to claim recognition from the landlord, and if the latter, ignoring them, brings a suit for arrears of rent and in execution thereof sell the holding, the right of the former is not affected. So where, upon the death of the last recorded tenant, none of his heirs had his name recorded in the landlord's office, but they held the land and went on paying the rent and obtained separate rent receipts for some years, until recently, when a rent suit was brought against two of them only, and the *jumma* was sold in execution of the decree, *held* that after having accepted rent from all the heirs the landlord had no right to ignore some of them and that the sale did not pass the entire *jumma* but only the right, title and interest of the judgment-debtors : *Annada Kumar v. Hari Dass*, 4 C.W.N. 608 : s. c., 27 Cal. 545.

Where a landlord brings a suit for rent against some of several heirs of a deceased tenant, the other heirs have a right to be added as parties : *Baoli Bibi v. Hamijuddi*, 12 C.L.J. 267.

The conflict of decisions on the point as to whether a suit for rent is maintainable against some of the heirs or successors in interest of a deceased tenant without bringing all the heirs or successors in interest on the record has been set at rest so far as the Calcutta High Court is concerned by the Full Bench decision in *Jaganmohan Sarkar v. Brojendra Kumar Chakravarti*, 53 Cal. 197, s.c. 29 C.W.N. 1000,* where it has been held that such a suit is maintainable but the decree in such a suit has the effect of a money decree.

See notes under s. 65.

6. Liability for rent even when heirs are not in possession : —The heirs of a raiyat who may have died intestate having rights of occupancy succeed to his holding and are bound to pay rent whether they hold the lands or not. The heirs of a deceased tenant, dying intestate, having rights of occupancy, are entitled to hold on until they have expressly, or in any manner from which a surrender may be presumed, as is stated in s. 86, relieved themselves from such liability, and that, unless they have surrendered or done something

Rent suit if properly constituted unless brought against all recorded tenants.—

Rent suit, if maintainable when all the heirs are not made parties.

Heirs of the last recorded tenant entitled to recognition.

Addition of parties in a rent suit.

Present Law.

Liability for rent when heir not in possession.

The names of the parties in 29 C.W.N. 1000 are *Kailas Chandra Mitra Brojendra Kumar Chakravarti*.

from which a surrender in the terms of s. 86 can be presumed they are liable for the rent. Non-cultivation of the land would not necessarily amount to a surrender: *Peary Mohun v. Kumares Chunder*, 19 Cal. 790.

7. Under raiyats with right of occupancy by custom:
Heritability :—The descendant of an under raiyat who acquired right of occupancy by custom, if he fails to prove heritability under a local custom, is a trespasser on the land and is liable to be ejected without any notice: *Iswar Sant v. Torendra*, 42 C.L.J. 560.

Apart from sec. 26 of the Bengal Tenancy Act which makes the occupancy right of a raiyat heritable, there is no right of heritability in regard to such a right. The occupancy right of an under-raiyat is thus not heritable by law but it is open to the under-raiyat to prove that by custom or usage the occupancy right is heritable: *Sudhanya Kumar Das v. Saik Ismail*, 29 C.W.N. 733 (Greaves and Cuming J.J.) (reversing the decision of B. B. Ghose J., on Letters Patent appeal). The right of occupancy acquired by an under-raiyat is a right acquired by custom or usage and not by statute, and before such right can be said to be heritable it must be proved by evidence in the usual way that by custom or usage heritability is an incident of such right—*Per Greaves, J. Ibid.* The right of occupancy is a right peculiar to a particular person and not to a particular parcel of land or holding. An occupancy right is a personal right and heritability of such a right is a creature of the statute created by sec. 26 and outside the statute there is no right of heritability on such a right: *Per Cuming J.. Ibid.*

Enhancement of rent.

Presumption as to fair and equitable rent.

Restriction on enhancement of money-rents.

Enhancement of rent by contract.

Enhancement of rent.

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

Notes :—The same presumption is to be made in settling a fair and equitable rent under s. 105; see cl. (4) of that section.

Assessment of rent :—See notes under s. 24.

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

Notes :—As to what is money-rent, see notes under s. 40 and s. 48.

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

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

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

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

Provided as follows :—

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Headings of Notes.

1. CO-SHARER LANDLORD.
2. CONVERSION OF CASH RENT INTO RENT IN KIND.
3. TO WHAT CASES THIS SECTION APPLIES AND TO WHAT CASES IT DOES NOT APPLY.
4. EFFECT OF REALISATION OF RENT AT A REDUCED RATE: RENT KEPT IN SUSPENSION.
5. ONUS.
6. CLAUSE (a).

Donated By:-
Mr. Jalim Ullah Fahmi

7. CLAUSE (b) : ENHANCEMENT BY MORE THAN 2 AS IN THE RUPEE.
8. PROVISO (i).
9. PROVISO (ii) AND CL. (b).
10. PROVISO (iii).
11. S. 20 CL. (7) : PRESUMPTION.
12. RENT IN CONTRAVENTION OF S. 29 : ENHANCEMENT SUIT.
13. COMPROMISE OF SUITS CONTRAVENING THE PROVISIONS OF S. 29.
14. HOLDING OVER.
15. S. 105 PROCEEDING : APPLICABILITY OF SEC. 29.
16. UNDER RAIYATS WITH RIGHT OF OCCUPANCY BY CUSTOM : APPLICABILITY OF SEC. 29.

Co-sharer
landlord.

1. Co-sharer landlord :—This section is quite as much applicable to contracts for enhancement of rent by co-sharer landlords as to those by sole landlords : *Ramcharan v. Ekadasi*, 10 C.L.J. 87.

Conversion
of cash rent
into rent
in kind.

2. Conversion of cash rent into rent in kind :—Enhancement means an enhancement of the same kind : conversion of *nakdi* into *bhaoli* is not an enhancement within the meaning of this section : *Hussan v. Nakchhedi*, 33 Cal. 200.

Replying upon this case it was held that the conversion of cash rent into rent in kind cannot be regarded as enhancement within the meaning of s. 29 or s. 43 : *Gobind Mandar v. Banarasi Prasad*, 18 C.L.J. 74.

But it was held by Jenkins C.J. that this section applies even where a money rent is enhanced by the addition of a rent in kind : *Kishori Mohan v. Shiak Uzir*, 37 Cal. 610, s. c., 14 C.W.N. 693.

It has however been held in the case of *Fazl Imam v. Sukor Mahlon*, 19 C.L.J. 333 that s. 29 deals with the enhancement of money rent of an occupancy raiyat and not of rent in kind.

These cases were considered by D. Chatterjea and Beachcroft J.J. in the case of *Brojobasi v. Ram Sankar*, 23 C.L.J. 635 and it was held that s. 29 applies to a case where an occupancy raiyat held lands at a money rent of Rs. 3-4 ans. per annum, and then executed a kabuliyat by which he agreed to hold the same lands at a fixed produce rent of 12 *Batuas* of paddy or in lieu thereof, 12 rupees.

As to what is money rent. See notes under s. 48.

Alteration
of rent for
alteration
of area.

3. To what cases this section applies and to what cases it does not apply :—This section does not apply to alteration of rent for alteration of area. This section applies only to cases of increase in the rate of rent, which is ordinarily designated "enhancement of rent." This section has no application to increase in the rent by reason of increase in area which is not called "enhancement of rent" but is styled "alteration of rent" in this Act : *Satish Chandra v. Kabiruddin*, 26 Cal. 233.* See also *Nilmadhab v. Kadam Mandal*, 3 C.L.J. 74 (notes).

When the contract was to pay rental agreed upon by the parties in settlement of a dispute between them as to what had been in fact the

* A suit upon a contract on the terms of a *patta* for additional rent upon measurement is not a suit for alteration of rent under s. 52 ; *Dintarini v. Broughton*, 3 C.W.N. 25 ; nor is a suit upon a kabuliyat for rent of land a part of which was assessed at the date of kabuliyat a suit for enhancement of rent : *Ram Chunder v. Giridhur*, 19 Cal. 155.

rental of the land held by the tenant, held that this agreement is not within the provisions of this section at all : *Sheo Sahoy v. Ram Rachia*, 18 Cal. 333. This case was followed in the case of *Nath Singh v. Damri Singh*, 28 Cal. 90, where it was held that where the *kabulyat* is not a mere agreement to enhance the rent, but is an agreement to settle *bona-fide* disputes and differences, this section will not apply. But the fact that the tenant has been exonerated from certain liabilities under a previous contract cannot give validity to a stipulation to pay rent at an enhanced rate exceeding 2 ans. in the rupee : *Probol Chandra v. Cherag Ali*, 33 Cal. 607, s. c., 11 C.W.N. 62, s. c., 4 C.L.J. 320 ; the case of *Sheo Sahoy v. Ram Rachia*, 18 Cal. 333 and *Nath Singh v. Damri Singh*, 28 Cal. 90, were distinguished on the ground that those were cases where there was no certainty as to the initial rents and there were disputes as to the same.

The cases of *Sheo Sahoy v. Ram Rachia*, 18 Cal. 333 and *Nath Singh v. Damri Singh*, 28 Cal. 90 were considered in the case of *Kedar Nath v. Manindra Chandra*, 11 C.L.J. 106, and Mookerjee J., held (Teunon J., concurring) that the limitation as to enhancement of rent provided in s. 29 does not apply in the case of a contract by which the rent is adjusted or settled in a case of *bona fide* dispute whether as to the rate of rent or as to the area of the land comprised in the tenancy.

The case of *Nath Singh v. Damri Singh*, 28 Cal. 90 was followed in the case of *Bata Mandal v. Manindra Chandra*, 21 C.L.J. 325, s. c., 19 C.W.N. 321 (Mookerjee and Beachcroft J.J.) and it was held that s. 29 does not prevent an enhancement of rent by more than two annas in the rupee in settlement of a *bona fide* dispute and to avoid further litigation :

S. 29 has no application where the tenant is given a perpetual status at a fixed rate as the case comes within s. 179 of the Bengal Tenancy Act : *Gur Sahai v. Keshwar*, 1 Pat. L.J. 76 (Mullick J.).

S. 29 does not apply to a case where the landlord gives a *mokurari* interest in the land : *Gur Sahai v. Keshwar Sahu*, 1 Pat. L.J. 76 : 35 I.C. 437.

An agreement to pay future rent in contravention of s. 29 is void and not voidable if there was no existing dispute : *Monindra v. Upendra*, 36 Cal. 604, s.c., 9 C.L.J. 343 : when it is shown what the tenant defendant's previous rent was, it is for the plaintiff to justify the enhancement on the ground of increase in area : *Ibid*.

S. 91 of the Evidence Act does not preclude the landlord from proving improvements in consideration of which the enhanced rate was agreed upon, when the *Kabulyat* did not refer to any improvement : *Probol Chandra v. Cherag Ali*, 33 Cal. 607, s. c., 11 C.W.N. 62 : s. c., 4 C.L.J. 320.

When the section says that the money rent may be enhanced by contract in writing and registered it evidently means to refer to enhancement after the promulgation of the Bengal Tenancy Act ; a contract by which rent was enhanced before the passing of the Act does not fall within this section and therefore such a contract is no bar to an enhancement during the period of fifteen years from the date thereof, as contemplated by cl. (c) of this section ; *Mothura Mohun v. Mati Sarkar*, 25 Cal. 78.

Where a non-transferable occupancy holding was sold and purchased by a stranger, and the latter who was recognised by the land-

Agreement
in settle-
ment of
dispute.

Bonafide
dispute.

Fixed
raiya.

Mokurari

Agreement
to pay
future rent.

Plaintiff
to justify
enhance-
ment.

Contract
before the
passing of
the Act.

Recogni-
tion of

transferee of non-transferable holding upon increased rent.

lord agreed to pay one rupee in excess of the original rent which was Rs. 5, *held*, that the agreement was not in contravention of s. 29 of the Bengal Tenancy Act in as much as the holding not being transferable, the transferee was not a tenant and consequently no rent was payable by the transferee which was enhanced: *Sarat-chandra v. Shyam Chand*, 39 Cal. 663, s. c., 16 C.L.J. 71.

Non-transferable holding can be sold.

A non-transferable occupancy holding can be put to sale by an execution creditor even though he be not the landlord notwithstanding the objection of the tenant: *Kenaram v. Kinu Mandal*, 50 Cal. 508 (Chatterjea and Cuming J.J.); the cases of *Chandra Benode v. Ala Bux*, 48 Cal. 184; 24 C.W.N. 818 and *Bhairam Ali v. Gopikant*, 24 Cal. 355, s. c., 1 C.W.N. 396 and *Dayamayi v. Ananda Mohan*, 42 Cal. 172 were discussed.

See notes under s. 23.

Pasture land converted into arable land.

A claim for additional rent on the ground that defendant had converted pasture lands into arable lands and that by contract between the parties and by local custom such lands were liable to pay more rent than pasture lands is not one for enhanced rent under s. 29: *Rameshwar v. Kanchan*, 1 C.L.J. 78-n.

Prospective rent stipulated, is in violation of this section.

Where it was found at the date of the execution of the *kabuliyat* that the rent payable was Rs. 40-2 as. for a certain period and at the expiry of the same the tenant would pay a higher sum which was mentioned in the *kabuliyat* and it was found that the rent was Rs. 40-2 as. and the reference to the higher sum was only a devise, *held* in second appeal that the provision for the payment of the higher sum was in contravention of sec. 29: *Mahamaya v. Kishori*, 18 C.L.J. 502, s. c., 18 C.W.N. 738 (Jenkins C.J. and Mookerjee J.).

Stipulation for a higher rent after measurement is in violation of this section.

A clause in a lease that after measurement rent is to be paid at a certain rate—that is, nearly 50 per cent. in excess of former rent is clearly a violation of sec. 29: *Ajuhannasa v. Hakim Biswas*, 13 C. W. N. 202 (notes); consolidation of tenancies (*jamās*) and fact that a small quantity of land found in excess of the quantity rented originally were held not to be a sufficient ground as to justify to contravene the provision of sec. 29: *Ibid*.

Excess lands.

S. 29 has no application where the rent is assessed for excess lands as also for new lands, and one consolidated rent is assessed; this is an essence of a new holding: *Rajkumar v. Faizuddi*, 22 C. L.J. 81; as to whether a new holding is created is a question to be answered with reference to the circumstances of each particular case; where five bighas of new lands were added to the original seven bighas, and a consolidated rent was settled, *held* that a new holding was created: *Ibid*. Following the principle of this case it was held that s. 29 applies where the holding remains constant, and consequently it is not applicable where the original holding was split up; *Nazir Payada v. Jyatendra Narain*, 22 C.L.J. 88. These two cases were considered and distinguished in the case of *Sonaulla v. Bhagabati Debya*, 28 C.L.J. 144; in this case the area of the holding in the rent receipts was stated to be $7\frac{3}{4}$ bighas and the rent was Rs. 10-15 ans. and the parties were agreed to these facts; upon a fresh survey the area was $9\frac{1}{2}$ bighas, and the rent agreed to be paid by the tenant was Rs. 16-14 ans. *held* that the agreement contravened the provisions of s. 29; Walmsley J., observed as follows: Now, the landlord cannot point to any particular piece of land and say that the tenant agreed to pay him so much rent for this piece of

land ; and for the purpose of considering s. 29 we must take the average rate per bigha throughout the whole area ;

In the case of the consolidation of two holdings s. 29 has no application if the effect of the consolidation is the creation of a new tenancy : *Kristadhan Ghose v. Golam Mandal*, 37 I.C. 862 ; (D. Chatterjea and Walmsley J.J.).

A mere division of a tenancy has not the effect of creating new tenancies : *Nafar Chandra v. Rahaman*, 34 I.C. 45.

If the total rent remains unaltered, its distribution, by agreement of parties over the different parcels of land, does not constitute enhancement within the meaning of the Bengal Tenancy Act : *Rowshan v. Shyama Charan*, 20 C.L.J. 331.

S. 29 applies only where the holding remains constant ; it does not apply where an occupancy raiyat agrees to pay a consolidated rent for the lands of the original holding as also lands which he has encroached upon : *Garibulla v. Jnanada Sundari*, 32 C.L.J. 134.

S. 29 does not apply where the status of occupancy raiyat is changed to that of a raiyat of fixed rent : *Ram Pedarath v. Sohrai Kaer*, [1920 Pat.] p. 114.

S. 29 does not apply to the case of a transferee of a non-transferable occupancy holding who takes a settlement at fixed rent : *Ferasat Ali v. Priyambada*, 69 I.C. 414.

A registered *kabuliyat* taking effect from a prior period is valid, if it complies with the other terms of S. 29 ; *Hossein Jan v. Mirza Mahafedzuddin*, 62 I.C. 619.

Where rent was enhanced without a registered document, *held* that the landlord was not entitled to get the enhanced rent unless rent was recovered, at that rate for three years immediately before the institution of the suit : *Janaki Ballav v. Enat Mondal*, 73 I.C. 136, (Mookerjee and Cuming J.J.).

A landlord is entitled to receive consideration for recognising the purchase of a non-transferable occupancy holding : *Ibid*.

A tenancy created by amalgamating additional land with an existing occupancy holding is not controlled by s. 29 of the Bengal Tenancy Act : *Sasikant v. Genda Sheikh*, 82 I.C. 970 (Chakravarti J.) ; the case of *Garibulla v. Jnanada*, 32 C.L.J. 134 relied on.

The plaintiff had an old tenancy in his possession and there was another tenancy with regard to which there was a dispute between the plaintiff and the defendant. The plaintiff executed a *kabuliyat* which was made up of two parts—one relating to the tenancy originally held and the other regarding which there was a dispute. According to the *kabuliyat* the rental of the portion of the new tenancy was increased. The suit was brought on the ground that the enhancement of rent of even a portion of the new tenancy was in violation of provision of s. 29, *held* that it is sufficient that it should appear that some further consideration has proceeded from the landlord to justify an addition to the original rent. A new contract was entered into between the parties for the original consideration, and the parties were free to enter into it on any terms they pleased. There was no violation of the provision of s. 29 : *Sali Bewa v. Ajijuddin*, 104 I.C. 196 ; s. c., 1927 A.I.R. (Cal.) 911. (Cuming and Cammiade J.J.).

A stipulation in a *kabuliyat* that the tenant should pay an enhanced rate of rent if he continues to remain in possession after

the expiry of the term of the *kabuliyat*, is not in the nature of a penalty and does not, therefore, fall within the purview of s. 74 of the Contract Act.

The fact that the tenant had, during the term of the *kabuliyat* acquired occupancy rights under the provisions of the Bengal Tenancy Act, does not disentitle the landlord to enforce such a stipulation on the expiry of the term of the *kabuliyat*: *Kuman Das v. Kachali Mandal*, 105 I.C. 20, (Wort J.), Patna case.

Rent a
recurring
claim.

The consolidation of two separate holdings at specific and definite rentals does not create a new holding having no reference to the previous rentals, so as not to attract the operation of s. 29 of the Bengal Tenancy Act: *Meyrick v. Dipa Pandey*, 3 Pat. 825; s. c., 84 I.C. 361 (Dawson Miller C. J. and Mullick J.). A claim for rent is a recurring claim and it is open to the tenant at any time to take an objection on the ground that the claim contravenes the provisions of the law: *Ibid.*

S. 29 has no application to a case where a non-transferable occupancy holding is purchased by a person and the landlord recognises the purchaser as the purchaser's agreement to pay a rent which exceeds the previous rent by more than 2 annas in the rupee: *Ferasat Ali v. Priambada Devi*, 69 I.C. 414. The same principle has also been laid down in the case of *Sarat Chandra v. Shyam Chand*, 29 Cal. 663, s. c., 16 C.L.J. 71; s. c., 10 C.W.N. 930; but the rules laid down in these two cases seem to be against the principle laid down in the case of *Abhai Sankar v. Rajani Mandal*, 22 C.W.N. 904, s. c., 29 C.L.J. 371 which was a case under s. 50 of the Act. It was held in that case that s. 50 would apply where a non-transferable holding has been sold and the purchaser has been recognised as a tenant by the landlord. It is submitted that the view taken by Ghose J., in the case of *Ferasat Ali v. Priambada Devi*, 69 I.C. 414 and by Harrington and Mookerjee J.J., in the case of *Sarat Chandra v. Shyam Chand*, 29 Cal. 663 is the correct view and that the rule enunciated in the case of *Abhai Sankar v. Rajani*, 29 C.L.J. 371 does not lay a sound proposition of law.

It is submitted that where a non-transferable holding is sold the purchaser is in the position of a trespasser and the landlord is entitled to treat him as a trespasser and to eject him treating the land as his *khas* land the tenant having abandoned. The holding does not continue. If he recognises the transferee as a matter of favour or on receipt of a *selami* or on a higher rent it is a new settlement altogether and it is erroneous to suppose that the whole tenancy still continues in the hands of the transferee and it therefore follows that neither s. 29 nor s. 50 should apply to such a case. See in this connection the case of *Dhirendra v. Ahmad Mia*, 30 C.W.N. 765, (Chakravarti, J.).

Effect of
acceptance
of rent at
lower rate.

4. Effect of realisation of rent at a reduced rate: rent kept in suspension:—The mere fact that the rent for some years has been received at a reduced rate does not bind the lessor to accept rent at that rate: *Bajinath v. Raghunath*, 16 C.W.N. 496; this case was followed in the case of *Kailash Chandra v. Darbaria*, 20 C.W.N. 347; in this case a certain rent was settled with a non-occupancy rayat out of which a portion was kept in suspension; the lease was for a certain term and it was agreed that after the expiry of the lease

if the tenant occupied the land without a fresh settlement he would be liable to pay the full rent ; but after the expiry of the lease rent was realised at the reduced rate, *held* that the agreement did not contravene the provisions of s. 29 and that the landlord by accepting reduced rate was not deprived of his right to claim rent at the stipulated rate. See also *Durga Prasad v. Rajendra Narayan*, 41 Cal. 493, s. c., 18 C.W.N. 66 (P.C.) ; *Manindra Chandra v. Durga Sundari*, 20 C.W.N. 680. Evidence that since the execution of a *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat* is admissible to shew the intention of the parties that the *kabuliyat* was not intended to be acted upon or that there had been a waiver of the terms of the lease : *Kailash Chandra v. Darbaria*, 20 C.W.N. 346 ; see also *Benimadhab v. Lalmoti Dasi*, 6 C.W.N. 242 ; *Manindra Chandra v. Durga Sundari*, 20 C.W.N. 680 ; and *Makbul Ali v. Jogesh Chandra*, 21 C.W.N. 534. But see the case of *Haldar Jha v. Syed Sha Mahammad*, 22 C.L.J. 95 that a landlord after acceptance of a lower rent waived his right to demand a higher rent although the same was stipulated in the lease.

Sec. 29 does not prevent a landlord to recover the full amount of rent a portion of which was kept in suspension : *Ramesh v. Golam Nabi*, 19 C.W.N. 867. Where there is a stipulation for future rent it accrues automatically : *Makbul Ali v. Jogesh Chandra*, 21 C.W.N. 534, s. c., 25 C.L.J. 129. *Rent kept in Suspension.*

Where two sums were mentioned in a *kabuliyat* as rent, the larger sum to be payable at the time when the property will be settled again ; *held* that it should be judicially determined which of the two sums mentioned in the *kabuliyat* is the true rent ; "if it is found, as in the case of *Mahamaya v. Kishore Chang*, 18 C.W.N. 738, s. c., 18 C.L.J. 50 that the true rent is the smaller sum, then the larger sum cannot be recovered because it was merely put in the *kabuliyat* as an attempt to over-ride the provisions of s. 29 of the Bengal Tenancy Act" : *Manindra Chandra v. Srinibash*, 39 I.C. 1. (Fletcher and Richardson J.J.). *Mention of two sums as rent.*

Where a *kabuliyat* stipulated that after the expiry of the lease the tenant would have to pay the full rent reserved a portion of which was kept in suspense, *held* that it was a device to defeat the provisions of s. 29 : *Prodyot Kumar v. Chundra Mohun*, 44 I.C. 574. See also *Prodyot Kumar v. Maharulla*, 39 I.C. 497. A similar view was taken in the case of *Satis Chandra v. Amanulla*, 40 I.C. 113 ; (Fletcher and Richardson, JJ.). Fletcher, J. observed as follows :—It is a matter for comment that no day practically passes before the court, at any rate before this Bench, without leases of this sort being brought up in review ; there can be little doubt that these leases are put forward by the landlords with intent to evade the stringent provisions of the Bengal Tenancy Act. (This case came from the Rangpur District). *Where suspension of rent, a device to defeat s. 29.*

It was observed by Richardson and Beachcroft, JJ., in the case of *Prodyot Kumar v. Chundra Mohun*, 44 I.C. 574 that in cases of this nature each case must depend on its own facts, and that it would be therefore better in all such cases for the lower courts to record an express finding one way or the other whether the agreement was a device to evade the statute. *Each case must depend upon its own facts.*

5. **Onus** :—The onus of proving that a *kabuliyat* contravenes the provisions of sec. 29 (b) is upon the tenant : *Lachmi Pershad v.* *Onus.*

Ekdeshwar, 13 C.W.N. 181. But when it is shewn what the previous rent was, the onus lies upon the landlord to justify enhancement claimed in contravention of the provisions of Sec. 29: *Manindra v. Upendra*, 9 C.L.J. 343.

Where the original rent fixed between the landlord and the tenant was enhanced by a registered agreement in the year 1894 by more than two annas in the rupee, *held* in a suit brought for recovery of rent in the year 1917, that the onus was upon the landlord to shew that the enhancement agreed upon was justified: *Rajendra Narain v. Kalim*, 49 Cal. 875, s. c., 26 C.W.N. 758 (Mookerjee and Cuming, J.J.); and although the rent had been subsequently settled under s. 105, the defendant was entitled to raise in defence that the rent was less and the provisions of s. 109 were no bar to the entertainment of the defence: *Ibid*.

The defence under s. 29 is to be pleaded at the earliest opportunity and it cannot be allowed to be pleaded for the first time in appeal: *Kunja v. Rajkumar*, 11 I.C. 940.

6. Clause (a):—A widow may sign a *kabuliyat* on behalf of her minor son stipulating to pay enhanced rent, and the son on attaining full age and entering on possession of the tenancy is bound by the *kabuliyat*: *Watson & Co. v. Sham Lall*, 15 Cal. 8.

Proviso (i) to this section applies to cl. (a): *Bepin v. Krishnadhan*, 32 Cal. 395.

7. Clause (b):—Enhancement by more than 2, as in the rupee :—A contract for enhancement of rent of an occupancy raiyat by more than 2 as. in the rupee in contravention of this clause is wholly void. It is not divisible and must be looked upon as a whole, so that a decree for enhanced rent up to the extent allowed by law cannot be given: *Krishnadhan v. Brojo Gobinda*, 24 Cal. 895, s. c., 1 C.W.N. 442; *Mathura v. Mati*, 25 Cal. 781; *Provat v. Chiragali*, 33 Cal. 607; *Manindra v. Upendra*, 9 C.L.J. 343; *Nafar Chandra v. Rahaman*, 34 I.C. 45.

Clause (b) has no retrospective effect and does not apply to a *kabuliyat* executed before the passing of this Act: *Tejendra v. Bakai Singh*, 22 Cal. 658.

Proviso (1) does not control cl. (b): *Bepin Behari v. Krishnadhan*, 32 Cal. 395 (F.B.); s. c., 9 C.W.N. 265; s. c., 1 C.L.J. 10. Proviso (1) applies only to cl. (a): *Ibid*. See notes under heading no. 3.

8. Proviso (i) : Proviso (i) controls merely cl. (a) and not cl. (b) of the section; therefore the fact that rent at the enhanced rate has been realised for three years is no answer to the defence that it has been illegally enhanced in contravention of s. 29: *Bepin Behari v. Krishnadhan*, 32 Cal. 395 (F.B.); the view taken in *Mathura v. Mati Sarkar*, 25 Cal. 781 so far as it decided this question was dissented from. See also *Mullick Chand v. Satish Chandra*, 11 C.L.J. 56; s. c., 14 C.W.N. 335; *Asraf v. Sarada*, 10 C.W.N. 104 (notes).

Proviso (i) does not control cl. (b) and continuous realisation of rent at an illegal rate is of no avail to the landlord when he seeks the assistance of the court: *Nafar Chandra v. Rahaman*, 23 C.L.J. 580.

An agreement for enhancement of rent by more than two annas in the rupee for improvement effected by the landlord can continue

Enhancement by more than 2 as. in the rupee—whole contract void.

Proviso (i) controls merely cl. (a) and not cl. (b).

Improvement.

only so long as the improvement exists and substantially produces its estimated effect in respect of the holding: *Ganes Dutt v. Lachmi Narain*, 23 C.L.J. 209.

9. Proviso (ii) and Cl. (b):—Reading cl. (b) with the second proviso, it is evident that a landlord to entitle himself to recover more than the rate indicated in cl. (b) must establish the conditions set forth in the 2nd proviso that is to say, when the enhancement is on the ground of improvement it is incumbent on him to shew that the improvement has been effected, and that it exists and substantially produces its estimated effect in respect of the holding: (*Per Jenkins C. J., Mookerjee J., concurring*), *Romanath v. Jote Kumar*, 11 C.L.J. 1. Improve-
ment.

10. Proviso (iii):—The word “specially” in clause (3) has no reference to the *quantum* of the reduction of rent allowed for the consideration there mentioned but merely requires that owing to special circumstances, viz., the agreement to cultivate a particular crop, the rent is lower than it otherwise would have been. The low rate should be proved to have been settled in consideration of cultivating a crop: *W. M. Grant v. Eklal Jha*, [1922 Pat.] p. 177, s. c., 67 I. C. 49. Meaning of
the word
“specially.”

Proviso (3) means that one of the purposes of the tenancy is growing of a particular crop and in consideration of that the rent is not merely a low rent but a rent specially low on that account: *Eklal Jha v. William Meling Grant*, 64 I.C. 332.

An agreement to pay an enhanced rent in case the tenant raises a particular crop, is not protected by proviso (3) to sec. 29: *Probat Chandra v. Chirag Ali*, 33 Cal. 607; s. c., 9 C.W.N. 62; s. c., 4 C.L.J. 320.

11. S. 20 cl. (7): Presumption:—When a question arises as to whether an agreement for enhancement of rent is or is not void under s. 29, the presumption under s. 20 (7) is of no avail, as the presumption shews the tenant to be a raiyat at the date of the suit, whereas the question to be determined is whether he had a right of occupancy at the time of the agreement: *Jahandar Baksh v. Ram Lall*, 11 C.L.J. 364; s. c., 14 C.W.N. 470. Presump-
tion under
s. 20 cl. (7).

12. Rent in contravention of s. 29: Enhancement suit:—In a suit for enhancement of rent of an occupancy raiyat, the rents of similar holdings fixed in contravention of sec. 29 ought to be excluded from consideration: *Nobin Chandra v. Kulo Chandra*, 37 Cal. 742; s. c., 14 C.W.N. 914.

13. Compromise of suits contravening the provisions of S. 29:—See notes under s. 147A.

S. 29 applies to an enhancement made in a compromise: *Srikishun v. Sheobalak*, (Patna case), 44 I.C. 638.

An enhancement by more than two annas in the rupee made in a compromise is not binding on the tenant in absence of any finding that the compromise was in settlement of a *bona fide* dispute: *Beradar v. Raghunanda*, [1920 Pat.] p. 9.

14. Holding Over:—The possession of a tenant holding over on the expiry of the term of his lease is wrongful, and in the absence of evidence from which a fresh tenancy can be inferred, time begins to run against the landlord from the expiry of the lease: *Hari Gir v. Kamakhya Narayan*, 3 Pat. 534, s. c., [1924 Pat.] p. 158. Holding
over.

15. Sec. 105 proceeding : Applicability of sec. 29 :—Sec. 29 of the B. T. Act has no application to proceedings under sec. 105 : *Matta Majhi v. Gopinath*, 89 I.C. 951 ; s. c., 1926 A.I.R. (Cal.) 353 (Cumming and Chakravarti, J.J.).

Sec. 29, if applies to under-raiyat with right of occupancy by custom.

16. Under-raiyats with right of occupancy by custom: Applicability of sec. 29 :—It has been held in the case of *Azizul Huq Chowdhury v. Kazimuddin Sarkar*, 32 C.W.N. 68 (notes), *per* Mitter J., that s. 29 which applies to occupancy raiyats applies also to an under raiyat who has acquired a right of occupancy by custom. It is submitted with great respect that this decision has not laid down the correct view of the law. From the classification of tenants in sec. 4, and the scheme of the Act, it cannot be said that an *under raiyat*, when he acquires a right of occupancy by custom becomes an "*occupancy raiyat*," as defined in the Act. "*Occupancy raiyats*," as defined in sec. 4 are *raiya*ts having a right of occupancy and as such cannot include persons who are not *raiya*ts but are *under-raiyats* having a right of occupancy. It is therefore submitted that an "*under-raiyat*" having a right of occupancy by custom cannot acquire the status of an "*occupancy raiyat*" and he continues to be an *under-raiyat*, and his status of an "*under-raiyat*" is not changed to that of a "*raiya*t" merely because he acquires by custom only one of the incidents of occupancy raiyats, namely, a right of occupancy. Illustration (2) of sec. 183 of the Act speaks only of a custom or usage by which an *under-raiyat* can acquire a *right of occupancy* but it does not say that an *under-raiyat* can become an *occupancy-raiyat* by custom or usage. Such a custom or usage will be inconsistent with, and expressly abolished by, the provisions of the Act. By acquisition of a right of occupancy by custom an *under-raiyat* does not cease to be an *under-raiyat* but only gets the right of protection from ejectment and as such sec. 49 which is applicable to an *under-raiyat* does not apply in his case. In other respects he is to be governed by the provisions relating to *under-raiyats*, unless he can prove by custom or usage, as contemplated by s. 183 of the Act, that he has acquired any other right applicable to *occupancy-raiyats*. Sec. 48, therefore, should apply to such an *under-raiyat*, and not sec. 29, which applies only to *occupancy raiyats*. It appears therefore that ss. 26, 29, 30 and the other provisions of Chap. V, and secs. 65, 85 and all the other provisions which are applicable to *occupancy raiyats* should not apply in the case of *under-raiyats* with rights of occupancy by custom. If it is said, as has been observed in 32 C.W.N. 68 (notes), that the moment the *under-raiyat* acquires a right of occupancy by custom, he at once acquires all the rights of *occupancy raiyats*, then the Legislature would have included such *under-raiyats* within the definition of "*occupancy raiyats*." The effect of an *under-raiyat* acquiring a right of occupancy by custom appears to be only this, *that he is entitled to remain in occupation during his life time or, in other words, he having acquired a right of occupancy, is protected from ejectment*. It has been held that an occupancy right acquired by custom by an *under-raiyat* is not heritable by law and s. 26 of the Act applicable to occupancy raiyats does not apply to such an *under-raiyat* : *Sudhanya Kumar v. Saik Ismail*, 29 C.W.N. 733 (Greaves and Cumming J.J.) ; *Iswar Sant v. Torendra*, 42 C.L.J. 560 (Newbould and Graham J.J.).

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the pro-

visions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

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

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

Headings of Notes.

- 1. AMENDMENT: CL. (a).
- 2. ENTRIES IN THE RECORD OF RIGHTS.
- 3. MONEY-RENT.
- 4. S. 78 OF THE LAND REGISTRATION ACT.
- 5. ONE SUIT UNDER SS. 30 AND 52 MAINTAINABLE.
- 6. LANDLORD OF A HOLDING.
- 7. RIGHT OF A HINDU WIDOW TO SUE FOR ENHANCEMENT.
- 8. PREVAILING RATE.
- 9. CL. (b).
- 10. CLAUSE (c).
- 11. S. 188.
- 12. REFERENCE TO ARBITRATION.
- 13. SUIT FOR EJECTMENT OR FAIR RENT.
- 14. SUIT FOR ENHANCEMENT NOT A BAR TO A SUIT FOR KHAS POSSESSION.
- 15. SUIT FOR BOTH ENHANCEMENT AND ARREARS OF RENT.
- 16. BACK RENT.
- 17. EFFECT OF SUBLETTING BY A RAIYAT.
- 18. WHERE HOLDING COMPRISES TANK OR HOMESTEAD OR PATIT LANDS.
- 19. SEC. 105.
- 20. LIMITATION.

I. Amendment, Cl. (a) :—This clause was substituted for the original clause (a) by Bengal Act III of 1898, s. 2.

Cl. (a) as it originally stood was as follows:—"That the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate."

Entry in the record of rights need not be set aside before bringing an enhancement suit.

2. Entry in the Record of Rights, if to be set aside by suit before bringing an enhancement suit:—It a tenant is entered in the record of rights as a raiyat at fixed rate, it is not necessary to sue for a declaration that the entry is wrong before instituting a suit for enhancement of rent: *Brij Behari v. Sheo Sankar*, 2 Pat. L.J. 124 (Mullick and Atkinson J.J.); an entry in a record of rights neither creates nor extinguishes rights: it is merely a rebuttable piece of evidence: *Ibid.*

Where no enhancement suit for long period—no waiver.

The entry in the record of rights, meant that the Appellants were merely occupancy raiyats not holding at fixed rates and that being so the mere fact that the landlords did not think fit to enhance the rent since that record was made cannot be deemed to raise a presumption of fixity of rent in favour of the Appellants: *Mofizuddin v. Rajendra*, 29 C.W.N. 209; s. c., 40 C.L.J. 248.

3. Money rent:—So 30 applies where rent is payable in money only and does not apply to a case where rent is paid partly in cash and partly in kind: *Priyanath v. Tarini Charan*, 24 C.L.J. 373. See notes under ss. 40 and 48.

Ordinarily where a holding consists of both *nagdi* and *bhaoli* lands the landlord cannot institute the suit under sec. 30 (b) for enhancement of the *nagdi* rent: *Dipnarayan v. Bhim Mandal*, 8 P.L.T. 564, s. c., 101 I.C. 511 (Adami and Scroope, J.J.).

If the same lands be held by a tenant on payment of rent, partly in cash and partly in kind, and there be no distinction as to the portions of the lands for which *bhaoli* or the *nagdi* rents are paid, the holding must be treated as a single holding, and s. 30 would not apply. From the fact that decrees for *bhaoli* and *nagdi* are usually executed as rent decrees, it does not necessarily follow that in each case a presumption will be raised that the *nakdi* and *bhaoli* lands formed a single holding. Where parties do not agree that each class of land forms a single holding, no presumption can be raised, and the Court has to decide the question upon the facts and circumstances of each case: *Ram Kali v. Madan Mohan*, 8 P.L.T. 224, s. c., 98 I.C. 995 (Ross and Kulwant Sahay, J.J.).

S. 78 of the Land Registration Act is no bar to an enhancement suit.

4. S. 78 of the Land Registration Act:—S. 78 of the Land Registration Act is no bar to a suit for enhancement of rent: *Maugni-ram v. Sheo Charn*, 1 C.W.N. 179 (notes); their Lordships O'Kinealy and Hill, J.J., observed as follows: This suit was for enhancement of rent and under s. 31 of the Act, an inquiry was made by the Revenue authorities. Another objection raised is that s. 78 of the Land Registration Act applies. When the person who has obtained this decree for enhancement attempts to compel the tenants to pay and is not registered, that objection can be taken. We think as at present advised, that s. 78 has no bearing upon this case.

One suit under ss. 30 and 52.

5. One suit under ss. 30 and 52 maintainable:—There is nothing in the law which prevents one suit being brought for enhancement under s. 30 and for increase of rent under s. 52; the two causes of action may be joined in one suit: *Sarada v. Iswar*

Samli, 11 C.W.N. 1154 ; See also *Gudar Tewary v. Brij Nandan*, 5 C.W.N. 880.

6. Landlord of a holding :—The term “holding” as used in this section means an entire holding ; an agreement by a tenant with one of several joint-landlords to pay his share of the rent separately does not constitute a separate tenancy under him ; so, where a co-sharer landlord sued for enhancement of rent on the basis of such an agreement, *held* that such a suit was not maintainable even when it contained a stipulation for such enhancement : *Baidya Nath v. Sheikh Jhin*, 2 C.W.N. 44 ; see also *Hurry Charan v. Rajah Runjit*, 25 Cal. 917, s. c., 1 C.W.N. 521 ; see also *Haribole v. Tasimuddin*, 2 C.W.N. 680, where it is held that this section does not apply to an enhancement of rent of the undivided share of lands comprising a holding, as it does not fall within the definition of a holding given in this Act. See also *Haranandan v. Kesha Prasad*, 2 Pat. L. J. 553 ; s. c., 40 I.C. 585 ; *Abdulla v. Gagan Molla*, 2 C.L.J. 10 ; *Bahadur Ahmed Moulavi v. Sudharam*, 30 C.W.N. 613.

Holding, meaning of —undivided share of land, if a holding.

Where A and B held a tenure jointly, and A let out his undivided share as a raiyati lease to B, *held* that a suit for enhancement under s. 30 at the instance of A was not maintainable in as much as A was not the landlord of a holding, an undivided share in the land not being a holding : *Parbuty v. Mathura*, 40 Cal. 29 ; s.c., 16 C.W.N. 877 ; s. c., 16 C.L.J. 9 ; the case of *Jardine Skinner & Co. v. Sarat Sundari Debi*, 3 C.L.R. 140 where the Privy Council held that an occupancy right could be acquired (under the old law), in an undivided share of land, and the case of *Baidyanath v. Sudharam*, 8 C.W.N. 751 where a similar view was taken, were distinguished on the ground that plaintiff in a suit for enhancement of rent under s. 30 must be the landlord of a holding within the meaning of the Bengal Tenancy Act.

Where the land held by a raiyat consisted of entire parcels of agricultural land and an undivided share of a parcel of homestead land, *held* that it was not a holding, and the landlord cannot therefore bring a suit for enhancement of rent : *Binayak v. Sominuddi*, 24 C.W.N. 1022.

It was observed by Richardson J., that there can be a raiyati interest in an undivided share or part of land : *Banku Behari v. Benode Kumar*, 13 C.W.N. cclxiv (264) ; see notes under s. 3 cl. (9) at pages 60, 61.

Observations of Richardson J.

Owners of an undivided share of an estate can treat the excess land in the occupation of the tenant of the estate as a separate holding in a rent suit : *Pecha Mondal v. Bhairabendra*, 91 I.C. 846.

7. Right of a Hindu widow to sue for enhancement :—A Hindu widow may sue for enhancement either in her capacity as guardian of her minor son or in her own capacity as the widow : *Surja Kant v. Hemanta Kumari*, 20 Cal. 498.

8. Prevailing rate :—Of a similar description and with similar advantages : “At what time? At the time the raiyat was let into possession, or at the time of suing for enhanced rent? The former view was taken in the case at 2 W.R. Act X 40 ; the latter view was taken in the cases at Marsh 379 ; 1 C.L.R. 549 ; and 7 W.R. 97.” —Fields Digest of the Law of Landlord and Tenant, p. 40, note.

“At what time?”

“Prevailing” used in section 17, (of Act X of 1859) “must have

Act X of
1859, s. 17.

Evidence.

Prevailing
rate is not
average
rate.

Striking an
average is
wrong.

Rent paid
by the
largest
number of
tenants.

Rate
actually
prevailing
must be
found.

some definite meaning attached to it. It means the rate generally prevalent or the rate paid by the majority of the raiyats in the neighbourhood. Now the evidence of 20 raiyats, (for that is the number referred to in the present case), simply shewing that they paid their rents at the rate of 3 rupees per bigha, does not go to prove the *prevailing* rate or the rate paid by the majority of the raiyats. I do not mean to say that all the raiyats in the neighbourhood are to be examined, and then the rate paid by the majority of them is to be found out. But I do mean to say that the evidence given must purport to shew the rate paid by the majority, otherwise it cannot be said that the prevailing rate has been established." *Shadhas Singh v. Ramanoograha*, 9 W.R. 83.

In *Priag Lall v. G. G. Brockman*, 13 W.R. 346 the evidence of the Patwari, corroborated by Jummah-bundees was considered sufficient to shew that the requirements of the law had been fulfilled in such a manner as to entitle the plaintiff to obtain a decree for enhancement at the prevailing rate. "If a distinctly prevailing rate can be found (in this case I understand that it cannot) of course that must be adopted; if such rate cannot be found, and if, as in this case, the Court comes to the conclusion that the currency of the different rates is so nearly equal as to make it impossible to say which is the prevailing rate, the Court is not in error in taking an average, in other words, although as a general rule it is wrong to proceed by striking an average, yet under special circumstances it may be the only and therefore the proper course to adopt." (*Per Ainslie, J.*), *Shaikh Dena Gazee v. Mohinee Mohun*, 21 W.R. 157.

To determine what the prevailing rate is, a Court would be wrong if it arrives at its conclusion by the mode of striking an average on the rate of rent proved before it: *Audh Biharee v. Dost Mahomed*, 22 W.R. 185; see also *Sumura Khatoon v. Gopal Lall*, 1 W.R. 58. A Court must find specifically whether the rate claimed by plaintiff is actually paid by the neighbouring raiyats of the same class for similar lands, or what rate is so paid and decide accordingly; *Pelaram v. Nund Coomar*, 6 W.R. Act X, 45. But where it is found that there is no one prevailing rate and that the raiyat holding land in the village of similar description and with similar advantages, pay rent at varying rates, the lowest rate may be taken and the rent of tenant may be enhanced up to that limit: *Aleph Khan v. Raghunath*, 1 C.W.N. 310. The rate paid by the largest number of tenants was accepted as the prevailing rent, see 1 C.W.N. clxxxix.

Where there is no prevailing rate the landlord is not entitled to get an enhancement under cl. (a); the average rate of rent of neighbouring villages is not the prevailing rate within the meaning of cl. (a): *Ram Deo v. Babu Moheswar*, 21 C.L.J. 483; the artificial meaning of the expression "prevailing rate" in s. 31A cannot be applied to a case in a district where that section has not been extended; where the great majority of the raiyats in the neighbouring villages paid rent at a certain rate, *held* that that rate was not the prevailing rate: *Ibid.*

The rate actually paid and current in the villages has always been taken to mean the "prevailing" and not the "average" rate. "In the new act the words 'prevailing' and 'average' are used in different senses in different sections. In s. 30, for instance, reference

is made to the 'prevailing rate'; in section 32, reference is made to "average prices" not "prevailing prices"; in section 40, sub-sec. 4, clause (a) the terms "average money rent," and in clause (b) the "average value of the rent" are mentioned as distinct from "prevailing rate." We think, therefore, that the words "prevailing" in this case are used in the same sense and in which they are used in the earlier cases under Act X of 1859:" (*Per O'kinealy and Hill, J.J.*), *Shital Mandal v. Prossunno Moyi*, 21 Cal. 986.

Lowest rate: The adoption of the lowest rate as the prevailing rate, if the landlord does not object, cannot be challenged by the tenant: *Lalit Kaer v. Hitnarain*, 15 C.W.N. 56 (notes). Lowest rate.

In determining the prevailing rate of rent, rent settled in contravention of sec. 29 cannot be taken into consideration: *Nobin Chandra v. Kulo Chandra*, 37 Cal. 742, s. c., 14 C.W.N. 914.

See notes under s. 31A.

9. Cl. (b) :—

Price lists:—There are separate prices for upland and low-land in several places, consequently it has been held that in a suit for enhancement of rent for the rise of prices of staple food crops, it is not permissible to assess the enhancement of one kind of land by comparing the average prices of both up-land and low-land staple crops together; if it is up-land the prices of the up-land crops must be considered and if it is low-land the prices of the low-land are to be considered: *Sajiwan v. Gulab Chand*, 1 Pat. L.J. 409. Separate prices of upland and lowland staple food crops.

Price lists must be referred to even if parties do not produce the same: In a suit for enhancement of rent it is the duty of the Court to refer to the price lists prepared under sec. 39 whether the parties to the suit produce these or not: *Nobin Chandra v. Kulo Chandra*, 37 Cal. 742, s. c., 14 C.W.N. 914. See also *Harihar v. Sarat Chandra*, 91 I.C. 734.

In order to enable a landlord to claim an increased rent under the provisions of s. 30 cl. (b) it is not necessary to prove what was the value of the staple food crops at the date of the inception of the tenancy, *Bhudhar v. Nandalal*, 40 I.C. 682.

Where there is a house on a portion of the land the enhancement should be limited to the land only: *Jeonath Jha v. Bishambar Das*, 8 P.L.T. 495.

Where the lease recited that the tenant held for over 12 years at a fixed rent and the rent was increased for some excess area discovered and contained a stipulation for similar increase only in cases of further excess land, held upon a construction of the lease that a tenancy in perpetuity at a fixed rate of rent had been created and that the rent could not be enhanced under sec 30 of the B. T. Act: *Suryyakumar v. Ratan Choura*, 31 C.W.N. 450 (*Per Mukerji J.*). Stipulation for increase of rent for excess area: construction of lease.

A stipulation in a *pattah* to the effect that in case of any additional area being discovered in the tenants' possession, rent would have to be paid therefor at the rate fixed in the *pattah*, is not by itself conclusive proof of the rent being one fixed in perpetuity, although it will be an important factor in the determination of the question: *Ibid.* The cases of *Amarnath v. Raja Krishnadas Laha*, 35 C.L.J. 138 and *Golam Rahaman v. Gurudas*, 38 C.L.J. 350, were distinguished and the cases of *Surju Prasad Sukul v. The Midnapore Zemindary Co., Ltd.*, 38 C.L.J. 369 and *Bhairab Chandra Das v. The Midnapore Zamindary Co., Ltd.*, 38 C.L.J. 372, were referred to.¹⁰

The tenants' description of themselves in the compromise deed as persons "in the position of raiyats" was merely a recital of a part of the allegations on which the ejectment suit had been founded and in no way an admission ; even if it was one, it could not operate as an estoppel under circumstances where it was neither contractual nor essential for the purposes of the instrument: *Ibid.*

Capital—
Interest.

Estimate of
fair rent.

Jungle
boori lease.

10. Cl. (c) :—In assessing the enhanced rent under cl. (c), the enhancement should include a sum in addition to the interest payable upon the capital spent in as much as the landlord should be allowed a fair interest on the capital invested for the purpose of the improvement, otherwise his capital would be lost to him after the lapse of a few years: *Ganes v. Lachmi*, 23 C.L.J. 209 at p. 213 ; where a tenant agreed to pay a particular sum as enhanced rent in consideration of the improvement, *held* that that may be taken, *prima facie*, as his own estimate of what would be a fair rent under cl. (c) and the Court might well adopt this as the basis of the decree, till, at any rate, the tenants shewed that his estimate was erroneous: *Ibid.*

Where in a *jungleboori* lease a progressive rent was provided for and the interest of the tenant was not expressly made heritable or perpetual and the lease did not expressly exclude enhancement on any ground but expressly provided for increase of rent on the ground of the increase in the productiveness of the soil effected at the expense of the land-lord* and the lower Courts found that the interest created by the lease was not a tenure, *held* by Rampini, J., that the case came within s. 30, cl. (c), but Mitra, J., *held* that the case was not governed by this section and that the question which the lower Court should decide was as to whether the holding was transferable and in case it was so that suit should be dismissed, otherwise should be decreed: *Rajkumar v. Naya Chotoo*, 31 Cal. 960.

All the joint
landlords
must sue
together.

Suit by a
co-shebait.

II. S. 188 :—A suit for enhancement of rent is not properly framed when all the landlords are not joined as plaintiffs: it is not sufficient for one or some of joint landlords to sue as plaintiff or plaintiffs and make those who refuse to join with him or them defendants in the suit: *Jatindranath v. Prasanna Kumar*, 38 Cal. 702 (P.C.) ; s. c., 13 C.L.J. 51.

Where one of two joint shebait brought a suit for enhancement of rent and the other shebait who was made a defendant stated in the written statement that he had no longer any interest and had no objection to the enhancement, *held* that s. 188 was a bar to the suit: *Abdul Gafar Mandal v. Umakanta Pandit*, 19 C.W.N. 260 ; see notes under s. 188.

S. 188 is a bar to a suit for enhancement under sec. 30 by a co-shebait: *Abdul Gafur v. Umakanta*, 24 I.C. 260. The right of suit is vested in the shebait and not in the idol: *Ibid.* See also *Mabatulla v. Nalini Sundari*, 10 C.W.N. 42, s. c., 2 C.L.J. 577.

Power of
arbitrator
to settle
fair rate.

12. Reference to arbitration :—In a suit for enhancement of rent under s. 30 the case was referred to arbitration on the application of the parties and the arbitrator settled a fair and equitable rate: *held* that the arbitrator had jurisdiction to do so inasmuch as

* জমির শক্তি বৃদ্ধি ও ভরিপ জমাবন্দি যাহা করিবেন তাহা আনিলে আনিব। *i.e.*, whatever increase in the production of the soil you may effect, and whatever measurement and *jammabandi* you may make, I shall abide by the same.

the parties declared that they would be bound by what the arbitrator would decide ; *Ganga Charan Roy v. Sasti Mandal*, 6 C.W.N. 614.

13. Suit for ejectment or fair rent :—On the expiry of a lease granted to a non-occupancy raiyat where the landlord brought a suit for khas possession or in the alternative for fair and equitable rent, *held* that for the period the raiyat was a non-occupancy raiyat the landlord was entitled to the rent provided for in the lease, and thereafter the raiyat having acquired a right of occupancy, the landlord could proceed under Chap. V, and was not entitled to get any enhancement in the suit which had been brought : *Dayal Kundu v. Malku Patak*, 5 Pat. L.J. 406 (Dawson Miller, C. J. and Mullick, J.).

Frame of the suit.

14. Suit for enhancement not a bar to a suit for khas possession :—Where a person who purchased a tenure free from incumbrances under Act VIII, B. C. of 1865, obtained an *ex parte* decree for rent against a tenant and on bringing subsequently a suit for enhancement was met by the plea of the tenancy being *mokurari*, *held* that a suit for khas possession was not barred : *Arsali Sadagar v. Ram Satya Bhakhat*, 7 C.L.J. 191.

Suit for enhancement not a bar to ejectment suit.

15. Suit for both enhancement and arrears of rent :—A suit for both enhancement and arrears of rent is maintainable ; the cause of action although separate may be joined under s. 45, C.P.C. : *Gudar Tewari v. Brijandan*, 5 C.W.N. 880.

Suit for both rent and enhancement of rents.

16. Back-rent :—When the plaintiff did not frame his suit as one for enhancement of rent, but claimed arrears of rent at enhanced rate, *held* that he was not entitled to a decree till rent was enhanced in a suit appropriately framed for the purpose ; it is well-settled that a landlord can claim back rent for additional area, but not back rent at enhanced rate : *Ejel Mullick v. Felai Mullick*, 21 C.L.J. 300.

Suit for back rent.

17. Effect of subletting by a raiyat :—The fact that an occupancy raiyat has sublet his land is no ground why his rent should not be enhanced : *Basiraddin v. Jogendra Mohan*, 64 I.C. 182. (Walmsley, J.).

Enhancement even when raiyat has sublet.

18. Where holding comprises a tank or homestead or Patit lands :—It often happens that there is a homestead or tank in a raiyati holding. As a matter of fact a raiyat is entitled to erect a suitable dwelling house or excavate a tank on a part of the holding (see sec. 76) ; in such a case the entire holding is not used for actual agricultural purposes, but the homestead and the tank are really incidental to purposes of agriculture ; for, Sec. 76 provides that the erection of a suitable dwelling house is intended for the raiyat and his family, and the excavation of a tank is for the use of men and cattle employed in agriculture ; and these, namely, the dwelling house and the tank are according to sub-sec. (1) of Sec. 76 consistent with the purpose for which the land was let and they are improvements within the meaning of Sec. 76 and the raiyat is entitled to compensation for these improvements if he is ejected (See Sec. 82). It therefore stands to reason that under Sec. 30 of the Bengal Tenancy Act the landlord is entitled to recover enhancement of rents upon all the grounds mentioned in Sec. 30 for all the lands comprised in the holding inclusive of such portion which is not used for actual agricultural purposes. The right to enhancement should not be limited only to a particular ground of Sec. 30 but the enhancement may be claimed upon all the grounds. It is true that grounds (c) and (d) of Sec. 30 refer to en-

Holding comprising non-agricultural land.

hancement of rent on an increase of the productive power of the land ; but that is no reason why land not used for actual agriculture should be exempted from enhancement ; for it is easy to determine whether such land if put to cultivation would yield an increase of produce.

Where letting out originally for agriculture.

Case-law.

It is reasonable to think that the above remarks should apply to the case of a holding originally let out for agricultural purposes although subsequently used entirely for non-agricultural purposes, since subsequent uses does not alter the status of the tenant.

In a case where a raiyati-holding consisted of a tank and homestead and the lower courts refused the landlord to grant enhancement under cl. (b) of Sec. 30 holding on the ground that the land was not being used for agricultural purposes, the High Court held that the landlord was entitled to enhance the rent : *Reesheekesh v. Chintamani*, 27 C.W.N. 962, s. c., 36 C.L.J. 305. (Cuming and Panton, J.J.).

Remarks of Panton J.

In this case Panton, J. makes a distinction between clause (b) and the clauses which follow namely (c) and (d) on the ground that in the two clauses (c) and (d) reference is made to the productive power of the land.

It is submitted with great respect that there should not be any distinction at all in as much as the actual user by the tenant of land for non-agricultural purposes does not prevent the Court from determining the question of fact whether the productive powers of the land have increased.

The rent of homestead land held by an occupancy raiyat is liable to enhancement under s. 30 (b) : *Reshee Case v. Trailokya*, A.I.R. 1925 Cal. 399 (Suhrawardy and Chotzner, JJ.).

Homestead or *patit*. lands yielding no crop—no ground of disallowing enhancement.

Decree for Enhancement under s. 105 binding upon all contesting defendants although one died before decree.

Limitation.

The fact that a certain holding consists of homesteads or *patit* lands which yield no crop is no ground for disallowing enhancement of the rent of the tenancy : *Ibid*.

19. Sec. 105 :—Rent may be enhanced under this section in a proceeding under sec. 105 : *Sukraj v. Lal Bahadur*, 29 C.L.J. 253.

Where rent was enhanced in a proceeding under s. 105 during the pendency of which proceeding one of the tenants died and the other tenants who all contested the suit although aware of the death did not bring it into the notice of the court although they contested upon other grounds, *held* that the decree was binding upon the other tenants : *Kartik Chandra v. Jitendra Nath*, 28 C.W.N. 188 (notes) : (Suhrawardy and Chakravarty, J.J.).

See notes under s. 50 (2) and s. 103B. :

20. Limitation :—A claim to enhanced rent is a recurring cause of action and limitation runs from the date of refusal : art. 131 of Sch. I of the Limitation Act is applicable to such a suit : *Brij Behari v. Sheo Sankar*, 2 Pat. L.J. 124 ; (Mullick and Atkinson, J.J.). See notes under s. 52, under heading : Limitation.

Rules as to enhancement on ground of prevailing rate.

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

(a) in determining what is the prevailing rate the Court shall have regard to the rates

generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

- (b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code; ^{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;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorised on account of a landlord's improvement shall not be taken into consideration;
- (e) if a favourable rate has been determined under clause (c) for any description of raiyats, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;
- (f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

Headings of Notes.

1. AMENDMENTS.
2. ISSUE OF COMMISSIONS BY CIVIL COURTS OR REVENUE OFFICERS UNDER 7. 31 (b) OR S. 158 (2) OR S. 107.
3. DUTY OF CIVIL COURT IN ORDERING LOCAL INVESTIGATION.
4. LOWEST RATE.
5. REPORT OF REVENUE OFFICERS.

1. Amendments. :—Clauses (e) and (f) were inserted by Bengal Act III of 1898, sec. 3.

2. Issue of Commissions by Civil Courts or Revenue Officer under s. 31 (b) or s 158 (2) or s. 107 :—See Appendix II.

Instructions
of Board of
Revenue
regarding
local
enquiries.

As to instructions of the Board of Revenue regarding local enquiries, see Board of Revenue's Circular No. 4 of August 1894, and Circular No. 7 of April 1899 :

Extract from Circular No. 4 of August 1894.

* * No cost should be incurred to meet the charges of the local enquiry beyond that actually allowed by the Court issuing the commission, under rule 30 (b) at page 41 of the High Court's General Rules and Circular Orders as revised in 1891. If the probable costs were calculated with regard to the time likely to be occupied in the execution of the commission, and the Commissioner finds that the time fixed is insufficient he should give timely notice to the party at whose instance the commission was issued and report the fact to the Court. Then, unless the sum necessary to cover the expenses for such further period as may be required to complete the execution of the commission is deposited in Court by the party and the commissioner certified of such deposit, he should suspend the investigation at the close of the period originally fixed, pending the further instructions of the Court.

The expenses of the Commission will generally fall under the following heads :

- (1) Remuneration of the Commissioner.
- (2) His travelling and halting allowances.
- (3) Charges for the temporary subordinate establishment that may be employed.
- (4) Incidental charges that may be unavoidable.

The first will be calculated on the basis of the actual pay which the person to whom the commission is issued has been receiving. The second will be regulated by the scale prescribed for officers of Government of the class to which the Commissioner belongs, unless the Court should, for exceptional reasons, order an allowance in excess of the above. The third and the fourth will be passed on authority of the Revenue officer concerned, but must on no account assume proportions so as to exceed, in conjunction with the charges under heads (1) and (2), the sum actually allowed by the Court.

Extracts from Circular No. 7 of 1899 :

"The words 'from time to time', in notification, above quoted" (*i.e.* the Government notification) "give the Collector the option of changing his nomination, if in case of sickness, transfer, urgent press of work, or other valid reason, his original nominee cannot make the enquiry."

3. Duty of Civil Court in ordering local investigation : Commissioner's duty should be laid down by the Court.
 A revenue officer can hardly be expected to know the requirements of the Civil Court in respect of enquiries to be made under this section, so it is right and proper that a civil court, in directing a local investigation, should indicate to the officer holding the investigation what it is that the court precisely requires. *Nobin Chandra v. Kulo Chandra*, 37 Cal. 742, s.c., 14 C.W.N. 914: "If the court is satisfied that all the rent in the village should be excluded from consideration, because it is fixed in a mode which contravenes the provisions of Sec. 29 of B. T. Act, then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy raiyats for land of a similar description and with similar advantages in neighbouring villages." *Ibid*.

The Commissioner's duty as laid down in the case of *Brij Behari v. Sheo Sankar*, 2 Pat. L.J. 124; *Mullick and Atkinson*, JJ., is as follows:—

1. To ascertain what is the prevailing rent namely, the rent paid by the majority of the tenants for lands of similar description with similar advantages in the village, as explained by Mitter, J. in *Sadhas Singh v. Ramanoograha*, 9 W.R. 83.

2. If by reason of the application of s. 29 Bengal Tenancy Act or the absence of any prevailing rate within the village in which the holdings in suit lie the rates in the village cannot serve as a guide, then to ascertain what is the prevailing rate in the neighbouring village or villages.

3. If no one prevailing rate can be found in any village then to ascertain what is the lowest rate paid by lands of similar description with similar advantages.

4. To ascertain what would be the prevailing rate if s. 31 (A) of the Bengal Tenancy Act had applied to the lands in suit.

4. Lowest rate :—The adoption of the lowest rate as the prevailing rate, if the landlord does not object, cannot be challenged by the tenants: *Lalit Koer v. Hitnarain*, 15 C.W.N. 1vi (56 notes). Lowest rate.

5. Report of Revenue Officer :—Where in a suit for enhancement of rent under sec. 30 (a) of this Act, the Court is not satisfied with the report of the Revenue officer under sec. 31 (b) it should direct a further enquiry setting out what further materials are wanted to come to a proper decision: *Pranesh v. Banawarilal*, 86 I.C. 533 (Mukerji, J.).

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

Illustrations.

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

Bighas.						Rs.	A.	P.
100	...	...	...	...	@	1	0	0
200	...	...	...	...	@	1	8	0
150	...	...	...	...	@	1	12	0
100	...	...	...	...	@	2	0	0
150	...	...	...	...	@	2	4	0

Total 700

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

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

Bighas.						Rs.	A.	P.
100	...	...	...	...	@	1	0	0
250	...	...	...	...	@	1	4	0
150	...	...	...	...	@	1	8	0
150	...	...	...	...	@	1	12	0
50	...	...	...	...	@	2	0	0

Total 700

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

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

Amendment :—This section was inserted by Bengal Act III of 1898, s. 4.

Extension :—The provisions of sub-sec. (1) have been extended to the District of Tipperah : see Calcutta Gazette, September 5, 1900, Pt. 1, p. 970, Notification No. 1470 T. R., dated the 1st September, 1900. This sub-section has also been extended to the Govt. estate of Taufir Barhiea in the District of Monghyr being Towji No. 1309 in the District of Monghyr; (see Calcutta Gazette, 1904, Part I, p. 317). As to the Districts or areas where this section has been extended. See Appendix, Important Notifications of the Bengal Government.

Non-applicability of this section to a district where the section has not been extended :—The artificial meaning of the

expression "prevailing rate" given by this section cannot be applied to a case in a district where this section has not been extended : *Ram Deo v. Babu Moheshwar*, 21 C.L.J. 483.

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

Limit to enhancement of prevailing rate.

Amendment :—This section was inserted by Act III, B. C. of 1898), sec. 4. See notes under s. 31A.

Prevailing Rent :—By using the expression "prevailing rent" "determined by a Revenue Officer under Chap. X in s. 31B, it was intended to refer to the table of rates prepared by the Revenue Officer under Part II. of Chap. X : *Ramjiram v. Ramkumar*, [1924 Pat.] p. 345, (Dawson Miller C. J. and Kulwant Sahay, J.J.). The prevailing rate of rent in any particular local area is a question of fact and must depend upon the actual rents existing in that area : *Ibid.* The prevailing rate increases or decreases according to existing circumstances : *Ibid.*

Table of rates prepared under Chap. X, Part II. Prevailing rate—question of fact. S 30.

The expression "prevailing rate" as used in S. 31B has the same meaning as the expression when used in s. 30 : *Ibid.*

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

Rules as to enhancement on ground of rise in prices.

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

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

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

Price lists must be referred to.

Price-lists must be referred to :—It is an error of law if a court omits to refer to the price lists ; *Nobin Chandra v. Kula Chandra*, 37 Cal. 742, s.c., 14 C.W.N. 914. In a suit for enhancement of rent on the ground of rise of prices of staple food crops the lower courts relied on the price-lists appearing in a previous (second) edition of this work. In the High Court it was argued that the lower courts ought to have referred to the price-lists as published in the Gazette and therefore the provisions of section 39 had not been complied with and the price-lists as published in this work ought not to have been referred to ; Holmwood, J. (Chapman, J. concurring) overruled the contention and observed that "implicit reliance can be placed" upon the price-lists compiled in this work as referred to above : *Alimuddin v. Rupendra*, 19 C.W.N. cxl. (140 notes).

Price lists to be found at the end of this book may be relied on.

The two decennial periods must not even partially coincide.

Decennial periods :—The decennial periods taken as the basis of comparison under clause (a) must be entirely distinct and must not partially coincide : *Annada Prashad v. Nibarani Dassi*, 11 C.L.J. 380. Mookerjee J. (Teunon, J. concurring) observed as follows :—In the present case, the suit was commenced in 1907 : the decennial period immediately preceding the suit therefore covers the period 1887 to 1896. But the learned District Judge appears to have compared the prices during the decennial period 1897 to 1906 with those during the period 1888 to 1897, on the ground that the tenancy was created in 1897. In the view we take of the true scope of sec. 32, this was not permissible.

Mode of calculation in suit for enhancement of rent for rise of prices on staple food crops :—See Appendix XII (after the Price Lists).

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

33. (1) 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 utilizing the improvement, and
 - (iv) the existing rent and the ability of land to bear a higher rent.

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

Note :—In order to make out a case for enhancement on ground of improvement it is necessary to comply strictly with the provisions of s. 33 : *Gursahai v. Keshwar Sahu*, 1 Pat.L.J. 76.

The landlord must shew that the improvement has been effected and it exists and substantially produces its estimated effect in respect of the holding. *Ramanath v. Jotekumar*, 11 C.L.J. 1. As to "improvements"—See Secs. 76 to 83, and Sec. 29.

34. 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 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.

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

I. Periodical floods:—The effect of s. 35 is not that a Court is bound to allow enhancement of rent even though it finds that the lands are periodically flooded by water and that the rents are already too high: *Ishan Chandra v. Ram Prasad*, 65 I.C. 656, (Sanderson, C.J. and Richardson, J.). A Court in a proceeding under s. 105 in enhancing rent should take into consideration all the facts of the particular case.

2. Position of the land near a River:—S. 35 relates to the amount of assessment and does not refer to the grounds upon which a court has to determine whether enhancement should be allowed or not: *Gurucharan v. Sarab Ali*, 23 C.W.N. 1041, (N. R. Chatterjea and Duval, J.J.). In this case the lower appellate court held that the plaintiff was not entitled *equitably* to enhancement of rent. The High Court observed as follows: "The only ground upon which the learned Subordinate Judge so held is the position of the land by the side of a river and there being no crops grown on it. We do not think that that is what is contemplated by s. 35 of the Bengal Tenancy Act."

Note:—Where there is an unlawful exercise of discretion under this section, the High Court cannot interfere in revision: *Janki Koer v. Kukur Dusadh*, 1918 Pat. 347, (Roe and Jwala Prasad, J.J.).

As to whether the landlord's neglect of *gilandari* works dis-entitles him from claiming enhancement—See *Bibi Sayedatunnissa v. Amrit Mahto*, 100 I.C. 754.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase

yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Note :—The provisions of s. 36 do not apply to the case of a tenant who was in possession of the land for some years without paying any rent at all : *Sujaddin v. Jadunath*, 12 C.W.N. 167 (notes).

Limitation
of right
to bring
successive
enhance-
ment suits.

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

XIV of 1882.

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

Headings of Notes.

1. LIMITATION NOT CONFINED TO CASES OF ACTUAL ENHANCEMENT.
2. SUIT FOR ENHANCEMENT UNDER S. 52.
3. WITHDRAWAL OF SUIT, EFFECT OF.
4. PROTRACTED LITIGATION.
5. ENHANCED BY A CONTRACT.
6. FRESH SUIT.

1. Limitation not confined to cases of actual enhancement :—The Limitation put by s. 37 “is not confined merely to cases where enhancement is actually made. It applies to cases where a suit for enhancement is dismissed on the merits. S. 37 should be read with s. 113, as they are based on the same principle.” *Per Mitra, J.*, in *Rameswar v. Bhooboneswar*, 4 C.L.J. 133.

2. Suit for additional rent under s. 52 :—This section does not apply to a suit for additional rent under s. 52; such a suit may be brought after any interval of time : *Radha Kishore v. Umed Ali*, 12 C.W.N. 904.

3. Withdrawal of suit, effect of :—S. 373 of the old Civil Procedure Code corresponds to Rule 1 of Order xxiii of the new Code, Act V of 1908.

Although an application under s. 105 was previously withdrawn, without liberty to make a fresh application, a subsequent suit for enhancement of rent under s. 30 (b) of the Act is maintainable, in as much as an application under s. 105 is not a suit; the provisions of s. 37 or s. 109 of the Act are not applicable to such a case : *Cheoditti v. Tulsi Singh*, 40 Cal. 428; see also *Kamini Sundari v. Abdul Habin*, 28 C.L.J. 254.

4. Protracted litigation :—In a suit for enhancement of rent under s. 30 (a), the decree should not be passed to have retrospective effect *i.e.* from the date of suit: *Ramjiram v. Ramsre Raut*, 83 I.C. 124, (Dawson Miller, C.J., and Foster, J.).

5. Enhanced by a contract :—The words "enhanced by a contract" refer to a valid contract: *Bhudan Mahton v. Wazihunnessa*, 4 Pat.L.W. 210; s.c., 1918 Pat. 162, s.c., 4 Pat.L.J. 106; s.c., 44 I.C. 292 (Chapman and Atkinson, JJ.). Where a *ticcadar* got an agreement from the tenants enhancing their rent within 15 years from the date of the last enhancement and subsequently the zemindar instituted a suit for the enhancement of the rent and it was contended that the suit was barred under the provisions of s. 37 in as much as the rent had already been enhanced by the *ticcadar* within 15 years by the agreement with the *ticcadar*, held that the provisions of s. 37 did not bar the suit: *Ibid.*

6. Fresh suit :—The dismissal of a suit for enhancement of rent of a tenure, under Or. 9 r. 8, C. P. C. does not bar a fresh suit for enhancement within fifteen years of the dismissal: *Raja Gopal Roy v. Taj Muhammad*, 7 Pat. 28 (Kulwant Sahay and James, JJ.).

Reduction of rent.

Reduction of rent.—

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

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 specific cause, sudden or gradual, or

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

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

Headings of Notes.

1. S. 188.
2. PERMANENTLY.
3. PRINCIPLES LAID DOWN IN THIS SECTION.
4. SUIT FOR DECLARATION THAT RENT IS LESS THAN STIPULATED.
5. RENT-SUIT—REDUCTION.

Note :—A contract after the passing of this Act cannot take away the right of a raiyat to apply for reduction of rent, under s. 38: see s. 178, sub-sec. (3) cl. (f).

The provisions of this section apply only to rents payable in

money. The Act is silent as to whether raiyats paying rent in kind may sue for reduction for rent.

1. S. 188 :—S. 188 has no application to a suit for reduction of rent by one of several joint tenants: *Khethemani v. Jiban Krishna*, 21 C.L.J. 315.

Liberal
construc-
tion.

2. Permanently :—The word “permanently” should be liberally interpreted and ought to be construed with reference to existing conditions; a deterioration may be permanent although the same might be removed by application of capital and skill; *Gouri Patra v. Reily*, 20 Cal. 579. Following this case it has been held that the word “permanent” in s. 38 must in every case be considered with reference to existing conditions and when a piece of land gets covered with sand the deterioration is permanent with reference to existing conditions: *Krishna Sahoy v. Palakdhari*, 20 C.W.N. 1157, s.c., 22 C.L.J. 42.

Proceedings
for settle-
ment of
rent.

3. Principles laid down in this section :—No doubt it is only an occupancy raiyat who is authorised by the Act to bring a suit under this section, but the principles in this section ought clearly to be taken into consideration in all proceedings for the settlement of rent, whatever the status of the raiyats; *Gouri Patra v. Reily*, 20 Cal. 579.

Contem-
poraneous
oral
agreement.

4. Suit for declaration that rent is less than stipulated :—In a suit for a declaration that the plaintiff’s rent is less than what was stated in the *kabuliyat* which was a registered deed, and that there had been a contemporaneous oral agreement for the reduction of the rent, held that such a contemporaneous agreement could not be proved: *Radharaman v. Bhabani Prasad*, 12 C.L.J. 439 (*Per Rampini and Gupta, JJ.*, 9th August 1901); the mere acceptance of a reduced rent though it may amount to a full acquittance of rent for the particular year or years for which the rent was paid, does not operate as a binding contract between the parties without proof of the agreement which formed the basis of the reduction granted. See also *Radharaman v. Bhowni Prasad*, 6 C.W.N. 61; *Benimadhab v. Lalmoti*, 6 C.W.N. 242. See notes under sec. 29.

Reduction
may be
claimed in
rent suit.

5. Rent suit :—Abatement of rent can be claimed in a suit for rent by a tenant and a separate suit is not necessary; *Gosta Behari v. Hem Chandra*, 51 Cal. 1022, s.c., 29 C.W.N. 124; the cases of *Deendyal v. Thukroo Koonwar*, 6 W.R. Act X, 24; *Mahtab Chand v. Chitro Coomaree*, 16 W.R. 201; *Gour Kisore v. Banamali*, 22 W.R. 117 and *Shibakumari v. Bibrodas*, 12 C.W.N. 167 were referred to. See also *Mohesh Chandra v. Gangamoni*, 2 Hay 495.

In a suit for rent the tenant may claim reduction of rent; *Sukhraj v. Ganga Dayal*, 6 Pat.L.J. 665, s.c., [1922 Pat.] 132; (*Jwala Prasad and Ross J.J.*).

All tenants may claim abatement of rent on the grounds mentioned in s. 38: *Ibid.* Ordinarily, a tenant is exempted from the payment of the entire rent when the whole of the land is washed away: *Ibid.*

In a suit by a co-sharer landlord, who under an arrangement between himself, his co-sharers and the tenants, is entitled to collect his share of the rent separately the tenants are entitled to apply for an abatement of rent: *Sivadas Dutt v. Birendra Krishna Dutt*, 41 C.L.J. 330.

*Price-lists.**Price-lists—*

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

Price-lists
of staple
food 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.

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

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

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

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

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

Headings of Notes.

1. AMENDMENTS.
2. RULES REGARDING PRICE LISTS.
3. PRICE LISTS MUST BE REFERRED TO.
4. NATURE OF THE LAND ON WHICH RENT IS TO BE ASSESSED.

Amend-
ments.

I. Amendments :—After the word “correct” in sub-section (6) the words “and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct,” were inserted by s. 5 of Act III of 1898, B. C.

By the Devolution Act (XXXVIII of 1920)* in Sub-Sec. (7) of this section the words “subject to the control of the Governor-General in Council” after the word “Government” and before the word “shall” have been omitted.

2. Rules regarding Price Lists :—For Price Lists from 1887 up to current times of Bengal, East Bengal, Bihar and Orissa—(with references to the pages of the Gazettees)—See Appendix XII.

For Bengal Government Rules prepared under sub-sec. (7) of sec. 39. See Appendix I, Chap. II.

Price-lists
must be
referred to.

3. Price-lists must be referred to :—In a suit for enhancement of rent, it is the duty of the court to refer to the price-list prepared under this section whether the parties to the suit produce these or not: *Nobin Chandra v. Kulo Chandra*, 37 Cal. 742, s.c., 14 C.W.N. 914.

Price lists
as publish-
ed in a
previous
edition of
this work
were
referred to.

In a suit for enhancement of rent on the ground of rise of prices of staple food crops the lower courts relied on the price-lists appearing in a previous (second) edition of this work. In the High Court it was argued that the lower court ought to have referred to the price-lists as published in the Gazette and therefore the provisions of s. 39 had not been complied with and that the price-lists as published in this work ought not to have been referred to; Holmwood, J. (Chapman, J., concurring), over-ruled the contention and observed that “implicit reliance can be placed” upon the price-lists compiled in this work as referred to above: *Alimuddin v. Rupendra*, 19 C.W.N. cxi (140 notes).

Up-land
and
low-land.

4. Nature of the land on which rent is to be assessed :—In determining the amount of enhancement under s. 30 (b) regard must be had to the nature of the land on which rent is to be assessed; if it is up-land the prices of the up-land staple crop must be considered; while if it is low-land the prices of the low-land staple crop must be ascertained; it is not permissible to assess the enhancement on one kind of land by comparing the average prices of up-land and low-land staple crops together; *Sajiwan v. Gulab Chand*, 1 Pat.L.J. 409 (Chamier, C.J. and Sharfuddin, J.).

Commuta-
tion.—

Commutation.

Commuta-
tion of

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a

* An Act to release the control in certain respects of the Governor-General in Council over Local Government and to transfer to such Government certain powers now exercisable by the Governor-General in Council. This Act received the assent of the Governor-General on the 14th September, 1922.

portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, either the raiyat or his landlord may apply to have the rent commuted to a money-rent. ^{rent payable in kind.}

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

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

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

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

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

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

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

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which

† The word "and" was omitted by s. 11 (iii) of Act I, B. C. of 1907 & Act I, E. B. & A. Council of 1908.

it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

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

Headings of Notes.

1. AMENDMENTS.
2. JURISDICTION OF REVENUE COURT.
3. TRANSFER.
4. DECISION IN A PREVIOUS SUIT AS TO NATURE OF RENT.
5. SYSTEM OF PRODUCE RENT.
6. COMMUTATION AT THE INSTANCE OF THE COURT OF WARDS.
7. DOES S. 40 APPLY TO A RAIYAT WHO PAYS A FIXED QUANTITY OF PADDY ANNUALLY.
8. WHERE THERE CAN BE COMMUTATION AND WHERE NOT : MONEY RENT OR RENT IN KIND.
9. JURISDICTION OF CIVIL COURT.
10. COMMUTATION : WANT OF NOTICE.
11. COMMUTATION BY AGREEMENT.
12. CLAUSE 5.
13. REVERSION TO RENT IN KIND AFTER COMMUTATION.
14. ESSENTIALS NECESSARY UNDER S. 40.
15. DOWL EVIDENCING COMMUTATION.
16. CONVERSION OF CASH RENT INTO RENT IN KIND.
17. EFFECT OF ACCEPTANCE OF REDUCED RENT.
18. CL. (2) : AT WHAT STAGE THE APPLICATION IS TO BE MADE.
19. STAMP.
20. CL. (6).
21. APPEALS.
22. NATURE OF PROCEEDINGS UNDER SEC. 40.
23. CROP CUTTING REPORT : PUBLIC DOCUMENT.

Note :—Nothing in any contract made after the passing of this Act shall take away the right of a landlord or a tenant to apply for commutation of rent under s. 40. See s. 178, sub-sec. (3), cl. (g).

I. Amendments :—The amendments made in this section by s. 11 of Act I. B. C. of 1907, and s. 11 of the East Bengal Tenancy Amendment Act will appear from s. 11 of those two Acts which are the same and are as follows :—

In section 40 of the said Act—

- (i) in sub-section (1) after the words “partly in another” the words “partly in any of those ways and partly in cash” shall be inserted ;
- (ii) in sub-section (2), for the words “an officer making a settlement of rents” the following shall be substituted, namely :—

“a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant

Settlement Officer for the purpose of making a survey and record-of-rights” ;

(iii) in clause (b) of sub-sec. (4) the word “and” shall be omitted, and

(iv) to the said sub-sec. (4) the following shall be added, namely :—

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

2. Jurisdiction of Revenue Court :—A Civil Court has jurisdiction to determine whether an order under s. 40 by a Revenue Officer is without jurisdiction though the propriety of the order cannot be gone into : *Jadu Nath v. Pran Krishna*, 45 Cal. 769, s.c., 27 C.L.J. 569. Jurisdiction of Civil Court to determine the correctness of commutation order under s. 40.

A proceeding under s. 40 is founded on the assumption that the tenant whose rent is sought to be commuted is an occupancy raiyat and where the rent of an under-raiyat was commuted under s. 40, the Revenue-officer holding that the tenant was an occupancy raiyat, held that the order was without jurisdiction : *Kali Krishna v. Ram Chandra*, 19 C.W.N. 823, s.c., 21 C.L.J. 487 ; this case was followed in *Durga Mohon v. Sukumal*, 19 C.W.N. 825, s.c., 21 C.L.J. 590. These cases were followed in the case of *Sheikh Pokhan v. Rajani Kamal*, 23 C.W.N. 614 (N. R. Chatterjea and Panton, J.J.), in this case it was held that a Small Cause Court equally as a civil court is not bound by the decision of a Revenue officer in a commutation proceeding. In this case a certain person claimed to be a *burgadar*, and was recorded as a settled raiyat and after the entry was finally published, his rent was commuted under s. 40 ; in a suit for the price of the paddy in the Small Cause Court, it was held that the plaintiff was not bound by the decision in the commutation proceedings and the suit was cognisable in the Small Cause Court and that the defendant was not a tenant : *Ibid.**

An order by a Revenue Court under this section is final and no suit lies in the civil court by which its propriety can be questioned ; *Lala Saligram v. Mohunt Ramgir*, 3 C.W.N. 311. But a civil court is not bound by a decision of the Revenue Court passed without jurisdiction, and a civil court is competent to decide the question as to the status of the tenant.

3. Transfer :—An application for commutation of rent should be determined by the officer to whom it is presented, so when a Sub-divisional Officer before whom such an application was made transferred it to a Settlement Officer who again transferred to an Assistant Settlement Officer, held that the transfer by the Sub-divisional Officer was without jurisdiction : *Jadunath v. Prankrishna*, 45 Cal. 769, s.c., 27 C.L.J. 569. Transfer of commutation case.

4. Decision in a previous suit as to nature of rent :—A decision as to the nature of rent (i.e., as to whether rent is payable in money or kind) is not *res-judicata* in a subsequent suit : *Kali Roy v. Pratab Narain*, 5 C.L.J. 92. Resjudicata.

* In the head-note (23 C.W.N.) at page 615 Col. I line 14 there is a mistake ; for the word “pay” in that line read “hay” ; there is the same mistake at page 616 col. 2 line 9 ; there also read the word “hay” for “pay.”

System of produce-rent productive of disputes.

5. System of Produce rent :—“The system of produce rent has been described by competent authorities to be vexatious in the extreme and productive of disputes and litigation, constant irritation and oppression. [Field’s Digest of the Land Law of Bengal.] See also the observations of Mr. Justice Trevor in *Mahomed Yacob Hossein v. Sheikh Chowdhury Wahed*, 4 W.R. Act X, 23 ; reference may also be made to the history of the Law of ‘Titles in England’, *Per Mookerjee, J.*, in *Sashi Mahton v. Iswari Prasad*, 6 C.L.J. 727, at p. 732.

Commutation made by Court of Wards binding on minor.

6. Commutation at the instance of the Court of Wards :—Commutation of rent made by the Court of Wards is binding on the ward of the Court as to his successor unless it is shown that the power of the Court was restricted : *Sashi Mahton v. Iswari Prasad*, 6 C.L.J. 727.

7. Does s. 40 apply to a raiyat who pays a fixed quantity of paddy annually ?—A difficult question often arises as to whether s. 40 applies where a raiyat who according to his agreement with his landlord, pays as rent a fixed quantity in kind annually, and is a raiyat at fixed rent and has also acquired the status of an occupancy raiyat. It has been held that a raiyat paying a fixed quantity of produce, is a raiyat at fixed rent ; see the cases of *Dinanath v. Sati Prasad*, 27 C.W.N. 115, s.c., 36 C.L.J. 220 (*Mookerji and Chotzner, J.J.*) and *Manmatha v. Probodh*, 73 I.C. 416 (*Mookerjee and Rankin, J.J.*). Now, s. 40 speaks of the commutation of rent of an occupancy raiyat and therefore the question arises as to whether the produce rent payable by a raiyat at a fixed quantity can be commuted. In such a case the Board of Revenue decided that his rent cannot be commuted, he being a raiyat at fixed rent. But it has now been decided by Sanderson, C. J. and Richardson, J., in the case of *Sarbeswar v. Bijoy Chand*, 49 Cal. 280, s.c., 26 C.W.N. 15, s.c., 34 C.L.J. 233, that a raiyat at fixed rent may also acquire a right of occupancy.† Can it therefore be said that the paddy rent of a fixed raiyat who has acquired a right of occupancy may be commuted on the ground that s. 40 applies to all occupancy raiyats and consequently to a fixed raiyat who has acquired a right of occupancy ? It is submitted that* though reasons may be assigned both for and against the proposition, the sounder view is that the produce-rent of such a fixed raiyat cannot be commuted under s. 40, for the following reasons, viz., Chapter IV provides rules relating to the incidents of holdings at fixed rent or rates of rent ; in that Chapter we do not find any provision relating to the commutation of rent ; Chapter V lays down rules relating to occupancy raiyats in contra-distinction to raiyats at fixed rents for whom there are special provisions in Chapter IV. Then, we find that Chapter V lays down rules of enhancement or reduction of money rent payable by occupancy raiyats, and then s. 40 provides the rules of conversion of produce rent payable by occupancy raiyats into cash rent. From the scheme of the Act and the classification of the subjects, it seems that the legislature contemplates commutation of rent by raiyats who have merely occu-

Ss. 20, 21.

S. 19.

† A fixed raiyat may acquire a right of occupancy by complying with the provisions of Ss. 20 and 21. He has also a right of occupancy if he had acquired a right of occupancy before the passing of the Act which he could have done under the old law, and s. 19 of the Bengal Tenancy Act protects such right. See the notes under s. 19.

indication that this money value was placed for some other purpose than that of giving the tenant a choice either to pay money or to deliver the paddy, it must be taken that the tenant has the choice either to pay money or to deliver paddy as stipulated. A landlord cannot generally claim in such a case that the tenant is bound to pay the market value of the paddy at the date of the institution of the suit for rent if he does not deliver the paddy as rent in kind; *Saroj Bandhu v. Motilal*, 105 I.C. 756 (B. B. Ghose, J., Roy J., agreeing).

In the case of *Guru Das v. Govinda Chandra*, 24 C.W.N. 85 decided by N. R. Chatterjea and Duval, J.J., N. R. Chatterjea, J. observed as follows at p. 92:—"Contracts for payment of *bhag* paddy . . . are very common; and it is well known that middle class people, specially of the *bhadralogue* class who cannot cultivate lands themselves, let out their lands for getting paddy for the consumption of their family, and in some cases the *bhag* paddy is the only means of subsistence of the family. A certain value has to be fixed for the paddy in the *kabuliyat*, not only for the ascertainment of the registration fee, but also (and specially) for fixing the stamp duty payable, though it is not expressly stated in the *kabuliyat*. It is said that the parties may agree as to the value of the paddy in order to avoid disputes and the going into any question as to the value in the event of its non-delivery. But that would be a question of intention, and if it is clear from the *kabuliyat* (for instance where it is provided that the paddy is to be delivered in a particular month or measured with a certain measure) that it is only paddy which the parties intended should be paid, it would be inconsistent with that intention to hold that a fixed sum (which might be a wholly inadequate value of the paddy at the date of the suit) was agreed upon to be paid in the event of non-delivery of the paddy in order to avoid any question as to its value, in cases where the value is merely mentioned without any express stipulation to pay such value in the event of non-delivery of the paddy."

Observation
of N. R.
Chatterjea
J.

N. R. Chatterjea, J., in his judgment, discussed all the cases on the point and was of opinion that the cases were in conflict. The cases may be noted as follows:—

Cases where it was held that the tenant was bound to pay the actual value of the produce:—

Sobut Ali v. Abbas Ali, 3 C. W.N. 151. (Ameer Ali and Pratt J.J., 29 July, 1898); *Akbar Ali v. Durga Kripa*, 12 C.L.J. 589, (Stevens and Handley, J.J., 27 March, 1900); *Sheikh Esuf v. Gopal Chandra*, 12 C.L.J. 593, (Brett and Richardson J.J., 17 May, 1910); *Baneswar v. Umesh*, 37 Cal. 626, (Jenkins C.J. and Das J., 29 April, 1910); *Sarat Chandra v. Abbas Mondal*, 21 C. W.N. (140 notes). [See also *Kamoraddi v. Monmohini*, 29 C. L.J. 234, s.c., 21 C.W.N. 100

Cases where it was held that the landlord was entitled only to the amount stated in the *kabuliyat* to be the price of the paddy:—

After Moral v. Prasanna, 15 C. W.N. 249, s.c., 12 C.L.J. 649 (Mookerjee and Sharfuddin J.J., 2 Sept., 1910); *Asutos v. Haran*, 47 Cal. 133, s.c., 23 C.W.N. 1021; (Sanderson C.J., Mookerjee J., and Newbould J., dissenting); *Nilmadhub v. Sitanath*, 26 C.L.J. 94, (Sanderson C.J. and Mookerjee, J., 4 May, 1916, reversing the decision of N. R. Chatterjea J.); *Dwarka v. Dwijendra*, 30 C.L.J. 37; s.c., 47 Cal. 139 (footnote), Maclean C.J. and Banerjea J., 17

(notes)]. See in this connection 25 C.W.N. 714 ; 35 C.L.J. 159 ; 29 C.L.J. 234 and unreported special appeal No. 1718 of 1919. March, 1897). [Also see the cases of *Basiruddi v. Afsarennessa*, 21 C.W.N. 860 ; *Bibro Charan v. Suchand*, 12 C.L.J. 595, *Lakhatulla v. Biswambhar*, 12 C.L.J. 646 ; *Baneswar v. Umeshchandra*, 37 Cal. 626].

In a recent unreported case decided on the 15th April, 1924, by Sanderson C.J. and Chakrabarti J. (unreported second appeals Nos. 481 and 944 of 1922) *Gopal Chandra Mandal v. Prosannamayee Debi*, it was held that the landlord was entitled to the market price of the paddy and not to the amount fixed in the kabuliyat as the price of the paddy ; and that the lower Appellate Court was right in the construction of the kabuliyat. [In the kabuliyat it was provided that the tenant would pay a certain amount as cash rent *plus* a certain quantity of paddy at a certain measure and it was further stipulated that if for any unavoidable reason the tenant be unable to pay the paddy, then its market value at a certain rate, total Rs. 36/- plus the cash rent Rs. 20/- odd, total Rs. 56/13 would have to be paid, and the tenant further agreed that except for the reason that the entire land remained *patit*, he would not be allowed to pay the price but must pay the paddy.]*

The material portion of the judgment of the lower Appellate Court which was upheld by the High Court was as follows :—

“From a construction of the kabuliyat referred to above in the two kabuliyats, the Lower Court is of opinion that the price of paddy agreed to be paid in case of default was the amount fixed in the kabuliyat and not the market price of the paddy. I am unable to accept this finding of the Lower Court to be correct. We find in the first place that the primary intention of the landlord was to take the paddy in kind and the agreement to accept the price of paddy was a concession made on a special contingency only, i.e., when the land remained wholly *patit* or when the tenant was unable to deliver the paddy on account of any unavoidable cause over which the tenant had no control. In all the cases in which the construction of *kabuliyat* of the type before me came into question it was laid down that the primary intention of the parties should be looked into. Certainly if it was optional to the tenant to deliver the paddy or its price as stipulated between the parties, the landlord could not get the market value of the paddy. But if the intention was to deliver the paddy in kind and there was no option left to the tenant, then certainly the landlord would be entitled to the market value of the paddy deliver-

* The kabuliyats in both the cases were practically similar. The material portion of the kabuliyat is as follows :—

এই মর্মে কবুলতি দিতেছি যে উক্ত ১৩০০ (তের বিঘা পাঁচ কাঠা দুই ছটাক) জমির কাত বার্ষিক নগদ খাজনা ২০৬/০ ও হুখদেব স্বায়ের প্রচলিত দশ সেরা পৈকার ২৪ টায় যে পালী হয় তাহার ছয়পালী ধাত্ত করারী ধার্যে মহাশয়দিগকে কবুলতি মতে দিব। ২০শে কাঙ্ক্ষনের মধ্যে ধাত্ত শুক্ নারী করিয়া রাস পৈকা দ্বারা বাড়ীঘাত্ করতঃ মহাশয়দিগের নিকট আদায় করিতে থাকিব। অনিবার্য কারণে উক্ত ধাত্ত আদায় করিতে অপরক হইলে তাহার বাজার মূল্য কি পালী ছয় টাকা হিসাবে একুনে ৩৬ টাকা ধাত্ত মূল্য ও নগদ খাজনা ২০৬ ০ সন কিস্তি মত বেওজর আদায় করিব। জমি এককালীন পতিত ব্যতীত ধাত্ত ভিন্ন তাহার মূল্য দিব না।

able by the tenant. In the particular kabuliya with which we are concerned the intention has been given in unmistakeable language that unless the lands remained wholly *paiti* the tenant would not pay anything but the paddy. The fact that the value of the paddy was included in the cash rent payable can not help the defendants' case in any way for it is clear that the consolidation was intended to take effect in those years only when the tenant became entitled to pay the value of the paddy on the ground that the whole of the land remained unculturable.

Upon exactly similar terms of the kabuliya, their Lordships (B. B. Ghose and Roy, J.J.) held that the landlord was not entitled to the market price of the paddy at the date of the suit but only to the amount fixed in the kabuliya as the price of the paddy: *Bangshiram v. Prasannamoyi*, 106 I.C. 25, (July 15, 1927.)

9. Jurisdiction of Civil Court :—The order of a Revenue Officer for commutation of rent where the tenant is not an occupancy raiyat is without jurisdiction: and a Civil Court may set it aside: *Mohes v. Sheikh Basir*, 25 C.W.N. 714. Where tenant not occupancy raiyat.

10. Commutation—want of notice—order of Revenue Officer without jurisdiction not binding on Civil Court :—An order for communication without notice is *ultra vires*; and an order by a Revenue Officer without jurisdiction is not binding on a Civil Court: *Gorachand v. Rakhal Chandra*, 37 C.L.J. 473; the case of *Jadu v. Prankrishan*, 43 Cal. 769 was followed. Want of notice.

II. Commutation by agreement :—See notes under s. 109C.

12. Clause (5) :—The provisions of cl. 5 are imperative and should be strictly complied with before an order under this section can have any effect. The object of requiring the time from which the order is to take effect to be stated is to enable the parties distinctly to know from what date the new arrangement is to come into operation. In the absence of any date being fixed in the order, the order must be taken to be practically inoperative, or at any rate, to remain in suspense until it is amended by the specification of the time of its operation. The omission to specify the time may be inadvertent but it is the business of the parties in order to avail themselves of the effect of the order, to have the time specified: *Chowdhury Raghunath v. Dadha*, 18 Cal. 469. Provision of cl. 5 imperative.

Technical Rules and Instruction of the Settlement Department, 1916, Chapter XI page 71. "7: Under subclause (5) of section 40 each order of commutation should be embodied in a clear and self-contained proceeding and should specify the Bengali year from which the commuted rent will come into force. A single proceeding may be drawn up with a Schedule of the tenancies involved for all the applications in one village under the same landlord. As an appeal lies against the Commutation Officer's order, except where the application is refused; the proceeding should furnish full materials for the information of the appellate Court; and the case of each tenancy should be individually examined. Technical Rules.

13. Reversion to rent in kind after Commutation :—Where there has been a formal commutation of *bhowali* and *nukdi*, one of the contracting parties cannot, without the consent of the other, insist on reverting to *bhowali*; *Dursun Singh v. Fasihun*, 6 C.L.J. 369; *Bibee Jun v. Bhagul Singh*, 21 W.R. 438. But where the tenant After commutation consent of both landlord and

necessary
for rever-
sion to
original-
status.

occasional deviations to *nukdi* were not intended to be permanent the landlord can claim *bhowali*: *Dursun Singh v. Fasihun*, 6 C.L.J. 369. The question in each case is what was the intention of the parties; if the parties intended that the substituted agreement was to last for a specified period or during the continuance of special circumstances, or that either party could resile from the substituted agreement, with or without notice, either party may claim to revert to the original agreement; if on the other hand no such intention is proved the substituted agreement can be annulled only by consent of both parties: *Kashi Mahton v. Iswari Prasad*, 6 C.L.J. 727.

Essentials
necessary
under s. 40

14. Essentials necessary under s. 40 :—To bring a case within s. 40 the following essentials are necessary:

(i) The parties must stand in the relation of landlord and tenant:

(ii) The tenant must be an occupancy raiyat holding rent in kind as provided for in cl. (i) of s. 40.

Registra-
tion.

15. Dowl evidencing Commutation—if registration necessary :—Where a *dowl* (a memorandum shewing the rents payable by the tenants bearing their signatures) merely evidences that there has been a commutation of rent that the rent which was previously payable partly in kind and partly in cash would henceforth be paid in cash it is not an instrument relating to an interest in immoveable property and does not require registration: *Haraprasad v. Ramnarain*, 11 C.L.J. 22.

Ss. 29, 43.

16. Conversion of cash rent into rent in kind :—The conversion of cash rent into rent in kind cannot be regarded as enhancement within the meaning of s. 29 or s. 43 of the Act: *Gobinda Mandar v. Banarasi Prasad*, 18 C.L.J. 74, but it was held in *Kishori Mohon v. Sheikh Uzir*, 37 Cal. 610, s. c., 14 C.W.N. 693, that s. 29 applies even where a money-rent is enhanced by the addition of rent in kind.

Acceptance
of reduced
rent.

17. Effect of acceptance of reduced rent :—The mere acceptance of a reduced rent, though it may amount to a full acquittance of rent for the particular year or years for which the rent was paid, does not operate as a binding contract between the parties without proof of the agreement which formed the basis of the reduction granted: (*Per Gupta, J.*): *Radharaman v. Bhabani Prasad*, 12 C.L.J. 439. See notes under s. 29.

Stage at
which appli-
cation is to
be made.

18. At what stage the application is to be made :

Technical Rules and Instructions of the Settlement Department, 1916 (issued by the Director of Land Records on principles approved by Government) Chapter XI, page 70.

1. Applications under section 40 (2) of the Tenancy Act will ordinarily be dealt with at the stage of objections under section 103A. When however proceedings under Part II, Chapter X of the Tenancy Act are about to be held applications for commutation should be dealt with at that stage.

2. As there is no time limit under section 40 the commutation officer should not refuse to receive fresh applications which are presented to him in camp, provided that the applications are duly stamped and are otherwise in order.

Court fee.

19. Stamp :—Each application under section 40 (2) should be in writing and should bear a stamp of 8 annas: See Technical Rules

and Instructions of the Settlement Department, Ch. XI, page 70, para 2.

20. Cl. (6) :—*Technical Rules and Instructions of the Settlement Department, 1916 (issued by the Director of Land Records on principles approved by Government), Chapter XI, p. 70, para. 4: for commutation* ^{Grounds upon which application} ^{tation may be refused.}
 "Under section 40 (b) of the Bengal Tenancy Act the Commutation officer, if he considers that it would be unreasonable to grant an application for commutation, can refuse it. In the exercise of this discretion, he should be guided mainly by the consideration whether the commutation would be a hardship to the landlord or tenant or whether the land is in a fit state to bear a cash-rent. The following are examples of cases where it would be *prima facie* equitable to refuse commutation.

(1) "Where the landlord is unable to cultivate personally and is dependent for his livelihood on the produce-rent *e.g.*, the landlord is a minor, orphan or widow and on account of this fact does not and cannot cultivate the land personally ;

(2) Where owing to the land being under reclamation and the crop uncertain, it would be more equitable to wait until the land had been developed before fixing a rent ;

(3) Where the raiyat has again sublet the land on a produce-rent, or his landlord pays his rent, or a substantial portion thereof in produce."

21. Appeals :

Appeals.

The Bengal Survey and Settlement Manual, 1917, Part II., Chapter XVII, page 104 :—

429. Appeals against order of Commutation in section 40 cases lie as follows :—

	Original Court.	First Appellate Court.	Second Appellate Court.
When land revenue is not being Settled.	(1) Deputy Collector.	Collector.	Commissioner.
	(2) Collector.	Commissioner.	No Second appeal.
	(3) Assistant Settlement officer.	Settlement officer.	Commissioner
When land revenue is being Settled.	(4) Settlement officer.	Commissioner.	No Second appeal.
	(3) Assistant Settlement officer.	Settlement officer.	Director of Land. Records, Bengal.
	(4) Settlement officer.	Director of Land. Records, Bengal.	No Second appeal.

No appeal lies against an order refusing an application under section 40. When the second appeal is based on a question of fact the Court of Second appeal can make it a rule of practice ordinarily to reject appeals from concurrent findings of fact by the two lower Courts.

An appeal to a Collector or Settlement officer should be presented within 15 days of the date of the original order : but the officer, to whom the appeal lies, may accept an appeal filed after 15 days, if he is satisfied that it has been filed within, what is under the circumstances of the particular case, a reasonable period, and that there are sufficient grounds for interference.

An appeal to Commissioner should be presented within one month from the date of the order appealed against ; but the Commissioner has discretion to depart from this rule and to admit an appeal after time.

22. Nature of proceedings under Sec. 40 :—Proceedings under s. 40 of the B. T. Act are miscellaneous proceedings by a revenue officer in regard to which there are no provisions as to procedure either in the Act itself or in the rules framed under the Act : *Haricharan Sil v. Bepin Behari*, 100 I.C. 146, (Cammiade, J.).

23. Crop-cutting Report : Public Document :—The crop cutting report of the Deputy Collector made under Sec. 40 of the B. T. Act should be considered a public document under Sec. 74 of the Evidence Act and is evidence of the amount of crops produced by the land : *Hara Govind v. Kishun Doyal*, 7 P.L.T. 671, s. c., 95 I.C. 966 ; see also *Kishun Doyal v. Iswarnath*, 8 P.L.T. 74, s. c. 1927, A.I.R. (Pat.) 167 (Dawson Miller, C. J. & Foster J.).

The crop cutting report is a valuable piece of evidence in determining the produce of the land in suit for the years in suit, in the absence of any evidence to shew that the year to which the report belongs was an exceptionally a good year or evidence that the years immediately preceding it were exceptionally bad years or indeed any evidence at all to show that they in any way differed. *Ibid.*

Period for which commuted rents are to remain unaltered.

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

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

The section was added by s. 12, Act I, B. C. of 1907, and s. 12 of the East Bengal Tenancy Amendment Act of 1908.

CHAPTER VI.

NON-OCCUPANCY RAIYATS.

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

Headings of Notes.

1. HERITABILITY.
2. SUBLETTING.
3. TENAT FROM YEAR TO YEAR.
4. RIGHT TO TRANSFER.
5. REDUCTION OF RENT.
6. ALTERATION OF RENT.
7. IMPROVEMENT.
8. ACCRETION.
9. HOLDING UNDER A TRESPASSER.
10. AMENDING ACT I OF 1907 B. C.
11. PURCHASE OF OCCUPANCY RIGHT BY A CO-SHARER LANDLORD.
12. HOLDING OVER.
13. LEASE BY A CERTIFICATED GUARDIAN.
14. S. 116.
15. SURRENDER.
16. ZERAIT LAND.

Note :—This Chapter does not apply to Proprietor's private lands and some other classes of lands: See Chap XI; Chapter VI also does not apply to *utbandi* lands; see s. 180 sub-sec. (2). ^{Proprietor's private lands.}

Chapter VI applies to proprietor's private lands except where such land is held under a lease for a term of years or from year to year, and a right of non-occupancy may be acquired in such land: *Janki Sing v. Mahant Lagaunath*, 3 Pat. L.J. 1.

A tenant of a chur land for a term of years created by an unregistered lease, the rent being payable at a certain rate per bigha in respect of such of the land as for the time being is capable of being brought into cultivation is a non-occupancy raiyat and not an *utbundi* tenant: *Mitu Skeikh v. Amrita Lal Sen*, 42 I.C. 546; (Fletcher and Newbould J.J.). As to what is *utbundi* land: see notes under s. 180. ^{Chur land.}

I. Heritability :—The holding of a non-occupancy raiyat is (apart from possible exceptions) heritable: *Midnapur Zemindary Co., Ld. v. Hrishikesh Ghosh*, 41 Cal. 1108, s. c., 18 C.W.N. 828 (F.B.), s. c., 19 C.L.J. 505.* The judgment in the Full Bench does not indicate as to what may be the possible exceptions. ^{Non-occupancy holding heritable.}

* It was held in the case of *Karim Chawakdar v. Sunder Bewa*, 1. C.W.N. 89, that a non-occupancy raiyati holding is not heritable; in the case of *Arip Mandal v. Ram Ratan*, 31 Cal. 757 the contrary view was indicated and the question was referred to a Full Bench in the case of *Lakhan Narain v. Joy Nath*, 34 Cal. 516, s. c., 11 C.W.N. 626, s. c., 5 C.L.J. 457, the referring

The Full Bench was followed by the Patna High Court in the case of *Kalru Carki v. Jangli Choudhri*, 1 Pat. L.J. 273.

A stipulation in a lease to the effect that a non-occupancy holding will not be heritable may, possibly, be valid. S. 178 does not prevent a landlord from making such a stipulation with a non-occupancy raiyat.

2. Subletting :—A non-occupancy raiyat may sublet his land. See sec. 85 and also *Ramlal v. Bhelagazi*, 37 Cal. 709. But by contract this right can be taken away ; see sec. 178, sub-sec. (3), cl. (e) which applies to occupancy raiyats.

3. Tenant from year to year :—Under the Bengal Tenancy Act, there is no raiyat who holds from year to year, and if the tenant is a non-occupancy raiyat who does not hold under a lease for a term, he cannot be ejected under the provision of cl. (c) of s. 44 : *Jotiram v. Jonaki Nath*, 20 C.W.N. 258.

4. Right to transfer :—Non-occupancy raiyati holdings are not transferable except by local custom or usage.

5. Reduction of rent :—A non-occupancy raiyat is not entitled to sue for reduction of rent : *Nabadweep v. Lalla Sheel*, Marsh 325. But the principles laid down in s. 38 ought to be taken in consideration in all proceedings for settlement of rent, whatever the status of the raiyats : *Gouri Patra v. Raily*, 20 Cal. 579 at p. 586.

6. Alteration of rent :—He is entitled to bring a suit for alteration of rent for alteration of area : *Enayatulla v. Elaheebaksh*, W.R. 1864 (Jan. to July) Act X, 42.

7. Improvement :—He is entitled to erect suitable dwelling house, and construct a well. See sec. 79.

8. Accretion : When there is an accretion to the holding of a non-occupancy raiyat, he is entitled to claim the benefit of Sec. 4 of Reg. XI of 1825 : *Ahmud v. Tohi*, 13 C.W.N. 267 ; s. c., 8 C.L.J. 538. See also *Amjad Ali v. Kedor Jan*, 13 C.W.N. 269, s. c., 8 C.L.J. 527. See also *Madhu v. Salear*, 14 C.W.N. 681, *Gour Hari v. Bhola*, 21 Cal. 233, *Beni Pershad v. Chaturi*, 33 Cal. 444, s. c., 4 C.L.J. 68, *Miajan v. Akramali*, 8 C.L.J. 541.

Holding
under a
trespasser.

9. Holding under a trespasser :—When a person acquires a right to hold land under a trespasser whom he *bona fide* believes to have the right to let him into possession of the land he cannot be ejected by the true owner as he is a non-occupancy raiyat : *Binod Lal v. Kalu Paramanick*, 20 Cal. 708 (F.B.). See notes under sec. 5, heading no. 8.

10. Amending Act I of 1907 (B.C.) :—The status of a non-occupancy raiyat acquired before the Bengal Tenancy (Amendment) Act (Act I B. C. of 1907) is not affected by the passing of the Amending Act : *Jatiram v. Janaki Nath*, 20 C.W.N. 258. See also *Shibakali v. Chunilal*, 31 C.W.N. 1007 (Cuming and Mallik J.J.).

judges were inclined to the view, that a non-occupancy holding was heritable ; when the case came to be heard by the Full Bench there was a divergence of opinion and it was observed in the case of *Udatchandra v. Haridas*, 10 C.L.J. 608, s. c., 13 C.W.N. 937 that the Full Bench in the case of *Lakhan v. Joynath* has left the point undecided. In view of this conflict the present reference was made to the Full Bench in the case of *Midnapur Zemindary Co. Ld. v. Hritikesh Ghosh*, 41 Cal. 1108 (F.B.)

II. Purchase of occupancy right by a co-sharer landlord :

—When an occupancy right is extinguished by the operation of s. 22 cl. (2) (as it stood before amendment by Act I., B. C. of 1907), a new occupancy right cannot be acquired by the co-sharer proprietor : *Ram Lal v. Bhela Gazi*, 37 Cal. 709. See notes under s. 22.

12. Holding over :—See notes under s. 51.

13. Lease by a certificated guardian :—A lease for 5 years granted by the certificated guardian of a minor without the sanction of the District Judge is voidable at the instance of the minor : *Sitanath v. Haranarain*, 21 C.L.J. 644. Lease by certificated guardian.

14. S. 116 :—Where a lessee holds over after the expiry of the term of a lease for 5 years and remains in occupation for a period of 4 years more of agricultural land in a district to which ss. 20 and 21, were before the grant of the lease made applicable, he acquires the status of a non-occupancy raiyat ; the status cannot be retrospectively affected by the subsequent extension of s. 116 : *Sitanath v. Harinarain*, 21 C.L.J. 644. Effect of extension of s. 116.

15. Surrender :—Where by an arrangement with the purchaser of a non-occupancy holding the raiyat remained in possession of a portion and then surrendered the entire holding, held that the arrangement between the purchaser and the raiyat was in substance a sale of a portion of the holding, and that the surrender being obviously illusory, the original tenancy subsisted and protected the purchaser from ejection by the landlord : *Nabo Kishore v. Dhananjay*, 20 C.W.N. 610. See notes under s. 86. Effect of surrender.

16. Zerait land :—The mere fact that a lessee of a proprietor's private land is neither a fixed raiyat or an occupancy raiyat does not raise a presumption that he is a non-occupancy raiyat : *Jagannath v. Janki Singh*, 1 Pat. 340, s. c., 26 C.W.N. 822, (P.C.).

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

Admitted to occupation :—See s. 47.

Initial Rent :—The agreement by a non-occupancy raiyat to pay Rs. 3 per bigha for the first five years and afterwards Rs. 5/- per bigha is valid : *Ganpat v. Jasodhar*, 17 C.L.J. 590.

The covenant to the effect that if the defendant continues in possession of the land after the expiration of the first *kabuliyat*, then he would have to pay rent at a higher rate, is not in the nature of penalty, and it can be enforced even if the tenant has acquired occupancy rights during the period of *kabuliat* : *Kuman Das v. Kachali*, 1928 A.I.R. 62. The cases of *Tejendra v. Bakai*, 22 Cal. 658 and *Ganapati v. Jasodhur*, 17 C.L.J. 590; were distinguished.

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

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not

less than three years immediately preceding the period for which the rent is claimed.

Enhancement :—A raiyat holding a chur land but who has not acquired a right of occupancy is liable to pay such rent as may be agreed on between him and his landlord, irrespective of the provisions of sec. 43 : *Jahandar Baksh v. Ramlal*, 37 Cal. 449, s. c., 14 C.W.N. 470, s. c., 11 C.L.J. 364. A lessee of a government *khasmahal* can claim enhancement as might have been agreed by the tenant although the lessee covenanted not to raise the rents of the raiyat beyond the amount mentioned in the settlement *jamaabandi* : *Ibid*.

Meaning of enhancement. Conversion of cash rent into rent in kind. Agreement for payment of rent in kind after expiry of lease.

Enhancement of rent under the Bengal Tenancy Act means the increase of rent in amount without alteration in kind : *Haṣṣan Kuli v. Nakchhedi*, 23 Cal. 200 ; the conversion of cash rent into rent in kind cannot consequently be regarded as enhancement within the meaning of s. 43 : *Gobind Mandar v. Banarasi*, 18 C.L.J. 74.

Where it was agreed that if the tenant should continue in occupation after the expiry of the term of the lease, he would pay rent in kind, *held* that the agreement was not objectionable and could be enforced : *Ibid* : see also *Ganapat Singh v. Jasodhar Singh*, 17 C.L.J. 590. But where there was an agreement that if a fresh *kabuliyat* was not executed by the tenant, rent would become payable by him at an enhanced rate, *held* that such a provision was in the nature of a penalty, that is, not intended to be enforced but only to be used as a threat to compel the tenant to execute the *kabuliyat* : *Tejendra Narayan v. Bakai Singh*, 22 Cal. 658.

Suspension of rent.

Where there was an agreement that a portion of the rent reserved in the lease would remain in suspension and after the expiry of the lease the tenant continued to hold at the lower sum, and the tenant was sued for the full rent reserved, *held* that the agreement did not contravene the provisions relating to non-occupancy raiyat : *Kalish v. Darbaria*, 20 C.W.N. 347 ; see notes under s. 29.

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

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

- (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 46, or that the term for which he is entitled to hold at such a rent has expired.

Headings of Notes.

1. CL. (a).
2. TRANSFER OF NON-OCCUPANCY HOLDING OR DENIAL OF LANDLORD'S TITLE BY TENANT.
3. EJECTMENT : RAIYAT SETTLED ON THE LAND BY AN IJARADAR :
4. CL. (c).
5. LIMITATION.
6. CL. (b).
7. CL. (c) : ADMITTED TO OCCUPATION.

1. CL. (a) : See notes under s. 66.

2. **Transfer of non-occupancy holding or denial of landlord's title by tenant** :—Parting with the possession of a holding or denying the title of the person under whom a non-occupancy-raiyat holds is not a ground of forfeiture, and a non-occupancy-raiyat cannot be ejected except on the grounds enumerated in this section : *landlord's title*. *Chandra Mohun v. Bissesswar*, 1 C.W.N. 158 ; and when a portion of a non-transferable raiyati jote is sold the landlord although not entitled to *khas possession*, is yet entitled to have a declaration that the transfer is not binding on him : *Sheikh Gozuffur v. E. Dalglish*, 1 C.W.N. 162. Transfer, no ground of forfeiture.

When a tenant transfers his non-transferable holding he must be taken to have abandoned the holding if he ceases to pay rent to his landlord and accepts a new tenancy from the transferee, and the landlord is therefore entitled to eject the transferee as a trespasser : *Kali Nath v. Kumar Upendra*, 1 C.W.N. 163 ; *Narendra v. Ishan*, 22 W.R. 22. See notes under s. 23. Transfer of non-transferable holding.

3. **Ejectment : raiyat settled on the land by an ijaradar** :—Although an *ijaradar* holds for a term, a raiyat inducted by him on the land becomes a non-occupancy raiyat and is not liable to ejectment after the expiry of the *ijara* except upon one or more of the grounds mentioned in sec. 44 : *Atal Chandra v. Lakhinarayan*, 10 C.L.J. 55 ; such a case is much stronger than the Full Bench case of *Benodelal v. Kaloo Pramanick*, 20 Cal. 708. Raiyat inducted on land by Ijaradar.

A raiyat of 10 years' standing and holding over is not a trespasser and can not be ejected until his tenancy has been determined over by a notice to quit or some other legal manner : *H. B. Dalglish v. Damodar Narayan*, 8 C.L.J. 533. See notes under s. 51. Holding over.

In a case under the Chota Nagpur Landlord and Tenant Procedure Act (I. B. C. of 1879), it was held that after the service of a valid notice to quit, a non-occupancy raiyat became a trespasser, and the fact that when the suit for ejectment consequent upon the notice was instituted, the raiyat had been already holding the land for 12 years did not entitle the raiyat to claim occupancy right : *Nathuni v. Paresh Nath*, 14 C.W.N. 297. It seems that the same principle will apply to cases under the Bengal Tenancy Act. Case under the Choto-Nagpur Act.

See in regard to this question the cases of *Agmel Islam v. Jardine, Skinner & Co.*, 8 W.R. 501, *Janardan Acharjee v. Haradhan Acharjee*, 9 W.R. 513, *Mackintosh v. Gopimohan Mozumdar*, 4 W.R. 24, *Gale v. Maharanee Sreemutty*, 15 W.R. 133.

Dispossession of thicca tenant.

Where a thicca tenant or a tenant at will was dispossessed by the landlord by the end of 1318 B. S., and the tenant brought a suit in 1319 B. S., for recovery of possession under sec. 9 of the Specific Relief Act, the munsif found that the plaintiff was in possession as thicca tenant for 1318 B. S. and his rights ceased after 1318 and therefore the suit was dismissed, *held* that the plaintiff was entitled to a decree for possession having regard to the clear words of sec. 9 of the Specific Relief Act: *Ramdayal v. Upendranath*, 17 C.W.N. 501.

Expiry of lease.

4. Cl. (c): A non-occupancy raiyat whose lease has expired is liable to ejectment under the general law as a trespasser: *Janki v. Mahant Jagannath*, 3 Pat. L.J. 1.

Limitation—Ejectment suit.

5. Limitation:—A suit to eject a tenant on the ground that he has used the land comprised in his holding in a manner which rendered it unfit for the purposes of the tenancy is governed by Art. 32 of Sch. II of the Limitation Act: *Soman Gope v. Raghubir*, 24 Cal. 160, s. c., 1 C.W.N. 223; *Sharooop Das Mandul v. Jogessur Ray*, 26 Cal. 565. A suit under the latter part of cl. (b) is governed by one year's limitation; see Sch. III, Art. 1.

6. Cl. (b): See notes under s. 155.

7. Cl. (c): ADMITTED TO OCCUPATION:—Where a lease was executed after the tenant was in occupation with a view to continuance of his occupation, *held* that the raiyat cannot be ejected under this clause: *Kamini Prasad v. Khadada Khan*, 9 C.W.N. 287 (notes).

Repeal of s. 45.

45. [Repealed by the Bengal Act, I of 1907, B. C., s. 2 and the East Bengal Tenancy Amendment Act, I of 1908, s. 2.]

S. 45 stood as follows:—

Conditions of ejectment on ground of expiration of lease.

Sch. III art 1 (a).

Undivided share.

45. 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.

See Sch. III, Art. 1 (a) which practically re-enacts this section with a little variation. See notes under sch. III art. 1 (a).

It was held in view of sec. 45 that a raiyati interest could be created in an undivided parcel of land: *Bankibehari v. Benodekumar*, 13 C.W.N. 264 (notes portion) also reported in 14 C.W.N. ccxvi (216).

Suit for ejectment more than six months after expiry of lease.

'Ejectment:—Where a raiyati lease was created for a period of seven years and it was stipulated that the tenant would have no right to cultivate the land without a fresh lease and in the event of his cultivating the land he would pay rent at a higher rate, *held* in a suit for ejectment brought after six months from the date of the expiry of the lease that the tenant was liable to ejectment only in accordance with sec. 45, and the proper course for the plaintiff was to proceed under sec. 44 or 46 and that the stipulation for the pay-

ment of a higher rate of rent was a penalty and not recoverable : *Kamala Pershad v. Jhouti*, 13 C.W.N. 276 (notes portion).

46. (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.

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

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

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

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

(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.

(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 rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

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

Headings of Notes.

1. SCOPE OF S. 46.
2. SUB-SEC. (6).
3. SUB-SEC. (9).
4. RULES UNDER SUB-SEC. S. (2) AND (4).
5. AGREEMENT.
6. SERVICE OF NOTICE.

I. Scope of s. 46. :—The proceedings under section 46 of the B. T. Act are not merely proceedings for ejectment but they are proceedings to have a fair and equitable rent assessed by the Court. If the tenant has refused to accept the agreement filed under the provisions of s. 46 it is then alone that a suit for ejectment under that section can be commenced: *The Port Canning and Land Improvement Company Ltd., v. Achhiruddi Mollah*, 43 C.L.J. 45.

Construc-
tion of cl. 6.

2. Sub-sec. (6) : Sub-sec. (6) does not prescribe in what way the Court is to determine what is a fair and equitable rent for the holding, but it only restricts the Court in finding what is a fair and equitable rent in one way, that is to say, by the provisions of sub-section 9 of section 46. Sec. 46 nowhere says that, if there be no lands of a similar description and with similar advantages in the same village, the Court is to stay its hand and refuse to carry out the provisions of sub-section (6). It only prescribes that, if there be such lands, then the Court must regard the rents generally paid by raiyats for them and it was not intended that if there be no such lands, then it should be impossible to enhance the rent of non-occupancy raiyats in any way: *Hossain Ali v. Hati Charan Shaw*, 27 Cal. 476 ; s. c., 4 C.W.N. 321.

Sub-sec.
(9) is not
exhaustive.

3. Sub-sec. (9) : Sub-sec. (9) is not exhaustive, but is merely one of the methods by which a Court acting under sub-sec. (6) of the same section, is intended to arrive at the determination of the question as to what is a fair and equitable rent. The fact that a plaintiff, suing a non-occupancy raiyat for enhancement or rent is unable to comply with the provisions of sub-sec. (9) does not preclude the Court from having other evidence in support of his contention: *Hossein Ali v. Hati Charan*, 4 C.W.N. 321 : s. c., 27 Cal. 476.

4. Rules under sub-secs. (2) and (4) :—See Appendix I, Chap. V, rr. 30 and 31.

Agreement
meaning of.

5. Agreement :—An "agreement" in s. 46 means an agreement which the landlord proposes that the tenant should execute: *The Port Canning and Land Improvement Co. v. Narayan Chandra*

Pramanik, 45 I.C. 284 (Fletcher and Shamsul Huda J.J.). There is nothing in s. 46 that requires a notice to be served along with the copy of the agreement though it may be convenient to do so: *Ibid.*

The words "the date of the agreement" in sub-section (7) of sec. 46, B. T. Act 1885, do not refer to the "agreement" tendered to the tenant under sub-section (1) but to the agreement contemplated by sub-section (7), namely, an agreement by the raiyat to pay the rent determined by the Court. The enhanced rent therefore becomes payable under the provisions of sub-section (7) from the date when the raiyat agrees to pay the rent found by the Court under sub-section (6). *Wajibunnissa v. Babulal*, 5 Pat. 46; s. c., [1925 Pat.] 298, s. c., 7 P.L.T. 355. See also *The Port Canning and Land Improvement Trust Co. v. Achhiruddi Molla*, 43 C.L.J. 45.

6. Service of notice :—In serving the agreement on the tenant in a suit for ejectment it is essential that the requirements of the statute should be strictly carried out; service upon the son was not considered sufficient under O. 5 r. 15 C. P. C.; it is to be definitely found that the defendant could not be found after reasonable and diligent enquiries: *Bharam Chand v. Kanak Sarkar*, 26 C.W.N. 359.

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

Admitted to occupation :—Where a lease was executed after the tenant was in possession with a view to continuance of his occupation, *held* that the raiyat cannot be ejected under cl. (c) of s. 44; *Kamini Prasad v. Khadada Khan*, 9 C.W.N. 287 (notes). S. 44 cl. (c).

A non-occupancy raiyat who has been admitted to occupation of the land under a registered lease is liable to be ejected on the expiry of the term of his lease, but where it was found that the defendants were not admitted into occupation by the *kabuliyat* executed by the tenant, *held* that it was necessary to determine if the tenant was in occupation as tenant in respect of which he subsequently executed a *kabuliyat*: *Rajani Kantha v. Yusuf Ali*, 21 C.W.N. 188. Tenant not admitted into occupation by *kabuliyat*.

CHAPTER VII.

UNDER-RAIYATS.

Limit of
rent re-
coverable
from under-
raiyats.

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

(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.*

Headings of Notes.

1. UNDER-RAIYAT—LANDLORD OF AN UNDER-RAIYAT.
2. MONEY-RENT.
3. AN UNDER-RAIYAT MAY ACQUIRE A RIGHT OF OCCUPANCY.
4. UNDER-RAIYATI HOLDING NOT TRANSFERABLE.
5. SEC. 22.
6. HERITABILITY OF UNDER-RAIYATI HOLDING.
7. UNDER-RAIYATS WITH RIGHT OF OCCUPANCY BY CUSTOM:
HERITABILITY:
8. ENHANCEMENT.
9. CONTRACT IN EXCESS OF MAXIMUM NOT VOID.
10. LAND HELD BY RAIYAT TO BE CO-EXTENSIVE WITH LAND LET
OUT.
11. SUIT BY AN UNDER-RAIYAT.
12. EFFECT OF SALE ON ASSERTION BY LAND-LORD THAT PROPERTY
SOLD IS RAIYATI HOLDING.
13. SUIT FOR CONTRIBUTION.
14. SUIT FOR RECOVERY OF RENT.
15. SUB-LEASES BY UNDER-RAIYATS.
16. PURCHASE OF RAIYATI HOLDING BY LANDLORD.
17. COVENANT OF LEASE.
18. HOLDING UNDER A ZURPESHGIDAR.

“Under-
raiyat”
meaning of.

I. Under-Raiyat: Landlord of an under-raiyat:—The landlord of an under-raiyat is not necessarily a raiyat, for an under-raiyat is a person who holds *mediately* or *immediately* under a raiyat (see s. 4); when an under-raiyat lets out the land to another, the latter also becomes an under-raiyat.

Under-
leases by
an under-
raiyat.

The grant of under leases of any degree is recognised by the definition of under-raiyat as tenants holding *immediately* or *mediately* under a raiyat: *Parushulla v. Sital Chandra*, 19 C.W.N. 1110 at p. 1112.

Korfa
raiyat.

A *Korfa* raiyat is not necessarily an under-raiyat: *Emaduddin v. Danesh Mahmud*, 39 I.C. 240 (Fletcher and Richardson, J.J.); Richardson J., observed in the case as follows: It is not necessary to define the term “*Korfa-raiyat*.” The *kabuliyat* speaks of the

defendants as having a *Korfa* right, when such a right is subordinate to a jote, the question whether the tenant is a raiyat or an under-raiyat must depend on the character of the jote. Where A was an occupancy raiyat and B was an under-raiyat, and A subsequently purchased the superior tenure, *held* that B continued to be an under-raiyat: *Akhil Chandra v. Hasan Ali*, 22 C.W.N. 246, s. c.; 18 C.L.J. 262.

Effect of raiyat's acquisition of superior tenure.

A permanent sub-lessee under a raiyat acquires at least the status of an under-raiyat, if he is shewn to have been in possession from before the lease: *Janakinath v. Prabhasini*, 19 C.W.N. 1077.

Permanent sublease.

Although the restrictions contained in s. 85 apply to leases by a raiyat, they have no application to leases granted by an under-raiyat and although permanent leases granted by under-raiyat may be limited to the existence of the right of the grantor yet there is no provision in law which prohibits such grants; none that such grants shall not be registered and the prohibition under s. 85 cannot be expanded by analogy; such subleases by under-raiyats are valid documents between grantor and the grantee: *Parushulla v. Sital*, 19 C.W.N. 1110 at p. 1112 col. 2, (D. Chatterjee and Chapman, J.J.). As to subleases by an under-raiyat, see notes under this section under heading no. 15.

Permanent leases by an under-raiyat.

A bargadar may be a day labourer or he may be a tenant. The mere fact that he holds on produce rent will not give the landlord a right to eject him. He will still come within the provisions of s. 49 if he is a tenant: *Kshetra Nath v. Nityananda*, 96 I.C. 667. (Cuming and Page, J.J.). The denial of the landlord's title does not make an under-raiyat liable to be ejected. He can be ejected only in accordance with the provisions of s. 49: *Abbas Sheikh v. Neyamatennessa Bibi*, 91 I.C. 662.

2. Money-rent:—*Sub-headings*: (i) *Whether the words "holding at a money rent" apply to the landlord or to the under-raiyat*; (ii) *Money rent or produce rent*.

(i) *Holding at a money rent*:—It is doubtful whether the expression "holding at a money rent" is one descriptive of the "landlord" or of the word "under raiyat": see in this connection *Ananda Chandra v. Makram Ali*, 10 C.L.J. 144.

The landlord and the under-raiyat must both hold their respective tenancies at a money rent as otherwise no comparison can possibly be instituted as contemplated by the section: *Kanaraddi, v. Monmohini*, 29 C.L.J. 235, s. c., 21 C.W.N. 100, (notes) but it held in the case of *Kailas Pati v. Muneshwar*, 4 Pat. L.W. 109, s. c., 3 Pat. L. J. 576; s. c., 43 I.C. 965 (by Roe and Jwala Prasad, J.J.) that the words money-rent refer to the under-raiyat and not to the raiyat.

Whether the words "holding at a money-rent" apply to both the landlord and the under-raiyat. Money-rent or produce rent.

(ii) *Money-rent or produce rent*: Where an under-raiyat agreed to pay as rent a certain quantity of produce and in the event of failure to do so, to pay a fixed amount in cash, *held* that his rent is a money-rent within the meaning of sec. 48; *Ananda Chandra v. Makram Ali*, 10 C.L.J. 144.

Where the defendant agreed to pay a certain quantity of paddy as the rent of his holding, and Rs. 10 was put down, as the value of the paddy agreed to be delivered, *held* that the landlord might choose to insist to get produce rent, although he had for many years received rent in money: *Sahabul v. Abdul Ali*, 3 C.W.N. 151,

Cases on the subject.

the sum of Rs. 10 was put down as the value of the paddy for the sake of convenience or to meet the requirements of the law: *Ibid.* Upon the construction of a lease where the tenant agreed that on failure to deliver the paddy stipulated the arrears of the rent in paddy or the price thereof would be realisable, held that it was not optional either to deliver the paddy or to pay what might at a particular time be a very inadequate value thereof; *Akbar Ali v. Durga Kripa*, 12 C.L.J. 589.

Where an under-raiyat undertook to deliver to the landlord a certain quantity of paddy as rent and on default to pay Rs. 20 as the price of the paddy with damages and costs, held that the under-raiyat did not hold at a money-rent but at produce rent and therefore s. 48 did not apply: *Kanaraddi v. Monmohini*, 29 C.L.J. 234, s. c., 21 C.W.N. 100, (notes portion); the cases of *Ananda Chandra v. Makram Ali*, 10 C.L.J. 144 and *Bipro Charan v. Suchand Roy*, 12 C.L.J. 595 were distinguished.

Where a tenant agreed to pay a cash rent of a particular sum Rs. 45-8 and to deliver a certain quantity of paddy the price of which was stated to be Rs. 22, the total rent being fixed at Rs. 67-8, and the contract was that the rent should be paid and paddy delivered annually in the months of Bhadra and Pous, held that the tenant was not entitled to pay the named sum in lieu of the paddy, but damages at the rate of the value of the paddy on the date when the breach occurred: *Basiruddin v. Hari Mohon*, 39 I.C. 720 (Fletcher and Newbould, J.J.); the case of *Baneswar v. Umesh Chandra*, 37 Cal. 626 was followed.

In a case where the tenant agreed by the *kabuliyat* to pay Rs. 8 in cash and 29½ maunds of paddy as rent, but there was a provision in the *kabuliyat*, that if he could not deliver the paddy he has to pay cash rent at the rate of 1 maund 10 seers per rupee, it was held in Letters Patent appeal that the rent was payable at the price mentioned in the *kabuliyat* and not at the market rate of paddy at the time the suit was instituted: *Nilmadhab v. Sitanath*, 26 C.L.J. 94 (Sanderson, C. J., and Mookerjee, J.).

stipulation
pay
paddy or
value.

Where an under-raiyat stipulated in the *kabuliyat* for payment of paddy or its value in case of default as rent, such rent is not money-rent and is outside the scope of s. 48 (a): *Krishna Kumar v. Piru Fakir*, 35 C.L.J. 159.

An occupancy raiyat executed a usufructuary mortgage in favour of the plaintiff, stipulating that the mortgagee would pay the proprietor's rent and take *Dakhilas* in the name of the defendant. Subsequently he executed a *kabuliyat* in favour of the mortgagee stipulating to pay rent at Rs. 20 per year. In a suit brought by the mortgagee for recovery of rent at that rate it was contended that the mortgagee was not entitled to recover rent at that rate by virtue of the provisions of sec. 48 of the B. T. Act: held that the mortgagor holding under the mortgagee by virtue of the *kabuliyat* did not cease to be a raiyat holding under the proprietor and was not an under-raiyat and sec. 48 is inapplicable to the case: *Ismail Pramanik v. Khedir*, 43 C.L.J. 242 (Suhrawardy and Cuming JJ.). The case of *Tilakdhari v. Chaturgun*, 3 Pat. 266 was referred to. That by the mortgage the relationship as between the proprietor and the defendant was left untouched and no relationship of landlord and

tenant as between the proprietor and the plaintiff came into existence by the transaction: *Ibid.*

As to whether a tenant's rent is money-rent when there is a stipulation to pay money in lieu of produce rent, see notes under s. 40.

A person cannot by custom acquire the status of an occupancy raiyat notwithstanding that he is so recorded in the record of rights. If he relies on any custom it is for him to allege and prove that custom; *Raghunath v. Ram Behara*, 75 I.C. 437 (Das and Adami, J.J.). Das, J., observed as follows: "I can quite understand an under-raiyat acquiring by custom certain privileges which are possessed by occupancy raiyats but it is one thing to say that a person may by custom acquire certain rights which are incident to rights of occupancy in lands but it is quite another thing to say that by custom an under-raiyat may become a raiyat." *Ibid.* This was a case from Cuttack and governed by the Orissa Tenancy Act.

3. An under-raiyat may acquire a right of occupancy by custom:—An under-raiyat may acquire, having regard to the provision of s. 183, as explained by illustration 2 to that section, a right of occupancy by custom. *Gopal Mandal v. Japai Sankhari*, 46 Cal. 43, s.c., 22 C.W.N. 618, s.c., 28 C.L.J. 84 (Fletcher and Shamsul Huda). See notes under sec. 4 and 183. Under-raiyat may acquire a right of occupancy by custom.

It has now been decided that heritability of an occupancy under-raiyati holding must be proved by custom: *Sudhanya Kumar v. Saik Ismail*, 29 C.W.N. 733 (Greaves and Cuming, J.J., 26 March, 1925).

4. Under-raiyati not transferable:—An under-raiyat may under certain circumstances acquire an occupancy right; if he does acquire such a right, that right may be transferable by custom or local usages; but, there is no authority for the proposition that the interest of an under-raiyat is *ipso facto* transferable: *Akhil Chandra v. Hosain Ali*, 19 C.W.N. 246, s.c., 18 C.L.J. 262 at page 264. Under-raiyati not transferable.

Though it may be held that the right of an under-raiyat is not transferable without the landlord's consent, it does not necessarily or logically follow that it is transferable with his consent. Even if it be conceded that it is transferable with the landlord's consent, a consent given long after the transfer cannot be said to have been made with the landlord's consent: *Jnanendra v. Dukhiram*, 28 C.W.N. 865, s.c., 40 C.L.J. 90, s.c., 82 I.C. 386 (Surhawardy and Graham, J.J.).

An under-raiyat cannot acquire an occupancy right under any condition except by local usage or custom: *Ibid.*

Where a tenure or holding apart from the Transfer of Property Act is not transferable it cannot become so unless it is expressly made so by some other statute: so an under-raiyati holding is not transferable: *Amir-ennessa v. Jinnat Ali* 42 Cal. 751, s.c., 19 C.W.N. 43, s.c., 20 C.L.J. 548, on a transfer of an under-raiyati holding the landlord was held to be entitled to re-enter without a notice under s. 49. *Ibid.* Under-raiyati holding not transferable and the landlord is entitled to re-enter on sale.

When the tenure or holding apart from the Transfer of Property Act is not transferable it cannot become so unless it is expressly made so by statute : *Hiramati v. Annada Prasad*, 7 C.L.J. 553 (555) ; under-raiyati tenancies were not transferable according to the old law and they have not been made transferable by the Bengal Tenancy Act and they are therefore not transferable : *Ibid*.

Where an under-raiyat after sale of the land remained in possession of the homestead portion which covered about one-tenth of the entire area and made no arrangement for payment of rent to the raiyat landlord, held that there was abandonment : *Ishan Chandra v. Nishi Chandra*, 19 C.W.N. 1 (Mookerjee and Beachcroft, J.J.) ; (see in this connection *Sailabala v. Sriram*, 7 C.L.J. 303).

An under-raiyati interest is not transferable ; where such an interest is sold in execution of a money-decree to which the under-raiyat does not object (though binding on the under-raiyat) it is not binding upon the landlord : *Pramatha Bhusan v. Ramchandra*, 22 C.L.J. 124. A landlord who purchases an under-raiyat's interest at a sale under the provisions of the Civil Procedure Code without objection by the under-raiyat is entitled to eject a person who had previously purchased the under-raiyati interest at a sale in execution of a money-decree : *Ibid* ; the landlord can bring to sale the land held by an under-raiyat under the provisions of the Civil Procedure Code and although having regard to the Full Bench case of *Dayamayi v. Anand Gopal*, 42 Cal. 172, the under-raiyat can come forward and raise an objection to the sale ; but if he does not come forward, then the landlord having consented to the sale, the sale becomes binding on the under-raiyat : *Ibid* (at p. 126, col. 1, 22 C.W.N.).

S. 22.

5. Sec. 22. :—An under-raiyati lease if created by an instrument which is not registered is invalid under s. 85, and the landlord purchasing the holding of the raiyat in execution of a decree for arrears of rent is entitled to take *khas* possession by ejecting such under-raiyat without annulling the same by a notice under s. 167. The rights under such an under-raiyati lease are not protected by sub-sec. 1 of s. 22 : *Peary Mohun v. Badal Chandra*, 28 Cal. 205. See notes under s. 49 and s. 85.

Heritability
of under-
raiyati
holding.

6. Heritability of under-raiyati holding :—The heirs of an under-raiyat under an annual holding do not acquire an interest in his holding by inheritance ; *Arip Mondal v. Ram Ratan Mondal*, 31 Cal. 759, s.c., 8 C.W.N. 479 (F.B.). The only right which they have, irrespective of custom or local usage, is to remain in possession of the land until the end of the agricultural year for the purpose of either realising the rent which might accrue during that year or for the purpose of tending and gathering the crops : *Ibid* ; *Jamini Sundari v. Rajendra Nath*, 11 C.W.N. 519. See also *Nadiram v. Srinath*, 24 C.W.N. 93 ; *Sutu Bibi v. Jamini Sundari*, 1922 A.I.R. Cal. 85. See also *Meher Ali v. Kalai Khalasi*, 19 C.W.N. 1129, s.c., 27 C.L.J. 579 ; (Mookerjee and Richardson, J.J.), the description of a sub-lease granted by an occupancy raiyat as "*Sthayee karsha kabuliyat*" does not necessarily mean that the grantee was intended to have a permanent heritable interest in interest which the raiyat was not authorised to create by law : *Ibid*.

But where an under-raiyat holds for the prescribed period as Where provided for in s. 85 and dies before the expiry of the lease, it is submitted that the heir of the under-raiyat is entitled to inherit and is entitled to remain in possession for the unexpired portion of the lease. it is for a prescribed period it seems to be heritable

* It has been held that where a sub-lease is granted by a raiyat for a term of years not exceeding nine years and the under-raiyat dies before the expiry of the term, his heir succeeds him: *Abjan Bibi v. Raham Ali*, 20 C.W.N. 756, s.c., 22 C.L.J. 232 (Richardson and Mullick, J.J.);* see also *Midnapur Zemindari Company v. Hrishikesh Ghose*, 41 Cal. 1108 (F.B.).

An ordinary holding of an under-raiyat from year to year is not in itself heritable, but a leasehold interest under the Bengal Tenancy Act or under any other Act, if it is for a term of years, is necessarily heritable; *Nirode Mohan v. Jagar Ali*, 20 C.L.J. 328; where before the expiry of an under-raiyati lease the under-raiyat died and his heir continued to hold over after expiry of the lease, held that he was liable to be ejected: *Ibid.*

A leasehold property under the Bengal Tenancy Act or under any other Act, if it is for a term of years is necessarily heritable and where an under-raiyati holding was created for 9 years, his death can make no difference to the contract under s. 37 of the Contract Act: it cannot be therefore said that under no circumstances can an under raiyati be heritable: *Ibid.*

7. Under-raiyats with right of occupancy by custom
Heritability :—See notes under sec. 26, heading no. 7.

8. Enhancement :—The provision as to enhancement of rent is retrospective in its operation; *Baharuddin v. Dwarkanath*, 28 Cal. 166; *Guru Das v. Nandkumar*, 26 Cal. 199. Provisions as to enhancement retrospective.

The restriction imposed by s. 48 on the amount of rent that a raiyat can recover from an under-raiyat has no application in the case of a raiyat at a fixed rate of rent, the section being governed by s. 18. In other words, s. 18 controls s. 48 as it does s. 85; *Raj Kumar v. Ramani Mohon*, 104 I.C. 150.

9. Contract in excess of maximum not void :—A contract for a rate of rent in excess of the maximum prescribed by s. 48 is not wholly void, but nothing in excess of the maximum can be recovered: *Sitanath v. Basudev*, 2 C.L.J. 540. Nothing in excess of maximum can be recovered.

10. Land held by raiyat to be co-extensive with land let out :—Where a raiyat held 23 *kanis* of land for which he paid Rs. 71 as rent and brought five suits for enhancement of rent against five sets of defendants who held a portion of the lands comprised in the holding, the first Court held that s. 48 was applicable; he divided Rs. 71 by 23 the number of *kanis* in the entire holding; applying that result he decreed a sum not more than 50 per cent. or 25 per cent. allowing as the lease was registered or not; held by Geidt, J., that it was doubtful whether s. 48 applied to a case where Sub lease of different portions to different persons.

* The following cases were considered: *Midnapur Zemindari Company v. Hrishikesh*, 41 Cal. 1108, *Arip Mondal v. Ram Ratan*, 31 Cal. 757, s. c., 8 C.W.N. 479, *Jamini Sundari v. Rajendra*, 11 C.W.N. 519.

a raiyat sublet his holding to a large number of different persons ; *Akhil Chandra Biswas v. Amjad Ali*, unreported Second Appeal No. 415 of 1903, decided on June 3, 1904.*

S. 48
applies
where land
is let out
co-exten-
sive with
the land of
the raiyat.

Sec. 48 applies to cases in which the land held by the raiyat is co-extensive with the land held by the under-raiyat ; the mere fact that the raiyat's lease showed what rent was assessed in respect of the particular plot let out to the under-raiyat did not entitle the latter to pay rent up to 25 per cent. in excess of the assessed rate ; *Nimchand v. Jaychandra*, 39 Cal. 839 ; s.c., 16 C.W.N. 857 ; s.c., 17 C.L.J. 652 ; see also *Akram Ali v. Anwar Ali*, 24 I.C. 677. The unreported case of *Akhil Chandra v. Amjadali* (second appeal No. 415 of 1903) was held to support the above view.

The case of *Nimchand v. Joychandra*, 39 Cal. 839, was distinguished in the case of *Natibulla v. Badi Mihan Singh*, 42 I.C. 243 (Teunon and Shamsul Huda, J.J.) ; in this case the facts were held to be different from those in the case of *Nimchand v. Joychandra*.†

Transfer
and sub-
lease of
a raiyati
holding.

II. Suit by an under-raiyat :—Where a raiyat sold his non-transferable holding and took an under-raiyati lease under the transferee and was dispossessed by the superior landlord (raiya's landlord) and refused to pay rent to him ; held that the suit should be dismissed ; *Rajani Kanta v. Ekkari Das*, 8 C.W.N. 811 ; a raiyat having a right of occupancy is not liable to ejectment by the landlord merely because he has asserted a transferable right in the land and sold that right to a stranger, without giving up possession of the land ; *Sristidhar v. Madan Sardar*, 9 Cal. 941 ; see also *Dinanath v. Krishna Bejoy*, 9 C.W.N. 379 ; *Madan Mondal v. Mahima Chandra*, 33 Cal. 531 ; see notes under s. 23.

Ejectment.

Estoppel.

12. Effect of sale on assertion by landlord that property sold is raiyati holding :—Where a landlord puts a property to sale on the assertion that it is an occupancy holding, and the purchaser takes it in faith of the assertion, the landlord cannot afterwards be permitted to say that what has been sold is the interest of an under-raiyat ; *Abdul Sobhan v. Nekbar Mondal*, 17 C.L.J. 652 ; when a landlord makes an application under s. 102 and obtains an

* In this case Geidt, J., observed as follows :—

"I would also observe that the method adopted by the Munsif for calculating the rent which the plaintiff himself pays for the lands respectively held by the different defendants does not seem satisfactory. It may I think, be doubted whether sec. 48 of the Bengal Tenancy Act applies to a case where a raiyat sublets his holding to a large number of different persons. It seems impossible to ascertain with any precision what rent the plaintiff is paying for any specific lands which are comprised in any one of the defendants' under-tenure, if it be the fact as is asserted by the plaintiff that the quality of the lands held by the different defendants varies and also if it be a fact that the land which is not let to these defendants is of such an inferior quality that the same rate cannot be assessed on the defendant's land as on the other lands not let to them. If we were to construe sec. 48 strictly it would seem that as long as the plaintiff does not take from the whole body of his under-tenants a rent exceeding by 50 per cent., or 25 per cent as the case may be the rent which he himself pays, then that section does not restrict the plaintiff's claim in respect of any one particular holding."

† In the case of *Nimchand v. Jay Chandra*, the rent for the whole holding was Rs. 21-4-0 ; the plaintiff claimed in respect of the portion sublet a rent of Rs. 14. In the case of *Mehuga v. Mihan Singh* the holding measured 15 bighas ; the portion sublet to the tenant-defendant measured 7 bighas ; the rent payable by the raiyat was Rs. 6-14 the plaintiff claimed at the rate of Rs. 27-8-0.

2. Written lease for indefinite period :—The case of an Cl. (b). under-raiyat holding under a *patta* executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration comes within cl. (b) of section 49 and the notice must be provided thereunder: *Raj Kumari Debi v. Barkatulla Mondal*, 39 Cal. 278 (F.B.); the case of *Madan Chandra v. Jaki Karikar*, 6 C.W.N. 377 was over-ruled by this Full Bench case.

It has been held in the case of *Mia Raja Patwari v. Ram Kumar De*, 41 I.C. 846 (N. Chatterjee and Richardson, J.J.), that a sub-lease by a raiyat created before the Bengal Tenancy Act for a period exceeding nine years remains valid against the raiyat and the latter cannot eject the under-raiyat under s. 49 (b).

Cl. (b) should be read as also covering the case of a written lease without a term of years: *Mohendra Nath v. Parbatya*, 8 C.W.N. 136 (at p. 138, Col. 2); *Komoruddi v. Sreenath*, 8 C.W.N. 136; *Iduggazi v. Chandra Kali*, 8 C.W.N. 139. But a contrary view was taken in the case of *Madan Chandra v. Jaki Karikar*, 6 C.W.N. 377, where it was held that an under-raiyat holding under a written lease for an indefinite term cannot be ejected by the raiyat under s. 49 (b); the case in 6 C.W.N. 377 has been over-ruled by the Full Bench.

Contra.

Where an under-raiyati lease was not for a specified period and was described as a *harsana patta* (yearly lease), held that the under-raiyat was liable to be ejected by a notice: *Chandi Charan v. Samla Bibi*, 28 C.L.J. 91.

3. Sub-lease of homestead land comprised in a raiyati holding :—Where an agricultural raiyat let out a portion of the homestead land comprised in the holding for homestead purposes, held that the sub-lessee was an under-raiyat within the meaning of the Bengal Tenancy Act and that in order to maintain a suit in ejectment a notice under s. 49 (b) was necessary: *Babu Ram v. Mohendra Nath*, 8 C.W.N. 454. This case was followed in the case of *Abdul Kurim v. Abdul Rahaman*, 15 C.L.J. 672.

Where a raiyat whose holding consisted partly of agricultural and partly of homestead land let out the homestead portion to a person who held land as a settled raiyat under a different landlord in an adjoining village; held that the incidents of the sub-lease of the homestead portion would be governed not by the Transfer of Property Act, but by the Bengal Tenancy Act and that sec. 182 of the B. T. Act applied and the sub-lessee held the homestead as a raiyat: *Krishnakant v. Jadu Kasya*, 19 C.W.N. 914, s.c., 21 C.L.J. 475 (N. R. Chatterjee and Greaves, J.J.). The provisions of the B. T. Act applicable to a raiyat regulate the incidents of the tenancy of the homestead though the tenant has only the interest of an under-raiyat with respect to it and the latter cannot be ejected from his homestead under sec. 49, cl. (b) of the Act: *Ibid*.

This case was distinguished by Chakravarty J. (Cuming J. agreeing) in the case of *Rahimaddi v. Amina Bibi*, 43 C.L.J. 132, where it was held that an under-raiyat holding under a registered lease of homestead and *nal lands*, though a settled raiyat of the village of lands held under different landlords, can, on the expiry of his under-raiyati lease, be ejected under sec. 49 of the Act. S. 182 of the B. T. Act is applicable to lands held by a raiyat. It is in-

applicable to the case of homestead lands to which the provisions of the B. T. Act did already apply.

When a particular tenancy falls within the provisions of sec. 49 of the B. T. Act, section 182 cannot be invoked in determining the status of the tenant; *Chandra Mohon v. Meherjan*, 44 C.L.J. 311 (B. B. Ghose and Graham, J.J.).

Where an under-raiyat holds a homestead along with other lands as part of his under-raiyati tenancy and, if the landlord is entitled to eject him from the lands held by him by service of notice, there is nothing under the law which prevents him from the whole of the demised premises and sec. 182 of the B. T. Act does not apply: *Ibid.* The case of *Krishna v. Jadu*, 19 C.W.N. 914; s.c., 21 C.L.J. 475 was distinguished and the case of *Rahimaddi v. Amina Bibi*, 43 C.L.J. 132 referred to.

Held upon a construction of a lease that the sub-lessee under a permanent tenant of homestead land did not come under sec. 49 of the B. T. Act; *Bidhumukhi v. Gobinda*, 42 C.L.J. 78 (Chakravarty J., Cuming J. agreeing). The lessee of a piece of homestead is ordinarily a tenant and not a raiyat: *Ibid.*

Period of notice.

4. Notice to quit:—Sec. 49 of the Bengal Tenancy Act does not prescribe any period of notice or that the suit for ejectment shall not be brought until the expiry of a certain term after the expiry of the period of notice. The effect of the section seems to be that the landlord can serve a notice to quit at any time in the course of the year but that he shall not eject the raiyat until the end of the year next following the year in which the notice to quit is served, that is to say, an under-raiyat must under any circumstances get a full year expiring at the end of the agricultural year from the time when the notice is served: *Naharulla v. Madan*, 1 C.W.N. 133, followed in *Dwarka Nath v. Rani Dassi*, 28 Cal. 310, where it was held that it is not necessary that a notice under s. 49, cl. (b) should mention any particular period within which the under-raiyat is to quit the land.

Form and period of notice.

It has also been held in the case of *Chandi Charan v. Srimati Samla Bibi*, 28 C.L.J. 91 that s. 49 of the Bengal Tenancy Act prescribes no form of notice nor has it given any indication as to the length of notice—see also *Harifulla v. Binode Behary*, 17 C.W.N. 932 and *Singheswar v. Parbal*, 103 I.C. 471 (Patna case).

There is no necessity to import into the agricultural law of this country the six month's notice required in the case of an annual tenancy in England or as required in India in the Presidency towns. What is needed is a reasonable notice having regard to the nature of the tenancy and the date of expiry of the agricultural year as indicated in s. 49: *Brojonath v. Abdur Rahaman*, 89 I.C. 113. (Greaves and Mukherji, J.J.).

Ambiguous notice.

Where a notice to quit does not specify the date from which the time named in the notice is to run, such notice is ambiguous and bad in law; the validity of such a notice may be questioned for the first time in the course of a suit in second appeal: *Gouri Sankar v. Naja Bratt*, 1 C.W.N. 179 (notes).

Notice need not be signed by the landlord, if it

“There is no necessity that the notice should be signed by the landlord at all. It is sufficient if the notice is at the instance of the landlord calling upon the under-raiyat to quit the land”; it is quite immaterial whether the notice is actually given by the landlord him-

self or at his instance provided that the notice signifies to the under-^{is at his} raiyat that the landlord has called upon him to quit the land: ^{instance.} *Mahendra Nath v. Bishwa Nath*, 29 Cal. 231, s.c., 6 C.W.N. 183. This case has been followed in the case of *Majedul v. Maharaddin*, 44 I.C. 49 in which it has been held by Chitty and Smither J.J. that a notice under s. 49 purported to be on behalf of three landlords but signed by one is sufficient.

Where a notice to quit to an under-raiyat was served in Pous ^{Annual} 1303 and he was required to quit in Bysak 1304, and the suit was not ^{Tenancy.} instituted till the 1st of Bysak 1305; *held*, that the tenant was liable to ejectment; *Mohendra v. Biswanath*, 29 Cal. 231. But to determine an annual tenancy the notice should require the tenant to quit at the end of the year of the tenancy; so where a notice bearing the 26th of Jaistha 1304, B. S., was given calling upon the defendants to quit at the end of six months, *viz.*, on the last day of the month of Agrahayana of the same year and the suit was brought on the 16th Magh 1304: *held*, that the tenancy being an annual tenancy expiring at the end of the year the notice was bad and the suit was liable to be dismissed and that the decree given by the lower Appellate Court for *khas* possession at the end of 1306 was bad: *Hemanginee v. Srivovindo*, 6 C.W.N. 69; see also *Ramlal v. Dinanath*, 23 Cal. 200; *Hem Chunder v. Radha Pershad*, 23 W.R. 440; *Rajendra v. Bassider*, 2 Cal. 146; *Kishore Mohun v. Nundkumar*, 24 Cal. 720.

A suit to eject an under-raiyat under sec. 49, cl. (b) of the Bengal ^{Suit itself} Tenancy Act cannot be maintained without a notice to quit and the ^{cannot be} suit itself cannot be regarded as a sufficient notice. Where an under-^{regarded} raiyat was let into occupation under a kabuliyat for a year but held ^{as a notice.} over for a number of years; *held*, that he was not holding under any written lease, and therefore under clause (b) of sec. 49 of the Bengal Tenancy Act, he was not liable to be ejected without a notice to quit, although the terms under which he was holding were the same as those under which he had been let in under a written lease: *Rabiram v. Uma Kanta*, 2 C.W.N. 238.

A notice to quit under sec. 49 of the Bengal Tenancy Act was ^{Notice} sent by post in a registered cover and it was found that the notice was ^{by post.} delivered to the defendant; *held*—that the notice had not been properly served, the mode of service being as described in the Rules made by the Government under the Bengal Tenancy Act: *Tara Das v. Ram Doyal*, 2 C.W.N. 125.

Where a raiyat surrenders his holding, the landlord is entitled to ^{Surrender.} re-enter by ejecting the under-raiyat if he is not protected by sec. 85 or sec. 86, cl. (6). In such a case no notice to quit is necessary: *Nilkanta v. Ghatoo*, 4 C.W.N. 667.

• Where a notice (under this section) to quit was served on the ^{Where} under-raiyat on the 10th April 1908 (about the end of Chaitra 1314 ^{notice in-} B. S.) asking the tenant to leave within the 1st of Baisak 1315 B. S. and the suit was instituted on the 3rd August 1909 (Sravan 1316 B. S.) *held* that the notice was not insufficient: *Harifullah v. Benode Behari*, 17 C.W.N. 932 (Per Jenkins C. J., Ray J., concurring): Jenkins C. J., observed as follows: s. 49 of the Bengal ^{Form of} Tenancy Act prescribes no form of notice, nor has it given any ^{notice.} indication as to the length of notice and this is a very good reason. It would be deplorable to introduce, into matters of this kind, the

- Length of notice.** intricacies of English law as prevailing in the Presidency towns. Nothing is said as to the length of notice, because the Act itself protects the under-raiyat for ejectment until the end of the agricultural year in which a notice to quit is served upon him by his landlord. The provision of the law is that which indicates time at which it becomes obligatory upon an under-raiyat to leave.
- Notice under the Transfer of Property Act.** In a case under the Transfer of Property Act where a notice to quit took the form of a letter in which the landlord explained that he saw fit to increase the rent to a certain sum mentioned in the notice and asked the tenant to come to an agreement with him and he concluded by saying, "otherwise I shall take steps to eject you at the expiration of this month and hence you consider this as fifteen days' notice expiring with the end of this month," *held* that this was a valid notice : *Gangadas Sil v. Anandachandra Roy*, 13 C.W.N. 146.
- Notice signed by one of co-sharer landlords.** Where an ejectment suit was dismissed by the lower appellate Court on the ground that the notice to quit was signed by one of the co-sharer landlords, the High Court remanded the case holding "that such a point was not in issue and could not be in issue in a suit of this nature : " *Jakher Mahmud v. Khatir Mahmud*, 23 C.W.N. 76.
- Where notice not necessary.** A person purchasing an occupancy holding at a sale held in execution of a decree for arrears of rent can eject without annulling an under-raiyati interest by a notice under s. 167 or without a registered lease and without the consent of the landlord : *Bhuban Mohan v. Sheikh Badan*, 46 Cal. 766, s. c., 30 C.L.J. 210.
- Notice upon person who executed lease.** Where by virtue of a decree the landlord was to execute a lease in favour of two persons, but the lease was executed in favour of one, and both these persons were in possession from before ; *held* that a suit for ejectment under s. 49 upon a notice to the person (in whose favour the lease had been executed) was good : *Pitambar v. Ram Charan* : 28 C.W.N. 157.
- Co-sharer landlord, purchase of occupancy holding by.** Where a co-sharer landlord purchased an occupancy holding and let it out to a tenant, *held* that the latter was not an under-raiyat and could not therefore be ejected by a notice under s. 49 : *Roshan Ali v. Chandra Mohan*, 75 I.C. 447.
- Notice not specifying date when tenant is to vacate.** Where the notice did not specify the date when the under-raiyat was to vacate, but the suit was brought long after the expiry of the agricultural year following that in which the notice was served : *held* that the requirements of s. 49 (b) were fulfilled : *Purna Chandra v. Ali Mahammad*, 37 C.L.J. 548 :
- Receipt of rent prior to forfeiture, no waiver :—**Receipt of rent prior to the forfeiture but after notice is no waiver of the landlord's right to eject : *Ibid.*
- Service of notice.** Notice required to be served under sec. 49 of the B. T. Act shall be served in the manner provided in the Civil Procedure Code for the service of summons. Where the report of the serving peon showed that the defendant took the notice but refused to grant receipt therefor, *held* that under Or. V, r. 17 C. P. C., the peon should have affixed a copy of the notice on the outer door or some conspicuous part of the house in which the defendant generally resided. The rule laid down in r. 17 relating to the mode of service of notice having not been complied with the suit for ejectment was not maintainable : *Mahadeo Singh v. Basgit Singh*, [1925 Pat.] 106. The case in 3 Pat. 236 was distinguished.

No special form has been prescribed for notice under s. 49 of the B. T. Act. All that is required for a valid notice is that the terms should be such as cannot be misunderstood: *Singheshwar v. Partab Mandal*, 103 I.C. 471, s. c., A.I.R. 1727 (Pat.) 376. (James J.).

5. Under raiyati holding not transferable:—See notes under s. 48, heading no. 4.

6. Delay in the institution of suit:—Where a suit for ejectment was instituted one year and seven months after the termination of the written lease, *held* that there was no presumption that the tenant was allowed to hold over: *Ratan Lal v. Farsha Bibi*, 34 Cal. 396; mere delay in the institution of the suit is no reason for the dismissal of the suit on the ground that the defendant was allowed to hold over: *Ibid*.

7. Under-raiyat having no valid title:—As to where a sublease is in contravention of the provisions of s. 85, the rulings are not uniform; in addition to the rulings noted below see the cases noted under s. 85.

Although a permanent lease by a raiyat is void yet the under-raiyat is not a trespasser but is liable to be ejected only by notice under cl. (b) of this section: *Fazel Sheikh v. Keramuddi*, 6 C.W.N. 916.

A raiyat who has granted a permanent sublease may eject the under-raiyat by a notice under s. 49 (b): *Rashed Kazi v. Pachoo Sardar*, 42 I.C. 534 (Fletcher and Newbould J.J.). [All the previous decisions were discussed].*

It has been held in the case of *Mia Raja Patwari v. Ram Kumar De*, 41 I.C. 846, (N. R. Chatterjea and Richardson J.J.); that a sublease by a raiyat created before the Bengal Tenancy Act for a period exceeding nine years remains valid against the raiyat and the latter cannot eject the under-raiyat under s. 49 (b).

A plaintiff in a suit for eviction is in a very different position from a defendant resisting such an action, he cannot succeed except on proof of title and mere prior possession will not suffice: *Ram Gati v. Syama Charan*, 6 C.W.N. 919; see notes under s. 85.

Where an under-raiyati lease was described as a *harsana patta* (yearly lease), *held* that the lease was terminable by a notice to quit under s. 49 (b): *Chandicharan v. Samla Bibi*, 28 C.L.J. 91.

An under-raiyati lease if created by an instrument which is not registered is invalid under sec. 85 of the Bengal Tenancy Act, and a landlord purchasing the holding of the raiyat in execution of a decree for arrears of rent is entitled to take *khas* possession by ejecting such under-raiyat without annulling the same by a notice under sec. 167. The rights under such an under-raiyati lease are not protected by sub-sec. 1 of sec. 22 of the Act: *Peary Mohun v. Badal Chandra*, 28 Cal. 205; s. c., 5 C.W.N. 310. But where an under-raiyati interest was created without a registered lease and without the consent of the landlord the raiyat in order to be ejected by the superior landlord who purchases the raiyat's holding is entitled to a notice under s. 49: *Amirulla v. Nazir Mahomed*, 31 Cal. 932. The rule

* *Jarip Khan v. Durga Bewa*, 17 C.W.N. 59, s. c., 16 C.L.J. 144. *Telam Pramanick v. Adu Sheikh*, 17 C.W.N. 468. *Mohinichandra v. Baidyanath*, 21 C.L.J. 478.

Suit by private purchaser of raiyati holding.

enunciated in the case of *Peary Mohun v. Badal Chandra*, 28 Cal. 205, does not apply when the landlord of an occupancy raiyat purchases the occupancy holding by a Kobala and wants to eject the under-raiyat: *Amirulla v. Nazir Mahomed*, 34 Cal. 106; in such a case the under-raiyat cannot be ejected except by a notice under s. 49 as the raiyat cannot claim a right higher than his predecessor in interest: *Ibid.* Where a raiyat without the consent of his landlord sublet the holding by an unregistered lease, *held* that after the raiyat surrendered his holding the landlord is entitled to eject the under-raiyat without a notice: *Badan Chandra v. Rajeswari*, 2 C.L.J. 570.

Compromise decree against an under-raiyat—if a new tenancy—s. 147A.

A suit to eject an under-raiyat whose tenancy at its inception was for an unlimited time, there being no written lease, ended in a compromise which provided *inter alia* that the tenant would pay to his landlord "for the past period a sum of Rs. 20 as premium in addition to the annual rent of Rs. 12-8 and shall thereafter pay, at the end of each nine years, Rs. 44 as premium etc." and that in case of default of payment of the premium in accordance with stipulated terms, the tenant would be liable to be ejected. In a subsequent suit for ejectment on the ground of default, *held* that the aforesaid provision in the consent decree did not transform the tenancy which at its inception was for an unlimited time into a tenancy for a term held under a written lease within the meaning of sec. 49 of the Bengal Tenancy Act: *Ganeschandra v. Chandramohan*, 28 C.W.N. 984.

It was also held that tenant could be ejected only after a notice as contemplated in sec. 49 cl. (b) and in execution of a decree: *Ibid.*

Held further that the stipulation in the compromise for ejectment on default of payment of the premium was of no avail, because in view of the provisions of sec. 178 sub-sec. (1) cl. (c), it was not open to the landlord and the tenant to contract themselves out of the provision of s. 49: *Ibid.*

A compromise, followed by a consent decree, is none the less a contract between the parties and subject to the incidents of a contract because there is super added the command of the Judge: *Ibid.*

This principle is in essence recognised in sec. 147A Bengal Tenancy Act, providing for a compromise of suits between landlords and tenants: *Ibid.*

S. 85.

Where an under-raiyati lease is in contravention of s. 85, the raiyat can eject the under-raiyat without a notice: *Jadabchandra v. Gobinda Chandra*, 34 I.C. 912.

Suit for ejectment where sub-lease void.

In a suit for ejectment brought by a raiyat against an under-raiyat who had taken a sublease from the former's predecessor—the sub-lease being void being for the indefinite term, it was *held* that the raiyat was not entitled to eject the under-raiyat by a notice under s. 49 (b) and that the raiyat could be ejected for non-payment of rent merely: *Shangser Ali v. Shaikh Hadamulla*, 17 C.W.N. 48 (notes portion); [the facts of the case do not fully appear from the report.]

Stranger purchaser

A person in whose favour a permanent sublease is given by a raiyat is at least an under-raiyat (under his grantor) if he is in possession on payment of rent: *Janaki Nath v. Prabhasini*, 44 Cal. 178; s. c., 19 C.W.N. 1077. The rights of a stranger who purchases at a sale in execution of a decree under Chapter XIV of the Bengal Tenancy Act are regulated by s. 150 and not by s. 85: *Ibid.* When

a landlord purchases the occupancy holding at a sale in execution of a decree for arrears of rent it is not necessary for him to annul the interest of an under-raiyat which is in contravention of s. 85: *Peary Mohun v. Badal Chandra*, 28 Cal. 205, *Gangadhar v. Rajendra*, 17 C.W.N. 560 and *Ashutosh v. Bonamali*, 19 C.W.N. 412, s. c., 18 C.L.J. 252; see also *Janaki v. Prabhasini*, 44 Cal. 178 (at p. 189),* s. c., 19 C.W.N. 1077; but if a stranger becomes the purchaser he must annul the incumbrance by a notice under s. 167 before he can eject the under-raiyat: *Janaki v. Prabhasini*, 44 Cal. 178 at p. 189, s. c., 19 C.W.N. 1077. As between grantor and grantee, a permanent lease granted by an under-raiyat is a valid document, and the grantee can recover possession of the land from the grantee on the strength of such a lease: *Parushulla v. Sital Chandra*, 19 C.W.N. 1110. See also *Gurudas v. Kailas Changa*, 18 C.W.N. 882.

Suit by sub-lease under a *mokurari patla* against a stranger.

A person holding under a *mokurari patla* under a raiyat can succeed in a suit for possession against a stranger who has no title; assuming that the under-raiyati lease is void under s. 85 the tenancy may be proved *aliunde*: *Banabehary v. Rajchandra*, 14 C.W.N. 141; see also *Lala Surabh Narain v. Catherine Sophea*, 1 C.W.N. 248; *Fazel Sheikh v. Keramuddi*, 6 C.W.N. 916.

A person who takes a raiyati lease from a landlord who had obtained *khas* possession by ejecting a transferee of the raiyati holding is entitled to eject the under-raiyat without a notice: *Jadab Sardar v. Gobinda Chandra*, 44 Cal. 272, s. c., 21 C.W.N. 363; see *Nilkant v. Ghatoo Sheikh*, 4 C.W.N. 667 and *Badan v. Rajeswari*, 2 C.L.J. 570.

Where no notice necessary.

Where a raiyati holding was sold in execution of a decree for arrears of rent and the landlord having purchased it sold the same to another person who also took a lease from the landlord, *held* in a suit by the latter for ejectment of an under-raiyat who had been settled upon the land by the mortgagee of the raiyat that the occupancy holding did not merge in the landlords' right and the plaintiff was entitled to eject: *Yakub Ali v. Meajan*, 43 Cal. 164.

Where no merger.

An under-raiyat who is under an occupancy raiyat cannot be ejected by the landlord without notice prescribed by s. 49 (b); the intervention of a tenure-holder between the landlord and the under-raiyat makes no difference: *Rasik Lal Sen v. Krishna Mohan Mondal*, 17 C.W.N. 781 (following the case of *Amirulla v. Nazir*, 31 Cal. 932).

Suit without notice.

A landlord purchasing an occupancy raiyati holding in execution of a decree for arrears of rent is entitled to eject an under-raiyat who was upon the land by virtue of a permanent lease from the raiyat, without giving a notice under s. 49 or s. 167: *Gangadhar v. Rajendranath*, 17 C.W.N. 860; the case of *Peary Mohon v. Badal Chandra*, 28 Cal. 205 was followed.

Suit by a purchaser of an occupancy holding for arrears of rent.

A landlord purchasing the interest of an occupancy raiyat under him is not entitled to treat as a trespasser an under raiyat holding

Oral lease.

* In *Amirullah v. Nazir*, 34 Cal. 104, and *Lal Mahomed v. Jagtr Sheikh*, 17 C.W.N. 860 the doctrine was recognised that the landlord of an occupancy raiyat, who has purchased the interest of the raiyat and is thus brought into direct contact with the under-raiyat inducted on the land by the occupancy raiyat, cannot in view of the provisions of s. 22 of the Bengal Tenancy Act, seek the benefit of sub-sec. (1) of s. 85 which provides that if a raiyat sublets otherwise than by a registered lease, the lease shall not be valid against the landlord, unless made with the landlord's consent.

the land under an oral lease from the raiyat: *Lalmahammad v. Jagir Shaik*, 13 C.W.N. 913 (Jenkins C.J. and Mookerjee J.), according to their Lordships, this view of the law was in substantial accord with the decision in the cases of *Amirulla v. Nazir Mahammad*, 31 Cal. 932 and *Amirulla v. Nazir Mahammad*, 34 Cal. 104 and was distinguishable from *Peari Mohan v. Badal Chandra*, 28 Cal. 205, s.c., 5 C.W.N. 310 in that there the tenant's interest did not pass to the landlord by the voluntary act of the tenant.

Locus standi—
validity of
ejectment
decree.

An under-raiyat has no *locus standi* to question the validity of a decree of ejectment passed against the occupancy raiyat: *Bishen Narain v. Chandra Kant*, 37 I.C. 658; after an occupancy raiyat has been ejected from a holding for non-payment of rent, the under-raiyat is a mere trespasser and is liable to ejectment at the instance of the landlord: *Ibid.*

Ijaradar.

If an *ijaradar* purchase an occupancy holding, he acquires it as a non-occupancy holding and when he settles it with an under-tenant, the latter is an under-raiyat and he is liable to be ejected upon a notice under section 49. *Sheonandan v. Ramhit Singh*, 15 C.L.J. 647.

When a particular tenancy falls within s. 49 of the B. T. Act, s. 182 of that Act cannot be invoked to determine the status of the tenant. So where the under-raiyats held the homestead along with the other lands as part of their under-raiyati tenancy and the landlords sought to eject the tenants under sec. 49, *held* that the tenant was liable to be ejected and that he was not protected by s. 182 B. T. Act: *Chandra Mohan v. Meherjan*, 44 C.L.J. 311; s.c., 99 I.C. 216. (B. B. Ghose and Graham, J.J.).

8. Contract for fresh lease:—A contract, by a raiyat with his under-tenant that at the expiry of the under-raiyati lease, a fresh settlement would be made, is valid in law so far as regards the contracting parties are concerned: *Abdul Karim v. Abdul Rahaman*, 15 C.L.J. 672*; see also *Tamajuddi v. Ashgar Howladar*, 36 Cal. 256, s.c., 13 C.W.N. 183; *Bepinbehari v. Amritlal*, 9 C.L.J. 76; *Manik Borai v. Bani Charan*, 13 C.L.J. 649; but see *Basaratulla v. Asirunnissa*, 11 C.W.N. 190.

A kabuliyat executed by an under-raiyat provided "on the expiry of the term of the lease, I shall take a second settlement; unless I do so, I shall have no interest in the land:" on a suit for ejectment the under-raiyat stated that he was not bound by the lease and he did not express any willingness to take a settlement, *held* that he was liable to be ejected: *Rahmatulla v. Isabuddin*, 40 I.C. 616 (Fletcher and Richardson, J.J.).

Renewal
of lease.

A stipulation in a lease in favour of an under-raiyat to the effect that after the expiry of the term of nine years the raiyat will grant a lease for the same period and upon the same terms is valid: *Amiruddi v. Ananda*, 21 C.L.J. 507. (See in this connection the cases of *Ali Mahammad v. Narayan*, 15 C.L.J. 122, *Lani Mia v. Muhammad*, 20 C.W.N. 948).

Where an under-raiyati lease provided that on the expiry of the term (9 years), the tenant on applying for resettlement, the landlord

* The effect of the clause for the grant of a new lease is to prevent the landlord from seeking to eject the tenant upon the expiry of nine years; see also *Ali Mahammad Bepari v. Nayan Raja Bhina*, 15 C.L.J. 122.

would be bound to grant the same, *held* in a suit for ejectment that the covenant was too vague to be given effect to in as much as the covenant did not specify any term or amount of rent to be paid: *Surendranath v. Dinavandu*, 13 C.W.N. 595.

9. Ejectment suit by a co-sharer landlord who purchased the raiyati interest:—Where a co-sharer landlord purchased a raiyati holding which had been held under him and his co-sharers and then settled it with the Defendant for a term of years, *held* that the defendant was an under-raiyat and was liable to be ejected on the expiry of the lease, (the case being covered by s. 22 as it stood before amendment by E. B. A. Act I of 1908), *Alimuddin v. Ainuddin*, 38 I.C. 534: (Fletcher and Richardson, J.J.); see also *Ram Mohon v. Sheikh Kachu*, 32 Cal. 386, s.c., 9 C.W.N. 249; s.c., 1 C.L.J. 1 (F.B.).

A permanent lease by a raiyat is not binding upon the landlord; Where but where a lessee from the landlord who had purchased the raiyat's interest in a rent sale brought a suit for ejecting the under-raiyat, *held* that the suit must fail as the under-raiyat had acquired a limited interest against the landlord by more than 12 years' possession; *Purna Chandra v. Joylal*, 25 C.W.N. 55 (notes portion).

10. Surplus sale proceeds:—When an under-raiyati holding is sold in execution of decree for arrears of rent the landlord has no other title to attach the same than any other creditor of the under-raiyat: *Haran Chandra v. Pulin Chandra*, 5 C.L.J. 35 (notes).

11. Is a lessee entitled to deny the lessor's title when the latter brings a suit for ejectment after the expiry of the lease? In a suit for ejectment on the expiry of a lease it is not open to a lessee, who was inducted on the land by the plaintiff and has been holding under a lease granted to him, to say that the latter is not the sole landlord: *Alimuddin v. Ainuddin*, 38 I.C. 534; (Fletcher and Richardson, J.J.). See notes at pp. 153, and 42, *ante*.

12. Compromise decree:—Where a tenancy is created by a compromise decree for a period of nine years, the tenant is liable to be ejected only in accordance with the provisions of the B. T. Act and not in accordance with the provisions of the contract: *Gopal Krishna v. Harinath*, 34 C.L.J. 159.

13. Onus:—In an action for ejectment where the plaintiff alleged that he was a raiyat and the defendants were under-raiyats: *held*, (on consideration of secs. 101, 102 and 109 of the Evidence Act), that the onus was upon the plaintiff to prove that the defendants were under-raiyats; *Basiruddin Sarkar v. Sahebulla*, 32 C.W.N. 160 (Mukerji and Mallick, J.J.).

The decisions of the Judicial Committee in *Seturatanam Aiyer v. Venkatachela Goundan*, 43 Mad. 567 and *Nainapillai Marakayar v. Ramnathan Chettiar*, 47 Mad. 337, do not indicate that their Lordships intended to depart from the elementary rules of evidence contained in secs. 101, 102 and 109 of the evidence Act. That apart from authorities and from any other consideration the elementary rule contained in sec. 101 of the Evidence Act is a rule that is inflexible and must apply to all cases: *Ibid*. The cases of *Abhoycharan v. Futtari Dasi*, 57 I.C. 838, *Paran Chandra v. Khariz Mondal*, 42 I.C. 262, *Seturatanam Aiyer v. Venkotachela Goundan*,

S. 22.

acquired a limited interest.

Onus, lies on Plff. to prove that Defdt. is under-raiyat.

43 Mad. 567, *Nainapillai Marakayar v. Ramnathan Chettiar*, 47 Mad. 337 and *Nubo Coomar v. Oozir*, 23 W.R. 238, were referred to.

14. Under-raiyat with right of occupancy by custom :—

An under-raiyat with right of occupancy by custom is not liable to ejectment under se. 49 of the B. T. Act: *Gopal Mandal v. Japai Sankari*, 46 Cal. 43, s.c., 22 C.W.N. 618, s.c., 28 C.L.J. 84. See notes under s. 48 heading no. 3.

Occupancy
right of
under-raiyat
by custom,
if heritable.

15. Heritability of under-raiyat with right of occupancy by custom :—The heir of an under-raiyat who acquired right of occupancy by custom, if he fails to prove heritability under a local custom, is a trespasser on the land and is liable to be ejected without any notice. *Iswar Sant v. Torendra*, 42 C.L.J. 560. See also *Sudhanya v. Shaik Ismail*, 29 C.W.N. 733.

See notes under sec. 26 heading no. 7.

In a suit for ejectment the heirs of a tenant of a non-heritable holding are not necessary parties unless they are recognised by the landlord as tenants: *Jagannath v. Bhajahari*, 96 I.C. 360; (Cuming and B. B. Ghosh, J.J.).

16. Partial Ejectment :—Partial ejectment can be allowed only under special circumstances, and can not be decreed as a rule. Strong case must be made out for the purpose of holding that the landlord can eject a tenant from only a part of the tenancy. On termination of an under-raiyati lease the raiyat is entitled to the possession of the share of the holding let out to him: *Chandra Mohon v. Meherjan*, 44 C.L.J. 311.

CHAPTER VIIA.

Restrictions on alienation of land by aboriginals.

Note :—This Chapter was inserted by B. T. (Amendment) Act (II of 1918 of the Bengal Council. It was published in the Calcutta Gazette on the 13th March, 1918.

49A. (1) This Chapter shall apply in the first instance only to the Sonthals of the districts of Birbhum, Bankura and Midnapore, who shall be deemed to be aboriginals for the purposes of this Chapter. Application of Chapter.

(2) The Local Government may, from time to time, by notification published in the *Calcutta Gazette*, declare that the provisions of this Chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this Chapter, namely:—

Sonthals of other districts, Bhuiyas, Bhumijes, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Meches, Mundas, Oraons and Turis.

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

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

Application of this Chapter :—According to sub-sec. (1), this Chapter shall apply in the first instance to the Sonthals of the districts of Birbhum, Bankura and Midnapore: and according to sub-sec. (2) the Local Government may declare that the provisions of this Chapter shall apply to the aboriginal castes or tribes in any district or local area.

Under sub-sec. (2) the Local Government has by notification made the provisions applicable to the following castes or tribes in the district of Midnapur, viz., Kora, Bhumji and Munda; (See Cal : The provisions of this Chap-

ter have been made applicable to certain aboriginal tribes in Midnapur and in a certain area within Mymensingh.

Restriction on transfer of tenant's rights.

Gaz : dated 12th April, 1922, Part I, p. 741, Notification No. 4194 L.R. dated the 10th April 1922).

The provisions of this Chapter have also been made applicable to the following castes and tribes within the police stations Nalita-bari, Halnaghat, Durgapur and Kalmakanda in the district of Mymensingh : Garos, Hadis, Hajangs and Kochs ; (See Cal. Gaz : dated the 20th June, 1923, Part I, p. 823, Notification No. 749 T. R. dated the 9th June, 1923).

49B. No transfer by an aboriginal tenure-holder, raiyat or under-raiyat of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

Notes :—The word "holding" has not been used in this section in the strict sense of the word as defined in this Act, see s. 3 cl. (9) ; according to the definition of the word 'holding' in s. 3 cl. (9) it does not include land held by an under-raiyat. But in this section the word 'holding' has not been used in the strict sense as defined in the Act, but it has been used to mean also land held by an under-raiyat.

Lease by tenure-holder.

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

Sub-letting by raiyat.

49D. Subject to the provisions of section 85, an aboriginal raiyat may sub-let his holding to another aboriginal to cultivate it as an under-raiyat.

Usufructuary mortgage by tenure-holder, raiyat or under raiyat.

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

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

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

Explanation.—A 'complete usufructuary mortgage' means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan, upon the condition that the loan, with all interest thereon, shall be deemed

to be extinguished by the profits arising from the land during the period of the mortgage.

49F. (1) If in any case—

(a) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal raiyat is unable to sublet his holding as provided in section 49D, or an aboriginal tenure-holder, raiyat or under-raiyat is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (1), or

Application to Collector for transfer in certain cases.

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

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

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

(3) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

Mortgage :—The power of an aboriginal to effect a mortgage is restricted by S. 49E sub-sec. (2), and the permission of the Collector under s. 49F cannot enlarge the power to effect a mortgage in any other way than by a complete usufructuary mortgage: *Gangaram v. Bamaṇḍa*, 68 I.C. 301.

Effect of permission of Collector.

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

Courts not to register, or recognize as valid, transfers in contravention of this Chapter.

Notes :—It seems that if any deed of transfer is registered in contravention of this section it should not be recognised as valid.

49H. (1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-

Power to Collector to set aside

improper
transfers
by tenure-
holder,
raiyat or
under-
raiyat.

holder, raiyat or under-raiyat in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (1), or section 49F, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion :

Provided that—

- (a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and
 - (b) he is given an opportunity of showing cause against the order of ejectment.
- (2) When the Collector has passed any order under sub-section (1), he shall either—
- (a) restore the transferred land to the aboriginal tenure-holder, raiyat or under-raiyat, or his heir or legal representative, or
 - (b) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J, provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal; and, if the Collector is unable to make such settlement within the said period, and unrestricted right of settlement will vest in the landlord.

Notes :—The word “holding” in sub-sec. (1) has not been used in the strict sense in which it has been defined. It has been used also to mean land held by an under-raiyat ; see notes under s. 49B.

Sub-sec. (1) is silent as to the person who is competent to make the application, but it is immaterial in as much as the Collector has the right to take action on his own initiative.

49J. (1) Whenever—

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

Resettle-
ment of
certain
tenancies

(b) an aboriginal tenant surrenders his tenancy, or a portion thereof, or abandons his residence and ceases to hold his tenancy, the landlord may, subject to the provisions of sections 86 and 87,—

- (i) settle the tenancy, or a portion thereof, with an aboriginal, or
- (ii) with the approval of the Collector in writing, settle the same with a person who is not an aboriginal or retain it in his own possession: provided that such approval shall not be withheld if the Collector is satisfied that the surrender or abandonment referred to in this sub-section is not made with the object of evading the provisions of section 49B, 49E, or 49F.

(2) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (1), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

49K. Notwithstanding anything in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, raiyat or under-raiyat in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order :

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

Provided as follows :—

- (a) any tenure or holding belonging to an aboriginal may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the tenure or holding;
- (b) nothing in this section shall affect any right to execute a decree for the sale of any such tenure or holding, or the terms or conditions of any *bona fide* contract relating thereto, if such decree was passed, or such contract registered,—
 - (i) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and
 - (ii) in the case of other castes and tribes to which this Chapter has been applied, at

least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes;

- (c) nothing in this section shall affect any right for the sale of any such tenure or holding for the recovery of any dues which are recoverable as public demands.

Notes :—The word ‘holding’ in this section has not been used as defined in this Act, [see s. 3 cl. (9)] ; the word ‘holding’ in this section also means land held by an under-raiyat.

According to s. 65 of the Bengal Tenancy Act a permanent tenure or the holding of a raiyat at fixed rent or an occupancy raiyat may be sold in execution of a decree for arrears of rent, but the holder of a non-permanent tenure or a non-occupancy raiyat or an under-raiyat is liable to be ejected under s. 66. Section 49K so far as it makes non-permanent tenures, non-occupancy holdings and under-raiyati tenancies saleable in execution of decrees for arrears of rent is in contravention of ss. 65 and 66.

The sale of a tenure held by an aboriginal in execution of a money-decree in contravention of s. 49K, is a nullity and not merely an irregular sale: *Joggeshwar v. Jhapal Santal*, 28 C.W.N. 556 (N. R. Chatterjea and Panton, J.J.).

Stay of
execution
of decrees.

49L. If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, raiyat or under-raiyat in respect of such tenancy or portion thereof, the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due.

Note :—In this section also the word “holding” has not been used in the strict sense in which it has been defined in this Act.

Appeal and
revision.

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

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

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

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

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

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

Bar to suits.

9. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a raiyat, raiyat or under-raiyat of his tenure or any portion thereof, made *bona fide*,—

Saving of certain transfers.

in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore before the 1st November, 1916, and

in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes.

—————

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

*Rules and
presump-
tions as to
amount of
rent.*

*Rules and
presump-
tions as to
fixity of
rent*

Rules and presumptions as to amount of rent.

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

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

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

(3) The operation of this section shall not extend to land held by a raiyat, shall not extend to the fact of the land having been separated from other land which formed with it a single holding or to the fact of the land having been joined with other land into one holding.

(4) Nothing in this section shall apply to land held for a term of years or for a term of years determinable by the tenant.

6. WHERE THE PRESUMPTION IN THIS SECTION APPLIES AND WHERE NOT.
7. WHICH HAS NOT BEEN CHANGED.
8. ONUS.
9. PREDECESSOR IN INTEREST.
- ~~10. PERMANENT SETTLEMENT.~~
11. ALTERATION OF AREA.
12. SPLITTING UP OR AMALGAMATION OF HOLDING OR TENURE.
13. IT SHALL BE PRESUMED.
14. REBUTTING PRESUMPTION.
15. EFFECT OF TRANSFER OF NON-TRANSFERABLE HOLDING.
16. SUB-SECTION (4).

1. Construction of the section :—

According to the case of *Abhoy Sankar v. Rajani Mandal*, 22 C.W.N. 904 ; s.c., 29 C.L.J., 371 (*vide* observations of Richardson, J., 22 C.W.N. at page 907 and 29 C.L.J. at page 375) the following words should be added after the word “held” in sub-sections (1) and (2).

“A tenure or holding” or “land constituting a tenure or holding.”

2. Presumption—Rule of evidence—a cherished right :— Presump-
The presumption under sec. 50 of the Bengal Tenancy Act, “although tion,
it might be in one sense considered a rule of evidence, is to the tenants whether a
of this province a cherished right granted to them so long ago as right or rule
1859* in consideration, it may be, of his general ignorance and in- of evidence.
capacity to cope with the superior intelligence and ways and means of
his land-lord” : *Pirithi Chand Lal v. Basarat Ali*, 37 Cal. 30 at p. 39
(F.B.) ; s.c., 13 C.W.N. 1149 ; s.c., 10 C.L.J. 343.

3. Object of Sec. 50 :—The object of the Legislature in pro-
viding for the presumption as to fixity of rent mentioned in this
section is to provide, in suits or proceedings under this Act, an easy
method of determination of the rights of the parties ; *Nityananda v.*
Nandakumar, 13 C.L.J. 415 at 417. See also *Prankrishna v. Mukta*
Sundari, 18 C.L.J. 193.

4 Rent in Kind :—The presumption under this section applies
also in cases where the rent is payable in kind or partly payable in
money and in kind ; *Manmatha v. Probodh*, 37 C.L.J. 52 ; *Dinanath*
v. Sati Prasad, 27 C.W.N. 1151 ; s.c., 36 C.L.J. 220.

5. Ss. 50 & 115 :—When application under sec. 105 of this
Act is made for settlement of rent, the presumption under sec. 50
arises : *Pirithchand v. Basarat Ali*, 37 Cal. 30, (F.B.), s.c., 13 C.W.
N. 1149, s.c., 10 C.L.J. 343.

But once the record of rights is finally prepared after all chances
of correction under Chap. X are over, the presumption under sec. 50
does not apply in view of s. 115 ; *Prasannakumar v. Durgacharan*,
49 Cal. 919, s.c., 26 C.W.N. 947, s.c., 36 C.L.J. 291. See also
Bamandas v. Sadhu Majhi, 26 C.W.N. 945.

See Notes under Sec. 115.

6. Where the presumption under this section applies and where not :—Sub-sec. (2) of this section is expressly limited in its Presump-
application to a suit or proceeding under this Act and has no applica- tion under
this section

* See Act X of 1859.

applies to
suit or
proceeding
under this
Act.

tion in suits which are not under this Act but are suits under the general law for ejectment of an alleged trespasser: *Nilmoni v. Mathura*, 4 C.W.N. 159 (notes), s.c., 5 C.L.J. 413; *Gouri Kant v. Ramgopal*, 2 C.L.J. 380; *Rasamoy v. Srinath*, 7 C.W.N. 132; *Sarat v. Shyam Chand*, 10 C.W.N. 930; *Nandalal v. Atarmoni*, 12 C.W.N. 432; *Juggobandhu v. Magnamoyee*, 44 Cal. 555, s.c., 22 C.W.N. 89; *Santosh Kumar v. Rakhal Chandra*, 43 C.L.J. 104.

Apart from
s. 50, if any
presump-
tion arises,

It has however been held that even in cases where presumption under sec. 50 is not directly applicable, the court may act on a presumption similar to the one arising under this section, if the facts justify the necessary consequence; *Buzlal Karim v. Satischandra*, 15 C.W.N. 752, s.c., 13 C.L.J. 418; *Prankrishna v. Muktasundari*, 18 C.L.J. 193. It has been held that apart from the B. T. Act, a presumption of a contract to hold at fixed rates may arise when there has been a uniform payment of rent for more than 20 years; *Santosh Kumar v. Rakhal Chandra*, 43 C.L.J. 104. See also *Dulhin Golab Koeri v. Balla Kurmi*, 25 Cal. 744, s.c., 2 C.W.N. 580, which was distinguished in the case of *Rasamoy v. Srinath*, 7 C.W.N. 132 on the ground that the question in that case arose in a proceeding under this Act. In cases to which the presumption under sec. 50 is not applicable the court is entitled to consider the facts in view of all the circumstances and determine whether it was not a just inference that the holding bears a fixed rental; *Rajmohini v. Nagendra*, 94 I.C. 310. (Suhrawardy and Mukerji, J.J.).

It cannot be held in a case brought under the Bengal Tenancy Act that any presumption arises as to the fixity of rent from mere payment of the same rate of rent for a number of years apart from the presumption arising under section 50 of the Act. To hold otherwise would be to require every landlord to enhance the rent of every tenant under him at certain intervals of time which he might not himself desire to do: *Brajadas v. Bankim Chandra*, 51 Cal. 454.

Although s. 50 does not apply when the question of the permanency or otherwise of a tenure arises in a proceeding for the apportionment between landlord and tenant of money awarded for compulsory purchase of land, the principle involved in this section is a useful guide to the Courts in deciding it: *Nanda Lal v. Atarmoni*, 12 C.W.N. 432. This case was followed in the case of *Gulab Misser v. Kumar Kalanand*, 14 C.W.N. 884; s.c., 12 C.L.J. 107; there were three suits for declaration of the status of certain tenants and it was proved that the tenants held at the same rents for 27, 60 and 57 years, held that apart from any presumption under s. 50, a presumption arose that the status of the plaintiffs was that of raiyats holding at rents fixed in perpetuity: *Ibid.* These cases were followed in the case of *Pirithi Chand v. Sheikh Mahomed*, 1 P.L.J. 67, where it was held that even when a suit is not one under the B. T. Act, evidence of long payment at an unchanged rate is relevant as showing that the plaintiff has a holding at fixed rates.

Ejectment
suit.

It does not apply to a suit for damages under the Small Cause Court Act; *Nilmani v. Mathura Nath*, 4 C.W.N. 159 (notes); s.c., 5 C.L.J. 413. This case has been followed in the case of *Rasamoy v. Sreenath*, 7 C.W.N. 132; in this case it has been held that in a suit to recover possession of land treating the defendant as a trespasser this section does not apply unless the defendant makes out that he is a tenant.

Where a landlord brings a suit for ejectment on the allegation that his tenant who had a non-transferable holding has sold to a third person (one of the defendants) and has abandoned the holding, *held* that s. 50 has no application to such a case as it is not a suit, or proceeding under this Act: *Sarat Chandra v. Syam Chand*, 10 C. W.N. 930; see also *Mahabir v. Charles Fox*, 9 C.L.J. 467, *Golab Misser v. Kumar*, 14 C.W.N. 884, *Bazlal Karim v. Satis Chandra*, 15 C.W.N. 752, s.c., 13 C.L.J. 418; *Prankrishna v. Muktasundari*, 18 C.L.J. 193. In an ejectment suit s. 50 is not directly applicable, but the Court may act on a presumption similar to the one arising under the section, if the facts justify the necessary inference; *Manmotha Nath v. Probodh Chandra*, 37 C.L.J. 52. The mere fact of payment of rent at an uniform rate for any number of years, apart from the presumption that can be raised under sec. 50 does not raise any presumption of fixity of rent; *Yakub Ali v. Raj Kumar*, 65 I.C. 527.

The mere fact that a tenancy has been held by the predecessor-in-interest of the tenants for several generations and that the rent paid has been uniform for over 50 years is not sufficient in law in the absence of any other circumstance to shew that the rent was fixed for ever or that the tenancy was a permanent one: *Satis Chandra Ghose v. Debendra Nath Dey*, 85 I.C. 636 (*Per Mukerji, J.*).

For the purpose of the presumption arising under sec. 50 (2) of the B. T. Act, in order that a tenant has been holding at a uniform payment of rent for twenty years it is not necessary that he should prove payment of rent for all those years and produce *dakhilas* for every one of those twenty years. Uniform payment for the wanting years may be proved otherwise, by other proof and from surrounding circumstances: *Golam Husain v. K. S. Bonnerjee*, 30 C.W.N. 520 (*Walmsley and Mukerji, J.J.*).

**Dakhilas for
20 Years
not
necessary**

Where the Special Judge arrived at a finding against the tenant merely relying on the *dakhilas* produced and not considering the oral evidence adduced, *held* that the finding having been arrived at on a misunderstanding of the principle laid down in judicial decisions was liable to be set aside and it was open to the High Court to deal with the case upon the admitted facts and to hold that in view of the circumstances proved in the case the tenants were entitled to the presumption contained in sec. 50 sub-sec. (2) of the B. T. Act: *Ibid.*

In order to avail of the presumption under s. 50, Cl. (2) it is not necessary for the tenant to prove actual payment of rent for 20 years consecutively; so where *dakhilas* for three years of uniform rent for the same quantity of land were proved, and there was an interval of 12 years between the first *dakhila* and the second, *held* in the absence of evidence of change in the quantity of land and rent payable by the tenant, that the tenant is entitled to the presumption: *Pran Chandra v. Kanta Mohon*, 39 C.L.J. 437.

When rent at a certain rate was uniform from 1845 to 1897 and there was no actual payment from that time for 17 years before the institution of the suit and the rent was not altered from 1897 to the date of the suit (1915), *held* that s. 50 applied: *Mohini Kant v. Preo Nath*, 49 Cal. 661, s.c., 35 C.L.J. 309; proof of actual payment for twenty years at a uniform rate is not necessary to be proved: *Ibid.*

In order to entitle a tenant to claim a presumption under this section actual payment for 20 years is not necessary to prove; produc-

tion of receipts for 20 continuous years is not necessary: *Satis Chandra Biswas v. Nilmadhab Saha*, 37 C.L.J. 598.

It is not necessary to prove payment of rent at the same rate for 20 years under s. 50. It is sufficient if the defendants can show that the rent or rate of rent remained unchanged for 20 years previous to the date of the suit even though a single years' rent is not paid: *Jiban Naskar v. Muralidhar*, 97 I.C. 513.

"In order to take the benefit of the presumption which the law allows to be raised from proof of the fact that rents have not varied for 20 years previous to the suit, raiyats can give what is the best proof of non-variation, viz., that they have paid uniformly for the 20 years preceding the suit. Then the best evidence of payment being receipts, these are ordinarily filed to support the plea. When receipts are filed not for the entire period of 20 years preceding suit, but some are wanting here, and some there in that interval still uniform payment may be proved otherwise for the wanting years by other proof, and from surrounding circumstances." (Per Bayley and Pundit, J.J.), *Elahee Buksh v. Roopun*, 7 W.R. 284. "It is not absolutely necessary that *dakhilas* should be for 20 consecutive years before the date of suit for it might frequently happen that parties, with every right to the presumption, might lose one or two *dakhilas* here and there during such a long period; and it would be manifestly unjust to deprive them of the benefit allowed by law when no suspicion could arise of misfeasance merely because one or two of these receipts has been mislaid or lost. In the present case the missing *dakhilas* are for years about the middle of the period, and we do not think that their non-appearance should defeat the special appellant's claim to the presumption." (Per Glover and Campbell, J.J.), *Kattiyani v. Soonduree*, 2 W.R. Act X, 60.

The twenty years' uniform rent must be proved by full legal evidence and cannot be presumed from any evidence however strong: *Rajnarain v. Olivia Atkins*, 3 Rev. Jud. & Police Journal, p. 161.

When once a tenant has produced rent-receipts covering a period of 20 years at a uniform rate he is entitled to the presumption under s. 50 (2) and it is for the landlord to shew that the person who was formerly on the land was not the predecessor of the tenant: *Gopal Chandra v. Mahomed Soleman*, 22 C.W.N. 126.

Where the tenant produced rent-receipts by saying that he had received the receipt on payment of rent, *held* that this was sufficient proof and that it was not necessary that the person whose signature it bore was not examined: *Surj Kant v. Banerwar*, 24 Cal. 251, also see *Rajmahomed v. Banoo Rasmah*, 12 W.R. 34; and *Madhub Chunder v. Promotha Nath*, 20 W.R. 264. It is perfectly open to a Court which has to deal with the facts of a case to say, whether, taking the receipts which extend over a number of years together and having regard to the fact that the receipts did not specify the years to which the amounts relate, the amounts paid in any particular year are partly for the rents of that year and partly for the arrears due in respect of previous years: *Surja Kant v. Banerwar*, 24 Cal. 251.

Ordinarily in order to prove that rent has not varied, raiyats can give the best evidence, viz., rent-receipts; if however the zemindar's papers prove that a raiyat has been holding at a rent or rate of rent which has not been changed during the 20 years immediately before



the institution of the suit it is not necessary for the raiyat to produce rent-receipts: *Madhusudan v. Jamiruddin*, 21 C.W.N. 116 (notes); s.c., 41 I.C. 767.

S. 50 cl. (2) does not apply to a case where the lands are *hajabad* (liable to inundation) and the tenant gets remission of the full rent or a part of the rent: *Bijoy Chand v. Akhil Bhuiya*, 51 Cal. 314, s.c., 28 C.W.N. 529. The case of *Radha Gobind v. Kyamtollah*, 21 W.R. 401 was distinguished on the ground that the abatement of rent was allowed in a lump sum upon a lump jama for portion of land having been rendered unculturable by the overflow of a river and the abatement of rent was proportionate to the land made unculturable. *Hajabad lands* i.e., lands liable to inundation.

Where a tenant is not entitled to the presumption under s. 50, a finding that he proved fixity of rent by 48 years' uniform payment of rent was not considered sufficient to prove this: *Kesto Prasad v. Issur Dubey*, 71 I.C. 15. 48 years' uniform payment of rent not sufficient

In a proceeding for enhancement of rent it was held that the tenancy should be considered to have originated at the date when the previous tenancy expired and the tenant continued to hold over; and a presumption under s. 50 will not arise in such a case where the tenant held at a fixed rent for 20 years: *Uday v. Mahomed Ali*, 65 I.C. 589. when tenant not entitled to presumption. Holding over.

Where it is proved that an additional sum (not being an abwab) was paid by a tenant, it would rebut the presumption under s. 50: *Rajeswar v. Bahadur Singh*, 63 I.C. 317. Payment of additional sum which is not an abwab.

S. 50 of the B. T. Act has no application to a case where the origin of the tenancy is known: *Secretary of State v. Sarat Chandra*, 40 C.L.J. 235. See also *Secretary of State v. Ram Charan*, 70 I.C. 207. Origin of tenancy known.

Where the origin of the tenancy was unknown, the rent was paid at a uniform rate for more than 50 years, and the lease was for dwelling purpose, held that it could be inferred that the tenancy was permanent and heritable: *Pramathanatha v. Raja Bejoy Singh*, 44 C.L.J. 587 (B. B. Ghosh and Cammiade, J.J.). Where origin unknown.

Where there is a temporary kabuliyat for a term of years the presumption of a fixed tenure from the time of the permanent settlement goes: *Birendra Kisore Manikya v. Johiruddin*, 94 I.C. 26 (Greaves and Panton, J.J.).

Where rent has not been changed for a long time this does not shew that the tenant was a permanent one: *Jyati Prasad v. Dasrath*, 36 C.L.J. 73.

There is nothing in the nature of a *ghatwali* tenure to shew that as long as such a tenure existed the presumption under s. 50 could not, by reason of s. 181 of the Act arise: *Gouri Kanta v. Ram Gopal*, 2 C.L.J. 379. *Ghatwali* tenure.

The addition of the word "*kaimi*" to "settled raiyats" has not the effect of making the entry a bad entry, so as to bar the operation of s. 50. *Kaimi*.

The court is not precluded from drawing the appropriate inference from the facts proved by evidence on the record because s. 50 has no application. Payment of rent at an unvarying rate for more than 20 years is not in itself sufficient to establish that the tenancies are held at a fixed rate: *Shyama v. Fakir*, 101 I.C. 45. (Mukerji and Graham, J.J.).

**New
Tenancy.**

Where a landlord purchases a holding at a rent sale and re-settles the land with the same tenant, the continuance of the old tenancy is broken and the presumption under s. 50 of the Bengal Tenancy Act does not apply: *Ramanath v. Jagannath*, 106 I.C. 136 (Cuming and Roy, J.J.).

A new tenancy is created when a tenant sells or transfers a portion of his holding and the landlord recognises the transferee, and the presumption under s. 50 of the Bengal Tenancy Act, similarly, ceases to apply: *Ibid.* See also *Dhirendra Nath v. Ahamed Mia*, 30 C.W.N. 765 (Chakravarti, J.).

Where uniform payment of rent was proved for more than 20 years but the grant by the lease was for a particular term at a fixed rent and which gave to the landlord the right at the expiration of the term to settle the land with whomsoever he pleased, *held* that it cannot be taken as a mere recognition of a previous tenancy and therefore the document negatives the presumption under s. 50, *Dharani Kant v. Ismail Sheikh*, 45 I.C. 221.

Where four originally separate tenures were in 1853 amalgamated and by a *kabuliyat* of that year the tenant expressly stipulated to pay enhanced rent, it was held that the presumption under sec. 50 (2) arising from proof of payment of rent at the same rate for 20 years before the suit was rebutted: *Upendra v. Gopicharan*, 22 C.W.N. 321, s.c., 31 C.L.J. 12 (N.R. Chatterjea and Newbould, J.J.).

**Stipulation
in the Kabu-
liyat for
enhanced
rent in
future, if
rebutts
presumption**

Where there was an express stipulation in a *kabuliyat* (dated the year 1840) that the tenant would pay enhanced rent according to the *Pergunna* rate, *held* that the tenant was not entitled to get the presumption under s. 50 by shewing payment of uniform rent for 20 years; *Upendra Nath v. Dwarka Nath*, 22 C.W.N. 322, N. R. Chatterjea and Newbould J.J., in deciding the case remarked as follows: "The *Kabuliyat* may be considered either as a new contract under which the tenants agreed to pay enhanced rent, or as a contract containing recitals of the incidents of the tenancy which was in existence from before. In either view of the matter it shews that the rent was enhancible." This case was considered and distinguished in the case of *Abhoy v. Rajani*, 22 C.W.N. 904,* s.c., 29 C.L.J. 371, but it seems that the observations of their Lordships (Tennon and Richardson, J.J.), are contrary to the rule laid down in the case of *Upendra Nath v. Dwarkanath*, 22 C.W.N. 322. The case in 22 C.W.N. 322 seems to have taken a sounder view.

Where a purchaser of a non-transferable occupancy holding was recognised as a tenant of the previous jama upon his executing a *kabuliyat* in which shares separately purchased were amalgamated and there was a stipulation of enhancement of rent at specified rates for different classes of land upon a measurement in future, *held* that in the circumstances of the case the *kabuliyat* created a new tenancy, and the tenant was not entitled to the presumption under sec. 50 of the B. T. Act: *Dhirendranath Roy v. Ahamed Mia*, 30 C.W.N. 765 (Chakravarti J.). The case of *Abhoy Sankar v. Rajani*, 22 C.W.N. 904 was referred to. It has been held however in the case of

* In the case of *Abhoy Sankar v. Rajani*, 22 C.W.N. 904 Tennon J., accepted the translation of the words in the *Kabuliyat* কামি বেশী হুদে (Kamī Beshi Sūtre) as "less or more." It is submitted with great respect that the proper translation is "liable to enhancement or reduction."

Jitendranath v. Abejannessa, 30 C.W.N. 1038 (Cuming and B. B. Ghosh J.J.) that an agreement to pay rent at an enhanced rate at some future time does not constitute a change in the rate of rent under sec. 50 of the B. T. Act and such an agreement by itself does not rebut the presumption under cl. (2) of the section.

See notes under heading no. 7.

7. Which has not been changed:—In order to rebut the presumption arising under s. 50 cl. (2), it seems that the change of rent which is not substantial should be considered to be sufficient but the contrary rule was laid down in the cases in 1 W.R. 230 ; 4 W.R. 33, 7 W.R. 282 that the change should be a substantial one. All these cases were considered by B. B. Ghosh J. and it was held dissenting from those cases that the change need not be a substantial one and that the change of rent by one pice per *kani* was sufficient to rebut the presumption: *Dwijadas v. Dearish*, 28 C.W.N. 207 (notes) 29 July 1924. This decision was affirmed on Letters Patent Appeal by Cuming and Mukerji J.J., 44 C.L.J. 103 (12 Jan. 1926). See also *Prasanna v. Mahananda*, 40 I.C. 553.

Slight variation, if sufficient to rebut presumption.

But a contrary view was taken in the case of *Alimuddin v. K. S. Bonnerjee*, 29 C.W.N. 500, s.c., 41 C.L.J. 135 (Suhrawardy and Cuming J.J.), and it was held that where it was a slight change—an increase of 6 pies *i.e.* from Rs. 4/6 to Rs. 4/6/6, this variation did not debar the tenant from claiming the presumption even though the change is unexplained. The case of *Tarakumar v. Arunchandra*, 36 C.L.J. 389 was relied on. The decision of B. B. Ghosh J. in the case of *Dwijadas v. Dearish*, 28 C.W.N. 207 (notes) was not referred to.

It is submitted that the view taken by B. B. Ghosh J., affirmed on Letters Patent Appeal in 44 C.L.J. 103 has taken the correct view.

The variation between the *dowl jumma* of sicca rupees 614 and 15 annas and the defendant's admitted jumma Rs. 587 equal to Company's rupees 624-2-2 was held not to be such a variation as to preclude the admitted jumma being considered a fixed jumma: *Huronath v. Ameer Biswas*, 1 W.R. 230. (In the year 1836 the *sicca jumma* rupees were finally declared not to be legal tender: *Charitar Rai v. Kailash Behari*, 1918 Pat. 145 at p. 149). A mere variation in the rate of rent will not have a variation unless it be shewn that the tenant submitted to the varied and enhanced rate: *W. M. Grant v. Harsahai Singh*, 18 C.L.J. 76 ; see also *Gopal v. Nubbo Kishen*, 5 W.R. Act X 83. The variation arising from the change of sicca rupees into Company's rupees is no proof of any real change of rent: *Kalai Churan v. Shashee Dossee*, 1 W.R. 248 ; *Kattyani v. Soonduree*, *2 W.R. Act X p. 60. A nominal reduction in the jumma of one anna and three pies is not a variation that deprives a tenant of the benefit of the presumption: *Ramratno v. Chunder Mookhee*, 2 W.R. X, p. 74. See also *Karoona v. Shib Chunder*, 6 W.R. Act X, 50 ; *Monsoor Ali v. Bunna Singh*, 7 W.R. 282 ; *Ellahee Buksh v. Roopun*, 7 W.R. 284. Additional rent for additional land and the addition of a small illegal cess are not such variations as to deprive the tenant of the presumption: *Sumeroodin v. Huronath*, 2 W.R. Act X, 93. Where an abatement is allowed for lands rendered unculturable it is not such a variation as to deprive the tenant of the presumption: *Radha Govind v. Kyamatulla*, 21 W.R. 401. When a certain area of a holding was given to one tenant and certain area

Variation between the *dowl jumma* and the admitted jumma. Submission to varied rent.

Change of sicca rupees into Company's rupees. Nominal reduction.

Additional rent.

to another, and the rate of the *jumma* of the aliquot parts was not in proportion to the whole *jumma* but the whole *jumma* remained the same and unaffected, *held* that the tenant was entitled to the presumption: *Gopal Chunder v. Muthoor Mohun*, 3 W.R. Act X, 132. Where there was a variation in the total *jumma* from 60 to 61 rupees which seemed to have occurred many years ago and was not explained, *held* that it was not a material variation such as to deprive the tenant of the benefit of the presumption: *Anund Lall v. James Hills*, 4 W. R. Act X, 33. Relying on this case it was *held* that the presumption was not rebutted by shewing that there were slight variations between 1878 and 1884, which was sufficiently explained by very nearly corresponding variation on the area: *W. M. Grant v. Har Sahay*, 19 C.W.N. 117. Where the variation is as much as six annas on an alleged rental of Rs. 2-8 per bigha, it rebuts the presumption as arising out of s. 50: *Rajah Singh v. Kishun Behari*, 1917 Pat. 261, s.c., 41 I.C. 499. A change of money rent into rent in kind does not shew a variation in the rate of rent: *Miterjeet v. Toondun*, 12 W.R. 14.

Variation of
one rupee.

Change of
money rent
into kind.

Illegal cess.
Effect of
payment of
higher rent
under
compulsion.

Difference
of one
rupee.

Addition of a small illegal cess is not a variation: *Sumeroodin v. Huronath*, 2 W.R. Act X, 93. The mere fact of a tenant having been at some time forced to pay a higher rent is not sufficient to entitle the landlord to claim an enhanced rent: *Goluck v. Sandes*, 5 W.R. Act X 32.

The difference between Rs. 11-13 and Rs. 13-14 is sufficient to destroy the presumption of a uniform payment of rent: *Bissessur v. Wooma Churn*, 7 W.R., 44.

Sub-section (1) refers to the fact that whatever the contract might be, where the rent has not as a matter of fact, been changed from the time of the Permanent Settlement, the conditions laid down in it should prevail: *Jitendra Nath Roy v. Banku Behari Saha*, 96 I.C. 565 (Cuming and B. B. Ghosh J.J.).

See notes under heading no. 6.

Onus upon
tenant to
prove
uniformity
of rent.

8. Onus :—Where a tenant claims exemption from enhancement of rent under s. 50 the onus lies on him to prove the uniformity of rent as required by this section: *Govindo Priya v. Ralan Dhupi*, 4 C.L.J. 37. Where it was alleged that the tenant voluntarily abandoned a *mokurari* tenure and accepted a variable tenure instead, *held* that the onus lay upon the landlord to prove this allegation: *Goluck v. Sandes*, 5 W.R. Act X, 32.

9. Predecessor in interest :—This section entitles the holder of the land for the time being, *however he may acquire it*, to the benefit of the presumption, if he can shew that there has been a continuous and uniform payment of the same rent for 20 years: *Tirthanund Thakoor v. Herdu Jha*, 9 Cal. 252.

Permanent
Settlement.

10. Permanent Settlement :—When a question arises as to whether a tenant is entitled to the presumption under s. 50, cl. (2) of the Bengal Tenancy Act, the fact that the estate within which the tenure in question is situated was not permanently settled in the year 1793 does not make any difference: *Tamasha Bibi v. Ashutosh Dhur*, 4 C.W.N. 513. The date of the Permanent Settlement in the district of Jessore was the 11th April 1790: *Huro Nath v. Ameen Biswas*, 1 W.R. 231. Though certain provisions of Reg. 111 of 1828 go to shew that the Sunderbans, up to that date continued the pro-

Date of
Permanent
Settlement
in Jessore.

Sunderbans.

perty of the State and had not been permanently settled with any one, that was intended to be said generally with regard to the tract of country known as Sunderbans as a whole, and it could not have been intended to undo the effect of any lease granted by any duly-constituted Revenue authority. (Per Banerjee, J.), *Tamasha Bibi v. Ashutosh Dhur*, 4 C.W.N. 513.

The "Permanent Settlement" means the Permanent Settlement of 1793; so where an estate was permanently settled in 1905, the tenant to entitle him to claim the presumption under s. 50 must shew that he has been holding from 1793: *Osman Mondal v. Radhika Mohan*, 27 C.W.N. 647, the cases of *Tamasha Bibi v. Ashutosh*, 4 C.W.N. 513, and *Khettermoni v. Jiban Krishna*, 21 C.L.J. 315 were referred to.

The fact that a jama was created after the Permanent Settlement and therefore no presumption arose under s. 50 of the B. T. Act does not deprive the tenant to establish by evidence that there was a contract that the rent of the tenure should not be enhanced: *Gopi Mohan Majumdar v. Nawab Bahadur of Murshidabad*, 20 C.W.N. 723.

II. Alteration of area:—Additional rent for additional land does not shew that the old rent for the old land has increased: *Sumeroodin v. Huronath*, 2 W.R., Act X. 93. Where an abatement is allowed for lands rendered unculturable it is not such a variation as to deprive the tenant of the presumption: *Radha Govind v. Kyamtulla*, 21 W.R., 401.

Whether there is one or a series of tenancies or whether the land is held under the same landlord or different landlords is immaterial. It is sufficient for the purpose of the section that the rent or rate of rent has been the same from the time of the Permanent Settlement. Where it is provided by a kabuliyat that if the lands are measured and on measurement the tenant is found to be in possession of more land than what he is paying rent for he will pay rent for that excess land at the higher rate paid by the neighbouring tenants, the kabuliyat does not alter, nor does it propose to alter the rent or rate of rent within s. 50: *Umesh Ch. Das Gupta v. Bepin Behari*, 97 I.C. 546, s.c., A.I.R. (1927) Cal. 75 (Cuming and Page J.J.).

The tenants by holding additional lands for additional rent and paying the same along with the old rent and the old area do not lose the presumption as regards the old area and the old rent also, but the tenants are not entitled to the presumption for the added area although they are entitled to the presumption for the area which they held as was presumed before the Permanent Settlement. The onus of proving what the old area was and what the area is subsequently added, is upon the tenants, and if they show what the old rents were then they are entitled to the presumption under s. 50 so far as the old tenancy is concerned: *Hem Chandra v. Girish Chandra*, 92 I.C. 107, (Cuming and Chakrabarti, J.J.).

The presumption under sec. 50 (2) applies even if there has been an alteration in the area: *Modhusudan v. Jamiruddin*, 21 C.W.N. 116 (notes), s.c., 41 I.C. 767.

S. 50 (2) applies when an abatement has been allowed of a portion of the holding which has gone out of cultivation, if the abatement bears to the whole rent the same proportion that the land given up does to the whole area: *Genu Sheikh v. Taramani*, 41 I.C. 259.

Division of holding.

Consolidation.

Land need not remain as a separate holding.

Bengal Rent Recovery Act of 1859.

Subdivision of tenancy.

Amalgamation.

Subdivision of tenure
Applicability of
Cl. (3) Con-
flict of case
law.

12. Cl. (3)—Splitting up or amalgamation of holding or tenure :—The Zemindar, by consenting to a sub-division of, addition to, or subtraction from, the total holding of the raiyat, does not destroy the continuity of the tenure in respect of the rate of rent : *James Hill v. Huro Lal*, 3 W.R. Act X, 135. A consolidation of several *jummas* into one tenure does not deprive a tenant of the benefit of the presumption : *Kazee Khoda v. Nobo Kishore*, 5 W.R. Act X, 53. The principle laid down in this decision applies equally to *jummas* which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one *jumma* : *Raj Kishore v. Huree Hur*, 10 W.R., 117. The presumption was *held* to be rebutted where four tenures were amalgamated by one *kabuliyat* and rent was enhanced : *Upendra Nath v. Gopi Charan*, 22 C.W.N. 321, and also where the tenant expressly stipulated by a *kabuliyat* to pay enhanced rent at the *purgana* rate : *Upendra Nath v. Dwarkanath*, 22 C.L.J. 322. The presumption is not restricted to holding but refers simply to the fact that land has been held by a tenant which has not been changed for a period of 20 years before the commencement of the suit : *Ibid.* A tenant in order to be entitled to the presumption is only concerned to shew that the particular land which is the subject of suit has been held at an unchanged rent since the time of the Permanent Settlement and it is not important that that land should throughout that period have remained a separate holding : *Kasee Nath v. Bama Sundari*, 10 W.R., 429 ; see also *Sudhamukta v. Ramgati*, 20 W.R. 419.

“The cases of *Kasee Nath v. Bamasundari*, 10 W.R., 429 and *Sudhamukta v. Ramgati*, 20 W.R., 419 shew that the principle now embodied in sub-sec. (3) of s. 50 of the Bengal Tenancy Act is in accordance with the decisions of this Court under the Bengal Rent Recovery Act of 1859 : *Adit Singh v. Sakhranj Rai*, 17 C.L.J. 435 at p. 437.

When lands of a tenancy have been subdivided, if a question arises whether new tenancies have been created, the answer must depend upon the intention of the parties ; no inflexible rule apart from intention can be laid down : *Mulluck Chand v. Satis Chandra*, 11 C.L.J. 56.

The amalgamation of four tenures into one by one lease and where there was no suggestion that the incidents were the same, *held* that the *kabuliyat* created a new tenancy and the presumption arising out of sub-sec. (2) was rebutted : *Upendra Nath v. Gopi Charan*, 44 I.C. 595 ; but see *Bissessur v. Rajendra*, 18 C.W.N. 949.

Once it is shewn that any of the constituent parts of the tenure was not held at an uniform rent, no presumption can arise as to the tenure having been held at an uniform rent from the time of the Permanent Settlement : *Manmatha Nath v. Anath Bandhu*, 23 C. W.N. at p. 216, col. 2.

Where a tenure which was being held at a rent of Rs. 4-8 from before the Permanent Settlement but subsequently it was split up into two tenancies at Rs. 2-4 each, *held* that there was a splitting up and the tenant was not entitled to get the presumption under s. 50 : *Uday v. Nripendra*, 36 Cal. 287, s.c., 13 C.W.N. 410 ; this case was commented on in the case of *Chandra Kant v. Ram Krishna*, 20 C. W.N. 1002, s.c., 24 C.L.J. 275, and the contrary proposition of law was laid down by Mookerjee J., relying upon *James Hills v. Huro*

Lal, 3 W.R. Act X, Rul. 13 and *Kazee Khoda Newaz v. Naba Kishore*, 5 W.R. Act X, Rul. 53 that the continuity of a transferable tenure is not affected by sub-division or consolidation. The case of *Uday v. Nripendra*, 36 Cal. 287 was dissented from by Mookerjee and Rankin J.J. in the case of *Krishna Kamini v. Nilmadhab*, 36 C.L.J. 382, where it was held that the operation of sub-secs. 1 and 2 of s. 50 is not excluded by reason of sub-division or amalgamation of tenure; sub-sec. (1) contains the substantive rule on the subject of protection from enhancement, while sub-sec. (2) deals merely with the mode of proof; sub-sec. (3) is enacted solely with a view to secure the position of raiyats and not with a view to injure the position of tenure-holder. The case of *Krishna Kamini v. Nilmadhab*, 36 C.L.J. 382 was followed in the case of *Tarakumar v. Arunchandra*, 36 C.L.J. 389 (Mookerjee and Chotzner, J.J.).

The operation of s. 50 (3) is 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. The addition of other parcels to the original holding as well as the increase in the rental, change the incidents of the original holding and admittedly a new holding is created: *Kasimali v. K. S. Bonnerjee*, 101 I.C. 347. (Duval and Mitter J.J.).

13. It shall be presumed:—"Under the Bengal Tenancy Act, ^{Presump-} if for twenty years or more the landlord abstains from enforcing ^{tion.} enhancement this in itself confers no right upon the tenant, but merely gives rise to a presumption": *Birendra Kishore v. Mahomed Daulat Khan*, 43 Cal. 59 (*Per* Teunon, J., Sanderson, C.J., concurring). Where a tenant has paid rent for over 20 years prior to the date of suit at a uniform rate which has not changed, the presumption of law under s. 50, cl. (2) would arise if there is no allegation or proof that a tenancy commenced in a particular year after the Permanent Settlement, the mere fact that the tenant shews by documentary evidence that the rate of rent has not been changed from a particular year would not preclude him from the benefit of the presumption given by cl. (2); *Sheikh Mongola v. Maharajah Kumud Chandra*, 5 C.W.N. 60.

Where a raiyat holds at a rate of rent which had not been changed during the 20 years immediately before the institution of the suit or proceeding, it ought to be presumed that he has held at that rent or rate of rent from the time of the Permanent Settlement, and the fact, that he held at that rent or rate of rent, raises, in fact, the presumption, apart from the Act, that the original contract was a contract to hold at fixed rates and would be evidence from which any judge of fact could reasonably presume that there had been such a contract; so where in the course of settlement proceedings in connection with an estate, certain raiyats were recorded as raiyats holding at fixed rates, inasmuch as it was proved that they had been in possession of their lands without any alteration in their rent for 20 years, *held* that the Settlement Officer was right in recording them as raiyats holding at fixed rates: *Dulhin Golab Koeri v. Bulla Kurmi*, 25 Cal. 744, s.c., 2 C.W.N. 580 (decision of Special Bench of five Judges). It was held in *Bansi Das v. Jagdip Narain*, 24 Cal. 152, that the presumption created by this section does not operate to convert an occupancy raiyat into a raiyat at fixed rate; this case was dissented from in the case of *Dulhin Golab Koeri v. Bulla Kurmi*, 25 Cal. 744.

Presump-
tion under
sec. 50
operates to
convert
occupancy
raiayat into
fixed raiyat.

It is submitted that the presumption arising under this section does not convert an occupancy raiyat into a fixed raiyat. The presumption entitles the tenant only to this that the rent will not be enhanced and consequently the sections relating to enhancement of rent of an occupancy raiyat will not apply, but the other provisions relating to occupancy raiyats should apply. [It is no doubt true that apart from the Act a court may presume that the tenant is a permanent one as has been explained in the various decisions noted under in the notes under heading No. 6].

Proof under
Act X of
1859.

Under Act X of 1859, it was held that it was not necessary in order to give rise to the presumption described in s. 16 of the Act that the tenant should prove specifically the amount of rent which had been paid for his tenure each year for the preceding 20 years any evidence that satisfies the Judge that the rent has not during that period been changed, is enough: *Anand Mohan v. Kalidas*, 3 Rev. Jud. and Police Journal, p. 135.

Pattah.

Presump-
tion.

A tenant is not precluded from the benefit of his having held at a fixed rate of rent which has not been changed from the date of the Permanent Settlement or of any presumptive evidence to that effect merely from the fact of his stating that he holds under a *pattah* not inconsistent with that presumption, though he may fail to prove the *pattah*: *Greesh Chandra v. Kally Kristo*, 6 W.R. Act X, 57 (F.B.). It is not necessary that the tenant should claim to hold from the time of the Permanent Settlement in order to obtain the benefit of the presumption; the presumption arises on proof of payment of a uniform rent for 20 years: *Rakhal Das v. Kinooram*, 7 W.R. 242; *Poolin Behary v. Neemaye Chand*, 7 W.R. 472; *Dhum Singh v. Chander Kant*, 4 W.R. Act X, 162, but if a defendant pleads that he has held at the same rent on a *pattah* subsequent to the date of the Permanent Settlement, though upwards of 20 years, the defence annuls the presumption: *Luchmee Pershad v. Ram Golam*, 2 W.R. Act X, 30; *Watson & Co. v. Chote Joora*, Marsh, 80. The presumption is rebutted if it is shewn that the title commenced after the Permanent Settlement: *Ram Lall v. Lalla Pecumlall*, Marsh, 48. A tenant is bound to give strict proof of a uniform payment of rent for 20 years; it is not a matter which should be decided on mere inference: *Sham Lal v. Boistab*, 7 W.R. 407. The Judge ought not to presume a uniform rent for the 20 years preceding suit upon evidence, which only touches a portion of that period. For instance, suppose the evidence to satisfy him that the rent had been uniform for 18 years before suit he would be wrong in presuming from that alone that it must have been uniform for two years more also, or in other words for 20 years in the whole; on the other hand to support a finding of uniformity for any given numbers of years, it is not necessary that there should be evidence bearing directly on every year of that number; it is sufficient if the whole space of that time is included between limits upon which the evidence bears, provided that that evidence is such as to lead to the belief that the rent was uniform throughout the intervening period." (*Per Phear, J.*). *Catherine Fosehola v. Huro Chander*, 8 W.R. 284. See also *Sham Churn v. Dwarka Nath Kabiraj*, 12 W.R. 100; *Makmooda v. Huridhun*, 5 W.R., Act X, 12. But proof of payment of uniform rent is not necessary where the landlord refuses to take rent for a few years before suit: *Gya Ram v. Gooro Churn*, 2 W.R., Act X, 59.

In order to be entitled to get the presumption under sub-sec. (2) Transferee. it is not necessary to show that rent has been paid for twenty years *immediately* before the institution of the suit ; where it was proved that a raiyat paid rent at the same rate for many years and his transferee did not pay rent after his purchase for seven or eight years, held that that did not prevent the transferee from entitling to get the presumption: *Khirod Gobinda v. Gour Gopal*, 27 C.L.J. 281.

See notes under heading no. 6.

The presumption which arises from an entry in the record-of-rights is a very important piece of evidence and is conclusive until it is definitely rebutted by contrary evidence: *Bepin Behari v. Trailakyanath*, 31 C.W.N. 448 (Mukherji & Graham J.J.). It may be pointed out that the wording of sec. 103B cl. (3) is that the entry shall be presumed to be correct until it is proved by evidence to be incorrect.

Where the Record of Rights records the tenants as holding at fixed rates *held*: that it may require very slender evidence to rebut the presumption raised by that record, but so long as the entry remains unrebutted there is no onus on the tenants to produce evidence of a uniform rate of rent. Until that entry is displaced by the landlord the tenant is entitled to rely on it, and he is not bound to produce any evidence in support of the fixity of rent so long as the entry itself remains unrebutted: *K. S. Bonnerji v. Mahamed Faiz*, 96 I.C. 884 (Greaves and Panton J.J.).

14. Rebutting presumption:—The presumption is rebutted by the tenant relying upon a *pattah* granted after the Permanent Settlement: *Manmohan v. Watson & Co.*, W.R. (F.B.), 22 ; s.c., 1. *How presumption is rebutted.* Hay 232 ; *Ram Kishen v. Deler*, W.R., 1864, Act X, 36 ; *Beer Kishore v. Kunbooly*, W.R., 1864, Act X, 109.

The fact of a tenant relying on a *pattah* which is found to be forged does not entitle the landlord to a decree for enhancement of rent: *Issur Chander v. Nittanand*, B.L.R., sup. vol. 490 ; s. c., 6 W.R., Act X, 3. See notes under the previous heading.

It is open to a landlord to rebut the presumption by a contract of tenancy subsequently entered into between the parties which entitles the landlord to claim rent from the tenant after the expiry of the term of the lease at the rate of rent payable for the cultivable lands of the village: *Sarat Chandra v. Taraprasanna*, 36 Cal. 333. *Presumption may be rebutted by contract.*

A confirmatory lease after the Permanent Settlement was held as not to rebut the presumption arising under cl. (2) ; *Kumar Prasanna Deb v. Uddhab Chandra*, 28 C.W.N. 752 (P.C.).

A presumption under s. 50 was held to have been rebutted by the production of a kabuliyat, dated 1260 B. S. (1853), shewing that the tenant had agreed to pay enhancement of rent, the kabuliyat having amalgamated four pre-existing tenures ; *Upendra Nath v. Gopi Charan*, 22 C.W.N. 321, s. c., 31 C.L.J. 12. See also *Upendra v. Dwarkanath*, 22 C.W.N. 322 ; *Dhirendranath v. Ahamed Mia*, 30 C.W.N. 765 (Chakravarti J.). *Rebuttal of presumption by agreement to pay enhancement of rent.*

A contrary view was taken in the case of *Jitendranath v. Abejan-nessa*, 30 C.W.N. 1038 (Cuming and B. B. Ghose J.J.). See also *Abhoy v. Rajani*, 22 C.W.N. 904, s. c., 29 C.L.J. 371 (Teunon and Richardson, J.J.) in which the case of *Upendra v. Dhirendranath*, 22 C.W.N. 322 was distinguished. *Confirmatory lease, does not rebut presumption.*

Record-of-
rights
Onus.

If the landlord succeeds in showing that holdings, as recorded in the record of rights, were not in existence in the condition in which they were so recorded, in the previous years, the onus is shifted on the defendants to prove that their present holdings are made up of other holdings which also have borne uniform rental: *Nand Lal v. Kesho Prasad*, A.I.R. 1924 Pat. 245.

Presump-
tion not
rebutted
by return
under Reg.
VIII of 1793
S. 48 and
Reg. VII of
1799, S. 15.

Where in order to rebut the presumption under s. 50, cl. (2) the landlord produced a certified copy of an entry made in the Collectorate on the footing of a return submitted by his predecessor-in-title under Reg. VIII of 1793, sec. 48 and Reg. VII of 1799, sec. 15, *held* that as against the tenant it was of slight evidentiary value and the presumption was not rebutted: *Tarakchandra v. Prasannakumar*, 28 C.W.N. 679, s.c., 39 C.L.J. 389; where to rebut such presumption the landlord showed that the tenure was held in the name of the defendant's father and as such the tenure was created after the Permanent Settlement, *held* that this also did not rebut the presumption in as much as the defendant's father might have introduced his name after he acquired the property: *Ibid*.

A tenant is not deprived of the presumption merely by reason of the landlord claiming an enhancement and refusing to receive or acknowledge the old rent: *Mohini Kant v. Preonath*, A.I.R. 1922, Cal. 143; the rent continues to be the same until a change has actually been effected which may be either by consent or suit.

The mere fact that a taluk is not entered in the Quinquennial Register is not sufficient to rebut the presumption arising under this section: *Hemchandra v. Binayak*, 86 I.C. 538.

Question,
whether
tenant held
at uniform
rate, if one
of fact.

The question whether a tenant has held at a uniform rate for 20 years is a question of fact and not of law and not even of mixed fact and law, upon which the finding of the Court of first appeal is conclusive: *Alimuddin Mollah v. K. S. Bonnerjee*, 29 C.W.N. 500; s. c., 41 C.L.J. 135.

In a proceeding under sec. 105 of the B. T. Act for settlement of fair and equitable rent, the tenants relied upon receipts for 20 years to show uniform payment of rent as a basis for the presumption under section 50 of the said Act and the landlord adduced evidence in rebuttal of that presumption, of *Jamawasilbaki* papers of more than 70 years old shewing realisation at different rates of rent, *held*, that the genuineness of the *Jama wasil Baki* papers being more than 70 years old, could be presumed under sec. 90 of the Evidence Act; that these papers had the effect of rebutting the presumption under section 50 of the B. T. Act by showing that previous to 20 years for which uniform payment of rent had been shown there was realisation of different rates of rent: *Nirod Krishna v. Prodyot Coomar Tagore*, 45 C.L.J. 129. The case of *Dukha v. Grant*, 16 C.L.J. 24 was followed.

The liability of enhancement was imposed not by *Jamawasil Baki* papers but by the law which in absence of the presumption under sec. 50 of the B. T. Act or upon rebuttal of that presumption imposed a liability to enhancement upon tenants: *Ibid*.

Where the tenants have produced dakhilas of a uniform rate of rent for over twenty years which gives them the presumption that their rent is fixed, the presumption is not rebutted by producing *jama wasil baki* papers of over hundred years old, wherein the tenancies

do not find a place: *Kasimali v. K. S. Bonnerjee*, 101 I.C. 347 (Duval and Mitter J.J.).

Collection Papers:—In order to rebut the presumption arising out of sub-sec. (2) of s. 50, the landlord often produces *jama bandi* papers or *jama wasil baki* papers or other collection papers. *Jama-wasil baki papers, and collection papers, if independent evidence.*

The question therefore arises as to whether under s. 34 of the Evidence Act the entries in these collection papers are admissible in evidence without corroboration or these are independent evidence, if it is proved that they are kept in ordinary course of business. *S. 54, Evidence Act.*

The next question which arises is as to whether they may be proved under s. 32, cl. (2) of the Evidence Act and not requiring corroboration. *S. 32 cl. (2).*

The elements of s. 34 of the Evidence Act are as follows:— *S. 34.*

1. They must be Books of account.
2. and should be shown to be regularly kept in the course of business,
3. and if it is sought by the entries to charge any person with liability then the entries alone shall not be sufficient evidence, (i.e., corroboration is necessary).

Now, if it is sought by the collection papers to charge any person with liability, then corroboration is necessary, otherwise not. In the case of *Belayet v. Rash Behari*, 22 W.R. 549, it was held that *jama baki* papers do not charge any person with liability and therefore they are independent evidence. But the contrary rule was laid down in the case of *Surnamoyi v. Jahar Mahomed*, 10 C.L.R. 545 and it was held that *jama wasil baki* papers are not independent evidence but require corroboration. It is submitted that the decision in the case of *C.L.R. 545* lays down the correct law in as much as the entries in *jama wasil baki* papers are sought to prove the variability of the rent and if it is shewn the *mokurari* character of the tenancy will be established; and therefore when the entries have the effect of charging any person with liability they must require corroboration within the meaning of s. 34. This view has also been taken by Mookerjee and Chatterjee, J.J. in the case of *Aktawali v. Tarack Nath Bose*, 17 W.N. 774, s. c., 16 C.L.J. 328 and the learned judges have held following the case of *Surnamoyi v. Jahar Mahomed*, 10 C.L.R. 545 that collection papers are not independent evidence but require corroboration within the meaning of s. 34. *Charging a person with liability. Conflicting cases discussed.*

It seems to be the settled law on the subject. [All the cases discussed in the judgment in the case in 17 C.W.N. 774, s. c., 16 C.L.J. 329.] In the case of *Umed Ali v. Nawab Khaje Habibulla*, 17 W.N. 68, N. R. Chatterjee and Duval, J.J. held that under s. 34 of the Evidence Act *talab-baki* papers are not sufficient evidence to charge any person with liability. The learned judges discussed the various opinions on this subject and referred to the cases on the subject.† *Law settled.*

But it has been held that *jama wasil baki* papers or *talab-baki* papers or other collection papers if they can be

* For the cases which were discussed and referred to: See 17 C.W.N. at pp. 776, 777 and 778.

† *Surnamoyi v. Jahur Mahomed*, 10 C.L.R. 545, *Belayet Khan v. Rash Behari*, 22 W.R. 549 and *Dukha Mandal v. W. N. Grant*, 16 C.L.J. 24.

§. 32 cl. (2). brought within the meaning of s. 32, cl. (2), the entries will be admissible in evidence (without corroboration); i.e., if the facts mentioned in the earlier part of s. 32 and and also cl. (2) are proved as being the statements of persons who are dead, &c., &c., see the case of *Dukha v. Grant*, 16 C.L.J. 24, *Aktowli v. Tarak Nath*, 17 C.W.V. 774, s.c., 16 C.L.J. 328 and *Ram Pyarabi v. Balaji*, 28 Bom. 294. See also the case of *Jonab Biswas v. Siva Kumari*, 46 C.L.J. 253 (Rankin, C.J. and Mitter J.) where it has been held that Jamawasilbaki papers, in the absence of circumstances mentioned in Sec. 32 of the Evidence Act, such as in the absence of proof that the writers or the makers of the entries therein, at the date of the trial, were dead or could not be procured without unreasonable expense or otherwise, are evidence which in the presence of other substantive evidence may be used as corroborative but cannot be regarded as proving any fact by itself.

Rules laid down

The case-law may be summarised and the following two rules may be laid down—

- (1) Under s. 34 of the Evidence Act collection papers produced to rebut the presumption under s. 50 of the B. T. are not independent evidence (and they require corroboration as they are sought to charge liability to tenant).
- (2) The collection papers are independent evidence without requiring corroboration if the entries are proved to be the meaning of s. 32 cl. (2) of the Evidence Act if they are statements of persons who are dead and if they are kept in ordinary course of business.

Soundness of the second rule doubted.

It is submitted that the soundness of the second rule stated is open to doubt. If this is good law it creates a great anomaly: a party will be in a better position if the writer of the collection papers is dead or cannot be found, &c. If the writer is alive, a party relying upon the collection papers, will be required to produce the papers by examining the writer and also to produce corroborative evidence: whereas no such corroboration is necessary if the writer is dead or cannot be found. It is therefore submitted with great respect to the learned judges who have laid down the second rule stated above that the rule laid down is not good law. Moreover s. 32, cl. (2) cannot be said to override the provisions of s. 34. These two sections are read together it would appear that the accounts which are dealt with in s. 34 are not contemplated by s. 32, cl. (2).

The collection papers which have not been proved by the person who make the collections should not be treated as independent evidence of the amount realised; *Faijaddin v. Agnikumar*, 1924 Cal. 370.

Holding in the hands of a transferee.

15. Effect of transfer of non-transferable holding.

When a non-transferable holding is sold the landlord becomes entitled to *khas* possession on the ground that the tenant has abandoned the holding and the purchaser is a trespasser; it often happens that the landlord recognises the transferee as a tenant on payment of *nazar* or *selami*; in such cases a question arises as to whether the uniform payment of rent for twenty years, a part or the whole of which during the period of occupation of the former tenant, will raise a presumption

tion under s. 50 ; it is submitted that the old tenancy cannot be said to continue in the hands of the transferee and that the recognition by the landlord creates a new tenancy : this view is supported by the principle enunciated in the case of *Sarat Chandra v. Syam Chand*, 39 Cal. 663, s. c., 16 C.L.J., 71. See also the case of *Ramanath v. Jagannath*, 106 I.C. 136 (Cuming and Roy J.J.) where it was held that when a landlord purchases a holding at a rent sale and re-settles the land with the same tenant, the continuance of the old tenancy is broken and the presumption under Section 50 of this Act does not apply. A new tenancy is created when a tenant transfers a portion of his holding and a landlord recognises a transferee, *Ibid*. See also *Dhirendranath v. Ahmedmia* 30 C. W. N. 765 (Chakrabarti J).

The defendant purchased a non-transferable occupancy holding which bore a rent of Rs. 12-12-0. The plaintiff landlord refused to recognise the defendant as a purchaser and in consequence the landlord would have been entitled to khas possession. In order to retain possession of this holding, the defendant agreed to pay a rent of Rs. 18-11-0 and upon these terms, the landlord allowed him to remain on the land, *held*, that it was not a question of enhancement of rent of the original tenant but the defendant whose position by virtue of his purchase was only that of a trespasser as against the landlord took a new settlement after his purchase at the rate of rent sued for : *Ferasat Ali v. Priamboda Devi*, A. I. R. 1924, Cal 544 (Ghose, J). But a contrary view was taken in the case of *Abhoy v. Rajani*, 22 C.W.N. 904, s.c., 29 C.L.J. 371 where it was held that the purchaser of a non-transferable holding who has obtained recognition from the landlord is admitted, in the absence of special circumstances, into the original tenancy with all its incidents.

See notes under s. 29.

16. Sub-section (4) :—This Sub-section can only refer to the case of a tenure which is held for a term of years at the time of the suit or proceeding. Where the term of a Kabuliyat expired in 1872, *held*, that the tenant was not precluded from the benefit of the presumption under Section 50 (2) of this Section: *Atafal Ali v. Ghulam Mahiuddin* 11 C.W.N. 63 (notes).

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

Pres-
tion
amc
rent
conditions
of holding.

Headings of Notes.

1. HOLDING.
2. HOLDING OVER : NOTICE TO QUIT.
3. HOLDING OVER UNDER ONE OF SEVERAL JOINT LANDLORDS.
4. PRESEMPION—CONDUCT OF THE TENANT.
5. AGREEMENT TO HOLD OVER.
6. DECISION IN A PREVIOUS SUIT AS TO THE AMOUNT OF RENT.
7. HOLDING OVER BY ONE SEVERAL TENANTS.
8. LIABILITY OF DECEASED CO-TENANT'S HEIR FOR HOLDING OVER.

9. DISPOSSESSION OF A TENANT HOLDING OVER.
10. EFFECT OF HOLDING OVER IN THE ACQUISITION OF OCCUPANCY RIGHT.
11. MEANING OF "HOLDING OVER."
12. LIMITATION.
13. HOLDING OVER.

1. Holding :—The word "holding" in the marginal note of the section has been used in the broad sense to include all classes of tenancies and is not used in the restricted sense as defined in s. 3 cl. (g).

Tenant holding over, not a trespasser.

Notice to a raiyat holding over.

2. Holding over: Notice to quit :—A raiyat of at least 10 years' standing and holding over is not a trespasser and cannot be ejected until his tenancy has been determined by a notice to quit or some other legal manner: *H. B. Dalglish v. Damodar*, 8 C.L.J. 533; where a raiyat held over it was held that he was entitled to a notice to quit before ejectment: *Kishen Ojha v. Bujrangi*, 13 C.W.N. 180 (notes). The serving of notice to quit, on the person who continues in occupation after the expiry of the term, does not make him a tenant whose tenancy is to be terminated by a notice to quit: *Paramananda v. Syjon Singh*, 24 C.L.J. 30.

3. Holding over under one of several joint landlords :—A tenant can be said to be holding over, if there is acceptance of rent by all the co-owners, or if they otherwise assent to the continuance of the tenant by their words or conduct. Where a tenant holds after the expiry of the lease and pays rent to one of the joint landlords for his share, if there is any holding over it is in respect to the share of that landlord to whom he paid rent and a new tenancy is created in respect of that share and not in respect to the other shares: *Monmohon v. Hatem Makhbul*, 29 C.L.J. 473. No question of notice arises when a suit is brought for ejectment of the share held over: *Ibid*.

Conduct of the tenant.

4. Presumption—Conduct of the tenant :—The presumption under sec. 51 of the Bengal Tenancy Act is one that has regard to the conduct of the holding over. It is a presumption, until the contrary is shewn, that a tenant who holds over, holds at the same rent and under the same conditions as in the last preceding agricultural year. That is not the same thing as considering whether a judgment of the court in a rent suit decided the question of rental in the form of a general issue: *Ram Asis Upadhyay v. Balu Ramdhani Sinha*, 14 C.W.N. 56 (notes).

Agreement to hold over—registered instrument.

5. Agreement to hold over :—An agreement that a tenant should hold over from year to year is in essence an agreement to grant a lease from year to year and should be by a registered instrument: *Mati Lal v. Darjeeling Municipality*, 17 C.L.J. 167.

6. Decision in a previous suit as to the amount of rent :—Decision in a previous rent-suit as to the amount of rent annually payable gives rise to a presumption under this section as to the rent of a subsequent year, although it may not operate as *res judicata*: *Kali Ray v. Pratab Narain*, 5 C.L.J., 92; *Beni Prasad v. Rajkumar*, 6 C.W.N. 589. The same principle applies to the question whether the tenant held at *bhowli* or *nakdi* rent for a particular period: *Ibid*.

Holding over by one

7. Holding over by one of several tenants :—The holding over by one or more co-tenants without the consent of the others

cannot render the persons not so holding over liable to rent: *Draper v. Croft*, 15 M. M., and W. 166; see also *Brojo Lal v. R. Belchamers*, 9 C.W.N. 340. co-tenant does not make another liable for rent.

8. Liability of deceased co-tenant's heir for rent for holding over—In order to make the estate of a deceased co-tenant liable for rent due for holding over the onus lies heavily on the plaintiff to prove that after the expiry of the lease a new contract was made making all jointly and severally liable to perform the conditions of the tenancy: *Brojo Lal v. Belchambers*, 9 C.W.N. 340. Onus.

9. Dispossession of a tenant holding over :—When there is a current lease and the tenant is dispossessed by a third party time does not commence to run against the landlord until the expiration of the lease but where the lease has expired and the tenant is holding over with the landlord's consent and the possession of such third party is adequate in continuity, in publicity and in extent so as to show that it is possession adverse to the landlord, the latter is not precluded from determining the tenancy and suing the trespasser in ejectment and his right to sue will be barred after 12 years of such dispossession: *Kishwar Nath v. Kali Sankar*, 10 C.W.N. 343.

10. Effect of holding over in the acquisition of occupancy right :—Where after the expiry of a lease comprising agricultural and non-agricultural lands the landlord wanted to eject the tenant, held that the tenant could not be ejected from the agricultural lands, he having acquired a right of occupancy: *Hayes v. Ghina Barhi*, 33 Cal. 459. A raiyat holding over acquires a right of occupancy.

11. Meaning of "holding over" :—The expression "holding over" "means that the relation of landlord and tenant continued with the assent of both parties, and the overt acts, by which the relation might be continued, are either the receipt of rent, by the landlord or his assenting to the continuance of the tenancy by other acts or words": *Ratan Lal v. Farshi Bibi*, 34 Cal. 396.

12. Limitation :—Where a tenant holds over after the expiry of the lease, held that the time begins to run against the landlord on the expiry of the term of the lease under article 139 Sch. II of the Limitation Act: *Pusamal v. Makadum*, 31 All. 514; see also *Kantheppa v. Seshappa*, 22 Bom. 893 *Chandri v. Daji Bhow*, 24 Bom. 504; *Madan Moham v. Rameshar*, 7 C.L.J. 615; *Khunni Lal v. Madan Mohan*, 6 A.L.J. R. 293 but see *Adimulum v. Pir Revuthan*, 8 Mad. 424. Time begins to run at the expiry of the lease.

A tenancy by sufferance would not by itself make the passession of the holder rightful, so as to prevent limitation from running: but if the landlord or the person entitled to resume the tenancy, does anything to indicate his assent to the continuance of the tenancy by sufferance into a tenancy from year to year, and in such a case the limitation applicable to that provided by art. 139 of Sch. II of the Limitation Act: *Ramchandra v. Bhikambar*, 37 Cal. 674. Tenancy by sufferance.

13. Holding over :—If, after the expiration of a lease a land-owner continues to receive rent for a fresh period, he must be considered to have acquiesced in the tenants, continuing to hold upon the terms of the original lease, and cannot turn out the tenant or treat him as a trespasser, without giving him a reasonable notice to quit: *Ram Khalwan v. Musst. Soondra*, 7 W.R. 152; see also *Ooma* Tenant holding over holds on the terms of his expired lease.

Lochun v. Nitye Chand, 14 W.R. 467 ; *Jumut Ali v. Chowdhury Chulturdharee*, 16 W.R. 185 ; *Chaturi Sing v. Makund Lal*, 7 Cal. 710 ; s. c., 9 C.L.R. 240. Where a tenant holds over after the expiration of his lease, he does so on the terms of the lease, on the same rent and on the same stipulation as are mentioned in the lease until the parties come to a fresh settlement ; *Kishore Lal v. The Administrator-General of Bengal*, 2 C.W.N. 303 ; see also *Sreemutty Altav Bibee v. Joogul Mundul*, 25 W.R. 234 ; *Sheo Sahoy v. Bechun Sing*, 22 W.R. (31) 32 ; *Tara Churn v. Ameer Mundal*, 22 W.R. (394) 395 ; *Shaik Enayatullah v. Sheikh Elaheebaksh*, W.R. 1864, Act X, p. 42 see also *Baijnath v. Raghunath*, 16 C.W.N. 496 ; see also *Administrator-General of Bengal v. Asraf Ali*, 28 Cal. 227 ; *Beniprosad v. Raj Kumar*, 6 C.W.N. 42. Where there is no covenant for renewal, if the option does not state the terms of renewal, the new lease would be for that same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal itself : *Secretary of State v. Forbes*, 27 C.L.J. 443 ; see also *Secretary of State v. Forbes*, 16 C.L.J. 217 and *Lani Mia v. Muhammad Easin*, 20 C.W.N. 248 : *Secretary of State v. Sibaprasad*, 27 C.L.J. 447 : where in a lease there was a stipulation to the following effect : " If I agree to the enhancement of rent to be fixed at the time of the next settlement in future, the Government shall have the power to settle the lands with me or if I do not agree then with others ;" held that the clause in the lease was in essence a covenant for renewal : *Ibid.* There is no general rule of law to the effect that the lease of an agricultural tenant in this country who holds over, must be taken as renewed from year to year, and if any contract is to be implied, it should be taken to have been entered into as soon as the term of the lease expired rather than at the beginning of each year : *Kishore Lal v. The Administrator-General of Bengal*, 2 C.W.N. 303. But it has been held that when an agricultural tenant holds over, his tenancy is from year to year : *Administrator-General of Bengal v. Asraf Ali*, 28 Cal. 227 (at p. 233). Where the term of a *kabuliyat* expired some years before the passing of the Bengal Tenancy Act and the tenant continued to hold over after the expiry of the lease, held that the tenant was liable to pay interest at the *kabuliyat* rate even after the passing of the Bengal Tenancy Act : *Ibid.* But where an agricultural tenant continued to hold over after the expiry of the lease in 1881, held that the landlord could not recover interest at the rate mentioned in the lease but was entitled to interest at the rate provided for in s. 67 of the Act : *Administrator-General of Bengal v. Asraf Ali*, 28 Cal. 227 ; their Lordships (Ameer Ali and Brett, J.J.), in delivering judgment observed as follows :—" Supposing the contract was expressly renewed after the passing of the Act and the stipulation as to interest was embodied in a new lease, the tenant would not be bound by it and the stipulation would not be enforceable under the law. It would be anomalous to hold that what cannot be done by a lease may be done by allowing the tenant simply to hold over." See also *Ali Mamud v. Bhagabati*, 2 C.W.N. 525 ; *Alim v. Satis*, 25 Cal. 37. See notes under s. 67.

Holding
over,
implied
contract.

Renewal of
lease from
year to year

Interest.

Burden of
proof.

The mere fact that a tenant some time ago gave a *kabuliyat* for a limited period at a particular rate of rent is not sufficient in itself to throw upon the defendant the entire burden of proving what the present rent is, without any evidence on the part of the landlord that

the rent specified in the *kabuliyat* had ever been realised from him : *Mahund v. Arpan*, 2 C.W.N. 47.

When a raiyat holds over he is bound to pay rent at the rates ^{Rate of} current for similar lands in the village : *George Tommy v. Soobba* ^{rent.} *Kurim*, 2 W.R. Act X, 73.

A tenant holding over after an expired lease would generally be considered as lawfully in possession, and as having an interest in the land, and where such a tenant who holds over is dispossessed he has a right to be restored to possession and has the same right if, having been ejected during his lease expires pending a suit to recover possession : *Shaikh Arub v. Ashruf*, 24 W.R. 335. Right to be restored to possession.

When a tenant holds over he may be ejected on the expiration of lease without the intervention of Court ; *Chowdhury Isharool v. Bhoosee Makton*, 25 W.R. 201. Ejectment.

After the expiry of the lease the tenant becomes a yearly tenant upon the same conditions so far as applicable to a yearly tenancy and when after the tenant the heir is recognised he becomes a yearly tenant upon the same conditions as far as applicable to a yearly tenancy : *Mahomed Ayefjuddin v. Pradyot Kumar*, 25 C.W.N. 13.

Where in a *ticca* lease for a term it was stipulated that the grantor would execute a fresh *patta* for another term on the expiry of the first lease, *held* that the lessor was not entitled to eject the lessee after the expiry of the first lease although he had not executed a fresh *patta*, and the lessee who was in possession was entitled to possess for a fresh term : *Mohit Narayan v. Kamal Nath*, [1923 Pat.] p. 23. Ticca lease —ejectment suit after expiry of lease.

For the ejectment of a non-occupancy raiyat upon the expiration of the term of his lease, there must be a notice to quit, not only a notice to quit, but a notice served on the raiyat not less than six months before the expiration of the term : *Goburdhone v. Karuna*, 25 Cal. 77. Res judicata.

A decision in a previous rent suit as to the amount of rent annually payable was held not to operate as *res judicata* in a suit for the rent of subsequent years, although it was held that it gave rise to a presumption under this section that the rents for subsequent years remained the same : *Beni Pershad v. Rajkumar*, 6 C.W.N. 589.

The assent of the landlord to the continuance of the occupation of the tenant after expiry of the term may be indicated by acceptance of rent or by conduct which justifies an inference to that effect : *Paramananda v. Syjon Singh*, 24 C.L.J. 30 ; the fact that the landlord tolerates the continuance in occupation of the tenant after expiry of the term, does not make his former tenant, his tenant in future : *Ibid.*

A landlord is entitled to claim damages against a tenant who holds over, either for breach of his contract to yield up peaceful possession or for trespass. It is also well-settled that the measure of damages for trespass whether the claim is founded on contract or on tort, is not the value of the land, but the real damages sustained, which may be considerable or merely nominal : *Sundermall v. Ladhuram*, A.I.R. 1924 Cal. 240 (Page J.).

Alteration of rent on alteration of area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of

Alteration of rent for alteration of area.
Alteration of rent in

respect of
alteration
of area.

the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made; and

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

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

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

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

and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

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

(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

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

Headings of Notes.

1. ADDITIONS AND ALTERATIONS.
2. BACK RENT.
3. UNDIVIDED SHARE OF LAND.
4. EVERY TENANT.
5. SEC. 105.
6. SUIT FOR ENHANCEMENT UNDER SS. 30 AND 52.
7. SCOPE OF SEC. 52.
8. ASSESSMENT OF RENT UPON CONTRACT: WHAT SUITS DO NOT COME UNDER THE PURVIEW OF THIS SECTION.
9. SECTION 188.
10. LAND WITHIN DEFINED BOUNDARIES.
11. AREA FOR WHICH RENT HAS BEEN PREVIOUSLY PAID.
12. SUB-SECTION (3).
13. SUB-SECTION (5).
14. ENCROACHMENT.
15. ABATEMENT OF RENT.
16. ABATEMENT OF RENT FOR DILUVION.
17. APPORTIONMENT OF RENT.

18. ACCRETION.
19. RE-ASSESSMENT OF REVENUE.
20. INCREMENT.
21. STANDARD OF MEASUREMENT.
22. PROCEEDING UNDER SECTION 158.
23. RESJUDICATA.
24. LIMITATION.
25. FRAMING OF SUIT UNDER SECTION 52.
26. SUB-SECTION (6).
27. RIGHT TO ADDITIONAL RENT : RECURRING RIGHT.
28. 10 P.C. DEDUCTION FROM AREA ASCERTAINED BY MEASUREMENT.

I. Additions and alterations :—Sub-sec. (5) was added by Bengal Act III of 1898 and sub-sec. (6) was added by the Bengal Tenancy Amendment Act I of 1907 and E. B. and A. C. Act I of 1908.

Back-rent.

2. Back rent :—There is a fundamental distinction between claim for additional rent and a claim for enhancement of rent. It is well settled that a landlord may claim back-rent for additional area under sec. 52 ; on the other hand s. 154 requires that the court should specify the date from which the decree for enhancement should take place. A decree for enhancement therefore can never have retrospective operation and back-rent cannot be claimed at enhanced rate in the suit in which enhancement is sought : *Ejel Mullick v. Felai Mullick*, 21 C.L.J. 309.

There is nothing in the Bengal Tenancy Act to debar the landlord from claiming back rents for any additional area, if such additional area was in the use and occupation of tenant : *Juggernath Manjhi v. Jumman Ali Patwari*, 29 Cal. 247. See also *Assanulla v. Mohini Mohun*, 26 Cal. 139. There is no provision in s. 52 or in any other section as is to be found in sec. 154 which prescribes the time from which a decree for enhancement of rent is to operate : *Ibid*.

A landlord is entitled to back-rent for additional area under s. 52 ; *Manmatha v. Surendra*, 40 C.L.J. 538.

A purchaser at a private sale from a mortgagor is bound by law to pay the arrears of rent for which a decree had been obtained by the landlord prior to his purchase, though by the terms of the *kabala* his purchase is free from liability for the back rents : *Sarajubala Kamini Kumar*, 43 C.L.J. 142 (Suhrawardy and Mukerji J.J.).

Undivided
share of
land.

3. Undivided share of land :—A suit for enhancement of rent or for additional rent of an undivided share (of a raiyati holding) does not lie in as much as an undivided share of land is not a holding : *Harnandan v. Kesho Prasad*, 40 I.C. 585 (Patna) ; see notes under s. 3 cl. (9) and under s. 30).

It is submitted with great respect that this decision is open to doubt so far as regards the right of a landlord to claim additional rent under s. 52 ; for the word used in s. 52 is "land" and not "holding." The word used in s. 30 is "holding" and so a landlord is not entitled to sue for enhancement under that section in respect to an undivided share of land. The word used in s. 105 is *land* and not *holding*, and it has been held in a case under that section that an application for settlement of fair rent of an undivided share of *raiya* land is maintainable under s. 105 in as much as the

word there used is "land" and not "holding," *Sarifennessa v. Saferddi*, 21 C.L.J. 592 at p. 595. The same principle, it is submitted, should be applied to cases under s. 52.

It should be pointed out here that an undivided share of a parcel of land may form the subject matter of a distinct *tenure* and therefore a suit for enhancement of rent or for additional rent is maintainable to an undivided share of land which forms a *distinct tenure*.

4. Every tenant :—The words "every tenant" in this section includes a *patnidar*: s. 195 does not prevent s. 52 from applying to the case of a *putnidar*: *Ranjit Singh v. Abdur Rahim*, 45 I.C. 190.

The term "tenant" in this section does not include the case of a mere co-sharer tenant who has only a fractional share in the tenure, it means the tenant of the tenure, not one of many tenants. In a suit for arrears of rent by some of several joint landlords against one of several joint tenants, who had for many years paid rents to the plaintiffs in respect of the plaintiffs' 3 ans. 3 pies share, *held*, that the defendant was not entitled to claim abatement under sec. 52 sub-sec. (1), cl. (b), that his proper remedy was by suit making all the co-sharer landlords and tenants parties: *Bhoopendra v. Romon*, 27 Cal. 417 s. c., 4 C.W.N. 107. When a tenure or holding is sold the auction-purchaser has the right to claim any abatement which may have accrued to the predecessor: *Kali Prasanno v. Dhananjai*, 11 Cal. 625, but see *Prossunna v. Doyamoyee*, 22 W.R. 275.

Where a specified portion of a holding was sold by the raiyat, liberty being reserved to the assignee to use his name both in the *sudder* and in the *muffasil*, and the assignee entered into a separate settlement in respect of the lands assigned to him, *held* that the result was that the original holding was made into two separate holdings, and in a suit for additional rent for excess area under this section against the assignee the original tenant was not a necessary party; *Juggernath Manjhi v. Jumman Ali Patwari*, 29 Cal. 247.

5. Sec. 105 :—In a proceeding under s. 105 the Settlement-officer has jurisdiction to settle fair rent on excess land; *Paltoo Pandey v. Newas Prosad*, 18 C.W.N. 165.

6. Suit for enhancement under ss. 30 and 52 :—There is nothing in the law which prevents one suit being brought for enhancement under s. 30 and for increase of rent under s. 52; the two causes of action may be joined in one suit: *Sarada Charan v. Iswar Samli*, 11 C.W.N. 1154.

7. Scope of s. 52 :—Section 52 is not exhaustive: *Ramdas v. Asutosh*, 15 C.L.J. 310 s. c., 14 C.W.N. 152 (notes).

8. Assessment of rent upon contract: What suits do not come under the purview of this section :—Where the terms of the *patta* were that the whole of the lands being brought under cultivation, the landlords would be at liberty to measure the lands of the *ganti*, and if the land be found in greater quantity than 150 bighas, the tenant would pay rent at the rate of 10 annas per bigha, and the land being found greater than the said quantity, plaintiff, one of the co-sharer landlords, brought a suit for rent at that rate for the whole area claiming his own share making the other co-sharer landlords as defendants, *held* that the suit was maintainable at the instance of the plaintiff alone and that it was not a suit to alter the rent under the provisions of the section: *Dintarini*

Co-sharer tenant not a tenant within the meaning of this section.

Auction-purchaser of tenant's interest.

Separate settlement by an assignee of a portion of holding.

One suit under ss. 30 and 52 maintainable.

Suit upon contract not a suit under this section.

Suit upon kabuliyat for rent of land a part of which was unassessed at the date of kabuliyat.

Tenure protected from enhancement under s. 4 of Act X of 1859.

Existence of agreement.

Jungly land.

v. L. P. D. Broughton, 3 C.W.N. 225. A suit for arrears of rent under the terms of a *kabuliyat* at the original rate specified in the *kabuliyat* in respect of the land demised, part of which was left unassessed at the time by reason of its not being then culturable is not a suit for enhancement in the ordinary sense of the term, nor even it is a suit for additional rent for land found in possession of the tenant in excess of what he was paying rent for and where a co-sharer land-lord is in separate receipt of his share of the rent there can be no bar to his maintaining a suit for recovery of arrears of his share of the rent: *Ram Chander v. Giridhur*, 19 Cal. 755. It was held in the case of *Richard De Gouroy v. Meghnath*, 15 W.R. 157, that the rent of a tenure protected from enhancement under the provisions of sec. 4 of Act X of 1859 could not be increased on the ground of excess land.

The case of *Baidyanath v. Ilim*, 25 Cal. 917, s. c., 2 C.W.N. 44 shews that the existence of an agreement does not necessarily take the suit out of the Bengal Tenancy Act, and it was therefore held that the rule laid down in the case of *Govinda v. Hamidutta*, C.W.N. 670 to the effect that s. 188 of the Act has no application where there is a *kabuliyat* in favour of an individual co-sharer land-lord does not apply to a case where the *kabuliyat* is in favour of the entire body of joint landlords: *Dwarka Dhakai v. Mathura Lal*, 18 C.W.N. 942. The case of *Dintarini v. Broughton*, 3 C.W.N. 225 was distinguished on the ground that the liability of the tenant there came into existence before the passing of the Bengal Tenancy Act.

The case of *Dwaraka Dhakai v. Mathura Lal*, 18 C.W.N. 942 was distinguished in the case of *Bhosal v. (Bhasae) Aminuddin*, 21 C.W.N. 371, s. c., 25 C.L.J. 469 and it was held that s. 52 had no application in a case where the land was at the time of letting waste and jungly and was not measured but a certain area was stated by guess and it was provided that the tenants would pay rent at a fixed rate per bigha when the lands would be reclaimed or the surrounding lands brought under cultivation; s. 188 is not applicable to such a case.

A suit by a co-sharer landlord for assessment of rent in respect of a holding under separate agreement is not an act that is "authorised" by the B. T. Act, within the meaning of s. 188, and sec. 52 does not apply to it: *Partap Mahton v. Musst. Wazirunnissa*, 4 Pat. 604.

A suit to assess rent is consistent with and arises out of the general law and the land revenue system of the country, and is irrespective of anything in the B. T. Act; *Dhananjoy v. Upendranath*, 22 C.W.N. 685.

See also *Shibsahai Lal v. Bejoychand Mahatap*, 5 Pat. 157; *Drupad v. Hari*, 22 C.W.N. 827; *Manindra v. Kaulat Singh*, 50 Cal. 957, s. c., 28 C.W.N. 264 at 270, where Rankin, J. observed:—"A landlord who can prove such a contract is entitled to additional rent by virtue of his contract and without the aid of any statutory provision."

See also *Ejel Mullick v. Feali Mullick*, 21 C.W.J. 309; *Kesho Prasad v. Tribhuan*, 2 P.L.J. 276.

A jama of Rs. 6-8 as., was held under the landlord and the object of the *kabuliyat* was to increase the rent by 14 annas. This Rs. 7-6 was in respect of about 3 *pakhis* of land "as per boundaries

of the different lots given below." In the document after a reference to different kists came the sentence "when you would measure the lands we shall pay rent without any objection, for lands, found out by your measurement, in accordance with the prevailing rate of tenants holding similar class of lands," *held*, that the *kubuliyat* was a contract by which the tenant went on for the present at a fixed *jama* for a fixed land but there was a right in the landlord to alter that position and claim prevailing rate for the actual amount of lands in the tenants possession, that the landlord had to ascertain by measurement whether the tenant had gone beyond certain boundaries, and that, if the landlord insisted upon having a measurement, he might do so and then, when he did so, the whole thing was to be reassessed on the basis of the prevailing rate for lands of the same plots: *Sukumari v. Kinu*, 46 C.L.J. 250 (Rankin, C.J. and Mallik, J.).

In a case where the tenants took possession of certain lands by gradual encroachment, and some of the landlords brought a suit for recovery of their share of the encroached lands or for assessment of rent and made their co-sharers parties: *held*—that the plaintiff not having treated the defendants as trespassers from the beginning the defendants must be treated as tenants of those lands apart from their tenancy in respect of the holding; that it is altogether a new holding and the rent that would be assessed upon that would be a new rent in respect of the new holding and a suit for the assessment of rent is not an act that is authorised by sec. 188 of the Bengal Tenancy Act, and sec. 52 does not apply. But where a co-sharer landlord claimed for khas possession with an alternative claim for rent, not merely of the additional land found in possession of the tenants over and above the land of their own holding but in respect of the entire quantity of land found in possession of the tenants including the lands of their own holding; *held* that sec. 52 of the Bengal Tenancy Act applied: *Khondkar Abdul Hamid v. Mohini Kant*, 4 C.W.N. 508.

A *kabuliyat* executed before the passing of the Bengal Tenancy Act by Defendant No. 1, the holder of a *Darmourasi pattah*, in favour of his immediate landlord, a *mokuraridar*, provided that the former should have his name entered in the zemindar's *sherista* in place of the *mokuraridars* and pay rent direct to the zemindar, and also, in case the area of the tenure should exceed certain bighas, that he should pay rent on each excess bigha at the rates of 12 annas and 2 annas to the zemindar and the *mokuraridar* respectively; the agreement was ratified by the zemindar; on the zemindar suing Defendant No. 1 for measurement of the tenure and enhancement of rent it was objected that under the *kabuliyat* only the *mokuraridar* was entitled to sue for such measurement: *held*—That though they were both landlords of Defendant No. 1, they were not joint landlords by their subsequent conduct, in collecting rent and suing separately, they had ceased to be so; that, further, as the *kabuliyat* upon which the suit is based, was executed prior to the passing of the Bengal Tenancy Act, the suit was not under sec. 52, Bengal Tenancy Act, and so would not be barred by the provisions of s. 188 of the Bengal Tenancy Act: *Matungini Dassi v. Ram Das Mullick*, 7 C.W.N. 93.

Where remission of rent is claimed, not for land not found in the possession of the tenant, but for land which, though included in his tenure, he was obliged to leave uncultivated because he had to

Encroachment regarded as a new holding.

Exception

Kabuliyat before the passing of the Bengal Tenancy Act.

S. 188.

Remission of rent.

erect embankment to protect other land, and the remission for land so left out is provided for in the written contract, the claim does not come within the purview of sub-sec. 2 cl. (b): *Sree Kant Pershad v. Irshad Ali, Sarkar*, 16 C.L.J. 225.

Where it was stipulated that the waste lands included in the tenancy would be assessed with rent on becoming *hasila* (culturable), *held* that the increase in the rent would accrue automatically: *Mokbul Ali v. Jogesh Chandra*, 21 C.W.N. 534, s. c., 25 C.L.J. 128; the mere realisation of the admitted rent for the years before suit does not preclude the landlord from claiming the additional rent for those years in absence of any proof that the landlord received his dues on the understanding that no further demand would be made: *Ibid.*

See notes under headings Nos. 10 and 11.

9. Section 188: S. 188 requires that where two or more persons are joint proprietors they must all join in bringing a suit for additional rent for additional area; *Gopal Chandra v. Umesh Narain*, 17 Cal. 695.

Suit for alteration of rent.

Following the case of *Gopal Chandra v. Umesh Narain*, 17 Cal. 695 it was held in the case of *Sati Prosad v. Radhanath*, 16 C.L.J. 427 that the provisions of s. 188 are applicable to suits for alteration of rent on alteration of area under s. 52. It was also held in this case that a suit for assessment of rent for excess land instituted by some of the members of a joint Mitakshara family, cannot be considered as instituted by them as agents for other members, authorised to act on behalf of all the landlords within the meaning of s. 188. [It was pointed out by the Judicial Committee in the case of *Jogendra Deb v. Fanindra Deb*, 14 M.I.A. 367, s. c., 17 W.R. 104 that under certain circumstances a suit instituted by the head of a Mitakshara family operates in its result in the same way as if the members had been parties thereto.]

Suit for assessment of rent.

Suit by the head of a Mitakshara family.

When s. 188 is no bar to a suit by a co-sharer.

Where a co-sharer landlord brings a suit for additional rent on the basis of a *kabuliyat* executed by the tenant admitting his liability to pay additional rent for additional area without any reference to the right of any other co-sharer, *held* that such a suit is maintainable: *Gobind Chandra v. Hamedulla*, 7 C.W.N. 670. Section 188 of the Bengal Tenancy Act does not affect the co-sharer landlords' right under the *kabuliyat* unless the right to make such an agreement is otherwise forbidden by the Bengal Tenancy Act, and s. 178 which is the only section which deals with the full action of landlords and tenants in the matter of contract does not refer to such a matter: *Ibid.*

S. 178.

In this case the agreement was between the tenant and the individual co-sharer landlord who brought the suit and therefore the principle laid down in this case does not apply to a case where the tenant executed a *kabuliyat* in favour of the entire body of landlords agreeing to pay additional rent for additional area; in such a case s. 188 was held to be applicable: see *Dwarka Dhakai v. Mathuralal*, 18 C.W.N. 942. But see *Bhosal v. Aminuddin*, 21 C.W.N. 371, s. c., 25 C.L.J. 469 where the case of *Dwarka Dhakai v. Mathuralal*, 18 C.W.N. 942 was distinguished.

See notes under heading no. 8.

S. 188 does not apply to joint tenants and a suit by a co-tenant

alone for abatement of rent is maintainable: *Khettramani v. Jiban Krishna*, 19 C.W.N. 546, s. c., 21 C.L.J. 315.

S. 188 is a bar to a suit for additional rent for additional area under s. 52: *Monmotha Nath v. Mohendra Nath*, 65 I.C. 469.

10. Land within defined boundaries :—In order to ascertain what was actually leased, the boundaries mentioned in the lease are to be looked at and not the estimated area: *Kazee Abdool v. Baroda Kant*, 15 W.R. 394. Where the lands in question had always been deemed to form part of what was covered by the *pattah*, held that the *pattah* should be considered as one of *certain lands*, the number of bighas being added more by way of description than of limitation: *Janokee v. Gobin*, 2 W.R. Act. X, 33. Where the *pattah* purported to convey one bigha of land, more or less, and within certain boundaries, held that the test of what was really conveyed was not the area of the land but the boundaries of that land: *Sheeb Chandra v. Broja Nath*, 14 W.R. 301. A tenant was held to be entitled to hold the whole of the lands comprised within the *dags* endorsed on the *pattah* as included in and appertaining to his *mourasi* tenure notwithstanding that measurements made subsequently showed that the area was larger than formerly ascertained: *Modee Huddin v. Sandes*, 12 W.R. 439. Where the land is undoubtedly included in the original tenure but it has been found on a fresh measurement that there was some mistake in the former measurement, the tenant is liable to pay rent for the excess land: *Pran Kissen v. Monmohinee*, 17 W.R. 33 (34).

Whether boundaries or area to be looked at.

Area by way of description.

See also *Puhlwan v. Moheshar*, 16 W.R., (P.C.) 5; 9 B.L.R. 150; *Farquharson v. The Government of Bengal*, 16 W.R., (P.C.) 29; *Gopenath v. Ram Huree*, 9 W.R. 476; *Indro Bhusan v. Goluk Chunder*, 12 W.R. 350.

It is only when the boundaries of the land leased out can be ascertained with perfect certainty that an intention to convey all lands comprised within those boundaries can be inferred; if the boundaries are uncertain the intention should be taken to be to convey the specified quantity of land within those boundaries: *Rameshwar v. Tam Tarak*, 14 C.W.N. 268 (on P.C. 18 C.W.N. 66).

Intention.

Where the two elements—the boundaries and the quantity—are equally certain and exactly defined, or the boundaries are as precise and definite as the quantity is specific and exact, and there is gross divergency between the quantity specified and the quantity found to be included within the defined boundaries, preference should be given to that element of the description of the subject matter, which is more consistent with the intention of the parties to be collected from the other parts of the deed, illuminated, if necessary, by the surrounding circumstances and the subsequent conduct of the parties: *Durga Prasad v. Rajendra Narain*, 37 Cal. 293, s. c., 14 C.W.N. 268 (Doss and Richardson, J.J.).

Where boundaries and quantity are both certain.

On appeal, the Privy Council held that where the area of demised land, which was described in the lease as lying within certain specified boundaries, was stated therein as four thousand bighas, extrinsic evidence was not admissible to shew that there was not the stated area within the specified boundaries: *Durga Prasad v. Rajendra Narain*, 41 Cal. 493 (P.C.); s. c., 18 C.W.N. 66, s. c., 19 C.L.J. 95.

In an ordinary *kabuliyat* by which a certain quantity of land within definite boundaries is let out and the area is fixed not with

reference to actual measurement, but by approximate estimate and the rent fixed is a lump sum for the land within the boundaries, the tenant cannot claim reduction of rent due to area being found less than what is mentioned in the kabuliat: *Abdul Mannaf v. Sheikh Muslim*, A.I.R. 1925, Pat. 426.

Merely because there is excess land within the boundaries specified in the lease a landlord is not entitled to additional rent: *Manjanali v. Kailash Nath*, 44 I.C. 24.

Actual quantity, if found in excess of what is specified in the pattah.

Where there was a lease of lands comprised within the boundaries specified at the foot thereof and it was not the intention of the landlord to deprive the lessee of any land within the said boundaries, *held* that the landlord is not entitled to additional rent if on a measurement the actual quantity as comprised therein is found to be in excess of the quantity specified in the *pattah* itself: *Juggannath Manjhi v. Jumman Ali Patwari*, 29 Cal. 247. See *Akbar Ali v. Hira, Bibi*, 16 C.L.J. 182 at p. 185.

Area ascertained by measurement.

Where it is specifically shewn that the area of a land was ascertained by measurement and rent assessed on such measurement, the mere fact that boundaries of the land are mentioned in the *kabuliyat*, does not exclude the operation of s. 52: *Lukhi Narain v. Sri Ramchandra*, 15 C.W.N. 921.

Where on the interpretation of the kabuliyat executed on first April, 1885, it was found, firstly that the area of the land demised was assumed to be 15 bighas without actual measurement, secondly that the rent was assessed at the lump-sum of Rs. 15-10 as. on the assumption that the area was 15 bighas, and thirdly that the landlord reserved his right to have the lands measured and the rent assessed at the prevailing rate; *held* that the landlord was entitled to claim additional rent for excess land as also enhancement of rent: *Ejel Mullick v. Feali Mullick*, 21 C.L.J. 309.

Where it was stipulated in the kabuliyat that the rent would be payable at certain rates with regard to a certain quality of land which would be found on measurement by a certain unit under a survey at which the tenant bound himself to be present, *held* that it might be inferred from that stipulation that the lands as described within the boundaries were not let out at the fixed jama mentioned in the kabuliyat but it was the intention of the parties that the rent should be assessed upon a survey of the lands within the boundaries having regard to each class of land and area of each plot: *Hemantakumar Roy v. Meser Bibi*, 30 C.W.N. 640 (Greaves and B. B. Ghose J.J.).

Where there was a stipulation in a kabuliyat as to the standard of measurement and also the rate of rent to be paid per bigha with regard to each class of land, *held* that the land within the boundaries was not let out at a fixed rent but it was the intention of the parties that there should be a survey and rent should be assessed upon the measurement of the lands within the boundaries having regard to the class of land to which each plot falls and its area: *Hemanta Kumar Roy v. Belatali Munshi*, 30 C.W.N. 642 (Cuming and B. B. Ghose, J.J.).

See notes under heading No. 11.

Meaning of "area for which rent has been

II. Area for which rent has been previously paid : Additional Rent for Additional area :—The expression "the area for which rent has been previously paid" in the section, sub-sec. 1, cl.

(a), means the area with reference to which the rent previously paid has been assessed or adjusted: *Dhrupad v. Hari*, 22 C.W.N. 826, paid." s.c., 27 C.L.J. 562; also see *Rajendra v. Chander Bhūsan*, 6 C.W.N. 318; a landlord cannot therefore successfully claim additional rent in respect of an excess of area when he fails to shew what the area of the tenure was when first created, and that the rent originally fixed did not cover and was not intended to cover such excess area: *Ibid*.

The landlord must show that the defendant is holding lands in excess of what he is paying rent for, and in order to do that, he must shew for what quantity of land the tenant is paying rent: *Surjakanta v. Baneswar*, 24 Cal. 251. What is to be proved in a suit for additional rent.

The burden of proving an increase in "the area for which rent has been previously paid" is on the landlord; speaking generally he may discharge the burden in two ways (a) by proving that the tenant is in possession of excess land outside the boundaries of the land originally settled, (b) by proving that at the original settlement the rent was fixed at a rate per bigha or other unit of measurement or at differential rates according to the quality of the land and that the agreement was that the tenant would pay at that or those rates for all land, and in further proving that the existing rent is less than the rent payable under such agreement: *Dhrupad v. Hari Nath Singha Ray*, 22 C.W.N. 826, s. c., 27 C.L.J. 562 (Richardson and Walmsley, J.J.). Their Lordships remarked as follows:—"It is in connection with this second method of proving a right to increase of rent that questions may arise under cl. (2) (a) as to the conditions of the tenancy and whether the rent originally fixed was or was not a consolidated rate for the whole area. The rent might be a consolidated rent even if it was calculated at so much per measured or estimated bigha. The question would depend upon the true intention of the parties to be gathered in the absence of a written instrument from all the circumstances. When however it is proved that the tenant is holding land outside, and beyond the original boundaries the question as to the rent being a consolidated rent, cannot well arise, except possibly in connection with land gained by alluvion."

Their Lordships in deciding the aforesaid case considered the following cases: *Gouri Patra v. Reily*, 20 Cal. 579, *Rajendra v. Chander*, 6 C.W.N. 318, *Akbar Ali v. Hira Bibi*, 16 C.L.J. 182, *Lakhi Narain v. Sree Ram Chunder*, 15 C.W.N. 921 and *Uma Singh v. Tarini Prosad*, 19 C.L.J. 451.

In delivering their Lordships' judgment in (*Gouri Patra v. Reily*), 20 Cal. 579, Prinsep and Beverley, J.J., observed as follows.

"The mere fact that on a measurement made by a Zemindar under the authority of Government given under Chapter X of the Bengal Tenancy Act, it is found that the tenants generally are in possession of lands in excess of the area, entered in his Zemindary papers and their rent-receipts would not necessarily prove that he is entitled to additional rent for the excess area. There is no evidence that at any previous time there has been a measurement of any of these lands and it is admitted that all the holdings are of very old date. In our experience, too, in such instances lands were let out by areas ascertained as the Settlement-officer has found by "guess work" that is to say, without any accurate survey, but as contained within certain recognised boundaries either by reference to other holdings

**Gouri
Patrav
Reily.**

and it constantly happens in the case of lands such as those in this case that even this description is wanting. Settlements made in such a manner would seem to show that the object of the zemindars was to settle raiyats on the lands and to have them brought under cultivation rather than to be particular in the description of the lands let. In such a case it would be incumbent upon the zemindar, who seeks an enhancement of rent, or as he would term it,—settlement of rent, on excess lands very many years after the original settlement of the raiyats to show that the lands held by the tenants fall within that description, that is to say, that they are in excess of the lands originally let to them in consequence of some encroachment or some alluvial increment or that the previous settlement was made on the basis of a measurement and the rates of rent as applied to the area then determined, while on a fresh measurement made by the same length of measure, it has been found that he is entitled to receiving additional rent which by carelessness or neglect or some other reason he had hitherto lost.”

In a suit brought by a landlord for increase of rent on account of an increase in the area of the holding it was found that the tenant was holding the same lands without any variation in the boundaries ; that the landlord failed to prove what area was originally leased to the tenant ; and there were no materials before the Court for the determination of the question whether the rent was a consolidated rent or not : *held*—That the landlord was not entitled to any increase under sec. 52 of the Bengal Tenancy Act : *Ratan Lal v. Jadu Halsna*, 10 C.W.N. 46. In order to succeed the landlord must prove facts and circumstances showing that there was some reason not within the control of the landlord for additional lands being included in the holding : *Ibid*.

The case of *Gouri Patra v. Reily*, 20 Cal. 579 : *Rajendra Lal v. Chandra Bhusan*, 6 C.W.N. 318 ; and *Ratan Lal v. Jadu Halsana*, 10 C.W.N. 46 were discussed in the case of *Rajkumar v. Ram Lall*, 5 C.L.J. 538, where it was held that to establish the existence of excess lands, the landlord has to prove the area of the tenure at its inception ; in a suit for additional rent he must next prove that the rent originally did not cover and was not intended to cover such excess area.

Observation
by Coxe J.

All these cases were considered in *Akbar Ali v. Hira Bibi*, 16 C.L.J. 182 by Coxe, J. (N. Chatterjea J. agreeing) who laid the following rule.

Intention
of parties.

“It appears to me that the whole question is one of intention of the parties applicable to the tenancy before the final measurement. If the landlord originally intended to let and the tenant intended to take such and such a piece of land or such and such a holding, be the number of bighas in it what they may, the fact that the area proves to be large than what was originally stated would not entitle the landlord to additional rent. If however he intended to let and tenant intended to take so many bighas, be the actual piece of land what it may, the landlord would be entitled to additional rent when the tenant was proved to hold more bighas than were originally let to him.” 16 C.L.J. at page 185.

Standard of
measure-
ment.

The standard of measurement was presumed to be the same at the date of the lease when the defendant could not prove the standard of measurement set up by him : *Ishan Chandra v. Ram Ranjan*, 2 C.L.J. 125.

Where lands were measured according to a known standard and Consolidat-
rent assessed upon that, *held* that unless it was established that the ed rent.
rent payable was a consolidated rent for lands within defined
boundaries the landlord was entitled to claim additional rent: *Lukhi*
Narain v. Sri Ram Chandra, 15 C.W.N. 921.

In order to bring a case within clause (a) of sub-sec. (1) of S. 52
section 52 of the Bengal Tenancy Act, it is necessary for the landlord sub-sec. (1)
to prove that there is land held in excess of the area for which rent
has been previously paid by the tenant. Consequently the landlord
must establish the area for which rent has previously been paid by
the tenant; he must next establish the present area held by the
tenant; he is then entitled to claim additional rent in regard to the
excess area. When it is specially known that the area was ascer-
tained by scientific method, the lands measured and described as
lying within certain boundaries were let out to the tenants, the land-
lord is entitled to additional rent for excess lands ascertained on re-
measurement; *Srinibas Sarangi v. Ramchandra Bhaya Deo*, 14 C.L.J.
146.

In the sale certificate the boundaries of parcels sold were set out Sale-certi-
in detail. In the case of each parcel the area also was stated; *held* ficate.
that the purchaser took the plots as defined by the boundaries, and if
within those boundaries there was more or less land than that stated
in the sale certificate he obtained a title to whatever was contained
within those boundaries: *Gossain Das Kundu v. Mritunjoy Agan*
Sardar, 18 C.L.J. 541.

The decision of the question as to the area in a rent-suit was Res-judicata
held to operate as *res judicata* in a subsequent suit for additional question of.
rent for additional area: *Radhika v. Satyanarayan*, 74 I.C. 96.

A landlord may be entitled to additional rent even though he is
unable to establish that the previous measurement is accurate and
reliable; *Sukraj Ray v. Lal Bahadur*, 29 C.L.J. 253 (*Mookerjee*
Beachcroft, J.J.).

Where it was not proved the diminution of the area at the time
of the original settlement, the rent was fixed at a specified rate per
unit of measurement or at different rates according to the quality of
the land, *held* that the tenant was not entitled to claim alteration
of rent: *Ibid.*

In a suit for increase of rent a landlord cannot succeed in show-
ing that there has been an increase in area by merely proving that
the area under cultivation is in excess of that which is mentioned
in a confirmatory *kabuliyat*; he must show what the area was at the
inception of the tenancy. *Ramanath v. Jagannath*, 106 I.C. 136
(*Cuming and Roy J.J.*, August 10, 1927). The case of *Rajkumar*
Pratap v. Ram Lal Singh, 5 C.L.J. 538, followed.

The "area for which rent has been previously paid" must be "Area for
understood to mean area with reference to which the rent previously which rent
paid had been assessed or adjusted: *Aziz Khan v. Saraju Bala*, 24 has been
C.W.N. 76 (notes portion), (*Beachcroft J.*). In a suit for additional previously
rent for additional area it is not necessary to prove the area at the paid"—
inception of the tenancy and it is sufficient that since the creation meaning of.
of the tenancy rent has been assessed and the assessment was on the
basis of a certain area and the tenant is in possession of lands which
were not previously assessed: *Durga Priya v. Nazra Gain*, 25 C.W.
N. 204, (*Mookerjee C. J.* and *Fletcher J.*). This case was relied on be proved.
Area at the
inception
need not
be proved.

Stipulation as to existing rent till measurement. Larger area in a later record-of-rights.

by Newbould and Panton J.J., in the case of *Jogendra v. Sheikh Aktar*, 67 I.C. 998. Where rent was fixed at a certain rate per *drone* of arable land and the tenant agreed to pay that rent as long as the land was not measured, *held* that the landlord was bound to pay additional rent for additional area: *Joy Chandra v. Arun Chandra*, 67 I.C. 241 (Suhrawardy and Cuming J.J.). Where a second record-of-rights shewed that the land was in excess of the area found in an earlier record-of-rights, *held* that the landlord was entitled to additional rent for the additional area: *Bishen Pragash v. Achaib Dushad*, 1 Pat. 450.

Suit for additional rent where area in excess of what is mentioned in *dakhilas*. Settled rule.

In a suit for additional rent for additional area the landlord proved that the land was in excess of the area mentioned in the *dakhilas** (and the rate per bigha was mentioned), *Rankin J.*, (Buckland J., agreeing) made the following observations after reviewing all the decisions on the subject:† *Manindra Chandra v. Kaulat Singh*, 50 Cal. 957, s. c., 28 C.W.N. 264.

"I take it to be the settled rule of this Court that when a letting upon the basis of a measurement is proved the tenant has *prima facie* to shew that the rent was a consolidated rent for all the land within specified boundaries, but that in the absence of such proof the mere production of such *dakhilas* as those now in evidence does not suffice to throw any onus on the tenant. The position then is simply that the landlord has failed to establish the fact of excess area because he has failed to shew with sufficient certainty what the area in fact was for which the rent was originally reserved. There is no reason whatever forbidding a landlord from proving, if he can, a contract of the nature indicated in *Dhruwad Chandra's case*, (22 C.W.N. 827), but entries of area and rate in *dakhilas* or *jamabandis* do not suffice to prove this by themselves in the absence of further material throwing light upon the original conditions of a holding whose origin is beyond the reach of direct evidence."

The case of *Manindra v. Kaulat* was followed in the case of *Moyenuddin v. Baharuddin*, 90 I.C. 557 (Suhrawardy and Duval, J.J.).

Area of original grant, if to be ascertained.

For the purposes of sec. 52 it is not always necessary to ascertain the area of the original grant and the rent thereby reserved. All that the landlord has to show is that the present area is greater than the area for which rent was last paid. The onus is then shifted on the tenant to shew that the excess land used previously to belong to the holding and was lost by diluvion or otherwise: *Sib Sahai Lal v. Bijoy Chand Mahatab*, 5 Pat. 157; s. c., [1926 Pat.] 19, s. c., 7

* The details in the *dakhila* are as follows:

Mulberry land.—7½ cottahs, rate per bigha Re. 1-5-9, total Re. 0-8-3.

Crop bearing land.—1 bigha, 1 cottah, rate per bigha Re. 0-6-0, total Re. 0-6-6. Total rent Re. 0-14-9. (See 50 Cal. at p. 960).

† The following cases were discussed:—*Goari Patra v. Retly*, 20 Cal. 579; *Suraja Kant v. Banerwar*, 24 Cal. 251; *Rajendra Lal v. Chunder Bhusan*, 6 C.W.N. 318; *Ratan Lal v. Jadu Halsana*, 10 C.W.N. 46; *Raj Kumar v. Rasu Lal*, 5 C.L.J. 538; *Akbār Ali v. Hira Bibi*, 16 C.L.J. 182; *Dhruwad Chandra v. Hari Nath*, 22 C.W.N. 827; *Kesho Prasad v. Tribhuban*, 2 Pat. L. J. 276; *Lakshmi Narain v. Sriram Chandra*, 15 C.W.N. 921; and *Nilmani v. Sati Prasad*, 48 Cal. 556, s. c., 25 C.W.N. 230 (F.B.).

Cases discussed.

P.L.T. 375, s. c., 90 I.C. 862 (Mullick, A. C. J. and Kulwant Sahay, J.) Statements of area in the landlord's papers, whether after measurement or not, are evidence for the purpose of ascertaining what the area is for which the rent shewn in the *jumabandi* is being paid. *Ibid.* The cases of *Kesho Prasad v. Tribhuan*, 2 P.L.J. 276, *Durga Priya v. Nazra Gain*, 25 C.W.N. 204 and *Lal Sheo Kumar v. Ramphal*, 58 I.C. 959 followed. The case of *Manindra Chandra v. Kulat Sheikh*, 50 Cal. 957, 28 C.W.N. 264 was dissented from. In discussing this case Mullick, A.C.J. at p. 167 of 5 Pat. 157 observed as follows :

"In their view (*i.e.*, of the learned Judges who decided the case of *Manindra Chandra v. Kaulat Sheikh*, 28 C.W.N. 264) the settled rule of the Calcutta High Court was that an assumed area could never be the foundation for such a claim. It does not appear however that the case of *Durga Priya v. Nazra Gain*, 25 C.W.N. 204 was considered by the learned Judges."

Where a tenancy is created, not with reference to any boundaries or a specific block otherwise identifiable, but for a certain area at a certain rental, the area is of the essence of contract and any subsequent excess found upon measurement renders the raiyat liable to pay additional rent. In determining the area demised the parties may either resort to measurement or they may agree to accept an assumed figure. *Ibid.*

12. Sub-section (3) :—A court is not bound to allow additional rent at the prevailing rate ; in a case where the landlord allowed the defendant to continue in occupation without any claim for additional rent for nearly 25 years it was considered fair to assess rent for the additional area at the same rate as for the remainder of the holding ; it was remarked that the decree would not stand in the way of a suit for enhancement of rent of all the lands on one or more of the grounds mentioned in sec. 30 ; *Ejel Mullick v. Felai Mullick*, 21 C.L.J. 309, at pp. 311, 312. Rate of assessment of rent.

In respect to excess lands the landlord is entitled to a fair and equitable rate : (*Per Phear, J.*) *Golam Ali v. Gopal Lal*, 9 W.R. 68. Excess land should, as a part of the same lease, be liable to the same terms as the other land originally given under it (*Per Bayley, J.*) : *ibid.* Fair and equitable rent for excess land.

13. Sub-section (5) :—"There is a passage in the judgment of this Court in the case of *Goury Patra v. Reily*, 20 Cal. 579, in which it is observed that it is for the zemindar, who seeks for a settlement of excess lands, to show that they are in excess of those for which rents are being paid and that to do this, it is for him to show what those lands are, what were the terms of the original settlement, and whether it was by any, and if so, by what process of measurement. This statement appears to have been misunderstood, and it was held upon an interpretation of this passage that when additional rent was claimed on the ground of excess area, the landlord was bound to indicate the precise parcels of land acquired by the tenant in excess of the original holding. It was for this reason that sub-section 5 was added to section 52 of the Bengal Tenancy Act III of 1898. The section as amended indicates that it is not necessary, in order to prove excess area, to specify the particular parcels that were acquired since Why this sub-section was enacted.

Interpretation of *Goury Patra's* case.

Act III of
1898.

the original letting. But the amendment does not in any way weaken the authority of the decision in *Gauri Patra v. Reily*, 20 Cal. 579, in so far as it lays down that the landlord must satisfactorily prove that the lands in respect of which additional rent is claimed are lands held in excess of those for which rent is paid, and that in order to prove such excess, the quantity included in the tenancy at its inception must be determined. The same view was affirmed by this Court in the cases of *Rajendra Lall Goswami v. Chandra Bhusan Goswami*, 6 C.W.N. 318, and *Ratan Lal Biswas v. Jadu Halsana*, 10 C.W.N. 46, both of which cases are decided after the addition of sub-section 5 to sec. 52." *Per Mookerjee, J., in Raj Kumar v. Ram Lall*, 5 C.L.J. 538.

Tenant
holding ex-
cess land
may be
treated as a
tenant or
trespasser.

Tenant has
no right to
compel
landlord to
treat him
as a tenant.

Encroach-
ment
regarded as
a new
holding.

Encroach-
ment for
benefit of
landlord.

14. Encroachment :—When a tenant holds excess land for which no rent was paid before, the landlord may treat him either as a trespasser or a tenant: *David v. Ramdhun*, 6 W.R. Act X 97, but it was held in the case of *Rajmohun v. Gooroo Churn*, 6 W.R. Act X, 106, that a tenant who holds lands in excess cannot be used for enhancement; see also *Rasum Bibi v. Bissonath*, 6 W.R. Act X, 57. Where a tenant encroaches upon any land of his landlord outside his tenure, it is open to the landlord to treat him as a tenant and not as a trespasser: and the tenant has no right to compel the landlord to treat him as a tenant and not as a trespasser: *Pralhad v. Kedarnath*, 25 Cal. 302. Although where a tenant encroaches upon any land of his landlord outside his tenure it is open to the landlord to treat him as a tenant and not as a trespasser, and the tenant has no right to compel the landlord to treat him as a tenant, yet it does not follow that because the landlord has this option, he can treat the tenant as trespasser at any time after having exercised his option in treating him as a tenant for some time: *Khondkar Abdul Hamid v. Mohini Kant*; 4 C.W.N. 508. In a case where the tenants took possession of certain lands by gradual encroachment, and some of the landlords brought a suit for recovery of their share of the encroached lands or for assessment of rent and made their co-sharers parties: *held*—that the plaintiff not having treated the defendants as trespassers from the beginning, the defendants must be treated as tenants of those lands apart from their tenancy in respect of the holding, that it is altogether a new holding and the rent that would be assessed upon that would be a new rent in respect of the new holding, and a suit for the assessment of rent is not an act that is authorised by sec. 188 of the Bengal Tenancy Act, and sec. 52 does not apply. But where a co-sharer landlord claimed for *khas* possession with an alternative claim for rent, not merely of the additional land found in possession of the tenants over and above the land of their own holding, but in respect of the entire quantity of land found in possession of the tenants including the lands of their old holding, *held* that s. 52 of the Bengal Tenancy Act applied: *Ibid*.

An encroachment made by a tenant upon land adjoining to or even in the neighbourhood of his holding, is presumed, in the absence of strong evidence to the contrary, to be made for the benefit of the landlord, and this rule applies to all lands so encroached upon whether the landlord has any interest in it or not: *Nuddyar Chand v. Miajan*, 10 Cal. 820. If a tenant during his tenancy encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made

the encroachment, not for his own benefit, but for that of his landlord ; and even if he has acquired a title against the third person by an adverse possession, he has acquired it for his landlord, and not for himself: *Ibid.* See also *Earl of Lisburne v. Daries*, L.R. 1 C.P., 259 ; *Whitmore v. Humphries*, L.R. 7 C. P. 1 ; *Kingsmill v. Milliard*, 11 Ex. 313 ; *Andrews v. Hailes*, 2 E. and B. 349. 'It is true that by the English Law, if it could be distinctly proved that the tenant made the encroachment adversely to his landlord, an adverse possession for 12 years might then give the tenant a title by limitation ; and probably that would be so in this country.' (*Per Garth*, C. J.). *Nuddyar Chand v. Meajan*, 10 Cal. 820. "We think the true presumption as to encroachments made by a tenant during his tenancy upon the adjoining land of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. This is the clear rule of English law and it is a rule which is supported by reason and principle. In India where there is a great deal of waste land and where quantities and boundaries are very often ill defined, there are very strong reasons for the application of such a rule:" (*Per Markby J.*). *Gooroo Das v. Iswar Chander*, 22 W.R. 246 ; see also *Esu Bai v. Damodar*, 16 Bom. 552 ; *Sham Jha v. Doorga*, 7 W.R. 122.

Presump-
tion as to
encroach-
ment.

English law
applicable
here.

A tenant is entitled to hold *Khas* land of his landlord upon which he has encroached as part of his original holding, if, more than 12 years before the landlord's suit he denied the landlord's right to any separate rent from him in respect of the land and has forcibly in assertion of his claim appropriated entire crop and continued in possession ; the landlords, apart from s. 52 of the Bengal Tenancy Act, cannot recover additional rents in respect of such land: *Taran Chandra v. Ganendra Nath*, 16 C.W.N. 335.

Encroach-
ment of
Khas land.

When a tenant is found in possession of land which formed no part of the land originally let out to him, the landlord is entitled to treat the excess land as a new holding, and a suit for rent may be brought in respect thereof independently of s. 52: *Abdul Hakim v. Rajendra Narayan*, 23 C.W.N. 635.

Excess
land.

Held, upon the facts of the case that the tenant who agreed to pay rent to the landlord for the area actually under cultivation was not liable to pay rent to him in respect of contiguous land belonging to a third party which he had encroached upon and brought under cultivation: *Jatindranath v. Trailkhya*, 105 I.C. 737, (B. B. Ghose and Roy J.J.).

There is a difference from one point of view between a case where the tenant asserts that the land encroached upon by him is a part of an admitted tenancy and cases where the tenant sets up a rent-free title to the encroached land. The difference is that in one case the assertion means that rent is being already paid for the land and so more rent is not payable, and in the other that no rent is payable because the landlord is not entitled to realise any rent for the land. Suits for assessment of rent-free lands are governed by article 130, sch. 1 to the Limitation Act. A suit to establish a right to assessment is governed by article 131: *Devendra Narayan v. Jhumur Pramanik*, 43 C.L.J. 387 (Suhrawardy and Mukerji J.J.).

If a tenant had encroached upon any land and made it a part of his tenancy, he is bound to give that up to his landlord at the determination of his tenancy: *Indubhusan v. Atulchandra*, 42 C.L.J. 276 (Greaves and Chakravarti J.J.).

See notes under sec. 3 heading No. 15 at p. 31.

15. Abatement of Rent :—A claim for abatement may be made in a suit for rent by way of set off: *Deendoyal v. Thakroo*, 6 W.R., Act X, 24; *Mohesh v. Gungamoney*, 2 Hay. 495; *Afsaruddin v. Sarashi*, Marsh 558.

In a suit for rent the tenant can claim abatement of rent and no separate suit is necessary: See *Gosta Behari v. Hem Chandra*, 51 Cal. 1022, s. c., 29 C.W.N. 124; *Sukhraj v. Ganga Dayal*, 6 P.L.J. 665; *Sivadas v. Birendra*, 41 C.L.J. 330. See also notes under sec. 38.

In a suit for rent a tenant can claim a deduction for any particular year although he has paid full rent for several previous years: *Mahtab Chand v. Chitro Kumari*, 16 W.R. 201; *Ram Narain v. Pulin Behari*, 2 C.L.R. 5.

Where in a suit for rent a tenant, who did not obtain possession of a portion of the lands let out to him, pleaded that he was not bound to pay rent of that portion, held that he was entitled to say so and it was not necessary for him to bring a separate suit for abatement of rent: *Sibakumari v. Bipra Das*, 12 C.W.N. 767; a suit under s. 38 or s. 52 was not necessary, as those sections do not apply where the tenant has never been put into possession by the landlord: *Ibid*.

Suit for declaration that tenant not liable for whole rent is not a suit for abatement.

A suit by a tenant for a declaration that he is no longer liable to pay the whole amount of rent on the ground that a third party has established his right to a share of the rent, is not a suit for abatement of the rent payable for the plaintiff's land: *Chandmoni v. Lokenath*, 6 C.L.R. 494. Where, under such circumstances the tenant is holding more land than is covered by his lease, it is not necessary that the landlord should be referred to a separate suit if he is desirous of enhancing the rent: *Ibid*.

In a suit for rent by a co-sharer landlord for his share of the rent, a tenant is entitled to apply for reduction of rent: *Kesho Prasad v. Ram Deni*, 2 Pat. 183, (Coutts and Dass J.J.).* See notes under s. 38.

Effect of non-payment of rent.

Acceptance of remission of rent.

Rules laid down in 4 Cal.

Question of intention.

* *Effect of acceptance of reduction of rent: Sub-mergence: Abandonment: Nonpayment of rent* :—Where the land of a certain tenant became sub-merged by the action of a river and the tenant though he ceased to pay rent during the period of sub-mersion made no overt indication of his intention to relinquish the said land but, on the contrary, on the river again shifting its course laid claim to the land which had emerged, it was held that there had been no relinquishment: *Mazhar Rai v. Ramgat*, 18 All. 290, (P. C.); the case of *Hemnath v. Ashgar*, 4 Cal. 894 was not followed. The Privy Council case of *Mazhar v. Ramgat*, 18 All. 290, was followed in a later Privy Council case: *Arun Chandra v. Kamini Kumar*, 41 Cal. 683, s. c., 18 C.W.N. 369, s. c., 19 C.L.J. 272, where it was held that by claiming or accepting remission of rent in respect of lands washed away from time to time by action of the river the tenant cannot be said to abandon or to agree to abandon his right to such land as his reformation *in situ*. Their Lordships expressed their opinion that their view was not in accord with the rule of law expressed in the case of *Hemnath v. Ashgar*, 4 Cal. 894; the rule laid down in the 4 Cal. case was as follows: Where land held by tenants with rights of occupancy was completely sub-merged for a number of years, and during the period of such sub-mersion no rent was paid by the tenants, they by non-payment of rent during the period of sub-mersion forfeited their rights of occupancy.

A tenant is entitled to abatement of rent in respect of leased out land of which he did not obtain possession: *Rajkumar v. Surendra Nath*, 27 C.W.N. 166; the question of limitation does not arise in connection with the plea of abatement, but the question of acquiescence may arise: *Ibid*; see also *Ramnarain v. Poolin Behari*, 2 C.L.R. 5.

A tenant's right to claim abatement of rent on account of the landlords failure to put him in possession of the whole of the land demised will be lost by acquiescence and laches if, notwithstanding the failure of the tenant to get possession of the entire land, he continues to pay the full rent for a long number of years: *Midnapore Zemindary Co. Ltd. v. Shib Narayan*, 105 I.C. 741.

Where a portion of the land comprised in a tenure was wrongly resumed by Government, and the landlord did not object to the same and without taking accepted malikana from the Government who realised rent of that portion of the resumed land from the tenant, held in a suit for rent by the landlord that the tenant's plea to get abatement of rent should be accepted: *Jitendra Nath Ray v. Asutosh Goswami*, 27 C.W.N. 381, (B. B. Ghose J., Walmsley J., agreeing).

It is open to a court to make an enquiry whether the tenant was not put in possession of a portion of the property for the purpose of determining that the tenant is entitled to a reduction: *Benimadhab v. Krishna Kamini*, 36 C.L.J. 121.

The purchaser of a tenure at a sale for arrears of rent acquires title to the lands on the terms of the original lease unaffected by any incumbrances created by previous tenants. Such a purchaser, under sec. 159 of the B. T. Act is not entitled to an abatement of rent in respect of part of the land which at the date of the purchase was in possession of a trespasser who afterwards was allowed by him to remain in possession and this required an absolute title against the purchaser. It is the duty of a tenant under a perpetual tenure to protect himself against illegal encroachments by others on the lands of which he has the exclusive possession: *Katyayani Debi v. Uday Kumar*, 52 I.A. 160, s.c., 52 Cal. 417 (P.C.), s.c., 30 C.W.N. 1 (P.C.): *Womesh Chandra v. Rajnarain*, 10 W.R. 15 approved—Judgment of the High Court (49 Cal. 948) affirmed.

Where a proprietor has parted with his land in favour of a permanent tenure-holder, he is no longer under any obligation unless there is a special contract to that effect, to protect the property of the tenure-holder from the encroachment of salt water: *Mahammad Ismail Mia v. Sures Chandra Saha*, 53 Cal. 442 (Walmsley and Chakravarti, J.J.).

A claim for abatement may be made for land taken by Government for public purpose, *Deendyal v. Thukroo*, 6 W.R. Act X, 24. A putnidar may also claim abatement upon such ground as the land is absolutely lost to the putnidar and he is also entitled to some share of the compensation money; *Buowani Nath Chukerbutty v. Land Acquisition Deputy Collector of Bogra and another*, 7 C.W.N. 130;

A tenant's title to a holding is not necessarily lost by non-payment of rent during the time the land is sub-merged; whether from the non-payment of rent or from the conduct of the tenant, abandonment or surrender should be inferred is a question of fact: *Dinanath v. Umes Chandra*, 49 I.C. 984, (Teunon and Cumming, J.J.).

Wrong resumption of a portion of tenure.

Where tenant not put in possession of a portion of demised premises. Purchaser of a tenure at a rent sale.

Land acquired for public purposes. Putni.

also see *Prosunnomoyee v. Soondur*, 7 W.R. Act X, 30. A putnidar may also claim abatement upon the ground that portions of land included in his putni have been resumed as chakran by Government: *Huro Kissen v. Joy Kissen*, 1 W.R. 299.

A putni *kabuliyat* contained an agreement to the following effect ; that if the land be taken up by Government for a railway, a ferry fund or other purposes, the zemindar and the putnidar shall divide the compensation paid by Government in respect of such land, each receiving one moiety ; and also that the putnidar will make no objection on the score of diluvion, or any other causes to pay the rent reserved by the *kabuliyat* ; held that the putnidar was entitled to an abatement of the rent on the ground that part of the land had been acquired by the Government for public purposes: *Uma Sunkur v. Tarini Chandra*, 9 Cal. 571. But where a putnidar was allowed by the zemindar to appropriate the whole of the compensation the zemindar declaring that he would not grant an abatement, held that where the putni was sold under Regulation VIII of 1819 with notice of the amount of the original rent, the purchaser was not entitled to an abatement: *Peari Mohun v. Audhiraj*, 10 C.L.R. 526.

In a *putni* *kabuliyat* where there was a stipulation for remission to the tenant if the landlord obtains remission from the Government in respect of lands taken up for culverts, embankments or roads, held that the *putnidar* was entitled to get the same amount of remission in the *jumma* of the putni: *Hirendra Nath v. Harimohan*, 18 C.W.N. 860 ; the words "Culverts, embankments or roads" were illustrative and not exhaustive: *Ibid.*

A *kabuliyat* contained the following clause:—"In regard to the aforesaid rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In any case shall we be able to claim a reduction in the rent, nor will it be open to you to demand more on account of alluvion, &c." Lands were taken up by Government for the purpose of a railway and compensation was paid to the lessor ; held that the tenant was entitled to a deduction from the rent ; *Watson v. Nistarini*, 10 Cal. 544.

In order to bring a case within the first alternative mentioned in cl. (4) of s. 52 it is to be shown in the first place what the yearly value of the tenure is, it is next to be shown what is the diminution of the total yearly value of the tenure, and in order to calculate the diminution, the Court must find out the yearly value of the land lost: *Kanai Lal v. Midnapur Zemindari Co., Ltd.*, 5 C.L.J. 48n. If there is no abatement of rent, and the putnidar continues liable to pay to the zemindar the same rent as he had to pay before, there would be nothing for which the zemindar is to receive compensation: *Satis-chandra v. Jatindra*, 7 C.L.J. 248 ; the same rule applied to a perpetual lease with fixity of rent: *Ibid.* A suit brought by a putnidar for a declaration that he is entitled to an annual abatement of the putni rent in consequence of some lands acquired for the purpose of a railway and also for rent paid for some years, held that this was substantially a claim for abatement of rent and the prayer for refund is ancillary and therefore, in a locality where Act X of 1859 is in force, the claim is not maintainable in a Civil Court: (*Per Mookerjee, J.*) *Asutosh v. Harinarayana*, 3 C.L.J. 143.

Where there was no abatement of rent under the terms of the *putni* lease by the zemindar to the *putnidar* in respect of the land

acquired, *held* that the zemindar was not entitled to any portion of the compensation money: *Bipradas Pal v. Sarat Chandra*, 16 C.L.J. 209; see also *Ram Ranjan v. Sunwari Lal*, 16 C.L.J. 211.

Where by an agreement in the lease the tenant was entitled to an abatement, *held* that the latter was not entitled to claim an abatement if by his own default and not of his landlord he is in possession of a less quantity: *Sita Nath v. Sham Chand*, 17 W.R. 418.

Where tenant is in possession of a less quantity by his own default.

Where a tenant is evicted from possession of a portion of a holding or tenure by a person claiming under a title paramount, the tenant is entitled to a reduction of rent: *Brojonath v. Heera Lal*, 10 W.R. 120; *Mohanund v. Lalla Gobind*, 12 W.R. 109; *Imambadi v. Kameleswari*, 21 Cal. 1005; *Surendra Narain v. Dinanath*, 43 Cal. 554, s. c., 36 I.C. 33; the onus is on the lessor to show what is the fair rent of the lands out of which the tenant was not evicted: *Ibid*.

Dispossession by person claiming under title paramount.

In creating a permanent tenure an agreement that the tenant will be deprived of the provisions of s. 52 is valid, but it should be stated with clearness; so where it was stated merely in such a lease that there shall never be any decrease or increase of the rent it was *held* that the tenant was entitled to abatement as the expression was not clear: *Umesh Chandra v. Matilal*, 39 C.L.J. 431.

Where stipulation in a permanent tenure no increase, or decrease, meaning of.

When a tenant was obliged to bring a suit to obtain possession and succeeded in obtaining only a part of what was granted in *mokurari*, *held*, that there was the same equity for an apportionment as in a case of eviction: *Imambandi v. Kamaleswari*, 21 Cal. 1005 (P.C.).

Apportionment.

A raiyat who holds *diara* land cannot claim reduction of rent under cl. (b) of sub-sec. (1) unless he acquires a right of occupancy: *Srinibash v. Ram Raj Tewary*, 18 C.W.N. 598.

Diara land.

As to abatement of rent on the ground of diluvion—see notes under the next heading (No. 16).

As to reduction of rent—see also notes under sec. 38.

See also notes under heading No. 24 "Limitation."

16. Abatement of Rent for Diluvion:—If a portion of the land demised is washed away the tenant is entitled to abatement of rent on the principle formulated in s. 52: *Salimulla v. Kaliprosunno*, 22 C.L.J. 569; s. c., 21 C.W.N. 371; in order to defeat the claim of a tenant to abatement of a rent it must be proved affirmatively by the landlord that the tenant had contracted himself out of his right to claim abatement by some express stipulation: *Ibid*. It may be pointed out here that a contract made after the passing of the Bengal Tenancy Act shall not take away the right of a *raiya* to apply for a reduction of rent under s. 38 or s. 52": See s. 178 sub-sec. (3) cl. (f); see in this connection the case of *The Secretary of State v. Kamal Krishna*, 44 I.C. 222 (Richardson and Beachcroft J.J.). In the case of a *temporary* tenure the contract was that diluvion or no diluvion, the liability of the tenant to the full rent payable should remain, *held* that ss. 52 and 38 should be read together and that the tenant was not entitled to reduction of rent: *The Secretary of State v. Kamal Krishna*, 22 C.W.N. 56 (notes).

Abatement for diluvion.

Where in a permanent *mokurari* lease it was stipulated in the lease that the tenant would not be able to claim abatement of rent for diminution of area for diluvion, *held* that on account of diluvion

Permanent mokurari lease.

the tenant was not entitled to claim an abatement of rent under s. 52 : *Nando Lal v. Kymuddin*, 9 C.W.N. 886.

In the case of *Enayatulla v. Elahibuksh*, [1884] W.R. Act X Rulings 42, Peacock C. J. stated that it was settled doctrine that the tenant was entitled to abatement for the lands washed away, if the terms of the *kabuliyat* were not such as to preclude him from claiming that abatement. He pointed out that the rule was founded on principles of natural justice and equity and that if a landlord let his land at a certain rent to be paid during the period of occupation and the land was by the action of God put in such a state that the tenant could not enjoy it, the tenant was entitled to abatement. He held accordingly that when land was proved to have been washed away and yet the claim for abatement was resisted by the landlord it must be proved affirmatively by him, that the tenant had contracted himself out of his right to claim abatement by some express stipulation mentioned in the lease.

See in this connection also the cases of *Watson & Co. v. Nistarini*, 10 Cal. 544 ; *Ishan Chunder v. Chunder Kant*, 13 C.L.R. 55, and the case of *Secretary of State v. Kamal Krishna*, 44 I.C. 222, (Richardson and Beachcroft J.J.).

The cases of *Enayatulla v. Elahibuksh*, [1884] W.R., Act X Rulings 42, and *Salimulla v. Kali Prasanna*, 22 C.L.J. 569, s. c., 21 C.W.N. 371, were referred to and followed in the case of *Dwijendra v. Jitendra*, 32 C.W.N. 295 (B. B. Ghose & Mallik, J.J.) where upon an interpretation of the terms of the lease in respect of a *mourashi mokurari* tenure it was held that the contract was that there should be neither increase nor decrease of the rent on any ground whatsoever and the tenant was not entitled to abatement of rent on the ground of diluvion.

Rent is paid by a tenant for the use of land, and if for no fault of his own the lands are washed away, he cannot, on general principles be held liable to pay rent : *Rajendra v. Manindra*, 24 C.L.J. 162.

A permanent tenure-holder by claiming or accepting remission of rent in respect of lands washed away from time to time by the action of the river, did not abandon or agree to abandon their rights to such land on their reformation *in situ* : *Arun Chandra v. Kamini Kumar*, 41 Cal. 685 (P.C.), s. c., 18 C.W.N. 369.

Hajabad.

When in a suit for rent the tenants claimed remission of rent payable on account of what are called *hajabad* land (i.e., land liable to inundation) under an alleged custom under which in the year of inundation no portion of such rent, irrespective of the extent of the land inundated or of the crops destroyed, was recoverable from them : held that the custom was both unreasonable and uncertain and was in consequence invalid in law : *Sibnarain v. Bhutnath*, 22 C.W.N. 422, s. c., 28 C.L.J. 148.

Last assessment—Area.

Where it has not been shewn that there has been any diminution in the area for which rent was last assessed, no suit for abatement of rent under s. 52 can lie : *Kesho Prasad v. Bhagawat*, [1924 Pat.], p. 18, (Dawson Miller C. J. and Mullick J.).

Diluvion—
“on any
other
ground,”

When diluvion is established by the tenant, if there is no express agreement to the contrary, in a case arising before the Bengal Tenancy Act came into force, the tenant is entitled to abatement of rent ; the landlord is to prove the reduced amount of rent which

can be done by proof of the extent of diluvion : *Ram Kristo v. Abdul Karim*, 34 C.L.J. 35, (Mookerjee C. J. and Fletcher J.).

Where a *kabuliyat* stipulated that the tenant would not get abatement on the ground of diluvion "or on any other ground," held that the words "or on any other ground" referred to cases of like nature as diluvion : *Meshabuddin v. Abdul*, 34 C.L.J. 119, (N. R. Chatterjea and Panton J.J.). See in this connection the case of *Dwijendra v. Jitendra*, 32 C.W.N. 295.

Ordinarily a tenant is exempt from payment of the whole rent if the whole of the land be washed away ; and a plea for abatement of rent may be taken in a rent-suit : *Sekhraj v. Grugadayal*, 6 Pat. L.J. 665, s. c., [1922 Pat.] 132 ; (Jwala Prasad and Ross J.J.). For lands washed away a tenant holding under a *mokurari* lease in an area not permanently settled is entitled to a reduction of rent even if the lease stipulated that the tenant would not be entitled to reduction of rent : *Khetramoni Dasi v. Jibon Krishna*, 48 I.A. 39, s. c., 48 Cal. 473, s. c., 25 C.W.N. 361, s. c., 33 C.L.J. 214, (P.C.).

Where land is washed away. Plea of abatement in a rent suit. Lands washed away—

See notes under the next heading no. 17.

17. Apportionment of Rent :—Where a comparatively small portion of the demised lands was found to have originally belonged to the lessee and to have been included in the lease by mutual mistake, it was held that the whole lease should not be set aside but that there should be an apportionment of rent for the remaining land : *Raimoni Dassi v. Mathuramohon*, 16 C.W.N. 606 ; there is no suspension of rent when the tenant did not get possession of a portion of the land demised, in the beginning of the tenancy ; the tenant in such a case is bound to pay proportionate rent ; *Annada v. Malthura Lal Nag*, 13 C.W.N. 702, s. c., 9 C.L.J. 585. Where land forming part of a tenant's holding was lost by diluvion, but subsequently reappeared and was settled by the landlord with third parties : held that there was no eviction of the tenant by the landlord, and the tenant could not claim suspension of the whole rent but may claim a proportionate abatement of the rent : *Raicharan v. The Administrator General of Bengal*, 13 C.W.N. 853.

Where land leased out had been let out before.

No suspension of rent where tenant did not get possession.

Diluvion.

S. 52 of the Bengal Tenancy Act is not exhaustive : a claim for abatement of rent may be established otherwise than by measurement ; a tenant is entitled to reduction of the rent if he is dispossessed of a portion of the land comprised in the tenancy by a person claiming under a title paramount : *Rani Dassi v. Ashutosh Ray*, 14 C.W.N. 152 (notes portion), s. c., 15 C.L.J. 310.

S. 52 not exhaustive. Disposition by title paramount.

The doctrine of suspension of rent has no application to a case where the stipulated rent is so much per acre or bigha : *Kalyani v. Uday Kumar*, 52 I.A. 160, s. c., 52 Cal. 470, s. c., 30 C.W.N. 1 (P.C.) B. B. Ghose and Roy J.J., explaining the Privy Council case of *Kalyani* observed in the case of *Susil Kumar v. Rajani Kanta*, 31 C.W.N. 990 that even where the rent reserved is a lump sum for the whole land there may be apportionment of rent.

Apportionment of rent.

See notes under sec. 3, heading no. 16 at p. 34

18. Accretion :—Cl. 1, sec. 4, Reg. XI of 1825 refers to of tenants who possess some permanent interest in their lands and not to tenants from year to year : *Zuheeroodeen v. Campbell*, 4 W.R. 57, A raiyat who has right of occupancy is entitled to the benefit of s. 4, cl. 1 of Reg. XI of 1825 ; *Gourhari v. Bhola Koiburto*, 21 Cal. 233

Permanent tenant.

Occupancy tenant. (F.B.), see also *Gobind Monee v. Dinobundhoo*, 15 W.R. 87 ; *Attimollah v. Saheboola*, 15 W.R. 149 ; *Bhagabat v. Durga Bijai*, 8 B.L.R. 73 : s. c., 16 W.R. 95 ; *Brojendra v. Woopendra*, 8 Cal. 706. S. 4 of cl. 1 of Reg. XI of 1825 applies only where the tenant has pre-existing rights in the parent land : *Beni Pershad v. Chaturi*, 4 C.L.J. 63 ; and where there is fresh arrangement each year this section does not apply : *Ibid.* The accretion should be assessed at the same rate as the parent tenure : *Golam Ali v. Kali Krishna*, 7 Cal. 479 ; s. c., 8 C.L.R. 517, but in this case it was not laid down that there should be an inflexible rule applicable to all cases, but having regard to the particular circumstances of that case (i.e., *Golam Ali v. Kali Krishna*), it was thought that the accreted land should bear the same rent as was payable in respect of the land include in the original tenure : *Chooramonee v. Howrah Mills Company*, 11 Cal. 696. Where a *mokurari* is granted at the full letting value of the land comprised in it, it would be unjust to assess the newly-added land at the rate of the original *mokurari*, if the accreted lands be of inferior quality : on the other hand, if the accreted lands be of superior quality, or if in fixing the *mokurari* rent a lower standard than the full letting value was adopted in consideration of any bonus paid, it would be unjust to the landlord to fix the rent of the accretion at the rate of rent fixed in respect of the original tenure : *Ibid.*

Rate of assessment. But in the absence of any special circumstance the rate of rent to be assessed upon the accretion should be in proportion to that paid for the parent tenure : *Ibid.* See also *Gopal Lal v. Kumar Ali*, 6 W.R. Act X, 85, for accreted lands which are liable to enhancement, a tenant is entitled to a deduction of 10 per cent. for collection charges and 10 per cent. for talukdari profits : *Jaggut Chunder v. Panioty*, 6 W.R. Act X, 48.

Rule not inflexible.

Mokurari.

Rate of rent.

Rent free holding. The holder of a rent-free holding is entitled to possession of all lands forming accretions thereto but he is not entitled to hold the same rent free : *Baidya Nath v. Nundalal*, 18 C.W.N. 1206.

Persons who have a status of tenure-holders with regard to parent tenure, have the same status with regard to accretions : *Karuna v. Secretary of State*, 100 I.C. 466, s. c., A.I.R. (1927) Cal. 413. (Duval & Mitter J.J.).

Conditions laid down in Reg. X. The landlord is entitled to an increased rent on account of accretion on the condition laid down in Regulation XI of 1825 : *Shorussoti v. Parbutti*, 6 C.L.R. 362. See also *Hurro Sundaree v. Gopee Sundari*, 10 C.L.R. 559 ; *Ramnidhi v. Parbutty*, 5 Cal. 283.

Re-assessment of Revenue. Chapter X, B. T. Act. Reg. VII of 1822. S. 52, B. T. Act.

19. Re-assessment of revenue :—It is open to the Revenue-authorities in the case of a temporarily settled estate, to re-assess the revenue and re-settle the estate with effect from the expiry of a previous term of settlement ; to enhance the rents of tenants, proceedings should be taken either by the Revenue-authorities under Part II of Chapter X of the Bengal Tenancy Act (and not under Reg. VII of 1822) or by the landlord under s. 52 or some other appropriate section : *Ashutosh v. Dwarika Nath*, 27 C.W.N. 121, s. c., 36 C.L.J. 192.

Increment, a part of the parent tenure.

20. Increment :—An increment is to be recorded as a part of the parent tenure and the landlord cannot treat the increment as a separate tenure altogether, and treating it as a part and parcel of the parent tenure he can claim such relief as under the law he is entitled

to obtain as against the tenure-holder : *Assanulla v. Mohini Mohan*, 26 Cal. 739 (744).

21. Standard of measurement:—The landlord is to prove the area at the inception by the same standard as that by which the excess is found : *Indu Bhusan v. Jatu Mullick*, 35 C.L.J. 161, (N. R. Chatterjea and Panton, J.J.).

Standard of measurement—inception of the tenancy.

Where in a lease there is a stipulation that the tenant would pay additional rent for additional area according to the *Khod Khasta Nal*, held that evidence was admissible to show what the expression meant, there being nothing in the *kabuliyat* for guidance as to the proper meaning of the expression *Khod Khastanal* : *Prasanna Kumar v. Arun Chandra*, 29 C.W.N. 353.

Meaning of *Khod Khasta Nal* Evidence admissible : *kabuliat* does not explain it.

As to standard of measurement : See notes under sec. 92.

22. Proceeding under sec. 158 :—In a proceeding under s. 158 the Court has no jurisdiction to assess additional rent for excess lands found to be in occupation of the tenants, its function being limited to record the existing rent payable by the tenant at the time of the application : *Srinarain v. Maharaja Rameswar*, 6 C.W.N. 592.

S. 158—excludes lands.

23. Res judicata :—Each year's rent is in itself a separate and entire cause of action and the mere failure of a tenant to prove in a previous suit for rent that he was entitled to an abatement does not prevent him from proving the same in a subsequent suit brought for recovery of rent for a different period ; *Nilmadhub v. Brojonath*, 21 Cal. 240 ; *Raghoonath v. Juggut Bundhoo*, 7 Cal. 214. But where in a suit for rent the issue was as to whether the rent claimed was payable in respect to the quantity as alleged by the landlord of a much larger quantity as alleged by the tenant, and it was decided in favour of the landlord, held that a subsequent suit by the tenant for a declaration that the rent was payable for the larger area as claimed by him was barred by the rule of *res judicata* ; *Bussun Lall v. Chundee*, 4 Cal. 686 ; see also *Nobodurga v. Foyzbox*, 1 Cal. 202 : s. c., 24 W.R. 403. A tenant whose defence, that the landlord was entitled to rent in respect of a lesser area of land than was stated in his claim, was dismissed on the merits in a previous rent suit, is precluded from raising the same defence in a subsequent rent suit by the rule of *res judicata* ; *Upendra Kumar v. Sham Lal*, 11 C.W.N. 1100. A suit for assessment of additional rent on the same additional area which formed the subject-matter of a previous suit is barred as the decision in the previous suit operates as *res judicata* : *Kisori Manikya v. Umedali*, 12 C.W.N. 904.

Rule of *res judicata* does not apply when objection not taken in previous suit. But it applies where in a previous suit the question as to area was decided.

24. Limitation :—The right to recover additional rent for increased area is a recurring one and a landlord is entitled to exercise it whenever he finds it necessary to do so : *Jotindra Mohon v. Chandra Nath*, 6 C.W.N. 360. A tenant is also entitled to claim an abatement of rent although he has paid full rent for several years : *Mahtab Chand v. Chitro Coomaree*, 16 W.R. 201. A landlord brought a suit in an alternative form asking either for *khas* possession of the excess land or for a declaratory decree assessing the rent thereon in the terms of the *kabuliyat* ; he ultimately failed in his prayer for direct possession but succeeded in getting a declaratory decree ; he brought a suit for rent alleging that his cause of action accrued by virtue of the decree ; held that this was not so and that the cause of action accrued on the last day of the year on which the rent fell

Cause of action, a recurring one. Abatement.

Cause of action when rent falls due.

due: *Hurro Kumar v. Kali Krishna*, 17 Cal. 251 ; see also *Daya-moyee v. Bholanath*, 6 W.R. Act X 77 ; *Curro Pershad v. Gopal Dass*, 9 Cal. 255 ; *Sheriff v. Dinanath*, 12 Cal. 258.

Abatement,
suit for,
upon agree-
ment.

Where a suit for abatement was founded upon an agreement that at a certain time the land should be measured and if the quantity was found to be less than that named in their agreement, there should be an abatement of the rent, *held*, in a suit for abatement by the tenant, that it was barred by limitation, the cause of action having arisen when the landlord continued to take rent according to the

When no
limitation.

quantity of land named in the agreement ; *Prosunnomoyee v. Daya-moyee*, 22 W.R. 275 ; where abatement was claimed 24 years after a part of the land had been acquired by Government for public purposes, *held* that although the Limitation Act did not prevent the

No en-
hancement.

tenant from raising such a plea, the tenant was disentitled to any relief for the great delay and other circumstances peculiar to the case : *Ram Narain v. Poolin Behary*, 2 C.L.R. 5 ; where lands were occupied and enjoyed as lands included in the pattah since before the Decennial settlement, *held* that there could not be any enhancement : *Sutto Churn v. Obhoy Nund*, 2 W.R. Act X, 33.

A claim to enhanced rent is a recurring cause of action and is governed by Art. 131 of the Limitation Act, 1908 and not by Art. 102 ; limitation runs from the date of refusal to pay rent at the enhanced rent : *Brij Behari v. Sheo Sankar*, 2 Pat. L.J. 124.

See also *Hem v. Atul*, 19 C.W.N. 386, s. c., 19 C.L.J. 118 ; *Devendra Narayan v. Jhumur*, 43 C.L.J. 387 (Suhrawardy & Mukerji, J.J.). Suit for assessment of rent free lands is governed by Art 130 of the Limitation Act and is to be instituted within 12 years from the time when the right to assess the land first arises and this right may arise upon a notice of the tenant's claim to hold it rent free : *Ibid*.

25. Framing of suit under s. 52 :—In a suit for *khas* possession or for assessment of rent it was found that the land was not a part of the original holding but subsequently acquired and treated as a part of the original holding the prayer for *khas* possession was refused but the liability of the defendant to rent was decreed ; no decree could be passed for additional rent as the suit was not framed as one under s. 52 : *Harachandra v. Radhakison*, 20 C.L.J. 296.

26. Sub-sec. (6) :—This sub-sec. was added by Act I B. C. of 1907 in Bengal and E. B. and A. C. Act I of 1908.

Practice of
measure-
ment refers
to the
measure-
ment at
the time
of original
settlement.

There is some ambiguity as to the meaning of the words "*at the time the measurement on which the claim is based was made*" ; the language is not very clear as to whether "*the time*" referred to means the time when the original settlement was made or the time when the measurement upon which the excess area is found out before the institution of the suit. It is submitted that on reading this sub-section as a whole it seems that the measurement refers to the time when the original settlement is made and not to the time when the excess area is found before the institution of the suit. [If it meant the measurement subsequently made then every landlord can introduce a practice of measurement before the institution of suit and bring a suit for additional rent of ancient holdings.]

This question came up for decision in the case of *Uma Singh v. Tarini Prasad*, 19 C.L.J. 451 ; (N. Chatterjea, J.), has taken the view

that the measurement refers to the time when the original settlement was made. But the language of the judgment is not very clear ; however in a later case *Umed Ali v. Nawab Khaja Habibulla*, 47 Cal. 266, s. c., 31 C.L.J. 68 decided by N. R. Chatterjea and Duval J.J. the case of *Uma Singh v. Tarini Prasad*, 19 C.L.J. 451 has been explained and it has been clearly stated in their Lordships' judgment that the measurement refers to the time when the original settlement had been made.

But in the Full Bench Case of *Nilmani Kar v. Sati Prasad Garga*, 48 Cal. 556 (F.B.), s. c., 25 C.W.N. 230, s. c., 32 C.L.J. 302, (Mookerjee C. J., Fletcher, N. R. Chatterjea, Richardson and Ghose J.J.). The expression "at the time of the measurement upon which the claim is based was made" in s. 52 (6) refers to the measurement upon which the area in excess or defect, as the case may be, is found out before the institution of the suit. It does not as ruled in *Khojeh Habibulla v. Umed Ali*, 47 Cal. 266, s. c., 31 C.L.J. 68 refer to the measurement made at the time of the original settlement or the last preceding adjustment of rent.

It is submitted with great respect to the learned Judges of the Full Bench that the view taken by them will have anomalous consequences and the interpretation made by them of the words "at the time of the measurement upon which the claim is based was made" is open to doubt. It is submitted that the decisions over-ruled by the Full Bench laid down a correct view of the law.

"In my opinion it is not incumbent upon the landlord to prove that there was an actual measurement or that there has been a practice of measurement. If the landlord can shew that by contract between him and the tenants it was agreed that a certain rental at a certain rate per bigha was to be paid for a certain area then he is entitled to apply under s. 52 B. T. Act even if that area was agreed upon without any actual measurement or a practice of measurement with the *perganna*" (*Per* Mullick, J., Jwala Prasad J., agreeing): *Kesho Prasad v. Tribhuan*, 2 Pat. L.J. 276. See also *Shib Sahai Lal v. Bijoy Chand Mahatab*, 5 Pat. 157, s. c., 90 I.C. 862 ; *Durga Priya v. Nazra Gain*, 25 C.W.N. 204.

27. Right to Additional Rent : Recurring Right :—The right of a landlord to recover additional rent for additional area is a recurring one. He is entitled to exercise it whenever he finds it necessary : *Jotindra v. Chandranath*, 6 C.W.N. 360 ; *Radhakishore v. Umedali*, 12 C.W.N. 904.

28. 10 pc. deduction from Area ascertained by measurement :—There is no principle of law on which a deduction of 10 p.c. can be made by Survey officers from the area found by measurement. There is no reason to allow any deduction from a scientific measurement made by Settlement Officers or any other measurement made by the landlord unless it is shewn that either of these measurements was inaccurate. Ordinarily the measurements made by the Settlement Officers are accepted as scientifically made and correct but measurements made by the landlord are not scientifically made and it may be that such measurements may be challenged but unless such measurement are challenged as inaccurate *prima facie* they ought to be accepted as correct. When any such plea is taken and the court finds from the

Contract assessment. Clause (6) does not refer to the measurement made at the time of the original settlement.

Right to additional rent : recurring right.

Rule of 10 p.c. deduction made by settlement officers not warranted by law.

circumstances, that there are reasons to believe that previous measurements were inaccurate, in such a case the court ought, upon the circumstances and evidence of each case, to find whether the previous measurement was or was not accurate. If it is found to be inaccurate then the court would make certain deductions as would, in the circumstances of that case, give an approximate and accurate result: *Chundy v. Balaram*, 91 I.C. 763; s. c., 1926 A.I.R. (Cal.) 616 (Cuming and Chakravarti, J.J.).

Payment of
rent.

Payment of Rent.

Instalment
of rent.

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

Headings of Notes.

1. STIPULATION AS TO THE PAYMENT OF INTEREST UPON THE DEFAULT OF KISTS WHERE THERE ARE MORE THAN FOUR KISTS.
2. SUBJECT TO AGREEMENT.
3. USAGE.
4. ESTABLISHED USAGE.
5. DUE.
6. MONEY RENT.
7. PRODUCE RENT.

1. **Stipulation as to the payment of interest upon the default of kists where there are more than four kists :—**See notes under s. 67.

Purchaser
bound to
pay rent in
instalments
as stipulated
by his
predecessors.

2. **Subject to agreement :—**The words of this section indicate that there may be an agreement in modification of the provision for four instalments: *Monohar Mukerjee v. Khettra Nath Sabui*, 17 C.W.N. 820, s. c., 18 C.L.J. 175 (Jenkins C. J. and Ray J.). In a lease executed in the year 1865 there was a stipulation that the rents should be paid by monthly instalments, held that the purchaser of the tenure at a sale for arrears of rent was bound to pay rent by monthly instalments and interest on arrears would be calculated monthly: *Nadio Sundari Debi v. Girindra Narayan Singha*, 7 C.L.J. 24 (notes).

Usage as
used in
s. 183.

3. **Usage :—**With regard to the word "usage" as used in sec. 183 their lordships (Trevelyan and Beverley, J.J.) in delivering their judgment in the case of *Dalgleish v. Guzuffer Hossain*, 23 Cal. 429, observed as follows:—"The word 'usage' at any rate, would include what the people are now or recently in the habit of doing in a particular place. It may be that this particular habit is only of a very recent origin, or it may be one which has existed for a long time. If it be one regularly and ordinarily practised by the inhabitants of the place where the tenure exists, there would be 'usage' within the meaning of this section." The words "custom" and "usage" are not synonymous terms and the same kind of evidence as would be required to prove a custom is not necessary when the existence of a local usage is in question; a long period of time must elapse, before a custom in respect of the transferability of occupancy holdings can

The words
'Custom'
and 'usage'
are not
syno-
nymous.

grow up, but this is not the case with regard to the growth of a usage: *Dalgleish v. Guzuffer Hossain*, 3 C.W.N. 22. The "usage" to which secs. 178 and 183 refer is not restricted to a usage existing at the time of the passing of the Act but it includes usage which may have subsequently grown up: *Ibid.*

The payment of rent by the lessee from the mortgagor in advance after the institution of suit by the mortgagee is not binding upon the mortgagee or on the receiver appointed in the suit: *Kiran Chandra v. Dutt & Co.*, 40 C.L.J. 500.

Payment of rent in advance not binding upon mortgagee

It is submitted that the correctness of this decision is open to doubt; for where a landlord before the creation of mortgage accepts rent in advance from his tenant he is the only person entitled absolutely to deal with the property in any manner he likes; he is fully entitled to give a discharge to a tenant of his future dues. He can create a rent-free grant—and if he can do so and if such grants are binding upon the mortgagee, it is reasonable to think that any arrangement which he makes with a tenant before the date of the creation of the mortgage must be considered to be binding upon the mortgagee. If a person makes a transfer of a portion or whole of his property the mortgagee cannot say that he is not bound by it. Likewise all interests created in favour of tenants or other third persons are binding upon the mortgagees.

[Payments made by tenants to a mortgagor after a mortgage, but before notice of it, must, in order to be valid against the mortgagee, have been made in respect of rent which was due at the time of payment or became due before notice of the mortgage; but when a lessee has prepaid to his lessor all the rent to become due under the lease and the lessor then mortgages the premises to a mortgagee who neglects to make a proper enquiry of the lessee, who is in possession, the mortgagee cannot recover any part of the rent reserved by the lease: *Ibid.*

4. Established usage :—This expression refers not to a practice previously prevailing between the parties, but to the established usage of the *pergunnah* in which the property is situated: *Hira Lal v. Mothura Mohun*, 15 Cal. 714; *Chytunno v. Kedar Nath*, 14 W.R. 99. The case of *Hira Lal v. Mothura Mohan*, 15 Cal. 714, was followed in the case of *Watson v. Sreekristo*, 21 Cal. 132, where it was held that the established usage referred to in this section was not the usage between the parties but the established usage of the *locality*.

Usage of the locality.

The use of the words (*সন বসন*) *san basan* in a *pattah* does not show that the rent was to be paid according to instalments, if such instalments are payable by established usage, they merely mean that the amount of rent should be paid every year: *Chytunno v. Kedar Nath*, 14 W.R. 99. Where by an agreement the defendant was to pay Government revenue through the plaintiff: held that he was liable to pay Government revenue as it fell due and the rule which prevailed in the locality for the payments of instalments of rent by ordinary tenants was not at all applicable to the defendant: *Giridhari v. The Court of Wards*, 10 W.R. 368. Where in a *kabuliyat* it was provided that rent was to be paid in monthly instalments the mere fact that the payment of the rent had not been enforced (by not taking the rents in monthly instalments) did not take away from the landlord

Meaning of "sanbasan."

Agreement to pay Government revenue.

Where agreement to pay in monthly

instalment
is not
enforced.

the right to enforce it whenever the tenant fell into arrear. *Pearee Mohun v. Brojo Mohun*, 21 W.R. 36, *Pearee Mohun v. Brojo Mohun*, 22 W.R. 428.

Cases under
the old law.

Where a
putni is
sold and
rent suit is
brought
after putni-
dar is res-
tored to
possession
after setting
aside of sale
Suit after
khas posses-
sion—sub-
sequent
rent suit.

Contra.

5. Due:—When a *putni* was sold under Reg. VIII of 1819, the putnidar was ousted and the purchaser was put into possession and the sale being subsequently set aside, the zemindar brought a suit for recovery of rent on the putnidar being restored to possession: *held*, that upon the setting aside of the sale and the restoration of the party to possession, he took back the estate subject to the obligation to pay the rent and the arrears claimed must be taken to have become due in the year in which the restoration to possession took place: *Rani Surnomoyee v. Shoshee Mukhee*, 12 Moo. 244: s. c., 2 B.L.R. P.C. 11: s. c., 11 W.R.P.C. 5. The principle of this case was held not to apply to a suit for rent brought by a landlord after a suit for *khas* possession brought by him failed: *Harro Prosad v. Gopal Dass*, 3 Cal. 817; but see *Eshan Chandra v. Khajah Essanoolah*, 16 W.R. 79, where it was held that the principle of the case of *Surnomoyee v. Shoshee Mukhee*, applied to a case where plaintiff brought a suit for rent after being unsuccessful in a suit for *khas* possession.

Assignment
of rent;
suit for rent
if rent
assigned is
not paid.

The principle was also held to apply where the landlord assigned his tenant's rent in favour of his creditor, and subsequently a suit for rent was brought three years after the rent became due on the discovery of the fact that the rent assigned had not been paid by the tenant: *Mohesh v. Gungamonee*, 18 W.R. 59. The correctness of this decision was doubted by their Lordships Garth, C. J., and MacDonell, J., in the case of *Hurro Prosad v. Gopal Dass*, 3 Cal. 817.

Pendency of
a suit for
rent and for
ejectment.

Surnomoyee
v. Shoshee
Mukhee
where not
applicable.

Plaintiff instituted proceedings in the year 1272 for arrears of rent due and for ejectment of the defendant for non-payment of rent and obtained a decree: defendant paid rent within the time allowed by the decree and secured the right of continuing as a tenant; in 1270 plaintiff brought a suit for recovery of rent for 1272 and subsequent years; *held*, that the case of *Rani Surnomoyee v. Shoshee Mukhee*, 12 Moo. 244, applied: *Dindoyal v. Radha Kishori*, 8 B.L.R. 526; plaintiff's suit for rent for 1270 and subsequent years being dismissed, he brought a suit for declaration of his right to recover rent which was decreed, and plaintiff subsequently brought a suit for rent for 1271 to 1279, *held* that the Privy Council case of *Rani Surnomoyee* did not apply: *Baroda Kant v. Chunder Coomar*, 23 W.R. 280.

Demand for
rent cannot
be consider-
ed to be in
suspense
during the
pendency
of a suit by
landlord to
eject the
tenant.

A landlord objected to the registration of the names of the successors of his tenant and brought a suit to eject them and during the pendency of the litigation the landlord sued to recover rent not upon the basis of lease but for use and occupation treating the tenants as trespassers: both the suits were dismissed; the landlord subsequently sued on the basis of the lease, *held* that the claim for rent beyond three years was barred and it could not be said that the right to demand the rents which fell due during the pendency of the suit for ejectment was in suspense during the pendency of the litigation: *Watson & Co. v. Dhonendra*, 3 Cal. 6; where a suit for enhancement of rent was dismissed and subsequently the landlord brought a suit for rent at the admitted rent for the period when the former suit was pending, *held* that the old admitted rent did not become due on the dismissal of the enhancement suit: *Brojendra v. Rakhal*, 2 Cal. 791.

A landlord may under certain circumstances be allowed a deduction when limitation is pleaded in a suit for rent but the landlord's action must in that case be *bona fide* and he must have brought his suit for ejection in the full belief that the defendants were trespassers ; *Hura Nath v. Goluck Nath*, 19 W.R. 18. Contra.

6. Money rent:—Rent includes also money recoverable under any enactment for the time being in force as if it was rent. See s. 3, sub-sec. (5) and notes thereunder. Money rent.

The landlord decree-holder is debarred from claiming an amount not mentioned in the sale proclamation ; *Rajnarin v. Panna Chand*, 30 Cal. 213.

7. Produce rent:—This section does not apply to produce rents. It seems that such rents, subject to agreement, would be payable at the end of the year ; see Sch. III, Part I, Art. 2, cl. (b).

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

(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, from time to time, make rules, either generally or for any specified local area, 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.

Headings of Notes.

1. EVERY TENANT.
2. EACH INSTALMENT OF RENT.
3. VILLAGE OFFICE.
4. PAYMENT TO CO-SHARER.
5. RENT.
6. ARREAR.
7. OLD LAW.
8. DUE.
9. PAYMENT OF RENT MADE IN ADVANCE.
10. TENDER OF PAYMENT OF RENT.
11. PAYMENT TO A CO-SHARER LANDLORD.
12. PENDENCY OF A SUIT FOR ENHANCEMENT.

I. Every tenant:—Where a tenure is sold in execution of a decree, the auction-purchaser is liable for the whole instalment of rent accruing due after his purchase, but before confirmation of the sale ; rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract, according to the general law laid down in sec. 53 of the Bengal Tenancy Act: *Satyendra Nath v.* Liability of auction purchaser for rent due after sale ; but not before sale.

Purchaser becomes the tenant from the date of the confirmation of sale.

Nilkantha, 21 Cal. 383 ; but where a tenure is sold in execution of a decree for arrears of rent, the auction-purchaser is not liable for the arrears of rent which became due prior to his purchase : *Fazl Rahan v. Ramsukh*, 21 Cal. 169 : and when a landlord brings a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of the confirmation of the sale, and the arrears accruing due between the date of sale and the date of confirmation of sale, must be treated as arrears of rent payable by the outgoing tenant whose interest does not cease till the sale is confirmed : *Karoonamoy v. Surendra Nath*, 2 C.W.N. 327 (notes).

Purchaser bound by terms of previous lease.

In a case where the original *kabuliyat* was executed in 1865 and contained the stipulation that the rents should be paid by monthly instalments ; the tenure was sold in execution of a decree, held that the purchaser was bound to pay rent by monthly instalments : *Nadia Sundari Debi v. Girindra Narain Singha*, 7 C.L.J. 24 (notes).

If a landlord is bound to accept a part of arrears of rent.

2. Each instalment of rent :—It seems that the landlord is not bound to accept any sum which falls short of one instalment of rent. This question has not as yet been decided, but it was observed in the case of *Sati Prasad v. Monmotha*, 18 C.W.N. 84 that a landlord can not be asked to accept a small proportion of the rent due as the whole rent.

S. 61—Deposit of a smaller amount

A deposit in a Court by a tenant of an amount less than the amount of arrears due is not a valid deposit under s. 61 ; *Sati Prasad v. Monmotha*, 18 C.W.N. 84.

Instalments.

Cl. (3) of s. 54 deals with only cases of rent payable in instalments : *Brahmamoyi v. Somarali*, 68 I.C. 109, (Newbould and Panton J.J.).

“I am unable to accept the contention that because it” (rent) “is not paid in instalments it cannot fall into arrears” : *Maubharat v. Nowbut*, [1920 Pat.] p. 257 ; s. c., 5 Pat. L.J. 641 ; (per Coutts J., Sultan Ahmed J., agreeing).

Village office.

3. Village office :—A tenant's liability to pay rent remains notwithstanding that the landlord has no village office and that he has not appointed a convenient place for payment ; where there is no controlling agreement the tenant must go to his landlord and pay the rent as it falls due ; *Fakir Lall v. W. C. Bonnerjee*, 4 C.W.N. 324.

Place of payment.

Any officer of the zemindari authorised to receive rent who happens to be in the village office can receive it and give a valid acquittance ; but because a man happens to be manager of the zeminder, he cannot be compelled to take rent tendered wherever he may happen to be and at whatever time or place it may be offered : *Sati Prasad v. Monmotha Nath*, 18 C.W.N. 84.

Payment to one co-sharer is not good against other.

4. Payment to co-sharer :—A payment to one of three persons jointly entitled to receive money is not good against the other two : *Peary Lal v. Madhaji*, 17 C.L.J. 372 ; see also *Harihar v. Bholi*, 6 C.L.J. 383 ; and *Husainnara v. Rahamanessa*, 13 C.L.J. 3, but see *Barber Moran v. Ramana Goundan*, 20 Mad. 461.

5. Rent :—Rent includes in this section money recoverable under any enactment for the time being in force as if it was rent. See notes under s. 3, cl. (5) and s. 65.

6. Arrear :—"If rent has been duly tendered before or at the time when it falls due, and the tender has been improperly refused, the rent cannot legitimately be said to be in arrear :'' (Per Mookerjee, J.) *Kripasindhu v. Nanda*, 35 Cal. 34, s. c., 11 C.W.N. 983 at p. 989 ; s. c., 6 C.L.J. 273 (F.B.), but see the observation of Rampini, C. J. and Mitra J., who dissented from the majority of the Judges composing the Full Bench. See also notes under s. 67.

As arrear of rent due in respect of a property, sought to be sold in execution of a decree is to be regarded as one of the matters to be notified as being material for the purchaser to know in order to judge of the nature and value of the property, and the omission of the decree-holder to notify such arrear due to him at the date of the issue of the proclamation for the sale of the property has the effect of destroying the lien he has upon the property : *Giribala v. Rani Mina*, 4 C.W.N. 497 ; see also *Rajnarain v. Panchanand*, 7 C.W.N. 40 (notes).

7. Old law :—Under the old Act it was decided that rent became due at the last moment of the time which was allowed to the tenant for payment, and if it was not paid within that time it became an arrear and continued as such until it was paid : *Kasheekant v. Rohini Kant*, 6 Cal. 325, (F.B.) which over-ruled the case of *Woomesh Chunder v. Surju Kant*, 5 Cal. 713 where it was held that rent did not become due until the day after that on which by the terms of the holding the rent was payable.

8. Due :—Rent should ordinarily be regarded not as accruing from day to day but as following due only at stated times according to the contract of tenancy, or the general law, in the absence of such contract, as laid down in this section : *Satyendra Nath v. Nilkantha*, 21 Cal. 383. An arrear of rent was held not to be due within the meaning of s. 32, Act X of 1859, until the rent itself had been determined : *Khmul Lochun v. Messrs. Moran & Co.*, 2 W.R., Act X, 82. See notes under s. 53.

9. Payment of rent made in advance :—Where rent had been paid in advance and subsequently the right, title and interest of the former proprietors were sold and purchased by a person with notice of payment made by the tenant, held that the auction purchaser was not entitled to the rent which had been paid in advance to the former proprietors, although such rent accrued due after the date of his purchase : *Ram Lall v. Rao Jogendra*, 18 W.R. 329 ; see also *Madan Mohun v. Holloway*, 12 Cal. 555. But where A realised from tenants the entire rents of the whole year and by operation of law B became the owner in the midst of the year but after the date on which the rents had fallen due and after the same had been realised by A, held in a suit by B against A for refund (from the date when A ceased to have any interest and B's title accrued) that B's action was not sustainable : *Mathwson v. Shyam Sunder*, 33 Cal. 786. S. 36* of the Transfer of Property Act.

* S. 36 of the Transfer of Property Act is as follows :—

In the absence of a contract or local usage to the contrary, all rents, annuities, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly but to be payable on the days appointed for the payment thereof.

of the Transfer of Property Act relating to apportionment of rent does not apply to the case having regard to s. 2, cl. (d) of the Act inasmuch as the property devolved on B by operation of customary law: *Ibid.* In this case no opinion was given by their Lordships as to whether a suit lay at the instance of the transferee (B) against the tenants.

It is submitted that in such a case, *i.e.*, where on a date fixed by an agreement or established usage rent falls due on a particular day of the year and the tenant makes payment of rent to the person who is then the landlord, he cannot be made liable again for the same rent to the transferee of the landlord; for, if the tenant does not pay the rent on the day on which it falls due he becomes liable to interest and moreover the person who is then the landlord at that time is entitled to recover by suit the whole of the rent then falling due.

Rent paid in advance
—Right of suit by purchaser from landlord.

Where rent was paid in advance in accordance with the terms of a registered lease, *held* that the purchaser from the lessor was not entitled to recover from the lessee the rent which had been paid in advance to the original lessor: *Nand Kishore v. Anwar Hussain*, 30 All. 82.

Onus on tenant.

Tender need not be followed by deposit to stop interest.

How is tender kept good.

10. Tender of payment of rent: Onus :—Where a tenant pleaded tender of payment as a ground for not being saddled with interest, *held* that the onus was on him to prove that he had made such a tender: *Ranee Shurat Soondaree v. The Collector of Mymensingh*, 5 W.R., Act X, p. 69. To stop interest on rent running in a case governed by the Bengal Tenancy Act a tender of rent which is improperly refused, need not be followed up by a deposit of rent in Court under s. 61 and such a tender, if kept good, is sufficient to stop interest running from the date of tender: *Kripasindhu Mukerjee v. Annada Sundari Devi*, 35 Cal. 34, s. c., 11 C. W.N. 983, s. c., 6 C.L.J. 273 (F.B.); tender which has been improperly refused is kept good if the person who has made the tender has from that time always kept the money ready to be paid on demand: *Ibid.* See also *Gyles v. Hall*, 2 P. Wms. 378 [The following were some of the cases that were discussed in the Full Bench case: *Ranjit Singha v. Bhagabutti Charan*, 7 C.W.N. 720; *Jay Durga Dassi v. Srikanta Roy*, 11 C.W.N. 984 foot-note; *Jagat Tarini v. Nabagopal Chaki*, 34 Cal. 305; s. c., 5 C.L.J. 270; *Sarat Soondaree v. The Collector of Mymensingh*, 5 W.R. (Act X Rulings) 69; *Eshan Chandra v. Assanoolla*, 16 W.R. 79; *Wooma Charan v. Huree Prasad*, 10 C.W.N. 101.] A tender is not vitiated if a receipt is asked: *Jagat Tarini v. Nabagopal*, 34 Cal. 305; s. c., 5 C.L.J. 273; when a tender is actually made but in a currency different from that required by law, for instance by a cheque, the tender may be expressly or impliedly waived by the creditor and if he rejects the tender on the ground of the insufficiency in amount without making any objection to the legality of the tender in point of quality he may be deemed to have waived the objection: *Ibid.*

Tender not vitiated if receipt is asked.

A tender is not vitiated because a receipt is asked: *Rupchand v. Narendra Krishna*, 19 C.W.N. 112.

A tender of payment accompanied by a condition which prevented it from being a perfect and complete tender does not relieve

the payee of the obligation to pay interest : *Narain Das v. Abinash Chander*, 27 C.W.N. 299 (P.C.). Conditional tender—interest. •

See notes under s. 55.

A tender to be valid must include the entire amount due as principal and interest ; *Behari Lal Biswas v. Nasimannessa Bibi*, 37 C.L.J. 222 (Mookerjee and Rankin J.J.). But a landlord in accepting a part payment does not loose his right to recover the balance due : *Ibid.* A tender must be unconditional. Tender must include interest.

Sec. 36 of the Transfer of Property Act, does not apply to agricultural lands.

Unless therefore, there is a contract between the parties for apportionment of rent, the *Patnidar* is bound to pay the whole rent of the year, even though the proprietary interest in the *Patni* passed to him before the end of the year : *Satya Bhupal v. Rajnandini*, 83 I.C. 144. (Greaves and Chakravarty, J.J.).

II. Payment to a co-sharer landlord :—Payment to one of several joint proprietors is a payment to all : *Oodit Narain v. Hudson*, 2 W.R., Act X, p. 15 ; see also the case of *Mookta Keshee v. Koylash Chunder*, 7 W.R., Act X, p. 493. Payment to co-sharer landlord.

12. Pendency of a suit for enhancement :—The mere pendency of an enhancement suit cannot of itself excuse the tenant from paying what is admittedly due *viz.*, the old rate of rent : *Nava Kant Dev. Rajah Baroda Kanta Ray*, Rev. Jud. & P. Journal, Vol. III, p. 188.

13. Postal money order :—See Appendix II.

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

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

Headings of Notes.

1. RENT.
2. WHERE RENT-RECEIPTS DO NOT SPECIFY THE YEARS TO WHICH THE AMOUNTS RELATE.
3. PAYMENT ON PUNYÁHA DAY.
4. ACCEPTANCE OF RENT UNDER PROTEST.
5. APPROPRIATION OF PAYMENT OF RENT TO INTEREST.
6. SECS 59 AND 60 OF THE CONTRACT ACT.
7. OMISSION OF TENANT TO DECLARE YEAR AND INSTALMENT.
8. MONEY-RENT PAYABLE BY A TENANT.
9. TENDER : CONSTRUCTION OF THE SECTION.

1. "Rent" in this section also includes money recoverable under any enactment for the time being in force as if it was rent, s. 3, cl. (5).

2. Where rent-receipts do not specify the years to which the amounts relate :—Where the rent-receipts which extend over receipts a number of years together did not specify the years to which the silent as

to the years
to which
amounts
relate

amounts relate, it is open to a Court dealing with the facts of the case to say whether the amounts paid in any particular year were partly for the rents of that year and partly for the arrear due in respect of previous years: *Surja Kanta v. Banerwar*, 24 Cal. 251.

Payment on
punyaha
day.

3. Payment on Punyaha day :*—Where a payment of rent was made on the *Punyaha* day and the entry was in these words—“*garher khajana o coss, barabar Raj Sarkar darun kistir takar madhya punyaha deyo...Rs. 15,*” the translation of which is as follows:—“Rs. 15, forest rent and cesses, paid to the Raj on the *punyaha* day out of the money (payable) on account of the kist,” held that “that indicated a payment made not on account of a general arrear balance but on account of a special *kist* or instalment, that is, the *kist* of the newly opened year:” *Sarajubala v. Saradanath*, 23 C.W.N. 336; (Teunon and Richardson, J.J.).

Conditional
acceptance.

4. Acceptance of rent under protest:—Where money is paid and received as rent under a lease, a mere protest that it is accepted conditionally and without prejudice to a right to a prior forfeiture cannot counteravail the fact of such receipt: *Davenport v. The Queen*, L.R. 3 App. Cas. 115; see also *Kali Krishna v. Fuzle Ali*, 9 Cal. 843.

5. Appropriation of payment of rent to interest:—Rent does not necessarily include interest where a sum of money was paid by a tenant to a landlord as *rent* and the latter *received it as such*, held that the landlord was not entitled to apply that money towards any interest which might then be due; *Bhagabati Debya v. Basanta Kumari*, 5 C.J.J. 69, s. c., 11 C.W.N. 110.

Appropriation.

Where payments are made towards a debt, but there is nothing to shew whether they had been made in respect of principal or interest, the court is entitled to find out on the evidence for what purpose the payments were made: *Hemchandra v. Purnachandra*, 44 Cal. 667.

Ss. 59 & 60
of the Con-
tract Act.

6. Secs. 59 and 60 of the Contract Act :—The provisions of s. 55 of the Bengal Tenancy Act are very different from those of s. 59 of the Contract Act; under s. 59 of the Contract Act the court may have regard not only to the debtor's express intimation, but also to circumstances “implying that the payment is to be applied to the discharge of some particular debt”; under 55 of the Tenancy Act, the debtor must declare the year or the year and the instalment of to which he wishes the payment to be credited. If he does not do so, the payment may be credited to the amount of such year and instalments as the landlord thinks fit: (*Per Rampini and Woodroffe, J.J.*) *Mohim Chandra v. Kalitara*, 11 C.W.N. 939. Ss. 59 and 60 of the Contract Act which contain somewhat similar provisions are as follows:—

Appropriation of payments.

Application
of payment
where debt

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under

* *Punyaha day*: The ceremonial opening day of the *zemindari* official year. This day is appointed each year by each zemindar according to his own convenience and it is not necessarily the same day in every year.

circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

to be discharged is indicated.

Illustrations.

(a) A owes B, among other debts 1,000 rupees upon a promissory note, which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Appropriation of payments. Where debt to be discharged is not indicated.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

7. Omission of tenant to declare year and instalment :—

Where by an arrangement with the landlord the tenant paid on behalf of the landlord a portion of the rent every year to the Government, *held* that the landlord was entitled to credit to his account as he thought fit inasmuch as the tenant omitted to declare to the landlord the years and instalments to which he wished the payments he had made to Government for plaintiff to be credited : *Mohim Chandra v. Kalitara*, 11 C.W.N. 939.

8. Money-rent payable by a tenant :—A landlord, decree-holder, is debarred from claiming an amount not mentioned in the sale proclamation : *Rajnarin Mitter v. Pannachand Singh*, 30 Cal. 213 : in this case the tenant agreed to pay to the landlord in addition to the rent Rs. 1,009 a certain sum (Rs. 10), on failure to deliver a certain quantity of molasses ; in the notification of sale Rs. 1,009 was mentioned as rent and not Rs. 1,019 ; *held* that the landlord was not entitled to claim rent from the purchaser in excess of the sum mentioned in the sale notification.

9. Tender : Construction of the Section :—S. 55 speaks of appropriation and not to the right of a tenant to make part payment : *Behari Lal Biswas v. Nasimannessa Bibi*, 37 C.L.J. 222.

Appropriation.

See notes under s. 54.

Receipts and Accounts.

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

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

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt

Receipts and accounts. Tenant making payment to his landlord entitled to a receipt.

given in Schedule II to this Act as can be specified by the landlord at the time of payment :

Provided that the Local Government may, from time to time, prescribe or sanction a modified form, 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.

Headings of Notes.

1. PRESUMPTION UNDER SUB-SEC. (4).
2. HOW A RENT RECEIPT IS TO BE PROVED.
3. RECEIPTS ARE NOT CONCLUSIVE EVIDENCE.
4. RECEIPT FOR RENT : CONFIRMATION OF LEASE.
5. MODIFIED FORMS OF RENT-RECEIPTS IN PARTICULAR AREAS.
6. PUTNI LEASE BY HINDU WIDOW : EFFECT OF RECEIPT OF RENT BY REVERSIONER.

Presump-
tion.

I. Presumption under sub-sec. (4) :—The receipt, before it can form the basis of any presumption under this sub-section, must be shewn to be a receipt granted by or on behalf of all the landlords, i.e., in a case where there are several joint landlords, it must be shewn that the person by whom the receipt was signed was authorised by them all, either *verbally* or *in writing* : *Gopinath v. Umakanta*, 24 Cal. 169. The presumption is rebuttable and if it is shewn that it was not the intention of the parties that the last receipt should operate as a final discharge of the tenant of his liabilities, the Court cannot give effect to the provisions of this sub-section : *Bindeswari v. I. S. Smith*, 5 C.L.J. 27 (notes).

Proof of
rent-
receipts.

2. How a rent receipt is to be proved :—Where a question arose whether certain rent-receipts had been proved and the lower Appellate Court observed as follows :—It has been contended on behalf of the appellant that some rent-receipts have not been proved and some have been disproved by the witnesses. The defendant, however, has proved them all by saying that he received the receipts on payment of rent. This I consider sufficient proof. The nature and appearance of the receipts convince me of their genuineness," *held*, that the finding arrived at must be taken to be unassailable at law : *Surja Kant v. Baneswar*, 24 Cal. 251. Where the genuineness of a rent-receipt is sworn to by the tenant by whom the rent has been paid, that is legally sufficient to prove the receipt, notwithstanding that the person whose signature it bears has not been examined : *Raj Mahomed v. Banoo Rasma*, 12 W.R. 34 : *Madhob Chunder v. Promotho Nath*, 20 W.R. 264. A party producing a *dakhila* is bound to give some evidence of its having been signed by the person by whom it purports to have been granted : *Bharat Roy v. Gunga Narain*, 14 W.R. 211 ; see also *Ramjadoo v. Lukhee Narain*, 8 W.R. 488. As to the mode of proving the authenticity of *dakhilas*,

Genuine-
ness of rent-
receipt
sworn to
by tenant.

see the case of *Rajessuree v. Sib Nath*, 4 W.R., Act X, p. 41 (at p. 42).

If a tenant says "for 20 years I have paid rent at a certain rate, and here are the receipts which from year to year I have obtained," that may be sufficient *prima facie* evidence as to the genuineness of the receipts without specific evidence as to the handwriting and particulars of the circumstances under which each was obtained; *Woomesh Chunder v. Bama Dassee*, 7 W.R. 15. A payment on account of rent cannot be credited to arrears beyond the term of limitation: *Tara Monee v. Kali Churn*, W.R. 1864, Act X, p. 14. The payments in each year must be presumed to the current year, and surplus payments to be for past and not subsequent years: *Ibid.*

Proof of
rent-receipt.

Limitation.
Presump-
tion—
current
year.

It does not follow, because certain sums were paid to the landlord in a particular year, that they were therefore paid for the rent of the year: *Bibee Syefun v. Rudder Sohay*, 7 Cal. 628.*

3. Receipts are not conclusive evidence:—Receipts are *prima facie* evidence of payment of rent but not conclusive evidence: *Shaikh Ameer v. Yusoof Ali*, 22 W.R. 439.

Receipts—
prima facie
evidence.

4. Receipt for rent: confirmation of lease:—A landlord is not bound to refrain from receiving rents until he has had leisure to look into all the under-tenures in his estate; and the receipt of rent is no confirmation of an alleged lease in perpetuity: *Radhakant v. Hurrokant*, W.R., 1864, p. 14.

5. Modified forms of rent-receipts in particular areas:—The form of receipts which has been prescribed for Estates Nos. 162, 165, 167, 169, 1829 in Pergunna Barahakpur in the Raj-sahye District will be found in Sch. II.

The Governor of Bengal in Council has been pleased to prescribe a modified form of receipt of rent for general use in the Presidency of Bengal. See Calcutta Gazette, Jan. 13, 1915, Part I, pp. 20, 21 and 22. See Schedule II.

For forms of receipt for use in the western Dooars of Jalpaiguri District: see Calcutta Gazette, Nov. 1, 1899, Part I, Page 1397. (Notification 872 T. R. dated 27th October, 1899.)

6. Putni lease by Hindu widow: Effect of receipt of rent by reversioner:—A *Putni* lease by a Hindu widow is not void but voidable. Receipt of rent by the reversioner from the putnidar amounts to an election to treat the lease as valid. In order to prove that the receipt ought not to have that effect, the reversioner must adduce evidence on that point: *Madhusudan v. Rooke*, 24 I.A. 164, s. c., 25 Cal. 1, s. c., 1 C.W.N. 433 (P.C.).

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year

Tenant
entitled to
full dis-

* The rule down in this case is no longer applicable by virtue of the provisions of this section. The rule laid down was as follows:—The fact of the landlord not stating in respect of what year the payment is made, cannot raise any presumption in favour of the tenant, that the rent was paid in respect of any particular year.

charge or
statement
of account
at close of
year.

has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(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 II 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.

Headings of Notes.

1. FEES SHOULD BE PAID IN CASH.
2. SUCH OTHER FORM.

1. Fees should be paid in cash :—Board's Circular No. 2 of September 1886.

2. Such other form :—See notes under s. 56, heading No. 5.

The Governor of Bengal in Council has been pleased to prescribe a particular form of account of Rent for general use in the presidency of Bengal: see Appendix. (Cal. Gazette, Jan. 13, 1915, Part I, p. 23.)

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

s
for
ling
and
its
ut
ng

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

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

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

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

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

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law§ for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents in the same manner as is

* Sub-sections (3, to 8) were substituted for the original sub-section (3) for Western Bengal by the Bengal Tenancy (Amendment) Act 1907 (Ben. Act. I of 1907), and E. A. Act I of 1908, s. 14. The original sub-section ran as follows :—

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

* In Bengal Act I of 1917, s. 14, this word is printed as “orders.”

† Now the Board of Revenue for Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3 and Sch. D, item 3.

‡ See the Bengal Public Demands Recovery Act 1913 (Bengal Act III of 1913), s. 3 (6) and Sch. I.

provided in the case of a Court under the Code of Civil Procedure.

The object of the new sub-sections (3 to 8) is explained in the Notes on Clauses of the Bill as follows:—

“The provisions of the Tenancy Act regarding the issue of proper rent-receipts by landlord are very generally disregarded in certain parts of the province. It is considered necessary to take more active measure to enforce them. At present, the provisions of sec. 58 can only be set in motion on the complaint of the tenant and are practically inoperative. It is proposed, therefore, to give the Collector power to take action on reports received from Revenue or Judicial officers, who will be required to bring the Collector’s notice any breaches of the law which come to their knowledge. The power to require payment of compensation to the landlord will, it is hoped, to a large extent debar the bringing of false and vexatious complaints. In cases where the complaint is substantiated, the Collector should be empowered to award compensation to the tenant on the same scale as is provided in sec. 58 (1) and (2), and where compensation is so awarded by the Collector, the tenant should not be allowed to sue the landlord in the Civil Court for any penalty. It is inadvisable that tenants should be able to obtain damages in two different courts; the amendments proposed will be sufficient to safeguard their rights and to secure obedience to the law.”

In the report of the Select Committee on the Bill it is stated:—

“We have modified considerably the changes which it was proposed in the Bill to introduce into section 58 of the Act. The terms used in sub-sections as drafted would practically render the failure to give a receipt a criminal offence, and this is generally objected to by the associations of landlords consulted. We have, therefore, removed the cause of objection by substituting a form of procedure closely akin to that prescribed by section 52 of the Bengal Survey Act, 1875, for the imposition of penalties, and by the Public Demands Recovery Act, 1895, for their recovery. The tenant must first prove that he received no receipt, and we do not consider it necessary to make any specified provision as to the burden of proof. We have struck out of the clause the provisions as to compensation to tenants. We fear that the prospect of this compensations would be a temptation to bring false cases. Further, we think that the provision requiring judicial officers to report cases of failure to grant receipts would be generally disregarded, while the report by Revenue officers can best be prescribed by executive order. We have, therefore, omitted the last portion of the proposed sub-section (4), and in the same sub-section have proposed a time-limit within which information may be laid or complaint made. We consider that the Board of Revenue should have power to revise any order under the section, and have made provision for this.”

Headings of Notes.

1. OMISSION TO GRANT RECEIPT AN OFFENCE.
2. OPERATION OF THIS SECTION NOT LIMITED TO REGISTERED TENANT.
3. SUB-DIVISIONAL OFFICERS AUTHORISED TO DISCHARGE FUNCTIONS OF COLLECTORS.

4. **TRANSFER BY COLLECTOR OF CASE TO A DEPUTY COLLECTOR.** grant a receipt as required by the provisions of s. 58 of the Bengal

1. Omission to grant receipt an offence :—An omission to grant a receipt as required by the provisions of s. 58 of the Bengal Tenancy Act is an offence, and a proceeding under this section upon the complaint of a tenant is a criminal prosecution ; *Naik Pandey v. Bidya Pandey*, 1 Pat. L.J. 149 ; see also *Emperor v. Mohant Ram Das*, 9 C.W.N. 816. Omission to grant receipt, an offence.

2. Operation of this section not limited to registered tenant :—The operation of this section is not limited to the case where the payment has been made by the registered tenant ; when a landlord receives rent from a person, whose name has not been registered and thus recognises him as his tenant, he renders himself liable to the penalty provided by s. 58 if he refuses to deliver a receipt without reasonable cause : *Narendra v. Asmatulla*, 1 C.W.N. 19 (notes).

3. Subdivisional officers authorised to discharge functions of Collectors.

All Sub-divisional officers are authorised to discharge in their respective sub-divisions the functions of a Collector under this section : see Cal. Gaz. (1910, 19th Sept. Part I, p. 1323, see Appendix II.)

4. Transfer by Collector of case to a Deputy Collector :—Collector has authority to transfer cases under this section to Sub-divisional officers as the latter are authorised to discharge the functions of Collectors : *Phanindra v. The King Emperor*, 40 Cal. 465, s. c., 17 C.W.N. 671. Where, therefore, a complaint under s. 58 (3) was made to the Collector of a district and transferred by him for disposal to the Sub-divisional officer who found that certain rent receipt books, filed before him in the course of the enquiry, had been fabricated, held that the Sub-divisional officer had jurisdiction, under s. 476 C. Cr. P., to direct a prosecution for offences under ss. 193 and 196 I. P. C. *Ibid.* Collector's authority to transfer cases.

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

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

*Note :—*It is not compulsory to use forms sold by Government. (Cal. Gaz., 6th September 1885, p. 1648, Supplement, Government letter No. 1542, T. R. dated 7th Sept. 1885).

For Forms of Receipt and Statement of Account—see Sch. II.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the Effect of receipt by registered proprietor, manager or mortgagee.

Ben. Act
VII of 1876.

rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

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

Headings of Notes.

1. LAW BEFORE THE PASSING OF THE ACT.
2. PLEA OF BENAMI.
3. WHEN TENANT MAY PLEAD THAT RENT IS DUE TO A THIRD PERSON.
4. RIGHT OF REGISTERED PROPRIETOR TO DISTRAIN.
5. WHEN RECEIPT BY MORTGAGOR PROPRIETOR DOES NOT OPERATE AS A VALID DISCHARGE.
6. RENT-SUIT WHERE ASSIGNMENT BY LANDLORD OF PORTION OF INTEREST TO A MORTGAGEE.
7. INTERPRETATION OF S. 78 OF THE LAND REGISTRATION ACT.
8. RENT-SUIT BY A PROPRIETOR WHOSE NAME IS NOT REGISTERED.
9. WHEN REGISTRATION UNDER LAND REGISTRATION ACT NOT NECESSARY.
10. WHERE THERE IS REGISTERED AGREEMENT IN FAVOUR OF AN UNREGISTERED PROPRIETOR.
11. UN-EXPUNGED ENTRY IN THE REGISTER.
12. EFFECT OF REGISTRATION OF NAME UNDER THE LAND REGISTRATION ACT.
13. REGISTERED MORTGAGE.
14. ELEMENTS NECESSARY TO BE PROVED FOR REGISTRATION OF NAME.
15. REGISTRATION IN SPECIFIC MOUZAHS.
16. SUIT BY UNREGISTERED PROPRIETOR MAINTAINABLE AND IS SUFFICIENT IF THE REGISTRATION IS MADE BEFORE DECREE.
17. SUIT BY LEGAL REPRESENTATIVE OF DECEASED PROPRIETOR.
18. SUIT BY PROPRIETORS OF WHOM SOME ARE REGISTERED.
19. SUIT FOR RENT BY ASSIGNEE FROM UNREGISTERED PROPRIETOR.
20. TRANSFER OF PROPRIETORSHIP.
21. MANAGER UNDER THE BENGAL TENANCY ACT.
22. ACTUAL REGISTRATION NECESSARY.
23. MALIKANA.
24. RESUMED CHAKRAN LAND.

Old law.

1. Law before the passing of the Act :—Before the passing of this Act a person who was registered could not obtain rent unless the relation of landlord and tenant existed between him and the person whom he sued for rent: *Hem Chandra v. Sourendra Mohon*, 5 C.W.N. 482 ; see also *Ram Kristo v. Cheikh Harain*, 9 Cal. 517 ; *Saraswati v. Dhanpat*, 9 Cal. 431.

2. Plea of Benami :—In a suit for rent brought by a person registered as proprietor, a tenant is precluded by this section from raising a defence that the plaintiff is a *benamdar* of another person and as such not entitled to rent: *Sadhu Charan v. Radhika Mohon*, 8 C.W.N. 695.

3. When tenant may plead that rent is due to a third person :—Plaintiffs as registered proprietors brought a suit for recovery of rent. It was found that Defendant in good faith and under the reasonable belief that the land held by him was included in the estate of a third person attorned to him some four years prior to the suit, and it was held by the lower Appellate Court that under the circumstances the defendants ceased to be plaintiffs' tenant and they could not recover rent: *held*, that upon the above facts s. 60 of the Bengal Tenancy Act did not estop the defendant from pleading that rent was due to a third person notwithstanding that the plaintiffs were registered proprietors: *Durga Das v. Guru Das*, 4 C.W.N. 606.

Suit by registered proprietor —plea of rent being due to a third person.

The only person who is entitled to the benefit of this section is the proprietor who is registered under the Land Registration Act; the lessee from such proprietor is not entitled to the benefit of this section: similarly the benefit of s. 78 of the Land Registration Act cannot be claimed by a person who is not a proprietor: *Kazimahamed v. Sheikh Kadir*, 11 C.W.N. 128 (notes).

Lessee and registered proprietor, suit by.

In a suit by a lessee of a registered proprietor the tenant may plead payment of rent to a third person: *Mahomed Muzahar v. Ali Bewa*, 3 C.L.J. 93 (notes). S. 60 does not preclude a tenant defendant from proving that the title upon which the plaintiff claims to hold land in respect of which he has been registered under the Land Registration Act has been held by a Court properly constituted to be void and of no effect: *Girish Chandra v. Satish Chandra*, 12 C.W.N. 622; where this was proved, *held*, that this was a good defence to the suit: *Ibid*.

Where a tenant defendant denies the usufructuary mortgage on this basis of which plaintiff brought a suit for rent, s. 60 of the Bengal Tenancy Act has no application although the mortgagee has got his name registered under the Land Registration Act: *Sheo Charan Dhobi v. Bansi Singh*, 44 I.C. 129.

S. 60 does not apply where tenant denies Plaintiff mortgagee's title

4. Right of registered proprietor to distrain :—A tenant cannot deny the right of a registered proprietor to distrain, and plead payment of rent to a third person whose name is not registered: *Hanuman Ahir v. Gobind Koer*, 1 C.W.N. 318.

Distrain.

5. When receipt by mortgagor proprietor does not operate as a valid discharge :—When a mortgagee in possession has registered his name as such under s. 44 of the Land Registration Act, he is entitled to receive the rents till the fact of the redemption of the mortgage is noted in the general register under s. 26 of the Act: so long as the mortgagee's name continues on the Register a receipt granted by the mortgagor proprietor does not operate as a valid discharge under s. 78 of the Act or under s. 60 of the Bengal Tenancy Act: *Sundar Das v. Charitter*, 1 C.W.N. 163 (notes).

6. Rent-suit where assignment by landlord of portion of interest to a mortgagee :—In a suit for rent by a proprietor registered under the Land Registration Act (VIII of 1876 B. C.), the defendants are precluded by reason of this section from pleading as a defence to the claim that the rent is due to a mortgagee to whom the landlord has assigned a part of his interest but whose name has not been registered under the Land Registration Act: *Hem Chandra v. Rajah Sir Sourindra*, 5 C.W.N. 482.

Rent suit where assignment by landlord of portion of interest.

Interpreta-
tion of s. 60.

7. Interpretation of s. 60 of the Land Registration Act :—“In our opinion s. 60 must be strictly interpreted for if it is not so interpreted, the object for which it was enacted will not be attained; that object being to coerce proprietors to register their names under the Land Registration Act” (*Per* Chapman J., Atkinson J., agreeing); *Hardayal v. Wazir Mahton*, 41 I.C. 97; see also the remarks of Geidt J., in *Sadhu Charan v. Radhika Mohon*, 18 C.W.N. 695 at page 698 column I. It was intended by the Legislature in the Bengal Tenancy Act, that, in a rent suit where the only point can be as to the tenants acquittance for the rent, registration should be taken as conclusive and that the tenant should not in a rent suit be entitled to set up that the rent is one to a third party. Section 60 of the Bengal Tenancy Act says this in clear and unmistakable terms: *Bhupendra Narain v. Monmatha Nath*, 41 I.C. 859.

Registration
Act not
necessary
when
written
contract.

8. Rent-suit by a proprietor whose name is not registered :—S. 78 of the Land Registration Act and s. 66 of the Bengal Tenancy Act offer no bar to a person, whose name is not registered under the Land Registration Act, bringing a suit for arrears of rent under the provisions of the Bengal Tenancy Act; it is sufficient if, during the pendency of the suit and prior to the decree his name is registered: *Abdul v. Mehar Ali*, 26 Cal. 712, s. c., 3 C.W.N. 381.

Contract by
plaintiff's
predecessor.

S. 78 of the Land Registration Act is controlled by s. 81 of that Act: so, a landlord who has not had his name registered under the Land Registration Act is not precluded from recovering rent from his tenant who has taken a lease of the land in writing, which document contains a contract to pay rent; *Bhugwan Das v. Raghunath Sahai*, 11 C.L.J. 477 but see *Abdul Aziz v. Kanthu Mallik*, 38 Cal. 512, s. c., 13 C.L.J. 693.

Effect of
previous
payment of
rent.

S. 81 of the Land Registration Act has no application to a case where the written contract was between the defendant and the proprietor from whom the plaintiff claims to have derived title as usufructuary mortgagee: *Isvar Chandra v. Kalicharan*, 27 C.L.J. 474.

The bar prescribed by s. 78 of the Land Registration Act does not cease to be applicable, merely because the plaintiff establishes that the defendant has previously paid rent to him amicably, or because he brought the defendant upon the land; there is no question of estoppel: *Bangshi Badan v. Kamalakant*, 26 C.L.J. 90.

Where the question arises between two sets of thekadars one of whom is registered and the other is not registered, it is not open to the tenant to plead payment to the unregistered thekadar in defence to a claim by the registered thekadar: *Jung Singh v. Dularchand*, 96 I.C. 495, s. c., A.I.R. (1926) Pat. 532. (*Kulwant Sahay J.*).

When an
estate is
situated
both in
Assam and
Bengal.

9. When Registration under Land Registration Act not necessary :—When an estate partly situated in Goalpara in Assam and partly in Rangpur was entered in the Touzi of Goalpara Collectorate in Assam and the landlord brought a suit for rent in Rangpur for lands lying in that district, *held* that plaintiff was entitled to maintain the suit although his name was not registered in the Rungpur Collectorate under Act VII of 1876, (B.C.), inasmuch as his name was registered in Goalpara under the Assam Regulations: *Surendra Narain v. Joynath*, 1 C.W.N. 104 (notes). A *putnidar* or an *ijaradar* is not a proprietor of an interest in an estate within the meaning of

the Land Registration Act: it is not therefore necessary for a *putnidar* or *ijaradar* to register his name under the Land Registration Act to entitle him to sue for rent: *Sukurulla v. Bama Sundari*, 1 C.W.N. 92 (notes). A suit for the declaration of enhanced rates payable in future is not affected by the provisions of s. 60 of the Bengal Tenancy Act or s. 78 of the Land Registration Act: *Mangni Ram v. Seo Charn*, 1 C.W.N. 179 (notes). S. 78 of the Land Registration Act has no application to the case of a person to whom rent has been assigned by a proprietor whose name has not been registered under the Act: *Syed Serapat v. Tarini Prasad*, 11 C.W.N. 141.

10. Where there is registered agreement in favour of an unregistered proprietor:—S. 78 of the Land Registration Act provides that no person shall be bound to pay rent to any person claiming such rent as proprietor of an estate in respect of which he is required by the Act to cause his name to be registered, unless the name of such claimant shall have been registered under the Act; s. 81 of the Land Registration Act provides that nothing in ss. 78, 79 and 80 shall be held to interfere with the conditions of any written contract, so it seems that an unregistered proprietor may sue for rent upon a registered contract; but s. 60 of the Bengal Tenancy Act provides where rent is due to the proprietor of an estate, the receipt of the person registered under the Land Registration Act as proprietor shall be a sufficient discharge for the rent. Where A an unregistered proprietor brought a suit for rent upon a registered agreement, and the defence proved that rent had been paid to B who was the registered proprietor, *held* that A's suit ought to be dismissed; *Abdul Aziz v. Kanthu Mallik*, 38 Cal. 512, s. c., 13 C.L.J. 693. There can be no estoppel against an Act of the Legislature; hence the principle of estoppel does not override the provisions of either s. 78 of the Land Registration Act or s. 60 of the Bengal Tenancy Act: *Ibid*; the restriction by s. 81 of the Land Registration Act upon s. 78 of the same Act is not incorporated by implication into s. 60, of the Bengal Tenancy Act: *Ibid*. S. 78 of the Land Registration Act is controlled by s. 81 of that Act: so, a landlord who has not had his name registered under the Land Registration Act is not precluded from recovering rent from his tenant who has taken a lease of the land in writing, which document contains a contract to pay rent: *Bhugwan Das v. Raghunath Saha*, 11 C.L.J. 477.

Where a person acquires a title by adverse possession against the proprietor of an estate whose name is registered in the Collector's Register under the Land Registration Act, and the person acquiring title by adverse possession sublets the land to a tenant by virtue of a written contract and after putting a tenant into possession brings a suit for rent against his tenant, the latter cannot by virtue of the provisions of s. 81 of the Land Registration Act defeat the suit of his landlord; but if the tenant pleads and proves payment to the registered proprietor, it seems that the rent suit against him should be dismissed for the reason as given in the case of *Abdul Aziz v. Kanthu Mallik*, 38 Cal. 512, s. c., 13 C.L.J. 693. It seems that a person acquiring title to an estate by adverse possession is competent to get his name registered under the Land Registration Act, for the definition of "proprietor" given in the Act seems to include such a person as owner of the estate.

See notes under this section under heading No. 8.

Suit by
putnidar or
ijaradar.

Ss. 78 and
81 of the
Land Regis-
tration Act.

An unregis-
tered pro-
prietor may
sue upon a
written
contract,

but a rent
suit brought
by him
should be
dismissed if
payment to
registered
proprietor.

No estoppel
against Act
of Legis-
lature.

A landlord
though not
registered
may sue
upon writ-
ten con-
tract.

Title to an
estate
acquired by
adverse
possession
where such
a person
brings a
rent-suit.

Where A, a registered proprietor, sold his estate to B, and B whose name was not registered brought a suit for rent, *held* that B's suit was maintainable in as much as A the vendor had a written contract with the tenant and therefore s. 81 of the Land Registration Act was applicable: *Mesbahuddin v. Abdul Borkat*, 30 C.L.J. 119.

11. Un-expunged entry in the Register :—When a mortgagee's name was registered and although the mortgage was redeemed, the entry in the name of the mortgagee was not expunged as is provided for in s. 26 of the Land Registration Act, *held* in a suit for rent by the registered proprietor that a decree for rent should be made: *Hassan Mastaba v. Motbar Mahto*, 11 C.L.J. 147.

12. Effect of registration of name under the Land Registration Act :—In a suit for rent by the plaintiff whose name is registered under the Land Registration Act as 16 ans. proprietor, the defendant is not entitled to plead that part of the rent is due to a third person: *Shyama Charan v. Mustafizar Rahaman*, 41 I.C. 769.

Where a person has been registered as owner of certain land under the Bengal Land Registration Act, the tenant holding the land is precluded, under the provisions of s. 60 of the Bengal Tenancy Act from pleading in a suit for recovery of rent by the registered owner that the latter is not the true owner. Sec. 60 of the Bengal Tenancy Act and s. 78 of the Land Registration Act are complementary to each other: *Debendra Lal Panja v. Nilmoney Prodhan*, 86 I.C. 865 (Greaves and Chakravarti J.J.).

13. Registered Mortgage :—When a person who is a registered mortgagee from the proprietor by way of an ijara sued for rent, *held* that the tenant was not entitled to plead that rent was due to the auction purchaser of the proprietor's interest: *Mukhaduman v. Khairat Ahmed*, 3 Pat. L.W. 245, s.c., 43 I.C. 182.

14. Elements necessary to be proved for registration of name under the Land Registration Act :—The only question which the Collector is entitled to enquire into under the Land Registration Act is that of possession, he has no jurisdiction to deal with the question of title which is specially reserved for the decision of the ordinary Civil Courts; the mere fact of registration is only evidence of possession: *Saraswati v. Dhanpat*, 9 Cal. 431; see also *Ram Kristo v. Sheikh Harain*, 6 Cal. 517: s. c., 12 C.L.R. 141. If the Collector finds possession and title with the applicant, his name is to be entered in the register, he may summarily try the question of possession and deliver possession accordingly or may make a reference to the Civil Court which may determine summarily the right to possession and deliver possession accordingly: *Umatul v. Kulsoom*; 35 Cal. 120: s. c., 12 C.W.N. 16. Possession in s. 5 of the Land Registration Act does not mean lawful possession, but actual possession, which includes possession by receipt of rent, the possession of the tenant being in a sense possession of the landlord: *Ibid.* The mere registration of name under the Land Registration Act does not constitute possession in fact or in law: *Mirwaziruddin v. Lala Deoki* and *Syed Golam v. Lala Deoki*, 6 C.L.J. 472.

15. Registration in specific Mouzahs :—The Land Registration Act while providing for the registration by proprietors of their shares in an estate does not make it incumbent upon them to

register their shares in specific mouzahs or other portions of land within the estate and their position is not affected by the fact that under an amicable arrangement their shares have been differently allocated so as to give them larger shares in certain Mouzahs than their registered interest and no share in other mouzahs. *Deoki Singh v. Lakhan Roy*, 30 Cal. 880 s.c., 8 C.W.N. 196; see also *Poresch Moni v. Nobakishore*, 30 Cal. 773 s.c., 8 C.W.N. 193 and *Abdul Aziz v. Kanthu Mallik*, 38 Cal. 512, s.c. 13 C.L.J. 693.

16. *Suit by unregistered proprietor maintainable and it is sufficient if the registration is made before decree:—The rule laid down in the case of *Dharani Dhar Sen v. Wazidunnissa Khatoon*, 16 Cal. 708 note, and *Surya Kanta Acharya v. Hemanta Kumari Debi*, 16 Cal. 706, that it is a condition precedent under (s. 78 of the Land Registration Act) that a person must be registered as proprietor or manager before he can bring a suit for arrears of rent, has not been, according to the decision in the case of *Abdul Khair v. Meher Ali*, 26 Cal. 712, s. c. 3 C.W.N. 381 expressly overruled by the Full Bench case of *Alimuddin v. Hira Lall*, 23 Cal. 87, but the effect of the decision of the majority of the Judges was that apart from the provisions of s. 60 of the Bengal Tenancy Act, ss. 78 and 79 of the Land Registration Act did not prevent an unregistered proprietor from bringing a suit for arrears of rent, and following this principle it was held that a suit for arrears of rent cannot be dismissed merely on the ground of the plaintiff's name not being registered under the Land Registration Act at the time the suit was brought and it is sufficient if the name is registered before the decree is made: *Abdul Khair v. Meher Ali*, 26 Cal. 712; see also *Harekrishna v. Brindaban*, 1 C.W.N. 712; *Alimuddin v. Hiralal*, 23 Cal. 87 (F.B.); *Belchambers v. Nawab Sir Syad Hussain*, 2 C.W.N. 493. If the name of the proprietor is registered under the Land Registration Act during the pendency of a suit for rent by him and the registration decree is produced in the course of the trial it must be held that there is sufficient compliance with the requirements of the Act: *Rabiya Khatun v. Kilashmoni*, 8 C.L.J. 299.

Dharani, Dhar v. Wazidunnissa not expressly overruled by the Full Bench case of *Alimuddin v. Hira Lall*.

17. Suit by legal representative of deceased proprietor:—The provisions of this Act relating to registration do not apply to the case of a person who is seeking to recover rent as the representative of a deceased proprietor whose name was registered, the rent having become due during the life-time of that proprietor: *Belchambers v. Sir Syed Hussain*, 2 C.W.N. 493. Where an arrear of rent fell due during the life-time of A whose name was registered under the Land Registration Act, a suit for rent by B, his son, for the rent due to his father is maintainable although B's name is not registered, the

When this section does not apply.

* S. 78 of the Land Registration Act which is in some respects analogous to s. 16 of the Bengal Tenancy Act is as follows:—

No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act; and no person being liable to pay rent to two or more such proprietors, managers, or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which proprietor, manager, or mortgagee is registered bears to the entire estate or revenue free property.

S. 78 of the Land Registration Act.

principle being B is suing not as a proprietor but as the legal representative of the late registered proprietor: *Nagendra Nath v. Satadalbashini*, 3 C.W.N. 204, and the same rule applies where a registered proprietor after bringing the suit dies and his legal representative gets himself substituted: *Pramada Sundari v. Kanai Lal*, 27 Cal. 178.

S. 60 does not apply to a case where rent is payable to an *ijaradar* under a proprietor: *Probodh Chandra v. Harish*, A.I.R. 1924 Cal. 124.

When some of several joint-proprietors are registered.

18. Suit by proprietors of whom some are registered :—If some of several joint landlords get their names registered under the Land Registration Act in respect of fractional shares, all the landlords may jointly sue for the entire rent but will get a decree only for a share of the rent proportionate to the share in respect of which their names are registered: *Gobinda Chandra v. Ishan Chandra*, 25 Cal. 787, s. c. 2 C.W.N. 600.

A co-sharer landlord who has been duly registered under the Land Registration Act may maintain a separate suit for rent: *Bhupendra Narain v. Manmatha Nath*, 41 I.C. 859.

Payment of rent to transferee of former proprietor.

S. 60 applies even in a case where in a suit by a registered proprietor, the tenant shewed that the former proprietor had transferred his estate and the tenant was paying rent to the transferee by execution of a *kabuliyat*: *Adayapati v. Janardan*, 68 I.C. 288.

Title of a third person cannot be set up.
Deposit under s. 149.

In a suit for rent by a registered proprietor the tenant cannot set up the title of a third person: *Nand Kuer v. Jodhan Mahton*, 6 Pat. L.J. 658, s. c., [1919 Pat.] p. 201.

In a suit for rent by a registered proprietor it is open to the tenant to make a deposit of rent under s. 149 and ask the Court that there may be an adjudication as to the claim of the person whose title is set up: *Ibid.*

Where registered proprietor adjudged in Civil Court as having no title.

Where the registered proprietor has already been adjudged by a competent court to have no title, and he notwithstanding brings a rent-suit the Court may decline to follow the provisions of s. 60: *Ibid.*

19. Suit for rent by assignee from unregistered proprietor :—S. 78 of the Land Registration Act has no application to the case of a person to whom rent has been assigned by a proprietor whose name has not been registered under the Act: *Syed Serapat Hossain v. Tarini Prasad*, 11 C.W.N. 141.

Transferee from an unregistered proprietor.

S. 78 of the Land Registration Act is no bar to a suit for rent by a transferee from an unregistered proprietor: *Rameswar v. Ramjanak*, 6 Pat. L.J. 109.

20. Transfer of proprietorship :—Under s. 78 of the Land Registration Act it is immaterial how the transfer of proprietorship is effected, whether it is a case of transfer by purchase or a case of transfer by succession: *Punuk Lal Mundur v. Thakur Prasad*, 25 Cal. 747.

21. Manager under the Bengal Tenancy Act :—A manager appointed under the provisions of s. 95 of the Bengal Tenancy Act must have his name registered before he can recover rent: *Maqbal Ahmed v. Girish Chandra*, 22 Cal. 634.

22. Actual Registration necessary:—The Land Registration Act requires actual registration of name in order to enable a person to recover rent, and a mere order of the Civil Court for registration is not sufficient: *Ugramohun v. Bedeshi*, 5 C.W.N. 360.

23. Malikana:—S. 78 of the Land Registration Act is no bar to a claim for malikana which is not a claim for rent: *Syed Shah Nazamuddin v. Zahid Hossein*, 8 C.L.J. 300; see also *Bhuli Singh v. Nimu*, 4 B.L.R. 29.

24. Resumed Chakran land:—The effect of transfer of resumed chakran lands to the Zemindar is not to impart to such land the character of an "estate" for all purposes, and s. 78 of the Land Registration Act has no application to a suit for rent by the Zemindar; *Tinkari v. Satya Niranjan*, 18 C.W.N. 158.

Deposit of rent.

*Deposit of
rent.*

61. (1) In any of the following cases, namely:—
(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

Application
to deposit
rent in
court.

(b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

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

(d) when the tenant entertains a *bonafide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

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

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

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

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

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

Headings of Notes.

1. SCOPE.
2. RIGHT OF UNDER-TENANT TO MAKE DEPOSIT.
3. APPLICANT NOT REQUIRED TO FILE NOTICE.
4. TENANT OF HOMESTEAD LAND.
5. PUTNIDAR.
6. CL. (3).
7. SUB-SEC. (1) CL. (a).
8. SUB-SEC. (1) CL. (b).
9. CL. (d) : WHEN THE TENANT ENTERTAINS A BONAFIDE DOUBT.
10. EFFECT OF WITHDRAWAL OF MONEY DEPOSITED BY TENANT.
11. THE TENANT MAY PRESENT TO THE COURT.
12. WHEN DEPOSIT OF RENT IS PROVED IN SUIT FOR RENT.
13. LANDLORD HAS NO RIGHT TO DISPUTE THE VALIDITY OF THE DEPOSIT.
14. THE FULL AMOUNT OF THE MONEY THEN DUE.
15. WHEN IS A TENDER VALID.
16. DEPOSIT, VALIDITY OF.
17. OMISSION TO SUE FOR THE RENT OF PERIOD BETWEEN DEPOSIT & SUIT.
18. LIMITATION.
19. IN WHOSE NAME MONEY IS TO BE DEPOSITED.
20. MISTAKE IN THE NAME OF THE TALUK.
21. COURT-FEES FOR APPLICATION UNDER THIS SECTION.
22. MONEY.
23. REFUSAL OF TENDER.

1. Scope :—This section is an enabling section and not a mandatory one and it does not deprive the tenant of the right he has under the general law by which a valid tender if kept good stops the running of interest: *Kripa Sundhu v. Annada Sundari* 35 Cal. 34, s. c. 11 C.W.N. 983, s. c. 6 C.L.J. 273 (F.B.).

Under-
tenant
when may
deposit.

2. Right of under-tenant to make deposit :—Under-tenants who have been directed in their under-lease to keep down and pay the rent payable by their lessor to his superior landlord are persons authorised to make deposit of that rent under section 61 of the Bengal Tenancy Act: *Shibaprasad v. Amarendra Nath*, 41 I.C. 431.

Applicant
not required
to file
notice.

3. Applicant not required to file notice :—There is no law which entitles a court to call upon a tenant to file along with his application for deposit of rent a copy of the notice to be served upon the landlord: *Tara Charan v. Paresch Chandra*, 14 C.L.J. 116.

4. Tenant of homestead land :—A deposit of rent of home- Homestead
stead land governed by s. 182 of this Act may be made under this land.
section : *Pratap Chandra v. Bisweswar*, 9 C.W.N. 416.

5. Putnidar :—A Putnidar is entitled to make a deposit under Putnidar.
this section : *Batakrishna v. Janaki Nath*, 41 Cal. 1000, s. c. 18
C.W.N. 916.

6. Cl. (c). A payment to one of three persons jointly entitled Payment to
to receive money is not good against the other two : *Peary Lal v.* a co-sharer.
Modhoji Jiban, 17 C.L.J. 372.

7. Subsec. (I) cl. (c) :—When a tenant tenders rent and Refusal to
requests the landlord to grant a receipt in the statutory form but the give receipt
landlord refusés to give such a receipt and offers to grant a receipt in statutory
which would compromise the position of the tenant, held that there form.
is an improper refusal of a valid tender : *Rupchand v. Narendra*
Krishna, 19 C.W.N. 112.

8. Subsec. (I) cl. (c) :—A co-sharer landlord cannot as a Proportion-
matter of right claim from the tenants what he estimates to be his ate share
proportionate share of rent, before the rent is actually apportioned : of rent.
Satyesh v. Jillar Rahaman, 27 C.L.J. 438* where before such
apportionment the tenant deposited rent on the ground that it was
not possible to obtain joint receipt of the co-sharers for payment of
rent, held that the deposit was validly made : *Ibid*.

9. Cl. (d) : when the tenant entertains a bonafide doubt An inter-
&c. :—A tenant has no right to bring a suit to have it determined pleader suit
which of two defendants both of whom claimed rent from him is his is not main-
landlord : *Koylash Chandra v. Goluk Chandra*, 2 C.W.N. 61 : see tainable at
also *Shelly Bonerjee v. Raj Chandra*, 37 Cal. 522 ; and *Nanji v.* of the
Umatul, 15 C.L.J. 653. tenant.

In such a case where a tenant entertains a doubt as to who is
his landlord his remedy is to deposit the rent to prevent the running
of interest ; if he does not avail of the provisions of this section his S. 149.
remedy is as provided for in s. 149 of the Act.

10. Effect of withdrawal of money deposited by tenant :— Withdrawal
Where a Hindu widow made a grant of a *Putni* tenure without any by rever-
valid cause and on her death the reversionary heir brought a suit to sioner of
set aside the *putni* grant, held that the reversioner having withdrawn money
money deposited by the *putnidar* as rent due by him under this deposited.
section, this was *prima facie* an admission that the *putni* was still
subsisting : *Madhu Sudan v. E. G. Kooke*, 25 Cal. 1.

A landlord's agent who was authorised to withdraw money Recognition.
deposited in Court by tenants or any other money paid into Court to
the credit of the landlord withdrew the money deposited under s. 61,
held that the withdrawal amounted to a recognition as tenant of
the person who deposited the money : *Matihari v. Lachmi*, 42 I.C. 826
s. c., [1917 Pat.] p. 83.

II. The tenant may present to the Court.....an application Deposit
in writing :—It is not necessary that the tenant must present the may be
application in person : a deposit of rent though not made by a tenant made by a
himself, but made on his behalf by a transferee of the holding is a third person
on behalf of
the tenant.

* See also *Ishwar v. Ramkrishna*, 5 Cal. 902, s. c., 6 C.L.R. 421, and
Rajnaram v. Ekadasi, 27 Cal. 479, s. c., 4 C.W.N. 494.

valid deposit ; *Behari Lal v. Basarat*, 25 Cal. 289. Banerjee, J., in delivering judgment in this case observed as follows:—"The application here was made on behalf of the tenant though it was presented on his behalf by the transferee of the holding from him. The Bengal Tenancy Act does not make any provision as to how applications, other than those in suits, are to be made by or on behalf of the parties in a case like this. Neither s. 145 nor s. 188 applies to cases of this description. That being so, we think the view taken by the lower Appellate Court that an application, such as the one that was made in this case for the deposit of rent, was in substantial compliance with s. 61 is a reasonable view." But see *Dulli v. Meher*, 8 W.R. 131, where it was held that a transferee not in possession, instead of depositing the rent, should apply to register his transfer in the zemindar's *sheristha*.

Dismissal
of rent suit
where a
valid
deposit.

12. When deposit of rent is proved in a suit for rent:—

A rent-suit should be dismissed with costs if it is proved that the tenant deposited rent under s. 61 as he had a *bonafide* doubt as to who was entitled to receive the rent : *Stalkart v. Guru Das*, 21 Cal. 680. A valid deposit under s. 61 operates as an acquittance : *Ibid*. When a tenant deposits the rent under s. 61 and obtains a receipt from the court, his liability is discharged ; *Sukumari Gupta v. Bharat Mondal*, 20 C.L.J. 148 at p. 152.

Validity
of deposit
cannot be
disputed.

13. Landlord has no right to dispute the validity of the deposit :—When after a deposit was made under s. 61 and the Court granted the tenant a receipt, the zemindar applied to the Court stating that the tenant had deposited rent upon false and unfounded grounds whereupon the Court being of opinion that the dispute between the parties was as to the form of receipt which the tenant was entitled to receive decided that such a dispute could not be taken cognisance of by him and cancelled his previous order and directed the tenant to take back the money deposited, held that the landlord had no right to come in and be heard in the matter there being no machinery whatsoever provided by the Act for the Court to enter into a judicial enquiry in connection with the matter of the deposit ; *Sridhar v. Rameshwar*, 15 Cal. 166. As far as the tenant is concerned, after such deposit is made and a receipt granted, the Court is *functus officio* and is not authorised to return the money to the tenant upon an application, made by the *zemindar* : *Ibid*.

Court
functus
officio after
deposit.

"Full
amount of
money then
due" mean-
ing of.

14. The full amount of the money then due :—These words do not mean anything more than the words " what the tenant shall consider the full amount of rent due from him at the date of the tender to the zemindar " as they occur in s. 46 of Act VIII of 1869 (B.C.) ; *Sridhar Roy v. Rameshwar*, 15 Cal. 166. This case has been explained in the case of *Sasi Bhusan v. Umakant*, 19 C.W.N. 1143, s. c. 20 C.L.J. 153.

Deposit of
less than
the amount
if valid.

A deposit in Court by a tenant of less than the amount of arrears of rent due is not a valid deposit under s. 61 : *Sati Prasad v. Monmotha Nath*, 18 C.W.N. 84. An agent of the landlord authorised to receive rent cannot be compelled to take rent tendered wherever he may happen to be and at whatever time and place it may be offered : *Ibid* ; nor can he be asked to take a small portion of the rent due as the whole amount : *Ibid*. The decision in the case of *Sati Prasad v. Manmotha Nath*, 18 C.W.N. 84, so far as it decides the

validity of the deposit, has been dissented from in the case of *Sasi Contra. Bhusan v. Umakant*, 19 C.W.N. 1143, s. c. 20 C.L.J. 153 at p. 156.

Where under section 61 of the Bengal Tenancy Act a tenant deposits what he bonafide believes to be the whole amount due at the date of the deposit and not merely a portion thereof the deposit is validly made under the section, even though it should turn out that the whole amount due had not been deposited: *Wajihunnissa v. Babulal*, 5 Pat. 46, s.c. [1925 Pat.] 298, s.c. 7 P.L.T. 355. The case of *Sashibhusan v. Umakanta*, 19 C.W.N. 1143, s.c. 20 C.L.J. 153 relied on.

Where the amount claimed was Rs. 223 and odd and the tenant deposited Rs. 216 and odd under s. 61 of the B. T. Act, the deposit is a valid deposit and operates as an acquittance not for the whole amount due but for the amount of the rent payable by the tenant and deposited in the same manner and to the same extent as if the amount of rent had been received by the landlord: *Gnanadayini v. Gunamoni*, 105 I.C. 52 (Mukerji and Mitter J.J.).

Deposit of rent without the interest then due is not a sufficient Interest. deposit within s. 61: *Shyam Chandra v. Bhanga Dei*, 23 I.C. 777.

15. When is a tender valid:—When a tender is not made at the proper place or to a person authorised either under the law or by the landlord to receive the money, such tender is not sufficient: *Shaikh Murdad v. Sheikh Tufuzzal*, 16 W.R. 78.

16. Deposit, Validity of:—Where a tenant has only one holding but makes three deposits alleging that there are three holdings, *held* that the deposits are not valid, and the landlord can question the validity although the Court might have accepted it under s. 62: *Satis Chandra v. Umes Narain*, 34 C.L.J. 501.

17. Omission to sue for the rent of the period between deposit and suit:—A deposit under this section is equivalent to part payment and so far as regards the application of s. 43, C. P. C., (Act XIV of 1882) goes, the landlord is in no better position than if there had been a part payment; the notice under s. 63, does not give a fresh and independent cause of action to the landlord so as to entitle him to sue separately for the balance without also suing for any arrears then due: *Atul Krishna v. Nripendra*, 1 C.L.J. 114.

18. Limitation:—When a deposit is made under this section a suit for recovery of rent of a *holding* which fell into arrear before the date of the deposit is to be brought within six months from the date of the service of the notice; see Art. 2 (b) of Sch. III of the Bengal Tenancy Act.

But where a deposit was made under s. 61 and the Court was asked to serve notice of this deposit on the landlords and it was found that notice was served on only one of them, *held*, in a suit brought by all the landlords, that the plea of six months' limitation did not apply to the landlords on whom notice was not served, and also as the co-sharer landlords were jointly and severally entitled to the rent the period of limitation could not be reduced: *Rup Chand v. Gudar Singh*, 29 Cal. 283: s.c. 6 C.W.N. 15. If a tenant relies upon clause (a) of Art 2 of Sch. III of the Bengal Tenancy Act, he must prove that there was an application which fulfilled the requirements of s. 61, sub-sec. (2) of the Bengal Tenancy Act, and that a deposit was made under s. 61 after the arrear had fallen due, he

Validity of tender.

Notice under s. 63 does not give a fresh cause of action.

Sch. III, Art 2 (b).

Six months' limitation, when it does not apply.

Suit for enhancement of rent.

Limitation.

must also show that notice under s. 63 was served on the landlord and prove the date when the service was effected: *Mir Tapurah Hossein v. Gopi Narayan*, 7 C.L.J. 251. It was held that a deposit did not interfere with the limitation for suits for enhanced rent as prescribed in s. 32 of Act X of 1859 in the case of *Jeebun Mundal v. Taramonee*, 6 W.R., Act X, 98.

The period of limitation prescribed in Art 2 Clause (a) of Sch. III is applicable to a suit for rent whenever rent has been deposited under s. 61 even though the allegation of the tenant that what he had deposited was the full amount due at the time, may ultimately prove to be incorrect: *Sasi Bhushan v. Umakant*, 20 C.L.J. 153. Their Lordships (Mookerjee and Beachcroft, J.J.), in deciding this case dissented from the case of *Sati Prasad v. Monmotha Nath*, 18 C.W.N. 84.

19. In whose name money is to be deposited:—When a tenant has been in the habit of depositing rent due to a landlord in his sole name, he is not justified, without receiving notice or order to that effect in making the deposit in the joint names of that landlord and another: *John Rudd Rainey v. Nubo Coomar*, 24 W.R. 128.

Mistake in name of taluk does not invalidate deposit.

20. Mistake in the name of the taluk:—A mistake in the name of the taluk was held not to be material specially when the landlord was aware of the tender being made and the deposit was held to be valid; *Wooma Charan v. Haree Pershad*, 10 W.R. 101.

21. Court-fees for application under this section:—See Appendix VI High Court Rules.

22. Money:—It seems that under this section a tenant can deposit money-rent only and not the equivalent money representing the price of the produce rent unless in the Kabuliyat the money equivalent is fixed. "It may be conceded that no deposit can be made of rent in kind under s. 61 of the Bengal Tenancy Act. But where as here the parties have agreed that upon failure to deliver the rent payable in kind a fixed sum is to be paid in lieu of this description the provisions of s. 61 are clearly applicable." (per Mookerjee J., Beachcroft, J., agreeing) *Sasi Bhushan v. Umakant*, 19 C.W.N. 1143, s. c. 20 C.L.J. 153.

22. Refusal of tender:—To stop interest on rent running in a case governed by the Bengal Tenancy Act a tender of a rent which is improperly refused, need not be followed by a deposit of rent in Court, under s. 61, and such a tender, if kept good, is sufficient to stop interest running from the date of tender; *Kripasindhu v. Ananda Sundari*, 35 Cal. 34, s. c. 11 C.W.N. 983; s. c. 6 C.L.J. 273, approving the case of *Jagattarini v. Nabagopal*, 34 Cal. 305; s. c., 5 C.L.J. 270, and over-ruling the case of *Ranjit v. Bhagabati*, 7 C.W.N. 720.

Chalan.

A *chalan* is a valid receipt within the meaning of sec. 62 in-as-much as no special form of receipt is prescribed by the B. T. Act. Where the *chalan* bore the signatures of the Subordinate Judge and of the Treasury Officer but there was no seal of the Court as contemplated by s. 62, held that it is the duty of the Court to affix its seal to the *chalan* and if it is not done it is the fault of the Court and this defect should not be held to deprive the defendant of his just rights.

Rent can be deposited in Court under sec. 62 only when it appears to the Court that the applicant is entitled under sec. 61 to make the deposit ; hence, if a valid receipt was given under sec. 62 it must be presumed that the Court was satisfied at the time the receipt was given that the applicant was entitled under sec. 61 to deposit the rent : *Tofa Lal Das v. T. W. Partridge*, 4 Pat. 285.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

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

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

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

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

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

*Note :—*The provisions of s. 61 must be taken along with s. 62 : *Sasi Bhusan v. Umakant*, 19 C.W.N. 1143, s. c. 20 C.L.J. 153.

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

Notification of receipt of deposit.

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

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered ;

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

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

Service of Notice :—See Appendix—High Court Rules.

See notes under s. 61.

Transfer of a permanent tenure :—The transfer of a permanent tenure being complete as soon as the document is registered such a transferee when he tenders rent as tenant is entitled under s. 63 to claim a receipt with his name thereon as that of the tenant. *Rupchand v. Narendra Krishna*, 19 C.W.N. 112.

Suit for arrears before Deposit :—A suit for arrears of rent which fell due before a deposit was made under sec. 61 must be brought within 6 months of the date of service of the notice of the deposit. See Sch. III, Art 2 (a).

Payment or
refund of
deposit.

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

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

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

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

Effect of withdrawal of deposit by landlord :—Where rent deposited by a putnidar was withdrawn by the landlord by a petition stating that "my tenant had deposited rent due to me", held that the landlord by his action elected to recognise the putni tenure. *Madhu Sudan v. Rooke*, 24 I.A. 164 s. c. 25 Cal 1, s. c., 1 C.W.N. 433.

Courtfees on applications for payment and return of deposit of rent :—See Appendix VI—High Court Rules. See also cl. (a) para 4, Act I, Sch. II, of the Court Fees Act VII of 1870.

*Arrears of rent.***Arrears of rent.*

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

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

Headings of Notes.

1. FORM OF DECREE.
2. FICTITIOUS SALE FOR ARREARS OF RENT.
3. CONTRACT IN CONTRAVENTION OF THIS SECTION.
4. UNDER-RAIYAT.
5. CHARGE: PERSONAL LIABILITY OF TENANT.
6. WHAT IS A DECREE FOR RENT.
7. WHAT IS NOT A DECREE FOR RENT.
8. EFFECT OF CESSATION OF LANDLORD'S INTEREST.
9. TENANT.
10. CONTRIBUTION AND SUIT FOR DAMAGES.
11. NON-TRANSFERABLE OCCUPANCY HOLDING.
12. UNDIVIDED SHARE IN A HOLDING.
13. SUIT FOR REGISTRATION OF NAME IN LANDLORD'S SHERISTHA.
14. A SUIT FOR PRODUCE RENT.
15. CIVIL PROCEDURE CODE, (ACT XIV OF 1882) s. 210.
16. CIVIL PROCEDURE CODE, (ACT XIV OF 1882) s. 546.
17. WHEN LANDLORD IS A MORTGAGEE OF THE HOLDING—SALE FOR ARREARS OF RENT.
18. RENT DUE ON A TENURE AT THE TIME OF SALE BY AN EXECUTION PURCHASER.
19. DECREE FOR RENT AGAINST A HINDU WIDOW.
20. EFFECT OF REVERSAL OF SALE.
21. RIGHT OF MORTGAGE.
22. CESSATION OF TENANT'S INTEREST.
23. PARTIES IN RENT-SUIT.
24. RENT-SUIT—WHERE SOME OF THE JOINT TENANTS ARE NOT MADE PARTIES.
25. SALE IN EXECUTION OF THE DECREE OBTAINED BY A CO-SHARER LANDLORD—SUBSEQUENT SALE IN A SUIT UNDER S. 148A.
26. DECREE BY A CO-SHARER LANDLORD FOR USE AND OCCUPATION.
27. SUIT FOR RECOVERY OF PURCHASE MONEY FROM A DECREE-HOLDER PURCHASER.
28. SETTING ASIDE OF A FRAUDULENT DECREE.
29. APPORTIONMENT OF RENT.
30. SUIT BY HEAD OF MITAKSHARA FAMILY FOR RENT.
31. SALE CERTIFICATE.
32. RATE OF RENT.
33. REJUDICATA.
34. ROAD CESS RETURN.
35. BENAMIDAR.

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

Decree for sale of defaulting tenure bad.

1. Form of decree :—In a suit for rent the court in passing a decree cannot limit it by saying that the defaulting tenure should be first sold : *Jatindra Nath v. Muzafer Ali*, 16 C.W.N. 31 (notes).

"All the authorities in our courts have laid down that it is not competent to a court to direct in what manner the landlord shall execute his decree for rent and that he cannot be compelled to proceed first against the holding and then against the person": *Per Mullick J.*, in the case of *Kesho Prasad v. Lalji Ray*, 1 Pat. L.J. 138.

It seems that if a court erroneously gives a direction in the decree first to proceed against the defaulting tenure and then against the person or other properties, such direction does not seem to be binding as being without jurisdiction unless the decree is by consent.

It is not necessary for the Court to state in the decree passed in a suit for arrears of rent as to whether the decree will have the effect of a rent-decree or not, because by operation of law it is a rent-decree.

Purchaser at a sale in execution of fictitious decree.

2. Fictitious suit for arrears of rent :—Where a default was deliberately made by a tenure-holder in the payment of rent with the intention that the decree might be obtained against him and that on the sale of the tenure, the under-tenure might be extinguished and the purchaser was settled before-hand, *held* that at such a sale the purchaser was in the position of a purchaser by private transfer : *Umacharan v. Midnapore Zemindary Co.*, 20 C.L.J. 1. See in this connection *Sreenath v. Hurnath*, 18 W.R. 240 ; *Kishore Chander v. Kali Kinkur*, 20 W.R. 338 ; *Harendra Lal v. Salimulla*, 12 C.L.J. 336 ; *Harendra Lal v. Purna Chandra*, 15 C.L.J. 132 ; *Chowdhury Ram v. Chowdhury Pawn*, 18 C.L.J. 97 ; *Janki v. Debinandan*, 15 C.W.N. 776, *Faizar Rahman v. Mimansa Khatun*, 17 C.W.N. 1233, s.c., 18 C.L.J. 111 ; an intermediate landlord is bound to protect his own tenant from all paramount claims : *Graham v. Allsop*, 3 Exch. 186. If a lessor enters into an agreement with another to get rid of his lessee by means of a fictitious sale for arrears of rent and to share the profits of the transaction, that is a fraud against the lessee ; the person with whom such agreement is made must not be considered as having the rights of an auction purchaser but only those of a private purchaser : *Sreenath v. Hurnath*, 18 W.R. 240 ; see also *Nuzzur Ally v. Ojoodya Ram*, 5 W.R. (P.C.) 83.

3. Contract in contravention of this section :—Contract in contravention of this section is bad in law : *Samanta Rajnarain v. Ananta Prasad Das*, 4 C.L.J. 521.

S. 65 does not apply to an under-raiyati holding.

4. Under-raiyat :—Land held by an under-raiyat is not a holding within the meaning of s. 3 cl. (9) of the Act : s. 65 does not provide for a sale of land held by an under-raiyat in execution of a decree for arrears of rent thereof : *Arsadalla v. Mansubali*, 16 C.L.J. 359.

It is submitted that sec. 65 does not apply also to an under-raiyat with a right of occupancy by custom. See notes under sec. 29, heading No. 16, p. 228.

S. 100 of the Transfer of Property Act.

5. Charge : Personal liability of tenant :—The "charge" referred to in this section is not such a "charge" as is defined by s. 100 to the Transfer of Property Act ; and a landlord is not restricted by the provisions of this Act to executing a decree obtained by him for arrears of rent in the first instance by sale of the tenure or holding, but is at liberty to execute it in the ordinary manner against the

person or other property, whether moveable or immoveable, of the tenant: *Fatick Chunder v. E. G. Foley*, 15 Cal. 492. See also *Rayzuddi v. Kritartha Nath*, 33 Cal. 895, s.c. 4 C.L.J. 219. The view in these two cases was accepted in the case of *Panagipalli v. Suryanarayana*, 48 I.C. 794.

In the case of *Tarini Pershad v. Narayan Kumari*, 17 Cal. 301, Petheram, C.J., said as follows:—"This section, so far as I can see, creates a first charge upon the tenure for the rent of it, and puts the landlord in the position of a first mortgagee, so far as the rent is concerned, but the tenant remains personally liable for the rent. So that the landlord's position is this: he has a mortgage or charge upon the tenure for the rent, and he has a remedy against the tenant personally for the debt due to him. That being the case, he has a right to avail himself of either of his remedies. He may, if he chooses, bring an action in which he claims to establish his lien upon the tenure to bring that tenure to sale, notwithstanding any other charge which may have been made upon it, and that whether the tenant had any other property and whether some one else had a charge by way of contractual mortgage upon the tenure."

Landlord in the position of first mortgagee. Tenant liable personally.

A decree-holder who has obtained a decree for rent is free to proceed against any property of the judgment debtor; he is under no obligation to proceed in the first instance against the defaulting tenure: *Sailaja Prasad v. Gyon Das*, 18 C.L.J. 29.

Decree holder may proceed against any property.

Rent is a first charge: *S. M. Meherunnusa v. Sham Sundar*, 6 C.W.N. 834. *Gopinath v. Kashi Nath*, 13 C.W.N. 412 at p. 414.

The landlord's charge on the land for rent is prior to the charge created by the tenant in favour of the mortgagee: *Gopinath v. Kasi Nath*, 13 C.W.N. 412: s. c., 9 C.L.J. 234; so the purchaser at a rent sale has priority over the purchaser in execution of a mortgage decree; *Ibid*; See notes under ss. 161 and 167.

Purchaser at a rent sale has priority over purchaser in execution of mortgage decree.

A rent decree under the Bengal Tenancy Act is binding on the holding and a charge upon it, but the execution of decree must be levied on the holding and the holding is represented by the entire body of tenants. Execution against some of the tenants is limited to their right, title and interest and does not affect the holding: *Rampada v. Kanai Rai*, 44 C.L.J. 167 (Suhrawardy and Page, J. J.)

When a landlord makes the purchase of a holding in execution of his rent decree he may be taken to have become absolutely entitled to the property and it follows from s. 101 of the Transfer of Property Act that the landlord's charge for rent which is for his benefit continues to subsist after his purchase, so where an occupancy holding was mortgaged and the mortgage was not annulled by the landlord after his purchase, held that in a suit by the mortgagee the decree in favour of the mortgagee should be subject to the first charge for rent in favour of the landlord: *S. M. Meherunnusa v. Sham Sundar*, 6 C.W.N. 834; See notes under ss. 161 and 167.

Transfer of Property Act's 101.

Rent falling due during the time that a tenure belongs to any particular tenure-holder is a first charge on the tenure so long as it is his and has not been sold for arrears of rent, and the charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein, is transferred from the tenure to its sale-proceeds and the tenure passes to the purchaser at a sale for arrears of rent free of all liability created upon it by default of the previous holder: *Faez Rahaman v. Ram Suk Bajpai*, 21 Cal. 169.

Rent a first charge.

Rent for period anterior to sale.

But where a tenure or holding was sold in execution of a decree for rent with a notice that it was saddled with liability for arrears of rent for a period anterior to the date of sale, *held* that the purchaser was liable for the rent of such period : *Haradhan v. Kartick Chandra*, 6 C.W.N. 877. The notification must have some effect in controlling the bids of intending purchasers : *Ibid*.

Two decrees for rent.

Where a landlord obtained two decrees for arrears of rent and in execution of the later decree put to sale the defaulting tenure, and subsequently in execution of the antecedent decree put to sale a portion of the tenure again, *held* that this could not be done, i.e., after a tenure has been sold out and for the satisfaction of certain arrears, a portion of the same tenure cannot afterwards be sold for a second time for recovery of rent which had previously accrued : *Opal Saran v. Sheikh Mahomed Ahson*, 14 C.W.N. 1096 at p. 1099 ; in this case it did not appear that the first sale was held with a notice that the sale was to be held subject to any charge.

Sale in execution of one rent decree without notifying that there is another rent-decree.

Where a landlord obtained two rent decrees and sells the holding in execution of one of the decrees without notifying that there is another rent-decree, and purchases it himself, he is not debarred from executing the other decree against the other properties of the judgment debtor : *Kesho Prasad v. Paranjote*, 6 Pat. L.J. 354, a rent-decree is in no sense a mortgage decree : *Ibid*.

By the express terms of the Bengal Tenancy Act in the event of rent being unpaid, the owners of the zemindari interest are entitled by suit under that Act to bring a *putni* to sale with the consequences prescribed by that Act : *Pramada Nath v. Ramani Kant*, 35 Cal. 331.

Putni tenure.

There is no difference between *putni* taluks and other tenures in respect of the applicability of s. 65 to them : *Peary Mohon v. Sreeram Chandra*, 6 C.W.N. 794 ; there is no conflict between s. 65 of the Bengal Tenancy Act and s. 17 (3) of the Putni Regulation ; antecedent balances may be mere personal debts, which cannot be summarily recovered under the procedure prescribed by the Putni Regulation but they may also be a charge on the *taluk* : *Ibid*.

Personal liability or not.

The purchaser of the interest of a *putnidar* in execution of a money-decree obtained against the latter is not personally liable to satisfy the rent-decree obtained by the landlord against the *putnidar* prior to the sale in execution of the money-decree : *Indrachand v. Surendra Narain*, 1 Pat. 449.

How charge is enforced.

S. 65, which provides that the "tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon," only intends what is explicitly laid down in subsequent sections of the Act, that is, those in Ch. XIV, namely, that the charge should be enforced by the sale of the tenure or holding free of encumbrances, and if in any case the decree for rent either has not been, or cannot be, enforced by the sale of the tenure, we do not think that the charge created by s. 65 can be enforced in any other way" ; (*Per* Norris and Banerjee, J.J.) *Shoshi Bhusan v. Gagan Chunder*, 22 Cal. 364.

Surplus sale proceeds.

Not only can a *putni* tenure be sold under the Bengal Tenancy Act but decrees for rent for earlier periods can be enforced against the surplus sale proceeds of a *putni* tenure when sold in execution of a decree for rent under the provisions of the Bengal Tenancy Act ; *Satyasankar v. Monmohon*, 22 C.W.N. 131 (*Per* N. Chatterjee J., *Smither J.*, *contra*).

Notwithstanding a stipulation in a lease that on default of payment of rent the landlord shall be entitled to realise the same by auction-sale of the tenure; the tenant is also personally liable for the rent; *Sourindra Mohan v. Sournomoyee*, 26 Cal. 103: s. c., 3 C.W.N. 38. A decree-holder has in execution of a rent-decree the right to ask for personal execution against the judgment-debtor notwithstanding that he has also the power to sell the tenure in arrears: *Bhabani Charan v. Pratap Chandra*, 8 C.W.N. 575; *Mahomed Jamad Hussein v. Gopal Narain Singh*, 5 C.L.J. 48 (notes); the decree-holder may proceed against the tenure or other properties or part of the tenure and nothing depends on the order in which the decree-holder should proceed: *Ibid.*

A landlord, who purchases the defaulting tenure in execution of his money decree subject to rent charge, cannot execute his decree for rent as the judgment in his favour for rent is extinguished: *Sailaja Prosad v. Gyani Das*, 18 C.L.J. 29.

There cannot be two first charges standing simultaneously against a tenure: *Srimanta v. Mahadeo*, 8 C.W.N. 531.

It was held under s. 12 of Act VIII of 1865, B. C., that a plaintiff who obtains a decree for rent has no charge over the surplus sale-proceeds for the rent of the subsequent period: *Sultan Khan v. Radha Krishna*, 4 C.L.J. 500.

The union of a cause of action which is separable from a charge on land, with a claim which constitutes a charge disentitles the plaintiff from pursuing the procedure laid down in Ch. XII of the Bengal Tenancy Act: *Shib Prasad v. Vakai*, 33 Cal. 605; s. 65 does not bar the uniting of a claim for rent of a fishery with a claim for other rent: *Ibid.*; but such a decree does not seem to be decree for rent.

The liability to pay cess (of a rent-free tenure) is a liability to the Government and it is not a charge on the tenure: *Pilambar v. Sheikh Rahamat Ali*, 1 Pat. 218.

The amount of cesses payable to a Collector under the Cess Act (IX of 1880) B. C. is not a charge on the estate in respect of which they are due: *Ahsanulla v. Manjura Banoo*, 30 Cal. 778. Cess is not a charge on an estate but it is a charge on a tenure. "Rent" includes cess, and it has therefore been held that a decree for road-cess is a first charge upon the tenure: *Cheodilli v. Quadress*, 1 Pat. L.J., 161; therefore an auction purchaser in execution of a decree for cess has a title paramount to that of a mortgagee though the decree for cess was obtained subsequent to the execution of the mortgage: *Ibid.*

Where a certain property was hypothecated as security for rent of a tenure, and the tenant subsequently transferred the tenure, held that the charge on the hypothecated property ceased on the transfer of the tenure: *Bejoy Chand v. Sarat Chandra*, 19 C.L.J. 476.

6. What is a decree for rent:—S. 3 of the Bengal Tenancy Act defines the word 'rent' in the sense in which it would be understood without any statutory definition: *Jatindra Mohan v. Jarao Kumari*, 33 Cal. 140 (P.C.), s. c. 10 C.W.N. 201. The "decree" referred to in this section is a decree obtained by all the landlords or at all events a decree obtained by some of the landlords for the entire rent in the presence of all: *Sheikh Jarip v. Ram Kumar*, 3 C.W.N. 747. Where the entire body of landlords do not obtain a decree the effect of the sale is only that of right, title and interest of

Tenant also personally liable for rents.

Where landlord purchaser in execution of a decree for money. Two charges.

Act VIII of 1865, B. C.

Claim for rent and money.

Act IX of B. C. 1880.

Security for rent.

Decree by all the landlords, or in presence of all.

- Fractional co-sharer competent to sue. the judgment debtor ; *Narain v. Srimanta*, 29 Cal. 218. And one of several joint landlords is competent to sue for the entire rent due making his co-sharers parties to the suit : *Premchand v. Mokshada*, 14 Cal. 201. See notes under s. 188. "Rent" includes road-cess payable by a tenant : *Nobin v. Bansi Nath*, 21 Cal. 722. See, also
- Road cess, decree for. - *Cheoditti v. Quadress*, 1 Pat. L.J. 161. A suit for rent brought by the plaintiff against a person who was settled upon the land by plaintiff's co-sharers claiming the land exclusively is a suit for rent : *Azim Sirdar v. Ram Lall*, 25 Cal. 324.
- Decree for dak-tax &c. Where a decree was obtained against a *putnidar* for rent, Dak-tax and other items not strictly coming within the definition of rent and the sale was held under Chap. XIV of the Bengal Tenancy Act, held that s. 171 of the Act applied : *Jnanada Sundari v. Atul Chandra*, 32 Cal. 972 ; certain sums agreed to be paid by the tenant on behalf of the landlord are rent : *Ibid*.
- Drainage charges. A decree for rent which includes drainage charges is a rent-decree : *Manmatha v. Anath Bandhu*, 23 C.W.N. 201 ; see also *Monmohini v. Priyanath*, 8 C.W.N. 649.
- Co-sharer landlord. A co-sharer landlord can maintain a suit for recovery of his share of rent in arrears and enforce his claim under the provisions of the Bengal Tenancy Act, against the original tenant and the other co-sharer landlord who had before suit purchased the tenant's tenure : the consideration of the purchase being the amount of arrears to him : *Kamal Krishna v. Kedar Nath*, 10 C.L.J. 517.
- Sub-division of tenure. When a person, a 16 anna proprietor, obtained a decree for rent of a tenure against his tenants—against one for an 11 anns. odd share and against the other for a 4 anns. odd share, held that he was entitled to execute the decree as a decree for rent although he recognised the fact that the tenants had sub-divided the tenure and chose to accept a decree for the rent of the shares : *Surbo Lal v. J. M. Wilson*, 33 Cal. 682 ; under the provisions of s. 65 the rent, for which he has got a decree, is a first charge upon the tenure and in execution of such decree he is entitled to sell the tenure : * *Ibid*.
- Rent payable to a third person. A suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages : *Kalikumar v. Bidhu Bhusan*, 16 C.L.J. 89 following *Basanta Kumari v. Asutosh*, 27 Cal. 67 (F. B.). See also *Nagendra Bala v. Amrita Lall*, 47 I.C. 753.
- Sikka rupees. A contract to pay rent in *sikka* rupees should be maintained whether its date is prior or subsequent to 1836 : *Dhakeshwar v. Ram Pershad*, 43 I.C. 753.
- Landlord at date of suit and decree. Where the plaintiff in a suit for rent is shown to have been the landlord at the date of the suit and also at the date of the decree, both suit and decree would clearly be a suit and a decree under the Bengal Tenancy Act : *Khetra Pal Singh v. Kritartha Moyi*, 33 Cal. 566 (F.B.), s. c. 10 C.W.N. 547, s. c. 3 C.L.J. 470 (overruling the case of *Hem Chandra v. Monmohini*, 3 C.W.N. 604). The fact that the plaintiff sold his interest in the tenure subsequently to obtaining the decree, would not prevent him from obtaining the benefit of s. 65 of the Act : *Ibid*. See also *Srimanta v. Mahadeo*, 8 C.W.N. 531 : s. c., 31 Cal. 550.

The case of *Khetra Pal v. Kritartha Moyi*, 33 Cal. 566, s. c., 10

* See 17 Cal. 301.

C.W.N. 547, s. c., 3 C.L.J. 470 was distinguished in the Privy-Council case of *Arthur Henry Forbes v. Maharaj Bahadur Singh*, 41 I.A. 91, s. c., 41 Cal. 926*, s. c., 18 C.W.N. 747, and it was held that the right to bring a tenure or holding to sale under s. 65 being exclusively in the landlord, a person to whom certain rents are due and who obtains a decree therefor after he has parted with the property in which the tenancy is situate has no such right. See notes under heading No. 8.

Landlord
parting
with his
interest.

The rent payable by a *putnidar* to his zemindar, which has been transformed into a judgment debt, is a first charge on the tenure: *Basanla Kumar v. Khulna Loan Company*, 19 C.W.N. 1001 s. c., 20 C.L.J. 1; the *putni* sale has not the effect of destroying the character of the decree previously obtained as a rent decree: *Ibid.* If a sale of a *putni* tenure takes place under the Putni Regulation, the landlord is entitled in the first place to appropriate sufficient portion of sale proceeds in deposit with the Collector in satisfaction of his decree for rent for previous balances, before a mortgagee can proceed to realise his dues: *Ibid.*

Putni
judgment
debt.

A decree obtained by a zemindar against his *putnidar* is a decree for rent within the meaning of this section, although he had previously to the institution of the suit sold his interest in the zemindari: *Maharaj Bahadur v. Forbes*, 35 Cal. 737; s. c., 7 C.L.J. 652.

Decree
against a
Putnidar.

This case was followed in the case of *Diwan Balmukund v. Tarini Singh*, 16 C.L.J. 360 and it was held that the provisions of Art. 2 of Sch. III of the Bengal Tenancy Act apply to a suit for recovery of rent of a holding by one whose interest as landlord has ceased to exist before the institution of the suit, provided that the arrears claimed accrued due to him when he was the landlord of the defendant.

A suit brought by a landlord against his tenants claiming damages for wilfully omitting to raise crops whereby the landlord was deprived of his share thereof is in substance a suit for recovery of rent inasmuch as the shares of the produce to be received by the landlord was ascertained before the commencement of the suit: *Lalji Panday v. Barhamdeo*, 16 C.W.N. 89.

Claim for
damages.

An agreement expressly proved or implied by the conduct of the parties, for the payment of rent to co-sharer landlords separately, may establish the right to sue separately, for the shares of the rent receivable by the separate share-holders, but such an agreement merely affects the right to sue separately for rent and in no other respect modifies the terms of the holding; the right therefore to bring the tenure to sale for arrears of rent remains in tact, and also the right of one co-sharer to sue making his co-sharer defendants where they refuse to join as plaintiffs: *Pramada Nath v. Ramani Kanta*, 35 Cal. 331; s. c., 12 C.W.N. 249.

Separate
collection,
effect of.

Where under s. 19 of the Limitation Act a tenant acknowledges in writing his liability for the arrears of rent due from him, and the period of limitation is thus extended, the claim for the debt acknowledged is a claim for rent and for money and the decree may be executed as a rent decree: *Kamal Krishna v. Kedar Nath*, 10 C.L.J. 517.

Limitation
Act s. 19.

* This Privy Council case sets aside the decision of the High Court reported in, 35 Cal. 737, s. c., 7 C.L.J. 552.

Revenue payable by *nishkar* grant.

Where a *nishkar* grant was made and the grantee was to pay to the grantor a proportionate share of the government revenue payable by the grantor, held that the amount payable by the grantee to the grantor was rent and the grantee was a tenant and not a co-proprietor: *Dwarkanath v. Dambarudhar*, 38 Cal. 278.

Damages for use and occupation.

A suit by a landlord for damages for use and occupation was held to be indistinguishable from a rent-suit where the defendant claimed to be a tenant and the plaintiff said that the defendant was a permissive occupant, and it was held the suit was not cognisable by a Small Cause Court: *Mahadeo v. Kesho Pershad*, 2 Pat. L.J. 97.

Sale price. of *garh*.

A suit for recovery of the sale price of a *garh* or forest is a suit for rent: *Joy Churn v. Sarajubala*, 23 C.W.N. 876; see notes under s. 193.

Rent falling due after transfer by tenant.

When A purchased a putni tenure from B and the landlord without any justification refused to treat A as his tenant and brought a suit for rent against B, deliberately omitting to implead A as a party to the suit for rent, the whole of which had accrued due after the transfer by B to A, and in execution of the decree the putni was sold, held in a suit against A and B brought by the landlord for rent which had fallen due between the date of the institution of the previous suit and the sale in execution of the decree made thereunder, that the landlord was not entitled to resile from the position which he had taken up in the previous suit, and that A was not liable: *Girindra Sunder v. Srikishna*, 10 C.L.J. 538.

In the absence of anything to denote the contrary, a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears: *Mathura Mohan v. Nobin Chandra*, 20 C.W.N. 749, s. c., 24 C.L.J. 34 (the cases of *Maharani v. Harendra*, 1 C.W.N. 458, *Peari Mohan v. Sriram*, 6 C.W.N. 794 and *Manindra v. Jamaher*, 32 Cal. 643 were distinguished).

Decree by a co-sharer landlord.

7. What is not a decree for rent.—"The correct rule of law as to what passes at a sale held in execution of a rent-decree obtained by a co-sharer landlord would seem to be laid down by their Lordships of the Privy Council in *Jiban Krishna v. Broja Lal*, 30 Cal. 550. The case of *Pramada Nath v. Ramani Kant*, 9 C.W.N. 34, is to the same effect. There are also many other rulings which favour the conclusion that at such a sale only the right, title and interest of the judgment-debtor passes. See the cases of *Beni Madhab v. Joad Ali*, 17 Cal. 399; *Durga Charan v. Kali Prasanna*, 26 Cal. 727; *Sita Nath v. Atmaram*, 4 C.W.N. 571; *Sadagar v. Krishna*, 26 Cal. 937." *Per Rampini, J.*, in *Afraz v. Kulsumunessa*, 4 C.L.J. 68.

Splitting up.

Where a tenure is split up into two or more, a sale in execution of a decree obtained in a single suit for rent is not a sale under the B. T. Act: *Prafulla Nath v. Shital Khan*, 22 C.W.N. 788.

Assignment of Government revenue.

Government revenue agreed to be paid by a putnidar on behalf of the zemindar though a part of the consideration to be rendered by the putnidar for the enjoyment of the tenure was not considered to be a part of the putni rent: *Jotindra Mohan v. Jorao Kumari*, 33 Cal. 140, s. c., 10 C.W.N. 201; s. c., 3 C.L.J. 7. It was not money payable to the landlord: *Ibid*. A decree obtained by a co-sharer landlord for his share of the rent is not a decree for rent. Where one of several co-sharers in a zemindari thinks fit to pursue his remedies to recover his share of the rent, he must pursue that under the

• Co-sharer landlord.

ordinary law of the country and independently of the Bengal Tenancy Act: *Beni Madhab v. Joad Ali*, 17 Cal. 390 (F.B.). A decree obtained by some of several co-sharers for rent cannot be regarded as a decree under the Bengal Tenancy Act and the proceedings in execution thereof can only be in accordance with the provisions of the Code of Civil Procedure and therefore in execution of such a decree, an occupancy holding which is not saleable by custom or usage cannot be sold: *Durga Charan v. Kali Prasanno* 26 Cal. 727 s. c., 3 C.W.N. 585. See also the cases of *Premchand v. Mokshada* 14 Cal. 201; *Jagobandhu v. Jadu*, 15 Cal. 47; *Sita Nath v. Atmaram*, 4 C.W.N. 571. Where a *ticcadar* brought a suit for rent after the expiry of his lease and brought the tenure to sale after he ceased to be in possession and where in the meantime the landlord had entered into possession of the property and had obtained a decree for rent falling due after the termination of the lease, *held* that there could not be two first charges and the landlord and not the *ticcadar* was entitled to the first charge: *Srimanta v. Mahadeo*, 8 C.W.N. 531. A suit by an assignee of an arrear of rent stands in the shoes of a landlord and such a suit is a rent-suit for the purpose of jurisdiction of the Court in which such suit is to be bought: *Sris Chandra v. Nasim Quazi*, 27 Cal. 827 s. c., 4 C.W.N. 357 (F.B.); but it is doubtful whether a decree in such a suit is a decree for rent within the meaning of this section, (s. 65) for it has been held in the case of *Mahendra v. Kailash*, 4 C.W.N. 605, that the provisions of the Bengal Tenancy Act are not applicable to a suit for rent by an assignee of the arrears from the landlord as the assignee is not the landlord of the defendant.

Co-sharer
landlord.

Decree for
rent by
ticcadar,
for arrears
of rent.

Decree by
an assignee
for arrears
of rent.

A sale held at the instance of an assignee of a rent-decree who is not an assignee of the landlord's interest has at most the effect of a sale held in execution of a decree for money under the Civil Procedure Code: *Manurattan v. Hari Nath*, 1 C.L.J. 500; such a sale accordingly does not affect the interest of unrecorded co-sharers in the tenure who are not parties to the decree or to the execution proceedings: *Ibid*.

The right to bring a tenure or holding to sale under s. 65 being *privy* exclusively in the landlord, a person to whom certain rents are due and who obtains a decree therefor after he has parted with the property in which the tenancy is situate has no such right: *Arthur Henry Forbes v. Maharaj Bahadur*, 41 Cal. 926 (P.C.).

case.

Where upon the death of the last recorded tenant, none of his heirs had his name recorded in the landlord's office, but they held the land and went on paying the rent and obtained separate rent-receipts for some years until recently when a rent-suit was brought against two of them only and the *jamma* was sold in execution of the decree; *held*, that after having accepted rent from all the heirs the landlord had no right to ignore some of them; that the sale did not pass the entire *jamma* but only the right, title and interest of the judgment-debtors: *Durga Hazra v. Samosh Akon*, 4 C.W.N. 608. The heirs of the last recorded tenant with respect to an occupancy holding are entitled to claim recognition from the landlord and if the latter, ignoring them, bring a suit for arrears of rent and in execution thereof sell the holding, the right of the former is not affected: *Ibid*.

Decree
against
some of
several
heirs of
recorded
tenant.

A decree for rent falling due between the date of a previous suit and the date of the sale in satisfaction of the decree passed therein is not a decree within the meaning of this section; *Egeez Rahaman v. Mr. Salim Ullah Fahmi*.

Decree or
rent falling
due after

date of
previous
suit for rent
and date
of sale.

Application
for execu-
tion by
assignee of
rent
decree,
s. 148, (h).

A suit upon
a bond for
rent.

Burgadar.

Decree for
rents of two
or more
tenures.

Ramsak Bajpai, 21 Cal. 169. Where a rent decree was passed under the old rent law but the assignment and the application by the assignee for execution was made after the Bengal Tenancy Act came into force, held that cl. (h) of sec. 148 of the Act applied to the execution proceedings and the sale on such an application, which is prohibited by that clause is no sale under the Rent Law: *Shoshi Bhusan v. Gagan Chunder*, 22 Cal. 364. See notes under s. 148.

A suit upon a bond given for rent is not a suit for rent: *Royzaddi v. Kritartha Nath*, 4 C.L.J. 219. Nor is a suit against the defendants who had executed a bond in favour of plaintiff undertaking to pay a debt due from their landlord is not a suit for rent: *Hriday Nath v. Joyram*, 4 C.L.J. 402.

As to whether a *burgadar* is a tenant and a decree against him a rent decree; see notes under the Preamble at p. 5.

A decree for the consolidated rent of several tenures held by the same tenant does not bind any one of the tenures: *Baikuntha Nath v. Thakur Debendra*, 11 C.W.N. 676; one tenure cannot be made liable for the rent of another tenure: *Ibid.* Where there are several tenures held by the tenant, the landlord may institute one suit for the rent of all the tenures; but he cannot put the tenures to sale under the procedure laid down in Chap. XIV: *Hriday Nath v. Krishna Prasad*, 34 Cal. 298, s. c., 11 C.W.N. 407; s. c., 6 C.L.J. 153; *Nanda Lal v. Sadhu Churan*, 7 C.L.J. 96. See also *Bipra Das v. Rajaram*, 36 Cal. 795, s. c., 13 C.W.N. 560.

These cases have all been followed in the case of *Mulluk Chand v. Satis Chandra*, 14 C.W.N. 335; s. c., 11 C.L.J. 56; *Rashmohini v. Debendra Nath*, 16 C.W.N. 395. See also *Baikantha Nath v. Thakur Debendra Nath*, 11 C.W.N. 676, and *Dhirendra Nath v. Nischintapur Company*, 26 C.L.J. 118. See also *Abdul Aziz v. Bibi Tauhudurnissa*, 52 I.C. 380 (Atkinson J.).

Under the provisions of s. 117 cl. (e) of the Putni Regulation, arrears of rent for a period antecedent to the period to recover the rent of which the tenure had been sold must be regarded as personal debts recoverable under the ordinary procedure for the recovery of debts and not by re-sale of the tenure: *Khitish Chandra v. Khulna Loan Co.*, 13 C.W.N. 804. See also *Jagannath v. Mohiuddin*, 37 Cal. 747; *Pearymohon v. Sreeram Chandra*, 6 C.W.N. 794.

Cessation of
landlord's
interest.

8. Effect of cessation of landlord's interest:—There may be the following cases where the landlord ceases to have interest in the land which the tenant holds under him.

1. *Cessation of interest before suit;*
2. *After suit and before decree;*
3. *After decree and before execution;*
4. *After execution and before sale;*

(1) before
suit.

1st case: In the first case i.e., cessation of landlord's interest before suit, the decree obtained by the landlord is

not a decree for rent: *Forbes v. Maharaj Bahadur*, 41 Cal. 926 (P.C.), s. c., 18 C.W.N. 747, s. c., 25 C.L.J. 434; see also *Sremant v. Mahadeo*, 31 Cal. 550.

a decree for rent: *Maharaj Bahadur v. Forbes* (Rampini and Sharfuddin J.J., over-ruled by the Privy Council, (see left hand column)).

2nd case i.e. where the landlord ceases to have any interest after the date of the suit and before the decree is obtained :

It cannot be executed as a rent-decree: the principle upon which the Privy Council decision of *Forbes v. Maharaj Bahadur* was decided will apply: 41 Cal. 926: See also *Ramkali Kuer v. Madan Mohan Lal*, 8 P.L.T. 224, s. c., 98 I.C. 995.

It has all the characteristics of a rent-decree and may be executed as such: *Chatraput v. Gopi Chand*, 26 Cal. 750; s. c., 4 C.W.N. 446.

(2) after suit but before decree.

3rd case i.e., where there is cessation of landlord's interest after the decree is obtained but before the application is made for execution of the decree ;

The decree cannot be executed as a rent-decree; *Hem Chandra v. Monmohini*, 3 C.W.N. 604, (O'kinnealy and Ameer Ali J.J.); also see the observations of their Lordships of the Privy Council in the case of *Forbes v. Maharaj Bahadur*, 41 Cal. 926; the observations of the Privy Council, according to N. Chatterjea and Richardson J.J., are contrary to the principle upon which the judgment of the Full Bench in *Khetra Pal v. Kritarthamayi*, 33 Cal. 566 is based; N. Chatterjea and Richardson J.J., therefore referred the following question for a decision of a Special Bench under Part II, Ch. V., Rule VI of the Rules of the High Court:

Question: Whether the decision of the Full Bench in the case of *Khetra Pal Singh v. Kritarthamoyi*, 33 Cal. 566 is still good law.

The Special Bench could not decide the question as it was discovered that no second appeal lay by virtue of s. 153 of the Bengal Tenancy Act.

[For the Order of Reference to the Special Bench and the judgment of the Special Bench, see *Kumar Prafulla Krishna Deb v. Nosibannessa Bibi*, 24 C.L.J. 331.]

The decree may be executed as a rent-decree: *Khetra Pal v. Kritarthamoye*, 33 Cal. 566, s. c., 10 C.W.N. 547, s. c., 3 C.L.J. 740 (Maclean C. J., Ghose, Rampini, Sale and Pratt J.J.). This Full Bench, it is submitted over-rules the case of *Hem Chandra v. Monmohini*, 3 C.W.N. 604. The principle upon which the decision of the Full Bench is based is inconsistent with the observations of the Privy Council in *Maharaj Bahadur v. Forbes*, 41 Cal. 926. (See the notes in the left hand column).

(3) after decree but before execution.

(4) Cessa-
tion of
landlord's
interest
after execu-
tion but
before sale.

4th case: Where the landlord ceases to have interest after the application for execution is made and before the sale.

According to the observations made in the case of *Forbes v. Maharaj Bahadur*, 41 Cal. 926, the decree cannot be executed as a rent-decree. But it has been pointed out in the case of *Syedunnissa Khatoon v. Amiruddin*, 45 Cal. 204 that those observations were obiter dicta.

The decree may be executed as a rent-decree: *Syedunnissa Khatun v. Amiruddin*, 45 Cal. 294; [In this case the landlord lost a part of his interest; the principle upon which the decision is based will also apply to loss of entire interest]. In such a case *Woodroffe and Cuming J.J.*, held that the sale was a sale under the Bengal Tenancy Act: *Manindra Nath v. Ashutosh*, 25 C. L. J. 626; (their Lordships further held that the Full Bench case of *Khetter Pal v. Kritarthamoyi*, 33 Cal. 566, was not over-ruled by the Privy Council case of *Forbes v. Maharaj Bahadur*, 41 Cal. 926.

Registered
tenant.

9. Tenant:—A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the same who can shew no sufficient cause for not registering his name and may be enforced by sale of the tenure: *Shoshi Bhusan v. Gagan Chunder*, 22 Cal. 364 (at p. 372). See also *Mati Lal v. Nripendra*, 2 C.W.N. 172; *Sham Chand v. Brojo Nath*, 21 W.R. 94: s.c., 12 B.L.R. 484. Where the landlord of an occupancy holding obtains a decree for rent against his recorded tenant an unregistered transferee of the tenant into whose hands a portion of the holding had previously passed is bound by the decree: *Gopi Nath v. Sajani Kanta*, 10 C.W.N. 240; *Azgur Ali v. Assabuddin*, 9 C.W.N. 134 (the principle of the Full Bench case of *Ishan Chandra v. Beni Mandal*, 24 Cal. 62, was applied). See also *Bhubendra v. Upendra*, 13 C.W.N. 162 (notes); *Nasha Bibi v. Radhakishore*, 11 C.W.N. 312.

Decree
against un-
registered
transferee.

Following these cases it has been held that a purchaser in execution of a decree against an unregistered transferee of an occupancy holding, as well as the unregistered transferee himself, are bound by a decree for rent subsequently obtained against the registered tenant: *Haradhan v. Girish Chandra*, 13 C.W.N. 98.

When a landlord has obtained a decree for rent against his registered tenant, a transferee of the holding, who acquires an interest in it after the decree, cannot maintain a suit to set aside the decree, except on the ground of fraud, nor is he entitled to a refund of the money paid in satisfaction of the decree: *Jadunandan v. Tirbhuban*, 1 C.W.N. 164 (notes). A decree passed against the registered tenant binds the real tenant: *Moti Lall v. Nripendra*, 2 C.W.N. 172.

Dispossession.—
Mesne-
profits.

A tenant is not liable for rent for the period he was dispossessed by a person at the instance of a person who was set up by the landlord although he has got a decree for mesne profits against him: *Ram Chandra v. Dwarkanath*, (1918) Pat. 26.

Decree
against
recorded
tenant.

Where a landlord obtained a decree for arrears of rent of a tenure against all the tenants who were the recorded tenants except one who after acquiring title by purchase never got his name registered in the

landlord's sheristha, *held* that the entire tenure passed by the sale : *Profulla Kumar Sen v. Salimulla*, 23 C.W.N. 590.

Where two co-sharer landlords obtained separate decrees for rent for the same period (each making in his own suit his co-sharer a party) and the tenure was sold in satisfaction of the decree obtained by one of them ; *held* that the other co-sharer landlord could not execute his decree by sale of the same tenure after it passed into the hands of the auction purchaser and all that he was entitled to was to recover the sum due to him which from being a first charge on the tenure itself had, on the sale of the tenure, passed as a first charge on the surplus sale proceeds : ... *Nilambar v. Satyapriya*, 16 C.W.N. 701 ; when two persons have charges on a property of equal priority, the first who takes out execution is entitled to satisfy his decree by sale of the property and the other person loses his right to proceed against that property : *Ibid*.

Separate decrees for rent by different co-sharers.

A decree obtained in a suit for rent against a person in possession who is also the legal representative of the last registered tenant is a decree for rent within the meaning of the Bengal Tenancy Act : *Ban Bihari Kapur v. Khetterpal Singh*, 16 C.W.N. 259.

Decree against a person in possession.

Where at a sale in execution of a decree for money against the holder of a permanent tenure whose name is not registered in the landlord's sheristha the tenure is sold, and the landlord brings a suit against the registered tenant for arrears accruing up to the date of sale, *held* that the decree is a money-decree and the tenure cannot be sold : *Girish Chandra v. Khagendra Nath*, 16 C.W.N. 64. But in the case of *Surendra Narain v. Gopi Sundari*, 9 C.W.N. 924, it was held that a person who acquired a *putni* tenure at a sale in execution of a decree for money against the putnidar, but who did not get his name registered in the landlord's office is bound by the decree for rent against the recorded tenant.

Sale in execution of money decree against un-registered tenant.

A sale in execution of a money-decree obtained against the registered tenant passes only his right, title and interest in the tenure and not those of his unregistered co-sharers : *Doorgadhar v. Haramohini*, 13 C.W.N. 270 followed in *Bejoy Sankar v. Rajendra Kuwar*, 13 C.W.N. 746 ; s.c., 9 C.L.J. 470 ; in the first of these two cases i.e., *Durgadhar v. Haramohini*, 13 C.W.N. 270 the correctness of the decision in the case of *Jeolal Singh v. Ganga Prasad*, 10 Cal. 996 was doubted ; in that case the tenants were members of an undivided *Mitakshara* family and it was held that the person who was registered as the tenant being the *karta* of that family might be taken to be the representative of the rest of the family and that a decree obtained against him in a suit for rent would bind the rest of the family on the ground that he represented them.

Money decree against the registered tenant.

Mitakshara family.

It was held under the Choto Nagpur Tenancy Act (VI of 1908 B. C.) that a decree obtained against some only of the registered tenants can not be executed as a decree for rent ; *Chandra Nath v. Pratap Udai Nath*, 18 C.W.N. 170.

Chota Nagpur Tenancy Act.

There is no law rendering it obligatory on tenants who are not tenure-holders to get their names recorded in the landlord's *sheristha* for the purpose of perfecting their titles. Therefore the sale of a jote in execution of a decree for rent obtained against the recorded tenant does not pass the interest of the tenants whose names are not registered in the landlord's *sheristha* ; *Ashok Bhuiyan v. Karim Bepari*, 9 C.W.N. 843. The passage at p. 699 of 26 Cal., in the case

Execution of decree against registered tenant.

of *Nitayi v. Harigovindo* was distinguished from this case because that case (*i.e.*, the case in 26 Cal.) was the case of a tenure and the tenants in that case were bound to register their names in the landlord's sheristha.

It was decided in the case of *Jagat Tara v. Daulati Bewa*, 37 Cal. 75, s.c. 13 C.W.N. 1110, that the decision in *Ashok Bhuiyan v. Karim Bepari*, (9 C.W.N. 843) lays down no more than this that a landlord is not justified in treating the registered tenant of a raiyati holding as the sole tenant merely because his co-sharers in the holding are not registered; and it was also decided that there is nothing in that case to prevent the whole body of tenants of a raiyati holding electing to treat one of their numbers as their representative in their dealings with the landlord; the fact that only one tenant is registered is merely an item in the evidence on the question whether he is or is not the representative tenant of the landlord: *Jagat Tara v. Daulati Bewa*, 13 C.W.N. 1110. See also *Nitai Behari Shaha v. Hari Govinda Shaha*, 26 Cal. 677; *Mati Lall Poddar v. Nripendra Nath*, 2 C.W.N. 172; *Ananda Kumar v. Hari Haldar*, 27 Cal. 546; *Rupram Namasudra v. Iswar Nama Sudra*, 6 C.W.N. 302; *Rajani Kanto Guha v. Uzir Bibi*, 7 C.W.N. 170; *Afraz Molla v. Kulsumannasa*, 10 C.W.N. 176; *Ambica Pershad v. Choudhry Keshri Shahi*, 24 Cal. 642; *Motilal v. Omarali*, 3 C.W.N. 19.

It was observed in the case of *Gagan Sheik v. Abejan Khatun*, 14 C.L.J. 180 that the decision in *Ashoka Bhunia v. Kairm Bapari*, 9 C.W.N. 843 does not lay down any rule of universal application, that one person cannot represent a tenancy in the books of the landlord on behalf of himself and his fellow-tenants. Indeed, the contrary view has been maintained in a long series of decisions amongst which reference may be made to those of *Rupram Namasudra v. Iswar Namasudra*, 6 C.W.N. 302 and *Afraz Mondal v. Kulsuminnessa*, 10 C.W.N. 176."

Acquiescence.

Where one of several joint tenants executed a kabuliyat in favour of the landlord and the other tenants acquiesced in the representation of the holding by the tenant who executed the kabuliyat, and the landlord sued him only for the rent and in execution of that rent decree attached the entire holding, and the other tenants made no attempt to get them recognised or to pay the arrears; *held*, that the attachment covered the entire holding unless there was fraud on the part of the landlord; *Rajani Kanta v. Srimati Uzir Bibi*, 7 C.W.N. 170.

Unregistered transferee.

By suing the unregistered transferee of a part of the *putni* jointly with the transferer the zemindar only recognises him as one of the joint holders of the *putni*, but because he does so, he can not be said to have waived the right secured to him to preserve the unity of tenure held under him without splitting it and apportioning its rent; *Surindra Mohan v. Surnomyee*, 26 Cal. 103, s.c., 3 C.W.N. 38. One of the several proprietors can hold the status of a tenant under the other-co-proprietors of land which appertains to the common estate: *Jawadu Huq v. Ram Das*, 24 Cal. 143.

Mutawallis.

A suit for rent against one of two or several mutawallis is not maintainable and must be dismissed; *Abdul Rub v. Eggarr*, 35 Cal. 182.

Decree for rent against

Where a decree for rent was obtained against some of several heirs of a deceased tenant: *held*, that the heirs who were not parties

were entitled to contest a sale fraudulently obtained, although as heirs of a deceased registered tenant they had not got themselves registered in the landlord's *sheristha* and as such not competent to question the decree: *Jagannath v. Watson and Company*, 19 Cal. 341. some of several heirs of a deceased tenant.

The question whether one or several of original tenants represents the tenancy on behalf of all the persons interested is essentially a question of fact; *Gagan Shiek v. Abejan Khatun*, 14 C.L.J. 180. It cannot be laid down as an inflexible rule of law that one person cannot under any circumstances, represent the tenancy so as to entitle the landlord to obtain in a suit brought against that person a decree binding upon all the persons interested in the tenancy: *Ibid*.

When a *putni* sale under Reg. VIII of 1819 is set aside the zemindar is entitled to rent from the *putnidar* for the period intervening between the sale and its reversal: *Amrita Sekhar v. Bijoy Chand* 4 C.L.J. 547. If the *putnidar* was dispossessed by the auction-purchaser he will be entitled to mesne profits from the latter; *Ibid*. Where zemindar after giving a *putni* lease granted another *putni* lease above it, it was decided by Rampini and Pargiter, JJ., that an intermediate tenure may be created between the interest of a *putnidar* and a zemindar: *Rajkumar v. Prabal Chandra*, 9 C.W.N. 656: consequently the *putnidar* becomes a tenant of a new *putnidar*. See also *Modhusudan v. Devendra Nath*, 7 C.L.J. notes portion p. 23; a contrary view has been taken in the case of *Bibi Jarao Kumari v. Hanifuddin*, 14 C.W.N. 389. The question came up for decision before Carnduff and Richardson, J.J., who held, following the case in 9 C.W.N. 656 and disagreeing with the view taken in 14 C.W.N. 389, that an intermediate interest may be created between a zemindari and a *putni*; unreported second appeal No. 2704 of 1913; *Nilambar Ghose v. Mir Machanuddin* (2 Jan. 1914). It is submitted with great respect that this decision is not in accordance with law, for, the real nature of a *putni* lease is one which precludes the idea of the zemindar creating an intermediate lease; the Putni Sale Law does not recognise any such intermediate interest and the Bengal Tenancy Act does not affect the rules contained in the Putni Regulation; after creating a *putni* a zemindar can only assign his right to recover rent, but he cannot grant any lease of the lands covered by the *putni* lease. See notes under the Preamble. Setting aside of a putni sale, effect of. Rent suit by intermediate holder between zemindar and putnidar

The transferee of a portion of a holding is representative of the judgment-debtor within the meaning of s. 244, C.P.C. (s. 47 of the new Civil Procedure Code): *Gopinath v. Sajani Kant*, 10 C.W.N. 249; *Bacha Lal v. Bishnnath*, 11 C.W.N. 112 (notes). Transferee of a portion of the holding.

A landlord is not at liberty to ignore a purchaser of a portion of a tenure and prejudice his position by a decree made in a suit to which he had not been joined as a party: *Butayar Rahaman v. Karim Ali*, 18 C.L.J. 271. Purchaser of a portion of tenure.

A purchaser in execution of a decree against an unregistered transferee of an occupancy holding as well as the unregistered transferee himself are representatives of the registered tenant against whom a decree for rent has been obtained and may apply under s. 244 C.P.C. (s. 47 of the new Code): *Haradhan v. Girish Chandra*, 13 C.W.N. 98. Sale in execution of decree against unregistered transferee.

Where A bequeathed a permanent tenure to B, whose name was not registered in the landlord's office, and the landlord although aware of the bequest obtained a collusive decree for rent against A's heirs;

held that the sale in execution of the decree did not affect B's interest : *Jagadish v. Sridam*, 44 I.C. 26 (Calcutta case).

Liability of
auction-
purchaser
for rent due
after sale.

but not
before sale.

Purchaser
becomes
the tenant
from the
date of the
confirmation
of sale.

Where a tenure is sold in execution of a decree, the auction-purchaser is liable for the whole instalment of rent accruing due after his purchase, but before the confirmation of the sale ; rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract according to the general law laid down in sec. 53 of the Bengal Tenancy Act : *Satyendra Nath v. Nilkantha*, 21 Cal. 383, but where a tenure is sold in execution of a decree for arrears of rent, the auction purchaser is not liable for the arrears of rent which became due prior to his purchase : *Fazl Rahaman v. Ramsukh*, 21 Cal. 169 ; and when a landlord has brought a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of the confirmation of the sale, and the arrears accruing due between the date of sale and the date of confirmation of sale, must be treated as arrears of rent payable by the outgoing tenant whose interest does not cease till the sale is confirmed : *Karoonamoy v. Surendra Nath*, 2 C.W.N. 327 (notes). Where an occupancy holding which had been mortgaged by the raiyat of the holding was purchased by a person in execution of a decree for money obtained by him, and the purchaser re-purchased it in execution of a rent-decree against the old tenant for arrears which had accrued previous to his first purchase annulled by a notice under s. 167 the mortgage of which he was aware at the time of his re-purchase, held that the purchaser was not bound as representative of the old tenant to pay off the decree for rent obtained by the landlord : *Surendra Mohan v. Bansidhar*, 12 C.W.N. 114.

Arrear
before
purchase.

Decree
by a
registered
proprietor.

The tenure in the hands of the purchaser is liable for rent which accrued due before his purchase : *Kamal Krishna v. Kedar Nath* 10 C.L.J. 517.

A sale in execution of a decree for the whole rent obtained by a landlord who at the time of the suit is the sole registered proprietor and who has been placed and maintained in possession by a competent court, operates as a sale under chapter XIV of the Bengal Tenancy Act, even if it transpires ultimately as the result of litigation in a title suit that he is not the sole landlord and has co-share in the property. *Mafizuddin v. Ashutosh Chakravarty*, 14 C.W.N. 352, s.c., 11 C.L.J. 140.

Right of
suit for con-
tribution
from un-
recorded
tenant.

10. Contribution and Suit for damages :—All the co-owners of a *taluk* are jointly liable for the rent during the period over which their ownership extends, and although the landlord sues only the recorded tenants for the rent, this would not relieve the unrecorded tenants from the equitable liability of paying their share of the rent to those of the recorded tenants who are obliged to pay the whole. The fact that one of the co-owners (whose name is not recorded and who is not a party to the suit for rent) sold away his interest before the date of the suit, he having been co-owner at the time the liability arose would not relieve him of the liability although he may not have derived any advantage from the payment made : *Gobindo Chunder v. Basanta Kumar*, 4 C.W.N. 384. Where in a suit for contribution by a co-sharer to a certain sum of money paid on behalf of his other co-sharers to discharge a decree for rent obtained against them jointly the latter (*i.e.*, the defendants) claimed a set off on account

of previous payments of similar decrees for the decrees for the benefit of the plaintiff amongst others, *held* that no question of limitation arose as regards the claim for set off; the remedy might have been barred but the right to the debt was not extinguished: *Gazadhar v. Raghubar*, 12 C.W.N. 60; see also *Mohesh Lal v. Basanta Kumari*, 6 Cal. 340. Limitation.

Where the lessee agreed with his lessor to pay the rent due by the latter to the superior landlord but failed, and the superior landlord then recovered a decree for rent against the lessor and sold his interest in the lease-hold property in execution of the decree, *held* that the sale was not the natural consequence of the lessee's default, as the lessor ought to have paid the rent due to the superior landlord when he came to know of the lessee's default and the lessee should not be made liable for the value of the property sold: *Giris Chunder v. Kunja Behari*, 12 C.W.N. 628. Agreement by lessee to pay rent due to superior landlord

Where a lessee who took upon himself the liability to pay the Government revenue on behalf of the lessor, and the estate was sold for the lessee's failure to pay the revenue, and it appeared that the lessor was not only not aware of the lessee's default but the lessee deliberately allowed the estate to be sold and never intimated the danger to the lessor, *held* that plaintiff was entitled to damages for breach of contract when by use of reasonable precaution he had avoided loss: *Rohim Buksh v. Shajad Ahmad*, 19 C. Liability of tenant when his superior interest is sold for the former's fault.

As to cases on the right to contribution as between co-tenants, see the cases of *Batuk Nath v. Bipin Bihari*, 17 C.L.J. 1; *Kumar v. Jalaluddin*, 18 C.W.N. 327, *Mathura Nath v. I. Kumar*, 4 Cal. 369, but see the dictum in *Fateh Ali v. Ganganath*, 11 Cal. 113. See also the cases of *Swarnamoyee v. Hari Das*, 6 C.W.N. 903, *Matangini v. Brojeswar*, 20 C.L.J. 205, *Nirdosh v. Jakaria*, 20 C.L.J. 492. *Gobind Chandra v. Basanta Kumar*, 4 C.W.N. 384. A co-judgment debtor who purchases a rent decree is entitled to bring a suit for contribution: *Ram Lal v. Khiroda Mohini*, 18 C.W.N. 113. Right to contribution.

Plaintiff a purchaser of a *putni* at a sale in execution of a mortgage decree, saved the property from being sold in execution of a decree for arrears of rent by paying in the amount; these arrears included rents which had fallen due prior to the confirmation of sale at which plaintiff purchased, *held* that plaintiff was not entitled to recover the amount of these rents from the original *putnidar*: *Manindra Chunder v. Jamaher*, 9 C.W.N. 670; the plaintiff under this case was under a legal liability to pay the rents and so could not come under s. 69 of the Contract Act.

Where a *benamidar* of one of the defendants (*viz.* defendant no. 7), deposited money to have a tenure belonging to its defendants 1 to 7 from being sold and defendants No. 7 did not raise any objection from getting a decree, *held* that the plaintiff was entitled to a decree against the defendants 1 to 6 in proportion to their liability: *Satya Charan v. Dinanath*, 21 C.W.N. 1130.

Where in execution of a decree for rent by an assignee a co-tenant was compelled to pay off the debt, he is entitled to sue for contribution against the other co-tenants: *Rajani Kant v. Ramanath*, 19 C.W.N. 458; such a suit is not cognizable in the Small Cause Court: *Ibid.*

II. Non-transferable occupancy holding:—A non-transferable occupancy holding cannot be sold in execution of a decree ob-transferable

occupancy holding cannot be sold in execution of a decree for rent obtained by a fractional co-sharer,

but may be sold in execution of a decree for rent.

Sale at the instance of a co-sharer landlord.

tained by one of several joint landlords against the tenant for the share of the rent separately payable to him in respect of the holding: *Sadagar v. Krishna*, 3 C.W.N. 742; see also *Bhiram Ali v. Gopi Kanta*, 24 Cal. 355; s.c., 1 C.W.N. 396; *Hurry Churan v. Raja Ranjit*, 1 C.W.N. 521; *Beni Madhab v. Joad Ali*, 17 C.W.N. 360; *Aloke Chandra v. Jaluram*, 22 C.W.N. 563. A factional shareholder selling a non-transferable occupancy holding in execution of a decree which he obtained for his share of the rent is in no better position than an outsider selling the holding in execution of a money-decree: *Sheikh Jariph v. Ram Kumar*, 3 C.W.N. 747. But it was decided in the case of *Bhiram Ali v. Gopi Kanta*, 24 Cal. 355; s.c., 1 C.W.N. 396 that in the absence of custom or local usage to the contrary a *raiya* holding in which the *raiya* has only a right of occupancy is not saleable at the instance of any creditor of his other than his landlord in execution of a decree for arrears of rent. Following the cases of *Durga v. Kali Prasanna*, 26 Cal. 727 and *Sadagar v. Krishna*, 26 Cal. 937, s.c., 3 C.W.N. 472 and *Jariph v. Ramkumar*, 3 C.W.N. 747, it was held that a non-transferable occupancy holding cannot be sold in execution of a decree obtained by a co-sharer landlord for his share of the rent, and in this respect a co-sharer landlord is in the same position as an ordinary execution creditor: *Badarnnessa v. Alam Gazi*, 19 C.W.N. 814, s.c., 21 C.L.J. 650.

See the Special Bench case of *Chandra Benode v. Shaikh Ala Bux*, 48 Cal. 184. See notes under sec. 23, headings nos. 4, 12 and 13.

The transfer for value of the whole or part of an occupancy holding, apart from custom or usage is operative as against the *raiya* whether it is voluntary or involuntary. The principle is a general one which applies to the case of creditors other than landlords also: *Nabin Chandra v. Abdul Aziz*, A.I.R. 1926 (Cal) 337 (Suhrawardy and Duval, JJ.).

It was held in the case of *Susila v. Nitharmani*, 20 C.W.N. 108 (notes portion) that a non-transferable occupancy holding cannot be sold in execution of a decree for arrears of rent where the decree was obtained by the landlord after his interest as landlord had ceased, in as much as the decree was a money-decree.

A tenant is entitled to assert in execution proceedings when a co-sharer landlord executes his rent-decree that the holding is not transferable: *Abdul Aziz v. Tauhidunnissa*, 52 I.C. 380.

In execution of a decree for *pahi* land, the holding being attached, the judgment debtor objected, that it was not saleable in execution, held that he cannot raise such an objection in as much as he had compromised the suit agreeing that the holding would be sold for default in the payment of the decretal debt: *Nidhi Panda v. Karunakar*, 1 Pat. 153.

Undivided share cannot be a holding.

12. Undivided share in a holding:—The term “parcel” or “parcels” in s. 3, cl. 9 of this Act means “entire parcel” or “entire parcels” and is not intended to an undivided fractional share in a “parcel” or “parcels” of land; undivided shares in parcels of land cannot constitute distinct “holdings” within the meaning of this Act; *Hurry Churn v. Raja Ranjit*, 1 C.W.N. 521. So where a decree is obtained for rent of an undivided share of a holding, the sale in execution of the decree is not free from encumbrances: *Ahadulla v. Gagan Molla*, 2 C.L.J. 10. See also *Baidya Nath v. Jhein*, 2 C.W.N.

Tenant can plead non-transferability of his holding.

Pahi land, contract.

44 ; *Haribole v. Tasimuddin*, 2 C.W.N. 680 ; *Parbutty v. Mathura Nath*, 40 Cal. 29. See notes under s. 3, cl. (9).

13. Suit for registration of name in landlord's sheristha : Suit for registration of name : s. 73.
—When occupancy right, transferable by custom, has been transferred, it is no doubt open to the transferee to sue under the Specific Relief Act to have it declared that he has acquired certain rights, but if it is the object of such a suit to have it declared that the old tenant is no longer responsible for the rent, and that the transferee is so responsible to the landlord, such a declaration cannot be obtained without the service of the notice prescribed by s. 73 : *Ambica Pershad v. Chowdry Keshri*, 24 Cal. 642.

14 Suit for Produce Rent :—A holding which is held on produce rent or partly on produce rent and partly on money rent is liable to be sold in execution of a decree for arrears as it is a rent-decree and not a money-decree : *Manharan v. Nowbat* : [1920 Pot.] p. 257, s.c., 5 Pat.L.J. 641.

15. Civil Procedure Code, s. 210 :—(Order XX, r. II of the New Civil Procedure Code). A decree for rent under the Bengal Tenancy Act cannot be made payable by instalments, s. 210 C.P.C. not applying to such a decree : *Sibnarain v. Baikuntha Nath*, 11 C.W.N. 857 ; but where a Court passed such an order the High Court refused to set it aside, as it was an error of law only but not an error in the exercise of jurisdiction and as such the case did not come under the purview of s. 622 C. P. C. : *Ibid.* It seems however that an instalment decree by consent may be passed.

16. Civil Procedure Code s. 546 :—(Order XL., r. 6 of the New Civil Procedure Code). A decree for arrears of rent is a "decree for money" within the meaning of s. 546, C. P. C. ; *Banku Behary v. Syama Charan*, 25 Cal. 322.

17. When landlord is a mortgagee of the holding : Sale for arrears of rent :—When a landlord has taken a mortgage of the holding of a tenant he is debarred under s. 99 of the Transfer of Property Act from bringing the tenure to sale, in execution of his rent decree otherwise than by instituting a suit under s. 67 of the Act : *Rai Ramani v. Surendra Nath Dutt*, 1 C.W.N. 80. See also *Chandra Nath v. Barada Sundari*, 22 Cal. 813 ; *Aubhayeswari v. Gouri Sankar*, 22 Cal. 859, *Tokhon Singh v. Girwar Singh*, 32 Cal. 494 ; *Hem Ban v. Bihari Gir*, 28 All. 58 ; *Madho Pershad v. Baida Nath*, All. W.N. (1915) 152 ; *Kareri v. Anantpayaya*, 10 Mad. 129 ; *Kazi Inus v. Kazi Inus*, 8 Bom. L.R. 576, but it has been decided by the Full Bench that a sale held in contravention of the provisions of s. 89 of the Transfer of Property Act is not a nullity but an irregular and voidable sale ; *Asutosh v. Behari Lall*, 35 Cal. 61, s.c., 11 C.W.N. 1011* ; such a sale can be avoided by an application under s. 244, C.P.C., before or after confirmation of the sale, on the ground that the provisions of s. 99 of the Transfer of Property Act have been contravened ; but if the application is made after confirmation the applicant has to prove further that owing to fraud or other reasons

* Where the suit was against the father alone of a Mitakshara family for a joint family debt, held, that a claim by minor sons for exemption of their shares failed on the merits, the entire family estate having passed by the sale : *Nanomi v. Madan*, 13 Cal. 21. The entire family estate was held to have been bound by the act of the managing members : *Doulattram v. Mehr Chand*, 170, s. c., 14 I.A. 187 ; see also *Pursid v. Honooman*, 5 Cal. 845.

he was kept in ignorance of the sale proceedings and the proceedings preliminary to sale: *Ibid.* See also *Khairarajmal v. Diam*, 32 I.A. 23; s.c., 32 Cal. 23 s.c., 9 C.W.N. 201.

Purchaser of tenure with rent charged.

18. Rent due on a tenure at the time of sale by an execution purchaser :—Rent is by operation of law the first charge on a tenure, and a person who purchases the same at an execution sale must, in the absence of anything to denote the contrary, be taken to purchase it, charged with the rent which is due in respect of it at the time of its purchase: *Srimati Moharanee v. Harendra Lal*, 1 C.W.N. 458. But a purchaser of a tenure is not personally liable for its rent which fell due before the date of purchase, although the tenure may be liable for such rent: *Sreemutty Jogemaya v. Girindra Nath*, 4 C.W.N. 590; see also *Rash Behary v. Peary Mohan*, 4 Cal. 346.

Purchaser not personally liable.

Rent decree against a Hindu widow.

19. Decree for rent against a Hindu widow :—A decree for arrears of rent obtained against a Hindu widow was put into execution after her death against properties forming her father's estate in which she had only a life interest, *held* that it was a decree merely against her personally and was to be satisfied out of whatever she left at her death and that the estate which had passed to the next heirs was not liable: *Kristo Gobind v. Hem Chander*, 16 Cal. 511.* Where a suit was brought by some only of several co-sharer landlords against a Hindu lady who had succeeded her father to the tenure, for the recovery of rent which accrued due after her father's death, *held* that the lady's liability for rent was personal and did not attach to the reversion; and a sale held in execution of a decree obtained by the landlords in this suit passed only her limited interest in the tenure to the purchaser; *Jiban Krishna v. Brojo Lal*, 7 C.W.N. 425. It was held in the case of *Ashutosh v. Akhoy Kumari*, 44 I.C. 581 by Teunon and Sheepshanks, J.J., that where a decree for rent was obtained against a Hindu widow as heiress of her husband, the decree after her death may be executed against the defaulting tenure by proceeding against the reversionary heirs. Where a share in a revenue-paying estate in respect of which a separate account has been opened was inherited by a Hindu lady from her father and was then sold for default in paying Government revenue, *held* that the complete owner's interest and not merely a life estate in the share passed to the purchaser: *Banalata v. Monmath Nath*, 11 C.W.N. 821; the interest of a reversionary heir is not an incumbrance within the meaning of s. 54 of Act XI of 1859: *Ibid.*

Revenue Sale where a Hindu widow is a fractional sharer.

Sale reversed on the ground of irregularity.

S. 310A. C. P. C. (Act. XIV of 1882).

20. Effect of reversal of sale :—On a sale being reversed on the ground of irregularity the purchaser of a *putni* tenure was held to be entitled to get a refund of the rent paid by him to the landlord: *Nagendra Nath v. Chandra Sekhar*, 5 C.L.J. 59.

Where a tenant who was not made a party to a rent suit deposited money under sec. 310A. C. P. C. (Act XIV of 1882) and got the sale set aside, *held* that he was entitled to sue the several defendants in the rent suit for contribution, each according to his share in the decretal amount only, but not in respect of the deposit of 5 per cent. of the purchase money which he was bound to make under section 310 A. C. P. C.: *Suchand Ghoshal v. Baloram*, 38 Cal. 1; the terms of section 20 of the Contract Act apply to such a case (*Per Jenkins*,

* See also the cases referred to therein.

C.J.): *Ibid.* But according to Doss, J., such a case, does not come within the provision of section 20 of the Contract Act.

When a decree in execution of which a tenure was sold and purchased by the decree-holder was reversed on appeal, *held* that the tenant judgment-debtor was entitled to recover back possession together with mesne profits under s. 144 C. P. C.: *Sagore Mandal v. Mofizuddin*, 29 C.L.J. 486; see also *Satis v. Rameswari*, 20 C.W.N. 665, s. c., 22 C.L.J. 409.

21. Right of mortgagee:—Where in a rent suit a mortgaged property is sold, the mortgagee has under the provisions of s. 90 of the Transfer of Property Act a charge on the surplus sale-proceeds: *Gobind Sahai v. Sibdut Ram*, 33 Cal. 878; ss. 159 and 161 to 167 of Bengal Tenancy Act cannot prejudice the right of a mortgagee in that respect: *Ibid.*

Where a mortgagee of a tenure gets a decree and purchases the mortgaged tenure at a sale in execution of his mortgage decree, and the tenure is subsequently sold again in execution of a rent decree against the original tenant it is open to the mortgagor to fall back on his mortgage as a shield against the purchaser under the rent sale, when that sale is not free from encumbrances: *Ban Behari v. Khetterpal*, 16 C.W.N. 259.

A mortgagee of a tenure who has purchased it in execution of his own decree cannot sue his mortgagor, (the original tenant), for recovery of the amount, which subsequently to his purchase, he had to pay to save the tenure from sale in execution of a decree for rent which fell due prior to his purchase: *Ranga Lal v. Kali Sankar*, [1923 Pat.] p. 353. (Jwala Prasad and Ross, J.J.). Rent paid to save tenure.

22. Cessation of tenant's interest:—Where A and B, granted a lease to C who after obtaining a decree for rent which accrued due after the date of the lease purchased the tenant's holding in execution, and subsequently A obtained a decree for rent due to him and B, for the arrears which had accrued prior to the lease, *held* that the interest of the tenant having been extinguished and eliminated in the course of the execution obtained by C, there was no subject-matter in existence on which A's decree could operate to effectually vest in A any interest: *Nagnarain v. Jung Bahadur*, 34 I.C. 905 (Atkinson J. sitting singly). Effect of cessation of tenant's interest.

A decree obtained by a landlord against a tenant who ceased to be a tenant is not a decree for rent: *Dwarkanath Chakravarti v. Atul Chandra Chakravarti*, 46 Cal. 870. Decree against an outgoing tenant.

In the absence of anything to denote the contrary a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears and the purchaser is not liable for arrears for the period prior to the date of confirmation* of sale: *Mathura Mohan v. Nabin Chandra*, 20 C.L.J. 749. Previous arrears.

A sale in execution of a decree for arrears of rent of a non-transferable occupancy holding does not affect the interest of a purchaser of the holding who subsequent to the date of the decree but before the date of sale had been recognised by the landlord: *Giris Chandra v. Narendra Nath*, 23 C.W.N. 654. Cessation of tenant's interest.

* It is submitted that the purchaser becomes liable for all arrears accruing from the "date of sale."

23. Parties in a rent-suit :—A suit for rent is maintainable against some of the heirs or successors in interest of a deceased tenant but a decree in such a suit will not have the effect of a rent decree: *Jaganmohan v. Brojendra*, 53 Cal. 197 (F.B.) s. c. 29 C.W.N. 1000.

Mutwallis. *Mutwallis* are in the position of trustees and when a suit for rent is to be brought all the *Mutwallis* must be joined as defendants otherwise if the suit for rent is not against all the *Mutwallis*, the suit should be dismissed: *Abdul Rub v. Eggar*, 35 Cal. 182.

Rent suit against some of several joint tenants. Where a landlord obtained a decree for rent against some only of the representatives of the original tenant, and subsequently brought a second suit against the same persons, *held* on an application by the remaining representatives of the original tenant, that the Court after summarily determining the question ought to add them as party defendants: *Baoli Bibi v. Hamijeddi*, 12 C.L.J. 267; the High Court can interfere in the exercise of its revisional jurisdiction in the order of refusal of the original Court to add the petitioners as defendants: *Ibid*; See also *Promotha Nath v. Rakhal Das*, 11 C.L.J. 420 and *Dwarka Nath v. Kishorilal*, 11 C.L.J. 426. See notes under the next heading.

Addition of third party. A third party should not be made a party to a suit for rent so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed: *Pravat Chandra v. Amulya Chandra*, 45 C.L.J. 146. The case of *Lodai v. Kally Dass*, 8 Cal. 238 was referred to.

See also *Abdul Gafur v. Ali Miah*, 28 C.W.N. 805. There must be an enquiry into the plaintiff's title when it is derivative: *Indra Narain v. Sarbaseva Dassi*, 41 C.L.J. 341.

Tenant in possession. The rent due in respect of a property is a first charge on the property, and the person who purchases the property from the tenant must be taken to have purchased the property charged with the rent due at the time of his purchase. It is, therefore, not necessary that the tenant who was in possession during the period for which rent is claimed should be made a party to the suit: *Amiya Pal Chowdhury v. Sarba Mangala Debi*, 91 I.C. 657 (Greaves and Cuming J.J.).

In a suit for rent against several persons an appeal was filed by the landlord, and during the pendency of the tenant defendants died and his heirs were not substituted, *held* that the appeal could against the other tenants, the liability being joint and several: *Joygobind v. Manmatha*, 33 Cal. 580.

Where minor defendants were sued as majors. In a suit for rent where some of the defendants were minors but the plaintiff sued them as being of age but subsequently when it was discovered that they were minors, the plaintiff took steps to get them properly represented by appointment of guardian *ad litem*, but then a portion of the claim had already been barred, *held*, that the claim for that period should be dismissed as barred not only against the minor defendants but also against the others who were not minors: *Unreported* second appeal No. 166 of 1917: *Chunder Kant Roy v. Nritya Gopal Biswas*; (N. R. Chatterjea and Panton J.J.).

Suit against a representative tenant.

24. Rent-suit—where some of the joint tenants are not made parties :—Where one of two or more joint tenants is put forward by the other or others as their representative, a decree for rent against the representative is a decree for rent and it may be

executed as such under Chap. XIV, e.g. "where one of a number of tenants is put forward by the rest as their representatives he can be regarded as the sole tenant for the purpose of a suit for arrears of rent within Chap. XIV." : *Chamatkarini v. Triguna*, 17 C.W.N. 833 (Jenkins C. J. and Mullick J.). But where there is no representative tenant, a decree for rent, in order that it may be executed as a rent-decree, must be obtained in a suit in which the entire body of the joint tenants are made party-defendants.

Where there is no representative tenant.

A question often arises as to whether a suit for rent in which all the tenants are not made parties should be dismissed in its entirety or only a money-decree should be passed.

Question.

In this connection the following cases arise :—

Cases :

- (1) *Where the joint tenants are persons who jointly took a lease (or their transferees) ;*
- (2) *Where in the aforesaid case one or some amongst the joint tenants dies or die leaving heirs ;*
- (3) *Where a sole tenant or two or more joint tenants dies or die leaving heirs ;*

In case (1) the following rule was laid down by N. R. Chatterjea and Cuming J.J. Case (1).

So far as the original contracting parties are concerned any one of them may be sued for rent, (in as much as their liability for rent is, in the absence of a contract to the contrary, joint and several having regard to the provisions of s. 43 of the Contract Act: Manmatha Nath v. Abinash Chandra, 27 C.W.N. 521 at p. 524.*

The cases of *Jogendra v. Nagendra*, 11 C.W.N. 1026, *Rameswar v. Jaidar*, 12 C.L.J. 591, *Krishna Das v. Kali Tara*, 22 C.W.N. 289 and *Beradar Singh v. Bacha Mahto*, 5 Pat. L.J. were followed. As to the rule laid down somewhat to the contrary in *Kasi Kinkar v. Satyendra Nath*, 15 C.W.N. 191, s.c. 12 C.L.J. 642 it was observed by N. R. Chatterjea and Cuming J.J., (27 C.W.N. 521 referred to above) that the observations were obiter.

As regards case (2) where one or more of the joint tenants dies or die leaving heirs, the law may be explained by the following illustration which is taken from the judgment of N. R. Chatterjea and Cuming J.J., (*Manmatha Nath v. Abinash Chandra*, 27 C.W.N. 521, at p. 527. Case (2).

If A, B and C jointly take a lease, the liability of each of them is a joint and several liability, and assuming that on the death of A, the liability of all his heirs is a joint one, a suit can be maintained against his heirs provided all the heirs are joined. In the same manner if A alone could be sued for the entire rent in his life-time, similarly on the death of B and C the liability should devolve upon all the heirs. The right of A in the tenure devolved upon his heirs together with the liability for rent, and as A alone could be sued for the entire rent, his heirs who succeed to his right may be sued for the entire rent.

As regards (2) and (3) taken jointly i.e., where some of the Case (3).

* S. 43 of the Contract Act : When two or more persons make a joint promise, the promise may, in the absence of express agreement to the contrary, compel any or more of such joint promisors to perform the whole of the promise.

Divergence
of opinion.

heirs are left out, their Lordships in the same case (27 C.W.N. 521 at p. 525) said that

there is divergence of opinion upon the question whether upon the death of the original contracting party, a suit can be maintained against some only of the heirs.

After a review of the conflicting decisions their Lordships said as follows:—

“The authorities on the point appear to be in an unsettled state and if it were necessary to decide the question we would have referred the matter to the Full Bench.

Conflicting
cases.

Cases where it was held that a suit for rent should be dismissed when some of the heirs were not made parties:

Kasi Kinkar v. Satyendra, 15 C.W.N. 191, s.c., 12 C.L.J. 642, following the principle in the case of *Ahinsa Bibi v. Abdul Kader*, 25 Mad. 26 (at p. 35); *Sheikh Sahad v. Krishna Mohon*, 24 C.L.J. 371; *Siba Krishna v. Jagat Chandra*, 45 I.C. 732; *Krishna Das v. Kalitara*, 22 C.W.N. 289. See also *Kishori Mohan v. Osi Pramanik*, 48 I.C. 536; and the subsequent case of *Abinash Chandra v. Fulchand*, 50 Cal. 737 (C. C. Ghose & Panton JJ.), where their Lordships observed “assuming that one of the joint tenants is liable for the whole rent, on the death of one of such joint tenants leaving a number of heirs, no question can possibly arise as to whether the liability was joint or several, because the bundle of rights and liabilities was in one such joint tenant is by operation of law transferred to a number of parceners who, as has been observed, in *Ahinsa v. Abdul*, 25 Mad. 26 (at p. 35) constitute in law one heir.”

Cases where the contrary rule was laid down:

Chamatkarini v. Trigunanath, 17 C.W.N. 833, (observations of Jenkins C.J.); *Lalit Mohan v. Haran Chandra*, 36 I.C. 243; *Subasini v. Raj Krishna*, 23 C.W.N. xxvii (27 notes); *Meajan v. Jogendra Nath*, 48 Cal. 518, s.c., 63 I.C. 949. See also *Beradar v. Raghunanda*, [1920 Pat.] p. 9; *Krishnadas v. Kalitara*, 22 C.W.N. 289.

Conflict of
case-law set-
tled by Full
Bench.
Suit for
rent against
some of
the heirs of
a deceased
tenant is
maintain-
able.

The conflict of case-law has now been settled by the Full Bench decision in the case of *Jaganmohon v. Brojendra Kumar*, 53 Cal. 197, s. c. 29 C.W.N. 1000,* s. c. 42 C.L.J. 252 where it has been held by the majority of the Full Bench, (Walmsley, Greaves and B. B. Ghose J.J.; C. C. Ghose J. and Mukerji J., not agreeing) that a suit for rent is maintainable against some of the heirs or successors in interest of a deceased tenant without bringing all the heirs or successors in interest on the record, but the decree in such a suit will not have the effect of a rent-decree.

* The names of the parties in 29 C.W.N. 1000 are *Kailash Ch. Mitra* & *Brojendra Kumar Chakravarti*.

B. B. Ghose J., in delivering the judgment of the majority of the Full Bench, observed as follows:— Full Bench Case.

"The question should be decided on well-recognised general principles. It is argued that the tenancy as well as the liability for payment of rent has been inherited by the representatives of the deceased tenant as one body and this body as a whole is liable for the rent on the contract of this predecessor. If the landlord omits to implead anyone of them in his suit for rent, the suit is defective and must be dismissed for not having been brought against the body of representatives as a whole. This argument seems to me to be grounded on a misconception. The heirs did not take the tenancy as an entire body forming as it were a partnership or a corporation, the individual members of which have no definite interest. They took as tenants in common, each having a definite share in the whole which he might deal with in any way he pleased. The liability of a tenant to pay rent arises from the fact of possession of the land as a tenant where there is no express contract, and all persons in possession of land as tenants are under an implied obligation to pay the rent for the land to the landlord, whether they got into possession by right of succession or assignment. A tenant in common is entitled to possession of every part of the estate and there is privity of estate between him and the landlord in the whole of the lease hold. The law imposes a liability on a tenant in common based on privity of estate for all covenants running with the land, and as his estate is an estate in the whole of the leasehold, there is no reason why he should not be liable for the entire rent. Thus whether a contract is implied for payment of rent by all tenants in common in possession of a leasehold, or whether it is held that the law imposes the liability for payment of rent by reason of privity of estate, anyone of such tenants may be sued for the entire rent due to the landlord. This may be either in accordance with the provisions of sec. 43 of the Indian Contract Act which applies to express as well as implied promises, or under the general law based on privity of estate."

C. C. Ghosh J., observed as follows:—

"I adhere to the view which I expressed in the case of *Abinash Chandra v. Fulchand*, 50 Cal. 737."

Mukerji J., observed as follows:—

"Except in the case of original lessees or persons who are parties to the contract, the provisions of sec. 43 of the Indian Contract Act have no application and need not be resorted to. As far as the liability under a contract is concerned it appears to make all joint contracts joint and several. The liability of the persons upon whom the rights of the original tenant or tenants devolve on the death of the latter is a joint liability to the extent of the interest which devolves and not a joint and several liability in respect of that interest, as the whole body of persons who succeed in this way constitute in law but one heir. Persons who are under a joint liability to pay the rent are necessary parties in a suit for rent. I do not suggest that a decree obtained in the absence of some of the co-tenants is necessarily a nullity, it is a valid decree and is effective only as a decree for money. But, if objection is taken at the right moment as to the maintainability of the suit, I am clearly of opinion that it should be held that the suit is not properly constituted."

A decree for the whole amount of rent can be passed against one of several co-tenants. Under s. 43 of the Contract Act, before a defendant can resist a suit on the ground that one of his co-promisors has not been impleaded, he must show that there was a definite contract that each promisor should not be separately liable and it is not necessary, before a joint promisor can be separately sued, to find that he had made the promise separately to the promisee: *Raghunath Das v. Baleshwar Prasad*, 105 I.C. 484 (Das and James J.J.), (Patna case).

The tenancy must be represented in its entirety before a decree can be made binding on the tenure: *Birendra Nath v. Aghore Nath*, 25 C.W.N. 525, where one of the tenants was not made a party defendant in a rent-suit but a summons was served and he appeared.

Non-giving
of notice of
succession—
Permanent
tenure—
Landlord
not entitled
to treat one
of the heirs
as represen-
tative
tenant.

Forbes v.
Maharaj
Bahadur
Singh.

Representa-
tive tenant.

and in the appellate court he was made a respondent after notice after judgment, *held* that it was irregular : *Ibid.* Where the proposed guardian of an infant appeared and declined to defend the suit unless the name was corrected, *held* that the proper course to follow was to appoint a guardian: *Ibid.* Failure on the part of heirs on the death of a permanent tenure-holder to comply with the requirements under s. 15 does not necessarily entitle the landlord to treat one of the heirs as the representative of the tenancy: *Faijunnessa v. Ramtaran*, 26 C.W.N. 138., so where a tenure was sold at a sale in execution of a decree for arrears of rent obtained against one of the tenants, *held* that the others were not bound by the sale and were entitled to recover possession.

The decision in *Forbes v. Maharaj Bahadur Singh*, 41 Cal. 926 did not decide any thing more than that by virtue of the provisions of s. 65 a person who had ceased to be the *zemindar* at the time he sued for rent could not enforce his decree in accordance with the provisions of s. 65: *Dwarka Nath Chakravarti v. Atul Chandra Chakravarti*, 46 Cal. 870.

A person can under certain circumstances represent the tenancy so as to entitle the landlord to obtain in a suit brought against that person, a decree binding upon all the persons interested in the tenancy: *Sarat Chandra v. Bibhabati*, 34 C.L.J. 302.

The landlord is entitled to sue his recorded tenants. The death of some of the defendants previous to the decree does not in any way affect the liability of the tenure, where the landlord had no notice: *Jadeo Nath v. Pratap Udainath*, A.I.R. 1924 Pat. 339.

S. 148A.

25. Sale in execution of a decree obtained by a co-sharer landlord—subsequent sale in a suit under S. 148A :—Where a co-sharer landlord in execution of a decree for his share of the rent puts to sale his share in a holding, *held* that the other co-sharer in a decree for rent in a suit under s. 148A may put the entire holding to sale, even though the purchaser at the earlier sale is not made a party, and such purchaser cannot claim any right against the second purchaser: *Sasti Charan v. Akubjan Bibi*, 26 C.W.N. 639, s.c., 35 C.L.J. 30. In the subsequent suit the earlier purchaser was not a necessary party because he had purchased only the right, title and interest of the judgment-debtor.

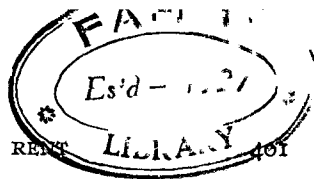
Use and
occupation.

26. Decree by a Co-sharer Landlord for use and occupation :—A decree by a co-sharer landlord for use and occupation is not a rent-decree and cannot be executed as a rent-decree: *Kesko Prasad v. Ram Deni*, 2 Pat. 183.

Sale of
occupancy
holding—
suit by
mortgagee
purchaser
against
decree-
holder pur-
chaser for
purchase
money.

27. Suit for recovery of purchase money from a Decree-holder purchaser :—Where a person at a sale in execution of a mortgage decree purchased an occupancy holding which had been previously purchased by a co-sharer landlord at a sale in execution of a rent-decree, *held* that the purchaser in execution of the mortgage decree was entitled in a suit to recover from the mortgagee decree-holder the purchase money as the holding was not saleable: *Prasanna Kumar v. Ibrahim*.

28. Setting aside of fraudulent decree :—In a suit for declaration that a decree in a certain rent suit was fraudulent, the plaintiff is to prove that the rent-decree was fraudulent and collusive; if that fact is not proved the plaintiff fails, and if in the absence of



direct proof the circumstances which are established are equally consistent with the allegation of the plaintiff as with the denial of the defendant, the plaintiff fails for the very simple reason that the plaintiff is bound to establish the affirmative of the proposition : *Amjad Ali v. Ismail* 27 C.L.J. 137. Setting aside of fraudulent decree.

When an *ex-parte* rent-decree was set aside on the ground of fraud, held that the original suit was revived ; *Nistarini v. Mohendra Nath*, 28 C.L.J. 158.

29. Apportionment of rent :—A sale of a share in a tenure, which has been let to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent ; but that if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose. If he takes no such steps, then the tenant is justified in paying the entire rent, as before to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and, then if an amicable apportionment of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit : *Satyesh v. Jillar Rahaman*, 27 C.L.J. 438 ; see also *Isvar Chander v. Ram Krishna*, 5 Cal. 902 (F.B.) s. c., 6 C.L.R. 421. Before rent is actually apportioned a landlord cannot as a matter of right, claim from the tenants what he estimated to be his proportionate share of the rent : *Satyesh v. Haji Jillar Rahaman*, 27 C.L.J. 438. See notes under s. 72. Apportionment of rent.

30. Suit by head of Mitakshara family for rent :—"I am of opinion that the decision of the Judicial Committee in the case of *Kishen Prasad v. Harnarain*, 33 All. 272 is ample authority for the proposition that the head of a Mitakshara family is competent in respect of all contracts which it is open to him to make on behalf of the family, to sue as managing member of the family. Suits under the Bengal Tenancy Act, may perhaps be excluded from the general rule. On that I prefer not to express a definite opinion " [Per Roe J., (Sharfuddin J., agreeing)], *Muhammed Sadik v. Khedan Lall*, 1 Pat. L.J. 154. [See the case of *Jeolal v. Ganga Prasad*, 10 Cal. 996, a decree for rent against the head of a Mitakshara family was held to be binding against all the members.] Suit by head of Mitakshara family for rent.

• There is an expression of opinion in the case of *Bhola Roy v. Jung Bahadur*, 19 C.L.J. 5, (Jenkins C. J. and Mookerjee, J.) that the head of a Mitakshara family who always collected rent as the head of the joint Mitakshara family is competent to maintain a suit for rent.

But it has been held in the case of *Mir Tapurah v. Gopi Narayan*, 7 C.L.J. 251 that a rent-suit is not maintainable at the instance of the *karta* alone (in a Mitakshara family except when the tenant has dealt with such *karta* as sole landlord) : (Mookerjee and Caspersz J.J.). See also *Kanna Pisharaday v. Narayanan*, 3 Mad. 234.

In a case from Barh (where probably the family was governed by the Mitakshara family) the Patna High Court held that a rent-decree may be passed if the defendant is the *karta* of the family and is entitled to act on behalf of the other recorded tenants : *Betadas v.*

Raghunanda, [1920 Pat.] p. 9 (Coutts and Adami J.J.). See also *Subodhini v. Cumar Ganada*, 14 Cal. 400. See notes under ss. 144 and 148A.

An application under s. 105 B. T. Act is not maintainable at the instance only of the managing member of a joint Hindu Mitakshara family: *Sati Prasad v. Sonatan*, 25 C.W.N. 39. See notes under s. 105.

Sale certificate.

31. Sale Certificate :—In determining the question as to what passed by a sale it is to be considered as to what is the paramount description in the sale certificate and what the subordinate description: *Rajendra Prasad v. Gaugan Koer*, 2 Pat. L.J. 623; see *Thakur Barmha v. Jeebanram*, 41 Cal. 590; *Karuppa Goandan v. Periatambi* 30 Mad. 397; *Barhamdeo v. Ram Narain*, 19 C.L.J. 182.

As to whether sale certificate can override sale proclamation and writ of attachment as to property sold: see *Christan v. Prasad Raut*, [1925 Pat.] 220.

Where a tenure consisted of several villages and in the plaint in suit for rent of the entire tenure the name of village Bijuli alone was mentioned and in the sale-proclamation and sale certificate the description was as two annas eight pies "*Bijulia asti mai dakhili*, held that the entire tenure consisting of all the villages passed by the sale: *Durgaprasad v. Dineshwar*, (1918) Pat. p. 5 (Chamier C.J. and Sharfuddin J.).

The statement of area in a *kabuliyat* must give way to the description of boundaries: *Baha Kalim v. Rajendra*, 64 I.C. 751.

What passes by sale—construction of sale notification.

Government by a notification put up to sale its zemindari right to a certain *khas mehal* which was purchased by the plaintiff. The notification stated the name of the *mehal*, its area and the jama payable in respect thereof. Subsequently a considerable quantity of land appeared as reformation of the lands of the aforesaid permanently settled estate and was formed into a Diara estate with a revenue assessed on it which the plaintiff took settlement of under protest, held upon a construction of the notification and having regard to the evidence of conduct afforded by various *diara* proceedings that it was the entire estate which was sold and not merely the quantity of land mentioned in the notification and the lands which reformed could not be again assessed with revenue: *Kumar Sankar v. The Secretary of State*, 29 C.W.N. 166.

See notes under Ss. 30 and 105.

Decree by Co-sharer landlord as to rate of rent, if admissible in evidence in a suit by another co-sharer landlord.

Contra.

32. Rate of Rent :—A decree by co-sharer landlord for rent is not evidence as to the rate of rent in a suit by another co-sharer under sec. 13 of the Evidence Act: *Abdul v. Rajchandra*, 10 C.W.N. 1084, *Premchand v. Official Trustee*, 27 C.W.N. 56 (notes). These cases were followed in the case of *Kanta Mohon Mullick v. Jadav Chandra Khara*, (unreported Second Appeal No. 38 of 1926) decided by Mitter J. on the 14th February 1928. A contrary view was taken in the case of *Byomkesh v. Jagadiswar*, 22 C.W.N. 304 where it has been held that a decree for rent by one co-sharer landlord is admissible in evidence in a suit by another co-sharer landlord. This case was followed by Mallik J. in the case of *Kanta Mohon Mullick v. Gopinath Santra*, (unreported Second Appeal No. 2452 of 1925, decided on the 15th February, 1928).

Mitter J., in deciding the case of *Kanta Mohon Mullick v. Jadav Chandra Khara*, (unreported Second Appeal No. 38 of 1926) followed the case of *Tepu Khan v. Rajani Mohon*, 25 Cal. 522 (F.B.) and the Privy Council Case of *Narash Narayan v. Secretary of State*, 50 I.A. 121 and observed that the reason for holding that a decree by a co-sharer landlord is not admissible in evidence depends on one circumstance, namely, that the subject matter of the two suits is not identical. Mitter J., distinguished the Privy Council case of *Ram Ranjan v. Ram Narayan*, 22 Cal. 533 and observed "it does not follow that because one co-sharer was suing for the particular amount as representing his share of the rent necessarily the other co-sharers would be getting the same amount of the shares or a proportionate amount unless there was one contract by which the tenancy was created."

On the otherhand Mallik J., in deciding the case of *Kanta Mohon Mullick v. Gopinath Santra* (unreported S. A. No. 2452 of 1925) referred to the cases of *Ram Ranjan v. Ram Narain*, 22 Cal. 533 (P.C.), *Gujulal v. Fatehlal*, 6 Cal. 171 (F.B.), *Tepu Khan v. Rajani*, 25 Cal. 522 (F.B.), and observed "it is difficult to understand how it can be said that the subject matters in the two suits were different, the amounts claimed were no doubt different and the claimants were not the same but the real dispute in the two suits was as to what the amount of the rental was."

Oral evidence is not admissible for the purpose of contradicting a statement made in a registered Kabuliyat as to the amount of rent but evidence is admissible to show that the Kabuliyat was never intended to be acted upon or enforced or that there was a waiver of some of its terms: *Benimadhav v. Lal moti*, 6 C.W.N. 242, *Manindra v. Durgasundari*, 20 C.W.N. 680. *Durgaprasad v. Rajendra Narain*, 37 Cal. 293 (on P.C. 41 Cal. 493), *Kailas (Kalish) Chandra v. Darbaria*, 20 C.W.N. 347, see notes in Appendix XI (Miscellaneous matters), and under s. 67, heading no. 18.

33. Resjudicata:—An *ex-parte* decree in a suit for rent operates as *resjudicata* on the question of relationship of landlord and tenant: *Hiranmoy v. Ramjan Ali*, 43 Cal. 170, s. c. 20 C.W.N. 48; *Mahamed Gahur v. Samiraddin*, 18 C.W.N. 33, *Umedali Munshi v. Goyjaddi*, 87 I.C. 672. Resjudicata.

But an *ex-parte* decree for rent cannot operate as *resjudicata* as to the rate of rent: *Nafar Chandra v. Bhusi Molla*, 65 I.C. 581. As to cases where the question of title decided in rent suit operates as *resjudicata* or not, see Appendix XI (Miscellaneous matters).

34. Road-Cess Return:—Road Cess Return though not conclusive is admissible in evidence against the person by or on whose behalf it is filed: *Hem Chandra v. Kali Prasanna*, 30 Cal. 1033 (P.C.), s. c. 8 C.W.N. 1. Road Cess Return.

The effect of sec. 95 of the Cess Act is to prohibit the admissibility of road-cess returns when tendered in favour of the person filing it. Provided this prohibition is not offended against, such a return may be adduced in evidence, if otherwise it is admissible under the Indian Evidence Act, *e.g.*, by or against a third party who was no party to the preparation of the return: *Sheikh Intaz v. Dinanath*, 53 Cal. 615, s. c. 30 C.W.N. 803, s. c. 43 C.L.J. 425 (Cuming and Page J.J.): *Promode Chandra v. Binayak Das*, 27 Cal. 547 explained.

Road Cess Return is admissible only against the maker : *Swarnamoyi v. Sourindra Nath*, 42 C.L.J. 14. See also *Chalo v. Jhare*, 39 Cal. 995.

Suit by
benamidar.

35. Benamidar :—An action may be maintained by a benamidar. A proceeding by or against the benamidar is fully binding on the beneficial owner : *Chowdhri Gur Narayan v. Sheolal Singh*, 46 Cal. 566, s. c. 23 C.W.N. 521 (P.C.).

See notes in Appendix XI (Miscellaneous matters.).

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeth where the Fasli 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) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff 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.

Headings of Notes.

1. INTERPRETATION OF THE SECTION.
2. WHETHER S. 65 APPLIES TO CASES PROVIDED FOR BY S. 66.
3. EFFECT OF CESSATION OF LANDLORD'S INTEREST.
4. EFFECT OF EJECTMENT: RIGHT TO CROPS.
5. PRODUCE RENT.
6. WAIVER.
7. DUE AT THE END OF THE YEAR.
8. DEPOSIT BY WHOM TO BE MADE.
9. EXTENSION OF TIME.
10. WHERE THE LAST DAY OF DEPOSIT IS A HOLIDAY.
11. ERROR IN THE COPY OF THE DECREE.
12. APPELLATE DECREE.
13. PAYMENT OF INTEREST.
14. AFTER EJECTMENT OF RAIYAT, UNDER-RAIYAT LIABLE TO BE EJECTED.
15. APPOINTMENT OF RECEIVER.

1. Interpretation of the section :—This section is not very happily worded. It provides that a tenant coming within the meaning of this section (*i.e.*, whose case is not covered by sec. 65) is liable to be ejected in execution of a decree for arrears of rent which fall due at the end of the Bengali year. This section is silent as to the procedure for recovery of rent which fell due in the previous year.

It is submitted that where rent falls due for more than a year it is doubtful whether a suit for ejectment can be brought at all, for example, if rent is due for the year 1330 and 1331, the section is not quite clear whether an ejectment suit can be brought on account of the arrear for the years 1330 and 1331; moreover if it is supposed that the section covers such a case the law is quite silent as to what should be the remedy for recovery of rent for the year 1330.

2. Whether s. 65 applies to cases provided for by s. 66 The provisions of s. 65 have no application to cases covered by s. 66. So, if a decree is obtained for recovery of rent of a non-permanent tenure or a non-occupancy holding or for rent due from an under-raiyat the decree cannot be executed as a rent decree. See the case of *Munsar Ali v. Arsadulla*, 16 C.W.N. 831. It should be executed as a money decree and as such a non-transferable non-permanent tenure or a non-transferable non-occupancy holding or the interest of an under-raiyat in the land held by him cannot be attached and sold in execution of such a decree. It may however be contended on the authority of the case of *Anund v. Ratnakar*, 7 C.W.N. 752 that as a landlord is competent to give his consent for the sale of a non-transferable holding, an attachment and sale at the instance of a landlord is valid. It is submitted that the sounder view is that the restriction as to transfer is also for the benefit of the tenant and therefore cannot be a valid transfer unless both the landlord and the tenant agree.

It has been held in the case of *Radhakant v. Ramanand*, 39 Cal. 513 that in regard to non-transferable holding the tenant alone cannot confer any title by transfer, nor the landlord by his own act and without the concurrence of the tenant can do so; the two jointly can confer title by transfer.

S. 65 does not provide for a sale of land held by an under-raiyat in execution of a decree for arrears of rent thereof: *Arsadulla v. Mansubali*, 16 C.L.J. 539.

3. Effect of Cessation of landlord's interest :—"The two sections" (ss. 65 and 66) "taken together cover practically the remedies provided by law for the landlord to recover arrears of rent. One section is the exact corollary of the other. The right to proceed to sale in one case, in the other to eject, is dependent on the existence of the relationship of landlord and tenant at the time when the remedy provided by law sought to be enforced" *Forbes v. Maharaj Bahadur Singh*, 41 Cal. 926 at p. 939 (P.C.), s. c., 18 C.W.N. 747, s. c. 22 C.L.J. 434.

It is submitted with very great respect that the observations of the Privy Council quoted above, do not seem to be in accordance with the real spirit of s. 66, so far as regards cases in which landlords after obtaining decrees for ejectment under s. 66 (2) lose the landlord's interest, for, there is some difference between a decree

under s. 65 and a decree for ejectment under s. 66. A decree for rent *does not declare that the rent decreed is a charge upon the tenure or holding*; such a decree states only this that the decree is *passed for such a sum*, and when the decree is executed the question arises as to whether by operation of law, having regard to the position of the parties, the *rent decreed* will be a charge on the tenure or holding. But a decree under s. 66 states that *the decree is for ejectment* [See sub-sec. (2).] So the cessation of the landlord's interest after the date of the decree does not alter the decree *which has already been passed*; in the execution of *such a decree for ejectment*, the court cannot go behind the decree.

Tenant not entitled to crops when ejected.

4. Effect of ejectment: Right to crops:—When a raiyat is ejected for non-payment of rent the connection between the parties as landlord and tenant completely terminates, and the effect of the ejectment is to dispossess the raiyat not only of the land but also of the crop standing thereon: *In the matter of Durjon Mahto v. Wazib Hossein*, 5 Cal. 135.

5. Produce rent:—Rent includes produce rent: see s. 3, cl. 5, and also *Kishen v. Barnes*, 2 Cal. 374.

Right of re-entry: Waiver.

6. Waiver:—A landlord cannot re-enter for non-payment of rent for one year if he receives rent for a subsequent year; *Sheikh Peer Bux v. Mowzah Ally*, 1 Hay 89. Receipt of rent subsequent to a decree for ejectment renders execution of the decree for ejectment impossible; *Nubo Kishen v. Hurish*, 7 W.R. 142 (143). See also *Umesh Chandra v. Kamaruddin*, 7 W.R. 20.

Suit for rent after ejectment decree for periods prior to ejectment. Suit for compensation for use.

A decree-holder who has obtained a decree for ejectment is entitled to bring a suit for the arrears of the period prior to the ejectment decree and cannot by such conduct be regarded having waived the rights he had obtained under ejectment decree; *Mansar Ali v. Abdul Karim*, 10 C.L.J. 187; but a plaintiff who sues for compensation for use and occupation of land but does not ask for ejectment therefrom of the defendant waives his right to eject and must be taken to have recognised the defendant as a tenant: *Abdul Hakim v. Rajendra*, 13 C.W.N. 635.

Claim for four years—waiver.

Where a landlord sued for arrears of rent for four successive years, *held* that the landlord's claim for ejectment for non-payment of arrears for the first three years must be held to have waived, and a decree for ejectment could be made for non-payment of the arrears due only for the year immediately preceding that in which the suit was brought: *Sita Nath v. Basudeb*, 2 C.L.J. 540; see also *Jogeshuri v. Mahommed Ebrahim*, 14 Cal. 33, which although a case under the old Act is applicable as s. 22 of Act VIII (B. C. of 1869), is almost the same as sub-section (1) of s. 66 of the Bengal Tenancy Act.

The cases of *Sita Nath v. Basudeb*, 2 C.L.J. 540, *Sheikh Peer Bux v. Mowzah Ally*, Marsh 25 and *Jogeshuri v. Ebrahim*, 14 Cal. 33 were followed in the case of *Kalanand v. Gunpat*, 16 C.W.N. 104 where it was held that the landlord may institute a suit for ejectment under s. 66 at the time of the year mentioned in the section but if he does not exercise his option at once but claims rent for any portion of the year subsequent thereto he treats the tenancy as existing after the specified date and cannot ask for ejectment in respect of arrears due for the year preceding that date.

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

Headings of Notes.

1. ALTERATIONS.
2. INTEREST.
3. EXECUTION OF BOND FOR ARREARS OF RENT.
4. RENT IN KIND.
5. S. 178 SUB-SEC. (3), CL. (H).
6. WHERE LEASE IS SILENT AS TO WHETHER INTEREST IS PER MENSEM OR PER ANNUM.
7. TENDER OR RENT.
8. INTEREST PAYABLE BY A TENANT HOLDING OVER.
9. SALE: CONDITIONS OF LEASE.
10. WHETHER A PURCHASER IS LIABLE TO PAY INTEREST AT THE RENT PROVIDED FOR IN THE KABULIYAT OF HIS PREDECESSOR.
11. JALKAR.
12. CONTRACT IN CONTRAVENTION OF THE PROVISIONS OF THIS SECTION.
13. EXORBITANT INTEREST.
14. LIABILITY TO PAY INTEREST WHEN THE LANDLORD HAS NO VILLAGE OFFICE.
15. APPLICATION OF MONEY TO INTEREST WHEN PAID AS RENT.
16. WHERE THERE IS NO AGREEMENT TO PAY INTEREST.
17. STIPULATION TO PAY INTEREST ACCORDING TO CUSTOM AND LAW.
18. DECISION AS TO RATE OF INTEREST WHETHER OPERATES AS RES-JUDICATA IN A SUBSEQUENT SUIT.
19. APPLICATION OF THIS SECTION.
20. WAIVER.
21. INTEREST ON ENHANCED RENT.
22. WHERE INTEREST AND NOT DAMAGES SHOULD BE AWARDED.
23. SECTION 169.
24. SECTION 92 EVIDENCE ACT: PROOF IN VARIATION OF THE TERMS OF CONTRACT.
25. S. 67 CONTROLLED BY S. 179.

I. Alterations:—By Act I of 1907 (B.C.) and Act I of 1908 (E.B.A.C.) the following additions were made: after the word “twelve” the words “and a half” were inserted; for the words “to the institutions of the suit,” the words “to the date of payment or of the institution of the suits, whichever date is earlier” were substituted.

2. Interest S. 121:—Interest may be recovered along with

* In Orissa where s. 67 was extended but not s. 178 it was held that an agreement modifying the provisions in regard to interest was permissible: *Govind v. Ram Chandra*, 13 C.W.N. 95.

rent by an application under s. 121 ; [see s. 122, cl. (b)] : *Sheobarat v. Nawrangdeo*, 28 Cal. 364.

In the case of *Narendra Nath v. Moniruddi*, 35 C.L.J. 209, it was held that in a rent suit a landlord was entitled to recover interest at the stipulated rate 75 per cent. although it was exorbitant.

75 P. c.,
is not an
ordinary in-
cident of
tenancy.

An exorbitant rate of interest (75 per cent. per annum) stipulated in a lease is not an ordinary incident of a tenancy, and therefore where such interest was stipulated in a lease before the Bengal Tenancy Act, and the tenure was subsequently sold in execution of a decree for arrears of rent, (the sale proclamation not notifying the said incident), held that the purchaser purchased only with the ordinary incident of the tenancy : *Anandamoyee v. Saudamini*, 27 C.W.N. 502, s. c., 37 C.L.J. 333 ; the cases of *Kalinath v. Troilokya Nath*, 26 Cal. 315, s. c., 3 C.W.N. 94, and *Deendayal v. Jagudeeshur*, 1 Marsh, 252, 2 Hay 21 were referred to.

50 P. c.

A rate of interest exceeding Rs. 50 per cent per annum in an agricultural lease is exorbitant : *Chandra Nath v. Sheikh Inamdi*, 34 C.L.J. 369.

See also 41 C.L.J. 453.

S. 67 does
not apply
when a
tenant
executes a
mortgage
deed in
favour of
his landlord
for rent.

3. Execution of Bond for arrears of rent :—Where a tenant executed a deed of mortgage on account of arrears of rent due to his landlord providing the payment of interest by more than 12½ per cent., held that it was not in contravention of s. 67, and that ss. 67 and 178 (3) (h) do not apply to such contracts but they apply to contract, between landlord and tenant and that the parties to the contract ceased to be in the relationship of landlord and tenant when this contract was made : *Hari Prasad v. Damri Singh*, 2 Pat. L.J. 367 ; it was a case merely of an arrangement for the payment of debt due by the tenant to the landlord ; *Ibid* ; it established a new relationship between the parties, a new contract under which the parties became mortgagor and mortgagee and ceased to be landlord and tenant : *Ibid*.

The same principle will apply to the case of an ordinary bond or promissory note executed on account of arrears of rent, and s. 67 will not apply.

Bhowali
rent.

4. Rent in kind :—*Bhowali* rent not being payable quarterly, interest cannot be claimed under s. 67 : *Bisheshur v. Husani*, 4 Pat. L.J. 282. The Interest Act (xxxii of 1839) is applicable in such cases : *Ibid*.

Interest
Act.

But it has been held that interest at the rate of 12½ p. c. per annum may be recovered as interest on arrears of rent by an application under s. 169 cl. (c) : *Rameswar Singh v. Shaikh Mohammad*, 2 Pat. L.J. 722.

Rent
payable
quarterly.

S. 68.

This section applies only to rents which are payable quarterly ; it does not apply to produce rents which are not so payable : *Bishesar v. Husani Sao*, [1919 Pat.] p. 242. S. 68 is not however restrictive (unlike s. 67), but where the lower Courts in their discretion did not allow damages the High Court would not interfere in second appeal. *Ibid*.

See also *Krishnagopal v. Barnes*, 2 Cal. 374 ; *Rangayya Appa Rao v. Bobba Siramalu* 31 I.A. 17, s. c., 8 C.W.N. 162.

5. S. 178 sub-sec. (3), Cl. (h) :—Under sec. 178 sub-sec. (3),

cl. (g) of the Bengal Tenancy Act a contract made between a landlord and a tenant after the passing of the Act cannot affect the provisions of section 67; consequently a landlord is not entitled to claim interest at a rate higher than that provided for in sec. 67: *Harihar v. Dinubera*, 14 C.L.J. 170.

Contract after the passing of the Act.

6. Where lease is silent as to whether interest is *per mensem* or *per annum* :—Where there was a stipulation of interest on an arrear of rent but the document was silent as to whether the interest was *per mensem* or *per annum*, held that evidence was not admissible to shew whether the interest was *per mensem* or *per annum*: *Protap Chanda v. Mahomed Ali*, 41 Cal. 342, s.c., 18 C.W.N. 502, s.c., 19 C.L.J. 66. In a case before the passing of the Evidence Act it was held that in case of such ambiguity evidence was admissible to explain the ambiguity by showing previous transactions between the parties and the custom of the country: *Mahomed Shunsoodeen v. Abdul Huq*, W.R. 1864 p. 397 followed in *Monmotha Nath v. Nobin Chandra*, 14 C.W.N. 1100.

Ambiguity of the terms as to interest.

7. Tender of rent :—To stop interest on rent running in a case governed by the Bengal Tenancy Act a tender of rent which is improperly refused, need not be followed up by a deposit of rent in Court under s. 61 and such a tender, if kept good, is sufficient to stop interest running from the date of tender; *Kripasindhu v. Ananda*, 35 Cal. 34, s.c., 11 C.W.N. 983, s.c., 6 C.L.J. 273. A tender which has been validly made and improperly refused is kept good if the person who has made the tender has from that time always kept the money ready to be paid on demand: *Ibid*; see also *Gyles v. Hall*, 2 P. Wms. 378; see also *Jagat Tarini v. Naba Gopal*, 34 Cal. 305.

Improper refusal of tender of rent.

How is tender kept good.

8. Interest payable by tenant holding over :—When a tenant holds over, after the expiration of his lease, he does so on the terms of the lease, on the same rent and on the same stipulation as are mentioned in the lease until the parties come to a fresh settlement. There is no general rule of law to the effect that the lease of an agricultural tenant in this country who holds over, must be taken as renewed from year to year, and if any contract is to be implied, it should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year: so where the term of the *kabuliyat* expired some years before the Bengal Tenancy Act came into operation, held in a suit for rent subsequent to the passing of the Act that the tenant who was holding over was liable to pay interest at the *kabuliyat* rate although the same was in excess of the rate as is allowed by s. 67: *Kishore Lal v. The Administrator-General of Bengal*, 2 C.W.N. 303. But where a lease which provided the payment of interest at a rate higher than 12 per cent. *per annum* expired after the passing of the Bengal Tenancy Act and the tenant held over, it was held that the tenant was not liable to pay interest at the rate stipulated in the *kabuliyat*, but was only liable to pay interest at 12 per cent. *per annum* as provided for in s. 67: *Ali Mahmud v. Bagabati*, 2 C.W.N. 525. His Lordship (Rampini, J.) distinguished the case of *Kishore Lal v. The Administrator-General of Bengal*:—

Tenant holding over, liable to pay interest at the old rate.

But where lease expires after the passing of the Bengal Tenancy Act, a tenant holding over liable only to pay 12 per cent.

"We are pressed with a decision in the case of *Kishore Lal v. The Administrator-General of Bengal*, 2 C.W.N. 303, a somewhat similar case, the tenant was held liable to pay interest at the

Kishore Lal v. Administrator

General
discussed.

rate of rent stipulated for in his old *kabuliyat*, which was also 75 per cent. as in this case. The learned Judges who decided that case have held that there is no general rule of law to the effect that the "lease of an agricultural tenant who holds over must be taken as renewed from year to year ; but that a tenant who holds over with the consent of his landlord does so upon the same conditions as those set out in his time-expired lease ;" and that "if any contract is to be implied, it should be taken to have been entered into as soon as the term of the lease expired, rather than at the beginning of each year." It is not necessary for me to consider here when the present Defendant's lease must be regarded as having been renewed. In the case of *Kishore Lal Dey v. The Administrator-General of Bengal*, 2 C. W.N. 303, the Defendant's lease expired some years before the Tenancy Act came into force. In the present case, the lease expired after the Tenancy Act came into force, and, therefore, whether the Defendant's implied lease be regarded as having been entered into on the expiry of his old lease, or as renewed from year to year at the beginning of each year, in either case it must be taken as one made subject to the provisions of the Tenancy Act, and that being so, the Defendant cannot be held liable to pay more than 12 per cent. interest per annum, as provided in sec. 67."

Where a
lease
expires
after the
passing of
the Bengal
Tenancy
Act.

Where the term of a lease expired before the passing of the Bengal Tenancy Act and the tenant continued to hold over, *held* in a suit for arrears of rent for a period subsequent to the passing of the Act that the landlord could not recover interest at a rate higher than 12 per cent. per annum as is provided for in the Act ; *Administrator-General of Bengal v. Asraf Ali*, 28 Cal. 227. Their Lordships (Ameer Ali and Brett, J.J.) in delivering judgment said as follows :—It is unnecessary, however, to decide in this case whether the contract implied from the holding over is from year to year or not ; for assuming it "should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year," and that this contract is for the same term as in the lease, even then, in our opinion the present claim for interest beyond that allowed by s. 67 would not be maintainable for the term of six years under the implied contract "would end in 1886 whilst the Tenancy Act came into force in March 1885." The fresh contract implied by the fresh holding over, according to the learned Judges in *Kishore Lal Dey v. The Administrator-General of Bengal* would begin from 1886 when the Tenancy Act was in operation and must necessarily be subject to and governed by the provisions and restriction of the Tenancy Act. In the present case the interest claimed is for the years 1893, 1894, 1895 and part of 1896. In *Kishore Lal Dey v. The Administrator-General of Bengal* the claim was for the years 1298—1301, and we do not know when the successive implied contracts there began or came to an end.

*Kishore Lal
v. Adminis-
trator
General*
discussed.

Where a tenant in a *kabuliyat* for one year stipulated to pay interest at the rate of 75 per cent. and the tenant proved that the landlord had assured him that the covenant for interest would not be enforced, *held* that the tenant who was holding over was not bound by the stipulation of interest made in the *kabuliyat*: *Nadia Chand v. Birendra Chandra*, 20 C.W.N. 1067.

Holding
over.

Where a tenancy was created in the year 1880 for three years at a rent partly in money and partly in kind with a stipulation to pay interest at 6 pies per rupee per mensem on the cash rent and one

Kotta per rupee per month on the *paddy rent*, held that the tenant's Successors. successors who were holding over were not liable to pay any higher rate of interest than is provided in s. 67 : *Brahma Moyi v. Somarali*, 68 I.C. 109, (Newbould and Panton J.J.).

Where on the expiry of an agricultural lease the tenant held Holding over, held that he is not liable to pay interest exceeding the sum as over. provided for by s. 67 : *Chandra Nath v. Sheikh Inamdi*, 34 C.L.J. 369.

9. Sale: conditions of lease :—The purchaser of a raiyat holding at fixed rates in execution of his own mortgage decree buys it subject to the terms and conditions of the lease of which he had notice and is liable to pay interest at the rate in the *kabuliyat* : *Bhut-nath v. Ramanath*, 48 Cal. 93 ; in the absence of any evidence that any undue advantage was taken, the tenant is bound to pay interest at the rate stipulated : *Ibid*.

10. Whether a purchaser is liable to pay interest at the rate provided for in the *kabuliyat* of his predecessor :—A tenant executed a *kabuliyat* agreeing to pay interest at a higher rate than 12 per cent. the term of the *kabuliyat* expired in 1884, before the passing of the Tenancy Act, and the tenant continued to occupy the land ; in a decree for arrears of rent his holding was put to sale ; the purchaser at this sale was subsequently sued for arrears of rent and it was held that he was liable only for interest at the rate specified in s. 67 : *Alim v. Satis Chundra*, 24 Cal. 37, followed in *Ali Mahmud v. Bhagabati*, 2 C.W.N. 525. A stipulation for the payment of interest upon arrears of rent is an ordinary incident of a tenancy in this country unless there is something unusual in the stipulation and as a rule it would attach to the tenancy, not only so long as it remains in the possession of the tenant who enters into the stipulation, but would continue to attach to it notwithstanding a sale for arrears of rent, but though this be so, a stipulation for the payment of interest on an unusual and an exorbitant rate would not be an ordinary incident of a tenancy and would not continue to be attached to the tenancy after a sale for arrears of rent ; *Kalinath v. Troilucko*, 26 Cal. 215, s.c., 3 C.W.N. 194 ; see also *Rajnarain v. Panna Chand*, 30 Cal. 213 ; s.c., 7 C.W.N. 203. Where a *kabuliyat* for a time uncertain stipulates for the payment of interest from year to year and that in case there be any default in the payment of any instalment, the tenant will pay interest for the overdue instalment at a certain rate, it was held that it was a contract entered into once for all, and would continue in force so long as the tenancy was not determined. But where the stipulation was for the payment of interest at the exorbitant rate of Rs. 225 per cent. per annum and the contract was entered into between the landlord and a cultivating raiyat, held that the stipulation was not such an incident of tenancy as would continue to be attached to it notwithstanding the sale of the holding for arrears of rent : *Kalinath v. Troilucko*, 26 Cal. 215. Where a holding is not put up to sale with notice that it is being sold subject to the terms of the *kabuliyat* of the old tenant, the purchaser is not bound to pay the higher rate of interest provided for in the *kabuliyat*, and even when the holding is put up to sale on the express terms of the *kabuliyat* the purchaser is not liable to pay the higher rate because a fresh contract must be regarded as having been entered into between him and the landlord when the latter put the holding up to sale and the former purchased it : *Ibid*. (*Per Rampini J.*). A purchaser is bound to pay rent by monthly instalments and interest on arrears will be calculated monthly

Purchaser liable to pay interest under s. 67.

Stipulation for payment of interest is an ordinary incident of the tenancy and continues to attach to it even when it is sold.

Stipulation to pay interest is not an incident of the tenancy.

Subsisting
lease.

when the original *kabuliyat* was executed in 1865 and contained that rent should be paid by monthly instalments: *Nadia Sundari v. Girindra*, 7 C.L.J. 24 notes. Where the lease is a subsisting one the purchaser is bound to pay interest in accordance with the lease: *Lalgopal v. Monmotha Lal*, 32 Cal. 258, s. c., 9 C.W.N. 175 (F.B.). This case was followed in *Tiluk Chandra v. Jasoda Kumar*, 11 C. W. N. 215, in which case interest was claimed at a rate of more than 12 per cent. on the basis of a *kabuliyat* executed before the passing of the Bengal Tenancy Act, the tenant being proved to have acquired the holding by private purchase: *held*, that the stipulation as to interest must be given effect to. Where a tenancy was created before the passing of this Act and that it was stipulated that interest would run at the rate of one anna per rupee, *held* that the purchaser of the jama in auction-sale after the passing of the Act was bound by the terms relating to interest: *Ibid.* Rampini, J., discussed and distinguished the case of *Kalinath v. Troilucko*, 26 Cal. 215, s. c., 3 C.W.N. 194.

Effect of
apportion-
ment of
rents after
transfer of
a portion.

Where there was a stipulation in a lease before the passing of the Bengal Tenancy Act providing interest at 75 per cent. per annum, and subsequent to the passing of the Bengal Tenancy Act a person acquired a portion of the holding from the tenant and obtained recognition as such from the landlord who also apportioned the rents, *held* that the transaction could not be described as a new contract of tenancy and sec. 67 of the Bengal Tenancy Act did not apply. *Madhumalu v. Alfazuddin*, 13 C.W.N. 962; s. c., 10 C.L.J. 45.

Julkur.

11. Julkur :—S. 67 does not apply to a julkur: *Fakir Chandra v. Khagendra Nath*, 27 C.W.N. 68 (notes); see also *Krishnalal v. Salim*, 19 C.W.N. 514.

S. 179, if it
controls
s. 67.

12. Contract in contravention of the provisions of this section :—In granting a permanent lease, within the meaning of s. 179 of this Act, a condition that interest shall be payable at a higher rate than 12 per cent. per annum as allowed by s. 67 of that Act, is permissible: *Matungini v. Makrura*, 29 Cal. 674, s. c., 5 C.W.N. 433 (F.B.). The case of *Basanta Koomar v. Promatha Nath*, 29 Cal. 130, s. c., 3 C.W.N. 36, was overruled by the Full Bench and the case of *Atulya Charan v. Tulsi Das*, 2 C.W.N. 543, was approved of; see notes under s. 179.

Interest at
an exorbit-
ant rate.

13. Exorbitant interest :—Where the rate of interest was Rs. 225 per cent. per annum and the agreement was entered into by a landlord with a cultivating tenant, *held* that the case was one in which the rule of law relating to hard and unconscionable bargains enunciated by their Lordships of the Privy Council in *Kamini Sundari v. Kali Prosunno*, 12 Cal. 225, should be applied: *Kali Nath v. Troilucko*, 26 Cal. 215, s. c., 3 C.W.N. 194. A contract to pay interest at the rate of 75 per cent. for arrears of rent payable for land, for which arrears the landlord has got good security in the holding on which those arrears are a first charge and which he can recover in other ways, is an unconscionable one which should not be allowed to be enforced: *Norendra Kumar v. Gora Chand*, 33 Cal. 683 at p. 688, s. c., 3 C.L.J. 391.

Uncon-
scionable
contract.

In the case of *Ganendra v. Badulla*, 22 C.W.N. 124 (notes) it was *held*, that the contractual rate of interest may be recovered.

High rate
of interest

In awarding interest in a rent-suit at the contract rate which was 75 per cent. per annum the court observed as follows: "the rate

no doubt is very high, 75 per cent. per annum but the tenants have allowed the remedy in their own hands. They have only to pay their rent regularly and no interest will be chargeable": *Ashutosh Dhur v. Joy Lal Sardar*, 17 C.L.J. 50, at p. 53.

Cases in which interest at the rate stipulated in the bonds has not been allowed as being exorbitant: *Bonwang Raja Chellaphroo v. Banga Behari*, 20 C.W.N. 408; *Abdul Majid v. Kherode Chandra*, 42 Cal. 690, s. c., 19 C.W.N. 809; *Khagaram v. Ramsankar*, 42 Cal. 652, s. c., 19 C.W.N. 775, s. c., 21 C.L.J. 79; *Gopeswar v. Jadub Chandra*, 22 C.L.J. 352; *Ram Barman v. Sanat Kumar*, 25 C.L.J. 24.

A high rate of interest is not *per se* a penalty: *Nathuni Sahu v. Baij Nath*, 2 Pat. L. J. 212.

A change from simple interest to compound interest after due date is not a penalty: *Lakh Chand v. Pear Chand*, 2 Pat. L.J. 283.

14. Liability to pay interest when the landlord has no village office:—A tenant's liability to pay interest remains notwithstanding that the landlord has no village office and that he has not appointed a convenient place for payment of rent under s. 54: where there is no controlling agreement, the tenant must go to his landlord and pay the rent as it falls due; rent falling into arrears under such circumstances will carry interest under s. 67: *Fakir Lal v. W. C. Bonnerjee*, 4 C.W.N. 324.

15. Application of money to interest when paid as rent:—The word "rent" does not necessarily include interest, so if any sum of money be paid by a tenant to a landlord as rent and the latter receives it as such he cannot be permitted to apply that money towards any interest which might then be due: *Bhagobati v. Basanto Kumari*, 11 C.W.N. 110: s. c., 5 C.L.J. 69.

16. Where there is no agreement to pay interest:—S. 178, sub-sec. (3) cl. (h) says that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall affect the provisions of s. 67 relating to interest payable on arrears of rent." It would seem therefore that the provisions of this section are not retrospective in its effect. So where a tenancy was created before the passing of the Bengal Tenancy Act without any written lease and there was no provision for the payment of interest the landlord is not entitled to recover any interest under this section, for it has no application, but a landlord may be entitled to, interest if he gives a notice demanding interest (as provided for in Act XXXII of 1839). In cases of written leases but without any provision to pay interest, interest may be allowed as provided for in the Interest Act. It is enacted by that Act "that upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered, may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: Provided that interest shall be payable in all cases in which it is now payable by law."

But where a lease did not contain any stipulation with regard to payment of interest one way or the other, *held*, that there was

Cases in which stipulated rate or interest not allowed as being exorbitant.

High rate of interest, if penalty,

When landlord has no village office.

Rent, if includes interest.

Where there is no agreement to pay interest to a kabuliyat.

before the passing of the Tenancy Act.

Act XXXII of 1839.

allowed

where there was no stipulation.

nothing in the lease which prevented interest being paid; *Second Appeal No. 370 of 1902, Kanai Lal Goswami v. Rajendra Lal Goswami* (unreported) decided by Rampini and Mitra, J.J., on July 20, 1904.*

Mortgage bond.

Where no interest is stipulated for in a mortgage bond no interest is recoverable: *Makbulali v. Ali Ahmed*, 40 Cal. 514, see also *Kutliumna v. Madhavamenon*, 11 Mad. L.J. 186.

17. Stipulation to pay interest according to custom and law :—Where it was stipulated that interest on arrears of rent should be realised according to *custom and law*, it was held under the old law (Act VIII, B. C. of 1869) that interest would run at the rate of 12 per cent. per annum as provided for in that Act: *Anungo Mohun v. Madan Mohun*, 1 C.L.R. 147.

Erroneous decision in a previous suit does not operate as *res-judicata*.

18. Decision as to rate of interest whether operates as *res judicata* in a subsequent suit :—Where in a previous suit for rent the Court erroneously held that interest exceeding 12 per cent. per annum was not recoverable for a permanent tenure-holder in a permanently settled area, although the *kabuliyat* stipulated for the payment of such interest; held, that in a subsequent suit for rent the erroneous decision in the former suit would not operate as *res judicata*: *Alimunnessa v. Shyamacharan*, 9 C.W.N. 467; 1 C.L.J. 176; 32 Cal. 749. (The previous decision was in accordance with a ruling which was subsequently overruled by a Full Bench decision). Cases must be decided upon the law as it stands when judgment is pronounced and not upon what was at the date of a previous suit, the said law having been altered in the meantime, the effect of a law being differently interpreted afterwards by a judicial decision is similar to that of an alteration by statute: *Ibid*. An erroneous decision has been held to operate as *res judicata* in the case of *Woman Hari v. Hari Vithal*, 31 Bom. 128. A decision upon a pure question of law, even though erroneous may under certain circumstances operate as *res judicata*: *Ram Behari v. Surendranath*, 19 C.L.J. 34; see also *Aghorenath v. Kamini*, 11 C.L.J. 461; *Rai Charan v. Kumud Mohon*, 1 C.W.N. 687.

Decision upon a pure question of law.

Application of s. 67: Effect of Privy Council decision in 22 Cal. 214.

19. Application of this section :—The provision in s. 67 applies only to cases where the rent is payable quarterly: *Hemanta v. Jagadindra*, 22 Cal. 214 (P.C.). It has been explained in the case of *Narendra Kumar v. Gora Chand*, 33 Cal. 683, s. c., 3 C.L.J. 391, that their Lordships of the Judicial Committee in the case of *Hemanta v. Jagadindra* did not rule that the whole of s. 67 is limited in its application to cases where the rent is payable quarterly but it was only laid down that the section so far as it defines the time from which the interest is to run applies only to cases where the rent is payable quarterly, and that their Lordships did not decide by implication any question as to the effect of the other provision of the section, *viz.*, which fixes the rate of interest, so by making interest payable otherwise than quarterly will not have the effect of making an agreement to pay more than the rate provided for in this section valid.

When there was a contract between the landlord and the tenant

*The lease in this case was dated the year 1159; the first Court had observed as follows:—The *Patta* of 1159 appears to be silent as to interest and damages. If the plaintiff be not entitled to interest he cannot necessarily be entitled to damages.

executed after the passing of the Bengal Tenancy Act whereby provision was made for payment of the rent in monthly kists and also for payment of interest on each kist from the time when it fell due, and the interest so calculated exceeded $12\frac{1}{2}$ per cent. per annum : *Contract held* :—that the landlord was entitled to impose on the tenant an obligation to pay the monthly kists, having regard to sec. 178, sub-sec. (3) cl. (h) of the Bengal Tenancy Act, the landlord was entitled only to the interest secured to him by sec. 67 of the Bengal Tenancy Act, the Interest Act not being applicable : *Monohar Mookerjee v. Kshetranath Sabui*, 17 C.W.N. 820 ; s. c., 18 C.L.J. 175 : the Privy Council case of *Hemanta Kumari v. Jagadindra*, 22 Cal. 214 was explained and discussed in this case. A contract between a landlord and a tenant for payment of rent in monthly kists or instalment is valid and is in accord with the provisions of the Bengal Tenancy Act ; but a stipulation for payment of interest on each instalment from the time when it falls due, being in excess of that which can be permitted under the law is illegal and cannot be enforced, in as much as the landlord is only entitled to the interest secured to him by S. 67 : *Manohar v. Paresh Chandra*, 18 C.L.J. 176.*

Contract after passing of the Act.

Where monthly kist and interest agreed to be paid in excess of what is allowed by law.

Interest runs under s. 67 not from the date of the kist fixed for payment of rent but from the expiration of the quarter of the agricultural year in which the instalment falls due : *Sris Chandra v. Jadunath*, 45 I.C. 532 ; (Fletcher and Shamsul Huda, J.J.) ; when therefore rent is tendered by money-order after a kist falls due before the accrual of interest under s. 67 i.e., before the expiration of the quarter when the kist fell due the tender is a good tender and the landlord is not entitled to interest or damages : *Ibid*.

20. Waiver :—The mere omission to claim interest for past years from a tenant, who did not pay his rent on due date should not be considered a waiver of the right to claim interest for all time : *Johoory v. Bullub*, 5 Cal. 102 ; see also the cases referred to therein.

21. Interest on enhanced rent :—A tenant is not liable for interest on enhanced rent unless it is determined : *Raj Mohun v. Anund Chunder*, 10 W.R. 166 ; see also *Golam Ali v. Babu Gopal Lall*, 1 W.R. 56 ; *Sumeera v. Babu Gopal Lall*, 1 W.R. 58 : but see *Khajah Ahsanullah v. Aftabuddin*, 3 C.L.R. 382, and *Dayamoyi v. Bhola Nath*, 6 W.R. Act X, p. 77.

Interest on enhanced rent.

22. Where interest and not damages should be awarded :—Where during the years for which rent was claimed the defendant had paid several sums to the landlord, held that interest and not damages ought to have been allowed : *Bharath Prasad v. Rameshwar*, 30 Cal. 1066, s. c., 8 C.W.N. 118.

23. Section 169 :—Rent as used in cl. (c), s. 169, does not exclude interest : *Bejoy Chand Mohatab v. S. C. Mookerji*, 11 C. W. N. 1106 ; where a landlord applies under s. 169, cl. (c) for getting the rent and interest due to him between the date of the institution of the suit and the date of the sale from the surplus sale proceeds and the judgment-debtor raised an objection to it but admitted the justice of the decree-holder's demand, held that the decree-holder was entitled to get interest on rent : *Ibid*.

Rent does not exclude interest.

24. S. 92 Evidence Act : Proof in variation of the terms of contract :—“Where a tenant executes a *kabuliyat* containing a variation of the terms of

Proof in variation of the terms of

*The Privy Council Case of *Hemanta Kumari v. Jagadindra*, 22 Cal. 214 was distinguished and explained,

contract : s.
92 Evi-
dence Act.

stipulation which the landlord has told him will not be enforced the tenant cannot be held to have assented to it, and the *kabuliyat* is not the real agreement between the parties : *Nadia Chand v. Birendra Chandra*, 20 C.W.N. 1067 at p. 1068, col. 2 ; (in this case the *kabuliyat* stipulated interest at the rate of 75 per cent. per annum). The test is, whether the tenant can maintain a suit for rescission, cancellation or variation of the contract ; if he can he may successfully resist the claim on the basis of the contract : *Ibid* ; see also *Kasinath v. Brindaban*, 10 Cal. 649, and *Benimadhab v. Lalmoti*, 6 C.W.N. 242. But it was held in the case of *Ganendra v. Babulla*, 22 C.W.N. 124 (notes) that a landlord is entitled to recover interest at the contractual rate and that under s. 92 of the Evidence Act an agreement not evidenced by a written contract cannot be given in evidence to vary the terms of a registered contract.

25. S. 67 controlled by s. 179 :—This section is not applicable to permanent *mokurari* leases governed by s. 179 : *Matangini Debi v. Makrura Bibi*, 29 Cal. 674, s. c., 5 C.W.N. 438 (F.B.).

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

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

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.

Headings of Notes.

1. WHERE A LEASE DID NOT STIPULATE PAYMENT OF INTEREST.
2. NON PAYMENT OF CESSSES.
3. DAMAGES.
4. REASONABLE AND PROBABLE CAUSE.
5. DISPUTE BETWEEN LANDLORD AND TENANT.
6. DAMAGES IN EXCESS OF 25 PER CENT. CANNOT BE RECOVERED.
7. WHERE INTEREST AND NOT DAMAGES SHOULD BE AWARD AND WHERE NOT.
8. PROVISIO.

Damages
may be
allowed
where no

I. Where a lease did not stipulate payment of interest :
—In a case where the lease dated before the passing of the Act did not stipulate for payment of interest and the lower Appellate Court awarded damages, (*Rampini and Mitra, J.J.*) observed as follows :—

The learned District Judge was perfectly justified under s. 68, in awarding damages. Moreover, so far as we can see, the contract in this case did not contain any clause with regard to the payment of interest one way or the other. Therefore it would appear that there is nothing in the lease which prevents interest being paid under s. 67. But, however this may be, as we said interest has not been awarded, but damages: unreported second Appeal, *Kannai Lal v. Rajendra Lal*, No. 370 of 1902, decided on July 20, 1904.

2. Non payment of cesses :—Rent includes cess: see s. 3 cl. (5). Tenants are therefore liable to pay damages on failure to pay road and public works cesses.

3. Damages:—It was decided under the old law (Act VI of 1862, B.C.) that damages could not be recorded unless specially alleged and claimed in the plaint: *Hurro Mohun v. Womesh Chunder*, 1 R.J.P. 116.

4. Reasonable and probable cause :—The absence of reasonable and probable cause is a matter which is incumbent on the plaintiff to prove: *Horro Mohun v. Womesh Chunder*, 1 R.J.P. 116. A man is not to be made liable to damages merely because he may from poverty, illness, or some unavoidable cause have failed to pay his rent: *Ibid*.

5. Dispute between [landlord] and tenant:—Where on account of dispute between the landlord and the tenant the former would not himself realise rent from the tenant in the midst of the dispute, held that the landlord is not entitled to damages: *Bisheshar v. Husain*, 4 Pat. L.J. 282 at p. 287.

6. Damages in excess of 25 per cent cannot be recovered :—Even if there is custom of paying damages of the rate at more than 25 per cent. the same cannot be recovered; interest cannot be recovered at a higher rate than 2 per cent.: *Apurba Krishna v. Ashutosh*, 9 C.W.N. 122.

7. Where interest and not damages should be awarded and where not :—Where during the years for which rent was claimed the defendant had paid several sums to the landlord; held, that interest and not damages ought to have been allowed: *Bharath Prasad v. Rameswar*, 30 Cal. 1066 s.c. 8 C.W.N. 118. S. 68 unlike s. 67 is not restrictive: where the lower Courts in their discretion did not allow damages the High Court in second appeal did not interfere: *Bisheshar v. Husain Sao*, [1919, Pat.] p. 242, s.c., 4 Pat. L.J. 282.

8. Proviso :—The award of damages does not in any way interfere with the interest which might be allowed subsequent to the date of the suit: *Watson v. Sreekrishna*, 21 Cal. 132.

Produce-rents.

69. (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

Order for appraising or dividing produce.

(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 District or Subdivisional Magistrate the making of the order would be likely to prevent a breach of the peace.

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

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

Headings of Notes.

1. AMENDMENTS.
2. Ss. 69 AND 70.
3. CL. I (b).
4. INTEREST.
5. ATTENDANCE OF LANDLORD.
6. DANABANDI SYSTEM.
7. SUIT FOR RENT AFTER A PROCEEDING UNDER SS. 69 AND 70.
8. SUIT FOR VALUE OF CROPS.
9. DEPOSIT OF CROPS BY ORDER OF COLLECTOR : SUIT AGAINST DEPOSITARY.
10. AMEEN APPOINTED UNDER THIS SECTION.
11. COLLECTOR : S. 195 CR. P. C.
12. DISOBEDIENCE OF ORDER MADE UNDER S. 69.
13. DISPUTE AS TO SHARE.
14. POWERS OF A COLLECTOR.
15. BONAFIDE DISPUTE AS TO THE NATURE OF RENT.
16. APPLICATION BY A CO-SHARER LANDLORD.
17. SUIT FOR PRODUCE RENT.
18. APPRAISEMENT.
19. RIGHT TO SUE TO SET ASIDE WRONGFUL DISTRAINT.
20. REFUSAL OF LANDLORD TO ACCEPT RENT IN KIND.
21. RES JUDICATA.

* In Eastern Bengal the words are : "by a Civil Court " instead of " by the Court."

1. Amendments :—The amendments by Act I (B.C.) of 1907 Amendment of section 69. and by Act I (E. B. and A Council) will appear from the following section : (s. 16 which is the same in both the amending Acts).

16. (1) To sub-section (3) of section 69 of the said Act the following shall be added, namely :—

“but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops.”

(2) To the said section the following shall be added, namely :—

“(4) Every officer appointed by the Collector under sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian Penal Code, be deemed to be a servant.” XLV of 1860,

2. S.S. 69 and 70 :—“S. 69 applies equally to cases of division of produce and of appraisement as also does s. 70. There is no distinction of produce and appraisement. between those two classes of cases, and a final order enforceable as a decree is as necessary in the one case as in the other.” *Suraj Prasad v. Kara Singh*, 4 Pat. L.J. 325 at p. 329.

3. Cl. I (b) :—A Revenue Court is competent, under s. 60 (1) (b) to decide a dispute between a landlord and tenant as to the proper shares of the produce to which each is entitled: *Bhajan v. Gangeshwar*, 53 I.C. 37.

4. Interest :—As soon as a Court adjudicates upon a claim for *bhowali*, it becomes an ascertained amount, but no interest can be claimed thereon under s. 67, because *bhowali* rent is not payable quarterly: *Bisheshar v. Husani Sao*, 4 Pat. L.J. 282; s.c., [1919 Pat.] p. 242.

5. Attendance of landlord :—Under section 69 of the Bengal Tenancy Act, if the landlord does not attend to take the share of the crops the remedy of the tenants is by way of an application to the Collector, but if it is found that the tenants have actually appropriated all the crops they are plainly liable to indemnify the landlord; *Kamaleshwar Pershed Singh v. Kanhari Singh*, 17 C.W.N. 1159. Remedy of the tenant when landlord does not attend.

6. Danabandi System :—Where the question was whether a tenant held under the *danabandi* system, held that the mere circumstance that the contract of tenancy in respect of some land was of one description does not necessarily indicate that the contract was one of the same description in respect of different lands in the same village held by other tenants: *Kamalshwar Pershad v. Kanhari Singh*, 17 C.W.N. 1159.

Produce rents are collected on two systems, the *agorebatai* and the *danabandi* systems. According to the *agorebatai* system, the produce is divided between the landlord and the tenant. According to the *danabandi* system, the outturn of the crop, and its value are appraised, and the tenant pays the landlord his share either in grain or in money as may be agreed on.

7. Suit for rent after a proceeding under ss. 69 and 70 is quashed :—Where a suit for rent did not include the claim for rent which had been realised previous to the institution of the suit in a proceeding under ss. 69 and 70, held that after the proceeding was quashed a suit for rent for the period which was the subject of the proceeding under ss. 69 and 70 was barred under s. 43, C.P.C.; *Syed Abdulla v. Hurkishan*, 2 C.L.J. 490.

8. Suit for value of crops :—In a suit to recover *bhowlee* rent or a sum equivalent to the value of the proportion of the crop which the defendant ought to have delivered to his landlord, *held* that the damage to the plaintiff was the value of the crops at the time they were due and not subsequently : *Luchman v. Hoolas Mahtoon*, 11 W.R. 151.

Suit against
depository
maintain-
able.

9. Deposit of crops by order of Collector—Suit against depository :—Sections 69 and 70 refer to and contemplate proceedings between the landlord and the tenant, and they have no reference to a third party, who, in the course of proceedings under these sections becomes depository or bailee ; when therefore a landlord seeks relief in the Civil Court, not against his tenant, but against a third party, a depository or bailee, it is not barred by anything contained in ss. 69 and 70 : *Jaga Singh v. Chooa Singh*, 22 Cal. 480. A suit is maintainable by a tenant against a third party for recovery of crops awarded to the latter by the Collector ; *Chhedi v. Chhedan*, 32 Cal. 422.

Ameen
appointed
under this
section is
not a public
servant.

10. Ameen appointed under this section :—A person nominated by a Collector under this section for the purpose of making a division of crops between the landlord and the tenant is not a public servant within the meaning of the Penal Code. His mere office is to go down on the nomination of the Collector and appraise and make a division of the crops as between two private persons who are to pay him for his services : *Chatter Lall v. Thacoor Pershad*, 18 Cal. 518.

Collector,
a Court.

11. Collector : s. 195 Cr. P. C. :—The Collector is authorised to take evidence on the matters with which he is empowered to deal ; and this brings him within the definition of a Court ; where therefore in certain proceedings under this section some forged rent receipts were filed, *held* that the previous sanction of the Collector was necessary under s. 195, Cr. P. C., for the prosecution of the persons who filed the forged rent receipts : *Raghoo Buns v. Kokit Sing*, 17 Cal. 872. This case was followed in the case of *Chandi Charan v. Gadadhar*, 45 Cal. 336, s.c., 22 C.W.N., 165 ; s.c., 27 C.L.J. 316 ; proceedings under ss. 69 are civil in nature and the Court of the Deputy Collector acting thereunder is subordinate to the Court of the District Judge under s. 195 (7) of the Criminal Procedure Code : *Ibid*.

Primary
purpose
of order.
S. 188
I. P. C.
Ss. 195
and 476
Cr. P. C.

12. Disobedience of order made under s. 69 :—The primary purpose of orders made under s. 69 is to prevent breaches of the peace ; s. 188 of the Penal Code applies when the order is disobeyed : the Subdivisional Magistrate as Collector is competent to act in such cases under s. 195 or s. 476 C. Cr. P. : *Lakshan Bar v. Nara Narain*, 43 Cal. 1086.

Division of
produce.

13. Dispute as to share :—A dispute as to the division of the produce under s. 69 (1) includes a dispute as to the shares into which it is to be divided. A Revenue Court is competent to decide the issue as to the proper shares under s. 69 (1) (b). If the Revenue Court is not prepared to decide the issue as to the proper shares he should refer the dispute to the Civil Court under s. 70 (5) : *Bhajan Ahir v. Gang Keshwar*, [1919 Pat.] p. 461, s.c., 5 Pat. L.J. 76.

See notes under s. 70.

Reference
to Civil
Court.

Functions of
Collector.

14. Powers of a Collector :—All officers in charge of sub-divisions have been invested with the powers of a Collector for the

purpose of discharging the functions referred to in ss. 12, 13, 15 and 69 to 71 of this Act; (*Calcutta Gazette*, 1886 Part. I, pp. 466, 1092). The Deputy Collector of Howrah and the Senior Deputy Collector of Gaya have also been invested to exercise the functions, referred to in ss. 69 to 71; (*Calcutta Gazette*, 1886, Pt. I. p. 652; and 1893, Pt. I., p. 274). See Appendix II.

Sub divisional officers.

15. Bonafide dispute as to the nature of rent :—Where there is a *bonafide* dispute as to the nature of the rent *i.e.*, whether it is *bhaoli* or *nakdi*, Deputy Collector has no jurisdiction to proceed under the provisions of ss. 69 and 70: *Nukheda Singh v. Ripu Mardan*, 4 C.W.N. 239; *Mir Tipura Hossein v. Gopi Narain*: 7 C.L.J. 251; in a suit by a tenant to set aside an appraisement by the Collector as invalid he would be entitled to succeed upon proof that there was a *bonafide* dispute between the parties as to the character of the holding. *Ibid.*

Bona-fide dispute as to the nature of rent.

16. Application by a co-sharer landlord :—An application under this section cannot be made by some only of a body of landlords, such an application being authorised by the provision of this Act and not by those of the Civil Procedure Code: *Nukheda Singh v. Ripu Mardan*, 4 C.W.N. 239.

17. Suit for produce rent :—A suit for produce rent or its money value is a suit for rent under this Act and not a suit for damages for breach of contract, and therefore is not cognizable by a Provincial Small Cause Court. *Shoma Mehta v. Rajani Biswas*, 1 C.W.N. 55; see also *Tajuddin v. Ram Parasad*, 1 All. 217; *Luchman v. Kailas*, 11 W.R. 151; 2 B.L.R. App. 27; *Malik v. Aklu*, 25 W.R. 140; *Jamna v. Guni*, 21 W.R. 124. The fact that a landlord sues, not to recover the crop itself but its money value with interest, does not withdraw the suit from the category of rent suits: *Krishto Bunahoo v. Rotish*, 25 W.R. 307.

Suit for Burga if cognizable by Small Cause Court.

It has been held in the case of *Jadav Chandra v. Gopal Chandra*, 28 C.W.N. 848, that a suit for half share of the produce is cognizable by Small Cause Court if there is nothing in the plaint to suggest that the Defendant is a tenant.

See notes under the Preamble, at pp. 5 & 6.

18. Appraisement :—In a case of appraisement the Collector does not take possession of the crops nor does it make it over to the landlord. He simply prepares an estimate of the crops under sec. 69 of the B. T. Act and then reduces it into a money value and declares how much is due to the landlord and how much to the tenant. In such a case the Collector's order must clearly specify the amount due from one party to the other so that the former may in execution of the order in the Civil Court, receive his dues from the latter: *Bhuneshwari Kuer v. Sukhdeo Singh*, 85 I.C. 566 (Jawala Prasad and Kulwant Sahay, JJ.).

Appraisement.

The Collector's jurisdiction arises only when the rent is payable under the *bhaoli* system; and if this is disputed and a system of cash or *nakdi* rent is set up, the Collector will have no jurisdiction under sec. 69 of the B. T. Act and he must leave the question to be determined by a competent Civil Court. Where it is admitted that *bhaoli* rent is payable the Collector has jurisdiction under sec. 69 to appraise or divide the crops and has a right to determine as to whether the system of payment of landlords' share is by appraisement or division: *Ibid.*

Dominion
over crop
cut.

19. Right to sue to set aside wrongful distraint:—Where the landlord, under exceptional circumstances, supplied the seed and the agreement was that the tenants would cut and store the crop on his *chuck* and after the threshing, division was to be made between the landlord and the cultivators; *held*, that the dominion over the crop was with the landlord, and if that crop has been cut by some one else under cover of the law of distraint, the landlord was entitled to sue to contest the demand of the distrainer; *Harro Narain v. Shoodha Krishna*, 4 Cal. 893; s.c., 4 C.L.R. 32.

Dismissal
of suit
for money
value,
effect of.

20. Refusal of landlord to accept rent in kind:—A landlord refused to accept rent in kind as he was suing for a money rent, *held* that on the dismissal of his suit the landlord could not sue for the money value; *Mohun Narain v. Gour Taran*, 23 W.R. 368.

21. Res judicata:—Where in a suit by a tenant to set aside the Collector's appraisement neither he nor the landlord could prove as to the character of the holding *viz.*, as to whether the rent was payable in cash or kind; *held* that in a subsequent suit for rent the Court was not precluded from determining the question as to the true character of the holding; *Mir Tapura Hossein v. Gopi Narain*, 7 C.L.J. 251.

Procedure
where officer
appointed.

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

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

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

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such 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, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

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

Headings of Notes.

1. ANY OTHER PERSONS AS ASSESSORS.
2. BUT SUBJECT AS AFORESAID HIS ORDER SHALL BE FINAL.
3. CL. (2).
4. CL. (4).
5. CL. (5).
6. EFFECT OF THE SETTING ASIDE OF AN ORDER UNDER CL. (5).
7. CL. (5): ENFORCEABLE AS A DECREE.
8. CL. (5): EXECUTION IN CIVIL COURT—INJUNCTION.

I. Any other persons as Assessors:—According to the General Clauses Act, words used in the singular include the plural and *vice versa*, unless there is anything repugnant in the subject or context; but it seems to be doubtful whether the expression “any other persons as assessors” also means “any other person as assessor.”

2. But subject as aforesaid, his order shall be final:—It seems that in case the Collector refers any question in dispute between the parties for the decision of a Civil Court, he will pass a conditional order which will be subject to the such decision.

The Civil Court has no jurisdiction to pass an award on a claim for rent for certain years in a case where the matter had been decided by the Revenue Court, under s. 70 of the B. T. Act: *Binode Behari v. Tokhi Singh*, [1924 Pat.] p. 211.

In order to see whether an order purporting to have been passed under s. 70 is a final order enforceable as a decree, the order must be read as a whole: *Ibid*.

Where the *takhmina* papers were considered by the Settlement Officer and the division was approved, that is the crop was divided between the two parties, landlord and tenant, and further direction was given with respect to the landlord's share that if he did not accept it then it should be sold and the money deposited in the Treasury; *held* that the money that was deposited was the sale proceeds of the landlord's share and consequently it was his money and no further direction was necessary and the landlord would be entitled to withdraw the money on that order. This was clearly a final order enforceable as a decree within the meaning of s. 70 of the Bengal Tenancy Act: *Ibid*.

3. Cl. (2):—If the amin comes to the village and gives notice to all and sundry either by informing them personally or by leaving notices at their houses, then that is *prima facie* compliance with the section. If that is done, then it lies upon those who are complaining that the section is not complied with to come forward and give evidence that they in fact had no notice: *Dinadayal v. Raj Keshwar*, 98 I.C. 991.

4. Cl. (4):—“A Collector cannot pass any separate order as to cost. The Provision of Cl. (4) of s. 70 is, however, very wide. It directs the Collector to pass such orders as he thinks just and contemplates that the Collector should consider what order is most

equitable, taking all things into consideration. The Collector has power, therefore, without passing any separate order as to cost to take into consideration the amount deposited by the applicant and to so arrange his order of appraisalment that the share awarded to the parties include or be dismissed by, the proper and equitable proportion of the costs." OBSERVATIONS OF THE BOARDS OF REVENUE, BIHAR AND ORISSA BASED ON THE OPINION OF SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS. *In re Shew Gulam and others*, 1 Pat. L.W. 694 ; s.c., 42 I.C. 482.

If sufficient time is given after service of notice and before the collector passes his final orders, to enable tenants to come forward and make their objections, that is a proper compliance with the provisions of sub-s. (4) and no further notice is required upon the tenants to enable them to come and make their objections: *Dindayal v. Raj Keshwar*, 98 I.C. 991.

5. Sub-sec. (5):—Sub-sec. (5) does not bar a suit by a tenant against a third party for recovery of crops awarded to the latter by the Collector: *Chhedi v. Chhedan*, 32 Cal. 422.

See notes under s. 69.

6. Effect of the setting aside of an order under cl. (5)—The setting aside of an order made under sub-sec. (5) does not give a fresh cause of action, so when a suit for rent did not include claim for rent of a previous period which was the subject of an order under cl. (5), *held* that a suit for rent for that period after the setting aside of the order under cl. (5) was barred by s. 43, C.P.C.: *Syed Abdulla v. Hurkrishna*, 2 C.L.J. 490.

When Civil Court can adjudicate.

7. Cl. (5): Enforceable as a decree:—To make an order of the Collector under section 70 of the Bengal Tenancy Act final, it must be an order in conformity with that section and enforceable as a decree under clause 5. In the absence of such an order, it is competent to the Civil Court to adjudicate upon the question whether the rent is to be taken by appraisalment or division of the produce: *Kailaspati Narayaan Sing v. Ganga Sing*, 10 C.L.J. 599.

In order to bring proceedings under Ss. 69 and 70 it must be shewn that, as required by s. 70 (5), the Collector has passed an order having complete finality and enforceable as a decree: *Suraj Prasad v. Karu Singh*, [1919 Pat.] p. 400 ; where the proceedings are not in accordance with the provisions of ss. 69 and 70, the order of the Deputy Collector is not a final order as contemplated under S. 70 (3) and it cannot therefore oust the jurisdiction of the Civil Court: *Ibid.*

Clause 5 of s. 70 of the B. T. Act does not require that a separate decree, apart from the order itself, should be prepared by the competent Revenue authority. It simply requires that the order shall be final and shall, on application by the landlord or the tenants to the civil court, be enforceable as a decree: *Bhuneshwari Kuer v. Sukhdeo Singh*, 85 I.C. 566 (Jawla Prasad and Kulwant Sahaay, J.J.).

Injunction.

8. Cl. (5): Execution in Civil Court: injunction:—A landlord obtained an order under sub-section (5) of section 70 and proceeded to execute it by an application to the Civil Court, the tenant brought a suit in the Civil Court for a declaration that the order of the revenue authorities was without jurisdiction and inoperative, *held* on an application made under rule (2) of Order XXXIX

of the Civil Procedure Code for a temporary injunction to restrain the landlord from executing the order in question that the Civil Court has jurisdiction to grant the injunction: *Jit Lal Singh v. Kamaleshwari Pershad*, 18 C.W.N. 92.

The proper way to receive the decree for execution is by transmission from one Court to another in an authorised and defined mode: *Baluk v. Nathuni*, 2 Pat. L.J. 24.

An order made under Cl. (5) if made by an officer having jurisdiction, it is final and no appeal lies against it: when such an order is sought to be executed the merits thereof cannot be questioned: *Baluk v. Nathuni*, 2 Pat. L.J. 24. It is open to the Civil Courts to enquire whether the Collector had jurisdiction to take action under ss. 69 & 70: *Thakur Singh v. Pardip Singh*, 2 Pat. L.J. 183. A Subdivisional officer is competent to decide whether the crops should be appraised or divided: *Ibid*, Limitation: where the tenant obtained an injunction preventing the landlord from enforcing the order, limitation does not run for the period the injunction was in force: *Baluk v. Nathuni*, 2 Pat. L.J. 24.

Although a decree may have been passed by a Revenue Court when it is under execution in a Civil Court, proceedings may be stayed by the Civil Court if a suit has been brought for declaration that the decree was obtained by fraud or was made without jurisdiction and for a perpetual injunction to restrain the decree-holder from executing the decree: *Ibid*. See also *Ramlochan Singh v. Beniprasad Kumari*, 36 Cal. 252 s.c., 13 C.W.N. 791.

Stay of proceedings.

71. (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 the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due 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.

Sub. Sec. (4):—"The object of s. 71 sub-sec. (4) is to provide the courts with a definite rule as to the value of crops which have been wrongly removed by the tenant. If the tenant in removing the crops acts dishonestly he is liable to be convicted under s. 424 I.P.C.: *Kuldip Panday v. King Emperor*, 1 Pat. L.J. 353, (Chamier Object of s. 71, sub-sec (4)).

C. J. and Sharfuddin J.). It is submitted with great respect that this decision is probably open to doubt for the following reasons: (1) the object of s. 71 is that the *actual* produce is to be divided between the landlord and the tenant; if on account of the removal of the crops by the tenant the *actual* produce cannot be ascertained, then under cl. (4) 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*; therefore by the removal of the crops there ensues no wrongful loss to the landlord; (2) moreover the penalty for the removal is provided for in cl. (4).

"Section 71, sub-sec. 4, of the Bengal Tenancy Act seems to me to contemplate that where tenants do remove a crop without having the same properly appraised that the presumption arises against them and the landlord is entitled to the full measure of the crop as of the best crop in the neighbourhood of a similar character for that harvest:" *Balak Mahton v. Mathura Ram*, 52 I.C. 267.

If tenants cut and take away crop before it can be appraised or do not attend at the appraisal under Sec. 71 (4) of the B. T. Act, presumption arises against them and the landlord is entitled to the full measure of the crop in the neighbourhood of a similar character to that harvest: *Hargobind v. Kishundoyal*, 95 I.C. 966.

Under s. 71 (4) of the B. T. Act the crop cutting report of the Revenue Officer relating to a period subsequent to the period for which the rent suit is filed may be taken into consideration by the court in assessing the rent for the disputed antecedent period. Its evidentiary value is greater than that of oral evidence: *Kishun Dayal v. Ishwarnath*, 8 P.L.T. 74, s.c., 102 I.C. 391 (Dawson Miller C.J. and Foster J.) (Patna Case).

Notes :—On the complaint of a tenant that the landlord had cut and taken away crops belonging to the tenant worth Rs. 88, although the landlord who was to get rent in kind was entitled to take one-half portion of the crops, the landlord was convicted of the crops being in excess of Rs. 50 the conviction under summary trial was bad, the tenant being entitled under s. 71 to possession of the entire crops until it was divided: *Sheikh Haboo v. Sheikh Kariman*, 1 Pat. L.J. 230, (Chamier, C. J., Sharfuddin J.).

Liability for rent on change of landlord or after transfer of tenure or holding.

Liability for rent on change of landlord or after transfer of tenure or holding. Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

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

(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.

Headings of Notes.

1. TRANSFER OF LANDLORD'S INTEREST.
2. REGISTRATION OF TRANSFER.
3. NOTICE.
4. SUB-SEC. (2).
5. APPORTIONMENT OF RENT.

1. Transfer of landlord's interest:—Where a landlord transferred his interest to another person and the tenant got notice of the transfer from the transferor but the transferee did not give any notice, *held* that payments of rent made by the tenant to the transferor after such notice were not valid payments and the transferee was entitled to claim the same from the tenant: *Nabin Chander v. Surendra Nath*, 7 C.W.N. 454.

Payment of rent after notice by transferee.

A tenant is not bound to pay rent to the transferee of the landlord unless he got notice of the transfer from the transferee, and a payment made to the previous landlord not in good faith within the meaning of S. 50 of the Transfer of Property Act is valid, if no notice has been given by the transferee: *Jharucharan v. Sridam*, 40 I.C. 655, s.c., 23 C.W.N. 88 (notes).

Where no notice by transferee.

Before the tenant can be excused from payment to the transferee under S. 72 two conditions are necessary. The first is that he must pay rent to the landlord whose interest has been transferred; and secondly, he must have done so without notice of the transfer: *Brojo Dhabal v. Prem Chand*, 91 I.C. 726 (Newbould & Graham, J.J.)

Where the plaintiff was the registered mortgagee from the landlord, and in a suit for rent the tenant pleaded payment to the auction purchaser of the landlord's estate at a sale for arrears of revenue, *held* that s. 72 had no application and that plaintiff was entitled to get rent: *Mikhduman v. Khairat Ahmed*, 43 I.C. 182; s.c., 3 Pat. L.W. 245.

Suit by registered mortgagee where landlord's interest is sold for arrears of revenue.

Where the transferee from a landlord did not give the requisite notice, the tenant was held not liable for the rent paid to the transferor landlord: *Jharu Charan v. Sridam Chandra*, 29 C.L.J. 204.

2. Registration of transfer:—"It is no longer compulsory for the *zemindar* to register the names of any tenants in his *sherista*. The Act provides for the official registration of transfers of the rights of permanent tenure holders and raiyats holding at fixed rates. But the transfers of occupancy rights are not so registered, and there is no provision of law by which they can be registered in the landlord's *sherista*. When occupancy rights, transferable by custom, have been transferred, it is no doubt open to the transferees to sue under the Specific Relief Act to have it declared that they have acquired certain rights: but it is clear that if it is the object of such a suit, as it apparently was of this suit, to have it declared that the old tenant is no longer responsible for the rent and that the transferee is so responsible to the landlord, such a declaration cannot be obtained without the service of the notice prescribed by s. 73." (*Per Rampini and Stevens, JJ.*) *Ambika v. Chowdhury Keshri*, 24 Cal. 642.

Right of suit by transferee.

3. Notice:—Sub-section 1 of this section does not require that the notice therein contemplated should be given in any particular manner. Rule 3, Ch. I of the Rules made by the Local Government under cl. (2) of s. 189 is intended to apply only to those cases where

the Act speaks of the service of a notice and not merely the giving of a notice ; it may apply to cases where the Act speaks of the giving of notice, if such notice is required to be given in the prescribed manner: *Madhub Ram v. Dayal Chunder*, 25 Cal. 445, s.c., 2 C.W.N. 109. As to the mode of service of notice: see Appendix I.

4. Sub-sec. (2):—The object of sub-sec. (2) of s. 72 is to relieve the transferee landlord from the necessity of giving notice to such tenant individually: it does not say that such a notice shall be a necessary notice: *Nabin Chunder v. Surendra Nath*, 7 C.W.N. 454.

5. Apportionment of Rent:—Where the Plaintiffs who were joint landlords in suits separately instituted by them against the tenant, asked for apportionment of rent and for recovery of rent on such apportionment, and all the parties interested were made parties to the suits, *held* that the Plaintiffs were entitled to have the rent apportioned: *Rajnarain v. Ekadasi*, 27 Cal. 479, s.c., 4 C.W.N. 494; *Shyama Charan v. Jogeschandra*, 16 C.W.N. 774. Apportionment may take place in respect both the arrears and the future rent.—*Ibid.*

All co-sharers must be made parties.

In a suit for apportionment of rent, the Plaintiff must make all the co-sharers parties to the suit, otherwise the suit is badly framed and is liable to dismissal: *Iswar Chandra v. Ram Krishna*, 5 Cal. 902; *Abhoygovind v. Haricharan*, 8 Cal. 277; *Bindubashini v. Peary Mohan*, 20 Cal. 107.

Separate payment.

Separate payment of rent is not conclusive evidence of apportionment: *Anu Mandal v. Kamaluddin*, 1 C.L.R. 248.

As to apportionment of cesses: see *Harimohan v. Ashutosh*, 4 C.W.N. 776.

Liability for rent after transfer of occupancy-holding.

73. When an occupancy raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Headings of Notes.

1. APPLICATION OF THIS SECTION.
2. TRANSFERABILITY OF OCCUPANCY HOLDING.
3. RECOGNITION NOT COMPULSORY FOR PERFECTING TITLE.
4. TRANSFER OF PORTION OF HOLDING.
5. RECOGNITION BY LANDLORD.
6. WHAT DOES NOT AMOUNT TO RECOGNITION.
7. RIGHT OF TRANSFeree AGAINST TRANSFEROR.
8. SUIT FOR REGISTRATION OF NAME.
9. TRANSFER BY INVOLUNTARY SALE WHEN COMPLETE.
10. MODE OF SERVICE OF NOTICE.
11. WHERE TRANSFeree ACQUIRES THE RIGHT OF A TENANT BY ADVERSE POSSESSION.
12. EXTINCTION ON TRANSFER OF CHARGE OF HYPOTHECATED PROPERTY.

1. Application of this section :—This section applies only to occupancy holding which are transferable by custom or usage: *Jatindra v. Binode*, 52 I.C. 289.

2. Transferability of occupancy holding :—See notes under s. 23.

3. Recognition not compulsory for perfecting title :—There is no law rendering it obligatory on tenants who are not tenure-holders to get their names recorded in the landholder's *sherista* for the purpose of perfecting their title: *Ashok Bhuiyan v. Karim Bepari*, 9 C.W.N. 843.

4. Transfer of a portion of holding :—There is no authority for the proposition that the purchaser of only a portion of a holding gets no title: *Asokh Bhuiyan v. Karim Bepari*, 9 C.W.N. 843; the case of *Kuldip v. Gillenders*, 26 Cal. 615, is no authority for such a proposition that the purchaser of a portion acquires no title. *Ibid*.

In the case of a transfer of a portion of an occupancy holding such transfer not binding the landlord unless made with his consent, the transferee can by suit recover possession from the landlord who has forcibly dispossessed him: *Ambikacharan v. Ramcharan*, 18 C.W.N. 971, s.c., 19 C.L.J. 52 (F.B.). Suit by a transferee of a portion.

In the case of a transfer of a part of a holding from one of two joints tenants, the landlord has no right to recognise such transferee of the entire holding to the detriment of the interest of the transferee from the other joint tenant: *Sheikh Elahi v. Sheikh Hukum*, 19 C.L.J. 462. Landlord has no right to recognise transferee of a part as transferee of whole.

A landlord cannot interfere with the possession of the transferee of a part of a non-transferable occupancy holding and if he does so the transferee is entitled to recover possession from the landlord by suit; the right to recover possession arises, not by reason of any title in the holding as against the landlord, but from the tenant's undisputed right to transfer a part of his holding: *Gananath v. Harihar*, 48 I.C. 359; but the transferee of a part, until he is dispossessed is not entitled to a declaration that a tenant alleged by the landlord to be his tenant is not in fact his tenant and that a decree obtained by the landlord against his alleged tenant is fraudulent; *Ibid*. No transfer of a part of a non-transferable occupancy holding is valid against the landlord: *Ibid*. Transfer of part.

5. Recognition by landlord :—A landlord, if he accepts rent, assents to the transfer of the holding and it would make no difference in the application of this rule if the sale is a part of the holding: *Bharut Roy v. Gunga Narain*, 14 W.R. 211. Where the purchaser paid rent for a period of 18 years without the slightest objection on the part of the landlords, held, that this acted as a full and complete acknowledgment by the proprietor of the estate that he accepted the new tenant in the place of the old one: *Allendar v. Dwarkanath*, 15 W.R. 320. Where a landlord allowed the sums paid into the Collectorate by a third party to be carried to his credit, held that he had recognised the transfer from the tenant to the third party, although such transfer had not been registered: *Ram Gobind v. Dushoobhoojan*, 18 W.R. 195. A landlord by taking the plaintiff's purchased lands after the rent was deposited by him in the Collectorate was held to have virtually admitted the plaintiff's status as a purchaser from the former tenant and that he had attorned to him Acceptance of rent.
Rent deposited by landlord to be carried to his credit.

Withdrawal
of deposit,
effect of.

as his landlord: *Gudha Dhur v. Khetter Mohan*, 7 W.R. 460. As to the effect of withdrawal of a deposit by virtue of which a sale of a holding is set aside, see notes under s. 171; see in this connection *Gadadhar v. Midnapur Zemindary Co.*, 27 C.L.J. 385; *Matihari Concern v. Luchmi Prasad*, 42 I.C. 826; (same case also reported in 41 I.C. 885). A landlord who withdraws the amount deposited by the transferor of a nontransferable holding to set aside the sale under s. 310 of the Civil Procedure Code of 1882 (O. 21, r. 89 of the New Code) is not competent to urge that the transferee did not, by his purchase, acquire a title: *Gadadhar v. Midnapur Zemindar Co.*, 43 I.C. 742; (*Mookerjee and Beachcroft J.J.*). Where a landlord made a transferee a party to a rent suit and accepted a decree against him jointly with other persons, *held* that the landlord had recognised the transferee as a tenant: *Ram Kishore v. Krishno Monee*, 23 W.R. 106. Where in a rent receipt the name of the *Sabek praja* or old tenant was given and the name of the transferee was entered after the word "*dakhilkar*" *held* by their Lordships of the Judicial Committee (reversing the decision of the High Court) that it was quite a sufficient recognition of the transferee as tenant in as much as the *dakhila* described the rent paid as the rent of the holding and the person paying as occupier of the holding and as paying on her own account: *Nobo Kumari v. Bihari Lal*, 34 Cal. 902, s.c., 11 C.W.N. 865, s.c., 6 C.L.J. 122. See also *Thomas Barclay v. Syed Hossein*, 6 C.L.J. 201. But see *Digbijoy v. Sheikh Rahaman*, 17 C.W.N. 156.

Rent suit :
transferee
a party.

Dakhila.

"Marfat-
dar" in
rent
receipts.

The mere fact that in rent-receipts the word *Marfatdar* is used is not conclusive to shew that there was no recognition: each case must be decided on its own circumstances; *Prabhabati v. Taibabennessa*, 17 C.W.N. 1088.

Rent
"through
the mort-
gagee."

Receipt of rent stating that the said rent was received "through A, the mortgagee" of a raiyat of a non-transferable occupancy holding, *held* that this amount to a recognition of the transfer: *Baroda Charan v. Hemalata*, 10 C.L.J. 610.

Recognition
by some of
joint
landlords.

When some of several joint landlords have assented to a transfer of non-transferable holding or subsequently recognised the transferee they are not entitled to dispute the title of the purchaser or to eject him; the other co-sharers are entitled to eject the purchaser from their shares only and to recover joint possession but if they sue to eject him from the entire holding on the footing that he is a trespasser a decree for joint possession ought not to be made in their favour: *Hossein Mahomed v. Fakir Mahomed*, 10 C.L.J. 618.

A consent given by the *karta* of a joint Hindu family to a transfer of a non-transferable holding is binding on the other members: *Golapdi v. Purnachandra*, 27 C.L.J. 129; this case was from the Faridpur district and it seems therefore that the family was a Dayabhaga family.

Landlord
taking out
money depo-
sited by ten-
ant stating
that he
procured
the money
by sale of
the holding.

6. What does not amount to recognition :—Where a non-transferable holding was advertised for sale in execution of a decree for arrears of rent and the judgment-debtor put in the money due under the decree stating that he had procured the money due by selling his holding to another person and the landlord took out the money out of Court, *held* that it could not be inferred from the above circumstances that the landlord had given his consent to the transfer, inasmuch as the landlord had a right to draw the money out of

Court without regard to the manner in which or the source from which the judgment-debtor had procured it: *Robert Wilson v. Radha Dulari*, 2 C.W.N. 63. When a party wishes to make known to the zemindar that he has a right to a holding the rent of which the landlord refuses to take from him, he should distinctly state what is the interest he claims, and the notice to the zemindar should comprise this information; it is not sufficient for a man wishing to protect his special interest of which zemindar may have no knowledge to make a deposit of the rent in the name of the recorded tenant along with his own, without stating what his claim is: for unless he does so, the landlord is not obliged to enquire as to his status: *Mirtunjoy v. Gopal Chunder*, 10 W.R. 466. A receipt given by a gomastha does not bind the landlord: *Bhojoharee v. Aka Gôlam*, 16 W.R. 97; see also *Wyatt v. Sheogobind*, 1 Pat. L.J. 414.

Deposit of rent by transferee in the name of the recorded tenant and his own.

Receipt by Gomastha.

In the absence of evidence to the contrary, the ordinary presumption is that the gomastha performs his duty and duly delivers the rent (he collects) to his employer, and it was held under the circumstances of the case that there was recognition of the transferee as a tenant: *Jahurmul v. Keramutulla*, 45 I.C. 196, (Richardson and Beachcroft J.J.).

Gomasta—ordinary presumption.

"In my opinion it is not within the scope of the authority of a Rent-Collector to consent on behalf of his master to the transfer of an occupancy holding. That is an important act to be performed only by a person having some at least of the powers of a Manager. I cannot accept the suggestion which has been made that it lay on the landlord in this case to prove that the *patwari* had not authority to consent to the transfer. Landlords would be in a very difficult position if it were held that *patwaris* and other underlings should be presumed till the contrary is shewn to have the power to sign away their masters' rights." *A. W. N. Wyatt v. Seogobind*, 1 Pat. L.J. 414 at pp. 418, 419 (Per Chamier C. J.).

Rent-receipt by Patwari or rent-collector when not binding on landlord.

Where a person set up a tenancy by virtue of an *amalnama* from a *gomostha* and proved rent receipt received from the latter on payment of rent, held that independently of the question whether, a *gomostha* had authority to grant an *amalnama* or settle a holding, the receipt of rent by him on behalf of his employer from the person in occupation of a holding is sufficient to prove the tenancy of the latter. *Jahurmal v. Keramutullah*, 45 I.C. 196, (Richardson and Beachcroft, J.J.). In the absence of evidence to the contrary, the ordinary presumption would be that the gomastha of a landlord performed his duty and duly delivered the rent collected by him to the landlord: *Ibid*; the case of *Sudaman v. Behari Mahton*, 15 C.W.N. 953 was referred to.

Amalnama from a Gomostha.

Presumption: rent receipt by Gomostha.

In the absence of any evidence that a *gomostha* was actually or ostensibly vested with wider authority, the presumption would be that the granting of receipts by him would not be binding upon the landlord as a recognition of a transfer: *Janki Sahu v. Ram Bahadur*, 1 Pat. L.W. 658, s.c., 2 Pat. L.J. 231 (Chapman and Roe J.J.).

* "The position and duties of a *patwari* are well-known. He is a poorly paid underling employed only to collect rents due to his master and to grant receipts for the same. His implied authority would extend to all subordinate acts which are necessary or incidental to his express authority." (Per Chamier, C. J., in *Wyatt v. Seogobind*, 1 Pat. L.J. 414 at p. 418.)

Recognition. The mere fact of rent having been received from a certain person does not amount to a recognition of that person as a tenant ; when the old tenant's name occurred in the rent-receipts under the heading "tenant's name" and the name of purchaser from the tenant occurred under a different heading "*Sarbarakar*," held that the landlords by these receipts did not mean to recognise the purchaser as a tenant : *Rosomoy v. Srinath*, 7 C.W.N. 132. But see *Nabokumari v. Behari Lal*, 34 Cal. 902, s.c., 11 C.W.N. 865 : s.c., 6 C.L.J. 122, cited in the previous paragraph. Where the *dakhilas* shewed that N was the raiyat mentioned and R's name was merely mentioned *murful-waree*, held that the payments of rent by R would not confer upon her any title to the property : *Khoduram v. Rookhinee*, 15 W.R. 197. By mere receipt of rent on the part of the zemindar it cannot be said that the landlord sanctions the transfer so as to give him a right of occupancy for it might have been a temporary arrangement between the purchaser and the old tenant : *Gour Lal v. Rameswar*, 6 B.L.R. App. 92. See also *Digbejoy v. Shaikh Ata Rahaman*, 17 C.W.N. 156.

Receipt from an agent The receipt by the landlord of rent from the transferee of a holding, not in his own account but as an agent of the transferor is not a recognition of the transfer. *Debnarayan v. Baidyanath*, 14 C.W.N. 68 : Their Lordships (Chitty and Vincent J.J.) in deciding this case distinguished the Privy Council case of *Naboo Kumari v. Behari Lal*, 34 Cal. 902, s.c., 11 C.W.N. 865 on the ground that in the case of *Naboo Kumari* rent had been received from the transferee on his own account and with a statement that he was in possession.

Rent from an agent. Relying upon the cases of *Khoduram Chatterjee v. Rukhinee Boistobee*, 15 W.R. 197, *Gour Lal v. Rameswar*, 6 B.L.R. App. 92, *Wilson v. Radhadulari*, 2 C.W.N. 63 and *Rasomay Purkait v. Sreenath Moyra*, it was held in the case of *Digbijoy v. Shaikh Ata Rahman*, 17 C.W.N. 156, that the acceptance of rent from the transferee of a non-transferable occupancy holding not as a transferee but as the agent or representative of the original tenant does not amount to a recognition of the validity of the transfer : Their Lordships (Mookerjee and Curnduff J.J.) in deciding the case were of opinion that the view they took was not opposed to the decision of *Baroda Charan Dutta v. Hemlata Dasi*, 13 C.W.N. 833 ; *Thomas Barclay v. Hossein Ali Khan*, 6 C.L.J. 601 ; *Nabakumari v. Behari Lal*, 34 Cal. 902.

Marfatdar and gujrat-dar in rent-receipts do not of themselves prove recognition. The words '*marfatdar*' and '*gujratdar*' in rent receipts do not of themselves prove recognition of tenancy. Each case depends upon its own circumstances, and the Court should determine in each case whether or not, on a consideration of all the facts,—not merely by giving undue weight towards words used—a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who had paid and another who has received rent for a number of years ; *Provabati v. Taibatunnisa*, 19 C.L.J. 62.

Rent receipt : marfat : the name of purchaser as baidar. Where rent receipts are granted in the name of the old tenant *marfat* the name of the purchaser describing the latter as *baidar*, or in the name of the old tenant *benam* the name of the purchaser describing the latter as *baidar*, held that the rent-receipts do not show that there was recognition of the purchaser as the tenant. *Wyatt v. Seogobind* ; 1 Pat. L.J. 414.

It can not be laid down as an inflexible rule of law that a landlord is not bound by the act of a *gomastha* in recognising a transferee of an occupancy holding; the question of the *gomostha's* power to bind his landlord is one which must be decided on the particular facts of each case; *Suduman Jamadar v. Behari Mahton*, 15 C.W.N. 953, the burden of proof in the first instance is upon the landlord to prove the extent of the authority of the *gomostha* for a matter peculiarly within his knowledge; where therefore a *gomostha* accepted rent from the transferee of a holding and the landlord failed to show that the *gomostha* acted beyond the scope of his authority, held that there was sufficient recognition of the transferee by the landlord: *Ibid.*

Act of
Gomastha
how far
binding.

Plaintiffs as assignees of a lease brought a suit to have it declared that the lease was a permanent, heritable and transferable one and also that the rent was fixed in perpetuity and that the landlord defendant was bound to recognise the plaintiff as tenant, held that the court has power to pass a declaratory decree: *Monmohan Ghose v. Equitable Coal Co.*, 18 C.W.N. 596; sec. 42 of the Specific Relief Act has introduced a considerable change in the law on this point; *Ibid.* See notes under s. 23.

Suit by
tenant to
compel
landlord to
recognise
the former

7. Right of transfer against transferor:—Where a tenant transferred his jote and agreed to pay the rent up to the date of sale, held that the transferee was entitled to get from the transferor the amount when as a matter of fact the landlord had obtained against the transferor for rent for a period before and after the transfer and in execution a portion of the property had been sold: *Syed Kutub Ali v. Azibulla Mondol*, 7 C.W.N. 905.

8. Suit for registration of name:—When occupancy rights, transferable by custom, have been transferred it is open to the transferees to sue under the Specific Relief Act to have it declared that they have acquired certain rights; but if it is the object of such to have it declared that the old tenant is no longer responsible for the rent, such a declaration cannot be obtained without the service of the notice prescribed by this section: *Ambika v. Chowdhury Keshri*, 24 Cal. 642.

Right of
suit by
transferee.

9. Transfer by involuntary sale, when complete:—S. 65 of the present Civil Procedure Code (Act V of 1908) provides that when a property is sold in execution "the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute." It was held under the old Code that when a property is sold in execution of a decree, the purchaser's title becomes complete upon his payment of the purchase money and confirmation of such by the Court: *Naigor v. Bhaskar*, 10 Bom. 144. The title of an auction purchaser at a sale for arrears of revenue accrues from the date on which the sale is confirmed: *Babu Dheput Sing v. Mothuranath*, W.R. 1864, p. 278. The sale of a jote in execution of a decree for rent obtained against the recorded tenants does not pass the interests of the tenants whose names are not registered in the landlord's *sherista*: *Ashok Bhuiyan v. Karim Bepari*, 9 C.W.N. 843.

10. Mode of service of notice:—see Appendix

11. Where transferee acquires the right of a tenant by adverse possession:—Where a transferee of a non-transferable tenant loses

Where
tenant loses

his interest on account of adverse possession by another.

Extinction of charge on hypothecated property.

Illegal cesses, etc. *Abwab*, etc., illegal.

occupancy holding acquires by adverse possession the right of a tenant against the landlord, the latter cannot hold his former tenant liable for rent: *Jatindra Nath v. Binode Behari*, 52 I.C. 289, (Beachcroft and Walmsley J.J.)

12. Extinction on transfer of charge of hypothecated property :—Where a certain property hypothecated as security for rent of a tenure, held that on a transfer of the tenure, the mortgage or charge of the property hypothecated is extinguished: *Bejoy Chand Mohatab v. Sarat Chandra Adya*, 29 C.L.J. 476.

Bengal and East Bengal.

Bihar.

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

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

(2) All impositions upon tenants of road cess or public works cess, or of both;—

(a) in excess of the net amount prescribed by clause (2) of section 41 of the Cess Act, 1880, or

(b) on any scale in excess of that prescribed by clause (3) of that section.

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void :

Ben. Act IX of 1880.

* See Regulation VIII of 1793, s. 55; Reg. V of 1812, s. 3; Reg. VII of 1822 s. 9, Cl. 1; Act VIII of 1886, B. C., s. 12, Act X of 1859, s. II; see also judgment of Ghose, J., 17 Cal., pp. 762 to 768.

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919 :

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area.

IX of 1872.

Headings of Notes.

1. ALTERATIONS AND ADDITIONS.
2. STIPULATIONS AND RESERVATIONS RELATE TO BOTH PAST AND FUTURE STIPULATIONS.
3. WHAT IS AN ABWAB.
4. WHAT IS NOT AN ABWAB.
5. PERSONAL COVENANT.
6. ABWAB NOT LEGALLY RECOVERABLE BY REASON OF ITS BEING PAID PREVIOUSLY.
7. RESJUDICATA.
8. SUIT AGAINST TESHILDAR FOR ABWABS COLLECTED BY HIM.
9. WHEN ABWAB RECOVERABLE.
10. ABWAB PAYABLE AT THE TIME OF THE PERMANENT SETTLEMENT.
11. ENHANCEMENT OF RENT—ILLEGAL CESS.
12. CONTRACT TO PAY WHOLE OF CESS PAYABLE BY LANDLORD.

I. Alterations and Additions :—By the Bengal Tenancy (Amendment) Act, (III of 1919) the following additions and alterations have been made :

(a) The original section as it stood has been renumbered as sub-section (1) of s. 74.

(b) clauses (2) and (3) have been added.

2. Stipulations and reservations relate to both past and future stipulations :—“All impositions upon tenants under the denomination of *abwab*,” etc., and “all stipulations and reservations for the payment of such” referred to in this section relate to both past and future stipulations ; each stipulations made before the passing of the Bengal Tenancy Act are therefore void : *Jotindra Mohon v. Chandra Nath*, 6 C.W.N. 360.

Stipulation to pay embankment cess, costs of acquittance, *dasahra* and *chaitnawami farmaish*, *tika*, *bheti*, *guru bheti*, *batchhapi jangla-isim-navisi*, *katiari*, *dewani dastur* and *mahal uprohati* in a lease along with rent (*malguzari*) and road cess is void under s. 74 of the B. T. Act although all these were totalled up into an annual jama : *W. W. Broucke v. Chhatar Kumari*, 4 Pat. 404, s.c., [1925 Pat.] p. 89 (Dawson Miller C. J. and Foster J.).

On appeal to P.C., this decision was reversed and their Lordships of the Judicial Committee held that the said items were not *abwabs* : *Chattrā Kumari v. W. W. Broucke*, 54 I.A. 432, s.c., 32 C.W.N. 260, s.c., 47 C.L.J. 90 (P.C.) (Per Lord Sinha). The description “*malguzari*” is not to be regarded as equivalent to the “actual rent” which by sec. 74 of the B. T. Act, 1885 alone was recoverable, and that section does not preclude the recovery of any part of the sum specified as the consolidated jama—*Ibid*.

Sec. 74 of the B. T. Act has a long history behind it from 1791 to 1885, and the object of the whole series of enactments from the Regulations of 1791 to Act VIII of 1885 was to prevent exactions from tenants beyond the rent specified in their patta, when there was one, and if there was no written engagement, beyond what was the rent actually payable whether by verbal agreement or by virtue of custom.

It has to be ascertained in each particular case whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease.—*Ibid*.

The words “actual rent” in sec. 74 cannot be taken to mean either a fair and equitable rent or rent at customary or *pergana* rates. Long use or custom cannot validate *abwabs* as an addition to the rent—*Ibid*.

3. What is an *abwab* :—No imposition under any name whatever shall be recovered from the tenant for or in respect of the occupation of tenure of the land beyond the sum which has been fixed for rent, whether that sum has been fixed by agreement or by judicial determination between the landlord and the tenant...*Radha Prosad v. Bal Kowar*, 17 Cal. 726 (F.B.) According to the decision in the case of *Upendra Lal v. Meheraj Bibi*, 21 C.W.N. 108 the question whether in a case where there is a written engagement, a specified sum which is neither indefinite nor arbitrary and which is agreed upon to be paid as part of the rent in the lease creating the tenancy can be recovered, was not referred to the Full Bench in the case of *Radha Prosad v. Balkowar*, 17 Cal. 726. The question whether any particular item is or is not an *abwab* must depend upon the construction of the contract of lease in each case, and the

“*Mal-guzari*,”
meaning of

“Actual
rent”
meaning
of.

Sum beyond
what has
been fixed
as rent.

question in each case is whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease: *Upendra Lal v. Meheraj Bibi*, 21 C.W.N. 108. See also *Bejoy Singh v. Krishna Behari*, 45 Cal. 259, s.c., 21 C.W.N. 959, see also *Rudreshwari Prosad v. Dhana Mahto*, 52 I.C. 119 (Patna case): Where, in a kabuliyat executed by a dar-putnidar in favour of a putnidar a sum of four rupees was agreed to be paid in lieu of certain quantities of jack fruit, bamboos and fish, which the defendant was to present annually to the plaintiff, and it was stipulated for in a perfectly distinct claim from that in which the payment of the rent was contracted for and further, while the rent was payable quarterly, the produce or its money value equivalent was to be given or paid in due instalment, *held*, that the sum of Rs. 4 was an abwab: *Krishna Chunder v. Susila*, 3 C.W.N. 608. All cesses are illegal when they are not specifically included in the contract under which a tenant pays rent: *Dhalle v. Anund*, 5 W.R., Act X, P. 86. Where a landlord claimed to recover a cess of so much *goor* on every maund manufactured, *held*, that as no agreement was entered into between the parties for this extra payment, the claim was an illegal cess. *Sonnum Sookool*, 7 W.R. 453. A *purobi* (festival cess) is an arbitrary and indefinite cess and is not recoverable: *Kamola Kant v. Kanoo Mohomed*, 11 W.R. 395, but see *Jugodish v. Turikoolah*, 24 W.R. 90. *Puja Kharchi*, i.e., expenses for Puja agreed to be paid in excess of rents is an abwab: *Narendra Kumar v. Gora Chand*, 3 C.L.J. 391: s.c., 33 Cal. 683. A contract to provide for the collection and payments of an illegal cess is illegal: *Kamola Kant v. Kano Mohomed*, 11 W.R. 395. A put-waree's wages and allowance are in the nature of illegal cesses: *Mengur v. Huree Mohun*, 23 W.R. 477: see also *Burmah Chowdry v. Sreenund*, 12 W.R. 29. A sum of money realised from a tenant as *bhiksha* is an abwab: *Nabin v. Gooroo*, 25 W.R. 8. A sum collected by a teshildar as *purvibhiksha* or present for an *annoprasan* ceremony was held to be an abwab: *Nobin v. Gooroo*, 14 W.R. 447. A landlord is not entitled to sue for a declaration of his right to levy a cess upon a tenant who grazes his cattle upon the land comprised in his own tenure, within the precincts of his landlord's mehal, there being no contract between them whereby the tenant was bound to pay such a cess: *Bhugeeruth v. Ram Narain*, 9 W.R. 299 (at p. 300). An agreement to give a certain number of cocoanuts as *bhet* and to perform *beggar* services without remuneration is an abwab: *Aparna Charan v. Karamali*, 10 C.W.N. 527: s.c., 4 C.L.J. 527. *Batta usual* is an abwab; *Radha Mohun v. Ganga Prasad*, 7 Mac. Sel. R. 166; *Chakan Saha v. Rupchand*, S.D.A. 680; *Chuttan Mahto v. Tilakdhari*, 11 Cal. 175; *Radha Prasad v. Balkowar*, 17 Cal. 726; *Mir Tapura v. Gopinarayan*, 7 C.L.J. 251.

Dastur, *Hazzatenama* and *Sonari* are abwabs: *Chuttan Mahto v. Tilakdhari*, 11 Cal. 175; *Mir Tapurah v. Gopinarayan*, 7 C.L.J. 251; *Chanda* is an abwab: *Millis v. Megnath Thakur*, S.D.A. 4; *Mir Tapura v. Gopi Narayan*, 7 C.L.J. 251. *Selami* and *percentage* being arbitrary and indefinite demands are abwabs; *Mir Tapuar v. Gopinarayan*, 7 C.L.J. 251.

As to whether *batta* is abwab, see notes in the preceding paragraph.

Sum agreed to be paid in lieu of fruit, bamboos and fish.

Cess not included in the contract.

Goor.

Purabi.

Puja-kharachi.

Contract to pay illegal cess.

Putwaree's wages.

Bhiksha.

Purvibhiksha.

Cess for grazing cattle.

Bhet.

Beggar.

Dastur &c.

Batta.

Mokarari lease before the Bengal Tenancy Act, — *selami, holi &c.*, charges.

In a *mokurari* lease, executed before the Bengal Tenancy Act came into operation, there was an agreement to pay a certain sum as rent and a certain additional sum as *zemindari selami, holi &c.*, expenses which latter was found to be arbitrary and extra charges imposed on the tenants on account of work done in the *zemindari sherestha* and for other purpose ; *held* following the case of *Radha Prasad v. Bal Kowar*, 17 Cal. 726 that the additional sum was an illegal cess : *Bepin Behary v. Prokash Chandra*, 13 C.L.J. 148.

True test.— Interpretation of contract.

Whether an amount claimed by the landlord is or is not an illegal cess depends upon the construction of the contract of the parties. If upon a fair interpretation of the terms of the contract, the sum claimed can be deemed part of the actual rent, the tenant is bound by it ; if, on the other hand, the sum claimed can only be regarded as an imposition in addition to the actual rent, the stipulation for its payment is void : *Mathura Prasad v. Tata Singh*, 16 C.L.J. 296 ; s.c., 40 Cal. 806 ; where throughout the lease, the yearly rent was described as Rs. 252-6 ans, assessed at the rate of Rs. 3-4 ans., a bigha, upon the area demised, and at the end of the lease, in a clause entirely distinct, provision was made for delivery of four cart-loads of huck, valued at Rs. 5 per cart load and this additional sum of Rs. 20 was not expressly or by implication, made part of the rent, *held*, that the claim for the value of the huck was in the nature of an *abwab* : *Ibid.* This case was followed in the case of *Kalar Singh v. Mathura Prasad*, 19 C.L.J. 402.

Price of presents and unpaid labour.

Where the *jama* in a lease was mentioned as Rs. 360 and then there was an additional item under the heading of "price of presents and unpaid labour" amounting to Rs. 17-4 ans., and these two sums as amounting to Rs. 377-4 ans. was put under the heading of "Total rent," and in regard to the sum of Rs. 17-4 ans. the *kabuliyat* provided : "Besides I shall, every year at the time of the *Saradiya* (Durga) Puja, give four castrated goats as presents and shall supply you labour without wages for five days, which if I fail to do I shall have no objection to your realising the sum of Rs. 17-4 ans. as price of the said presents and labour in addition to the amount of rent," *held*, that the sum of Rs. 17-4 ans. was an *abwab* : *Sreekanta v. Irshad*, 16 C.L.J. 225, approved of in *Mathura Prasad v. Totasingh*, 40 Cal. 806, s.c., 16 C.L.J. 296.

Price of goats.

A stipulation in a *kabuliyat* to deliver two goats or to pay Rs. 4 as price thereof in addition to the rent stipulated to be paid in a previous paragraph of the lease was considered to be an *abwab* : *Gayratulla v. Girish Chandra*, 12 C.W.N. 175. See notes under heading No. 4.

Collection charge.

4. What is not an *abwab* :—As to whether collection charges are *abwabs*, each depends upon its own particular circumstances and the contract is to be looked at to see whether the payment which the tenant agreed to make is in reality part of the rent as opposed to what is known as an *abwab* : *Radha Charan v. Golok Chandra*, 31 Cal. 834, s.c., 8 C.W.N. 529 : Collection charges agreed to be paid by a tenant are not *abwabs* and may be recovered if they are certain and definite in their nature and form part of the consideration for the lease : *Mohomed Fayez v. Jamoo*, 8 Cal. 730. See also *Radha Charan v. Golak Chandra*, 31 Cal. 834. Where in a *putni kabuliyat* there was the following clause :—"According to the practice prevailing in the *pargana*, we shall

annually pay the collection charges at the rate of 2 annas per rupee along with the instalments of the annual rent," Garth, C. J., in delivering judgment said as follows:—We believe that agreements of this kind are by no means unusual, and if they are certain and definite in their nature, and form part of the consideration for the lease, there is no reason why they should not be enforced: *Ibid.* *Purabee.* A *purabee* which is part of the consideration for which the agreement was entered into is legally enforceable: *Juggodish v. Turikoolah*, 24 W.R. 90, but see *Kumala Kant v. Kanoo Mohomed*, 11 W.R. 395. "Abwabs," as I understand them, "are cesses which a raiyat is compelled to pay to the Zemindar in excess of his rent. If the Zemindar demands a cess over and above the original rent, and the raiyat consents and contracts to pay it, then this demand and the old rent form a new rent lawfully claimable under the contract:" (*Per Ainslie J.*) *Jeatoolah v. Jugodindra*, 22 W.R. 12; See also *Dhallee v. Anund*, 5 W.R., Act X, 86. If a tenant for the purpose of preventing disputes with his landlord and for securing his own interest thinks fit, agree to make a definite payment to his landlord in addition to his *asal jumma*, the law rather favours such arrangement and the same is enforceable at law: *Serajgunge Jute Company v. Torabdee Akoond*, 25 W.R. 252; certain payments which were fixed and uniform and had been paid ever since the occupation of the land, held that the sums were not illegal cesses: *Budhna Oraiban v. Jemadar Baboo*, 24 W.R. 4. *Money agreed to be paid by tenant. Cess incorporated with rent.*

What is or is not an abwab must depend upon the circumstances of each particular case in which the question arises: *Pudmanund v. Baijnath*, 15 Cal. 828: where certain sums were claimed as *tewhari* and *salami* held that the same was recoverable and not *abwabs* inasmuch as they were specific sums which the tenants had agreed to pay to the landlord and the payment of these items, no less than the payment of the *jumma* itself, formed part of the consideration upon which the tenancy was created: *Ibid.* But this case has been overruled by the case of *Radha Prasad v. Bal Kowar*, 17 Cal. 726 (at p. 740). See also *Tiluckdari Singh v. Chulan Mahton*, 16 I.A. 152, s. c. 17 Cal. 131. Where the payment of the chowkidari tax was one of the terms of a *putni* settlement and was made for valuable consideration, held that the same was recoverable and not an abwab: *Assanullah Khan v. Tirthabashini*, 22 Cal. 683. *Uniform payments since the occupation of land by the tenant.*

A claim for *company's batta* is not necessarily a claim for an abwab: if the rent was fixed in *sicca* rupees and *batta* is claimed so as to make the demand equivalent in current coin the demand is not illegal: *Ram Saran v. Gyan Sing*, 6 C.L.J. 637. As to where *batta* is an abwab and where not, see also *Rameshwar v. Gobardhan*, 7 C.L.J. 202; *Ram Khelwan v. Kumar Rai*, 6 C.L.J. 667; *Chucken Sahoo v. Rup Chand*, S., D.A., 680; *batta* is not an Abwab if it is merely an allowance for the exchange of *sicca* rupees into company's rupees, the latter of which was introduced by Act XVII of 1835 and the former ceased to be legal tender by Act XIII of 1836: if the rent claimed in a suit was fixed before 1836, *batta* is *prima facie* not an abwab, if not, it is *prima facie* an abwab: *Ibid.* *Company's batta.*

Where a non-transferable occupancy holding was sold and the landlord recognised the transferee as a tenant without any payment of *selami* on consideration of the transferee agreeing to pay an increase of the rent, held that the increase of rent stipulated was not an *Additional sum agreed to be held over and*

above rent in consideration of landlord recognising transferee of a non-transferable holding. Claim for rent higher than stated in the record of rights. Test.

abwab: *Sarat Chandra v. Shyam Chand Sinha Ray*, 39 Cal. 663; s. c., 16 C.L.J. 71.

In a record of rights the rent payable by a tenant was stated to be one half the produce; in a suit for rent the landlord claimed more than that and both parties agreed to a decree at the rate claimed which was being paid for a long time, *held* that the decree did not contravene the provisions of s. 70 and that the excess claimed was not an *abwab*: *Fazl Imam v. Sukor Mahtun*, 19 C.L.J. 333.

Selami and *tehwari*.

If a particular sum specified in the lease or a suit to be paid is the lawful consideration for the use and occupation of the land that is to say, if it is really part of the rent, although not described as such, the landlord would be entitled to recover the same and the whole question in the case is whether the items claimed are really part of the rent, which was the consideration for the letting out of the land: *Kalanund Singh v. Eastern Mortgage Agency Co. Ltd.*, 18 C.L.J. 83. Where it was stipulated in a lease in the year 1874 that the tenant would pay a fixed *jamma* of Rs. 4,310 of which the sum of Rs. 4,300 was described as *jama*, Rs. 5 as *selami towji* and Rs. 5 as *tehwari dasahra*, *held*, that the stipulation for the payment of *selami* and *tehwari* was not a stipulation or reservation for the payment of arbitrary or indefinite cesses but in the language of s. 3 of Reg. V. of 1812 was "a definite clause in the engagement contracted between the parties" which should be maintained and given effect to: *Ibid*.

Peshkosh

Peshkosh, a fixed annual sum, paid as a contribution towards the expense incurred in repairing embankment was held to be not an *abwab*: *Lakhmi Narain v. Secretary of State*: 28 C.L.J. 285, s. c. 45 Cal. 866 (Richardson and Beachcroft, J.J.); the unreported case of *Sumbhoo Lall v. Collector of Surat* (second appeal no. 44 of 1912 decided on the 30th July 1915 by Jenkins C. J. and Holmwood J.) was referred to and relied on.

Costs for improvement and *Bhet* expenses, included in rent, when not an *abwab*.

Where in a *kabuliyat* rent was fixed at a certain rate per *Kani* of land and a further sum was mentioned as payable on account of improvement of *Dak* and *Bhet* expenses and the whole sum was put down as rent total, *held* that the sum mentioned for *Dak* and *Bhet* expenses formed part of the rent payable for the land, and did not constitute an *abwab* within the meaning of s. 74 of the Bengal Tenancy Act: *Nalini Bhusan v. Ali Mia*, 51 Cal. 643. (Suhrawardy and Page J.J.).

Bhet.

Where the sum of Rs. 14 was mentioned as rent, Rs. 2 and odd as cess, and a stipulation for delivery of *bhet* (present) on Saradiya Puja day of a goat and forty pieces of sugarcane, (the value of these two items being Rs. 3 and odd, and in the *Kistibandi* of the patta the whole sum of Rs. 19 and odd made up of the various items detailed above were treated as the total rent and was payable in different instalments, *held* that the whole sum of Rs. 19 odd was rent, no part of it was an *abwab*: *Barada Charan v. Alljan*, 25 C.W.N. 72 (notes).

Goats.

Where the intention of the parties as stated in the *kabuliyat*, was that the total rental of a *jote* would be Rs. 106-1-6 made up of Rs. 97-8 annas in cash, two he-goats (deliverable at the time of the Dussera Puja) or their price Rs. 2-8 annas and Rs. 6-1-6 as cesses; *held* that the annual rental was Rs. 100 and cesses Rs. 6-1-6 as mentioned in the *kabuliyat*. There is nothing in the law prohibiting a stipulation that two he-goats are to be delivered as part of the consideration for the

use and occupation of the land: *Jogesh Chandra v. Sharfuddin*, 54 Cal. 799, s.c., 32 C.W.N. 81, s.c., 46 C.L.J. 298. (Mukerji and Cammiade, JJ.).

Real abwabs are payments or deliveries, sometimes fixed and customary and sometimes arbitrary and uncertain, which were *not agreed upon between the parties as consideration* for the use and occupation of the land. *Ibid.*

In each case it has to be determined whether or not the item called in question as an abwab is covered by the definition of the term rent as given in section 3 sub-section (5), Bengal Tenancy Act. To put it in other words, it must be found that that item is part of the consideration agreed to be paid or delivered by the tenant for the use and occupation of the land, provided that such consideration is lawful. The consideration may be wholly monetary or wholly one in kind or it may be partly in money and partly in kind. The Statute does not restrict consideration in kind to grain or other produce of the soil. He-goats may form part of the consideration. The payments in money or the deliveries in kind at which the law strikes are such as are not payable or deliverable under the terms of the contract between the landlord and the tenant. *Ibid.*

see notes under heading No. 3.

A *kattihari* charge in respect of looms worked by tenant in his *Kattihari* house is not an abwab: *Bhagwati v. Mahabub*, 37 I.C. 813, (Per charge. Jwala Prasad J.).

5. Personal covenant:—Where a *durpulni* lease stipulated the Personal payment of Rs. 1,009 as rent and Rs. 10 annually in the event of covenant. default in supplying the landlord with a certain quantity of molasses, held that the sum of Rs. 10 was not a part of the rent but it was a mere personal covenant by the lease: *Rajnarain v. Panna Chand*, 7 C.W.N. 203.

6. Abwab not legally recoverable by reason of its being paid previously:—An abwab is not legally recoverable even when it is proved that by the custom of the estate of which the lands form part, it has been paid by the tenant and his ancestors for a good many years: *Chutton Mahton v. Tilukdhari Singh*, 11 Cal. 175 (F.B.); see also *Radha Mohun v. Gunga Pershad*, 7 Sel. Rep. 142 (o. e.), 166. A mere payment of rent including an illegal cess for three years does not justify a landlord to recover it: *Dhalle v. Anund*, 5 W.R., Act X, p. 86. "It does not follow that, because the defendant had been adjudged to pay particular cess or other demand in a particular year, he should therefore be compelled to pay it for ever." Per Jackson, J., *Orjoon Sahoo v. Anund Singh*, 10 W.R. 257. If any portion of the sum claimed from the tenant is an illegal cess which has never been consolidated with the rent, it is not recoverable even if it has been decreed at any previous stage by a judicial decision: *Radha Prosad v. Balkowar*, 17 Cal. 726. The mere fact that in a previous rent-suit the tenant did not raise the plea that an item claimed was an abwab would not, in the absence of a judicial determination of the point in the previous suit, preclude him from raising the plea in the subsequent suit: *Woomesh v. Baroda*, 28 Cal. 17. Abwab not recoverable even if recovered before;

7. Resjudicata:—Where in a suit for rent the defendant did not raise any plea to an illegal cess which was allowed to the plaintiff, held in a subsequent suit that the tenant was not precluded from raising the plea: *Woomesh Chandra v. Baroda Das*, 28 Cal. 17, the Erroneous decision of law.

principle in the case of *Koilas Mondal v. Boroda Das*, 24 Cal. 711, and *Radha Prosad v. Balkeri*, 17 Cal. 726, was followed in this case. But where in a previous suit certain cesses claimed by the plaintiff were disallowed as not recoverable under law, held in a second suit that the former decision operated as *resudicata*: *Padmananda Singh v. Radha Singh*, 9 C.W.N. 469. The view of law taken in this case seems to be opposed to the principle in the case of *Alimunnisa v. Shyama Charan*, 32 Cal. 749, s. c., 9 C.W.N. 466 s. c., 1 C.L.J. 176, where although it was a case of interest the same principle was involved. An erroneous decision upon a question of law is *resjudicata* in a subsequent suit: *Waman v. Hari*, 31 Bom. 28, see notes under heading *Resjudicata*, in. s. 67.

Suit by
landlord
against
gomastha.

8. Suit against a teshildar for abwabs collected by him :— If the tenants make any payments to the teshildar in excess of the rents due from them and those payments are made voluntarily, then the teshildar, having received them for the landlord, is clearly bound to account, for them ; but if the teshildar collects illegal cesses from the tenant, the landlord is not entitled to recover them from him ; *Nobin v. Gooroo*, 25 W.R. 8. This case was decided under Act X of 1859 and it has been dissented from in the case of *Nagendra Bala v. Gurudoyal*, 30 Cal. 101 s. c., 7 C.W.N. 535, where it has been laid down that a landlord's agent is liable to pay to the landlord any sums collected by the agent from the tenants as *khurcha* or illegal cesses and a suit by a landlord for recovery of such sums against his agent is maintainable.

Does s. 179
control s.
74 ?

9. When abwabs recoverable :—S. 179 provides that "Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent *makurari* lease on any terms agreed on between him and his tenant." It has been held therefore that s. 179 is not controlled by this section, consequently the provisions of this section do not prevent the holder of a permanent tenure from granting a permanent *mokurari* lease "on any terms" he pleases, that is, even stipulating for the payment of an *abwab*: *Khrishna Chunder v. Susila*, 3 C.W.N. 608 ; see also *Gayratulla v. Girish Chandra*, 12 C.W.N. 175. It is submitted with great respect that these decisions do not lay down a sound proposition of law, for s. 179, when it says that a *mokurari* lease can be granted on *any terms*, it does not mean any *illegal* terms but only such terms which otherwise legal but not sanctioned by any provision of the Bengal Tenancy Act. The imposition of an *abwab*, that is, an illegal cess is not lawful apart from s. 74. A landlord is entitled to get *rent merely* from a tenant ; when there is relationship of landlord and tenant, the liability of the tenant is to pay "rent" on account of his occupation of land, and therefore any sum which is agreed to be paid over and above rent is not recoverable ; "rent" is a charge on the tenure (s. 65) ; if any sum is levied over and above "rent" even if such stipulation is lawful, it cannot be recovered as rent under the Bengal Tenancy Act. But *abwabs* are not recoverable from a permanent tenure-holder under a lease created before the Bengal Tenancy Act and the provision in s. 179 will not apply: *Apurna Charan v. Kasamali*, 10 C.W.N. 527 : s. c., 4 C.L.J. 527. The landlord cannot now recover an *abwab* which he could not recover before the passing of the Act. *Ibid.* See notes under s. 179.

10. Abwab payable at the time of the Permanent Settlement :—An *abwab* payable at the time of the Permanent Settlement

unless consolidated with the rent under s. 54 of Reg. VIII of 1793, cannot be recovered under s. 61 of that Regulation: *Tiluckdhari v. Chulhan*, 16 I.A. 152: s. c., 17 Cal. 131.

II. Enhancement of rent—Illegal cess:—In a suit for enhancement of rent against a tenant on the ground of the prevailing rate being higher than what is paid by the tenant, a Court cannot legally include *patewareen* and other *abwabs* paid by raiyats in the neighbouring lands: *Burmah Chowdry v. Sreenund Singh*, 12 W.R. 29. Prevailing rate.

12. Contract to pay whole of cess payable by landlord:—There is nothing in s. 41 of the Cess Act of 1880 (Act IX, B. C. of 1880) to prevent a landlord from realising the whole amount of the cess from a tenant under a contract: *Eastern Mortgage and Agency Co. v. Rai Gunput Singh*, 9 C.W.N. 23 (notes): *Narendra Kumar v. Gorachand*, 33 Cal. 683 s. c. 3 C.L.J. 391; *Asutosh v. Amir Molla*, 3 C.L.J. 327. Road cess is not *abwab*: *Ibid*. But the law in this respect as far as regards contracts after the passing of the Bengal Tenancy Amendment Act, 1919, is to be found in sub-sections (2) and (3) of this section. Road cess, not an *abwab*.

Bengal and East Bengal.

Bihar.

75. 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 or road cess or public works cess or interest lawfully payable, may, subject to the second proviso to sub-section (2) of section 74, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

75. 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 or interest lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value. Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

Headings of Notes.

1. AMENDMENTS.
2. SCOPE OF THE SECTION.
3. EXACTED.
4. LIMITATION.
5. JURISDICTION OF COURT.
6. EXCEPT UNDER ANY EXACTMENT.
7. SUIT AGAINST A TESHILDAR.

1. Amendments :—The words “or interest” after the word “rent” were inserted by Act I (B.C.) of 1907 and Act I (E. B. A. Council) of 1908. By Bengal Act No. III of 1919 the following amendments were made: (1) after the words “in excess of the rent” the words “or road cess or public works cess” were inserted; and (2) after the words “lawfully payable, may” the following was inserted, namely :—“subject to the second proviso to sub-sec. (2) of section 74.”

Exaction
other than
by process
of law.

2. Scope of the section :—S. 75 evidently contemplates exaction by means other than process of law, and section does not take away the right of a person from whom rent has been realised in excess to recover such excess amount from the landlord apart from the provisions of the section within the ordinary period of limitation : *Nagendra v. Raju Bibee*, 17 C.W.N. 374.

3. Exacted :—This section evidently contemplates exaction by means other than process of law : *Nagendra v. Raju Bibee*, 17 C.W.N. 374, see also *Chandramoni v. Debendranath*, Marsh 420.

4. Limitation :—S. 75 merely enables a tenant to recover from his landlord certain penalty in addition to the amount or value of what is exacted, if the suit is brought within 6 months from the date of the exaction, and the limitation provided by the section does not bar a suit to recover the excess amount where no penalty is claimed : *Nagendra Lal v. Raju Bibee*, 17 C.W.N. 374; where the putnidar sued for a declaration that the talook held by him bore money rents and not paddy rents and for refund of the amount deposited by him in excess of the proper rent under s. 14 of Reg viii of 1819, held that the suit was not governed by the special limitation provided by s. 75 of the Bengal Tenancy Act and by Art. 14 of Sch. 1 of the Limitation Act (IX of 1908). *Ibid*; to bring a suit for refund of the excess amount realised by the zemindar in proceedings under the Putni Regulation, it is not necessary to set aside the Collector's award under s. 14 of the Regulation; there is no provision of law for setting aside such an award. *Ibid*.

A suit to recover a sum of money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from former on account of road-cess and public works cess is governed by Art. 96 of the second schedule of the Limitation Act; *Mathura Nath v. Steel*, 12 Cal. 555.

Suit under
this section
lies in a
Small Cause
Court.

5. Jurisdiction of Court :—A suit under this section for the recovery of a sum which the plaintiff, the tenant of the defendant, claims in respect of excess payments made by him in respect of the rent of his holding is cognizable by the Small Cause Court : *Rungo Roy v. Frederick Holloway*, 4 C.W.N. 95. S. 144 has no bearing upon the question of the nature of the suit; it determines the jurisdiction within which suits are to be instituted; *Ibid*. Under the

old Act (X of 1859) it was held that a suit for an illegal exaction of rent did not lie in a Small Cause Court but in a Revenue Court ; *Subbo Chunder v. Woomanund*, 11 W.R. 412 ; but a suit to recover money deposited with the defendant to be applied in payment of rent was held to lie in a Civil Court and not before a Collector ; *Dabee Golam v. Chunder Kant*, 3 W.R. 109, but see *Rampershad v. Ramtohl*, Marsh, 655.

Where notwithstanding a certain portion of the rent was paid, the landlord realised the entire rent by taking proceedings under Reg. VIII of 1819, *held* that a suit was not maintainable under Act X of 1859 for the portion of the rent which had been previously paid : *Chunder Monnee v. Debender Nath*, Marsh. 520 ; sum is recoverable by a suit in the ordinary civil suit : *Debender Nath v. Chunder Monnee*, 2 Hay 519. Suit for recovery of money illegally recovered under Reg. VIII of 1819.

Where plaintiff sued to recover the value of his share of the crop which defendant had appropriated, *held* that the claim was not for a sum exacted in excess of rent within the meaning of s. 10, Act X, 1859, and that the suit lay in the Small Cause Court : *Gurreeboolla v. Fakeer Mohomed*, 10 W.R. 203. S. 10, Act X of 1859.

6. Except under any enactment :—Act IX of 1880, B. C. Act II of 1882, B. C., Act V of 1875, B. C., Act III of 1876, B. C., Act VI of 1882, B. C., ss. 47, 74, 38, 83, 44, respectively.

7. Suit against a teshildar :—If the tenants make any payments to the teshildar in excess of the rents due from them, and those payments are made voluntarily, then the teshildar having received them for the plaintiff is clearly bound to account for them ; but if these sums are received by the teshildar as *bhiksha* and are exacted by him they would come under the head of illegal cesses ; and in that case no action lies at the instance of the landlord to recover them : *Nabin Chunder v. Gooroo Gobind*, 29 W.R. 8. But the case has been doubted in the case of *Nagendrabala v. Gurudoyal*, 30 Cal. 1011, s. c. 7 C.W.N. 535, where it has been held that an agent is liable to account to the landlord for any illegal cesses he might have recovered from the tenants. Suit by landlord against a teshildar.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LAND- LORDS AND TENANTS.

*Improve-
ments.*

Improvements.

Definition
of "im-
provement."

76. (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 value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

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

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;
- (b) the preparation of land for irrigation ;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste land which is culturable ;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;
- (e) the renewal or reconstruction 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 his landlord's property.

Headings of Notes.

1. EMBANKMENT ACT: LAND IMPROVEMENT LOANS ACT.
2. DWELLING-HOUSE.
3. TANK.
4. DAMAGES.
5. S. 188: SUIT BY A CO-SHARER FOR COMPELLING THE TENANT TO FILL UP A TANK. .

I. Embankment Act:—The general provisions contained in s. 23 and Chap. IX of the Bengal Tenancy Act, do not repeal the Embankment Act, *Lakshmi Kant v. Emperor*, 29 C.L.J. 328.

Land Improvement Loans Act:—The terms of this section follow closely those of sec. 4 of the Land Improvement Loans Act. (XIX of 1883).

2. Dwelling-house:—"It may well be that in particular places raiyats having rights of occupancy in land for agricultural purposes may by custom have the right to transfer it to any person to hold for the same purpose, but that will not carry with it the proposition that a person who may be desirous of erecting a large house in the midst of an agricultural mehal, can buy up the tenures and rights of several cultivators, and convert the land which they formerly occupied into a dwelling-house and appurtenances" (*Per Jackson, J.*); *Jugat Chunder v. Eshan Chunder*, 25 W.R. 220. Where an occupancy raiyat erected a *pucca* building, held that the landlord did in no way suffer by the building of a *pucca* house and on the contrary the land was rendered more valuable and the tenant was not bound to remove the building: *Nayamatoollah v. Gobind Churn*, 6 W.R., Act X, 40. "We think it clear that every man possessed of a right to hold the land permanently,—that is of a right of occupancy,—can do what he likes with the land so long as he does not injure it to the zemindar's detriment." (*Per Campbell and Jackson, JJ.*): *Ibid.* A suitable dwelling-house of a raiyat within the meaning of this section need not necessarily be of a temporary description: *Hari Kishore v. Barada Kishore*, 31 Cal. 1014, s. c. 8 C.W.N. 754; the question raised in the case was whether an occupancy raiyat had a right to erect as a dwelling-house a building consisting of masonry walls and a corrugated iron roof 18 cubits by 14 cubits on a jote in the holding on which the dwelling-house had all along stood, held that the raiyat had a right to do so: *Ibid.* In this case the building which it was proposed to erect was not one which on account of its size was unsuitable to the character of the holding. [See in this connection *Prosunno v. Jagannath*, 10 C.L.R. 25; *Anand Coomar v. Bissonath*, 17 W.R. 416; *Beni Madhub v. Jaikishna*, 7 B.L.R. 152: s. c., 12 W.R. 495.]

Conversion of agricultural land into a dwelling house.

Pucca building.

Occupancy raiyat entitled to use holding in any manner he likes but not to injure to the zemindar's detriment.

A tenant who erects building on land in which he has no permanent interest is not entitled to compensation on being evicted on the termination of his tenancy: *Ismail Khan v. Kali Krishna*, 6 C.W.N. 134.

Compensation.

"A tenant is entitled to effect on his holding any improvement which would add to the value of the holding. The clauses which specify what constitutes improvements within the meaning of s. 76 of the Bengal Tenancy Act are not exhaustive." *Mahadeo v. Sheogulam*, 2 Pat. L.J. 634.

Section not exhaustive.

Dwelling house need not be of temporary description.

The fact that an occupancy raiyat has a house in an adjacent *mouja* does not deprive him of his right to erect upon the holding another house for the purpose of making a residence for himself and his family : *Mahadeo v. Sheogulam* ; 2 Pat. L.J. 634.

There is nothing in s. 76 to indicate that suitable dwelling of an occupancy raiyat must be of a temporary description only : *Surendra Nath v. Nakoor Chandra*, 64 I.C. 716, (Mookerjee, C.J. and Fletcher, J.).

Excavation of tank in contravention of agreement.

3. Tank :—If a tenant in contravention of an agreement excavates a tank the damages which should be awarded to the landlord should be merely nominal in case the tank is an improvement and is beneficial ; the amount of damages was fixed for Rs. 5 plus the amount of nazar which the tenant would have to pay to the landlord for such permission : *Krishna Das v. Mahendra Chandra Sil*, 62 I.C. 779. See notes under s. 155.

Nominal damages.

Where s 76 applicable.

Where a tank was excavated by a raiyat on a part of his holding when there was already another tank, *held* that in order to make s. 76 applicable, it must in the first instance be shewn that the tank in question was excavated for the purpose of agriculture, or for the use of men and cattle employed in agriculture ; digging of tank for the purpose of providing good drinking water did not come within the provisions of s. 76 : *Gobinda Chandra v. Kamijuddi*, 16 C.L.J. 127 ; it was for the tenant to shew that the tank was required for the purpose of providing drinking water and not for the purpose of agriculture : *Ibid.*

Digging of tanks for drinking water.

Contract by permanent tenure-holder not to excavate tank.

Where a tenure-holder undertook in his lease not to excavate any tank in the property and when a raiyat who had taken a sublease from the tenure-holder excavated a tank and the raiyat was unaware of any restrictive covenant in his landlord's lease, *held* that the tenure-holder was liable to damages to his landlord and that the raiyat was not ; *Akshoy Kumar v. Akman Molla*, 19 C.W.N. 1197. s. c. 20 C.L.J. 551. See notes under s. 194.

S. 194.

S. 194 of the Act provides as follows :—Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

This section seems to control the previous sections of the Act including s. 178, consequently it seems that a permanent tenure-holder who holds his lease under a restrictive covenant not to excavate a tank may impose a similar restriction on a raiyat, and the latter will not therefore be entitled to excavate a tank although the same may be an improvement ; see in this connection the case of *Akshoy Kumar v. Akman Molla*, 19 C.W.N. 1197.

Damages for-excavation of tank where no actual damages.

4. Damages :—Where there was breach of a covenant not to excavate any tank the landlord, though he may not suffer any actual damage, is entitled to nominal damages which is not necessarily small damages : *Akshoy Kumar v. Akman Molla*, 19 C.W.N. 1197.

Measure of damages for waste committed by a tenant.

A covenant by a tenant not to commit waste on the demised property is not with regard to the measure of damages for the breach of it the same thing as a covenant to deliver up the property at the end of the term in the same state as that in which he received it ; therefore, in an action for damages by the reversioner against the

tenant for waste, the measure of damages is not necessarily the sum which it would cost to restore the property to its condition before the waste ; the true measure of damages is the diminution of the value of the reversion less a discount for immediate payment : *Whitham v. Kershaw*, 16 Q.B.D. 613.

5. S. 188 : Suit by a co-sharer for compelling the tenant to fill up a tank :—A suit by a co-sharer landlord for the purpose of compelling the tenant to fill up a tank which he had wrongfully excavated in one part of his holding, in the alternative, for damages, does not fall within the scope of s. 188 of the Bengal Tenancy Act : *Gobinda Chandra v. Kamijuddi*, 16 C.L.J. 127.

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

S. 188 does not apply to a suit to compel tenant to fill up tank.
Right to make improvements in case of holding at fixed rates and 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.

Fixed rate :—The words “fixed rate ” seem to mean fixed rate or rent fixed in perpetuity. See s. 18.

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

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

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

Collector to decide question as to right to make improvement, &c.

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

Right to make improvements 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.

See notes under s. 76.

Registra-
tion of
landlord's
improve-
ments.

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

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

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

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

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

1. Rules :—See Appendix.

2. Such Revenue Officer :—Cal. Gaz., Feb. 6th, 1889, at I, p. 87. See Appendix.

Application
to record
evidence as
to improve-
ment.

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

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

Compensa-
tion for
raiyyats' im-
provements.

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

(2) Whenever a Court makes a decree or order for the ejection of a raiyat, it shall determine the amount

of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of 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 second 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.

Notes :—S. 82 has been drawn from similar provisions in the Agricultural Holding Act of 1883 (46 and 47 Vict., c. 68).

“There is no law of emblements in this country ; neither does the Bengal Tenancy Act make any provision for the heir, executor or administrator taking away crops or the benefit of improvements made by a non-occupancy raiyat in case of his death before the crops are taken away or before he gets compensation for improvements made by him.” Per Brett., J., in *Mohunt Lukhan Narain v. Jainath Panday*, 34 Cal. 516, s. c. 11 C.W.N. 626 (640), s. c., 5 C.L.J. 457. It has now been held that a non-occupancy raiyat's holding is heritable: *Midnapur Zemindary Co. Ltd. v. Hrishikesh Ghosh*, 18 C.W.N. 828, s. c., 19 C.L.J., 505 (F.B.).

83. (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 value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement, and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

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

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

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

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

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Headings of Notes.

1. APPLICATION OF THE LANDLORD.
2. APPEAL.
3. CERTIFICATE OF THE COLLECTOR.
4. REASONABLE AND SUFFICIENT PURPOSE.
5. COMPENSATION.
6. HOLDING.
7. CO-SHARER LANDLORD.

I. Application of the landlord :—A person who is not the immediate landlord of a holding cannot make an application under this section : *Narain Matho v. Tekait Brojo Behari*, 9 C.W.N. 472.

2. Appeal :—No appeal lies against an order passed by a Civil Court under this section: *Goghun v. Rameshur*, 18 Cal. 271 (F.B.); see also *Pearimohan v. Barada*, 19 Cal. 485.

3. Certificate of the Collector :—The Collector's certificate is not conclusive and a Civil Court is to hold a judicial enquiry to ~~determine the reasonableness and sufficiency of the matter~~: *Goghun v. Rameshur*, 18 Cal. 271 (F.B.). See also *Narain Matho v. Tekait Brojo Behari*, 9 C.W.N. 472. Collector's certificate not conclusive.

4. Reasonable and sufficient purpose :—Where the application was made to acquire land under this section to introduce the cultivation and manufacture of indigo through a gentleman of the profession known as an indigo planter, *held* that the application ought to be rejected: *Goghun v. Rameswar*, 18 Cal. 271 (F.B.). The purpose for which the land is sought to be acquired must have a direct relation to the good of the holding, and the appointment of a European manager and the necessity for erecting buildings for his comfort and convenience are not sufficient grounds: *Ibid.* Where by the acquisition there would be increase of revenue and consequently it would be for the improvement of the estate, *held* that the purpose was not reasonable and sufficient: *Narain Matho v. Tekait Brojo Behari*, 9 C.W.N. 472. Cultivation and manufacture of indigo.
Appointment of a European manager.

5. Compensation :—There is no provision in this Act as to what matters should be considered in determining the amount of compensation. The matters to be considered for determining the amount of compensation under the Land Acquisition Act are to be found in s. 23 of that Act. Land Acquisition Act, s. 23.

6. Holding :—It seems that the word "holding" has been used in its strict sense as defined in this Act.

7. Co-sharer landlord :—One of several joint landlord cannot make an application under this section; see s. 188.

Sub-letting.

Sub-letting.

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

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

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

Headings of Notes.

1. THIS SECTION DOES NOT APPLY TO A RAIYAT AT FIXED RENT OR FIXED RATE OF RENT.
2. SUB-LEASE BY A NON-OCCUPANCY RAIYAT.

3. SUB-LEASE BY AN UNDER-RAIYAT.
4. SURRENDER BY A RAIYAT.
5. SALE OF RAIYATI HOLDING.
6. LEASES IN CONTRAVENTION OF THIS SECTION.
7. RIGHT TO RECOVER POSSESSION: ESTOPPEL.
8. SUB-LEASE FOR NINE YEARS WITH A STIPULATION FOR A RESETTLEMENT.
9. STIPULATION BY A RAIYAT GRANTING HERITABILITY TO AN UNDER-RAIYAT HOLDING.
10. RENEWAL CLAUSE IN A LEASE.
11. SUB-LEASE BY A RAIYAT FOR HOMESTEAD PURPOSE.
12. UNDER-RAIYATI LEASE, TRANSFERABILITY OF.
13. UNDER-RAIYATI INTEREST: INCUMBRANCE.
14. REGISTRATION RULE UNDER SUB-SECTION (2).

1. This section does not apply to a raiyat at fixed rent or fixed rate of rent :—

S. 85 is controlled by s. 18 and therefore the restrictions as to sub-letting in s. 85 have no application to a raiyat at a fixed rent or rate of rent.

The provisions of s. 85 are controlled by s. 18 and therefore a raiyat at fixed rate can grant a permanent lease; the word "transfer" in s. 18 includes a lease: See *Hari Mohan v. Atul Krishna*, 19 C.W.N. 1127; this case has been followed in *Rammohan v. Udai Bairagi*, 49 I.C., 515, and in *Hochen Sardar v. Poresnath*, 54 I.C., 647, also see the observation of Beachcroft, J., in the case of *Chandi Charan v. Samla Bibi*, 22 C.W.N. 179 at p. 184, col. 2, lines 30 to 37. The observations of D. Chatterjee, J., in the case of *Parushulla v. Sital Chandra*, 19 C.W.N. 1110 at page 1112 that "the transfers contemplated in ss. 11 and 18 (of the Bengal Tenancy Act) are transfers out and out and not partial transfers by way of sub-lease" were considered by Newbould, J., as obiter in *Prasanna Dassi v. Amar Chand Roy*, (unreported S.A. No. 818 of 1919), and his Lordship held, following the case of *Hari Mohan v. Atul Krishna*, 19 C.W.N. 1127, that the word "transfer" in s. 18 includes also a lease; the judgment of Newbould, J., was confirmed by Mookerjee, (Acting) C.J., and Fletcher J. in *Amar Chand Ray v. Prasanna Dassi*, 25 C.W.N. 9. S. 85 does not bar a raiyat at fixed rates from making a permanent settlement with the under-raiyats or giving them a transferable and heritable interest in the land: *Probodh v. Birsinha*, 71 I.C. 319. A raiyat may by custom have a right to create permanent under-lease: *Rashed Kazi v. Pachoo Sardar*, 42 I.C. 534. Apparently it seems that the learned Judges have used the word "raiyyat" as including an occupancy raiyat. It is submitted with great respect that this proposition of law does not seem to be sound in as much as a right of an occupancy raiyat to sublet permanently by custom is inconsistent with the provisions of s. 85, and therefore under s. 183 such a custom not being consistent with the provisions of the Act is invalid. See notes under s. 18, heading No. 2, at p. 132.

2. Sub-lease by a non-occupancy raiyat :—A non-occupancy raiyat is not prohibited from sub-letting and may have an under-raiyat under him and may create a protected interest under s. 160 cl. (g), if his landlord allows him to do so: *Ram Lal v. Bhela Gazi*, 37 Cal. 709.

Permanent sub-lease by an under-raiyat.

3. Sub-lease by an under-raiyat :—It has been held in the case of *Gurudas v. Kalidas*, 18 C.W.N. 882 that section 85 of the Bengal Tenancy Act has no application to a permanent lease created

by an under-raiyat in favour of a sub-lease, and that the provisions of this section cannot be applied to such a case by analogy.

In this case plaintiff who was an under-raiyat brought a suit in ejectment against the defendant being the successor in interest of the lessee under the plaintiff and it was held that s. 85 of the Bengal Tenancy Act had no application to a permanent lease by an under-raiyat in favour of a sub-lessee and consequently the plaintiff's suit must be dismissed.

It is submitted with great respect that the reason given for the decision is not sound ; s. 85 of the B. T. Act provides restrictions to sub-letting by a raiyat ; therefore an under-raiyat who acquires his right from the raiyat cannot have greater rights than the latter ; if a raiyat cannot grant a lease for more than 9 years, it does not stand to reason that the under-raiyat should have the right to create a permanent lease. The right of an under-raiyat to grant a sub-lease has however been recognised in the Bengal Tenancy Act in as much as in cl. (3) of s. 4 of the B. T. Act an under-raiyat is a person who holds *mediately or immediately* under a raiyat ; but it seems that an under-raiyat cannot claim a higher right than a raiyat in the grant of sub-leases.

S. 85 does not apply to a sub-lease by an under-raiyat : *Osman Sheikh v. Fakir Mahmud*, 26 C.W.N. 31 (notes portion).

4 Surrender by a raiyat :—Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s. 85 or s. 86, cl. (b) : *Nilkanta v. Ghatoo*, 4 C.W.N. 667. In such a case no notice to quit is necessary : *Ibid.* When a sub-lease by a raiyat is not binding on the landlord and the holding does not subsist after abandonment, an under-raiyat does not become a raiyat : *Pran Krishna v. Mukta Sundari*, 18 C.L.J. 193. See notes under s. 87.

Right of re-entry by landlord by ejecting under-raiyat. Effect of abandonment by raiyat.

5. Sale of raiyati holding :—An under-raiyati lease, if created by an instrument which is not registered, is invalid under s. 85 and a landlord purchasing the holding of the raiyat in execution of a decree for arrears of rent is entitled to take *khas* possession by ejecting such under-raiyat without annulling the same by a notice under s. 167. The rights under such an under-raiyati lease are not protected by sub-sec. (1) of s. 22 : *Peary Mohun v. Badal Chunder*, 28 Cal. 205 s.c. 5 C.W.N. 310 ; see also *Ashutosh v. Banomali*, 19 C.W.N. 421.

Purchaser at a sale in execution of decree for arrears of rent entitled to *khas* possession by ejecting under-raiyat. holding on oral lease.

But a landlord who purchases by a *kobala* an occupancy raiyati holding from his raiyat cannot eject an under-raiyat without a notice under s. 49 although the raiyat had created the under-lease without the landlord's consent and otherwise than by a registered instrument : *Amirulla v. Nazir*, 34 Cal. 104 : s.c., 3 C.L.J. 155 : see also, *Amirulla v. Nazir*, 31 Cal. 932. These two cases were approved by Jenkins, C.J. and Mookerjee, J., in the case of *Lal Mahomed v. Jagir Sheikh*, 13 C.W.N. 913, and it was held that a landlord purchasing by *kabala* the interest of an occupancy raiyat under him is not entitled to treat as a trespasser an under-raiyat holding the land under an oral lease from the raiyat.

Purchase by *Kabala* stands on a different footing.

The case of *Peary Mohan v. Badal Chandra*, 28 Cal. 205 ; s.c., C.W.N. 310 was followed in the case of *Gangadhar v. Rajendra*, 17 C.W.N. 860 and it was held by Jenkins, C. J.; and Ray, J. where a lease was invalid under the provisions of cl. (2) of s. 85, no

Landlord who purchases raiyati holding at

a sale in execution of a decree for arrears of rent can avoid an invalid under-raiyati lease without notices under ss. 49 and 167.

the landlord who was a purchaser of the raiyati holding in execution of a decree for arrears of rent was entitled to take khas possession by ejecting such under-raiyat without annulling the same under s. 167 and without giving a notice in the terms of s. 49 ; it was also held that the rights of the under-raiyat were not protected by sub-sec. (1) of s. 22.

See notes under sec. 167.

In a suit for rent against a raiyat the landlord also impleaded as pro forma defendant another person alleging to be an under raiyat : held that the mere fact that the person was made a defendant to the suit does not imply a consent by the landlord to the under-raiyati lease in his favour : *Maniraddi v. Ambica*, 91 I.C. 668 s. c., A.I.R. (1926) Cal. 734. (Greaves and B. B. Ghosh J. J.).

Putra poutradi.

6. Leases in contravention of s. 85 :—Terms of heritability and transferability are terms which generally occur in permanent leases and they are intended to create a permanent tenancy and as such are in contravention of the provisions of s. 85, and consequently cannot be registered in view of cl. (2) of s. 85 : *Muhammad Mir. v. Faizal Hassan*, 47 I.C. 416, (Per Walmsley and Panton, J. J.) ; the words *san ba san* সন বসন do not alter the nature of the agreement, *Ibid.* The expression *putra poutradi* implies an absolute and heritable estate and as passing an estate of inheritance : *Ram Saran Lal v. Ramnarayan Singh*, 42 Cal. 305 ; *Ram Lal v. The Secretary of State*, 7 Cal. 304 at p. 315 ; *Bhujanga v. Ramayamma*, 7 Mad. 387 ; *Lalit Mohan v. Chukkan Lal*, 24 Cal. 834 at p. 849.

Harsana patta.

Where in a sub-lease granted by a raiyat the words used were "*putra poutradi krame*" the lease was considered to be a perpetual lease : *Kartik Mandal v. Bamacharan*, 20 C.W.N. 182, see also *Jnanendra v. Royman Sheikh*, 31 C.W.N. 580 at p. 581 (Mukerji and Graham J. J.). Where a *harsana patta* (lease from year to year) was given by a raiyat, it was held that the under-raiyat was liable to be ejected upon notice under s. 49 : *Chandi Charam v. Samla Bebi*, 22 C.W.N. 179, s.c., 22 C.L.J. 91. Where there is no evidence that lessor and lessee conspired by false or equivocal recitals to evade the provisions of section 85 (2) the lease that was admitted to registration contrary to the provisions of section 85 (2) through a misconception of the registering officer does not affect the property demised, at any rate beyond the period of nine years : *Tarni Singh v. Sat Narain*, 6 P.L.T. 787.

Unregistered Solenama.

A suit between two raiyats, the purchaser and seller of a raiyati holding, was settled by a *solenama* by which the seller took a permanent tenancy under the purchaser at a certain rent and continued in possession. In a fresh suit by the purchaser to recover khas possession, it was contended on his behalf that the solenama was invalid as it had not been registered and it was contended on behalf of the under-tenant that at any rate he had acquired a right of permanent under-tenancy in the holding by prescription, held, that the solenama purported to create a lease of immoveable property and as such, was inadmissible without registration. It was not in fact registered ; could not, in law, have been registered, because of sec. 85 of the B. T. Act ; and since registration itself was forbidden for reasons of public policy, the plea of specific performance as a substitute equivalent of registration was not available to the defendant.

Rajani Kanta v. Raj Kumari, 31 C.W.N. 1099, (Rankin, C. J. and Mitter J.).

• **7. Right to recover possession : Estoppel :—**As to the rights of a lessee under an occupancy or non-occupancy raiyat the decisions are not uniform. These cases may be classified under the following headings :—

Rights of a lessee under a raiyat.

- (1) *Suit between a raiyat and an under-raiyat ; (i.e. grantor and grantee, or their representatives in interest).*
- (2) *Suit between an under-raiyat and a stranger.*
- (3) *Suit between an under-raiyat and raiyat's landlord.*
- (4) *Suit as between under-raiyats claiming under the same landlord.*

(1) **Suit between a raiyat and an under-raiyat :—**(i.e. Suit grantor and grantee or their representatives). The following are the cases on the point: *Gopal Mondal v. Eshan Chandra*, 29 Cal. 148, *Madan Chandra v. Jaki Karikar*, 6 C.W.N. 377 ; *Fazel Sheikh v. Karamaddi*, 6 C.W.N. 916 ; *Mahendra v. Parbutty*, 8 C.W.N. 136 (case under s. 49 and also observation under s. 85) ; *Kamaruddi v. Sree Nath*, 8 C.W.N. 136 ; *Bipin Behari v. Amrita Lal*, 9 C.L.J. 76 ; *Abdul Karim v. Abdul Rahaman*, 16 C.W.N. 618, s.c., 15 C.L.J. 672 ; *Jarip Khan v. Dorfa Bewa*, 17 C.W.N. 59, s.c., 16 C.L.J. 144 ; *Janaki Nath v. Prabhasini*, 19 C.W.N. 1077 ; *Mahim Chandra v. Baidya Nath*, 21 C.L.J. 478 ; *Abjan Bibi v. Raham Ali*, 20 C.W.N. 756 ; *Lani Mea v. Muhammad Easin*, 20 C.W.N. 948 ; *Baman Das v. Nilmadhab*, 44 Cal. 471, s.c., 20 C.W.N. 1340, s.c., 24 C.L.J. 541 ; *Nazirali v. Banshi Badan*, 23 C.W.N. 435, s.c., 29 C.L.J. 388, *Chandi Charan v. Samla Bibi*, 22 C.W.N. 179 (at p. 188) ; s.c., 28 C.L.J. 91 ; [followed in *Madan Mundal v. Tarini Chandra*, 54 I.C. 625 where Newbould J., has held that the consent of the raiyat's landlord would not make the sub-lease by a raiyat valid, if it is in contravention of cl. (2)]. *Nazir Ali v. Banshi Badan*, 23 C.W.N. 435, s.c., 29 C.L.J. 388, followed in *Karim Buksha v. Abdul Jabbar*, 47 I.C. 416 ; also followed in *Alimuddi v. Chinta Haran*, 23 C.W.N. 437.

On account of a conflict of decisions, the question which was referred by Walmsley and Greaves, J. J., to a Full Bench was as follows :—

“Is a lease purporting to be of a permanent character, granted by a raiyat (not being a raiyat holding at a fixed rate) to an under-raiyat operative as against the grantor?”

Plaintiff was a raiyat who brought this suit for ejectment of an under raiyat.

The question was considered by a Full Bench (consisting of Mookerjee, C. J., Fletcher, N. R. Chatterjea, Teunon and Richardson, J. J.,) in the case of *Chandra Kanta v. Amjad Ali*, 48 Cal. 783, s.c., 25 C.W.N. 4, s.c., 32 C.L.J. 296 (F.B.).

Full Bench Case : *Chandra v. Amjad Ali.*

Mookerjee, C. J., in delivering the judgment of the Court, said that the question referred to the Full Bench may arise in three classes of cases :—

- I. Where the lease purporting to be of a permanent character is granted, on the face of the document, by a raiyat (not being a raiyat holding at a fixed rate) to an under-raiyat, the lease is not operative as a permanent lease between

**Full Bench
Case.**

the raiyat and the under-raiyat. But as the tenancy of an under-raiyat may be created without a written lease, the grantee in such a case is an under-raiyat who holds otherwise than under a written lease, and his tenancy is liable to be terminated in the manner provided by section 49 (b) ; till the tenancy has been thus terminated, the grantor cannot treat him as a trespasser.

II. When the lease, purporting to be of a permanent character, is granted by a person who, on the face of the document, confesses to have a higher status than that of a raiyat (for example, that of a tenure-holder or a raiyat holding at a fixed rate), the grantee when his title as permanent lessee is challenged by his grantor, may invoke the doctrine of estoppel and plead that the grantor cannot be permitted to prove the falsity of the recitals in the document (on the faith of which he took the lease) so as to enable him to derogate from his grant.

III. Where the lease purporting, to be of a permanent character is granted by a person who, on the face of the document, professes to have a higher status than that of a raiyat (for example, that of a tenure-holder or a raiyat holding at a fixed rate) and the grantee invokes the aid of the doctrine of estoppel in answer to a challenge of his title as permanent lessee by his grantor, it may be a matter for argument whether such plea may be defeated by the grantor on proof that they had conspired by false recitals to evade the provisions of the statute."

The case before the Full Bench fell within the first class. Mookerjee, C. J., said as follows:—

"The case before us clearly falls within the first class. The lease, on the face of the document, is by a raiyat and is for an unlimited term. At this distance of time, no explanation is available as to how, notwithstanding these recitals, it came to be registered in contravention of s. 85 (2). The registration was clearly null and void and the document must be excluded from consideration, as if it has never been registered. The defendant, however, was not a trespasser ; he was an under-raiyat who held otherwise than under a written lease. His tenancy was accordingly terminable in the manner provided by sec. 49 (b) and it has legally been terminated. Consequently he had no right to remain on the land at the date of the institution of the suit."

**Homestead
land.**

S. 85 of the Bengal Tenancy Act is not applicable to leases of homestead lands. Where a lease of a permanent character is granted by a person who, on the face of the document confesses to have a higher status than that of a raiyat, the grantee may invoke the doctrine of estoppel, against the grantor and persons claiming through him. The plea that a lease is contrary to the provisions of S. 85 of the Bengal Tenancy Act and is consequently invalid can be raised by the landlord or a person claiming through him or by any one having a permanent title but not by the grantor or any one claiming through him or by a stranger: *Jogendra v. Monmohin* 105 I. C. 290 (Cuming and Roy J. J.).

Although a person who has granted a permanent lease descri

ing himself as the holder of a *ganti* interest will be estopped from asserting that he was a mere *ryot* and that the lease was consequently invalid, a purchaser of his interest at an execution sale who has obtained a new title from the landlord at an enhanced rent will not be bound by this estoppel: *Jaladhar Mondal v. Amrita Lal Raha*, 105 I.C. 641 (B. B. Ghose and Roy J. J.).

Purchaser at execution sale and acquiring new title from landlord.

Where the lease expressly provided that the grantee would have the status of a raiyat, though the grantor's status was not stated, held that the doctrine of estoppel applied: *Iswar Chandra v. Gour Sundar*, 39 C.L.J. 337. See also *Bamandas v. Nilmadhab*, 44 Cal. 771, s.c., 24 C.L.J. 541.

(2) **Suit between an under-raiyat and a stranger:**—The following are the cases on the point: *Banka Behary v. Raj Chandra*, 14 C.W.N. 141, *Manik v. Bani Charan*, 13 C.L.J. 649; *Jarip Khan v. Dorfa Bewa*, 17 C.W.N. 59, s.c., 16 C.L.J. 144; *Gour Mondal v. Balaram*, 22 C.W.N. 61.

Suit between an under-raiyat and a stranger.

Where an under-raiyat claiming under a lease which was to last “*putra poutradi krame*” brought a suit against a stranger, held, that the suit should fail; *Kartik Mondal v. Bama Charan*, 20 C.W.N. 182.

In a suit by an under-raiyat claiming under a permanent mukurari under-raiyati lease against a stranger, held, that assuming that the permanent mukurari under-raiyati lease was void under s. 85 of the B. T. Act, it was open to the plaintiff to prove his tenancy *aliunde*,* and a suit to recover possession of the holding against the defendant who was a trespasser should succeed upon proof of the plaintiff's bare possession when dispossessed: *Banka Behary v. Raj Chandra*, 14 C.W.N. 141.

[It is submitted with great respect that the second portion of the judgment that a plaintiff can succeed to obtain possession is open to doubt in as much as it is opposed to the decisions of *Purmeshur Chowdhury v. Brijo Larl Chowdhry*, 17 Cal. 256, *Shama Churn v. Abdul Kabir*, 3 C.W.N. 158; *Nisa Chand v. Kanchiram*, 26 Cal. 579, in which it was held that possession short of statutory period of 12 years does not entitle a plaintiff to a decree for recovery of possession except in a suit under sec. 9 of the Specific Relief Act. This was also pointed out in the case of *Manik Borai v. Bani Charan*, 13 C.L.J. 649 at p. 652 where Mookerjee, J., (Coxe, J., concurring) says that “the question is by no means free from difficulty and we reserve our opinion on it, involving as it does an examination of the true effect of the decision of the Judicial Committee in *Sunder v. Parbutty*, 16 I.A. 186, s.c., 12 All. 51.]

In the case of *Manik Borai v. Bani Charan*, (*Ibid*) it was held that in a suit by an under-raiyat against a stranger that the question of the invalidity of a sub-lease granted in contravention of the sub-sec. (1) and (2) of s. 85 can be raised only by the landlord of the raiyat. (It was also held that the under-raiyat could successfully maintain a suit for possession or defend his suit for possession against the raiyat).

But in the case of *Jarip Khan v. Dorfa Bewa*, 17 C.W.N. 59; s.c., 16 C.L.J. 144 it was held that where an under-raiyat held under an invalid lease and could not fall back upon any prior possession,

* *Lala Surabh Narain v. Catherine Sophia*, 1 C.W.N. 248; *Fazel Sheikh v. Keramuddi Sheikh*, 6 C.W.N. 916 followed.

† *Premraj v. Narayan*, 1 L.R. 6 Bom. 215.

oral evidence to prove the tenancy in such a case is inadmissible under s. 91 of the Evidence Act.

It was however subsequently held by D. Chatterjee J., in the case, of *Gour Mondal v. Balaram Manjhi*, 22 C.W.N. 61 (at p. 62) that if the sub-lessee (under raiyat) had possession when he was dispossessed he could prove his title by possession; in deciding this case D. Chatterjee, J. differed from the case of *Jariß Khan v. Dorfa Bewa*, 17 C.W.N. 59 and *Telam Pramanik v. Adu Sheikh*, 17 C.W.N. 468, and followed the case of *Manik Borai v. Bani Charan*, 13 C.L.J. 649 and *Ganes Mondal v. Thanda Namasudrani*, 24 C.L.J. 539.

The case of *Gour Mandal v. Balaram*, referred to above and decided by D. Chatterjee, J., was remanded for a finding as to whether the plaintiff under-raiyat was in possession, and after the finding which was in favour of the plaintiff the case came back to the High Court before Fletcher and Newbould, J. J., (22 C.W.N. 61), who decreed the plaintiff's (under-raiyat's), suit remarking "that although the plaintiff's lease had been in excess of what a raiyat is entitled to grant to an under-raiyat under the provisions of the Bengal Tenancy Act, yet if the plaintiff had been in possession of the property on the basis of the kabuliati, he had sufficient interest in the property to recover the land."

Suit
between an
under-raiyat
and raiyat's
landlord.

(3) Suit between an under-raiyat and raiyat's landlord :—The following are the cases on the point: *Mahomed Taqui v. Chao Lal*, 13 C.L.J. 499; *Ashutosh v. Banomali*, 19 C.W.N. 412.

In the case of *Mahomed Taqui v. Chao Lal*, 13 C.L.J. 499, where a tenant granted a lease of a portion of his holding to a person without the consent of the landlord and placed him in possession, not of the whole holding, but only of the portion leased and not do anything to justify the Court in arriving at the conclusion that the lessor intended to abandon the holding, the lease must be held to be a lease which the lessor was within his rights in granting, and the lessee is, on dispossession by the malik or landlord, entitled to a decree for possession in a suit brought for the purpose before the expiry of the lease.

In the case of *Ashutosh v. Banomali*, 19 C.W.N. 412, it was held that an under-raiyat lease in contravention of sub-sec. (2) is not operative against the superior landlord of the occupancy raiyat.

Suit as be-
tween two
under-
rai-yats
claiming
under the
same land-
lord.

(4) Suit as between two under-raiyats claiming under the same landlord :—The following are the cases on the point: *Telam Pramanik v. Adu Sheikh*, 17 C.W.N. 468. *Baisnab Charan v. Ramkumar*, 18 C.W.N. 140 (notes portion)—*Ganes Mandal v. Thanda Namasudrani*, 24 C.L.J. 539.

Where the plaintiff and the defendant each claimed under a registered permanent sub-lease granted by the same raiyat, held, that the plaintiff could not succeed in ejectment against a person in the advantageous position of a defendant in possession: *Telam Pramanik v. Adu Sheikh*, 17 C.W.N. 468; the case of *Jariß Khan v. Dorfa Bewa*, 17 C.W.N. 59 was followed and the following cases were discussed: *Abdul Karim v. Abdul Rahaman*, 16 C.W.N. 618; *Fazel Sheikh v. Kermuddi*, 6 C.W.N. 916; *Ramgati v. Shyama Charan*, 6 C.W.N. 919, *Basaratullah v. Kasirunnissa*, 11 C.W.N. 190; *Gopal v. Ishan*, 29 Cal. 148; *Madan Chandra v. Jaki Karikar*, 6 C.W.N. 377; *Tamijuddi v. Ajjar*, 36 Cal. 258, s.c., 13 C.W.N. 183;

Bepin v. Amrita, 29 Cal. 148; *Manik Borai v. Bani Charan*, 13 C.L.J. 649.

In a suit by an under-raiyat claiming under a permanent lease and registered in contravention of s. 85 cl. (2) against a person who was an under-raiyat and whose interest has been sold in execution of a decree obtained by the raiyat, *held*, that the plaintiff could not succeed and the case was covered by the decision in the case of *Jarip Khan v. Dorfa Bewa*, 17 C.W.N. 59: See *Baisnab Charan v. Ramkumar*, 18 C.W.N. 140 (notes portion).

In the case of *Ganes Mandal v. Thanda Namasudrani*, 24 C.L.J. 593, (Fletcher J., Richardson J., agreeing), it was held that the plaintiff claiming under a lease from the raiyat against the defendant claiming under a subsequent lease from the same raiyat, was entitled to succeed although the plaintiff's lease was invalid under s. 85; the reason of the decision was that the plaintiff had possession.

In the footnote will be found a reprint with slight alterations of the notes on this subject from the previous edition of this work. Cases decided since the last edition will be found amongst other cases collected under this heading: Ante.

***5. Leases in contravention of this section:** An underraiyati lease for Under- a term exceeding nine years and erroneously registered in contravention of raiyati lease s. 85 cl. (2) is inadmissible in evidence, and oral evidence to prove the tenancy registered is not admissible under s. 91 of the Evidence Act; a suit for possession upon in con- the basis of such a lease is not maintainable: *Jarip Khan v. Dorfa Bewa*, travention 17 C.W.N. 59, s. c., 16 C.L.J. 144, followed in *Baisnab v. Ramkumar*, 18 of s. 85 C.W.N. 140 (notes): In the case of *Jarip Khan v. Dorfa Bewa*:—"The wholly void Plaintiff in this case did not rest his claim on any prior possession that has and not ad- been established, but solely upon a document." Per Jenkins C.J., 17 C.W.N. missible in at p. 61. There is a number of cases in which the provisions of s. 85 have evidence. come under consideration but in none has the particular point noted above been the actual basis of a decision. Jenkins C.J. observed as follows:—

".....it appears to me that this document though purporting to be registra- Observa- tion of tioned in breach of s. 85 of the Bengal Tenancy Act, in fact, must be treated as Jenkin- C. J. though it was not registered, for it was a registration in contravention of law. The result then is that we have no proof of this document, and as a conse- quence, no proof of the title on which the Plaintiff rests. More than that, as I have already pointed out, the Plaintiff cannot fall back on any prior possession as tenant or otherwise, so as to attract in his favour that class of decisions of which the one reported in *Lala Surabh Narain Lal v. Catherine Sopia*, 1 C.W.N. 248. Nor do I think that we can accept other evidence—oral evidence of this grant—without contravening the provision of s. 91 of the Evidence Act; and, in fact, I do not understand that there has been in this case any evidence of the grant tendered other than the document which was improperly registered.

The case of *Jarip Khan v. Dorfa Bewa*, 17 C.W.N. 59 was followed by Carnduff and Beachcroft J.J. in the case of *Telam Paramanik v. Adu Sheikh*, 17 C.W.N. 468 and also by D. Chatterjea and Chapman J.J. in the case of *Baisnab Charan v. Ramkumar*, 18 C.W.N. 140 (notes). The case of *Manik Borai v. Bani Charan Mandal*, 13 C.L.J. 649 was distinguished and explained. The case of *Manik v. Bani* was also distinguished in the case of *Fakir v. Banamali*, 18 C.L.J. 255 and it was held that a sublease registered in contravention of s. 85 sub-sec. (2) is not operative against the superior landlord of an occupancy raiyat. See also *Ashutosh v. Banomali*, 19 C.W.N. 412.

In an unreported second appeal No. 2237 of 1911 (*Sumitra Bewa v. Gopal Chandra Biswas*, decided on the 20th Feb. 1914). Teunon, J., observed as follows: "On the authority of the case of *Tamijuddi v. Afgar Howladar*, 12 C.W.N. 183, the Courts below have found that as between the raiyat and sub-raiyat the lease is good. But in that case no question of registration arose, and in view of the clear provisions of section 85 (2) of the Bengal Tenancy Act, and of the decision of the Court in *Jarip v. Dorfa Bewa*, 16 C.L.J. 144 and *Telam Pramanik v. Adu Sheik*, 17 C.W.N. 468 it is clear that the decision

8. Sub-lease for nine years with a stipulation for a re-settlement :—An under-riyati lease was created for nine years with a stipulation that the under-riyat might apply for a re-settlement and thereupon the riyat would be bound to grant a re-settlement :

of the lower courts on this point cannot be upheld. But it appears that the unregistered lease recites that the lessee was in prior possession on an oral lease; and though the document be inadmissible it is open to the defendant to prove a subsisting tenancy otherwise, *vide* the case of *Lala Surabh Narain v. Catherine Sopia*, 1 C.W.N. 248, and *Fazal Sheikh v. Keramaddin*, 6 C.W.N. 916. I therefore remand the case to the Subordinate Judge for the trial of the following issue, namely, whether the defendant to be regarded as an under-riyat holding otherwise than under a written lease."

All these cases were discussed and explained in the case of *Ganes Mondal v. Thanda Namasudrani*, by Fletcher J., (Richardson J., agreeing), 24 C.L.J. 539. Their Lordships held that where plaintiff a sublessee is in possession the case falls within the case in 13 C.L.J. 649.

Following the case of *Ganesh Mandal and Thanda Namasudrani*, 24 C.L.J. 539, it was held by Teunon and Greaves J.J., that although a lease for more than nine years granted by a riyat may not be given in evidence, a tenancy can be proved *altunde* by possession and payment of rent: *Nibaran v. Ram Charan*, 29 C.L.J. 479.

Who may raise the question as to the invalidity of the lease.

It was decided in the case of *Manik Borai v. Bani Charan*, 13 C.L.J. 649 that the question of invalidity of a sublease granted in contravention of s. 85 sub-sections (1) & (2) can be raised only by the landlord of the riyat, but this case was distinguished in the case of *Fakir Chandra v. Banamali*, 18 C.L.J. 252 where it was held that a sublease registered in contravention of s. 85 sub-sec. (2) is not operative against the superior landlord of an occupancy riyat.

Sub-lease not valid against the landlord. Permanent lease, binding between the parties.

The words "the sub-lease shall not be valid" mean that the sub-lease shall not be valid against the landlord: *Madan Chandra v. Jaki Karikar*, 6 C.W.N. 377. Where a riyat without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of the Bengal Tenancy Act the sub-lease shall not be valid for more than 9 years from the commencement of the Act, as against the landlord but not as against the riyat; *Gopal v. Eshan*, 29 Cal. 148. A sub-lease by a riyat for a term exceeding nine years is invalid even against the riyat: *Basarabulla v. Kasirunnessa*, 11 C.W.N. 190.

But this case has been doubted by Mookerjee and Carnduff J.J., in the case of *Abdul Karim v. Abdul Rahaman*, 16 C.W.N. 618, s. c., 15 C.L.J. 672 and it has held that permanent lease by a riyat is binding between the parties to the contract.

Sub sec. (2).

If the document is registered in contravention of sub-sec. (2) it must be dealt with as non-existing: *Mahendra v. Parbatty*, 8 C.W.N. 136; *Srikanta v. Sarada*, 29 Cal. 49; *Fasil v. Karamuddi*, 6 C.W.N. 919; the object of the section was not only to protect landlords but to protect the riyats against the effect of their improvident acts: *Mahendra v. Parbatty*, 8 C.W.N. 136. The words in sub-sec. (3) "a sub-lease shall not be valid for more than nine years from the commencement of the Act" apply duly as between the sub-tenant and the landlord: *Bepin v. Amrita*, 9 C.L.J. 76; *Madan v. Jaki*, 6 C.W.N. 377; *Gopal v. Eshan*, 29 Cal. 148.

Dispossession by superior landlord or under-riyati land.

Sub-sec. (2) was not put in between sub-sec. (1) and sub-sec. (3) evidently for the benefit of the landlord only to prevent the registration of the document if it creates a tenancy of more than nine years or in perpetuity: *Tamijuddin v. Ajar*, 13 C.W.N. 183, s. c., 36 Cal. 256; as long as the interest of the tenant from year to year is not put an end to, the superior landlord has no right to eject the sublessee, who is not his riyat, and the lessee can maintain a suit for possession of the land, from which he is dispossessed by the superior landlord and a tenant of his who is not the lessor of the plaintiff: *Ibid*, see also *Mahomed Taqui v. Choa Lal*, 13 C.L.J. 499. In this case an under-riyat who had taken a sub-lease of a portion of a riyati holding was dispossessed by the riyat's landlord, held that the under-riyat is entitled to a decree for possession, in as much as a riyat is entitled to grant a sub-lease, though that power is restricted by s. 85. Where a sub-lease by a riyat was not admissible in evidence as being registered in contravention of s. 85, it was held that the sub-lease could be proved by oral evidence in a suit brought by the under-riyat against a person who was neither his own landlord nor superior landlord: *Banku Behari v. Rajchandra*, 14 C.W.N. 141.

Sublease registered in contravention of s. 85, when may be proved.

by the Bengal Tenancy Act: *Abdul Karim v. Abdul Rahaman*, 16 C.W.N. 68; s. c., 15 C.L.J. 672; the question whether cases of this description are governed by the Bengal Tenancy Act or by the Transfer of Property Act depends on the nature of the original tenancy and not on the nature of the sub-tenancy with reference to particular piece of land within the holding: *Ibid.* See also *Baburam v. Mohendra Nath*, 8 C.W.N. 454.

12. Under-raiyati lease, transferability of:—An under-raiyati holding is not transferable: *Amirennessa v. Jinnat Ali*, 42 Cal. 751, s. c., 19 C.W.N. 43, s. c., 20 C.L.J. 548. See notes under s. 48, heading no. 4. Transferability of under-raiyati holding.

13. Under-raiyati interest—incumbrance :—See notes under s. 161.

14. Registration Rule under Sub. Sec. (2):—When a sub-lease by a raiyat purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back: “*Not admissible under sub-sec. (2), Sec. 85 of the B. T. Act.*” The note shall be signed, sealed and dated by the registering officer. The order of refusal will be entered in Book II: see Appendix V, Registration Rules, rule 4.

Surrender and abandonment.

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

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

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

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

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

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the

jurisdiction of which the holding or any portion of it is situate.

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

(6) When a holding is subject to incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing subsection, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Headings of Notes.

1. DISTINCTION BETWEEN SURRENDER AND ABANDONMENT.
2. DISTINCTION BETWEEN SURRENDER AND A RELEASE.
3. RELINQUISHMENT.
4. SURRENDER—IMPLIED SURRENDER.
5. RELINQUISHMENT BY PERMANENT TENURE-HOLDER.
6. UTBANDI TENANT.
7. SURRENDER NEED NOT BE IN WRITING.
8. HEIRS OF OCCUPANCY-RAIYAT: LIABILITY TO PAY RENT.
9. PORTION OF A HOLDING CANNOT BE SURRENDERED.
10. SURRENDER AFTER TRANSFER OF PORTION: RIGHT OF LANDLORD TO EJECT THE TRANSFEREE.
11. SUB-SECTION (6): INCUMBRANCE.
12. SURRENDER AFTER AN ORDER S. 171.
13. LANDS SUBMERGED UNDER WATER.
14. EJECTMENT OF UNDER-RAIYAT.
15. SURRENDER BY A HINDU WIDOW.
16. EFFECT OF PARTITION AS BETWEEN LANDLORDS.
17. COURT-FEE AND STAMP.
18. NOTICE OF SURRENDER.

Surrender
and abandon-
ment.

1. Distinction between surrender and abandonment:—The position of a landlord in the case of abandonment is stronger than in the case of a surrender by a raiyat; in the case of abandonment, the landlord does not acquire any title through the raiyat as in the case of a purchase: *Prankrishna v. Mukta Sundari*, 18 C.L.J. 193.

Surrender
and release.

2. Distinction between surrender and release:—"A surrender is of a nature directly opposite to release; for, as the latter operates by the greater estate descending upon the less, the former is the falling of a less estate into a greater by a deed—A surrender immediately divests the estate of the surrenderer and vests it in the surrenderee, even without the assent of the latter." *Bouvier's Law Dictionary*, Vol. III.

Right of
relinquish-
ment—
conditions
of lease.

3. Relinquishment:—The right of relinquishment is a privilege given to tenants, by means of which they may restrict the lease and establish their tenancy upon a new basis or may extinguish the lease altogether; and the tenants cannot avail themselves of that

privilege to any extent, unless they strictly observe the conditions which are either expressed or implied in the lease: *Ram Churn v. Ranigunge Coal Association*, 26 Cal. 29, s. c., 3 C.W.N. 697 (P.C.).

A relinquishment is not inoperative because it was to take effect at a subsequent date: *Sheikh Kubir v. Baikunta*, 15 C.W.N. 680. Relinquishment to take effect at a subsequent date.

A relinquishment made in favour of the landlord by some of several of a joint occupancy holding does not operate by way of enlarging the right of the other co-sharers who did not relinquish, and depriving the landlord of what ordinarily would belong to him: *Peary Mohun v. Radhica Mohan*, 8 C.W.N. 315: s. c., (on Letters Patent appeal) 5 C.L.J. 9. Relinquishment by some of several joint tenants.

A relinquishment made in favour of the landlord by one of two co-tenants so as to affect his share is valid: *Sheikh Kadir v. Baikunta Chandra*, 15 C.W.N. 680; Jenkins C. J. in delivering the judgment of the court said in respect to the case in 8 C.W.N. 315 as follows:—
“I feel no doubt, as Mr. Justice Banerjee held, of the validity of a relinquishment made in favour of the landlord by one of two or more tenants for the purpose of affecting the share of that tenant.”

A mere notice of relinquishment does not relieve a tenant from liability to pay rent; it is the actual relinquishment of property that relieves him: *Nobeen v. Luckhee*, 1 W.R. 20: (s. c.) Rev. Judicial and Police Journal, Vol. III, p. 142. See also *Cazee Syed Mahomed v. Chundee Lall*, 7 W.R. 250. Notice of relinquishment.

The tenant being called upon by his landlord to pay rent declined to do so using the words অজকে বিলি কর (i.e. settle the land with some other person); there was no verbal notice to quit given to the tenant; held in a suit by the landlord for khas possession that there being no acceptance of the relinquishment, the facts did not constitute a valid relinquishment: *Bonomali v. Delu Sirdar*, 24 W.R. 118. What facts do not constitute relinquishment.

4. Surrender—Implied surrender:—See notes under s. 87.

5. Relinquishment by permanent tenure-holder:—See notes under s. 11, at p. 113.

6. Utbandi tenant:—An *utbandi* tenant, when he ceases to hold the land, is not bound to give any notice of abandonment to his landlord, in order to avoid liability for rent for future years: *Amrita v. Giridhur*, 11 C.W.N. 581, s. c., 5 C.L.J. 398. Under the *utbandi* system the settlement is for one year only and the cultivator is not obliged to hold or cultivate for a second year: *Ibid*. Oral Surrender.

7. Surrender need not be in writing:—There may be a valid surrender of an occupancy holding without a written document: *Khondkar Abdur Rohaman v. Ali Hafez*, 28 Cal. 256, s. c.; 5 C.W.N. 351: see also *Imambandi v. Kumlaswari*, 13 I.A. 160; s. c., 14 Cal. 109; see also *Mahomed v. Shunker*, 11 W.R. 53. According to s. 86 sub-sec. (2) a raiyat in order to be relieved of his liability to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender is to give to his landlord at least 3 months before he surrenders, notice of his intention of surrender. But the section nowhere says that the surrender should be in writing. It has also been held that a surrender or relinquishment of lease is not required to be in writing: *Elias Meyer v. Manoranjan Bagchi*, 22 C.W.N. 441; a surrender can be inferred from acts of the parties; *Ibid*, see also *Jagadamba Prasad*

v. *A. V. Sham*, (1919) Patna 88. See also *Chunder Mani v. Shumboo Chandra*, [1864] W.R. 270. See also *Khondkar Abdur Rahman v. Ali Hafiz*, 28 Cal. 256 and *Brajonath Sarma v. Maheswar Gohani*, 28 C.L.J. 220 : although the original lease might be a registered one, that does not prevent the surrender being made orally and s. 92 proviso of the Evidence Act has no application ; *Poran Matia v. Indra Seni*, 47 Cal. 128 ; the case of *Sarat Chandra v. Nritya Gopal*, 13 C.L.J. 284 was distinguished on the ground that in that case possession had not been given up and also that it did not appear what the nature of the tenancy was in that case. In the case of *Sarat Chandra v. Nritya Gopal*, 13 C.L.J. 284, the landlord had sued to recover possession on the allegation that there was an oral surrender of a portion of the tenancy and a reduction of rent, and it was held that the original lease having been a registered one, oral evidence was not admissible to prove the surrender and the subsequent reduction of rent. In the case of *Brojonath v. Monessur*, 22 C.W.N. 100, (notes portion) s. c., 28 C.L.J. 220 it was held by Fletcher and Shamsul Huda J.J., that no written document is necessary for effecting a surrender in this country.

See notes under s. 11, heading no. 6, at p. 113.

Heirs of
occupancy
raiyyat liable
to pay rent
even when
not in pos-
session.
Portion of
a holding
cannot be
surrendered.

8. Heirs of occupancy raiyyat—Liability to pay rent—The heirs of an occupancy raiyyat, dying intestate, are liable to pay rent whether they occupy the land or not unless they surrender the holding : *Peary Mohan v. Kumaris Chander*, 19 Cal. 790.

9. Portion of a holding cannot be surrendered :—“We know of no law or custom by which a raiyyat is justified in throwing up a portion of his jote and in keeping just that portion which happens to suit his convenience, and which may be.....the very portion which confers value on the remainder of the jote, and one without which no fresh tenant will be found to enter on an engagement. In this instance the raiyyat may either retain the whole or he may throw up the whole, in conformity with the provisions of Act X of 1859. But as long as he retains any portion of the land, he is liable for the rent of the whole.” *Per SETON-KARR and A. G. MACPHERSON, J.J., in Sarada Sundari v. Hazee Mohamed*, 5 W.R., Act X, 783 : (s. c.) *Rev. Civil and Criminal Reporter*, Vol. I, p. 66 (Rulings in rent-suits). “It is not enough for a raiyyat who holds a considerable quantity of land to give notice that he relinquishes a part of the land, without specifying what portion, in order to relieve himself from liability to pay rent. He must shew and prove that he did relinquish the land, and “what it was, and how it was that he relinquished.” *Per NORMAN and JACKSON, J.J., in Habela Sircar v. Doorgakant*, 11 W.R. 456. Where the lease is an entire contract, the lessee has no right to repudiate one portion of it on the ground of fraud and adhere to the other portion ; if the tenancy is to be avoided on the ground of fraud, it must be avoided *in toto* : *Anarullah v. Koylash*, 8 Cal. 118. It was however, observed by Ghose, J. (Holmwood, J., concurring) that under cl. (7) of s. 86 a portion or the whole of a holding may be surrendered : *Badan Chandra v. Rajeswari*, 2 C.L.J. 570. Under cl. (7) a part of a holding can be surrendered by an arrangement with the landlord.

If a tenancy
is to be
avoided it
must be
avoided
in *toto*.

Surrender
after
transfer of
a portion.

10. Surrender after transfer of a portion : Right of landlord to eject the transferee :—Where after transferring a portion of a holding a raiyyat surrenders the whole of his holding to

the landlord: *held* that, if the surrender be collusive, the tenancy subsists; and so long as the tenancy subsists, the landlord is not entitled to eject the transferee of a portion of the holding: *Askar Ali v. Goupee Mohun*, 18 C.W.N. 601, s. c., 18 C.L.J. 257. Right of landlord to eject transferee.

Where a raiyat surrenders a portion of his holding to the landlord, the landlord is entitled to re-enter that portion notwithstanding any subordinate rights which the raiyat may have created upon that portion, and the mere fact that the landlord was aware of the encumbrance created by the raiyat cannot take away his right of re-entry: *Gagan Chandra v. Rajeswari*, 2 C.L.J. 570, *Rajendra Kishore v. Chandra Nath*, 12 C.W.N. 878. Conflict of rulings.

A surrender of a raiyati holding by the raiyat, without the consent of the usufructuary mortgagee of a portion of the holding does not entitle the landlord to eject the mortgagee: *Raghunath Singh v. William Cox*, 19 C.W.N. 268; * their Lordships in deciding the case relied upon the observations of Channel J., in the case of *Walter v. Yalden*, L.R. 7 K.B. 804:—"The law is that a lessee can only give title to his lessor by a surrender to the same extent that he could give it to another person by his assignment. If the lessee has created under-leases, the under-leases remain notwithstanding the surrender; the lessee cannot assign his term to any one else so as to put an end to those under-leases. But that, I think, is only an example of what he can and cannot do; the point is that he has no power to effect by surrender anything that he could not do by assignment to a third person: the reason being that he cannot convey to his landlord anymore than to any one else anything that he has not got himself."

Where a purchaser (in execution of a money decree) of a non-transferable raiyati holding being resisted by the raiyat, by arrangement with the latter, was given a portion of the holding, the raiyat retaining the rest; and subsequently the raiyat expressly surrendered the whole holding to his landlord, though it appeared that even after such surrender he went on occupying the portion retained by him under the arrangement, *held*, that the arrangement between the purchaser and the raiyat was in substance a sale of a portion of the holding and that the surrender being obviously illusory, the original tenancy subsisted and protected the purchaser from ejection by the landlord. *Nobokishore v. Dhananjoy*, 20 C.W.N. 670.

Where a tenant surrendered his holding a landlord was held to be bound by the previous transaction of the tenant by way of mortgage. *Mahammad Nasaruddin v. Sheikh Isal*, 21 C.L.J. 185.

In the case of *Zamir Munshi v. Bisseswari*, 25 C.L.J. 480, D. Chatterji, J. and Newbould, J. took different views, the former holding that a raiyat having sold a part of his occupancy holding cannot surrender the self same part to his landlord so as to entitle the landlord to take *khas* possession of the said part by ejecting the purchaser.

Where a raiyat expressly surrendered a part of his non-transferable holding which, prior to such surrender, he had sold, and took

* The following cases were discussed:—*Rajendra Kisore v. Chandra Nath* 12 C.W.N. 878; *Gagan Chandra v. Alak Chand*, 17 C.W.N. 698; *Krishna Chandra v. Miran Bajanta*, 3 C.L.J. 222; *Hasani Bibi v. Sadir Mahmud Sarkar*, 2nd Appeal No. 2955 of 1917 (unreported).

Conflict of rulings. a new settlement of the remainder: held that this operated as a surrender of the whole holding (express as to a portion and implied as to the rest) and as no fraud on the part of the landlord was established, he was entitled to evict the purchaser from the portion sold. *Shaikh Tamij Munshi v. Brojendra Kishore*, 22 C.W.N. 967. See also *Kunja Kisore v. Bamasundari*, 43 Cal. 878. In the case *Shaikh Dastur Ali v. Ram Kumar Gope*, 22 C.W.N. 972, Teunon, J. took a view different from Richardson J., the latter holding that the landlord (apart from fraud) has the right to re-enter if the whole or a part of a non-transferable holding be relinquished or surrendered by the raiyat after the same has been sold by him. In Letters Patent Appeal in this case, Fletcher, Beachcroft and Greaves, J.J. adopted the view taken by Teunon, J. and it was held by them that where an occupancy raiyat sold a portion of his holding and subsequently surrendered that part to his landlord, the latter could not sue the transferee for *khas possession*: 24 C.W.N. 571. The same view was taken by N. R. Chatterjea and Panton, J.J., in the case of *Sailesh Chandra v. Umesh Chandra*, 24 C.W.N. 573.

In the case of *Anandamohan v. Gurudyal*, 22 C.W.N. 965 it was held by Woodroffe and Mookerjee, J.J., affirming the decision of D. Chatterji, J. on Letters Patent Appeal that a landlord is not entitled to *khas possession* where a raiyat sells a part of his holding and then makes a surrender.

Where one of two joint tenants holding his portion of the land separately and paying his rent separately to the landlord executed a registered document in favour of the landlord transferring his interest in the holding, it was held that even if there could be no valid surrender, the deed operated to pass his interest in the holding in favour of the landlord, *Abdul Karim v. Meajan Meajanji*, 20 C.W.N. 28 (notes portion).

The cases in which it has been held that a landlord is not entitled to *khas possession* when a part of the holding is transferred by the raiyat and then surrendered will be found below in the left-hand column, and those against will be found in the right-hand column below.

Conflict of rulings.	<i>Anandamohan v. Gurudyal</i> , 22 C.W.N. 965; judgment of Teunon J., in <i>Sheikh Dostur Ali v. Ramkumar</i> , 22 C.W.N. 972, affirmed in <i>Dostur v. Ramkumar</i> , 24 C.W.N. 571; <i>Sailesh v. Umesh</i> , 24 C.W.N. 573.	<i>Tamijuddin v. Khoda Newaj</i> , 14 C.W.N. 229, s.c., 11 C.L.J. 166. <i>Ramani Mohan v. Kalimuddin</i> , 17 C.W.N. 1101. <i>Sheikh Tamij Mondal v. Brojendra Kisore</i> , 22 C.W.N. 967; judgment of Richardson J., in <i>Dostur v. Ramkumar</i> , 22 C.W.N. 972; <i>Kunjakissori v. Bamasundari</i> , 43 Cal. 878.
----------------------	---	--

Analysis of the reasons. If these cases are analysed it will appear that the reasons why a landlord is not entitled to *khas possession* on the surrender of a part when it had been transferred previously are as follows:—

- (1) A person who has parted with his interest and has given up possession in favour of the transferee has nothing left in him to deal with that interest.
- (2) By surrender a raiyat cannot confer upon the landlord a

higher right than he could have passed to any other person by assignment.

It is submitted with great respect that where a raiyat transfers a part of his non-transferable holding he is in the eye of law the landlord's tenant in respect of the entire holding and therefore under cl. (7) of s. 86 he can surrender a part subject only to the limitations mentioned in cl. (6). The transferee takes the transfer subject only to the limitations as stated above; there cannot be an estoppel against the clear provision of the statute. Observations.

The Full Bench Case of *Syed Mohsenuddin v. Baikuntachandra*, 48 Cal. 605, s.c., 25 C.W.N. 29, s.c., 32 C.L.J. 286 has now settled the law which is stated below. Having regard to a conflict of rulings on the subject, Mookerjee, C.J. and Fletcher J., referred the following question for a decision of the Full Bench. Calcutta Full Bench Case. Landlord not entitled to eject transferee of a part.

"When an occupancy raiyat has transferred part of his non-transferable holding, is he competent to surrender to his landlord the portion so transferred either by surrender of that portion alone or by surrender of the whole inclusive of such portion?"

Mookerjee, C.J., delivered the judgment of the Full Bench.

The question referred to the Full Bench was answered in the negative and it was held that an occupancy raiyat, who transferred a part of his non-transferable holding, is not competent to surrender to his landlord the portion so transferred, either by surrender of that portion alone or by surrender of the whole inclusive of such portion.

A surrender of a non-transferable holding by an occupancy raiyat to his landlord, where the raiyat has previously sold a portion of the holding to another person entitles the landlord to enter upon the whole holding and eject the vendee or to settle it with another tenant; the English doctrine that a person cannot derogate from his own grant does not apply to prevent such surrender: *Sheoraji v. Dhami Mian*, [1923 Pat.], p. 305, (F.B.). The result of the provisions of ss. 178 (3) and 86 is that the raiyat has an absolute right of surrender subject to cl. (6) of s. 86: *Ibid.* Patna Full Bench. dissents from the Calcutta Full Bench.

This Patna Full Bench Case dissents from the Calcutta Full Bench Case of *Syed Mohsenuddin v. Baikantha Chandra*, 48 Cal. 605.

It is submitted that the Patna Full Bench case has taken the correct view of the law.

Where there is a surrender to the landlord, the rights of the tenant's mortgagee or encumbrance is preserved: *Bisheswar v. Ali Karim*, 63 I.C. 500. Mortgage is preserved after surrender.

A person after parting with his interest in property cannot deal with the interest by surrendering it in favour of the landlord: *Amiruddin v. Sankar*, 67 I.C., 91.

II. Sub-section (6): Incumbrance :—"The term 'incumbrance' used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure, or holding or in limitation of his own interest therein, and not being a protected interest in s. 160;" see s. 161. In s. 161 of the Bengal Tenancy Act the word "incumbrance" seems to be used as covering a lease: *Jogeshar v. Abed*, 3 C.W.N. 13. See Relinquish-ment.

Incum-
brance.

also *Thakoor Das v. Nobin Kishen*, 15 W.R. 552 ; *Mahamed Askur v. Mahamed Wasuck*, 22 W.R. 413 ; *Gopendra Chandra v. Mokaddam*, 21 Cal. 702. In order to satisfy the definition of "incumbrance" as given in s. 161 it must be the creation of the tenant, and therefore when a mortgage is created not by an act of the tenant but by operation of law under s. 171 of the Act, it is not an incumbrance : *Pasupati v. Narayan*, 1 C.W.N. 519 ; see notes under s. 161.

Sale of a
portion.

A sale of a portion of a non-transferable occupancy holding is not an incumbrance within the meaning of s. 86 sub-secs. (6) and (7) : *Tamizuddin Khan v. Khoda Nawaz*, 14 C.W.N. 229 ; s.c., 11 C.L.J. 16 ; an incumbrance must imply a limitation of the rights of the tenant and not a total extinction of them ; *Ibid.* This case was followed in the case of *Fazar Ali v. Pooroo Mian*, 28 C.L.J. 266. The case of *Tamizuddin Khan v. Khoda Nawaz*, was discussed in the case of *Askar Ali v. Goupee Mohan*, 18 C.W.N. 601, s.c., 18 C.L.J. 257 and although their Lordships deciding the latter case did not express any opinion as to whether the former case was correctly decided, it appears however that the correctness of the decision in the case of *Tamizuddin* was doubted. In the case of *Askar Ali v. Gopi Mohan*, it was held that as long as the tenancy subsists the landlord is not entitled to eject the transferee of a portion of the holding.

Incum-
brance,
meaning of

Effect of
surrender.

The provision of sec. 86 (6) of the Bengal Tenancy Act embodies within certain bounds the principle that the lessee has no power to effect by surrender anything he could not do by assignment to a third person. A surrender of a raiyati holding by the raiyat without the consent of a usufructuary mortgagee of a portion of the holding, does not entitle the landlord to eject the mortgagee and where the landlord after such surrender himself settled the rest of the land with another, the subdivision of the holding was effected by the landlord and so did not offend against sec. 88. *Raghunath Sing v. William Cox*, 19 C.W.N. 268.

Section 86, clause (6) of the Bengal Tenancy Act, was introduced for the purpose of invalidating surrenders made so as to defeat the claims of incumbrancers. *Per* Richardson, J., in the case of *Ramkumar v. Rameshwar*, 38 I.C. 523.

Notice of
relinquish-
ment.

12. Surrender after an order under s. 171 :—Where a raiyat surrendered his holding at a time when the holding was in possession of the under-lessee of the raiyat under s. 171 of the Bengal Tenancy Act, held that the superior landlord's claim to khas possession by virtue of the surrender should be postponed till the amount due to the under-lessee by virtue of the mortgage under the operation of the law under s. 171 is satisfied : *Nabadip v. Bhairab Chandra*, 13 C.W.N. 97.

What is
not a valid
relinquish-
ment.

13. Lands submerged under water :—By claiming or accepting remission of rent in respect of lands washed away from time to time by an action of the river, a tenant may be held to abandon or agree to abandon his rights to such lands on their reformation *in situ* : *Arun Chandra v. Kamini Kumar*, 18 C.W.N. 369 (P.C.).

Ejectment
of under-
raiyyat.

14. Ejectment of under-raiyat :—Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s. 85 or cl. (6) of this section : *Nilkanta v. Ghatoo Sheikh*, 4 C.W.N. 667. When the surrender is of a portion of a holding, a landlord need not serve a notice a quit

upon the under-raiyat before he can be ejected: *Badan Chandra v. Rajeswari*, 2 C.L.J. 570.

15. Surrender by a Hindu widow :—Where a Hindu widow surrenders her raiyati holding (which she inherited from the last owner) such surrender is subject to the disability and limitation which attaches to her interest in the holding as a Hindu widow: *Jumna Prasad v. Basdeo*, 4 Pat. L.J. 548 ; s.c., [1919 Pat.] p. 245.

16. Effect of partition as between landlords :—"On principle it seems to me that a partition of the landlord's interests ought not to be held to confer upon the holders of one of the new *mahals* or *pattis* rights against tenants or their transferees which the landlords did not possess before the partition and which do not necessarily result from the partition:" *Suraj Deo Narayan v. Pachi Narayan*, 2 Pat. L.J. 225 at p. 230.

17. Court-fee and Stamp :—An application for service of notice of relinquishment of land is not chargeable with Court-fee according to cl. xii of s. 19 of the Court-fees Act. Although a surrender need not be in writing (see notes under heading No. 6) yet where a tenant actually executes a document in favour of his landlord which requires a non-judicial stamp it should bear stamp as provided for in Art. 61 of Sch. I of the Stamp Act which is as follows:—

Description of instrument.

Proper stamp duty.

"61. Surrender of lease—(a)
When the duty with which the
lease is chargeable does not
exceed five rupees.

The duty with which such
lease is chargeable.

(b) In any other case.

Five rupees.

Exemption.

Surrender of lease when such lease is exempted from duty."

A lease of the following description is exempted from stamp duty under Art. 35 of Sch. I of the Stamp Act:—

"Lease, executed in the case of a cultivator and for the purpose of cultivation, including a lease of trees for the production of food or drink, without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees."

18. Notice of Surrender :—As to rule framed by the Local Government regarding the service of notice of the surrender: see Appendix I, Chap. V ; rule 36. Personal service is not required: *Ksheroode v. Hashan Ali*, 6 C.W.N. 28 (notes).

87. (1) If a raiyat voluntarily abandons his resi-
dence 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

Abandon-
ment.

holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in such manner as the Local Government, by rule, directs.

(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, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering, under this section, on the holding, offer the whole holding to the sub-leasee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-section refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Headings of Notes.

1. PROVISIONS OF THE SECTION ARE NOT EXHAUSTIVE.
2. SUB-SEC. (1) : CEASES TO CULTIVATE.
3. ABANDONMENT : SUB-MERGED LAND.
4. ABANDONMENT.
5. ABANDONMENT BY HINDU WIDOW.
6. SALE BY RAIYAT AND SUBSEQUENT SUB-LEASE FROM TRANSFEREE :
ABANDONMENT.
7. RELINQUISHMENT.
8. FORM OF NOTICE : SUB-SEC. (2).
9. S. 9 OF THE SPECIFIC RELIEF ACT.

S. 87 not
exhaustive.

I. Provisions of this section are not exhaustive :—The provisions of this section are not exhaustive ; they apply only to cases in which a landlord take possession of an abandoned holding without bringing a suit ; but they do not prescribe the only mode in which a

holding can be abandoned: *Samujan v. Munshi Mahton*, 4 C.W.N. 493; *Ram Pershad v. Jawahir*, 12 C.W.N. 899 s.c., 7 C.L.J. 72; see also *Prankrishna v. Mukta Sundari*, 18 C.L.J. 193; see also *Adiluddi v. Fajal Sheikh*, 19 C.W.N. 76 (notes portion); see notes under s. 23.

The provisions of this section are not exhaustive and the landlord may proceed by suit if he can prove that the facts and circumstances of the case lead to an inference of abandonment: *Matookdhari v. Jugdip Narain*, 19 C.W.N. 1319 s.c., 21 C.L.J. 261. Inference of abandonment.

2. Sub-sec. (I): Ceases to cultivate:—S. 87 contemplates of cases in which there is cultivation of the holding by the tenant; in cases where the land is partly homestead and partly horticultural the question of ceasing to cultivate the holding does not properly arise: *Shashi Mohan v. Bipin Behari*, 15 C.W.N. 79 (notes portion). Land partly homestead and partly agricultural.

When a raiyat without giving notice, goes away from the land he has occupied, and neither cultivates nor pays rent, the landlord is justified in assuming that he has relinquished it and the raiyat has no right to ask to be re-instated on the ground that he never formally relinquished the land: *Goher Sheikh v. Alif-uddin Sheikh*, 30 C.L.J. 13: Mere non-payment of rent is not evidence of abandonment but non-payment of rent coupled with non-occupation of land is evidence of an intention to abandon it: *Ibid*. Evidence of abandonment. Non-payment of rent and non-occupation of land.

Where a raiyat executed a usufructuary mortgage and delivered possession to the mortgagee, and the lower appellate court held that the landlord was not entitled to get khas possession in as much as the tenant had not abandoned within the meaning of s. 87 the High Court on the principle of the Full Bench case of *Daya Mayi v. Ananda*, 42 Cal. 172, held, that the finding of the lower appellate court was not sufficient to dispose of the suit and the case was therefore remanded for determination of the questions as to whether there was relinquishment of the holding or a repudiation of the tenancy; *Prio Nath v. Kusum Kumari*, 47 I.C. 332. Usufructuary mortgage.

Mere execution of a usufructuary mortgage is not sufficient to establish abandonment: it is principally a question of fact: where an occupancy raiyat after executing a usufructuary mortgage left the village and cut off all connection with the holding, held that there was abandonment: *Monohor Pal v. Ananta Moyee*, 17 C.W.N. 802; see notes under s. 23.

Where a raiyat sublets to an under-raiyat and then abandons the holding, it cannot be said that the raiyat has not ceased to cultivate. For, the cultivation by an under raiyat is not his own cultivation. Sub-sec. (4) contemplates cases of abandonment by raiyats and at the same time there have been subleases to under-raiyats. Sub-letting to under-raiyat. Non-cultivation by raiyat.

3. Abandonment: Sub-merged land:—By claiming or accepting remission of rent in respect of lands washed away from time to time by an action of the river, a tenant may be held to have abandoned or agreed to abandon his rights to such lands on their reformation *in situ*: *Arun Chandra v. Kamini Kumar*, 18 C.W.N. 369 (P.C.).

4. Abandonment: Abandonment, what amounts to:—In order to succeed under s. 87 the plaintiff must prove:— Elements necessary for abandonment under s. 87.

- (i) that the raiyat without notice to the landlord voluntarily abandoned his residence,

(ii) that he did so abandon without arranging for payment of his rent, and

(iii) that he ceased to cultivate his holding: *Ramjanum v. Khublal*, [1919 Pat.] p. 151.

Question of fact in each case.

The question as to whether there has been an abandonment or not within the meaning of s. 87 is in each case a question of fact: *Monohor Pal v. Ananta Moyee*, 17 C.W.N. 802; A court of appeal cannot make a new case and decree the appeal on the ground of abandonment which was not pleaded nor any evidence gone into the question: *Harendra v. Khemada Kinkar*, 44 C.L.J. 282.

Transfer of non-transferable holding.

The first sub-section shows that abandonment is the effect of the act of the tenant in vacating the holding without making arrangement for payment of his rent and for cultivating the land: *Ram Pershad v. Jowahir*, 7 C.L.J. 72; whether there is abandonment is a question of intention to be determined upon the facts of the particular case: *Ibid.* Where a tenant transfers his non-transferable holding he must be taken to have abandoned the holding if he ceases to pay rent to his landlord, and accepts a new tenancy from the transferee; *Kalinath v. Kumar Upendra Chandra*, 24 Cal. 212, s.c., 1 C.W.N. 163; where a tenant transfers his non-transferable holding and abandons possession of the same, he must be taken to have abandoned the holding: *Lal Mamud v. Arbulla Sheikh*, 1 C.W.N. 198; see also *Robert Wilson v. Radha Dulari*, 2 C.W.N. 63; *Shamujan v. Munshi Mathon*, 4 C.W.N. 493. Where a non-transferable occupancy holding was sold, and the purchaser, after obtaining possession through Court, pulled down the huts of the tenants and threw every obstruction in the way of any body else obtaining possession of the land, *held* that these findings were sufficient to hold that the tenant had abandoned: *Bhagaban v. Bissesswari*, 3 C.W.N. 46. But mere non-payment of rent, taken by itself, does not extinguish or amount to a relinquishment of the right of occupancy: *Nilmony v. Sonaton*, 15 Cal. 17; but it may be that the fact that the tenant has ceased to cultivate the lands coupled with the non-payment of rent would be evidence upon which a Court may come to the conclusion that there has been a relinquishment: *Ibid.* Where a raiyat neither cultivates nor pays rent for it he should be considered to have wholly relinquished the land: *Muneeroodeen v. Mohamed Ali*, 6 W.R. 67. In order to entitle the landlord to re-enter on abandonment by the tenant, it must be an abandonment in the words of s. 87, namely, that the raiyat voluntarily abandons his residence without notice to the landlord and without arranging for the payment of his rent as it falls due, and ceases to cultivate: *Madan Mondal v. Mohima Chandra*, 33 Cal. 531: s.c., 3 C.L.J. 343. Where a raiyat therefore, transferred his non-transferable holding but still remained on the land and cultivated the same, *held* that the landlord could not re-enter: *Ibid.*

Mere non-payment of rent does not extinguish right of occupancy.

Non-payment of rent coupled with the fact of raiyat not cultivating, effect of.

Where a tenant transfers his non-transferable holding and ceases to pay rent, the landlord is justified in regarding the conduct of the tenant as amounting to an implied surrender.

Usufructuary mortgage.

The mere execution of a usufructuary mortgage may not be sufficient to establish abandonment, but where the raiyat did not live in the village and cut off all connection with the holding, *held* that there was abandonment: *Monohor Pal v. Ananta Moyee*, 17 C.W.N. 802: *Sashi Mohan v. Bepin Behari*, 15 C.W.N. 79 (notes portion).

where the raiyat after execution of a usufructuary mortgage still held in the village, held that there was no abandonment: *Sadhu Sai v. Awadh Bihar Saran Singh*, 89 I.C. 702 s.c. 7 P.L.T. 552.

See notes under s. 23, headings nos. 14, and 15 at pp. 187, 188.

In order that there might be an abandonment under s. 87, there must be a finding that the tenant left the village without making any arrangement for the payment of rent; *Adiluddi v. Fajal Sheikh*, 19 C.W.N. 76 (notes portion).

In order to effect legal abandonment and to allow a valid re-entry by a landlord, service of notice under cl. (2) of s. 87 is not indispensable; the only effect of the service of notice, is to make it obligatory upon the tenant to have a speedy determination of the question whether there has been an abandonment or not: *Ram Pershad v. Jowahir*, 7 C.L.J. 72: s.c., 12 C.W.N. 899. Where a raiyat sells his non-transferable holding and is no longer in possession of the same and pays no rent for it, the landlord is entitled to eject both the transferor and transferee, and no notice is necessary under this section to enable the landlord to obtain khas possession of the holding: *Samujan v. Munshi Mahlon*, 4 C.W.N. 493; see also *Robert Wilson v. Radha Dulari*, 2 C.W.N. 63: the landlord is also entitled to khas possession when the tenant, after transfer, accepts a new tenancy from the transferee: *Kali Nath v. Kumar Upendra Chandra*, 1 C.W.N. 163; s.c., 24 Cal. 212; *Norendra Narain v. Ishan Chandra*, 22 W.R. 22. But the landlord has no right to take khas possession where a share of the holding is sold by the original tenants to certain members of their family, and after the sale, the entire holding remains jointly in the possession of the original tenants and the transferees and the rent of the holding continues to be paid in its entirety in the names of the original tenants and the transferor: *Kabil Sardar v. Chunder Nath*, 20 Cal. 590. In a case in which a raiyat transfers his holding and makes over possession to some one else, it is not the notice under s. 87 which terminates the tenancy, but the voluntary abandonment coupled with acts on the part of the landlord (not necessarily limited to the giving of notice) indicating that he considered the tenancy at an end, and it would be for the Court in each case to determine whether the tenancy had terminated: *Lal Mahmud v. Arbullah*, 1 C.W.N. 198. Where a non-transferable occupancy holding is sold in execution of a decree for money, and the purchaser obtains possession of the land through the Court, and pulls the huts of the tenant standing thereon, and it is found that the tenant has abandoned the possession of the holding, held that in a suit for khas possession the landlord is entitled to succeed, and a notice under s. 87 to the old tenant is not necessary: *Bhagaban v. Bisseswari*, 3 C.W.N. 46. Where a holding is actually abandoned the landlord is entitled to re-enter without a notice under s. 8: *Wahid Ali v. Mohamad Ansar*, 47 I.C. 147.

Transfer of non-transferable holding.—Right of landlord to obtain khas possession.

No right to khas possession where a share is sold.

Notice does not terminate the tenancy but the voluntary abandonment coupled with other acts.

Landlord not entitled to possession where sale not operative or transferee remains in possession as sub-lessee.

If the sale is not meant to be operative, the title to the property still continues with the tenant: *Mathur Mandal v. Ganga Charan*, 13 Cal. 1219 s.c., 10 C.W.N. 1033; where a transferee holds possession on behalf of the tenant, he cannot be evicted: *Ibid.* The landlord is not entitled to re-enter where the transferee remains in possession as a sub-lessee: *Madar Mondal v. Mahima Chandra*, 33 Cal. 531 s.c., 3 C.L.J. 343; *Dina Nath v. Krishna*, 9 C.W.N. 379; *Chreestidhar v. Mandan*, 9 Cal. 648.

See notes under the next heading.

Sale of non-transferable holding in execution of money decree.

When a non-transferable occupancy holding is sold in execution of a money decree, the landlord cannot re-enter if the tenant is still upon a portion of the holding and unless he has abandoned the whole holding: *Jogendranath v. Tincowri*, 10 C.L.J. 147.

Surrender after transfer of a portion.

A raiyat, after transferring a portion of the holding may surrender that portion or the whole and Cl. (7) is no bar to the landlord accepting the surrender, as the interest, if any, of the transferee is not an incumbrance; upon such surrender, the landlord may sue to eject the transferee as a trespasser: *Ramoni Mohan v. Sheikh Kalimuddi*, 17 C.W.N. 1102.

Test of abandonment of homestead land. Repudiation.

The only test of abandonment of homestead land within the meaning of the Bengal Tenancy Act, s. 87, would be discontinuance of residence in the village: *Raghubar v. Ramghulam*, 36 I.C. 653.

Even though there has been no abandonment, repudiation by the original tenant is sufficient to justify the landlord in evicting him. Where a tenant or occupancy tenant transfers his holding and in a suit for ejectment by the landlord pleads that the tenancy was transferable and he had a right, he must be deemed to have repudiated the tenancy and the landlord has a right of re-entry: *Kinu Sheikh v. Raj Kumar*, 96 I.C. 588 (Cuming and B. B. Ghosh J. J.).

Sale of entire holding.

For a landlord seeking to re-enter it is not necessary to prove as a fact that the holding has been abandoned but it is a direct inference from the fact that the entire holding was sold and possession given to the purchaser: *Prosonna Kumar v. Ananda Chandra*, 30 C.W.N. 231 (Cuming and Chakravarti J. J.).

Transfer of part.

Where the transfer is of a part only of a (non-transferable) holding or not, by way of sale, the landlord, though he has not consented, is not ordinarily entitled to recover possession of the holding unless there has been an abandonment within the meaning of s. 87 or a relinquishment of the holding: *Dayamayi v. Ananda*, 42 Cal. 172 (F.B.).

A suit brought for *khas* possession based on the provisions of sec. 26 of the B. T. Act fails as soon as it is found that the occupancy raiyat died leaving an heir: *Harendra Kumar v. Khemada Kinkar*, 44 C.L.J. 282 (Cuming and B. B. Ghosh J.J.). It is not necessary for the court to decide who is preferential heir or whether there has been abandonment and base its decision upon the same: *Ibid.* A court of appeal cannot make a new case and decree the appeal on the ground of abandonment which was not pleaded nor any evidence gone into the question: *Ibid.*

Covenant in kabuliyat.

A tenant holding under a Kabuliyat which precluded him from transferring the property in any way, either by sale or gift or otherwise, and which gave the landlord a right of re-entry in case of alienation, transferred his rights to another but remained in possession of a portion of the same as a lessee under his transferee. A person claiming under the landlord sued to eject him without giving him any notice under sec. 155 (1) of the B. T. Act; held that the defendant was liable to be ejected as there was an express covenant for re-entry on alienation, *Gohur Sheikh v. Ahmed Mia*, 105 I.C. 786 (B. B. Ghose and Roy J. J.). *Ramesh Chandra v. Mathuranath*, 28 C.W.N. 497; s.c. 39 C.L.J. 356, was distinguished; *Dwarika Nath v. Mathura*, 21 C.W.N. 833; s.c. 24 C.L.J. 40, was followed.

5. Abandonment by Hindu widow :—A Hindu widow can abandon a raiyati holding: *Deo Narayan v. Ramanand*, 63 I.C. 211. Hindu widow.

6. Sale by raiyat and Subsequent sublease from transferee: Abandonment :—Where a raiyat sells his non-transferable occupancy holding and takes a sub-lease from the transferee and remains in possession, two questions arise; 1st, as to whether the landlord is entitled to get a declaration of his title against the transferee to the effect that the transferee did not acquire any title against him, and secondly, as to whether the landlord is entitled to get *khas* possession by ejecting the original tenant who takes the sub-lease. In regard to the first question, the case-law seems to be settled that the landlord is entitled to get a declaration that the transferee has acquired no title as the holding is non-transferable and no title passed by his purchase. In regard to the second question, the landlord has been allowed *khas* possession in certain reported decisions, (see *Kalicharan v. Arman*, 13 C.W.N. 220; *Kalinath v. Kumar Upendra*, 24 Cal. 212, s.c. 1 C.W.N. 163; *Rajani Kanla v. Ekkari*, 24 Cal. 689, s.c. 11 C.W.N. 811), whereas in others the landlord has been disallowed his prayer for *khas* possession, (*Madan Mandal v. Mahima Chandra*, 33 Cal. 531, s.c., 3 C.L.J. 343; *Superunnessa v. Ramdeb*, 24 C.W.N. 117). See also notes under sec. 23, heading no. 9. But the true rule which underlies all these decisions seems to be this—that the landlord is entitled to get a decree for ejectment if the original tenant has abandoned the holding or repudiated the tenancy.

Whether a landlord is entitled to any relief where a raiyat sells his holding and takes a sub-lease.

What seems to be the true rule.

It is submitted that from the fact that the tenant is in possession of the holding it cannot be inferred that the tenant has not abandoned; abandonment is a mixed question of fact and law. If he continues to possess the land as a tenant of a third person, in the eye of law he ceases to possess the land as before and therefore he should be considered to have abandoned. It is submitted that the elements necessary for abandonment under sec. 87 cannot be invoked for the determination of the question as to whether there has been abandonment in a suit for ejectment on the ground of transfer of non transferrable holding and the tenant taking a sub-lease. Mere non-payment of rent is not sufficient for proving abandonment but non-payment of rent coupled with the fact that the tenant is in possession by asserting a hostile title should be considered to be abandonment in law. "Repudiation" of the landlord's title should also be inferred from the fact that the tenant when he transferred the land asserted transferability and allowed a stranger to come in and he himself admitting the title of a trespasser attorned to him. It is, therefore, submitted that on the transfer of a non-transferable holding the landlord is entitled to re-enter, although the original tenant is in actual occupation of the holding as a sub-lessee.

Abandonment, a mixed question of law and fact.

S. 87.

Repudiation.

Landlord entitled to re-enter.

It has, however, been held by Newbould and Rankin, J.J., in the case of *Monmotho Kumar v. Jasodalal*, 28 C.W.N. 300, that where a tenant of a non-transferable occupancy holding sells it to a third person and after obtaining a sub-lease from him remains in possession of the holding the landlord is not entitled to obtain *khas* possession of it in the absence of repudiation by the raiyat of his relation to the landlord as such raiyat, because mere transfer apart from any other consideration does not give the landlord any right to get a decree for *khas* possession although the raiyat does not

Case-law.

Omission
to pay rent,
not a denial
of land-
lord's title.

appear and contest the suit. [The case of *Sipernnessa Bibi v. Ramdeb Rai*, 24 C.W.N. 117 was referred to.] Mere omission to pay rent is not a denial of the landlord's title in the absence of any evidence that the tenant ever refused to pay, —even if a case is heard *ex parte*, it is the duty of the Court to consider the interest of the absent party and not to pass a decree except on proof by the Plaintiff that he is entitled to that decree *Ibid.*

Sub-lease
after
transfer

Where a non-transferable occupancy holding was sold in execution of a decree (not a rent-decree), and the original tenant was in possession by taking a sub-lease and there was no evidence of refusal by the original tenant to pay rent to the landlord, *held* in a suit by the latter for *khas* possession against the transferee (in which the original tenants were not made parties) that there was no abandonment of the tenancy nor there was repudiation of the landlord's title and as such the landlord was not entitled to get *khas* possession: *Ramesh Chandra v. Daiba Charan*, 28 C.W.N. 602; s. c., 39 C.L.J. 356. (Rankin and Mookerjee, J.J.). Unless the landlord has a right to present possession he cannot maintain an ejectment suit against the transferee and the only remedy which the landlord can get against the transferee would be a declaration that the transferee has got no title to the land as against him: *Ibid.*

Landlord's
only remedy
to get a
declaration
where he
has no
right to
immediate
possession.

Where a non-transferable occupancy holding is sold by the riyat who after transfer takes sub-lease from the vendee and continues in possession, there is no abandonment of the land and there is nothing in the mere act of transfer to show any intention either to abandon the holding or to repudiate the relationship of landlord and tenant: *Ataharuddin v. Murari Mohan*, 47 C.L.J. 21, (Suhrawardy and Cammiade, J.J.). [The cases of *Manmatha v. Jasoda*, 28 C.W.N. 300; *Superunnessa v. Ramdeb*, 24 C.W.N. 117 and *Madan Mandal v. Mahima Chandra*, 33 Cal. 531, s. c., 3 C.L.J. 343 followed.] Suhrawardy, J. doubted the correctness of the decision of *Manmatha v. Jasoda*, 28 C.W.N. 300 and observed as follows:—"I am not prepared to accept the view without further consideration as it would seem that the very fact of the tenant transferring the whole of the holding to a stranger and attorning to him is sufficient evidence of repudiation of tenancy under the original landlord. But I am not at present disposed to differ from the view taken in that case and the other cases which it has followed": *Ataharuddin v. Murari Mohan*, 47 C.L.J. : 21 at p. 25

7. Relinquishment :—See notes under s. 86.

8. Sub-sec. (2): Form of Notice :—See Appendix I, rule 37, s. 87 does not require that personal service is to be effected upon the tenant: *Kherode v. Hashan Ali*, 6 C.W.N. 28 (notes).

9. S. 9. of the Specific Relief Act :—A landlord who proceeds to take possession of a holding after service of notice under s. 87 does so at his own risk; he cannot be said to take possession in due course of law so as to bar a suit by the tenant for recovery of possession under s. 9 of the Specific Relief Act on the ground that there was no abandonment: *Suresh Chandra v. Srimati Nesa Bibi*, 11 C.L.J. 433.

*Sub-division of tenancy.**Sub-division
of tenancy.**Bengal and Bihar.**East Bengal.*

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or with that of his agent duly authorized in that behalf.

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

Division of
tenancy not
binding on
landlord
without his
consent.

Headings of Notes.

1. AMENDMENT IN BENGAL.
2. EAST BENGAL.
3. LANDLORD.
4. ACT I. B. C. OF 1908.
5. PUTNI TENURE.
6. INTENTION OF PARTIES: NO INFLEXIBLE RULE.
7. SUB-DIVISION OF TENANCY: RECEIPT BY LANDLORD OR AGENT.
8. CONSENT IN WRITING.
9. PARTITION BETWEEN LANDLORDS, OR EFFECT OF OPENING OF SEPARATE ACCOUNTS UNDER ACT. XI OF 1859.
10. JOINT LIABILITY OF PURCHASER OF A FRACTION OF TENURE.
11. PAYMENT OF PROPORTIONATE PARTS OR RENT.
12. EFFECT OF CONSOLIDATION.
13. RECOGNITION OF DIVISION OF HOLDING.
14. ESTATES PARTITION ACT: EFFECT OF PARTITION.
15. APPORTIONMENT.
16. TRANSFER.
17. SUIT FOR CONTRIBUTION OF RENT: APPORTIONMENT OF RENT.
18. IJARADAR OR TICADAR, ACTION BY.
19. HOLDING.

20. TRANSFER OF A PORTION OF A HOLDING.
21. ALIENATION OF PORTION OF A SURBORAKARI TENURE.
22. SUIT FOR RENT BY CO-SHARER LANDLORDS.
23. WHAT CONSTITUTES "SEPARATE TENANCY".
24. DIVISION OF A TENANCY AT THE INSTANCE OF ONE OF JOINT LANDLORDS.
25. SPLITTING UP.
26. CONTINUITY OF TRANSFERABLE TENURE AFTER DIVISION.

1. Amendments in Bengal :—The words "*with his express consent in writing or with that of his agent duly authorised in that behalf*" were substituted for the original words "*with his consent in writing*" by Act I. B. C. 1908. The proviso was added by the same Act.

2. East Bengal :—There have been no alterations in East Bengal.

3. Landlord :—"Landlord" means a sole landlord or a entire body of joint landlords: A division which does not bind the whole body of the landlord does not come within the scope of s. 88: *Srikishun v. Jeohasi*, 45 I.C. 294.

S. 3 of Act
I.B. C. of
1903.

4. Act I. B. C. of 1903* :—S. 3 of Act I of 1903 is as follows :—Nothing in s. 1 shall be deemed to affect the provisions of s. 88 of the said Bengal Tenancy Act, 1885.

5. Putni tenure :—The registration of a sale of the whole or a part of a *putni* tenure s. 12 (B. T. Act) does not give the purchaser any right in as much as the Putni Regulation provides rules for the alienation of the whole or a part of a *putni* taluk: *Shaizuddin v. Mathura Mohan*, 18 C.W.N. 338.

Creation of
of new
tenancies.
Intention
of parties.

6. Intention of parties : No inflexible rule :—When lands of a tenancy have been subdivided, if a question arises as to whether new tenancies have been created, the answer must depend upon the intention of the parties; no inflexible rule apart from intention can be laid down: *Mulluck Chand v. Satis*, 11 C.L.J. 56; s. c., 14 C.W.N. 335 followed in *W. M. Grant v. Ram Reseha*, 14 C.L.J. 110.

Rent receipt
by landlord
or agent.

7. Sub-division of tenancy : Receipt by landlord or agent :

—A receipt for rent given by the landlord or his duly authorised agent in the form prescribed in this Act containing a recital that a tenant's name is registered in the landlord's sheristha, as the tenant of a portion of original holding at a rent which is a portion of the original rent amounts to a consent in writing by the landlord to a division of the holding and a distribution of the rent payable in respect thereof within the meaning of the section: *Peary Mohun Gopal Paik*, 25 Cal. 531, (F.B.), s. c., 2 C.W.N. 375: *Jogodiswar Joymani*, 25 Cal. 533, s. c., 2 C.W.N. 378 note: but see *Aubhoy Churn v. Shoshi Bhusan*, 16 Cal. 155. But where a receipt did not contain any specification of the total jumma of the taluk nor the statement of the area of the taluk or of the taluk at a rent which was a portion of the original holding, held that this receipt did not amount to a sub-division of the tenancy: *Jnanendra Mohan v. Gopal Das*, 31 Cal. 1020, s. c., 8 C.W.N. 923; receipt granted by *Sumarnavis* who was not the collector of rents and who had

Sub-division
of tenancy.

* Act I. (B. C. of 1903) is to be found in the Appendix.

authority to grant a receipt does not amount to consent in writing by the landlord: *Ibid.*

Any subdivision of the tenancy requires the consent of all the landlords: *Sasti Charan v. Akubjan Bibee*, 26 C.W.N. 639.

Consent of all the landlords necessary.

It is open to the landlord to say that he is not bound to any sub-division made by the tenants of the holding. It is also quite open to him to give effect to the subdivision made by the tenants themselves: *Sadakali v. Janakinath*, A. I. R. 1924, Cal. 463.

Where the shares of the tenants in the *putni* as well as those of rent payable by each in his own share are separately shewn in the rent receipts granted to several tenants: *held* that the rent payable by different tenants is distributed amongst them and there is a sub-division of the tenure consented to by landlord: *Abinash Chandra v. Purnananda*, 18 C.L.J. 174.

Rent receipt shewing the shares of the tenants and rent payable by each, effect of.

Where the authority of a *gomostha* is in question to give a receipt recognising the sub-division of a tenure or holding the onus of proof is upon the landlord, the relations between the landlord and his servant being a matter peculiarly within the knowledge of the landlord under s. 106 of the Evidence Act: *Srikrishna v. Jeohasi*, 45 I.C. 294.

Gomostha's authority, to recognise sub-division: Onus of proof lies on landlord to rebut.

It is not within the scope of the authority of a Patwari or rent collector to consent on behalf of his master to the transfer of an occupancy holding, i.e. an important act to be performed only by a person having at least some of the powers of a manager: (*Per* Chamier C.J.): *Wyatt v. Seo Gobind*, 1 Pat. L. J. 414.

Patwari or rent collector, if has power to consent to transfer of occupancy holding.

8. Consent in writing:—The “express consent in writing” may be given by a receipt, and in each case the adequacy of the consent must be gathered from all the circumstances: *Srikrishan v. Jeohasi*, 45 I.C. 294, s.c., 1918, Pat. L. W. 316; see notes under s. 23 and s. 73. The consent in writing by the landlord to the division of a tenure or holding has the effect of substituting a new contract for the old: and it should therefore be complete in itself and embody distinctly the terms of the new contract; should it fail to do so, no extraneous evidence to prove the terms of the contract would be admissible having regard to the terms of s. 91 of the Evidence Act: *Jnanendra Mohun v. Gopal Das*, 8 C.W.N. 923.

‘Express consent in writing’ may be by a receipt. Consent in writing amounts to new contract.

Receipts for rent granted separately by the landlord’s *teshildar* to the tenants of a holding, whose names were also entered in the landlord’s *sheristha* in the place of that of the tenant who held the tenancy before them, does not amount to a consent in writing on the part of the landlord to a sub-division of the tenancy within the meaning of this section: *Moharani Beni Pershad v. Romdohin*, 10 C.W.N. 216. It cannot be laid down as an inflexible rule of law that a landlord is not bound by the act of a *gomosta* in recognising a transferee of occupancy holding, the question of the *gomostha*’s power to bind his landlord is one which must be decided on the particular facts of each case; the burden of proof is in the first instance upon the landlord to prove the extent of the authority of the *gomostha* as a matter peculiarly within his knowledge: *Saduman Yamadar v. Behari Mahton*, 15 C.W.N. 953. See notes under heading b. 6 under this section and notes under ss. 23 and 73. A landlord bound to recognise a transfer of a portion of a holding though in the absence of his written consent as required by this section he is

Separate receipt of rent does not amount to consent in writing as to sub-division of tenancy.

Recognition of transfer of part is not recognition of transfer.

not bound to recognise the sub-division effected by the transfer: *Baistab Charan v. Akhil Chandra*, 11 C.W.N. 217; *Rammoyee v. Rupai*, 9 C.W.N. 123 (notes).

Suit for rent when sub-division or separate collection.

A 16 anna proprietor obtaining a decree for the whole rent due in respect of a *mokurari* tenure in a suit brought against all the tenants is entitled under s. 75 to sell the tenure in execution of the decree although he recognised the fact that the tenants had sub-divided the tenure and chose to accept a decree making each of them separately liable for his own share of the rent: *Surbo Lal v. J. M. Wilson*, 32 Cal. 680. Mere separate collection of rent does not make it binding upon them to collect rent separately unless they give their consent in writing: *Girish v. Chairadhar*, 3 C.L.J. 379; one suit for rent may be brought by the landlords notwithstanding separate collection; *Ibid.* See also *Shyama Charan v. Akhoy*, 3 C.L.J. 627.

Ss. 17 and 88

A subdivision of the holding or distribution of the rent, cannot, having regard to the terms of s. 17 and 88 of the Bengal Tenancy Act, be binding on the landlord, unless his consent in writing has been obtained to the subdivision, and the landlord cannot be held to be bound by reason of the provisions of the Act to make the purchaser of a portion of the holding or tenure, a joint defendant with the defendants who are the only persons recorded as tenants in the landlord's *sherestha*: *Ram Moyi v. Rupai Pramanick*, 13 C.L.J. 267; a consent given by a landlord, by a *solenama* decree, to a transfer of the whole of a holding or tenure, cannot be taken as his written consent to the division or distribution of the rent of that holding, even though possibly, under the law, the tenants may be entitled as holders of a permanent tenure to make a transfer of a portion of their interest in the same to a third party: *Ibid.*

Solenama decree.

Separate suit for rent after partition between landlords: apportionment.

9. Partition between landlords, or effect of opening of separate accounts under Act XI of 1859:—Where the principal defendant was the tenant of two joint landlords and, there being a partition between them, each of the joint landlords brought a separate suit for his share of the rent against the principal defendant by making the co-sharer landlord a party, *held* that the suits were maintainable, all parties interested having been made parties; and that apportionment may take place of the sum due for arrears as well with regard to the future: *Rajnarain Mitter v. Ekadasi Bag*, 4 C.W.N. 494, Plaintiff held land in joint tenancy with the defendants under herself as the landlord; the shares of the plaintiff and defendants having been separated by partition, the defendants contended that the plaintiff could not sue them for rent jointly but must bring a separate suit against each tenant, *held* that there was a division of the land and not a division of the holding and the tenants remained jointly liable to the landlord for the entire rent: *Dukh Haran v. Bibee Sghra*, 12 C.W.N. 568.

Where a *putnidar* took upon himself the liability to pay the revenue to the Government on behalf of the Zemindars, and the latter subsequently opens separate accounts under s. 10 of Act XI of 1859, and the owner of a share of the Zemindari sued the *Putnidar* making the Zemindar's owner's parties, for an appointment and for an order directing the *putnidar* to make separate payment in the collectorate to the credit of the plaintiff of the amount due in his share, *held*, that the suit was maintainable and should be decreed.

Gour Gopal v. Gostabehari, 21 C.W.N. 214, see also s. 37 of the Transfer of Property Act and the cases *Sreenath Chunder v. Mohesh Chunder*, 1 C.L.J. 453. *Issur Chander v. Ramkrishna*, 5 Cal. 902, *Raj Narain v. Ekadasi Bag*, 27 Cal. 479 ; s. c., 4 C.W.N. 494.

10. Joint liability of purchaser of a fraction of tenure :—

Purchaser of a portion of tenure, whether jointly liable for entire rent.

The transferee of a part of a tenure is jointly liable with his co-sharer for the whole rent, for although the privity between the parties may be one of estate only, it is in respect of the whole of the tenure though the transfer was a part, by reason of the indivisibility of the tenure without the landlord's consent, the fact of the lease being for a limited time does not make any difference: *Jogmaya v. Girendra Nath*, 4 C.W.N. 500.

11. Payment of proportionate parts of rent :—

"We should not affirm the proposition that where a holding is in the occupation of several tenants as one entire rental, the fact that the landlord's *teshildar* has accepted from the various tenants proportionate parts of the rent binds the landlord to recognise a separation of the tenancy. On the other hand, if it were proved that the landlord granted receipts showing that a separate jumma had been fixed for the holding alleged to have been served, it might be well argued on behalf of the tenant that the landlord was estopped from denying that a separate tenancy had been created": (*Per* Harington and Mitra, JJ.), *Moharani Beni Pershad v. Gobordhon*, 6 C.W.N. 823. The fact of some of the joint occupiers of a joint tenure paying portions of the rent due from all, corresponding with the shares for which the joint occupiers are liable, cannot prevent the landlord from suing them all or making all answerable for the joint debts: *Jnanendra Mohun v. Gopal Das*, 8 C.W.N. 923 ; see also *Buloram v. Saroop*, 21 W.R. 256 ; *Gour Mohan v. Anund*, 22 W.R. 295 ; *Ram Lalon v. Sonamonee*, 22 W.R. 334.

12. Effect of consolidation :—

Effect of consolidation.

The mere fact of consolidation of a number of separate raiyati holdings cannot alter the nature of the tenancies and convert them into a tenure unless the landlord and the tenant agreed at the time that the holdings should thenceforth be a tenure: *Manmoth Nath v. Anath Bandhu*, 23 C.W.N. 201 ; see also *Moula Baksh v. Jadunath*, 21 W.R. 267, and *Promoda Nath v. Asiruddi*, 15 C.W.N. 896.

13. Recognition of division of holding :—

Effect of landlord accepting rent.

There are various ways in which a Zemindar may recognise the division of holding ; he may do so formally by dividing the holding into separate parts, or by implication by receiving rent from parties holding separately: *Wooma Churan v. Raj Luchkee*, 25 Cal. 19 ; where a tenure was put to sale in separate lots at the instance of the landlord, and he took rent from two of the purchasers separately, held that no written consent was necessary in order to his being bound to recognise the partition: *Nubo Kishen v. Sreeram*, 15 W.R. 255. Glover, J. in delivering judgment said as follows :—No doubt there is no consent in writing on the part of the Zemindar, but the inference that he did not consent to the partition is of the strongest kind. It was by his own deliberate act that the tenure was put up for sale in separate and it is not denied that he has, since the sale, taken rent from each of the purchasers of these lots separately. The object of the regulation was the protection of the Zemindar from the division of part of his property without his knowledge, but in this case it is

clear that he knew of the division all along, and was in fact himself the cause of the property having been so divided.

Although tenants pay separately against all one rent suit is maintainable.

There is nothing in ordinary circumstances to prevent some of the joint occupiers from paying portions of the rent due from all, and the portions so paid may correspond with the shares for which the joint occupiers are liable, but there is nothing to prevent the landlord from suing them all, or making them all answerable for the joint debt: *Gour Mohun v. Anand Mandul*, 22 W.R. 295.

Where a raiyat transferred 5 bighas out of 8 bighas, *held* that it amounted to a division of a holding and a distribution of the rent, which, under s. 88 was not binding upon the landlord because not made with his express consent in writing: (*Per* Kingsford, J.); *Wyatt v. Seogobind*, 1 Pat. L.J. 415. Where a raiyat transferred a portion of his non-transferable holding to another, *held* that the division of the lands of the holding was not binding on the landlord: *Abdul Karim v. Miajan*, 20 C.W.N. 28 (notes portion). When a sale is only of a part of a holding at fixed rate the landlord is not bound to recognise the purchaser, as such a sale constitutes a division of the holding: *Fazarali v. Amir Buksh*, 47 I.C. 334.

Partition of an estate has the effect of dividing the holding.

14. Estates Partition Act: Effect of partition:—An estate having been partitioned between the plaintiff and his co-sharers under Act VIII, B. C. of 1876, a portion of a holding which formerly appertained to the joint estate fell within the plaintiff's share; *held* that the partition had the effect of dividing the holding so that the plaintiff became the sole landlord with regard to the portion of the holding that fell within his share of the estate: *Protap Chandra v. Kamala Kant*, 10 C.W.N. 818: Act VIII, whilst it did not provide for the division of holdings, did not also contain any prohibition against such division. *Ibid*.

Severance of tenure by sale of share.

15. Apportionment:—A sale of a share in a tenure, which has been let to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking, proper steps for that purpose, if he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect and then, if an amicable apportionment of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit: *Iswar Chandra v. Ram Krishna*, (F.B.), 5 Cal. 902, Garth, C.J., in delivering judgment of this case said as follows:—No real injustice will be done to the tenant under such circumstances because the possibility of the severance of the tenure, by *butwara*, sale or otherwise, is only one of those necessary incidents of the property which every tenant is or must be presumed to have been aware of when he took the lease, and as regards the costs of any suit which may be brought for the purpose of having the rent apportioned, they would of course be a matter for the discretion of the Court, and would probably depend upon how far in each case the tenant has had a fair opportunity of amicably adjusting apportionment.

A landlord has no right to break up existing holdings and re-distribute lands so as to alter the extent and nature of the holdings without the consent of the tenant: *William Nicholas Love v. William John Hume Ainsworth*, 22 W.R. 336. Landlord not entitled to distribute lands.

Where seven *mouzahs* had been let in *putni* to certain tenants by the zemindar, and then, under a decree against the zemindar, three of those *mouzahs* were sold to A, and the other four to B, and subsequently A brought a suit against the putnidars to have his share of the *putni* rent apportioned, making B, purchaser of the other *mouzahs*, a party to the suit, held that the suit was properly brought: *Sree Nath v. Mohesh Chunder*, 1 C.L.R. 453. But see *Kalee Chunder v. Ramguttty*, 25 W.R. 95, where in a suit for rent brought by an assignee of a portion of the interest of a certain landlord it was held that where a landlord lets out land at a certain rent, the rent being payable in one sum for the whole, and the land not being let to the tenant in separate parcels in respect of each of which there is a separate assessment of the rent, he cannot, without the consent of the tenant, alter the position of the latter and say that in future so much of the rent shall be payable in respect of one parcel only of the land and so much in respect of another parcel only. Apportionment.
Suit by an assignee of a portion of interest.

See notes under heading No. 9.

A landlord, if he accepts rent, assents to the transfer of the tenure whether the whole is sold or a part only: *Bharut v. Gunga Narain*, 14 W.R. 211. Acceptance of rent.

See notes under s. 23.

16. Transfer :—Ss. 12 and 17: A landlord is not bound to recognise any sub-division of the holding unless the provisions of ss. 12 and 17 are complied with: *Ram Moyi v. Rupai*, 9 C.W.N. 123 (notes); where a durputnidar to the knowledge of his holding, transferred a portion of this durputni to one person on one date and the remainder to another person on a subsequent date, held that after the second transfer the liability of the durputnidar for rent ceased and the two transferees became jointly and severally liable to the landlord for the same: *Kishori Raman v. Ananta Ram*, 10 C.W.N. 270; see also *Kristo Bulluv v. Kristo Lall*, 16 Cal. 642, *Chinta Moni v. Rash Behari*, 19 Cal. 17; *Jogmaya v. Girindra Nath*, 4 C.W.N. 590. The act of a permanent tenure-holder in transferring the tenure piece-meal has the effect of dividing the tenure contrary to the provision of s. 98: *Kishori Raman v. Ananta Ram*, 10 C.W.N. 270; where the holder of a permanent tenure transferred a portion of it and the transferee held that portion separately and was allowed to pay proportionate rent for the same to the landlord for a great number of years, held that upon sale by the transferee of that portion of the tenure his liability for rent to the landlord ceased: *Kali Sundari v. Dharani Kant*, 10 C.W.N. 272; s. c., 33 Cal. 279; his act did not have the effect of subdividing the tenure; *Ibid*. Landlord when not bound to recognise transfer.
Transfer in portion.
Transfer piece-meal.

17. Suit for contribution of rent: Apportionment of rent: Apportionment on the basis of assets,

—In a suit for contribution an apportionment of rent should not be on the basis of assets of the different villages at the time of the creation of the original tenure but on the basis of the present assets of the different portion of the tenure which by division have passed to different hands; *Harī Kishun Bhagat v. Tilak Dhari Lal*, 7 W.N. 453.

Right of
ijaradar to
accept
surrender.

18. Ijaradar or Ticcadar, action by :—An *Ijaradar* has full power to accept a surrender of the tenant's holding and having accepted a surrender he can let out the lands surrendered either as an entire holding to a stranger or part to the old tenants and part to a new tenant: *Huree Mohun v. Gora Chand*, 2 W.R., Act X, 25. The consent by a *thikadar* given in good faith for the benefit of the estate to an alteration of the area of the holdings under him and the apportionment of rent upon the new holdings is binding upon the landlord. *Mohamad Nazirul Hussain v. Chuni Kamti*, 2 Pat. L. J. 151, s.c., 1 Pat. I. W. 229.

Undivided
share in a
holding.

19. Holding :—An undivided share in the lands comprised in a holding is not a holding even if the landlord and the tenant agree to such a division: see *Hurry Churun v. Rajah Runjit*, 25 Cal. 817, s. c., 1 C.W.N. 521; *Baidya Nath v. Sheikh Jhin*, 2 C.W.N. 44; *Haribole v. Tussimuddin*, 2 C.W.N. 680. See notes under s. 3, sub-sec. (9).

Transferable
holding,
subdivision
of.

If landlord
entitled to
sue for khas
possession if
holding is
transferred.

20. Transfer of a portion of a holding :—Even if an occupancy holding is a transferable one, the raiyat is not entitled to subdivide his holding and transfer different parts of it to different persons, and in case of such transfer the landlord is entitled to treat the transferees as trespassers and eject them: *Tirthanund v. Mutty Lal*, 3 Cal. 774, but it has been held that the transfer by a raiyat with a right of occupancy of a part of his holding does not entitle the landlord to recover possession of the land transferred by ejecting the transferee, in the absence of evidence to shew that by custom such transfer is allowed: *Durga Prasad v. Doula Gazee*, 1 C.W.N. 160; although the landlord in such a case is not entitled to *khas* possession, he is yet entitled to a declaration that the transfer of a portion of his holding which has not been made with his written consent as is provided by this section is not binding on him: *Sheikh Guzafar v. Dalglish*, 1 C.W.N. 126. See notes under ss. 23 and 183.

See the Full Bench case of *Dayamayi v. Ananda*, 42 Cal. 172, s. c., 18 C.W.N. 971, s. c., 20 C.L.J. 52. Where a part of a non-transferable holding is sold and on partition by the landlords, that part falls in the exclusive share of one of the landlords, held that he cannot bring a suit for *khas* possession of that part: *Suraj Deo v. Pach Narain*, 2 Pat. L.J. 225; a partition of the landlord's interest does not confer upon a co-owner a higher right than he had against a raiyat or his assignee than what he possessed before partition: *Ibid.* A landlord has a right to sue for a declaration that transfer of a portion of a holding is not binding upon him: *Ram Ram v. Bibi Wazirunnessa*, 49 I.C. 439.

21. Alienation of portion of a surborakari tenure :—The alienation of a portion of a *surborakari* tenure in Cuttack without the landlord's consent is invalid but it does not work as a forfeiture of the whole tenure: *Dassorathy v. Ram Krishna*, 9 Cal. 596.

22. Suit for rent by co-sharer landlords :—See notes under s. 188.

Separate
Kabuliyat
necessary.

23. What constitutes a separate tenancy :—The mere fact that a tenant agrees to pay rent separately to one of the co-sharers would not constitute a separate tenancy; where however there is a separate *kabuliyat* in favour of one of the co-sharers lan

lords it may be held that there is separate tenancy: *Monmotha v. Mohendra*, 65 I.C. 469.

24. Division of tenancy at the instance of one of joint landlords :—There is no provision in the Act as to the division of a tenancy when one of several joint landlords and the tenant agree, but the other co-sharer landlords do not agree. So far as regards the division of a tenure the unwilling co-sharer landlords are not at all affected if there is no dispute as to their respective shares, for an undivided share of land may form a separate tenancy, but in case of the division of a (raiya) holding the other co-sharer landlords will be affected as an undivided share of land is not a holding: see notes under s. 3, Cl. (9) and s. 30. Tenure and Holding.

25. Splitting up :—Where a tenure which was being held at a rent of Rs. 4-8 from before the Permanent Settlement, but subsequently it was split up into two tenancies at the rate of Rs. 2-4 each, held that there was a splitting up and the tenant was not entitled to get the presumption under s. 50: *Uday Chandra v. Nripendra Narain*, 36 C. 287: s. c., 13 C.W.N. 410. Split up.

An order under s. 81* of the Estates Partition Act though unfounded in fact is not a nullity and such an order cannot be challenged by way of defence to a suit for rent in the absence of other parties to the partition: *Satis Chandra v. Kali Charan*, 29 C.W.N. 221. Ss. 81 & 119 of the Estates Partition Act.

S. 119 of the Partition Act gives the tenant a right to have the order set aside: *Ibid*; so long as the order has not been set aside the tenant cannot say that the tenure has been split up.

26. Continuity of a transferable tenure after division :—Where a permanent tenure existed from before the time of the Permanent Settlement, and a portion thereof was transferred after the Permanent Settlement and the transferee was granted a sanad confirming the transfer and allowing the transferee to hold his purchased share on payment of proportionate share of the original rent, it was held, that a new tenure was not created and that it should be considered as existing from before the time of the Permanent Settlement and consequently it was not liable to enhancement except as provided by clauses (a) and (b) to sec. 6: *Chandra Kant v. Ramkrishna*, 20 C.W.N. 1002; s. c., 24 C.L.J. 275; "It is well settled that the continuity of a transferable tenure is not affected by subdivision or consolidation. *Per Mookerjee, J.,* Ibid.*

* S. 81 of the Estate Partition Act runs thus :—" (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under chap. VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

Mookerjee J. further observed in this case as follows :—The decision in *Chandra v. Nripendra Narayan Bhup*, 36 Cal. 287: s.c. 13 C.W.N. 410, is apparently an authority in support of the contrary view, overlooks, as

See also *James Hills v. Huro Lall*, 3 W.R. Act X Rulings 135, and
and *Kazee Khoda Newaz v. Nabakisore*, 5 W.R. Act X Rulings 53.

Ejectment.

Ejectment.

No eject-
ment except
in execu-
tion of
decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Headings of Notes.

1. COVENANT THAT LANDLORD BE ENTITLED TO TAKE POSSESSION WITHOUT RECOURSE TO LAW.
2. EJECTMENT OF TENANT'S SUBLESSEE.
3. HOLDING.
4. REMEDIES AGAINST ILLEGAL EJECTMENT.
5. DISPOSSESSION BY A LANDLORD—LIMITATION.
6. DISPOSSESSION BY THE SUPERIOR LANDLORD.
7. NOTICE.
8. RIGHT TO CROPS.
9. DECREE FOR RENT IN A SUIT FOR EJECTMENT.
10. ONUS IN EJECTMENT SUITS.
11. CO-SHARER LANDLORDS.
12. SUIT FOR EJECTMENT AND ARREAR OF RENT.
13. EJECTMENT SUIT AGAINST A LICENSEE.
14. EJECTMENT SUIT AGAINST A PORTION OF A HOLDING.
15. SUIT FOR POSSESSION AFTER EXPIRY OF LEASE.
16. RECOGNITION BY TICCADAR.
17. SUIT FOR EJECTMENT, DEFENCE, SPECIFIC PERFORMANCE.
18. PARTIES.

1. Covenant that landlord would be entitled to take possession without recourse to law :—When there was a stipulation that on the breach of a certain covenant the landlord would be entitled to take possession without recourse to law, *held* that in spite of the condition of the lease the landlord is bound by the provisions of s. 89 ; *Budhimanta v. Sarat Chandra*, 13 C.L.J. 672.

2. Ejectment of tenant's [sub-lessee] :—A superior landlord has no right to eject the sub-lessee (*i.e.* sub-tenant under the superior landlord's tenant) even if the sub-lease is not binding on the superior landlord : *Tamijaddi v. Asgar Howladar*, 36 Cal. 256 ; such sub-lessee may bring a suit for possession against the superior landlord : *Ibid.*

3. Holding :—The term "holding" has not been used here in the strict sense in which it has been defined (s. 3, cl. 9) ; it seems to include the tenancy of an under-raiyat, whereas according to the definition it means a parcel or parcels of land held by a *raiyat*.

S. 9 of Act I
of 1877.

4. Remedies against illegal ejectment :—Where a tenant sues a landlord for recovery of possession of his holding which he alleges to have been illegally dispossessed of, he has his remedy under s. 9 of the Specific Relief Act, but in a suit not under that

I had occasion to point out in *Addi Singh v. Sukhraj Rai*, 17 C.L.J. 435, pre-existing law on the subject in this Court. Besides, as it turned up construction of cl. (3) of Sec. 50 of the Bengal Tenancy Act, it has no bearing upon the case before us.

section, he is bound to shew that he has a title to re-enter : see *Nund Kishore v. Sheo Dyal*, 11 W.R. 168 ; where a landlord dispossesses a tenant otherwise than by due course of law, a tenant may bring a suit under s. 9 of the Specific Relief Act to recover possession ; when the suit was not under s. 9 but under s. 23, cl. 6 of Act. X of 1859, it was held that the question was open as to whether the tenancy was at an end or not, and if at an end, he must fail in his suit ; see *Janardan v. Haradhan*, 9 W.R. 513 (at p. 514) (F. B.) ; see also *Rughoonundan v. Gopal Singh*, 1 W.R. 131 ; *Sheo Pursun v. Baboo Ram*, 1 W.R. 361 ; cl. 6 of s. 23 of Act X of 1859 referred only to possessory actions on the ground of illegal ejectment ; it did not apply to suit in which the plaintiff set out his title and sought to have his right declared and possession given him in pursuance of that title and did not bar the jurisdiction of the Civil Court : *Gooroo Das v. Ram-narain*, 7 W.R. 186 ; when a tenant comes into Court suing on his title, and fails to establish that title, he cannot fall back upon mere possession and get a decree independently of any right to hold the land : *Urjoon Dutt v. Ram Nath*, 21 W.R. 123. Ainslie, J., in delivering judgment said as follows :—".....both the lower Courts have found against the plaintiff on the title set up by him. If this is so, I think there can be no doubt that the suit ought to have been dismissed, because when a tenant comes into Court suing on his title, and fails to establish that title, if he can fall back upon mere possession and get a decree independently of any right to hold the land, the consequence would be that the landlord, who has just succeeded in defeating the title set up, would have to meet the decree by a fresh suit, notwithstanding that the judgment already arrived at would be conclusive between the parties, so that the second suit must end in a decree reversing the first decree, that is, a state of thing which clearly ought not to be brought about by the action of the Courts,—"

Tenant bound to prove title in a title suit.

Tenant's suit liable to be dismissed if tenancy is at an end.

A mortgagee of a non-transferable occupancy holding cannot recover possession of the holding in a suit against the landlord on the ground of illegal ejectment without reference to his title ; *Madan Mohan v. Sheikh Habi*, 2 C.W.N. 182 (notes).

Where a tenant held under a *ticca* and before the expiry of the *ticca* lease the landlord dispossessed the tenant, and the latter within six months from the date of dispossession (but after the expiry of the *ticca*) brought a suit for recovery of possession under s. 9 of the Specific Relief Act, *held* that the plaintiff's suit should be decreed : *Ramdayal v. Upendra Nath*, 17 C.W.N. 501.

Expiry of *ticca* lease.

5. Dispossession by a landlord—Limitation :—A suit to recover possession of land claimed by the plaintiff as an occupancy raiyat is governed by Art. 3 of Schedule III of the Act. See notes under that article.

Sch. III, Art 3.

The limitation applicable to a suit to recover possession by a non-occupancy raiyat who has been dispossessed of his holding by his landlord, is either six years or twelve years : *Tomizaddin v. Ashrub Ali*, 31 Cal. 647 (F.B.), s.c., 8 C.W.N. 446, over-ruling *Bhugabat Charan v. Luton Mondal*, 7 C.W.N. 218 ; see notes under Art. 3 of Schedule III.

6. Dispossession by the superior landlord :—Where a raiyat granted a sub-lease and the landlord of the raiyat dispossessed

the sub-lessee without the sanction of law, *held* that he was a trespasser: *Dumree v. Bissessur*, 13 W.R. 291. A lessee can eject a tenant brought by his lessor on the land during the continuance of his lease: *Kadir v. Sheo Prasad*, 2 Pat. L.J. 713.

7. Notice :—See notes under s. 155.

Suit for
ejectment
not main-
tainable un-
less tenancy
has been
determined.

Tenant at
will and
year to year.

Notice not
bad if it
includes
land not
belonging
to tenant.
Notice not
giving true
area.

Accuracy of
a plea.

Upon general principles a suit for ejectment of a tenant cannot be maintained, unless the tenancy has been determined *i.e.*, unless there has been a previous notice to quit or a demand for possession: *Per Mookerjee, J.*, in *Deo Nundan v. Meghu Mahton*, 34 Cal. 57 s. c., 11 C.W.N. 225: s. c. 5 C.L.J. 181. A mere demand for possession is sufficient for a tenant at will. *Ibid.*; the rule laid down in the case of *Sulatu Dass v. Jadunath Dass*,* 8 C.W.N. 774, applies in the case of a tenant from year to year: *Ibid.* A notice to quit which directs the tenant to vacate a certain quantity of land under his landlord is not bad in law merely because it includes some land which the tenant is found not to hold under the landlord: where a notice to quit stated the area of the defendant's holding to be 1 bigha and 5 chittaks, but the true area was $1\frac{3}{4}$ cottas less and no boundaries were given, *held* that it was not a defect which would make the notice bad in law, specially when the defendant was not misled by reason of this: *Shama Charan v. Uma Charan*, 25 Cal. 36, s. c., 2 C.W.N. 106. It is not required that a notice should be worded with accuracy of a plea; *Deo dem. William v. Smith*, 5 A. and E. 350: *Deo on the demise of Cox and others*, 6 Revised Reports 850; *Deo Lessee of Rodd v. Archer*, 12 Revised Reports 509.

On the determination of a lease for a term, the lessee is bound to surrender possession to the lessor; on default, he may be ejected without notice: *Paramananda v. Syjon Singh*, 24 C.L.J. 30.

Act I (B.C.)
of 1879.

It has been decided in a case decided under Act I of 1879 (B.C.) the Chota Nagpur Landlord and Tenant Procedure Act, that in a district in which that Act is in force, no notice to quit is necessary to eject a tenant who holds over after the expiry of his agricultural lease, there being no provision in the Act for such a notice: *Ram Narain v. Mongru Urao*, 4 C.W.N. 792.†

Observa-
tions of
Rampini J.

Rampini, J., in delivering judgment said as follows:—Now, the land which is the subject of dispute is situate in the District of Lohardaga, where the provisions of Act I of 1879 (B.C.) prevail. It is admitted before us that there is no provision whatever in Act I of 1879 which prescribes that the landlord must give a tenant notice to quit before he sues to eject him. A *fortiori* there is no provision of the law which compels persons in the position of the present Plaintiffs who are not landlords, but who allege themselves to be tenants under the landlords, to give such notice to quit to the defendants, who they

* Yearly tenants are entitled to reasonable notice before they can be ejected.

† But see *Abdulla v. Pakeri*, 2 Mad. 346; *Nilkant v. Ghatoo*, 4 C.W.N. 667; *Komal v. Ramanath*, 21 W.R. 332; *Hem Chundar v. Radha Pershad*, 23 W.R. 440; *Ram Khelawan v. Sundra*, 7 W.R. 152; *Jubraj v. W. Mackenzie*, 5 C.L.J. 231; *Chaturi v. Mukund*, 9 C.L.R. 240; *Mahomed Rasid v. Jadoo*, 20 W.R. 401; *Rajendra v. Bassidier*, 2 Cal. 146.

Suit when sufficient notice: *Ram Lal v. Dtnanath*, 23 Cal. 200; *Hem Chunder v. Radha Pershad*, 23 W.R. 440.

say, are not tenants but trespassers. There is no other law that we know which applies. The Transfer of Property Act will not apply to this case inasmuch as the lease under which the defendants originally held was a lease for agricultural purposes. From sec. 117 of the Transfer of Property Act it is clear that the provisions of Ch. V do not apply to such leases. Under these circumstances we cannot see that there is any law under which the lower Appellate Court was justified in holding that the Defendants were entitled to a reasonable notice to quit before they could be ejected. The pleader for the respondents has called our attention to various rulings of ancient date given under the rent-law formerly prevailing in Bengal, under which, he says, it is the common law in this country that before a tenant can be ejected, he must get notice to quit. We think, however, that there is no such common law and no such general rule. The Acts under which the cases cited were decided have all been repealed, and therefore they now prevail neither in Bengal nor in Chota Nagpur. And, so far as we can see, there is no other Act to guide us in this case but Act I of 1879 B.C., or the Transfer of Property Act.

Common law of the country.

This case (*Ram Narain v. Mangru Urao*, 4 C.W.N. 792, was not intended to lay down that where the Defendant is a tenant the tenancy has not to be determined before the institution of a suit for ejectment; *Deo Nundan v. Moghu Mohton*, 11 C.W.N. 225.

Ram Narain v. Mangru, explained.

In a suit for ejectment where no party sets up a tenancy the suit cannot be dismissed on the ground of want of notice when the Court finds that the defendant is a tenant; *Sujjad Ahmed v. Gangā Charan*, 9 C.W.N. 460. Notice to quit is necessary in the case of a service tenure when the tenant refuses to perform his services: *Anser Ali v. C. E. Grey*, 2 C.L.J. 403; see also *Hurgovinda v. Ramrutna*, 4 Cal. 67; *Radha Pershad v. Badhu Dashad*, 22 Cal. 938; *Sreesh Chandra v. Madhab Mochee*, (1857) S.D.A. 1772.

Where no party sets up a tenancy.

Service tenure.

Where a notice to quit directed that in default of compliance the tenant would be charged with damages at a certain rate, held that it was good notice to quit: *Adolphe Shrager v. Emma Price*, 12 C.W.N. 1059.

Notice to quit with notice of demand of damages for non-compliance.

In regard to non-agricultural tenancies the presumption is that the tenancy is a monthly tenancy expiring with the last day of each Bengali month: *Rakhal Chandra v. The Secretary of State*, 10 C.W.N. 841; a notice to quit such a tenancy was held to be good when the notice was dated the 25th of July and served on the 8th of August and the tenant was desired to quit on the last day of Chait: *Ibid*.

Agricultural tenancies.

The Collector is competent to sign a notice to quit on behalf of the Government: *Rakhal Chandra v. The Secretary of State*, 10 C.W.N. 841.

Signing of notice on behalf of Government.

In a suit for ejectment under the Bengal Tenancy Act a landlord is not relieved of the obligation to give notice to quit to the tenant, where the tenant for the first time denies the title of the landlord in his written statement: *Pratap Narain v. Harihar*, 36 Cal. 927; the notice must be a reasonable one, and it need not necessarily determine the tenancy at the end of the year; it will be the final court of fact in each case to determine what is reasonable notice having regard to all the circumstances, and whether it would not be reasonable in the circumstances of the particular case for it to determine with the year: *Ibid*.

Notice to quit.

Notice to quit when not sufficient.

A notice was served on the following terms: ".....some persons offer Rs. 27 a month, you are therefore informed by this notice that if from the 1st Aswin, 1318, you want to keep the shops and almiraahs in lease, you shall have to pay Rs. 27 a month": held that this notice was not sufficient either to terminate the tenancy or to enhance the rent: *Sakhi Chand v. Ram Chandra*, 16 C.L.J. 561; see also *Bradley v. Atkinson*, 7 All. 899.

Good notice.

Where a landlord wrote to the tenant asking him to come to an agreement with him to pay increased rent, and concluded by saying "otherwise I shall take steps to eject you and hence you consider this as 15 days' notice expiring with the end of this month," held that this was a good notice: *Ganga Das v. Ananda Chandra*, 13 C.W.N. 146.

Reasonable notice question of fact.

In regard to a tenancy-at-will the notice to quit need not be anything more than a reasonable one; as to what is a reasonable notice is largely a question of fact: *Dukhiram v. Malabi*, 39 I.C. 795.

Question of notice not raised in lower appellate Court if can be raised in second appeal.

The question as to whether the notice to quit was legal and sufficient cannot be raised in Second Appeal in the High Court when it was not raised in the Court of the First Appeal: *Shahwali v. Hossaini Begum*, 42 I.C. 655.

Determination of tenancy: Right of landlord to crops.

Contra.,

8. Right to crops :—The interest of non-occupancy raiyat in his holding is not heritable and as death determines the tenancy, the crop is lost to the heirs and his heirs cannot enter on the land and reap the crop after the tenancy has been determined: *Karim v. Sudder*, 24 Cal. 707, s.c., 1 C.W.N. 89. The effect of an order of ejectment is to dispossess the raiyat not only of the land but also of the crop standing thereon: *In the matter of Durjan Mathon v. Wazid Hossein*, 5 Cal. 135, but see *Durga Pershad v. Doochur Pershad*, 3 Agra 188, where it was held that a landlord cannot claim the crops on this ground at the raiyat's death even if the raiyat's right lapsed in his favour as it forms a part of the property belonging to the deceased, and passes to his legal representatives.

Suit against a trespasser.

9. Decree for rent in a suit for ejectment :—In a suit to eject the defendants as trespassers, although it was found that the latter were not so, a decree was given declaring the plaintiff's title to receive rent from the defendants, held in second appeal that the entire suit ought to have been dismissed, inasmuch as the defendants were not found to be trespassers on the allegations made, in the plaint and on the suit as framed, the plaintiffs were not entitled to get any other relief than the particular relief which they asked for: *Kali Kishore v. Gopi Mohun*, 10 C.W.N. 166.

Onus on plaintiff to prove title and possession within 12 years.

10. Onus in ejectment suits :—In a suit to recover possession it is essential for the plaintiff to prove two things—first, possession within 12 years before his suit; and, secondly title to possession: *Beer Chunder v. The Deputy Collector of Bhullooah*, 13 W.R., P.C., 23; s. c., 13 M.I.A. 323. See also *Mirza Shamsher v. Munshi Kunj Behari*, 12 C.W.N. 273.

Where onus on defendant. Plaintiff shewing *prima facie* title.

In a suit to recover possession where the plaintiff can shew a *prima facie* title to possession, he can claim a decree, unless the party in possession has a tenure entitling him to retain possession: *Ram-monee v. Aleemodeen*, 20 W.R. 374. Where plaintiff's title is admitted or proved the onus is upon the defendant to prove the allegation of his tenancy: *Narshing v. Dharani*, 9 C.W.N. 144.

When the plaintiff shews that he has a title, unless the defendant proves he has a right to continue in possession he is a trespasser: *Ibid.* In a suit for recovery of possession plaintiff stated that he was in khas possession and the defendants dispossessed him; the plaintiff purchased the land under a kobala and it was admitted that the persons from whom he purchased were proprietors of it; defendant claimed to hold under some title from the former proprietors; it was held that the onus was upon the defendant to prove his alleged title and defendant failing to discharge the onus plaintiff was entitled to a decree even if he failed to prove the allegation of khas possession and also the allegation of dispossession: *Raj Kissen v. Pearee Mohun*, 20 W.R. 421. The case of *Rammonee v. Alleemoodeen*, 20 W.R. 374, was followed in the case of *Raj Kissen v. Pearee Mohun*, 20 W.R. 421 which was followed in *Sheodeni v. Chatoorbhooj*, 12 C.L.J. 376. Where a person has the general title to a property and the defendant sets up an interest as *mokuridar* it is for the defendant to prove that and not for the plaintiff to disprove it; *Koonj Beharee v. Bukshee Luchman*, 19 W.R. 188. The cases in 20 W.R. 374 and 19 W.R. 188 were relied upon and followed in *Haree Mohun v. Gurubulloh*, 24 W.R. 417, where it was held that where in a suit for recovery of possession the defendant had admitted the ownership to be with the plaintiff and prayed to be allowed to be in possession as tenant, the burden of proof lay with the defendant.

Where plaintiff's title is admitted.

Where plaintiff has general title to the property.

Where plaintiffs are admittedly proprietors of the lands, they are, as such, entitled to exercise all the ordinary rights of ownership, and therefore when the defendants dispute the landlord's title to collect rents from the tenants directly on the ground that they hold immediately, they are bound to establish their title: see *Batai Ahir v. Bhuggobutty*, 11 C.L.R. 476; followed in *Sheodeni v. Chatoorbhuj*, 12 C.L.J. 376; (this case was followed in *Azmat v. Bishun Bakar*, 29 C.L.J. 607), *Rammanee v. Aleemoodeen*, 20 W.R. 374; *Raj Kissen v. Pearee Mohun*, 20 W.R. 421. When the plaintiff's title was admitted in a suit for ejectment and defendant claimed to be a raiyat, held that the onus is upon the defendant to prove the tenancy set up by him: *Dina Nath v. Ganesh Chandra*, 18 C.L.J. 544.

Where plaintiffs are admittedly proprietors.

A landlord is entitled to eject his tenant unless debarred by certain rights of the tenant. He is not required to prove the absence of the circumstances which entitled that tenant to retain possession: *Nubo Coomar v. Oozir Shikdar*, 23 W.R. 238; Jackson, J., in delivering judgment said as follows:—"The Judge said in his judgment in this case, 'I shall always hold that a landlord who seeks to eject a tenant is bound to shew his title to do so.' That may be either a very harmless proposition or a very dangerous one. If he means to say that the landlord is bound to shew his title to the land, he may be correct, but if he means to say that a landlord seeking to eject his tenant must prove the absence of the circumstances which entitle that tenant to retain possession of the land, we differ from him, and presume that he will not hold that view after receiving this expression of opinion of this Court that he is mistaken. We have no doubt that a landlord is entitled to eject his tenant after notice unless debarred of the power to do so by certain rights of the tenant of which the right of occupancy is one.....".

Landlord entitled to eject unless debarred by tenant's rights.

In a suit for ejectment, it lies upon the plaintiff to prove not only a title as against the defendant in possession, but to prove that the

Proof of title and previous possession.

Ejectment suit for non-payment of rent.

Zerai land.

Defendant to prove allegation of mokurari.

Occupancy right. Onus on defendant to prove permanent occupancy.

Onus on defendant to prove intermediate tenure.

Onus on plaintiff where defendant proves intermediate tenure.

plaintiff had been dispossessed or had discontinued to be in possession of the land within 12 years immediately preceding the commencement of the suit : *Dharani Kant v. Gabar Ali*, 17 C.L.J. 277 (P.C.).

In a suit to eject a tenant for non-payment of rent it is incumbent upon the plaintiff to shew that he is sole proprietor of the property and that there are no other co-sharers to be joined with him as plaintiff : *Shaikh Ashruff v. Ram Kishore*, 23 W.R. 289.

Plaintiffs were admittedly zemindars and the defendant did not deny that he was the plaintiffs' lessee, the plaintiffs alleged that a certain *mouzah* including all lands appertaining thereto, had been leased to the defendant and that amongst those lands were certain *zerai* land. But, on the expiry of the lease the defendant had given up possession of all the land with the exception of the *zerai* land ; the plaintiffs, therefore, sued for khas possession of these lands ; the defendant set up a special allegation that he was holding these lands by purchase from third parties, who had derived their rights from the former maliks, and that the title under which the defendant held was a *khas karee* title, held that the onus was upon the defendant inasmuch as he set up a title to defeat the plaintiff's admitted right as zemindars and it was for him to prove the tenure which he set up as defeating the plaintiff's right as *malik* to khas possession : *Baharee Sahoo v. Puryaj Mahtoon*, 13 W.R. 291. Where plaintiff claims certain land as *zerai* and his title is proved or admitted, the onus is upon the defendant to prove the allegation of his tenancy. *Narsing v. Dharam*, 9 C.W.N. 144.

It is upon the defendant to prove the allegation of a *mokurari* grant purporting to have been made by the zemindar for the past services : *Rajah Sahib Perlhah Sein v. Doorga Pershad*, 2 B.I.R., (P.C.), 128 ; 12 M.I.A. 286.

The claim of an occupancy right as overriding the proprietor's right to cultivate his own land is of a special character and as such, it is one which the party seeking to derogate from the ordinary incidents of property is bound to establish : *Rangasami v. Grana Samantha*, 22 Mad. 264 ; where an occupier of land resists a suit for ejectment by setting up a claim of a right of permanent occupancy, the onus of establishing such a right is upon the defendant : *Ibid*.

A zemindar has a *prima facie* title to the gross collections from all the *mouzahs* within his zemindari ; it lies upon the defendant to defeat that right proving the grant of an intermediate tenure : *Ibid* at p. 331.

In a suit by a landlord for khas possession of land the defendant set up and proved an intermediate tenure ; held that it was on the plaintiff to shew that the parcel of land sought to be resumed was outside such tenure : *Rajendra Kumar v. Mohim Chandra*, 3 C.W.N. 763. In this respect it makes no difference whether the plaintiff admits the existence of the under-tenure or the defendant proves such tenure to exist, although denied by the plaintiff. *Ibid*. This case has been explained in the case of *Protap Chandra v. Judhistir*, 19 C.W.N. 143 where the law laid down is this :—It is not the law that because a defendant is found to be a tenant of some land under plaintiff, the burden is thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant. The burden would ordinarily be on the defendant to prove the tenancy under which he claims to hold it. The case in 3 C.W.N. 763

has further been explained in the case of *H. Manners v. Harihar*, 19 C.W.N. 149 where it has been held that the owner of an estate is entitled to recover possession of lands within it unless the defendant can prove a subordinate interest.

In the case of *Rhedhoy Kistto v. Nobin Chandra*, 12 C.L.R. 457, s. c., 9 Cal. 813 it was held that in a case of a landlord suing his tenant, admitting the tenant's holding, and alleging that the land in dispute is land which the defendant has encroached upon beyond his proper boundaries, the onus is upon the landlord to prove the encroachment. But in a case where the zemindar alleges the land in question to be within the ambit of his zemindari, and does not admit there is any such under-tenure or holding as the defendant sets up, and the defendant admits the ambit of the plaintiff's zemindari, and sets up an adverse title by reason of an under-tenure, the burden of proof is upon the defendant. *Contra.*

The principle laid down in *Rhidhoy Kristo Mistri's case*, 9 Cal. 813, s. c., 12 C.L.R. 457, throwing the onus on the plaintiff should be held applicable to cases where the land sought to be recovered is admitted by the plaintiff to be contiguous to the holding of the defendant or that it has come to his possession by encroachment: *Gopini Debi v. Ramtaran*, 19 C.W.N. 140. (*Per N: Chatterjea, J.*). The mere fact that the defendant holds some land under the plaintiff's would not be sufficient to throw upon the plaintiff the burden of shewing that in respect of any other land in the zemindari which the defendant may be found to be in possession of, he has no right as tenant; the burden of proof in a case like this is on the tenant: *Ibid.*

In all actions for ejectment where the defendants are admittedly in possession, and a *fortiori* where, they had been in possession for a great number of years, and under a claim of title, it lies upon the plaintiff to prove his own title: *Mohima Chunder v. Mohesh Chunder*, 16 Cal. 473 (at p. 479), P.C.

In a suit by an auction purchaser of a permanently settled estate to recover certain julkars of which the defendants were in possession for a long time the onus was held to be on the plaintiff to prove his title affirmatively: *Forbes v. Meer Mahomed*, 12 B.L.R. 213.

When a defendant alleges that he holds a permanent tenure, the burden of proving that fact lies on him and it is not for the plaintiff to shew that he is not a tenure-holder but a raiyat: *Nilmoni Maitra v. Mothura Nath Joardar*, 4 C.W.N. 159 (notes).

Possession by the defendant of a tenure of a limited extent within the plaintiff's putni raises no presumption of title upon his seizure of a piece of land and claiming it as part of his tenure; the onus lies upon the defendant to prove that the land is included in his *mokurari* holding and not upon the plaintiff to shew that it is not; but when a tenant has been in long and peaceable occupation of land as part of an admitted tenure, it lies upon the landlord in a suit for ejectment to prove in the first instance that the land is his *khas* property and not the tenant's: *Nanda Lal v. Jajneswar*, 6 C.W.N. 105.

When a tenant holds lands of considerable extent, it is a matter peculiarly within his own knowledge of what that holding consists; and if he alleges that one or two plots occupied by him are held under a different title it is for him to shew it: *Ram Coomar v. Beejoy Gobind*, 7 W.R. 535.

Onus upon landlord to prove tenant's encroachment.

Plaintiff to prove title where defendant is in possession for a long time.

Suit by an auction purchaser of an estate.

Tenure-holder or raiyat—Onus upon defendant.

Onus—Presumption.

Suit for
resumption
of land—
Onus.

In a suit for presumption of lands which are alleged by the defendant to be *lakhiraj*, the onus is on the plaintiff, in the first instance to shew that the lands are *mal*, and if he fails to make out a *prima facie* case, the suit should be dismissed: *Narendra Narain v. Bishun Chundra*, 12 Cal. 182; *Bacharam v. Peary Mohun*, 9 Cal. 813: s. c., 12 C.L.R. 475.

Where
defendant
claims to
hold a
dependant
taluk.

Where defendant claims to hold as the holder of a dependant *taluk* the zemindar in order to get enhancement of rent must shew that the land was included in the zemindari at the time of the Permanent Settlement: *Assanulla v. Bussurat Ali*, 10 Cal. 920.

Suit for
resumption
of *lakhiraj*
lands.

A person seeking to resume *lakhiraj* land must give *prima facie* evidence to shew that rent has been paid for that land at some time since the 1st of December, 1790: *Koylash Bashinee v. Gocool Mani*, 8 Cal. 230; see also *Parbati Charan v. Rajkrishna*, B.L.R. Sup. vol. 162; *Sonaton v. Moulvi Abdul*, B.L.R. Sup. Vol. 109; *Huryhur v. Madhub Chander*, 14 Moor's I.A. 152; s. c., 8 B.L.R. 566.

Resump-
tion: *Mal*.
Zemindar
to make out
a *prima*
facie case.

A Zemindar in a suit for resumption of land as part of his *mal zemindari* for assessment is bound in the first instance to prove a *prima facie* case (1) the payment of rent since 1790, or (2) that the land formed part of the *mal* assets of the estate at the Decennial settlement; when such a *prima facie* case is made out, the onus is shifted on the defendant to prove that his tenure existed rent-free before the first of December, 1790; *Huryhur v. Madhub Chunder*, 14 M.I.A. 152: s. c., 8 B.L.R. 566.

The onus is upon the landlord in a suit for possession to prove his allegation that it is *mal* and not *lakhiraj*, although the land lies within the ambit of his zemindari: *Sheikh Melan v. Mahomed Ali*, 10 C.W.N. 434; the reason of the rule as regards the burden of proof is mainly that where possession for a long time by a defendant is admitted to be undisturbed, the plaintiff must give affirmative-proof of the land being part of his estate: *Ibid*; the fact of the land being pasture land raises a presumption in favour of the plaintiff: *Ibid*; see also *Oooma Charan v. Umbica Charan*, 20 W.R. 285.

Onus.
Where
plaintiff's
title is
proved.

In a suit for ejectment where the defence sets up a tenure by right of purchase from the former tenants, if the plaintiff has proved that he is the owner of the land, it lies upon the defendant to make out that he is tenure-holder and is entitled to remain thereon: *Hiramoti v. Annoda Prosad*, 7 C.L.J. 553.

Onus in
ejectment
suit against
under
raiyat.

In an action for ejectment where the plaintiff alleged that he was a raiyat and the defendants were under-raiyats, *held* that the onus was upon the plaintiff to prove that the defendants were under-raiyats: *Basiruddin v. Sahebullu*, 32 C.W.N. 160. The cases of *Abhoy v. Fultari*, 57 I.C. 838 and *Paran v. Khariz*, 42 I.C. 262 were referred to. See note at p. 287.

Suit for
enhance-
ment.

Where the purchaser of a tenure having obtained *ex parte* decree for rent against the tenant in occupation subsequently brought a suit for enhancement and was met by the plea that the tenancy was *mokurari* one, *held* that purchaser was not estopped from bringing a suit for ejectment: *Arsali v. Ramsaiya*, 7 C.L.J. 191.

There is no authority for the proposition that simply because a



landlord does not for a time institute a suit for ejectment after the expiry of the tenant's lease, the presumption is that the tenant was allowed to hold over: *Ratan Lal v. Farashi Bibee*, 11 C.W.N. 826. Holding over.

Where the plaintiff is admitted to be the landlord, and it is further found that defendant has raiyati interest in respect of some of the lands in suit but there is nothing to show which of the lands are raiyati, it was held that it was for the defendant to identify the lands which he claims as raiyati: *Bhaiyan v. Khawas Dilwar*, [1920 Pat.] p. 39. The case of *Rajah Sahib Perhlad Sein v. Doorga Pershad*, 12 M.I.A. 286, followed. Where plaintiff is admitted as landlord.

In a suit for ejectment the initial onus is on the plaintiff to prove his title. As to the right of the defendant to hold the land, where there is no contract between him and the plaintiff or any privity of contract as between the parties, the defendant must also prove his right to remain on the land: *Satis Chandra v. Debendra Nath*, 85 I.C. 636.

II. Co-sharer landlords :—When tenants where originally let into possession of land by all the co-sharers in a zemindari, a co-sharer is not competent to obtain a partial ejectment of the tenants to the extent of his share, unless the tenancy has been determined by all the co-sharers: *Gholam Mahiuddin v. Khairan*, 31 Cal. 786; the cases of *Radha Prasad Wasli v. Esuf*, 7 Cal. 414; *Hulodhur Sen v. Gooroodas Roy*, 20 W.R. 126, and *Kamal Kumari v. Kiran Chandra*, 2 C.W.N. 329, were all distinguished on the ground that these were cases in which an individual co-sharer let a person into possession of the land as tenant without the consent of the co-sharer seeking to eject that person from the land. Co-sharer not entitled to eject unless the tenancy is determined by all the co-sharers.

When some of several joint landlords have assented to a transfer of a non-transferable holding, the other co-sharers are entitled to recover joint possession of their share: *Hossein Mahomed v. Fakir Mahomed*, 10 C.L.J. 618, referred to in *Radhakissun v. Bhagawat*, 38 I.C. 72.

In a suit for ejectment by a Putnidar against A, A set up that he was the tenant not under the Putnidar but under another who was the durputnidar and seputnidar and who was entitled to the land, the durputnidar and seputnidar was ordered to be made a party and the appellate court sent the case for retrial; *Upendra Chandra v. Sheikh Sobhan*, 15 C.L.J. 6. Party.

12. Suit for ejectment and arrears of rent :—A person may claim in an ejectment suit arrears of rent due up to the time of the institution of the suit: *Shahwali v. Hussaini*, 2 Pat. L.J. 595; s. c., 42 I.C. 655; see also *Mansarali v. Abdul Karim*, 10 C.L.J. 187, and *Padmanabha v. Ranga*, 20 M.L.J. 930; and see *Fenton v. Barnett*, (1898) Q.B. 276; s. c., 67 L.J. Q.B. 11, s. c., 77 L.T. 645. A decree holder who has obtained a decree for ejectment is entitled to bring a suit for the arrears of rent of the period prior to the ejectment decree: *Mansar Ali v. Abdul Karim*, 10 C.L.J. 187; (The cases of *Jogeshuri Chowdhurani v. Mahomed Ibrahim*, 14 Cal. 33 and *Peer Pux v. Mowzahally*, 1 Hay 89 were distinguished). Waiver by receipt of rent only applies to rent accruing subsequent to the forfeiture: *Rajmohon v. Mati Lal*, 22 C.L.J. 546. Where a suit was brought for ejectment on the ground of non-payment of rent the suit was dismissed as rent was claimed for a period subsequent to the default in payment of rent: *Abdul Rasid v. Safar Ali*, 21 C.W.N. 159 (notes). Ejectment suit-Arrears of rent. Waiver by receipt of rent.

Notice to quit, not necessary for ejectment of licensee.

Ejectment suit, not maintainable in respect of a portion of holding.

Breaking up a tenure.

Sub-tenant not a party.

Fair rent.

Recovery of possession.

No cause of action until tenancies determined.

13. Ejectment suit against a licensee :—For the ejectment of a licensee a notice to quit is not necessary : *Gobinda Chandra v. Nandadulal*, 27 C.L.J. 523.

14. Ejectment suit against a portion of the holding :—A suit for ejectment cannot be brought for a part of the holding : *Bhagloo Shah v. Mahadeo Chaudhuri*, 36 I.C. 283 ; see also *Harihar v. Ram Sashi*, 23 C.W.N. 77, s. c., 29 C.L.J. 117 ; (P.C.).

A landlord cannot break up his tenant's tenure by declaring that he has no longer any right to the portion of it although he still holds the remainder : *Ramkanai v. Gones Chandra*, 33 C.L.J. 513, a suit to eject a tenant on service of notice from a portion of the holding on the ground that he refused to pay him, (the landlord), any rent for that portion is not maintainable : *Ibid.*

In a suit for ejectment against a tenant, the sub-tenant is not a necessary party and the latter is bound by the decree obtained against the tenant : *Ram Kissen Das v. Binraj Choudhury*, 50 Cal. 419.

15. Suit for possession after expiry of lease :—Where it was stipulated that after the expiry of an *ijara* a fair rent should be settled and that until a fair rent was settled the old rent would continue, *held* that a landlord was entitled to recover possession in a suit for possession : *Midnapur Zemindari Co. v. Naresh Narain*, 48 I.A. 49 ; s. c., 48 Cal. 460.

A landlord has no cause of action to sue for *khas* possession of lands forming part of his tenant's holdings until the tenancies are determined, but he can get a decree declaring his title to the land and giving him possession through the tenants by receipt of rent : *Kumudini Dasi v. Surendrabala Dasi*, 82 I.C. 22.

Where a man, whether the owner or merely a tenant, creates a tenancy under him which entitles the tenant to the exclusive use of the land or of the house, as it may be, the man creating the tenancy, cannot have any right to actual possession, unless he has by the lease or by agreement with his tenant reserved to himself a right to re-enter and take possession : *Ibid.*

See notes under s. 23.

16. Recognition by thicadar :—Where the thicadar of the plaintiff accepted rent from the transferee of a holding, *held* that a suit for ejectment did not lie : *Bhagloo Shah v. Mahadeo Chaudhuri*, 36 I.C. 283.

Suit for ejectment
Defence—
Specific performance.

17. Suit for ejectment—Defence—Specific performance :—A suit for ejectment by a person having a legal title can be met by one in possession under an agreement not formally executed and registered, though a suit for specific performance is barred : *Mahammad v. Krishna Gobinda*, 28 C.L.J. 77.

Parties.

18. Parties :—An action for damages against one or some of the several joint wrong-doers is maintainable. Such an action, however, is entirely distinct from an action in ejectment. The cause of action in the former, is the injury sustained, while in that of latter, is the detention of property. The two causes of action are essentially distinct.

The principles governing the rules of joinder of defendants in an action for ejectment are mainly two ; first, if any of the person in possession is left out, he remains in possession as not being affected

by the decree, and the decree as one in ejectment and for possession becomes infructuous because the person ejected as being bound by the decree can always come in under the person who remains in possession ; and second, there is a certain amount of risk involved in not making the person in actual possession defendants for in execution of the decree, persons may happen to be turned out who may then bring action against the plaintiff for wrongful dispossession, not being bound by the decree. In a case where the plaintiff has alleged in the plaint that a person is in possession, and there is no question of any particular share of which he may be in possession, it is not possible to apply the principle embodied in the first part of the rule stated in *Cole on Ejectment* pages 84 and 85, namely : "If the name of any tenant in possession be omitted as a defendant those parts of the premises which are in his occupation cannot be recovered in the action."

For the application of the rule that in action in ejectment all persons in possession should be impleaded as defendants, there is no distinction in principle between the cases of trespassers and of tenants who claim to hold under a title, because all action in ejectment proceed on the assumption that the plaintiff has title and hence the right to possession and that the defendant has none.

The plaintiff in a suit for recovery of khas possession of certain lands on declaration of plaintiffs' maliki right thereto, stated that one R held an ordinary raiyati jote which he afterwards abandoned. Defendants Nos. 1 to 3 were the heirs of R, Nos. 4 to 6 were purchasers of part of the jote from R and defendants Nos. 7 to 8 were sub-tenants. Defendant No. 6 died pending suit and his heirs were not brought on the record ; an objection as to maintainability of suit held that the suit was not maintainable in the absence of heirs of the Defendant No. 6 : *Arunadaya v. Mahamad Ali*, 46 C.L.J. 435.

Measurements.

Measurements.

90 (1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorised by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord 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 (namely) :—

- (a) where the area of the tenure or 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.

Headings of Notes.

1. STANDARD OF MEASUREMENT.
2. PROCEEDING UNDER THIS SECTION IS NOT A SUIT.
3. APPEAL.
4. RIGHT OF MEASUREMENT WITH A CERTAIN POLE.
5. RIGHT OF LANDLORD TO MEASURE WHERE THERE IS AN INTER-MEDIATE TENANT.
6. LANDLORD.
7. LAKHRAJ LANDS.
8. FRACTIONAL CO-SHARER LANDLORD.

1. Standard of measurement :—A court has no power to deal with the question as to the standard of measurement in a proceeding under ss. 90 and 91: *Ashutosh v. Joy Lal*, 17 C.L.J. 50.

Proceeding
not a suit.

2. Proceeding under this section is not a suit :—A proceeding under this section is not a suit and the order passed in such a proceeding is not a decree as defined in the Civil Procedure Code: *Dya Gazi v. Ram Lal*, 2 C.W.N. 351.

3. Appeal :—See notes under s. 91.

4. Right of measurement with a certain pole :—In a proceeding under this section the order should be limited to one directing in the words of s. 91, that the tenants do attend and point out the land, and a declaration made in such order that the applicant to measure is entitled to make the measurement with a pole of a certain measure is bad in law and without jurisdiction: *Dya Gazi v. Ram Lal*, 2 C.W.N. 351.

Right of
measure-
ment.
when there
are inter-
mediate
tenants.

5. Right of landlord to measure where there is an inter-mediate tenant :—Every landlord has a right to measure under this section even if there is a mukuridar between him and the tenant: *Matangini Dasi v. Ram Das*, 7 C.W.N. 93; there was nothing in the old law which precluded the proprietor of an estate from making a general survey and measurement merely because his estate happened to be sublet to a number of tenure-holders: *Brojendra v. Krishna*, 7 Cal., 684 (at p. 689), 9 C.L.R. 444; see also *Baboo Run Bahadoor v. Muloram Tewaree*, 8 W.R. 149; *J. Tweedie v. Ram Narain*, 9 W.R. 151.

Agreement
to pay
excess rent.

6. Landlord :—A *kabuliyat* executed before the passing of the Bengal Tenancy Act by defendant, the holder of a *darmourashi patta* in favour of his immediate landlord a *mukuridar*, provided that the former should have his name entered in the zemindar's *sheristha* in place of the *mukuridar* and pay rent direct to the zemindar, also in case the area of the tenure should exceed certain bighas, that he should pay rent on each excess bighas at a certain

rate to the zemindar and *makuraridar*; the agreement was ratified by the zemindar; it was held that the zemindar had the right to measure the land: *Matangini v. Ram Das*, 7 C.W.N. 93.

7. Lakhraj land:—A landlord had no right under s. 9, Act VI 1862 (B.C.), to measure *lakhiraj* lands, as *lakhraj* lands until resumed form a distinct and separate estate: *Prosunno v. Chunder Nath*, 10 W.R. 361; *Rang Lall v. Sreedhur*, 11 W.R. 293; *Golam Kheruj v. Ershine & Co.*, 11 W.R. 445.

8. Fractional co-sharer landlord:—It seems that by virtue of s. 188 of this Act a fractional co-sharer landlord has no right to make an application to measure. Under the old law also it was so decided: see *Mahomed Bahadoor v. Rajah Raj Kishen*, 15 W.R. 522; *Moolook Chand v. Modhoosoodhun*, 16 W.R. 126; *Soorender v. Bhuggobut*, 18 W.R. 332; *Santeeram v. Bykunt*, 19 W.R. 280; *Pearee Mohun v. Raj Kisto*, 20 W.R. 385. But it was held in the the case of *Abdool Hossain v. Lall Chand*, 10 Cal. 36: s.c., 13 C.L.R. 323, that a proprietor of a fractional share of an estate was competent under s. 38 of Act VIII (B.C.) of 1869 to apply for measurement of the lands, if he made all his co-proprietors parties to the proceeding. S. 188.
S. 38 of
Act VIII of
1869 (B.C.)

But where one set of landlords obtains separate *kabuliyats* entering into separate contracts for rent with the tenants such landlords cease to be joint landlords and such a landlord is entitled to make an application for measurement of the land comprised in his estate under this section: *Jognesh Prakash v. Maniraddi*, 35 Cal. 417.

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

(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.

Headings of Notes.

1. APPLICATION AGAINST SEVERAL TENANTS.
2. APPEAL.
3. PRESUMED TO BE CORRECT.
4. COURT-FEE.
5. STANDARD OF MEASUREMENT.

I. Application against several tenants:—S. 91 of the Bengal Act VI B.C. Tenancy Act does not contemplate that there should be separate appli- of 1862.
cations under that section by the landlord against each tenant; an application by the landlord with reference to the several tenants having holdings in the land which the zemindar desires to measure is competent under this section; *Haji Shah v. Raghunandun*, 14 One applica-
tion with

reference to several tenants maintainable.

Order not appealable.

Presumption.

Suit for possession of accreted lands.

Standard of measurement.

1 acre-4,840 square yards.

C.L.J. 231. A single suit to measure lands of several tenants although their rights and tenures are different was maintainable under s. 9, Act VI of 1862, B. C. : *Shushee Bhusun v. Nubo Coomar*, 8 W.R. 94.

2. Appeal :—A proceeding under s. 90 is not a suit and the order passed in such a proceeding is not a decree as defined in the Civil Procedure Code, and hence an order made under this section, on an application under s. 90 is not appealable, although a declaration is therein made that the petitioner is entitled to make the measurement with a pole of a certain measure: *Dya Gazi v. Ram Lall*, 2 C.W.N. 351.

3. Presumed to be correct :—"Under the present Act finality is not given to a measurement, and it would be open to a tenant to rebut the presumption of correctness which the Court is directed to make if he fails to attend when directed to do so." *Per* Macpherson and Ameer Ali, J.J., *Dya Gazi v. Ram Lall*, 2 C.W.N. 351. Where a landlord by virtue of an agreement with a tenant measured the lands on notice to the tenant who raised no objection at the time of the measurement, *held* in a suit by landlord for possession of alleged accreted land that the tenant could not defeat the suit merely on the ground of the incorrectness of the measurement, there being no fraud but that they were entitled to ask the Court to decide what the amount of the property was which the plaintiff was entitled to recover; *Alimuddi v. Kali Krishna*, 10 Cal. 895 (P.C.).

4. Court-fee :—It seems that the Court-fee for an application under sec. 90 is eight annas as provided for by Sch. II: Art. 1, cl. (b) of the Court-fees Act.

5. Standard of measurement :—A Court has no power to deal with the question as to the standard of measurement in a proceeding under ss. 90 and 91; *Ashutosh v. Joylal*, 17 C.L.J. 50.

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

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

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

Acre :—One standard bigha is equal to—14,400 square feet or 1,600 square yards—100 bighas are therefore equal to 33 acres (an acre being considered to be equal to 4,840 square yards).

Acre :—"A quantity of land, containing 160 square rods or perches or 4,840 square yards. This is the English Statute or Imperial acre which is employed over the United Kingdom and its

Colonies and in the United States, though Scotland and Ireland have respectively an acre of their own, which is still to some extent used in measurements. The Scotch acre is larger than the English as it contains 6,104,128 square yards, 48 Scotch acres being equal to 61 English acres. The Irish acre is also larger than the English inasmuch as 100 Irish acres are nearly equivalent to 162 English acres. OGILVIE'S IMPERIAL DICTIONARY OF THE ENGLISH LANGUAGE.

MANAGERS.

Ss. 93 to 100.

Ss. 93 to 100 lay down the rules for the appointment of a Common Manager when there is a dispute between co-owners of an estate or tenure. The case-law on the several sections has been noted under the appropriate sections; still for convenience' sake a summary of the comparatively more important cases on the subject is given below :—

1. Where a co-owner is not concerned in a dispute :—Where there is a dispute amongst some only of several co-owners, the common manager is to be appointed with regard to the entire estate including the share of such co-owner with whom there is no dispute and who is in separate collection of rent¹ Dispute amongst some only of several co-owners.

2. Separate collection of rent :—Where the several co-owners in separate receipt of rent of their respective shares an application may be made for the appointment of a common manager.¹

3. Portion of an estate :—An appointment of a common manager with regard to one of several mouzahs comprising an estate is invalid.² See notes under sec. 93.

An "estate" means an "entire estate" [see definition of estate, s. 3, sub-sec. (1). A common manager cannot be appointed with regard to a share of an estate.^{2a} Part of an estate.

4. Dispute with regard to several estates :—Where there is a dispute between co-owners of several estates one application is maintainable in respect to such of them of whom the owners are common.³

5. Appeal :—An appeal does not lie against an order passed in a proceeding arising out of an application for appointment of a common manager.⁴ The remedy therefore lies in an application under s. 622, C. P. C.

6. Non-service of notices :—An appointment of a common manager without service of notices upon all the co-sharers is not valid.^{4a}

7. Revenue Sale Law :—S. 5 of Act XI of 1859 (Revenue Sale Law) has no application to the case of an estate managed by a com-

¹ *Saradindu v. The Collector of Rungpur*, 11 C.W.N. 1143; Also see *Saradindu v. Girish Mohini*, 21 C.W.N. 240.

² *Indu Bhusan v. Annapurana*, 6 C.L.J. 216.

(2a) *Mohini v. Nagendra*, 30 C.L.J. 261.

³ *Fazel Ali v. Abdul Majid*, 14 Cal. 659.

⁴ *Hossain Bux v. Matoodharee*, 14 Cal. 312.

(4a) *Indu Bhusan v. Annapurna*, 6 C.L.J. 216.

mon manager appointed under the Bengal Tenancy Act ; such management does not also fall within s. 17 of that Act.⁵

8. Appointment of common manager where parties did not agree to it:—Where parties consent to the estate being made over to the Court of Wards, such consent should be taken to limit to the Court of Wards, and a District Judge appointing a common manager without further proceedings after the Courts of Wards gives it up acts illegally.⁶

Such an order may be set aside by the High Court under s. 622, C. P. C. (s. 115 of the new Code).⁶

Effect of
consent.

9. Appointment of common manager by consent:—An order of the District Judge formally appointing a manager with the consent of the co-owners is an order which should be treated as an order under s. 95 of the Act.⁷

A District Judge has no jurisdiction to appoint a common manager by consent of parties ; before he can make the order, he must find that there is dispute likely to cause inconvenience to the public or injury to private rights existing between the co-shares.⁸

Prima facie the provisions of s. 375 of the Civil Procedure Code (Act XIV of 1882) do not apply to such a case.⁸

10. Regular suit to set aside an order of appointment of common manager:—A regular suit lies to set aside an order of appointment of a common manager on the ground that the appointment was made in respect to a portion of the estate and without service of notices to all the co-sharers.⁹ It is not obligatory to apply in the first instance to the District Judge who had appointed the common manager.⁹

11. Security of manager:—The appointment of a common manager under s. 95 is only complete when the required security has been given and possession has been taken under the order.¹⁰

12. Power of a co-owner during common management:—The appointment of a common manager does not take away from a co-owner his power of dealing with his own share.¹¹

A purchaser or a mortgagor acquiring an interest from a co-owner during the period of common management is subject to a charge incurred by the manager.¹¹

13. Power of lessee under co-owner:—A person who takes a lease from a co-owner after the appointment of a common manager is in no better position than the co-owner.¹²

14. Death of common manager:—The powers of a Judge under s. 95 are not exhausted by the appointment of a person who has entered upon the duties of his office and has subsequently vacated the same by death, voluntary relinquishment or otherwise the applica-

⁵ *Bhawani Koer v. Afzal Hussain*, 34 Cal. 381 : s. c., 5 C.L.J. 425.

⁶ *Ganoda Kantha v. Prabhabuti*, 20 Cal. 881.

⁷ *Jugut Chandra v. Goloke Chandra*, 23 Cal. 522 (at p. 524).

⁸ *Kali Charan v. Parbati*, 4 C.L.J. 564.

⁹ *Indu Bhusan v. Annapurna*, 6 C.L.J. 216.

¹⁰ *Dwarka Nath v. Bankutesh Lal*, 7 C.L.J. 109.

¹¹ *Amarachandra v. Shoshee Bhusan*, (P.C.) 8 C.W.N. 225; *Midnapur Zemindary Co. v. Abinash*, 29 C.L.J. 297.

¹² *Juggul Chandra v. Goloke Chandra*, 23 Cal. 522.

tion of the manager has not the effect of restoring the estate to the owner.¹³ But the case of *Dwarka Nath v. Bankutesh*, 10 C.W.N. 437, decides to the contrary; the case in 7 C.L.J. 109,¹³ seems to take the correct view.

15. Power of the District Judge :—(1) A District Judge has no power to call upon a person to deliver certain accounts and papers to the common manager.¹⁴

(2) A District Judge can in the exercise of his discretion consider the propriety of the appointment of a common manager whatever be the stage at which the proceedings may have arrived.¹⁵

16. Powers and duties of a common manager :—A common manager appointed under the provisions of the Bengal Tenancy Act—

(1) has power to mortgage or sell property with the permission of the District Judge.¹⁶

(2) has power to collect rent which is a part and parcel of the management of an estate.¹⁷

(3) is competent on behalf of the co-owners to sue for recovery of possession of land.¹⁸

(4) is competent to defend a suit;¹⁹

(5) shall get his name registered under s. 78 of the Land Registration Act before he can recover rent from the tenant.²⁰

17. Accountability of common manager :—See notes under ss. 95 and 98.

18. Dedicated or Shebait property :—It seems that where a dedicated property to an idol is under the common management of two or more co-shebait the provisions relating to the appointment of a common manager apply to such a case. It may be contended that a shebait is not an owner within the meaning of s. 93 and that the idol or deity is the owner and therefore when there is a dispute between co-shebait (who are not co-owners within the meaning of s. 93) these provisions have no application; such a contention does not seem to be sound; for, the management of the dedicated estate or tenure (as the case may be) rests with the co-shebait and the dispute is amongst the co-shebait. The right to possession and management of a dedicated property belongs to the *shebait* and the right to bring a suit for rent is vested in the *shebait* and not in the idol.*

The principle in the following case seems to support this view: *Jagadindra v. Hemanta*, 31 I.A. 203, s. c., 8 C.W.N. 809.

19. Proceeding under s. 93: Appointment of Receiver :—

A proceeding for the appointment of a common manager is a proceeding in the nature of a suit within the meaning of sec. 141 of the Civil Procedure Code, and a Receiver can be appointed during

¹³ *Dwarka Nath v. Bankutesh*, 7 C.L.J. 109.

¹⁴ *Abdul v. Krishna*, 20 Cal. 724.

¹⁵ *Saradindu v. The Collector of Rungpur*, 11 C.W.N. 1143.

¹⁶ *Amar Chandra v. Goloke Chandra*, 4 C.W.N. 11; 8 C.W.N. 225 (P.C.)

¹⁷ *Maqbul Ahmed v. Girish Chandra*, 22 Cal. 634 at p. 637.

¹⁸ *Maqbul Ahmed v. Girish Chandra*, 22 Cal. 634.

¹⁹ *Kirtibash v. Umesh Chandra*, 16 C.W.N. 96, s. c., 14 C.L.J. 614.

²⁰ *Sibo Sundari v. Rajmohun*, 8 C.W.N. 214.

* *Mabatallah Nasya v. Nalini Sundari Gupta*, 12 C.W.N. 42: s. c., 2 C.L.J.

the pendency of such a proceeding, if it should appear to the court to be just and convenient to appoint a Receiver: *Asadali Chowdhury v. Syed Mohammed Hossain Chowdhury*, 43 Cal. 986, s. c., 20 C.W.N. 1009.

20. Other matters :—See notes under ss. 93 to 100.

Managers.

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

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

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of 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.

Headings of Notes.

1. EXTENSION.
2. OLD LAW.
3. DISPUTE.
4. NOTICE.
5. ESTATE.
6. SEPARATE RECEIPT OF RENT.
7. ACT XI OF 1859.
8. PROCEDURE.
9. APPEAL.
10. CO-OWNERS OF AN ESTATE OR TENURE.
11. APPLICATION UNDER S. 93—ORIGINAL PROCEEDING—APPOINTMENT OF RECEIVER.
12. REFORMATION OF LANDS OR ACCRETION TO THE ESTATE.
13. "INJURY TO PRIVATE RIGHTS"—meaning of.

Extension.

1. Extension :—Ss. 93 to 100 have been introduced in the permanently settled parganas of Goalpara in Assam, *vide* Revenue Department Notification No. 2023 R. dated 14 June, 1916, published in the Assam Gazette of 21st June, 1916.

Old law.

2. Old law :—See Regulation V of 1812, s. 26, Regulation V of 1827 and Act XVI of 1874.

Dispute.
Co-owners.

3. Dispute :—Where there is a dispute amongst some only of several co-owners, the common manager is to be appointed with regard to the entire estate including the share of such co-owner with whom there is no dispute and who is in separate collection of rent;

Saradindu v. The Collector of Rungpur, 11 C.W.N. 143; see also *Saradindu v. Girish Mohini*, 21 C.W.N. 240.

A dispute as to the terms on which, or the person with whom, a particular holding or a number of holdings should be settled, is a dispute as to the management of the estate though only a part of the estate is involved: *Ibid.*

A dispute as to the boundaries between the common estate of the co-owners and another contiguous estate of which one of the co-owners of the common estate is the sole proprietor, is not a bar to the appointment of a common manager when there are other disputes between the co-owners: *Ibid.*

4. Notice:—An appointment of a common manager without service of notices upon all the co-sharers is not valid: *Indu Bhusan v. Annapurna*, 6 C.L.J. 216.

5. Estate:—An appointment of a common manager with regard to one of several mouzahs comprising an estate is invalid: *Indu Bhusan v. Annapurna*, 6 C.L.J. 216. An estate means an entire estate [definition of estate s. 3, sub-sec. (1).]* The appointment of a common manager must be to the entire estate and not to a portion thereof; *Mohim v. Nagendra*, 30 C.L.J. 261. An estate remains a single estate for revenue purposes though separate accounts may have been opened in respect of it: *Sardindu v. Girish Mohini*, 21 C.W.N. 240; see also *Saradindu v. Collector of Rangpur*, 11 C.W.N. 1143.

A common manager cannot be appointed to a part of an estate or tenure; it must be to an entire estate or tenure: *Basanta Kumar Chakravarti v. Asutosh*, 27 C.W.N. 1040.† After a common manager was appointed in regard to certain properties some of which were parts of tenure, the common manager was removed and his successor was appointed when a co-sharer made an objection to the original appointment of a common manager with regard to a part of certain tenures was bad, held that such objection was entertainable although not made at the time when the common manager was appointed originally: *Ibid.*

6. Separate receipt of rent:—Where the several co-owners are in separate receipt of rent of their respective shares an application may be made for the appointment of a common manager: *Saradindu v. The Collector of Rangpur*, 11 C.W.N. 1143.

7. Act XI of 1859:—S. 5 of Act XI 1859 (Revenue Sale Law) has no application to the case of an estate managed by a common manager appointed under the Bengal Tenancy Act: *Bhawani Koer v. Afzal Hussain*, 34 Cal. 51: s.c., 5 C.L.J. 425.

* It is submitted with great respect to the learned Judges who decided this case that it is doubtful whether the view taken is correct, for the meaning of the word "estate" as defined in the Act means land included under one entry unless there is something repugnant in the subject or context. Now if an estate is comprised of two moujahs—one in the 24-Parganas and another in Burdwan, and if A. and B. are co-owners of the moujah in the 24-Parganas and C. and D. are co-owners of the moujah in Burdwan, and if there is any dispute between A. and B. in the 24-Parganas, it is absurd that there should be an appointment of a common manager to manage the two moujahs. It therefore appears that there would be a repugnancy in construing the word "estate" as meaning land included under one entry. See notes under s. 3, sub-sec. (1).

† The cases of *Indu Bhusan v. Annapurna*, 6 C.L.J. 216, and *Mohini v. Pakrasi v. Nogendra Nath Pakrasi*, 30 C.L.J. 261 were referred to and followed.

8. Procedure :—A District Judge can, in the exercise of his discretion, consider the propriety of the appointment of a common manager whatever be the stage at which the proceedings may have arrived: *Saradindu v. The Collector of Rungpur*, 11 C.W.N. 1143. The proceeding may therefore be quashed at any stage: *Ibid.*

9. Appeal :—An order passed in a proceeding arising out of an application made under this section is not appealable inasmuch as the application is not a suit between a landlord and a tenant within the meaning of s. 143: *Hossain Bux v. Matoodharee*, 14 Cal. 312.

Procedure where application relates to more than one estate.

10. Co-owners of an estate or tenure: Court fees—
Notice :—An application was made for the appointment of a common manager of a property consisting of 243 estates, or taluks; 60 bore separate numbers on the Collector's Land Register, whilst other portions of the property were tenures and holdings; the petitioners were holders of different proportions of the entire property, and the persons who were called upon to shew cause held various shares in many of the estates; *held*, that there need not be as many applications as there are estates, but the applicants should be called upon to state whether all of them are entitled in common to the various estates, and tenures mentioned in the application, if not, to divide themselves into as many groups as there may be properties held by them in common and in the latter case it would be necessary that each group of shareholders should put in separate applications: *Fazel Ali v. Abdul Majid*, 14 Cal. 659. Separate court-fees are to be levied if separate applications have to be put in the above circumstances, *Ibid.*; the notice in the case of tenure will be as provided by this section and it will be of the same character and to the same effect as in the case of estates: *Ibid.* Where there is a dispute between co-owners of several estates one application is maintainable in respect of such of them of whom the owners are common: *Fazel Ali v. Abdul Majid*, 14 Cal. 659.

Court-fees.

Notice.

Receiver—
C. P. C. sec
141.

11. Application under s. 93—Original proceeding: Appointment of Receiver :—An application for the appointment of a common manager under s. 93 is an original proceedings contemplated in s. 141 of the Civil Procedure Code to which the procedure under O. 41, r. 4 (appointment of Receiver) seems to be applicable: *Asadali Chowdhury v. Mahomed Hossein*, 43 Cal. 986, s.c., 20 C.W.N. 1009.

Estate includes reformation and accretion.

12. Reformation of lands or accretion to the estate :—The word "estate" includes reformation of or accretion to the lands of an estate, which may come under the hands of the common manager subsequent to the date on which the common manager is appointed: *Secretary of State v. Anada Mohon*, 34 C.L.J. 205.

"Injury to private rights."

13. Injury to private rights :—The words "injury to private rights" are ambiguous, but they are wide enough to include an injury of a co-sharer however small his share may be i.e. if there is a loss of income of a co-sharer: *Promotho v. Monmotho*, 52 Cal. 231. The case of *Saradindu v. Girish Mohini*, 21 C.W.N. 240 was followed. As to whether "injury to private rights" includes invasion of the rights of tenants: See *Abdul Azahar Chaudhury v. Collector of Backerganj*, 44 C.L.J. (Greaves and Mukerji J. J.). See notes under sec. 99.

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

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

Headings of Notes.

1. REVENUE SALE LAW.
2. INVALID ORDER.
3. COMMON MANAGER APPOINTED BY CONSENT OF CO-OWNERS.
4. COMMON MANAGER APPOINTED UNDER THIS SECTION WHETHER UNDER THE CONTROL OF THE DISTRICT JUDGE.

1. Revenue Sale Law:—An estate for which a common manager is appointed is not an estate under attachment under Act XI of 1859: *Bhawani v. Irshad*, 34 Cal. 51; s.c., 5 C.L.J. 425.

2. Invalid order:—Where a common manager was appointed with regard to one of several *mouzahs* comprising an estate without notice to all the co-shares, *held* that a suit for recovery of possession by such co-shares who had no notice by setting aside the appointment of a common manager as invalid was maintainable: *Indu Bhusan v. Annapurna*, 6 C.L.J. 216.

3. Common manager appointed by consent of co-owner:—An order of the District Judge appointing a manager with the consent of the co-owners is an order under s. 95: *Juggut Chunder v. Galoke Chunder*, 23 Cal. 522 (at p. 524). But it has been now decided that a District Judge has no jurisdiction to appoint a common manager by consent of parties; *prima facie* the provisions of s. 375 of the Civil Procedure Code do not apply to such a case: *Kali Charan v. Parbati*, 4 C.L.J. 565.

Appointment of common manager without the consent of the parties without taking evidence.

Under sec. 94 of the B. T. Act, the Common Manager may be appointed by the co-owners themselves under orders of the District Judge. Such an appointment will not be an appointment by the District Judge, but by the co-owners themselves: *Durga Prasad v. A. H. Forbes*, [1925 Pat.] 109.

It is submitted that a District Judge should be satisfied upon evidence that the elements required by s. 93 have been proved to the satisfaction to enable him to make an order for Common Manager. The consent of parties cannot give the Judge the jurisdiction to appoint a Common Manager unless really there are good reasons.

4. Common manager appointed under this section whether under the control of the District Judge:—It is not clear whether a manager appointed by the co-owners under this section is under the control of the District Judge, for, s. 98 applies to a manager under s. 95; on the other hand s. 100 empowers the High Court to make rules defining the powers and duties of manager under this chapter, and the rules are made making them applicable to "every manager, appointed under Chap. IX of the Bengal Tenancy Act."

It is not clear whether a manager appointed by co-owners is under the control of the District Judge.

95. If the co-owners do not, within such period, not being less than one month after the making of an

Power to
appoint
manager,
if order is
not obeyed.

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,—

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

Headings of Notes.

1. APPOINTMENT OF MANAGER—CONSENT.
2. POWERS OF COMMON MANAGER.
3. POWERS OF CO-OWNERS DURING COMMON MANAGEMENT.
4. PAPERS AND ACCOUNTS CANNOT BE CALLED FOR DELIVERY TO MANAGER.
5. MANAGEMENT.
6. S. 78 OF THE LAND REGISTRATION ACT.
7. APPOINTMENT OF SUCCESSOR.
8. SECURITY OF MANAGER.
9. REGULAR SUIT TO SET ASIDE AN ORDER.
10. APPOINTMENT OF RECEIVER OF PROPERTY IN THE HANDS OF A COMMON MANAGER.
11. APPOINTMENT OF RECEIVER WHEN AN APPLICATION IS MADE FOR APPOINTMENT OF COMMON MANAGER.
12. COMMON MANAGER BY AGREEMENT OF CO-OWNERS.
13. ACCOUNTABILITY OF COMMON MANAGER TO CO-OWNERS.
14. SUIT BY COMMON MANAGER AGAINST EX-COMMON MANAGER FOR ACCOUNT.
15. A MANAGER.

Agreement
of parties
that
property
should be
made over
to the Court
of Wards.
Subsequent
appoint-
ment of
common
manager
without
further pro-
ceedings.

Order
appointing
a common

I. Appointment of manager—Consent :—Where the parties, while objecting to the appointment of a common manager, agreed that the property should be made over to the Court of Wards, and under an order of the Judge it was made over to the Court of Wards, which assumed the management and continued it for some time but afterwards give it up, it was held that an order of the Judge appointing a common manager without taking any further proceedings under s. 93 was bad and the consent by virtue of which the Court of Wards took charge was limited to the Court of Wards, and did not give the Judge power to appoint any other manager: *Ganada Kant v. Prohabati*, 20 Cal. 881.

There was a proper application to the District Judge under s. 93 by some of the co-owners for the appointment of a common manager and notice was served on all the co-owners to shew cause why a common manager should not be appointed; no cause was shown, but the District Judge, instead of making an order under s. 94 directing

the owners to appoint a common manager gave them time in order that they might come to some arrangement ; eventually they agreed to appoint a certain person and the Judge made a formal order appointing him as manager ; this order was treated as an order under s. 95 : *Juggut Chander v. Goloke Chunder*, 23 Cal. 522 (at p. 524). But it has been now decided that a District Judge has no jurisdiction to appoint a common manager by consent ; *prima facie*, s. 375, C.P.C., has no application to such a case : *Kali Charan v. Parbati*, 4 C.L.J. 564.

manager on consent of parties is an order under s. 95.

Where separate accounts were opened in regard to an estate and there is quarrel between the co-owners of one of the separate accounts, the proprietors of the other separate account being holding unconnected with the dispute and were in peaceful possession, held that if the Court appoints a common manager it should be in regard to the entire estate including the separate estate the proprietors of which are not concerned in the suit : *Promotho v. Monmotho*, 52 Cal. 231. But the powers under s. 93 given to a District Judge are discretionary and where the Judge in his discretion did not appoint a Common manager, because in such a case the co-owners of the separate account, who are not concerned in the dispute the High Court did not interfere specially because the applicant for the appointment of a common manager might bring a regular suit and get a Receiver appointed : *Ibid*.

Common Manager should be appointed in regard to entire estate.

District Judge's power discretionary.

2. Powers of Common Manager :—A common manager, appointed under the provisions of the Bengal Tenancy Act, has power to mortgage property with the permission of the District Judge : *Amar Chunder v. Roy Goloke Chunder*, 4 C.W.N. 769. The powers of the manager regarding sale or the grant or renewal of a lease stand on one and the same footing and are subject only to the District Judge : *Ibid* (at p. 774). A common manager is competent on behalf of the co-owners to sue for recovery of possession of land : *Sibo Sundari v. Raj Mohun*, 8 C.W.N. 214.

Mortgage.

Sale or lease.

A "common manager can bring a suit for declaration of title and recovery of possession of immoveable property on behalf of the co-owners and if he can bring a suit, there is no reason why he should not represent them for defending a suit," *Kritibash v. Umesh Chundra*, 14 C.L.J. 61 ; 16 C.W.N. 96. Where a common manager who was made a defendant actually in possession to the exclusion of the co-owners, the suit against him was held rightly to have been brought and as the suit had been brought within time it was immaterial whether the heirs of some of the co-owners were brought on the record too late for a suit against them, question of limitation did not therefore arise : *Ibid*.

Common Manager can bring suit and defend suit.

Suit not barred if common manager is made a party with-in time, although co-owners are made parties beyond time.

A common manager appointed under sec. 95 of the B. T. Act has under sec. 98 cl. (3) all the powers of the co-owners for the purposes of the management of the estate, subject to the control of the District Judge and the co-owners cease to exercise such powers so long as the appointment lasts. The payment of rents for tenures or holdings held by the co-owners is an act of management. The sanction should be obtained before proceedings are taken against the common manager for realisation of such rents, the position of the common manager so appointed being analogous to that of a Receiver appointed by the Court : *Durga Prasad v. A. H. Forbes* [1925 Pat.] 109. The case of *Beni Madhab Sukul v. Deb Narain Sukul*, 24 C.W.N. 138 was referred to.

Execution proceedings against common manager without sanction of District Judge, not valid.

Where at the time of the sale of the six annas share in an estate under a mortgage decree the estate was under the management of a Common manager appointed under Sec. 95, and all that the purchaser purchased was a six annas share subject still to the authority of the common manager, *held* the fact that the common manager had been made a party to the execution case will not make him liable under the decree. His authority as common manager still existed and the purchaser has no power to collect rents separately so long as the common manager continued to be the common manager: *Abdul Gaffur v. Durga Prasad*, 8 P.L.T. 611 s.c. 1927 A.I.R. (Pat.) 334.

Position of
Common
Manager
analogous to
Receiver.

Powers of
co-owners
not in
abeyance
during
common
manage-
ment.

3. Powers of co-owners during common management:—The appointment of a manager does not take away from a co-owner his power of dealing with his own share: *Amar Chandra v. Shoshi Bhusan*, 31 Cal. 305, s.c., 8 C.W.N. 225 (P.C.); *The Midnapur Zemindary Company v. Abinash*, 29 C.L.J. 297. Any interest which a mortgagee or a purchaser would acquire from a co-owner during the period of management would be subject to any charge on the estate that might properly be incurred by the manager during that period: *Ibid.* When a manager is appointed, co-owners, even though their names are registered, cannot collect the rents: *Maqbul Ahmed v. Girish Chunder*, 22 Cal. 634 (at p. 637).

A person taking a lease of the share of one of the co-owners after the appointment of a common manager can not realise his own share of the rent as he is in no better position than the co-owner from whom he takes the lease: *Juggut Chunder v. Goloke Chunder*, 23 Cal. 522. Where the share of a co-owner was in possession of the other co-owners as *ijaradars* when an order was made appointing a common manager with the consent of all the co-owners, it was held that where subsequent to the expiration of the *ijara* that share was let out in *putni*, the *putnidar* had no right to collect the rents but was bound by the order appointing the manager: *Ibid.*

District
Judge
cannot call
upon a
person to
deliver
accounts
and papers
to manager,

Ss. 193 and
199, I.P.C.

4. Papers and accounts cannot be called for for delivery to manager:—The District Judge called upon a person to deliver certain accounts and papers to the common manager; on his failure to do so the Judge instituted a miscellaneous proceeding and in that proceeding the person who was called upon to deliver the accounts and papers made a certain statement and filed two affidavits on the ground that the statement and the allegations in the affidavit were false. The District Judge sanctioned his prosecution under ss. 193 and 199, I.P.C.; it was held that the District Judge had no authority to make any such enquiry or to pass an order for the delivery of the papers and to examine the person on oath in such proceedings: *Abdul v. Krishna*, 20 Cal. 724.

Collection
of rent.

5. Management:—Collection of rent is part and parcel of the management of an estate and it is so recognised in Regulation V of 1812: *Maqbul Ahmed v. Grish Chunder*, 22 Cal. 634 (at p. 637).

6. S. 78 of the Land Registration Act:—A manager who is appointed under this section must get his name registered under s. 78 of the Land Registration Act before he can recover rent from the tenants: *Maqbul Ahmed v. Grish Chunder*, 22 Cal. 634.

Successor
to Manager.

7. Appointment of successors:—Having once made an appointment of a common manager under s. 95 of the Act it is not open to the District Judge to appoint a successor to the manager on

his resignation: *Dwarka Nath v. Bankutesh Lal*, 10 C.W.N. 437, but the case of *Dwarka Nath v. Bankutesh*, 7 C.L.J. 109, which decides to the contrary seems to take the correct view.

Where a common manager dies, resigns or is removed the District Judge has inherent power to appoint a successor: *Brindaban v. Jnanendra*, 35 C.L.J. 75; s.c., 64 I.C. 819; the case of *Dwarkanath v. Bankutesh*, 10 C.W.N. 437 was dissented from.

Death, resignation or removal of common manager.

8. Security of manager:—The appointment of a common manager under s. 95 is only complete when the required security has been given and possession has been taken under the order: *Dwarka Nath v. Bankutesh Lal*, 7 C.L.J. 109.

Appointment of common manager, when complete.

9. Regular suit to set aside an order:—A regular suit lies to set aside an order of appointment of a common manager on the ground that the appointment was made in respect to a portion of the estate and without service of notice to all the co-sharers: *Indu Bhusan v. Annapurna*, 6 C.L.J. 216; it is not obligatory to apply in the first instance to the District Judge who had appointed its common manager: *Ibid.*

Appointment of manager of portion of estate without notice.

10. Appointment of Receiver of property in the hands of a Common manager:—A receiver may be appointed under O. 40 rule 1, sub-sec. (2) C.P.C. in respect of property in the hands of a common manager appointed under s. 95 of the Bengal Tenancy Act: *Madaneswar v. Mahamaya Prosad*, 15 C.W.N. 672; s.c., 13 C.L.J. 487; their Lordships observed as follows:—‘If, therefore, a Receiver is appointed in respect of property which is already in the possession of a common manager, the possession of the common manager need not necessarily be disturbed. The common manager, under the direction of the District Judge, may have to apply a certain portion of the income for the benefit of one or more of the co-sharers. If the interest of such co-sharers in the joint estate is the subject matter of the litigation in which the Receiver is appointed the effect of the appointment of the Receiver is to entitle him to obtain from the common manager whatever is payable to the co-sharers in question.

O. 40 r. 1, C. P. C. is not controlled by s. 95 of the Bengal Tenancy Act and a Receiver may be appointed in regard to property in the hands of the common manager. But the possession of the common manager is not to be disturbed.

11. Appointment of Receiver when an application is made for appointment of common manager:—The fact that an application of the appointment of a common manager of the property in a suit is pending before the District Judge does not preclude the Subordinate Judge before whom the suit is pending from appointing a Receiver in a proper case: *Jibanessa v. Majudunessa*, 17 C.W.N. 581. See also *Asadali v. Syed Mohammed*, 20 C.W.N. 1009.

Receiver.

Although the position of a common manager is somewhat analogous to a Receiver and it has therefore been held in the case of *Nabokrishore v. Atul Chandra*, 17 C.W.N. 846 and *Benimadhav v. Upendra*, 24 C.W.N. 138 that a suit against a Receiver does not lie without the previous sanction of the District Judge, yet an application for execution may be made and a suit for rent may be brought against the common manager without the sanction of the District Judge: *Sarat Chandra v. Raj Kumar*, 82 I.C. 327, s.c., A.I.R. 1925 Cal. 334.

Right of common manager to sue and to be sued—Receiver if analogous to.

12. Common manager by agreement of co-owners:—A Proprietor appointed by the other co-proprietors of an estate as manager thereof, for the purpose of realising its profits and appropriating them to the payment of their joint debt, is an agent of the

Limitation in a suit against a common manager

when such manager is appointed by consent of the other owners.

Accountability of common manager to the District Judge when the appointment is under the B. T. Act.

Accountability of common manager to co-owners.

Account suit.

Common Manager if public officer.

other proprietors and of the legal representatives of a proprietor since deceased within Art. 89 of the Limitation Act of 1908, and the period of limitation of a suit for account brought by the latter against such manager is governed thereby: *Chandra Madhub v. Nobin Chandra*, 40 Cal. 108 ; s.c., 17 C.L.J. 103.

It seems that the accountability of a common manager appointed under the Bengal Tenancy Act is to the District Judge and not to the co-owners although the common manager is one of the co-proprietors and appointed by consent of all the co-owners.

13. Accountability of common manager to co-owners :—A common manager is in a position analogous to that of a Receiver: *Naba Krishore v. Atul Chandra*, 40 Cal. 150, s.c., 17 C.W.N. 846 ; he is entitled to the same protection as a Receiver by a civil court: *Ibid* ; where a common manager regularly submitted accounts which had been duly audited and passed by the District Judge, he cannot be sued by a co-owner to render a general account for the whole period of his management: *Ibid*. A co-owner is not however debarred from bringing a suit against a common manager for act of misconduct or misappropriation done outside the limit of his authority as common manager under the Act: *Ibid*.

14. Suit by common manager against ex-common manager for account :—A suit by a common manager against an ex-common manager for account is maintainable: *Mahammad v. E. F. Sandys*, 30 C.L.J. 263 ; such a suit should be brought with the sanction of the District Judge under rule 4 of the rules framed by the High Court in accordance with s. 100: *Ibid*, [*Per C. M. Ghose J., (Geidt, J., contra)*] ; where in such a suit the District Judge passed an order as follows: "It does not appear that my sanction is necessary: the manager can act on his own initiative: and subsequently the District Judge passed the following order: "I am informed to-day that a suit has been instituted against Mr. S. for recovery of monies received by him as manager ; till the suit is decided it would not be proper to return the security ;" held that the requirements of s. 98 and Rule 4 framed by the High Court under s. 100 were substantially complied with: *Ibid*.

Where a common manager was appointed and the estate released and it was found that the common manager's account had not been properly rendered and passed by the District Judge, held that he could be sued for account with the permission of the District Judge: *Durga Prasanna v. Ishan Chandra*, 44 Cal. 800.

A suit for accounts against a common manager is not maintainable without the sanction of the Court which appointed him: *Beni Madhab v. Upendra Chandra*, (Deb Narayan) 24 C.W.N. 138, s.c., 30 C.L.J. 279 ; no such suit is maintainable without a notice to the common manager under s. 80 C.P.C., as he is a public officer within the meaning of s. 2 (17) (d), C.P.C. ; *Ibid*. The liability of the common manager does not terminate by his ceasing to be a common manager: *Ibid*.

When a common manager is appointed under s. 95 for the whole estate, and he is afterwards released from one third of the estate and he continued to be in possession of the remaining two thirds share as common manager, held that he was *defacto* manager and was bound to render accounts as such: *Beni Madhab v. Upendra Chandra*, (Deb Narayan), 24 C.W.N. 138, s.c. 30 C.L.J. 279.

15. "A Manager":—Although according to the General Clauses Act, the singular includes the plural, it seems that the words "a manager" mean *one manager*, because according to the context of sections 93 to 100 it appears it would be repugnant to the context if two or more managers are appointed. For if the legislature had really meant that more than one manager could be appointed there would have been provisions in the Act defining rules of management in case of difference of opinion between the Managers. There is nothing in the statute to that effect nor there is anything in the Rules made by the High Court under s. 100.

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

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

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

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

Notes :—Having regard to the provisions of this section the permission of the District Judge for a reference to arbitration by the Court of Wards is not necessary: *Tweedie v. Joges Chandra Ray*, 51 I.C. 999 (Teunon and Richardson J. J.).

Right of suit by Court of Wards :—This section gives power to the Court of Wards to sue in regard to an estate which comes into its management under s. 95: *Secretary of State v. Ananda Mohon*, 34 C.L.J. 205.

Power of Court of Wards to sue.

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

Provisions applicable to manager.

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

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

(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 103.

(8) He shall be removable by the order of the District Judge and not otherwise.

Headings of Notes.

1. RULE MADE BY THE COURT.
2. POWERS OF MANAGER TO MORTGAGE PROPERTY.
3. POWER OF CO-OWNERS DURING EXISTENCE OF COMMON MANAGEMENT.
4. SUB-SECTION (3).
5. RIGHT TO BRING OR DEFEND SUIT.
6. ACCOUNTABILITY OF COMMON MANAGER.
7. REMUNERATION OF RETIRED COMMON MANAGER.

Power of manager.

1. Rule made by the High Court :—The following rule has been made by the High Court under s. 100 with regard to the power of a manager to sell or mortgage any property :—“No manager shall have power to sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge : Provided that this rule shall not render valid any lease for a shorter time than three years, if such lease is disapproved by the District Judge, or if the District Judge directs that his sanction is to be obtained as regards all leases granted by the manager.”

Mortgage.

2. Power of Manager to mortgage Property :—A common manager, appointed under the provisions of the Bengal Tenancy Act, has power to mortgage property with the permission of the District Judge : *Amar Chunder v. Roy Goloke Chunder*, 3 C.W.N. 769 ; (on P.C.) ; 31 Cal. 305 ; s. c. 8 C.W.N. 225. He has also power to sell : *Ibid.*

Power of co-owners in abeyance during common management.

3. Power of co-owners during existence of common management :—See notes under sec. 95. While the common management exists the powers of the co-owners must be regarded as in abeyance, and therefore a mortgage created by a co-owner during the existence of the common management cannot in any way interfere with, or derogate from, the rights created under any transaction made by the common manager with regard to the joint property : *Amar Chunder v. Roy Goloke Chunder*, 4 C.W.N. 769.

Case where title of a co-owner is in dispute.

4. Sub-section (3) :—Where the title of co-owner was disputed, the District Judge has jurisdiction under sub-section (3) s. 98 to direct the common manager to retain the disputed share of the rent in his hand ; it is the only possible course to adopt so long as the common manager remains in charge and so long as a competent court does not adjudicate upon the title of the co-owner which is in dispute : *Bhabangana v. Horendra*, 17 C.W.N. 445.

See notes under s. 95.

5. **Right to bring or defend suit** :—See notes under s. 95.

6. **Accountability of Common Manager** :—See notes under s. 95.

7. **Remuneration of retired Common Manager** :—Where the District Judge passed an order that the retired common manager should be paid what was due to him, *held* in a suit by him for his remuneration against the common manager for the time being no question of limitation arises: *Trailokya Nath v. Durga Nath*, 46 I.C. 686.

99. 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 95, 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.

Common Manager not a necessary party in a proceeding under this section :—In an application by the co-owners under section 99 of the Bengal Tenancy Act for restoration of the management of the estate, the common manager is not and cannot be made a party to the proceeding: *Bhagabati Debya Choudhurani v. Nil Kanter Satterjee*, 24 C.W.N. 927.

Restoration of Estate :—When the question arises of the restoration of the estate under section 99 of the B. T. Act and it is alleged by the co-sharers that the dispute is no longer existing, what the Judge has to consider is whether it has been really or effectively settled in such a way that the management will be conducted by the co-owners without inconvenience to the public or injury to private rights. Where the District Judge refused the application of the co-sharers for restoration of their estate on the ground that the tenants were afraid that they would be oppressed if they were released to the proprietors and that at least the dispute probably lead to endless friction and to the danger to the peace, *held* that the order of the District Judge was in error: *Abdul Azahar Chowdhury v. The Collector, Calcutta*, 44 C.L.J. 569 (Greaves and Mukerji J. J.). At the moment that injury to private rights includes invasion of the tenants and not merely injury to the private rights of the co-owners and assuming also that the injury apprehended by the tenants comes within that category and granting that an apprehension of the breach of the peace is well founded, they would not be sufficient for the purpose of sec. 93 if there is no dispute between co-owners to which such injury, or invasion is attributable: *Ibid.* Restoration of estate.
Injury to private rights.

100. 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.

Rules of the High Court :—See Appendix VI.

When powers conferred by law are defined by rule the rules should not be interpreted as imposing any restriction on those powers, except such as in terms expressed or can be clearly inferred from the wording used: *Mahammad F. Aziz v. E. F. andys*, 30 C.L.J. 63.

The High Court having made rules under s. 100 of the Bengal Tenancy Act, defining the powers and duties of Managers, has power under s. 107 of the Government of India Act to revise the orders of a District Judge under Chap. IX. The position of a Common Manager under B. T. Act is analogous to that of a Receiver, appointed by the Court save and except that he is not liable to be sued: *Satyendra Mohan v. Raj Mohun*, 29 I.C. 177. The case in 40 Cal. 150 referred to.

CHAPTER X.

RECORD OF RIGHTS AND SETTLEMENT OF RENTS.

Headings of Notes.

1. AMENDMENTS OF THE PROVISIONS OF CHAPTER X.
2. NON-AGRICULTURAL TENANCIES.
3. MUNICIPAL AREAS.
4. SURVEY AND SETTLEMENT OPERATIONS.
5. INITIATION OF SURVEY AND SETTLEMENT OPERATIONS.
6. LAND REVENUE SETTLEMENT.
7. PROCEDURE ORDINARILY ADOPTED IN BENGAL IN THE PREPARATION OF RECORD OF RIGHTS.
8. RESJUDICATA UNDER FORMER CHAPTER X.
9. BOUNDARY DISPUTE.
10. RESUMPTION OF LAKHRAJ.
11. PROCEEDING UNDER THE CHAPTER AS IT STOOD BEFORE THE PASSING OF ACT III B. C. OF 1898: APPEAL.
12. SUIT FOR RENT AFTER FINAL PUBLICATION.
13. WEIGHT TO BE ATTACHED TO ENTRIES.
14. CHAPTER X NOT CLEAR OF COMPREHENSION.
15. SUIT TO SET ASIDE PROCEEDINGS UNDER CHAP. X.
16. REG. VII OF 1822.
17. ESTATES PARTITION ACT.
18. OMISSION TO MAKE AN ENTRY.
19. CONTRACT WITH GOVERNMENT TO MAINTAIN RECORD OF RIGHTS: SUIT TO SET ASIDE A FRAUDULENT ENTRY.
20. ENTRY IN RECORD OF RIGHTS, IF EVIDENCE WHERE PARTIES ARE NOT LANDLORDS AND TENANTS.
21. DEDUCTION OF 10 P.C. FROM AREA FOUND ON MEASUREMENT.
22. CERTAIN TERMS USED IN THE RECORD OF RIGHTS.

I. Amendments of the provisions of Chapter X:—

This Chapter was substituted for the original Chapter X by the Bengal Tenancy (Amendment) Act 1898, (Beng. Act III of 1898), s. 7. Since then there has been amendments by Beng. Act I of 1907 and E. B. A. Act I of 1908.

Amend-
ments!

The former Chapter X as it stood before the passing of the Act III B. C. 1898 is to be found in Appendix VII.

As regards proceedings under sections 104, 105, and 106 of the Bengal Tenancy Act as originally passed, see Act III B. C. 1898—sections 8 and 9 of Act III, B. C. of 1898.*

* Ss. 8 and 9 of Act III of 1898 (B.C.) are as follows:—

8. All records published under section 105 of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form, shall be deemed to have been duly published.

9. (1) Every settlement of rent or decision of a dispute by a Revenue Officer under section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act, in respect of which no appeal has before the commencement of this Act, been preferred to the Special Judge appointed under

Validation of publication of past records. Effect of settlement of rent and

2. Non-agricultural Tenancies :—

Non-agricultural tenancies do not come under the purview of the Bengal Tenancy Act and therefore Chapter X has no application to such tenancies ; see notes under s. 101.

3. Municipal areas :—

Municipal-
ities.

"Municipal areas will ordinarily be dealt with in the course of major operations under Chapter X of the Tenancy Act. The map should be prepared on such a scale as the local conditions require, and the Settlement Officer will consult the Director of Surveys in regard to the scale to be adopted for each municipality. In the absence of special orders, the cost should be merged in that of the general District operations, and will be recovered in the same way. If, however, the cost incurred in any municipality is so heavy as to make it inequitable to merge it in that of the general operations, or if other special local conditions exist the Director of Land Records will apply to Government for a special apportionment order, and the accounts should be kept in such a way as to give effect to that order. In large municipalities, or in other cases, when it is practically certain that a special apportionment order will be necessary, separate accounts of the operation should be kept from the outset."—*Bengal Survey and Settlement Manual*, 1917, Chap. II, para. 11.

In the absence of any notification, as is contemplated by sec. 1, the mere fact that land is situate within Municipal area is not sufficient for holding that Chap. X does not apply to it: *Iswar Chandra v. Jogendra Lal*, 98 I.C. 137, s.c. A.I.R. 1927 Cal. 126.

4. Survey and Settlement operations :—

"Survey and settlement operations or survey operations alone are conducted under the following Acts and Regulations:—Settlement Regulations VII of 1822, IX of 1825 and IX of 1833, Acts IX of 1847 (Assessment of Alluvion), V (B.C.) of 1875 (Survey), III (B.C.) of 1876 (Irrigation), VIII (B.C.) of 1879, VI (B.C.) of 1880 (Drainage), II (B.C.) of 1882 (Embankments), VIII of 1885 (The Bengal Tenancy Act) as amended up to date, I (B.C.) of 1887 (Calcutta Survey), I of 1894 (Land Acquisition), and V (B.C.) of 1897 (Partition of Estates). The rules of procedure and the technical rules relate primarily to surveys and settlements under the Settlement Laws, the Bengal Tenancy Act and the Survey Act, but they may also be followed, so far as they are applicable, in operations under the other Regulations and Acts mentioned."—*Bengal Survey and Settlement Manual*, 1917, Chap. I para. 2.

decisions by
Revenue
Officer,
made before
the com-
mencement
of this Act,
VIII of 1885,
XIV of 1882.

section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final.

Provided that an appeal shall lie to the District Judge from any settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

NOTE :—This Act (III of 1898 B.C.) came into force on the 2nd November 1898.

Sub-sec. (1) to s. 9 of Act III of 1898 did not give the force and effect of a Civil-Court decree to the decision of a dispute by a Settlement officer passed before the Act came into force, which it was beyond the jurisdiction of the Revenue officer to decide under s. 10: *Birendra Kisore v. Kalitara*, 43 Cal. 547, s. c., 20 C.W.N. 275. (*Mookerjee and Breachcroft J.J.*)

5. Initiation of Survey and Settlement Operations :—

“(1) Survey and Settlement operations are initiated under the following laws :—

- (a) Chapter X of the Bengal Tenancy Act.
- (b) Regulation VII of 1822.
- (c) Act VIII (B.C.) of 1879.
- (d) Act I (B.C.) of 1887.
- (e) Act III (B.C.) of 1884.

Extracts from Guide & Glossary.

Laws under which proceedings can be initiated.

(2) Chapter X of the Bengal Tenancy Act is in force throughout the Presidency of Bengal except in the following areas :—

- (a) The Municipality of Calcutta.
- (b) The District of Darjeeling.
- (c) The Chittagong Hill Tracts.
- (d) Such Municipalities as have been excluded from the operation of the Act by a notification under section 1 (3).

(3) Regulation VII 1822 is used for the settlement of land revenue.

(4) Act VIII (B.C.) of 1879 is used in the district of Darjeeling. The rent law in force in this district is Act X of 1859.

(5) Under Act I (B.C.) of 1887 a survey can be ordered in the town of Calcutta. The relations of landlord and tenant in the town of Calcutta are governed by contract.

(6) Under section 223A of Act III (B.C.) 1884, a survey can be ordered in any Municipality other than Calcutta.

(7) Executive orders of Government control survey and settlement operations in the Chittagong Hill Tracts.”—*Bengal Survey & Settlement Manual, 1917, Chap. II, para. 4.*

6. Land Revenue Settlement :—

“Where the Bengal Tenancy Act is in force all operations for the revision or assessment of land revenue will in future be preceded by operations under Chapter X of that Act, unless there are good and sufficient reasons for not settling rents under that Act. The assessment of revenue in temporarily-settled private estates will always be made under Regulation VII of 1822. In such estates where there are proprietors but no tenants the whole settlement will be carried out under that Regulation.”—*Bengal Survey & Settlement Manual, 1917, Chap. II, para. 5.*

Land Revenue settlements.

7. Procedure ordinarily adopted in Bengal in preparation of Record of Rights :

The following extracts from the **Guide and Glossary to Survey and Settlement Manual, Bengal, 1917**, will throw light on the subject.

5. The Bengal Tenancy Act was passed in 1885, about 20 years after the completion of the Revenue Survey.....there were then in existence—

- (a) in permanently settled estates the Thakbast maps and the Revenue Survey maps but no records-of-rights ;
- (b) in other estates, Thakbast maps, the Revenue Survey maps, and also the rough maps and records-of-rights prepared in the course of the periodical revisions of land revenue.

**Extracts
from Guide
& Glossary.**Ch. X
Reg. VII
of 1822.

Chapter X of the Act deals with preparation of "records-of-rights.".....It extends the system of "records-of-rights" to all kinds of estates, whether permanently settled or otherwise.....Regulation VII of 1822 has not been repealed by the Bengal Tenancy Act. In fact the Act is not inconsistent with the regulation, it merely lays down more clearly and definitely how a record-of-rights should be prepared. When, therefore, land revenue, has to be revised in any non-permanently settled estate—either in the course of a district operation or as a separate undertaking—the record-of-rights is now prepared under the provisions of Chapter X of Bengal Tenancy Act. The Act does not, however, deal with the assessment of land revenue as between a temporarily settled proprietor and Government. When a proprietor intervenes it is still necessary to use the old regulation so far as he is concerned.

Rules of
the Local
Govern-
ment.

6. Operations under Chapter X of the Bengal Tenancy Act are carried out in accordance with rules framed by the Local Government. These rules have the force of law.....in the record as finally published the rents which are entered are those which were actually being paid at the time of the operations, not "fair rents" for future terms of year. Such fair rents can only be decreed by a distinct and subsequent proceeding (see paragraph 27 below). An exception is however made in the case of estates where land revenue is being revised ; in such estates fair rents for the ensuing period of settlement are determined before and not after final publication, and only these fair rents appear in the final record.

Fair rents.

Division
into blocks.

7. When a district is taken up under Chapter X of the Bengal Tenancy Act, it is ordinarily divided into "blocks" of about 800 square miles each. The work in each block takes about five years. The various stages are briefly described below :—

First year.Traverse
survey.
Boundary
dispute.

8. The Survey Department makes a "Traverse survey" of the area. In no case do the traverse surveyors record or decide boundary disputes.

Second year."Cadastral,"
meaning of

9. The detailed 16 inches map is now begun. This work is known as "cadastral survey." The expression is somewhat misleading. "Cadastral" is an old French word for a public register. It is said to be derived from a dog-latin word "capitastum"—i.e., a statement of the population head by head (caput). The word therefore indicates a record-of-rights rather than a map. It was probably used by the priests who prepared the record-of-rights for William the Conqueror, first in Normandy and then in England. Properly speaking, then, a cadastral survey simply means "a survey undertaken in connection with a record-of-rights."

Cadastral
survey.

10. The cadastral survey in Bengal was formerly carried out by the Survey Department. It is now carried out by surveyors or "amins" working under the Settlement Officer and his assistants, i.e., the "Revenue Officers" contemplated in Chapter X of the Bengal Tenancy Act.

Working of
the Amin.

11. The cadastral amin, like the traverse surveyor, works downwards "from the whole to the part.".....for convenience, however,

the amin is instructed to begin with the outside boundary of the village. If in the course of plotting this outside boundary he comes upon a dispute between the inhabitants of the two villages as to the correct position of the boundary he brings the dispute to the notice of the Assistant Settlement Officer, who decides it according to actual possession, in the manner laid down in the Bengal Survey Act of 1875.

Extracts
from Guide
& Glossary
Bengal
Survey
Act.

12. We now come to the first stage in the preparation of the draft record-of-rights. This stage technically known as "Khanapuri, which means the "filling of columns.....The final record-of-rights will ultimately consist of a series of documents known as "Khatians." There will be a khatian* for each distinct group of proprietors and a khatian for each tenancy, of whatever degree. The khatian will show the person or persons who are in possession of the "interest" in question, together with their respective shares. It will show their status under the Bengal Tenancy Act and the special incidents (if any) which attach to their tenancy. It will give a list of the fields which are in their immediate possession, with the area of each field. It will also indicate the interests which are immediately superior to them and the rent and cess which are payable to each superior interest. Finally, it will indicate all the tenants who are immediately below this interest and the area of their tenancies. In other words each final khatian will be a complete statement of the rights and liabilities of the person or persons in question ; it will show who are immediately above them and who are immediately below them, and it will show all the land which they possess either directly or through others.

Draft
Record
Khanapuri
Khatian.

Khatian.

13. Although khanapuri is the "filling of columns" there are some very important columns which are *not* filled up at this stage. all the columns relating to area, rent, cess, status and special incidents remain for the present blank. In fact, the work of the khanapuri recorder practically consists in preparing an accurate description of the fields and crops, an accurate statement of the landlords and tenants and an accurate distribution of the fields among these personsHe will generally begin his work from the field in the north-west corner of the village and he will work down to the field in the south-east-corner.

Khanapuri

14. When the recorder has reached the south-east corner and has entered up the last field he will, therefore, have in his hands a bundle of khatians which constitute the first rough draft of the "record-of-rights" of the village. He will also have a khasra which constitutes a rough index of the fields. In the eye of the law the khasra is not part of the record-of-rights, any more than a biblical index is part of the Bible. The khasra is however a most useful document, without which it is practically impossible to understand the khatians. In addition to serving as an index of the fields the khasra is the basis of much of the statistical information which is collected in the course of the proceedings. While the recorder works his way through the village he notes in the khasra the classification

Rough
draft.

Khasra.

* Formerly the documents of which a record of rights consisted were :—(1) the *Khewat* which was a record of the proprietor's proprietary rights and of the rights of tenure holders under him and (2) the *Khatian* which was a record of the cultivator's rights; these two documents were bound up together and deposited in the Collectorate record room, and it was to the entries in these documents that the presumption in s. 103 cl. (3) of the Act applied. See Board's Settlement Manual, 1908, Chap. III, Para. 871.

**Extracts
from Guide
& Glossary.**

of each field (high arable land, low arable land, river, swamp, orchard, etc.). He also notes the crops which are grown in each field during the year in question. In a separate paper he records the number of cattle, ploughs, boats, etc., which are owned by each householder, as well as any other statistical information which he has been instructed to collect.

15. The map and the village bundle then go back to a central camp where the area of each field is "extracted" by a trained staff, using compasses and "combs.".....The area of each field is then entered in the khasra and khatians in "acres and cents." In the khatians there are additional entries in the local measure prevalent in the village.

Bujharat**Local
explanation.**

16. The next stage is *bujharat* or "local explanation." Before it begins the landlord and the tenant each receives a "parcha", that is an exact copy of the khatian, including the entries of area both in "acres and cents" and in the local measure. The work of *bujharat* is carried out by a Kannungo personally. He goes from field to field, checking the map and the record and correcting every mistake in presence of the landlord (or his representative) and the tenants. He also makes preliminary entries of the rent, but he does not deal with status, or special incidents of tenancies.

Disputes.

17. Disputes which arise, both during *khanāpuri* and during *bujharat*, are decided by the Kannungo or (if complicated) by the Revenue Officer. The decisions are on the basis of actual possession and are entered in a Dispute Book. Dispute regarding rent are not decided until a later stage. The Kanungo simply notes the rent as stated by the two sides.

Bujharat.

18. *Bujharat* concludes the field work of the second season. During the recess the maps are further checked and the statistics of land, crops, etc., are worked out from the *khasra*.

Third year.**Attestation.**

19. In this year the "attestation" of the draft record takes place. This work is carried out at camps in or near the village concerned. The camps are presided over by officer not below the rank of Revenue officer. Each khatian is thoroughly examined by the presiding officer in presence of the landlord (or his representative) and the tenant. All remaining mistakes are corrected. Old disputes, if the parties so desire, are again brought up and re-examined. New disputes are also recorded and decided by the presiding officer. But the most important work of the attestation camp is the record of rent, status and special incidents. In the rent columns the attestation officer has before him the preliminary entries of the *Bujharat* Kanungos (*vide* paragraphs 17-18). The columns for status and special incidents are still blank. The Attestation Officer makes all his entries with his own hand. The rent which he enters is the rent *which is actually being paid, provided that it is not illegal*. Disputes often arise, both as to what is actually being paid and as to whether the sum is legal. The Attestation Officer decides these disputes as they arise. Having decided and entered the rent, he enters the case. In the case of "cultivating raiyats" this entry follows mathematically from the entry of rent, *i.e.*, 6 pies for every rupee of rent. In the case of tenureholders the cess which is entered depends on the last "valuation" of

the tenure under the Cess Act. If this cannot be ascertained the entry is left blank. As the legality of the rent, and the correct method of entering the cess, depend to a great extent on the status of the tenant the Attestation Officer should ascertain and record the status of the tenant *before* he deals with the rent and the cess. Extracts
from Guide
& Glossary

20. As the Attestation Officer completes and corrects the khatians a writer (muharrir) makes similar entries in the "parchas" (see paragraph 16), of the tenants, while the landlord or his representative corrects the landlord's "parchas." When the Attestation Officer has completed each khatian he signs it, and seals it. The parchas of the parties are also sealed, but not signed.

21. When all the khatians have been attested the draft record is thoroughly checked, and the khatians are rearranged and renumbered. The draft record is then placed under formal "publication" in the camp. It lies open for public inspection for at least one month. All concerned have free access to the draft record and can take notes in pencil from it. Formal
publication.

22. During this period of "publication" any one who is dissatisfied with any entry in the draft record, or any omission therefrom, may under section 103A of the Bengal Tenancy Act, file a written "objection." Blank forms of objection are kept in camp and are supplied free of charge. A court-fee of 8 annas must be affixed to each objection. The objections are heard in camp by an Assistant Settlement Officer, after due notice to all concerned. Any corrections which he orders are then made in the draft record. S. 103A.

23. The draft record is then put through a most detailed check, known as "final janch." Every entry is tested in order to ensure that there are no mistakes, that the record is consistent throughout, and that all orders in disputes and objection have been properly carried out. Janch.

Fourth year.

24. The record is now "finally framed."

"The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of khatians prepared in forms which are generally similar to the forms used for the khatians of the draft record. The khasra shall not form part of the final record. The final record shall be printed or prepared in manuscript, according as the Local Government may, by general or special order, determine." Record
finally
framed.

In accordance with this rule the final record is now generally printed in all the large settlements. Specimens of the standard draft khatian and the standard final (*i.e.*, printed) khatian are annexed to this note. During printing the proof are carefully compared with the draft record. On completion every khatian is again checked against that record, a percentage being twice checked. The khasra is not printed, but a brief field-index is printed in its place. A specimen of the khasra is annexed. At this stage the village maps, which have hitherto been in cobalt blue (paragraph II), are marked in black Indian ink. Many additional maps are also printed by the Vandyke process, which secures that each map is absolutely accurate.

25. Further statistics are now prepared, and the work of computation of costs to be recovered from landlords and tenants is under-

**Extracts
from Guide
& Glossary.**

taken ; the total amount recoverable is three-fourths of the nett cost of the actual work done under Chapter X of the Bengal Tenancy Act ; the landlords and tenants' share in temporarily settled and Government estates under settlement of land revenue is borne by the Provincial Government. The proportion payable by landlords and tenants respectively in the remaining area is decided by the Local Government.

Fifth year.**Final pub-
lication.**

26. The record-of-rights of each village is then finally published by placing it open for public inspection for a period of one month. At this time the costs of the operations are recovered in the locality ; every tenant receives a certified copy of his khatian and a map of the village in which his lands are situated ; the landlord receives his own khatian and copies of his tenants' khatians. The final copy of the records-of-rights is bound and prefaced by a certificate of final publication signed by a Revenue Officer ; every khatian is endorsed by a special seal. Further certified copies are prepared for the use of the Collector, the District Judge, the Subdivisional Officer and the Munsiffs' Courts ; these are eventually made over to the officers concerned. Special arrangements are made for the sale of extra copies to landlords and tenants.

**Supple-
mentary
proceed-
ings.**

27. After final publication of the record and after distribution of the printed khatians and maps there are supplementary proceedings of three kinds :—

- (i) Proceedings under Section 105.
- (ii) Proceedings under Section 106.
- (iii) Proceedings under Section 108A.

29. In respect of each police-station printed maps are prepared from the settlement maps on the scale of 1-inch to the mile. Lists of the villages in each thana are also prepared. These printed maps and these lists may be purchased at the Collectorate. Printed maps on the scale of 4 inches to the mile are also prepared and published by the Director of Surveys.

Miscellaneous.**Two points
stated for
clear under-
standing of
the Record.**

33. For clear understanding of the record two points remain to be noticed :

- (a) It has been noted that a separate record is prepared for each village. Cases, however, occur where the same interest of a proprietor, landlord or tenant recurs in more than one village ; in such cases full details are only entered in one khatian, a reference (*barat*) khatian being opened in the remainder.
- (b) When the heir of a deceased tenant is in possession of a holding a khatian is opened in his name whether the landlord has entered the new name in his papers or not. When however, a whole holding is transferred by any other means and the transfer is not binding against the landlord, the name of the original raiyat is entered in the khatian, followed by the name of the transferee with a remark showing the manner of transfer (*e.g.*, by sale). If only part of the area of the holding has been

transferred without the landlord's consent, the plots are recorded in the khatian of the original raiyat, the fact of transfer being noted against the transferred plots in the remarks column. The fact of a mortgage is also entered against each plot in the remarks column when the mortgagee is in possession of the land.

8. Resjudicata under former Chap. X:—A decision by Settlement-officer under Chapter X, as it stood before amendment, as to which of two persons claiming to be a tenant ought to be recorded as such does not operate as *res judicata* in a subsequent suit between the two tenants: *Pandit Sirdar v. Meajan*, 21 Cal. 378. Norris & Banerjee, J.J., in delivering judgment said as follows:—“If it had been intended by the Legislature that the decision of a Revenue-officer should operate as *res judicata* upon matters like this, the result would be to transfer to the Settlement-officer the jurisdiction to try all suits between tenant and tenant in regard to their rights in any land included in the area with reference to which the record-of-rights is made. It might happen that the person whose name the Settlement-officer records as tenant may not be entitled to the land in respect of which his name is recorded, and another person may set up a conflicting title to the same land, claiming it on grounds which might render it necessary to determine complicated questions of inheritance or of construction of wills, or other questions of a similar nature. We do not think that such a condition of things could have been intended by the Legislature.” The case of *Pandit Sirdar*, 21 Cal. 378, was followed in the case of *Har Mohon v. Pran Nath*, 4 C.W.N. 128.

9. Boundary dispute:—A Settlement-officer has jurisdiction to decide a question of boundary dispute between two neighbouring proprietors under his powers as a Survey-officer with which he is vested under s. 189 (b), and Rule 1, Chapter VI of the Government Rules made under the Tenancy Act; *Irshad Ali v. Kanta Pershad*, 21 Cal. 835.

See notes under s. 106.

10. Resumption of Lakhiraj:—In proceedings under Chapter X as it stood before the passing of Act III of 1898 (B.C.), it was held that a Settlement-officer had no power to resume and assess with rent land which had been held as *lakhiraj*: *Padmanand v. Bajo*, 20 Cal. 577.

A question as to mal or *lakhiraj* could not be decided by a Settlement-officer under the Act before its amendment; *Mahomed Ashruff v. Ashutosh Nath*, 2 C.L.J. 10 n.

11. Proceedings under the chapter as it stood before the passing of Act III. B. C. of 1898: Appeal:—Where all the proceedings in a settlement case as well as the Judge's order were of date prior to the passing of Act III of 1898, B.C., a second appeal which has heard after Act III came into force was disposed of under the provisions of the former Chapter X; *Hara Mohon v. Pran Nath*, 27 Cal. 364; s.c., 4 C.W.N. 127.

12. Suit for rent after final publication of record:—In a suit for rent which accrued due after the final publication of a record-of-rights, the plaintiff relied upon a rent-decree passed previous to those proceedings declaring a lower rate of rent as stated in the Settlement proceedings: *held* that the plaintiff was entitled to claim

Rent suit after publication of record.

the rate of rent as stated in the Settlement proceedings: *Padmanand v. Ghanshyam*, 6 C.W.N. 914.

Title to land.

It was held under the chapter as it stood before amendment that a Settlement-officer had no power to entertain any dispute between the persons interested in neighbouring estates as to the title of any land: *Norendranath v. Srinath*, 19 Cal. 641; *Bidhu Mukhi v. Bhugwan Chunder*, 19 Cal. 643.

13. Weight to be attached to entries:—Record-of-rights under Chapter X are prepared with considerable formality, and the proceedings of Revenue-officers are conducted with publicity; entries in such records should not be lightly discarded: *Kali Roy v. Protap Narayan*, 5 C.L.J. 92. See notes under s. 103B.

Careless drafting of Chapter X.

14. Chapter X not clear of comprehension:—"Chapter X of the Bengal Tenancy Act has under-gone several amendments and it cannot be said that the successive amendments have made the law clearer of comprehension or easier of practical application": *Pirithi Chand v. Basarat Ali*, 37 Cal. 30 at p. 37 (F.B.), Jenkins C.J., remarks (in the case of *Umedulla v. Ramchandra*, 14 C.W.N. 812) "of the careless drafting which mars this very important Act." It was also remarked in the case of *Gopinath v. Adaita*, 21 Cal. 776 that the provisions of Chapter X are somewhat obscure.

15. Suit to set aside proceedings under Chapter X:—S. 109 does not present an effective bar to the maintainability of a suit for declaration that the proceedings under Chapter X were vitiated by fraud: *Nawab Bahadur of Murshidabad v. Ahmad Hossain*, 21 C.W.N. 1006.

Khewats and Khatians admissible under Evidence Act, s. 35, but *Butwara Khasra* under the Estates Partition Act not so admissible.

16. Reg. VII of 1822:—Entries in *Khewats* and *Khatians* made at settlements under Regulation VII of 1822 are admissible in evidence under s. 35 of the Indian Evidence Act; *Robert Skinner v. Chandan Singh*, 31 All. 247. Reg. VII of 1822 is used for the settlement of land revenue.

17. Estates Partition Act:—The *Butwara Khasra* prepared under the Estates Partition Act (VIII B.C. of 1876) is not a record within the meaning of s. 35 of the Evidence Act: *Nandalal v. Mohanth Chanurpat*, 17 C.L.J. 462.

18. Omission to make an entry:—The mere omission of the Settlement authorities to make an entry in the settlement records in respect of the tenures cannot affect the rights of the parties: *Mohendra Nath v. Syam Lal*, 19 C.L.J. 308.

Rights of parties not affected by omission of entries.

"5. Where the Bengal Tenancy Act is in force all operations for the revision or assessment of land revenue will in future be preceded by operations under Chapter X of the Act, unless there are good and sufficient reasons for not settling rents under that Act. The assessment of revenue in temporarily-settled private estates will always be made under Regulation VII of 1822. In such estates where there are proprietors but no tenants the whole settlement will be carried out under that Regulation."—*Survey and Settlement Manual*, 1917. Chap. 2, Rule 5.

Suit to set aside fraudulent entry.

19. Contract with Government to maintain Record of Right: Suit to set aside a fraudulent entry:—Where a person contracted with Government to maintain the rights of all tenure-holders entered in the Record of Rights prepared prior to the giving of a *Kabulyat* by the person, held, that a suit by the person who

has made the contract with Government for a declaration that one of the tenure-holders covered by the Record-of-rights had obtained a fraudulent entry therein and had no such rights as those recorded, was not maintainable: *Maharaja Kunwar Manmoth Nath Roy v. Sheikh Ameer Khan*,* 3 Pat. L.J. 394.

20. Entry in Record of Rights, if evidence where parties are not landlords & tenants :—An entry in the record of rights operates in the same way between landlord and tenant as between landlords of the same or neighbouring estates and between tenant and tenant: *Fazlar Rahaman Biswas v. Golam Kader Mia*, 30 C.W.N. 689 (B.B. Ghose and Graham, J.J.). The cases of *Bibi Wakilan v. Deo Nandan Prosad*, 5 P.L.J. 681 and *Mazharul Ekbal v. Gopal Lal Rai*, [1924] Pat. 213 were followed.

21. Deduction of 10 p. c. from area found on measurement :—See notes under s. 52 heading No. 30.

22. Certain terms used in the Record of Rights :—(Mostly taken from Guide and Glossary to Survey and Settlement Records in Bengal.)

Attestation (তশদীক)	...	See Rule 46 of the Government Rules under the Bengal Tenancy Act. (See Appendix I, also see notes, p. 528 para 19). Guide and Glossary to Survey and Settlement Manual, Bengal, 1917).
Bujharat (বুঝারত)	...	Local Explanation (see para 16, Part I and rule 55 of the Government Rules under the Bengal Tenancy Act. (Appendix I, also see notes, page 528, para 16).
Cadastral Survey	...	The expression is somewhat misleading. "Cadastre is an old French word for a public register. It is said to be derived from a dog-latin word "capit-astrum"—i.e., a statement of the population head by head (caput). The word therefore indicates a record-of-rights rather than a map. It was properly used by the priests who prepared the records-of-rights for William the Conqueror, first in Normandy and then in England. Properly speaking, then, a cadastral survey simply means "a survey under-taken in connection with a record-of-rights." See ante at page 526 para 9.
Diara (দিয়ারা)	...	Alluvial accretions—See notes under s. 180).

* The following cases were discussed: *Manmotha Nath v. Raikisore*, 17 C.L.J. 70 note; *Gourchandra v. Manimohon*, 32 Cal. 463. *Jahandar v. Ram Lal*, 11 C.L.J. 364. *Tapanidhi v. Pitambar*, 5 C.L.J. 67. *Chandraman v. Manmathanath*, 11 C.L.J. 68. *Tweedle v. Atkinson*, 1 B. and S. 393. *Jamna Das v. Ram Aurtar*, L.R. 39 I.A. 7. *Rogers v. Hosegood*, 2 Ch. D. 388 (1900). *Khawaja Muhammad v. Husaini Begam*, L.R. 37, I.A. 152.

Gair-Mukarari (গয়ের মোকা-
রারি) (Same as Gar-makarai)

(গর মোকারারি)

... Rate of rent not fixed.

Janch (জাঁচ)

... Check of the record. (Every entry is tested in order to ensure that there are no mistakes, that the record is consistent throughout, and that all orders in disputes and objections have been properly carried out).

Khanapuri (খানাপুরি)

... Preliminary record-writing. The writing up of the *khassra* and the possession columns of the *khatian* (see notes, p. 527 paras. 12 & 13.)

Khasra (খসড়া) ...

... Draft (in rough), field statement. List of fields serially numbered according to the map, showing occupants (not in Midnapore), area and class, plot by plot.

*Khatian (খতিয়ান)

... Record of rights. (The main document of the record containing for all classes of proprietors and tenants all the information prescribed in s. 102 of the Bengal Tenancy Act.).

Kistwar

... Same as Cadastral Survey.

Milan khasra

... Area statement by class of land. (An abstract of the classification of land, village by village).

Paitha (পাইঠা)

... Khatian (Rajshahi).

Parcha (পর্চা)

... Copy of preliminary Khatian given at *bujharat* (local explanation).

Sthitiban (স্থিতিবান)

... Settled (raiya).

Bakasht

... Literally means "in the cultivation of" A term invented by the Revenue officers in Bihar: [See *Dhakeshwar v. Gulab Kuer*, 53 I.A. 176, s. c., 31 C. W. N 341, s.c., 5 Pat. 735 (P.C.)]

PART I.

Record of Rights.

Power to
order survey
and pre-
paration of
record of
rights.

101. (1) The Local Government may, in any case, if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in respect of the lands in any local area, estate or tenure or part thereof.

* Formerly the documents of which a record of rights consisted were:— (1) the *Khewat* which was a record of the proprietor's proprietary rights and of the rights of tenure holders under him and (2) the *Khatian* which was a record of the cultivator's rights; these two documents were bound up together and deposited in the Collectorate record room, and it was to the entries in these documents that the presumption in s. 103 cl. (3) of the Act applied. See Board's Settlement Manual 1908, Chap. III, para. 871.

(2) In particular and without prejudice to the generality of the foregoing power, the Local Government may make such an order in the following cases, namely :—

(a) where—

- (i) the landlord or tenants, or
 - (ii) a proportion of not less than one-half of the total number of landlords, or
 - (iii) a landlord, or a proportion of the landlords whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate, or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or
 - (iv) a proportion of not less than one-fourth of the total number of tenants,
- applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses 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 ;
- (c) where the local area, estate or tenure or the part thereof belongs to, or is managed by, the Government or the Court of Wards or a Manager appointed by the District Judge under section 95 ;
- (d) where a settlement of land revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

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

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

(3) A notification in the official Gazette of an order

under this section shall be conclusive evidence that the order has been duly made.

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

Headings of Notes.

1. AMENDMENTS: BENGAL AND EAST BENGAL.
2. CHAPTER X NOT CLEAR OF COMPREHENSION.
3. S. 101 AS IT STOOD BEFORE AMENDMENT BY ACT III, B. C. OF 1898: A LARGE PROPORTION OF THE LANDLORDS.
4. CAN A RECORD OF RIGHTS BE ORDERED TO BE PREPARED AFTER ONCE A RECORD HAS BEEN PREPARED AND FINALLY PUBLISHED?
5. EFFECT OF AN ENTRY.
6. LOCAL AREA.
7. NON-AGRICULTURAL TENANCIES.
8. SURVEY.

Amend-
ments.

1. Amendments: Bengal and East Bengal:—Cl. (a) was substituted by Act I (B.C.) of 1907 and Act I of 1908 (E.B.A.) for the original cl. (a) as it stood before amendment. Cl. (a) as it stood before the passing of Act I (B.C.) of 1907 was as follows:—

(a) where the landlords or tenants for a large proportion* of the landlords or of the tenants apply for such an order and deposit, or give security for, such amount for the payment of expenses, as the Local Government directs;

To cl. (c) the following was added by the same Act: “or manager appointed by the District Judge under section 95”;

Sub-Sec. (1) and the first para of sub-sec. (2) were amended by the Devolution Act (XXXVIII of 1920) as follows:

In Section 101 sub-sec. (1) the words “with the previous sanction of the Governor-General in Council and may” and the words “without such sanction in any of the cases hereinafter mentioned” shall be omitted.

In sub-sec. (2) for the words from “the cases” to “the following” the following shall be substituted, *viz.*, “in particular and without prejudice to the generality of the foregoing power the Local Government may make such an order in the following cases.”

2. Chapter X not clear of comprehension:—“Chapter X of the Bengal Tenancy Act has undergone several amendments and it cannot be said that the successive amendments have made the law clearer of comprehension or easier of practical application”; *Prithi Chand v. Basarat Ali*, 37 Cal. 30 at p. 37 (F.B.); Jenkins, C.J. remarks (in the case of *Umedulla v. Ramchandra*, 14 C.W.N. 812) “of the careless drafting which mars this very important Act.”

It was also remarked in the case of *Gopinath v. Adaita*, 21 Cal. 776 that the provisions of Chapter X are somewhat obscure as regards the procedure to be followed in cases under the Chapter.

* The words “a large proportion of the landlords” mean a large proportion of the landlords as determined by the interests they hold in the estate: *Secretary of State v. Purnehdu Narayan*, 40 Cal. 123, s. c., 17 C.W.N. 1151.

3. S. 101 as it stood before amendment by Act III B. C. of 1898: A large proportion of the landlords :—The words “a large proportion of the landlords” as used in s. 101 before amendment by Act III, B. C. of 1898 do not mean only a large numerical proportion of the individuals constituting the body of landlords but also a large proportion of the landlords as determined by the interests they hold in the estate: *The Secretary of State for India in Council v. Purnendu Narain*, 40 Cal. 123, s.c., 17 C.W.N. 1151. The discretion rests with Local Government to determine whether an application for preparation of record of rights is in due form, and after the Local Government has decided that point and issued the notification the jurisdiction of the Civil Court to interfere with the order and to determine that it was *ultra vires* and illegal is barred by cl. 3 of s. 101. *Ibid*; where the order of the Local Government under s. 101 (2) (a) is *intra vires* and legal and binding on the parties the order for apportionment of costs under s. 114 is also legal and binding: *Ibid*.

“A large proportion of landlords,” meaning of Discretion of Local Government. Want of jurisdiction of civil court. Costs.

4. Can a Record of Rights be ordered to be prepared after once a record has been prepared and finally published :— Reasons. In a record of rights which has been prepared and is finally published all the particulars specified in the order directing the preparation of the record of rights are recorded; every entry after the final publication is presumed to be correct unless the contrary is shown; [see s. 103 B (3)]. So, if after such final publication no changes occur, there cannot be any necessity for the preparation of a second record; it is submitted that in such circumstances a second record cannot be ordered to be prepared; for, it does not seem to be the intention of the Legislature that the Revenue officer in preparing the second record should revise or alter the finally published first record. Moreover, when after once a record has been finally published and there has been a decision of a dispute under s. 106, how can there be another record of rights giving an opportunity to a party to question an entry again under s. 106? Take the following illustration :—

Illustration.

A record is finally published in which there is an entry that X is a raiyat at fixed rate under Z. Z brings a suit under s. 106 and gets the entry corrected and X is declared to be an occupancy raiyat. Illustration.

Suppose three years after this, another record is ordered to be prepared and X is entered in the finally published record as an occupancy raiyat as was held in the previous s. 106 case. Should X be allowed to bring a suit under s. 106 to correct the second record notwithstanding the decision in the previous s. 106 case (which is final under s. 107)?

It is submitted that X ought not to be allowed to do so; since from a reading of the several sections of Chapter X it seems that the Chapter is not intended to give any person a renewal of rights and privileges under these sections when there have been no change in the circumstances. It seems therefore that when after once a record is made and finally published, there is an order made for a second Record of Rights, the Revenue Officers if they find on enquiry that the same state of things continues in any area, no second Record ought to be made.

Renewal of rights.

Conclusion.

It should however be pointed out here that in the case of *Sheikh Latafat v. Kumar Kaliker*, 1918 Pat. 225 a question arose as to whether a party has the right to bring a suit to have a declaration that an entry in a finally published record was wrong when a similar entry in an earlier record was not challenged by the party. But in the case the question as to whether a second record could be ordered to be prepared did not arise.

Act VII of
1868 (B. C.)
s. 12.

5. Effect of an entry:—Where in a record of rights prepared under sub-sec. (2) of s. 101 there was an entry in respect of an under-tenure, the existing rent was mentioned and the new rent settled was stated, but the Settlement Officer made a remark in the remark column as follows:—“The *etnam* is not binding upon the Government”; held that there was no recognition of the under tenure and the tenant was not protected by s. 12 of Act VII (B.C.) of 1868: *Lakshidhar v. Saradacharan*, 20 C.L.J. 41.

6. Local area:—“The term ‘local area’ is not defined in the Bengal Tenancy Act, and is obviously comprehensive enough to include an entire district. The term ‘local’ is frequently applied to an area smaller than an entire estate or country as a whole’ (*Per Mookerjee J., Chapman J., concurring.*): *Brojendro Kishore v. Khalil Nagarchi*, 21 C.L.J. 489.

Non-agri-
cultural
tenancies
do not
come under
the purview
of the
Bengal
Tenancy
Act and

7. Non-agricultural tenancies:—Non-agricultural tenancies do not come within the purview of the Bengal Tenancy Act; see the cases of *Raniganj Coal Association v. Jadunath*, 19 Cal. 489; *Hassanali v. Gobind Lal*, 9 C.W.N. 141; *Umrao Bibi v. Syed Mahomed*, 27 Cal. 205, s.c., 4 C.W.N. 76. So there cannot be a record of rights prepared under Ch. X of this Act in regard to non-agricultural tenancies.* The question as to whether s. 105 of the Bengal Tenancy Act applies to a non-agricultural (residential) tenancy

* As to agricultural and non-agricultural leases: see notes under the Preamble, heading No. 9, at pp. 7 to 11.

Fruit trees.

Where a piece of land is let out containing fruit trees of which the tenant enjoys the fruits and on which may be planted fresh and additional trees, it was held in an unreported Second appeal that the lease does not come within the purview of the Bengal Tenancy Act. The following is the judgment in the unreported second appeal:—unreported second appeal no. 2371 of 1915 *Rajkumar Nali*, Defendant, Appellant v. *Mohesh Chandra Guha*, Plaintiff, Respondent, decided on the 19th July 1915:

Unreported
case.

The Judgment of the court (Fletcher and Newbould J.J.) was delivered by Fletcher J.:—This is an appeal by the defendant against a judgment of the learned Subordinate Judge of Barisal dated the 19th July 1915, reversing the decision of the Munsiff of the same place. The suit was brought by the plaintiff to recover rent at the rate of Rs. 20 per annum. The defendant alleged that he was only liable to pay a smaller rent because the tenancy was governed by the provisions of the Bengal Tenancy Act. Therefore the question in debate has been limited to as to whether this holding is or is not governed by the provisions of the Bengal Tenancy Act. It is not an agricultural holding; that is quite clear. No body has argued that it is so. The question is whether it is a horticultural holding. That is a question of fact to be determined in each particular case from the facts found by the learned Judge. In the lease, in this case, the word although it may mean a garden, may also mean an orchard. That seems to be common ground and the learned Judge of the lower appellate Court has found that the evidence on the record shows that since the creation of the sub-lease, that is, the sub-lease under which the defendant holds, the defendant has been possessing the land by enjoying the fruits of the trees standing thereon and also by growing new trees. There is nothing relating to a garden on this piece of land at all. This is what is called in the English language an orchard, namely, a piece of land let out containing fruit trees of which the defendant enjoys the fruits

came up decision before Chapman and Newbould, J.J., in the case of *Ram Das v. Bipra Das*, 19 C.W.N. 35 and it was held that where the purpose of the tenancy is residential the Bengal Tenancy Act has no application and consequently an application for settlement of rent cannot be made under sec. 105 of the Act; the same view was taken by Woodroffe and Smither J.J., in the case of *Bipra Das v. Azam Ostagar*, 46 Cal. 441, s.c., 22 C.W.N., 116 (notes): Woodroffe J., in delivering judgment observed as follows:—"The legislature contemplated, I think, that only three classes of tenants should be regarded as holding lands within the meaning of the Bengal Tenancy Act, viz., a tenure holder who has been held to mean a person collecting rents from raiyats, raiyats holding lands for the purpose of cultivation and under-raiyats holding under themthere seems to me no doubt that in its general scope the Bengal Tenancy Act is a law for agricultural landlords and tenants. "Tenant" in s. 105 means a tenant as defined in s. 4. In s. 105 "landlord" means a landlord as defined in s. 4, and "land" means a land held by a tenant as so defined.

consequently Ch. X does not apply.

A homestead holding held by a raiyat otherwise than a part of his tenancy stands however on a different footing, since according to s. 182, such a homestead holding is governed by the same rules which apply to the raiyat's agricultural holding; see notes under s. 182. A raiyat under s. 76 can erect a suitable dwelling house on his holding; that fact will not take the holding from the operation of the Bengal Tenancy Act. Homestead holdings held under a raiyat are governed by the Bengal Tenancy Act. See notes at pp. 7 & 8.

Homestead holdings.

Homestead land within the Municipality even though recorded as *bagan* land in the Record of Rights is not governed by the Bengal Tenancy Act but by the Transfer of Property Act; *Safarali v. Abdul Majid*, 47 C.L.J. 27 (Duval and Mitter, J.J.). The mere fact that in the Record of Rights the land, which is only a few cottahs in area, was shewn as *bagan* is not sufficient to shew that it was used for horticultural purposes: *Ibid*.

Bagan.

Where a record of rights was prepared of *Chandina* (non-agricultural) lands, Sanderson, C.J. observed as follows:—"If the revenue authorities understood that it meant *bazar* land which was not subject to the provisions of the Tenancy Act at all, it is difficult to understand why they entered it upon the record of rights which was made in connection with lands which are subject to the Tenancy Act. The explanation of it may be that the revenue officer had not then the advantage which the two lower courts had, for the discussion as to what the word* really meant and the entry may have been made under a misapprehension as to the real meaning:" *Sasi Kant v. Sadhyamoni*, 34 C.L.J. 504, s.c., 26 C.W.N. 483 (Sanderson, C.J., Chotzner J.).

Chandina or bazar lands.

Observations of Sanderson C. J.

and on which may be planted fresh and additional trees. There is no suggestion that any portion of the land is under cultivation at all and that any such cultivation is being made for horticultural purposes. The view of the learned Judge on these facts is clearly right that this is not a garden in any sense of the word but is really let out as an orchard to which the provisions of the Bengal Tenancy Act do not apply. In that view, the learned Judge has come to the conclusion and rightly so—that the present case is governed by the provisions of the Transfer of Property Act. The appeal, therefore, fails and must be dismissed with costs.

* *Chandina* i.e., *Bazar lands*; see foot-note at p. 9.

Survey indispensably necessary.

S. 189.

Survey Act.

Particulars to be recorded.

8. Survey :—A survey is indispensably necessary for the preparation of a Record-of-Rights under s. 101 (1): *Bibi Wakilun v. Deonondan*, 5 Pat.L.J. 681, (Das and Adami, J.J.). The procedure of a Revenue officer under s. 189 to survey and demarcate any land must be in accordance with the Bengal Survey Act, 1875, and such survey and demarcation must be made with publicity and notice to all the parties concerned: *Ibid.*

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

- (a) the name of each tenant or occupant ;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non-occupancy raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier ;
- (d) the name of each tenant's landlord ;
- (dd) the name of each proprietor in the local area or estate ;
- (e) the rent payable at the time the record of rights is being prepared ;
- (f) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise ;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;
- (gg) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each

- tenant, whether or not such appliances be situated within the boundaries of such land ;
- (h) the special conditions and incidents, if any, of the tenancy ;
- (i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared ;
- (j) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority.

Headings of Notes.

1. I. AMENDMENTS AND ALTERATIONS.
2. CLAUSE (B).
3. CL. (DD).
4. CL. (GG) ; RETROSPECTIVE EFFECT.
5. HOMESTEAD LAND AND NON-AGRICULTURAL TENANCIES.
6. OCCUPIER AND OCCUPANT.
7. RELEVANCY OF ENTRIES.
8. S. 102 CL. (H) ; SPECIAL CONDITIONS AND INCIDENTS.
9. CLAUSE (I).
10. CL. (I) AND CL. (F) ; RENT-FREE TITLE.
11. DISPOSSESSION BY LANDLORD : SUSPENSION OF RENT.
12. KHATA NUMBER.

1. Amendments and alterations :—Cl. (dd), cl. (gg) and [(i) and (ii)], and cl. (i) have been inserted, and the original clause (i) has been re-lettered cl. (j), by s. 20 of Act I (B.C.) of 1907 and s. 19 of Act I (E.B.A.C.) of 1908.

2. Clause (b) :—The entry in the record of rights describing the tenancies “Kaimi settled raiyats” is not an entry in compliance with the provisions of sec. 102 Cl. (b) of the B. T. Act, and that being so the presumption arising under s. 50 of the Act is not taken away: *Shyamacharan v. Fakir Chandra*, 101 I.C. 45 (Mukerji and Graham, J.J.).

3. Clause (dd) :—When there is a dispute between two neighbouring proprietors the case comes within the provisions of s. 102 (dd) ; in a suit instituted under the provisions of s. 106 the question between the two rival proprietors that the Court is to go into is as to which of these two rival proprietors was in possession of the land in question at the date of the final publication of the record: *Maharaj Bahadur v. Bhagwan Das*, 45 I.C. 781, (Fletcher and Shamsul Huda, JJ.), the following cases were relied on: *Mohunt Padmalav v. Lukmi Rani*, 12 C.W.N. 8 ; *Kali Sundari v. Giriza Sankar*, 15 C.W.N. 974 ; *Ramchandra v. Nanda*, 18 C.W.N. 938, s.c., 19 C.L.J. 197 ; *Prankrishna v. Trailokya*, 19 C.W.N. 911. These decisions, were

Dispute between two-neighbouring proprietors.

considered and relied on in the case of *Asfarannessa v. Heramba*,* 54 Cal. 114, s.c., 44 C.L.J. 467 (Greaves and Mukerji, J.J.) where it has been held that the decision of a Revenue Court in a suit under sec. 106 of the B. T. Act does not operate as *resjudicata* in a subsequent suit by the aggrieved party in the civil courts notwithstanding the introduction of clause (dd) in sec. 102 of the B. T. Act, as the Revenue Officer has to go primarily upon the question of possession :

4. Cl. (gg) ; Retrospective effect :—According to sub-sec. (2) of s. 20 of Act I (B.C.) of 1907 and sub-sec. (2) of s. 19 of the East Bengal Act I of 1908, cl. (gg) inserted by these two Acts shall be deemed to have been inserted from the commencement of the Bengal Tenancy (Amendment) Act 1898, (i.e., Act III of 1898).

5. Homestead land and non-agricultural tenancies :—See notes under s. 101 ; heading no. 7 ; Chap. X does not apply to non-agricultural tenancies.

Purchaser of a non-transferable holding can not have his name entered.

6. Occupier and occupant :—The terms “occupier and “occupant” in clauses (a) and (c) (which were added subsequently by the Amending Act I of 1898 B.C.) were presumably added to cover the case indicated in clause (i) added at the same time ; a purchaser of a non-transferable occupancy holding, being a trespasser is not entitled to have his name entered in the record of rights under cl. (a) or (c) : *Umedulla v. Ram Chandra*, 14 C.W.N. 812 ; such an entry may be corrected in a proceeding under s. 106 : *Ibid.*

Relevancy of entries which do not come properly under s. 102.

7. Relevancy of entries :—Entries made in the Settlement khewats, even if they do not come under s. 102 of the Bengal Tenancy Act, are relevant under s. 35 of the Indian Evidence Act : *Protap Chandra v. Jagadish Chandra*, 40 C.L.J. 331.

The record of rights being a public record prepared by public officers appointed under the statutory authority of the Local Government in admissible under sec. 35 of the Evidence Act, and the record being an official act done within the jurisdiction of the public officer it has a presumptive value of its correctness : *Fazlar Rahaman v. Golam Kader*, 30 C.W.N. 689 (B. B. Ghose and Graham, J.J.).

‘Settled raiyat’ entry of.

The making of an entry of “settled raiyats” was a sufficient compliance with sec. 102, cl. (b) and when such an entry was made in the record of rights the presumption under sec. 50 of the Act was ousted by the operation of s. 115 : *Mofizuddin v. Rajendra*, 29 C.W.N. 209, s.c., 40 C.L.J. 248.

Provisions under s. 102 not mandatory.

The provisions of sec. 102 are not mandatory, but provide that certain matters may be included either without or in addition to the other particulars set out in the section : *Ibid.*

It is submitted that particulars which are not provided for in s. 102 if recorded, should not have any binding force upon any party even if those entries are finally published, unless both parties agreed to such entries.

A settlement officer has no jurisdiction to decide civil disputes arising between landlord and tenant : *Horo Mohan v. Prannath*, 27 Cal. 364, s.c., 4 C.W.N. 127 ; see also *Pandit Sardar v. Meajan Mirdha*, 21 Cal. 378.

* The names in 44 C.L.J. 467 are *Asfarannessa v. Hemchandra*.

8. Clause (h): Special conditions and incidents:—

Where occupancy rights may be obtained by under-raiyats as a result of local usage or custom, the Revenue officers are to record as an incident of the tenancy the fact that the under-raiyat possesses such rights and the presumption under sec. 103B of the B. T. Act applies to such an entry: *Singheswar v. Parbal*, 103 I.C. 471, s.c., 1927 A. I. R. (Pat.) 376 (James J.).

Under-raiyat with right of occupancy by custom.

A right of occupancy in an under-raiyat by local usage is not inconsistent with the provisions of the B. T. Act: *Gopal Mandal v. Tapai Sankari*, 46 Cal. 43, s.c., 22 C.W.N. 618, s.c., 28 C.L.J. 84.

See notes under sec. 4, heading no. 5, page 72 and under sec. 183.

"Attention should also be paid to the record of under-raiyat's rights. As indicated in sections 113 and 183 of the Bengal Tenancy Act, under-raiyats may acquire occupancy rights in accordance with local custom or usage. As the custom or usage on the subject is in many localities still in a fluid condition, the date from which the sub-tenancy has been in existence should invariably be recorded.

Status of under-raiyats. Board's instructions.

"Occupancy rights are most commonly acquired by under-raiyats in cases where they have reclaimed lands by their own exertions, or have occupied their holdings for a long period and been allowed by the superior raiyat to erect homesteads, dig tanks or plant trees on them. Where in such or analogous cases, occupancy rights have been acquired by under-raiyats, the occupancy right should be duly recorded. Where the local custom or usage is doubtful or is opposed to the acquisition of occupancy rights, no entry regarding occupancy rights need be made." *Board's Settlement Manual, 1908, Part II, Chap. III, Rule 341, page 98.*

The Revenue Officer has no power to record as part of the Record of Rights the existence of any local custom that may affect lands generally, since village customs are not among the particulars which have to be recorded under sec. 102 of the B. T. Act. When the Record of Rights contained entries of such local customs in the remarks column of the *khatians* as special incidents of each particular tenancy in the village, these entries should not be presumed to be correct under sec. 103B although they might be used as evidence under sec. 35 of the Evidence Act: *Suresh Chandra v. Sitaram*, 57 I.C. 126 (Patna case) *per* Das J.

Village custom. Hajabad land i.e., land liable to inundation.

Although a Revenue Officer may be travelling out of his sphere when he records as a special incident of every tenancy in that village a local custom by which special remissions may be made in time of flood as was held in the above case, that decision should be read with reference to the particular facts of the case and should not be extended to support a general rule that no incident of tenancy, how vitally it may affect the status of a tenant, can be properly recorded under sec. 102 (h) of the B. T. Act, if the right or the liability recorded is based on the existence of a local custom: *Singheswar v. Parbal*, 103 I.C. 471, s.c., 1927 A.I.R. (Pat.) 376 (James J.).

See in this connection the case of *Sibnarain v. Bhuinath*, 45 Cal. 475; s.c., 22 C.W.N. 422, s.c., 28 C.L.J. 148 (Mookerjee and Walmsley J.J.), where in a suit for rent the tenants claimed remission of interest payable on account of what are called *hajabad* land under an alleged custom under which in years of inundation, no portion of such rent, irrespective of the extent of the land inun-

dated or of the crops destroyed, was recoverable from them, *held* that the custom was both unreasonable and uncertain and was in consequence invalid in law. See also *Bejoychand v. Akhil Bhuiya*, 51 Cal. 314, s. c., 28 C.W.N. 529.

Village
Custom :

"In my view in making an entry of village customs in the village note the Settlement officer is acting as a public servant in the discharge of his official duty." (*Per* Roe J., Chapman J. agreeing) : *Maniram Singh v. Akloo Ahir*, 1918 Pat. 36: Such an entry (which was regarding the rights of landlord and tenant in trees) is relevant under s. 35 of the Evidence Act: *Ibid*.

Trees.

An entry in the Record of Rights at variance with the common law in respect of right to trees would not carry with it the presumption of correctness under s. 103B because it must be based on a finding of local custom: *Debi Dyal v. Gango Kuer*, A.I.R. 1926 (Pat.) 68.

As to custom regarding right to trees: See notes under section 23, heading No. 2, page 163. See also Janki Koer v. Saudagar, [1920 Pat.] 177.

Right of
way.

Under Chapter X as it stood before the passing of Act III (B. C.) of 1898, it was held that a Settlement Officer was not justified in recording the existence of a right of way which one tenant had upon the land of another: *Horomohan v. Prannath*, 27 Cal. 364, s. c., 4 C.W.N. 127.

Right to
rear fish in
another's
tank is
not an
easement.

9. Clause (i).—Where in a record of rights there was an entry that A had the right to rear and catch fish in B's tank, *held* that B was entitled in a suit under s. 111A of the Act to have a declaration that A had no right to rear and catch fish in B's tank: *Chand Mia v. Tuka Mia*, 28 C.W.N. 516 (Newbould and B. B. Ghose J.J.); the right of a person to rear fish in another's tank is a novel right which a Court of law cannot recognise and is too vague to give a person a right in law in the nature of an easement.

10. Cl. (i) and cl. (j).—Rent-free title:—Under the chapter as it stood before the passing of Act III of (B. C.) 1898 it was held that in preparing a record-of-right under s. 102 a Revenue-officer was not competent to determine the validity of rent-free title set up by a person occupying lands within the area under enquiry, so as to resume such lands and to declare them liable to settlement of rent: *The Secretary of State for India v. Nitaye Singh*, 21 Cal. 38. But where the defendant claimed under a *sanad* granted by a predecessor of the Zemindar, and of a date subsequent to the decennial settlement and was therefore regarded as a tenant within the meaning of the Bengal Tenancy Act, *held* that the Revenue-officer had jurisdiction to enter the particulars of the land in his record-of-rights: *Gokul Sahu v. Jadunandan*, 17 Cal. 721.

The defendant in a case set up *sanad* from a person who was not apparently a predecessor of the plaintiff and it was of a date anterior to the decennial-settlement; the Revenue-officer was of opinion that no rent had ever been paid for the land and the land was *mal* and not *lakhitaj*, *held* that the Revenue-officer had no jurisdiction to make this determination: *Karmi Khan v. Brojo Nath*, 22 Cal. 244.

Rent-free.

In proceedings under Chapter X as it stood before the passing of Act III (B. C.) of 1898 it was held that a Settlement-officer had

no jurisdiction to resume and assess with rent land which had been held as *lakhiraj*: *Padmanand v. Bajo*, 20 Cal. 577.

Cl. (j) expressly authorises the Settlement-officer to decide when the land is claimed to be held rent-free—whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled under what authority: *Birendra Kishore v. Kalitara*, 43 Cal. 547, s. c., 22 C.L.J. 155, s. c., 20 C.W.N. 275. As to rent-free title see also the cases of *Sobhan Baksh v. Birendra Kisore*, 22 C.L.J. 144, *Birendra Kisore v. Ram Charan*, 22 C.L.J. 147; *Birendra Kisore v. Ananda Priya*, 22 C.L.J. 151; *Birendra Kisore v. Ramchandra*, 22 C.L.J. 153; *Upendra Nath v. Anath Bandhu*, 52 I.C. 406; *Bipradas v. Manorama*, 47 I.C. 49; see notes under s. 106.

According to cl. (j) the question as to rent-free title may be gone into and the particulars as to whether land is rent-free may be recorded.

II. Dispossession by landlord: Suspension of rent:—Where a tenant has been dispossessed by a landlord from a portion of the land, the Settlement-officer is correct in showing that no rent is payable: *Dwijendra Nath v. Aftabuddi*, 21 C.W.N. 492.

12. Khata number:—It has been the practice and custom of settlement officers to show a separate tenancy for a holding under a single *khata* number. A *khata* number will never consist of more than one holding: *Dip Narayan v. Bhim Mondal*, 101 I.C. 511, s. c., A.I.R. (1927) Pat. 207. (Adami and Scroope J.J.).

102A. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water, make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

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

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

Note: This section was inserted by Act I, B. C. of 1907 and Act I, E. B. A. C. of 1908.

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of

Power for Revenue-officer to re-

cord particulars on application of proprietor, tenure-holder or large proportion of raiyats.

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

Headings of Notes.

1. S. 103 NOW REDUNDANT.
2. ONE OR MORE OF THE PROPRIETORS OR TENURE HOLDERS : S. 188.
3. WHETHER PARTICULARS RECORDED UNDER S. 102 IN A PROCEEDING UNDER S. 103 ARE A RECORD-OF-RIGHTS.
4. OLD LAW.
5. PROCEEDINGS UNDER SS. 103 AND 104.
6. ASCERTAIN.
7. APPLICATION OF S. 104 TO PROCEEDINGS TAKEN UNDER S. 103.
8. S. 101.
9. POWER OF BOARD OF REVENUE.
10. RULES FOR APPLICATIONS.

S. 103 redundant in view of amendment of s. 101 by the Devolution Act (XXXVIII of 1920).

1. S. 103 now redundant:—After the Amendment of s. 101 by the Devolution Act (XXXVIII of 1920), s. 103 has been redundant. S. 101 as it originally stood did not empower the Local Government to order the preparation of a Record-of-rights without the sanction of the Government of India, and therefore s. 103 was enacted to give powers to the Local Government to order in certain cases the preparation of a Record-of-rights without the sanction of the Government of India. Now, the limitation of the powers of the Local Government having been removed on account of the amendments by the Devolution Act, s. 103 is now redundant.

S. 188 does not apply to an application under s. 103.

2. One or more of the proprietors or tenure holders:—S. 188 :—S. 103 authorises one or more of several proprietors or tenure-holders to apply to a Settlement officer to ascertain and record all or any other particulars specified in s. 102. S. 188 is no bar to any such application by virtue of the amendments made in s. 103, but there has been no corresponding change in s. 105, so s. 188 is still applicable to an application under that section (s. 105) : *Beharilal v. Priya Nath*, 21 C.L.J. 305 ; there is a fundamental difference between the scope of s. 103 and s. 105. Section 103 contemplates a record of existing facts while section 105 contemplates an alteration of existing facts ; *Ibid*.

Whether particulars recorded constitute a record-of-rights.

3. Whether particulars recorded under s. 102 in a proceeding under s. 103 are a record-of-rights:—It is doubtful as to whether the particulars recorded under s. 102 in a proceeding under s. 103 constitute a record-of-rights. In s. 101 the expression "record-of-rights" has been used, whereas this expression has not been used in this section. If particulars recorded in a proceeding under s. 103 do not constitute a record-of-rights, ss. 105, 106 and the other sections will not apply to proceedings under s. 103.

Observations of Pargiter, J.

Pargiter, J., is of opinion that if all the particulars or almost all the particulars are recorded, those would constitute a record-of-

rights, as the record would *include rights*, whereas, if only such particulars as are referred to in (a) or (c) of s. 102 are recorded that would not constitute a record as these particulars *do not involve any rights* :

Shurendra Narain v. Tarini Kanta, 32 Cal. 518, s. c. 9 C.W.N. 504 : s. c., 1 C.L.J. 239 ; the particulars referred to in s. 109 when recorded and compiled under s. 103 amount to a record-of-rights as contemplated in Chapter X : *Per Ghose J.* ; *Ibid.* Ss. 103A, 105, 106, &c., will apply to such a record-of-rights : *Ibid.* Ss. 104 to 108 (before the amendment of 1898) were held to apply to proceedings taken under s. 103 in the same way as to proceedings taken under s. 101 : *Dharani Kant v. Gahar Ali*, 30 Cal. 339 : a Revenue-officer can in such a proceeding decide the question as to relationship of landlord and tenant : *Ibid.* ; a survey and record-of-rights may be prepared without the order of Government in a proceeding under s. 103 : *Ibid.* As the present section 103 is almost similar to that before Act III of 1898 this ruling still applies.

Record-of-rights.

Ss. 104 to 108. Relationship of landlord and tenant. Record may be prepared without order of Govt.

Following the case of *Sudhendu v. Gobind*, 32 Cal. 518 it was held by Carnduff J., that proceedings under s. 103 of the Bengal Tenancy Act are not excluded from the category of record-of-rights merely because some only of the particulars set forth in s. 102 are to be excluded : *Sheddhyan v. Maharani Beni Pershad*, 9 C.L.J. 67 (notes).

Proceedings under s. 103 not excluded from the category of record of rights.

See notes under s. 102.

4. Old law :—The proceedings upon an application under s. 103, constitute a suit within the meaning of s. 143 by reason of the rules made by the Local Government (Ch. VI, paras. 27 and 32 of the old Rules) in 1885 under ss. 189 and 190 of the Act. The Civil Procedure Code is therefore applicable to such proceedings and it was held that a Special Judge who heard an appeal under s. 108, cl. (2), was entitled to review his judgment under s. 623, C. P. C. : *Achha Mian v. Durga Churn*, 25 Cal. 146, s. c., 2 C.W.N. 137. Ss. 107 and 108 of the former chapter were therefore considered to be superfluous. *Ibid.* See notes under s. 106.

Civil Procedure Code applicable.

5. Proceedings under ss. 103 and 104 :—Proceedings under ss. 103 and 104 of the former Chapter X were regarded as proceedings for record-of-rights and to which ss. 106 to 109 of the former chapter were applicable : (*Per Ghose J.*) *Dharani Kant v. Gohar Ali*, 7 C.W.N. 33 (at p. 39) ; see also *Denga Kazi v. Nobin Kissori*, 24 Cal. 462 : s. c., 1 C.W.N. 294 ; *Achha Mian v. Durga Churn*, 25 Cal. 146 : s. c., 2 C.W.N. 137 ; *Ram Autar v. Sanoman*, 27 Cal. 167 ; *Durga Churn v. Basir*, 6 C.W.N. 238.

Proceedings under ss. 103 and 104 of the former chapter.

6. Ascertain :—The following observations made by their Lordships with regard to s. 103 of the former chapter would seem to apply to the present section as the wording of both these sections are practically the same in this respect :—The section empowers the Revenue-officer to “ascertain, subject to and in accordance with rules made in this behalf by the Local Government,” the particulars to be recorded and we think it must be taken that the Local Government is empowered to authorise the Revenue-officer to do any act not contrary to law which may be necessary to enable him to ascertain those particulars : (*Per Prinsep, Hill and Stevens, J.J.*), *Dharani Kant v. Gahar Ali*, 7 C.W.N. 33 (at p. 50).

Particulars to be recorded.

7. Application of s. 104 to proceedings taken under s. 103 :—The following observations were made by Prinsep, Hill and Stevens, Prinsep,

Observations of Prinsep,

Hill and J.J., in a case under Chapter X as it stood before the passing of Act
Stevens J.J. III, B. C. of 1898:—

With regard to the application of sec. 104 to proceedings taken under sec. 103, we think that as the former section by its terms applies to “any proceedings under this chapter,” that is, Chapter X of the Act, it must be applicable to proceedings under sec. 103 equally with proceedings under sec. 101. Similarly sec. 105 is by its terms applicable to a “record made under the chapter, and a record of the particulars specified in sec. 102 seems to us to come within that description none the less when it is prepared upon an application made under sec. 103 than when it is the result of an order passed under sec. 101. It follows that secs. 106, 107 and 108 are also applicable: *Dharani Kant v. Gahar Ali*, 7 C.W.N. 33 at p. 51, s. c., 30 Cal. 339.

See notes under s. 107.

Procedure
as in s. 101.

Denial of
relation of
landlord &
tenant.

Resjudicata

8. S. 101:—When an application is made by a proprietor or a tenant of an estate under sec. 103 of the Bengal Tenancy Act for the preparation of a record-of-rights, the Revenue Officer is competent to make a survey and measurement of the land and the procedure to be adopted by him shall be the same as in the case of a proceeding under sec. 101; and in such a proceeding when there is a denial of relation of landlord and tenant either by the landlord or the tenant, it is absolutely necessary for the Revenue-Officer to deal with the question in order to enable him to make the necessary entries under sec. 102, but the decision of the Revenue-officer does not operate as *resjudicata* in a subsequent suit by the landlord for declaration of his title and to eject the tenant and for mesne profits; *Dharani Kant v. Gahar Ali*, 30 Cal. 339, s. c., 7 C.W.N. 33.

Applications
under s. 103.

9. Power of Board of Revenue:—The Board of Revenue have powers to sanction all applications under s. 103. See *Boards Survey Manual*, 1908, Part I, Chap. III, Rule 17 (b) (i).

10. Rules for Applications:—See Bengal Government Rules to be found in the Appendix I.

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

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

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

(2) Separate draft or final records may be pub-

lished under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Headings of Notes.

1. NOTIFICATION OF THE GOVERNMENT OF INDIA.
2. S. 105 OF CHAPTER X AS IT STOOD BEFORE ACT III B. C. OF 1898.
3. OBJECTION AND DISPUTE.
4. ORDER DISALLOWING AN OBJECTION.
5. POSSESSION.
6. OMISSION TO MAKE OBJECTION.
7. DISPOSAL OF OBJECTION IRREGULARLY.
8. INHERENT JURISDICTION OF SETTLEMENT OFFICER TO CORRECT A MISTAKE.
9. DRAFT RECORD OF RIGHTS.
10. APPEAL.
11. PRESUMPTION: FINAL PUBLICATION.

I. Notification of the Government of India :—Calcutta, the Remission
9th January 1892, No. 321, S—In exercise of powers conferred by of Court-
section 35 of the Court Fees Act, 1870 (VII of 1870), and the super- fees.
session of the Notification of the Government of India in the Department
of Finance and Commerce, No. 5087, S. R., dated the 11th
October 1894, the Governor-General in Council is pleased to remit the
fees chargeable on applications or petitions of objection referring to
any entry made, or proposed to be made in a draft record-of-rights
prepared under Chap. X of the Bengal Tenancy Act, 1885 (VIII of
1885), as amended by the Bengal Tenancy (Amendment) Act, 1898
(Bengal Act III of 1898) : Provided that such applications or petitions
are presented before the publication of such draft record under sec.
103A, sub-sec (1), of the said Act: The *Gazette of India*, Part 1,
p. 31, dated 31st January 1899.

In exercise of powers conferred by sec. 35 of the Court Fees Act, Remission
1870 (VII of 1870), the Governor-General in Council is pleased to of fees on
remit the fees chargeable under the said Act on certified copies of certified
entries in record-of-rights furnished in accordance with any rules for copies of
the time being in force under Bengal Tenancy Act, 1885 (VIII of finally pub-
1885), after the final publication of such record-of-rights under section lished
103A (2) of that Act; India Government Notification No. 4834 records.
Exc., dated Simla, 8th August 1905. See Settlement Manual, 1908,
Part I, Ch. VII, p. 54.

2. S. 105 of chapter X as it stood before Act III. B. C. of Disposal of
1898 :—This section is analogous to s. 105 as it stood before the objection in
passing of Act III, B. C. of 1898, which "lay down that during the a summary
pendency of the draft publication any person affected by an entry in manner.
the record might raise an 'objection' with regard to it, which the
Revenue-officer was to 'receive' and 'consider' and dispose of in" a
summary manner: *Sheikh Karban Ali v. Sheikh Dufer Ali*, 28 Cal.
475, s.c., 5 C.W.N. 798. From an order disposing of such an 'objection' Appeal.
no appeal and no second appeal lay, and the order did not operate as
res judicata. If "dispute" under s. 106 of the former chapter was to
be 'heard, and decided by the Revenue-officer under the procedure
laid down in the Code of Civil Procedure for the trial of suits and
was subject to appeal and an order, disposing of such a dispute had
the effect of *res judicata* : *Ibid*. Res-
judicata.

3. Objection and dispute :—See notes under s. 106.

Effect of
order dis-
allowing
objection.

4. Order disallowing an objection :—Where there has been a mere preparation of a record-of-rights but no settlement of rent or final publication, an order made under s. 103 is not a final order or an order having a judicial effect: 2 C.L.J. 22n.

Correction
of entry.

5. Possession :—In framing a record-of-rights under s. 103A the Revenue-officer must record the proprietors according to possession: *Mohunt Padmalav v. Lakmi Rani*, 12 C.W.N. 8 (at p. 14).

How to be
made.

6. Omission to make objection :—Where no objections were preferred and the record was finally published and the landlord applied for settlement of rent, *held* that the tenant was not entitled to ask the Settlement-officer to correct an entry in the record-of-rights that the lands were lakhraj and not *mal* and that in regard to certain land he was a settled raiyat: *Shambu Chandra v. Purna Chandra*, 35 Cal. 176: the Settlement-officer has no jurisdiction to alter an entry in the record upon such an objection is made in such a stage: *Ibid*. These disputes can only be decided by the presentation of a plaint on stamped paper under s. 106: *Ibid* 12 C.W.N. 122: s. c., 7 C.L.J. 103.

Irregular
disposal of
objection
has no
effect of *res-
judicata*.
Order strik-
ing off
not a
judicial
order.

7. Disposal of objection irregularly :—When a Revenue-officer disposes of an objection under s. 193A, of the Bengal Tenancy Act, without adopting the procedure laid down in the Code of Civil Procedure for the trial of suits, his order will not be open to appeal, or second appeal nor will it have the effect of *res judicata*: *Nasuralla v. Amiruddi*, 3 C.L.J. 133; see also *Kurban Ali v. Jafar Ali*, 28 Cal. 471; an order striking off an objection under s. 103A, for default is not a judicial order: *Nasarulla v. Amiruddi*, 3 C.L.J. 133.

Correction
of an
obvious
error.

8. Inherent jurisdiction of Settlement officer to correct a mistake :—A Settlement-officer has inherent jurisdiction to correct an obvious error or incidental slip even after the final publication of records: *Rajmohan v. Alamgazi*, 17 C.W.N. 625 (Mookerjee and Beachcroft, J.J.); where after the settlement of rent under s. 105 and after the disposal of an appeal by the Special judge amended the record as to the area and the rent payable, (the question before the Special Judge being as to the rate of rent) *held* that the Settlement Officer had inherent jurisdiction to correct the obvious error: *Ibid*.

Draft record
not admis-
sible in
evidence.

9. Draft Record of Rights :—Entries in a draft record-of-rights published under s. 103A are not admissible in evidence in a suit for rent: *Galar Kuer v. Ramratan*, 18 C.W.N. 896. See also *Ambar Ali v. Lutfee Ali*, 21 C.W.N. 996, s. c., 25 C.L.J. 690; see also *Imrit Mahton v. Bahadur Singh*, 34 I.C. 857.

Court bound
to come to
a finding
whether
presump-
tion is
rebutted.

A presumption no doubt attaches to a finally published entry, but where the Court has before it the evidence upon which the record was prepared, and a party denies the correctness of the record, the Court is bound to come to a finding whether that evidence is sufficient to justify the entry.* *Janki Koer v. Saudagar*, [1920 Pat.] 177. The cases of *Sheonandan v. Bacha Raut*, 9 C.L.J. 28, and *Bhogha Mower v. Ram Lakhan*, 27 C.L.J. 107, were referred to.

Proceedings
before
final publi-
cation ad-
missible.

In order to rebut the presumption which led to the final publication are admissible in evidence: the Court is entitled to take into consideration what took place at the *Khanapuri* and attestation stage and the decision of the Revenue officer at that stage:

* In this case the entry was to the effect that the tenants were entitled to appropriate trees. (This is not the ordinary law).

The entry in the record-of-rights must be presumed to be correct unless the contrary is proved but when the matter is investigated by the Civil Court and the parties adduce evidence on the point of controversy the entry loses its weight when the evidence discloses no foundation for it: *Kiran Chandra v. Srinath*, 31 C.W.N. (Panton and Chakravarti, J.J.).

Sec. 147B of the B. T. Act does not in any way limit the operation of sec. 103B of that Act, under which the presumption of correctness of an entry in a finally published record-of-rights arises generally and not merely in suits between landlords and tenants: *Fazlur Rahman v. Golamkader*, 30 C.W.N. 689 (B. B. Ghosh & Graham J.).

The record-of-rights being a public record prepared by public officers appointed under the statutory authority of the Local Government is admissible under sec. 35 of the Evidence Act, and the record being an official act done within the jurisdiction of the public officer it has a presumptive value of its correctness: *Ibid.*

An entry in the record-of-rights operates in the same way between landlord and tenant as between the landlords of the same or neighbouring estates and between tenant and tenant: *Ibid.*

In order to rebut the entry in the Record-of-rights that the tenant is a fixed raiyat, it was held in a suit under s. 106 that the quinquennial papers, even if admissible are not sufficient to rebut the entry: *Probode Chandra v. Benoy Kumar*, 27 C.W.N. 548, (C. C. Ghosh and Chotzner J.J.).

See notes under this section under heading: Draft Records.

The question whether the presumption is rebutted by a *kabul* is more a question of fact than of law: *Yakubali v. Rajkumar* I.C. 527.

Evidence of facts, oral and documentary, of a date prior to publication of the Record-of-Rights is admissible to rebut the presumption arising under s. 103B: *Raghunath v. Ram Behara*, 75 I.C. 427,* (Das and Adami J.J.). The Provincial Settlement Records are sufficient to rebut the Revisional Settlement Record, *Ibid.* An under raiyat cannot acquire the status of an *occupancy raiyat*, if he is so entered in the record of rights, the onus is upon him to prove the custom. (This was a case from Orissa).

Where there was an entry in regard to an occupant that no rent was actually paid but that he was not entitled to hold without payment of rent, and it was proved that since the grant to his predecessors no rent had ever been paid, held, that the proved possession free from rent was sufficient to rebut the presumption that the lands are liable to payment of rent: *Bipradas v. Manorama*, 45 Cal. 57. (Mookerjee and Walmsley J.J.), see also *Bipradas v. Kedarnath*, 47 I.C. 765.

A Settlement officer's decision though prior to the passing of the Amending Act III B. C. of 1898 but embodied in a record of rights published afterwards, as to the liability of land claimed to be held as rent-free, to pay rent does not operate as *res judicata* in a suit for rent of the same land brought in the Civil Court as the decision was not given by a competent Court. *Birendra Kishore v. Kalitara Debi* 43 Cal. 547: s. c., 20 C.W.N. 275, s. c., 22 C.L.J. 55. The case of *Radha Kishore v. Durganath*, 32 Cal. 162 was followed and the *dictum*

* The case of *Sheonandan v. Bacha Raut*, 9 C.L.J. 28 was followed.

The case of *Nobin Chandra v. Radha Kisore*, 11 C.W.N. 895 was sent from. See in this connection the case of *Sobhan v. Birendra hore*, 22 C.L.J. 144 and *Nikunja Behari v. Radha Kishore*, 22 C.L.J. 148.

The plaintiff sued for assessment of fair rent on the land in suit which he alleged that the defendant had an occupancy right only. The defence was that the land was held rent-free. The lands in suit were recorded in the record-of-rights as being on the possession of the defendant's or their predecessors with the remark that they were liable to be assessed with rent although no rent had been paid. The defendants adduced evidence to show that they and their predecessors were in possession for a long period and no rent was paid and that the lands were *nishkar brahmattar*, held that where the period during which the defendants have been in possession is left in an indefinite and nebulous state, that is not sufficient even when taken with the fact that no rent has been paid to show that the entry in the record-of-rights is incorrect: *Brojendrakishore v. Mohim Chandra*, 31 C.W.N. 32.

Where the land is proved to lie within the ambit of a certain state it lies upon those who claim the whole rent free to prove the same; an entry in a record-of-rights under sec. 103B that the land is rent-free is rebutted upon proof that the land lies within the estate of the Zemindar, and the onus is shifted; *Jagdeo Narayan, v. Baldeo Singh*, 49 I.A. 399, s. c., 27 C.W.N. 925, s. c., 2 Pat. 38 (P.C.), 36 C.L.J. 499. As to presumption of rent-free title by long possession without payment of rent: see *Chattranath Chowdhury Babarali*, 29 C.W.N. 333.

The burden of proving that an entry in the record of rights is wrong is on the party alleging it: *Srinath v. Maharaja Pratap*, 28 C.W.N. 145 (P.C.).

Where plaintiffs sued for declaration of their right to possession of lands which they claimed as *Khud Kasht* and the record-of-rights showed that the lands were *Khud Kasht*, held, that the onus was on the defendant to show that the entry was wrong: *Gajudhar v. Sheo Nandan*, 23 C.W.N. 304.

When a record of rights is challenged in a Civil Court, the party challenging must adduce evidence to rebut the presumption of its correctness, matters other than what happened during the proceedings before the Revenue officer before the final publication: *Lakshikant v. Nabadwip Chandra*, 31 C.W.N. 192. (B. B. Ghose and Cammiade, JJ.). When a record of rights has once been finally published, it cannot be attacked on the ground that certain procedure adopted by the revenue authorities in arriving at the final conclusion does not support the entry as finally published: *Ibid.* It is for the person who challenges an entry in the record of rights to show that it is incorrect: *Ibid.* A decision of the attesting officer which was arrived at before the final publication of the record of rights is not evidence to consider the question whether the record of rights is erroneous or not—*Ibid.*

In a suit for partition the plaintiff claimed certain land to be the malik's zeraif, while the defendants contended that it was their occupancy holding; the record of rights supported the defendants. The plaintiff contended that the presumption arising from the entry in the record of rights was rebutted by the fact of the disputed land

falling within the ambit of the plaintiff's zamindari, held that the plaintiff had no presumptive right generally to possession of raiyati holdings and that, therefore, there being no conflict of presumption, the burden of proof lay on the plaintiff: *Mahanth Ram v. Nandi Jha* 5 Pat. 393, s. c., 7 P.L.T. 784, s. c., 96 I.C. 937.

Apart from the question whether or not a *fard rewaj bhaoli* if part of the Record of Rights to which a presumption of correctness attaches under section 103 (b) of the Bengal Tenancy Act, it is admissible in evidence under section 35 of the Evidence Act, being a public record prepared by a public servant in the discharge of his official duty: *Sheo Prasad v. Lal Babu*, 39 I.C. 505. *Fard rewaj bhaoli.*

The presumption which attaches to a Record of Rights under s. 103B, does not apply to the *fard rewaj bhaoli* as according to the Rules in the Settlement Manual it is not possibly a part of the Record; but the *fard* is clearly admissible under s. 35 of the Evidence Act: *Tulsi Mahton v. Ishandoo Pandey*, 2 Pat. L.J. 188, (Chamier, C.J., Sharfuddin, J., agreeing), s. c., 1 Pat. L.W. 238.

In a suit under s. 104A by a person who was entered as a tenure-holder for a declaration that he is a raiyat, held that the onus was up on him to prove that he was a raiyat: *Rajani Kant v. The Secretaries, State*, 45 I.A. 190, s.c., 46 Cal. 90, s.c., 23 C.W.N. 649, (P)

Rebuttal by evidence external to the settlement proceedings or evidence of apparent on the face of those proceedings: *Ramanath Santil Trustee of Bengal*, 29 C.W.N. 517. Rebuttal by evidence or evidence on the face of the record.

resumption arising out of an entry that the trees belong to cannot be rebutted merely by shewing that the ordinary trees are the full right to trees to the landlord: *Bishan Pragash v. Sh*, n, 1 Pat. 368.

Evidence of facts, documentary and oral, of a date prior to that of publication of the record-of-rights, is admissible and should be taken into consideration in determining whether the presumption under s. 103B has been rebutted or not: *Sheonandan v. Bachha Rani*, 284, *Pirthichand v. Sheik Mohamed*, 1 Pat. L.J. 67 which approved of the case of *Radha Kisore v. Umed Ali*, 12 C.W.N. 904; see also *Birendra Kisore v. Kailash Chandra*, 22 C.L.J. 140. See *Bhukhon Quassab v. Mardanali*, 56 I.C. 40. The fact that an entry was made in the record of rights is not sufficient to save the person relying on the entry from the necessity of producing and proving a document on which the entry was based and by which he had settlement as a raiyat: *Sheonandan v. Bachha Rani*, 9 C.L.J. 284. Evidence prior to publication of record-of-rights admissible.

The proposition that evidence of payment anterior to the publication of the Record of Rights, is not admissible to shew that the plaintiff has a holding at fixed rates, is erroneous: *Pirthichand v. Sheikh Mohamed*, 1 Pat. L.J. 67 (*Radha Kisore v. Umed Ali*, 12 C.W.N. 904 approved). Evidence prior to publication.

Entries in a draft record of rights published under s. 103A are not admissible in evidence: *Gulab v. Ramratan*, 18 C.W.N. 896; see also *Ambar Ali v. Lutfee Ali*, 21 C.W.N. 996. Entries in draft record not admissible.

An entry in a draft record of rights that a certain tank is known by a certain name is not admissible in evidence: *Ambarali v. Lutfee-ali*, 25 C.L.J. 690.

If there is no settlement of rent under Chapter X, the entry in the record-of-rights, if it was duly published, would be only *prima* of Settlement of rent—

effect as a decree.

facie evidence in favour of the landlord—evidence which may be rebutted by the tenant: *Abdu Rasheed v. Jogesh Chandra Ray*, 11 C.W.N. 153; but if there was an application for settlement of rent and the rent was settled and record-of-rights duly prepared, such record would have the effect of a decree (see section 9 of Act III of 1898): *Ibid.*

Entries not lightly to be discarded.

The entry of the record-of-rights is presumptive evidence as to the condition of things which existed at the time the record was prepared; such records are prepared with considerable difficulty and the proceedings of Revenue-officers are conducted with publicity; if the entries in such records were lightly to be discarded the result would be to frustrate the very object for which Chap. X was enacted: *Kali Ray v. Protap Narain*, 5 C.L.J. 92.

History of proceedings which resulted in a particular entry may be looked into.

The statutory provision in s. 103B says nothing as to the value to be attached to an entry in the Record of Rights; it only says that the entry must stand and be presumed to be correct until it is proved by evidence to be incorrect; it is often of the greatest value to very carefully consider the history of the proceedings which resulted in a particular entry in the Record of Rights for the history is frequently of the greatest assistance in enabling the court to estimate the value which should be attached to an entry in the record-of-rights: *Mahtab Khan v. Sheobarat*, 37 I.C. 353.

Entry cannot override the statutory prohibition contained in s. 20 of the Cess Act

An entry in the record-of-rights, which only raises a presumption, cannot override the statutory prohibition contained in s. 20 of the Cess Act (Act IX B.C. of 1880): *Dhanukdhari v. Saiyid Huda*, 1 Pat. L. J. 521.

Entry cannot override well settled principles of law.

An entry in the Record-of-rights cannot have the effect of overruling well settled principles of law." If therefore, the entry in the Record-of-Rights conflicts with the established law, I think the established law must prevail, and that the presumption attached to the entry in the Record-of-Rights must be deemed to have been rebutted." *Raghubir v. Bhajan*, 40 I.C. 987; where the trees in an *Ar* (boundary fence) were recorded as the property of one of the owners of the adjoining proprietor, *held* that the entry was wrong in as much as a boundary fence is owned by both the adjoining proprietors to the centre of the fence, each owner being entitled to claim the land forming the fence to its centre and the trees growing thereon: *Ibid.*

Presumption when the entries were made.

The presumption under s. 103B is a presumption that the entries were correct at the time of the preparation of the record: *Luchmi v. Ekdeshwar*, 13 C.W.N. 181.

Presumption in a suit before publication of record.

The presumption referred to in s. 103B, is applicable to a suit which has been instituted before the publication of the record-of-rights in which the entry is contained; *C. R. Macdonald v. Babu Lall Purbi*, 4 C.L.J., 519;—followed in *Kamaliswari v. Ramphari*, 19 C.L.J. 348.

Effect of s. 104 J.

When settlement of rent has been made under Part II of Chap. X, no evidence is admissible to prove that a different rate of rent is payable from that entered in the rent-roll, such entries being conclusive under s. 104 of the Act; s. 103B, does not operate to modify the effect of s. 104J., *Ambika Charan v. Joychandra*, 13 C.W.N. 210.

Sub-sec. 2 of s. 109

Sub-sec. (2) of s. 109 of the Act before amendment by Act III of 1898 provided that "every undisputed entry in the record shall be

presumed to be correct until the contrary is proved." It was held that this presumption would be sufficiently rebutted by a decree passed in a contested suit between the parties and that the rule in sub-sec. (2) was only a rule of evidence and could not over-ride the rules of *res judicata* which are of general application: *Ghanshyam v. Pudmanund Singh*, 9 C.W.N. 610.

Where a person was inducted as a tenant by a proprietor after the last day fixed for payment of revenue and the auction-purchaser at the revenue-sale brought a suit to oust the tenant, held that although there is an entry in the record-of-rights that the person inducted into possession was the tenant, such presumption was rebutted from the fact that his occupation in its inception was that of a trespasser: *Deonundun v. Meghu Mahton*, 11 C.W.N. 225 (at p. 228, Per Mookerjee, J.).

Where in a suit for rent the Court gave a decree to the landlord at the rate admitted by the tenant and not at the rate in the entry in the record-of-rights held in a subsequent suit for rent that the *khatian* not having been considered in the previous suit, the Court should consider the same as evidence in the case: *Sarifunnessa v. Sasodhar Moulik*, 14 C.W.N. 364.

There is no limitation as to the nature of the suit to which the provisions of s. 103B applies: *Tokhi Sahu v. Tori Munda*, 13 C.W.N. III, s.c., 9 C.L.J. 83; the presumption as to the correctness of the entries will operate even in a suit to declare the entries incorrect: *Ibid.*

An entry in the column of the record-of rights that a tenure was under temporary settlement for thirty years is conclusive evidence that the settlement was made duly under the Regulation: *Haider Ali v. Secretary of State*, 9 C.L.J., 265.

In an appeal from the Judicial Commissioner's court, N. W. Frontier Province, the Judicial Committee held that though an entry in a *Wazib-ul-arz* "does not create a title, it gives rise to a presumption in its support, which prevails until its correctness is successfully impugned" *Dakas Khan v. Ghulam Kasim*, 28 C.L.J. 441.

A decision in a rent-suit as to the rate of rent is sufficient for rebutting an entry under s. 103 B.: *Brajendra v. Somar Ali*, A.I.R. 1923 Cal., 282.

As to whether the entry is money-rent or produce-rent: see the case of *Gobinda v. Thakur Prasad*, A.I.R. 1922 Pat. 181.

5. Remedy regarding an entry :- An entry in a finally published record does not create any title in favour of any person; the entry only raises a presumption that the entry is a correct one unless the contrary is proved. An entry raises a presumption merely and it is not necessary to bring a suit to avoid a presumption; *Ramgolam v. Bishnu Pargash*, 11 C.W.N. 48; a suit may however be brought for a declaration that the entry contains an erroneous statement: *Ibid*; Art 14 of Sch. II of the Limitation Act has no application to such a suit: *Ibid*. See also *Agin Bindh v. Mohan Bikram*, 30 Cal. 20. See also *Brij Behari v. Sheo Sankar*, 2 Pat. L.J., 12. An entry in a record of rights neither creates nor extinguishes merely a rebuttable piece of evidence: *Ibid*. It is not sufficient for a declaration that an entry is wrong before

before amendment by Act III of 1898: presumption rebutted by decree.

How presumption is rebutted in a suit against a person inducted as a tenant by a proprietor in default. Where an entry was not considered in a rent-suit, the same may be considered in a subsequent rent suit. Presumption applies in all suits.

Where entry conclusive evidence.

Wazib-ul-arz.

Rate of rent.

Entry does not create any title.

Consecutive record.

proceeding for enhancement of rent: *Ibid.* See also *Ram Sahawan Misser v. Bachoo Misser*, 11 C.W.N. 300. See notes under s. 106. Where there were two consecutive finally published records-of-rights, and in both there were entries prejudicial to the plaintiff, *held* that it was competent to him to bring a suit for a declaration in regard to the second record without first displacing any prejudicial entries in the finally published entries of the first record: *Sheikh Latafat v. Kumar Kalikar Nund* [1918 Pat.] p. 225; the time for bringing the suit runs from the subsequently published record: *Ibid.* As the plaintiff was found to be in possession there was no reason why he should sue upon every challenge of his rights: *Ibid.*

Suit for a declaration not a suit under the Tenancy Act.

s. 50.

Where a tenant was entered as a *Kaimi raiyat* in the finally published record, and he brought a suit in the Civil Court for a declaration that he was a *raiya* at fixed rate, *held* that the suit was not one under the Bengal Tenancy Act but under the general law of the country: *Pirthi Chand v. Sheikh Mohamed*, 1 Pat. L.J., 67; although s. 50 of the B. T. Act has no application to such a suit, yet that does not prevent the court to take into consideration the evidence of long payment of rent at an unchanged rent as showing that the plaintiff had a holding at fixed rates: *Ibid*; also see *Golab Misser v. Kumar Kalanand*, 12 C.L.J., 108 and *Nandlal v. Atermoni*, 12 C.W.N. 432.

No suit lies in Civil Court for alteration or correction of entries made in the record of rights; persons aggrieved are to take recourse to the remedy provided by this Chapter: *Jogendranath v. Krishna Pramada*, 35 Cal. 1013, s.c., 12 C.W.N. 1032, s.c., 8 C.L.J. 322.

Suit with a stranger.

6. Entry whether evidence against strangers: A finally published entry does not seem to be admissible as presumptive evidence against a stranger who is not party to the proceedings under the Record-of-rights: where there is a dispute between a landlord and a tenant in regard to any matter, the dispute is decided in the presence of or with notice to the parties; a stranger is not a necessary party nor does he get any notice of the proceedings; it is therefore reasonable that the entry should be presumptive evidence only against persons who were parties in the record-of-rights. S. 147B provides that "a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject matter in dispute." It is submitted that if s. 103B and s. 147B are read together a finally published entry ought not to be admissible as presumptive evidence against a stranger.

S. 147B.

It has however been held in the case of *Fazlar Rahaman v. Golam Kader*, 30 C.W.N. 689 (B. B. Ghose and Graham, J.J.), that sec. 147B of the B. T. Act does not in any way limit the operation of sec. 103B of that Act under which the presumption of correctness of an entry in the record of rights arises generally and not merely in suits between landlords and tenants.

Chandina or bazar land.

Presumption is not of such weight as

7. Non-agricultural lands: In regard to an entry in the Record-of-rights in respect of non-agricultural land (*Chandina land*), Sanderson C.J. observed as follows:—"I am not prepared to go so far as to say that in this case no presumption arose from the entry in the Record-of-rights but I am prepared to say that the presumption cannot be of such great weight as would be the case of a presumption in regard to matter which are rightly and properly

Record-of-rights:" *Sasi Kant v. Sandhyamoni*, 26 C.W.N. 483, s.c., 34 C.L.J. 504; (*Per Sanderson C.J., Chotzner J.*).

Following the case of *Sashi Kant v. Sandhyamoni*, 26 C.W.N. 483 it has been held by Newbould and B. B. Ghose, J.J., in the case of *Chand Miya v. Tuka Miya*, 28 C.W.N. 516 that although strictly speaking the presumption under s. 103B is not applicable to non-agricultural land to the extent to which it is applicable with regard to agricultural lands, still such entry raises *some presumption* with regard to the fact recorded in it. See also *Brindaban Prasad v. Gopal Saran Narayan Singh*, 104 I.C. 514 (Allanson and Sen, J.J.).

It is submitted with great respect that the rule laid down in these cases that an entry in the record-of-rights in regard to non-agricultural land raises *some presumption* is not correct, inasmuch as the proceedings under Chap. X in regard to non-agricultural land are *without jurisdiction*, and as such they are void; if a Revenue-officer proposes to deal under Chap. X non-agricultural tenancies, the parties interested are not bound to attend nor they are concerned with the same.

8. Weight to be attached to entries:—Record-of-rights under Chap. X are prepared with considerable formality, and the proceedings of Revenue-officers are conducted with publicity: entries in such records should not be lightly discarded: *Kali Roy v. Partab*, 5 C.L.J., 92.

The presumption is rebuttable but as to whether the evidence adduced is sufficient to rebut the presumption is a matter obviously within the competence of a final Court of fact and incapable of being revised in a second appeal: *Ramkumar v. Birendra Kishore*, 22 C.W.N. 449.

Where the disputed lands were shown to be part of the defendant's mouzas in the Revenue Survey Map of 1845 but were shown to be part of the plaintiff's mouza in the Cadastral Survey Map of 1907, it must be assumed that the defendants were in possession of the disputed lands at the date when the Revenue Survey Map was prepared. Similarly it must be assumed until the contrary is shown that the Plaintiffs were in possession of the disputed lands at the date when the Cadastral Survey Map was prepared. If the contrary is not shown by the defendants, it must be held that the plaintiffs are entitled to succeed in the action on their present possession: *Mazharul Ekbar v. Gopal Lal*, [1924 Pat.] p. 213. The entry in the record-of-rights operates in the same way between landlord and tenant as between landlords of the same or neighbouring estates, or between tenant and tenant. *Ibid.*

Non-agricultural lands are not subjected to the provisions of Chap. X of the B. T. Act. But in a suit for the recovery of rent an entry in the record-of-rights with respect to the amount of rent is admissible in evidence as corroborative of other evidence in the suit although the weight to be attached to such entry would depend on the circumstances of each case: *Rakmijan v. Amar Krishna*, A.I.R. 1925 Cal. 404.

An entry in the Record-of-Rights to the effect that certain lands are *Zerail lands* of the proprietor will be presumed to be correct, and the onus is on the tenants to prove the contrary: *Ramjiram v. Banshi Raut*, 4 Pat. 49; s. c., 84 I.C. 305.

of entry of non-agricultural lands.

Entry in regard to non-agricultural tenancy. Some presumption.

These decisions seem to be incorrect.

Entries should not be lightly discarded.

Presumption rebuttable.

Value of Revenue Survey.

The weight of entry depend on the circumstances of each case.

Zerail-lands onus.

Where the entry also shows that the tenants have acquired in those *Zerai* lands the rights of occupancy or non-occupancy rights, the landlords have to displace the entry and prove that the tenants have not acquired any such rights: *Ibid.*

Definite
challenge.

9. Limitation: Regular suit :—Where there is a definite challenge to the plaintiff's right by an entry made in the Record-of-Rights and where the fact is patent that the plaintiff must have been aware of that challenge to his rights the suit if brought upon that challenge must be brought in accordance with the six years rule of limitation. If inspite of the challenge the plaintiff retains possession of the property he is not required to institute any suit upon that challenge but may institute a suit at any time within six years of any new challenge which has the effect of prejudicing his rights: *Ramji v. Lala Sadhu*, 2 Pat. L.J. 403. See also *Saroj Kumar v. Umedali*, 25 C.W.N. 1022.

Belagan,
meaning of.

10. Meaning of certain terms :—The entry *belagan* in a settlement record, while it may be indicative of a tenure, also shews that no rent was in fact paid and makes no pronouncement either way as to liability to pay rent: *Keshwar Bhagat v. Sheo Prasad*, 18 C.L.J., 166. The word *Lakheraj* is often used loosely: in strictness, it indicates a freedom from liability to revenue but it is constantly used as indicating exemption from liability to pay rent: *Ibid.* The expression "*Kabillagan*" describes a tenancy for which rent is not actually paid, but which is liable to pay rent: *Ibid.*

Lakheraj.

Kabillagan.

Baksh

The word '*Baksh*' literary means "in the cultivation of": It has been invented by Revenue officers in Bihar and conveys to all intents and purposes the same meaning as *Khudkast* which is admittedly the same as *Sir* or *Zerai*: *Dakheswar v. Gulab Kuar*, 53 I.A. 176, s.c., 31 C.W.N. 341, s.c., 5 Pat. 735 (P.C.).

Claim of
hostile
title.

11. Claim of hostile title: Settlement Khatian :—The mere fact that the defendant in a suit had been in possession without payment of rent for 12 years was held not sufficient for basing a valid title in bar of the suit brought by the plaintiff; but where the Settlement *khatian* shewed that the defendant claimed the land as rent-free and the plaintiff's agent denied the claim, held that there was a claim of *rent-free* title unqualified by reference to any document and a denial of the same by the plaintiff's agents; a hostile title was thus claimed to the knowledge of the plaintiff and a suit brought after 12 years would be barred: *Birendra Kishore v. Rosan*, 15 C.L.J., 203. This case was distinguished in the case of *Aman Gazi v. Birendra Kishore*, 16 C.W.N. 920; in this case more than 12 years before the landlord's suit for assessment of rent the tenant in the course of settlement proceedings, set up a rent free title but no actual decision of the question by the Settlement-officer was proved, though the record-of-rights which was finally published within 12 years of the suit, shewed that the tenant was entered as a settled raiyat, *h.* that it was open to the landlord to rely upon the entry in the record-of-rights as a tacit recognition of his rights to have rent assessed, at any rate within 12 years of the date of final publication, and the suit was not therefore barred by limitation.

Rent free
title.

Recogni-
tion.

12. Settlement-holder bound to recognise intermediate interests :—Where defendants were recorded as intermediate tenure-holders and the plaintiff did not take the remedy mentioned in s. 106 but subsequently took a settlement from the Government and then

sued to avoid the tenures of the defendants, *held* that the suit was not maintainable and that the settlement-holder was bound to recognise intermediate tenure-holder mentioned in the settlement papers: *Tapanidhi v. Pitambar*, 5 C.L.J. 67.

See notes under ss. 105 and 115.

13. Draft records :—See notes under s. 103A.

14. Where presumption does not arise :—Where a certain tract of land was recorded within the area of defendants' *putni* taluk, *held* that although the general rule is that the onus in such a case would *prima facie* lie on the plaintiff, the presumption would not apply for this circumstance that because the defendant holds a *putni* taluk under the plaintiff, a particular tract in dispute was comprised within the tenure: *Jogendra Nath v. Jagadindra Nath*, 34 C.L.J. 133.

Where defendant holds a *putni* taluk.

15. Neighbouring landlords :—An entry operates in the same way between landlords of neighbouring estates as between landlord and tenant: *Bibi Wakilun v. Deonandan*, 5 Pat. L.J. 681 (Das and Adami, J.J.). See also *Mazharal Ekbal v. Gopal Lal Rai*, (1924) Pat. 213. These cases were followed in *Fazlar Rahman v. Golam Kade*, 30 C.W.N. 689. (B. B. Ghose and Graham, J.J.).

16. Final publication during the pendency of an appeal :—Where during the pendency of an appeal, the Record-of-rights was finally published, an appellate Court may order a retrial of the suit: *Bhairab Chandra v. Kalikumar*, 37 C.L.J., 491. See also unreported second appeal no. 2358 of 1921. *Indra Bhusan Saha v. Jonardan Saha*, (decided by Suhrawardy and Chotzner J.J. ; on 25th Feb. 1924.)

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

Alterations :—In the heading the words “disposal of objections” were substituted for the words “decision of disputes” by Bengal Act I of 1907 and East Bengal Act I 1908.

Regulation VII of 1822 :—Regulation VII of 1822 has not been repealed by the Bengal Tenancy Act. In fact the Act is not inconsistent with the Regulation, it merely lays down more clearly and definitely how a record-of-rights should be prepared. When, therefore, land revenue has to be revised in any non-permanently settled estate—either in the course of a district operation or as a separate undertaking—the record-of-rights is now prepared under the provision of chapter X of the Bengal Tenancy Act. The Act does not, however, deal with assessment of land revenue as between a temporarily settled proprietor and Government. When a proprietor intervenes (see paragraph 2 above) it is still necessary to use the old Regulation so far as he is concerned: (*Extracts from para 5 of Part I of the Guide and Glossary to the Survey and Settlement Records in Bengal 1917.*)

Land Revenue Settlement :—Where the Bengal Tenancy Act is in force all operations for the revision or assessment of land revenue will in future be preceded by operations under Chapter X of that Act, unless there are good and sufficient reasons for not settling rents under that Act. The assessment of revenue in temporarily settled

private estates will always be made under Reg. VII of 1822. In such estates where there are proprietors but no tenants the whole settlement will be carried out under that Regulation: (*The Bengal Survey and Settlement Manual*, 1917, Ch. II para 5, at page 2).

Re-assessment of Revenue :—See notes under s. 52.

Determina-
tion of
rent by
Diara
officers
under Act
XXXI of
1858 not
binding on
tenant.

Where certain lands which formed an accretion to an estate were brought under *diara* operations and the same were formed into a separate estate and settled with the proprietor, and the revenue authorities in the course of proceeding of assessing the revenue determined the rent to be paid by a tenure-holder for lands which accreted in front of his tenure, *held* that the rent not having been determined under Chap. X of the Bengal Tenancy Act or under s. 52 of that Act or under any other appropriate law, the tenure-holder could not be fastened with liability to pay that rent to his landlord; *held further* that the determination of the said rent under Act XXXI of 1858 or Reg. VII of 1822 would not bind the tenure-holder to pay that rent to his landlord i.e., the proprietor who took the settlement; *Dhirendra Chandra Roy v. Nawab Khaje Habibullah*, 29 C.W.N., 595.

Settlement
of rents and
preparation
of Settle-
ment Rent
Roll when
to be
undertaken
by Revenue-
officer.

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

- (a) settle fair and equitable rents for tenants of every class ;
- (b) notwithstanding anything contained in section 192, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (j) of section 102, that the occupant is not entitled to hold it without payment of rent, and
- (c) prepare a Settlement Rent-roll :

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

Headings of Notes.

1. AMENDMENTS.
2. ACT III OF 1898, B.C., s. 9.
3. BOARD'S SURVEY AND SETTLEMENT MANUAL, 1909, PART I CH. I. PAGE I.
4. LAND HELD BY A PERSON NOT A TENANT.
5. S. 52.
6. DECISION SETTLING RENT—A DECREE.
7. JURISDICTION.
8. S. 113.
9. REMEDIES OF PERSONS AFFECTED BY SETTLEMENT PROCEEDINGS PREPARED UNDER PART II OF CHAP. X.

1. Amendments :—In cl. (b) for the word, letter and brackets “cl. (i)” the word, letter and brackets “cl. (j)” have been substituted by s. 24 of Beng. Act. I of 1907 and s. 23 of East Bengal Act I of 1908.

By the same sections of the same Acts the proviso was added.

2. Act III of 1898, B. C. s. 9 :—S. 9 (1) Every settlement of rent or decision of a dispute by a Revenue-officer under section 106 of the Bengal enancy Act, 1885, before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under sec. 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final :—

Effect of settlement of rent and decisions by Revenue-officers made before the commencement of this Act.

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

3. Board's Survey and Settlement Manual, 1909, Part I. Ch. I. Page 1 :—In the Bengal Tenancy Act, the term “settling a rent” implies the determination of a rent payable for a term of years, and is used in contradistinction to the term “recording a rent,” which implies the ascertainment and record of a rent payable at the time of the preparation of record-of-rights.

Settlement of rent.

4. Land held by a person not a tenant :—It was held under s. 104 of Chap. X as it stood before Act III, B.C., of 1908, the only provision of law under which a Settlement-officer could make a settlement of rent in respect of excess land, was s. 104, and that did not apply to lands held by one who was not a tenant in respect of other lands to which they had become attached :—*Padmanand v. Bajo*, 20 Cal. 577.

5. S. 52 :—S. 104, sub-sec. 2 of the former chapter was held to be subject to s. 52 of the Act : *Gouri Patro v. Reily*, 20 Cal. 579.

6. Decision settling rent—a decree :—A settlement of rent under s. 104 (2) for the purposes of land revenue, has, under s. 107, the force of a final decree of a Civil Court, and as such, operate as *res judicata* upon the question of rent payable by the tenant, both as to its nature and amount : *Brahmanund v. Arjun Raut*, 1 C.L.J., 310.

S. 104 (2).

In a proceeding under s. 103 the rent of a tenant was settled under s. 104 (2), held that the decision amounted to a decree and the matter could only be re-opened on an appeal to the Special Judge and could not be re-opened by a suit : *Durgacharan v. Hateen*, 29 Cal. 252.

In a rent suit the amount of rent entered in the rent-roll prepared under Part II of Chap. X cannot be disputed by the tenant : *Sarbeswar v. Rajani Kant*, 51 I.C., 981.

Where the tenants hold over, it is open to the settlement officer Holding to determine fair rent after determining the true status of the tenants irrespective of the stipulation in the time expired *kabuliyats* : *Karuna v. Secretary of State*, 100 I.C. 466. (Duval and Mitter, J.J.).

7. Jurisdiction of Settlement-officer to settle rent :—Where some sort of tenancy is admitted, the Settlement-officer has Settlement of rent.

jurisdiction to settle rent under s. 104: *Brahmanund v. Arjun Raut*, 1 C.L.J., 310.

Assessment
of rent
when final.

Where a Settlement-officer made an assessment of rent under s. 104 which was not appealed against under s. 108, held that the decision of the settlement was in view of s. 107, read with s. 9 of the Bengal Tenancy Amendment Act, 1898, final: *Dwarkanath v. Dambarudhar*, 38 Cal. 274.

8. S. 113:—S. 113 applies to rents which have been finally settled under the provisions of one or other of the sections 104, 104J., 105 or 112 of chap. X, but it does not apply to rents otherwise settled. The provisions of s. 113 are not applicable to a mere entry of an existing rent in the Record-of-Rights: *Meyajan v. Joymala*, 34 I.C. 32.

9. Remedies of persons affected by Settlement proceedings prepared under Part II of Chap. X:—Any one aggrieved by an entry or omission may, before the final publication of the settlement rent roll;

(1) prefer "objection" before the Revenue Officer (Sec. 104F).

(2) prefer appeal against his decision to the Superior Revenue authority. (Sec. 104G).

and after the final publication of the record of rights, may

(3) bring a suit in the civil court. (Sec. 104H).

(4) bring a declaratory suit. (Sec. 113A).

Note.—The Board of Revenue may exercise its power of revision at any stage, either before or after the final publication of the record of rights.

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

(a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed upon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;

(b) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;

(c) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practi-

Procedure
for settle-
ment of
rents and
prepara-
tion of
Settlement
Rent Roll
under this
Part.

cable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described ;

- (d) the Revenue-officer may settle all or any the rents by maintaining the existing rentals recorded in the record-of-rights published under section 103A, sub-section (1), or by enhancing or reducing such rentals.

Provided that, in taking any such settlement regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 181.

(2) The Settlement Rent-roll shall show the rent of each landlord and of each tenant whose land has been settled, and the amount of each such rent payable for the area shown against his name.

104B. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which the Table of Rates is prepared, having regard to the nature of the land, its situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent for each class and
- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each class whose rent is liable to be settled.

(2) When the Revenue-officer has prepared a Table of Rates, he shall publish it in the local language prevailing in the district, and in the prescribed manner.

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer.

within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue authority empowered by rule made by the Local Government to confirm the Tables and Rent Rolls prepared under this Part (herein after called the "confirming authority"), with a full statement of the grounds of his proposals, and shall send any petitions of objection which he may have received.

The confirming authority may confirm a Table made under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently.

When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall contain evidence that the proceedings for the confirmation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue-officer shall settle all or any of the rents and prepare the Statement Rent-roll on the basis of the rates shown in the Table by calculating the rental of each tenure or holding of a raiyat or under-raiyat on the basis of such tenure or holding at the said rates:

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the Local Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of

this Act regulating the enhancement or reduction of rents. in accordance therewith.

104E. (1) When a Settlement Rent roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the Local Government may prescribe. Preliminary Publication and amendment of Settlement Rent Roll.

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

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

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

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

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

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

1. Court fees :—When a survey and record-of-rights are undertaken with a view to the settlement of land revenue, applications or petitions to a Revenue-officer making a settlement of land revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interest therein, if presented before the final confirmation of the settlement under section 104F (3) are not chargeable with any fee. [Section 19 (ix) of the Court Fees Act of 1870].

2. Civil suit :—An entry in the record-of-rights settling a rent in accordance with the provisions of ss. 104A to 104F, unless altered

by means of a suit brought as contemplated by s. 104H is conclusive and no suit is afterwards maintainable for enhancement of rent on the ground of an excess in area in spite of there having been a stipulation to that effect in the *kabuliyat* executed by the tenant prior to the settlement proceedings: *Prosanno Kumar v. Rachimaddin*, 17 C. W.N. 153.

Appeal to,
and revision by,
superior
Revenue
authorities

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

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

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

Court-fees
in appeals
under sections 104G
(1) and (2)
and 108.
Bengal
Tenancy
Act.

I. Board's Survey and Settlement Manual, (1908), Part I, Chap. VII, p. 54 :—4. Court-fees :— Appeals presented under section 104G (1) to a superior Revenue authority and applications for revision presented under section 108 will bear a Court-fee of eight annas under Schedule II, 1 (b) of the Court Fees Act, if the superior Revenue authority is of lower standing than a Commissioner of a Division. If the authority is a Commissioner of a Division or the Director of the Department of Land Records, or if an application for revision is made to the Board under section 104G (2) the fee will be one rupee under Schedule II, 1 (c) of the Court Fees Act.

2. Notes :—Where a Record of Rights has been finally published before Act III of 1898, B. C. came into force, no proceedings could be taken under s. 104G: *Behary v. Narain*, 29 C.L.J. 237.

Jurisdiction
of Civil
Courts in
matters
relating
to rent.

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

(2) Such suit must be instituted within six months from the date of the certificate of final publication of

the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then within six months from the date of the disposal of such appeal.

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

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

(Bengal and Behar.)

(East Bengal.)

(g) that the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land which is the subject of the tenancy, have not, or has not, been recorded, or have or has been wrongly recorded.

(g) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded.

[*There is no sub-section (h) in Bengal.*]

(h) that any right-of-way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government is landlord or tenant of the land to which

the aforesaid entry relates or in respect of which the aforesaid omission was made.

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

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

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

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

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

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

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

Headings of Notes.

1. AMENDMENTS IN BENGAL.
2. AMENDMENTS IN EAST BENGAL.
3. NOTICE.
4. FINALITY TO FIXATION OF RENTAL ASSETS.
5. WHEN RENT CANNOT BE ALTERED IN A SUIT.
6. SUIT FOR SETTLEMENT OF FAIR RENT.
7. COURT FEES. DECLARATORY SUITS &C.
8. REMEDIES AGAINST INCORRECT ENTRIES OR OMISSION.
9. SCOPE OF A SUIT UNDER THIS SECTION.
10. PARTIES.
11. EFFECT OF ENTRY IF NO SUIT IS BROUGHT.
12. LIMITATION.
13. CONTRACT IN A SOLENAMA.
14. CIVIL COURT CANNOT REVISE SETTLEMENT OF RENT.

I. 10 Amendments in Bengal :— The words in cl. (g) s. 104H “or any right of way or other easement.....has” were sub-

stituted for the original words "have not been recorded or have" by Bengal Act I of 1907, s. 25.

2. Amendments in East Bengal:—After cl. (g) of sub-sec. (3), cl. (h) was added by s. 24 of Act I (F. B. A. C.) of 1908.

3. Notice : In order to institute a suit against the Secretary of State under s. 104H for correction of an entry in the Settlement Roll a formal and distinct notice under s. 80 C. P. C. should be given : *Hari Mohan Misra v. The Secretary of State*, 18 C.L.J. 566 ; an objection made to an entry in the Settlement Roll under s. 104E is not a sufficient notice : *Ibid*. Notice to Secretary of State in a suit for correction of entry.

4. Finality to fixation of rental assets .—Clauses (a) to (g) of sub-sec. (3) are designed to safeguard the Government revenue and to attach reasonable finality to the fixation of the rental assets upon which the revenue is necessarily based : *Nasarulla v. Amiruddi*, 3 C.L.J. 133. These clauses do not bar a suit for rent against the recorded tenant : *Ibid*. Clauses (a) to (g) of subsec. (3).

See notes under s. III.

5. When rent cannot be altered in a suit :—In a suit under s. 104H by tenants who had been recorded as tenure holders to have themselves recorded as raiyats, the Court cannot disturb the rent settled unless the plaintiff succeeds in showing under s. 104H (3) (e) that in the record of rights their status has been wrongly recorded : *Secretary of State v. Gobind Prasad*, 21 C.W.N. 505.

6. Suit for settlement of fair rent :—A suit by a tenure-holder for settlement of fair rent is maintainable where the rent payable by the tenure-holder has not been settled but has been fixed on the basis of rent payable by raiyats to proprietors ; the Court has power under sub-sec. (4) to settle a fair rent : *Profulla Nath v. The Secretary of State*, 26 C.W.N. 100, s.c., 63 I.C. 892. Settlement of fair rent. Sub-Sec. (4).

7. Court fees. Declaratory suits &c. :—"A certain difficulty arises on the wording of s. 104H for although sub-clause (3) of that section expressly sets out the suits which may be instituted under that section from (a) to (g) and no others, and these causes of action are all of them purely declaratory, yet we find in the sub-clause (4) that if the court proceeds to make any declaration, it shall in some cases give one kind of consequential relief and in other cases give others, and that is quite contrary to the law which is laid down in Schedule II, Art. 17, of the Court Fees Act. There it is clearly set out that the plaint or memorandum of appeal can only be stamped as declaratory suit with a fee of Rs. 10 when the relief is to obtain a declaratory decree where no consequential relief is prayed." *Pajiruddin v. The Secretary of State*, 16 C.L.J. 383. Where a consequential relief is prayed *ad valorem* court-fees should be paid : *Ibid* ; a suit for declaration that the plaintiff is an occupancy raiyat and for settling fair and equitable rent does not come under Art. 17 of Sch. II of the Court Fees Act and the court fees must be paid *ad valorem* : *Ibid*. Declaratory suits. Consequential relief.

It has been held subsequently in a case by Mookerjee and Holmwood J.J., that the plaintiff in a suit under s. 104H is competent as to the entry of rent and not for a declaration that a tenant has not acquired right of occupancy : *Jogendra Nath v. Secretary of State*, C.W.N. 835, s.c., 16 C.L.J. 385.

Following the case of *Pajiruddin v. The Secretary of State*, 16 C.L.J. 383, it has been held that suits for declaration that the status of the plaintiffs is that of raiyats with rights of occupancy and not that of tenure holders as recorded in Settlement Revenue Roll prepared under ss. 104A to 104F and for settlement of fair and equitable rents on that basis in respect of their holdings are, regard being had to provisions of s. 104H, sub-sec. (4) brought to obtain consequential relief and *ad valorem* fees should be paid under section 7 (iv) of the Court Fees Act on the sum at which the plaintiffs value their suits or the relief sought: *Trailakya Nath v. Secretary of State*, 17 C.L.J. 426.

Relief in a
suit under
s. 104H.

8. Remedies against incorrect entries or omission :—The only way in which a Record of Rights under ss. 104A to 104F can be altered is by a suit under s. 104II: *Hajzuddi v. Prasanna*, 38 I.C. 341; see also *Prasanna v. Rachimuddin*, 17 C.W.N. 153. The only relief which a plaintiff in a suit under s. 104II can claim is the alteration of an entry as to the amount of rent to be settled: *Jogendra Nath v. Sec. of State*, 17 C.W.N. 835, s. c., 16 C.L.J. 385. The plaintiff is not competent in a suit under this section to seek a declaration that part of the lands is *nij-jote* or that certain specific tenants have not acquired rights of occupancy therein: *Ibid.* But see notes under the previous heading.

S. 104II of the B. T. Act only contemplates a case where a person has been aggrieved so far an entry of rent is concerned. Therefore if a person is not really affected by an entry of rent in the Record-of-rights he would not be entitled to claim a revision of rent under cl. (4) of that section even if he can bring his case under any of the sub-clauses of cl. (3) of s. 104II: *Secretary of State v. Ramcharan*, A. I. R. 1924 Cal. 464.

9. Scope of a suit under this section : Where more than six months from the date of final publication the plaintiff brought a suit for a declaration that he was an occupancy raiyat, held that the suit came within the proviso to s. 111A and not under s. 104H and was not barred by limitation: *Kumada Prosunna v. The Secretary of State*, 19 C.W.N. 1017; see also *Promada v. Basiraddi*, 15 C.W.N. 896. See also notes under heading no. 12, Limitation.

"In a suit under s. 104H, it is not sufficient for the court to hold that the entry in the settlement Rent-Roll as to the status or the rent is erroneous; the court must affirmatively determine the exact conditions and incidents of the tenancy as also the rent to be settled on such basis; this is obvious as under sub-sec. (7), the rent settled by the court is deemed to have been duly settled in place of the rent entered in the settlement Rent Roll": *Secretary of State v. Digambar*, 46 Cal. 160, at p. 167; s.c., 27 C.L.J. 334.

A suit under sec. 104II of the Bengal Tenancy Act does not lie on the ground that an enhancement of rent made by reason of a rise in the price of staple food crops should not have been made: *Kali Prosanno v. Secretary of State*, 23 C.W.N. 383. The special conditions and incidents of the tenancy mentioned in sec. 104H (3), (g) of the Bengal Tenancy Act refer to the special conditions and incidents mentioned in sec. 102 (h), whilst the rent payable comes under sec. 102 (e) of the Act: *Ibid.*

Whether
Secretary of

10. Parties :— A suit under this section may be instituted either by the landlord or by the tenant, according as the one or the

operate to modify the effect of s. 104J.: *Ambika Charan v. Joy-chandra*, 13 C.W.N. 210.

An entry in the record-of-rights is conclusive unless altered by means of a suit under s. 104H: *Prosanno v. Rachimuddin*, 17 C.W.N. 153. Entry conclusive.

It is settled that an entry as to the rent settled is conclusive under s. 104J: *Priya Nath v. Tarachand*, A.I.R. 1924 Cal. 341. Entry conclusive under s. 104J

An entry as to area in the Record-of-Rights is not conclusive under s. 104J. Such entry can only be presumed to be correct under s. 103B until the contrary is proved by evidence and, therefore, an under-raiyat can, in defence to a suit for ejection, give evidence to prove that the holding from which he is being ejected forms part of a larger holding: *Uma Charan v. Lakshmi Narayan*, 98 I.C. 498 (Cuming & Page, J.J.). Entry as to area.

It may also be considered that other entries in the record-of-rights upon which the rent is settled cannot be challenged so as to affect the rent settled i.e. in so far as they bear upon the rent settled and for that purpose only: *Ibid*.

The fact that the suit under s. 104H is to be instituted on the grounds mentioned in that section by a person aggrieved by an entry of a rent settled indicates that the other entries in the record-of-rights can be challenged under that section only for the purpose of showing the incorrectness of the entry as to the rent settled: *Ibid*.

But where the question in controversy is not as to the rent payable but the quantity of land included in the tenure, the determination of which is necessary not for deciding the amount of rent payable for the tenure, but for deciding the amount of rent payable for the tenure, but for deciding the question whether the rent should be suspended because the defendants had been dispossessed from a portion of the tenure, the entry as to the area is not conclusive under s. 104J: *Ibid*.

If the contention that as the rent of a tenancy is settled with reference to the area comprised in the tenancy, the entry as to the rent should be held to be conclusive ~~with the~~ *with the* ~~entry~~ *conclusive*.

sumption and being an irrebuttable presumption it is not open to a party to show that the rent settled is not correct: *Baikuntha Nath v. Prasanna Kumar Mohapatra*, 23 C.W.N. 516. Where it was alleged that the Settlement-officer has re-arranged certain holdings, and a certain rent was settled, *held*, that the rent settled was conclusive: *Ibid*.

S. 104J.

S. 104J., precludes any evidence from being given to contradict the settlement as to the rent mentioned in the record-of-rights where a settlement roll has been prepared: *Prafulla v. Palku*, 44 Cal. 90, s. c., 20 C.W.N. 860.

Irrebuttable presumption does not arise if made without jurisdiction.

Where entries cannot be challenged.

3. Irrebuttable presumption as to entry of rent—want of Jurisdiction :—As to the rent payable s. 104J., raises an irrebuttable presumption: *Jyoti Prokash v. Bagala Kant*, 36 C.L.J. 124, s. c. 70 I.C. 822, but the presumption is of no avail where the entry was made as a result of a proceeding without jurisdiction: *Ibid*.

Entry as to area not conclusive.

An entry in the Record-of-rights as to rent settled under Part II of Chap. X of the Bengal Tenancy Act cannot be challenged otherwise than by a suit under Section 104H, and except in so far as is allowed by such suit, the other entries in the Record-of-rights cannot also be challenged so as to affect the amount of rent settled and recorded in such entry. These other entries, however, are not conclusive for any other purpose. Where an entry in a Record-of-rights prepared under Part II of Chapter X of the Bengal Tenancy Act as to the area of a tenant's holding is questioned by the tenant in a suit for rent, for the purpose of shewing that the tenant has been dispossessed by the landlord of a portion of the holding and that therefore the rent should be suspended: *held* that the entry as to area in the Record-of-rights is not conclusive, under Section 104G presumed to be correct under Section 103B until the contrary is proved. *Priya Nath Basu v. Tara Chand*, 27 C.W.N. 982.

Rent in excess of entry cannot be recovered

4. Suit for rent in excess of entry :—It was *held* in the case of *Protab Chandra v. The Secretary of State*, 49 Cal. 1026, s. c. C.L.J. 304, that the Secretary of State was not competent to

31. RULES AND INSTRUCTIONS.
32. CESS ACT: s. 20.
33. BACK RENT:
34. TANK:
35. SEC. 29.
36. SERVICE OF NOTICE.
37. PARTIES.
38. RESJUDICATA.
39. UNDER RAIYAT: SETTLEMENT OF FAIR RENT.
40. OR. 2, R. 2, C. P. C.

I. Alterations :—In sub-sec. (2) for the word, letter and brackets “clause (i)” the word, letter and brackets “clause (j)” was substituted by both the Amending Acts of Bengal and East Bengal of 1907 and 1908, respectively. Sub-sec. (7) was added in East Bengal.

By the Devolution Act (XXXVIII of 1920) the following amendments have been made: In sub-sec. (3) of s. 105 for the words “Government of India” the words “Local Government” and for the words “Gazette of India” the words “local official Gazette” shall be inserted.

Sub-sec. (3) as amended stands as follows:—

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

2. Redundant words in the section :—From the heading of this Part i.e., Part III of Chap. X, it will appear that this part applies *where a settlement of land-revenue is not being or is not about to be made*. Therefore the following words in sub-sections (1) and (2) are redundant: “*in any case in which a settlement of land-revenue is not being made or is not about to be made.*”

3. Act III of 1898, B.C., s. 8. :—All records published under s. 105 of the Bengal Tenancy Act, 1885, before the commencement of the Act, whether in draft or final form, shall be deemed to have been duly published. Validation of publication of past records.

4. Non-agricultural tenancies :—A decision settling a fair rent of a non-agricultural tenancy under s. 105 is without jurisdiction: *Ramdas v. Biprodas*, 19 C.W.N. 35; the same view has been taken in the case of *Biprodas v. Azam Ostagar*, 46 Cal. 441, s.c., 22 C.W.N. 116 (notes). Non-agricultural tenancies.

5. Sub-sec. (1) :—This sub-section is founded upon s. 104 of the former chapter, i.e. Chapter X as it stood before the passing of Act II, B. C. of 1898; see notes under s. 107: *Durgacharan v. Basir Mandal*, 6 C.W.N. 238. The former Ch. X is to be found in the Appendix VII.

6. Scope of the section :—By the introduction of s. 105A by Act I of 1907 B. C. and Act I of 1908 E. B. C., there has been some anomaly created. The real scope of s. 105 was to have a fair and equitable rent settled *upon the entries finally published*.

Questions as to the correctness of the entries could not properly form the subject of an enquiry under s. 105 before the passing of the Amending Act I, B. C. of 1907: *Pandab Dewari v. Ananda Kishun*, 14 C.W.N. 897, s.c., 12 C.L.J. 195. Correctness of entries.

Status.

In a proceeding under this section before the passing of Act I, (B. C.) of 1907, it was held that an entry in a finally published record-of-rights that land held by tenants were *mal* lands or that the status of the tenants was that of settled raiyats could not be corrected by the Settlement-officer: *Shambhu Chandra v. Purna Chandra Pal*, 12 C.W.N. 122. See also *Preobast v. Murat Bai*, 13 C.W.N. 204 (notes).

Law as it stood before the introduction of s. 105A.

If any one was dissatisfied with an entry, the remedy lay in a suit under s. 106; simultaneous proceedings could be taken under both the sections and in such cases the proceedings under s. 105 were to be stayed. But s. 105A provides that many matters which really fall within the scope of s. 106 may now be determined in proceedings under s. 105. The legislature in enacting s. 105A over-looked the fact, that s. 105 was not intended for the correction of any erroneous entry. It has been held by N. Chatterjee and Walmsley, J.J., in the case of *Upendra Nath v. Jamini Mohon*, 18 C.W.N. 268 that the correctness of the record of rights can be impugned by the landlord in an application under s. 105 and that issues mentioned in s. 105A. can be tried in a proceeding for settlement of rent under s. 105A.

Present law.

The questions as to the status of the tenant and also as to area may be gone into in a proceeding under s. 105: *Behari Lal v. Priyanath*, 21 C.L.J. 305.

The effect of the introduction of s. 105A may be explained by the following illustration:—

Effect of the introduction of s. 105A.

If a tenant is recorded as a raiyat, the question as to whether he is a tenure-holder could not (strictly speaking) be formerly raised by the tenant in a proceeding under s. 105 and it was necessary for him to bring a suit under s. 106 for that purpose; but by the introduction of s. 105A the tenant may now raise that question in a proceeding under s. 105. Likewise the correctness of the record of rights can be impugned by the landlord also in an application under s. 105; (See Upendra Nath v. Jamini Mohon, 18 C.W.N. 268, Per N. Chatterjea and Walmsley, J.J.).

Land liable for rent.

The question whether any land is liable for payment of any rent should be decided in a proceeding under s. 105: *Promatha Nath v. Kaligunga*, 19 C.W.N. 44 (notes). See also *Upendra v. Anath*, 52 I.C. 406.

S. 106.

Questions under s. 106 arising out of applications under s. 105 can be considered and determined by the Revenue officer without calling upon the tenants to file a separate suit under s. 106. *Misri Chowdhry v. Rameshwar*, 14 C.W.N. 275 (notes portion). S. 105 authorises the Settlement officer, in the course of proceedings under s. 105 for the settlement of fair and equitable rent, to investigate questions which would otherwise be determined at the instance of the aggrieved party in a suit instituted under s. 106. *Nawab Bahadur of Murshidabad v. Ahmad Hossein*, 44 Cal. 783, s.c., 21 C.W.N. 1004, s.c., 25 C.L.J. 556. S. 109 requires that the civil suit should have for its subject a matter which has already formed

S. 109.

and not one which might have formed the subject of an application under s. 105: *Ibid*.

See notes under s. 109.

Alteration of entry.

It has been held in the case of *Shambhu Chandra v. Purna Chandra*, 35 Cal. 176: s.c., 7 C.L.J. 103; s.c., 12 C.W.N. 122, that in a proceeding under s. 105 a tenant cannot apply to the Settle

ment-officer to alter the entry in a record finally published by correcting a mistake, viz., to record certain lands as *lakheraj* instead of *mal*, and to enter his status as a settled riyat in respect of certain lands. This is no longer the law after the introduction of s. 105A.

The decision of a Settlement officer in a proceeding initiated by *Lakheraj*, the landlord under s. 105 (before the introduction of s. 105A) as to fair and equitable rent is no bar to a suit by the tenant for a declaration that the land was *lakheraj* or was held at a fixed rent: *Sashi Bhusan v. Sheikh Eshabar*, 19 C.W.N., 636.

Where in a proceeding under s. 105 the issue as to whether the land was *lakheraj* was raised but for want of evidence, the land was assessed to rent, held that a suit in the Civil Court for declaration that the land was *lakheraj* was barred: *Apurba Krishna v. Shyama Charan*, 24 C.W.N. 223, see notes under ss. 107 & 109.

A revenue-officer has jurisdiction under s. 105 to settle fair and equitable rent on excess land found in the tenant's possession: *Paltoo* land. *Pandey v. Sri Nawab Prosad*, 18 C.W.N. 165. "The words 'in respect of the land held by the tenant' are wide enough to include excess lands held by the tenant": *Ibid*.

S. 105 applies to cases where no rent has been fixed by agreement of parties: as well as where such rent has been fixed by agreement of parties: *Aktowhi v. Tarak Nath*, 17 C.W.N. 774, s. c., 16 C.L.J. 328. See also, 16 C.L.J. 67.

Where the status of a tenant is determined in a proceeding under s. 105, a civil suit for its alteration is not maintainable in view of s. 109: *Ram Dayal v. Genda Tewari*, 37 I.C. 641, s.c., 1 Pat. L.J. 479. See also the case of *Bepin Krishna v. Haridas*, 27 C.L.J. 210, s.c., 44 I.C. 562; see notes under s. 109.

S. 105 may be availed of for the purpose of enhancement or re- S. 52. duction of rent under the various sections of the Act as well as for alteration of rent under s. 52; besides, a land-lord or a tenant may apply for settlement of a fair rent in accordance with an agreement or the terms of a written lease: the words in the section are wide enough to include all cases in which a settlement of fair and equitable rent may be made. In the case of *Jogendra Mohan Das v. Janaki Nath Saha*, 21 C.W.N. 427, it was held that in settling a fair rent under s. 105 though Cl. (4) says that the Revenue-officer shall have regard to the rules laid down in the Act for the guidance of the Civil court in increasing or reducing rents, there is nothing to prevent a Revenue officer and a court from taking into consideration the terms and conditions embodied in a lease or other written document by which the rights of the parties are regulated. Also see *Jogendra v. Secretary of State*, 16 C.L.J. 385, s.c., 17 C.W.N. 835.

See notes under s. 109.

Where in a proceeding under s. 105 the landlord abandons his claim for enhancement of rent and obtains a decree for additional area, the Special Judge on appeal cannot grant a decree for enhancement under s. 7: *Ramrenu v. Midnapur men* *indary Co.*, 67 I.C. 1001.

Section 105 requires the Revenue Officer to assess a fair rent the area actually held by the tenant, and Section 105A empowers him either at the instance of the parties or of his own motion to issue orders regarding the area and other matters: *Kesho Prasad S.*

Terms and conditions of lease.

App. Spec

Judge

Issue

v. *Bhagwat Saran*, [1924 Pat.] p. 18; for a settlement for a fair rent the Revenue Officer may either accept the area entered in the record-of-rights or alter it after taking evidence, and it is not necessary that a direct issue should have been raised as to the area: *Ibid.*

7. Sub-sec. (4):—In settling rents under this section, the Revenue officer is to follow the provisions of this Act relating to enhancement or reduction of rents of tenants. In an application for settlement of fair rent, the landlord is entitled to have the rent enhanced under the various sections of the Act as well as additional rent assessed upon additional lands; in regard to lands for which there is no rent settled the landlord is entitled to have new rent assessed. Likewise the tenant is entitled to have his rent reduced or his rent assessed.

Rent may be enhanced under all the sections and additional rents may be assessed.

A claim for enhancement of rent on the ground of rise of prices under s. 30 (b) is to be determined under this section and the parties should not be referred to a separate suit: *Sukraj Ray v. Lal Bahadur*, 29 C.L.J. 253. See notes under the previous heading.

This sub-section covers cases both of enhancement of rent under sec. 30 and also of additional rent under sec. 52: *Sheodhayan Pande v. Beni Pershad*, 9 C.L.J. 67n.

S. 188.

8. S. 188: Co-sharer landlord:—S. 188 is a bar to the maintainability of an application made under s. 105 by one of two or more joint landlords: *Krishna Das v. Poresb Sardar*, 10 C.L.J. 458; see also *Behary Lal v. Priya Nath*, 21 C.L.J., 305.

S. 30.

Enhancement of rent of raiyati holding

Where a raiyat takes a lease from a co-sharer landlord of his undivided share in a holding and executes a separate kabuliyat with stipulations for enhancement of rent, such co-sharer landlord has no right to bring a suit for enhancement of rent, under s. 30 of the Bengal Tenancy Act; the reason is this: under s. 30 "the landlord of a holding...may...institute a suit to enhance the rent.... But a co-sharer landlord in respect to an undivided share of a holding is not the landlord of a holding, for a holding has been held to be an entire parcel of land: see *Baidya Nath v. Sheikh Jhin*, 2 C.W.N. 44; *Haribole v. Tasiruddin*, 2 C.W.N. 680; *Ahadulla v. Gagan Molla*, 2 C.L.J. 10; *Parbuty v. Mathura*, 40 Cal. 29, s.c., 16 C.W.N. 877, s.c., 16 C.L.J. 9; *Harnandan v. Kesho Prasad*, 2 Pat.L.J. 553, s.c., 16 C.L.J. 9; *Harnandan v. Kesho Prasad*, 2 Pat.L.J. 553, s.c., 1 Pat.L.W. 798; *Haricharan v. Ranjit*, 25 Cal. 917 (footnote), s.c., 1 C.W.N. 521. In the case of *Binayak Das v. Sominaddi*, 24 C.W.N. 521, it was held that a holding consisted of entire parcels of agricultural land and an undivided share of a holding was not a holding within the definition of "holding" in s. 30 (a).

Undivided share of holding.

But such a co-sharer landlord i.e., a co-sharer landlord in whose favour a raiyat has executed a separate kabuliyat with respect to his undivided share is entitled to make an application under s. 105 for settlement of rent, for the word used in s. 105 is not 'holding' but 'land'; see in this connection, *Sarifunnessa Khatoon v. Saferad*, 21 C.L.J. 592 at p. 595, confirmed in Letters Patent appeal.

Application for assessment of rent.

An application for assessment of rent at the instance of one or several joint landlords seems to be maintainable in accordance with the principle laid down in the case of *Dhananjoy v. Upendra N*, 21 C.W.N. 685. See notes under heading No. 11.

A suit to assess rent is consistent with and arises out of the general law and the land-revenue system of the country and s. 188 is no bar to such a suit by a co-sharer landlord: *Dhananjoy v. Upendra Nath*, 22 C.W.N. 685, the right to have rent assessed continues so long as the relationship of landlord and tenant continues: *Ibid.*

S. 188 does not apply to a suit for assessment of rent. Recurring cause of action.

Where an application is made by an entire body of landlords under this section the withdrawal of one of the plaintiffs on the suit does not disqualify the remaining co-sharer landlords from further proceeding with the case; all that sec. 188 requires is that all the landlords must join in making the application and that it does not say that if one co-sharer retires the other should not further act; when once the application is properly made further proceedings are governed by the Civil Procedure Code: *Kali Charan v. Mahammad Ismail*, 52 Cal. 139. See also *Hazarilal v. Ambicka*, [1923 Pat.]

As section 188 of the Bengal Tenancy Act applies to proceedings under s. 105, it is necessary that all the joint landlords should join in making an application under this section. The question which arises is

as to what is the effect of the death of one of the joint landlords after the institution of the proceeding and the heirs refusing to get their names substituted in place of the deceased.

Death of one of joint landlords after institution of proceedings.

It is submitted that on the death of one of the joint-landlords, and his heirs refusing to get themselves substituted, the application may be proceeded on by the surviving plaintiffs and s. 188 of the Act will be no bar to the right of the surviving plaintiffs to continue the suit; the reason is as follows:—

s. 105 says:—“.....either the landlord or the tenant applies” Therefore all that is necessary is that in making the application all the joint landlords must join; but after once the application is made, the procedure is to be in accordance with the Civil Procedure Code, see s. 107 (1) of the B. T. Act.

It is submitted that the same principle will apply to cases where subsequent to an application made under s. 105, one of the joint landlords withdraws or refuses to proceed on with the case. The same principle will apply when one of two or more joint landlords prefers an appeal.

Withdrawal by one of joint landlords.

It is however desirable that in case of one of the plaintiffs withdrawing from the case or refusing to proceed, or in case of the heirs of a deceased plaintiff not substituting their names, they should be made defendants.

Where an application purported to have been signed by all the landlords, the subsequent conduct of some of them in repudiating the authority of the others to sign the application on their behalf and retiring from the case will not attract the provisions of s. 188 so as to defeat the application if the other joint landlords choose to proceed with it: *Hazarilal v. Ambika Gir*, [1923 Pat.] p. 273.

Effect of some of the co-sharers repudiating the authority of others.

Where the entire body of landlords were joined as plaintiffs in a proceeding under s. 105 but the Receiver of the estate of one of the landlords was not made a party plaintiff, held that s. 188 was not a bar to the maintainability of the application: *Madheva v. Awadh*, 65 I.C. 349.

Where a Receiver is not a party.

*Sadar
Malguzar.*

The effect of the appointment of *Sadar Malguzar* under Regulation VII of 1822 as extended by Regulation XI of 1828 is to suspend or take away for the time being the proprietary rights of the estate; the *Sadar Malguzars* constitute the entire body of landlords within the meaning of s. 188 of the Bengal Tenancy Act. For the time being the tenants must be held to be holding under the *Sadar Malguzars*. The right of the other proprietors under the law remains in abeyance so long as the property is managed by the *Malguzars* under the Regulation; *Malguzars* may be considered as agents of the proprietor and as such they are entitled to maintain suits under s. 105 Bengal Tenancy Act. The word "agent" in s. 188 Bengal Tenancy Act includes "agents." There is no special provision in the Bengal Tenancy Act or any other law which would restrict the meaning of the word "agent" to a single individual: *Ramijuddin v. Radhakanta*, 80 I.C. 987.

Agent.

Question,
referred to
Full Bench
but not
decided as
they did not
arise upon
the findings
of fact in
the case.

In the case of *Haridas Mazumdar v. Golam Mohiuddin*, 53 Cal. 955 (F.B.) the following questions were referred to the Full Bench by Suhrawardy and Mukerji J.J. (1) as to whether a co-sharer, collecting his own share of the rent "separately from the other co-sharer or co-sharers, is a joint landlord within the meaning of s. 188 of the B. T. Act and (2) whether such a co-sharer is entitled to make an application under section 105 of the Act.

[Their Lordships in their order of Reference referred to the following cases* and in conclusion said as follows: "The authorities bearing upon those questions are numerous and conflicting. We are of opinion that this conflict should be set at rest."]

It was held by the Full Bench that as the proceedings were initiated by the landlord under s. 105 of the B. T. Act and as it appeared from the judgment of the Assistant Settlement Officer that it was an admitted fact that the sharers of the entire taluq passed into the hands of the plaintiff's predecessor gradually by sale the point involved in the two questions which had been referred to them did not arise.

Am-muktear

An *Am-Muktear* holding a proper power of attorney can duly sign on behalf of one of the co-sharer landlords an application under s. 105, although he may not happen to be an *Am-Muktear* of others; i.e., all the joint landlords making the application need not be represented by the same agent: *Kali Charan v. Mahammad Ismail*, 52 Cal. 139.

Institution of proceedings under s. 105 is a bar to a subsequent suit for enhancement of rent, even if the proceedings were withdrawn with the permission of the Revenue-officer concerned: *Bijoy Kumar v. Nagendra*, 83 I.C. 876. The following cases were discussed: *Sasi Kant v. Salim*, 27 C.W.N. 987; *Dinanath v. Anada Krishna*, 83 I.C. 873; *Abeda Khatun v. Majubali*, 24 C.W.N. 1020; *Chiodith v. Tulsi Singh*, 17 C.W.N. 467.

Proceedings
under s. 105
by one party

A landlord applied for the settlement of fair rent under s. 105. Then the tenant made an application under s. 106 alleging that he

* *Krishna Das v. Paresb Sardar*, 10 C.L.J. 458; *Behari Lal v. Priyanath*, 21 C.L.J. 305; *Dhananjay v. Upendranath*, 22 C.W.N. 685; *Kali Charan v. Mahammad Ismail*, 52 Cal. 139; *Saferuddi v. A. K. Fazul Huq*, 21 C.L.J. 592; *Panchanan v. Rajkumar*, 19 Cal. 610; *Gobind Charan v. Hamidulla*, 7 C.W.N. 670; *Gopal Chunder v. Umesh*, 17 Cal. 695; *Haricharan v. Runjit*, 25 Cal. 917; *Baidyanath v. Ilm*, 25 Cal. 017.

had held his tenancy at a uniform rate of rent for so long that he was entitled to the presumption under s. 50 of the Act. The hearing of the application under s. 105 was stayed until the disposal of the application under s. 106 on the ground, that the case under s. 106 would dispose of the question whether the rent was fixed or not and this argument was not challenged on behalf of the landlord. The application under s. 106 was dismissed for default and revived and decided eventually in favour of the tenant but between the date of its dismissal for default and the order for restoration, the application under s. 105 was taken up and a rent higher than that entered in the Record of Rights was fixed as fair rent; *held*, (Mukerji J., dissenting) that as by mutual consent of the landlord and tenant the question whether the rent could be enhanced or not was to be settled in application under s. 106 been not dismissed for default and the application under s. 105 not taken up by the Revenue-officer and the parties should be bound by the decision in application under s. 106 and not by that in application under s. 105: *Prasanna Dev v. Achhiruddin*, 82 I.C. 953 (Walmsley and Mukerji, JJ.).

Under cl. (6) of s. 105 of the Bengal Tenancy Act, where the parties agree among themselves, by compromise or otherwise, as to the amount of fair rent, it is incumbent upon the Revenue-officer to satisfy himself that the amount agreed upon is fair and equitable; and it is only if he is so satisfied that he can record the amount agreed upon as the fair and equitable rent; if he is not so satisfied, he has to settle a fair and equitable rent as provided in sub-sections (4) and (5). The decision of the Revenue-officer operates as a decree of a Civil Court in a suit between the parties and under s. 107 so long as this decree remains in force, effect should be given to it: *Dharani v. Ashutosh*, 40 C.L.J. 34.

The defendants-appellants who were the landlords applied under sec. 105, B. T. Act, for settlement of fair and equitable rent of certain holdings including one held by the plaintiffs-respondents which were recorded in the record-of-rights as appertaining to their estate. The issue was raised before the Revenue officer whether the suits were barred by sec. 188, B. T. Act, and was decided in favour of the Appellants, it being held that it was not proved that the Appellants were landlords jointly with others. Some of the defendants in those suits appealed against the decision of Revenue officer and were successful on the ground that the Appellants were landlords jointly with others, but the plaintiffs-respondents did not file any appeal. The plaintiffs-respondents subsequently brought a suit for declaration that the decree of the Revenue officer was without jurisdiction and null and void, *held* that the Revenue-officer has jurisdiction to decide whether or not the appellants when they made the application to him under sec. 105, B. T. Act, were joint landlords and his decision on this point not having been questioned by the plaintiffs-respondents by appeal was final and binding on them: *Choudhury Upendranandan v. Umai Set*, 30 C.W.N. 974 (Newbould and Graham, JJ.).

9. Application by a managing member of a Mitakshara family :—An application under s. 105 of the Bengal Tenancy Act is not maintainable at the instance only of the managing member of a joint Hindu Mitakshara family: *Sati Prasad v. Sonaton Jhara*, 25 C.W.N. 38. See also *Sati Prasad v. Radhanath*, 16 C.L.J. 427.

These cases were followed in the case of *Kuldip Saran Singh v. Raghunandan Singh*, 97 I.C. 436, s.c., 7 P.L.T. 540 (Ross and Kulwant Sahay, JJ.), where it has been held that where the sole plaintiff is not only the *karta* but he is the sole recorded landlord of the *touzi*, he can apply alone under s. 105 without joining his sons as plaintiffs.

10. Suit for enhancement or reduction of Rent :—The fact that a party does not avail of the remedy under s. 105 is no bar to a suit in the Civil Court for enhancement or reduction of rent or for alteration of rent for alteration of area.

Regular
suit.

Assessment
of rent.

11. Suit for assessment of rent in a Civil Court :—Where certain lands were entered in the record-of-rights as rent free, and in a suit under s. 106 the Revenue officer having found that the lands were liable to payment of rent, (and the period within which an application was to be made under s. 105 having expired) the landlord brought a suit in the Civil Court for assessment of fair rent, *held* that the suit was maintainable, if not under the general law, as a suit in the nature of a declaratory suit, then as an application under s. 158: *Berhamdutt Misser v. Ramji Ram*, 18 C.W.N. 466. See notes under s. 158 and s. 144.

Where
name does
not appear
on the
record.

12. Application by a landlord whose name does not appear as landlord in the khatian :—Where a person who was an applicant under s. 105 purchased a tenure in an estate of which he himself was the proprietor, *held* that the mere fact that his name did not appear in the *khatian* as owner of the tenure was no ground for holding that he was not entitled to apply under s. 105: *Upendra Nath v. Jamini Mohan*, 18 C.W.N. 268.

Where land on which tenants were settled by a Zemindar A was in a Civil Court held to be land within the zemindari of B, and the tenants were entered in the record-of-rights as raiyats on the land, *held* that an application for settlement of rent under s. 105 by B against the tenants was competent: *Kali Prasanna v. Bhagwan Mali*, 17 C.W.N. 348, s.c., 17 C.L.J. 431.

13. Withdrawal of or non-prosecution of application, effect of :—See notes under s. 109.

S. 50.

14. Presumption under s. 50 :—In a proceeding under s. 105 the tenant is entitled to the benefit of the presumption under s. 50: *Pirithi Chand v. Basarat Ali*, 37 Cal. 30 (F.B.), s.c., 13 C.W.N. 1149; s.c.; 10 C.L.J. 343. See also *Radha Kisore v. Umed Ali*, 12 C.W.N. 904; *Aktowli v. Tarak Nath*, 16 C.L.J. 328; s.c., 17 C.W.N. 774.

But once the record of rights is finally prepared after all chances of correction under Chap. X are over, the presumption under s. 50 does not apply in view of sec. 115: *Prasanna Kumar v. Durga Charan*, 49 Cal. 919, s.c., 26 C.W.N. 947, s.c., 36 C.L.J. 291.

See notes under Ss. 50 and 115.

Presump-
tion may be
rebutted.

When a record is finally published under s. 103B an entry made in the record-of-rights shall be presumed to be correct unless the contrary is proved. So in a proceeding under s. 105 a tenant may shew that he is a settled raiyat although he was not entered as such and although he did not prefer any objections under s. 103A. He may likewise shew that the land is *lakhiraj* and not *mal*. The only benefit which is derived from the final publication of the record is that the entry shall be considered to be correct until the contrary is proved. See notes under s. 115 where the other cases are collected.

In a proceeding under s. 105, the landlord produced a *Kabuliyat* executed by the tenant after the inception of the tenancy shewing that the rent was liable to be enhanced, but there was nothing to shew that the rent had ever in fact been enhanced: *held* that the mere fact that the rent was enhanceable was not sufficient to rebut the presumption under s. 50 cl. (2): *Dhirendra Nath v. Purna Chandra*, 51 I.C. 904, see also *Srimanta Kumar v. Sabar Ali*, 52 I.C. 702. But see *Upendranath v. Gopicharan*, 22 C.W.N. 321.

See also notes under s. 50, heading No. 14 at p. 309.

15. Power of the Settlement officer to grant enhancement at reduced rate :—In settling additional rent for increased area it is open to the Settlement officer in consideration of possible errors in the original measurement to allow the enhancement at a reduced rate: *Lukhi Narain v. Sri Ram Chandra*, 15 C.W.N. 921. Terms of enhancement in *Kabuliyat*.
Enhancement at a reduced rate.

16. Regular suit to set aside result of proceedings under s. 105 :—A suit brought to impugn that which was the subject matter and the result of proceedings taken under s. 105 is not maintainable: *Sheodhani v. Beni Pershad*, 16 C.L.J. 67. Regular suit not maintainable.

17. Whether proceeding under s. 105 is a suit: Rule 63 (I) (Appendix I) :—It is doubtful whether a proceeding under s. 105 is a suit: *Hazarilal v. Ambika Gir*, [1923 Pat.] p. 273. Question doubtful.

S. 141 of the Civil Procedure Code has no application to applications under s. 105 of the Bengal Tenancy Act: *Ibid.* s. 107 of the Bengal Tenancy Act, which provides that the procedure for the trial of *suits* laid down in the Civil Procedure Code are applicable to proceedings under s. 105 Bengal Tenancy Act and not to applications initiating the proceedings; and consequently the provisions in the Civil Procedure Code about verification do not apply to proceeding under s. 105. *Ibid.* S. 141 C. P. C. does not apply.

The application under sub-sec. (1) of sec. 105 is merely an application to which no tenants, if the application is by the landlord, need be made parties. It is only after the application has been made that the proceeding becomes a suit or in the nature of a suit and the provisions of the Civil Procedure Code apply thereto. Rule 63 (1) of the Bengal Government Rules (see Appendix I) may well be read as applying when the proceedings have reached the suit stage: *Birendra Kisore v. Ambika Charan*, 31 C.W.N. 860, s. c., 43 C.L.J. 591. (Greaves, Mukerji and Chakravarti, JJ.). S. 105: Parties. Rule 63 (1).

18. Rule 63 (I), (Appendix I), if inconsistent with s. 105 (I) :—Rule 63 (1) [Appendix I] though not very happily worded may be read as applying when the proceedings have reached the suit stage. A Rule cannot govern the true construction of the Act, and if the Rule is not appositely worded, then it is the Rule that must give way to the section: *Birendra Kisore v. Ambika Charan*, 31 C.W.N. 860, s. c., 43 C.L.J. 591. Rule 63 (1).

19. Settlement of rent amounts to a decree :—When rent is settled and the record is prepared it amounts to a decree (s. 9 Act III of 1898): *Abdul Rasheed v. Jogesh Chandra Ray*, 11 C.W.N. 135. Act III of 1898, s. 9.

20. Rent-free title :—In a proceeding under Chapter X before the passing of Act III of 1898 the settlement authorities found that lands claimed by the tenants as their rent-free lands were not Rent free title.

rent-free and they accordingly assessed the same with rents, held that by the operation of s. 9 of Act III, B. C. of 1898, the Civil Court is precluded from adjudicating on the same matter: *Nabin Chandra v. Radha Kisore*, 11 C.W.N. 859.

Costs.

21. Costs:—A landlord is entitled to costs incurred by him in making applications under s. 105 and in serving them upon the tenants; *Srinibas v. Ram Chandra*, 14 C.L.J. 146.

Execution.

Execution of decree for costs.—Revenue officer must themselves execute decrees for costs in cases under ss. 105 and 106 which have been decided by them, if application is duly made: *Survey and Settlement Manual* (1908), Pt. III, Ch. 9, sec. 8, p. 102.

Execution of decree by other Revenue officer, when Settlement officer or Assistant Settlement-officer has left the district.

When the Settlement-officer or Assistant Settlement-officer who has passed a decree has left the district on transfer or at the close of the operations, any Revenue-officer [see the term defined in section 3 (17) of the Bengal Tenancy Act and also the Notification cited under rule 76 of this Manual] who would have had jurisdiction to try the suit in which the decree was passed, or who is in charge of the records of the case can execute it (*vide* section 649 of the Civil Procedure Code, and the ruling in Indian Law Reports, 6 Cal. 513): *Settlement Manual* (1909), Part II, Chap. X, Rules 519, 520, pages 136, 137.

Finality of a decree under s. 105.

22. Finality of decree under s. 105:—Where in a proceeding under sec. 105, for assessment of fair rent, the tenant contends that he holds the land rent-free, and the Revenue officer assesses an annual rent, by compromise or otherwise, the decision of the Revenue officer, by virtue of provisions of s. 107 (1) of the Act, has the force and effect of a decree of a Civil Court in a suit between the parties and if it is not challenged by way of revision or appeal, under sec. 108 and 109A of the Act, it operates as final decree, as deciding between the parties that the tenant holds the land subject to the payment of rent and that the fair annual rent is that fixed by Revenue officer: *Dharani Mohon v. Asutosh*, 82 I.C. 396; s. c., A.I.R. 1924 Cal. 907; *Rajendra v. Sheikh Kalim*, 26 C.W.N. 758. *Gokul v. Padmanund*, 6 C.W.N. 825 discussed.

Where proceedings under sec. 105 are based on the assumption that the land concerned is rent paying and owing to there being no appearance on behalf of the tenants the question whether the land is rent paying or lakheraj land could not be agitated, the plea that lands are not rent paying lands is not barred by the provisions of s. 105: *Kshetra v. Prohlad*, 101 I.C. 800, s. c., A.I.R. 1927 (Cal.) 603.

Court fees.

23. Court-fees:—The following Notification, issued by the Government of India in the Finance Department, published in the *Gazette of India*, dated the 10th August, 1918 was re-published for general information in the Calcutta Gazette, August 28, 1918, Part IA page 415: Notification: Separate Revenue: Stamp: Simla, the 8th August, 1918.

No. 2254F:—In exercise of the powers conferred by section 105, sub-section (3) of the Bengal Tenancy Act, 1885 (VIII of 1885), and in supersession of the Notification of the Government of India in the Department of Finance and Commerce, No. 322 S. R. dated the 19th January, 1899, published at page 31 of Part I of the *Gazette of India*, dated the 21st *idem*, so far as it relates to the Presidency

of Bengal, the Governor-General in Council is pleased to direct that an application made under the said section for a settlement of rent during the preparation of a record-of-rights in the Presidency of Bengal under Chapter X of the said Act, shall bear:—

- (a) a stamp of eight annas for each tenant making or joining or joined in the application, and,
- (b) if, at any time “during the hearing of the applications an S. 105A. issue is raised by the applicant under section 105A of the said Act, in addition a stamp to the amount of an *advalorem* fee chargeable under Article 1 Schedule I of the Court-fees Act 1870 (VII of 1870), subject to a maximum of ten rupees.

Calcutta Gazette: July 26, 1922 Part I, p. 1451. No. 6954 L.R.—The 21st July, 1923—

In exercise of the powers conferred by s. 105, sub-sec. (3) of The Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Devolution Act, 1920 (XXXVIII of 1920) and in modification of the Government of India's Notification No. 2254F, dated the 8th August, 1918, published in the Gazette of India of the 10th idem and republished at p. 465, Part IA of the Calcutta Gazette of the 14th idem, the Governor in Council is pleased to direct that an application made under the said section for a settlement of rent during the preparation of a record of rights under Chapter X of the Bengal Tenancy Act shall bear—

- (a) a stamp of twelve annas for each tenant making or joining or joined in an application, and
- (b) if at any time during the hearing of the application, an issue is raised by the applicant under S. 105A of the said Act, in addition, a stamp to the amount of an *ad valorem* fee chargeable under Art. 1, Sch. I of the Court Fees Act 1870 (VII of 1870), as amended by the Bengal Court Fees (Amendment) Act, 1922 (IV of 1922), subject to a maximum of twenty rupees.

Court fees :
Secs. 105 &
105A.
**Present
Law.**

A stamp of eight annas* is to be levied in respect of each *tenancy*, not in respect of each tenant who may be one of the group of tenants holding a particular tenancy: *Sachidananda Thakur v. Mahes Chandra Das*, 50 Cal. 903, s. c., 28 C.W.N. 116.

[*Note.*—As to Court-fees in BIHAR, See Appendix XIII at the end of this book. The Court-fee for application under s. 105, in Bihar, is 12 as. to be charged for each tenant or group of joint owners of a tenancy making or joining or joined in the application.]

Court fees :
Bihar.

24. Where application to be made :

Bengal Survey and Settlement Manual, 1917: Chap. XVI., Page 103, Para 425: Applications under these sections should be kept at first in the hands of the Settlement officer or of a Special Assistant Settlement officer. When they are made over to an Assistant Settlement officer a formal order under Rule 45 of the Government Rules is required. The Settlement officer should keep cases under sections 105 and 106 in his own hands, until he has mastered the difficulties and the principles involved, and he should not make them over to any assistant for decision, until he has trained him in the proper system.

Instructions in
Settlement
Manual.

* The new Notification now requires twelve annas.

25. Where a single tenancy extends over more than one village :—See notes under heading No. 29.

Period of limitation to be counted from the date of schedule which is an essential part of the decision. Revision by High Court.

26. Appeal and Revision :—The period within which an appeal is to be preferred is thirty days from the date of the decree : See Sch. III Art. 4. It has been decided in the case of *Dharani Kant v. Amir Sheikh*, 22 C.W.N. 20 (notes portion), s. c., 44 I.C. 152 by Teunon and Newbould J.J., that the period of 30 days is to be counted from the date of the schedule in-as-much as schedule is an essential part of the decision, whether it be a decree or not.

Whether the rent settled in a proceeding under s. 105 is fair and equitable is a question into which the High Court cannot go, if the lower Court had jurisdiction : *Ram Lal v. Satish Chandra*, 53 I.C. 411.

Question of measurement—Appeal.

In an appeal arising out of a proceeding under s. 105, the Appellate Court is entitled to allow a deduction on the measurement on the ground that the measurement was not a scientific one : *Midnapur Zemindari Company v. Kristo Prosad*, 46 I.C. 544.

See notes under s. 109A.

Application against co-sharer landlord.

27. Right of a tenant to apply under s. 105 when he took settlement from a co-sharer :—Where a tenant obtained a settlement *bona-fide* for reclamation of waste land from a co-sharer landlord, *held* that he has a right to apply for settlement of rent against another co-sharer landlord who has got a portion of the lands by partition, although he had not settled the land; *Dakhyani Dassi v. Mono Raut*, 19 C.W.N. 407.

Whether a person not a party bound by a decree under s. 105.

28. If Purchaser at auction sale bound by a decree under s. 105 :—Where a proceeding under s. 105 was pending a tenure was sold in auction at the instance of the landlord, *held* that the purchaser was bound by the result of the proceeding and was bound to pay the rent settled, although he was not a party to the proceeding and although the sale proclamation had stated the previous rent payable : *Rasik Chandra v. Syama Kumar*, 46 I.C. 136, Where after the rent of a holding was enhanced in a proceeding under s. 105, but the landlord afterwards put the holding to sale and the sale proclamation stated the rent which was previously payable, *held* that the auction purchaser was not bound by the result of the proceedings under s. 105 : *Rai Kiran Chandra Roy Bahadur v. Nirod Bhusan Basu*, unreported appeal from order No. 333 of 1919 decided on the 30th July, 1920 by Teunon and Newbould, J.J.

Limitation.

29. Within two months from the date of the Certificate of final publication : Limitation :—Applications under sub-sections (1) and (2) are to be made within two months from the date of the Certificate of the final publication of the record-of-rights under s. 105A, sub-sec. (2). But it sometimes happens that the lands of a tenancy are included in different local areas for which separate records are framed and the final publications in the different local areas are published on different dates ; in such cases the period of two months according to clause (7) of this section begins to run in *East Bengal* from the date of the Certificate of final publication of the last record which contains entries to the tenancy.

For West Bengal and Behar there is no sub-section corresponding to sub-sec. (7) which applies to East Bengal.

It is submitted that in West Bengal and Behar, although there is no such sub-section as sub-section (7), for East Bengal, the period of limitation will be the same as is provided for East Bengal in sub-sec. (7); the reason is as follows:

"The date of certificate of final publication as is referred to in sub-secs. (1) and (2) refers to the date of final publication of the tenancy; where final publications are made *peicemeal*, it cannot be said that there has been final publication of the tenancy in its entirety; on the view which is submitted, cl. (7) is redundant."

The following instructions have been given by the Board of Revenue to Revenue-officers:—

Bengal Survey and Settlement Manual 1917, Page 96 Para 388 :— Delay in signing the certificate of final publication in special cases.
Where any difficulty is likely to arise in West Bengal in the matter of filing section 105 and section 106 suits from the fact that the lands in question lie in several villages, of which the records are finally published at different times, it is best to delay the signing of the certificates of final publication until the records of all the villages have been finally published. The actual work of final publication should not be delayed. If the signing of the certificates is not delayed, the plaintiff would be well advised to file his plaint within the period of limitation of the first village. The Settlement officer may allow supplementary plaints to be filed in respect of the subsequent villages; and the plaint will be stamped and the suit tried as though in respect of a single tenancy.

It is submitted that the advice given in the above instructions to file the applications or plaint within the period of limitation of the first village is upon a misconception of law, for, such application and suit will be wholly premature, if filed before the final publication of the record of rights of all the villages comprising the tenancy, and an application or suit prematurely filed cannot be entertained.

Where in a Mitakshara family a son was born subsequent to the final publication of the record-of-rights and previous to the date of the application made under s. 105, *held* that he ought to have been joined as an applicant, and a subsequent application when two months have expired from the date of the final publication to make him a party, was barred and the proceeding under s. 105 must therefore fail: *Sati Prosad v. Sonaton*, 25 C.W.N. 38. An application under s. 105 of the Bengal Tenancy Act, is to be dealt with as a suit under the Local Government Rules and s. 22 of the Limitation Act applies to it: *Ibid*. Subsequent application to make a member of a Mitakshara family party.

30. Clause (7) :—See notes under heading No. 29.

31. Rules and Instructions :—See Local Government Rules, Rules and Instructions. Appendix No. 1 of this book; see also Bengal Survey and Settlement Manual, 1917, Chap. XVI Page 103, Chap. XIV, para. 388, p. 96, also Appendix J. p. 185, Chap. VI p. 34. See also Technical Rules and Instructions of the Settlement Department, 1916, Part II, p. 107, Part I, p. 101.

32. Cess Act: s. 20 :—Where prior to a proceeding under s. 20 of the Cess Act, s. 105 the landlord had submitted a cess return shewing the rent different from what was subsequently settled under s. 105, *held* that s. 20 of the Cess Act did not prevent the landlord from claiming the rent settled under s. 105 of the Bengal Tenancy Act: *Nazir Rai v. Kesho Prasad*, 6 Pat. L. J. 622, s. c. [1922 Pat.] p. 57: S. 20 of the Cess Act, no bar to claim for higher rent under s. 105.

33. Back rent :—When the landlord applies under sec. 105 of the B. T. Act for settlement of fair and equitable rent and has Back rent.

obtained an enhanced rent fixed by the Settlement officer, he is bound by the terms of sec. 110 of that Act which provides that such settlement of rent shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent and it is not open to him to sue on the contract for back rents of the additional area found by the Settlement officer: *Chandi Charan v. Meher Banu*, 52 Cal. 910 (Cuming and Chakravarti, J.J.).

Tank.

34. Tank:—When a tank is leased for agricultural purposes it can be assessed to rent under section 105: *Satindra v. Ramsundar*, 88 I.C. 534, s. c. A.I.R. 1926 (Cal.) 239 (Suhrawardy and Cuming, J.J.).

S. 29.

35. Sec. 29:—Sec. 29 of the B. T. Act has no application to proceedings under sec. 105: *Matta Majhi v. Gopinath*, 89 I.C. 951, s. c., 1926 A.I.R. (Cal.) 353.

Service of notice.

36. Service of notice:—In the absence of a plea of fraud Court cannot try the question as to whether there was any service of notice on the defendant or not. If the defendant desires to challenge the proceedings under sec. 105 on the ground of non-service of notice, he ought to question the proceedings before the Settlement officer, or by appeal, or by way of proceedings proper for such relief: *Taramonee v. Sheik Elim*, 92 I.C. 714, s. c. A.I.R. 1926 (Cal.) 582 (Per Chakravarti, J.).

Application under s. 105 : Parties : Substitution.

37. Parties:—Sec. 105 (1) B. T. Act, speaks of an application, and when the application is originally made it is not necessary for the landlord or the tenant in making the application under the section to name any persons. All that is necessary is to indicate the holdings in the record in respect of which the settlement of fair and equitable rent is sought. No doubt in practice when the landlord applies the recorded tenants are made parties and there seems no objection to this practice, but nevertheless the application under sub-section (1) of sec. 105 is merely an application to which no tenants, if the application is by the landlord need be made parties. It is only after the application has been made, which of course must be made within 2 months, that the proceeding becomes a suit or in the nature of a suit and the provisions of Civil Procedure Code apply thereto: *Birendra Kisore v. Ambika Charan*, 31 C.W.N. 860, s. c. 43 C.L.J. 501. (Greaves, Mukerji and Chakravarti J.J.).

Where an application for enhancement of rent under sec. 105 (1), Bengal Tenancy Act, was made by the landlord within two months from the final publication of the record-of-rights but an application to substitute the heirs of some of the tenants was made after that period, they were dismissed on the ground that the proceedings were a suit from the beginning, ~~and a suit could not be allowed after two months and the first application could not be entertained as some of the joint tenants were not on the record, and that the applications were wrongly dismissed.~~ It is enough if the first application with specifications of the holdings is within two months: *Ibid.* The case of *Birendra Kisore v. Ambika Charan*, 31 C.W.N. 860, s. c. 43 C.L.J. 591 was followed in the case of *Sibakumari v. Doshi Ghossain*, 46 C.L.J. 555 (Rankin C.J. and Mitter J.) where it has been held that it is only necessary to indicate the holdings in the record in respect of which a settlement of fair and equitable rent is sought. An application to bring on the record the heir or transferee of the right of the tenant more than two months from the final publication of the record of rights is not time barred. But if the landlord went on against one only out of several tenants, his

advantage such as it is in being able to proceed under sec. 105 of the Parties : B. T. Act comes to an end. Where the original tenant recorded in Substitu- the record of rights was A. One B was brought on the record by a tion. petition filed after two months from the date of the final publication. It turned out that A's interest has been sold at auction. Although B's name had been substituted for A on the application of the plaintiff landlord, B was only one of several persons interested in the tenancy, and the matter was fought out to a finish in his presence and ultimately the application under sec. 105 was dismissed on the ground that such an application must be brought against all the joint tenants, held that in these circumstances it would not be right to send back the case in order that the other joint tenants should be impleaded : *Ibid.*

Where in a proceeding under s. 105 the tenant preferred an appeal and got the appeal dismissed against one of the heirs of the parties. deceased landlord for non-prosecution, held that the appeal ought to be and was dismissed against the other respondents, in as much as there was defect of parties : *Azimuddin v. Tara Sankar*, 28 C.L.J. 201 ; the cases of *Bejoy Gopal v. Umesh*, 6 C.W.N. 196; *Tarif Dafadar v. Khotajunissa*, 10 C.W.N. 981 and *Baser Sheikh v. Fazle Karim*, 19 C.W.N. 290 were followed; see also *Azimuddin v. Tarasankar*, 28 C.L.J. 201, *Sriram v. Hriday*, 20 C.L.J. 461, *Chandarsang v. Khimabai*, 22 Bom. 718, *Upendranath v. Shamlal*, 34 Cal. 1020 and *Kali Dayal v. Nagendra Nath*, 24 C.W.N. 44. See also *Balaram Pal v. Kangsha*, 53 I.C. 548 and *Indu v. Sheikh Mahammad*, 23 C.W.N. 208 (notes).

Where B was recorded as a tenureholder under A and C was recorded as a raiyat under B, held in a proceeding under s. 105 by A against B on the allegation that B was a raiyat and not a tenure holder, that C was not a necessary party : *Jogendra Mohan Das v. Janaki Nath Saha*, 21 C.W.N. 427.

Where in a proceeding under s. 105 for settlement of rent against the tenants of a holding, one of the tenants had died before the final publication of the record of rights and notwithstanding his heirs were not brought on the record and the other tenants did not bring it to the notice of the court, but contested on other grounds unsuccessfully and the landlord subsequently brought a suit for rent at the enhanced rent and the tenants objected on the ground that the enhancement allowed in the proceeding under s. 105 was void and not binding, and the landlord struck off from the category of defendants the heir of the tenant who had died before the record of rights, the lower Courts gave a money-decree against the other tenants. In the High Court the tenant defendant preferred an appeal and it was contended that the decree under s. 105 was altogether void for the absence of one of the tenants and that a decree at old rate ought to have been given, held that the landlord was entitled to get a decree at the enhanced rent against the tenants who were parties to the proceeding under s. 105 : *Kartik Chandra v. Jitendra Nath Roy*, 28 C.W.N. 188 (notes).

38. Resjudicata :—See notes under s. 109.

39. Under raiyat: Settlement of fair rent :—In settling fair and equitable rent of an under raiyat in a proceeding under this section, the Revenue Officer, it is submitted, shall have regard to the provisions laid down in s. 48 of the Act. See s. 105 sub-sec. (4). See notes under heading No. 7 of this section.

40. Or 2, r. 2, C. P. C. :—Where a landlord obtained a decree for enhanced rate of rent, arising out of proceeding under C. P.

s. 105 from the year 1322 B. S. and during the pendency of the appeal in the High Court the landlord brought a suit for rent at the old rate for the years 1326 to 1329 B. S. and got a decree. After the decision of the Special Judge allowing the enhancement, on remand of the case by the High Court, the landlord brought a suit for rent representing the difference between the old rate and the enhanced rate for the same period, *held* that Or. 2, r. 2, C. P. C., was no bar to the maintainability of the suit; it cannot be said that the landlord was "entitled to make" a claim or "intentionally relinquished a portion of his claim": *Debnarain v. Jagadish Chandra*, 32 C.W.N. 68 (notes), (Cuming and Mukerji J.J.). 40 C.L.J. 538 distinguished.

Decision of questions arising during the course of settlement of rents under this Part.

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

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

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

any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

Headings of Notes.

1. NOTE.
2. LANDLORD MAY IMPUGN CORRECTNESS OF ENTRIES.

3. SCOPE OF S. 105A: RESJUDICATA AND CONSTRUCTIVE RESJUDICATA.

4. COURT-FEES.

I. Note :—S. 105A was inserted by s. 26 of Bengal Act I of 1907 and E. B. Act I of 1908.

This section was introduced by s. 26 of Act I, B.C., of 1907. The Select Committee in their report observed as follows :—“In cases where rents are settled under Part II of Chapter X of the Bengal Tenancy Act in Government and temporarily-settled estates, section 104H allows any person aggrieved by an entry of a settled rent to file a suit in the Civil Court, on certain grounds, within six months from the date of the certificate of final publication or from the date of disposal of an appeal under section 104G. There is, however, no corresponding provision in regard to cases in which rents are settled under section 105 in private estates.

S. 105A :
Report of
Select
Committee.

The result is that litigation in connection with the settlement of rents under section 105 in private estates is unduly prolonged, especially in cases falling under section 105 (2), where the Revenue-officer settles a rent for holdings for which no rent has hitherto been paid, but which the occupant is not entitled to hold without payment of rent. It frequently happens that long after such a rent has been settled, and where the landlord proceeds to realise it, the tenant files a suit in the Civil Court to have it declared that he is entitled to hold the land rent-free. The dispute is thus re-opened. The High Court have held that the Settlement officer, under s. 105, has only to settle a fair and equitable rent for the holding ; and that if any dispute is raised in proceedings under section 105, as to the liability of the landlords to pay rent, proceedings under section 105 must be stayed, and the parties told to file a suit under section 106. This, however only provides for a small minority of the cases. It usually happens that when the case under section 105 comes up for trial, the time allowed for filing suits under section 106 has expired. Or the tenant may refrain from raising the question in the proceedings under section 105, wait till the landlord attempts to realise the settled rent from him, and then raise the matter in the Civil Court.

We are agreed that it is necessary to take some action which will prevent proceedings from being protracted in this way. It has been suggested that this might be effected by enacting some provision similar to section 104H in Part II of Chapter X of the Act, which allows the entries of rent entered in a Settlement Rent-Roll to be contested in the Civil Courts on certain grounds within six months of the date of certificate of final publication. But the majority of us are of opinion that this would only afford partial remedy, and there is no real analogy between a settlement of rents under Part II and Part III of Chapter X. In settling rents under Part II in connection with settlement of land revenue, the Revenue-officer is subject entirely to the control of the Revenue authorities, and appeals against the rent settled lie exclusively to the Revenue authorities. There is therefore good reason for allowing certain matters to be referred to the civil courts as under section 104H. But in proceedings under Part III of Chapter X for the settlement of rents, in private estates, the Revenue-officer acts judicially. Under section 107, he is required to adopt the procedure for the trial of suits ; and under section 109A the appeal against his decision lies to the Special Judge and the High Court.

The majority of us are, therefore, of opinion that there is no reason why finality should not be given to the decisions of a Revenue-officers under Part III of Chapter X, subject to appeal to the Special Judge and the High Court. It was the expressly declared intention of the framers of the Amendment Act of 1898 that the proceedings of the Revenue officers and the Special Judge should be final. The present clause merely gives effect to that intention. The High Court have held that, under the law as it stands, finality attaches only to the rent settled under section 105, and not to incidental matters raised in the course of these rent settlement proceedings. But in order that a fair rent may be settled, it is essential that such matters should be decided. The Revenue-officer would have the power to decide them finally, subject to appeal to the Special Judge, if they were raised in suits under section 106, and the majority of us can see no valid reason why the same Revenue-officer should not be given power to decide them finally, subject to appeal, if they are raised in proceedings under sec. 105. We consider that any other course would lead to considerable confusion and practical inconvenience, as it would enable the same matters to be raised simultaneously in the subordinate Civil Courts and before the Special Judge and the High Court. For these reasons, the majority of us are in favour of the proposed clause."

Correctness
of entries
may be im-
pugned by
landlords.

2. Landlord may impugn correctness of entries :—The correctness of the record-of-rights can be impugned by the landlord also in an application under s. 105 ; issues mentioned in s. 105A can s. c., 46 I.C. 125 ; the following cases were discussed: *Dharani Nath Ghose v. Jamini Mohon Pal*, 18 C.W.N. 268.

Res-
judicata.

3. Scope of s. 105A: Resjudicata and constructive Res-judicata :—A question as to the relationship of landlord and tenant decided in a proceeding under s. 105A operates as resjudicata in a suit for ejectment: *Mahendra Narayan v. Girish Chandra*, 3 Pat. L.J. 379, s. c., 46 I.C. 125 ; the following cases were discussed: *Dharani Kant v. Gober Ali*, 30 Cal. 339 ; *Gokal Mander v. Padmanand*, 29 Cal. 707, *Nanda Kumar v. Ram Kumar*, 19 C.L.J. 457.

Where in a proceeding under s. 105A it has been found that the relationship of landlord and tenant does not exist between the parties, that decision operates as resjudicata and the defendant is not entitled in a suit for ejectment by the landlord to re-agitate the question: *Lalji Singh v. Lakshmi Narayan*, 97 I.C. 708, s. c., A.I.R. 1927 Pat. 32 (*Jwala Prasad and MacPherson J.J.*).

Point
neither
raised nor
decided.
Constructive
Res-
judicata.

"We cannot hold, on the analogy of the doctrine of constructive *res-judicata*, that the jurisdiction of the Civil Court has been constructively excluded even when a point has been neither raised nor decided under s. 105 read with s. 105A. In this connection, we may observe that ss. 105 and 109 were inserted in the Bengal Tenancy Act by Act III of 1898, B. C. Sec. 105A was subsequently introduced into the Bengal Tenancy Act by sec. 26 of Act I of 1907, B. C. But though the scope of sec. 105 was thus widened and sec. 105A was included in sec. 109, the language of s. 109 was left unaltered:" *Nawab Bahadur of Murshidabad v. Ahmad Hossain*, 44 Cal. 783, s. c. 21 C.W.N. 1004 at p. 1006, s. c. 25 C.L.J. 556. The cases of *Pandab Dowari v. Ananda Kisore*, 14 C.W.N. 897, *Sashi Bhusan v. Eshabar*, 19 C.W.N. 636, and *Sasi Bhusan Hazra v. Aswini Kumar Samanta*, 19 C.W.N. 637 were decided before the introduction of s. 105A, so s. 109 must be construed on the same lines as before the introduction of s. 105A: *Ibid*. See notes under s. 109.

A decision in a proceeding under s. 105A that certain persons are ^{Persons}tenure holders, does not bar a suit by those persons against certain ^{who are}other persons who were not parties to the proceeding under s. 105A ^{not}for ejectment of the latter on the ground that they are mere tres- ^{parties.}passers: *Ramyad Pande v. Genda Tewari*, 56 I.C. 933.

The word "issue" in s. 105A cannot mean merely an issue framed ^{"Issue."}and recorded according to law; the object of s. 105A is to give the defendant in proceedings under s. 105 the right to raise questions which should properly form the subject matter of proceedings under s. 106: *Jatindra Narayan v. Malu Haji*, 51 I.C. 969; although no formal issue is framed as to the tenant's status, it is obligatory upon the Revenue-officer to decide such an issue as the question is one of the kind described in s. 105A: *Ibid*.

A Revenue court has by virtue of the provisions of s. 105A, ^{Scope of s. 105A.} clauses (a), (b) and (c), read with section 102, clause (j) of the Act, jurisdiction to go into the question whether the land is not liable to pay rent and whether an occupant of the land stands in the relation of a tenant towards the applicant: *Upendra Nath Ghose v. Anath Bandha Chakravarty*, 52 I.C. 406, see also *Upendra Nath Ghose v. Jamini Mohan Pal*, 18 C.W.N. 268.

See notes under s. 105.

4. Court-fees:—When in a proceeding under s. 105 an issue is raised under s. 105A, an advalorem fee subject to a maximum of twenty rupees is to be paid in addition to the ordinary fee under s. 105; See notes under s. 105 heading No. 23.

[*Note*.—The Court-fee for application under sec. 105A, in BIHAR, is an *advalorem* fee subject to a maximum of Rs. 15/- in respect of any one tenant. See Appendix XIII at the end of this book.]

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

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

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

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

Provided also that in any suit under this section

the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

Bengal and Bihar.

There is no sub-sec. (2) in Bengal and Bihar.

East Bengal.

(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in subsection (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands.

Headings of Notes.

1. AMENDMENTS.
2. FORMER SECTION.
3. ACT III OF 1898, B. C., S. 9
4. SCOPE OF S. 106.
5. WITHIN THREE MONTHS FROM THE DATE OF THE CERTIFICATE OF FINAL PUBLICATION : LIMITATION.
6. CL. (2) :
7. SUIT FOR POSSESSION.
8. PROVISIO : TRANSFER OF A CASE TO CIVIL COURT.
9. EFFECT OF S. 9 OF ACT III, B. C. OF 1898.
10. COURT FEES.
11. ONUS.
12. DISPUTE AS TO STANDARD OF MEASUREMENT.
13. OBJECTIONS AND DISPUTES.
14. DISPUTE BEFORE FINAL PUBLICATION OF RECORD.
15. CAUSE OF ACTION.
16. RES JUDICATA.
17. PLAINT.
18. EXECUTION OF DECREE.
19. DISMISSAL FOR DEFAULT.
20. CO-SHARER LANDLORD.
21. PRESUMPTION UNDER S. 50.
22. OCCUPIER AND OCCUPANT.
23. PARTIES.
24. RENT-FREE TITLE.
25. APPEAL.
26. ABATEMENT OF APPEAL.
27. WITHDRAWAL OF SUIT.
28. S. 105A.



29. NOTING OF ORDERS: CORRECTION OF FRAUDULENT ENTRIES:
CIVIL COURT'S ORDERS.

30. DECREES.

31. COSTS.

1. Amendments :—The Proviso has been added by the two amending Acts of Bengal and East Bengal. Sub-sec. (2) has been added by the E. B. Act.

S. 106 has been re-numbered s. 106 sub-sec. (1) by the East Bengal Amending Act of 1908.

2. Former section :—For s. 106 as it stood originally see Appendix VII. Then by Act III of 1898 it was altered as follows :—

If, in any case under this Part, a dispute arises at any time within two months from the date of the certificate of the final publications of the records-of-rights under section 103A, sub-section (2), regarding any entry which the Revenue-officer has made in, or any omission made from the record,

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

a suit may be instituted before the Revenue-officer, by presenting a plaint on stamped paper, for the decision of the dispute, and the Revenue-officer shall then hear and decide the dispute :

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

And subsequently by Act I, B. C. of 1903, it was altered as follows :—

In proceeding under this Part, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-sec. (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from the record, whether such dispute be between landlord and tenant or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter, and the Revenue-officer shall hear and decide the dispute :

Institution of suit before a Revenue-officer.

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

Where a Settlement officer decided that the defendant had failed to establish his alleged rent-free title, and on the basis of this decision rent was subsequently settled and the record finally published, held in a subsequent suit by the landlord against the defendant for assessment of rent of the land, that the Settlement officer had no jurisdiction under s. 106 as it stood before the amendment to decide a question of this character and his decision did not preclude the Court from determining the question of *lakhiraj* title on the merits: *Birendra Kishore v. Kalitara*, 43 Cal. 547, s. c. 20 C.W.N. 275, the following cases were discussed and referred to: *Donay Das v. Keshub Prahti*, 8 C.W.N. 741; *Radha Kishore v. Durganath*, 32 Cal. 162, *Secretary of State v. Nitye Singh*, 21 Cal. 38, *Dharani Kant v. Gaber Ali*, 30 Cal.

Decisions under s. 105 as it stood before.

339, s. c., 7 C.W.N. 33, *Karmi Khan v. Brojo Nath*, 22 Cal. 248, *Nobin Chandra v. Radha Kishore*, 11 C.W.N. 859.

The order of a Settlement officer in a survey and record-of-rights under s. 106 as originally passed, is a decree under s. 9 of Act III (B.C.) of 1898, which operated as *resjudicata* on points raised and decided: *Nikunja Behari v. Radha Kesori*, 22 C.L.J. 148; where a dispute as to land being rent-free or rent-paying had arisen before final publication and had been decided by the Settlement officer under s. 106 as originally framed, *held* that section 9 of the Amending Act III of 1898 did not apply to the order of the Settlement officer, and the suit in the Civil Court was maintainable: *Ibid*; the Settlement officer was not precluded from deciding on a dispute as regards rent-free title, whether rent had been previously paid or not: *Ibid*.

Effect of settlements or rent and decisions by Revenue-officers made before the commencement of this Act.

3. Act III of 1898, B. C., s. 9 :—(1) Every settlement of rent or decision of a dispute by a Revenue-officer under sec. 106 of the Bengal Tenancy Act, 1885 before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final:

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

Scope.

S. 107.

Effect of entry.

Illustration.

Finality, what is

Presumptive evidence.

Ss. 102, and 106.

S. 105A.

4. Scope of s. 106 :—This section provides a remedy for the correction of an entry after the final publication of the record of rights. S. 107 provides that a decision in a proceeding under s. 106 "shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provision of sections 108 and 109A, shall be final." The effect of an entry after the final publication of the record of rights is that such entry is to be presumed to be correct unless the contrary is shewn (s. 103B). So, where A is recorded as a non-occupancy raiyat under B in the record of rights, the entry is presumptive evidence, in favour of B, and if A brings a suit under s. 106 for correction of the entry that he is an occupancy raiyat and the suit is decreed, the result is that A will no longer be entitled to plead that the original entry that A is a non-occupancy raiyat is correct, in-as-much as the decree is final under s. 107. But the *finality* is as regards the question whether the original entry is correct or incorrect. The scope of s. 106 is limited only as to whether the entry was correctly made and the effect of the decision in a case under s. 106 is only as to whether a particular entry will in future be considered as presumptive evidence. It is only to avoid an entry being made as presumptive evidence that a suit under s. 106 is necessary to be brought. The scope of s. 102 under which an entry is made is that under that section the existing state of facts is recorded (as is provided for in s. 158); s. 106 provides that a revenue-officer is to see whether such entry is correct; a decision under s. 106 confirms or corrects an entry; and the effect of the decision is that what is decided will have presumptive evidence.

The correctness of entries may be questioned also under s. 105A.

The correctness of the record-of-rights can be impugned by the

landlord in an application made under s. 105 : *Upendra Nath v. Jamini Landlord*
Lohan, 18 C.W.N. 268.

Where a settlement of land-revenue is not being or is not about to be made, a dispute as to an entry in the record of rights though arising under Part I of Chapter X is a matter that can be decided under s. 106 : *Keshab Panda v. Bhowani Panda*, 18 C.L.J. 187. may impugn correctness of entry.
S. 106.

A Revenue-officer in deciding disputes between rival proprietors under s. 106 is confined to the question of possession : *Mohunt Padmalav v. Lukmi Rani*, 12 C.W.N. 8 (*Per* Coxe, J., at p. 15) ; a question of title cannot be gone into : *Ibid.* The reason of the rule is that in proceedings under the Tenancy Act no disputes of title between rival proprietors, considered merely as proprietors can legitimately arise and it is no part of the purposes of the Tenancy Act to regulate disputes between rival proprietors except in so far as such disputes affect their relations with their tenants, and that in framing a record-of-rights under s. 103A the Revenue-officer must record the proprietors according to possession, so an entry made in a record-of-rights according to the rules laid down giving a correct view of the landlords and tenants *actually on the land* cannot be corrected and altered because it is incorrect for the purpose of ascertaining the legal titles of the proprietors, a purpose which is not one of the purposes of the Tenancy Act or of a settlement under it : (See the observations in the judgment of Coxe, J., at pp. 13, 14, and 15 of 12 C.W.N.). But a different view seems to have been taken in the case *Jogendra Nath Roy v. Krishna Promoda Dass*, 35 Cal. 1013, s. c. 12 C.W.N. 1032, s. c., 8 C.L.J. 322, where it has been held that the remedy of a proprietor against a rival landlord for correction of an entry lies in a suit under s. 106 and not by a regular suit. Question of possession and not of title can be gone into.
Reason of the rule.

The wording of the section is very comprehensive but it is reasonable to suppose that these words are confined to disputes which may legitimately arise from incorrect entries and therefore a question of title between two rival landlords cannot come under the purview of this section : *Mohunt Padmalav v. Lukmi Rani*, 12 C.W.N. 8 (at p. 14, col. 1). Following this case it has been held that a Revenue-officer in deciding disputes between rival proprietors under s. 106 is confined to the question of possession alone and is not competent to determine the question of title : *Ram Chandra v. Nandananda Bessain*, 18 C.W.N. 938 ; s. c., 19 C.L.J. 197 ; the Bengal Tenancy Act deals with the relations of landlords and tenants, and it is no part of its purpose to regulate disputes between rival proprietors except in so far as such disputes affect their relations with their tenants. Contra.

As between landlords of neighbouring estates, the only question that can be raised in a proceeding under s. 106 is as to the possession of neighbouring estates. The date of the final publication : *Kali Sundari v. Giriza Sanker*, 12 C.W.N. 974. This decision is practically in conflict with the decision in the case of *Jogendra Nath v. Krishna Pramada*, 35 Cal. 1013, s. c., 12 C.W.N. 1032 ; s. c., 8 C.L.J. 322. Landlords of neighbouring estates.

The case of *Jogendra Nath v. Krishna Pramada*, 35 Cal. 1013 ; *Jogendra Nath v. Harfuddin*, J.J., in the case of *Gulab Misser v. Kumar Kalanand*, 12 C.W.N. 884 ; s. c., 12 C.L.J. 107 their Lordships says as follows : — We are unable to accept the view taken in the case of *Jogendra Nath v. Krishna*, that the failure of a person to institute a case under s. 106 of the Bengal Tenancy Act for the purpose of correcting an entry in a record of rights debars him from bringing a regular suit in subsequent cases. dissented from in subsequent cases.

to establish his rights. If no case has been brought and decided under that section the entry in the record of rights is at most presumed to be correct but the presumption is rebuttable and the entry does not amount to a final adjudication of the rights of the parties. This indeed is the view taken by this court in the other decisions to which we have referred."

The other decisions referred to where the same view was taken are the cases of *Ram Gulam v. Bisun*, 11 C.W.N. 48 and *Trailokya v. McLeod*, 28 Cal. 28.

The case of *Jogendra Nath v. Krishna Pramada*, 35 Cal. 1013; s. c., 12 C.W.N. 1032 was also dissented from by Mookerjee and Carnduff, J.J., in the case of *Pandab Dowari v. Ananda Kisun*, 14 C.W.N. 887, s. c., 12 C.L.J. 195 and it was held that s. 106 of the Act clearly indicated that s. 106 did not provide an exclusive remedy against erroneous entries in the record of rights.

Jogendra Nath v. Krishna Pramada distinguished.

All these cases were considered in the case of *Mukti Nath v. Rameswar*, 15 C.W.N. 57 and it was held that the failure of a person to institute a suit under s. 106 for correctness of an entry in the record of rights is no bar to his instituting a suit in the civil court for the establishment of his title: the case of *Jogendra Nath v. Krishna Pramada*, 12 C.W.N. 1032, s. c., 8 C.L.J. 322, was not dissented from but distinguished on the ground that the case decided that that was for alteration and correction of certain entries and their Lordships (Woodroffe and Teunon, J.J.), said that it might well be that such a suit would not lie in a Civil Court.

Failure to institute a suit under s. 106 does not bar a suit.

The question as to whether the provisions of s. 106 exclude the jurisdiction of Civil Court came up for decision before Fletcher and Teunon, J.J. in the case of *Shashi Bhusan v. Sheikh Eshabar Ali* 19 C.W.N., 636 and it was held the fact that a suit is not instituted under s. 106 does not deprive a person from his right to sue in the Civil Court: the case of *Sasi Bhusan v. Aswini Kumar*, 18 C.W.N. 637, Footnote, and *Jogendra v. Krishna Pramada*, 35 Cal. 1013, s. c., 12 C.W.N. 1032 were dissented from.

Suit under s. 106 not the only remedy. Civil Suit maintainable. Question of possession merely. Where there are rival proprietors, question of possession is the only question.

S. 106 is not the only remedy for correction of an entry and a civil suit for that purpose is maintainable: *Mahomed Ayefuddin v. Pradyumn Kumar*, 25 C.W.N. 13, the case of *Jogendra Nath v. Krishna Pramada*, 35 Cal. 1013 was not followed.

In deciding disputes between rival proprietors under s. 106, Revenue Officer is confined to the question of possession only: *Das v. Niroda Bala*, 63 I.C. 602.

In a suit under s. 106, Fletcher, J., (Newbould, J., concurring) said as follows:—"I think that the authorities of this court show clearly that where there are rival proprietors this question of possession is the only matter that should be gone into. As regards other parties claiming, the court is not limited to the question of possession, vide, *Pran Krishna v. Trailokya Nath*, 19 C.W.N. 887, *Surendra Krishna v. Peary Mohon*, 41 I.C. 698.

The cases of *Mohunt Padmalav v. Lukmi Rani*, 12 C.W.N. 974, *Kali Sankari v. Giriza Sankar*, 15 C.W.N. 974, *Ramchand Nanda*, 19 C.L.J. 197 and *Pran Krishna v. Trailokya Nath*, 19 C.W.N. 911 were discussed in the case of *Maharaj Bal Bhagwan Das*, 45 I.C. 781 and it was held by Fletcher and Huda, J.J., that in a suit between two rival proprietors the question "is the question as to which of these two rival p

was in possession of the land in question at the date of the final publication of the Record-of-Rights." In the same case it was held that "a dispute between two neighbouring proprietors.....the case comes within the provisions of s. 102 (dd)."

The decisions as to rival landlords do not apply to the case of rival co-sharers in as much as "there is this distinction that in the former case there can be no question of joint possession or possession of the one being the possession of the other." But where A and B were recorded as joint landlords, and A brought a suit under s. 106 and proved a partition previous to the record-of-rights and B could not prove that A was in possession, *held* that A should be recorded as the sole landlord: *Ibid*.

Technical Rules and Instructions of the Settlement Department, 1916: Page III, Rule 47:—".....cases involving title between neighbouring landlords should ordinarily be transferred to the Civil Court under the proviso to section 106."

The scheme of ss. 105, 106 etc. of the Bengal Tenancy Act seems to be that matters brought at once or within a strictly limited time before the Revenue-officer are to be dealt with by him while matters not so brought before the Revenue-officer are left to the ordinary law and the civil courts: *Berhamdutt v. Ramji Ram*, 18 C.W.N. 466. See also *Aswini v. Sarada*, 24 C.L.J. 79; *Pran Krishna v. Trailakkya*, 19 C.W.N. 911.

In a suit under s. 106, the plaintiff is not entitled to a declaration that a specific entry in the record-of-rights is not correct as it stands, he must go further and establish in what respect it is incorrect and how it should be amended, if he is unable to do this, his suit must fail: *Dwijendra Nath v. Aftabuddi*, 21 C.W.N. 492, s.c., 25 C.L.J. 53.

One suit against all the tenants of a village is not maintainable: *Dhakeshwar v. Iswardhari*, 22 C.L.J. 57; one suit however, might be instituted against such of the tenants as belonged to the same caste or followed the same occupation and a separate suit ought to have been instituted with respect to each class of tenants, and a separate court-fee of Rs. 10 should be paid for each such suit: *Ibid*.

Where the defendant denies the correctness of the record and the Court has before it the evidence upon which the record was prepared, *held* that the Court is bound to come to a finding whether that evidence is sufficient to justify the entry: *Janki Koer v. Usman Sain*, 62 I.C. 417.

A Revenue Officer in deciding disputes between rival proprietors under s. 106 is confined to the question of possession merely: *E. A. Moore v. Gulab Chand*, 1 Pat. 157, s.c., 73 I.C. 5; but a question as to the relationship of landlord can be decided in case the question does not arise between rival proprietors, *Ibid*; where a question arises between two rival proprietors a Revenue Officer cannot even refer the suit to the Civil Court, *Ibid*.

See notes under s. 105.

5. Within three months from the date of the certificate of the final publication: Limitation:—Where there are two consecutively finally published records-of-rights it is competent to a party aggrieved by the second record-of-rights to ask for a declara-

tion in respect of that second record-of-rights without displacing any prejudicial entries in the first record-of-rights: *Sheik Latafat v. Kumar Gangnanad*, 3 Pat. L.J., 361.

Where lands are situated in two or more local areas.

Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation *so far as regards East Bengal*, shall, according to cl. (2) of this section, begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands. There is no corresponding clause for West Bengal and Behar, but it is submitted that the same rule as prevails in East Bengal will apply in West Bengal and Behar. For reasons see notes under s. 105,

In calculating the period of limitation in a suit under s. 106 parties are entitled to deduction of holidays: *Bisweswar v. Sukraj*, 15 C.W.N. 95 (notes).

6. Cl. (2):—See notes under the previous heading.

Suit for possession.

7. Suit for possession:—A suit for recovery of possession cannot be brought under s. 106: *Nilmani v. Kedar Nath*, 17 C.W.N. 750; a civil court to which a case is transferred under the first proviso to s. 106 has no jurisdiction to pass a decree for possession: *Ibid*.

The prayer for declaration of title and for recovery of possession are matters “entirely foreign to the jurisdiction of the Revenue officer under section 106, his work being confined to a decision of the point whether the record-of-rights is correct or not”: *Aswini Kumar Aich v. Saroda Charan Basu*, 24 C.L.J. 79, it is submitted that this decision so far as it decides that a prayer for declaration of title is foreign to the jurisdiction of a Revenue officer under s. 106 does not seem to have taken the correct view of the law, for, a person in respect of whom there is an entry in the record-of-rights that he has no title is competent, having regard to the wording of s. 106, to bring such a suit. A suit for possession no doubt is outside the scope of s. 106; but where both these prayers are made *viz.*, declaration of title and recovery of possession, the Revenue officer should not dismiss the suit but having regard to the principle in the case of *Umedulla v. Ramchandra*, 14 C.W.N. 812 should grant the relief as to declaration of title, if the plaintiff is competent to get it.

Declaratory suit.

A suit instituted under s. 106 is in the essence a suit for a declaratory decree in which no consequential relief is asked: *Salish Chandra v. Gopal Chandra*, 15 C.W.N. 110. A suit was brought under s. 106 for ejectment and for other reliefs (which were properly within the scope of s. 106); *held* that the relief for ejectment could not be granted and the suit could not be dismissed on the ground that ejectment was prayed for, since it was proper to the court to grant the other reliefs: *Umedulla v. Ram Chandra*, 14 C.W.N. 812.

Ejectment suit.

A suit for recovery of possession is not maintainable under s. 107: *Kali Sundari v. Giriza Sanker*, 15 C.W.N. 974.

Question as to rent-free title.

A person who is not in possession of land which is claimed at the date of the record of rights cannot have the mere question of his title to hold the land rent-free tried in a suit under s. 106: *Prankrishna v. Trailakya Nath*, 19 C.W.N., 911. A plaintiff cannot

Suit for

sue for possession under s. 106; nor, if he is out of possession at

the date of the suit, can he be given a declaration of his right to possession. get possession ; he can get complete remedy only in a suit in the Civil Court ; *Ibid.* The words "or to any other matter" in s. 106 must have reference to the matters indicated in s. 102 : *Ibid.* The words "or to any other matter."

8. Proviso : Transfer of a case to Civil Court :—In the case of *Chandi Charan v. Monoranjan*, 17 C.L.J. 416, Brett J., (Richardson J., agreeing) made the following remarks :—
Remarks of Brett, J.

"In the cases before us though the complaints were presented before the Revenue officer, that officer proceeding under the proviso to s. 106 of the Bengal Tenancy Act transferred them for trial to the court of the Subordinate Judge. It is manifest that the civil court in trying the suits is not bound to confine itself to the reliefs which in such cases could alone be granted by the Revenue-officer."

A Civil court to which a case is transferred under the first proviso to s. 106 has no jurisdiction to pass a decree for possession : *Contra.* *Nilmani v. Kedar Nath*, 17 C.W.N. 750 ; see also *Pran Krishna v. Trailakya*, 19 C.W.N. 911.

A record-of-rights having been prepared in 1896 the landlord applied in 1897 for the correction of an entry under s. 106 of the Act as it then was ; after the Amending Act (III) of 1898 was passed the case was referred to the Civil Court under the proviso to s. 106 of the Act as amended ; *held* that the Court has jurisdiction to try, notwithstanding that the proceedings were commenced prior to the passing of the amending Act which first empowered a reference to the Civil Court : *Rahimuddin v. Jagut Kisore*, 12 C.W.N. 987 ; in matters of procedure an amending Act would affect legal proceedings instituted under the repealed provision : *Ibid.* Jurisdiction of Civil Court.

Although a suit under s. 106 was withdrawn with liberty to bring a fresh suit, *held* that the suit was barred by the provisions of s. 109, when instituted a suit in the Civil Court for the identical relief : *Dinonath v. Anadi Krishna*, 28 C.W.N. 703. Withdrawal of suit under s. 106 effect of.

The statutory provisions of s. 109, B. T. Act must be strictly enforced and should not be whittled down : *Ibid.*

See notes under s. 109.

A suit instituted under s. 106, although transferred to the ordinary Civil Court, is a suit for a declaratory decree within the meaning of Art. 17, cl. (3) of sch. II of the Court-fees Act and is not chargeable with an *ad-valorem* fee : *Sailaja Nath v. Chandi-charan*, 28 C.L.J. 301.

Where a suit instituted under s. 106 is transferred to a Civil Court (Court of Munsiff), the appeal lies to the Sub-judge and not to the Special Judge : *Khirod Gobind v. Gour Gopal*, 27 C.L.J. 281.

9. Effect of s. 9. of Act III, B. C. of 1898 :—The effect of s. 9 of the Amending Act III of 1898, B. C., is to make final the decision of a Revenue-officer, made under s. 106 before the commencement of the amending Act, only in regard to disputes which could be decided by the Revenue-officer under s. 106 : *Donay Dass v. Keshub Pruhti*, 8 C.W.N. 741. A question of title between rival purchasers of a tenure could not be dealt with and determined under s. 106 as it stood before its amendment by Act III of 1898 : *Ibid* ; also see *Pandit Sardar v. Meajan Mridha*, 21 Cal. 378 and *Haromohan v. Prannath*, 27 Cal. 364 ; a decision on such a question Dispute.

passed by a Revenue-officer before the commencement of the amending Act, does not prevent the question from being litigated in the Civil Court: *Donay Dass v. Keshub Pruhti*, 8 C.W.N. 741.

Court fees :
Suit in
Civil Court.

10. Court fees :—The Court-fee payable on a plaint in a suit brought in a Civil Court for the amendment of a record-of-rights and for settlement of fair rents must be determined under s. 7 (4) (c) of the Court fees Act, by the amount at which the reliefs sought are valued and not at the sum of ten rupees required for a declaratory decree: *Sreenath Chandra v. The Secretary of State for India in Council*, 11 C.L.J. 158. But it was decided by Mookerjee and Sharfuddin, J.J., in the case of *Satis Chandra v. Gopal Chandra*, 15 C.W.N. 110, s.c., 12 C.L.J. 638 that a suit under s. 106 of the Bengal Tenancy Act is a suit for a declaratory decree within the meaning of Art. 17 cl. (3) of sch. II of the Court-fees Act and that the fee payable on the plaint in such a suit is Rs. 10.

S. 106.

The following notification of the Govt. of India was published after the aforesaid decisions were passed:

Government
of India
Notification
about Court
Fees.

Notification No. 1897 F. dated the 24th March, 1911. (India Gazette, dated March 25, 1911, Part I, p. 222):

In exercise of the powers conferred by s. 35 of the Court-fees Act, 1870 (VII of 1870) the Governor-General-in-Council is pleased to reduce the fees chargeable under clause (iii) of Article 17 of schedule II of the said Act on plaints relating to suits instituted in Bengal under s. 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *advalorem* fee chargeable under Article I of Schedule I of the Act, in cases where the amount of such fee would be less than ten rupees.

Suit for cor-
rection of
entry and
consequen-
tial relief.

S. 7, Court
Fees-Act.

Government
of India
Notification
how far
binding on
Civil
Courts.

Certain suits brought under s. 106 for correction of an entry and other consequential reliefs were transferred to a Civil Court. A question arose as to the amount of Court-fee and Brett J. (Richardson J., concurring) remarked as follows:—In these suits not only was relief claimed by correction of the entries in the record of rights but also such other reliefs as the plaintiffs might be entitled to. It is evident when such suits are tried by a regular Civil Court that Court is bound by the provisions of s. 7 of the Court-fees Act to determine the proper institution fee, and that this must be done with reference entirely to the reliefs claimed: *Chandi Charan v. Manoranjon*, 17 C.L.J. 416. The Notification of the Government of India published at page 222 Part I of the Gazette of India, 1911 cannot be regarded as an authority *binding a Civil Court* in the exercise of its powers under s. 7 of the Court Fees Act: *Ibid*.

Observation
in *Chandi
Charan v.
Monoranjan*
contrary to
*Nilmoni v.
Kedarnath*,

It is submitted that the decision in the case of *Chandi Charan v. Monoranjan*, 17 C.L.J. 416 is upon the view that a Civil Court has wider powers when a suit is transferred to it under the proviso to s. 106; this view seems to be an *obiter* and opposed to the decision in the case of *Nilmani v. Kedarnath*, 17 C.W.N. 750.

A suit instituted under s. 106, although transferred to the ordinary Civil Court, is a suit for a declaratory decree within the meaning of Art. 17, cl. (3) of sch. II of the Court-fees Act, and is not chargeable with an *advalorem* fee: *Sailaja Nath v. Chandi Charan*, 28 C.L.J. 301. The cases of *Satis Chandra v. Gopal Chandra*, 12 C.L.J. 638 and *Chandicharan v. Manoranjan*, 17 C.L.J. 416 were discussed.

Applications:—The court-fees chargeable for applications or petitions under s. 106 are annas eight if the value of suit is Rs. 50 or above, and anna one if it is below Rs. 50: See Sch. II, cl. 1 (a) and 1 (b) of the Court Fees Act.

~~Calcutta Gazette: April 5, 1922, Part I p. 689. Notification No. 3789 L.R.—The 3rd April 1922. In exercise of the power conferred by s. 35 of the Court Fees Act, 1870, (VII of 1870) as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in modification of the Government of India's Notification Nos. 1897F dated the 24th March 1911, published at p. 222 Part I of the Gazette of India of the 25th idem and No. 3119F dated the 22 May, 1911 published at p. 366 Part I of the Gazette of India of the 27th idem, the Governor in Council is pleased to reduce the fees chargeable under clause (iii) of Art. 17 of Sch. II of the Court Fees Act, 1870 (VII of 1870), as amended by the Bengal Court Fees Amendment Act, 1922, on plaint relating to suits instituted under s. 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *advalorem* fee chargeable under Art. I of Sch. I of the Act in cases where the amount of such fee would be less than twenty rupees.*~~ **Court-fees: S. 106: Present Law.**

A Revenue-officer is competent to set aside an order passed by him under sec. 106 for non-payment of additional Court-fees found requisite on revision of the said order: *Dhakeswar v. Iswardhari*, 22 C.L.J. 57.

II. Onus:—In suit to correct an entry in a record of rights under s. 106, the onus of shewing that the lands in suit are *mal* is not on defendants: *Sailaja v. Risheecase*, 51 Cal. 135.

12. Dispute as to Standard of measurement:—A dispute as to the length of the standard of measurement to be used in measuring certain lands is not a dispute as to the correctness of an entry in the record-of-rights: *Narahari v. Hari Charan*, 26 Cal. 556; see also *Anund Lal v. Shib Chunder*, 22 Cal. 477. An order of a Settlement-officer deciding a dispute on a question of the local standard of measurement is not therefore appealable. *Ibid.* **Length of the standard of measurement.**

Under the former chapter it was held that under the terms of s. 108 a second appeal lay from the decision of a Special Judge on questions with regard to the prevailing standard of measurement, area of land in the possession of tenants, and the liability of the tenants to pay rent on account of any excess lands in their possession: *Mathura Mohon v. Uma Sundari*, 25 Cal. 34. **Appeal.**

13. Objections and disputes:—"The law as amended distinguishes between 'objections' which, under the present rules of the Government, are disposed of summarily and 'disputes,' which are disposed of formally after the manner of suits;" (*Per Stevens, J.*) *Troylokya v. Macleod*, 28 Cal. at p. 34. **Objections and disputes.**

It was held under the chapter, as it formerly stood, that the words "objection," and "dispute," as used in ss. 105 and 106 were used in the same sense: *The Secretary of State v. Kalimuddy*, 23 Cal. 257. **As used in ss. 105 and 106.**

Where the matter in dispute was dealt with under s. 106 of the **Jurisdiction**

[Note. In BIHAR the Court fee payable on a plaint under s. 106 is an *advalorem* fee subject to a maximum of Rs. 15. See Appendix XIII at the end of this book.]

of Special Judge.

former chapter before its repeal by Act III of 1898, B. C. held that there was nothing under s. 108 which limited the jurisdiction of the Special Judge to deal only with matters of objection taken after publication of the record-of-rights: *Durga Churan v. Hari Churan*, 21 Cal. 521.

Second appeal.

It was held under the Chapter, as it formerly stood, that a second appeal lay to the High Court under s. 108 (3) against a decision of a Special Judge in a case under s. 106 and where the decision was as to a boundary dispute between neighbouring proprietors of land it was not a decision about the correctness of an entry in the record-of-rights: *Irshad Ali v. Kanta Pershad*, 21 Cal. 935.

S. 106 requires that there should be a dispute and for this two parties are necessary: *Mohunt Padmalav v. Lukmi Rani*, 12 C.W.N. 8 at p. 10.

Boundary dispute.

A decision as to a boundary dispute between neighbouring proprietors of land is not a decision about the correctness of an entry in the record-of-rights: *Irshad Ali v. Kanta Pershad*, 21 Cal. 938.

See notes under s. 109A.

S. 108, sub-sec. 3.

14. Dispute before final publication of record:—The terms of s. 106 of the former chapter were held to be enough to include the case in which a dispute arose, even before the publication of the draft record, as to the correctness of an entry which the Revenue-officer proposed to make in the record that he was preparing and the decision of the Revenue-officer was a decision within the scope of sub-sec. 3 of s. 108 of the former chapter and a second appeal lay to the High Court from such a decision: *Dengu Kazi v. Nobin Kisori*, 1 C.W.N. 294 (F.B.); the decisions in the case of *Gopi Nath v. Adoit Naik*, 21 Cal. 776, and *Anand Lal v. Shib Chunder*, 22 Cal. 477, were overruled by the Full Bench case.

Correction of entry.

15. Cause of action:—In a suit by a rival landlord for correction of an entry on the ground that the estate claimed by the plaintiff erroneously recorded as defendant's, held that the cause of action arose on the date of the final publication of the record-of-rights: *Mohunt Padmalav v. Lukmi Rani*, 12 C.W.N. 8 (at p. 10).

Res-judicata: Old law.

16. Resjudicata:—The decision of a Revenue-officer under s. 106 of the former chapter was held to operate as *res judicata* between the parties in a subsequent suit between the same parties regarding lands which formed the subject-matter of the proceedings under s. 106: *Joypal v. Mohunt Palukdhari*, 2 C.W.N. 491; see also *Gokul Shaha v. Jadu Nandun*, 17 Cal. 721.

See notes under ss. 109 and 109A.

Relationship of landlord and tenant.

A decision under s. 106 as regards the question of relationship of landlord and tenant operates as *res judicata*: *Jatindra Nath v. Azizarahaman*, 71 I.C. 307.

A decision of a Revenue Court in a suit under s. 106 does not operate as *res judicata* in a subsequent suit by the aggrieved party in the Civil Court notwithstanding the introduction of cl. (dd) in sec. 102, as the Revenue officer has to go primarily upon the question of possession: *Asfarannessa v. Heramba*, 54 Cal. 114, s. c., 44 C.L.J. 467.

See notes under s. 102, heading no. 2.

17. Plaintiff:—A dispute under this section can only be decided **Plaint.** by the presentation of a plaint on stamped paper: *Shambhu Chandra v. Purna Chandra*, 35 Cal. 176; s. c., 12 C.W.N. 122: (at p. 125, col. 2, per Maclean, C. J.): s. c., 7 C.L.J. 103.

18. Execution of decree:—See notes under s. 105: *Board's Manual 1909, part, 11, Chap. X, Rules 519 and 520, pages 136, 137.*

19. Dismissal for default:—Where a suit under s. 106 is dismissed for default the order of dismissal is not a decision under s. 107, the word "decision" as used in s. 107 implies an adjudication on the merits: *Parbati v. Toolshi Kapri*, 18 C.W.N. 604.

20. Co-sharer Landlord:—It was decided in the case of *Kali-charan v. Debendra Nath*, 10 C.L.J. 458 that an application under s. 105 is not maintainable by one of two or more joint landlords; in regard to a suit under s. 106 their Lordships remarked (at p. 461) as follows: "But we are of opinion also that s. 106 itself furnishes ample evidence that it could never have been intended by the Legislature that an objection under that section should be jointly taken by all the landlords." See also *Sher Bahadur v. Mackenzie*, 7 C.W.N. 400. See notes under s. 105 heading No. 8 and s. 108.

A cosharer landlord cannot apply under s. 105, but may institute a suit under S. 106.

A suit by one of the co-sharers in a jote instituted at a time when Act XIV of 1882 was in force, for a declaration that an entry in the record-of-rights to the effect that the plaintiff and the defendant were joint tenants, was wrong on the ground that the plaintiff alone was the tenant and the defendant was his sub-tenant, is bad for misjoinder of parties: *Sheikh Faiza v. Sheikh Joman*, 19 C.L.J. 455.

Mis joinder, of parties.

21. Presumption under s. 50:—A tenant in a proceeding under s. 106 is entitled to the presumption under s. 50; *Prithi Chand v. Sheikh Basarat Ali*, 37 Cal. 30, s. c., 13 C.W.N. 1149, s. c., 10 C.L.J. 343 (F.B.); see also *W. M. Grant v. Harsahai*, 18 C.L.J. 76; *Gobind Lall v. Ramsaram*, 68 I.C. 433.

S. 50.

See notes under s. 115.

In a suit under s. 106 there is primarily a presumption in defendant's favour: *Hari Kant v. Bibi Nurannessa*, 53 I.C. 625.

22. Occupier and occupant:—A trespasser cannot be entered as an occupier or occupant in the record-of-rights at all: *Umedulla v. Ramchandra*, 14 C.W.N. 812; a purchaser of a non-transferable holding is a trespasser and his name cannot appear in the record-of-rights: *Ibid.*: if he has been so entered the entry may be corrected by a suit under s. 106: *Ibid.*

Trespasser not an occupier.

23. Parties:—Where in a proceeding under s. 105 for settlement of a fair rent, the landlord impugned the correctness of an entry in the record-of-rights and contended that the tenant was a raiyat and not a tenure holder, *held* that the tenant's tenant *i.e.*, the under-tenant was not a necessary party: *Jogendra Mohon v. Janakinath*, 21 C.W.N. 427; it is submitted that the same rule will apply to a suit under s. 106.

See notes under s. 105.

24. Rent-free title:—In a suit under s. 106 for a declaration that an entry that the land was liable to be assessed to rent was incorrect, *held* that the proved possession free from payment of rent was sufficient to rebut the presumption that the lands were liable to be assessed to rent: *Bipradas Pal v. Manorama Debi*, 45 Cal. 574. See notes under s. 105.

25. Appeal:—See notes under s. 109A.

26. Abatement of appeal:—A suit by the tenants under sec. 106 of the B. T. Act for the correction of an entry of rent in the record of rights was dismissed by the A. S. O. but on appeal to the Special Judge it was decreed. During the pendency of an appeal to the High Court by the landlords one of them died and his legal representatives were not brought on the record, *held* that under Or. 22 r. 3 of the C. P. C., the appeal in respect of the deceased landlord had abated and in view of the nature of the suit he was a necessary party to the appeal, and the appeal had thereupon become incompetent: *Naimuddin v. Maniruddin*, 32 C.W.N. 299, s.c., 47 C.L.J. 82 (Cuming and Malik, J.J., May 10, 1927). Or. 41 r. 4 C. P. C. had no application to a case like this. Or. 41 r. 4 gives no power to the Court to vary or reverse a decree in favour of a person who is dead, whose legal representatives have not been brought on the record and in respect of whom the appeal has abated: *Ibid.*

27. Withdrawal of suit:—Where a suit was brought for declaration of title and recovery of possession under s. 106 and it was withdrawn without liberty to bring a fresh suit, *held* that a suit in the Civil Court for these reliefs was not barred in as much as a suit under s. 106 for these reliefs was entirely foreign to the jurisdiction of the Revenue Court: *Aswini Kumar v. Saroda Charan*, 24 C. L.J. 79.

28. S. 105A:—In the course of proceeding under s. 105 for settlement of fair and equitable rent, questions which would otherwise be determined at the instance of the aggrieved party in a suit under s. 106 may be investigated: *Nawab Bahadur of Murshidabad v. Ahmad Hossein*, 25 C.L.J. 556; see also *Jatindra Narain v. Malu Haji*, 51 I.C. 969.

29. Noting of orders: Correction of fraudulent entries: Civil Court's orders:

Bengal Survey and Settlement Manual, 1917, Part II, Chap. XVII.

Noting of orders on revision or appeal.

430. Notes of all rents settled and all decisions of disputes under sections 105, 105A and 106 or of orders on revision or appeal under sections 108 and 109A and on section 109 c, (2) and (3) must be made in the final record and other public copies by the Settlement officer, or if the Settlement officer has left the district, by the Collector. Corrections under section 108A must be similarly made in the record.

Correction of fraudulent entries.

431. It has been ruled that where it is desired to correct an entry in the finally published records that has been procured by fraud the Settlement officer has an inherent right to order excision of the fraudulent entry, and his act in doing so is a ministerial act, not open to appeal. At the same time the Settlement officer should make the correct entry that it is fraudulent, and either stating his reasons in the record or making in the record a reference to a proceeding in which those reasons have been stated, as may be more convenient.

Civil Court's order.

432 (a) The Act contains no provision enabling the record-of-rights to be corrected in accordance with the orders of a Civil Court. If a Settlement officer or a Collector is made a party to a suit in which a prayer for such correction in the record-of-rights is contained in the plaint, he should, in the course of its hearing, raise objection to that part of the plaint. In his written statement he should urge the want of jurisdiction on the part of the Civil Court to order any such

alteration. Any order of a Civil Court purporting to order the correction of the record-of-rights should be brought to the notice of Government in order that the High Court may be moved to revise it under section 115 of the Civil Procedure Code.

(b) On the other hand every Civil Court trying a suit under section 106 or disposing of an appeal under section 109A, will communicate to the Collector of the district, a note of its final decision in the case for incorporation in the final record-of-rights (High Court Rules, Civil, Vol. I, Rule 39A).

30. Decrees.

Technical Rules of the Settlement Department, 1916 Page 112.

Para 50. It is necessary to specify clearly how each person concerned is affected. At the end should be recorded "ordered that, etc." The form of the decree shall be the same as prescribed by the High Court for decrees in original suits [Civil Process No. 20, pp. 270-271, High Court Rules (civil), Vol. II].....The decree must bear the date of the judgment, but it must also bear the date on which it is signed by the case officer.....No decree should be delayed more than a week after judgment.....

A decree is necessary in every case under s. 106 not dismissed for default.

31. Costs in proceedings under s. 106 :—*Technical Rules and Instructions of the Settlement Department*, 1916 Page 112, Para 52. Award of Costs of suits.
Costs should be allowed with discrimination. When allowed, pleader's fees should be awarded according to the local rules prevailing in Munsiff's Courts.

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

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

Headings of Notes.

1. PREVIOUS HISTORY & AMENDMENTS.
2. COMMISSION.
3. FORCE OF A DECREE: SHALL BE FINAL.
4. S. 622, C. P. C.

5. RES-JUDICATA.
6. RIGHT OF SUIT FOR ALTERATION.
7. WHERE CONTEST AND WHERE NOT.
8. RIGHT OF SUIT.
9. WITHDRAWAL OF APPLICATION UNDER S. 105.
10. CL. (2).

1. Previous history of s. 107—Amendments, additions, and alterations :—S. 107 has undergone several changes ; the section as it stood before the passing of the Bengal Tenancy Amendment Act III B. C. of 1898 was as follows :—

Previous history.

Procedure to be adopted by the Revenue-officer.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for trial of suits, and his decision in every such proceeding shall have the force of a decree.

By Act III B. C. of 1898 the following section was substituted for the section as it originally stood :

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

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

Amendments.

By the Amending Acts of Bengal and East Bengal, viz., Act I B. C. of 1907 and Act I E. B. A. C. of 1908 the following amendments were made :

For the words and figures. "In all proceedings for the settlements of rents under this Part, and in all proceedings under s. 106" the words, figures and letters. "In all proceedings under section 105, section 105A and section 106" were substituted.

Former sub-section.

The present sub-sec. (2) was substituted by the same Acts, for the former sub-section :

2. Commission:—See Appendix III under heading "s. 189 : Local Enquiry under s. 107 (1).

"Shall be final."

3. Force of a decree of a Civil Court.....and shall be final :—In this section the words "shall be final" as stated before were introduced by Act I B. C. of 1907 and Act I E. B. A. C. of 1908.

Effect of the amendments.
Issue settled once under s. 105A. cannot be re-opened.

The effect of this enactment as amended is to bar for all time the possibility of raising any issue which was once settled in a dispute under s. 105A, and to make it incapable of being re-opened and incapable of being challenged : *Mohendra v. Girish Chandra*, 3 Pat. L.J. 379 at p. 384. A decision under s. 105A that the relationship of landlord and tenant does not exist between two persons is *resjudicata* in a subsequent suit : *Ibid*. The words "shall be final" were im-

ported into the section to give finality to a decision under s. 105A: *Effect of Amending Ibid.* The amending enactment in the year 1898 supplies what was lacking when the decision of the Full Bench in *Dharani Kant Lahiri v. Gaber Ali Khan*, 29 Cal. 707 was decided: *Ibid.* Act of 1898.

Where the land comprised in A's holding was recorded as *mal*, and his landlord B made an application for settlement of fair rent and A set up *lakheraj* title but having adduced no evidence to prove his allegation, the Revenue officer assessed the holding to rent, *held* in a suit by A in the Civil Court for declaration of his *nishkar lakheraj*, that the Revenue officer had recorded a decision within the meaning of s. 107: *Apurba Krishna v. Shyama Charan*, 24 C.W.N. 223; where a question has been necessarily decided in effect though not in express terms between parties to a suit, they cannot raise the same question as between themselves in any other suit in any other form: *Ibid*; see also *Gregory v. Molesworth*, 3 Atk. 626; *Soorjimoney v. Sudda-nand*, 20 W.R. 377 and *Pahalwan Singh v. Maharaja Muheshwar*, 18 W.R. 182. Lakheraj title, decision in a proceeding for settlement of fair rent.

"S. 107 does indeed provide that a decision in a proceeding under s. 106 "shall have the force of a decree, but it does not necessarily follow that it shall in all cases operate as *res judicata*, for an ordinary decree of a Civil Court has not that effect except on certain conditions, which are set forth in s. 13, C. P. C." (*Per* Prinsep, Hill and Stevens, J.J.) *Dharani Kant v. Gohar Ali*, 30 Cal. 339, s. c., 7 C.W.N. 33 at p. 54; (on appeal to the Privy Council: 17 C.W.N. 389). "Force of decree," meaning of.

See notes under s. 103.

"Under s. 107 the decisions of the Settlement officer in all proceedings under the chapter are to have the force of a decree and under s. 108, cl. 2, an appeal lies to the Special Judge from all decisions of the Settlement-officer. But it is only in cases under s. 106 decided by the Special Judge that a second appeal lies to this Court," (High Court) "and such cases can only relate to disputes regarding the correctness of entries other than entries of rent settled:" (*Per* Trevelyan and Rampini J.J.), *Gopinath v. Audoita Naik*, 21 Cal. 776 at p. 781. Appeal.

Where an objection to certain entries with regard to enhancement of rent under s. 105 (2) was disallowed, it was held under the old chapter that the proceedings of the Settlement-officer were of an executive, rather than of a judicial character and did not operate either as *res judicata* or as a final decree under s. 107 estopping the plaintiffs from having the same matters tried by the regular Civil Court: *The Secretary of State v. Kajimuddy*, 23 Cal. 257. When a number of tenants occupied land under the same landlord and were joined as defendant in the same proceeding for the settlement of rent under s. 104, cl. 2 of the former chapter and an appeal to the Special Judge under s. 108, cl. 2 from the Revenue-officer's decision, *held* that as many Court-fees of Rs. 10 each as there were tenant defendants were payable: *Upadhaya Thakur v. Presidh Singh* (F.B.), 23 Cal. 723. The decision in the case of *Shewbarat v. Nirpat*, 16 Cal. 596, was dissented from and the decision in the case of *Petu Gharai v. Ram Khelwan*, 18 Cal. 667, was overruled by the Full Bench case of *Upadhaya Thakur*, 23 Cal. 723. Enhancement of rent.

Court-fee on memo. of appeal.

Where proceedings were taken under the second clause of s. 104 Decisions of the former chapter in consequence of applications made by the landlord for a settlement of the rent, *held* that the decisions under s. 107.

s. 107 had the effect of decrees and every thing necessary to be decided for the purpose of arriving at the decisions must be held to have been decided in them, that it was necessary to decide what was the fair and equitable rent and that it was *res judicata* between the parties in a subsequent suit brought by the tenant to have it decided whether the rent was enhancible or not: *Durga Churn v. Hatem Mundal*, 29 Cal. 252.

"Decision" in this section implies adjudication on merits and does not include order of dismissal for default. Where no appeal is preferred.

The decision of a Settlement-officer to which the force and effect of a decree of a Civil Court is given by s. 107 does not include an order of dismissal of a suit under s. 106 for default, the word decision implying an adjudication on the merits: *Parbati v. Toolshi Kapri*, 18 C.W.N. 604 s. c., 18 C.L.J. 128. See also *Chiodith v. Tulshi*, 17 C.W.N. 467.

See notes under s. 105 cl. (6).

Where a Settlement-officer made an assessment of rent under s. 104 which was not appealed against under s. 108, held that the decision of the Settlement officer was, in view of s. 107 read with s. 9 of the Bengal Tenancy Amendment Act, final: *Dwaraka Nath v. Dambarahar*, 38 Cal. 278.

S. 115
C. P. C.

4. S. 622, C. P. C. Act XIV of 1882 :—(S. 115 OF THE PRESENT CODE) :—It was decided under the former chapter *i.e.*, as the chapter stood formerly, that with regard to an entry made by a Settlement-officer to which s. 106 did not apply, the High Court had jurisdiction to interfere under s. 622, C. P. C. : *Shewbarat v. Nirpat*, 16 Cal. 596.

S. 141
C. P. C.

As to whether a proceeding under s. 105 is a suit and whether s. 141 of the Civil Procedure Code is applicable: see notes under s. 105. As to the effect of the withdrawal of a suit: see notes under s. 109.

Res-judicata.

5. Res-judicata :—A decision in a proceeding under the second clause of sec. 104 of the former Chapter X of the Bengal Tenancy Act, in consequence of an application made by a landlord for the settlement of rent was held to have the effect of a decree and the matters decided by such a decision could only be re-opened on an appeal to the Special Judge: *Durga Charan Law v. Basir Mandal*, 6 C.W.N. 238. See notes under s. 109.

Suit for cancellation of certificate.

6. Right of suit for alteration of rent. :—Where in a settlement proceeding the rent of a tenant was settled in the tenant's absence who did not appear, and the landlord whose estate was under the Court of Wards obtained a certificate for the arrears, held that in a suit brought by the tenant for the cancellation of the certificate and determination of the plaintiff's juma the decision of the Settlement-officer although admissible in evidence as to the tenant's rent, did not make the question of rent *res judicata*: *Asutosh v. Abdool*, 28 Cal. 676. An order made by a Revenue-officer under s. 107 determining the rent of a tenant cannot be questioned in a Civil Court when not set aside by appeal or otherwise and it has the force of a decree: *Ram Autor v. Shonamon*, 27 Cal. 167; see also *Joypal v. Palukdhari*, 2 C.W.N. 491; *Gokul v. Jadu Nundun*, 17 Cal. 721. See notes under s. 106.

Order under s. 107.

Ss. 106 to 109 do not bar a civil suit.

S. 109 does not apply to the facts of such a case: *Ibid*. It applies only where the matter in question is or has already been the subject of a suit instituted under s. 106: *Ibid*. Neither s. 109 nor s. 106 renders the institution of a suit under s. 106 compulsory or prevents the institution of a suit directly in a Civil Court: *Ibid*.

7. Where contest and where not :—It was decided before Where no the section was amended that in a case where there is no contest contest. whatever before the Settlement-officer the case does not fall under s. 107 : *Pudmanand v. Ghanasyam*, 32 Cal. 336, s. c., 9 C.W.N. 610 : s. c., 1 C.L.J. 134.

The presumption in favour of its accuracy raised by s. 109 would Presump- be sufficiently rebutted by a decree passed in a contested suit between tion. the parties : *Ibid*.

Where no objection is preferred under s. 105 and no dispute is Where no raised under s. 106, the decision of a Settlement-officer in proceed- dispute. ings for settlement of rents under s. 104, operates as *res judicata* as to the amount of rent annually payable under s. 107 : *Brohmanunda v. Arjun Raut*, 1 C.L.J. 310.

Where a settlement of rent was made under s. 104 (2) of the Settlement Bengal Tenancy Act, before its amendment by the Amending Act of 1898, the decision of the Settlement-officer had the effect of a of rent— decree under s. 107 of the Act (before amendment) and is evidence effect of a decree. in a suit for rent subsequently brought by the landlord even though it may not operate as *res judicata* : *Mohim Chandra v. Kalitara*, 11 C.W.N. 1028.

8. Right of suit :—A tenant has no right of suit when rent is settled under s. 104 (2) in a proceeding under s. 103 ; the remedy is by way of an appeal to the Special Judge : *Durgacharan v. Hateen*, 29 Cal. 252.

9. Withdrawal of application under s. 105 :—See notes under s. 109.

10. Cl. (2) :—*Bengal Survey and Settlement Manual*, 1917, Chap. XVII, Part II, page 105.

(a) The Act contains no provision enabling the record-of-rights Civil Court's to be corrected in accordance with the orders of a Civil Court. If a Court's orders. Settlement officer or a Collector is made a party to a suit in which a prayer for such correction in the record-of-rights is contained in the plaint, he should, in the course of its hearing, raise objection to that part of the plaint. In his written statement he should urge the want of jurisdiction on the part of the Civil Court to order any such alteration. Any order of a Civil Court purporting to order the correction of the record-of-rights should be brought to the notice of Government, in order that the High Court may be moved to revise it under section 115 of the Civil Procedure Code.

(b) On the other hand every Civil Court trying a suit under section 106, or disposing of an appeal under section 109A, will communicate to the Collector of the district, a note of its final decision in the case for incorporation in the final record-of-rights. (High Court's Rules, Civil, Vol. I, Rule 39A).

There is no provision enabling the Collector to note orders under section 104H in the record, but the Civil Court will notify any orders Orders under section 104H. passed under section 104H to the Collector of the district.

108. Any Revenue-officer especially empowered by the Local Government in this behalf, may, on application or of his own motion, within twelve months Revision by Revenue officer. from the making of any order or decision under section 105, section 105A, section 106 or section 107, revise

the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section 109A :

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

Headings of Notes.

1. AMENDMENTS.
2. SCOPE OF THE SECTION AND REVISION OF ENTRY.
3. COURT-FEES.
4. CORRECTION OF ERRORS.
5. EFFECT OF BONA-FIDE MISTAKE.
6. APPEAL.

1. Amendments :—After the word and figures “section 105” the word, figures and letter, “section 105A” were substituted by Bengal Act I of 1907 and East Bengal Act I of 1908.

Terms of
this section
very com-
prehensive.

2. Scope of the section and revision of entry :—“It is worthy of note that the terms of this section are very comprehensive and that the Legislature has not prescribed any restriction either as to the class of questions which may be considered by the specially empowered Revenue-officer or as to the mode in which his jurisdiction is to be exercised. A specially empowered Revenue-officer is invested, under s. 108, with what may be described as power to review on the merits his own order or revise the orders made by another officer. If he reconsiders an order made by himself, he obviously exercises a power of review: if, on the other hand he examines the propriety of an order made by another Revenue-officer, he exercises revisional powers:” (*Per Mookerjee J., Breachcroft J., agreeing*): *Parbati v. Tulsi Koeri*, 18 C.L.J. 125. Where consent decrees have been made or ex-parte decrees passed, in suits under s. 106, their propriety is liable to be examined by an officer specially empowered in that behalf under s. 108: *Ibid.*

Consent
decrees or
ex-parte
decrees.

Mal lands.

This section does not warrant the Settlement-officer in revising the entries as to mal lands in the record-of-rights: *Shambhu Chandra v. Purna Chandra*, 35 Cal. 176, s. c., 12 C.W.N. 122: s. c., 7 C.L.J. 103 (at p. 126 col. 1).

Revision.

Under s. 108 a Revenue-officer may on the application of a person affected by an entry in the record-of-rights revise his decision under ss. 106 and 107: *Jogendra Nath v. Krishna Pramada*, 12 C.W.N. 1032.

The power under s. 108 is not restricted to revision of the decision or order on the merits; and thus a Revenue-officer is competent to set aside an order passed by him, for non-payment of Court-fees found requisite on revision of the said order, and to direct the payment of additional Court-fees within a prescribed time: *Dakeshwar v. Iswardhari*, 22 C.L.J. 57.

To enable a Settlement officer to revise an order under sec. 108 of the B. T. Act, it is sufficient if the application by the party for revision be made within 12 months of the order sought to be revised,

even though the passing of the order revising it takes place more than 12 months after the order revised: *Reshee Case v. Kedarnath*, 30 C.W.N. 638 (Greaves and Pantton, J.J.).

3. Court-fees :—Appeals presented under s. 104G (1) to a superior Revenue authority and applications for revision presented under s. 108 and 108A will bear a Court-fee of eight annas per tenancy under Sch. II (1) (b) of the Court Fees Act, if the superior Revenue authority is of lower standing than a Commissioner of a Division. If the authority is a Commissioner of a Division or the Director of the Department of Land Records, or if an application for revision is made to the Board under s. 104G (2), the fee will be one rupee per tenancy under Sch. II (1) (c) of the Court Fees Act: *Settlement Manual, 1908, Part I, Ch. VII, Rule 175, p. 54.*

[*Note*.—The Court-fee payable in Bihar on application under ss. 108 and 108A is 12 as.—See Appendix XIII at the end of this book.]

4. Correction of errors :—See notes under s. 108A.

5. Effect of bona-fide mistake. :—Where in a proceeding under s. 105 the Court decided that the tenant was settled *raiyat* but on account of a *bonafide* mistake the tenant was recorded as a *durari mourashi raiyat* in the ordering portion of the judgment, that a correction of the mistake could not be made under s. 108 but a notice to the tenant, and the latter is entitled in a regular suit to have a declaration that the order under s. 108 is without jurisdiction; and such a suit is not barred by s. 109: *Iswar Chandra Kamiruddin*, 28 C.W.N. 4 (notes). See notes under s. 105.

6. Appeal :—An order under s. 108 is liable to be challenged by way of appeal under sub-sec. (2) of s. 109A: *Parbati v. Tulsi*, 18 C.L.J. 125; *Dhakeswar v. Iswardhari*, 22 C.L.J. 57.

108A. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 108, correct any entry in such record-of-rights which is unsatisfied has been made owing to a *bona fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 109A, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Correction by Revenue-officer of mistakes in record-of-rights.

Headings of Notes.

NOTE.

SCOPE OF THE SECTION.

APPEAL.

COURT-FEES.

Note :—This section was inserted by s. 30 of Ben. Act I of 1908.

Select Committee's Report.

The Select Committee in their report on the Bill of 1906 said : "It has been pointed out to us that, under the law as it stands, the Revenue officer has no power to correct errors in the settlement record after final publication, unless they are made the subject of dispute under sec. 106. In the millions of entries which find place in a settlement record some clerical errors are bound to creep up in and it seems desirable to have a cheap and ready means of correcting them. We propose therefore that any Revenue officer specially empowered in this behalf by the Local Government should be able to correct *bonafide* mistakes, after giving due notice to all the parties concerned."

Mistakes other than obvious errors may also be corrected.

Inherent power of Settlement officer to correct clerical errors.

Mistake as to area.

Accuracy of record.

2. Scope of section :—S. 108A has a much wider scope than the correction of obvious errors or incidental slips in a record of rights ; it entitles the Settlement officer to correct the record where there has been a *bonafide* mistake ; such mistake need not necessarily be the mistake of the Settlement Officer ; it may very well be a mistake by one of the parties ; this section in substance authorises a Settlement officer to reconsider the matter on the merits : *Rajmohon v. Alam Gazi*, 17 C.W.N., 625, s.c., 16 C.L.J. 339 ; where a clerical or arithmetical error is to be corrected, the Settlement officer has inherent power to do the needful : *Ibid.* Where an appeal in proceeding under s. 105 was dismissed by the Special Judge, the question being as to the rate of rent and not to the area, and subsequently the Settlement Officer having discovered a mistake as to the area corrected it, *held* that the correction was not under s. 108A but under the inherent power of the Settlement Officer : *Ibid.* Every court has inherent power to take steps for the preservation of the accuracy of its records : *Baul Chand v. Sris Chandra*, 19 C.L.J. 251.

When the record of rights was accurately drawn but an interpolation and forgery were committed in the records, *held* that the Settlement Officer has inherent authority to set the record right : *Ibid.* ; this is not a case of correction of an entry made in the record of rights owing to a *bonafide* mistake : *Ibid.*

Second appeal.

3. Appeal :—An appeal against an order of the Settlement Officer purporting to act under s. 108A lies to the Special Judge ; a second appeal to the High Court if the Special Judge purports to act under s. 109A, sub-sec. (2) : *Baul Chand v. Sris Chandra*, 19 C.L.J. 251. Where a Settlement Officer purporting to act under s. 108A corrected an interpolation which had been made in the record of rights and the Special Judge on appeal set aside the correction, *held* that a second appeal lay : *Ibid.*

4. Court-fees :—The Court-fee payable under s. 108A was eight annas previously under rule 66 of the Local Government Rules. It has now been increased to twelve annas : See Government Notification in the Appendix IX. As to Court fees in *Bihar* see under the previous section heading No. 3.

Bar to jurisdiction of Civil Courts.

109. Subject to the provisions of section 108, a Civil Court shall not entertain any application concerning any matter which is or has already been the subject of an application made, suit instituted or proceedings taken under sections 105 to 108 (inclusive).

Headings of Notes.

1. AMENDMENTS.
2. INTERPRETATION OF THE SECTION IN VIEW OF THE AMENDMENTS.
3. INTERPRETATION OF THE SECTION: MEANING OF THE WORDS "SUBJECT OF AN APPLICATION MADE, SUIT INSTITUTED OR PROCEEDINGS TAKEN UNDER SECTIONS 105 TO 108 (BOTH INCLUSIVE)."
4. RIGHT OF SUIT: RES-JUDICATA.
5. DEFENCE.
6. LIMITATION.

I. Amendments:—S. 109 was introduced by Act III, B. C. of 1898. In this section, for the words and figures "or suit instituted, under section 105, section 106, section 107 or section 108," the words, figures and brackets "suit instituted or proceedings taken.....(both inclusive)" were substituted by Beng. Act I of 1907 and East Beng. I of 1908.

2. Interpretation of the Section in view of the Amendments:—Ss. 105 and 109 were inserted in the Bengal Tenancy Act Act III, B. C. of 1898; sec. 105A was subsequently introduced by s. 26 of Act I, B. C. of 1907 in Bengal and Behar, and by Act I (B. Council) of 1908 in East Bengal. This should be borne in mind in interpreting s. 109 as it at present stands. S. 109 was also amended by the said Acts of 1907 and 1908; and, amongst others, the alterations made are as follows:—
 The words and figures "sections 105, 105A, 106, 107 and figures "section 105, sect. 106, 107, or section 108 (both inclusive)" were substituted for the words "sections 105, 106, 107, or section 108 (both inclusive)".

S. 109 was first introduced by Act III B. C. of 1898.

It thus appears that the words in s. 109 as to bar to jurisdiction of Civil Courts ("a Civil Court shall not entertain any application or proceeding in relation to any matter which is or has already been the subject of an application") should now bear an interpretation different from that which it bore before the introduction of s. 105A and amendment of s. 109 in 1907 and 1908 in Bengal and East Bengal respectively.

Effect of amendment: Interpretation.

Illustrations and Explanations.

(1)

A tenant brought a suit in the year 1900 (i.e. after the passing of Act III, B. C. of 1898, but before amendment by the Acts of 1907 and 1908) for settlement of fair and equitable rent under s. 105; the suit was dismissed upon the tenant defendant's holding which had been assessed on the record of rights as liable to assessment of rent. The tenant then brought a suit subsequently in the Civil Court for a declaration that his holding is *nishkar* or *lakheraj* (i.e. rent free); s. 109 is not within the jurisdiction of the Civil Court to entertain the suit, the question being that it was not within the scope of s. 105 before 1898. The question of *lakheraj* and rent was to be assessed on the record of rights in the Record-of-Rights (s. 105A had not then been introduced).

Illustrations.

(2)

A brought a suit in the year 1910 *i.e.* after the passing of Act I B. C. of 1907 and Act I. E. B. A. of 1908 for settlement of a fair and equitable rent of a holding which had been recorded as a holding liable to assessment of rent. On account of the introduction of s. 105A, it was within the scope of s. 105 for the Revenue officer to determine the status of the tenant defendant whether he sets it up or not. Rent is assessed and then the tenant brings a suit in the Civil Court for a declaration that he has *lakheraj* or *niskar* (rent-free) title ; s. 109 is a bar to such a suit, the reason being that according to s. 109 the matter as to the tenant's status of alleged title had already been the subject of an application under s. 105 in as much as by the introduction of s. 105A, such a question could have been decided under s. 105. It should further be mentioned that s. 109 also underwent an alteration and s. 105A was also included in s. 109. S. 109 as it originally stood contained the figures and words "section 106, section 107 or section 108" but the alterations which were made by Act I, B.C. of 1907 and Act I, E. B. A. C. of 1908 by inserting the figures and words "sections 105 to 108 (both inclusive)".

Interpre-
tion of the
words "sub-
ject of an
application,
etc."

3. Interpretation of the section: meaning of the words "Subject matter of an application made, suit instituted proceedings taken under ss. 105 to 108 (both inclusive)."

There was a conflict of authority as to the meaning of the words. To properly understand the question it is necessary to state when a proceeding is taken under either of the sections 105 to 108 by the party

- (i) may withdraw the application or suit with liberty to bring a fresh one,
- (ii) may withdraw the same without such liberty,
- (iii) may by default get the application or suit dismissed,
- (iv) or the application or suit might be decided by the court.

In the 4th case no difficulty arises ; for a fresh application is apparently barred.

But the difficulty arises in cases (i), (ii) and (iii), *i.e.* if an application or suit is withdrawn either with liberty or without to bring a fresh one or the case is dismissed for default, can it be said that the civil suit is barred by s. 109, or in other words, that the matter was the subject of application or suit.

Full Bench.

In regard to case No. (i) the following question was referred to a Full Bench :

When an application under s. 105 of the Bengal Tenancy Act for settlement of rent is withdrawn with liberty to bring a fresh suit, whether a suit for enhancement of rent is barred by the provisions of s. 109 of the Bengal Tenancy Act.

It was held by the majority of the Full Bench in the case of *Purna v. Narendra*, 52 Cal. 894, s.c., 29 C.W.N. 755 ; s.c. 456* that the civil suit was barred—and that it was quite immaterial whether the suit was withdrawn or not.

Suhra-
wardy J.

Suhrawardy J., who was a member of the Full Bench, dissented from the view taken by the majority, and he held that by

* The names in 41 C.L.J., 456 are *Becharam v. Purna*.

of the application with liberty to bring a fresh one it was no longer the subject matter of application under s. 105.

It is submitted with great respect to the majority of the Judges who decided the Full Bench case that the view taken by Suhrawardy J. seems to be the sound one. The subject matter of an application or suit which is not decided by the Court for whatever reason cannot be considered to be the subject of the application or suit. It ceases to be the subject. For example, if a Court deciding a case under s. 105 is invited to decide certain matters, of its own motion, and leaves a question open can it be said that the parties are debarred from raising that question in a subsequent suit; the plain answer should be "no."

The decision of the majority of the Full Bench should how- **Present law.**
ever be considered to be the present law so far as regards the Calcutta High Court is concerned.

The case of *Saroj v. Umed*, 25 C.W.N. 1022, s.c., 35 C.L.J. 19 Cases-over-
was over-ruled by the Full Bench and the cases of *Abeda Khatun v. ruled and*
Majub Ali, 48 Cal. 157; s.c., 24 C.W.N. 1020; s.c., 33 C.L.J. 304 approved.
and *Sasi v. Salim*, 50 Cal. 126; s.c., 27 C.W.N. 987 were approved.

See notes under the next heading.

4. Right of suit: Resjudicata :—In the case of *Nawab S. 109 not a*
Bahadur of Murshidabad v. Ahmad Hossain, 44 Cal. 783, s.c., 21 bar to a suit
C.W.N. 1004, s.c., 25 C.L.J. 556, it was held that s. 109 is no bar where the
to a suit in a Civil Court for declaration of a tenant's status, which question of
was not raised in a proceeding under s. 105 by virtue of which rent status was
was settled; it was further held that the introduction of s. 105A not raised in
had made no change in the law in this respect as laid down in a proceeding
Pandab Dowari v. Ananda Kissors, 14 C.W.N. 897, s.c., 12 C.L.J. under s. 105.
195, *Sashi Bhusan v. Eshabar*, 19 C.W.N. 636 and *Sashi Bhusan v. Reason of*
Aswini Kumar, 19 C.W.N. 637 (foot note). The reason of the deci- the decision.
sion in the case cited above (*Nawab Bahadur of Murshidabad v. Ahmad Hossain*) as explained by their Lordships is that s. 109 requires that the Civil suit should have for its subject a matter which has already formed and not one which might have formed the subject of an application under s. 105.

During the settlement proceedings certain holdings were Assessment
recorded in the record-of-rights as rent paying, and liable to assess- in s. 105
ment of rent. Thereafter the landlord applied under s. 105 of the proceeding
Bengal Tenancy Act, to have fair and equitable rent settled in as rent-
respect of these holdings. The tenants did not appear in those paying.
proceedings which were decided *ex parte* against them. The tenants Suit in
then brought suits against the landlord for a declaration that they Civil Court
were *lakherajdars* in respect of the lands in suits, and for a further that land
declaration that the lands did not appertain to the *jamas* as alleged is *lakheraj*.
by the landlord, and that the decisions of the Revenue officer were
not binding upon them, held that s. 109 of the Bengal Tenancy
Act was no bar to the maintainability of the suits: *Priyambada Debi v. Priyanath*, 30 C.W.N. 826, s.c., 43 C.L.J. 327. (Suhrawardy and Mukerji, JJ.). [*Nawab Bahadur of Murshidabad v. Ahmad*, 44 Cal. 783, s.c., 21 C.W.N. 1004, s.c., 25 C.L.J. 556 followed. *Purna v. Narendra*, 52 Cal. 894, s.c., 29 C.W.N. 755, s.c., 41 C.L.J. 456 (F.B.) and *Apurba v. Shyama*, 24 C.W.N. 223 distinguished.]

The decision of the Full Bench in *Purna v. Narendra*, 52 Cal.

894 is not intended to give such a wide meaning to the words of s. 109 of this Act, as to lay down that any matter which though not directly the subject matter of an application before the Revenue officer under s. 105 was indirectly or impliedly involved in the determination of that application should be taken as a matter which was the subject of the application made before the Revenue officer : *Ibid.*

Consolidation of *jamas*.

The defendant tenant held 13 *jamas* under the plaintiff. There was settlement and survey under the Bengal Tenancy Act and the record was prepared by the Settlement officer and these 13 *jamas* were amalgamated and the rent shown to be Rs. 170 odd. After the final publication of the record an application was made by the landlord under sec. 105 of B. T. Act for assessment of fair and equitable rent. The main objection of the tenant defendant in that proceeding being that he did not hold one *jama* but 13 separate *jamas* under the landlord and the Settlement officer was wrong in consolidating those *jamas* without his consent. That proceeding was still pending. In the meantime the landlord instituted a rent suit with reference to one of those holdings. The munsiff dismissed the suit, holding that the suit was not maintainable under sec. 109 B. T. Act, *held* that the suit for rent was maintainable, sec. 109 of the B. T. Act not being a bar: *Sarat Chandra v. Monmohon*, 46 C.L.J. 46. (Majumdar, J.). [*Nawab Bahadur of Murshidabad v. Ahmad Hossein*, 44 Cal. 783, s.c., 21 C.W.N. 1004, s.c., 25 C.L.J. 556, followed: *Apurba Krishna Roy v. Shyama Charan*, 24 C.W.N. 223, not followed.]

Rent suit pending s. 105 proceeding.

Suit for rent.

Where two suits were instituted claiming rent for two separate holdings and the defence taken was that there was a single holding with a much lower rent as shown in the record-of-rights and that the suits were barred under section 109 being the subject matter of previous proceedings under Ss. 105 and 106 which were dismissed for default: *held*, that a suit for rent is for relief against an alleged grievance which the plaintiff is entitled to institute under the general law, and it is not concerning any matter which may form the subject of an application or suit under section 105 or 106. That the dismissal for default not being an adjudication on the merits did not amount to a decision so as to operate as *res judicata* and a bar to the suits. *Mahendra Nath v. Prabal Chandra*, 53 Cal. 475. (Suhrawardy and Mukerji, JJ.). The cases of *Purna Chandra v. Narendra Nath*, 52 Cal. 894 (F.B.), s. c., 29 C.W.N. 755; and *Parbati v. Tulsi Kapri*, 18 C.W.N. 604 referred to.

Lands, if included in one *jama* or not.

There was a record of rights in which the disputed lands were recorded as forming part of one *jama*. The landlord then made an application for increase of rent under section 105. There was a decision and the rent was increased. Then a suit was brought for a declaration that the record of rights recording the two lands in two schedules as appertaining to one *jama* was erroneous, *held* the question whether the lands given in the two schedules of the plaint were included in one *jama* or not was not a matter about which the application under s. 105 was made. It may be that the area of the land for which application was made for increase of rent by the landlord was taken into consideration. But the question in dispute in the suit cannot be said to be a matter which was subject of the application under section 105: *Basantā Kumari v. Benimadhab*,

95 I.C. 788, s. c., A.I.R. (1926) Cal. 1058 (B. B. Ghose and Panton, JJ.).

S. 109 is a bar only in respect of matters which are legally the subject matter of the investigation under Ch. X: *Aswini Kumar v. Saroda Charan*, 24 C.L.J. 79; suits for declaration of title and for recovery of possession are entirely foreign to the jurisdiction of a Revenue officer under s. 106: *Ibid*; see notes under s. 106 where this case has been discussed.

A Revenue-officer when hearing an application for settlement of rent, has jurisdiction to enquire as to whether a tenant belongs to the class to which he was shown in the record-of-rights; it is not competent to a Civil Court under s. 109 to enquire into the status of a tenant, which was the subject of enquiry before a Revenue-officer: *Bepin Krishna v. Hari Das*, 27 C.L.J. 210.

The decision of a Revenue-officer in a proceeding initiated by the landlord under s. 105 (before amendment by Act I B.C., of 1907), as to what is fair and equitable rent is no bar to a suit by the tenants for a declaration that the lands in respect of which the rents have been settled were *lakheraj* or were held at fixed rents. *Sashi Bhusan v. Sheikh Eshabar*, 19 C.W.N. 636; s. 109 is no bar as it was not competent to the Revenue officer in a proceeding under s. 105 to go behind the finally published record-of-rights: *Ibid*. By the introduction of s. 105A it is now competent to a Revenue officer in a proceeding under s. 105 to go into the question of *lakheraj* or as to the status of tenant; so it is submitted that now s. 109 will be a bar to such a suit.

It has been accordingly held by N. R. Chatterjea and Duval JJ., in the case of *Apurba Krishna v. Shyama Charan*, 24 C.W.N. 223, that s. 109 is bar to a civil suit by a person for declaration of *nishkar*—*lakheraj* title when in a proceeding under s. 105 the same question arose and rent was assessed on account of the failure of the defendant in the proceeding under s. 105 to adduce evidence in support of his allegation of *lakheraj* title.*

It was held by Mookerjee and Fletcher J.J., in the case of *Abeda Khatun v. Majubali Choudhury*, 24 C.W.N. 1020, that where an application for enhancement of rent under s. 105 on the ground, *inter alia*, of increase in area, was dismissed for non-prosecution and a suit for enhancement on the same ground was subsequently brought, the suit was barred by s. 109.

But it has been held in the case of *Bibi Salcha v. Antu Ram*, 43 I. C. 972 that a proceeding under s. 106 which is dismissed for default does not operate as a bar to a subsequent suit by virtue of the provisions of s. 109; and that s. 109 in order to operate as a bar to a subsequent suit presupposes the existence of a decision by the Settlement officer on the merits of the claim.

In the cases of *Cheoditti v. Tulsi Singh*, 40 Cal. 428, s.c., 17 C. W.N. 467, and *Kamini Sundari v. Abdul Habin*, 28 C.L.J. 254 it was held that an application which had been made under s. 105 and subsequently withdrawn without liberty reserved to make fresh application was to be treated as one never made, and consequently a

* It was also held that the Revenue-officer had recorded an issue within the meaning of s. 107.

Civil suit upon the same cause of action was not barred. But these cases were in effect dissented from by Mookerjee C.J. and Fletcher J., in the case of *Abeda Khatun v. Majubali Chaudhury*, 24 C.W.N. 1020, Mookerjee C.J., after referring to the above two cases says:— "In our opinion these cases are clearly distinguishable, even if we assume that they were correctly decided. An application which has been made, whether it is withdrawn or whether it is dismissed for non-prosecution, is nevertheless an application made within the meaning of the provisions of sec. 109. We are clearly of opinion that the provisions of that section should be strictly enforced and not whittled down, as appears to be the effect of the two decisions mentioned." Where it was decided in a case under s. 105 that there was no relationship of landlord and tenant, that decision operates as *resjudicata* in a suit for ejectment by the landlord: *Mahendra Narayan v. Girish Chandra*, 3 Pat.L.J. 379.

Where an application was made for enhancement of rent and withdrawn with liberty to bring a fresh suit, *held* that a suit in the civil court upon the same cause of action is not maintainable in view of the provisions of s. 109: *Sasikanta v. Salim*, 50 Cal. 626, s. c., 27 C.W.N. 987 (B. B. Ghose, J., Walmsley J. concurring). There is no provision in the B. T. Act that an application made under s. 105 and subsequently withdrawn has the effect that such application has never been made: *Ibid.* [The following cases were distinguished: *Saroj Kumar v. Umed Ali*, 25 C.W.N. 1022, s. c., 35 C. L.J. 19. *Abeda Khatun v. Majub Ali*, 48 Cal. 157, s. c., 24 C.W.N. 1020, s. c., 33 C.L.J. 304.]

Having regard to the conflict of decisions on the point the question was referred to the Full Bench as to whether a suit in a Civil Court was barred in case an application under s. 105 is withdrawn with liberty to bring a fresh suit and it was held by the majority of the Full Bench that the suit was barred: *Becharam v. Purna*, 52 Cal. 894, s. c., 29 C.W.N. 755, s. c., 41 C.L.J. 456 (F.B.) and the majority of the Full Bench approved of the case of *Abeda Khatun v. Majubali*, 48 Cal. 157; and *Sasi v. Salim*, 50 Cal. 626. See notes under this section under the previous heading.

"In our opinion it is obviously clear what was the meaning and intention of the Legislature in enacting s. 109. It was to avoid conflicts arising between the Revenue courts on the one side and the Civil Courts on the other; and when an issue is decided by a Revenue Court having jurisdiction, as in this case, under s. 105, the decree having the force and effect of a decree of a Civil Court, an action was capable of being entertained by a Civil Court in connection with any matter decided in the proceeding under s. 105." *Ramdayal v. Genda Tewari*, 1 Pat.L.J., 479 at p. 481; where the status of the plaintiff was decided in a proceeding under s. 105, the same question cannot be re-opened in a regular suit: *Ibid.*

Meaning
and intention
of the
Legislature
in enacting
s. 109.

S. 105.

A suit brought to impugn that which was the subject matter and the result of the proceedings taken under s. 105 is not maintainable in view of s. 109: *Sheodhani v. Beni Pershad*, 16 C.L.J. 67.

The effect of s. 109 which lays down a rule of evidence is not to over-ride the rules of *res judicata* which are of general application *Pudmanunda v. Ghanashyam*, 32 Cal. 336, s. c., 1 C.L.J. 134; the presumption under s. 109 in favour of the accuracy of an undisputed

entry as to the rate of rent is sufficiently rebutted by the decree in a contested suit *in the parties* shewing a different rate: *Ibid.*

Where a tenant in his appeal before the Special Judge against an order for the settlement of rent purporting to have been made under s. 102 of the Bengal Tenancy Act did not take the objection that the settlement of rent was made contrary to the provisions of that section and without jurisdiction—and the decision of the Settlement-officer was affirmed by the Special Judge, *held* that the matter was *res-judicata* and would not be re-opened in the Civil Court owing to the operation of ss. 107, 109 and 109A of the Act: *Mohim Chandra v. Kalitara*, 11 C.W.N. 939.

See notes under s. 107.

S. 109 clearly indicates that s. 109 did not provide an exclusive remedy against erroneous entries in the record of rights: *Pandab Dowari v. Ananda Kisan*, 14 C.W.N. 897, s.c., 12 C.L.J. 195; see also *Mukii Nath v. Rameswar*, 15 C.W.N. 57.

No civil suit lies at the instance of the tenant in regard to a rate of rent settled under s. 104 (2) in a proceeding under s. 103; the remedy is by way of an appeal to Special Judge: *Durga Charan v. Hateen*, 29 Cal. 252.

A suit for assessment of rent is maintainable in a civil court: s. 109 is no bar to such a suit: *Berhumdut v. Ramji Ram*, 18 C.W.N. 466.

S. 109 is no bar to a suit for a declaration that proceedings under Chap. X of the Act were vitiated by fraud: *Nawab Bahadur of Murshidabad v. Ahmad Hossain*, 44 Cal. 783, s.c., 21 C.W.N. 1004, s.c., 25 C.L.J. 556.

A civil suit lies to correct an entry in the record-of-rights prepared under the provisions of the Bengal Tenancy Act. The fact that a proceeding under s. 106 of the Act for rectification of the entry was commenced and withdrawn without leave to institute fresh proceedings, does not make the suit incompetent: *Mahommed Ayejuddin Mia v. Prodyot Kumar Tagore*, 48 Cal. 359, s.c., 25 C.W.N. 13, s.c., 61 I.C. 503.

Where it was impossible for the Settlement Officer to assess a fair rent under s. 105 without ascertaining the area, *held* that s. 109 was a bar to a subsequent suit for abatement under s. 52 in as much as the question of area was one of the matters which was the subject of the proceeding under s. 105: *Kesho Prasad v. Bhagwat*, [1924 Pat.] p. 18.

In an application by the landlord under s. 105 of the Bengal Tenancy Act for enhancement of rent on the ground of rise of prices of staple food crops [s. 30 cl. (b)], the rent was settled; subsequently the tenant brought a suit for abatement of rent under s. 52; *held* that s. 109 was no bar to the maintainability of the suit: *Kesho Prasad v. Bhagwat*, 67 I.C. 710, (Das J.); the case of *Nawab Bahadur of Murshidabad v. Ahmad Hussain*, 44 Cal. 736, s.c., 21 C.W.N. 1004, s.c., 25 C.L.J. 556.

A previous dismissal of an application by the tenant for an abatement of rent on the ground that there had been a decrease in area does not debar him in a subsequent rent suit from contending that there had been a decrease in area and hence he was entitled

to an abatement of rent: *Benga v. Bejoy*, 91 I.C. 738, s.c., A.I.R. (1926) Cal. 513.

Ejection
of a trans-
feree.

Where a non-transferable holding had been purchased by a person and he was entered in the record-of-rights as a tenant, and subsequently the landlord brought a suit under s. 106 for correction of the entry and the suit was dismissed, *held* in a subsequent suit by the landlord to eject the purchaser, that the decision under s. 106 was *res judicata* and final: *Jatindra Nath Chowdhury v. Azizur Rahaman Shaha*, 50 Cal. 79.

Declaration
of rent-free
title.

S. 109 is a bar to a suit for declaration of plaintiff's rent-free title when a suit under s. 106 for correction of the entry after establishment of his rent-free title was dismissed for default: *Apurba Krishna v. Atarmani*, 64 I.C. 889.

Compromise—Res-
judicata.

Where a decree for rent is passed at a rate lesser than the rate settled by a compromise under s. 105, *held* that the decision in the Civil suit does not operate as *res judicata* in view of s. 109: *Ravaneswar v. Younus Momin*, 6 Pat.L.J. 588, s.c., [1922 Pat.] p. 68, s.c., 65 I.C. 474. See notes under s. 105.

Defence to
an action
not a bar.

5. Defence :—S. 109 is a bar to the entertainment of an application or suit and not the entertainment of a defence to an action: *Rajendra Narain v. Kalim*, 49 Cal. 857. The case of *Apurba Krishna v. Shyama Charan*, 24 C.W.N. 223 was distinguished, in which case it was decided that a suit by a person for a declaration of *lakhiraj* title was not entertainable in view of a decision under s. 105 where his rent was settled on the application of the landlord and where the plea of *lakheraj* had been taken though not decided in express terms.

6. Limitation :—See notes under s. 103B, heading no. 9 and s. IIIA.

Appeals
from deci-
sions of
Revenue-
officers.

109A. (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 section 105 to 108 (both inclusive).

XIV of 1882.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections 105 to 108A (both inclusive), 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 in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of the first section of the Chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which

rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

Headings of Notes.

1. AMENDMENTS.
2. POWER OF JUDGE TO REVIEW HIS JUDGMENT.
3. APPEAL : SECOND APPEAL : WHERE APPEAL LIES AND WHERE NOT.
4. LIMITATION : FILING OF APPEAL.
5. APPEAL IN CASES WHEN A CASE UNDER S. 106 IS TRANSFERRED TO CIVIL COURT.
6. REVISION BY HIGH COURT.

1. Amendments :—In sub-sec. (2) after the figures "108", the letter "A" was inserted by Bengal Act I of 1907 and E. B. Act I of 1908.

2. Power of Judge to review his judgment :—See notes under s. 108.

3. Appeal : Second Appeal : Where appeal lies and where not :—An appeal does not lie from an order of remand passed by a Special Judge under the Bengal Tenancy Act : *Mathur v. Chandra Tara Sanker*, 7 C.W.N. 440 ; *Mathura v. Basanta*, 16 Cal. 510 ; *Debi Prasad v. Official Trustee*, 37 C.L.J. 314.

The words 'a decision settling a rent' do not in our opinion mean and include any decision upon the question what is or what ought to be the rent. They mean only a decision settling a rent in the sense of fair and equitable rent in place of the existing rent, and the words do not include a decision determining what the existing rent is. This is clear in our opinion from sections. 104 to 109A, if read together. The words settling a rent, are in our opinion, used in a technical sense and not in what might be their ordinary signification : *Per Banerjee and Harington, J.J., Ramani Pershad v. Mahanth Adaitya Gossain*, 31 Cal. 380 ; the principle in the case of *Mathura Mohon v. Uma Sundari*, 25 Cal. 34, was followed.

The words "not being a decision settling a rent" in s. 109 (3) refer not only to a decision by which existing rents are varied but also to a decision by which existing rents are maintained as fair and equitable ; the words "settle a fair and equitable rent" in s. 105 (1) do not exclude a case in which the existing rent is not varied : *Pameswar v. Bhoobaneswar*, 4 C.L.J. 138 ; where in a proceeding under s. 105 the rent was not enhanced but the existing rent was maintained, held that no second appeal lay : *Ibid.* But where the decision of the Judge does not settle a fair and equitable rent but merely proceeds on the ground that there was no excess land and therefore no rent to be settled an appeal lies : *Raj Kumar v. Ram* 5 C.L.J., 538. (See also *W. M. Grant v. Ram Rekha*, 14 C.L.J. 110.

Where on a consideration of the application for settlement of fair and equalable rent as a whole, the court is not satisfied that the only matter dealt with by that application is settlement of rent within the meaning of those words in s. 109A of the B. T. Act, there is a right of second appeal: *Sibakumari v. Doshi Ghosain*, 46 C.L.J. 555.

Area.

An appeal lies to the High Court from a decision of the Special Judge fixing the area for which the tenant must pay rent in as much as it is not a "decision settling a rent" from which an appeal is barred by s. 109A; but no appeal lies from that part of the decision which relates to the rent that ought to be assessed upon the land held by the tenant: *Akbar Ali v. Hira Bibi*, 16 C.L.J. 182; the cases of *Mathura Mohon v. Uma Sundari*, 25 Cal. 34 and *Raj Kumar v. Ram Lal*, 5 C.L.J., 538 were followed; the case of *Rameswar v. Bhoobaneswar*, 4 C.L.J. 130 was not followed.

An appeal lies where the questions are as to the extent of the area and enhancement: *Midnapur Zemindary Co. v. Sridhar*, 49 Cal. 866, s.c., 36 C.L.J. 96.

Where rent is not settled for want of excess land.

Where in a proceeding under s. 105 the District Judge on appeal did not settle a fair and equitable rent on the ground that there were no excess lands and accordingly there were no lands in respect of which he might be called upon to settle a fair and equitable rent, held that a second appeal lay as a decision of this description was not a decision settling a rent: *Raj Kumar v. Ram Lal*, 5 C.L.J. 538.

Amount of enhancement.

"It appears to me that part of the Special Judge's decision which determines the amount of enhancement is "a decision settling a rent" within the meaning of sec. 109A of the Bengal Tenancy Act and therefore no appeal lies against it": *Sajiwan Mahto v. Gulab Chand*, 1 Pat.L.J. 409. The expression "settling a rent" includes enhancement and therefore s. 109A bars a second appeal when rent is enhanced: *Rampat Mahto v. Ram Gulam*, 20 C.W.N. 48 (notes).

Enhancement.

Where in a proceeding under s. 105 a question arose as to whether the rent was liable to enhancement, a second appeal lies under s. 109A: *Govinda v. Manmatha*, 62 I.C. 677.

Illegally settling a rent.

Where a Special Judge acted illegally in settling the rent, held that his decision is not open to second appeal: *Mahabir v. Shat Malikuddin*, 38 I.C. 32.

S. 584 of Act XIV of 1882.

Clause (3) of s. 109A makes applicable to an appeal to the High Court from the decision of a Special Judge the provisions of Chapter XLII of the Code of Civil Procedure 1882, and the right of appeal is therefore limited by the provisions regulating the right of appeal to the High Court from a subordinate court contained in s. 584 of the Code, the power as to the regulation of rents being dependent and consequent upon alteration of the judgment on specified grounds, and only such grounds are permissible: *Nafar Chandra Pal Chowdhury v. Shukur Sheik*, 46 Cal. 189 (P.C.), s.c., 23 C.W.N. 345.

Question as to whether S. 188 applies.

A second appeal lies against a decision in a proceeding under s. 105, when the decision is regarding the maintainability of the suit: *Mahadheva v. Awadh*, 65 I.C. 349; in this case the lower appellate Court decided the question as to whether s. 188 was a bar to institution of the proceeding.

In a proceeding under s. 105 a decision upon the question

status is liable to be challenged by way of second appeal: *Sarat Chandra v. Taraprasanna*, 36 C.L.J. 333, s.c., 70 I.C. 437. Question of status.

Where a question as to whether a tenant is a fixed raiyat cannot be urged in second appeal to the High Court when there was no appeal to the Special Judge upon that question: *Raja Singh v. Kishun Behari*, 41 I.C. 499.

An appeal lies against an original order of a Special Judge refusing to set aside an abatement of appeal, and s. 109A is no bar: *Krishna Das v. Samsan*, 37 C.L.J. 139. The case of *Monmatha v. Gadadhar*, 45 Cal. 638 was followed. Original order of Special Judge.

An appeal against an order of the Settlement officer purporting to act under s. 108A lies to the Special Judge and a second appeal to the High Court if the Special Judge purports to Act under s. 109A, sub-sec. (2): *Baul Chand v. Siris Chandra*, 19 C.L.J. 251. S. 108A.

No second appeal lies from the decision of the Settlement-officer settling rent: *Shambhu Chandra v. Purna Chandra*, 35 Cal. 176: *Ram Bishen v. Rajab Ram*, 33 Cal. 837. The words "not being a decision settling a rent" in sub-sec. (3) include cases where existing rents are sought for, amongst other grounds for increase of area, in such a case no second appeal lies: *Raneswar v. Bhoobaneswar*, 4 C.L.J. 138. See also *Shewbarat v. Nirpat*, 16 Cal. 596; *Lala Kirat Narayan v. Palukdhari*, 17 Cal. 326. No second appeal from an order settling a rent.

In a proceeding under s. 105 for settlement of rent where upon the application of the tenant the Settlement-officer altered the entry in the record-of-rights recording as *lakheraj* lands which had been put down as *mal*, a second appeal was entertained at the instance of the appellant: *Shambhu Chandra v. Purna Chandra*, 35 Cal. 176: s.c., 12 C.W.N. 128; s.c., 7 C.L.J. 103. Lakheraj or mal.

S. 109A is no bar to an appeal in a case of a settlement of rent in which a question of jurisdiction is definitely raised, (the question of jurisdiction in this case was that the Settlement Officer had no jurisdiction) as the holding was a homestead one and as such the B. T. Act did not apply: *Ramdas v. Biprodas*, 19 C.W.N. 35. Question of jurisdiction.

A Special Judge on appeal against a decision under s. 105 dismissed the application on the ground that it had not been shewn that the plaintiff's claim to assess the land to rent had been made within the period permitted by the general law of limitation, held that as the decision was not a decision settling a rent a second appeal lay: *Preobast Narain v. Mural Bei*, 13 C.W.N. 204 (notes). Question of limitation.

There is no right of second appeal in proceeding for settlement of rent under s. 105: where the Settlement officer as well as the Special Judge tried matters coming under ss. 105 and 106 without discriminating them in their judgments, a second appeal lies: *Kali Kishore v. Gopi Mohun*, 9 C.L.J. 574. A Special Judge has jurisdiction to hear appeals from the decision of a Settlement officer in his district regarding dispute and settlement of rent relating to land out-side the district but included in an estate recorded in the Collectorate register of the district: *Ibid*. Ss. 105, and 106. Jurisdiction.

No appeal lies to the High Court from the decision of a Special Judge under s. 109A sub-sec. (3) from the finding that the present rent must be maintained in as much as the plaintiff failed to prove Where present rent is maintained.

any excess, as it was a decision settling a rent: *W. M. Grant v. Ram Rekha*, 14 C.L.J. 110.

Where Special Judge confirms first court's decision as to status of tenant.

Where defendants were recorded as occupancy raiyats, and the landlord having made an application under s. 105 for settlement of rent the tenants set up that they were raiyats at fixed rates, the Settlement Officer did not give effect to their contention, and the order being appealed against the Special Judge upheld the decision of the first court, *held* on second appeal that no appeal lay: *Naimuddin v. Ram Rangini Dasi*, 13 C.W.N. 220.

S. 50.

Where in a proceeding under s. 105 the Settlement Officer held that the rent was not enhancible by virtue of s. 50 and on appeal the Settlement officer held that the rent was enhancible, *held* that a second appeal lay: *Bishesur v. Rajendra Kumar*, 18 C.W.N. 949.

Liability to pay rent.

It was held by Chapman J., in the case of *Pramatha v. Kaligunga*, 19 C.W.N. 45 (notes) that the question whether the land was liable to payment of rent or not, was a question which required to be and ought to have been determined in the proceedings under s. 105.

Measurement.

Power of Appellate Court:—A special Judge in an appeal arising not of a proceeding under s. 105 is entitled to allow a deduction on the measurement on the ground that the measurement was not a scientific one: *The Midnapur Zemindary Company Limited v. Kristo Prosad*, 46 I.C. 544.

As to validity of 10 p.c. deduction from area ascertained by measurement:—see notes under s. 52 heading No. 28 p. 343.

Appeal from order.

S. 588 C. P. C. (Act XIV of 1882) does not apply to orders under s. 106 of the Bengal Tenancy Act; s. 109A of the Bengal Tenancy Act limits the power of the High Court to the hearing of second appeals and not appeals from orders either under s. 558 or s. 560 C. P. C. (Act XIV of 1882): *Mathuranath v. Basunta Kumar*, 36 Cal. 510.

Appeal dismissed for default.

An appeal lies from an order refusing to rehear an appeal dismissed for default, even though such appeal has been preferred under s. 109A, sub-sec. (2) in a suit under s. 106: *Manmatha Nath v. Gadadhar*, 45 Cal. 638, s. c., 28 C.L.J., 155, the case of *Mothur Chandra v. Tara Sankar*, 7 C.W.N. 440 was distinguished.

S. 52.

When in a proceeding under s. 105 a claim for additional rent under s. 52 is refused by the Special Judge on the ground that the excess area alleged is not proved, a second appeal is not barred by s. 109A: *Jnanada Sundari Chowhurani v. Amudi Sarkar*, 43 Cal. 603 (F.B.), s. c., 20 C.W.N. 428, s. c., 23 C.L.J. 281; if in any proceeding under s. 105 questions under s. 105A have been investigated and determined, the order of the Revenue-officer, though in form an order which settles a fair and equitable rent, does in substance embody a decision of questions within the scope of s. 105A, and consequently of s. 106; such a question is liable to be challenged by way of second appeal to the High Court and s. 109A is no bar (*Pér Mookerjee J.*): *Ibid.*

Questions under s. 105A.

The decision of the lower appellate Court fixing the rent payable by the tenant is not appealable. But an appeal lies where the question raised relates to the competency of the Court to settle rent: *Ra Sundar v. Satindra*, 85 I.C. 190, s. c., A.I.R. (1926) Cal. 85 (Suhrawardy and Cuming J.J.).

Plaintiff commenced ~~proceedings~~ under sec. 105 for settlement of fair and equitable rent in respect of certain lands. The defendants contested the case on the ground that they held the lands in dispute on a fixed rental as a permanent, heritable, transferable and *mokurari* tenure. The Settlement officer held that the defendants were entitled to the presumption under sec. 50. Against this decision an appeal was preferred to the Special Judge who held that the holding in suit was a non-mokurari tenure and liable to enhancement of rent and he remanded the case to the lower Court for assessment of fair and equitable rent, *held* that the issue whether the defendants were non-mokurari tenure-holders or they were permanent tenure holders paying rent which is fixed in perpetuity, being the cardinal issue in the proceeding, the order of the Special Judge was a decision under sec. 109A and, therefore, second appeal was competent : *New Beerbhoom Coal Co. v. Jyoti Prosad*, 31 C.W.N. 936 (Panton and Mitter J.J.). It was *held* further, that with regard to the question whether the tenure was liable to enhancement or not, the decision of the Special Judge was a final decision and the order was final and not interlocutory and, therefore, right of appeal from this order would not cease with disposal of suit : *Ibid*.

Presump-
tion under
s. 50.

4. Limitation : Filing of appeal :—The schedule prepared in a proceeding under s. 105 under Rule 63 sub-rule (g) of the Statutory Rules framed by the Bengal Government is a decree and in calculating the period of limitation for preferring an appeal time should be taken as running from the date of the schedule : *Dharani Kanta Lahiri v. Amir Sheik*, 22 C.W.N. 20 (notes portion) ; this case has been fully reported in 44 I.C. 152.

Schedule—
a decree.

The period of limitation for preferring a second appeal against the decision of a Special Judge is ninety days from the date of the decision in a case under s. 105 and 105A and not from the date on which a memorandum is added to the decision stating the amount of costs incurred in the case : *Sheikh Golab v. Janki Koer*, 5 Pat. L.J. 472.*

5. Appeal in cases where a case is transferred to Civil Court :—Where a suit under s. 106 is transferred to a Civil Court and decided by a Munsiff, the appeal does not lie to the Special Judge, and the competency of the Civil Court is to be ascertained under the Civil Procedure Code, and the attributes of the competency of the Civil Court would follow from the transfer, and as such the Subordinate Judge is competent to hear the appeal : *Kshirod Govinda v. Gour Gopal*, 27 C.L.J. 281.

Effect of
transfer of
case to Civil
Court.

6. Revision by High Court :—The Court of Special Judge is a Court subordinate to the High Court and the High Court has power to interfere under s. 15 of the Charter in cases where no second appeal lies : *Upadhaya Thakur v. Persidh Singh*, 23 Cal. 723.

* In an appeal to the Special Judge in a proceeding under s. 105 and s. 105A after the decision was passed on the 4th February, 1919, the Special Judge passed an order on the 4th May 1919 as follows : "Respondent to pay Rs. 13-8-0 as costs of this appeal to appellant."

*Part IV.—Supplemental Provisions.**Bengal and Bihar.**East Bengal.*

Power of
Revenue
officer to
give effect to
agreement
or compro-
mise.

109B. (1) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant; but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until

109B. In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful; but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

There are no sub-secs. (2) and (3) in East Bengal.

he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—*A*, a proprietor, agrees that *B*, his tenant, shall be recorded as an occupancy-raiyat: this affects the rights of the tenants of *B*. The Revenue-officer must, under sub-section (3), inquire whether *B* is a tenure-holder or a raiyat, as defined in section 5. If he finds on the evidence that *B* is a raiyat, he may give effect to the agreement, but shall not do so if he finds that *B* is a tenure-holder.

Notes :—The enquiry under sub-sec (1) of s. 109B is obviously contemplated in a case where the agreement or compromise has been made for the purpose of settling a dispute, namely, a dispute which the Revenue-officer would be called upon to decide on the merits but for the agreement or compromise; *Bata Mandal v. Manindra Chandra*, 19 C.W.N. 321; s. 109B clearly does not apply to a case, where the contract between the parties was made several years before the Settlement proceedings: *Ibid*.

Bengal and Bihar.

109C. (1) Notwithstanding anything contained in section 109B, if, in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue-officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the

East Bengal.

109C. A note of all rents settled, and of all decisions of disputes, on revision or appeal, under section 108 and section 109A, shall be made in the record-of-rights finally published under sub-section (2) of section 103A; and such note shall be considered as part of the record.

Power of Revenue-officer to settle rents on agreement.

There are no sub-sections (2) and (3) in East Bengal.

provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 109A, on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled :

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

Inserted by Beng. Act I of 1907 and E. B. A. Act I of 1908.

I. Strict compliance :—In every case where the provisions of this section are invoked there should be a strict compliance with its requirements. Where the rent agreed upon was in contravention of s. 29 and the Revenue Officer passed the following order under s. 109 C. : “The defendant agrees. Though the increase is rather large the attested compromised rent may be settled as fair and equitable” : “It was held that s. 109 C. does not contemplate settlement of fair and equitable rent on the basis of such an ambiguous order : *Maydhan-nessa Bibi v. Satis*, 37 C.L.J. 118.

See notes under s. 147A.

2. Agreement not binding on mortgagee :—Where on a compromise in a proceeding under s. 109 C. the tenant agreed to pay *nagdi* rent in lieu of produce rent, and the rent settled was much low in consideration of heavy *nazarana* paid to the landlord, *held* that the mortgagee of the landlord who subsequently purchased the landlord's interest was not bound by the rent settled : *Mathura Rai v. Babu Mandil*, [1921 Pat.] p. 165.

Mortgagee not bound. by compromise made with mortgagor landlord.

*Bengal and Bihar.**East Bengal.*

109D. A note of all rents settled, and of all decisions of disputes, on ~~revision or appeal, under~~ section 108, section 109A, or sub-section (2) or sub-section (3) of section 109C, shall be made in the record-of-rights finally published under sub-section (2) of section 103A; and such note shall be considered as part of the record.

Note of decisions on record.

There is no Section 109D in East Bengal; but s. 109C of East Bengal is almost to the same effect as s. 109D in Bengal and Bihar.

1. 109D was inserted in Bengal by Act I, B.C., of 1907.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the Settlement Rent-roll:

Date from which settled rent—takes effect.

Provided as follows:—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of sections 191 and 192, take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

Notes :—When the landlord applies under sec. 105 of the B. T. Act for settlement of fair and equitable rent and has obtained an enhanced rent fixed by the Settlement Officer, he is bound by the terms of sec. 110 of that Act which provides that such settlement of

rent shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent and it is not open to him to sue on the contract for back rents of the additional area found by the Settlement Officer: *Chandi Charan v. Meher Banu*, 52 Cal. 910 (Cumming and Chakravarti J.J.).

Stay of proceedings in Civil Court during preparation of record-of-rights.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

(a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land-revenue is not being made or is not about to be made—until three months after the final publication of the record-of-rights,

entertain* any application made under section 158, or any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record-of-rights applies.

Headings of Notes.

1. AMENDMENTS.
2. RIGHT OF SUIT IN A CIVIL COURT.
3. LIMITATION.
4. SUIT PREMATURELY FILED.
5. SHALL NOT ENTERTAIN.
6. ALTERATION OF RENT.
7. OLD LAW.
8. RECOGNITION FOR INTERMEDIATE TENURE HOLDERS.
9. SUIT FOR POSSESSION.
10. S. 115.

I. Amendments:—After the word “entertain” the words and figures “any application.....or” were inserted by Act I, B.C., of 1907 and E. B. A. Act I of 1908. .

Suit for possession and mesne profits.

2. Right of of suit in Civil Court:—Where a suit was brought by the landlord for possession and mesne profits by ejectment of the defendants from certain lands in respect of which a survey and preparation of record-of-rights had been ordered under Chapter X as amended by Act III, B.C., of 1898, and in which record the defendants had already been recorded as tenants and plaintiff's objections to such records were existing at the date of the suit, held that there was no legal bar to the maintenance of the suit in the Civil Court: *Troilokya v. M. N. Macleod*, 28 Cal. 28.

* MEANING OF “ENTERTAIN”: S. 91 of the Chota Nagpur Tenancy Act is somewhat analogous to this section. It has been held that s. 91 of that Act merely provides that the Civil Court shall not entertain a suit of a particular description; that does not mean that the suit, if instituted, shall be dismissed; and that the proper course is to adjourn the trial of the suit until the final publication of the record of rights: *Ramnarain v. Lachmi Narain*, 17 C.L.J. 239.

S. III does not apply to such a suit because it is not a suit for S. III. the determination of the status of a tenant: *Ibid*.

Where in a suit for ejectment against an alleged under-raiyat, the defendant claimed that he was an occupancy raiyat and contended that the suit should be stayed until three months after the final publication of the record of rights by reason of sec. III of the Bengal Tenancy Act, held that sec. III did not apply: *Kshemananda v. Rashamaya*, 32 C.W.N. 132 (Rankin, C. J. and Costello J.). Sec. III of the B. T. Act does not mean that in any case where the tenant chooses to raise a question as to status, the landlord is prevented from taking action in the Civil Court under the ordinary law: *Ibid*.

Although a suit lies for the alteration of rent, such a suit after the lapse of time, cannot be maintained in the guise of a suit for the amendment of a certificate obtained for the altered rent by the landlord under the Public Demands Recovery Act: *Asutosh v. Abdool*, 28 Cal., 676. Suit for cancellation of certificate.

By operation of s. 9 of Act III, B.C., of 1898, the Civil Court is precluded from adjudicating the question as to the assessment of rents of certain lands where the same question was decided by the settlement authorities: *Nabin Chandra v. Radhakishore*, 11 C.W.N., 859. Assessment of rent.

An order of the Special Judge affirming the fair rent fixed by the Settlement-officer has under s. 107 the force of a decree and cannot be opened under ss. 109 and 109A: *Mohim Chandra v. Kalitara*, 11 C.W.N. 930. Order of Special Judge affirming fair rent.

The first part of the section prohibits suits which seek to take undue advantage of more technical defects in the procedure leading up-to, or involved in the settlement proceedings: *Nasirulla v. Amiruddi*, 3 C.L.J. 133; the proviso, in virtue of which suits of a declaratory nature may be brought, cannot be read as prohibiting suits for the recovery of arrears of rent alleged to be due from tenants: *Ibid*. Suit for rent.

3. Limitation :—It is doubtful whether Art. 14 or Art., 122 of Sch. II of the Limitation Act applies to a suit, for the alteration of rent: See *Asutosh v. Abdool*, 28 Cal. 678. Suit for alteration of rent.

Art. 14 of Sch. II of the Limitation Act has no application to such a suit: *Ramgulum v. Bishun Pargash*, 11 C.W.N. 48.

4. Suit prematurely filed :—A suit for alteration of rent instituted within three months of the final publication of the Record-of-rights should not be dismissed altogether but should be stayed until the expiry of this period: *Hira Koer v. Lachman Gope*, 19 C.W.N. 1141; on appeal from a decision of the lower appellate court dismissing such a suit, the three months having expired long ago, the High Court directed a trial of the suit on the merits *do novo*, the appellant being directed to pay the costs of the lower appellate Court and of the High Court: *Ibid*; see also *Ramnarain v. Lachmi Narayan*, 17 C.W.N. 408, s. c., 17 C.L.J. 239. Suit prematurely filed cannot be dismissed.

5. Shall not entertain :—Following the cases of *Hira Koer v. Lachman Gope*, 19 C.W.N. 1141 and *Ram Narain v. Lachmi Narayan*, 17 C.W.N. 408, s. c., 17 C.L.J. 239, it was held in the case of *Promode Nath v. Basiruddin*, 51 Cal. 250, s. c., 28 C.W.N. 631, s. c., 40 C.L.J. 177; that the expression "shall not entertain etc." includes cases not only not already instituted but cases where suits Stay of suits instituted previous to order for

preparation
for record-
of-rights.

have already been instituted but not tried, and such suits should also be stayed.

Order
under
s. 104.

6. Alteration of rent :—The alteration referred to in this section is an alteration of the rent as it is at the time when the order under s. 104 is made. A suit for excess rent upon a contract for the years which preceded the year in which an order under Ch. X is made is not a suit for alteration of rent within the meaning of this section: *Ramjan v. Amjad*, 20 Cal. 903. The object of this section is that two proceedings shall not go on simultaneously for the determination of the same matter: *Ibid*.

Suit for
alteration
of rent.

The expression 'suit for alteration of rent' in this section includes not merely a suit of the nature described in s. 52, but also a suit for enhancement of rent under s. 30: *Brojendra Kisore v. Khalil Nagarchi*, 21 C.L.J. 489.

What suit
must be
regarded
as one for
arrear of
rent and
not for
alteration
of rent.

7. Old law :—In October 1890 the Government made an order under the former Chapter X for a record-of-rights and settlements of rent in the part of the country in which the land in suit lay; a suit was brought in April 1891 to recover rent due for the *magi* years 1249, 1250 and 1251, corresponding to 1887-1889, A.D.: the plaintiff claimed under the terms of a *kabuliyat* which provided that if it was found that the defendant held land in excess of the area specified in the *kabuliyat*, he should pay excess rent at a stipulated rate; it was urged in the suit that a measurement had been made previous to the time for which rent had been claimed, that excess land had been found, and that the defendant was liable to pay the additional rent claimed; *held* that the suit must be regarded as one for arrears of rent and not a suit for alteration of the rent within the meaning of clause (a), s. 111 of the Tenancy Act: *Ramjan Ali v. Amjad Ali*, 20 Cal. 903. Their Lordships (Macpherson and Banerjee, JJ.) in delivering judgment said as follows:—

Suit for
rent.

The alteration there referred to is an alteration of the rent as it is at the time when the order under sec. 104 was made; an alteration which would have a prospective and not a retrospective effect, and the suit for the alteration of rent which is prohibited by that section points, in our opinion, to a suit in which the alteration would be of the same description as that which the Revenue-officer is empowered to make under Chapter X. What has to be determined in this suit is not the rent which the defendant would be liable to pay for future years. The question here is, what is the amount of rent now due under the terms of his contract for the years which preceded the year in which the order under Chapter X was made, and it seems to us to make no difference that the decision of that question might involve as regards those years some alteration of the rent which had been previously paid. The object of s. 111 clearly is that two proceedings shall not go on simultaneously for the determination of the same matter, such as a suit for the alteration of the rent, putting upon these words the meaning which we have done. If that meaning which we have done is the right one, it is clear that this suit would not clash with any proceeding held by the Settlement-officer for the determination of the rent which the defendant henceforward would have to pay.

Object of
s. 111.

8. Recognition of intermediate tenure holders :—A settlement-holder is bound to recognise intermediate tenure-holders mentioned in the settlement papers and no suit lies for a declaration

negating the existence of such intermediate tenures: *Chandra Mohon v. Manmath Nath*, 11 C.L.J. 68, referred to and followed in *Tapanidhi v. Pitamber*, 5 C.L.J. 67.

9. Suit for possession :—Where in a suit for possession on the allegation that the defendant was a trespasser, the defendant set up a tenancy and pleaded that the suit was not maintainable as settlement proceedings were in progress in respect of the village in which the land was situated, *held* that the suit was not one for the alteration of the rent or the determination of the status of any tenant within the meaning of s. III and was consequently not barred: *Rajaram v. SheoPersad*, 3 C.L.J. 63n. Suit for possession.

10. S. II5 :—As to the meaning of the word “recorded” in s. II5 S. II5. there is the following observation in the judgment of the Full Bench in the case of *Pirithi Chand v. Sheikh Basarat*, 37 Cal. 30, s. c., 13 C.W.N. 1149, s. c., 10 C.L.J. 341. “It is not necessary to consider in this case whether ‘recorded’ means recorded after all chances of an amendment of the record under any other provision of the chapter are over, including a suit as contemplated by s. III.”

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F : Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, subsection (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.

Headings of Notes.

1. RIGHT OF SUIT AND LIMITATION.
2. ALTERATION OF RENT.
3. PROVISO.
4. COURT FEES.

I. Right of suit and Limitation :—S. IIIA provides that no suit shall be brought in any civil court in respect of any order directing the preparation of a record of rights, etc., but where the order itself is not attacked but the condition under which it was issued in as much as they did not fulfil the requirements of s. 101 (2) (a), the case is not covered by the section: *The Secretary of State v. Purnendu*, 40 Cal. 123, s. c., 17 C.W.N. 1151. When a regular suit may be brought.

Where no question as to entry of rent settled or an omission to settle rent is concerned, a suit by a tenant for a declaration that an entry in the record of rights describing him as a tenure-holder is erroneous and for a declaration that he is an occupancy raiyat is not a suit under s. 104H but falls within the category of suits referred to Limitation.

in the proviso to s. 111A and may be brought within 6 years: *Promoda Nath v. Asiruddin*, 15 C.W.N., 896.

A suit for a declaration that an entry contains a new statement may be instituted within 6 years of the date when the cause of action arises: *Ramgulum v. Bishnu Pargash*, 11 C.W.N. 48; Art. 14 of Sch. II of the Limitation Act has no application: *Ibid*.

Effect of entry.

An entry in a Record-of-Rights neither creates or extinguishes rights and therefore it is not necessary to sue for a declaration that an entry in a Record-of-Rights is wrong before bringing a suit for enhancement of rent: *Brij Behari v. Sheo Sankar*, 2 Pat. L.J. 124.

Declaratory suit.

Where in a Record of rights A was entered as a tenant under B and liable to pay rent at a certain rate, and B subsequently obtained decrees for rent, *held* that a suit by A for a declaration that A was a *Lakheraj* raiyat on the land, *held* that such a suit was one under s. 111A although no reference was made in the plaint to the Record of Rights: *Sheikh Amiruddin v. Sheikh Sadar Rahaman*, 1 Pat. L.J. 73 at p. 76. "Although no reference is made to the Record-of-Rights, the effect of the declaration which the plaintiff seeks will be to correct the Record-of-Rights, and that being so it makes no difference whether the plaintiff does in so many words attack the Record-of-rights or not" (*Per* Mullick, J.): *Ibid*.

Limitation.

The period of limitation for bringing such a suit is six years from the date of the publication of the Record: *Sheikh Amiruddin v. Sheikh Saidar Rahaman*, 1 Pat. L.J. 73 (*Per* Mullick, J.), followed in *Brij Behari v. Sheo Sankar*, 2 Pat. L.J. 124. If the suit is merely for a declaration it is one under s. 111A, and the plaintiff cannot by adding a prayer escape the six years rule of limitation: *Ibid*.

Challenge to plaintiff's right.

"It is clear that where there is a definite challenge to the Plaintiff's rights by an entry made in the Record-of-Rights and where the fact is patent that the plaintiff must have been aware of that challenge to his rights the suit if brought upon that challenge must be brought in accordance with the six years rule of limitation. If inspite of the challenge the plaintiff retains possession of the property he is not required to institute any suit upon that challenge but may institute a suit at any time within six years of any new challenge which has the effect of prejudicing his rights." *Ramji Ram v. Lala Sadhu*, 2 Pat. L.J. 493. See also *Saroj Kumar v. Umedali*, 25 C.W.N. 1022.

Consecutive Record-of-Rights.

When there are two consecutive Records-of-Rights, the party aggrieved by the successive entries may bring a suit for declaration that the entry in the second is wrong without challenging the entry of the first record: such a suit although brought six years after the first record is not barred by limitation: *Sheik Latafat v. Kumar Ganganand*, 3 Pat. L.J. 361.

Suit for declaration of rent-free title.

A suit for a declaration that the plaintiff had a rent-free title is substantially one under s. 111A because the declaration would have the effect of correcting the Record-of-Rights: *Sheikh Amiruddin v. Sheikh Saidar Rahaman*, 1 Pat. L.J. 73.

S. 101.

S. 111A applies only to a case where the Record-of-Rights was framed in pursuance of an order under s. 101 sub-sec. (2), cl. (d), but not to a case where the Record-of-Rights was prepared at the instance of the landlord under s. 101, sub-sec (2) cl. (4): *Nawab Bahadur of Murshidabad v. Ahmad Hussain*, 35 I.C. 695.

S. 104H.

Where in a suit the following reliefs were asked, (1) that the plaintiff's who were recorded as tenure holders be declared as

occupancy raiyats, (2) that certain lands might be declared as included in the right which the plaintiffs may be held to have, (3) that proper rents may be fixed of the lands in the possession of the plaintiffs and time for payment of the said rent may be fixed, (4) that the tenants under the plaintiffs may be held to have no rights, as settled raiyats or occupancy raiyats, (5) that the tenants under the plaintiffs may be declared *Korfa* tenants (under-raiyats), held that so far as relief (3) was concerned, the suit was one under s. 104H and was governed by the special law of limitation, but that the claim for other reliefs was outside the scope of that section, and within the scope of s. 42 of the Specific Relief Act and Art. 120 of Sch. I of the Limitation Act: *Rajani Kant v. Secretary of State*, 47 I.C. 820.

A suit for a declaration that the plaintiff was an occupancy raiyat is within the proviso to s. 111A and not under s. 104H: *Kumeda Prosanna v. The Secretary of State*, 19 C.W.N. 1017.

The period of limitation for a declaration that the tenant had a status different from what was recorded does not run from the date of the decision of the dispute and the suit was held to be within time, the same having been brought within 6 years from the date of the final publication: *Badaruddin v. Sarafaddin*, 68 I.C. 489. Suit not barred—six years from date of final publication.

A suit for enhancement brought more than 6 years after the date of final publication of the record-of-rights in which the tenant was recorded as a fixed raiyat is not barred by limitation: *Sheo Pratap v. Sheo Gulam*, 72 I.C. 781. It is not necessary to sue for a declaration that an entry in the record-of-rights that a raiyat entered as a fixed raiyat is wrong, before instituting a suit for enhancement: *Ibid*. Enhancement suit.

Although a previous claim may be barred by limitation under s. 104H, he may yet maintain a suit coming under s. 111A: *Palan Meah v. The Secretary of State*, 65 I.C. 669. Limitation.

In a suit under s. 42 of the Specific Relief Act by plaintiff for a declaration that the status of the defendant in respect of a certain tenure is not that of a permanent tenure-holder as recorded in the record-of-rights, the period of 6 years limitation under Art. 120 Sch. I of the Limitation Act is to be computed from the date of the final publication of the record-of-rights and not from the date when the certificate was signed: *Prodyat Kumar v. Bal Gobinda*, 41 C.L.J. 31. Limitation in a suit for declaration that entry is wrong—time to be computed from the publication date of the record-of-rights, and not from the date when the certificate was signed.

In this case it was not disputed in arguments as it appears from the judgment that Art. 120 of the Limitation Act applies to such a case; it is submitted that this view of the law is open to doubt. In order to come to a correct conclusion on this point it is necessary to examine the provisions of s. 103B. That section only provides that the entry shall be presumed to be correct unless the contrary is shown; the utmost that can be said is that it is only a rule of evidence and the presumption may be rebutted at any time when such a question arises and therefore if a regular suit is brought for the purpose to get rid of the presumption the cause of action for such a suit is a recurring one and the suit may be brought at any time even after 6 years after the date of publication of the record of rights or after the date of the signing of the certificate. In deciding the question which arose in the case it was assumed that the cause of action arose from the date when the cloud cast upon the plaintiff's title by virtue of the entry in the record-of-rights and not from the subsequent signing of the certificate of the record-of-rights. *But*

mere entry and final publication of that entry does not throw any real cloud but it only gives the person in whose favour the entry is made to throw the onus of proving the contrary upon the other side ; thereby the real enjoyment of the property is not affected and the question as to the correction of the entry arises only when a suit is brought and the presumption is claimed therein by a party. If it is necessary to have any regular suit brought simply for the purpose of getting rid of it by a suit, the necessary consequence will be that in all cases where presumptions arise by virtue of statutes, viz., The Indian Evidence Act etc., it will be necessary to bring suits for getting rid of such presumptions.

Entries in a record of rights adversely to a plaintiff do not affect his possession though they may be used in evidence against him in a suit for declaration of title. Time does not begin to run against him till an actual claim is made on the strength of the entry in the record-of-rights: *Dinanath v. Ramanath*, 23 C.L.J. 561. See *Ramji v. Lala Sadhu*, 2 P.L.J. 403, *Saroj Kumar v. Umedali*, 25 C.W.N. 1022. See notes under s. 103B, heading no. 9.

Where a suit was brought by certain raiyats for correcting an entry as to their status in the record-of-rights, without any proceeding being taken before the Revenue Court of the Special Judge or under Chap. X of the B. T. Act, and the lower Appellate Court held that the suit was one under sec. 111A, B. T. Act and sec. 115 was no bar in as much as the record-of-rights could not be said to be finally settled before the suit had been determined, *held*, that in view of the provisions of sec. 111A, B. T. Act, which permit suits for correction of entries in record of rights only where there has been a settlement of land revenue and forbids such suits under the Act in all other cases, the suit in question could only be treated as an ordinary civil suit. No presumption under sec. 50 could therefore arise: *Satiprasad v. Brojogopal*, 31 C.W.N. 499 (Duval and Mallik, J.J.) ; When no proceedings are taken to get entries in a record-of-rights altered either before the Revenue Court or the Special Judge or under Chap X, Bengal Tenancy Act, the record of rights must be taken to be finally settled, and sec. 115, B. T. Act, will apply and there can be no presumption under sec. 50: *Ibid*.

S. 50.

Decree in civil suit for correction of record of rights.

A decree in a civil suit for correction of a record-of-rights will be a mere declaratory one and will not force the Revenue authorities to alter the entry made by them. *Ibid*. *Pirithi Chand v. Basarat Ali*, 37 Cal. 30, s. c., 13 C.W.N. 1149 referred to and *Secretary of State v. Kazimuddi*, 26 Cal. 617 distinguished.

Technical defects.

2. Alteration of rent:—"The first part of the section evidently, prohibits suits which seeks to take undue advantage of mere technical defects in the procedure leading up to, or involved in the settlement proceedings." (*Per* Mitra J., Caspersz J., concurring): *Nasarulla v. Amiruddi*, 3 C.L.J. 133 at p. 135: S. III prohibits the alteration of rent once settled except to the extent allowed by s. 104H: *Ibid*.

Rent-suit.

3. Proviso:—"The proviso, in virtue of which suits of a declaratory character may be brought, cannot be read as prohibiting suits for the recovery of arrears of rent alleged to be due from tenants." (*Per* Mitra J., Caspersz J., concurring): *Nasarulla v. Amiruddi*, 3 C.L.J. 133 at p. 135.

Court-fees.

4. Court fees:—In a suit by a person who was entered as a tenure-holder in the Record-of-Rights (1) for declaration that he was

in possession as an occupancy raiyat and (2) that his status recorded as a tenure-holder was a nullity, *held* that the first prayer came within the description of relief contemplated by s. III A but the second prayer was for *consequential relief*, and as such the plaint which was on a ten rupees court fee was insufficiently stamped, and the plaint was therefore rejected: *Midnapur Zemindary Co. v. The Secretary of State*, 44 Cal. 352, s. c., 21 C.W.N. 834.

It is submitted with great respect that the correctness of this decision is open to doubt, in as much as the prayer for declaration that the plaintiff is an occupancy raiyat involves the other matter, that is, the entry that he is a tenure-holder is a nullity. One follows from the other, and consequently such a suit is purely a declaratory suit without any consequential relief.

It was held in the case of *Serajul Huq v. Secretary of State*, (unreported S. A. No. 818 of 1919, N. R. Chatterjea & Panton J.J.) that the amount of Court fee payable on a memorandum of appeal arising out of a suit under S. III A, falls under Art. 17, cl. (iii), Sch. II of the Court Fees Act.

A suit for amendment of record of rights and assessment of rent comes under s. 7, para IV (c) of the Court Fees Act, and as such *ad valorem* Court fee is payable: *Srinath v. Secretary of State*, 11 C.L.J. 158.

111B. (1) Where a record-of-rights has been prepared and finally published in respect of the land in an area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within three months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely:—

Stay of suits in which certain issues arise.

- (a) whether the land is or is not liable to the payment of rent ;
- (b) whether the relation of landlord and tenant exists ;
- (c) whether the land is part of a particular estate or tenancy ; or
- (d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

Bengal and Bihar.

East Bengal.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues men-

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues

tioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 106 involving the decision of the same issue.

mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue ;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

Suit prematurely filed.

Notes :—Although a suit cannot be instituted within the period of three months under s. 111B, the jurisdiction of the Civil Court is not wholly taken away when no suit has been instituted in respect of the same matter in the Revenue court ; in such a case, the suit may be instituted in the Civil Court on the expiry of that period and there is no provision in the Act for the dismissal of a suit within the said period : *Prankrishna v. Kripanath*, 21 C.W.N. 209, s. c., 29 C.L.J. 17 ; if a suit appears from the statement of the plaint to be barred by any law, the proper course is to reject the plaint under order 7 r 11 cl. (d) C. P. C. and not to dismiss the suit entirely : *Ibid*.

A suit involving issues mentioned in clauses (b) and (c) within the period of three months from the date of the certificate of final publication of a Record-of-rights ought not to be dismissed but may be treated, subject always to any question arising under s. 109, as though the plaint had been received and the suit instituted on the day following the expiration of such period : *Prankrishna v. Ofal Pramanick*, 35 I.C. 76 ; the plaint may however be at once returned or rejected under O. 7 rr. 10 and 11 C. P. C. *Ibid* ; the suit cannot be dismissed : *Ibid*.

*Bengal and Bihar.**East Bengal.*

112. (1) The Local Government, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer with the following powers or either of them, namely :—

112. (1) The Local Government, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer with the following powers or either of them, namely :—

Power to authorize special settlement in special cases.

(a) power to settle all rents ;

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

Sub-section (3) was omitted by the Devolution Act (XXXVIII of 1920).

Alterations :—In sub-sec. (1) for the words “invest a Revenue-officer acting under this Chapter” the following was substituted in Bengal :—

“or that any landlord.....Revenue-officer.”

For the same words the following was added in East Bengal :—

“or that any landlord is demanding or exacting.....
.....Revenue officer.” Sub-sec. 2 (a) was inserted

by both the above Acts. To sub-sec. (3) the following was added by both the Acts:—"and the revision.....Council."

S. 112 was amended by the Devolution Act* (XXXVIII of 1920) thus: In sub-sec. (1) the words "with the previous sanction of the Governor General in Council" and the whole of sub-sec. (3) were omitted.

Sub-sec. (3) was as follows:—

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council; [and the revision, by direction of the Board of Revenue under sub-section (2) of section 104G, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to a like confirmation by the Governor General in Council.]

Period for which rents as settled are to remain unaltered.

113. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-raiyat having occupancy rights, for fifteen years, and, in the case of a non-occupancy holding or the holding of an under-raiyat not having occupancy rights, for five years; and no such rent shall be reduced within the periods afore-said save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a).

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Headings of Notes.

1. SUIT FOR RENT FOR EXCESS LAND.
2. RENT IN SUSPENSIONS (HAJAT).
3. ENHANCEMENT—PREVAILING RATE.
4. UNDER-RAIYAT—OCCUPANCY RIGHT.
5. EXISTING RENT.
6. REDUCTION OF RENT.

1. Suit for rent for excess land:—Where a suit was brought for recovery of rent (for excess land) in excess of the rent settled under ss. 104 to 104F, *held* that s. 113 was no bar to the maintainability of the suit but that s. 104J renders the entry in the record of rights conclusive in this case: *Prasanna Kumar v. Rachimuddin*, 17 C.W.N. 153.

2. Rent in suspension (Hajat):—Where a holding consisted partly of waste and partly of cultivated lands and there was a stipulation that on the waste lands becoming culturable they would be assessed at the settlement rate of rent, *held* that the increase in the

* See foot note under s. 39 at p. 248.

rental would accrue automatically on any portion of the waste land becoming culturable, and neither s. 113 nor any other section could operate as a legal bar to the assessment of an additional rent on the portion of the waste land actually cultivated: *Makbal Ali v. Jogesh Chandra*, 21 C.W.N. 534, s.c., 25 C.L.J. 128.

3. Enhancement—Prevailing rate:—Even on the ground of prevailing rate, there cannot be any enhancement of rent for 15 years, under s. 113 where rent has been settled under Chap. X: *Harihar v. Ajub Mesir*, 45 Cal. 930.

Where a fair and equitable rent has been settled under s. 105, it is bar to any subsequent proceeding for the enhancement of rent before the expiry of the period mentioned in s. 113 except on the ground mentioned therein: *Sheo Pratap v. Sheogulam*, 72 I.C. 78. Enhancement suit subsequent to proceeding under s. 105.

4. Under-raiyat: Occupancy right:—An under-raiyat may by usage or custom acquire a right of occupancy: *Gopal Mandal v. Tapai Sankhari*, 46 Cal. 43, s.c., 22 C.W.N. 618; see also *Akhil Chandra v. Hasan Ali*, 19 C.W.N. 246. See notes under s. 4 at p. 72, and notes under ss. 48 and 183.

5. Existing rent:—This section is not applicable to a mere entry of an existing rent in the Record of Rights: *Meyajan Buian v. Joymala*, 21 C.W.N. 546, s.c., 34 I.C. 32 at p. 33 column 2; s. 113 applies in those cases where the rent of a tenure or holding has been actually settled under this chapter: *Ibid*: “a consideration of Chap. X as a whole shews that the effect of the plain language of s. 113 is not in any way controlled or cut down by s. 103B”: *Ibid*.

6. Reduction of Rent:—Rent of a tenure settled under Chap. X is not liable under section 113 to be reduced on account of reduction in the area: *Nares v. Hujjatali*, 97 I.C. 470 s.c., A.I.R. (1926) Cal. 1240. (Cuming and Page, JJ.). Reduction of area.

114. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred * * in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions and in such instalments (if any) as the Local Government, having regard to all the circumstances, may determine. Expenses of proceedings under Chapter.

(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Local

Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Headings of Notes.

1. AMENDMENTS.
2. APPORTIONMENT OF COSTS.
3. ASSESSMENT NOT UPON LAND BUT UPON LANDLORD.

I. Amendments :—The following amendments were made by Act I B. C. of 1907 and Act I E. B. C. of 1908 :—

In sub-sec. (1) the words “by the Government” were repealed ; for the word “from time to time in the maintenance,” the following was substituted :—

“at any time.....restoration;” after the word “proportions,” the words and brackets “and in such..... (if any)” were inserted.

Sub-section (2) was inserted ; the former sub-section (2) was re-numbered sub-section (3) and after sub-section (3) so re-numbered and before the Explanation, sub-sec. (4) was inserted.

2. Apportionment of costs :—Where the order of the Local Government under s. 101 (2) (a) is legal and binding on the parties the order for apportionment of costs under s. 114 is also legal and binding : *The Secretary of State v. Purnendu*, 40 Cal. 123, s. c., 17 C.W.N. 115.

As to distribution of printed maps and of copies of the final record : see Appendix I.

For the Rules for apportionment and recovery of costs, see Bengal Survey Settlement Manual, 1917. See also Land Records Maintenance Act (III, [B.C.] of 1895) to be found in Appendix IV of this book.

As to Rules of apportionment of costs of Settlement operations and computation, recovery, and distribution of copies, see Bengal Survey and Settlement Manual, 1917, Chap. XV, Rules 389-420, pp. 97 to 102.

A few extracts from these Rules are quoted below:—

Apportionment and Computation :

391. In cases in which funds are advanced by Government an order for apportionment under s. 114 of the Tenancy Act must be passed. In other cases an apportionment order may be passed. In operations under sec. 101 (2) (d), no apportionment order can be passed.

392. In the case of District Settlements and of operations undertaken under s. 101 (2) (b), the cost of which has been advanced by Government, the first thing to determine in apportioning the amount to be recovered from private parties is the share to be paid by the landlords or tenants, e.g., one half or one third. This apportionment must depend on the circumstances of each case, and it is not possible to frame any general rules on the subject.

399. The following principles should ordinarily be followed in apportioning costs between proprietors, tenure-holders, raiyats, and under-raiyats when an area basis is adopted throughout.

Permanent tenure-holders should pay three-fourths and their landlord one-fourth of the landlord's share.

401. Rent-free holders should pay the whole of the landlord's share, and also the raiyat's share for lands in their own occupation.

402. When there are several grades of landlords the calculation should be made from the lowest grade upwards.

403. Under-raiyats having occupancy rights may be ordered to pay half the raiyat's share. All other under-raiyats and those holding under them may be exempted from payment. It may be convenient sometimes to make a fixed charge for under-raiyats.

404. When it has been decided how the apportionment order should be framed, it will be submitted to Government through the Director of Land Records. The apportionment order passed by Government under s. 114 of the B. T. Act will be conclusive as to how the apportionment should be made.

Recovery :

407. The recovery of costs is to be made one month after the commencement of final publication or as soon after as possible. Recovery will ordinarily proceed throughout the year.

Distribution :

417. Certified copies of the record will in all cases, whether in Government or temporarily-settled estates, or in settlements on the application of landlords, or other operations, be distributed to the landlords and tenants of charge. Copies of the map, except where with the sanction of the Director of Land Records such maps have not been reproduced, will be distributed. When there is any recovery of costs, the distribution made at the time of recovery of costs : where there is no recovery, time of final publication.

418. In accordance with Government orders each landlord or group of landlords with a separate collection is entitled to receive a copy of his own *khatian* and of the *khatians* of the tenancies immediately subordinate to him or them. The landlord in the group with the largest share should receive the copies, unless he does not pay the costs punctually on the day fixed, when the Recovery Officer may, at his discretion, give them to the next largest sharer who is ready to pay.

419. When an owner has several interests he should receive only one copy of the map.

420. When the record is printed, sales of spare copies of the *khatians* may be made in recovery camps or at the headquarters at such rates as may be determined by the Director of Land Records. Sales of Vandyked maps may be similarly effected. No copies of the record or the maps should, however, be sold to persons who have not paid the demands due by them.

3. Assessment not upon land but upon landlord :—Assessment of costs is not upon land but personally upon the landlord of the tenant ; so where in a lease the tenant agreed to pay tax, toll, rent or whatever sum under whatever denomination be assessed in future, held that the landlord was not entitled to demand of the tenant for cadastral survey costs : *Bejoy Singh v. Hem Chandra*, 33 C.L.J. 349.

Survey and Settlement Manual 1917.

Apportionment order where necessary or where permissible. Principles of apportionment. District operations and operations under s. 101 (2) (b) Cost of permanent tenure-holders. Costs of rent-free holders. Grades of landlords. Costs of under-raiyats. Apportionment order conclusive. Time of recovery.

Distribution.

Distribution of *khatians*.

Distribution of maps. Sales of maps and *khatians*.

Agreement to whatever sum be assessed.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Headings of Notes.

1. INTERPRETATION OF THE SECTION.
2. PRESUMPTION UNDER S. 50 WHEN APPLIES: MEANING OF "THEREAFTER".

Meaning of "have been recorded under this Chapter."

1. Interpretation of the section :—The meaning of the words "when the particulars mentioned in s. 102, Cl. (b), *have been recorded under this chapter*....." is that "when the particulars have been recorded after all corrections (if any) made in proceedings under ss. 105 and 105A, as well as under s. 106, and *possibly* under s. 108 and 108A." After the particulars under cl. (b) of s. 102 are entered in the Record-of-rights and finally published under s. 103, the said entries are liable to corrections in proceedings under ss. 105, 105A, 106, 108 and 108A. So the words "have been recorded" mean "have been *finally* recorded *after all corrections (if any) under the aforesaid sections of this Chapter.*"

So, in proceedings under ss. 105, 105A, 106, 108 and 108A, the tenant is entitled to the presumption under s. 50, in as much as the Record cannot be said to have been finally prepared till then, and the particulars under s. 102 cl. (b) could still be corrected.

But when after the proceedings under ss. 105, 105A, 106, 108, 108A are taken and the corrections (if any) are entered in the Record, or when no proceedings are taken under these sections and the periods of limitation for taking these proceedings expire, and any regular suit is brought in the Civil Court by the landlord, the tenant cannot avail of the presumption under s. 50, in as much as it can be then said that the particulars under s. 102 (b) have been *finally* prepared under Chapter X.

Illustrations.

(1) *A* is recorded as an occupancy raiyat under s. 102 (b) ; the landlord makes an application under s. 105 for settlement of rent. *A* is entitled to the presumption under s. 50, *in as much* as the Record cannot be said to have been finally prepared, for the tenant may still raise the question of his status and if he is successful, the entry will be corrected.

(2) *A* is recorded as an occupancy raiyat. As a result of proceedings under ss. 105, 105A, 106, 108 or 108A, the entry is not corrected, as the tenant is found in these proceedings to be an occupancy raiyat or suppose that the periods for taking proceedings under these sections expire ; So it may be considered that the Record has been *finally* prepared. Suppose, the landlord now brings a suit *in the Civil Court* for enhancement or *A* brings a suit in the Civil Court for a declaration that he is a raiyat at fixed rate and not an occupancy raiyat. *A* is not entitled to the presumption under s. 50 in as much as the Record has been finally prepared under Chap. X. It is true that the tenant may otherwise prove that he is a raiyat at fixed rate and not an occupancy raiyat, and the Civil Court may

declare that the entry in the Record-of-Rights is incorrect, and even the Record of Rights is corrected by virtue of such a decree, but there will be no correction under Chapter X ; the Record, so far as regards that Chapter was finally prepared.

Meaning of the word "thereafter" in the clause "the presumption under s. 50 shall not thereafter apply to that tenancy": This means that once the particulars under s. 102 (b) have been finally corded as explained above, s. 50 will cease to apply. "Thereafter" does not mean that a tenant will be entitled to avail of the presumption by shewing uniformity of rent for 20 years prior to the preparation of the Record-of-Rights. Meaning of "thereafter."

Illustration.

A Record of Rights was finally prepared after all chances of correction under Chapter X in the year 1900 ; the tenant shews uniform payment of rent for 20 years prior to 1900 ; the tenant is not entitled to the presumption under s. 50. He cannot say that the bar as to his entitling to avail of the presumption is restricted to the period after the Record-of-Rights. The restriction is in regard to the periods both prior and subsequent to the Record-of-Rights.

2. Presumption under s. 50 when applies: Meaning of "thereafter" :—Having regard to the word "thereafter" used in this section it was decided by Doss, J. : in the case of *Radha Kisore Umed Ali*, 12 C.W.N. 904, that in a suit for enhancement of rent, a tenant is entitled to the presumption under s. 50 (2), if he shew that rent was not changed for a period of years anterior to the publication of the Record-of-Rights. This decision was approved of and followed in a Patna case, *Pirithi Chand v. Sheikh Mohamad*, 1 Pat.L.J. 67. But the contrary was held by Brett J., in the case of *Ram Sewak v. Mahont Bansi*, 13 C.W.N. 1151 footnote. It is decided in the case of the *Secretary of State v. Kajimuddi*, 26 Cal. 17 that when a suit is brought by a tenant for the purpose of proving the correctness of the decision of a Revenue officer in regard to the entry as to the status of a raiyat in a record-of-rights, the provisions of s. 115 against the presumption as to a fixed rent do not apply on application and the tenant is entitled to the benefit of such presumption. In view of the conflict of case law, the question was referred to a Full Bench, in which the case of *Radhakisore v. Umed Ali*, 12 C.W.N. 904 was not approved: see *Pirithi Chand v. Sheikh Mohamad*, 37 Cal. 30, s.c., 13 C.W.N. 1149 (F.B.), s.c., 10 C.L.J. 343. This Full Bench it was laid down that s. 115 is no bar to a tenant claiming the presumption under s. 50 (2) in proceedings under ss. 105 and 106. Conflicting decisions.

In a suit for enhancement of rent, where the tenant proved uniform payment of rent for a period of 35 years out of which 18 years anterior to the Record-of-Rights, it was held that the presumption under s. 50 (2) did not apply: *Gurucharan v. Sarab Ali*, 23 Cal. 1041, s.c., 30 C.L.J. 9. Full Bench.

Following the principle of the Full Bench case of *Pirithi Chand v. Umed Ali*, 37 Cal. 30, it was held in the case of *Harihar v. Ajab Ali*, 37 Cal. 930 that in a suit for enhancement of rent, in view of the presumption under s. 50 (2) does not arise when a Record of Rights has been finally published. Full Bench decision settles the point.

After the final publication of a Record-of-Rights under Chapter X the tenants are debarred by the provisions of s. 115 from claiming the presumption under s. 50: *Muralidhar Aditya v. Radhamohan Hazra*, 51 I.C. 552. (*Pirithi Chand v. Basarat Ali*, 37 Cal. 30 (F.B.) and *Harihar v. Ajab Misir*, 45 Cal. 930 were followed); see also *Jagdeo Narain v. Bhagwan Mahto*, 54 I.C. 672.

S. 106.

In a suit under s. 106 of the Act, a question arose as to whether the tenant defendant was entitled to get the presumption under s. 50, it was held, that s. 115 clearly barred such a presumption, although the tenant was entitled to shew by any other means that he was holding from the time of the Permanent Settlement: *Janki Kuer v. Hiranand Pande*, 58 I.C. 25. This decision lays down a rule contrary to the decision of the Calcutta Full Bench case of *Pirithi Chand v. Sheikh Basarat*, 37 Cal. 30.

Where no entry whether tenure liable to enhancement or not.

Where a record-of-rights has been prepared and a tenant was recorded as a tenure-holder without specifying whether the tenure was permanent or not or whether the rent of the tenure was liable to enhancement or not, the particulars under s. 102 were not recorded and therefore s. 115 was not a bar in the application of s. 50: *Kamaluddin Ahmed v. Kumar Rammand Singh*, [1924 Pat.] p. 1.

Meaning of "thereafter." Presumption under s. 50 does not arise after preparation of record.

The expression "thereafter" in s. 115, signifies "after the particulars have been finally recorded after recourse to all the provisions contained in Chapter X for the attainment of finality in this respect. When once the record of rights is finally prepared, the presumption of s. 50 does not apply in view of s. 115; *Prasanna Kumar v. Durga Charan*, 49 Cal. 919, s.c., 26 C.W.N. 947, s.c., 36 C.L.J. 291 (Mookerjee and Cuming, J.J., affirming on Letters Patent Appeal the judgment of Teunon J.). See also *Bamandas Vidyasagar v. Sadh Majhi*, 26 C.W.N. 945 (N. R. Chatterjee and Panton, J.J.). The case of *Pirithi Chand v. Basarat Ali*, 37 Cal. 30 (F.B.) was referred to. The cases of *Harihar v. Ajib Misser*, 45 Cal. 930 and *Murali Radha Mohan*, 51 I.C. 552 were approved, and the cases of *Secretariat of State v. Kajimuddi*, 26 Cal. 617 and *Kishor Manikya v. Basarat Ali*, 12 C.W.N. 904 were dissented from. See also *Kesho Prasad Ramdas Pandey*, 2 Pat. 92; *Ramsaran v. Muhammad*, 80 I.C. 753; *Ramsaran Chandra v. Mahommad Akbar*, 86 I.C. 753; *Ramsaran Muhammad Aradut*, 80 I.C. 926; *Kesho Prasad v. Issur Dutta*, 15 I.C. 15.

Where record is in favour of a party—fixed rent.

In a case where a tenant was entered in the Record of Rights holding at a fixed rent, held that in a suit to eject the tenant, he may rely on s. 50 and can claim presumption under that section notwithstanding the provisions of s. 115: *Rash Behari v. Dwarkanath*, 26 C.W.N. 936.

This case is entirely different from the cases in which it has been held that where a tenant's rent is entered in the record-of-rights as variable he is in a civil suit debarred from claiming a presumption under s. 50 if the entry has not been corrected in proceedings under Chap. X.

In a proceeding under s. 105 the tenant may invoke the presumption under s. 50, and s. 115 does not debar the tenant from the benefit of s. 50 as s. 115 applies only when all possible proceedings under Chap. X have been exhausted: *Narendra Lal v. Rash Behari*, 27 C.W.N. 740.

The presumption under s. 50 does not apply when once

of-rights has been prepared: *Kamiluddin v. Kumar Ramanand*, ^{Where particulars are not recorded.} [1924 Pat.] p. 1. But where a tenant was recorded merely as a tenure-holder without specifying as to whether he was a permanent tenure-holder or not or whether his rent was liable to enhancement or not, *held* that s. 115 was no bar to prove fixity of rent by recourse to s. 50; *Ibid.* From a mere entry in the record-of-rights that the tenant is a tenure-holder it cannot be inferred that he is not either a permanent tenure-holder or a tenure-holder at fixed rates: *Ibid.*

Where a tenure-holder was recorded as to have *kaimi* interest ^{Kaimi.} and not *mokrari*, *held* following the cases of *Pirithi Chand v. Basarat Ali*, 37 Cal. 30 (F.B.) and *Harihar Pershad v. Ajub Misser*, 45 Cal. 930, that section 50 does not apply, no suit having been brought and the entry not having been corrected in a suit under s. 106: *Brajadas v. Bankim Chandra*, 51 Cal. 454.

Upon a review of the decisions, the present law may be stated as follows: The presumption under s. 50 can be claimed in proceedings under Ss. 105, 106, and before all chances of correction under Chapter X are over. But once the record-of-rights is finally prepared after all chances of correction under Chap. X are over, the presumption under s. 50 does not apply in view of sec. 115. See notes under heading No. I of this section. ^{Summary of case law.}

Bengal and Bihar.

115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, if any; and, where village maps prepared at a previous revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

East Bengal.

115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (10) (b) of section 3 as defining villages; and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

Demarcation of village boundaries.

Ben. Act. V of 1875.

Notes :—This section was inserted by both Bengal Act I of 1907 and East Bengal Act, I of 1908.

Act III B.C.
of 1898, s. 9.

Assessment of lands claimed as rent-free :—In a proceeding under Chapter X of the Bengal Tenancy Act before the passing of Act III B. C. of 1898, the settlement authorities found that lands claimed by the tenants as their rent-free lands were not rent-free and they accordingly assessed the same with rents, held that by the operation of s. 9 of Act III B. C. of 1898 the Civil Court is precluded from adjudicating on the same matter: *Nabin Chandra v. Radha Kishore*, 11 C.W.N. 859.

SS. 8 TO 11 OF ACT III OF 1898 (B.C.), which do not modify the provisions of Chap. X but are closely connected with it, are as follows :—

Validation of
publication
of past
records.
Effect of
settlement
of rent and
decisions by
Revenue
Officers
made before
the com-
mencement
of this Act
VIII of 1885.

8. All records published under section 105 of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form, shall be deemed to have been duly published.

9. (1) Every settlement of rent or decision of a dispute by a Revenue Officer under section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final:

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

XIV of 1882.

(2) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

VIII of 1885.
Amendment
of Act VIII,
1885 section
119.

10. In section 119 of the Bengal Tenancy Act, 1885, the words and figures "sections 103A, 103B, 106, 107, 108, 109A" shall be substituted for the words and figures "sections 105 to 109, both inclusive."

Repeal of
Bengal
Act V 1894.

11. Bengal Act V of 1894 (an Act to remove doubts which have arisen in connection with the resettlement of land-revenue in temporary-settled areas, and to amend the Bengal Tenancy Act, 1885) is hereby repealed.

CHAPTER XI.

NON-ACCRAU OF OCCUPANCY AND NON-OCCUPANCY RIGHTS, AND RECORD OF PROPRIETOR'S PRIVATE LANDS.

Amendments :—In the heading of this chapter the words “Non-accrual of Occupancy and Non-occupancy rights and” were inserted by the Amending Acts of 1907 and of 1908 of Bengal and East Bengal respectively.

Construction of the heading :—The court can look to the heading for the purpose of construing the section: *Dwarka Nath v. Tafazar Rahman*, 44 Cal. 267, s.c., 20 C.W.N. 1097.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remained the property of the Government, or of any Local Authority or Railway Company, or to a proprietor's private lands known in Bengal as *khāmar*, *nij*, or *nijjot*, and in Bihar as *ziraat*, *nij*, *sir* or *khamat*, where any such land is held under a lease for a term of years or under a lease from year to year.*†

Saving as
to khamar
land.

*** Board's Survey and Settlement Manual, 1908, p. 94.**

NOTE.—The law officers have advised that there is nothing in the law which prevents occupancy right being acquired in admittedly *zirat* or *sir* land, or which provides that, if such occupancy rights are acquired and lost or abandoned, the land should in consequence of the acquisition of the occupancy right lose for ever its character of *zirat* or *sir* land.

† **Orissa ;** This section was extended to the districts of Cuttack, Puri and Balasore. (Notification, dated 21st Aug., 1906). Before its extension when ss. 20 and 21 had been extended to Orissa it was observed in a case :—This section has not been extended to Orissa. Section 20 and 21 of the Bengal Tenancy Act, however, have been extended to Orissa; and that being so, under the provisions of sub-sec. 2 of s. 2 when any part of this Act is extended to Orissa, so much of the enactments as are in force in Orissa, which are inconsistent with that portion are repealed. Now as ss. 20 and 21 have been extended to Orissa section 6 and the proviso to that section of Act X of 1859 must stand repealed, because they are inconsistent with ss. 20, 21. Therefore the proviso to s. 6 of Act X of 1859 with corresponds with s. 116 of the present Act, must be held to be no longer in force in Orissa : *Brahmananda v. Arjun*, 1 C.L.J. 310; under Act VIII of 1869 (B.C.) it was held that a right of occupancy could not be acquired in the *niz-jote* lands of a Sarbarkar in Orissa : *Obhoy Churan v. Kanae Rawat*, 1 C.L.R. 394. Ss. 20 and 21. Act VIII B.C. of 1869.

A tenant of *niz-jote* land, was in occupation continuously for more than 12 years after the introduction of ss. 20 and 21 of the Bengal Tenancy Act to Orissa, held that he acquired the status of a settled raiyat : *Rafiuddin v. Iswar*, 17 C.L.J. 585.

Where a lessee holds even after the expiry of the term of a lease for five years and remains in occupation for a period of four years more of agricultural land in a district to which ss. 20 and 21 of the B. T. Act, were, before the

Headings of Notes.

1. ALTERATION.
2. OCCUPANCY AND NON-OCCUPANCY RIGHT.
3. PROPRIETOR'S PRIVATE LANDS.
4. ADMISSION.
5. WHERE ANY SUCH LAND IS HELD UNDER A LEASE &C.
6. KHAMAR LAND.
7. TENURE-HOLDER'S PRIVATE LANDS.
8. PRESUMPTION.
9. ONUS.
10. EJECTMENT SUIT BY A LESSEE.
11. EJECTMENT SUIT: LIMITATION.
12. SALE OF ESTATE: RIGHT TO NIJ-JOTE LANDS.
13. LEASE FOR A TERM OF YEARS OR YEAR TO YEAR.
14. EFFECT OF PARTITION OF AN ESTATE.
15. ENHANCEMENT.
16. SETTLED RAIYAT.
17. KHUDKAST, MEANING OF.
18. HOLDING OVER.
19. MESNE PROFITS.
20. CHOWKIDARI CHAKRAN LANDS.

1. Alteration :—After the words “shall apply to” the following words were inserted by the Amending Acts of 1907 and 1908 of Bengal and East Bengal respectively :—“*lands acquired under.....or to*”

2. Occupancy and Non-occupancy Right :—A tenant of khamar land is not a non-occupancy raiyat and so cl. (1) (a) of Sch. III is not applicable to the ejectment of a raiyat of khamar land: *Dwarka Nath v. Tafazar Rahaman*, 44 Cal. 267, s. c., 20 C.W.N. 1097.

Right of
occupancy
in *Zerai*
land.

Where a lessee of *zerait* land settles the land with a raiyat, he acquires a right of occupancy if he fulfils the conditions under ss. 20 and 21, if the former was not restricted in any way by the lease: *Sheogobind v. Mahipat*, 2 Pat. 913, (Mullick and Bucknill J.J.).

A description of land as *zerait* does not necessarily shew that it is *zerait* land; the elements necessary under s. 120 must be proved: *Beni v. Trailakya*, A.I.R. 1922 Pat. 425 (Jwala Prasad and Bucknill J.J.).

A lessee of *zerait* land cannot create a tenancy in excess of the term of his lease: *Jogendra v. Kesho Prasad*, 1 Pat. 764, s.c., [1923 Pat.] p. 113; (Jwala Prasad and Bucknill J.J.).

3. Proprietor's Private lands* :—Broadly speaking, the

grant of the lease, made applicable, he acquires the status of a non-occupancy raiyat; the status cannot be retrospectively affected by the subsequent extension of s. 116: *Sita Nath v. Haranarain*, 21 C.L.J. 644; the cases of *Brahmananda v. Arjun*, 1 C.L.J. 310 and *Rafuiddin v. Iswar*, 17 C.L.J. followed.

* Meaning of the words Khamar, Nij, Nijjote and Sir as given in Wilson's Glossary of Judicial and Revenue terms:

Khamar.

Khamar: a threshing floor, the general threshing ground of a village to which all the crops are brought to be cleaned, and from which they cannot be removed till the landlord's claim is settled. Land of which the revenue was paid in kind or of which the produce was divided in determinate shares between the cultivator and the revenue payer or *zeminder*, applied also to lands originally waste, but which having been brought into cultivation, were retained

~~Bengal Tenancy Act~~ classifies agricultural lands under two heads: (1) *raiyyati* lands, in respect of which a raiyat acquires a right of occupancy which is explained in Chapter V; and (2) lands which are held by the *malik* or owner, in his own direct cultivation, and are called in the Act "the private lands" of the Zamindar. In these lands the raiyat cannot acquire a right of occupancy. The Zamindar's "private lands" are dealt with under this Chap: *Dhakeshwar v. Gulab Koer*, 53 I.A. 176, s. c., 31 C.W.N. 341 (P.C.).

Tenure holder's private land.

This chapter does not apply to a tenure-holders's private lands but it applies only to a proprietor's private lands. But where the rights of the parties were governed by Act VIII B. C. of 1869, lands which were *kamat* land did not cease to be so by virtue of a *mokurari* settlement of the same. *Syed Khalilur Rahaman v. Rupan Mahton*, 13 C.W.N. 436.

Where the lands were not found to be the proprietor's private lands, it was held by the Privy Council affirming the judgment of the High Court that there was nothing to prevent the tenants acquiring occupancy right therein: *Damodar Narayan v. Dalglish*, 38 Cal. 432: 15 C.W.N. 345 (P.C.).

There mere fact that in the lease the land is described as *khud kasht* land, would not be sufficient in itself to prevent the tenants from acquiring occupancy rights, regard being had to the provisions of s. 178 of the Bengal Tenancy Act and would not shift the onus on the tenant: *Ajodhya Prosad v. Ram Golam*, 13 C.W.N. 661.

Khudkasht does not necessarily mean *zerait* or private lands of the proprietor: *Deonath v. Amarsingh*, 45 I.C. 418.

4. Admission:—An admission in *kabuliyat* is certainly evidence as to the character of the land: the probative value of such evidence is a question of fact: *Bhagtu Singh v. Raghunath Sahai*, 9 C.L.J. 15; see also *Masudan v. Goodar*, 1 C.L.J. 456; see notes under s. 120.

5. Where any such land is held under a lease, &c.:—The Bengal Tenancy Act does not contemplate a raiyat who does not come under the classes enumerated in s. 4: *Udai Chand v. Jang Bahadur*, 2 Pat. L.W. 118, s. c., 40 I.C. 500 at p. 503 (Mullick and Jwala Prasad J.J.); an occupancy right cannot be acquired in *zerait* land: *Ibid.* The provisions of Ch. V and Ch. VI are not inapplicable to all tenancies in proprietor's private lands; they do not apply

Application of Ch. V and Ch. VI.

by the zemindars in their own hands, or were let out at a grain rent: at the Decennial Settlement these lands, previously unassessed, were declared subject to assessment.

NIJ—H (স. নিজ) own, peculiar, used sometimes in the sense of Nij-jot.

Nijjot.

NIJJOT—corruptly Nijote, Neej-Joot, H. &c. (s. from *nij* and *jot* cultivation). Lands cultivated by the proprietors or revenue payers by themselves and for their own benefit; also land allowed to be set apart for the private maintenance of a zemindar, on which before the Decennial Settlement in Bengal, no revenue was assessed.

SIR, ~~SERR~~,—name applied to the lands in a village which are cultivated by the hereditary proprietors or village zemindars themselves as their own special share, either by their own labourers and at their own cost, or by tenants-at will, not being let in lease or farm: these lands were sometimes allowed to be held at a favourable assessment, or were unassessed so as to provide Nankar, or subsistence for the proprietor: the term is also some times applied to lands cultivated on account of the State, or to those in which the revenue is paid by the cultivators without any intermediate agents.

Sir.

only when it is proved that the land is held under a lease for a term of years, or under a lease from year to year: *Deo Nandan v. Meghu Mahton*, 11 C.W.N. 225, s. c., 5 C.L.J. 181. Where *zerail* lands of a proprietor were sublet to a tenure-holder for a term of years and a raiyat held under the latter and not directly under the proprietor, *held* that the lands were excluded from the operation of Chapter V so far as it conferred a right of occupancy, and also from the operation of Chapter VI: *Sheo Nandan v. Ajodh Ray*, 26 Cal. 546, s. c., 3 C.W.N. 336. The object of s. 116 is to exclude the proprietor's private lands from the operation of Chapters V and VI, of the Act, provided that the proprietor has taken the precaution which is indicated by the concluding words of the section—"where any land is held under a lease for a term of years or under a lease from year to year." *Ibid.* Chapters V and VI do not apply only when it is proved that the land is held under a lease for a term of years or under a lease from year to year: *Deo Nandan v. Meghu Mahton*, 11 C.W.N. 228: (approving the case of *Sheo Nundan v. Ajodh Ray*, 26 Cal. 546, s. c., 3 C.W.N. 336: and *Masudan v. Goodar Singh*, 1 C.L.J. 456. In such cases it is immaterial whether the lands are held by a *ticcadar* to whom the proprietor has let it out or by a raiyat under the *ticcadar*; a person who is brought on the land by a lessee for a term under the proprietor, ceases to have any right in the land on the expiry of the term: *Sheo Nandan v. Ajodh Ray*, 26 Cal. 546. The case of *Binod Lal v. Kalu Pramanick*, 20 Cal. 708, was thus distinguished by their Lordships, Banerjee and Rampini, J.J. :—

Binod Lal v. Kalu Pramanick, distinguished.

"It was argued upon the authority of *Binod Lal Pakrashi v. Kalu Pramanick*, 20 Cal. 708, that the mere fact of the title of the person who inducts a raiyat upon any land ceasing, or being non-existent, would not be sufficient to show that the raiyat's title ceased or did not exist. We are of opinion that that case can have no application to a case like the present. The ground for the decision in that case was, as stated in the judgment of the learned Chief Justice, that the only right of the person who has obtained possession of the zemindari is to the rent payable for the land and not to obtain *khas* possession of the land itself unless he can do so under the provisions for the Bengal Tenancy Act; and that ground is not applicable to *zirat* lands protected by section 116, the primary character of such lands being that the proprietor is entitled to be in *khas* possession of them, and no raiyat can acquire any occupancy or non-occupancy right in them."

The principle in the case of *Binod Lal Pakrashi* cannot be extended to the case of a tenant who, taking a settlement *bona fide* from trespasser or resumed chowkidari chakran lands does not become an occupancy or a non-occupancy raiyat: *Jonab Ali v. Rakubuddu*, 1 C.L.J. 303.

See notes under s. 5.

Act X of 1859 and Act VIII of 1869 (B. C.).

"I think it is a reasonable construction to put upon s. 6 of Act X of 1859 and Act VIII of 1869, B. C., as also upon s. 116 of Act of 1885, to hold that these sections contemplate the beginning of the tenancy and not merely the execution of a lease during its continuance"—*Per Mookerjee J.*: *Masudan v. Goodar Nath*, 1 C.L.J. 456: s. c., 9 C.W.N. 107 (notes) Acquisition of occupancy or non-occupancy rights by a tenant in a *zerail* land cannot be prevented unless the landlord proves that when the holding was first

created it was held under a lease for a term or from year to year: *Ibid.* If the land is not so initially let out, the execution of a *kabuliyat* for a term by the tenant during the continuance of the tenancy does not affect his status or bar the application of the provisions of Chaps. V and VI of this Act; *Ibid.*

6. Khamar land :—In deciding a case under the old law *Khamar*, Glover, J., in delivering judgment in the case of *Hurish Chander v. Gungadhur*, 25 W.R. 181, said as follows:—It is contended that the word “khamar” in s. 6 of the Rent-law refers to land in the actual possession of the zemindar, and not to every piece of jungle or waste land included in his zemindari. But it seems to me that the words *Khamar* refers to any parcel of land, whether cultivated or uncultivated, belonging to the zemindar, and which the zemindar chooses to keep in his own possession. Every piece of land which the zemindar keeps under his own special control, would be khamar land within the meaning of the section.

7. Tenure-holder's private lands :—This section has no application to a tenure-holder's private lands. But the old law (Act VIII of 1869, B. C., s. 6) excepted from the acquisition of occupancy rights *kamat* lands belonging to the proprietors of the *estate or tenure* and let by him on a lease for a term or year by year; and therefore where the rights of parties were governed by Act VIII, B. C., of 1869, lands which were *kamat* did not cease to be so virtue of a *mokurari* settlement of the same: *Syed Khalilur Rahman v. Rupan Mohton*, 12 C.W.N. 436.

This section has no application to tenure holder's private lands.

8. Presumption :—Long possession in respect of *khamar* lands does not give a right of occupancy; there is no presumption therefore in favour of the raiyat from the fact of his having been more than 12 years in possession of the land, on the contrary the presumption would be that he was in possession for a term or year by year as a tenant. If he wishes to get rid of the limitation, it will be for him to shew that he had made some arrangements with the zemindar, which brought him a right of occupancy: *Harish Chunder v. Gungadhur*, 25 W.R. 181.

Long possession.

A proprietor may hold other lands besides *zerait* lands in *khas* possession and because he recovers possession of lands on the basis of the presumption arising from his proprietorship, it does not follow that the land is *zerait*, nor does the fact that he fails to prove the land to be *zerait* prevent him from claiming the land, if the defendant fails to establish a subordinate interest in it: *H. Manners v. Harihar*, 19 C.W.N. 149.

9. Onus :—Where a zemindar sued to recover possession on the allegation that the lands were his *zerait* but failed to prove his *zerait*, and the defendants having failed to have acquired rights of occupancy and failed to prove that they had acquired such rights or that they were tenants of the plaintiff, *held* that the plaintiff being admittedly the zemindar was entitled to a decree, the defendants having failed to establish their defence: *Batai Ahir v. Bhuggobutty*, 11 C.L.R. 476; see also *Rajah Sahib Perhlad v. Doorga Pershad*, 12 M.I.A. 286; *Ram Mon v. Ahmuddhen*, 20 W.R. 374; *Raj Krisen v. Peare Mohun*, 20 W.R. 421; *Huree Mohun v. Goreebulla*, 22 W.R. 417; *Nobo Coomar v. Oozer*, 23 W.R. 238; *Behary v. Prayag*, 22 W.R. 291.

Suit for recovery of possession of *zerait* land.

Onus.

Where the owner of land seeks to recover possession on the allegation that the party in possession had no right to continue in it his title to possession is proved or admitted, he can claim a decree unless the defendant proves the existence of a tenancy which entitles him to retain possession: *Norsingh Narain v. Dharam Thakur*, 9 C.W.N. 144, so where a zemindar claims a plot of land as his *zerait* and the defendant admitted his right as zemindar claimed to hold as raiyat, *held* that the landlord was entitled to a decree unless the defendant's tenancy was proved: *Ibid.**

In a suit by landlord to eject a tenant on the ground of the land being the former's *zerait* land, the onus is on the landlord to prove that the land was *zerait* so as to bring it within the provisions of s. 116; *Ajadhya Prasad v. Ram Golam*, 13 C.W.N. 661.

In a suit for ejectment brought against a tenant by a landlord the onus is in the first place on the landlord to prove either that the land is *zerait*, or any other title on which he claims to be entitled to eject the tenant; if such a title is made out, it will then be for the tenant to prove his title in order to save himself from ejectment: *Herbert Manners v. Chatter Mahto*, 13 C.W.N. 664.

In a suit by a proprietor for recovery of possession of land which he claimed to be *zerait*, *held* that the Settlement Officer having rejected the plaintiff's objection the settlement records afforded *prima facie* evidence in support of the defence: *Azmut v. Bishun Prakash*, 29 C.L.J. 607.

10. Ejectment suit by a lessee:—When the plaintiff, a lessee, sought to eject the defendant, not on the ground that he was entitled to keep possession of *zerait* lands against the wishes of the proprietor but on the ground that the defendant was a trespasser as he was not entitled to continue in occupation of those lands after the termination of his *ijara* lease, *held* that the true character of the lands would only be material if the defendant proved some kind of agricultural tenancy right thereon, so as to make the provisions of s. 116 of the Bengal Tenancy Act applicable: *Raghubar Mahto v. Manners*, 13 C.L.J. 568.

II. Ejectment suit: Limitation:—A suit to eject a raiyat of *zerait* land brought more than six months after the expiry of the term of his lease is barred by Art. (1) (a) of Sch. III of the Bengal Tenancy Act, s. 45 of the Act which was not applicable to *zerait* lands under s. 116 having been replaced by the said Article which is applicable: *Ganpat v. Rishal Singh*, 20 C.W.N. 14. But the contrary view seems to have been taken in the case of *Dwarakanath v. Tafazar Rahman*, 44 Cal. 267, s. c., 20 C.W.N. 1097 where it has been held that a raiyat of *zerait* land was not a non-occupancy raiyat and therefore Art. (1) (a) of Sch. III does not apply.

The Patna High Court dissented from the view taken in the case of *Dwarakanath v. Tafazar Rahman*, 44 Cal. 267, s. c., 20 C.W.N. 1097 and approved of the view taken in the case of *Ganpat v. Rishal Singh*, 20 C.W.N. 14 and it was held by the majority of the Full Bench (Chamier, C. J., Mullick and Roe J.J.) ; Chapman

* The following cases were considered in this case:—*Raj Kissen v. Pyari Mohun*, 20 W.R. 421; *Huree Mohan v. Gureebulla*, 22 W.R. 417; *Behari v. Paryag*, 23 W.R. 291; *Batai Ahir v. Bhugwatee Koer*, 11 C.L.R. 476; *Lulla Joynath v. Lutchun Christian*, 16 W.R. 158. *Rajah Sahib Perhlah Sein v. Doorga Pershad*, 12 M.I.A. 286. *Kripamoyee v. Durga Gobind*, 15 Cal. 89.

and Jwala Prasad, J.J., dissenting) that a suit by a landlord to eject a tenant of *zirat* lands on the ground of the expiration of the term of his lease is governed by Art. 1 (a) of Sch. III of the Bengal Tenancy Act, and the operation of Art. (1) (a) is not excluded in such a case by s. 116: *Janki Singh v. Mahant Jagannath*, 3 Pat. L.J. 1 (F.B.). This decision has been reversed on P.C. appeal: *Jagannath v. Janki Singh*, 49 I.A. 81, s.c., 26 C.W.N. 833, s.c., 35 C.L.J. 506.

12. Sale of estate: Right to Nij-jote lands:—Where a zemindari is sold the right to hold *nij-jote* lands passes with the sale to the auction purchaser: *Joy Dutt v. Baijeeram*, 7 W.R. 40.

13. Lease for a term of years or year to year:—There is *ing per se* in the fact of the land being *nij-jote* which prevents a proprietor from acquiring rights of occupancy in it; it is so only in such lands have been let by the zemindar on a lease for a term of years, or year by year: *Gour v. Beharee*, 12 W.R. 277; *Shaikh Jafar v. Ram Kishore*, 23 W.R. 288; *Hurish Chunder v. Gungadhar*, 25 W.R. 181. Right of occupancy.

Letting land for a term, or from year by year, for a considerable period, does not of itself alter the character of the land: *Bhugwan v. Jug Mohan*, 20 W.R. 308.

14. Effect of partition of an estate:—A part proprietor of an estate, in virtue of the share which he held in the estate before a partition of the estate occupied certain lands as *zirat* or *nij-jote* lands; the estate being partitioned, the lands fell in the share of another co-sharer who sued to recover possession of the same; the defendant having failed to prove that he held as a raiyat, *held* that the plaintiff was entitled to claim the said lands; *A Reed v. Sree Kishen*, 15 W.R. 430. Part proprietor.

15. Enhancement:—It was held under the old law that the right of the landlord to enhance the rent on account of *nijjote* lands was to make his own terms with the tenant or to turn him out of occupation of the lands: *Ionoo v. Brijia*, 22 W.R. 548. Where a reasonable notice was given to the tenant to quit unless he agreed to pay the rent required, and the tenant continued to hold over in view of the terms proposed to him by the notice when he had the reasonable opportunity of quitting his tenancy if he did not like those terms, *held* that he impliedly intimated his acceptance of them: *Ibid.* Old law.
Notice to quit.

16. Settled raiyat:—It seems that a tenant may acquire the status of a settled raiyat in a proprietor's private lands although he cannot acquire a right of occupancy; for this section only says that nothing in Chapter V shall confer a right of occupancy in a proprietor's private lands; by occupation of land in the manner provided by s. 20 a raiyat becomes a settled raiyat of the village and as such acquires a right of occupancy in all land for the time being held by him as a raiyat in that village. By sec. 116 he is no doubt debarred from acquiring a right of occupancy in a proprietor's private land but that does not prevent him from acquiring the status of a settled raiyat and thus acquiring a right of occupancy in the other lands (if any) held by him in the village as a raiyat. A tenant may acquire the status of settled raiyat in proprietor's private lands.

17. Khud-kast, meaning of:—The word "*Khudkast*" does not conclusively connote proprietor's private land: *Sukam Sao v. Karu Mahata*, [1920 Pat.] p. 131, s. c., 5 Pat. L.J. 87; *Deonath v.* Khud-kast.

Bakasht.

Amarsingh, 45 I.C. 418. The word *khudksht* is in common use in Bihar as a synonym of *Sir*. It literally means "one's own cultivation." *Bakasht* is a new name coined by the Revenue officers to designate lands found in the possession of landlords and under their cultivation, in regard to which, however, it is difficult to ascertain whether they are *Sir* or whether they are raiyati lands temporarily in the possession of the zemindar. It conveys to all intents and purposes, the same meaning as *khudkasht*, but might imply raiyati lands that had temporarily come into the possession and under the cultivation of the landlord: *Dhakeshwar v. Gulab Koer*, 53 I.A. 176, s. c., 31 C.W.N. 341 (P.C.).

Holding over of *Zerai* lands.

18. Holding over :—A tenant of *kamat* land does acquire a right of occupancy by holding it over after the expiry of the lease: *Syed Khalilur Rahman v. Rupān Mahton*, 12 C.W.N. 436.

A lessee of *zerait* land is tenant only during the period of the lease,—where he holds over Art. 1 (a) of Sch. III does not apply: *Jagarnath v. Janki Singh*, 49 I.A. 81, s. c., 1 Pat. 340, s. c., 2 C.W.N. 833, s. c., 35 C.L.J. 506 (P.C.).

Where tenants have been inducted on the *zerait* lands of the proprietor by means of a registered lease for a term of years, they do not acquire any raiyat's interest in the lands, occupancy or non-occupancy, and are liable to be ejected in a suit brought within 12 years of the expiry of the lease: *Ramjiram v. Banshi Raut*, 4 Pat. 49, s. c., 84 I.C. 305 (Jwala Prasad Actg. C. J. and Kulwant Sahay, J.).

Mesne profits.

19. Mesne profits :—Mesne profits should be assessed on the basis of produce and not rent when a proprietor is dispossessed of his *zirat* lands: *Pundit Luchmi Narayan v. Sheikh Mazhor Hossain*, 12 C.W.N. 650.

In estimating the amount of mesne-profits against a trespasser occupying a proprietor's private land the actual value of the produce should be taken: *Damodar v. Miller*, 6 Pat. L.J. 166, s. c., [1919 Pat.] p. 294.

20. Choukidari Chakran Lands :—On resumption by Government and settlement with the Zemindar, Chowkidari Chakran lands are at the disposal of the Zemindar and he can deal with them either as *mal* or as *zirat*: *Jonab Ali v. Rakibuddin*, 9 C.W.N. 571, s. c., 1 C.L.J. 303. See notes under s. 181.

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Report of Select Committee.

The Select Committee in their report on the Bengal Tenancy Act Bill stated as follows: "In dealing with the difficult question of *khamar* or *zirat* 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."

This section refers to the former procedure, and s. 118 to the latter procedure.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of proprietor or tenant.

:—See Appendix I, Chap. IV.

When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 103A, 103B, 106, 107, 108, 109 and 109A shall apply.

Procedure for recording private land.

Alterations :—The words and figures "sections 103A, 103B, 106, 107, 108, 109, and 109A" were substituted for the words and figures "sections 105 to 109 both inclusive" by Act III, B.C. of 1898.

Appeal :—The orders of Revenue-officer are appealable as provided for in s. 109A.

Procedure :—"Section 119 renders it clear that the same procedure is to be adopted, whether action be taken under s. 117 or s. 118": *Dharani Kant v. Gober Ali*, 30 Cal. 239.

120. (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 *khamar*, *zirat*, *sir*, *nij*, *nijjot* or *kamat* by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village usage as proprietor's *khamar*, *zirat*, *sir*, *nij*, *nijjot* or *kamat*.

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

(2a) Notwithstanding anything contained in any

agreement or compromise, or in any decree which proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

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

Headings of Notes.

1. ALTERATIONS.
2. ADMISSION AS TO CHARACTER OF LAND MADE AFTER
MARCH 1883, IF EVIDENCE : SUB-SECS. 2 AND 2 (a).
3. SUB-SEC. 2 (a).
4. INDIGO ZERAI LANDS.
5. SUB-SEC. (3).

Report of
Select
Committee.

I. Alterations :—Sub-sec. (2a) was inserted, by the Amending Acts of 1907 and of 1908 of Bengal and East Bengal respectively.

The object of this sub-section as explained in the Report of the Select Committee is as follows :—“This clause in the main reasserts the principle already accepted in clause 24 that agreements or compromises made before a Revenue officer should not be held to affect the rights of third parties. But in regard to the record of a proprietor's private land, the majority of us consider it necessary to go further and to provide that the Revenue officer shall not be bound to record land as proprietor's private land, because it has been declared to be so in a decree which has been obtained *ex parte* or by collusion or fraud. The question whether land is proprietor's private land affects not merely the parties to a particular suit, viz., the landlord and the tenant for the time being, but also all future occupants of the land, and it is necessary to safe-guard their interests as far as possible. It would be easy for a landlord to obtain an *ex parte* collusive decree, declaring certain land to be proprietor's private land, by suing a non-existent or fictitious defendant who had no concern with the land. We consider, therefore, that in framing the record-of-rights regarding such land, the Revenue officer should not be bound by decrees of the nature referred to, but should be required to satisfy himself by independent evidence as to the real nature of the land.”

The provision relating to *ex parte* decrees was omitted during the passage of the Bill through the Council.

Admission
made after
2nd March
1883.

2. Admission of tenant as to character of land made after 2nd March 1883, if evidence : Sub secs. (2) and (2) (a) :—It was held in the case of *Nilmoni v. Bykant*, 17 Cal. 466 that “any other evidence” in sub-sec. (2) of sec. 120 to show an assertion of a title on the part of the proprietor as to land as his private land may be an assertion communicated to the tenant before the 2nd March, 1883. It was held in the case of *Sher Bahadur Sahu Mackenzie*, 7 C.W.N. 400 that the mere fact, that the land having

been taken in lease on the 23rd August 1888 as *zerait* would not give to that fact any probative value, as the lease was not before the 2nd March 1883. In the case of *Masudan v. Goodar Nath*, 1 C.L.J. 456, s. c., 9 C.W.N. 107 (notes), it was observed that the question was not free from doubt. It was held, however, in the case of *Bhagtu v. Raghunath*, 13 C.W.N. 135, s. c., 1 C.L.J. 15 that an admission in a *Kabuliyat* of a date subsequent to the 2nd March 1883 as to the character of the land was relevant evidence and admissible in evidence. But in the case of *Ganapat v. Rishal Singh*, 20 C.W.N. 14 it was held that the admission in a *kabuliyat* of a date subsequent to the 2nd March 1883 was not admissible in evidence. The question came up for decision in the case of *Kesho Prasad v. Parameswari*, 2 Pat. 414 where it was held that the admission made in a *kabuliyat* subsequent to 2nd March 1883, that the land is private land of the landlord is admissible in evidence; on appeal to the Privy Council this judgment was affirmed and their Lordships of the Judicial Committee upon a review of the case-law cited above held, that sub-sec. (2) of sec. 120 of this Act does not exclude as inadmissible in evidence that subsequent to the 2nd March 1883, the tenant admitted that the lands let to him were *zerait* lands of the landlord; such an admission is relevant and admissible in evidence but it is probative evidence only, which like any other relevant fact, has to be considered and such weight given to it as under the circumstances of the case, it is entitled to have: *Bindeswari Prasad v. Kesho Prasad*, 53 I.A. 164, s. c., 31 C.W.N. 74, s. c., 44 C.L.J. 86, s. c., 5 Pat. 634 (P.C.). Their Lordships of the Judicial Committee agreed with the view taken by Mitter and Bell J.J. in *Bhagtu v. Raghunath*, 13 C.W.N. 135. The other decisions cited above and the case of *Sukan Sao v. Karumahata*, 5 P.L.J. 87, s. c., [1920 Pat.] p. 131 taking a contrary view are, therefore, no longer good law having regard to this Privy Council decision. Their Lordships of the Judicial Committee further held that the addition of sub-sec. (2) (a) of this section did not displace the view taken in the case of *Bhagtu v. Raghunath*, 13 C.W.N. 135 which their Lordships approved. The law therefore as it now stands having regard to the Privy Council decision is that an admission in a *kabuliyat* subsequent to the 2nd March 1883 as to the character of the land is relevant and admissible in evidence.

Admission made after 2nd March 1883.

Privy Council case of *Bindeswari Prasad v. Kesho Prasad*.

Present law.

3. Sub-sec. (2) (a): Any agreement or compromise:—The words “any agreement or compromise” in sub-sec. (2) (a) refer only to an agreement or compromise of a question in discussion as to the character of the land at the time when the agreement or compromise was made: *Bindeswari Prasad v. Kesho Prasad*, 53 I.A. 164, s. c., 31 C.W.N. 74 (P.C.).

“Any agreement or compromise, meaning of.”

4. Indigo *Zerait* lands:—Indigo *zerait* lands, in the absence of evidence to show that the lands were ever in the *khas* possession of the landlord, or their ancestors, do not come within the definition of proprietor's private lands contained in sec. 120 of the Bengal Tenancy Act: *H. B. Dalglish v. Damodar*, 8 C.L.J. 533.

5. Sub Sec. (3):—Rules 41 to 48 relating to Revenue officers acting under Chapter X of this Act shall apply *mutatis mutandis* in the case of Revenue officers acting under this Chapter. See Appendix I.

CHAPTER XII.

DISTRAINT.

Notes :—The operation of this Chapter was postponed till the 1st of February, 1886, by Act XX of 1885.

The word "rent" in this Chapter includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (5).

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

- (a) any crops or other products of the earth standing or ungathered on the holding ;
- (b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead :

Provided that an application shall not be made under this section—

Ben. Act
VII 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 area is due have been registered under the provisions of that Act; or
- (2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or
- (3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Headings of Notes.

1. DISTRRAINT BY A PROPRIETOR WHOSE NAME IS REGISTERED UNDER THE LAND REGISTRATION ACT.
2. LANDLORD NOT ENTITLED TO DISTRRAIN FOR DAMAGES.
3. RENT WHICH HAS NOT BEEN DUE FOR MORE THAN A YEAR.—
4. ONE APPLICATION FOR TWO OR MORE HOLDINGS NOT MAINTAINABLE.
5. DISTRRAINT FROM A PERSON NOT IN POSSESSION.
6. LIMITATION FOR A SUIT FOR WRONGFUL DISTRRAINT.
7. SUIT FOR ILLEGAL DISTRRAINT BY ONE OF SEVERAL CO-SHARERS.

1. Distraint by a proprietor whose name is registered under the Land Registration Act :—A tenant cannot deny the right of a registered proprietor to distrain and plead payment of rent to a third person whose name is not registered: *Hanuman v. Musst. Gobind Koer*, 1 C.W.N. 318. See notes under s. 90 and s. 140. Right of registered proprietor to distrain.

2. Landlord not entitled to distraint for damages :—A landlord is not entitled on his application under this section to distrain for damages: *Sheobarat v. Naurangdeo*, 28 Cal. 364. Distraint for damages not allowed.

3. Rent which has not been due for more than a year :—A landlord is entitled to distrain for the rent of the holding in the preceding agricultural year, i.e., for the rent of the holding for the year preceding the current year and not for the rent of the current year, and under cl. (d) to s. 122, he is also entitled to distrain for the interest due upon that amount, if he chooses to claim any: *Sheobarat v. Naurangdeo*, 28 Cal. 364 at p. 367. It is submitted that the landlord is entitled to make an application for distraint for the rent of the current year too in as much as the section speaks of rent which "has not been due for more than a year," and therefore the current rent which has been due according to the instalments of the current year, is rent which has not been due for more than a year. See *Government of Bengal v. Kojal Haoladar*, 25 C.W.N. 209 at p. 211. Distraint for rent for the year preceding the current year not allowed.

4. One application for two or more holdings not maintainable :—Under ss. 121 and 122 the landlord cannot by one application for distraint distrain for the rent of more than one holding: *Sheobarat v. Naurangdeo*, 28 Cal. 364 at p. 367.

5. Distraint from a person not in possession :—A landlord has no right to distrain for an arrear alleged to be due from a person who is not in possession and who did not raise the crops: *Mohinee Dass v. Ram Coomar*, W.R. 1864, Act X, 76.

6. Limitation for a suit for wrongful distraint :—See notes under s. 140.

7. Suit for illegal distraint by one of several co-sharers :—See notes under s. 140.

An order for distraint made on the 2nd December for rent payable on the 1st December is not an illegal order: *Superintendent and Remembrancer of Legal affairs v. Kajal Howladar*, 33 C.L.J. 24, s. c., 62 I.C. 187. If the tenant notwithstanding attachment of crops under such order and protest cuts the crops he is liable to prosecution under ss. 143 and 424 I. P. C.: *Ibid.*

Form of
application.

122. (1) Every application under the last foregoing section shall specify—

- (c) the period in respect of which the arrear is claimed, the 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.

Landlord
not entitled
to damages.

Interest :—Under s. 67 the interest due on arrears of rent is only 12 per cent. and can only run “from the expiration of that quarter of the agricultural year, in which the instalment falls due ;” *Sheobarat v. Naurangdeo*, 28 Cal. 364 at p. 367. But the landlord is not entitled to damages: *Ibid*.

Procedure
on receipt of
application.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Rules of the High Court under s. 142 :—See Appendix VI.

Execution
of order for
distraint.

124. If an application is admitted under the last foregoing section the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court :

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

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 a conspicuous part of the outside of the house in which he usually resides.

126. (1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to
reap, etc.
produce.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for

the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Sale-proclamation to be issued unless demand is satisfied.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained, and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

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.

Place of sale.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

When produce may be sold standing.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

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

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the

sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold. Payment of purchase-money.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid. Certificate to be given to purchaser.

134. (1) From the proceeds of every sale of distrained property under this Chapter, the officer holding the sale shall pay the costs of the distrainment and sale, calculated on a scale of charges prescribed by rules* to be made, from time to time, by the Local Government in this behalf. Proceeds of sale how to be applied.

(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.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers. Certain persons may not purchase.

136. (1) If at any time after a distrainment 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 distrainment, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same, and the distrainment 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.

* See Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. IV.

(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.

Amount
paid by
under-ten-
ant for his
lessor may
be deducted
from rent.

137. (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.

(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.

Conflict
between
rights
of superior
and inferior
landlords.

138. When land is sub-let, and any conflict arises under this Chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Distrain of
property
which is
under
attachment.

139. When any conflict arises between an order for distraint issued under this Chapter and an order issued by a Civil Court for the attachment or sale of the property, which is the subject of the distraint, the order for distraint shall prevail; but if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the

property without the sanction of the Court by which the order of attachment or sale was issued.

140. No appeal shall lie from any order passed by a Civil Court under this Chapter; but any person whose property is distrained on an application made under section 121, in any case in which such an application is not permitted by that section, may institute a suit against the applicant for the recovery of compensation. Suit for compensation for wrongful distrainment.

Headings of Notes.

1. MAINTAINABILITY OF SUITS.
2. COMPENSATION.
3. IN ANY CASE IN WHICH SUCH AN APPLICATION IS NOT PERMITTED.
4. TORTIOUS ACTS OF SERVANT.
5. PROOF.
6. SUIT FOR DECLARATION OF TITLE TO STANDING CROP.
7. SUIT FOR COMPENSATION FOR WRONGFUL DISTRRAINT.
8. LIMITATION.

1. Maintainability of suits :—A suit for compensation for illegal distrainment is maintainable only on the ground that the distrainment was made in violation of the provisions of s. 121 of the Act: *Hanuman v. Gobind Koer*, 1 C.W.N. 318. See notes under ss. 121 and 122. Distrainment in violation of s. 121.

2. Compensation :—S. 140 of the B. T. Act does not afford the only remedy against a distrainment made erroneously or on insufficient grounds: *Madhavananda v. Madhu Mahto*, 27 I.C. 812. Before a tenant can obtain any decree for damages on the ground of illegal distrainment he must prove what loss he has actually sustained: *Oojan v. Pran Nath*, 8 W.R. 220. "What they (the plaintiffs) are entitled to under s. 140 is compensation for damage done to them, and in such a suit as this, they must shew how they have been damaged. Now the amount, which they may be entitled to as damages would seem to consist of two sums: (i) any excess amount realised from them; (ii) and amount to which they might be entitled owing to the way in which their crops have been sold off." *Per Rampini and Gupta, J.J.*,: *Sheobarat v. Nawarangdeo*, 28 Cal. 364 at p. 369. Proof of loss to be proved before a decree may be had for compensation.

3. In any case in which such an application is not permitted :—See notes under ss. 121 and 122.

4. Tortious act of servant :—A landlord is not liable for compensation when his agent, who is not authorised in that behalf, makes an illegal distrainment: *Ramjoy v. Kali Mohan*, Marsh, 282. Landlord's knowledge and concurrence.

In a suit by a tenant to recover the value of crops alleged to have been carried off by the orders of the landlord, it was found that there had been long continued litigation between the parties, that the landlord was determined in getting *khas* possession of the land, and had refused to recognise the tenant, that the actual perpetrators of the trespass were her confidential servants specially employed in matters concerning her landed property, and that the

Servant's act under landlord's authority.

Act done by servant on behalf of landlord and with the intention of serving his purposes.

act done was in furtherance of her known wishes and for her benefit, *held* that the landlord's knowledge and concurrence could be presumed from these facts: *Shyama Soonduree v. Mallyut Mundal*, 11 W.R. 101. Unless it is shown that a servant of the landlord acted under the landlord's authority, the latter cannot be made answerable for the servant's tortious acts, though for his benefit: *Ibid*. But a master or principal is liable for any wrong done by his servant or agent, provided the act is done on his behalf and with the intention of serving his purposes: *Iswar Chunder v. Satis Chandra*, 7 C.W.N. 126.

5. Proof:—To obtain a decree for damages on the ground of illegal distraint one must prove what loss he has actually sustained: *Oojan v. Pran Nath*, 8 W.R. 220.

Burden of proof.

In a suit for recovery of compensation the onus lies upon the plaintiff to prove the annual rent payable by him: *Chunder Kant v. Ram Lal*, 1 C.W.N. 72 (notes): s. c., 1 C.W.N. 463. In a suit by a tenant for damages for wrongful distraint the landlord is required to prove the fact of tenancy and the amount of *jama*; and if the tenant pleads payment, the onus is on the tenant to prove his allegation: *Oojan Dewan v. Pran Nath*, 8 W.R. 220.

Title : standing crops.

6. Suit for declaration of title to standing crop:—A suit for declaration of title to a standing paddy crop which was attached in execution of a decree and unsuccessfully claimed by the plaintiff-appellant who was still in possession of the crop is an ordinary civil suit, and such a suit was held not maintainable in a Small Cause Court under s. 6, Act XI of 1865, the former Small Cause Courts Act., *Dakhyani v. Dole Gobind*, 21 Cal. 432.

Act IX 1887 Sch. II, Art. 35 (j),

7. Suit for compensation for wrongful distraint:—Plaintiff sued to recover Rs. 304-12-9 which he had to pay into Court, in order to obtain the release of his crops from attachment together with Rs. 7-0-9 dams, the costs alleged to have been incurred in making the attachment, the plaintiff's case was that the principal defendant had wrongfully caused his crops to be distrained under colour of s. 120, *held* that the claim being not only for the recovery of the sum paid but also for damages, namely, the cost alleged to have been incurred in paying it, it was a suit for compensation for illegal distress such as was contemplated by Art. 35 (j) of the Second Schedule of the Provincial Small Cause Courts Act: *Jugdeo Sing v. Padarath Ahir*, 25 Cal. 285. See also *Hyder Ali v. Jafas Ali*, 1 Cal. 183.

when applies.

Article 35 (j) of the Second Schedule of the Provincial Small Cause Courts Act applies only to suits for damages for illegal, improper, or excessive distress, and does not apply to suit so far as they seek to recover back the money paid: *Dewan Roy v. Sundar*, 24 Cal. 160 at p. 165. Where the plaintiffs claimed to recover money paid by them to get back their crops which had been distrained by the defendants for rents alleged to be due by persons other than the plaintiffs, and they also claimed damages on account of the distraint, *held* that the suit as constituted was not entirely of the nature of a Small Cause Court suit: *Ibid*; s. 586, C. P. C., does not bar a second appeal in such a suit: *Ibid*. Plaintiff alleged that defendant had taken unlawful possession of two heaps of paddy under the pretext that he had distrained them; the prayer was for an order directing to deliver to plaintiff Rs. 250 being the price of

the paddy, held that the suit was in substance one for compensation for illegal distress or attachment and therefore not a suit of the nature cognizable by a Court of Small Causes and a second appeal lay: *Pama Sanyasi v. Zemindar of Jayapur*, 25 Mad. 540. Compensation for illegal distress.

A suit under this section lies against a landlord who abuses his power of distraining the crops which belong to the tenant on the pretence that they belong to another person: *Jugdeo v. Padanath*, 35 Cal. 285. "There has been an invasion of the rights of the tenant for which he is entitled to a remedy, and if the case is not one of the kind contemplated by s. 130 he is not so far as we can see, deprived by the provisions of that section of ordinary right of action which any person who suffers from a tortious act has against the tortfeasor. (*Per Trevelyan and Stevens, J.J.*): *Ibid* at p. 288. Suit against a landlord who abuses his power.

The rule of law that persons having the same cause of action must sue jointly does not apply to actions on tort in every case in which several persons have been damnified by the same tortious act: *Jugdeo v. Padanath*, 25 Cal. 285. A suit for compensation for illegal distraint under s. 121 is therefore maintainable although brought at the instance of one of two persons jointly entitled to the crops distrained: *Ibid*. Joinder of parties—tortious acts.

See notes under s. 121.

8. Limitation:—The limitation applicable to a suit for illegal distraint of crops by the landlord is one year from the date of the wrongful seizure. Art. 28 or 29 and not Art. 2 of Sch. II of the Limitation Act (Act XV of 1877) applies to such suits: *Jagat Jiban v. Sarat Chandra*, 7 C.W.N. 728. The last act of taking or detention must be regarded as the date of the action; *Tarinee Charan v. Shambhoo Nath*, 3 W.R. Act X, 139. The cause of action arises when the unlawful distress is made: *Pama Sanyasi v. Zamindar of Jayapur*, 25 Mad. 540. Where the distraint was made on 25th January, 1898, and the suit was instituted on the 26th of the same year, held that the suit was time-barred: *Ibid*. A suit for wrongful distraint seems to be governed by Art. 2 of Sch. II of the Limitation Act and should be brought within 90 days of the cause of action. Act XV of 1877, Sch. II, Art. 28 or 29.
Last act of taking or detention.
Date of unlawful distraint.
Sch. II, Art. 2 of the Limitation Act.

Where the defendants by setting up a fictitious landlord and a fictitious tenant with regard to the Plaintiff's holding and thus obtaining a process for distraint from the Court, entered upon the land of the plaintiff and cut and removed the standing crops on it: held; (*Per Rampini C. J.*) that a suit for damages in respect of the above acts of the Defendants was governed by Art. 36 of Sch. II to the Limitation Act; (*Per Doss J.*) that the suit fell partly under Art. 39 and partly under Art. 49 of Sch. II of the Limitation Act: *Sripati Sarkar v. Hari Kar*, 9 C.L.J. 109; see the cases of *Mahesh Chandra v. Ari Kar*, 9 C.W.N. 376; *Mangun Jha v. Dulhin Golab Koer*, 23 Cal. 692. Limitation Act Sch. II Art. 36.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this Chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by Power for Local Government to authorize distraint in certain cases.

himself or his agent, any produce for the distraint of which he would be entitled to apply under this Chapter to the Civil Court :

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power of
High Court
to make
rules.

142. The High Court may, from time to time, make rules, consistent with this Act, for regulating the procedure in all cases under this Chapter.

Rules :—See Appendix VI, High Court Rules.

CHAPTER XIII.

JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules,* consistent with this Act, declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to
modify Civil
Procedure
Code in its
application
to landlord
and tenant
suits.
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.

Headings of Notes.

1. WHAT ARE NOT SUITS.
2. PROCEDURE APPLICABLE TO PROCEEDINGS WHICH ARE NOT SUITS.
3. SCH. III, ART. 6.
4. SUITS BETWEEN LANDLORD AND TENANT :
 - (a) *Miscellaneous cases* (b) *One suit for rent of several tenures* ; (c) *A suit for recovery of money due on an instalment bond* ; (d) *Suit for rent assigned to be paid to superior landlord* ; (e) *Assessment of rent* ; (e) (i) *Suit for damages for use and occupation* ; (f) *Suit for consolidated rent of agricultural holding and fishery* ; (h) *Forest rights* ; (i) *Suit for rent of homestead or bastoo land* ; (j) *Suit for rent for period when tenant was out of possession* ; (k) *Hajabad* ; (l) *Katihari dues* ; (m) *Fraudulent decree* ; (n) *Effect of setting aside an ex parte decree* ; (o) *Effect of abatement of appeal on the death of one of the co-appellants* ; (p) *Produce of land jointly held by plaintiff and defendant* ; (q) *Rate of rent* ; (r) *Saranjami*.
5. UNREGISTERED LEASE ; RATE OF RENT.
6. ISSUE IN A RENT SUIT.
7. SUITS BETWEEN LANDLORD AND TENANT : JURISDICTION.
8. ADDITION OF PARTIES IN A RENT SUIT.
9. RENT-SUIT FOR ACCRETED LANDS.
10. MISCELLANEOUS CASES.
11. EVIDENCE.
12. SET OFF.
13. SUCCESSION CERTIFICATE ACT.
14. INSTALMENT DECREE.
15. INTERPLEADER SUIT.
16. ADMISSION BY A CO-TENANT.

* See Bengal Local Statutory Rules and Orders, 1912, Vol. I, Part IV.

17. EXECUTION OF DECREE.
18. COLLECTION PAPERS: JAMABANDIS: JAMAWASIL BAKIS: JAIBAKI: ISAMNAVISI: QUINQUENNIAL REGISTERS: CHITTAS: BUTWARA PAPERS: HAQUIQUAT PAPERS: ROAD CESS RETURN: THAK AND SURVEY MAPS: AS TO ADMISSIBILITY OF THESE PAPERS IN EVIDENCE.
19. RESJUDICATA.
20. REGISTERED TENANT.
21. ADVERSE POSSESSION.
22. PROOF OF TENANCY RIGHT.
23. ESTOPPEL.

S. 84.

1. What are not suits :—An order under s. 84 passed by a Civil Court is not a decree and as such is not appealable: *Gaghan v. Rameswar*, 18 Cal., 271; *Peary Mohun v. Barada Charan*, 19 Cal. 485. A proceeding under s. 90 is not a decree: *Dayagazi v. Ram Lall*, 2 C.W.N., 351; such an order is not appealable; *Ibid.* See also *Ashutosh v. Basanta Kumari*, 19 C.W.N. 160 (notes). As to whether orders passed under ss. 173 and 174 are decrees and as to whether they are appealable, see notes under those sections. Applications under ss. 61 and 171 are not suits.

Ss. 61, 171.

S. 93.

An application under s. 93 is not a suit: *Rango Roy v. Frederick Holloway*, 4 C.W.N. 95; s. c., 26 Cal. 842. (*Hossein v. Mutookdharee*) but a proceeding under s. 103 is a suit: *Acha Mian v. Durga Charan*, 25 Cal. 146, s.c., 2 C.W.N. 137; see notes under s. 103.

S. 103.

Suit includes appellate stage.

C. P. C. O. 43 r. 1 (t).

The term "suit" includes the appellate stage; it even includes the execution proceedings based on the final decree made in the suit: *Samed Sheikh (Chamed Shekh) v. Naba Nepal Ghose*, 19 C.W.N. 359, s.c., 19 C.L.J., 310; sub-sec. (2) of s. 143 of the Bengal Tenancy Act makes O. 43 r. 1 cl. (t) of the Code of Civil Procedure applicable subject to the operation of the restrictive provision of s. 153 of the Bengal Tenancy Act: *Ibid.*

Or. 21 r. 58

A tenant who was not made a party in a suit for rent against his co-tenant, in absence of any evidence as to his relinquishment of his rights, can file a claim under or 21 r. 58 of the C. P. Code, to attachment of his homestead land by the decree-holder and is not precluded by section 143 read with sec. 170 of the B. T. Act from doing so: *Bibhuti Bhusan v. Chinibas*, 45 C.L.J. 229 (Mitter J.).

2. Procedure applicable to proceedings which are not suits :—No rules have as yet been framed under this section. But s. 148 provides that sections 121 to 127 (*both inclusive*), 129, 305, and 320 to 326 (*both inclusive*), of the Code of Civil Procedure (Act XIV of 1882) shall not apply to "rent-suits"; that section also provides certain other rules as to the procedure in rent-suits. In a suit for ejectment under the Bengal Tenancy Act it was held that the recording of evidence in English instead of in the language of the Court is merely an irregularity which may be cured under s. 578 of C. P. C. (Act XIV 1882); *Ratan Lal v. Farashi*, 34 Cal. 396. S. 147A of the Bengal Tenancy Act also modifies s. 375, C. P. C., (Act XIV of 1882) to a certain extent; s. 170 of the Bengal Tenancy Act lays down that ss. 278 to 283, C. P. C. (Act XIV of 1882) shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon. S. 210, C. P. C. (Act XIV of 1882) applies to a suit for money and not to a rent-suit and therefore a decree for rent cannot be made payable by instalments: *Shib Narain v. Baikuntha Nath*, 11 C.W.N. 857.

No rules have yet been made under this section.

v. *Kaleechurn*, Marshall 215, *Dhunbat v. Russomoyee*, 14 W.R. 108, *Radha Gobind v. Prokash*, 10 W.R. 461.

A suit for assessment of rent does not lie unless framed under s. 52, for land encroached upon by a tenant and which has been treated as a part of the holding: *Harachandra v. Radhakishore*, 20 C.L.J. 296. See notes under ss. 52 and 158.

(ei) *Where in a suit by a landlord for damages for use and occupation of land*, defendant claimed to be a tenant and plaintiff admitted that defendant was an occupant by possession, *held* that the suit was one for rent and was not cognisable by a Small Cause Court: *Mahadeb v. Kesho Pershad*, 2 Pat. L.J. 97.

(f) *Suit for consolidated rent of agricultural holding and fishery*: Where a raiyat of an agricultural holding agreed to pay in addition to his rent a certain sum at the rate of one anna per rupee (of the rent of the agricultural holding) for a fishery, *held* that one suit for rent of the holding and the fishery lies and the suit lies in a Civil Court: *Shib Prosad v. Vakati Pali*, 33 Cal. 601. Consolidated rent of agricultural holding and fishery.

(g) *Suit for rent of a fishery*:—A suit for the rent of a fishery is maintainable in ordinary Civil Courts which have jurisdiction in rent suits: *Shib Prosad v. Vakati Pali*, 33 Cal. 601. A suit for rent of a fishery lies in a Court where a suit for possession of a fishery would lie: *Shibu Halder v. Gopi Sundar*, 1 C.W.N. 187 (notes). A julkar is immoveable property within the meaning of s. 2, cl. 5 of the General Clauses Act, ss. 16A and 19 (Act XIV of 1882) C.P.C. apply to the case of a julkar and a suit for rent may be brought in either of two Courts if there is reasonable doubt as to its situation. *Ibid.* See notes under s. 193.

(h) *Forest rights*: A suit for recovery of arrears of rent for Forest forest rights is a suit under this Act: *Abdullah v. Asraf*, 7 C.L.J. 152. rights.

A grant to cut and remove during a specified period trees which might during that period attain a prescribed size is a grant of forest rights within the meaning of s. 193, although it creates an interest in land or not: the consideration payable is rent, and a suit for such rent is not maintainable in a Small Cause Court, but should be instituted under s. 144 of the B. T. Act in the Court which would have jurisdiction to entertain a suit for the possession of the trees: *Bande Ali v. Amud Sarkar*, 19 C.W.N. 415. Grant to cut and remove trees.

(i) *Suit for rent of homestead or bastoo land*: A suit for the rent of homestead or bastoo land is not cognisable by a Court of Small Causes under the Provincial Small Cause Courts Act IX of 1887: *Uma Charan v. Bijari Bewah*, 15 Cal. 177 (F.B.). Homestead.

(j) *A tenant is not liable for rent for the time during which he was out of possession* at the instance of a person who was set up by the landlord although he has got a decree for mesne profits against him: *Ramchandra v. Dwarkanath*, 1918 Pat. 26. See also *Chandra Kant v. Ramanath*, 11 C.L.J. 591.

(k) *Hajabad*: Where in a suit for rent, the tenants claimed remission of rent payable on account of what are called *hajabad* land under an alleged custom under which in years of inundation, no portion of such rent, irrespective of the extent of the land inundated or of the crops destroyed was recoverable from them, *held* that the custom was both unreasonable and uncertain and was in consequence Hajabad.

invalid in law: *Srinarain v. Bhutnath*, 22 C.W.N. 422. See notes under ss. 50 and 103B.

Katihari
dues.

(l) *Katihari dues*. A suit to recover *Katihari* dues (being a profession tax for carrying on the trade of a weaver) is not to be confounded with a suit for agricultural rent: *Rameshwar v. Bikan Mamin*, 36 I.C. 600.

Fraudulent,
decree,
onus.

(m) *Fraudulent decree*: In a suit for declaration that a decree in a certain rent suit is fraudulent, the plaintiff is to prove the affirmative of the proposition. *Amjad Ali v. Ismail*, 27 C.L.J. 137.

Ex parte
rent
decree.

(n) *Ex-parte decree for rent*: An *ex-parte* decree for rent is conclusive as to the relationship of landlord and tenant: *Hiranmay v. Ramjan Ali*, 20 C.W.N. 48.

An *ex-parte* decree for arrears of rent which has been duly executed is some evidence as to the rate of rent: *Madhu v. Jhumar*, 1 C.W.N. 120; *Matilal v. Nripendra*, 2 C.W.N. 172. But an *ex-parte* decree which has never been executed is no evidence as to the rate of rent: *Ram Chandra v. Harogobinda*, 1 C.W.N. 128 (notes). Where a suit was decided in the presence of the defendant's pleader, held that the decree could not be called an *ex-parte* one, merely because the defendant did not adduce any evidence or submit any argument at the trial and it was further held that the *ex-parte* decree did not lose its conclusive character because it was not executed: *Rajkumar v. Alimuddi*, 17 C.W.N. 627.

Where an *ex-parte* decree was obtained for a suit for ejectment and thereupon the said decree was regular suit brought by the defendant on the ground that the original suit was revived by the setting aside of the *ex-parte* decree: *Nistarini v. Mohendra*, 28 C.L.J. 158.

Death of co-
appellant.
Abatement
of appeal.

(o) *Effect of abatement of appeal on the death of one of co-appellants*: Where one of the tenant appellants died after having preferred an appeal arising out of a suit in which the tenants claimed abatement of rent, held that one of the tenants appellants having died and his heirs not having been substituted, the whole appeal ought to fail by reason of the abatement of the appeal with respect to one of the appellants: *Narendra v. Satyadhan*, 30 C.L.J. 203; see also *Bhoopendra v. Romon*, 27 Cal. 417.

Suit for
produce of
land jointly
held by
plaintiff and
defendant
cognizable
by Small
Cause
Court.

(p) *Produce of land jointly held by plaintiff and defendant*:—A suit for recovery of share of profits and produce of land jointly owned by Plaintiff and Defendant is cognizable by a Small Cause Court: *Rajiva Narayan v. Kiral Narayan*, 1918 Pat. 55.

Rate of rent
decided in
earlier suit.
Review.

(q) *Rate of rent*. See notes in Appendix XI and under s. 65, heading no. 32.

Where in an earlier instituted suit the High Court decided as to the question of rate of rent in favour of the plaintiff landlord and the same question was decided against the plaintiff in a subsequently instituted suit by the lower appellate court without knowledge of the judgment of the High Court, held that the remedy of the plaintiff was to apply for review: *Jadav Chandra v. Manik Sarkar*, 29 C.L.J. 313.

"Saran-
jami,"
meaning of.

(r) *Saranjami*: The word "Saranjami" ordinarily signifies collection charges and does not include Government revenue: *Bhabani Nath v. Purna Chandra*, 25 C.W.N. 308.

5. Unregistered lease: Rate of rent:—Oral evidence is admissible to prove the rent agreed to be paid by an unregistered *kabuliyat* which is inadmissible in evidence: *Amir Ali v. Aqkup Ali*, 19 C.L.J. 428; see also *Banku Behary v. Raj Chandra*, 14 C.W.N. 141. Rate of rent.

6. Issue in a rent suit:—The primary issue in a rent suit is whether the rent claimed for the particular period is due; where a rent-suit was dismissed on the ground that no amount was due by the defendant, a further declaration by the Court that the land was held subject to payment of rent was only incidental and could not operate as *resjudicata* in a subsequent suit for assessment of rent: *Harihar Pande v. Chowdhury Karamut*, 9 C.L.J. 493; see also *Thakur Magunde v. Thakur Mahadeo*, 18 Cal. 647; *Run Bahadur v. Lucho Koer*, 11 Cal. 301 (P.C.). Primary issue in a rent suit.

In a suit for rent no issues need be framed but where issues are framed, the non-existence of a direct issue has to be seriously taken into consideration in determining whether the question of right or liability for all times was really directly and substantially in issue: *Gnanada v. Nalinibala*, 43 C.L.J. 146.

7. Suits between landlord and tenant: Jurisdiction:—Because a suit is one between a landlord and a tenant it does not follow that it is therefore cognizable by ordinary Civil Courts as distinguished from Courts of Small Causes: *Rango Ray v. Frederick Holloway*, 26 Cal. 842, s. c., 4 C.W.N. 95. This section has no bearing upon the question of the nature of the suit; it determines the jurisdiction within which suits are to be instituted: *Ibid.* A suit under s. 75 for the recovery of a sum which the plaintiff, the tenant of the defendant, claims in respect of excess payments made by him in respect of the rent of his holding, is cognizable by the Small Cause Court, although it is a suit between landlord and tenant: *Ibid.* See notes under the Preamble. This section determines the jurisdiction within which suit is to be instituted.

S. 144 empowers a landlord to institute a suit for rent in the Court in whose jurisdiction the tenure or holding is situate partly or wholly. But having regard to clauses (a) and (b) of s. 20 C.P.C. a suit for rent may also be brought where the tenant resides: *Kunja Mohan v. Manindra Chandra*, 27 C.W.N. 42. But the sale must be held where the tenure or holding is situate: *Ibid.* Rent-suit may be brought where tenure or holding is situated or where Defendant resides.

8. Addition of parties in a rent-suit:—Parties should not be added in a suit for rent so as to transform it into a complex title suit, though questions of title may be incidentally investigated in a suit for arrears of rent, e.g., where the tenant defendant disputes the extent of the title of the plaintiff to the arrears demanded: *Abdul Gafur v. Ali Miah*, 28 C.W.N. 805; see also *Indra Narain v. Sarbaseva*, 41 C.L.J. 341. See notes under s. 65, heading no. 23. Addition of parties in a rent-suit, where may not be made.

9. Rent suit for accreted lands:—It is difficult to affirm a general proposition that in no case can a separate suit for rent be maintained for accreted lands: where the accreted lands were formed subsequent to the creation of the parent (*howla*) tenure and were not only constituted a separate estate between the Government and the proprietor, but the *deara* lands were separated and formed into new tenancies recorded in the settlement *khewats*, and the plaintiff had previously sued for and obtained a decree for rent in respect of the parent *howla* tenure separately, and the parties had treated the accreted lands as separate tenures; held that a separate suit for rent Rent suit for accreted land: separate suit, if maintainable.

for the accreted lands was maintainable: *Kali Ranjan v. Rajeswar*, 51 Cal. 396.

Suit
against
beneficial
owner or
farazidar.

10. Miscellaneous cases:—A landlord is entitled to sue either the beneficial owner or his *farazidar* for rent: *Taharat Karim v. Bal Kuar*, 64 I.C. 515.

Suit against
usufructu-
ary mort-
gagee.

Where the usufructuary mortgagee is in possession, the landlord may sue him for rent: *Nityananda v. Harimohan*, 64 I.C. 750.

Where no
defect of
parties—
Parties to a
kabuliyat.

A suit for rent is not bad for defect of parties if all the parties to the *kabuliyat* are made defendants and it is not necessary to determine whether there are other co-sharers: *Hosen Jan v. Mirza Mehafedzuddin*, 62 I.C. 619.

Where all
heirs are
not parties.

Where in a suit for joint possession one of the plaintiffs respondents died and his heirs were substituted the appeal should be dismissed, and the fact that the shares of the plaintiffs were separately stated in the plaint would make no difference: *Arjan Mirdha v. Kalikumar*, 68 I.C. 194.

See notes under s. 65.

Conversa-
tion about
comprom-
ise, if ad-
missible in
evidence :
Admission.

II. Evidence:—The mere fact of a conversation taking place about the compromise of a rent suit about to be instituted is not in itself sufficient to prevent the conversation from being put in evidence: *Meajan v. Alimaddi*, 44 Cal. 130 ; where several persons are jointly interested in the subject matter of a suit an admission by one of them is receivable as evidence against all if the admission is made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered: *Ibid*.

Set off.

12. Set off:—In a rent-suit a set off cannot be allowed as to payments made in regard to properties not the subject matter of the suit, but a set off may be allowed in respect to payments made on the plaintiff's behalf *qua* the property which the defendant holds under the plaintiff: *Dittor Koer v. Harkhoo Singh*, 37 I.C. 367.

See notes under ss. 38 and 52.

Succession
Certificate
Act.

13. Succession Certificate Act:—Arrears of rent due to the estate of a deceased person can be recovered without the production of a certificate under the Succession Certificate Act, (VII of 1889). The word "debt" in sub-sec. (2) of sec. 4 of that Act includes any debt except rent, revenue, or profits payable in respect of land used for agricultural purposes.

Instalment
Decree.

14. Instalment decree:—A decree for rent under this Act cannot be made payable by instalments, s. 210 C. P. C. (or XX, r II) not applying to such a decree: *Sibnarain v. Baikuntha*, 11 C.W.N. 857. It seems, however, that instalment decree by consent may be passed.

Inter-
pleader
suit.

15. Interpleader Suit:—A tenant cannot bring an interpleader suit to have it determined which of two defendants both of whom claimed rent from him is his landlord: *Koylash v. Goluck*, 2 C.W.N. 61. See notes at pp. 44 and 369.

Admission
by co-tenant.

16. Admission by co-tenant:—The admission by a co-sharer tenant as to a particular person being the landlord of a holding is no evidence against the other co-tenants: *Kalikishore v. Gopimohon*, 1 C.W.N. 154 (notes). An admission by one of the tenants as to the rate at which he holds is not evidence to prove the rate at which the other co-tenants hold: *Narahari v. Narayani*,

W.F., Sp., (F.B.) 23. See also *Kasikinkar v. Satyendra*, 15 C.W.N. 191, s. c. 12 C.L.J. 642; *Jogneswar v. Kesha Prasad*, 1 P.L.J. 190. Where two persons were sued as joint tenants, held that a separate decree for half the amount admitted by one of them could not be made against him who have made the admission: *Chandreswar v. Chuni Ahir*, 9 C.L.R. 359.

17. Execution of decree :—The Court in passing a decree in a suit for rent cannot limit it by saying that the defaulting tenure or holding should be first sold: *Jatindra v. Muzaffar Ali*, 16 C.W.N. 31 (notes). See also *Kesho Prasad v. Lalji Roy*, 1 P.L.J. 138. A landlord obtaining a decree for rent is free to proceed against any property of the judgment debtor; he is under no obligation to proceed in the first instance against the defaulting tenure: *Sailaja v. Gayani Das*, 18 C.L.J. 29. Where a suit is rightly framed as a suit for rent a decree passed therein would be capable for execution as a decree though the Court passed a money decree: *Pramada v. Sara Khatun*, 16 C.W.N. 31 (notes).

18. Collection papers : Jamabandis ; Jamawasil bakis ; Jai-Baki : Isamnavisi : Quinquennial Registers : Chittas : Butwara Papers : Haqiqat Papers : Road cess Return : Thak and Survey Maps : As to admissibility of these papers in evidence :—Collection papers. See Appendix XI (Miscellaneous matters). As to collection papers, see also notes under s. 50 at pp. 311 to 313. As to Road Cess Return, see notes under s. 65, heading no. 34.

19. Resjudicata :—As to cases on the question of resjudicata in rent suit, see Appendix XI (Miscellaneous matters). See also notes under s. 65, heading no. 33.

20. Registered Tenant :—A decree against the recorded tenant is binding on the unregistered transferee: *Gopinath v. Sajanikant*, 10 C.W.N. 240, *Sashi Bhusan v. Gogon Chandra*, 22 Cal. 364. See notes under s. 65, heading no. 9.

21. Adverse Possession :—The possession of a tenant is not adverse to his landlord: *Srishtidhar v. Kalikant*, 1 W.R. 171, *Watson v. Sarat Sundari*, 7 W.R. 395. *Rajkisore v. Girijakant*, 25 W.R. 66. *Ram Chandra v. Madho Kumari*, 12 Cal. 484. So long as the relation of landlord and tenant exists the mere non-payment of rent does not constitute adverse possession: *Trailokya Tarini v. Mohima Chandra*, 7 W.R. 400; *Rangulal v. Abdül Gofur*, 4 Cal. 314; *Prasanna Kumar v. Srikant*, 17 C.W.N. 137; *Jagdeo v. Baldeo*, 27 C.W.N. 925. See notes at pp. 39, 40, 43 and notes under s. 161. The possession of a trespasser during the continuance of a lease does not become adverse as against the lessor: *Hajra Sardar v. Kunja Behari*, 19 C.W.N. 18, s. c., 25 C.L.J. 635. See notes in App. XI (Miscellaneous matter) and under s. 161.

22. Proof of tenancy right :—Tenancy in this country is created not only by contract but also by occupation of land, so far as agricultural lands are concerned: *Ajim Sardar v. Ramlal*, 25 Cal. 324, *Kali Prasanna v. Bhagaban*, 17 C.L.J. 431. A tenant can prove his tenancy rights without proving his lease if he has one which is inadmissible for want of registration: *Fazel Sheikh v. Keramaddi*, 6 C.W.N. 916; *Amir Ali v. Yakub*, 41 Cal. 357, *Banka Behari v. Raj Chandra*, 41 Cal. 347; *Rajkumari v. Shyama Bibi*, 25 C.W.N. 163 (notes). Proof of tenancy right.

23. Estoppel :—As to cases on estoppel between landlord and tenant, see notes at pp. 41 to 42 and also under s. 85 and in Appendix XI.

Jurisdiction
in proceed-
ings under
Act XIV
of 1882.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(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 possession of the tenure or holding in connection with which the application is brought.

Headings of Notes.

1. JURISDICTION TO ENTERTAIN A SUIT FOR THE POSSESSION OF THE TENURE.
2. RENT SUIT ERRONEOUSLY REGISTERED IN SMALL CAUSE COURT.
3. COURT FEES.
4. S. 43, C. P. C. (ACT XIV OF 1882).
5. COMPENSATION FOR USE AND OCCUPATION.

Rent-suit
not exceed-
ing Rs.
1,000 with
regard to a
tenure the
value of
which is
Rs. 4,500
cognizable
by a
Munsif.

Reasonable
ground of
uncertainty
as to juris-
diction.

Fishery

1. Jurisdiction to entertain a suit for the possession of the tenure :—A suit for recovery of rents due on a tenure for a sum not exceeding Rs. 1,000 is cognizable in a Munsiff's Court, although a suit for recovery of possession of the tenure lies in a sub-Judge's Court, the capital value of the tenure being Rs. 4,500: *Chowdhury Fazlur Rahim v. Dwarka Nath*, 30 Cal. 453, s. c. 7 C.W.N. 402. S. 144 lays down where the cause of action in suits between landlord and tenant shall be deemed to have arisen: it does not say in which Court the suit is to be instituted; for that purpose that section is to be read with ss. 15 and 17 of the Civil Procedure Code: *Ibid*.

Where there is a reasonable ground of uncertainty as to jurisdiction a suit for possession may be brought in either of the Courts where the property is supposed to be situate under ss. 16A and 19 of the Civil Procedure Code (Act XIV of 1882) and consequently a suit for rent of such a property may be brought in either of the Courts: *Shibu Haldar v. Gopi Sundari*, 1 C.W.N. 87 (notes).

Julkar is immoveable property within the meaning of s. 2, cl. (5) of the General Clauses Act and where there is reasonable doubt as to the situation of a julkar in the jurisdiction of one or two Courts, a suit for rent may be brought in either of the courts: *Ibid*.

2. Rent suit erroneously registered in Small Cause Court :—Where a rent suit was erroneously registered in a Small Cause Court and the Munsiff at the time of trial who was vested with the powers of the Small Cause Court transferred it to his file as a Munsiff, held that the order was lawful: *Joggeshwari v. Chandi Charan*, 22 C.W.N. 47 (notes).

3. Court Fees :—S. 7, cl. (v) of the Court Fees Act does not apply to a suit for recovery of possession of land of which the plaintiffs claim to be tenants, brought against the admitted landlords and persons who also claim to be tenants of the same ; and the value of the relief sought, as stated in the plaint determines the jurisdiction of the Court to try the suit : *Ram Ekbal v. Baldeo Singh*, 19 C.L.J. 418 ; *Furzand Ali v. Mohanth Lal Puri*, 32 Cal. 268 ; *Ram Raj Tewari v. Grinandan Bhagat*, 15 All. 63.

S. 7 Cl (v)
of the Court
Fees Act.

4. S. 43. C. P. C. (Act XIV of 1882):—If claim for rent of year is extinguished by satisfaction and again revived by cancellation of such satisfaction, *held* that s. 43, C.P.C., (Act XIV of 1882) would bar the institution of a suit for the said rent which was not included in a suit brought after satisfaction and before revival of the claim : *Syed Abdulla v. Hurkishen*, 2 C.L.J. 490 : the claim for rent for several successive years constitutes one whole claim in respect of the cause of action within the meaning of s. 43 : *Ibid.* See also *Adhirani v. Lala Sheo Sankar*, 12 Cal. 482.

Relinquish-
ment of
claim.

5. Compensation for use & occupation :—A suit for compensation for use and occupation of land in which the Plaintiff does not ask for ejectment of the defendant may be treated as a suit for rent : *Abdul Hakim v. Rajendra*, 13 C.W.N. 635.

145. Every naib or gumashta of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Naibs or
gumasthas
to be re-
cognized
agents.
XIV of
1882.

Headings of Notes.

1. CIVIL PROCEDURE CODE.
2. SUIT BY AGENT.
3. SUIT FOR RENT BY GUMASTHA IN HIS OWN NAME NOT MAINTAINABLE.
4. STAMP IN A DEED FOR APPOINTMENT OF AN AGENT.
5. BRIBE PAID TO LANDLORD'S AGENT.
6. A GUMUSTHA CANNOT CONSENT TO TRANSFER OF A HOLDING.
7. NAIB OR GUMUSTHA CANNOT GRANT LEASES.
8. ILLEGAL CESSSES COLLECTED BY LANDLORD'S AGENT.
9. LIMITATION.

1. Civil Procedure Code :—See Order, 3, Rules 1 to 3 of Act V of 1908.

2. Suit by Agent :—A Court whose aid is invoked on behalf of one person through the agency of another is entitled in some form or other to enquire whether the alleged agent had authority to bring the suit : *Nam Narain v. Raghu Nath*, 19 Cal. 678 (P.C.). A suit for arrears of rent was brought in the Deputy Collector's Court on behalf of one person through the agency of another ; after the

Suit by
agent.

institution of the suit the principal's name was substituted in place of the alleged agent: *held that* in permitting the amendment to be made the Court did not decide that the agent had authority; and the suit was dismissed inasmuch as the agency was not proved: *Ibid.*

Suit for rent by Gumastha not maintainable.

3. Suit for rent by Gumastha in his own name not maintainable :—A Gumustha or Am-muktear can not bring a suit for rent in his own name: *Madhusudan v. Moran*, 11 W.R. 43; see also *Kunja Behari v. Purna*, 9 Cal. 450, s. c., 12 C.L.R. 55.

4. Stamp in a deed for appointment of an agent :—See Indian Stamp Act (II of 1899), Sch. II Art. 48.

5. Bribe paid to landlord's agent :—Where in the course of negotiations resulting in a lease, the tenant entered into an arrangement with the landlord's agent under which the agent expected to be paid an amount by way of bribe or secret commission and the amount was paid after the lease was given, *held* in a suit by the landlord to avoid the lease that the contract so induced by fraud was only voidable and the remedy by rescission was open only so long as the parties could be restored to the relative positions which they originally occupied: *Indranath Banerjee v. E. G. Rooke*, 37 Cal. 81. s. c. 14 C.W.N. 101.

Gumastha cannot consent to transfer of holding.

6. A Gumustha cannot consent to transfer of a holding :—The purchaser of a raiyati holding is bound to communicate with the *Zemindar* and obtain his consent to the transfer; without this being done a *gumashta's* receipt of rent is not binding on the *Zemindar*: *Bhajohari Banik v. Aka Ghulam Ali*, 16 W.R. 97. See in this connection notes under s. 73.

7. Naib or Gumustha cannot grant leases :—It is not within the ordinary scope of the duties of a naib or gumustha to grant leases. Express authority must be proved to make the grants valid: *Golak v. Asimuddin*, 1 W.R. 56; *Annada v. Chandra Sekhar*, 7 W.R. 394; *Abilak v. Dalial*, 3 Cal. 557.

8. Illegal cesses collected by landlord's agent :—A suit by a landlord against his agent for recovery of *kharcha* or illegal cesses collected by him from the tenants: *Nagendrabala v. Gurudayal*, 7 C.W.N. 535.

9. Limitation :—As to period of limitation for a suit for account by landlord against his agent. See notes, 89 and 116.

Special register of suits.

146. 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.

I. Civil Procedure Code :—For s. 58 of Act XIV of 1882, see O. 7, r. 9 and O. 4 r. 2 of the present Civil Procedure Code (Act V of 1908).

Suits should be entered in a separate Register.

2. Separate Register :—"The Bengal Legislature, when it passed Act VIII of 1869, restoring to the Civil Courts the jurisdiction of which they had been for a time deprived, and empowering them to try suits for rent and others of a kindred nature, thought fit

to direct that the suits instituted under the provisions of the Act should be entered in a separate Register. This provision, however, was introduced obviously for statistical purposes and not for the purposes of separating into parts the jurisdiction exercised by one Court." *Per* Jackson J., in *Jallaloodeen v. Major James Burne*, 18 W.R. 99.

There should be no question in the mind of a Court as to which side of the Court is to entertain the suit, or under what act it is to be tried, *Puriag v. Feku*, 19 W.R. 160.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.*

Successive
rent suits.
XVI of
1882.

1. Civil Procedure Code:—For s. 373 of Act XIV of 1882, see O. 23, r. 1 of Act V of 1908.

2. Date of institution of suit:—The date of a suit must be taken to be that on which the plaint is originally filed and not the date on which it is filed as an amended plaint: *Khellat Chandra v. Nussibunnisa*, 16 W.R. 47.

3. Object of the Section:—The object of this section, as slated by the Select Committee in their report was "to prevent raiyats being harassed by successive suits for rents when by agreement or custom a larger number of instalments than four may be established."

Bengal and Bihar.

East Bengal.

147A. (1) The provisions of section 375 of the Code of Civil Procedure shall not apply to any suit between landlord and tenant as such.

(2) If any suit between landlord and tenant as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in

147A. Notwithstanding anything contained in section 375 of the Code of Civil Procedure, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be re-

Compromise
of suits
between
landlord
and tenant.

* S. 44A of the Chota Nagpur Landlord and Tenant Procedure Act (I.B.C. of 1879 as amended by Act V, B.C. of 1905) is analogous to s. 147 of the Bengal Tenancy Act. In a case from Chota Nagpur it was held by Coxe J., (Caspersz J., holding *contra*) that s. 44A of the Chota Nagpur Landlord and Tenant Procedure Act is a bar to the maintainability of suit for rent brought within six months of the striking off of a previous rent-suit: *Karma Uraon v. Baraik Debi*, 36 Cal. 115; s.c. 13 C.W.N., 287; the effect of striking off a suit is not to restore the parties to their original positions as if such a suit had not been brought; *Ibid* (36 Cal. at p. 120).

respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit :

Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the state-

corded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act :

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

ments made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy raiyat : this affects the rights of the tenants of B. The Court must, under sub-section (4), inquire whether B is a tenure-holder or a raiyat as defined in section 5. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

Headings of Notes.

1. NOTES.
2. CIVIL PROCEDURE CODE.
3. COMPROMISE DECREE IN CONTRAVENTION OF THIS SECTION, IF NULLITY.
4. NOTES.
5. COMPROMISE SUBSEQUENTLY RETRACTED.

I, Notes :—These sections were inserted by Act I of 1907 (B. C.) and Act I of 1908 (E. B. A.) in Bengal and East Bengal respectively.

The object of the section as explained in the Notes on Clauses of the Bill was as follows :—“The proposed section 147A is intended to give to Civil Courts the same power to disregard illegal and inequitable compromises regarding rent and other matters in suits between landlord and tenant as such, as it is proposed to confer upon Revenue officers engaged in the preparation of the record of rights. Section 375 of the Code of Civil Procedure governs compromises filed in suits under the present law, and there is reason to believe that decrees have been passed giving effect to compromises containing illegal and inequitable provisions, and in particular that the provisions of sec. 29 regarding the limits of enhancement of rent by contract between landlord and tenant have frequently been nullified in this way.”

2. Civil Procedure Code :—S. 375 of Act XIV of 1882 corresponds to O. 23, r. 3 of Act V of 1908.

Decree in
contraven-
tion of this
section if
nullity.

3. Compromise decree in contravention of this section. if nullity :—Sub-sec. (3)—A decree for rent passed in accordance with a compromise, in contravention of the provisions of this section, i.e., without recording evidence to show what the amount of rent was before the dispute arose, is made without jurisdiction and the tenant is not bound to have it set aside: *Sarjugsharan v. Dukshit Mahato*, 17 C.W.N. 496 (Coxe and N. Chatterjea J.J.); as the tenant cannot waive the irregularity, it amounts, according to the test laid down in *Holmes v. Russel*, 9 Dowl 487, to a nullity: *Ibid.* See also *Kunja Behari v. Charan Singh*, 72 I.C. 40, s. c., A.J.R. 1924 Pat. 204 (Ross, J.) where the case of *Sarjugsharan v. Dukhit Mahato*, 17 C.W.N. 496 was followed.

It was held in the case of *Deolagan v. Gulabansi*, 69 I.C. 616 (Das and Adami, J.J.) that a compromise decree passed by a Court when it is not in conformity with this section is not a nullity and cannot be ignored by the Court.

It is the duty of the Court to determine whether the compromise if embodied in a contract can be enforced under the provisions of the statute: *Fuze v. Suker*, 19 C.L.J. 333.

The case of *Sarjugsharan v. Dukhit Mahto*, 17 C.W.N. 496 was dissented from in the case of *Ishan Chandra* v. Moomraj Khan*, 30 C.W.N. 941, s. c., 45 C.L.J. 24 (B. B. Ghose & Graham, J.J.) where their Lordships held that a decree for enhanced rent made on compromise between the parties under the provisions of sec. 147A, B. T. Act, cannot in a subsequent suit for rent between the parties be treated as without jurisdiction and a nullity on the ground that the procedure laid down in that section as to the recording of reasons by the Court for being satisfied that the terms of the compromise were such that if embodied in a contract they could be enforced under the Act and that the enhancement was fair and equitable and in accordance with the rules laid down in the Act for the guidance of Courts in increasing rents was not complied with. Such a decree may be assailed in proper proceedings as erroneous but cannot be said to have been passed without jurisdiction and is valid and binding and the landlords are entitled to a decree for rent at the rate settled by the former decree.

[The cases of *Hridoy Nath v. Ram Chandra*, 48 Cal. 138, s. c. 24 C.W.N. 723, s. c. 31 C.L.J. 482 (F.B.); *Ashutosh v. Bihari*, 35 Cal. 61; *Gora Chand v. Prafulla*, 53 Cal. 166, s. c., 42 C.L.J. 1 (F.B.) referred to].

A previous decree can be treated as a nullity only where a decree was made by a Court which apparently had no jurisdiction whether pecuniary or territorial or in respect of the judgment debtor's person to make the decree: *Ibid.* The case of *Ishan Chandra v. Moomraj Khan*, 30 C.W.N. 941, s. c., 45 C.L.J. 24, has been followed by Mitter, J. in the case of *Syed Mohamud v. Khana Kazi*, 32 C.W.N. 84 (notes) where it has been held that the compromise decree passed in contravention of the provisions of this section cannot be treated as a nullity and without jurisdiction. In deciding this case, Mitter, J. observed "it seems to me extremely doubtful whether the view taken in the case in 17 C.W.N. 496 can be regarded as sound having regard to the two Full Bench cases (48 Cal. 138, and 53 Cal. 166). In view of these decisions and to the observations of the Judicial

* The names in 45 C.L.J. 24 are *Ramesh Chandra v. Moomraj Khan*.

Committee in *Malkarjun's* case (27 I.A. 216) it cannot be said that the compromise decree in this case was passed without jurisdiction.

4. Notes :—A decree recording an agreement as one of the terms of the compromise though not relating to the suit, is a legal record of the agreement between the parties and as such available to the party as evidence: *Mahabir v. Nanda Kissore*, 27 C.L.J. 83. A compromise does not require registration even where it effects an alteration in a registered document: *Charu Chandra v. Sambhunnath*, 3 Pat. L. J. 255, (F.B.). A compromise under s. 147A of the Bengal Tenancy Act is valid even if it contains extraneous matters to the suit and is not registered: *Rampadrath v. Sohrai Koeri*, 4 Pat. L.J. 667; s. c., 1920 Pat. 114.

Compromise beyond suit.

Registration.

S. 147A has no application to a compromise effected in a suit for recovery of possession against a person who was alleged to be a trespasser, the compromise recognising the defendant as a tenant and a certain rent was agreed to: S. 29 has no application to the case: *Sheo Govind v. Mahabir* [1922 Pat.] p. 319; s.c., 71 I.C. 143.

Compromise recognising a trespasser as a tenant.

In the record of rights the rent which was payable in kind was stated to be one half the produce; in a suit subsequently brought, the landlord claimed more than a half share of the produce, the tenant did not resist the claim; in fact, the common case of both the parties was that for a long series of years, the tenant paid rent to the landlord at the rate alleged and they jointly prayed that a decree might be drawn up in the terms of the petition of compromise filed by them, held that a decree could be drawn up in accordance with the terms of the compromise, as neither s. 29 nor s. 74 governed the matter: *Fazl Imam v. Sukor Mohton*, 19 C.L.J. 333; s. 29 deals with case of enhancement of money rent and not rent in kind: *Ibid*; s. 147B did not apply as the presumption of accuracy which attaches to an entry in the record of rights was rebutted in the case: *Ibid*.

Claim for produce rent in excess of the rent stated in the record of rights.

According to the East Bengal section a tenant cannot raise an objection in execution proceedings that in decreeing the suit on compromise (which had been effected under s. 147A by enhancing the rent for the addition of new lands) the Court did not grant a certificate: *Hemchandra v. Chandra Mohan*, 24 C.W.N. 136 (notes portion).

Objection in execution proceedings —East Bengal.

See notes under s. 3 cl. (18), s. 29 and s. 178.

5. Compromise subsequently retracted :—Cl. (2) of this section empowers a Court to give effect to a compromise and to pass a decree, even if the parties subsequently retract from it: *Uttim Sahu v. Abzani*, 26 I.C. 229.

147B. In all areas for which a record-of-rights has been prepared and finally published under subsection (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Regard to be had by Civil Courts to entries in record-of-rights.

Notes :—This section was inserted by the Amending Acts of Bengal and East Bengal ; I of 1907 and I of 1908, respectively.

In the Notes on the Clauses of the Bill it was stated as follows :—
 “The proposed sec. 147B is intended to define more clearly the force to be attached to entries in the record of rights in proceedings and suits between landlord and tenant as such. Under the present Act, such entries are presumed to be correct until the contrary is proved. But cases have occurred which indicate that it is doubtful whether the Courts pay sufficient attention to this presumption. It is proposed, therefore, to provide that the Courts shall have regard to the entries in the record of rights unless such entries have been proved by evidence to be incorrect, and that when a Court passes a decree at variance with such entries, it shall record its reasons for so doing.”

Scope of
the section ;
s. 103B.

Scope of the section :—This section does not in any way limit the operation of sec. 103B of this Act under which the presumption of correctness of an entry in a finally published record of rights arises generally and not merely in suits between landlords and tenants. The expression “shall have regard” in this section ordinarily means shall consider as of value or of importance, but certainly the provision of this section does not mean that the Court will not presume the entries to be correct until the contrary is shewn. This section has been inserted as a matter of abundant caution directing the attention of the Court to the fact that, in all suits between landlord and tenant, the entries in the record of rights should be taken into consideration. What the legal effect of such entries is is provided under s. 103B of this Act, under which an entry in the record of rights operates in the same way between landlord or tenant as between the lands of the same or neighbouring estates and between tenant and tenant : *Fazlar Rahaman v. Golam Kader*, 30 C.W.N. 689 (B. B. Ghose and Graham, J.J.) ; see notes under s. 103B, heading No. 6, at p. 560.

Procedure
in rent
suits.

148. The following rules shall apply to suits for the recovery of rent :—

XIV of
1882.

(a) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit :

XIV of
1882.

(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 :

Bengal and Bihar.

East Bengal.

(b1) where the suit is for the rent of land situated within an area for which a record-of-rights

(b1) where the suit is for the rent of land situated within an area for which a record-of-rights

has been prepared and finally published, the plaintiff shall further contain a list of the survey plots comprised in the tenancy and a statement of the rental of the tenancy according to the record-of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement:

has been finally published, the plaintiff shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement:

Provided that, in all cases in which the Court admits a plaintiff which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may, require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy:

Bengal and Bihar.

There is no such proviso in Bengal and Bihar.

East Bengal.

Provided also that such statement, when contained in the plaintiff, shall be deemed to be a description of the land sufficient for identification within the meaning of clause (b).

- (b2) where an alteration has been made in the area of the tenancy since the record-of-rights was prepared and finally published, the plaintiff shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed:
- (c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:
- (d) the service of the summons may, if the High Court by rule, either generally, or specially, for any local area, so directs, be

effected either in addition to, or in substitution for, and 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 :*

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served :

- (e) a written statement shall not be filed without the leave of the Court :
- (f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not :

Bengal and Bihar.

(ff) when any account books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord ;

East Bengal.

(ff) when any account books, rent-rolls, collection-papers, measurement-papers, maps or extracts from records-of-rights have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord ;

And thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the

* Act XIV of 1866 has been repealed and re-enacted by the Indian Post Office Act, 1898, (IV of 1898), and this reference should now be construed as a reference to Chap. VI of the latter Act.

Court before which they are produced sees fit to require the production of the originals :

- (g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for 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.

Headings of Notes.

1. AMENDMENTS.
2. SECTIONS OF THE OLD C. P. C. REFERRED TO IN THIS SECTION AND THE CORRESPONDING SECTIONS OF THE NEW CODE.
3. PORTIONS OF THE CIVIL PROCEDURE APPLICABLE AND NOT APPLICABLE.
4. S. 10 C. P. C.
5. CL. (b).
6. CL. (b1).
7. CL. (h).
(a) *Interpretation* ; (b) *Co-sharer* ; (c) *Erroneous application of cl. (h)* ; (d) *Assignment—payment to assignee.*
8. RENT SUIT BY A MANAGING MEMBER OF A MITAKSHARA FAMILY.
9. RENT-SUIT—AREA—DIVISION BINDING UPON AUCTION PURCHASER.
10. S. 99 C. P. C.
11. WHAT IS A DECREE FOR RENT AND WHAT IS NOT.
12. SUIT FOR RENT BY A LANDLORD WHO HAS SOLD HIS INTEREST IN LAND.
13. EXECUTION.

I. Amendments :—Cls. (b1), (b2), (ff) were inserted by Bengal Act I and East Bengal Act I of 1907 and 1908 respectively.

Clause (b 1) & b (2) :—The Select Committee in their report on the Bill said with reference to these clauses :—

“We are of opinion that it is necessary to require the Court to record reasons when it dispenses with a statement in the plaint. Unless this is done, some landlords will file plaints not containing the required particulars, and to save themselves trouble, Munsiffs will continue to decree according to the claims without reference to the record-of-rights. If the Munsiff is required to record his reasons for dispensing with the statement of the rental according to the record, he will insist on such particulars being furnished wherever possible.

We consider that in addition to a statement of the rental of a tenancy, the plaint should show the survey plot numbers comprised in the holding. The Court should not be allowed to have any excuse

for not referring to the entries in the record-of-rights. Where a plaintiff, for a good and sufficient reason, fails to produce a statement of the rental or a list of survey-plot numbers, the Court should be obliged a call for a copy of the record from the Collector. We think that delay will be prevented and corruption of the *amla* checked if in all cases the record of rights is supplied by the Collector direct to the Court. No fees should be charged in any case for the copies.

We have thought it necessary to make it clear that a statement of rental and of survey plots in the plaint will be necessary, in cases where, since the record was finally published, a holding has been divided during partition proceedings, or amalgamated with another holding, or in other ways treated so as to obscure its identity."

2. Sections of the old C. P. C. referred to in this section and the corresponding sections of the New Code :—For ss. 121 to 127, C. P. C. (Act XIV of 1882), see O. 11 r. 1, O. 48 r. 2, O. 11 r. 3, O. 11 r. 5, O. 11 r. 6, O. 11 r. 6, O. 11, r. 8, O. 11 r. 1, of Act V of 1908. For s. 50 C. P. C. (Act XIV of 1882), see O. 7, rr. 1, 2, 4, 5 and 6 of Act V 1906. For s. 189 of Act XIV of 1882, see O. 18, r. 13 of Act V 1908. For s. 232 of Act XIV of 1882, see O. 21, r. 16 of Act V of 1908.

S. 210, C. P. C. (O. 20, r. 11 of the new Code).

3. Portions of the Civil Procedure applicable and not applicable :—Besides the sections of the Civil Procedure Code mentioned in this section, s. 210, C. P. C. (See O. 20 r. 11 of the New Code) does not apply to a rent-suit as it has reference to a *money decree* and therefore in a rent-suit a decree for rent cannot be made payable in instalments under s. 210, C. P. C., *Shibnarain v. Baikuntha Nath*, 11 C.W.N. 857, but s. 546, C.P.C. (See O. 41, r. 6 of the New Code) although it speaks of a "decree for money" has been held to apply to a decree for rent: *Banku Behary v. Syama Charan*, 25 Cal. 322. The Appellate Court has power to stay sale under s. 546, C. P. C.: *Tribeni v. Bhagwat*, 34 Cal. 1037; s. 147A modifies s. 375, C. P. C. (O. 23 r. 3 of the New Code) to a certain extent. S. 170 lays down that ss. 278 to 283, (O. 21, rr. 30 to 39) C. P. C., shall not apply to a tenure or holding attached in execution of a decree for recording of evidence in English instead of in the language of the Court is merely an irregularity which may be cured under s. 578 C. P. C. (Act XIV of 1882): *Ratan Lal v. Farshi*, 34 Cal. 396.

S. 547, C. P. C. (O. 41, r. 6).

Ss. 278 to 283 C. P. C. (O. 21, rr. 59 to 63).

4. S. 10 C. P. C. :—S. 10 of the Civil Procedure Code does not bar the trial of a suit for rent for a period subsequent to that included in the previously instituted suit for rent; the expression "matter in issue" in s. 10 C. P. C. refers to the entire subject in controversy between the parties: *Bepin Behari v. Jogendrachandra*, 27 C.L.J. 541.

When it is necessary to determine question as to whether defendant holds land set forth in the plaint.

5. Cl. (b) :—In a suit for rent, where the plaintiff claims a certain rent as payable in respect of certain lands mentioned in the plaint and the defendant denies the occupation of these lands at the rents alleged by the plaintiff but admits that he holds other lands at different rents, the proper issue to be tried is whether the defendant holds lands set forth in the plaint at the rent specified having regard to the provisions of s. 148, cl. (b) of the Act, as a simple issue as to whether, the defendant holds the jumas set forth in the plaint under the plaintiff is not sufficient: *Bhaichal v. Shaikh Shamnuyasi*, 1 C.W.N. 152.

The case of *Bhaichal v. Shaikh Shamnuasi*, 1 C.W.N. 152 was



considered by Mookerjee and Carnduff, J.J., in the case of *Ramdev v. Newaj Prosad*, 10 C.L.J., 196 and their Lordships said as follows: "It is not possible to lay down any inflexible rule of universal application, upon the question whether the precise area of the tenancy could or should not be determined in a suit for rent. The only general principle which can be formulated is that where there is a substantial dispute as to the identity of the tenancy set-up by the parties to the suit, the question in controversy must be decided."

No inflexible rule of universal application.

Where the plaintiff alleged that the original tenancy which had been created in the year, 1887 ceased to exist, that upon the expiry of the term a new tenancy was created in respect of a portion of the land, and the defendant alleged that the old tenancy was continuing, *held* that the question in controversy could not be left open but must be decided: *Ibid*.

Controversy as to whether old tenancy is continuing.

In a suit for recovery of rent where the allegation was that the defendant held a tenure consisting of 61 odd bighas of land within certain boundaries as specified in the plaint and the defence was that the area was only 36 bighas within certain boundaries as mentioned in the written statement at a certain rate of rent per bigha, and the lower Appellate Court decreed the suit without deciding the question as to the area of the lands and keeping the question open; *held*, that the decision of the Subordinate Judge was correct and did not contravene the provisions of sec. 148, cl. (b) of the Tenancy Act. *Per Banerjee, J.*—That in a rent-suit it is not absolutely necessary for the plaintiff to give the extent and boundaries of the lands in respect of which rent is claimed where there is any difficulty in giving those particulars and that in such cases it is enough if a description sufficient for identification is given; that the Court is not bound in every suit for arrears of rent to determine the extent and boundaries of the defendant's holding or tenure: *Pifurndi Naskar v. Ambikacharan*, 5 C.W. N. 121, Banerjee J., in delivering judgment in this case observed as follows:—

Question as to area.

No doubt it is true that cl. (b) of sec. 148 of the Bengal Tenancy Act requires that the plaintiff should ordinarily give a statement of the extent and boundaries of the land held by the defendant, but cl. (b) further provides "or when the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification." That indicates that it is not absolutely necessary for the plaintiff to give the extent or boundaries of the land in respect of which rent is claimed where there is any difficulty in giving those particulars; and that in such cases, it would be enough if in lieu of giving the extent or boundaries of the land a description sufficient for identification is given. It cannot, therefore, be said that the Court is bound, in every suit for arrears of rent, to determine the extent or boundaries of the defendant's holding or tenure: *Ibid*.

Observations of Banerjee J.

In a suit for arrears of rent the plaintiff claimed a certain rent in respect of certain survey plots mentioned in the plaint and the defendant denied the relationship of landlord and tenant in respect of those plots but admitted a tenancy under the plaintiff at the rent claimed in respect of different lands, *held* that it is necessary to determine the question as to what lands were comprised in the tenancy in suit, and that the plaintiff was not entitled to a decree unless it was proved that the lands mentioned in the plaint formed the tenancy in suit: *Indu Bhusan v. Jatindranath*, 32 C.W.N. 244 (Rankin, C.J. and Mitter, J.J.).

What lands are comprised in the tenancy, when to be determined.

A mere incidental dispute about boundary has got nothing to do with a rent suit. But unless every rent decree be definitely given in respect of a certain ascertained land the state of the country would get even more confused in the matter of agricultural right than it is at present: *Ibid.*

What is a sufficient description for identification.

In a suit for rent the plaintiff after stating his title to a certain zemindari described defendants' tenure in the following words:— "In the said zemindari there is a juma standing in the name of Kala Chand Biswas bearing a variable yearly rent of Rs. 170-9-3 pies, situate in *bil* Eran Mohis Charali, within the jurisdiction of station Kotowali, which was owned and held by the defendants to the extent of 16 annas share. The annual rent of Rs. 56-2-9 pies is due to the plaintiffs, in respect of 5 ans. 4 pies share thereof." The first Court held that the plaint did not satisfy the requirements of cl. (b) and as such could not be registered; the plaint not being amended was rejected. The lower Appellate Court also held the same; in second appeal it was held the lower Courts were wrong and the plaint ought to have been registered: *Durga Charan Laha v. Kala Chand Biswas*, 7 C.W.N. 615.

Suit dismissed on default of tenant to furnish summons containing boundaries.

In a suit for rent where the copies of the summons did not contain a correct description of the boundaries, and the Court ordered them to be filed within a certain date and on default the suit was dismissed long before the date fixed for hearing, held that the order of dismissal was bad: *Rajendra v. Hirralal*, 13 C.W.N. 19 (notes).

6. Cl. (b) :—Where in a suit for rent the plaintiff did not include two of the plots entered in the Record-of-rights, and subsequently amended the plaint by inclusion of the said two plots under protest and obtained a rent decree, held in a suit for recovery of possession of the said two plots against the tenant, that the plaintiff was not estopped from claiming the same: *Bansraj Lal v. Motilal*, 1918 Pat. 21.

Cl. (h) should be strictly interpreted.

7. Cl. (h) :—(a) *Interpretation*: This clause imposes a limitation upon the execution of a decree for rent and therefore it should be interpreted strictly and should not be extended to any person who does not come properly within its provisions: *Nagendra v. Bhuban Mohan*, 6 C.W.N. 91.

"There can be no doubt that if we look to the language of this clause and place a strict construction upon it, it cannot be taken to mean that an assignee of a decree for arrears cannot at all make an application for execution thereof, except in the special case in which he has also obtained an assignment of the landlord's interest in the land": *Per Mookerjee, J., in Manurattan v. Hari Nath*, 1 C.L.J. 500 at p. 505.

Not applicable to a decree obtained by a co-sharer.

(b) *Co-sharer*: It seems that this clause *i.e.* cl. (h) is not applicable to a decree obtained by a co-sharer landlord, for the simple reason that such a decree is a money decree, and the assignee of such a decree without the assignment of the land will have no conflict with the co-sharer who obtains a decree subsequently for his share of the rent as both are money decrees: whereas the assignee of a decree of rent obtained by a 16 annas landlord or an entire body of landlords to whom the land has not been assigned will have conflict with the landlords when they obtain a decree for subsequent rent, for, the question then might arise (but for the present clause) as to which of the decrees should be a charge on the tenure. The question has

been discussed in *Manurattan v. Hari Nath*, 1 C.L.J. 500, where however the contrary view has been taken.

(c) *Erroneous application of cl. (h)*: Where upon the objections of the judgment-debtor the Court erroneously decides that this clause is no bar to the execution proceedings the decision may bind him but not an unrecorded tenant: *Manurattan v. Hari Nath*, 1 C.L.J. 500. Unrecorded tenant.

(d) *Assignment—Payment to assignee*: If a payment made to an assignee of a rent-decree is accepted by him, the decree is satisfied and there is nothing in s. 148 (h) to prevent it: *Rajanikant v. Ramanath*, 19 C.W.N. 458; where in execution of a decree for rent by an assignee a co-tenant was compelled to pay off the debt he is entitled to sue for contribution against the other co-tenants: *Ibid*. Assignment.

Assignment of decree: By the expression “landlord’s interest” in s. 148, cl. (h), is meant the interest of the person entitled to receive the rent from the tenant at the date of the application for the execution of the decree; where, therefore, a decree for rent obtained by a *ticcadar* during the pendency of the *ticca* was transferred to the landlord before the termination of the *ticca*, but, after the termination of the *ticca* the landlord applied for execution of the decree: held that the execution should proceed: *Shambhu Nath Sing v. Sheo Proshad Singh*, 40 Cal. 462, s.c., 17 C.W.N. 276, s.c., 17 C.L.J. 227 (F.B.); the case of *Dwarka Nath Sen v. Peari Mohon Sen*, 1 C.W.N. 694 was over-ruled and the case of *Monmotha v. Rakhal Chandra*, 10 C.L.J. 346 was approved by the Full Bench.

Assignee, application for execution by: There is no provision in the Code of Civil Procedure which renders necessary the actual substitution of the name of an assignee or legal representatives for the validity of the proceedings in execution: all that s. 232 C.P.C. (Act XIV of 1882) provides is that the assignee should apply for execution of the decree and that his name should be brought on the record: *Monmotha Nath v. Rakhal Chandra*, 10 C.L.J. 396. Actual substitution of assignee’s name not necessary but assignee may apply in his own name.

A decree for arrears of rent obtained by the landlord against the defaulting tenant, as having accrued due between the date of the sale of the tenure in execution of a previous decree for arrears of rent and the date of confirmation of such sale, is a decree for rent and application for execution by the assignee of such a decree is barred by this clause: *Karuna Moyee v. Surendra Nath Mukherjee*, 26 Cal. 176. Decree for period after sale.

A sale held in execution of a decree for arrears of rent on an application by the assignee of the decree, when the landlord’s interest in the property itself was not transferred to the assignee, passed no title to the auction-purchaser under cl. (h) of s. 148: *Guru Charan v. Kartik Nath*, 10 C.W.N. 44; a purchaser of the same property at a sale held in execution of a mortgage decree obtained under the first sale acquired good title as against the first purchaser: *Ibid*. Where landlord’s interest is not transferred to assignee.

Assignment of decree obtained under the former Act: Where a decree had been passed under the former Rent Law, and the assignment of the decree and the application for execution by the assignee were made after the Bengal Tenancy Act came into operation, held that cl. (h) applied to the execution proceedings: *Soshi Bhusan v. Gagan Chander*, 22 Cal. 364. Cl. (h) of s. 148 does not prohibit the decree-holder to assign his decree nor does it prohibit any one from accepting an assignment of the decree, so long as Decree under the old Act.
Cl. (h) does not prohibit assignment but prohibits the

making of an application.

satisfaction can be obtained out of Court. All that it prohibits is an application for enforcement of the decree by an assignee: *Ibid.*

Application for execution by assignee of a tenure with arrears where decree obtained by vendor after date of assignment not maintainable.

Application for execution by an assignee for arrear.—Where subsequent to the assignment of a property with all balances and sums of money due and owing by the tenants, the assignor obtained a decree for arrears accruing on the date of assignment, against a tenant, *held* that the assignee has no *locus standi* to apply for execution of the decree in as much as he was not an assignee within the meaning of O. 21, r. 16, C. P. C. either by assignment in writing or by assignment by operation of law: *Mathurapur Zemindary Co. v. Bhasaram Mandal*, 28 C.W.N. 26, s. c., 39 C.L.J. 373; the case of *Ananda Mohan Roy v. Pramatha Nath Ganguly*, 25 C.W.N. 863 was distinguished which was a case in which a mortgagee auction purchaser claimed to execute a decree obtained previous to his purchase of the mortgage by virtue of the mortgage deed by which rents etc. had also been mortgaged.

It is submitted with great respect that the aforesaid decision cannot properly be distinguished, and it seems the decision in the case of *Mathurapur Zemindary Co. v. Bhasaram Mandal*, is against the principle laid down in the case of *Ananda Mohan v. Pramatha Nath*.

Ch. (h) does not apply to a decree for rent by outgoing landlord or assignee.

Decree for rent by outgoing landlord or assignee: A decree obtained in a suit for rent brought by a landlord who ceases to have interest in the land during the pendency of the suit, is not a decree for rent and the provisions of cl. (h) of this section do not apply to such a decree: *Nagendra v. Bhuvan Mohan*, 6 C.W.N. 91. When therefore such a decree is assigned by the decree-holder and is afterwards re-assigned to him this clause is no bar to the execution of the decree.

Where plaintiff landlord at date of suit and decree.

When the plaintiff in a suit for rent is shewn to have been the landlord at the date of the suit and also at the date of the decree, both suit and decree would clearly be a suit and a decree under the Bengal Tenancy Act: *Khetra Pal v. Kritariha Moyi*, 10 C.W.N. 547 (F.B.); s. c., 3 C.L.J. 470. [This Full Bench case overrules the case of *Hemchunder v. Monmohini*, 2 C.W.N. 604].

Assignee having landlord's interest. Assignment during pendency of suit—ordinary civil demand.

The provisions of this Act do not apply to a decree for rent obtained by an assignee of the arrears: *Mahendra v. Kailas Chandra*, 4 C.W.N. 605; unless the assignee of a rent-decree has the landlord's interest in the land he cannot execute it: *Dina Nath v. Golak Mohini*, 1 C.W.N. 183; where during the pendency of a suit for rent plaintiff sold his interest in the mehal to certain person and subsequently sold to him the decree for rent, *held* that the rent-decree if assigned under s. 232, ceased to be rent-decree and became only an ordinary civil demand: *Ibid.*

Where a person is not the landlord at the date of the suit.

The decision of the High Court in the case of *Maharaj Bahadur v. Forbes*, 35 Cal. 737 has been reversed by the Privy Council (*Forbes v. Maharaj Bahadur*, 41 Cal. 926, s. c., 18 C.W.N. 747, s. c., 25 C.L.J. 434), and it has been held that where a landlord after parting with the interest of his estate brings a suit for rent *i.e.*, where on the date of the institution of the suit he is no longer the landlord, the decree which he obtains cannot be executed as a rent decree. In regard to s. 148 cl. (h) their Lordships of the Privy Council said as follows: "The prohibition contained in this section refers to decrees obtained by the landlord under s. 65. To acquire the right which

the section gives, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure must have the landlord's interest "vested" in him. In order words the right to bring the tenure or holding, as the case may be, to sale exists so long as the relationship of landlord and tenant exists.

The case of *Khetra Pal Singh v. Kritartha Mayee*, 33 Cal. 566 (F.B.), s. c., 10 C.W.N. 547 was distinguished on the ground that in that case the landlord did not part with the property and did not thus put an end to the relationship of landlord and tenant until the decree in his suit for rent, whereas in the Privy Council case the landlord transferred his interest before the institution of the suit.

Application for execution of decree by a trustee: D, who was the owner of certain putni mehals, sold the same to one B on the 27th June 1893; on the 10th of July he obtained a decree for arrears of rent due from the judgment-debtors, for a period prior to the sale, and on the 19th of July he executed a trust-deed in favour of one G and others by which he conveyed to them various properties including the decree. D died in September 1896, and on the 3rd December following the trustees applied for execution. D's son M. subsequently joined in the application; *held*, that ~~sec~~ 148, cl. (h) of the Bengal Tenancy Act does not prevent the trustees from executing the decree, in as much as the word "assignee" as used in that section does not include persons in the position of the applicants who were executing the decrees under an assignment which is not for their benefit but for the benefit of the heir of the assignee: *Chatraput Singh v. Gopi Chand Bothra*, 26 Cal. 750, s. c., 4 C.W.N. 446.

Application maintainable by trustee.

Assignee

Assignment of a rent-decree, effect of s. 232, C. P. C. "In the present Act the law is, as it was before it, that the landlord had a first charge for his rent, and a rent-decree, if assigned under s. 232, ceased to be a rent-decree, and became only an ordinary civil demand recoverable under the Civil Procedure Code." *Per* O'KINEALY and HILL, J.J.: *Dinonath v. Golap Mohini*, 1 C.W.N. 113.

Rent-decree if assigned, becomes an ordinary civil demand.

S. 148 (h) does not speak of the assignor's interest but of the landlord's interest: *Monmotho Nath v. Rakhal Chandra*, 10 C.L.J. 396; s. c., 14 C.W.N. 752.

Transfer by operation of law: Where after an executor to the estate of a deceased person obtained a decree for rent, the probate was revoked at the instance of the son of the deceased, and the latter applied to execute the decree, *held*, that he was in a position to execute the decree, his succession to the estate of his father being a succession or transfer by operation of law: *Uma Soondury v. Brojo Nath*, 16 Cal. 347.

Application by transferee by operation of law maintainable.

Where a landlord obtains a decree for rent and applies for execution of that decree and during the pendency of the execution proceedings the interest of the landlord, by operation of law, vests in the superior landlord who thereby becomes the direct landlord of the tenants, and the interest of the landlord in the decree for rent is transferred to the superior landlord who is authorised to carry on the execution already initiated, in the name of either the assignor or the assignee, s. 148 (h) does not debar the superior landlord from executing the decree for rent in the same manner as the landlord decree-holder might have done: *Monmotho Nath v. Rakhal Chandra*, 14 C.W.N. 752, s. c., 10 C.L.J. 396.

Transfer by operation of law during the pendency of execution proceedings.

Cl. (h) not retrospective.

Assignment before the Act.

Decree passed before Act.

Where a rent-suit by a member of a Mitakshara family lies.

Auction purchaser bound as to area decided.

Summary trial—Irregularity.

Operation of cl. (h) whether retrospective: The application of s. 148 (h) is not retrospective: *Koylosh Chunder v. Jadu Nath*, 14 Cal. 380 at p. 381. So where before the passing of the Act a person was substituted by an order under s. 232, it was held that the application of s. 148 (h) was not to affect that order: *Ibid.* But the mere fact that an assignment was made before the passing of the Bengal Tenancy Act would not entitle the assignee to be protected from the provisions of s. 148, cl. (h): *Ibid.*

This clause (i.e., cl. h) applies to an application made after the passing of the Bengal Tenancy Act in respect to a decree passed before the passing of the Act: *Manurattan v. Harinath*, 1 C.L.J. 500. [See also *Kailas v. Jadu Nath*, 14 Cal. 380; *Deb Narayan v. Narendra*, 16 Cal. 267; *Shosi Bhusan v. Gagan*, 22 Cal. 364].

Cessation of landlord's interest in the land, effect of; see notes under s. 65.

8. Rent-suit by a managing member of a Mitakshara family. :—A rent-suit by a manager of a Mitakshara family will not necessarily fail, merely because the infant coparceners have not been made joint plaintiffs: *Kalipada v. Sati Prasad*, 27 C.W.N. 372, s. c., 36 C.L.J. 234.

9. Rent-suit—area—decision binding upon auction purchaser :—Where in a rent-suit a question as to the area of a tenure was decided, held that an auction purchaser was bound by the said decision: *Kalidayal v. Umesh Prasad*, 1 Pat. 174.

10. S. 99 of the Civil Procedure Code :—S. 99 C. P. C. covers the case where a suit for rent is brought against a tenant with an alternative claim for recovery of money against a co-sharer landlord and the suit is tried summarily and without the settlement of issues; *Krishna Kumari Basu* v. Nagendra Prasad Basu*, 50 Cal. 807, s. c., 27 C.W.N. 716.

II. What is a decree for rent and what is not :—See notes under ss. 65 and 159.

12. Suit for rent by a landlord who has sold his interest in land :—Where a landlord plaintiff sells his interest in the land and transfers to the purchaser all claims for rent in arrears in the suit then pending and the deed authorised the purchaser as the irrevocable attorney of the vendor i.e. the plaintiff, to continue and prosecute in the name of the plaintiff the suit then in existence or any future suit with reference to the monies and claims transferred by that document, held that a suit for rent by the plaintiff is maintainable: *Mohendra Nath v. Paresch Chandra*, 40 I.C. 506. See notes under s. 65.

7. Execution :—*Death of Judgment debtor*: Where an application for execution of a rent-decree was made within time, but on notice under s. 248 C. P. C. (Act XIV of 1882) it was found that the judgment-debtor was dead, held that the court had power to allow the substitution and that execution was not barred although the substitution was made more than three years after the date of the decree, the decree being for a sum far below Rs. 500: *Kumar Kalanand v. Chandra Kishore*, 12 C.L.J. 192.

* In 27 C.W.N. 716 the case is named as *Tinkari Basu v. Nagendra Prasad Basu*.

Death of judgment creditor or debtor: On the death of an execution creditor or of a judgment debtor the proceedings do not lapse and the provisions relating to substitution upon the death etc. of parties do not apply to proceedings in execution between the decree holder and the judgment debtor: *Monmotha Nath v. Rakhal Chandra*, 14 C.W.N. 752, s. c., 10 C.L.J. 396.

Bengal and Bihar.

148A. Where a co-sharer landlord who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent is due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them.

East Bengal.

148A. Where a co-sharer landlord who is entitled to sue for his share of the rent separately and has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharer parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them.

Suits for arrears of rent by co-sharer landlords.

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent ;

and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

Headings of Notes.

1. NOTES.
2. DIFFERENCE BETWEEN THE BENGAL SECTION AND THE EAST BENGAL SECTION.
3. SUIT FOR RENT AFTER THE RECLAMATION OF LAND.
4. RIGHT OF ONE CO-SHARER TO SUE FOR WHOLE RENT EVEN WHEN THERE WAS SEPARATE COLLECTION.

5. COURT FEE AND CLAIM OF THE SUIT.
6. SUIT BY ONE OF JOINT LANDLORDS FOR RENT WITH ALTERNATIVE CLAIM AGAINST CO-SHARER LANDLORD.
7. JOINT SEBAITS.
8. SUIT FOR RENT, IF MAINTAINABLE AT THE INSTANCE OF A MANAGER OF A MITAKSHARA FAMILY.
9. RIGHT TO RECOVER RENT BY SUIT:—REMEDY OF A CO-SHARER LANDLORD.
10. DECREE IN A SUIT FRAMED UNDER S. 148A BINDS A PURCHASER OF A PORTION OF THE HOLDING.
11. REASONS FOR ENACTMENT OF S. 148A.—ESSENTIALS OF A PLAINT UNDER S. 148A.

I. Notes :—This Section was inserted by the amending Acts of Bengal and East Bengal—Acts I of 1907 and I of 1908 in Bengal and East Bengal respectively.

The Bengal Section (148A) was inserted by s. 44 Act I B.C. of 1907. The object of this section as explained in the Notes on the Clauses of the Bill is stated as follows :—

Object of
the section.

“Under the present law, considerable difficulty in realising rents is often experienced by co-sharer landlords, who make rent collections jointly. A decree for arrears of rent, obtained by a co-sharer for the amount due to him alone, is a mere money decree (*Jogendra v. Paban*, 8 C.W.N. 472) and the tenure or holding, in respect of which the arrears are due, does not pass to the purchaser in a sale for the execution of such a decree (*Narainuddin v. Srimanta*, 29 Cal. 219), unless he can get himself recognised by the other co-sharers. Decrees for arrears of rent obtained by single co-sharer, are therefore often of little value, and the system is further objectionable, in that it exposes the tenant to the trouble of several successive suits brought by different co-sharer landlords. Considering that the majority of estates in the Province are held by co-sharer landlords, it seems necessary to provide a remedy for the present state of things. As it is often impossible to get all the landlords to join in a suit for arrears of rent, a single co-sharer should be empowered to sue for the rent due to all the co-sharers, and that the tenure or holding should pass in execution of a decree obtained in such a suit, provided that the other co-sharers have been made parties.”

The East Bengal Sec. (148A) was inserted by s. 44 of Act I E. B. A. C. of 1908. The object of the section as stated in the Report of the Select Committee is as follows :—

“The intention of the framers of the Bill was to limit the application of this clause to such co-sharers as collect their shares of the rent separately. We have inserted words to make their intention clear.”

2. Difference between the Bengal section & East Bengal section :—The wording of the Bengal section is different from that of the East Bengal section. According to the section prevailing in Bengal it appears that a co-sharer landlord, whether he has a right to sue separately for his share of the rent or not, may bring a suit for rent under this section, whereas according to the section prevailing in East Bengal the application of this section is limited to only such co-sharer landlords who have the right to sue separately for their shares of the rent.

In East Bengal a co-sharer landlord not entitled to sue separately cannot act under this section.

Although the East Bengal section applies only to such co-sharer landlords who are entitled to sue for their shares of the rent separately, yet it does not interfere with the right of a co-sharer landlord (not entitled to sue separately) to sue under the general law for the whole rent by making his co-sharers defendants who refuse to join as plaintiffs. As to the right of a co-sharer landlord to sue for the entire rent, see notes in the heading No. 4 below and also under s. 188. But he can sue under the general law for the whole rent by making his co-sharers party defendants.

3. Suit for rent after reclamation of land:—Where in a kabuliyat the area was stated by guess and that the tenant would pay at a certain rate mentioned in the kabuliyats for all lands when the same would be reclaimed, *held* that after the reclamation a suit for rent by a co-sharer landlord in which the other co-sharer landlords are made defendants is maintainable and s. 188 is no bar to such a suit as it is not a suit for additional rent for additional area: *Bhosal v. Aminuddin*, 21 C.W.N. 371; see *Shital Chandra v. Manik Chandra*, 13 C.W.N. 60, s.c., 9 C.L.J. 331. See notes under s. 52. Suit for rent after reclamation of land: s. 188.

4. Right of one co-sharer to sue for whole rent even when there was separate collection:—“.....it is a general rule not derived from the Bengal Tenancy Act, but from quite another branch of law, namely the general principles of legal procedure—that a sharer, whose co-sharers refuse to join him as plaintiffs, can bring them into the suit as defendants, and sue for the whole rent of the tenure”; *Pramada Nath v. Ramanikant*, 35 Cal. 331: s.c., 12 C.W.N. 249: s.c., 7 C.L.J. 139 (P.C.). Right of co-sharer to sue for whole rent.

Following the case of *Pramada Nath v. Ramanikant*, 35 Cal. 351, Rule laid the following rule was laid down in the case of *Bholanath v. R. Belchambers*, 14 C.L.J. 373:—Co-sharer landlords who by arrangement with the tenants used to collect their shares separately and had in previous years brought separate suits, are competent to sue jointly for the total amount of demands due to them relating to different periods under the terms of the original lease, which can be enforced by all the co-sharers together without the consent of the tenants.

Such a suit will be treated as one by the entire body of the landlords and the decree made in the suit will carry with it all the incidents attaching to such a suit.

A co-sharer landlord can maintain a suit for his share of the rent separately if there is arrangement for separate collection without a division of the lands amongst the co-sharers: *Shyama Churn v. Joges Chandra*, 10 C.W.N. 774; *Mohendra v. Paresch*, 40 I.C. 506; the case of *Rajnarain v. Ekadasi*, 27 Cal. 479 does not lay down that there must be division of the lands before a co-sharer can maintain a separate suit for his share of the rent: *Ibid*. Where no division of land.

Where rent had been separately recovered by co-sharers, *held* that an agreement expressly proved or implied by the conduct of parties, may establish the right to sue separately for the shares of rent receivable by the separate shareholders but such an arrangement, expressly or impliedly, merely affects the right to sue separately for rent but the right to bring the tenure to sale for arrears of rent remains intact and also the right of one sharer to sue, making his co-sharers defendants when they will not join as plaintiffs: *Ibid*. Following this decision it has been held that a suit for rent by the transferee of the whole interest of one of the co-sharers, making the Right to sue separately.

other co-sharers parties is maintainable if the tenant is jointly and severally liable for rent to the several co-sharer landlords; *Sashee Kumar v. Seetanath*, 35 Cal. 744.

A co-sharer landlord is entitled to maintain a suit for the entire rent, if his co-sharers on their refusal to join as plaintiffs are made defendants: *Sashi Kumar v. Sitanath*, 7 C.L.J., 425.

One of several joint landlords may bring a suit for recovery of balance of rent due, and, in the alternative, for recovery of sums which may have been collected by his co-sharers in excess of their legitimate share: *Sham Singh v. Kishan Sahai*, 6 C.L.J., 190.

Decree
obtained by
a co-sharer.

A decree obtained by a co-sharer landlord for his share of the rent in a suit not brought under s. 148A or s. 158B is a simple money decree: *K. B. Dutt v. Gostha Behari*, 16 C.W.N. 1005, s. c., 16 C.L.J. 379.

Usu-
fructuary
mortgagee.

A usufructuary mortgagee from one of the co-sharer landlords is in the position of a co-sharer and is entitled to bring a suit for rent framing it as one under s. 148A: *Brohmananda v. Hemchandra*, 18 C.W.N., 1016.

Court fee.

5. Court fee and claim of the suit :—Where a plaintiff states in his plaint that he is aware of what is due to himself and he is not able to obtain precise information as to what might be due to his co-sharer but that he has reason to believe that there is nothing due to his co-sharer who is made a party defendant and the plaintiff offers to increase the valuation of the suit, if it should turn out in the end that rent was still due to his co-sharer, it was held that such a suit was one for the whole amount due as contemplated in the section and the decree would be a rent-decree: *Nandalal v. Kalachand*, 15 C.W.N. 820. It therefore seems that a co-sharer landlord may bring a suit under this section valuing his claim for his share only and paying court-fee for that amount if he is not aware of the amount of arrear in the share of his co-sharer.

Alternative
claim.

6. Suit by one of joint landlords for rent with alternative claim against co-sharer landlord :—A suit is maintainable by one of several joint landlords for recovery of balance rent due from a tenant, and in the alternative, for recovery of sums which may have been collected by his co-sharers in excess of their legitimate share: *Sheikh Uzir v. Hari Charan*, 37 I.C. 671; see also *Ahamudin v. Girish Chander*, 4 Cal. 350, *Sham Singh v. Kishna Sahai*, 6 C.L.J., 190, *Srinivasa v. Pichakaran*, 29 Mad. 184, *Yerokola v. Mudiya Kamadu*, 4 I.C., 34. But, if relief is sought in the alternative in this manner, foundation for the claim must be held in the allegations; a general prayer may well cover any other relief arising out of the same cause of action; but it does not cover a relief arising from a different cause of action: *Sheikh Uzir v. Hari Charan*, 37 I.C. 671; see also *Mohammad Zahoor v. Thakorane*, 9 W.R. (P.C.) 9; *Sital Das v. Pertab Chunder*, 11 C.L.J., 2, *Basowan Kurmi v. Nokchedi*, 27 All. 174; *Gopinairain v. Bansidhar*, 32 I.A. 123, s.c., 9 C.W.N. 557 and *Devi Doyal v. Bhan Pertap*, 21 Bom. 248.

A co-sharer landlord who brings a suit for rent is competent to make the other co-sharer a party defendant and claim an alternative relief for a decree against the latter, if it is found that the latter realised the share of rent due to the plaintiff: *Iswar Dalin v. Girindra Kumar*, 48 I.C. 726.

A co-sharer landlord is not entitled to sue for his own share of the rent without making the other co-sharers parties or without proving separate collection or praying for apportionment of rent, and a simple suit for rent cannot be converted into a suit for apportionment of rent: *Kamalesh v. Dwarikanath*, 28 C.W.N. 967.

A suit for apportionment of rent should be properly framed so as to implead all the co-sharers and the tenants who are necessary parties: *Ibid.*

A co-sharer landlord can, in the presence of other co-sharers who are incompetent to realise their rent on account of the provisions of sections 15 and 16 of the Bengal Tenancy Act, sue for his share of rent and recover it although there had been no separate collection before: *Nibaran v. Nabin Chandra*, 40 C.L.J., 504.

7. Joint Sebaitis:—Joint Sebaitis are not co-sharers but co-worshippers and any family arrangement at which they may have arrived amongst themselves cannot entitle them to treat the *debuttur* property as personal property and to sue personally for their share of the rent payable to the deity; their interest and authority being equal and undivided they cannot act separately but all must join: when the co-sebaitis who are made proforma defendants decline to join as plaintiffs, the proper course for the plaintiff co-sebait is to sue for the entire rent: *Norendra Nath v. Atul Chandra*, 27 C.L.J., 305; this principle in no way contravenes the decision of the Judicial Committee in *Jogadindra v. Hemanta Kumari*, 31 I.A. 203, s.c., 32, Cal. 129, s.c., 8 C.W.N. 809: *Ibid.* See also *Abdul Gafur v. Uma Kant*, 19 C.W.N. 260; *Kumban v. Moorhi*, 7 I.C. 422; *Peary Mohan v. Kedar Nath*, 26 Cal. 409, s.c., 3 C.W.N. 271.

8. Suit for rent, maintainable at the instance of a Manager of a Mitakshara family:—It is submitted that in a suit for rent all the members of a Hindu Mitakshara family must join as plaintiffs and a suit is not maintainable at the instance of the Manager (*karta*) alone.

Ordinarily, a co-sharer may bring a suit for rent and frame the suit under s. 148A by making the other co-sharers party defendants, but in a Mitakshara family, one member has no right to maintain a suit for rent for the entire rent even by making the other members as party defendants. S. 148A contemplates cases where one of two or more joint landlords has a definite share in the property; for, it is stated in the section "such co-sharer landlord shall be entitled to proceed with the suit for his share of the rent only....." A member of a Mitakshara family has no defined share and therefore the words of the section "for his share of the rent only" can have no meaning to a member of a Mitakshara family.

It has been decided in the case of *Mir Taperah v. Gopal Narayan*, 7 C.L.J., 251 that when rent is due to the members of a joint Hindu family, it is not open to the *karta* alone to maintain a rent-suit without joining the other members either as plaintiffs, or as defendants, except when the tenant has dealt with such *karta* as sole landlord.

In a case under s. 105 of the Bengal Tenancy Act for settlement of fair rent, it has been decided that all the members of a Mitakshara family must join as plaintiffs (applicants) and that a managing

Co-sharer landlord, no right of suing separately where other co-sharers not joined.

Suit by a co-sharer where no separate collection.

Joint Sebaitis cannot act separately.

Observations. Mitakshara family: suit for rent, all members must join as plaintiffs. Suit by the manager (*Karta*) not maintainable.

member alone has no such right, see the case of *Sati Prasad v. Sonatan Jhara*, 25 C.W.N. 38.

S. 188 of the B. T. Act applies to proceedings under s. 105 and it was accordingly held that all the members must join as plaintiffs. Although s. 188 of the Bengal Tenancy Act has no application to a rent suit, yet the principle underlying the decision in the aforesaid case applies to a rent suit by a member of a Mitakshara family, for, one out of two or more members has no defined share and as such cannot bring a rent suit. See in this connection *Sati Prasad v. Radha Nath*, 16 C.L.J. 427.

Suit under s. 85 of the Transfer of Property Act—all the members of a Mitakshara family necessary parties.

In a joint Mitakshara family consisting of a father and a minor son, the father as *karta* of the family by a mortgage bond hypothecated the joint property, held that in a view of s. 85 of the Transfer of Property Act both the father and the son are necessary parties in a suit upon the mortgage, and for the purpose of the suit the father does not represent the son: *Lala Surja Prasad v. Golab Chand*, 28 Cal. 517; the judgment of Ghose J., was reversed and that of Harington J., was affirmed. This decision was followed in the case *Debi Prasad Sahi v. Dharamjit Narayan*, 41 Cal. 727; the addition of a party after the period of limitation cannot be made: *Ibid.* member of joint Mitakshara family has no right to sue in his individual capacity to recover a debt due to the family: *Shivijira alias Shivraj v. Vishnu Vaman*, 2 Bom. L.R., 121.

One co-owner cannot be invested by others to sue for ejectment.

"Co-owners may agree that their property shall be managed and legal proceedings conducted by some or one of their member, but they cannot invest each person or persons with a competency to sue in his name or their behalf, or, if sued to represent them. It may, indeed, happen that a suit by one of several co-owners can be successfully maintained against a tenant. This is the case when the tenant has dealt with such co-owner as sole landlord and, by so dealing is estopped from denying the title of the person who has let him into possession: *Kathusheri v. Vallotil*, 3 Mad. 234. A suit for assessment of rent for excess land instituted by some of the members of a joint Mitakshara family, cannot be considered as instituted by them as agents for other members, authorised to act on behalf of all the landlords within the meaning of s. 188 B. T. Act: *Sati Prasad v. Radhanath*, 16 C.L.J. 427; in this case their lordships considered it "doubtful whether a member of a joint Mitakshara family, even if he happens to be the head of the family, can be said to be an agent, authorised on behalf of other members of the family". In the case of *Bhola Roy v. Jang Bahadur*, 19 C.L.J., 5, the original plaintiff who was the head of a Mitakshara family and who had always collected rent as such head brought a suit for rent and the defendant objected saying that the plaintiff had an infant nephew, and on such objection plaintiff added his minor nephew as co-plaintiff after the period of limitation and had himself appointed as guardian of the added minor plaintiff, held that the suit was not barred. Their Lordships further remarked that the original plaintiff was competent to maintain the suit, *as he alone had always collected the rent as the head of the joint Mitakshara family*:

Rent-suit by a co-owner who has always collected rent.

It is respectfully submitted that the above remarks of their Lordships (*in italics*) are *obiter dicta*, and are open to doubt in as much as the payment of rent to one of several joint landlord

who accepts it on behalf of others does not constitute a separate agreement entitling the person who receives rent to sue for rent.

A member of a joint family has no right in law to sue alone for the recovery of property belonging to other members as well as himself; "neither the defendant nor any one else was injured" is no ground: *Gokool Pershad v. Etwaree Mahto*, 20 W.R. 138.

The principle in this case, should apply to a rent-suit; for, a rent-decree is not a decree for money merely; rent is a first charge on the tenure and the tenure is liable to be sold free from all encumbrances in execution of a decree for rent; against a non-occupancy raiyat or a non-permanent tenure-holder the decree for arrears of rent is a decree for ejectment. So, in principle, there is practically no distinction between a decree for recovery of immovable property and a decree for rent, for the latter decree carries with it certain rights against the tenure, and certain liabilities are attached to it as soon as a decree for rent is obtained.

In a suit by one of two *co-uralans* of a Malabar *devasour* to recover land, the property of the *devasur*, the *uralan* being joined as defendant, there was no evidence that the latter had repudiated the right of the plaintiff to sue in conjunction with himself and it appeared that he had not been consulted as to the institution of the suit, *held* that the suit was bad for non-joinder of the *co-uralan* as plaintiff: 14 Mad. 489.

9. Right to re-cover rent by suit: Remedy of a co-sharer landlord :

1. A co-sharer land-lord who is entitled to sue for his share of the rent separately may follow one of the following courses for recovery of rent:

Remedy of
a co-sharer
landlord
to recover
rent.

(1) He may bring a suit for his share of the rent *separately* on the basis of his right to sue separately on account of an arrangement or agreement, express or implied, or

(2) he may join with his other co-sharers in bringing one suit for the entire demand, or

(3) he alone may bring a suit for rent by framing the suit as one under Section 148A of the Bengal Tenancy Act.

2. In the case under paragraph 1 sub-para (1) the decree will be a money-decree. In the two other cases, i.e. under para 1 sub-paras (2) and (3) the decree will be a rent-decree.

Money-
decree or
rent-decree.

3. Now, the question is as to what is the effect of addition of the other co-owners as defendants in a suit framed as stated in sub-para (1) of para 1, i.e., if a co-owner brings a suit for his share of the rent on the basis that he is entitled to recover his share of the rent separately on account of an agreement or arrangement express or implied, and he makes the other co-owners as defendants, can it be said that the decree passed in such a suit is a rent-decree or is it a money-decree? The simple fact of joining the other co-owners as defendants will not make the

Effect of
addition of
co-sharers
as defen-
dants.

Remedy of
a co-sharer
landlord
to recover
rent.

Summary
of Rules.

*Nandlal v.
Kalachand.*

*followed
in Brahmanand v.
Hemchandra.*

decree a rent-decree. For, the real distinction is this:—was the suit based upon the right of the plaintiff to sue separately by reason of agreement or arrangement of separate collection? If it is so, the decree will be a money-decree *notwithstanding that the other co-owners are brought in as party defendants.* On the other hand, if the other co-owners are made party defendants and the suit is framed as one under Section 148A of the Bengal Tenancy Act, the decree will be a rent-decree.

4. The propositions of law may, therefore, be enunciated as follows:—

(1) When a co-sharer landlord brings a suit for rent for his share of rent, *on the basis that he has the right of separate collection, the decree will be a money-decree, whether the other co-sharers are made party defendants or not.*

(2) On the other hand, if a co-sharer brings a suit for rent by making the other co-owners as party defendants, and *frames his suit as one under Section 148A of the Bengal Tenancy Act, the decree will be a rent-decree.* [As to how a suit is to be framed under s. 148A, see below para (8), sub-para (2)].

5. In the case of *Nanda Lal v. Kalachand*, 15 C.W.N. 820, the plaintiffs alleged in the plaint that the annual rent was Rs. 14 a year, that it was jointly payable to themselves and the proforma defendant, that the rent due for their share was in arrears, that they had not been able to ascertain whether the rent due for the share of the proforma defendant had been paid, but that they had reason to believe that it had been paid: they consequently brought the suit for recovery of what they believed to be the total amount of rent due: but they stated that if it transpired that any portion of the rent due to the proforma defendant was still unpaid, they would increase the value of the suit and pay additional Court fees. The Court fee was paid for the amount claimed by the plaintiff. It was held by Mookerjee and Newbould J.J., that the plaint was one under section 148A of the Bengal Tenancy Act.

6. The aforesaid case was followed in the case of *Brahmanand v. Hemchandra*, 18 C.W.N. 1016 where it was held by Mookerjee and Beachcroft J.J., that in a plaint under section 148A of the Bengal Tenancy Act if a plaintiff sues for recovery of what to his information was the whole arrear due, it is in essence a suit for rent due to all the co-sharers within the meaning of Section 148A and it was further held that in order to entitle a person to claim the benefit of section 148A it is not necessary to include in the suit a claim, not for the rent actually in arrears, but the rent payable under the contract without the de-

luction of any amount that might have been actually paid to the land-lord.

7. The Rules laid down in the two aforesaid cases have not been over-ruled or modified by the decision in the case of *Baikuntha v. Ramapati*, 27 C.L.J., 101. In this case Mookerjee and Walmsley J., were of opinion that if in substance a suit is brought for the share of the rent due to the plaintiff separately by reason of the fact that that he has on previous occasions collected that share of the rent separately from his co-sharers, the suit cannot be regarded as one under Sections 148A although there is a prayer to the effect that if it be found that there was arrear due to the other co-sharer a decree might be given for the entire rent ; the nature of the decree to be made in the suit depends upon its true character.

Remedy of a co-sharer landlord to recover rent.

Rules laid down in the two aforesaid cases have not been over ruled by *Baikuntha v. Ramapati*.

8. From the aforesaid rulings the following Conclusions. conclusions may be drawn :

- (1) The case of *Baikuntha v. Ramapati*, 27 C.L.J. 101 has not in any way affected the earlier rulings in as much as in the case in 27 C.L.J. it was decided that the suit there was based on the basis of separate collection and therefore, it was dismissed as separate collection had not been proved. (The same view has been taken in *Ramdhyan v. Pardip Singh*, 4 Pat.L.J. 500).

Manuk J. (Atkinson J., concurring) made the following observations in the case of *Ram Dhyay v. Pardip*, 4 Pat.L.J. 500 at 504 "I am of opinion that the essential principles underlying that section are (1) that the suit should, in form, be for the whole rent and in substance for the separate share of rent in arrears ; (2) that the whole body of landlords are impleaded, with the allegation that the plaintiff has not been able to ascertain, what, if any, rents are due to the former. In such cases the whole rent due must, in the nature of things, be always a matter of speculation for the plaintiff and he is entitled to assert that he believes that his share of the rent due to the entire rent due and ask the Court to decide on the accuracy of that belief, and if when the impleaded co-sharers appear and claim any arrears as due to themselves. If his belief is accurate the Court will give him a decree for his share of the rent only as being the entire rent due ; if inaccurate, the Court will investigate and decree the arrears due to the impleaded co-sharers as well : *Ram Dhyay v. Pardip*, Pat.L.J. 500 at p. 504. The following cases were considered : *Nandalal v. Kalachand*, 15 C.W.N. 10, *Brohmanand v. Hemchandra*, 18 C.W.N. 1016, *Baikuntha Nath v. Ramapati*, 27 C.L.J. 101.

Essential principles underlying s. 148A.

The case in 27 C.L.J. 101 in no way touches the principles on which the earlier cases in Calcutta

**Remedy of
a co-sharer
landlord
to recover
rent.**

As to how a
suit is to
be framed
under s.
148A.

were decided: *Ram Dhyani v. Pardip Singh*, 4 Pat. L.J. 500 at p. 505.

(2) When the co-owner brings a suit under section 148A of the Bengal Tenancy Act:

(a) he should make the other co-sharers party-defendants.

(b) the suit should be in substance a suit for recovery of the rent of the entire tenure or holding.

(c) but the co-sharer plaintiff shall be entitled to proceed with the suit for his share if he is unable to ascertain what rent is due for the whole on account of the refusal and neglect of the tenant or of the co-sharer-landlord-defendants to furnish the correct information.

(d) If a suit is really framed as a suit under section 148A of the Bengal Tenancy Act, the mere mention in the plaint that the plaintiff collected his rent separately will not take it out of the provisions of Section 148A of the Bengal Tenancy Act.

(e) the real test is as to whether the suit is or is not really based on the plaintiff's right to sue separately.

9. If a suit is properly framed as one under Section 148A of the Bengal Tenancy Act the Court fee is to be paid upon the amount claimed. The last portion of section 148A clearly states: "such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent."

Court-fee.

It is absurd to suppose that a party is to pay court-fee upon an amount not claimed, or upon an amount not known to the plaintiff and not claimed.

In the case of *Nandalal v. Kalachand*, 15 C.W.N. 820, court-fee was paid upon the plaintiff's share of rent.

The following cases may be referred to on the subject:—*Pramada v. Ramani Kant*, 35 Cal. 331, s.c., 12 C.W.N. 249, s.c., 7 C.L.J. 139 (P.C.). *Bholanath v. Belchambers*, 14 C.L.J. 373. *Shyama Churn v. Joges Chandra*, 16 C.W.N. 774. *Sashi Kumar v. Seetanath*, 35 Cal. 744, s.c., 7 C.L.J. 425. *Sham Singh v. Kishun Sahai*, 6 C.L.J. 190. *K. B. Dutt v. Gostha Behari*, 10 C.W.N. 1006, s.c., 16 C.L.J. 379. *Nandalal v. Kalachand*, 15 C.W.N. 820. *Brohmanand v. Hemchandra*, 18 C.W.N. 1016. *Baikantha v. Ramapati*, 27 C.L.J. 101. *Pergash v. Balgobind*, 19 Cal. 735. *Jogendra v. Pabon*, 8 C.W.N. 472. *Narainuddin v. Srimanta*, 29 Cal. 219. *Ramdhyan v. Pardip*, 4 Pat.L.J. 500.

10. Decree in a suit framed under s. 148A binds a purchaser of a portion of the holding :—A decree passed in a suit framed under s. 148A and the sale in execution of such decree binds the purchaser from the tenant of a portion of a holding, although the purchase had taken place before the institution of the suit: *Bhaikhia v. Birj Bihari*, 2 Pat.L.J. 478.

II. Reasons for enactment of s. 148A—Essentials of a plaint under this section :—S. 148A was enacted in order to further facilitate the recovery of the arrears of rent due to a co-sharer who is in dispute with his tenants or his fellow landlords: *Rajgiri Singh v. Jadunath Ray*, [1922 Pat.] p. 355 (Dawson Miller, C.J. and Mullick, J.).

Reason for enactment of the section.

The essentials of a suit under this section are:—

- (1) that the suit should in form be for the whole rent.
- (2) and in substance be for the separate share of rent in arrears.
- (3) that the whole body of landlords should be impleaded with the allegation that the plaintiff has not been able to ascertain what, if any, rents are due to the former: *Masud Ahmed v. Jagan Singh*, 68 I.C. 625.

Essentials of a plaint in a suit under s. 148A.

Where the plaintiff claimed his share of rent and in the alternative the whole rent for the years in suit on his own behalf and of his co-sharers, the plaint was held to conform with s. 148A, and the High Court directed the amendment of the prayer column on payment of deficit Court-fee: *Rajgiri Singh v. Jadunath Ray*, [1922 Pat.] p. 355.

Where a co-sharer landlord who was not in separate collection rent stated that he had enquired of his other co-sharers whether they had realised any rent and the latter did not give him any information, and made his co-sharers parties in the rent suit, and stated that if his co-sharers' share of the rent had remained unpaid he was willing to pay additional Court-fee, held that the suit was substantially one framed under s. 148A: *Profulla v. Baburam* 34 C.L.J. 462; the case of *Brahmanand v. Hem*, 18 C.W.N. 1016 was followed and that of *Baikanta v. Ramapati*, 27 C.L.J. 101 was distinguished.

Contents of plaint when sufficient.

Baikantha v. Ramapati, 27 C.L.J. 101, distinguished.

The case of *Baikantha v. Ramapati*, 27 C.L.J. 101 was distinguished in the case of *Jagabandhu v. Abdul Hamid*, 28 C.W.N. 757 (Walmsley and Suhrawardy, JJ.), and it was held that the elements of s. 148A were sufficiently complied with where a co-sharer landlord's plaint in a suit for rent mentioned what was the rent payable in the 16 ans. share, what was payable in the different shares, what was believed to be due altogether for the period in suit with damages in 16 ans. and what was due to the plaintiffs on their shares and what was payable to the other landlords in their shares, and then went on to allege that the other landlords having refused to let the plaintiffs know what was due to them, the plaintiffs had been unable to ascertain that and on that account they asked for a decree for the amount due to themselves alone and in the alternative prayed that if the other landlords wished to be added as plaintiffs on disclosing what was due to them then they might be transferred from the category of the defendants to that of plaintiffs: The decree in the suit was a rent decree: *Ibid.*

Elements of a plaint under s. 148A—*Baikantha v. Ramapati*, distinguished.

For a plaint to be in accordance with the provisions laid down in s. 148A of the Bengal Tenancy Act (applying to East Bengal) the first requisite is that the co-sharer landlord should sue for recovery of the rent due to all the landlords, and secondly, if he is unable to find out the dues of the co-sharers, he would be entitled to proceed with the suit for his share only.

Elements necessary for a plaint under this section.

Where the plaintiffs sued for their share of the rent alone, stating that a certain amount might be due to the co-sharer landlords and prayed that under certain conditions stated in the plaint a decree for

"Has instituted a suit due to all the co-sharer landlords"; meaning of.

the total amount due might be passed, *held*, that the plaint was not in accordance with s. 148A of the Bengal Tenancy Act, the terms whereof should be strictly complied with, a substantial compliance with the requirements of the section would not be enough to give the auction purchaser a title to annul incumbrances: *Gangamani v. Rajabali*, 51 Cal. 935, s.c., 40 C.L.J. 512 (Newbould and B. B. Ghose, JJ.); the effect of the decision of the learned Judges in this case is that the co-sharer landlords should include in his plaint the 16 ans. rent which is payable for the *jama* even if he does not know the portion of rent due to the other co-sharer landlords defendants. The expression "has instituted a suit due to all the co-sharer landlords," it is submitted means what the *plaintiff knows to be due*. If the plaintiff does not know really what is due it is not possible for him to bring the suit for such amount and there cannot be any verification of the plaint of a fact which the plaintiff does not know. Non-inclusion of the 16 ans. rent does not prevent the plaintiff to ask for a relief that a decree may be given for the shares of the co-sharer defendants from praying the amount due to the co-sharers may also be decreed on payment of a proper Court-fee in case the other co-sharer landlords disclose the amount due to them. A suit brought in this way may be considered to be a suit for recovery of arrears due to all the co-sharers. It is therefore submitted with great respect to the correctness of this decision (*Gangamani v. Rajabali*, 51 Cal. 935) is open to doubt, and this decision seems to be contrary to the principles laid down in the case of *Jagabandhu v. Abdul Hamid*, 28 C.W.N. 757. It may be pointed out here that the words "has instituted a suit to recover the rent due to all the co-sharer landlords" occur in both Bengal and East Bengal sections.

Where the prayer in the suit for rent by the co-sharer was that the other co-sharers might be added in decision in the plaintiff if the defendant objected to payr 37 Cal. 552, that the suit was not under s. 148A of the R. Maintainable: *Nanji Koer v. Batul*, 15 C.L.J. 653; the suit was not maintainable under s. 42 of the Specific Relief Act: *Ibid*; the suit was also barred by res judicata: *Ibid*.

Where A executed two kabuliyats, one in favour of B and another in favour of C of different amounts of rent, *held* that A is not a mere stakeholder within the meaning of s. 471 C. P. C. (Act XIV 1882) in so far as he may seek to establish a title to hold the land as the tenant of one or the other: *Shelly Bonnerjee v. Rajchunder*, 37 Cal. 552.

Where upon a registered kabuliyat A brought a suit for rent against B, and the defence was that B held directly under A's landlord C, and the defence being over-ruled a decree was passed in A's favour, and subsequently B brought a suit against both A and C for a declaration that he was C's tenant and also for refund of the money realised by A, *held* that the suit was barred by res judicata: *Sreenath v. Kaser Sheikh*, 18 C.W.N. 116.

Where A brings a suit for rent against B making C as a party defendant, and C admits that A is entitled to get a decree for rent against B, *held* that is not open to B to invite the Court to determine whether A or C is the landlord: *Sreemati Sukumari Gupta v. Bharat Mandal*, 20 C.L.J. 148; in such a case A is entitled to get a decree: *Ibid*.

recover the rent reserved in the lease without reference to the other co-proprietor whose name had been previously registered under the Land Registration Act: *Prabodh Chandra v. Harish Chandra*, 48 Cal. 1078, s.c., 27 C.W.N. 888.

One co-sharer cannot bring a suit for the entire rent when the contract made by the tenant was with several persons: *Rajgiri Singh v. Jadunath Ray*, [1922 Pat.] p. 355. But where the tenant is liable by express or implied contract to pay rent separately to a person, he can bring a suit for his share of the rent: *Ibid.* Claim for entire rent.

Mere omission to state specifically in the plaint that the plaintiff is entitled to sue for his share of the rent will not take the suit out of the purview of s. 148A if as a matter of fact, the contrary has not been proved in the case: *Sasi Bhusan v. Khiroda Sundari*, 95 I.C. 42. (Mukerji, J.).

Where an occupancy raiyat sold a part of his holding, and the transfer was recognised by one of several joint-landlords a decree for rent obtained in a suit by one of the co-sharer landlords who did not recognise the transfer cannot be considered to be a rent-decree although the suit was framed under s. 148A by making the remaining co-sharer landlords party-defendants: *Sasi Bhusan Roy Choudhury v. Kali Prasanna Ray Choudhury*, (unreported Civil Revision No. 84 of 1923 decided by Mukerji J., on 11th March, 1924). See also *Abibullah v. Sheikh Baser*, 24 C.W.N. 150 (notes). These cases were considered and distinguished in the case of *Bamapada v. Sakuntala*, 30 C.W.N. 494 (Greaves and Panton, J.J.).

Where subsequently to the recognition by the 14 ans. co-sharer landlords of a purchase of a moiety of a non-transferable occupancy holding, the remaining 2 ans. landlords instituted a suit for rent under sec. 148A of the B. T. Act making parties defendants to the suit the original raiyats of the holding and the 14 ans. co-sharers follo-
guished.

The case of *Bamapada v. Sakuntala*, and the entire holding passed to the purchaser, and the decree and execution of the decree and not merely the right, (Walmsley and Suhrawardy, JJ.), and it was held that the provisions of s. 148A were sufficiently complied with where a co-sharer landlord's plaint in a suit for rent mentioned what was the rent payable in the 16 ans. share, what was payable in the different shares, what was believed to be due altogether for the period in suit with damages in 16 ans. and what was due to the plaintiffs on their shares and what was payable to the other landlords in their shares, and then went on to allege that the other landlords having refused to let the plaintiffs know what was due to them, the plaintiffs had been unable to ascertain that and on that account they asked for a decree for the amount due to themselves alone and in the alternative prayed that if the other landlords wished to be added as plaintiffs on disclosing what was due to them then they might be transferred from the category of the defendants to that of plaintiffs: The decree in the suit was a rent decree: *Ibid.*

For a plaint to be in accordance with the provisions laid down in s. 148A of the Bengal Tenancy Act (applying to East Bengal) the first requisite is that the co-sharer landlord should sue for recovery of the rent due to all the landlords, and secondly, if he is unable to find out the dues of the co-sharers, he would be entitled to proceed with the suit for his share only. Elements necessary for a plaint under this section.

Where the plaintiffs sued for their share of the rent alone, stating that a certain amount might be due to the co-sharer landlords and prayed that under certain conditions stated in the plaint a decree for

any person to recover from the plaintiff money paid to him under sub-section (3).

Headings of Notes.

1. AMENDMENTS.
2. INTERPLEADER SUIT.
3. TITLE SUIT.
4. SUB-SEC. (3).
5. APPEAL.
6. ONUS.

Amend-
ments.

1. Amendments :—The words “except for spécial reasons to be recorded in writing” after the word “shall” and before the word “refuse” in the clause (1) of the section were repealed by the Amending Acts I of 1907 in Bengal and I of 1908 of East Bengal, respectively.

Inter-
pleader
suit.

2. Interpleader suit :—Where A executed a kabuliyat in favour of B and another in favour of C and then brought a suit against both B and C for declaration as to whose tenant he is, held that such a suit is not maintainable: *Shelly Bonnerjee v. Raj Chandra Datta*, 37 Cal. 552, s.c., 14 C.W.N. 784, s.c., 11 C.L.J. 57. Jenkins C.J., in delivering the judgment of the Court said follows:—“If the plaintiff finds himself harassed in the way he describes, it may be that he can take advantage of the protective procedure prescribed by s. 149 of the Bengal Tenancy Act, though as to this I can express no definite opinion on the present materials”: *Ibid* at p. 558. A tenant has no right to bring a suit to have it determined which of two defendants, both of whom claimed rent from him, is his landlord: *Kylash Chandra v. Goluk Chandra*, 2 C.W.N. 61. Where A brought a suit for rent against B who said he was C's tenant; A obtained a decree; B brought a suit to have it declared that C and not A was his landlord, held following the category of the case of *Shelly Bonnerjee v. Raj Chandra Datta* that such a suit being an interpleader suit was not maintainable. Act, which contemplates a suit for the entire rent: *Ramanath v. Hurish Chandra*, 32 C.W.N. 50 (notes). (Cuming and Mukerji, JJ.). It was held in the case of *Harimohon v. Purnendra*, 90 I.C. 955 by Greaves and Mukerjee, JJ., that for a suit to fall under s. 148A must be a suit to recover the whole of the rent due. The essence of a suit under s. 148A is that either the whole rent is due or else the plaintiffs are unable to ascertain whether or not the whole of the rent is due. [The case of *Jagabandhu v. Abdul Hamid*, 28 C.W.N. 757 was considered.]

In the case of *Dhirendranath Roy v. Rajendranath*, 103 I.C. 827 (Mukerji and Graham, J.J.), the case of *Gangamoni Biswas v. Rabjaali Chaukidar*, 51 Cal. 935, s.c., 40 C.L.J. 512 was followed, and the case of *Jagabandhu v. Abdul Hamid*, 28 C.W.N. 757 was distinguished on the ground that in that case the amount due to the co-sharers was apparently known or ascertainable but in the present case (103 I.C. 827) the precise sum due to other co-sharers was specified and there was nothing to prevent them from suing for the entire amount.

Claim
where a
part is
not due.

The mere fact that something was claimed which was not due would not make the decree any the less a rent decree: *Sasticharan v. Akubjan Bibi*, 26 C.W.N. 639.

Ijaradar
under a
co-sharer.

Where one of two co-proprietors granted a lease of a portion of certain lands for profitable use of it by bringing it under cultivation, and then granted an *ijara*, held that the *ijaradar* was entitled alone to

3. Title suit :—The object of this section was to prevent tenants from being harassed where disputes arise between rival claimants to the land in respect of which the rent is due, and consequently whether the dispute between such third parties is a dispute as to title, or a dispute as to possession only, they are at liberty to have that tried, and in the suit in which that is being tried to obtain the injunction which is mentioned in sub-sec. 3 of s. 149 of the Act: *Rubiunnessa v. Gooljan Bibee*, 17 Cal. 829. The case of *Jagadamba v. Protap*, 14 Cal. 537, was thus distinguished in the judgment of Petheram, C. J., while deciding *Rubiunnessa's* case :—

In that case the Judges held, for the purposes of stamp duty, that that was not a title suit, and that was all they held. That, no doubt, was a suit which was brought to determine which of two parties were entitled to the money paid into Court under that section, but we do not know what the form of that suit was, or in fact anything more than the Judges considered that the suit was not a title suit. That does not determine that no suit which is brought under circumstances such as these can be a title suit, or that the plaintiffs in a suit to establish their right where the matter has come into dispute by reason of another rent suit, and of the money having been paid into Court may not go into their title.

4. Sub-sec. (3) :—Sub-sec. (3) contemplates a suit which culminates not in a decree, but in an order of a limited kind, an order restraining payment out of the money; it is therefore, an order not finally decisive of the substantial rights of the parties, but providing a machinery for the purpose of carrying out the scheme whereby it is sought to relieve a tenant from harassment: *Tirthabasi v. Purna Chandra*, 16 C.W.N. 558, s.c., 15 C.L.J. 501. If a third person desires to retain the benefits of this section, he must keep his claim within the terms of the section: *Ibid*.

See also *Kshettramohan v. Akhilchandra*, 100 I.C. 427, s.c., A.I.R. 1927 Cal. 431 (Mukerji and Graham, JJ.). If in a suit of this sort the Court incidentally goes into the question of title in order to determine a question but the decision does not operate as res judicata in a subsequent suit on the question of title: *Ibid*.

The money mentioned in sub-sec. (3) is the entire sum deposited under sub-sec. (1) and no question of apportionment is intended to be raised or decided in a suit instituted under the section: *Ambika v. Aswini Kumar*, 21 C.L.J. 485.

In a suit for rent by one R against one P and B, the defendants alleged that the rent claimed was due to one I and paid into Court under the 1st clause of s. 149 the amount of the rent due; notice under the second clause of that section having been served on I, she filed a suit within three months against all the parties to the rent-suit, in which she claimed the amount deposited and a further amount of 8 ans. which she alleged to have fallen due subsequent to the period covered by the rent-suit: held by Tottenham and Norris, J.J., that the suit was not a title suit and was not required to be stamped as such: *Jagadamba v. Protap*, 14 Cal. 537. "It is in the nature of a suit for an injunction under the Specific Relief Act, or else of a declaratory suit." (*Per Tottenham, J.*): *Ibid*.

A suit contemplated by this section is a suit with reference to the money deposited in Court and for an injunction restraining the paying out of the money. The section does not contemplate

a suit for establishment of the relationship of landlord and tenant.

for the establishment of the relation of landlord and tenant between the parties: *Harendra v. Ananta*, 9 C.W.N. 492. A suit under cl. (3) in which the plaintiff claims the right to receive rent by reason of his being in possession of the land (as shown by the receipt of rent for a reasonably sufficient period) is maintainable, though the decision of the suit may or may not ultimately rest on the question of possession merely without reference to the question of title: *Jadub Lal v. Khemankari*, 8 C.W.N. 248; the question of possession should be tried first and the suit dismissed if that question be decided against the plaintiff as he does not rely on his title; but if decided in the plaintiff's favour, the defendant would be put to the proof of his title and the question of title would have to be tried: *Ibid*.

Question of possession.

Nature of an inter-pleader suit.

A suit under sub-section (3) is in the nature of an *inter-pleader* suit and the property in dispute is the money deposited in Court, for determining who must get the money, the question of possession as well as the question of title must be incidentally gone into: *Guru Das v. Kumud Bandhu*, 7 C.L.J. 40n.

Appeal.

5. Appeal:—In regard to a suit under sub-sec. (3) of s. 149 Jenkins C.J., observed as follows:—"It is not for us now to say whether an appeal would lie from such an order, but I feel constrained to say that the language of s. 153 does not sustain the argument that an appeal would lie under that section." *Tirthabasi Purna Chandra*, 16 C.W.N. 558, s.c., 15 C.L.J. 501.

Onus.

6. Onus:—Where a suit was brought under the provisions of cl. (3) and the plaintiff made out a very strong case in support of his title to the rents in deposit, *held*, that the onus was then shifted on the defendant and that plaintiff was entitled to succeed although he was not in a position to prove realisation of rents from the tenant, the plaintiff's case being that the defendant had been preventing her from realising them: *Trailakya Mohini v. Kali Prasanna*, 11 C.W.N. 380.

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Headings of Notes.

1. AMENDMENTS.
2. ADMITS THAT MONEY IS DUE.
3. INTERPRETATION.
4. THIS SECTION APPLIES WHERE THE PLEA IS OF CONFESSION AND AVOIDANCE.

Amendments.

I. Amendments:—The word "except for special reasons to be recorded in writing" after the word "shall" and before the word "refuse" have been repealed by Act I B.C. of 1907 and Act I E.B. A.C., of 1908.

What amounts to be an

2. Admits that money is due:—For the purpose of ascertaining whether anything is admitted to be due and payable by the written statement, the whole of it must be taken into consideration

and, further, must be assumed to be true: *Ali Ahammad v. Bepin Behari*, 20 Cal. 595 at p. 598. Where the claim was for a sum of Rs. 402 made up of four yearly balances, particulars of which were given in the schedule to the plaint, the defendant in the written statement said that the whole of the rents for the first three years and a portion of the fourth had been paid, that the account was not correct as the claim of the fourth year was not due when the suit had been brought, *held*, that this could not be said to be an admission that anything was payable at the time the action was brought: *Ibid*. The admission intended by the section must be an admission in the action: *Ibid*.

In a suit for rent where the defendant admits that money is due from him to the plaintiff on account of rent, sec. 150 of the Bengal Tenancy Act is a bar to the Court taking cognizance of a plea that the amount claimed is in excess of the amount due unless the defendant pays into Court the amount so admitted to be due; and this is so irrespective of the question whether the burden of proof lies on the plaintiff or not: *Maharaja Bahadur Kesho Prasad Singh v. Triloke Nath Tewari*, 4 Pat. 304. The case of *Banrasi Prasad v. Makhan Rai*, 30 Cal. 947 was dissented from.

S. 150 does not apply when the rate of rent is in issue: *Rate of Dharendra v. Charu Sashi*, 90 I.C. 431, s.c., A.I.R. 1926 Cal. 191 rent. (Greaves and Cuming, J.J.). The case in 30 Cal. 947 followed.

3. Interpretation :—This section is highly penal in its character and cannot be put in force against a defendant unless he has intentionally admitted money to be due and has not paid it: *Section highly penal.* *Ali Ahammad v. Bepin Behari*, 20 Cal. 595 at p. 599.

S. 150 of the B. T. Act is not designed to relieve the landlord of the burden which lies upon him of proving his claim but to give both parties a chance of avoiding further litigation. In many cases a landlord will give up a substantial part of his claim if the tenant makes a fair offer accompanied with costs. The section is not really penal, for the dishonest tenant may always evade it by pleading an absolutely low amount; it is intended to benefit the honest tenant and the honest landlord: *Kesho Prasad v. Troilokenath*, 82 I.C. 841. *Scope of S. 150.*

4. This section applies where the plea is of confession and avoidance :—“In my opinion, s. 150 of the Bengal Tenancy Act is limited in its operation to those cases where the plea of the tenant is of a nature such that the burden of proving it rests upon the tenant, and in the absence of evidence on his side, the plaintiff would be entitled to a decree for the full amount; as for instance where the plea is in the nature of a plea of payment or a plea of exemption from liability to pay rent by reason of diluvion or by reason of partial eviction or for any other similar reason”: (*Per Merjea J.*) *Banarasi v. Makhan Ray*, 30 Cal. 947. But this section has no application where the rate of rent is in question: *Ibid*. *Where this section applies and where not.*

151. When a defendant is liable to pay money to Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the *Provisions as to payment of portion of money.*

defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to
grant
receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Appeals in
rent suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

- (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or
- (b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

Explanation.—A question as to the regularity of the proceedings in publishing or conducting a sale or execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

Headings of Notes.

1. ALTERATIONS.
2. TRANSFER OF OFFICER SPECIALLY EMPOWERED.
3. TANK : JALKAR : HOMESTEAD.
4. PHULKUR.
5. SUIT FOR ASSESSMENT OF RENT.
6. APPEAL : DEFECT OF PARTIES : RENT SUIT.
7. AMOUNT CLAIMED IN THE SUIT : APPEAL.
8. AMOUNT OF RENT ANNUALLY PAYABLE.
9. RIGHT TO ENHANCE OR VARY THE RENT.
10. TITLE TO LAND OR SOME INTEREST IN LAND AS BETWEEN PARTIES HAVING CONFLICTING CLAIMS THERETO.
11. ACTED ILLEGALLY.
12. MUNSIF SPECIALLY EMPOWERED WITH FINAL JURISDICTION. ...
13. SUIT BY AN ASSIGNEE FOR BACK RENT.
14. SUIT BY A CO-SHARER LANDLORD.
15. REVISION.
16. RESJUDICATA.
17. IN CASES WHERE THE VALUE DOES NOT APPEAR FROM THE PROCEEDINGS.
18. THE DISTRICT JUDGE MAY CALL FOR THE RECORD.
19. ORDER.
21. PROVISIO.
22. SEC. 153 : EXPLANATION.

1. Alterations :—The Explanation was added by the Amend- Amend-
ing Acts I of 1907 and I of 1908 in Bengal and East Bengal, ments.
respectively.

2. Transfer of officer specially empowered :—Where a Power
Munsiff is empowered to exercise final jurisdiction under this section, vested in
he does not cease to have the power by reason of his transfer from the an officer,
station ; *Shilabati v. Roderigues*, 35 Cal. 547, s. c., 12 C.W.N. 448. personal
and does
not cease
on transfer.
Rent for
tank.

3. Tank : Homestead : Jalkar : :—A suit for rent of a tank is not cease
governed by this section : *Shaikh Mulla v. Lt. A. Wake*, 2 C.W.N. 51 (notes) *held* on a finding that a share in a tank formed an integral Rent for
portion of an agricultural holding situate on its bank—that a right of tank.
occupancy could be acquired in such share ; *Uma Charan v. Moniram*,
8 C.W.N. 192.

A lease of a share of a tank including the land underneath is Lease of
not within the Bengal Tenancy Act even though there is a restrictive tank with-
covenant regarding the right of the lessee to the fruit of the trees on out land.
the bank ; it is not a lease for agricultural purposes ; s. 153 is not
therefore applicable ; *Gourmohon v. Chandicharan*, 11 C.L.J. 63
(notes) ; s. c., 14 C.W.N. 159 (notes). The lease of a tank is not a
lease for agricultural or horticultural purposes : *Chandramohan v.*
Ramnarain, 17 C.W.N. 80 (notes portion).

The provisions of s. 153 are, having reference to the words of Jalkar.
s. 193, applicable to suits for recovery of rents of *Jalkar* (fishery) :
Ananda v. Nagendra, 15 C.L.J. 52.

S. 102, C.P.C., is no bar to second appeals in suits for rent for Homestead.
homestead land : *Sahadora v. Nabinchand*, 42 Cal. 638.

4. Phulkur :—*Phulkur* rent is within the meaning of the Phulkur.
Bengal Tenancy Act and s. 153 is applicable to a suit for such rent ;
Kani v. Madhu, 6 C.L.J. 669.

Assessment
of rent.

5. Suit for assessment of rent :—A suit for assessment of fair rent on the basis of a *butwara* or partition between co-sharers and also for arrears of rent on that footing is a suit for assessment of rent independently of the prayer for recovery of rent from the tenant and is not a suit instituted for recovery of rent under s. 153 and that section has no application to such a case: *Dhanukdhari v. Baburam*, 10 C.L.J. 629.

This case was distinguished in the case of *Benimadhab v. Bejoychand*, 44 C.L.J. 296 (Cuming and B. B. Ghose, JJ., reversing the decision of Chakravarti, J. in *Bejoychand v. Benimadhab*, 52 Cal. 689, on Letters Patent Appeal) and it was held that where it was stated in the plaint that the rent payable was thirteen annas for the lands in suit and a declaration was asked for that the existing rent was thirteen annas and there was no prayer for assessment of rent on the allegation that the rent payable by the tenant was not ascertained, the suit was not for assessment of rent and hence s. 153 applied to this case.

It cannot be said that because there is a prayer for enhancement of rent the suit is to be considered as one for assessment of rent. *Ibid.* The case of *Dhanukdhari v. Baburam*, 10 C.L.J. 629 was distinguished on the ground that in that case the suit was also for assessment of rent and so s. 153 had no application.

Appeal to
be dis-
missed for
non-substi-
tion of
heirs of
deceased
plaintiffs
respondents.

Appeal in
rent-suit—
defect of
parties :
proforma
co-sharer
defendants
not parties.

6. Appeal: Defect of parties: Rent-suit :—Where during the pendency of an appeal against a decree for rent one of the plaintiff respondents died and his heirs were not brought on the record, *held* that the appeal ought to be dismissed: *Tarip Dafadar v. Khotijunnissa*, 10 C.W.N. 981; *Bejoy Gopal v. Umes Chandra*, 6 C.W.N. 196.*

Where a suit was brought by the Plaintiff alone impleading certain persons as proforma defendants who were said to be the heirs of one who was the only other person interested in the 4 as. claimed by him, and those proforma defendants applied to be made Plaintiffs but their application was rejected. The suit was dismissed and the Plaintiff alone appealed and the suit was decreed in the lower Appellate Court. The principal defendants preferred second appeal. Plaintiff respondent took preliminary objection to the maintainability of the appeal on the ground that the proforma defendants were not made parties to the appeal, *held* that in the circumstances of the case the objection was overruled: *Wajuddi Pramanik v. Balaki Moral*, 30 C.W.N. 63 (Suhrawardy and Chotzner, JJ.).

Amount
claimed in
the suit in-
cludes in-
terest, &c.

7. Amount claimed in the suit: Appeal :—The term "amount" does not mean merely the amount of rent claimed, but the whole amount claimed in the suit, including rent, interest, &c.: *Behary Churn v. Bhut Nath*, 3 C.W.N. 214. Maclean, C.J., in delivering judgment in this case said as follows:—S. 153 of the Bengal Tenancy Act does not speak of the amount of rent claimed but of the amount claimed being under Rs. 100, though the amount

* As to where an appeal should be dismissed for defect of parties: see the cases of *Dharasigitt v. Chandreswar*, 11 C.W.N. 504; *Basir v. Fazil*, 19 C.W.N. 290; *Ajimmuddin v. Tarasanker*, 28 C.L.J. 201; *Sriram v. Hriday*, 29 C.L.J. 461; *Chander Sing v. Khimabal*, 22 Bom. 718; *Upendra v. Shamlal*, 34 Cal. 1020; *Kali Dayal v. Nagendra*, 24 C.W.N. 44, s. c., 30 C.L.J. 217; *Narendra v. Satyadhan*, 30 C.L.J. 203; *Bhoopendra v. Roman*, 27 Cal. 417; *Bharso v. Aminuddi*, 25 C.L.J. 469; *Balaram v. Kangsha*, 53 I.C. 548; *Indu v. Sheikh Mahammad*, 23 C.W.N. 208 (notes portion). *Manindra Chandra v. Bhagabati Devi*, 30 C.W.N. 45.

claimed for rent alone is under that amount. The preliminary objection must be over-ruled.

The case in 3 C.W.N. 214 was considered by Woodroffe and Carnduff J.J., in the case of *Sibu Sant v. Nitai Charan*, 15 C.L.J. 114; in that case the plaintiff asked to recover Rs. 99 and the court Interest. fee was paid on that sum, but the plaintiff asked for further and other relief and for costs; the plaintiff on proof of his case was entitled to get interest, and the question was whether the interest was to be added to the amount claimed; Woodroffe J., in delivering judgment said that on the whole it appeared to his Lordship to be doubtful whether a second appeal lay: (15 C.L.J. at pp. 116 and 117).

A suit was brought for recovery of Rs. 82-8 as arrears of rent Claim for money and damages and of Rs. 50 as damages for breach of contract, i.e., with claim for rent. for a total sum of Rs. 132-8, held that a second appeal was barred under s. 153: *Jamadar Sirighr v. Jagot Kisore*, 23 C.L.J. 557; this case was distinguished in the case of *Jonardi v. Anadinath*, 39 C.L.J. 334 (Mookerjee and Rankin J.J.); the bar provided in s. 153 cannot be evaded by the joinder of a claim for money with a claim for rent: the expression "the amount claimed in the suit" in cl. (a) has reference to the rent for the recovery whereof the suit has been instituted; the term rent may possibly include whatever is recoverable as rent under the provisions of the Bengal Tenancy Act as also sums ancillary to rent such as interest on arrears of rent, or statutory damages: *Ibid.* A suit was framed in the alternative, for recovery of rent or of damages for use and occupation; the sum claimed was less than Rs. 100; held that no second appeal lay: *Mohim Chander v. Mirza Ahmad*, 22 C.L.J. 564. Damages for occupation.

By withdrawal of a certain portion of a claim in a rent-suit reducing it to a sum below Rs. 50, where it was originally above that sum, the amount of claim for the purpose of this suit should be considered below Rs. 50: *Shilabati v. Roderigues*, 35 Cal. 547, s. c. 12 C.W.N. 448. Effect of withdrawal of a certain portion of the claim.

In a suit for arrears of *chowkidari tax* payable by a *putnidar* under the *putni* settlement, it was held that it came within the definition of rent in as much as the consideration for the payment of the *chowkidari tax* was the holding of the *putni* and the amount agreed to be paid was lawfully payable: *Assamulla v. Tirthabashi*, 22 Cal. 680.* Chowkidari tax.

Where *Dak cess*† is claimed under a contract by which rent is payable it must be regarded as rent: *Watson v. Sreekristo*, 21 Cal. 132. Dak-cess.

"No doubt the Act declares in ss. 53 to 68, both inclusive, and ss. 72 to 75 both inclusive, "rent" includes cesses but we think that these are enabling provisions passed to extend the meaning of "rent" and it in no way interferes with the law refusing a right of appeal in suits below one hundred rupees in value, which law is made applicable to suits for cesses by s. 47 of Bengal Act IX of 1880 (B. C.)," *Per O' Kinealy and Banerjee, J.J. : Rajani Kant v. Jageshwar*, 20 Cal.

* S. 586 C.P.C., will not bar a second appeal in such a suit although the value may be less than Rs. 500.

† *Dak charges*:—Where a Zemindar sued a *putnidar* for *dak* expenses according to his *putni juma*, held that the suit was of a nature cognizable by a Court of Small Causes and therefore under s. 27, Act XXII of 1861 no second appeal would lie: *Matab Ehan v. Radha Benode*, 8 W.R. 517.

254. A suit to recover cesses falls under s. 153 with respect to appeals: *Mohesh v. Umataara*, 16 Cal. 638.

Jeth raiyati mafi.—
Appeal lies.

Where a *jeth raiyati mafi* is claimed as an incident of the holding and not as a personal right, *held* that it was a question as to the amount of rent annually payable: *Jagdish v. Rameswar*, [1920 Pat.] p. 241.

Amount of interest—no appeal.

A question as to the amount of interest annually payable is not a question as to the amount of rent annually payable within the meaning of s. 153: *Hafizulla v. Latefernessa*, 63 I.C. 529.

Liability to pay cess—no appeal.

In a suit for recovery of cess merely for rent-free lands were the question is as to whether the defendant is liable to pay cess, no second appeal lies in as much as there is no question as to the *amount of cess annually payable*: *Birendra Kishore v. Trailokhya*, 37 C.L.J. 521: The cases in which both rents and cesses are claimed and the only question is as to liability of cesses stand on a different footing in as much as the question as to the liability of cesses would affect the question as to the amount of rent annually payable: see *Debendra Prosad v. Paresh Nath*, 21 Cal. 132 and *Watson v. Sree Krishna*, 4 C.L.J. 119.

8. Amount of rent annually payable:—In a suit for rent for less than Rs. 100, the defendant pleaded that he was the tenant, not of the plaintiffs but of some other persons at a rate lower than that claimed in the suit, no issue was raised as the rate of rent and the lower Court merely decided that the defendant was plaintiff's tenant and decreed the suit, *held*, that the question of the rate of rent not having been raised and decided no second appeal lay: *Baidya Nath v. Dhon Krishna*, 5 C.W.N. 516. But in a suit for rent for a *juma* consisting of a few cottas the rent claimed was Rs. 1-12 and the defendant, said that there was no *juma* of Rs. 1-12 as alleged but that the lands appertained to a bigger *jama* of Rs. 13-0-0 under the plaintiff, and the lower Appellate Court found defendant's story untrue, *held* that a second appeal lay inasmuch as the question as to the amount of rent annually payable was in question, see (unreported) second appeal No. 815 of 1901, *Nabu Sheikh, v. Jogendra Nath Bhadra*, decided by Mitra J.

No appeal where defendant claims to hold at a lower rate under a third person and it is decided that defendant holds under plaintiff.

Question as to interest.

Where there was no decision as to the amount of rent annually payable but only as to whether the landlord was entitled to interest, *held* that no second appeal lay: *Kripasindhu v. Jogendra*, 5 C.L.J. 78n.

Where plaintiff alleged that there was a *jama* of Rs. 5-0 annually for the land and a separate *jama* of Rs. 2 for the trees standing on the land and the defendant alleged that the *jama* of Rs. 5-0 included both the land and the trees, *held* that it was a question as to the amount of rent annually payable and a second appeal lay: *Jonardi v. Anadi Nath*, 39 C.L.J. 334, (Mookerjee and Rankin, J.J.), reversing on Letters Patent Appeal the decision of Cuming J. The case of *Jamadar Singh v. Raja Jagat Kisore*, 23 C.L.J. 557 was distinguished.

Suit for rent by an outgoing landlord s. 153 does not apply. Dak-cess.

S. 153 of the Bengal Tenancy Act has no application to a suit by an outgoing landlord: *Mrittunjoy v. Shyma Charan*, 28 C.W.N. 106 (notes).

Where a tenant denied his liability to pay the Dak cess under an agreement, *held*, that it was a question as to the amount of rent annually payable and a second appeal would lie: *Watson v. Sree-*

kristo, 21 Cal. 132. The question whether certain cesses are payable or not is a question as to the amount of rent and a second appeal lies where such a question is decided: *Debendra v. Paresh*, 4 C.L.J. 119; see also *Rajanikant v. Jogeshwar*, 20 Cal. 254. Cesses.

Rent does not necessarily include interest: *Bhagabati v. Basanta*, 11 C.W.N. 110; this case had reference to the question as to whether the landlord had the right to apply to interest any money paid as rent. Interest.

The question as to whether a *jeth* raiyat is entitled to deduction on account of *mafi* is not one as to the amount of rent annually payable in as much as *mafi* is not rent: *Sheikh Safait v. Sheikh Waizuddin*, 1 Pat. L.J. 504.* *Mafi*.

In order that there should be a second appeal it is only necessary that the court should have decided the annual rate of rent whether directly or incidentally: *Noorijan v. Bimalasundari*, 18 C.W.N. 552. Rate of rent.

Where a question whether certain cesses claimed in a rent-suit are payable or not was decided, *held* that a second appeal lay. *Debendra v. Pareshnath*, 4 C.L.J. 119. Cess.

A question in a rent-suit whether rent is payable in money or kind is a question as to the amount of rent annually payable within the meaning of s. 153: *Apurba v. Ashutosh*, 9 C.W.N. 122. See also *Kali Krishna v. Ram Chandra*, 19 C.W.N. 823, s. c., 21 C.L.J. 487; see also *Wazir Ali v. Mahimunnisa*, 43 I.C. 777, s. c., 4 Pat. L.W. 72, but see *Mathura Singh v. Ratan Barhi*, 54 I.C. 662. Rent in money or kind.

A question as to the instalments in which rent is payable, though it affects the amount of interest payable on the rent is not a question "of the amount of rent annually payable," within the meaning of this section: *Rai Churn v. Kumud Mohon*, 25 Cal. 571, s. c., 2 C.W.N. 297; which followed the case of *Kailas Chunder v. Taraknath*, 25 Cal. 571, note, s. c., 1 C.W.N. 63 (notes): A question as to whether the rent is to be paid in instalments or in a lump sum is not a question of right to enhance or vary the rent: *Piary Mohon v. Madhub Chunder*, 23 W.R. 385. The term "rent" does not include interest payable upon an over-due instalment: *Ibid*. Question as to the instalments in which rent is payable. Rent does not include interest on over due instalment.

Where the lower Appellate Court, in deciding the question as to the amount of rent annually payable, found that the plaintiff had failed to prove the rate of rent claimed by him, and therefore gave him a decree at the rate admitted by the defendant, *held* that this was not a determination of the amount of rent annually payable and therefore no second appeal lay: *Neekajaie v. Nandalal*, 1 C.W.N. 711; see also *Binode Bihari v. Maizuddin*, 49 I.C. 258. The case of *Neekajaie v. Nanda*, 1 C.W.N. 711 was distinguished in the case of *Shibnath v. Annada*, 11 C.L.J. 382 and it was *held* that a second appeal lay where the amount of rent decreed by the lower appellate court is not that admitted by the tenant but some other amount. Decree at the admitted rate.

The case of *Neekajaie v. Nandalal*, 1 C.W.N. 711 was also distinguished in the case of *Kanta Mohon Mullick v. Jadab Chandra Khara* (unreported S.A. No. 38 of 1926, decided by Mitter, J. on the

* "*Jeth* raiyats have to perform certain duties under the landlord, as for example, calling tenants for the collection of rent and such similar duties, and for that they are allowed by the landlord, by way of wages and instead of payment in cash, a *Mafi* from the total rent. This *Mafi* is not rent because it is a sum of money payable by the landlord to the tenant." Per Sharfuddin and Roe J.J.), *Sheikh Safiat v. Sheikh Waizuddin*, 1 Pat. L.J. 504.

14th February 1928) and it was held that a second appeal lay where the Court considered the evidence and came to a decision on the amount of rent which however corresponded to the figure admitted by the defendant. Mitter J., in distinguishing the case of *Neekajale v. Nandalal*, 1 C.W.N. 711 observed: "In the case in 1 C.W.N. 711 the Court held that the Plaintiff's evidence was not reliable and that the defendant should consequently get a decree at the admitted rate. There was no decision on the evidence as to what the rate was, and the case proceeded on the defendant's admission."

Under this section a second appeal lies in a rent-suit whenever the decree of Appellate Court has decided a question of the amount of rent annually payable by a tenant; it is not necessary that the amount of rent payable by the tenant should be a matter in issue in the second appeal: *Rai Churn v. Kumud Mohon*, 1 C.W.N. 687.

Amount
of rent.

Suit for rent: defence that plaintiff's right to some of the plots had been sold in auction and as such plaintiff is not entitled to recover rent of the entire holding: *held* that the question was as to the amount of rent annually payable and an appeal lay: *Sashi Bhushan v. Benimadhab*, 8 C.L.J. 519; see also *Nabin Chand v. Bansenath*, 21 Cal. 722.

Mafi is sum payable by a landlord to tenant; so where in a suit for rent the defendant claimed a deduction on the ground of *Mafi*, *held* that it was not a question of rent annually payable and therefore no second appeal lay: *Safait Hossain v. Waizuddin*, 20 C.W.N. 1207; s. c., 1 Pat. L.J. 504.

Amount
of rent
annually
payable.

Where without deciding as to the amount of rent annually payable, the Court gave a decree for a lump sum, *held* that the court did not decide a question as to the amount of rent annually payable: *Rajgiri Singh v. Jadunath Ray*, [1922 Pat.] p. 355.

Decision as
to the
amount of
rent.

Where the question as to the amount of rent annually payable was decided in the lower Court on behalf of the plaintiff, *held* s. 153 did not debar the plaintiff from preferring an appeal: *Sripali v. Kala Chand*, 1 C.W.N. 187 (notes).

Decision
that jama
set up
formed part
of bigger
jama, not
a decision
as to
amount
of rent
annually
payable.

Where in a suit for rent, the Court held that the jama set up had no separate existence, but formed part of a bigger jama and it was contended that the decision amounted to a decision on the amount of rent annually payable and therefore an appeal lay under sec. 153, B. T. Act, *held*, that the decision did not come within the exception provided by sec. 153, Bengal Tenancy Act and no appeal lay: *Kumarish v. Ramtaran*, 31 C.W.N. 436 (Mukerji and Graham, J.J.).

Decision
allowing
suspension
of rent, not
a question
of the
amount
of rent
annually
payable.

Where in a suit for rent valued below Rs. 100 the defendant pleaded suspension of rent on the ground of dispossession by the landlord, and the Court held that there should be suspension of rent and dismissed the suit, *held* that the decision was not of a question of the amount of rent annually payable by a tenant and hence a second appeal was barred by sec. 153 of the B. T. Act: *Goyratulla Sirdar v. Tarini Charan Sirdar* (unreported S. A. No. 1520 of 1924, decided by Cuming and Mallik, J.J., on the 3rd May 1927).

Question as
to whether
plaintiff

Plaintiff sued for recovery of rent alleging that he had an eight anna share; the defendant contended that the plaintiff had only an eight-pie share of the landlord's interest in the land. The amount

claimed in the suit being less than Rs. 100, it was contended that no second appeal lay. In view of conflicting decisions of *Prasanna Kumar v. Srinath*, 15 Cal. 231, and *Aubhoy v. Shoshi*, 16 Cal. 155, the following question was referred to a Full Bench: Do the words "amount of rent annually payable by a tenant," in s. 153 of the Bengal Tenancy Act, mean "the total amount of rent annually payable by a tenant to the whole body of his landlords where there are more than one," or do they mean "the amount of rent payable by a tenant to one of his co-sharer landlords, who collects his share of the rent separately"? The Full Bench decided that the words "amount of rent annually payable by tenant" in cl. (a) include the case of rent payable by a tenant to one of the co-sharer landlords, who collects his rent, separately: *Narain v. Manofi*, 17 Cal. 489 (F.B.).

alone is
entitled to
rent, or
he has
co-sharers :
Appeal.

A question as to whether the plaintiff is entitled to the whole rent claimed or only a two fifths share as asserted by the defendant is a question as to the amount of rent annually payable: *Sudhanya v. Basanta Kumar*, 49 Cal. 538, s. c., 34 C.L.J. 579, s. c., 26 C.W.N. 96, s. c., 64 I.C. 733, (*Mookerjee and Panton, J.J.*), (On Letters Patent appeal from the judgment of Newbould J.).

Where in a suit for rent by A, the defence, *inter alia* was that A alone was not the landlord but that A's brothers were co-owners with A, (and the brothers were not parties to the suit), and the suit valued at less than Rs. 50 was decided by a Munsiff specially empowered under s. 153, who dismissed the suit holding that A's brothers were co-owners with A and they had not joined in the suit, *held* that there was no question as to the amount of rent annually payable and as such no appeal lay: *Wajuddi v. Balaki Moral*, 30 C.W.N. 63, (*Suhrawardy and Chotzner, J.J.*); the Full Bench case of *Narain v. Manafi*, 17 Cal. 489 and the case of *Sudhanya v. Basanta*, 49 Cal. 538 were distinguished. It was further held by the High Court that a second appeal lay to the High Court: *Ibid.*

It is now settled that if the Court of Appeal below entertains an appeal which it has no jurisdiction to do, an appeal will lie from the decree of that Court: *Ibid.* [The cases of *Kalipada v. Sekharbasini*, 24 C.L.J. 235, s. c., 20 C.W.N. 967, and *Bandiram v. Purna*, 27 C.L.J. 115 followed.]

Where the Plaintiff brought a suit for rent amounting to Rs. 7-11-9 pies against the tenant defendant on the allegation that he purchased the interest of one B from his sole widow J and the defence principally was that the Plaintiff purchased the said interest from one of two widows of B and so entitled to a half share of the rent, and the Munsiff who was especially empowered under s. 153 (b) to try cases of rent of less than Rs. 50 in value, tried the case and found that B had only one widow and that the Plaintiff had no co-sharer, and decreed the entire rent, *held*, that this was not a decision of the question as to the amount of rent annually payable by the tenant defendant within the meaning of s. 153, B. T. Act, and as such no appeal lay from the Munsiff's decision: *Munshi Salimuddin v. Rahim Shaikh*, 30 C.W.N. 850, s. c., 44 C.L.J. 414 (*Cuming and Mukerji J.J.*), on Letters Patent Appeal reversing the decision of Chakravarti J.). Their lordships upon a review of the case law held: "In a suit for rent the tenant may dispute the amount of the rent of the tenure or holding or the landlord's title to the entire rent or

No appeal, if the finding is that there is no co-sharer.

to the share of the rent which he claims and may allege that the amount of the rent or the share is less. In such cases, if the defence is pressed, the landlord is called upon to prove the amount of rent or is put to the proof of his title to the share or to the amount which he claims, as there is a real controversy between the parties on these points and the Court has necessarily to decide a question of the amount of rent or the rent payable to the landlord, whichever way the decision may go. There may be cases however where the afore-said defences of the tenant are dependent entirely on his averment that there is a co-sharer or there are co-sharers. In those cases it becomes necessary to go into these defences only in the event of the Court finding that there is a co-sharer, or that there are co-sharers. If the finding be that there is no co-sharer of the Plaintiff the other questions do not arise and there is no occasion or necessity for the Court to decide the question of the amount of rent. The decision of the Court in such cases, whether dismissing the suit on the ground of non-joinder of Plaintiffs or decreeing the suit in Plaintiff's favour, does not expressly decide and cannot by implication be held to have decided the question." *Ibid.*

[The case of *Sudhanna v. Basanta Kumar*, 49 Cal. 538 ; *Narain Mahaton v. Manofi*, 17 Cal. 489 (F.B.) ; *Wajuddi Pramanik v. Mahammed Balaki*, 28 C.W.N. 72 (notes), fully reported 30 C.W.N. 63 ; *Parashmoni v. Nabokishore*, 30 Cal. 773, s. c., 8 C.W.N. 193 ; *Bashiram v. Srinath*, 23 C.W.N. 76 (notes) and *Fakeer Mondal v. Arshed Molla*, 10 C.W.N. 280 (notes) referred to and discussed.]

9. Right to enhance or vary the rent :—Where the plaintiff sued the defendant on the basis of a *shironamah* claiming a certain amount as rent upon a contract made between the parties, and the tenant defendant denied the *shironamah*, or that the rate mentioned therein was a proper rate of rent, and he produced certain evidence to shew that the rates mentioned in the *shironamah* were not correct, held, that there was, no doubt, a dispute between the parties as to what was the rate of rent paid previously but it was not a question of right to enhance or vary the rent of a tenant : *Nritressur v. Jhotee*, 23 W.R. 443.

Rent if payable in instalments or lump sum.

A question as to whether the rent is to be paid in instalments or in a lump sum is not a question of right to enhance or vary the rent : *Peary Mohun v. Madhub Chander*, 23 W.R. 385 ; see also *Rai Charan v. Kumud Mohon*, 25 Cal. 571, s. c., 2 C.W.N. 297, *Kailas v. Tarak Nath*, 25 Cal. 571 (note) s. c., 1 C.W.N. 63 (notes).

Rate varied by decision of Court.

It was held under s. 102 of Act VIII, B.C. 1869, that by the fact of the rate of rent having been varied by the decision of the Court the suit could not be taken out of that section as the Judge did not decide "the right to vary the rent" : *R. Watson & Co. v. Mohendra Nath*, 23 W.R. 436, s. 102 of Act VIII of 1869 was held not to apply where the point decided was simply whether the rent fixed by a previous decision had been subsequently altered and a new arrangement come to : *Nurubdessur v. Shaikh Jungole*, 24 W.R. 49.

Title to land between landlord and tenant.

10. Title to land or some interest in land as between parties having conflicting claims thereto :—The following illustrations will explain the meaning of the words *as between parties having conflicting claims thereto* :

Illustration I.

A brings a suit for rent against B who pleads that he is not the tenant of A but of C who is not a party to the suit. There is no question of title as between parties having conflicting claims thereto.

Illustrations.

Illustration II.

A brings a suit for rent against B who pleads a title in himself ; i.e. A claims to be the proprietor of an estate and alleges that B is his tenant ; B denies the relationship of landlord and tenant and alleges that the lands belong to him as proprietor of another estate. In this case there is question of title as between parties having conflicting claims thereto.

Where a question of title as between parties having conflicting claims thereto is raised but not decided no second appeal lies ; *Jillor Rahaman v. Ebrahim*, 44 I.C. 558.

Relation of landlord and tenant.

Where the only question decided was as to whether the relationship of landlord and tenant existed no appeal lies if the value is below the limit provided for in this section : *Shelabati v. Roderiques*, 35 Cal. 547, s.c., 12 C.W.N. 448. Where a question relating to title to land was raised and decided as between the landlord and the tenant, *held* that such a question was not decided as between any parties having conflicting claims thereto : *Eshan Chander v. Burnomayee*, 16 W.R. 233 (at p. 234). Where a Judge decided a case solely on the want of proof of relationship of landlord and tenant between the parties, *held* that this was no determination as to right and title to the land or as to any interest in land : *Hurry Mohan v. Dwarka Nath*, 18 W.R. 42 (at p. 43). In a suit for rent in which the tenant sets up the title of a third party who is not a party in the suit, the decision as to the question of title in such a suit is not a question as to title to land or some interest in land as between parties having conflicting claims thereto : *Sheikh Dilbur v. Issur Chander*, 21 W.R. 36 ; *Kashee Ram v. Moharane Sham Mohinee*, 23 W.R. 227 ; *Kripa Moyee v. Dropudee*, 24 W.R. 203 ; *Rama Pershad v. Shorup*, 8 Cal. 712. See also *Ganga Singh v. Raghunandan*, 39 I.C. 748, s. c., 1 Pat. L.W. 548. A suit was brought by a 4-anna co-sharer against a tenant for her separate portion of rent and made her co-sharer parties to the suit as defendants who resisted her right to have any share of the rent at all : the first Court gave a decree, but the lower Appellate Court dismissed the suit as not maintainable without expressing any opinion as to the rights of the parties ; *held*, that although there was no expression of opinion on the part of the Judge as to the rights of the parties, yet the decree was one which determined questions between parties having conflicting claims to an interest in land : *Mokhoda Sundaree v. Kureem Saikh*, 23 W.R. 11. But the judgment in this case was set aside on Letters Patent appeal, see 23 W.R. 268. Where in a suit by a co-sharer landlord for rent the other co-sharer was made a defendant who set up an *ijara* (lease from the plaintiff) and claimed rent from the tenant, *held* that the decision on it his question is a question of title as between parties having conflicting claims thereto and a second appeal lay : *Kaniz Fatma v. Sarbon Lal*, 42 I.C. 415, (Patna Case). Where in a suit for rent the defendant claimed the right to pay the amount of rent to himself on account of interest due to him as mortgagee, *held* that this was not a conflicting claim to

When a third party whose title is set up is not made party.

Where co-sharer landlords are made parties.

Where defendant claims payment of rent to himself on account of interest due on a mortgage.

Where the third party whose title is set up by defendant is not a party.

land: *Raj Kissen v. Pearee Mohun*, 24 W.R. 114. "It has been decided in the cases of *Shaikh Dilbar v. Issur Chander Ray*, 21 W.R., 36; *Donzali v. Token Nadaf*, 23 W.R. 277, and *Kashee Ram Dass v. Moharanee Sham Mohinee*, 2 C.L.R. 588, that where A sues B for rent of land, B pleads that the rent of the land is payable to C and not to A, and where C is not made a party to the suit in which a decree is passed against B no question relating to title to land as between parties having conflicting claims thereto is determined by the judgment in such suit. *Per Pontifex, J.*, in *Doorga Narain v. Ram Lall*, 7 Cal. 330. See also *Bhutnath v. Bqm Kesh*, 24 C.W.N. 64 (notes portion).

Where both plaintiff and defendant claim under the same landlord.

Where in a suit for rent both plaintiff and defendant claimed to hold under the same landlord, and the plaintiff was found to have no title, *held* that a second appeal should lie: *Sita Nath v. Kartick*, 8 C.W.N. 434. This case was referred to and followed by *Mitra, J.*, in the case of *Ram Kanai v. Fakir Chand*, 8 C.W.N. 438. See also unreported second appeal No. 320 of 1900 decided by *Brett and Mitra, J.J.* But where the question was between a raiyat and tenure-holder and the raiyat who was the defendant set up the title of the superior tenure-holder, who was not a party; *held*, that no second appeal lay as the decree appealed against did not decide any question relating to title to land or to any interest in land as between parties having conflicting claims thereto: *Ram Mohan v. Badan Barai*, 8 C.W.N. 436. Where the plaintiff and the principal defendants both claimed under the same *maliks* who were party-defendants, *held* that there was a question as to title between parties having conflicting claim: *Manimohan v. Auoraddi*, 24 C.W.N. 52 (notes portion). Where the defendant set up the title of the superior landlord, *held* that an appeal lay from the decision of the Munsiff in a suit not exceeding Rs. 50: *Ainulla v. Rahinulla*, 39 I.C. 721. Where in a suit for rent the defendant claimed to hold under the plaintiff and his mother, under a right different from what was set up by the plaintiff, *held* that it was not a question as between parties having conflicting claims thereto and an appeal was barred by s. 153: *Dina Bandhu v. Nobin Chandra*, 8 C.W.N. 437.

Claim of a co-sharer to a particular share.

Where in a suit by co-sharer landlord the amount claimed did not exceed a hundred rupees but the question raised and determined was not merely the amount of rent payable to the co-sharer but whether he had a title to recover a particular share of the rents of a particular moujah, *held* that the suit came under the exception mentioned in s. 153; *Poresb Moni v. Nobokishore*, 30 Cal. 773, s.c., 8 C.W.N. 193; in this case it does not seem that the other co-sharer landlords were parties; followed in *Bashiram v. Srinath*, 23 C.W.N. 76 (notes portion).

Where the defendant alleged that the defendant was the tenant of the plaintiff's co-sharer who was a party defendant and who it was alleged held an *ijara* under the plaintiff, *held* that a second appeal lay: *Bibi Kaniz v. Sarban Lal*, 42 I.C. 474. (Patna case).

Question as to title.

A brought a suit for recovery of rent claiming title under a lease from B who was made a party; the tenants contested the claim saying that the lease given by B to A was invalid; B did not contest the suit; the appellate court sustained the tenant's plea and dismissed A's suit: *held* that a second appeal lay in as much as the decree decided a question relating to title to land or to some interest in

land as between parties having conflicting claims thereto: *Gauhar Ali v. Samiruddin Sheikh*, 18 C.W.N. 33.

In a suit for rent the defendant pleaded a proprietary title and set up that the land was his, *held* that it was a question as between parties having conflicting claims thereto and that a second appeal lay: *Jatra Mohon v. Pilambar*, 19 C.L.J. 385. There was an appeal under the Letters Patent against the judgment of Richardson, J., but not upon this point (19 C.L.J., 385).

Where defendant set up a proprietary title.

Where in a rent suit the defendant claimed title in himself, *held* that a decision on the question was one relating to title to land as between parties having conflicting claims thereto and a second appeal lay: *Babua v. Sarli*, 20 C.W.N. 1352 (Patna High Court).

Where a tenant defendant claims to pay rent not to the plaintiff but to his lessor there is a question of title between parties having conflicting claims thereto: *Mohamed Hosain v. Hiramoun Rout*, 24 I.C. 118; but it is not so if plaintiff is a mere mortgagee: *Ibid*.

The lower appellate court cannot be said to have decided a question as to title as between parties having conflicting claims thereto, if the rent-suit is dismissed upon the ground of the result of a title suit: *Jogesh v. Nibaran*, 50 I.C. 276.

Where A brought a suit against B who was a tenant on the land, and C who was also made a defendant was alleged to hold an intermediate tenure which had been cancelled, *held* that a second appeal lay: *Krishna Pramada v. Sheikh Parasulla*, 15 C.W.N. 216 (notes).

Setting up of an intermediate tenure.

Where the defendant alleged that the defendant had paid rent to an intermediate tenure holder who was not a party, *held* that no second appeal lay; *Ganga Singh v. Raghunandan*, 39 I.C. 743, s. c., 1 Pat. 548.

Intermediate tenure-holder, payment of rent to.

Where the question in the decree appealed against decided as to whether the holding was *gujasta* or not, *held* that s. 102 of Act VIII of 1869 (B.C.) did not apply: *Byji Nath v. Ramdour*, 7 C.L.R. 369.

Act VIII (B. C.) of 1869, s. 102.

Under s. 153 an order passed in execution of a decree, whether the decree is appealable or not must be an order itself deciding a question in respect of title to or some interest in land as between parties having conflicting claims thereto. The expression "had decided a question relating to title" etc. in s. 153 of the B. T. Act, qualifies both decree and order: *Joymangal v. Sarafat Ali*, A.I.R. 1925 Cal. 299. A question as to area does not raise any question of title between the parties: *Haro Pershad v. Sreedam*, 20 W.R. 15.

Execution case.

Question as to area.

Decision of conflicting title between defendants tenants *interse* as to who is the real tenant.

Where a Munsiff decided a question of conflicting title as between the defendants tenants *interse* as to who is the real tenant, *held* that the decision was of a question relating to title to land or to some interest in land as between parties having conflicting claims thereto within the meaning of sec. 153 of the B. T. Act and hence an appeal lay to the Subordinate Judge: *Lakshi Narayan v. Jharu Mohan*, 31 C.W.N. 140 (notes), *Per Mitter J.*

"Acted illegally," meaning of.

II. Acted illegally:—The expression "acted illegally" in the analogous section 115 of the Civil Procedure Code, was held not merely to imply the committing of an error of procedure such as "acted with material irregularity" does. This part of the clause was advisedly left in indefinite language in order to empower the High Courts to interfere and correct gross and palpable errors of sub-

ordinate courts, the justification for the interference being determined upon the gravity of the injustice resulting from it: *Jogunnessa v. Satis Chandra*, 51 Cal. 690.

Final juris-
diction of
Munsiff.

12. Munsiff specially empowered with final jurisdiction :—Where a Munsiff was specially empowered to finally decide rate of rent exceeding Rs. 50, and a Subordinate Judge notwithstanding entertains an appeal erroneously, *held* that no second appeal lies against the decision of the Subordinate Judge: *Bhagabati v. Nanda Kumar*, 12 C.W.N. 835, but where a District Judge entertained an appeal against the decree of a Munsiff which did not decide any question as to the amount of rent annually payable or any question as to title to land as between parties having conflicting claims thereto, and the District Judge decided a question as to title to land as between parties having conflicting claims thereto, *held* that a second appeal lay: *Gangadhar v. Sekharbasini*, 20 C.W.N. 967, s. c., 24 C.L.J. 235* (reversing on review the decision of Holmwood and Mullick J.J. in *Kalipada v. Sekhar Basini*, 23 C.L.J. 235). Sanderson C.J. and Mookerjee J. distinguished the case of *Bhagbati v. Nandakumar*, 12 C.W.N. 835 on the ground that in that case the Sub-Judge had not decided any question as to the amount of rent annually payable or any question as to title to land having conflicting claims thereto.

Second
Appeal
when first
appeal was
wrongly en-
tertained.

If the Court of appeal below entertains an appeal which it has no jurisdiction to do, an appeal will lie from the decree of that court: *Wakuddi Pramanik v. Mohammed Bolani Morul*, 30 C.W.N. 63 (Suhrawardy and Chotzner J.J.). If a Court assumes jurisdiction over a matter over which it has no jurisdiction and passes a decree either in the suit or in the appeal, and that decree is open to appeal under the ordinary law no objection can be taken to an appeal from that decree on the ground that the Court below had no jurisdiction to try the matter; because an appeal may lie to a higher Court on the sole question of jurisdiction: *Ibid*.

(The cases of *Kalipada v. Sekharbashini*, 20 C.W.N. 967, s. c., 24 C.L.J. 235 and *Bandiram v. Purna*, 27 C.L.J. 115 (followed). A decree in a rent suit passed by a Munsiff not especially empowered is appealable to Subordinate Judge whose order in appeal is not appealable to the High Court unless a question of title or some interest in land is involved: *Baidik Lachmi Narain v. Najahat*, A.I.R. (1927) Pat. 300 (Dawson-Miller, C.J., and Kulwant Sahay, J.).

Rent suit
by assignee.

13. Suit by an assignee for back rent :—A suit for back rent by an assignee from the previous landlord is not a suit by a landlord against a tenant and therefore s. 153 does not apply: *Kali Nath v. Kefatulla*, 1 C.W.N. 119 (notes); s. 586 C. P. C. is not also a bar to a second appeal when the value is less than Rs. 100 inasmuch as the sum sued for by the assignee is rent within the meaning of s. 3, cl. 5; a second appeal therefore lies in such a suit: *Ibid*. A suit by an assignee of arrears of rent is not a suit of a nature cognizable by a Small Cause Court and therefore an appeal and a second appeal lie: *Mohendra v. Kailas*, 4 C.W.N. 605.

Benami.

Where A brought a suit against B alleging that he had purchased the superior interest of B, and in this suit B's plea was that the purchase was really the purchase by B in the *benami* of A, and the

* The name of the case in 24 C.L.J. is *Kalipada v. Shekhar*.

~~court without deciding the question of title~~ dismissed the suit on the ground that there was no realisation of rent by A from B, *held* that it was no decision of the question of title, but where in such a case the court decides the question of title, it is a decision deciding a question of title as between parties having conflicting claims thereto: *Gangadhar v. Sekhar Basini*, 20 C.W.N. 967; *Kalipada v. Sekhar Basini*, 23 C.L.J. 235. It is not sufficient merely that there should be a controversy on the question of title as between parties having conflicting claims to land but the section requires that some question of title *should be decided*; if there is such a question raised but not decided no second appeal lies: *Jillor Rahman v. Ebrahim Khan*, 44 I.C. 558.

Question of title must be decided.

It was held by a Full Bench that a suit brought by an assignee for recovery of arrears of rent assigned after they fell due is a suit for recovery of rent, and is therefore excepted from the cognizance of the Court of Small Causes: *Sris Chandra v. Nasim Quazi*, 27 Cal. 827, s.c., 4 C.W.N. 357*; *Banerjee, J.*, who was a member of the Full Bench and who dissented from the opinion of the majority observed as follows:—".....if a suit by an assignee of arrears of rent for the amount due be held to be excepted from the cognizance of a Small Cause Court an appeal and also a second appeal will always lie in such a suit, whereas if the suit had been brought by the landlord, an appeal would lie in such a suit *only* to the extent allowed by s. 153 of the Bengal Tenancy Act. Thus in a suit for any amount, however small, brought by an assignee of rent, an appeal and a second appeal will always lie even where the suit involves no question of rate of rent or title to land, though if the landlord had brought the suit, not one appeal would lie."

14. Suit by a co-sharer landlord :—Where a tenant has contracted to pay rent to one of several persons interested in a *zemindari*, in respect of his share separately from that of his co-sharers, and such rent has been assessed without any reference to the rent payable to the other sharers and has been separately collected, the landlord is separate landlord and s. 153 applies to a suit for rent by such co-sharer. *Dhubatarini v. Ekabbar*, 5 C.L.J. 253 (F.B.). A decree obtained by a co-sharer landlord for his share of the rent is not a decree for rent under the Bengal Tenancy Act and it has been held that s. 170 of the Act, therefore does not apply: *Beni Madhub v. Joad Ali*, 17 Cal. 390, see also *Parameswar v. Kali Mohon*, 28 Cal. 127, s.c., 4 C.W.N. 801. But it has been *held*, notwithstanding that s. 153 of the Act applies to a decree obtained by a co-sharer landlord: *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763 at p. 766, see also appeal from Appellate Order No. 225 of 1902, *Jogendra Nath Roy v. Uma Charan Roy* (unreported); the words "amount of rent annually payable" include the case of rent payable by a tenant to one of the co-sharer landlords who collects his rent separately: *Narain v. Manafi*, 5 C.W.N. 766. See also the case of *Jogendra Nath Ghose v. Paban Chandra Ghose*, 8 C.W.N. 472. But in a case where a co-sharer landlord sued for the recovery of the rent and the amount claimed did not exceed a hundred rupees, but the question raised and determined was not merely the amount of rent payable to the co-sharer but whether he had a title to recover a particular share of the rents of a particular moujah, *held* that the

Observations by Banerjee J. This section is applicable to a suit for rent by a co-sharer landlord.

S. 170.

S. 153.

Share.

* See also *Shaikh Munsur v. Loke Nath*, 4 C.W.N. 10.

S. 153 held not applicable.

suit came under the exception mentioned in s. 153; *Poresh Moni v. Nobokishore*, 8 C.W.N. 193. The case of *Beni Madhab v. Joad Ali*, 17 Cal. 390; and *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763 were considered practically dissented from and it was held that s. 153 does not apply to the case of a suit for rent by a co-sharer landlord: *Jogendra Nath v. Paban Chandra*, 8 C.W.N. 472. The case of *Poreshmoni v. Nobokishore*, 8 C.W.N. 193 was followed in *Bashiram v. Srinath*, 23 C.W.N. 76 (notes portion).

Contra.

A suit by a co-sharer landlord for his share of the rent falls within the purview of s. 153; *Sital Chandra v. Sheikh Afiuddin*, 13 C.W.N. 793.

Where the plaintiff, a co-sharer landlord, brought a suit for his share of rent amounting to less than Rs. 50, and he made his co-sharers *pro forma* defendants to the suit, *held* that an appeal to the High Court from the decision of the lower Appellate Court is barred under s. 153: *Ibid.* The case of *Jogendra v. Paban*, 8 C.W.N. 472 was not followed.

S. 153 applies to suit for rent by a co-sharer landlord.

S. 153 applies to a suit for rent by a co-sharer landlord: *Bhagabati v. Nand Kumar*, 12 C.W.N. 835; where a suit for rent brought by a co-sharer landlord was decided by a Munsiff specially empowered under s. 153, *held*, that s. 153 applied to the case and no appeal lay to the Subordinate Judge and consequently no second appeal also lay; but the judgment of the Subordinate Judge was set aside by the High Court as being without jurisdiction.

Pramad-nath v. Ramani Kant followed.

Their Lordships in deciding this case observed that it was governed in principle by the case of *Pramada Nath v. Ramani Kant*, 35 Cal. 331, s.c., 12 C.W.N. 249, s.c., 7 C.L.J. 139 (P.C.).

Pramadnath v. Ramani Kant does not seem to be an authority for holding that s. 153 applies to such a case.

It is submitted with great respect to the learned Judges who decided the case of *Bhagabati v. Nand Kumar*, 12 C.W.N. 835, that there is no such principle to be found in the Privy Council case; in that case the question was different and there was no question of appeal under s. 153. In that case a co-sharer landlord brought a suit for rent; "the suit was framed as one under the Bengal Tenancy Act to recover the whole rent of the tenure, and for the purpose to bring to sale the tenure itself"; the co-sharer landlords had been realising their shares of the rent separately. So the question was entirely different, and it is submitted that no proposition was laid down by their Lordships of the Judicial Committee from which it may be inferred that there was a principle which should govern the present question as to an appeal in a case brought by a co-sharer landlord, specially when the co-sharer landlords are not all parties.

Bhagabati v. Nanda Kumar followed.

However, it has been subsequently held following the case in 12 C.W.N. 835, that the suit of a co-sharer landlord for his share of the rent falls within the purview of s. 153: See *Sital Chandra v. Sheikh Afiuddin*, 13 C.W.N. 793; in this case plaintiff made his co-sharer landlords *proforma* defendants.

High Court interfered in revision by converting second appeal into revision.

15. Revision:—In a suit for rent in which a second appeal was barred by s. 153, the High Court under s. 115 C. P. C. exercised its power of revision and interfered by reversing the decree of the District Judge and gave a decree at the admitted rate: *Efran Daraga v. Delaladdi Molla*, 24 C.W.N. 176 (notes portion). [Although the case is reported in the notes portion, the entire judgment of the High Court has been printed.]

In a case where no second appeal lay in a rent-suit the High Court interfered in revision treating the memo of appeal as an application under s. 115 C. P. C.: *Dina Bandhu v. Jagabandhu*, 25 C.W.N. 55 (notes portion), s. c., 63 I.C. 520.

An error of law cannot be corrected by a District Judge in revision; the powers of revision under s. 153 are similar to those as contained in s. 115 C. P. C.: *Durgati v. Bijoy Chand*, 26 C.W.N. 12 (notes). Error of law.

Where a second appeal was dismissed on the ground that no appeal lay to that Court from the decree of the lower appellate Court in as much as no appeal lay to that Court from the decree of the first Court under sec. 153 of the Bengal Tenancy Act, the High Court interfered in revision under sec. 115 of the C. P. C.: *Surendra Krishna Chowdhury v. Abbas Ali*, 85 I.C. 760. Interference in revision.

A District Judge may transfer an application for revision under s. 153 to an Additional Judge: *Lal Behari v. Akhil Chandra*, 27 C.W.N. 315. Revision application transferred by District Judge to Adl Judge.

16. Res-judicata:—In a suit for rent the decision that there is no relationship of landlord and tenant does not operate as res judicata: *Syamal v. Brindaban*, 72 I.C. 655. In this connection see *Mrigendra v. Krishna*, 33 C.L.J. 334.

17. In cases where the value does not appear from the proceedings:—Under the old law (s. 102 of Act VIII of 1869) no second appeal lay in a rent suit, if the amount sued for, or the value of the property did not exceed one hundred rupees. In a case where there was nothing to shew that the value of the property claimed did not exceed Rs. 100, it was held that if the fact did not appear either from the finding of the lower Court or elsewhere upon the proceedings, no inference could be drawn to that effect: *Tulsi Panday v. Bucha Lall*, 9 Cal. 596 (F.B.): s. c., 12 C.L.R. 223. Where the value does not appear from the proceedings.

18. The District Judge may call for the record:—An Additional District Judge has no jurisdiction to exercise the powers of revision as the law laid down in this section makes a distinction between a District Judge and an Additional District Judge: *Gaunda Bibi v. Jabonulla*, 5 C.W.N. 48 (notes). Additional District Judge has no powers of revision.

"The Judicial Officer as aforesaid" mentioned in the proviso has reference to the "Judicial Officer" spoken of in cl. (b) of the section and to such an officer only; the District Judge possesses no revisional jurisdiction by virtue of the proviso in respect of decrees and orders of a District Judge, Additional Judge or Subordinate Judge referred to in cl. (a) of the section: *Sankarmani v. Mathura Dhupini*, 15 Cal. 327. Judicial officer, meaning of.

19. Order:—The term "order" in this section does not mean merely a final order but includes an interlocutory order such as an order of remand: *Gagan Chand v. A Caspersz*, 4 C.W.N. 44. S. 152 precludes an appeal from an order of remand made in an action for rent for less than Rs. 100, unless order has determined any of the questions specified in s. 153: *Ibid.* See also *Batasu Sarkar v. Jaity*, 3 C.W.N. 62 (notes): *Sashi Bhusan v. Deno Moyee*, 34 I.C. 301. Order of remand.

No appeal lies to the High Court under s. 153 from an order refusing to hear an application under O. 41, r. 21 C. P. C. to have an appeal from a decree in a rent suit valued less than Rs. 100 O. 41, r. 21, C. P. C.

reheard in the presence of the respondent ; an application to rehear the appeal is an application in the suit : *Samed Shaikh v. Naba Nepal Ghose*, 19 C.L.J. 310. The term 'suit' includes the appellate stage ; it even includes the execution proceedings based on the final decree made in the suit : *Ibid*—sub-sec. (2) of s. 143 makes Order 43 r. 1 cl. (t) C. P. C. applicable subject to the operation of the restrictive provision of s. 150 B. T. Act : *Ibid*.

'Suit' includes execution proceedings.

The term "suit" in this section includes proceedings in execution of the decree made in the suit ; no second appeal therefore lies against an order made in the course of proceedings in execution of a decree passed in a suit for rent in which the amount claimed does not exceed Rs. 100, unless the order appealed against decides any of the special question mentioned in s. 153 : *Shyama Churn v. Debendra Nath*, 27 Cal. 484, s. c., 4 C.W.N. 269 : * approved of in *Kumar Praphulla Krishna Deb v. Nasibannessa Bibi*, 24 C.L.J. 331 (Special Bench of seven Judges). Following the case of *Shyama Charan v. Debendra Nath*, it was held in *Monmohini v. Lakhinarin*, 28 Cal. 116, that no appeal lies from an order passed by a District Judge setting aside a sale in execution of *ex-parte* decree for rent valued at less than one hundred rupees.

Order setting aside a sale in execution of an *ex-parte* decree.

Order setting aside a sale.

An order setting aside a sale is as much an order relating to the execution of a decree as an order confirming a sale : *Ibid*. An order setting aside a sale seems also to be governed by this section : see *Deb Coomari v. Gungadhar*, 17 W.R. 199.

Proceedings in execution.

Proceedings in execution should be treated as a part of the suit and are subject to the same rule as regards jurisdiction throughout the various stages as the suit itself and therefore an appeal does not lie from an order in execution when no appeal is allowed against the decree in the suit : *Parutty v. Shaikh Mandari*, 5 Cal. 594. The word 'suit' is intended to cover all proceedings prior to decree and subsequent ones in execution : *Krishto Coomar v. Anund Coomar*, 19 W.R. 307 : *Kedar Nath v. Huro Proshad*, 23 W.R. 227.

Suit, meaning of.

Order of remand.

An order of remand is an order within the meaning of s. 153 : *Batasu v. Jaitly*, 3 C.W.N. 62 (notes).

A second appeal lies against an order refusing to set aside a sale in execution of a decree obtained in a suit for rent for less than Rs. 100 : *Arjun Das v. Gunendra Nath*, 27 I.C. 294.

O. 41, r. 21, C. P. C.

Sec. 153 is a bar to an appeal against an order passed by the lower appellate court upon an application made under Order 41 rule 21 C. P. C., in a suit for rent for less than Rs. 100 in value : *Ahmed Shikh v. Naba Gopal*, 19 C.W.N. 359 ; s. c., 19 C.L.J. 310 ; the term "suit" includes the appellate stage and an application to rehear the appeal is clearly an application in the suit ; *Ibid*. Sub-sec. (2) of sec. 143 of the B. T. Act, which makes order 43 rule 1, cl. (t) C. P. C., applicable to suits between landlord and tenant, makes it applicable subject to the operation or the restrictive provision of Sec. 153 of the Bengal Tenancy Act, and the absence of

* Orders made in execution of decrees passed in suits of the nature cognizable by Courts of Small Causes the value of which does not exceed Rs. 500 have been held to be non-appealable by virtue of the provisions of s. 586, C. P. C. (Act XIV of 1882). See *Lalla Khanda Pershad v. Lalla Lal Behary*, 25 Cal. 872 ; *Anund Chunder v. Sidhy Gopal*, 8 W.R. 112 ; *Dendoyal v. Patra Khan*, 18 All. 481 ; also see appeal from order No. 223 of 1900 (unreported) decided by BANERJEE and GEIDT, J.J.

the restrictive words "in a case open to appeal," from cl. (t) does give the right of appeal: *Ibid.*

A decree for rent was passed by an officer empowered to exercise final jurisdiction in the matter under s. 153, *held* that this section is no bar to an appeal from an order passed in execution of the decree by an officer not so empowered: *Sheo Persad v. Bishen Pargosh*, *Execution of decree.* 15 C.W.N. 760.

An order under s. 174 of the Bengal Tenancy Act is appealable if the question is between the parties to the suit or their representatives and the question raised is a question relating to execution, discharge or satisfaction of the decree: *Sital Rai v. Nanda Lal*, 13 C.W.N. 591; s. c., 11 CL.J. 202. It cannot be affirmed as a general proposition of law either that an order under s. 174 of the Bengal Tenancy Act or under s. 310A C. P. C. (Act XIV of 1882) is or is not appealable: *Ibid*; the test is whether the question raised in the proceedings is one relating to execution, discharge or satisfaction of the decree, or if the question, whether it arises between the parties to the suit or their representatives; if it is so, the order is appealable: *Ibid.* S. 174.

An order under s. 174 of the Bengal Tenancy Act is an order under s. 47 C. P. C. and an appeal and a second appeal lie: *Raghubar Dagol v. Jadunandan*, 16 C.W.N. 736, s. c., 15 C.L.J. 89, when the judgment-debtors appealed against an order in execution treating it as one under s. 174 B. T. Act read with s. 46 C. P. C., it was not open to them on second appeal by the decree holder to urge that such appeal did not lie: *Ibid.*

20. Appeal: Effect of passing of new Act :—A suit for rent was brought before the Bengal Tenancy Act was passed; after the suit was commenced and before the decree the Bengal Tenancy Act was passed; under the old law no appeal lay in such a suit having regard to the nature of the question which was tried: although if the case were governed by the Bengal Tenancy Act a second appeal lay; *held* that no second appeal lay: *Satghuri v. Majidun*, 15 Cal. 107; see also *Hurro Sundari v. Bhofohari*, 13 Cal. 86. Decree in a suit before the passing of the Act.

21. Proviso :—The powers of revision in the *proviso* are practically the same as those contained in s. 622, C. P. C. (Act XIV of 1882) which is as follows:—The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as High Court thinks fit. S. 622 Power to call for the record of cases not appealable to High Court.

S. 115 of the new Civil Procedure Code corresponds to s. 622 of the old Code.

It has been decided by their Lordships of the Judicial Committee that when a Court has jurisdiction to decide a case and decides it rightly or wrongly, it does not exercise its jurisdiction *illegally or with material irregularity* within the meaning of s. 622, C. P. C.: *Amir Hassain v. Sheo Baksh Singh*, 11 Cal. 6 (P.C.). In *Amir Hassain's* case it was decided that even if a Court having jurisdiction to decide a case, wrongly decided a question of *resjudicata*, it does not exercise its jurisdiction illegally or with material illegality within the meaning of s. 622, C. P. C. Exercise of jurisdiction illegally or, with material irregularity. *Amir Hassain's case.*

Mistake
in law.

A mere mistake in law by a lower Court does not bring a case under s. 622, C. P. C. (*Per Maclean, C. J.*): *Raghunath v. Rai Chatraput*, 1 C.W.N. 633. See *Mohunt Bhagwan v. Khetter Moni*, 1 C.W.N. 717; *Brij Mohun v. Rai Umanath*, 20 Cal. 8; *Jagadanand v. Amrita Lal*, 22 Cal. 767; *Magniram v. Jiwa Lal*, 7 All. 336, *Badami Kuar v. Dinu Rai*, 8 All. III; *Sheo Bux v. Shib Chunder*, 13 Cal. 225, *Jagabandhu v. Jadu Nath*, 15 Cal. 47; *Kristamma v. Chapa Nandu*, 17 Mad. 410; *Mahomed Yusuf v. Abdul Rahman*, 16 Cal. 749; *Mathuranath v. Umes Chunder*, 1 C.W.N. 726; *Raghunath v. Rai Chatraput*, 1 C.W.N. 633; *Raium Bux v. Nanda Lal*, 14 Cal. 321; *Debo Das v. Mohunt Ram Churn*, 2 C.W.N. 474.

Refusal
to exercise
jurisdiction.

If a District Judge erroneously refuses to exercise a jurisdiction under s. 153 the remedy lies in an application to the High Court under s. 622 C. P. C.: *Sarat Chandra v. Ram Nidhi*, 2 C.L.J. 69 notes.

Erroneous
exercise of
jurisdiction
by District
Judge.

Where a District Judge acted in contravention of the powers vested in him by the proviso to s. 153 by interfering with the judgment of the Munsiff on a question of law the District Judge acted without jurisdiction and the High Court can revise the order: *Horananda v. Ananta Dasi*, 9 C.W.N. 492.

Third
clause of
s. 622,
C. P. C.

In *Mohunt Bhagwan v. Khetter Moni*, 1 C.W.N. 617, Banerjee and Gordon, J.J., held that the third clause of s. 622, C. P. C. is intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts, so as to prevent grave injustice in non-appealable cases, and the question whether any case comes under the clause has to be determined with reference to the grossness and palpableness of the error complained of, and to the gravity of the injustice resulting from it.

Gross and
palpable
error.

*Mohunt
Bhagwan v.
Khetter
Moni*
discussed.

The case in 1 C.W.N. 617 was considered by Maclean, C.J., in the case of *Enal Mandal v. Boloram Dey*, 3 C.W.N. 581, His Lordship observed as follows:—The learned Judges in the latter case, (*Mohunt Bhagwan v. Khetter Moni*, 1 C.W.N. 617), however, apparently engrafted upon the Privy Council decision (*Amir Hassan v. Sheo Bux*, 11 Cal. 6) a limitation, to the effect that the Court can interfere under s. 622 if the error of law be “gross and palpable.” This, to my way of thinking and with all respect, is frittering away the decision of the Privy Council and is likely to lead to confusion. In every case we should have to enquire whether error of law “is gross and palpable” and this opens out a rather startling vista of contentious matter. To our mind the error of law may appear “gross and palpable”; to another mind it may present itself as question of real difficulty. When the Privy Council have decided a point of law in clear and precise terms, I prefer, as have frequently said, to follow it, and not attempt to whittle down its effect.

When the Lower Court dismissed the plaintiff's suit for rent in its entirety on the ground that his co-sharer not having complied with the requirements of s. 15 of the Bengal Tenancy Act, the whole suit must fail, *held* that the High Court can interfere in such a case under s. 115 C.P.C. or s. 15 of the Charter Act: *Tarini Charan v. Chandra Kumar*, 14 C.W.N. 788.

Where the Munsif declined to exercise jurisdiction wrongly on the ground that s. 109 of the B. T. Act barred the suit, *held* that the District had jurisdiction to interfere under revisional power under s. 153 of that Act: *Sarat Chandra v. Monmohan*, 46 C.L.J. 46 (Majumdar, J.).

22. Sec. 153—Explanation :—An order setting aside or refusing to set aside a sale in execution of a decree for rent wherein the decree-holder was the purchaser decides a question relating to title to the land as between parties having conflicting claims thereto ; an appeal therefore lies from such an order even when there could be no appeal from the decree in the suit on account of the prohibition contained in s. 153 of the Bengal Tenancy Act: *Kali Mondal v. Ram Sarbeswar*, 32 Cal. 957, s.c., 9 C.W.N. 721, s.c., 1 C.L.J. 476 (over-ruling *Mon Mohini v. Lakhi Narain*, 28 Cal. 116) ; see also *Ganga Charan v. Shashi Bhusan*, 32 Cal. 572, s.c., 1 C.L.J. 255 : *Safarali v. Raj Mohan*, 1 C.L.J. 454.

Order setting aside or refusing to set aside sale.

Where a sale is set aside on both the grounds of fraud and irregularity an appeal lies, but no appeal lies where the sale is set aside on the ground of irregularity alone untainted by fraud: *Jatiram v. Dinanath*, A.I.R. 1922 Cal. 163 ; the cases of *Kali Mandal v. Ram Sarbeswar*, 32 Cal. 957 (F.B.) and *Nobin v. Beni*, 19 C.W.N. 953 were referred to and discussed.

Following the case of *Kali Mondal v. Ram Sarbeswar*, 32 Cal. 957, s.c., 9 C.W.N. 721 (F.B.), it has been held that a second appeal lies against an order refusing to set aside a sale in execution of a decree for rent obtained in a suit valued at less than Rs. 100, the decree-holder being the purchaser: *Arjun Das v. Gunendra Nath*, 18 C.W.N. 1266, s.c., 20 C.L.J. 441. The Full Bench case in 32 Cal. 957 was followed in the case of *Nobin Chandra v. Bipin Chandra*, 19 C.W.N. 953 ; s.c., 22 C.L.J. 244. A question as to fraud in publishing or conducting a sale is not covered by the explanation: *Ibid* : (*Per N. Chatterjee, J.*). "The effect of the Full Bench decision (*Kali Mondal v. Ram Sarbaswar*, 32 Cal. 957), has been much impaired by the Amending Acts of 1907 and 1908": *Nawab Bahadur of Murshidabad v. Khondkar Mahamad*, 49 I.C. 465.

The explanation added to this section by the Amending Acts of Bengal and East Bengal practically overrules the Full Bench decision so far as regards its applicability to cases where the sale is sought to be set aside on the ground of irregularity in publishing or conducting the sale, but the explanation does not seem to affect cases where sales are sought to be set aside on the ground of fraud or other grounds. But it has been held in the case of *Arjun Das v. Gunendra*, 18 C.W.N. 1266 that the explanation added to s. 153 has not completely nullified the Full Bench decision in *Kali Mondal v. Ram Sarbeswar*, 32 Cal. 957, s.c., 9 C.W.N. 721, s.c., 1 C.L.J. 476. It was also held in the case of *Arjun Das v. Gunendra*, 18 C.W.N. 1266 that a second appeal lay where an application for setting aside a sale was made by a purchaser from the tenant although the claim in the suit for rent was under Rs. 100.

Effect of the explanation section.

The question whether the judgment debtor has complied with the S. 174. requirements of s. 174 for reversal of the sale is one which decides a question relating to title to land as between parties having conflicting claims thereto ; although therefore the order was passed originally by a munsiff having final jurisdiction under s. 153, the order is appealable: *Beni Madhub v. Bissesar*, 17 C.W.N. 84, s.c., 16 C.L.J. 542 ; *Mookerjee J.*, in delivering judgment of the Court observed as follows at p. 545 (16 C.L.J.) :—

"No doubt as pointed in the case of *Sheo Parsad v. Bishên Pargush*, 15 C.W.N. 760 the effect of the explanation is to restrict

considerably the effect of the decision of the Full Bench ; *Kali Mondal v. Ram Sarbeswar*, 32 Cal. 957. But we are unable to uphold the contention that the decision of the Full Bench, has been practically superseded by the explanation. The explanation provides that a question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto. In the case before us no question arises as to the regularity of the proceedings in publishing or conducting the sale. The question raised is whether the judgment debtor has complied with the requirements of s. 174 for reversal of the sale. We are therefore of opinion that this is not covered by the explanation and that the rule laid down in *Kali Mondal v. Ram Sarbeswar*, 32 Cal. 957 governs the matter.”*

Sec. 153
Explanation.
Or. 21 r. 90.

A suit for rent valued at less than Rs. 50 was brought before the Munsiff who had final jurisdiction to try such a suit. The suit ultimately resulted in a decree which led to the sale. A transferee from the judgment-debtor thereafter applied under Or. 21 r. 90 C. P. C. for the setting aside of the sale on the ground of fraudulent suppression of the sale proclamation and the writ of attachment. The Munsiff dismissed the application. On appeal, the District Judge held that there had been suppression of processes and as a result thereof the price fetched at the sale was wholly inadequate and accordingly he set aside the sale. The petitioner moved the High Court on the ground that no appeal lay to the District Judge under s. 153 B. T. Act, held that an appeal lay to the District Judge : *Prosad Kumar v. Surendra Nath*, 31 C.W.N. 107 (notes) (Mitter J.). The explanation to s. 153 does not purport to affect cases of fraud in publishing or conducting the sale in execution of the decree for arrears of rent : *Ibid.* [*Kali Mondul v. Ram Sarbeswar*, 32 Cal. 957 (F.B.) explained ; *Nabin Chandra v. Bepin*, 19 C.W.N. 953, s.c., 22 C.L.J. 244 followed ; unreported Civil Rule No. 613 of 1921 *Jotiram Gyan Das v. Dinanath Samanta*, (Greaves, J.) where it was held that if both fraud and irregularity be established, the fact they are coupled together does not exclude an appeal ; unless there is irregularity alone—an irregularity untainted by fraud—an appeal lies]. The mere fact that a transferee from the judgment debtor made the application under Or. 21 r. 90 C. P. C. does not make any difference in principle : *Ibid* ; *Gour Routh v. Digambar*, 30 C.W.N. 586 referred to.

Contra.

It has however been held in the case of *Maharaj Bahadur Singh v. Kurani Mai*, 32 C.W.N. 57, s.c., 45 C.L.J. 566 (Mukerji and Roy, J.J.) that fraud in publishing or conducting a sale is not meant to be kept separate from irregularities in the publication or conduct thereof for the purpose of Explanation to s. 153 of the B. T. Act.

An application for setting aside a rent sale was dismissed by the Munsiff and an appeal was preferred to the District Judge who set aside the sale. A second appeal was preferred to the High Court. The Appellant's contention was that by reason of the Explanation to s. 153, B. T. Act, a question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest

* As to when appeals lie against orders under s. 174, see notes under that section.

in land as between parties having conflicting claims thereto, *held* Sec. 153. that no appeal lay from the decision of the Munsiff: *Ibid.* [The case of *Nobin v. Bepin*, 22 C.L.J. 244, s.c., 19 C.W.N. 953 dissented from; The cases of *Beni v. Bireswar*, 17 C.W.N. 84 and *Arjun v. Gunendra*, 18 C.W.N. 1266 and *Kali v. Ram Sarbeswar*, 32 Cal. 957 (F.B.) discussed and commented on]. Explanation.

In cases in which an appeal will lie only if fraud is established, it is not open to a litigant to avail himself of the right of appeal, simply because in the original application in respect of which the appeal arises, an allegation of fraud has been made. In such cases an appeal will lie only if the allegation of fraud is established: *Aswini Kumar v. Raj Kumar*, 103 I.C. 705, s.c., A.I.R. (1927) Cal. 845. (Page and Graham, JJ.).

153A. Every application for an order under section 108 of the Code of Civil Procedure to set aside a decree passed *ex-parte*, or for a review of judgment, under section 623 of the said Code, in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment;

Deposit on application to set aside *ex parte* decree.

and no such application shall be admitted—

- (a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary

Headings of Notes.

1. NOTES.
2. Ss. 108 & 623 C. P. C.
3. APPLICATION TO SET ASIDE A DECREE OR FOR REVIEW.
4. JULKUR RENT.
5. MODE OF APPLICATION OF THE MONEY DEPOSITED.
6. DEPOSIT.
7. COURT CAN ORDER DEPOSIT WHETHER THERE IS ADMISSION OR NOT.
8. STATEMENT OF THE INJURY.
9. ADMIT TO BE DUE.

I. Notes :—This section was inserted by the Amending Acts of Bengal and East Bengal, I of 1907 and I of 1908.

2. Ss. 108 & 623 C.P.C. :—S. 108 of the old Civil Procedure Code corresponds to O. 9, r. 13 of the new Code and s. 623 of the old Code corresponds to s. 114 and O. 47, r. 1 of the new Code.

3. Application to set aside a decree or for review :—It seems that this section will apply when an application is made for a review of judgment passed by the original Court as well as the appellate Court and that it applies in all suits between landlords and tenants and not merely to suits for rent, although from clause (a) as well as the Select Committee's report in the footnote below* it would seem that the intention of the legislature was to limit its application to a suit for rent alone.

4. Julkur rent :—The provisions of this section are applicable to suits for recovery of rents of *julkur* or fishery: *Annada v. Nagendra*, 15 C.L.J. 52.

5. Mode of application of the money deposited :—The landlord in whose favour the decree is ultimately made on the re-trial is entitled to and should apply the sum deposited by the judgment debtor to his credit towards satisfaction of the decree and execute the decree for the balance left, if any: *Sheo Parsad v. Bishen Pargash*, 15 C.W.N. 760.

6. Deposit* :—It is said that a practice prevails in the mufasil by virtue of which applicants for setting aside decrees under this section are allowed to give security instead of being required to make a deposit of the amount as required under this section. It seems that such practice is not according to law. The section speaks of "deposit of amount" and this expression clearly indicates that *money is to be deposited*. So where a deposit is to be made the deposit must be a money deposit.

7. Court can order deposit whether there is admission or not :—Sec. 153A of the B. T. Act contemplates a deposit to be made in all normal cases, where a decree has been passed for any amount in a suit between the landlord and tenant as such. Unless the Court grants an exemption under cl. (b) of that section the deposit must be made. If there is an admitted amount the deposit may be made of the admitted amount but in all cases the Court has power to make an order for the deposit of any amount whether there has been an admission or not. The obvious intention of the Legislature is that the Court should regulate the amount of the deposit, and in all cases it should record its reasons for the order it passes, whether it requires or excuses a deposit: *Tamijannessa Khatun v. Purna*

* The conditions which apply under sections 149 and 150 to a plea by a tenant to the effect that the rent claimed is due to a third person or is in excess of the amount really due, should also attach to an application for the setting aside of an *ex-parte* decree under section 108 of the Code of Civil Procedure, for such applications are very often made with the sole object of delaying and obstructing the recovery of rent. A deposit of the decretal amount is required in the case of such an application under section 17 of the Provincial Small Cause Courts Act, 1887. We have inserted the new section 153A with the object of preventing vexatious applications for the purpose of delay, not only under section 108 of the Code of Civil Procedure, but also under section 623 of the same Code. We think that the tenant should be bound to deposit either the amount, if any, which he admits to be due, or such amount as the Court directs. The Court should be empowered to regulate the amount of the deposit after consideration of the statement of injury filed with the application. In all cases the court should record its reasons for the order it passes, whether it requires or excuses a deposit; *Select Committee's report*.

Money deposited should be applied to the satisfaction of the decree.

Security cannot be allowed.

Scope of s. 153A : Court can order deposit even when the tenant does not admit any amount due.

the Court, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Headings of Notes.

1. ANY CASE.
2. SUIT MUST INCLUDE ALL THE LANDS IN THE TENANCY.
3. INJUNCTION.
4. NOTICE.
5. LIMITATION.
6. SERVICE OF NOTICE.
7. COMPENSATION.
9. OMISSION OF APPELLATE COURT TO FIX A DATE FOR EJECTMENT.
10. CASES WHERE S. 155 APPLIES AND WHERE NOT.
11. DECREE APPEALED AGAINST DISMISSED FOR DEFAULT.
12. FORM OF DECREE.
13. WAIVER.
14. WASTE LAND.
15. TENANCY AND LIMITATION.
16. ENGLISH LAW AS TO FIXTURES.
17. EXTENSION OF TIME IN EXECUTION OF DECREE.
18. IMPROVEMENT.

1. Any case :—The expression “In any case, to pay reasonable compensation” means every case : *Pershad Singh v. Ram Pertab*, 22 Cal. 77 : “The question really turns upon the meaning of the words, ‘and in any case,’ if that means in any case whatever, it follows that there being statutory prohibition unless the notice exactly complies with the statute the Judge would be right. The argument of learned counsel comes to this that, if it was a case where no compensation could possibly be ascertained, it would be unreasonable to expect the landlord to give notice with regard to it. He says that in this particular case with regard to what was alleged to have been done, it was impossible to ascertain the damages. Of course that argument would be very difficult to accept, if the Legislature meant every case, because we are bound to follow the Act.” *Per Trevelyan, J. : Ibid.* {“Any case” means every case.

2. Suit must include all the lands in the tenancy :—A suit for ejectment of a certain portion of an occupancy holding on the ground that it has been rendered unfit for the purpose of the tenancy under s. 25 is bad, as it does not include all the lands comprised in the tenancy : *Kamaleswari v. Harbullubh*, 2 C.L.J. 369.

3. Injunction :—Where a suit for ejectment failed, the ancillary prayer for injunction was refused : *Pershad Singh v. Ram Pertab*, 22 Cal. 77. Ancillary prayer for injunction.

4. Notice :—A suit for ejectment for misuse of the land is not bad merely because the compensation was demanded in the alternative : *Boidyanath v. Ghisu Mandal*, 30 Cal. 1063.* A notice to Claim of compensation in the alternative.

* In the notice the defendant was called upon to pay compensation if he did not choose to remedy his misuse of the land.

Denial of
landlord's
title.
Service
tenure.

Suit which directs the tenant to vacate a certain quantity of land under his landlord is not bad in law, merely because it includes some land which the tenant is found not to hold under the landlord: *Shama Charan v. Uma Charan*, 2 C.W.N. 106. Where a notice to quit stated the area of the defendant's holding to be 1 bigha and 5 chittaks, but the true area was $1\frac{3}{4}$ cottas less and no boundaries were given; *held*, that it was not a defect which would make the notice bad in law, specially when the defendant was not misled by reason of this: *Ibid*. Notice to quit is not necessary in a suit for ejectment on the ground of denial of landlord's title: *Anandmoyee v. Lakhi Chandra*, 33 Cal. 339: s. c., 3 C.L.J. 274. Nor is a notice necessary to eject a holder of service tenure who refuses to perform his services: *Ansar Ali v. C. E. Grey*, 2 C.L.J. 403. Where a notice proceeded on the view that the notice was not capable of remedy, the notice is sufficient although it does not require the tenant to remedy the misuse: *Bejin Behari v. Shib Charan*, 43 I.C. 801.

Where
notice held
to be bad.

Where in a notice there is no claim for compensation, either in addition or as an alternative to a demand on the tenant to remedy the misuse or breach, *held* that the notice did not fulfil the requirements of s. 155 (1): *Maharaj Bahadur v. Makhan Chandra*, 29 C.L.J. 436.

Object of
notice.

"The object of a notice to quit given under s. 155 is to give the tenant an opportunity of remedying the breach (if it is capable of being remedied); so that on remedying the breach and on payment of a reasonable compensation he may avoid ejectment. Under the notice given in the present case, the tenant was required to quit the land even if he remedied the breach. Under the circumstances we are of opinion that the Courts below are right in holding that it was not a proper notice under s. 155 of the Bengal Tenancy Act": *Kali Chandra v. Kali Kumar*, 34 I.C. 537. (Chatterjee and Richardson J.J.).

Where
breach
capable
remedied

Whether the breach complained of is capable of remedy or not, a sum is to be specified by the Court which will be reasonable compensation for the breach, and it is only if the tenant fails to deposit that sum within the time given, that the landlord can have his decree for ejectment: *Afiladdi v. Satish Chandra*, 34 I.C. 497. (Beachcroft and Newbould, J.J.).

Suit for
injunction
and com-
pensation.

5. Limitation :—Where a person having a right to use the property demised to him for one purpose, *viz.*, for agricultural purposes perverts to another purpose, *viz.*, that of a tank, and a suit is brought seeking as primary relief a mandatory injunction, directing the defendant to fill up the tank, and to pay the plaintiff compensation and a secondary relief for ejectment which could not follow save upon failure of the defendant to comply with that order, the case comes within the provisions of Art. 32 of Sch. II of the Limitation Act: *Saroop Das v. Jageswar*, 26 Cal. 564, s. c., 3 C.W.N. 464 (F.B.).

Ejectment
suit.

Art. 32 and not Art. 143 of Sch. I of the Limitation Act governs a suit by a landlord brought under s. 155 of the B. T. Act to eject a tenant who has allowed a portion of his holding to be encroached upon by a stranger and had exchanged another plot of land of the tenancy with the stranger in contravention of the terms of his kabuliati: *Taher Mondal v. Tarafdi Gharami*, 20 C.W.N. 661.

See notes under secs. 10, 25 and 89.

6. Service of notice*:—See Appendix I: Bengal Government Rules. (Rule No. 38).

7. Compensation:—The compensation to be given, according to the terms of s. 155 is for the breach; to determine compensation the position of the landlord immediately before the breach is to be compared with his position after the breach, and the measure of compensation will be the extent to which he has been prejudicially affected by the breach and not the loss of privilege brought into existence by the breach; if he has not been prejudicially affected, reasonable compensation cannot be more than a nominal sum: *Keshablal v. Jnanendranath*, 20 C.L.J. 332; see notes under heading No. 4.

Compensation, how to be determined.

Where a suit for ejectment is held to be barred by limitation the claim for compensation is maintainable if the suit is within the period of limitation: *Krishna Das v. Mahendra Chandra Sil*, 62 I.C. 779. If a tenant in contravention of an agreement excavates a tank the damages which should be awarded to the landlord should be merely nominal in case the tank is an improvement and is beneficial. [The amount of damages was fixed for Rs. 5/- five plus the amount of nazar which the tenant should have to pay to the landlord for such permission): *Ibid*.

Compensation, claim for,—where ejectment suit fails.

A decree under s. 155 cannot direct payment of compensation in addition to ejectment: *Karim v. Aswini*, 25 C.W.N. 658.

Compensation in addition to ejectment cannot be decreed.

8. Capable of remedy:—The phrase “capable of remedy” means physically possible to remedy and does not mean possible remedy by compensation: *Harak Singh v. Kirat Narayan*, 10 C.L.J. 595; where a tenant misused an agricultural holding by growing thereupon a mango orchard, the landlord is entitled to a decree directing the defendant to remove the trees within a specified time, and eject him if he fails to do so; he is entitled to a decree for compensation: *Ibid*; see notes under heading No. 4.

Physical possibility to remedy.

Where a misuse was found to be capable of remedy and the notice only claimed compensation and did not require the tenant to remedy the breach, held that the suit for ejectment should fail and the landlord was not also entitled to any compensation: *Shib Charan v. Bepin Behary*, 27 C.W.N. 144.

Notice defective if it omits to remedy breach which is capable of remedy.

9. Omission of appellate court to fix a date for ejectment:—It is no doubt better to fix a date for ejectment in the judgment of the appellate Court, but if the original decree fixed a date, the appellate decree might be presumed to incorporate the terms of the original decree and as such is not liable to be set aside for omission: *Karim v. Sswini*, 25 C.W.N. 658.

Appellate Court presumed to incorporate terms of the original decree.

10. Cases where s. 155 applies and where not:—Where a lease provided that the lessee would not be entitled to alienate the property nor to place the land in possession of another, and if the lessee acted in contravention of the said conditions he would be entitled to take possession without recourse to the court and that the

Ss. 89 and 155.

* In a suit for ejectment under the Transfer of Property Act a notice to quit which was addressed to all the joint tenants who lived in commensality, was handed over to one of them and he signed an acknowledgment for it, held that the service was a good service: *Rajani v. Hafisonnisa*, 4 C.W.N. 573. Service of notice by a registered letter through the Post Office is not necessarily a non-compliance with the provisions of the second clause of s. 106 of the Transfer of Property Act, if there is evidence that the post peon tendered or delivered the notice either personally to the party or to one of his family or servant: *Subadini v. Durgacharan*, 4 C.W.N. 790.

Scope of
s. 155.

tenant would not be entitled to plead that he had acquired a right of occupancy under s. 6 of Act X of 1859 ; in a suit for ejectment by the landlord against the tenant and his transferee, *held* that in spite of the condition in the lease, the landlord was bound by the provisions of s. 89 of the Bengal Tenancy Act, but when the tenant lessee had submitted to a decree for ejectment the transferee could not avail himself of the provisions of ss. 89 and 155 as he was under the terms of the lease a trespasser : *Budhimonta v. Sarat Chandra*, 13 C.L.J. 672 ; this case was followed in the case of *Dwarka v. Mathura*, 21 C.W.N. 117, s. c., 24 C.L.J. 40, where it was held that s. 155 is not applicable to a suit for the ejectment of a tenant who has forfeited his tenancy by breach of a covenant, and s. 155 cannot be invoked by a purchaser of a permanent tenure in execution sale, which was forfeited by a condition of the lease. This case was distinguished in the case of *Ataharuddin v. Murarimohan*, 47 C.L.J. 21 (Suhrawardy and Cammiade, J.J.) where it has been held that section 155 of this Act applies to every case where the landlord sues the tenant for ejectment even though on the allegation that he has forfeited his tenancy on account of the breach of a covenant in the lease. Because a tenant commits an act in breach of the terms of the tenancy, he does not cease to be a tenant within the meaning of sec. 155 of the B. T. Act. He continues to be a tenant until he is declared by a Court of justice that he has forfeited his tenancy and is liable to be ejected : [The case of *Afiladdi v. Satis Chandra*, 29 C.L.J. 40 was followed, and the case of *Dwarka v. Mathura*, 21 C.W.N. 117, s. c., 24 C.L.J. 40 was distinguished.] In a lease creating a *miras karsha* there was a covenant that if the tenant transferred the holding without the landlord's consent the landlord would have the right of re-entry. The tenant transferred the holding to another person and continued to remain in possession as a sub-lessee under him. The landlord sued the tenant without serving notice upon him under sec. 155 of the B. T. Act, it was held that the suit was not maintainable for want of notice under the said section : *Ibid*.

Where a tenant, holding land under a kabuliyat which precludes him from transferring it in any way, either by sale or gift or any other manner and gives the landlord a right of re-entry if such transfer is effected, transfers the land and holds a portion of it under a sub-lease from the transferee, both the purchaser from the tenant and the tenant holding land under the sub-lease from the transferee are liable for ejectment by the landlord or a person claiming under him, even without a notice under s. 155 (b) of the Act, *Gohur Sheikh v. Shaikh Ahmedali*, 105 I.C. 786, s. c., 1928 A.I.R. Cal. 113 (B. B. Ghose and Roy, J.J.). [*Romesh Chandra v. Daiba Charan*, 28 C.W.N. 602, s. c., 39 C.L.J. 356, s. c., A.I.R. 1924 Cal. 900 ; *Dwarika Nath v. Mathuranath*, 21 C.W.N. 117, s. c., 24 C.L.J. 40 referred to.]

Effect of
decree dis-
missed for
default.

II, Decree appealed against dismissed for default :—

Where an appeal against a decree for ejectment was dismissed for default, *held* that the order of dismissal is not a decree, and it is the decree of the primary court which is to be executed : *Syam Mandal v. Satinath*, 44 Cal. 354, s. c., 21 C.W.N. 776, s. c., 24 C.L.J. 523, but where the decree of the primary court is confirmed, amended or reversed it is the appellate decree which is to be executed : *Ibid*.

Form of
decree.

12. Form of decree :—Where the land of a tenancy has been misused, the landlord is entitled under s. 155 sub-sec. 2 to have a decree compelling the defendant to remedy the misuse where it is

capable of remedy : a decree which merely directs the payment of compensation is not a proper decree : *Harak Singh v. Kirat Narayan*, 10 C.L.J. 595.

13. Waiver :—An objection that forfeiture has been waived may be properly taken in proceedings in execution of the decree for ejectment : *Syam Mandal v. Satinath*, 44 Cal. 954, s. c., 21 C.W.N. 776, 24 C.L.J. 523 ; a tenant continues to be the tenant up till the date fixed in the decree for the performance of the obligation, so the institution of a suit for rent for arrears up till that date does not make a decree for ejectment previously obtained incapable for execution : *Ibid*.

Waiver.

Acceptance of rent, waiver.

Acceptance by the landlord of rent due after forfeiture from lessee operates as a waiver of the notice of forfeiture, notwithstanding notice of the landlord that such acceptance is without prejudice to his right to insist upon the forfeiture : *Bengal Nagpur Railway v. Bal-mukunda*, 80 I.C. 200. (Mookerjee and Rankin, J.J.). [The following cases were discussed : *Croft v. Lumby*, 6 H. L. Cas. 672 ; s. c., 27 L.J.Q.B. 321 ; 4 Govt. (N.S.) 903 : s. c., 6 W.R. 523 : s. c., 10 E. R. 1459 : s. c., 108 R. R. 252 : *Devenport v. Queen*, 3 A.C. 115 ; s. c., 47 L.J.P.C. 8, s. c., 37 L.J. 727 : *Rex v. Pantson*, I.A.C. 271, s. c., 90 L.J.P.C. 1, s. c., 124 L.J. 449. *Strong v. Stringer*, 42 L.T. 359 ; s. c., 44 J.P. 457. *Hartel v. Blackler*, 61 L.T. 470 ; *Davies v. Bristoe*, 3 K.B. 161 ; 89 L.J.K.B. 838 ; *Strater v. Hersh*, 1 K.B. 438 ; 91 L.J.K.B. 263 ; 126 L.T. 346. *Evans v. Enver*, 2 K.B. 315 ; 80 L.J.K.B. 845. *Teleman v. Portfury*, 7 Q.B. 344 ; s. c., 41 L.J.Q.B. 98. *Penton v. Barnett*, 1 Q.B. 276, s. c., 67 L.J.Q.B. 11 ; s. c., 77 L.T. 645 ; s. c., 46 W.R. 33 : *Sahwali v. Hussaini Begam*, 2 P.L.J. 598, s. c., 2 P.L.W. 52, s. c., 42 I.C. 655 ; *Munsur Ali v. Abdul Karim*, 10 C.L.J. 187, *Padmanakhya v. Range*, 34 M. 161, s. c., 20 M.L.J. 930].

Where rent is accepted after the notice to quit whether before or after a suit for ejectment has been filed the landlord thereby shows an intention to treat the lease as subsisting, *Manicklal v. Kadambini*, 43 C.L.J. 272 (Buckland J.).

14. Waste land :—S. 178 does not operate to make s. 155 in-applicable to the case of a tenant of waste lands, who cannot there-fore be ejected without a notice under s. 155 being served on him ; *Champakalatika v. Nafar Chandra*, 13 C.W.N. 536, s. c., 13 C.L.J. 300.

Ss. 178 and 155.

Possession in respect of waste land is presumed to follow title and in the absence of any entry by some other person on the lands beyond 12 years of suit, no question of limitation arises. There is no dispossession or discontinuance of possession, unless one person's possession terminates and is followed up by some body else's possession : *Mohesh Chandra v. Hemendra*, 46 C.L.J. 575 (Rankin, C. J., and Mitter J.).

15. Tenancy and Limitation :—In a suit for possession of land, brought against an alleged tenant who is really a trespasser, the defendant may set up a case of tenancy and also raise the issue of limitation : *Matilal v. Lalu Mondol*, 19 C.L.J. 321 (See also *Haji Khan v. Baldeo*, 24 All. 90, *Dinmoni v. Doorga Pershad*, 21 W.R. 70, s. c., 12 B.L.R. 274).

Tenancy and limitation.

16. English Law as to Fixtures :—The English law relating to fixtures was not applicable to India before the Transfer of Pro-

Law as to fixtures.

perty Act came into operation and it should not be applied to tenancy created before the Act on the ground of its being based on justice, equity and good conscience: *Mofiz Sheikh v. Rasik Lal*, 14 C.W.N. 952.

Extension
of time.

17. Extension of time in execution of decree:—It is competent to the court to entertain an application for enlargement of time after expiry of the period prescribed in the decree and even after the decree-holder has applied for execution; whether extension of time should be allowed or not depends on the circumstances of the litigation *i.e.*, upon the circumstances disclosed at the original trial and the events subsequent: *Syam Mondal v. Satindra*, 44 Cal. 954, s.c., 21 C.W.N. 776, s.c., 24 C.L.J. 523; see also *Mohabir v. Dioki*, 52 I.C. 137.

Improve-
ment.

18. Improvement:—A tenant is entitled to effect on his holding any improvement which would add to the value of the holding: *Mahadeo v. Sheogulam*, 2 Pat. L.J. 634. As to what constitutes improvements the provisions of s. 76 are not exhaustive; *Ibid.*

Rights of
ejected
raiyyats in
respect of
crops and
land pre-
pared for
sowing.

156. The following rules shall apply in the case of every raiyyat ejected from a holding:—

- (a) when the raiyyat 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 raiyyat 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 raiyyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage; and
- (d) if the landlord elects under this section to allow a raiyyat to retain possession of the

land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

157. 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.

Headings of Notes.

1. DISMISSAL OF RENT SUIT : SUBSEQUENT SUIT FOR EJECTMENT.
2. TENANCY BY OCCUPATION OF LAND.
3. SUIT AGAINST A TRASPASSER WITH ALTERNATIVE CLAIM FOR RENT.
4. SUIT FOR COMPENSATION ; NO WAIVER TO EJECT.

1. Dismissal of rent-suit : subsequent suit for ejectment :

—Plaintiff brought a suit to obtain a declaration that he had a right to the land in suit, and that the defendant No. 1 was a *karsa* raiyat under him, and to recover *khas* possession upon ejectment of the defendant No. 1 ; plaintiff had previously brought a suit for rent against the defendant No. 1 who in that suit denied the existence of the relationship of landlord and tenant between him and the plaintiff, and alleged that a third party who was made a defendant now was his real landlord ; the rent-suit having been dismissed, plaintiff brought the present suit and in the course of the suit plaintiff withdrew the claim for ejectment and sought for a declaration of his title to the land and for recovery of rent from defendant No. 1, *held* that s. 157 of the Bengal Tenancy Act was applicable, and that a right to claim rent may arise under that section upon the establishment of the plaintiff's right to the land in dispute notwithstanding that his previous suit for rent was dismissed : *Dwarka Nath v. Ram Chand*, 26 Cal. 428, s. c., 3 C.W.N. 266 (F.B.).

2. **Tenancy by occupation of land** :—The following observations were made by Banerjee J., in the judgment in the case of *Azim Sirdar v. Ram Lall*, 25 Cal. 324 (at pp. 327, 328) :—

Observations of Banerjee J.

“Tenancy in this country is created not only by contract, but also by occupation of land, so far as agricultural lands are concerned. As was observed by this Court in the case of *Nityananda Ghose v. Kissen Kishore*, 1864 W.R. Act X Ruling 82 :—‘Here it is a very usual thing for a man to squat on a piece of land or to take into cultivation an unoccupied or waste piece of land. Tenant in a great many Districts in Bengal commences in this way, and where it so commences it is presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus the established usage of the country regards these parties as land-

Tenancy by
occupation.

lord and tenant unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so although he may never have expressly acknowledged the landlord's rights or entered into express contract with him for the payment of rent. If he chooses to cultivate the zemindar's lands and the zemindar lets him, there is an implied contract between them creating a relationship of landlord and tenant. So in the case of *Lalan Monee v. Sonamonee Dabee*, (1874) 22 W.R. 334, Mr. Justice Jackson observed 'If these parties are in possession they make themselves tenants by use and occupation of land.' In the Full Bench case of *Lukhee Kanto Das Chowdhury v. Summeeruddi Lusker*, (1874) 13 B.L.R. 243 ; 21 W.R. 208, where the landlord sued a raiyat for rent alleged to be due under a *kabuliyat*, the question arose whether, as the defendant had occupied the land under the zemindar, the latter was entitled to recover some rent or compensation for the use of the land and the learned Judges held that he was so entitled. And following the two last mentioned cases Garth, C. J., in the case of *Surnomoyee v. Dina Nath Gir*, (1883), 9 Cal. 908, observed : 'As the plaintiff is willing in this case to waive the dispossession and to consider the defendant as her tenant, we think that upon the authority of those cases we may give the plaintiff a decree for use and occupation. The principle of law enunciated in those decisions has now been combined in section 157 of the Bengal Tenancy Act.....'

Relation-
ship of
landlord
and tenant.

The rule that in order that the relationship of landlord and tenant may be established between parties, the consent of both sides is essential may be the law in England, but it is not the law in this country : *Kali Prasanna v. Bhagaban*, 17 C.W.N. 348, s.c., 17 C.L.J. 431 (Per Holmwood J., Chapman J., concurring). Tenancy in this country is created not only by contract but also by occupation in the case of agricultural lands ; the embodiment of this principle of law in s. 157 of the Bengal Tenancy Act does not, however, mean that every case where tenancy is created by mere occupation must come under that section and that all other legal remedies are shut off from the landlord : *Ibid*—(The case of *Azim Sirdar v. Ram Lal*, 25 Cal. 324 was explained in this case).

"...the relationship of landlord and tenant under the Bengal Tenancy Act is or may be governed not only by contract but by status. In essence the difference may be merely the difference between a contract made by the parties for themselves and a contract made by the law for them"—Per Richardson and Newbould (J.J.) : *Berham Dut v. Ramji Ram*, 18 C.W.N. 466 at p. 469.

Rent free
land—
accretion.

A rent-free tenure-holder is liable to pay rent in respect of accreted land : *Rajendra v. Nanda Lal*, 19 C.L.J. 595. The principle that a tenant who enters upon a land and holds a *de-facto* proprietor *bona-fide*, is entitled to be treated as a raiyat, although the *de-facto* proprietor subsequently turns out to be not the real owner, is applicable quite as much as to form land as to alluvial accretions : *Ibid*.

Pleas of
tenancy and
limitation.

In a suit for possession of land brought against an alleged tenant, who is really a trespasser, the defendant may set up a case of tenancy and also raise the issue of limitation : *Moti Lal v. Kalu Monder*, 19 C.L.J. 321.

Where no
contract

Where there is no proof of any contract between the parties, the presumption of law that the possession of one is held under an agree-

ment of tenancy from the other, is not applicable: *Moti Lal v. Darjeeling Municipality*, 17 C.L.J. 167. between landlord and tenant.

Where in a suit for rent the defendant denied the landlord's title and the plaintiff failed to prove an alleged settlement with him and no alternative claim was made in the plaint for compensation for use and occupation, held that the landlord was not entitled to compensation for use and occupation: *Bhukhi Koer v. Ram Khelwan*, 17 C.W.N. 311. (Per Jenkins C. J. and N. Chatterjea J.). See in this connection the cases of *Lukhee Kant v. Sumeeruddi*, 13 B.L.R. 243; *Surendra Narain v. Bhai Lal*, 22 Cal. 752, *Rachhea Singh v. Upendra Chandra*, 27 Cal. 239, *Gobinda Sundar v. Srikrishna*, 10 C.L.J. 533, *Surnamoyee v. Dinanath*, 9 Cal. 908, *Azim Sardar v. Ram Lal*, 25 Cal. 234 and *Eshan Chandra v. Shama Charan*, 11 M.I. 7 (20).

If a person who has been dispossessed from an immoveable property, brings a suit for recovery of mesne profits the suit is not maintainable; the proper remedy is to institute a suit for declaration of title, and recovery of possession with mesne profits: *Girinarain v. Madhu Sudan*, 17 C.W.N. 324; where the title of the plaintiff is denied by the defendant the plaintiff ought not to obtain a decree for mesne profits till his title has been established in a Court of competent jurisdiction: *Ibid*. Suit for mesne profits.

In an action for mesne profits against co-trespassers while it is open to the plaintiff to proceed against one or some or all of several co-trespassers at his own choice, once a decree has been obtained, it is the decree in its entirety that may be challenged on appeal, and so long as the decree against one remains a final and operative decree and not subject to an appeal, even though it is not satisfied but is capable of execution, the plaintiff cannot proceed with the suit further and take an appeal against the others. *Kama Prosad v. Chandra Nath*, 106 I.C. 300, (M. Verji and Mallik J.J.). Though as a general rule the liability for a joint wrong does in tort is joint and several, this is not an inflexible rule which needs no relaxation according to the law that is taken of the jointness of the act on facts which constitute the wrong. *Ibid*. Joint trespassers.

3. Suit against a trespasser with alternative claim for rent:

—Where the suit is based on trespass only, the mere fact of an alternative claim for rent does not make it the less a suit on trespass as that claim is based on s. 157: *Birendra Kisore v. Giris Chandra*, 22 C.L.J. 154.

4. Suit for compensation: no waiver to eject:—It is open to an owner of land first to sue a trespasser for compensation and then to bring a suit for ejectment to assert his right to the land: *Rajkrishna v. Phakir*, 19 C.W.N. 478.

158. (1) Subject to the provisions of section 111, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely:— Application to determine incidents of tenancy.

(a) the situation, quantity and boundaries of the land;

(b) the name and description of the tenant thereof (if any);

- (c) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat, holding at fixed rates, occupancy raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held, under Chapter XXV of the Code of Civil Procedure, by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

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.

Findings of Notes.

1. AMENDMENTS AND ALTERATIONS.
2. OBJECT OF THE SECTION.
3. DISPUTE AS TO RELATION OF LANDLORD AND TENANT.
4. CL. (D): "RENT PAYABLE."
5. ONE APPLICATION WITH RESPECT TO MORE THAN ONE TENANCY MAINTAINABLE.
6. SS. 102 AND 158.
7. S. 188.
8. ASSESSMENT OF RENT.
9. DECISION OF A REVENUE COURT NOT BINDING ON PARTIES.
10. EFFECT OF DISMISSAL FOR DEFAULT.
11. STANDARD MEASUREMENT.
12. CL. (3): DECREE.

1. Amendments and Alterations:—In sub-sec. (1) before the words "the Court having jurisdiction" the words and figures. "Subject to the provisions of s. 111" were inserted by Act I of 1907, (B. C.) and Act I of 1908 (E. B. A.).

object of
the section.

2. Object of the section:—In a proceeding under s. 158 it is open to a petitioner to dispute the validity of the *patta* set up by the tenant; in determining the question as to the nature of the tenancy the Court must look into the title which the tenant set up and pronounce upon its validity: *Bhupendra Narayan v. Nemye Chand*, 15 Cal. 627.

Incidents
of the
existing

The object of this section is to enable the Court to ascertain what are the incidents of the existing arrangements between a landlord and his tenant, and not to enable the Court to make a new contract.

between the parties between whom no contract was in existence at and before the date of application: *Debendra Kumar v. Bhupendra Kumar*, 19 Cal. 182. arrange-
ments.

A decree for enhancement of rent cannot be passed in a proceeding under s. 158: *Rajeswar v. Burta Koer*, 21 Cal. 807.

The question whether holding is transferable cannot be gone into under s. 158: *Purna Rai v. Bungshidhur*, 3 C.W.N. 15.

Decree for
enhance-
ment.
Question of
transfer-
ability.
Dispute as
to relation
of landlord
and tenant.

3. Dispute as to relation of landlord and tenant:—A Court has jurisdiction under s. 158 only when a tenancy is admitted, and that it should not under that section proceed to decide a dispute as to the existence of the relation of landlord and tenant between the parties to the application: *Peary Mohun v. Ali Sheikh*, 20 Cal. 249 (at p. 252).

"In our opinion the object of s. 158 is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in clauses (a) (c) (d) of the section. Though clause (b) does authorise the Court to determine the name and description of the tenant this, we think, was not intended to and does not authorise the Court to decide conclusively disputes as to who is the tenant or as to who is entitled to the occupation of the land. The section, in other words, does not empower the Court to decide disputes as to the right to possession of the land. It could not in a proceeding under s. 158 of the Act pass a decree for possession, so that if it were to decide such questions it might declare one person entitled to possession, while another might ostensibly hold, and might continue to hold, actual and direct possession of the land. Further, the section does not empower the Court to bring all persons claiming to have rights on the land before it." *Per Pigot and Rampini J.J.*: *Peary Mohun v. Ali Sheikh*, 20 Cal. 249 at p. 253.

In an application under section 158, it is open to the court to determine whether the relationship of landlord and tenant does exist between the parties: *Kailas Chandra v. Meheruddin*, 97 I.C. 604 s.c., A.I.R. (1927) Cal. 51 (Cuming and B. B. Ghose J.J.).

4. Clause (d): "Rent payable":—Under clause (d) a Court has to determine what the existing rent is and it has no jurisdiction to determine what the rent should be, and consequently additional rent for additional area cannot be assessed in such a proceeding: *Srinarain v. Luchmeshwar*, 6 C.W.N. 562. additional
area.

Where, in a proceeding under s. 158, the Court sent the case to the Collector for the purpose of local enquiry with a view to determine the matters referred to in that section, and it was directed, among other matters, that the Revenue-officer should find out what may be the rent payable by raiyats holding lands in the vicinity of a similar description; held, that the Revenue-officer ought not to have directed his inquiry to the question mentioned above, but the inquiry should have been directed to find out what was the rent that was being paid by the particular defendant or had been previously paid by them: *Purna Rai v. Bungshidhur*, 3 C.W.N. 15.

Enquiry
should be
directed to
find out the
existing
rent.

"Rent payable" in cl. (d) of Section 158 does not mean existing rent only but means also the fair and equitable rent. *Priyanath v. Official Trustee*, 105 I.C. 133 s.c. 1928 A.I.R. Cal. 43 (Mukerjee and Graham J.J.). [The cases of *Purna v. Bunshidhar*, 3 C.W.N. 15,

"Rent
payable"
means also
fair and

equitable
rent.

Sree Narain v. Luckmeswar, 6 C.W.N. 592, and *Debendra v. Bhupendra*, 19 Cal. 182, were explained]. .

The determination of the rent payable under cl. (d) of sec. 158 when it is the fair and equitable rent for the holding must be such as is payable at the time of the application and on its basis only rent for future years may be realised and not for the years in arrears in the suit, while there is nothing to prevent the landlord from asking for a decree for the back rent at such rate as the court may find to be fair and equitable for the years in suit. If the Revenue officer is able to determine the contract rents the plaintiff will undoubtedly be entitled to decrees on the footing thereof. If he finds only fair and equitable rents those can only be such rents as are payable at the time of the application. *Ibid.*

One applica-
tion with
respect to
two or more
tenancies
held by
the same
tenant main-
tainable.

5. One application with respect to more than one tenancy maintainable :—Under this section a landlord may include in one application two or more tenancies held by the same tenant and is not bound to make a separate application in respect of each separate tenancy: *Dijendra Nath v. Sailendra Nath*, 24 Cal. 197 s.c. 1 C.W.N. 236. By virtue of s. 647, C. P. C., the provisions thereof may be applied to all proceedings under the Bengal Tenancy Act so far as they can be made applicable; and therefore the inconvenience resulting from the proceedings becoming complicated by the inclusion of more tenancies than one in an application under s. 158 may be obviated by following the course prescribed by s. 45 C. P. C. (*Per Banerjee J.*): *Ibid.*

But not so
against a
number of
tenants.

But this section does not authorise one application being made against a number of tenure-holders having separate and distinct tenures: the proper procedure is by separate application against each: *Golap Chand v. Ashutosh*, 11 Cal. 602.

Total denial
of relation-
ship of land-
lord and ten-
ant—Juris-
diction of
Revenue-
officer under
s. 103.

6. S. 102 and S. 158 :—It has been decided in the case of *Dharani Kant v. Gaber Ali*, 30 Cal. 339 s.c. 7 C.W.N. 53 that where there is a total denial of relation of landlord and tenant by one of the parties, a Revenue-officer has jurisdiction in a proceeding under s. 103 of the Bengal Tenancy Act to decide that question. But his decision, although it may have the force of a decree, it does not operate as *res judicata* in a subsequent suit by the landlord for ejectment; Stevens J., in delivering judgment in this case made the following reference to s. 158.

Observa-
tions of
Stevens, J.

"It seems to us difficult to say that the first two of these reasons are not as applicable to a record under section 102 as to proceedings under section 158. With regard to the particulars which may be determined by a Court under sec. 158 on the application of either the landlord or the tenant, clause (a) of the section answers to clause (c) of sec. 102, clause (b) to clause (a), clause (c) to clause (b), and clause (b) to clause (e). Moreover, sub-sec. 3 of s. 158 provides that an order made on an application under the section shall have the effect of, and be subject to the like appeal as, a decree. There is, therefore, we think, sufficient analogy between a proceeding under sec. 158 and a proceeding under section 103 to make the case of *Peary Mohun Mookerjee v. Ali Sheikh*, 20 Cal. 249, applicable to the case before us, which appears to be distinguishable from the cases cited for the respondents on the ground suggested by the learned Vakil for the appellants. In this view we do not feel pressed by the authority of

those cases to hold that the rule of *res judicata* applies in the present case."

7. S. 188 :—As so whether s. 188 is a bar to an application by a co-sharer landlord under s. 158, see notes under s. 188.

S. 188 applies to an application under s. 158: *Mahiballi v. Amir Rai*, 17 Cal. 538; *Dhananjoy v. Upendra Nath*, 46 I.C. 428.

An application under s. 158 to determine the incidents of a tenancy cannot be made against persons who have only a portion of the proprietary interest in the land of the tenancy even when the applicant appears to have taken separate leases from different landlords of their respective undivided interests; *Hari Mohan v. Sasi Mohan*, 18 C.W.N. 168 (*Per Coxe and Ray J.J.*). The words "the landlord or the tenant of the land" occurring in this section clearly mean the landlord or the tenant of the whole land and not of a share of it: *Ibid* (*Per Ray J.*).

The above decision may be illustrated as follows :—

A, B, C and D are joint proprietors of a plot of land. E takes separate leases from A, B, C and D in respect to their undivided shares of the land. E cannot make an application under s. 158 against A. It was not decided whether one application against all is maintainable. Illustration.

Sec. 158 requires that the application must be made by the whole body of landlords, and therefore if the suit is not maintainable under the general or any other law but is one sanctioned exclusively by the Tenancy Act then the suit must fail. But sec. 158 is not restrictive and the right to claim a fair and equitable rent is an obligation arising out of the contract between the parties and is enforceable in the ordinary Civil Courts under the provisions of sec. 9 of the C. P. C. Both jurisdiction are available and as sec. 158 does not expressly bar the operation of the general law, sec. 9 of the C. P. C. operates. When the Bengal Tenancy Act does not exclude the operation of sec. 9, C. P. C., sec. 188 of the Bengal Tenancy Act is no bar and the co-sharer landlords are entitled to maintain the suit for assessment of fair and equitable rent: *Ram Gobind v. Shashi Sekhar*, [1925 Pat.] 153.

8. Assessment of rent :—In a proceeding under s. 106 a tenant was held liable to pay a fair rent; thereupon the landlord brought a suit for assessment of rent, *held* that the suit was maintainable, if not under the general law, as suit in the nature of a declaratory suit, then as an application under s. 158: *Berham Dut v. Ramji Ram*, 18 C.W.N. 465.* Their Lordships say as follows:—"It was said that cl. (b) of the section admits only of the determination of the rent payable by the tenant at the time the application under the section is made, and that when these suits were instituted no rent was payable. The answer to that argument is that the rent payable when these suits were brought was a fair and equitable rent, that is, a rent capable of being ascertained by evidence: (18 C.W.N. at p. 469). Assessment of rent.

A suit by a co-sharer landlord for assessment of the rent of the tenant's holding is not maintainable where the other co-sharers have not been made parties. It is not necessary to join the other co-sharers

* The case of *Devendra v. Bhupendra*, 19 Cal. 182 was distinguished.

as plaintiffs as sec. 188 does not apply but they should be made parties defendants, so that the assessment when made may bind all equally. No really effective decree can be passed in the absence of the interested co-sharers and there can be no finality as to what is really the fair and equitable rent. As in a partition suit so in a suit for assessment all the interested persons should be made parties: *Partap Mahton v. Mussr. Wazirunnissa*, 4 Pat. 604, s.c. [1925 Pat.] 125.

Decision of
a Revenue
Court.

9. Decision of Revenue Court not binding on parties:—

Where a revenue court in a proceeding for commutation of rent held that the tenant was an occupancy raiyat although the landlord contended that the tenant was an under raiyat, *held* that the landlord had the right to apply under s. 158 for determination of the status of the tenant: *Amarnath v. Aghorendra*, 15 C.W.N. 216 (notes). A dispute as to the status of a tenant cannot be finally decided by a Revenue Court in a proceeding for commutation of rent under s. 40: *Kali Krishna v. Ram Chandra*, 19 C.W.N. 823; *Durgamohon v. Sukumar*, 19 C.W.N. 825.

O. 9. r. 9,
C. P. C.

10. Effect of dismissal for default:—An application under s. 158 Bengal Tenancy Act is not a suit within the meaning of O. 9 r. 9, C. P. C., so where an application under s. 158 is dismissed for default under O. 9 r. 8, C. P. C., a fresh suit for the determination of the annual rent was not barred: *Janki Ray v. Kalanand*, 2 Pat. 192. (Dawson Miller C. J. and Mullick J.).

Standard of
measurement,
relevant.

11. Standard measurement:—Under a proceeding under s. 158 of the Bengal Tenancy Act, in which an enquiry was directed, amongst other things, as to the boundaries of certain plots held by certain raiyats, the Ameen took evidence as to the standard measure of the district, and the Court decided the case on their evidence, *held* that in determining the boundaries the question as to what was the standard measure of the district arose, and that the evidence was rightly received and acted upon: *Deoki Singh v. Sheogobind*, 17 Cal. 277.

Limitation :
Sch. III
Art. 4.

12. Cl. (3): Decree:—An order on an application made under sec. 158 cl. (3) of the Bengal Tenancy Act is to be regarded as a decree under Schedule III, Art. 4 and time runs from the date of the order. If a formal decree is drawn up, it need not be filed with the memorandum of appeal and the time for presentation of appeal is to be calculated from the date of the order and not from the date of the decree: *Debendra Nath v. Nagendra Nath*, 43 C.L.J. 106 (Suhrawardy and Mukerji J.J.). *Kamala v. Tarapada*, 15 C.L.J. 498 referred to.

Rent
decree :
No objection
in execution
proceedings,
effect of

Where a person against whom a decree purporting to be a rent decree is passed has not taken exception to the execution proceedings under Chap. XIV, B. T. Act, on the ground that the decree is not a rent decree, he is precluded from doing so at a subsequent stage: *Ambika v. Harkishore*, 103 I.C. 707, s.c. 1927 A.I.R. (Cal.) 825.

CHAPTER XIII.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913.

158A. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained, may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the *Bengal Public Demands Recovery Act, 1913*,* to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

Recovery
of arrears
of rent
under the
certificate
procedure
in certain
areas.

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed,

to such Revenue-officer as the Local Government may, appoint, for the purpose of this section, to perform the functions of a Certificate-officer under the *Bengal Public Demands Recovery Act, 1913*,†

for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner prescribed by rule I in Schedule II of the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of

* For the Province of Bihar read the following words and figures: Bihar and Orissa Public Demands Recovery Act, 1914," for the italicised words and figures.

† For the Province of Bihar read the following words and figures: "Bihar and Orissa Public Demands Recovery Act, 1914," for the italicised words and figures.

VIII of
1870.

the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of such requisition, the said Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office :

Provided that—

(a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued; and

(b) if, after the signing of a certificate, it is found that such a suit was instituted in a Civil Court before the certificate was signed, such certificate shall be cancelled.

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise.

(7) *The Bengal Public Demands Recovery Act, 1913*,* with such restrictions and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall, during the pendency of any

* For the Province of Bihar read the following words and figures : "Bihar and Orissa Public Demands Recovery Act, 1914," for the italicised words and figures.

proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3) ;

and, subject to the provisions of *section 34 of the Bengal Public Demands Recovery Act, 1913*,† no tenant shall, after the signing of any certificate against him under sub-section (5) of this section, institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(9) The word 'landlord' in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately ; and, where a Revenue-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

Amendment :—The original Chap XIII A was inserted by the Amending Acts of Bengal and East Bengal, Act I of 1907 and Act I of 1908 respectively. The present Chapter XIII A has been substituted by the Public Demands Recovery Act (III of 1913, B. C.) and the Behar and Orissa Public Demands Recovery Act IV of 1914, therefore the original Chap. XIII A, now repealed in Bengal will be found in Appendix VII.

[The Object of s. 158A which was originally inserted by Act X B. C. of 1907 and Act I E. B. C. of 1908, as explained in the Notes on the Clauses of the Bill of 1906 (B. C.) was as follows : “* * * * It is therefore proposed that in areas in which record-of-rights has been prepared and published and is periodically revised, the Local Government should take power to allow the recovery of the arrears of rent by the application of the procedure prescribed by the Public Demands Recovery Act, 1895, in the case of those landlords to whom, in the opinion of the Government, this privilege may safely be conceded. It is further proposed that the issue of certificates should be entrusted to a Revenue officer, who shall have powers to inspect the landlord's rent-rolls, accounts and collection papers, and to compare the receipts given to the raiyats with the counterparts kept by the *zemindar*, and to test their agreement with entries in the account. The conditions under which the summary procedure may be applied will thus resemble those under which it is extended to Government estates and estates under the Court of Wards, for the demand of each individual raiyat will be accurately known and the landlord's accounts and collection papers will be subject to inspection by a Government officer. If it

† For the italicised words and figures *read* for the Province of Bihar as follows : Section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914.

is possible, with safety, to reduce the expense of rent suits, the results will be beneficial to landlords and tenants alike, and it is expedient, therefore, that a trial should be given to the scheme provided for in the clause, subject to the safeguards therein laid down.”]

**Bhowal
Estate.**

Sub-sec. (3):—In exercise of the power conferred as sub-sec. (3) of s. 158A of the Bengal Tenancy Act, 1885, (VIII of 1885), the Governor in Council is pleased to vest the Certificate Officers at Mymensingh and Backergunje and the Certificate Officers at Naraingunje, Manickgunje, Munshigunje and Chandpur with powers to perform the functions of a Certificate Officer under the Bengal Public Demands Recovery Act, 1913, for the purposes of the said section and in respect of the recovery of arrears of rent (including cesses) due to Srimati Ananda Kumari Debi, proprietor of the 4 ans. share of the Bhowal estate in the Districts of Mymensingh and Backergunje and the sub-divisions of Naraingunje, Manickgunje, Munshigunje and Chandpur respectively: *Notification No. 3198 L.R. the 23rd March 1922, Cal. Gazette, March 29, 1922, Part I p. 607.*

**Dacca
Nawab's
Estate.**

The officers mentioned below have been appointed under sub-sec. (3) of s. 158A to perform the functions of a Certificate Officer in respect of the arrears of rents and cesses due to the Dacca Nawab's estate: (1) Babu Giris Chandra Nag, Deputy Collector, Sudder Sub-division, Dacca; (2) the Sub-Divisional Officer of Manikgunje; (3) Babu Sachindra Nath Chatterjea, Deputy Collector, Munshigunje Sub-Division; (4) Surendra Mohon Bhowmick, Deputy Collector, Naraingunje Sub-division: *Notification No. 4268 L.R. dated the 22nd April 1924, Calcutta Gazette; April 30, 1924 Part I p. 908.*

The officers mentioned below have been appointed under sub-sec. (3) of s. 158A to perform the functions of a Certificate officer in respect of the arrears of rent and cesses due to the Dacca Nawab Estate in the District of Backergunje:

1. Sadar Certificate Officer, Backergunje.
2. Sub-Divisional Officer, of Patuakhali.
3. Sub-Divisional Officer of Perojpur.

Notification no. 3419 L.R., dated the 4th April, 1924, Part I p. 782.

Sub-sec. 5:—The form of certificate used under Sec. 6 of the Bengal Public Demands Recovery Act, (III of 1913) is to be used for the purposes of sub-sec. (5) of s. 158A of the B. T. Act: See Appendix II.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

158B. (1) Where a tenure or holding is sold in execution of—

Passing of
tenure or
holding sold
in execution
of decree or
certificate.

- (a) a decree for arrears of rent due in respect thereof, or
- (b) a decree for damages under section 186A, or
- (c) a certificate for arrears of rent signed under *the Bengal Public Demands Recovery Act, 1913*,*

the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser,

if such decree was obtained by—

- (i) a sole landlord, or
- (ii) the entire body of landlords, or
- (iii) one or more co-sharer landlords who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit, or

if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords.

(2) When one or more co-sharer landlords, having obtained a decree in a suit framed under sub-section (1) or under section 148A, applies, or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

Headings of Notes.

1. AMENDMENTS.
2. CO-SHARER LANDLORD.
3. ANNULMENT OF INCUMBRANCES.
4. PRODUCE RENT.
5. EFFECT OF SALE WITHOUT NOTICE UNDER SUB-SEC. (2).
6. PURCHASE OF A PORTION OF A HOLDING.
7. NOTES.

* For the italicised words and figures read as follows for Bihar : Bihar and Orissa Public Demands Recovery Act, 1914.

1. Amendments :—This section was inserted by the Amending Acts of Bengal and East Bengal, I of 1907 and I of 1908, respectively. The object was to counteract the effect of the previous rulings (See *Jogendra v. Paban*, 8 C.W.N. 472) and to provide that in execution of a decree obtained by a co-sharer landlord in a suit for rent passed under sec. 148A of the Act, the tenure or holding shall pass.

The present sub-sec. (1) was substituted by s. 61 of the Bengal Public Demands Recovery Act III B.C. of 1913.* The former sub-sec. (1) printed in the foot note is still applicable in Bihar.

2. Co-sharer landlord :—A decree for rent obtained by a co-sharer landlord in a suit not brought under s. 148A or s. 158B is a money decree: *K. B. Dutt v. Gostha Behary*, 16 C.W.N. 1006; s.c., 16 C.L.J. 379.

A usufructuary mortgagee from one of several co-sharer landlords is in the position of a co-sharer landlord within the meaning of s. 158B, sub-sec. (1) cl. (3): *Brohmanand v. Hem Chandra*, 18 C.W.N. 1016.

Parties.

Sec. 158B of the Bengal Tenancy Act requires that in order to enable one or more co-sharer landlords to sell a tenure all the remaining co-sharer landlords should be made parties to the suit and also that when one or more co-sharer landlords having obtained a decree in such a suit applies for such execution of a decree by sale of the tenure, notices of the application for execution should be given to all the co-sharers. The provisions of this section must be strictly followed in order to give complete title to the auction purchaser in such a sale. Where all the co-sharer landlords are not made parties to the suit an auction purchaser in execution of a decree obtained in the suit does not purchase the holding free from all incumbrances. *Surendranath v. Javed Ali*, 25 I.C. 747.

Right to annul incumbrances.

3. Annulment of incumbrances :—If the decree satisfies the requirements of s. 158B the purchaser will have the right to annul incumbrances; the right to annul incumbrances depends not on the statement in the sale proclamation that the purchaser will have that right, but upon the nature of the decree and of the property put up for sale: *Mahabir v. Baiju Lal*, 2 Pat. L.J. 176, s.c., 1 Pat. L.W. 351. It is sufficient for the purpose of s. 158B that the decree holder was the sole landlord at the time of obtaining the decree: *Sarup v. Jagarnath*, 2 Pat. L.J. 194; see also *Ram Krishun v. Mahabir*, 39 I.C. 219, s.c., 1 Pat. L.W. 342. As to the effect of cessation of landlord's interest, see notes under s. 65.

4. Produce rent :—A holding which is held on produce rent and partly on money-rent is liable to be sold in execution of a rent decree: *Monmohon v. Nowbat*, 5 Pat. L.J. 641.

* The original sub-sec. (1) was as follows :—

(1) Where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, or of a decree for damages under section 186A, the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser, provided that the decree in execution of which has been sold has been obtained by—

(a) a sole landlord; or

(b) the entire body of landlords; or

(c) one or more co-sharer landlords, who has, or have, sued for the rent due to all the co-sharers in respect of the entire or holding and made all the remaining co-sharers parties defendant to the suit.

5. Effect of sale without notice under sub-sec. (2):—

The provision of s. 158B (2) as to the giving of notice to the co-sharer landlords before the sale of a holding in execution of a rent-decree obtained by one co-sharer is mandatory and not merely directory and the failure of the court to sever such notice render the sale invalid: *Sarip Hechan v. Tilattama*, 43 I.C. 3; (Fletcher and Newbould J.J.); this case was followed in the case of *Ahamad Biswas v. Benoy Bhusan*, 23 C.W.N. 931, the purchaser at such a sale is in the position of an ordinary purchaser under a money decree: *Ibid.* In a case where no notice was served under s. 248 C. P. C. (Act XIV of 1882) which corresponds to O. 21 r. 22 of the new Code it was held by the Privy Council that notice under s. 248 C. P. C. (Act XIV of 1882) was necessary in order that the court should obtain jurisdiction to sell the property by way of execution as against the legal representatives of the deceased judgment debtor: *Raghunath v. Sundar Dass*, 42 Cal. 72, s.c., 18 C.W.N. 1058, (P.C.).

Sale without notice under sub-sec. (2), if nullity.

The cases of *Sarip Hechan v. Tilottama*, 43 I.C. 3 and *Ahamad Biswas v. Benoy Bhusan*, 23 C.W.N. 931 were distinguished by Mookerjee and Chotzner J.J. in the case of *Rajani Kanta v. Rahaman Gazi*, 27 C.W.N. 765 s.c. 37 C.L.J. 447 where it has been held that the provision of sub-sec. (2) of this section is for the benefit of the co-sharer landlord and it is open to him to waive the benefit of that section. The omission to serve upon the co-sharer landlord the notice under sub-section (2) does not nullify the sale or alter its character to that of a sale held in execution of a money decree, if he has knowledge of the sale and acquiesces therein.

It cannot be maintained on principle that because a sale has been held in contravention of a statutory provision, it must, irrespective of the nature and purpose of the provisions, be deemed to be null and void. If a question arises as to how the proceedings are affected by such contravention, the matter must be determined with regard to the nature, scope and object of the particular provision which has been violated. No hard and fast line can be drawn between a nullity and an irregularity. The safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection; if he can waive it, it amounts to an irregularity; if he cannot, it is a nullity: *Ibid.* The case of *Holmes v. Russel*, 9 Dowe 28 referred to.

A sale without a notice under sub-sec. (2) of this section is not a nullity but has the effect of a sale under a decree for money: *Duga v. Ram Dasi*, 6 Pat. 80, s.c. 7 P.L.T. 871, s.c. 96 I.C. 569 (Ross and Kulwant Sahay, J.J.). The notice is not essential to the validity of the sale and omission to serve the notice is a mere irregularity. *Ibid.* [The case of *Rajani Kanta v. Rahaman Gazi*, 27 C.W.N. 756 followed. The cases of *Sarip Hechan v. Tilottama*, 43 I.C. 3 and *Ghanashyam v. Basudev*, 60 I.C. 529 not followed. The cases of *Ahamad Biswas v. Benoy Bhusan*, 23 C.W.N. 931 and *Norendra v. Jatindra*, 55 I.C. 402 referred to]. See also *Nakul v. Rajendra*, 104 I.C. 196 (Graham J.) where it has been held that the non service of notice upon the co-sharers in accordance with the provisions of s. 158B (2) does not invalidate the rent sale but totally alters it to a sale in execution of a money decree.

The case of *Rajani Kanta v. Rahaman Gazi*, 27 C.W.N. 765 was followed in the case of *Badlu Pathak v. Sibram Singh*, 107 I.C. 310 (Dawson Miller, C.J. and Adami, J.).

Effect of
purchase of
a share of
a holding.

6. Purchase of a portion of a holding :—There is nothing in s. 158B which would give the purchaser the right to acquire the rights therein mentioned except by a purchase of the whole holding. So that if he purchases a portion only of the holding he does not acquire the rights therein mentioned but merely the right, title and interest of the judgment debtor: *Dipa Mahton v. Sheonandan Prasad*, A.I.R. 1924 Pat. 342. (Dawson Miller C. J. and Mullick J.).

7. Notes :—The obligation of serving notice on co-sharers under s. 158B sub-sec. (2) is not sufficiently carried out by serving notices on some of them: *Jabed Ali v. Surendranath*, 42 C.L.J. 477 s.c. A.I.R. 1926 (Cal.) 351. (Greaves and Cuming J.J.). On Letters Patent Appeal from the decision of B. B. Ghose J.). Where a co-sharer landlord, who is a party to a rent decree obtained by another co-sharer, knows the facts and yet stands by and allows the impression that the decree is encumbrances, he is estopped from subsequently challenging the character of the decree and asserting that the sale was not free from encumbrances: *Ibid*.

The special provision of the B. T. Act which allows one or more co-sharer landlord to sell a tenure or holding in execution of their decree must be strictly followed in order to give complete title to the auction-purchaser and it will not be sufficient to say that the *ijaradar* under a particular co-sharer was a party in other capacity being himself a co-sharer in the Zemindari and therefore the absent co-sharer was sufficiently represented in order to bring into operation the special provisions laid down in s. 158B of the B. T. Act: *Ibid*.

Under s. 158B the tenure passes to the purchaser when it is sold in execution of rent-decree. Until the sale takes place the tenant recorded in the landlord's *serestha* must be deemed to have been the person in whom the tenure was vested: *Rameswar v. Puran Chandra*, 95 I.C. 303, s.c., 7 P.L.T. 717, s.c., A.I.R. 1926 (Patna) 213 (Sen J.).

General
powers of
purchaser
as to avoid-
ance of
incum-
brances.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "incumbrances":

Provided as follows :—

- (a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case herein-after mentioned in that behalf ;
- (b) the power to annul shall be exerciseable only in manner by this Chapter directed.*

* **Putni Sale Law :—**The position of a purchaser at a sale under Reg. viii of 1819 may not be precisely that of a purchaser at a sale for arrears of revenue, yet he is privy in estate to the defaulting proprietor and he does not derive his title from him; a claim for rent by such a purchaser is not barred by *res-judicata* by reason of the failure of a suit for rent by the previous putnidar, on the ground that the relationship of landlord and tenant between the then plaintiff and the defendant was not established: *Satish Chandra v. Munjeemati*, 18 C.W.N. 340.

Headings of the Notes.

1. MISCELLANEOUS NOTES.
2. TENURE OR HOLDING.
3. UNDER-RAIYATI TENANCY.
4. SALE OF TENURE AFTER THE PASSING OF THE BENGAL TENANCY ACT IN EXECUTION OF A DECREE FOR RENT OBTAINED UNDER THE OLD ACT.
5. WHAT IS A DECREE FOR RENT.
6. WHAT IS NOT A DECREE FOR RENT.
7. PURCHASER.
8. POWER TO ANNUL.
9. KABULIYAT BY ONE OF SEVERAL JOINT TENANTS FOR ENTIRE RENT.
10. LIABILITY OF PURCHASER FOR RENT FOR A PERIOD ANTERIOR TO THE DATE OF SALE.
11. DEFAULT TO PAY RENT DUE TO SUPERIOR LANDLORD.
12. SALE OF "TENURE OR HOLDING" OR MERELY "RIGHT, TITLE AND INTEREST."
13. WHAT CONSTITUTES A SEPARATE TENANCY.
14. BABUANA GRANT.
15. PURCHASER.
16. INCUMBRANCE.
17. CHARGE ON SALE PROCEEDS.
18. SALE CERTIFICATE.
19. SUIT FOR RENT AGAINST SOME OF SEVERAL JOINT TENANTS.

I. Miscellaneous notes :—So far as s. 65 is concerned there is no distinction between a holding which is held on money rent and a holding which is held on produce rent : *Manbharan v. Babu Nowhat*, 1920 Pat. 257. Where a Putnidar purchased a revenue-paying estate at a sale under Act XI of 1859, *held* that he was not entitled to annul the subordinate tenures under the putni : *Patcowri v. Priyanath*, 18 C.W.N. 672.

In order to determine whether an execution purchaser has acquired rights under s. 159 the test to be applied is two-fold : namely, *first*, whether a tenure has been sold, and *secondly*, whether the decree in execution where of the sale has taken place is a decree for arrears due in respect of that tenure : *Chandra Mohini v. Kenaram*, 19 C.L.J. 324.

The consequence of a sale under the Bengal Tenancy Act does not depend upon the amount of the bid offered by the successful purchaser ; it is independent of the value of the bid ; s. 165 was enacted solely for the benefit of the decree-holder ; if the bid is not sufficient to satisfy his decree and costs, it entitles him to have the property sold with power to annul all incumbrances ; but it is not obligatory upon him to adopt this extreme measure, and he is not in peril if he decides not to pursue this special remedy : *Salimullah v. Rahenuddi*, 43 Cal. 263 ; the case of *Banbihari v. Khetra Pal*, 38 Cal. 923 was not followed.

Where a durputnidar was allowed to have full rights to grant the leases or create incumbrances subject only to the restriction that if the durputni was sold for arrears of rent, the subordinate titles created by the durputnidar should at the same time come to an end, *held* that this agreement did not contravene the provisions of s. 159

of the Bengal Tenancy Act or s. 10 of the Transfer of Property Act : *Madhusudan v. Midnapur Zemindary Co.*, 45 Cal. 940.

Suit for
previously
accrued
arrears
after Putni
sale.

Where after his putni taluk had been sold under Reg. VIII of 1819, the putnidar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putnidar there-after applied for execution of the decree by sale of the holding under the Bengal Tenancy Act, but before the sale the putni was again sold under Reg. VIII of 1819, *held*, that the decree could be executed as a rent-decree : *Manindra v. Asutosh*, 20 C.W.N. 1132.

Sale in
collusion
with
purchaser.

Where a tenure-holder had deliberately defaulted to pay the superior landlord his just dues, with the intention that a decree might be obtained against him and his tenure, sold so that the under-tenure might be extinguished ; the plan succeeded : the decree was made and was executed ; the purchaser was settled from before the sale and the price also was fixed beforehand. Under the circumstances, the Court held that although the sale was held under the provisions of the Rent-Law, it had no higher effect than a private alienation, because it was in essence a transfer under pre-arranged conditions to a purchase who was a party to the arrangement : *Uma Charan v. Midnapur Zemindary Company*, 19 C.W.N. 270, s. c., 20 C.L.J. 11. This case went up to the Privy Council and although upon facts the judgment of the High Court was set aside, the Privy Council expressed its opinion in the same way as the High Court, *viz.*, "If the sale had been the result of a corrupt agreement between the under tenure-holder and the purchaser at the sale, the purchaser might no doubt lose the benefit of s. 16 of the Bengal Act (VIII of 1865), and especially if the default in payment of rent had been deliberately incurred in furtherance of such an agreement" : *Midnapur Zemindary Co. v. Umacharan Mondal*, 24 C.W.N. 201 at p. 205. But where before the sale of a holding in execution of a rent decree, judgment-debtor, being anxious to procure good prices for the holding at the sale, approached the decree-holder and the latter expressed his intention to bid up to a certain amount, and at the sale the property was knocked down to the decree-holder for that amount, *held* that, in the absence of fraud, this circumstance would not deprive the purchaser of the benefit attaching to a sale under the Bengal Tenancy Act or render it a private sale : *Monmotha Nath Mitter v. Anath Bandhu Pal*, 23 C.W.N. 201 ; their Lordships distinguished the case of *Umacharan Mandal v. Midnapur Zemindary Co.*, 19 C.W.N. 270. See in this connection also *Sreenath v. Huranath*, 18 W.R. 240.

S. 16 of Act
VIII (B.C.)
of 1865.

Arrange-
ment with
the intend-
ing pur-
chaser.

Raiyat

The word "raiya" is sometimes used to denote a tenant : *Rahamat Khan v. Sheikh Budhu*, 24 C.W.N. 28 (notes portion).

Abatement
of rent.

A purchaser of a perpetual tenancy sold for arrears of rent under s. 159 of the B. T. Act is not entitled to an abatement of rent in respect of part of the land which at the date of the purchase was in possession of a trespasser who afterwards was allowed to remain in possession and thus acquired an absolute title against the purchaser. It is the duty of a tenant under a perpetual tenancy to protect himself against illegal encroachments : *Katyayani Debi v. Udoy Kumar*, 52 I.A. 160, s. c., 52 Cal. 417 (P.C.), s. c., 30 C.W.N. 1. The cases in 10 W.R. 15 and 49 Cal. 948 were affirmed.

"Tenure"

2. Tenure or holding :—"Tenure" is defined in s. 3 cl. (7) and "holding" is defined in s. 3 cl. (9). An undivided share in the

lands comprised in a holding is not a holding : for, "holding" means and "hold-
parcel or parcels of land held by a raiyat forming the subject of a ing."
separate tenancy, and the words *parcel* or *parcels of lands* have been
interpreted to mean *entire* parcel or *entire* parcels of land ; see notes
under s. 3 cl. (9) at p. 61. The definition of *tenure* does not exclude
the idea that an undivided portion of land cannot be a distinct tenure.
See notes under this section under *heading* What constitutes a
separate tenancy.

The description of a property as a "jote" does not necessarily *Jote*.
shew that it is not a tenure and that it is simply an ordinary culti-
vating "jote" or holding ; if the area of a jote exceeds one hundred
bighas the presumption under s. 5 should be applied : *Syed Nawab*
Ali v. Hemanta Kumari, 8 C.W.N. 117.

In the case of *Ram Lal v. Bhelu Gazi*, 37 Cal. 709, s.c., 14 C. Non-occu-
W.N. 814 it has been held that Chapter XIV applies to the sale of pancy
non-occupancy holdings also. holding.

It is submitted with great respect that the soundness of this deci-
sion is open to doubt, for Chapter XIV should be read along with
ss. 65 and 66. It is submitted that Ch. XIV applies to such tenures
and holdings as are referred to in s. 65 only.

3. Under-raiyati tenancy :—Ch. XIV does not apply to the Under-
sale of an under-raiyat's interest : *Munsar Ali v. Arsadulla*, 16 C.W. raiyati
N. 831, s.c., 16 C.L.J. 549. interest.

4. Sale of tenure after the passing of the Bengal Tenancy Act viii
Act in execution of a decree for rent obtained under the old Act : (B. C.)
—Where a decree was obtained under Act VIII (B.C.) of 1869 and of 1869.
the tenure was sold after the Bengal Tenancy Act came into opera-
tion, held that the provisions of the Bengal Tenancy Act would govern
the annulment of under-tenures : *Birendra Kishore v. Ahammad Ali*,
17 C.W.N. 612.

5. What is a decree for rent :—A suit brought by an Suit for
assignee for recovery of arrears of rent assigned after they fell due, rent by an
is a suit for recovery of rent and is therefore excepted from the cogni- assignee.
zance of the Courts of Small Causes : *Sris Chandra v. Nasim Quazi*,
27 Cal. 827, s.c. (F.B.), 4 C.W.N. 357 ; see also *Shaikh Munsar v.*
Loke Nath, 4 C.W.N. 10, which was approved of and followed by the
Full Bench case of *Sris Chandra v. Nasim Quazi*, which practically
overruled the case of *Lalla Bhugwan Sahoy v. Sungesur Chowdry*, 19
W.R. 431.

But it has been held that the provisions relating to limitation in Limitation
the schedule of the Bengal Tenancy Act do not apply to a suit in a suit for
brought by an assignee of the arrear of rent, on the ground that the rent by
assignee is not the landlord of the defendant : *Mohendra v. Kailas*,
4 C.W.N. 605. assignee.

It is submitted that this case is in conflict with the Full Bench *Mahendra*
case of *Nasim Quazi*, 27 Cal. 827, s.c., 4 C.W.N. 357 (F.B.). *v. Kailas*, if
Although the question before the Full Bench was as to whether the a correct
Civil Court or the Small Cause Court has jurisdiction to try such a decision.
suit the principle involved in both the cases is the same, and when it
was decided by the Full Bench that rent when assigned still retains
its character as rent, the decision in *Mohendra v. Kailas* seems not
to be in accordance with the Full Bench decision.

A suit by a landlord against a tenant for recovery of a certain Where rent

is agreed to be paid to a third person.

sum which the latter had agreed to pay to third persons on behalf of the former but which he had not paid and was not required to pay, held that the suit must be regarded as one for rent: *Basanta Kumari v. Asutosh*, 27 Cal. 67, s.c., 4 C.W.N. 3 (F.B.). The case of *Mohebut Ali v. Mahomed Faizulla*, 2 C.W.N. 455, was approved of by the Full Bench. The case of *Rutneswar v. Harish Chunder*, 11 Cal. 221, was practically overruled, but it has been held in the case of *Hemendra Nath v. Kumar Nath*, 6 C.W.N. 96, that the case of *Rutneswar* was not overruled by the Full Bench case of *Basanta Kumari*; it was also held distinguishing the latter case that a suit for rent assigned to be paid to the superior landlord is a suit for damages. It seems that the case of *Basanta Kumari* is in conflict with the case of *Hemendra Nath v. Kumar Nath*.

Rutneswar v. Harish if overruled. Proportionate revenue payable by grantee of a *khorphosh* rent-free tenure. Decree by all the landlords. Sale purporting to be at the instance of a sole landlord but subsequently transpiring that there is a co-sharer landlord. Decree by a co-sharer

A grant by a proprietor of *baradaran jagir khorphosah nishkar* etc. for the support of the grantee was not transferable and was subject to resumption on failure of direct heirs; the grantee was liable to pay a proportionate share of the Government revenue to the grantor; held that the amount payable by the grantee was rent within the definition of s. 3 cl. (5) and the grantee was a tenant: *Dwarka Nath v. Dambarudhar*, 38 Cal. 278.

The decree referred to in s. 65 is a decree obtained by all the landlords or at all events a decree by some of the landlords for the entire rent in the presence of all: *Sheikh Jarip v. Ram Kumar*, 3 C. W.N. 747.

A sale in execution of a decree for the whole rent obtained by a landlord who at the time of the suit is the sole registered proprietor and who has been placed and maintained in possession by a competent court, operates as a sale under chapter XIV of the Bengal Tenancy Act, even if it transpires ultimately as the result of litigation in a title suit that he is not the sole landlord and has co-sharers in the property: *Mafizuddin v. Ashutosh*, 14 C.W.N. 352, s.c., 11 C.L.J. 140.

Where a decree for the entire rent of a tenure is obtained by one of several co-sharers by making the others party defendants, the decree has the same effect as if the decree has been obtained by all the co-sharers: *Chandra Sekhar v. Ranee Manjher*, 3 C.W.N. 386.

S. 17 (3) of Regulation VIII of 1819.

There is no conflict between s. 65 of the Bengal Tenancy Act and s. 17 (3) of the Putni Regulation: antecedent balances may be mere personal debts, which cannot be summarily recovered under the procedure prescribed by the *Putni* Regulation but they may be also a charge on the taluk: *Pearee Mohun v. Sree Ram*, 6 C.W.N. 794.

Decree for rent and other demands.

Where a decree made in a suit for rent was in the main one for rent, although it included other sums, e.g., Government revenue and other demands which the landlord was himself liable to pay, the sale may take place under this chapter: *Jnanada Sundari v. Atul Chandra*, 32 Cal. 972.

Landlord losing his interest in the land decreed.

If at a time when a suit for arrears of rent is instituted and a decree made the plaintiff is still the landlord, the fact that he has subsequently sold his interest in the property does not prevent him from obtaining the benefit of s. 65 and executing the decree against it: *Khetra Pal v. Kritarthamoyee*, 33 Cal. 566: (F.B.); this Full Bench case overrules the case of *Hem Chandra v. Monmohini*, 3 C. W.N. 604.

A suit by a *ticcadar* after the expiration of his lease against a

tenant for the recovery of arrears of rent which had fallen due during the pendency of his lease can be brought under the provisions of the Bengal Tenancy Act; *Srimanta v. Mahadeo*, 8 C.W.N. 531. Outgoing landlord.

S. 159 applies to the case of the sale of a non-occupancy holding in execution of a decree for arrears of rent: *Ram Lal v. Bhela Gazi*, 37 Cal. 709. It is submitted with great respect that this decision is contrary to the provisions of s. 65. Non-occupancy holding.

A suit against a tenant claiming damages for wilfully omitting to raise crops whereby the plaintiff was deprived of his share thereof is one for rent: *Lalji Panday v. Barhamdeo*, 16 C.W.N. 89. See notes under s. 188. Damages for rent raising crops.

As to decree against one of several tenants: See notes under s. 65, p. 396.

See notes under Ss. 3 cl. (5) 65.

6. What is not a decree for rent:—A decree obtained by some of the landlords in a suit for their share of the rent brought not as co-sharer landlord under s. 148A or s. 158B is a simple money-decree; *K. B. Dutt v. Goshta Behari*, 16 C.W.N. 1006, s. c., 16 C.L.J. 379. Ss. 148A, 158B.

A sum of money agreed to be paid by a *putnidar* to the collectorate as revenue payable by the proprietor was held not to be rent: *Jotindra Mohun v. Jarao Kumari*, 10 C.W.N. 201 (P.C.), see also *Hemendra v. Kumar Nath*, 9 C.W.N. 96; see notes under heading WHAT IS A DECREE FOR RENT. In a suit to recover rent for four years the plaintiffs constituted the entire body of landlords as regards the claim for the first two years, but only factional co-sharers as regards the claim for the last two years; held, that the decree passed was not a rent-decree under the Bengal Tenancy Act, but only a money-decree under the ordinary law: *Shaikh Naimuddin v. Srimanta Ghose*, 6 C.W.N. 124. Sum of money agreed to be paid to a third person.
Fractional landlord for a portion of claim.

A suit instituted on an instalment bond, part of the consideration for which was arrears of rent, was held to be a suit for money and not a suit for rent: *Royjaddi v. Kritartha Nath*, 4 C.L.J. 219. It seems that a suit on an instalment bond the consideration for which is entirely arrears of rent also is not a suit for rent but for money. Instalment bond for rent

The word *saranjami* ordinarily signifies collection charges and not government-revenue: *Bhabani Nath v. Purna Chandra*, 25 C.W.N. 308.

Where a landlord, after obtaining a decree for arrears of rent, loses his interest in the estate, he cannot bring the defaulting tenure itself to sale in execution of his decree: *Hem Chandra v. Monmohini*, 3 C.W.N. 604. When a *ticcadar* after the expiry of his lease brought to sale (when he was not in possession) and in the meantime the landlord who had entered into possession obtained a decree for rent, held that there could not be two first charges and the landlord was entitled to the first charge: *Srimanta v. Mahadeo*, 31 Cal. 550, s. c., 3 C.W.N. 531. But these two cases were not followed in the case of *Maharaj Bahadur v. Forbes*, 35 Cal. 737, where it was held that where a *zemindar* previous to his suit for arrears of rent against the *putnidar* had sold his *zemindari*, the decree was a decree for rent. But the decision of the High Court in the case in 35 Cal. 737 was set aside by the Privy Council (18 C.W.N. 747) and it was held that the right to bring a tenure or holding to sale under s. 65 being Outgoing landlord.

exclusively in the landlord, a person to whom certain rents are due and who obtains a decree therefor after he has parted with the property in which the tenancy is situate has not such right. The case of *Hem Chandra v. Monmohini*, 3 C.W.N. 604, has not been overruled by the Full Bench case of *Khetra Pal v. Kritariha Moyee*, 33 Cal. 566.

See notes under s. 65.

Non-transferable occupancy holding.

A non-transferable occupancy holding cannot be sold in execution of a decree obtained by one of several joint landlords against the tenant for the share of the rent separately payable to him in respect of the holding: *Sadagar v. Krishna Chandra*, 26 Cal. 937, s. c., 3 C.W.N. 742.

Lease of an undivided share of holding.

A lease of an undivided share in several parcels of land does not create a holding within the meaning of the Bengal Tenancy Act: accordingly when the interest of such a lessee is sold in execution of a decree for arrears of rent obtained by the landlord, the purchaser is not the purchaser of a holding within the meaning of s. 159: *Asadulla v. Gagan Molla*, 6 C.W.N. 84 (notes). The term "parcels" in s. 3, cl. 9 of the Act means "entire parcel" and is not intended to include an undivided fractional share in a "parcel" or 'parcels' of land; undivided shares in parcels of land cannot therefore constitute distinct "holding": *Hurry Churn v. Rajah Ranjit*, 1 C.W.N. 521; *Parbati v. Mathura*, 40 Cal. 29. See notes under s. 3, cl. (9).

Suit by a co-sharer landlord.

A fractional co-sharer selling a non-transferable occupancy holding in execution of a decree which he obtained for his share of the rent is in no better position than an outsider selling his holding in the execution of a money-decree: *Sheikh Jarip v. Ram Kumar*, 3 C.W.N. 747. See notes under s. 23.

A decree obtained by some of several co-sharers for rent cannot be regarded as a decree under the Bengal Tenancy Act, and the proceeding in execution thereof can only be in accordance with the provisions of the Code of Civil Procedure: *Durga Churn v. Kali Prosunno*, 26 Cal. 927, s. c., 3 C.W.N. 585; see also *Prem Chand v. Mokshada*, 14 Cal. 201; *Jagabandhu v. Jadu*, 15 Cal. 47; *Beni Madhub v. Joad Ali*, 17 Cal. 390 (F.B.); *Sita Nath v. Atmaram*, 4 C.W.N. 571; *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763 (at p. 766). See the observation of Mookerjee, J., in the case of *Afraz v. Kulsumennisa*, 10 C.W.N. 176 at p. 180 (4 C.L.J. 48) and also notes under this section under heading WHAT CONSTITUTES A SEPARATE TENANCY and also notes under s. 188. In execution of such a decree, i.e., a decree obtained by a co-sharer landlord an occupancy holding not transferable by custom or local usage cannot be sold: *Durga Churn v. Kali Prosunno*, 26 Cal. 927, s. c., 3 C.W.N. 585. See notes under s. 23.

Separated share recognised by both landlord and tenant.

A separated share in a tenure which was duly and effectively recognized by both landlords and tenants was sold in execution of a decree for rent: *held*, that the effect of the sale was that of an entire tenure: *Gopi Nath v. Radha Shyam*, 4 C.W.N. 80 (notes). See notes under s. 23.

Suit against some of

Where, upon the death of the last recorded tenant, none of his heirs had his name recorded in the landlord's office but they held the land and went on paying the rent and obtained separate rent receipt

for some years, until recently, when a rent suit was brought against two of them only and the *Juma* was sold in execution of the decree: *held*, that after having accepted rent from all the heirs the landlord had no right to ignore some of them: that the sale did not pass the entire *juma* but only the right, title and interest of the judgment-debtors: *Annada Kumar v. Hari Das*, 27 Cal. 545, s.c., 4 C.W.N. 608. The heirs of the lost recorded tenant with respect to an occupancy holding are entitled to claim recognition from the landlord, and if the latter, ignoring them, bring a suit for arrears of rent and in execution thereof sell the holding, the right of the former is not affected: *Ibid*.

A decree obtained against some only of the registered tenants cannot be executed as a decree for rent: *Chandra Nath v. Protap Udai*, 18 C.W.N. 170 (Mookerjee and Beachcroft, J.J.; 26 March, 1913). All the tenants of a holding must *ordinarily* be joined as parties in a rent suit in order that the decree may be a rent-decree and the sale in execution may pass the entire holding and not merely the right title and interest of the judgment-debtor; but where one of several co-tenants is put forward by the rest as their representative he can be regarded as the sole tenant for the purposes of a suit for arrears of rent under Ch. XIV: *Chamatkari v. Triguna Nath*, 17 C.W.N. 833. When the recorded tenant represents a holding on behalf of all his co-sharers, such holding passes by a sale in execution of a decree for arrears of rent obtained by the landlord against such tenant: *Jagattara v. Daulati Bewa*, 37 Cal. 75; s.c., 13 C.W.N. 1110. It was held in the case of *Ashok Bhuyan v. Karim Bepari*, 9 C.W.N. 843 that there being no law obligatory on the tenants who are not tenure holders to get their names recorded in the landlord's *sherestha* for the purpose of perfecting their title, the sale of a holding in execution of a decree for rent obtained against the recorded tenants does not pass the interest of the tenants whose names are not registered in the landlord's *sherestha*:—The case of *Natayi Bihari v. Harigovinda*, 26 Cal. 677 was distinguished on the ground that in that case there was a tenure and the tenants were bound to register their names in the landlord's *sherestha*; one person can under certain circumstances, represent a tenancy in the landlord's *sherestha* on behalf of himself and his co-tenants: *Gagan Shekh v. Abejan Khatun*, 14 C.L.J. 180; see also *Rupram v. Iswar*, 6 C.W.N. 302 and *Afrai v. Kulsumennesa*, 10 C.W.N. 176.

A sale in execution of decree for his share of the rent obtained by a co-sharer landlord against the registered tenants passes only the right, title and interest of such registered tenants and not the interest of their unregistered co-sharers as well: *Bejoy Sankar v. Rajendra*, 13 C.W.N. 746.

A landlord obtaining a decree for the whole *rent* due in respect of a tenure brought against all the tenants is entitled under s. 65 to sell the tenure in execution of the decree although he recognised the fact that the tenants had sub-divided the tenure and chose to accept a decree making each of them separately liable for his own share of the rent: *Surbo Lal v. Wilson*, 32 Cal. 680; the case of *Tarini Prasad v. Narayan Kumari*, 17 Cal. 301, was dissented from; the observation made in this case was considered to be *obiter*.

Where a portion of a tenure is sold in execution of a decree for arrears of rent the auction-purchaser cannot proceed to annul encumbrances: *Ramkissore v. Akhil Chandra*, 11 C.W.N. 350.

Malikana is not rent: *Syed Sha v. S. Zahid*, 8 C.L.J. 300.

One suit
for two or
more hold-
ings.

A landlord is entitled to bring one suit for the total rents for three separate holdings but the decree cannot be executed as a rent decree: *Nanda Lal v. Sadhucharan*, 7 C.L.J. 96; see also *Hridoy Nath v. Krishna Prasad*, 34 Cal. 298: s.c., 11 C.W.N. 497; s.c., 6 C.L.J. 153: *Baikuntha v. Thakur Debendra*, 11 C.W.N. 676; also *Bipra Das v. Rajaram*, 13 C.W.N. 650; s.c., 36 Cal. 765; see also *Mulluk Chand v. Satish Chandra*, 14 C.W.N. 335; *Rashmohini v. Debendra*, 16 C.W.N. 395.

Suit
against
one of
several
joint
tenants.

It is competent to a plaintiff landlord to maintain his suit for rent against any number of several joint tenants; *Rameswar v. Jaideb*, 12 C.L.J. 591; *Jogendra v. Nagendra*, 11 C.W.N. 1026. According to the decision in the case of *Kasikinkar v. Satyendra*, 12 C.L.J. 642 the above rule was stated in too comprehensive terms. When a landlord A creates a tenancy in favour of B and C jointly, whether each is liable for the entire rent must depend upon the intention of the parties: *Ibid*; the question whether a contract was joint or several, or joint and several, is a question of construction dependent upon the intention of the parties to the contract: *Ibid*.

See notes under s. 65, p. 396.

Landlord's
purchase in
execution
of money
decree.

A landlord who purchases the defaulting tenure in execution of his money decree subject to rent charge, cannot execute his decree for rent as the judgment-debt in his favour for rent is extinguished: *Sailaja Prosad v. Gyani Das*, 18 C.L.J. 29.

Decree for
rent
against
several
tenures.

Where a tenure was split up into separate taluks, held that one decree for rent obtained for all the taluks, cannot be executed as a rent decree: *Profulla Nath v. Shital Khan*, 22 C.W.N. 788.

7. Purchaser:—Purchaser includes transferee. See notes under s. 167.

8. Power to annul:—See notes under s. 167.

Kabuliyat
by one of
several joint
tenants does
not bind
the other
tenants.

9. Kabuliyat by one of several joint tenants for entire rent:—Where one of several joint tenants executed a kabuliyat in favour of the landlord for the entire tenure and it was proved that the other tenants did not acquiesce in this, and where in a separate suit by the other tenants it was found that they were not bound by the kabuliyat: held, that the tenant executing the kabuliyat for the entire tenure was not bound in excess of his share and was not liable for the whole rent: *Ram Taran v. Asmatulla*, 6 C.W.N. 111. Where a co-tenant executes a separate kabuliyat for his share in the tenancy, the landlord cannot sue the other tenants on the basis of the new arrangement without proving that they agreed to the division of the tenancy; Second Appeal No. 1116 of 1900: *Souravi Namasudrani v. Nabadip Chunder*, decided on the 17th February, 1903.

When pur-
chaser
liable for
rent for a
period
anterior to
the date
of sale.

10. Liability of purchaser for rent for a period anterior to the date of sale:—Where a tenure or holding was sold in execution of a decree for rent with a notice that it was saddled with liability for arrears of rent for a period anterior to the date of sale: held, that the purchaser was liable for the rent of such period: *Haradhan v. Kartick Chunder*, 6 C.W.N. 877. The landlord in possession is entitled to the first charge and at the time of the sale at the instance of the outgoing landlord the tenure is subject to the first charge: *Srimanta v. Mahadeo*, 31 Cal. 550, s.c., 8 C.W.N. 531.

Where the purchaser of a non-transferable occupancy holding was recognised by the landlord and subsequently the latter in execution of a rent-decree obtained previous to the recognition of the purchaser against the former tenant put to sale the holding, *held* that the sale could not be regarded as a rent-sale, and the title of the purchaser who had been recognised by the landlord is not affected; *Girish Chandra v. Narendra Nath*, 23 C.W.N. 654.

11. Default to pay rent due to superior landlord :—In default of payment of rent by a lessee to the landlord of the lessor as agreed to by the lessee the lessor's property was sold by the superior landlord in execution of a decree for arrears of rent, *held* that the lessor in a suit for damages is not entitled to get from his lessee the value of the property but only the amount which his lessee defaulted to pay: *Girish Chandra v. Kunjo Behari*, 12 C.W.N. 628.

12. Sale of "tenure or holding" or merely "right, title and interest" :—Where in execution of a decree for rent for Rs. 29, the sale was held on the first day fixed for sale without the fresh proclamation as provided by s. 165 sub-sec. (1) and the tenure was purchased for a sum of Rs. 26 and the District Judge held that plaintiff acquired only the right, title and interest of the purchaser, *held* that the District Judge had overlooked the provisions of ss. 159, 161 and 164, sub-sec. (2) under which the purchaser is authorised to annul any incumbrance other than a registered and notified incumbrance: *Mahendra Narain Basu v. Lalit Kumar Mukerjee*, 18 C.W.N. 64 (notes portion). Where the proceedings were taken under the provisions of the Bengal Tenancy Act, and application made for the simultaneous issue of the order of attachment and proclamation as provided in s. 163, but the property was wrongly described as the right, title and interest of the debtor in the *tenure*, although in the schedule attached to each it was specified as "the lot," or property itself "in arrears," *held* that the tenure passed by the sale and not merely the right, title and interest of the debtor: *Akhoy Kuman v. Bejoy Chand*, 29 Cal. 813. The terms "right, title and interest of the debtors" as used in a sale certificate and an order confirming the sale must be construed with reference to the circumstances under which the suit was brought and the true meaning to the decree under which the sale took place as well as the proceedings leading up to the sale: *Ibid.* See also *Jotindra Mohun v. Jugul Kishore*, 7 Cal. 357.

Where it is clear from the proceedings that what is sold, and intended to be sold, is the interest of the judgment-debtor only, the sale must be confined to that interest, although the decree-holder might have sold the whole tenure if he had taken proper steps to do so, or although the purchasers may have obtained possession of the whole tenure under the sale. But if, on the other hand, it appears that the judgment-debtor has been sued as representing the ownership of the whole tenure, and that the sale, though purporting to be of the right, title and interest of the judgment-debtor only, was intended to be, and in justice and equity to operate, as a sale of the tenure, the whole tenure then must be considered as having passed by the sale; and if the question is a doubtful one on the face of the proceedings or one part of those proceedings may appear inconsistent with another, the Court must look to the substance of the matter, and not to the form or language of the proceedings: *Jeolal v. Gunga*

Proceedings under the Bengal Tenancy Act but the property is wrongly described as the right, title and interest of the debtor.

Where the proceedings shew that the interest of the judgment debtor alone is sold.

Pershad, 10 Cal. 996,* see also *Netaye Behari v. Hari Govinda*, 26 Cal. 677; *Hari Vithal v. Jairam Vithal*, 14 Bom. 557. The judgment in the case of *Jeolal v. Gunga Pershad*, 10 Cal. 996, proceeded, as explained in *Rupram v. Iswar Namasudra*, 6 C.W.N. 302, upon two grounds, *first*, that in bringing the suit the Zemindar brought it against the recorded tenant in his representative capacity, and *secondly*, that the recorded tenant represented the ownership of the whole tenure.

What
passes at
an execu-
tion sale.

To determine what passed to the purchaser at an execution sale, one must look to the sale certificate as a whole and examine, if necessary, the nature and scope of the execution proceedings; where one part of the sale certificate described the interest transferred as the right, title and interest of the judgment-debtor in the property mentioned in the schedule, but in another part it was explicitly stated that the property transferred was one of which the rent was in arrear: *held* that what was intended to be sold and actually sold was the defaulting tenure described as the property of the judgment debtor: *Gocool v. Debendra*, 14 C.L.J. 136; see also *Akhoy v. Bijoy*, 29 Cal. 813 and *Nazir Mohamed v. Girish Chunder*, 2 C.W.N. 251; the case of *Dewarka Nath v. Aloke Chunder*, 6 Cal. 641, according to their Lordships who decided the case in 14 C.L.J. 136 does not lay down any inflexible rule of law but must be taken to have been decided on its special facts.

In execution of a money-decree against the father alone (in a *Mitakshara* family) for a personal debt, the whole family property may be sold, if the debt was not contracted for immoral purpose and it is not absolutely necessary that the son should be a party either to the suit or to the execution proceedings: *Hitendra Singh v. Rameshar Singh*, 18 C.W.N. 42: the execution proceedings and the description of the property should be looked at as to what was the intention: *Ibid*.

Decree
against one
of several
joint
tenants.

Where one of several joint tenants executed a *kabuliyat* in favour of the landlord and the other tenants acquiesced in the representation of the holding by the tenant who executed the *kabuliyat*, and the landlord sued him only for the rent and in execution of that rent decree attached the entire holding, and the other tenants made no attempt to get them recognised or to pay the arrears: *held*, that the attachment covered the entire holding unless there was fraud or collusion on the part of the landlord: *Rajani Kant v. Uzir Bibi*, 7 C.W.N. 170.

Decree
against the
recorded
tenant.

Where a landlord had been in the habit of realising the rent due from the holding in the occupation of the recorded tenant and other persons jointly interested with him, in previous years, from the recorded tenant, and a suit was brought against him only for the rent of a subsequent year, and a decree for rent being obtained, the holding was sold as the right, title and interest of the recorded tenant, *held* that the entire holding should be taken to have passed: *Netai Behari v. Hargobind*, 26 Cal. 677,† but where in execution of a certificate obtained under the Public Demands Recovery Act taken

Sale in exe-
cution of
certificate.

* See also *Doolarchand v. Lalla Chabeel*, 6 I.A. 471 and *Bisseswar v. Luchmeswar*, 6 I.A. 233.

† Fully explained in *Afraz v. Kulsumannesa*, 10 C.W.N. 176 at p. 179, col. 2 and p. 180 col. 1.—See also *Sadhun Chunder v. Guroo Churn*, 15 W.R. 99. See in this connection *Ashok Bhuiyan v. Karim Bepari*, 9 C.W.N. 843.

against the recorded tenant, the landlord put the holding to sale ; held that the right, title and interest of the recorded tenant alone and not the entire holding passed by the sale and that the interest of the other joint tenants was not affected by the sale : *Rupram v. Iswar Namsudra*, 6 C.W.N. 302.

A landlord is bound to recognise a transfer of a portion of a permanent holding, though he is not bound to recognise a division ; consequently a decree against the transferee does not bind the transferee : *Baistab v. Akhil*, 11 C.W.N. 217 : See notes under ss. 12, 13, 17.

Landlord bound to recognise transfer of portion of tenure.

A sale held at the instance of an assignee of a rent decree who is not the assignee of the land does not affect the interest of unrecorded tenants who are not parties : *Manu Rattan v. Hari Nath*, 1 C.L.J. 500 ; the case of *Netai Behari v. Hargobind*, 26 Cal. 677, was distinguished.

Sale held at the instance of an assignee.

Where a suit was brought for the recovery of arrears of rent due in respect of a jagir tenure, the joint property of four brothers, arrears having accrued during the life-time of their father and a decree was obtained against the eldest brother, who was the sole registered *ilakadar* or person held responsible in the zemindar's book, it was held that the decree related to the arrears due in respect of the whole tenure and that a sale of his right, title and interest under s. 124, Act I of 1879 (B.C.) would, under the circumstances of the case and by the incidents attaching to such tenure in Choto Nagpur, include the right, title and interest of any person claiming such jointly with him and inseparably united with his own : *Madhusudan v. Piroo Ram*, 2 C.W.N. 94.

Rent of a jagir tenure against the eldest son of the last recorded tenant.

Where a tenure was sought to be sold in execution of a decree for rent obtained against one of the tenants after the shares of the other tenants had passed by auction sale to a stranger on the allegation that the tenant against whom it had been obtained was the sole recorded tenant, held that whether this was so or not was a matter specially within the knowledge of the landlord and the *onus* was on him to prove it : *Baikuntha v. Thakur Devendra*, 11 C.W.N. 676.

Onus.

When the landlord of an occupancy holding obtains a decree for rent against his tenant, an unregistered transferee of the tenants into whose hands a portion of the holding has previously passed is bound by the decree : *Azgar Ali v. Asaboddin*, 9 C.W.N. 134, followed in *Gopinath v. Sajani Kant*, 11 C.W.N. 240 ; the principle of the case of *Ishan Chandra v. Benimadhab*, 24 Cal. 62 (F.B.), was applied in this case. There is no law rendering it obligatory on tenants who are not tenure-holders to get their names recorded in the landlords sherista for the purpose of perfecting their title ; therefore the sale of a jote in execution of a decree for rent obtained against the recorded tenants does not pass the interest of the tenants whose names are not registered in the landlord's sherista : *Ashok v. Karim*, 9 C.W.N. 843 ; the case of *Netai Behari*, 26 Cal. 677, was distinguished : see also *Afray v. Kulsumannessa*, 10 C.W.N. 176 ; a person who is not a party to a suit cannot be affected in person or property by any thing that is done in the suit : *Ibid*.

Transferee when bound by decree against his vendor,

and when not.

It is now firmly settled by the cases of *Durga Charan v. Kali Prasanna*, 26 Cal. 727, s.c., 3 C.W.N. 585 : *Sadagar v. Krishna Chandra*, 26 Cal. 937, s.c., 3 C.W.N. 743 : *Sheikh Jarip v. Ram*

Decree obtained by a fractional landlord.

Kumar, 8 C.W.N. 747 ; *Sita Nath v. Atmaram*, 4 C.W.N. 570, and *Pramada Nath v. Ramani Kant*, 9 C.W.N. 34, that a decree obtained by a fractional landlord for his share of the rent operates in the same way as a decree for money and a sale held in execution thereof produces the same effect as a sale in execution of a money decree under the Civil Procedure Code and does not lead to the results which flow from a sale under Ch. XIV of the Bengal Tenancy Act." *Per Mookerjee J.*, in *Afraz v. Kulsumannessa*, 10 C.W.N. 176 at p. 180, col. 2 : s.c., 4 C.L.J. 68 ; see also *Doolar Chand v. Lala Chabeel*, 6 I.A. 47, and *Jiban Krishna v. Braja Lal*, 26 Cal. 977.

Registered
tenant.

A sale in execution of a money decree obtained against the registered tenant passes only his right, title and interest in the tenure, and not those of his unregistered co-sharers : *Doorga Dhur v. Huro Mohinee*, 13 C.W.N. 270.

Sale for
arrears
accruing
subsequent
to previous
sale.

Where it did not appear that a tenure was sold at the first sale subject to a charge for previously accrued arrears of rent, *held* that a subsequent sale in execution of a decree for such rents passed no title, and the sale was liable to be set aside on the ground that the judgment debtor had no saleable interest : *Gopal Saran v. Sheikh Md. Ahsan*, 14 C.W.N. 1096.

As to the effect of cessation of landlord's interest (1) before rent suit (2) after suit before decree, (3) after decree before execution and (4) after execution and before sale, see notes under s. 65, *ante* at pp. 384 to 386.

Agreement
to pay rent
separately
does not
give rise
to a
separate
tenancy.

13. What constitutes a separate tenancy:—A separate *kabuliyat* creates a separate tenancy ; *Safuruddi v. Fazlal Huq*, 21 C.L.J. 592. An arrangement by virtue of which a tenant agrees to pay his share of the rent separately to a co-sharer landlord does not give rise to a separate tenancy ; *Gopal Chander v. Umesh Narain*, 17 Cal. 695.* In this case (*Gopal v. Umes*) the tenant was a raiyat and the holding formed part of an entire estate and by an arrangement the co-sharer landlords collected their shares of the rent separately ; it was a suit to enhance the rent of a raiyat and to obtain additional rent for excess land ; their Lordships Norris and Macpherson, J.J., in delivering judgment, observed as follows:—The land, which is said to be in excess of the area for which rent has been previously paid, has been held rightly or wrongly, as part of the original holding. There is here no allegation that it has been taken by trespass. If a decree is obtained the excess land will be annexed to the land of the original holding, and the additional rent will be added to the original rent. There will be no new holding created. If, therefore, some of several joint landlords cannot enhance the rent of the original holding, they cannot, it seems to us, any the more add to that rent in any other way and they cannot increase the area of the holding

* See *Guni Mohamed v. Moran*, 4 Cal. 96.

"This case (*Guni Mohamed v. Moran*) decides that when a tenant has agreed to pay a co-sharer landlord his share of the rent separately, he can be sued for a *kabuliyat*, for "the grant and acceptance of a binding lease of the separate share," it is said "cannot exist contemporaneously with the original lease of the entire jote." I do not, however, understand this decision as laying down a general rule to the effect that the granting of a *kabuliyat* of any kind necessarily operates as the creation of a new and separate tenancy. If it does, it is *obiter dictum*, but no such rule would seem to be laid down in this case. *Per Rampini, J.*, in *Hurry Churan v. Rajah Ranjit*, 25 Cal. 917, s. c., 1 C.W.N. 521.

any more than they can reduce it. The right of some of several co-sharers to collect separately their share of the entire rent of an undivided holding is quite distinct. It rests on an arrangement between the co-sharers and the tenants as to the mode in which the entire rent shall be collected, but which preserves in tact the original tenancy both as regards the area of the holding and the rent paid.

An arrangement, under which fractional shares of the rent are paid separately to the different co-sharers, does not give rise to a separate tenancy and is perfectly consistent with the continuance of the original lease of the entire tenure: *Shyama Sharan v. Akhoy Kumar*, 3 C.L.J. 627. If one set of landlords obtains separate *kabuliyats* entering into separate contracts for rent with the tenants such landlords cease to be joint landlords with the other co-proprietors; *Jogesh v. Maniruddi*, 35 Cal. 417. Payment of rent separately.

But where the tenant executed in favour of a co-sharer landlord a *kabuliyat*, and the *kabuliyat* set out the total area of the land and area which proportionately would belong to the plaintiff and the tenant stipulated to pay the plaintiff rent for that area, and the *kabuliyat* also gave the landlord a right to measure the land, and the tenant undertook to pay increased rent that might be found over the area for which rent was payable: held that the effect was to create a separate tenancy under such fractional co-sharer: *Panchanan v. Raj Kumar*, 19 Cal. 610. In this case it was clear the tenant was an *Osut talukdar* tenure-holder. The case of *Gopal Chandra v. Umes Narayan*, 17 Cal. 695, was held to be not applicable for the following reasons as given by their Lordships Macpherson and Banerjee, J.J., in their Lordships' judgment:—In that case there was a mere undertaking by the tenant to pay to each of the landlords their proportionate share of the rent, and it was held that the effect of that arrangement was not to split up the tenancy or create a separate tenancy under each of the landlords. Here the tenant, by his own act, has given the plaintiff power to deal with him as if he was his tenant alone, without any regard to the interest of the co-sharers, and should the defendant be subjected to separate suits, at the instance of the co-sharers, either with reference to enhanced rent or measurement he has no reason to complain. But when a tenant agrees to allow one of several co-sharer landlords to deal with him as if he were his own tenant, the effect is to create a separate tenancy. *Gopal v. Umes*, distinguished.

When a share in a tenure has been duly and effectually recognised by both landlords and tenants as a separated share and as constituting a distinct tenure, the purchaser of such a share at a sale for its arrears acquires the rights of a purchaser of an entire tenancy within the meaning of s. 156: *Somir Jama v. Mahabharat*, 16 C.W.N. 777. Effect of recognition of share.

Following the case of *Panchanan v. Raj Kumar*, 19 Cal. 610, it has been held that where a tenant under the whole body of landlords agreed to pay rent at a specified rate to a co-sharer landlord for his share of the lands and further to pay additional rent at a fixed rate for additional area found on measurement to be held by him under such co-sharer, the lease creates a separate tenancy and is not merely an agreement to pay the share of rent separately: *Sailendra v. Karali*, 2 C.L.J. 534. Agreement to pay rent and additional rent separately.

The institution of one suit for rent of two tenures cannot have the effect of consolidating the two tenures into one: *Rashmohini v. Debendra*, 16 C.W.N. 395.

Where the principal defendant was the tenant of two joint land- Partition

between two joint land-lords—Separate suits by landlords against tenant main-tainable.

lords and there being a partition between them each of the joint landlords brought a separate suit for his share of the rent against the principal defendant by making the co-sharer landlord a party, *held* that the suit was maintainable. Rampini and Wilkins J.J., observed as follows in delivering judgment:—When a defendant is subject to a joint liability, it would without doubt be unjust to allow him to be sued by one of his joint creditors, who could not release him from his liability to his other creditors. But there would seem to us to be no reason why the creditors should not be allowed to sever their mutual relations and sue their debtor separately for their share of the debt, provided this be done in such a manner as to relieve the debtor from all further liability to any of them: *Raj Narain v. Ekadasi*, 7 Cal. 479, s.c., 4 C.W.N. 494.

Undivided shares in parcels of land cannot constitute distinct holdings.

Undivided shares in parcels of land cannot constitute distinct holdings within the meaning of the Bengal Tenancy Act, inasmuch as the term "parcels" in s. 3 cl. 9 means entire parcel or entire parcels and is not intended to include an undivided fractional share in a parcel or parcels of land: *Hari Charan v. Ranajit*, 25 Cal. 917,* although there were separate leases executed by the raiyat with respect to the holding. The case of *Panchanan Banerjee v. Raj Kumar Guha*, 19 Cal. 610, was held not to be applicable but it was held to be quite distinguishable from the present as that was a case in which the leases related not to a raiyati holding but to an *osut taluk* or tenure.

When an undivided share in lands is leased to a raiyat, such share does not constitute a holding within the meaning of the Bengal Tenancy Act; a purchaser of such share of lands, even in execution of a decree for rent does not consequently acquire any right to annul incumbrances: *Ahadulla v. Gagan Molla*, 6 C.W.N. 84 (notes), s.c., 2 C.L.J. 10.

Agreement to pay rent separately.

Following this case (*Hari Charan v. Raja Ranajit*) it was held in *Baidyanath v. Sheikh Jhin*, 25 Cal. 917, s.c., 2 C.W.N. 44: that an agreement by a raiyat with one of several joint landlords to pay his share of the rents separately, does not constitute a separate tenancy under him; so where a co-sharer landlord sued for enhancement of rent on the basis of such an agreement, *held* that such a suit was not maintainable even when it contained a stipulation for such enhancement.

Suit for additional rent for excess area.

The cases of *Baidyanath v. Sheikh Jhin*, 25 Cal. 917 s.c., 2 C.W.N. 44; *Panchanan v. Raj Kumar*, 19 Cal. 610, and *Hari Charan v. Ranajit*, 25 Cal. 917 s.c., 1 C.W.N. 521, have been considered in the case of *Govinda Chandra v. Hamidulla*, 7 C.W.N. 670; in this case the plaintiff sued for additional rent for land in excess of the area for which rent had been previously paid by the tenant defendant who was an occupancy raiyat; the plaintiff was the landlord of an undivided five annas share of the land comprised in the defendant's holding, and the defendant executed a *kabuliyat* in the plaintiff's favour in respect of a quantity of land, that quantity not being a specified defined area, but merely a quantity ascertained by the calculation as proportionate to the plaintiff's share in the

* The cases of *Jardine, Skinner & Co. v. Rani Sundari*, 3 C.L.R. 140 and *Gorbur v. Jeolal Roy*, 16 Cal. 181, in which it was decided that a right of occupancy could be acquired in an undivided share of land were decided under the Old Act and were therefore not held to be applicable.

entire holding ; Geidt J., *held* that the *kabuliyat* executed by the defendant in favour of the plaintiff could not create a separate tenancy under the plaintiff, and therefore the suit was not maintainable without the addition of the plaintiff's co-sharer as a party ; but Ghose J., *held* that the question whether the execution of a separate *kabuliyat* had the effect of creating a separate holding was not necessary to be considered in the case and that the only question was whether plaintiff's suit was maintainable without making his co-sharer a party and his Lordship answered the question in the affirmative : owing to this difference of opinion the case was referred to Prinsep J., who *held* that such a suit was maintainable although plaintiff's co-sharer was not made a party.

Where a tenure is held under a *zemindari* which originally formed one entire estate and the estate was subsequently partitioned, and the rent of the tenure was thereupon allotted proportionately to each of the four estates formed by partition although the land forming the tenure remained undivided ; *held*, that the effect of the partition of the parent estate was to create separate and distinct tenancies under the proprietors of each of the estates ; *Hem Chandra v. Kali Prasanna*, 26 Cal. 832 ; see also *Sarat Sundari v. Anund Mohan*, 5 Cal. 223, and *Sarat Sundari v. Sumeruddin*, 22 W.R. 530. Partition of estate.

Where the defendants held a holding under the plaintiffs and their co-sharers, and subsequent to the creation of the original holding defendants took possession of certain lands by gradual encroachment, and plaintiffs brought a suit for recovery of their share of the encroached lands or for assessment of rent ; *held*, that it was altogether a new holding and the rent that would be assessed upon that would be a new rent in respect of the new holding : *Khondkar Abdul Hamid v. Mohini Kant*, 4 C.W.N. 508. Encroachment by tenant.

A suit by a co-sharer landlord, entitled to collect his share of the rent separately, for additional rent for land brought under cultivation, payable in terms of a lease, is maintainable : *Ram Chunder v. Giridhur*, 19 Cal. 755 ; see also *Tejendra Narain v. Bakai Singh*, 22 Cal. 659. Suit upon contract.

14. Babuana grant :—In respect of a *Babuana* grant of certain mehals in the Durbhanga Raj it was *held* that the grantor and grantee are neither co-proprietors nor are the latter tenure-holders under the former : *Laliteshwar v. Rameshwar*, 13 C.W.N. 118. As to *Babuana* grant by the Darbhunga Raj, see *Rameshwar Singh v. Janeshwari*, 18 C.W.N. 129, *Ekradeswar v. Janeshwari*, 18 C.W.N. 1249 (P.C.), and *Hitendra v. Rameswar*, 18 C.W.N. 42. Babuana grant.

15. Purchaser :—An unregistered tenant who purchased the entire tenure in execution of a decree for arrears of rent was held under Act VII B.C. 1869 not entitled to the benefit of avoiding encumbrances : *Fakir Chunder v. Ram Kumar*, 8 C.W.N. 721 (P.C.) Following the case of *Kailas Chandra v. Jabbar Ali*, 22 W.R. 29, it has been held that an assignee of an auction-purchaser of an entire estate sold for arrears of revenue can exercise the privileges given to an auction-purchaser under the provisions of s. 37 of the Revenue Sale Law (Act XI of 1859) to avoid incumbrances : *Shosi Bhusan v. Kramtulla*, 10 C.W.N. 148 ; see also *Sooharam v. Doorgacharan*, 5 C.L.J. 264 ; *Wahin Ali v. Rahat Ali*, 12 C.W.N. 1029 ; *Shosi Bhusan v. Kramtulla*, 10 C.W.N. 148 ; a purchaser from a purchaser can also Purchaser. Right to avoid incumbrance.

annul encumbrances ; *Ananda v. Kunja Behari*, 8 C.L.J. 117 ; see notes under heading "PURCHASER INCLUDES TRANSFEREE."

The sale of a holding in execution of a decree for rent obtained by a landlord, who also holds a mortgage of the holding, is void and the purchaser at the sale acquires no title against another mortgagee of the holding, who has purchased it under a decree on his mortgage. *Basiraddi v. Kailas*, 33 Cal. 113.

See in this connection *Tarini Chandra v. Bishen Chand*, 22 C.W.N. 505.

16. Incumbrance :—See notes under ss. 160 and 161.

17. Charge on sale-proceeds :—When mortgaged property is sold under a decree in a rent suit, the mortgagee would have, under the provisions of s. 73 of the Transfer of Property Act, a charge on the surplus sale proceeds whether under the decree in the rent suit the property was put up for sale with power to the purchaser to avoid encumbrances ; ss. 159 and 161 to 167 of the Bengal Tenancy Act cannot prejudice the right of a mortgagee in that respect : *Gobind v. Sibdut*, 33 Cal. 878.

Sale
Certificate.

18. Sale Certificate :—The paramount description in the sale certificate is ordinarily the general description of the holding sold ; the plot numbers are the subordinate description ; where there is a mistake in the plot numbers the error will not prejudice the auction-purchaser : *Rajendra v. Gangan*, 2 Pat. L.J. 623 ; see also in this connection *Karuppa Goundan v. Pariatambi Goundan*, 30 Mad. 397 ; *Barhamdeo v. Ram Narain*, 19 C.L.J. 182, *Thakur Baronha v. Jeeban Ram*, 42 Cal. 590.

19. Suit for rent against some of several joint tenants :—See notes under s. 65, pp. 396 to 400.

Protected
interests.

160. The following shall be deemed to be protected interests within the meaning of this Chapter :—

- (a) any under-tenure existing from the time of the Permanent Settlement ;
- (b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;
- (c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;
- (f) any right conferred on an occupancy raiyat

to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Headings of Notes.

1. ONUS.
2. CL. (a) ; EXISTING FROM THE TIME OF THE PERMANENT SETTLEMENT.
3. CL. (b) ; RECOGNISED BY SETTLEMENT PROCEEDINGS.
4. CL. (c) ; LEASES OF LAND WHEREON DWELLING HOUSES, &C.
5. CL. (d) ; RIGHT OF OCCUPANCY.
6. CLAUSES (d) AND (f).
7. CL. (g) ; PERMISSION TO CREATE.
8. MISCELLANEOUS CASES.

1. Onus :—Where the plaintiff sets up a protected interest, the onus is upon him to prove the same : *Jogesh Chandra v. Rohini Kumar*, 21 C.L.J. 65. See also *Somir v. Mahabharat*, 16 C.W.N. 777 ; *Harimoni v. Moti*, 16 C.W.N. 779.

2. Cl. (a) : Existing from the time of the Permanent Settlement :—In a suit for ejectment under s. 37 of Act XI of 1859 ^{Burden of proof.} by a purchaser at a revenue sale, the defence was that the defendants held the land as a subordinate taluk, which had been in existence and in their possession and that of their predecessors since the time of the Permanent Settlement ; it was found as a fact that the tenure was in existence in the year 1798-99 ; the plaintiff's suit being dismissed, it was contended in second appeal that the facts found could not protect the tenure in the absence of proof that the tenure was in existence at the date of the Permanent Settlement ; *held*, that although in the first instance the burden of proof is upon the defendants, the fact that defendants were in possession for such a length of time, was sufficient to discharge the onus and establish that the tenure was protected ; that in a case like this no hard-and-fast rule can be laid down as to when the burden of proof shifts from one side to the other and that such case must be governed by its merits ; *Nityanand v. Banshi Chunder*, 3 C.W.N. 341.

The expressions "permanently settled" and "Permanent Settlement" in s. 37 of the Revenue Sale Law contemplate the Permanent Settlement of 1793 : *Nagendra Lal v. Nazir Ali*, 10 C.W.N. 503 ; see also *Koowar Singh v. Gour Sundar*, 24 Cal. 887, and *Raj Chunder v. Sheikh Basir*, 24 W.R. 476. It is not necessary that direct evidence should be given to prove the existence of a tenure from before the Permanent Settlement in order that it might be protected from avoidance on account of sale for arrears of Government revenue. A presumption in favour of its existence arises from the proof of the existence of a tenure for a very long time, say from 1824 : *Ananda v. Kunjo Behari*, 8 C.L.J. 177.

See also *Hurryhar v. Madub Chunder*, 14 M.I.A. 152 at p. 173 ; *Forbes v. Meer Mahomed*, 12 B.L.R. 210, at p. 215 (P.C.) ; *Nitya-nund v. Banshi*, 3 C.W.N. 341.

Thak
survey
Inference.

If certain lands are included in an estate at the time of the Thak Survey in 1859, it is open to the court to draw an inference that the lands were included within the estate at the time of the Permanent Settlement from all the surrounding circumstances: *Shyama Charan v. Mokhuda*, 15 C.W.N. 706, s.c., 13 C.L.J. 293.

Portion of
taluk held
under a
name differ-
ent from
original
taluk.

When a portion of a *taluk*, existing from before the Permanent Settlement is transferred and that portion is subsequently held in proportionate *jumma* under a name different from the original *taluk*, but the subsequent transfer and descent thereof can be traced from the original *taluk*, the portion so transferred is also protected under s. 37 Act XI of 1859; *Doyamoyee v. Narendra*, 19 C.W.N. 79.

3. Cl. (b): Recognised by settlement proceedings:—Settlement operations are initiated under the following laws:—

- (a) Chap. X* of the Bengal Tenancy Act :
- (b) Reg. VII of 1822 :
- (c) Act VIII (B.C.) of 1879.
- (d) Act I (B.C.) of 1887.
- (e) Act III (B.C.) of 1884.

See notes under Chap. X.

Tenure not
set aside
by Revenue
authorities.

Where certain *howalas* and *neem-howala* tenures were never set aside by the Revenue settlement or Revenue Commissioner's orders, from the time they were recorded as existing rightful hereditary tenures of those classes at the first settlement, held that a purchaser at a sale of entire estate for arrears of revenue is not entitled to eject as long as the tenure-holders pay their *jama* according to the settlement *jummabundi*: *Buroda Kanth v. Govind Chunder*, 7 W.R. 50.

Records of
Rights—
Recogni-
tion.

The record of rights prepared under sub-sec. (2) of s. 101 contained an entry in respect of certain under-tenures ; the existing rent was mentioned and the new rent settled was also stated ; but in the remark column a note was made by the Settlement officer as follows : "This *etnam* is not binding upon the Government" ; held that there was no recognition of the under-tenure in law or in fact and the under-tenure holders were not protected under the third clause of s. 12 of Act vii (B.C.) of 1868: *Lakshidhar v. Sarada Charan*, 20 C.L.J. 40.

A tenure-holder cannot seek protection under clause (b) of s. 160 when the auction purchaser purchased before the settlement proceedings and the notice under s. 167 given and suit brought before the preparation of the Record of Rights: *Johara Binoo v. Ganga Chandra*, A.I.R. 1922 Cal. 222.

This clause refers to a temporary revenue settlement: *Deblal Jha v. Kuman Das*, [1925 Pat.] 236 (Adami and Sen, J.J.).

Garden.

4. Cl. (c): Leases of land whereon dwelling-houses, &c. :—Lands on which gardens have been made are protected by Act XI of 1859, s. 37, from the effect of a sale for arrears of revenue, although they may not have been expressly leased for that purpose: *Gobind Chandra v. Joy Chunder*, 12 Cal. 327 ; see also *Bhago Bibee v. Ram Kant*, 3 Cal. 293.

* The Settlement proceedings under Chap. X refer to proceedings to Part II of Chap. X.

The mere fact that a garden was made on a piece of land many years before the revenue-sale would not make it protected from being annulled under the Revenue Sale Law: *Sahodra Mudiali v. Nabin Chand*, 42 Cal. 638 s. c., 19 C.W.N. 1030.

The sale of a portion of a non-transferable holding is not an encumbrance: *Bijoy Krishna v. Surendra Nath*, 46 Cal. 891, s. c., 30 C.L.J. 4; *Abdul Rahman v. Ahmadar Rahman*, 43 Cal. 558, s. c., 19 C.W.N. 1217, s. c., 22 C.L.J. 356. A landlord purchaser at a sale in execution of his rent decree is not required to annul the interest of purchaser of a portion of a non-transferable occupancy holding: *Fazarali v. Poroo Mian*, 28 C.L.J. 266; the case of *Tomizuddin v. Khoda Nawaz*, 11 C.L.J. 16 was followed).

Sale of a portion of non-transferable occupancy holding is not incumbrance.

The word "lease" in sub-sec. 4 of s. 37 of the Revenue Sale Law does not mean a lease from the zemindar only: *Kiran Chandra Ray v. Naimuddi*, 30 Cal. 498.

Lease.

In a case under s. 37 of Act XI of 1859 their Lordships Tottenham and Maclean, J.J., observed as follows:—".....the benefit of the fourth exception must be limited to improvements effected *bona fide*, and to permanent buildings erected, before the revenue sale and should not be conceded to anything subsequently constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, we think that it does not matter whether the improvements have been effected by the present holder or by some previous occupier: and therefore the Subordinate Judge's observation that "there is no evidence that the defendants have sunk ponds and planted a garden" seems to us irrelevant": *Ajgur Ali v. Asmut Ali*, 8 Cal. 110 (p. 112): s. c., 10 C.L.R. 87. There is nothing in the words of the exception referred to confining the benefit of it to tenure-holders and excluding the raiyat from it: *Ibid*.

Improvements effected bona fide.

Garden.

Tenure-holder—raiyat.

A lease of tank without any portion of the surrounding land is not protected under cl. 4, sec. 37 of Act XI of 1859, as it is not within the meaning of that clause a lease of land whereon a tank has been excavated: *Asmat Ali v. Husmat Khan*, 2 C.W.N. 412.

Tank. Surrounding land.

The gardens within the meaning of the fourth exception mean permanent gardens; wells which are very shallow and small also do not come within the meaning of that exception: *Mahomed Soleiman v. Birendra*, 50 Cal. 243, s. c., 27 C.W.N. 749, (P.C.).

Permanent gardens.

Notwithstanding a party may fail to shew that his tenure comes within any of the first three exceptions of s. 37 of the Revenue Sale Law, yet he is entitled to the benefit of the 4th exception in respect of any dwelling-houses or other permanent structures that may be upon his holding: *Bhago Bibee v. Ram Kant*, 3 Cal. 293; where an under-tenure is not proved to have existed from the time of the Permanent Settlement but it is found that in a portion of a tenure structures have been erected or improvements made of the character mentioned in the 4th exception of s. 37 of Act XI of 1859, held that the Court will declare the defendant entitled to retain the land on which any structures are erected or improvements made of the character mentioned in the 4th exception, and the plaintiff will be entitled to retain the remaining land: *Ibid*. This case was followed in the case of *Nazeemuddin v. Syed Hossein*, 9 C.W.N. 852; see also *Gobind Chandra v. Joy Chandra*, 12 Cal. 327. Though a person may fail to prove a defence under exception (3) of s. 37 of the Revenue Sale Law it is still open to him to plead that he is protected

Dwelling house.

Portion of a tenure where structures have been erected.

Land on which structures are erected.

under the 4th exception: *Nazeemuddin v. Syed Hossein*, 9 C.W.N. 852.

The 4th exception to s. 37 of the Revenue Sale Law must be limited only to such portions of land as are covered by buildings, tanks, &c., and cannot be extended to cover those lands included in the lease on which buildings and tanks, &c. have not been constructed: *Wahid Ali v. Rahat Ali*, 12 C.W.N. 1029. See also *Jogendra Narain v. Kiran Chandra*, 46 Cal. 730; see also *Bisweshwar v. Fatteh Hussain*, 10 C.W.N. 24 (notes) and *Mathuranath v. Ratneswar*, 23 I.C. 917.

Where one lease covered two plots of land and there were tanks and garden on one of the plots only, *held* that the whole of the lands comprised in the lease were protected: *Kiran Chandra Roy v. Naimuddi*, 30 Cal. 498. This case was not followed in *Jogendra Narain v. Kiran Chandra*, 46 Cal. 730. The interest in a portion of the land comprised by one patta cannot be annulled: *Sooharam v. Doorga Charan*, 5 C.L.J. 264.

4th excep-
tion to s.
37 of the
Revenue
Sale Law.

Where a howla lease under which the defendant held the land provided for the digging of tanks and making homesteads and gardens and it was found that the defendant had occupied the land for about 40 years, and had incurred expense in excavating tanks and making gardens, and erecting homesteads, *held* that he was protected under the 4th exception to s. 37, Act XI of 1859: *Girish Chander v. Ganga Doorga*, 25 W.R. 60.

Zemindar
does not
become his
own raiyat.

If a zemindar chooses to plant gardens of mango and other trees upon any portion of his estate, he does not thereby become, *quoad* those plantations, his own raiyat so as to get it protected from sale: *Boolchand v. Lutho Moodee*, 23 W.R. 387.

Lease for
cultivation
of paddy
and clear-
ing away
jungle.

Where land was obtained for the cultivation of paddy after clearing away the jungle, *held* that such cultivation could not be regarded as making a plantation: *Bholanath v. Uma Churn*, 14 Cal. 440 at p. 444.

Dwelling-
house con-
sisting of
huts not
protected.

A dwelling-house to be exempted under s. 37 of Act XI of 1859 must be a dwelling-house of a permanent character and mere huts would not come under that description: *Makar Ali v. Shyama Charan*, 3 C.W.N. 212. A tin-shed is not a permanent building within the meaning of s. 37 of the Revenue Sale Law. *Kiran Chandra v. Naimuddin*, 30 Cal. 498. The plaintiffs, purchasers at a revenue sale, sought to eject the defendant from a piece of land measuring a little over one bigha: the defendant pleaded that he had his dwelling-house, tank and trees on the holding; it was found that the dwelling-houses consisted of certain huts and that the so-called tank was some two or three cubits in extent; as to the trees there was no finding that there was anything in the shape of a plantation or garden, *held* that upon the findings no case had been made out for exemption of any portion of the land: *Mahar Ali v. Syama Charan*, 3 C.W.N. 212.

Improve-
ment.

S. 37 cl. (4) of Act XI of 1859 contemplates improvements or works of a permanent character, and they are protected irrespective of whether the lease was or was not given for the purpose of the work in question, but the work must still be in existence: *Shohodora v. Sarbosobha*, 20 C.L.J. 494; the fact there was once a garden would not protect the land: *Ibid*.

Garden.

A resident and hereditary cultivator although he holds under a

miras patta cannot be ejected by a purchaser of a Putni tenure sold in execution of a Putni Sale under Reg. viii of 1819: *Sarbananda v. Rana Gazi*, 18 C.L.J. 334. Reg. VIII
1819—
Resident
and heredi-
tary cultiva-
tor.
Plantation
—Betel—
leaf, *Baroj*.
Assemblage
of plants.

A betel leaf *Baroj* may be a plantation within the meaning of s. 160: *Banko Behari v. Krishna Chandra*, 18 C.W.N. 349, s. c., 18 C.L.J. 170. (Jenkins C.J. and Mookerjee J. confirming the judgment of N. Chatterjee on Letters Patent appeal). Whether or not a particular assemblage of plants comes within s. 160 (c) is largely, if not conclusively, a question of fact: *Ibid*.

The interest of a tenant in land on which a *boroj* or betel cultivation has been made is a protected interest within the meaning of s. 160, although the tenant does not hold the land under a permanent lease: *Abhoya Charan v. Kamini Probha*, 53 I.C. 188; the case of *Banko Behari v. Krishna Chandra*, 18 C.W.N. 349, s. c., 18 C.L.J. 170 relied on; *Jogendra Narain v. Kiran Chandra*, 46 Cal. 730, s. c., 23 C.W.N. 315, distinguished.

5. Cl. (d): Right of Occupancy:—The expression “right of occupancy” in s. 37 of Revenue Sale Law is not limited to the right that could be acquired under the rules laid down in Act X of 1859 but also covers right of occupancy that might be acquired under laws promulgated since 1859: *Sarat Chandra v. Asiman Bibi*, 31 Cal. 725, s. c., 8 C.W.N. 601. In a suit for khas possession by an auction-purchaser at a sale for arrears of revenue against an occupancy raiyat, for lands lying within the ambit of the estate, held that the onus was *prima facie* on the defendant to shew that at the date of the plaintiff’s auction purchase the defendant held the land as a raiyat within the meaning of s. 37 of the Revenue Sale Law or s. 21 of the Bengal Tenancy Act: *Ambika v. Dya Gazi*, 10 C.W.N. 497. Act XI of
1859.

The status of a fixed raiyat can be combined with that of an occupancy raiyat. A fixed raiyat may acquire a right of occupancy under ss. 20 and 21 and his interest is a protected interest within the meaning of s. 160: *Sarbeshwar v. Bejoy Chand*, 49 Cal. 280, s. c., 26 C.W.N. 15, s. c., 34 C.L.J. 233. (Sanderson C.J. and Richardson J.). [Contrary view taken by Mookerjee J. (Jenkins C.J. not expressing any opinion) in *Bhutnath v. Surendranath*, 13 C.W.N. 1025, s. c., 11 C.L.J. 298, was considered to be *obiter*.] The case of *Sarbeswar v. Bejoy Chand*, 49 Cal. 280, was followed in the case of *Midnapur Zemindari Co. v. Sadhumoni*, 54 Cal. 681 (Duval and Mitter J.J.), where the dictum of Mookerjee J. in *Bhutnath v. Surendranath*, 13 C.W.N. 1025, was not followed. See also *Rajmohini v. Nagendra*, 94 I.C. 310 (Surhawardy and Mukerjee J.J.). A raiyat
at fixed rate
may have a
right of
occupancy.

See notes under s. 4, heading No. 6, pp. 73, 74.

The expression “right of occupancy” in s. 37 of Act XI of 1859 (Revenue Sale Law) covers “right of occupancy” that might be acquired under laws promulgated since 1859: *Sarat Chandra v. Asman Bibi*, 35 C.L.J. 212. Act XI
of 1859—
Right of
occupancy.

Where an occupancy raiyat subsequently acquired a *mokurari* right, held that even if the *mokurari* right be extinguished under s. 16, Act VIII of 1865 (B.C.), he was not liable to ejectment as he had occupancy right still: *Bama Charan v. Ram Kanai*, 19 C.W.N. 858.

It has been held by Doss J. that an occupancy raiyat may have a permanent right in his holding: *Sheik Latifar v. A. H. Forbes*, 14

C.W.N. 372. The words "permanent right" have been used in the sense that the landlord is not entitled to eject the tenant and not, in the sense that the rent is fixed.

Interest of under-raiyat with a right of occupancy by custom

There is no case-law as to whether the interest of an under raiyat with a right of occupancy by custom comes within the meaning of "any right of occupancy" in cl. (d) of s. 160 of this Act and as such is a protected interest under that section. The words "any right of occupancy" by themselves seem to be comprehensive enough to include the right of occupancy acquired by custom by an under-raiyat.

6. Clauses (d) and (f):—These two clauses, if read together, would show that the right of occupancy is protected merely, but the amount of rent is not protected if originally unfair; so if the rent of an occupancy raiyat which was fixed was unfair or unreasonable at the date of the fixing of the rent, the rent is liable to be revised and a suit may be brought for assessment of fair rent. According to the provisions of s. 27 the burden of proof is upon the landlord to prove that the rent is unfair.

Meaning of "Permission to create."

7. Cl. (g)—Permission to create: Ss. 3 and 4 of Regulation VIII of 1819 cannot be so read as to hold that, by them, the landlord expressly gives the *durputnidar* permission to create a mortgage within the provisions of s. 160 (g) of the Bengal Tenancy Act: *Akshoy Kumar v. Maharajah Bejoy Chand*, 29 Cal. 813: s. c., 6 C.W.N. 249 (notes): a mortgage created by a *durputnidar* of his interest in the taluk does not therefore amount to a protected interest within the meaning of s. 160 (g) of the Bengal Tenancy Act: *Ibid.* A *putni-kabuliyat* contained the following clause:—"If I (putnidar) should let out this mehal in *durputni* to any person, such *durputnidar* shall act according to the terms of my *kabuliyat*," held, that it did not contain even the implication of a permission to create a lease, assuming that the *putni* patta contained a counterpart of the clause: *Muhammad Kazem v. Naffar Chandra*, 32 Cal. 911, s. c., 9 C.W.N. 803; where there was some evidence to shew that the proprietor knew of the creation by the *putnidar* of a sub-tenure and accepted the rent of the *putni* taluk through the sub-tenure holder, held that this was not sufficient to constitute the sub-tenure a protected interest within the meaning of this Act: *Ibid.* See notes under s. 162.

Rights to make gift mortgage etc., in a Putni kabuliyat not an express authority in writing.

Where a *putni kabuliyat* provided as follows:—"I in succession to my sons, grandsons, etc., heirs and representatives, shall with felicity, held and enjoy the aforesaid share, with right to make gift, sale, mortgage, etc. and *durputni*, *mourasi mukurari*, *gantidari*, etc., settlements at a proper *jama* and to every way make alienations and create encumbrances"; and the *putnidar* created a mortgage, held that the recitals in the *kabuliyat* merely set out the ordinary incidents of a *putni grant* as laid down in s. 3 of the Putni Regulation and did not give the *putnidar* an express authority in writing by the landlords to create a mortgage and the mortgage created by the *putnidar* was not a "protected interest" within the meaning of s. 160 cl. (g): *Kristadas v. Jitendra Nath*, 16 C.W.N. 561: the effect of s. 160 cl. (g) is subject to the saving provisions of cl. (e) of s. 195: *Ibid.*

Right granted to enjoy by making *Prajabili*.

A granted to B a lease to enjoy the property by making *prajabili* etc. (i.e. by subletting tenants and otherwise); B settled C upon the land, and D held the land under C; B's tenure was sold for arrears of rent; the purchaser served notices of annulment upon C. and D.,

held by D. Chatterjee J., that the interest of C and consequently of D was protected interest: *Afazuddi v. Prasanna Gain*, 39 Cal. 138; Jenkins C.J., accepting the interpretation put upon by D. Chatterjee J. upon the Bengalee words agreed with his conclusion.

Where a *Durputni* patta contained the following words: "I give you a right to alienate the land at pleasure by gift and sale and to grant *sepulni* by settlements of your own interest"; it was held that the words were sufficient to authorise the creation of a subtenancy within the meaning of Cl. (g) of s. 160. *Bidhumukhi v. Asmatulla*, 21 C.W.N. 829, s. c., 24 C.L.J. 180; the cases of *Krista Das v. Jitendra Nath*, 16 C.W.N. 561 and *Afazuddi v. Prosanna*, 39 Cal. 138 were distinguished, but it is submitted with great respect that the case of *Krista Das v. Jitendra Nath*, 16 C.W.N. 561 can hardly be distinguished.

Where a *durpatnidar* was allowed to have full rights to grant leases or create incumbrances subject only to the restrictions that if the *durputni* was sold for arrears of rent, the subordinate titles created by the *durputnidar* should at the same time come to an end, held that this agreement did not contravene the provisions of sec. 159 of the Bengal Tenancy Act or s. 10 of the Transfer of Property Act: *Madhusudan v. Midnapur Zemindary Co.*, 45 Cal. 940. Durputni. Restrictions.

A general authority contained in a *darpatni patta* expressly stating that the *darpatnidar* may grant *sepadni* settlements is sufficient to protect from annulment a *sepadni* created by the *darpatnidar* as a protected interest within the meaning of s. 160 (g) of the B. T. Act, and a special permission in each case is not required: *Bidhumukhi Chaudhurani v. Asmatulla*, 23 I.C. 899.

A held under a sublease granted by B who held under a permanent lease granted by C. C. again holding under a permanent lease by D; the lease given by D to C authorised C to grant sub-leases, held that the right and interest of B and therefore of A are "protected interest" and are not such as can be interfered with by a purchaser under the Bengal Tenancy Act: *Afazuddi v. Prasanna*, 39 Cal. 138. Non-occupancy raiyat.

A non-occupancy raiyat is not prohibited from subletting and may create a protected interest under cl. (g), if his landlord allows him to do so: *Ram Lal v. Bhela Gazi*, 37 Cal. 709. Authority to grant sub-lease.

A mortgage of a *patni* created with consent and for benefit of the zemindar is protected interest within s. 160 (g): *Harimohon v. Purendranath*, 90 I.C. 955. As to decree on a mortgage of non-transferable occupancy holding: *Badlu v. Sibram*, 7 Pat. 155.

8. Miscellaneous Cases:—An agreement by a former owner making over a portion of the former proprietor's estate to another party is not binding upon the auction-purchaser of the estate at a sale for arrears of revenue: *Bykant Nath v. Ameerunnissa*, 2 W.R. 191 (at p. 193). Agreement with former owner.

A suit does not lie against a present proprietor (auction-purchaser) for damages for injury done to the land during the time of the former proprietor: *The Collector of 24-Parganas v. Joynarain*, W.R. Spl. No., p. 17. Injury by private proprietor.

Where a purchaser of a *putni* tenure at a sale for arrears of rent brought a suit against a person for recovery of possession and declaration of title within 12 years from the date of sale and the defendant proved that his adverse possession commenced before the creation of Adverse possession

the putni tenure, *held* that the suit was barred by limitation and Art 121 of Sch. II of the Limitation Act (XV of 1877) applied: *Kalika-nanda v. Biprodas*, 19 C.W.N. 18, s. c., 21 C.L.J. 265.

Customary
right to
cut trees.

A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII of 1819: *Prodyat Kumar v. Gopi Krishna*, 37 Cal. 322, s. c., 14 C.W.N. 487: * s. c., 11 C.L.J. 209. A purchaser of a putni taluk at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown during the subsistence of the putni; and which occupancy raiyats entitled to appropriate and convert to their own use such trees as they have the right to cut down in as much as he is not entitled to convert a *bonafide* engagement made by the defaulting proprietor with the resident and hereditary cultivators. *Ibid*.

Putni
Regulation
s. 11.

The proviso in the third clause of sec. 11 of the Putni Regulation does not mean that persons in occupation not coming within the definition of *khudkhast* raiyats are liable to be ejected even if they have acquired occupancy rights under the Bengal Tenancy Act: *Rash Behari v. Hemanta Kumar*, 54 Cal. 788.

Reclama-
tion lease.

Where land was let out to a tenant for purposes of reclamation at a progressive rate of rent, which, when minimum, was fixed in perpetuity and it was further provided that the land was to be held by tenant from generation to generation who might transfer the same and construct houses etc., *held* that the tenancy was in the nature of a tenure and therefore not a protected interest under s. 160: *Akhil Chandra v. Surendra Nath*, 11 C.L.J. 87. The case was followed and referred to in the judgment of Mookerjee J., in the case of *Bhutnath v. Manmatha Nath*, 13 C.W.N. 1025, s. c., 11 C.L.J. 98.

Annulment
of higher
interest
necessarily
annuls sub-
ordinate
interest.

Where a putni is sold, the annulment of the durputni necessarily carries with it the extinction of the *seputki* which is not a protected interest: *Makhan Das v. Ramchandra*, 17 C.W.N. 1064.

Purchase of
an estate by
Putnidar.

Where an entire estate was sold for arrears of revenue under Act XI of 1859 free from encumbrances and purchased by the putnidar of the estate (the putni being protected as being specially registered under that Act), *held* that the purchaser (who was the putnidar) was not entitled to annul the subordinate interest under the putni, even if it might be held that the putni was merged in the higher interest: *Satcowri v. Priyanath*, 18 C.W.N. 672.

As to whether a notice is necessary to annul an under-raiyati lease created in contravention of s. 85, see notes under s. 167.

Meaning of
"incum-
brance" and
"registered
and notified
incum-
brance."

161. For the purposes of this Chapter—

(a) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement of other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(b) the term "registered and notified incum-

* The names of the parties as given in 14 C.W.N. 487, are *Pradyot Kumar v. Rakhal Chandra*.

brance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided ;

- (c) the terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under subsection (1) of section 68.

Headings of Notes.

1. AMENDMENT.
2. CREATED BY THE TENANT.
3. ADVERSE POSSESSION.
4. SALE.
5. EXCHANGE OF LAND.
6. SALE PROCLAMATION.
7. SALE DOES NOT *ipso facto* CANCEL INCUMBRANCE.
8. WHAT AMOUNTS TO ENCUMBRANCE.
9. ANNULMENT OF UNDER-TENURE.
10. ANNULMENT OF HIGHER INTEREST NECESSARILY ANNULS SUBORDINATE INTEREST.
11. BURDEN OF PROOF.
12. MISCELLANEOUS CASES.

1. Amendment :—Cl. (c) was added by the Amending Acts of Bengal and East Bengal, Act I B. C. of 1907 and Act I. E. B. A. of 1908.

2. Created by the tenant :—The words "any other right or interest created by the tenant on his holding or in limitation of his own interest therein" in s. 161 (1) refer to some right which is *ejusdem generis* with the words "lien, subtenancy, easement" in the same subsection: *Mahadeo Lal v. Langat Singh*, 2 Pat. L.J. 457. Whatever may be the nature of the particular incumbrance, it must be the *creation of the tenant* ; so a mortgage created by the operation of s. 171 of the Act is not an incumbrance and as such not liable to be avoided by the purchaser of a tenure at a sale in execution of a decree for arrears of rent: *Pasupati v. Narayan*, 24 Cal. 537, s. c., 1 C.W.N. 519.

An incumbrance must imply a limitation of the rights of the tenant and not a total extinction of them ; a sale of a portion of a non-transferable occupancy holding is not an encumbrance within the meaning of s. 86 sub-secs. (6) and (7): *Tamizuddin v. Khoda Newaz*, 14 C.W.N. 229, s. c., 11 C.L.J., 16. It was however observed in *Jogeshwar v. Ahed Mohomed*, 3 C.W.N. 13 that "a lease just as a sale, gift or mortgage, must come, within the meaning of the word incumbrance":

Attachment.

Where during proceedings in execution of a money decree a revenue-paying estate was sold for arrears of revenue, *held* that the attachment did not create any incumbrance within the meaning of s. 54 of the Revenue Sale Law (Ac^t XI of 1859): *Mahadeo v. Thakur Prasad*, 14 C.W.N. 677, s. c., 11 C.L.J. 528.

Sublease by a non-occupancy raiyat.

An incumbrance may be created by a non-occupancy raiyat on his holding in limitation of his own interest, however limited, by way of sub-lease: *Ram Lal v. Bhela Gazi*, 37 Cal., 709.

Mortgage, is an incumbrance.

A mortgage is an incumbrance within the meaning of s. 161, and a mortgage security is not extinguished till the sale has taken place in execution of the mortgage decree and the proceeds have been distributed in satisfaction of the sum due to the mortgagee: *Joynarain v. Badri Das*, 16 C.L.J. 156. The incumbrance of a mortgagee decree-holder is liable to be annulled by the purchaser at a sale for arrears of rent: *Ibid.* But see *Badlu v. Sibram*, 7 Pat. 155.

Interest of usufructuary mortgagee, if incumbrance.

The interest of an usufructuary mortgagee or mortgagee by way of conditional sale in a portion of a non-transferable holding is not an incumbrance within the meaning of s. 161: *Abdul Gaffur v. Golam Rahaman*, 39 I.C. 460; it need not be annulled by a notice under s. 167: *Ibid.*

Interest of a mortgagee of a part of holding purchasing the holding in execution of his mortgage decree, is an incumbrance.

The interest of a mortgagee of a part of a holding who has purchased the holding in execution of his mortgage decree is an incumbrance within the meaning of s. 161: *Indra Narain v. Nabin Chandra*, 47 I.C. 847; the case of *Banbihari v. Kheltra Pal*, 38 Cal. 923, s. c., 16 C.W.N. 259 was followed.

A mortgage of a portion of a non-transferable occupancy holding is an incumbrance and is necessary to have it annulled under s. 167: *Prankrishna v. Atulkrishna*, 22 C.W.N. 662.

An usufructuary mortgage of a non-transferable occupancy holding is an incumbrance within the meaning of section 161 (a), Bengal Tenancy Act, 1885. A purchaser of the holding at a rent sale must annul such incumbrance within one year, as required by section 167 of the Act, or he loses all right to annul it: *Har Gobind v. Ram Chandra*, 6 Pat. 235 (Adami and Macpherson, J.J.).

The case of *Mahadeo Prasad v. Sheik Azmat*, 1 Pat. L.J. 108, followed.

The cases of *Lala Muralidhur v. Surat Lal*, 3 Pat. L.J. 362, *Jogarnain v. Badri Das*, 16 C.L.J. 156, *Sital Chandra v. Parbati Charan*, 35 Cal. L.J. 1, and *Bidhumukhi v. Bhabasundari*, 24 C.W.N. 961, referred to.

The position of a landlord purchasing a holding at a rent sale is different from that of an ordinary purchaser, who in fact steps into the shoes of the original tenant and becomes a tenant of the landlord. A tenant-purchaser of a non-transferable occupancy holding cannot, on the ground of non-transferability, eject a mortgagee whose incumbrance has not been annulled under section 167.

A purchaser at a rent sale who has not, under section 167, annulled a mortgage of the holding is, however, entitled to redeem the mortgage; but the mortgagee cannot redeem or otherwise exercise his right of redemption as against the auction-purchaser. The cases of *Bidhumukhi v. Bhabasundari*, 24 C.W.N. 961 and *Sital Chandra v. Parbati Charan*, 35 C.L.J. 1, followed.

The case of *Meherunnessa v. Shyam Sunder*, 6 C.W.N. 834, not followed.

The case of *Chiodetti v. Quadress*, 1 P.L.J. 161 and *Surat Lal v. Muralidhar*, 4 P.L.J. 362, distinguished.

A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Reg. VIII of 1819: *Prodyote Kumar v. Gopi Krishna*, 37 Cal. 322, s. c., 14 C.W.N. 487, s. c., 11 C.L.J. 209. Customary right to cut trees.

It was held in a case under Reg. VIII of 1819 that a purchaser of a *putni* under that Regulation free from incumbrances is not bound by a decree by virtue of which a suit for rent by the sold out proprietor was dismissed against a tenant on the ground that there was no relationship of landlord and tenant: *Satish Chandra v. Munjamati*, 17 C.W.N. 340. Decree against a former tenant.

An under-raiyati tenancy created in contravention of s. 85 is not required to be annulled by a landlord who purchased the raiyati right at a sale in execution of a decree for arrears of rent; the landlord can take *khas* possession of the same without being required to annul it by a notice; the under-raiyati interest in such a case is not an incumbrance: *Fakir Chandra v. Banamali*, 18 C.L.J. 252; *see also *Peary Mohun v. Badal Chandra*, 28 Cal. 205; see also *Gangadhar v. Rajendra Nath*, 17 C.W.N. 860; see also *Asutosh v. Banamali*, 19 C.W.N. 412.† See also *Joynal v. Kazem*, 22 C.W.N. 68 (notes); the under-raiyat holding under an under-raiyat who held under an invalid lease is not protected: *Ibid.* Under-raiyati tenancy.

The interest of the under-raiyat is an "incumbrance" within the meaning of sec. 167 of the Bengal Tenancy Act which a stranger purchasing at a sale for arrears of rent is bound to annul according to the procedure laid down in sec. 167 of the Bengal Tenancy Act, and where this procedure has not been followed the purchaser is not entitled to eject the under-raiyat. *Janaki Nath Hore v. Pravasini Dasi*, 43 Cal. 178, s. c., 19 C.W.N. 1077.

An under-raiyati interest is an "incumbrance," but to be so it must be such an under-raiyati interest as the law recognises as valid: *Jnanendra v. Royman Sheikh*, 31 C.W.N. 580 (Mukerji and Graham, J.J.). The word "sub-tenancy" in s. 161 cl. (a) which may be treated as an "incumbrance" as against the superior landlord must be one which is valid against him. Under-raiyati interest exceeding 9 years, if incumbrance.

A purchaser of an entire estate sold for arrears of revenue suing to recover land claimed by the defendant as *lakheraj* must prove a *prima facie* case that his *mal* land has since 1790 been converted into *lakheraj*; the fact that the lands are within the ambit of the estate is not sufficient to meet this burden: *Krishna Kalyani v. Braunfield*, 20 C.W.N. 1028. Lakheraj.

Interest voidable on the sale of an occupancy holding referred to in s. 170 are those interests which are incumbrances under s. 161; *Rameshwar Singh v. Raghunandan*, 1 P.L.J. 403, s. c., 38 I.C. 337. S. 170.

* Mookerjee J., in delivering the judgment did not pronounce any opinion upon the question as to the precise position of a stranger who purchases at a sale held in execution of a decree for arrears of rent.

† An under-raiyati lease registered in contravention of s. 85 sub-sec. (2), is not operative against the superior landlord of the occupancy raiyat: *Ashutosh v. Banamali*, 19 C.W.N. 412, also see *Jarip Khan v. Dorja Beza*, 17 C.W.N. 59 and *Manik Boral v. Bani Charan*, 13 C.L.J. 619, also see notes under s. 85.

Charge of a landlord in respect of his rent, not an incumbrance.

The charge which the landlord has in respect of his rent is not one created by law under s. 100 of the T. P. Act ; such charge is not an incumbrance within the meaning of s. 161 of the B. T. Act : *Satyasankar v. Monomohan Guha*, 22 C.W.N. 131.

Where the holder of a tenure granted an under tenure at a rent of Rs. 45 and then sold by a conveyance to the under tenure-holder his right to receive rent to the extent of Rs. 33 out of the said sum of Rs. 45, *held* that what was assigned to the under-tenure-holder was an incumbrance within the meaning of s. 161 : *Birendra Kishore v. Ahamud Ali*, 41 I.C. 687.

Adverse possession, an incumbrance under the Revenue Sale Law ;

also under the Putni Law ;

also under the Assam Land and Revenue Regulation ;

also under the Bengal Tenancy Act.

Adverse possession.

Statutory title acquired by adverse possession.

3. Adverse Possession :—It has been held that a right created in a person by adverse possession against the sold-out proprietor is an incumbrance which is a purchaser at a revenue sale, acquiring rights under s. 37 of Act XI of 1859 (or under the old Sale-law repealed by that Act) is entitled to set aside : *Karmi Khan v. Brojo Nath*, 22 Cal. 244 (at p. 251) : see also *Thakoor Dass v. Nabeen*, 15 W.R. 552 ; *Goluck Monee v. Huro Chunder*, 8 W.R. 62 ; *Narain Chunder v. Taylor*, 4 Cal. 103. Such a right has also been held to be an incumbrance within the meaning of the Putni Regulation (VIII of 1819) : *Khantomoni v. Bijoy Chand*, 19 Cal. 787 ; *Lukhmeer v. Collector of Rajshaye*, S. D. A. 1851, p. 116 ; *Ram Sunker v. Bijoy Govind*, S. D. A. 1852, p. 824.

An adverse possession has also been held as an incumbrance within the meaning of s. 70 of the Assam Land and Revenue Regulation : *Musuzah v. Brojendra*, 20 C.L.J. 210. The period of limitation for adverse possession against the purchaser at a sale for arrears of revenue under Act XI of 1859 only commences to run from the date of the sale : *Surja Kant v. Sarat Chandra*, 20 C.L.J. 563.

Where a purchaser of a tenure at a sale in execution of a decree for arrears of rent brought a suit for possession against a trespasser within 12 years of the date of his purchase and it was found that the defendant had acquired a title by adverse possession and the possession commenced from before the creation of the tenure, *held* that the suit was barred by Art. 121 of Sch. II of the Limitation Act : *Kalikanund v. Biprodas*, 19 C.W.N. 18, s. c., 21 C.L.J. 265. The adverse possession contemplated in the decisions of *Naffer Chandra v. Rajendra Lal*, 25 Cal. 167, *Woomesh Chandra v. Rajnarain*, 10 W.R. 15, *Khantamani v. Bijoy Chandra*, 19 Cal. 187 and *Karim Khan v. Broja Nath*, 22 Cal. 244 is possession which commences after the creation of the tenure : *Ibid*.

Title acquired by adverse possession for the statutory period is an incumbrance within the meaning of s. 161 : *Munsabali v. Arsad-ulla*, 16 C.W.N. 831, s. c., 16 C.L.J. 539, following *Gocool v. Debendra*, 14 C.L.J. 136 ; see also *Maizuddi v. Ishan Chandra*, 15 C.W.N. 706, s. c., 13 C.L.J. 293. The interest of an adverse possessor is an incumbrance only when the adverse possession has continued for the statutory period : *Satish Chandra v. Munjamati*, 17 C.W.N. 340.* A title acquired by adverse possession of a portion

* It is submitted with great respect that a statutory title acquired by adverse possession is not an incumbrance either under the Revenue Sale Law (Act XI of 1859) or under the Bengal Tenancy Act ; a purchaser of an entire estate sold for arrears of revenue as well as a purchaser of a tenure or holding sold for arrears of a rent is however entitled to get *khas* possession by ejecting the person who had acquired a title by adverse possession against the sold-out owner of the estate, tenure or holding ; and as the statutory title acquired by adverse

of the lands comprised in a tenancy is an incumbrance: *Bhusan Chandra v. Srikantha*, 45 Cal. 756, s. c., 23 C.L.J. 485. A title claimed by adverse possession must be proved to have been created before the sale of the tenure: *Monmothanath v. Anath Bandhu*, 25 C.W.N. 106.

The term incumbrance in clause (g) of s. 161 includes a statutory title acquired by a trespasser by adverse possession provided such act of possession commenced after the tenure had been created. Such incumbrance can not be annulled in any manner other than that provided in s. 167: *Kalikanand v. Bipradas*, 21 C.L.J., 265; see also *Bhusan Chandra v. Srikantha*, 21 C.W.N. 155, s. c., 23 C.L.J. 485.

Possession of a trespasser during the continuance of a lease does not become adverse as against the lessor.

The possession of a trespasser during the continuance of a lease does not become adverse as against the lessor: *Hazra Sardar v. Kunja Behari*, 19 C.W.N. 18, s. c., 25 C.L.J. 635. The cases of *Davis v. Kaze Abdul*, 8 W.R. 55, and *Kisewar Nath v. Kalisankar*, 10 C.W.N. 343 were followed and the cases of *Prosunnamoyi v. Kalidas*,

possession is not an incumbrance within the meaning of the Bengal Tenancy Act, it is not necessary for a purchaser of a tenure or holding to annul the title acquired by adverse possession by any notice under s. 167 of the Act. The reasons why a statutory title acquired by adverse possession is not an incumbrance are stated as follows:—The case of a revenue paying estate may be taken first; suppose A is the owner of a revenue paying estate; B dispossessed A from a plot of land comprised in the estate and acquired a title adversely to A by 12 year's adverse possession. B then becomes a co-owner with A in the estate; and therefore when the estate is sold for arrears of revenue, the interest of A and B, i.e., of all the co-owners pass by the sale. See *Mohini Chandra v. Pyari Lal*, 25 C.L.J. 99; see also *Baikuntha nath v. Basanta Kumari*, 23 C.L.J. 151; see also *After Ali v. Brojendra*, 24 C.L.J. 60.

Mookerjee J., has held in the case of *Bhawani v. Mathura*, 7 C.L.J. at pp. 20, 21 that where the interest of the owner of an estate is acquired by another by purchase, his interest is not an encumbrance and that such interest passes by the sale of the estate under Act XI of 1859.

It is submitted that a statutory title acquired by adverse possession stands on the same footing as a title by purchase.

In the case of a tenure under the Bengal Tenancy Act the following illustration may be given:

A is a permanent tenure holder; B acquires a statutory title by adverse possession against A in respect to a portion of the lands comprised in the tenure; B then becomes a co-sharer of A in the tenure: B does not get his name registered in the landlord's office; the landlord brings a suit for rent against A the recorded tenant; by the sale of the tenure the interest of B, the unregistered tenant, also passes. The purchaser therefore acquires a title against both A and B in the tenure by virtue of his purchase.

It has been held by N. Chatterjea J., (Jenkins C. J., affirming on appeal under the Letters Patent), that a sale is not an encumbrance; *Abdul v. Ahmadar*, 19 C.W.N. 1217, s.c., 22 C.L.J. 356; it is submitted that a person acquiring a title by adverse possession stands on the same footing as a purchaser.

The question as to whether a person who acquires a title by adverse possession to certain lands against a putnidar becomes a co-sharer with the putnidar and as an unrecorded co-sharer his interest ceases at the sale of a putni for arrears of rent arose in the case of *Manmatha v. Anath Bandhu*, 23 C.W.N. 201 at p. 222 but their Lordships (N. Chatterjea and Greaves J.J.), did not express any opinion:

It has been held that when a share of an estate is sold for arrears of revenue the purchaser gets not the right of the defaulter but the share sold, even if a person acquired by adverse title a right to the share against the ex-proprietors. *Rahmuddi v. Nalini*, 10 C.W.N. 407; followed in 43 Cal. 46, see also *Bhawani v. Mathura*, 7 C.L.J. 20. Where a trespasser did not acquire a title by adverse possession at the date of the sale of the estate for arrears of revenue under the Assam Land and Revenue Regulation, held that he was not a defaulting proprietor, and the delivery of symbolical possession could not avail against him: *Jitendra Kumar v. Mahendra Chandra*, 24 C.L.J. 61.

9 C.L.R. 347 and *Brindaban v. Bhoopal Chunder*, 17 W.R. 377 were dissented from. See also *Udai Kumar v. Katyani*, 35 C.L.J. 292.

Where no adverse possession.

A trespasser who has not acquired a title by adverse possession is not a defaulting proprietor and is bound to surrender possession when an estate is sold for arrears of revenue: *Jabāda Khatun v. Tulsi Charon*, 36 C.L.J. 472.

Adverse possession against proprietor of revenue-paying estate.

It is submitted that a person who has acquired a title by adverse possession against the sold out proprietor of an estate becomes in law a proprietor, and when the revenue was defaulted in the payment of rent he was a defaulting proprietor, and therefore the purchaser at a sale for arrears of revenue is entitled to oust him not as an encumbrance holder but as a defaulting proprietor, his interest having passed by the sale. (See in this connection *Baikuntha v. Basanta*, 23 C.L.J. 151).

A title acquired by adverse possession is an incumbrance, and therefore a purchaser in a rent-sale cannot recover possession without annulling the incumbrance under s. 167: *Jnanendra v. Umesh*, 26 C.W.N. 985. [There was a difference of opinion between Walmsley J. and Suhrawardy J.; the former holding that Art. 137 of the Limitation Act applied while the latter held that Art. 140 or Art. 144 applied; owing to this difference the question was referred to Woodroffe J.; who having held that the Articles in the Limitation Act did not apply but the suit was barred in as much as the incumbrance had not been annulled under s. 167 B. T. Act and thus having differed from both the judges the reference was out of order.]

Adverse possession—s. 167.

An interest created by adverse possession is an encumbrance and must be annulled by a notice under s. 167: *Ishan Chandra v. Safatulla*, 26 C.W.N. 703, s. c., 35 C.L.J. 36.

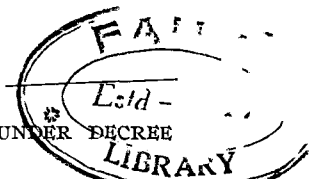
Adverse possession—Privy Council decision.

The Privy Council in the case of *Bipradas v. Kamini Kumar*, 48 I.A. 499, s. c., 49 Cal. 27, s. c., 26 C.W.N. 465 (P.C.), did not decide the question as to whether an interest not directly created by the tenant but allowed to grow up by his sufferance and negligence is an incumbrance. Their Lordships remarked that there is apparently a current of decisions to the effect that such an interest is an incumbrance, and their Lordships did not express a final opinion.

Sale of non-transferable occupancy holding, if incumbrance.

4. Sale :—The interest of an unregistered purchaser of a portion of a *putni* tenure is not an “incumbrance” within the meaning of s. 161 of the Bengal Tenancy Act and need not be annulled under s. 167 by the purchaser of the tenure at a sale in execution of a rent-decree obtained against the registered tenant: *Abdul Rahaman v. Ahmadar Rahaman*, 43 Cal. 558, s. c., 19 C.W.N. 1217, s. c., 22 C.L.J. 356. The sale of a portion of a non-transferable occupancy holding is not an incumbrance within the meaning of sub-secs. (6) and (7) of s. 86: *Tamijuddi v. Khoda Newaj*, 14 C.W.N. 229, s. c., 11 C.L.J. 16; see also *Mahadeo Lal v. Langat Singh*, 2 Pat. L.J. 457 and *Mahanli Lal v. Harkissen*, 19 C.W.N. 176 (notes portion); *Bijoy Krishna v. Surendranath*, 46 Cal. 891, s. c., 30 C.L.J. 4. See also *Jharu Mandal v. Kshettra Mohan*, 54 Cal. 15, s. c., 30 C.W.N. 729, s. c., 43 C.L.J. 554 (F.B.), and *Barada Prasad v. Foizuddi*, 28 C.W.N. 845, where it has been held that the transfer of the whole or portion of a non-transferable occupancy holding is not an incumbrance.

A landlord purchaser at a sale in execution of his rent decree is not required to annul the interest of a non-transferable occupancy



holding : *Fazarali v. Pooroo Mian*, 28 C.L.J. 266; the case of *Tamijuddin v. Khoda Newaz*, 11 C.L.J. 16 was followed.

5. Exchange of land :—Exchange of land is an incumbrance within the meaning of s. 161 : *Chandra Shai v. Kali Prosanna*, 23 Cal. 254. But it has been held that a sale is not an incumbrance : *Abdul Rahaman v. Ahmadar Rahman*, 43 Cal. 558, s. c., 19 C.W.N. 1217. The case of *Chundra Shai v. Kali Prosanna*, 23 Cal. 254 has practically been dissented from by N. R. Chatterjea J., in the case of *Abdul Rahaman v. Ahmadar Rahman* ; his Lordship observed as follows at p. 1220 of 19 C.W.N., s. c., 22 C.L.J. 356 :—“But if there is no distinction between an ‘exchange’ and a sale’ * * * the view that an ‘exchange’ is in ‘limitation’ of the tenant’s interest is opposed to that taken in *Tamijuddin v. Khoda Newaz*, 14 C.W.N. 229, s. c., 11 C.L.J. 16, and if an exchange is in ‘destruction’ of the tenant’s right, it cannot be an ‘encumbrance’ within the meaning of s. 161 of the Bengal Tenancy Act. I have doubts about the correctness of the decision in the case of *Chundra Shai*, 23 Cal. 254 referred to above and in any case I think, it ought not to be extended further.”

Exchange,
if incum-
brance.

6. Sale-proclamation :—The absence of a specification in the sale-proclamation of the encumbrance to which a property advertised for sale is subject, and which are required by cl. (c) of s. 287 of the Civil Procedure Code to be specified, coupled with the fact that the value of the property as stated in the sale-proclamation was much below the proper price, amounts to a natural misrepresentation which must be treated as a material irregularity in publishing the sale within the meaning of s. 311, C. P. C. (Act XIV 1882) : *Moti v. Bhawani Kumari*, 6 C.W.N. 836.

Sale pro-
clamation.

7. Sale does not ipso facto cancel incumbrance :—A sale purporting to be under this chapter does not, *ipso facto*, cancel incumbrance. Notice must be given under s. 167 : *Beni Prosad v. Rewat Lall*, 24 Cal. 746 ; also *Kalicanund v. Bipradas*, 21 C.L.J. 265, s. c., 19 C.W.N. 18.

Sale does
not *ipso*
facto cancel
incum-
brance.

See notes under ss. 159 and 160.

8. What amounts to encumbrance :—Grant of lands rent-free or the grant of landlord’s *zerait* land to a tenant for the purposes of cultivation does amount to an encumbrance. Apart from mere dealings such as mortgages which create a charge upon the land, there are other dealings which amount to an encumbrance. Anything which interferes with the unrestricted rights of the proprietors as they then existed would be an encumbrance upon the land, even the granting of a lease of *zerait* lands, that is to say the lands which the landlord is entitled to hold in direct possession and to cultivate for his own purposes. A lease of such lands granted to an occupier in circumstances which would give him a right of occupancy over the land would amount to an encumbrance : *Mahadeo Prasad v. Gajadhar*, A.I.R. 1924, Pat. 362.

Gift, mort-
gage, grant
of *Zerait*
etc.

An intermediate interest created between a proprietary right and a *mokurari* is an incumbrance within the meaning of the Revenue Sale Law : *Shazada Begum v. Kokila*, 1 Pat. 38 :

Incum-
brance.

9. Annulment of under tenure :—Where the lands held by the under-tenants include lands not claimed by the purchaser, and they hold the entire lands under one *patta*, their entire holding forms an indivisible tenure which cannot be annulled in respect of a portion

only of the lands comprised in the *patta*: *Soocharam v. Doorga Charan*, 5 C.L.J. 264.

Annulment
of higher
interest
cancels sub-
ordinate
interest.

10. Annulment of higher interest necessarily annuls subordinate interest :

Illustrations.

(1)

A purchases a putni tenure at a sale in execution of a decree for arrears of rent free from all encumbrances ; A annuls a durputni tenure by a notice under s. 167 ; the seputni tenure is necessarily annulled and no separate notice is necessary.

See *Mofizuddin v. Ashutosh*, 14 C.W.N. 352.

(2)

A purchases a putni tenure at a sale in execution of a decree for arrears of rent free from all encumbrances ; A annuls a durputni tenure by a notice under s. 167 ; the right of B who acquired a title by adverse possession against the durputnidar is necessarily annulled.

See *Monmotha v. Anath Bandhu*, 25 C.W.N. 106.

Usu-
fructuary
mortgage
from under-
tenant, not
an incum-
brance.

A usufructuary mortgage not from the defaulting tenant but from his under-tenant is not an incumbrance: *Debi Raut v. Ashutosh Bhattacharya*, 21 I.C. 55 ; as long as the interest of the under-tenant, under whom the mortgagee holds, intervenes, the purchaser cannot touch the mortgagee. *Ibid.*

Onus.

II. Burden of Proof :—In regard to the question of onus the following rule was laid down in the case of *Somir Jama v. Mohabharat Raktu*, 16 C.W.N. 777 by Mookerjee and Teunon J.J. :—“The true rule plainly is that the burden is upon the purchaser to prove that the interest sought to be annulled is an ‘incumbrance’ within the meaning of cl. (a) of s. 161, and if he proves this, he starts his case sufficiently ; the burden then shifts upon the defendant to prove that he has a ‘protected interest’ within the meaning of s. 160.”

Burden
upon
purchaser.

The case of *Somir Jama v. Mohabharat Raktu*, 16 C.W.N. 777 was approved in the case of *Hari Moni v. Moti Sheikh*,* 16 C.W.N. 779. The existence of such a “protected interest” as a right of occupancy is a matter specially within the knowledge of the person claiming it and the onus under s. 106 of the Evidence Act is on him: *Ibid.* See also *Jogesh v. Rohini*, 21 C.L.J. 65.

Rent-free
land.

Where a tenure-holder makes a rent-free grant, it is an encumbrance created by him, and a purchaser of the tenure at a sale for arrears of rent is therefore entitled to annul the same by a notice under s. 167.

Rent-free
grant.

In a suit by a purchaser of a *putni* tenure (at a sale for arrears of rent) to recover possession of an alleged rent-free grant upon a notice under s. 167, it was held that the defendant's interest could not be deemed to be an encumbrance unless it was shewn by the purchaser that the Zemindar was in possession of those lands at the time when the *putni* was granted: *Kedarñath v. Bipradas*, 23 C.W.N. 182 ; s. c., 47 I.C. 765.

* See also the case of *Narmada Sundari v. Tarip Molla*, 9 C.L.J. 490, s.c., 13 C.W.N. 720 which was distinguished.

A purchaser at a revenue sale cannot annul a *lakheraj* tenure existing from before the Permanent Settlement as it is not an incumbrance: *Tarakishore v. Nabin Chandra*, 21 C.L.J. 637. Merely because the lands are situated within the geographical limits of the estate purchased under the Revenue Sale Law (Act XI of 1859) it cannot be said that they were *mal* lands and formed part of the Zemindari at the time of the Permanent Settlement; the auction purchaser must prove that the revenue was assessed on the basis of the assets of those lands: *Abdul Rahaman v. Baikunthanath*, 27 C.L.J. 133.

In a suit for khas possession free of incumbrance of lands on the ground that they were included within a taluk purchased by the plaintiff at a revenue sale it was found that the defendants held certain rent-free tenures within the estate and that these tenures existed from before the Permanent Settlement, *held* that the onus was on the plaintiff to prove that the lands in suit were included within the *mal* lands of the estate: *Halodhur v. Ramendra*, 16 C.W.N. 980.

A person seeking to annul tenancy as an incumbrance shall make out a case that the tenancy is, in fact, an incumbrance within the meaning of s. 161: it is not for the defendant to prove that his tenancy existed before the creation of the tenure purchased by the plaintiff: *Narmada Sundari v. Tarif Mollah*, 13 C.W.N. 720, s. c., 9 C.L.J. 490.

When a portion of a *taluk* existing from before the Permanent Settlement is transferred and that portion is subsequently held in proportionate *jama* under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk, the portion so transferred is also protected under sec. 37, Act XI of 1859: *Doyamayee v. Narendra Kishore*, 19 C.W.N. 79, following the case of *Mahendra Kishore v. Durga Charan*, 15 C.W.N. 515.

Where a plaintiff set up an *osut-taluk* as a protected interest within the meaning of s. 160 and the defendant set up that it was an incumbrance which he was entitled to avoid, *held* that the onus was upon the plaintiff to make out his case: *Jogesh Chunder v. Rohini Kumar*, 21 C.L.J. 65.

12. Miscellaneous cases:—Where certain lands were included within a mehal in the course of a *thak* survey determined by the survey authorities in a proceeding acquiesced in by all the parties, *held* that the same should not be disturbed unless upon the clearest proof that the same was erroneous: *Surja Kant v. Sarat Chandra*, 18 C.W.N. 1281 (P.C.).

A purchaser in execution of a rent-decree has the power to annul a mortgage incumbrance which has been transformed into a mortgage debt: *Basanta Kumar v. Khulna Loan Company*, 20 C.L.J. 1. See also *Jognarain v. Badri Das*, 16 C.L.J. 156.

Where a purchaser of a tenure at a sale held under the provisions of Act VIII of 1865 (B.C.) sued the person in possession for rent, and obtained an *ex-parte* decree, and then brought a suit for enhancement of rent to which the defendant pleaded that he was entitled to hold the land under a *mokurari patta* upon which the plaintiff withdrew his suit and brought a suit for ejectment, *held* that the plaintiff was not estopped from bringing the suit by reason of his having brought

a rent suit against the defendant: under s. 167 of the Act, he is allowed to avoid encumbrances and if the defendant would not accept the position of tenant offered him and pay a reasonable rent, the plaintiff is entitled to eject him: *Arsali v. Ram Satya*, 7 C.L.J. 191.

Application
for sale of
tenure or
holding

XIV of
1882.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Headings of Notes.

1. DECREE.
2. HIGH COURT RULES: GENERAL RULES AND CIRCULAR ORDERS OF THE HIGH COURT (1891), p. 31, CHAP. I, RULE 26.
3. OCCUPANCY HOLDING.

Decree in
s. 174.

1. Decree :—The word “decree” in s. 174 no doubt primarily refers to the decree as mentioned in s. 162, namely, the decree of which execution is sought for, but if in the meantime, that is to say, before the sale is actually held, the decree of the first Court is modified in appeal in favour of the judgment-debtor then necessarily “the decree” must be the decree of the Appellate Court: *Bhikhi Singh v. Bhanu Mahton*, 3 C.W.N. 231.

Zuripeshgi
claim.

A advanced some money to B upon a zuripeshgi lease of certain property and sub-let the same property to B; in execution of a decree for rent A sold not only the *thica* right held by B but also the zuripeshgi claim which B had against him, *held* having regard to the provisions of ss. 162 and 163 that nothing but the tenure in default could have been sold, and that therefore the sale of the claim which the defendant had against the plaintiff was altogether void: *Luchmiput v. Mandil Koer*, 3 C.W.N. 333.

High Court
Rules.

2. High Court Rules: General Rules and Circular Orders of the High Court (1891) P. 31, Chap. I, Rule 26 (c) :—Every person applying under sec. 162 of the Bengal Tenancy Act (VIII of 1885) for simultaneous attachment and sale of a tenure or a holding of a raiyat's holding at fixed rates, or applying only for the sale of such tenure or holding already under attachment, shall, in such application, specify the registered and notified incumbrances subject to which the tenure or holding is to be sold. Such specification shall be verified, in the manner prescribed by the Code of Civil Procedure, for plaints by the holder of the decree in execution of which the tenure or holding is to be sold, or by some other persons (approved of by the Court) if the Court be satisfied that he is acquainted with the facts mentioned in it. See Appendix—High Court Rules.

Occupancy
holding.

3. Occupancy holding :—When a landlord decree-holder takes proceedings under ss. 162 and 163 there is an assertion by him that the property about to be sold at his instance is at least an occupancy

holding: it is not open to the landlord to say to the purchaser that what was sold was not an occupancy holding: *Abdul v. Nekbar*, 17 C.L.J. 652.

163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

Order of attachment and proclamation of sale to be issued simultaneously. XIV of 1882.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code announce—

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

Headings of Notes.

1. RULES.
 2. SUB-SECTION (3) : SHALL ALSO BE PUBLISHED IN SUCH MANNER ETC.
 3. SALE OF ENTIRE TENURE.
 4. OCCUPANCY HOLDING.
- See notes under sec. 162.

Local
Government
Rules.

1. Rules :—The Local Government has framed the following rule :—

“The 20th February, 1886—Under s. 163 (3), Bengal Tenancy Act, the Lieutenant-Governor is pleased to direct that the proclamation referred to in that section as required by s. 287 of the Civil Procedure Code, Act XIV of 1882, shall, in addition to the plans prescribed in s. 163 (3) of the Bengal Tenancy Act, and in section 289 of the Code of Civil Procedure, be also published in the Malkachari or rent office of the estate, and at the local Thanna.”
Calcutta Gazette March 3, 1886, Part I, p. 142.

2. Sub-section (3) : shall also be published in such manner etc. :—According to a notification of the Local Government the proclamation is also to be published in the *Malkachari* or rent office of the estate and at the local *thanna*. See Appendix.

3. Sale of entire tenure :—Where proceedings are taken under this section the entire tenure and not merely the right, title and interest is sold : *Akhoy Kumar v. Bejoy Chand*, 29 Cal. 813.

4. Occupancy holding :—Where a portion of a non-transferable holding is mortgaged, the purchaser of the holding in execution of a decree at a sale for arrears of rent takes the property subject to the mortgage, and it may be annulled by a notice under s. 167 : *Pran Krishna v. Atul Krishna*, 22 C.W.N. 662. See also *Mohadeo v. Langat*, 2 Pat. L.J. 457.

Even if the heading of the proclamation of sale issued under s. 163 referred to s. 287 of the C. P. C. of 1882 (O. 21 rr. 66 and 70 of the Code of 1908) and not to s. 163 of the Bengal Tenancy Act and even if the proclamation did not state that the holding would be sold with power to annul all encumbrances, yet the purchaser has power to annul encumbrances : *Mahabir Prasad v. Beijulal*, 2 Pat. L.J. 176, s. c., 39 I.C. 230.

See notes under ss. 162 and 170.

Sale of
tenure or
holding
subject to
registered
and notified
incum-
brances,
and effect
thereof.

164. () When a tenure or holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Headings of Notes.

1. REGISTERED AND NOTIFIED INCUMBRANCES.
2. SALE OF A TENURE AT A PRICE BELOW THE DECRETAL AMOUNT.
See notes under s. 167.

I. Registered and notified incumbrances :—It seems that where part of the arrear for which a tenure or holding is sold accrued due more than three months before the service on the landlord of a copy of the registered instrument creating the incumbrance, such incumbrance will not be protected.

2. Sale of a tenure at a price below the decretal amount : Effect of sale at a price below the decretal amount.
—Where a tenure was sold in execution of a decree for rent which was for Rs. 291 and the tenure was purchased for Rs. 24, and the District Judge held that the purchaser acquired only the rights of a purchaser under the Civil Procedure Code, it was held in second appeal that the District Judge had overlooked the provisions of secs. 159 and 161 and sec. 164 sub-sec. (2) under which the purchaser was authorised to annul an incumbrance other than a registered and notified incumbrance: *Mohendra Narain v. Lalit Kumar*, 18 C.W.N. 64 (notes portion).

Where the bidding for a tenure put up to auction under s. 164 did not reach the decretal amount, and a sale of the tenure subsequently followed, but without a second proclamation as contemplated by s. 165, the sale must be held to have been an ordinary court sale and the purchaser to have acquired only the right, title and interest of the judgment-debtor: *Banbehari v. Khetra Pal*, 38 Cal. 923, s. c., 16 C.W.N. 259. This case was dissented from in the case of *Salimulla v. Rehenuddi*, 43 Cal. 263, s. c., 20 C.W.N. 156, s. c., 21 C.L.J. 659, and it was held that under s. 164, sub-sec. (1) if the bid does not reach a sum sufficient to liquidate the amount of the decree and costs, and the sale is concluded, the purchaser becomes entitled to annul all encumbrances, provided he follows the procedure laid down in s. 167; the decree-holder is not in peril if he decides not to pursue the remedy given to him by s. 165; the procedure in s. 165 is permissive merely.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances. Sale of tenure or 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 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of a
tenure
below
decretal
amount.

Notes :—Where a tenure was sold in execution of a decree for rent, but on the first day the bidding did not come up to the decretal amount, and the property was sold notwithstanding, without any fresh proclamation and sale under sec. 165, *held*, that as the sale could not in the circumstances be under sec. 164, it was not a sale under the Bengal Tenancy Act and did not operate to transfer more than the right, title and interest of the judgment-debtor ; *Banbihari v. Khetter Pal*, 38 Cal. 923, s. c., 16 C.W.N. 259. The special and stringent provision of the Bengal Tenancy Act relating to sales is part of a public policy intended for the benefit of all parties concerned. If the landlord wants special results to follow from it under the Act, he must proceed strictly in accordance with its provisions.—*Ibid*.

Where a tenure is notified for sale subject to registered and notified incumbrances, the sale which takes place operates as one under s. 164, sub-sec. (1), even though the amount for which it is sold does not reach a sum sufficient to liquidate the amount of the decree and costs : *Salimulla v. Rahenuddi*, 43 Cal. 263, s.c., 20 C.W.N. 156, s.c., 21 C.L.J. 659 ; the procedure prescribed in s. 165 is permissive and enacted solely for the benefit of the decree-holder : *Ibid*.

A sale was held on the first day fixed without the fresh proclamation provided for by the second part of sub-sec. (1) to s. 165, and the tenure was purchased for Rs. 26 only whereas the amount of the decree was Rs. 291 ; the lower appellate court held that the purchaser acquired only the rights of a purchaser under the Civil Procedure Code, *held* that the lower appellate court had overlooked the provisions of ss. 159, 161 and 164 (2) under which the purchaser was authorised to annul any incumbrance other than a registered or notified incumbrance : *Mohendra v. Lalit*, 18 C.W.N. 64 (notes portion).

Sale of
occupancy
holding
with power
to avoid
all incum-
brances,
and effect
thereof.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

Procedure
for annul-
ling incum-
brances
under the
foregoing
sections.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections *or under the Bengal Public Demands Recovery Act, 1913,** and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree *or a certificate signed under the Bengal Public Demands Recovery Act, 1913,** for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this Chapter *or that Act†* to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Headings of Notes.

1. MISCELLANEOUS CASES.
2. SALE DOES NOT IPSO FACTO CANCEL INCUMBRANCE.
3. MODE FOR ANNULING INCUMBRANCE.
4. PURCHASER.
5. HAVING POWER TO ANNUL AN INCUMBRANCE.
6. MORTGAGE.
7. WITHIN ONE YEAR FROM THE DATE OF SALE ETC.
8. DATE OF SALE.
9. NOTICE.
10. COLLECTOR.
11. MISCELLANEOUS CASES.
12. ONUS.
13. STANDING CROPS ON EJECTMENT.

I. Miscellaneous cases :—Where a tenure was sold after the Bengal Tenancy Act has come into operation in execution of a decree before that Act was in force, *held* that the provisions of the Bengal Tenancy Act would govern the annulment of under-tenures ; *Birendra Kishore v. Ahammad Ali*, 17 C.W.N. 619. Decree before the passing of B. T. Act

S. 167 applies to sales under Chap. XIV, and an under raiyat's interest cannot be sold under Ch. XIV, a purchaser of such right Under raiyati tenancy.

* The words and figures in italics were inserted by the Bengal Demands Recovery Act (III B. C. of 1913). For the words and figures Bengal Public Demands Recovery Act, 1913 read as follows for Bihar: Bihar and Orissa Public Demands Recovery Act.

† The words in italics were inserted by the Bengal Public Demands Recovery Act, 1913 and Bihar and Orissa Public Demands Recovery Act, 1914.

cannot annul an incumbrance under s. 167: *Munsab Ali v. Arsadulla*, 16 C.W.N. 831.

Purchase of an estate by Putnidar.

Where a *Putnidar* whose *putni* was registered and protected from being annulled at a sale of the estate for arrears of revenue, purchased the estate for arrears of revenue, held that he was not entitled to annul the subordinate interest under the *putni*; *Salcowri v. Priyanath*, 18 C.W.N. 672.

Omission to state in proclamation that holding will be sold with power to annul incumbrances does not debar the purchaser from annulling incumbrance.

The heading of the proclamation of sale issued under s. 163 of the Bengal Tenancy Act, referred to s. 287 C. P. C. (of 1882). O. 21 r. 70 C. P. C. of 1908) and not to s. 163 of the Tenancy Act and that the proclamation did not state that the holding would be sold with power to annul all encumbrances, held that the purchaser notwithstanding has the right to annul encumbrances: *Mahabir Prasad v. Bajul Lal*, 2 Pat. L.J. 176.

Mode of annulling incumbrance.

2. Sale does not ipso facto cancel incumbrance:—A sale purporting to be under this Chapter does not *ipso facto* cancel incumbrance: *Beni Prasad v. Rewat Lal*, 24 Cal. 746.

Purchaser includes transferee.

3. Mode for annulling incumbrance:—The mode prescribed by s. 167 for annulling an encumbrance is the only mode in which encumbrances can be annulled: *Shoshee Bhusan v. Gogan Chunder*, 22 Cal. 364. See s. 166.

Lessee.

Purchaser from a purchaser and lessee.

4. Purchaser:—(a) *Purchaser includes transferee:* The rights which are conferred upon a purchaser at a sale for arrears of revenue under s. 37 of Act XI of 1859 are rights which are capable of being transferred to another person: *Koylash Chunder v. Jabul Ali*, 22 W.R. 29. See also *Wahid Ali v. Rahat Ali*, 12 C.W.N. 1029: *Sooharam v. Doorga*, 5 C.L.J. 264.* A *Putnidar* has therefore the right to exercise such rights: *Koylash v. Jabul Ali*, 22 W.R. 29. This case has been followed in the case of *Sooharam v. Doorga Charan*, 5 C.L.J. 264, where it has been held that the rights acquired by a purchaser can be transferred and the transferee can avoid an encumbrance. A purchaser from a purchaser at a sale for arrears of Government revenue as well as a *putnidar* are persons who can sue to avoid encumbrances: *Ananda v. Kunja Behary*, 8 C.L.J. 177. See also *Shosi Bhusan v. Kramatulla*, 10 C.W.N. 48.

Putnidar.

But when a purchaser at a sale for arrears of revenue created a *putni* he cannot sue to annul a tenure within that *putni* as his whole right passes to the *putnidar* who alone can institute such a suit: *Sreemant v. Kookoor Chund*, 15 W.R. 481.

The "purchaser" includes an assignee including a lessee from the purchaser.†

* See also *Surnamoyee v. Suteesh Chunder*, 10 M.I.A. 123; s.c., 2 W.R. P. C. 13.

† "Board of Revenue Bengal. Before Mr. C. J. Stevenson Moore, C.V.O., I.C.S., Member of the Board. Case No. 71 of 1918. Pratap Chandra Sinha Ray and another-Petitioners.

Read a petition No. 71 of 1918 presented on the 9th August 1918 on behalf of Pratap Chandra Sinha and another against the order of the Commissioner of the Burdwan Division, dated the 8th July 1918, in the matter of annulment of incumbrances caused by Raja Jyot Kumar Mukerji under section 167 of the Bengal Tenancy Act.

Read also the records of the case submitted with letter No. 220, dated the 24th October, 1918, from the Commissioner of the Division.

(b) *Purchaser of a portion of a tenure or in execution of a decree in a suit for rent of several tenures*: A purchaser at a sale in execution of a decree obtained in one suit for rent of several tenures cannot avoid an incumbrance under s. 161: *Hridoy Nath v. Krishna Prasad*, 34 Cal. 298, s.c., 11 C.W.N. 497, s.c., 6 C.L.J. 153; (see also *Nanda Lal v. Sadhu Charan*, 7 C.L.J. 96 and *Baikantha Nath v. Takur Debendra*, 11 C.W.N. 676; *Mullukchand v. Satish Chandra*, 14 C.W.N. 335, *Bipradas v. Rajaram*, 13 C.W.N. 650, s.c., 11 C.L.J. 56, the reason being that a sale in execution of such a decree cannot be held under the procedure laid down in this chapter: *Hridoy Nath* Purchaser.

Resolution 4212.

The facts relevant to the case are as follows: Mohendra Nath Bhatta-chargee and others purchased a *darpatni* tenure at a sale in execution of a decree for rent free from all encumbrances in June 1915. In May 1916 they, the patnidars and auction purchaser gave a *darpatni* lease to the petitioners before the Board in which it was specially provided that the *darpatnidars* should have the right of avoiding encumbrances. The petitioners applied to the Sub-divisional Officer Howrah for the issue of a notice under section 167 Bengal Tenancy Act and alleged that they made this application within one year from the date on which they had notice of the encumbrance. The Sub-Divisional Officer declined to issue the notice on the ground that section 167 B. T. Act provided for such an application to be by the purchaser and such application could not be made by his transferee. On appeal the Commissioner of the Burdwan Division upheld this view remarking that the terms of section 167 B. T. Act must be interpreted strictly. "Purchaser" includes assignees including lessees.

The learned pleader for the petitioner before the Board contends that on the analogy of High Court rulings relating to the interpretation of the word 'purchaser' in section 37 Act XI of 1859 the word 'purchaser' in section 167 B. T. Act should be held to include the purchaser's heirs and assignees. There appears to be nothing in either Act which would justify the application of a more liberal interpretation to the word 'purchaser' as used in section 37 of the Sale Law than to that word as used in section 167 of the B. T. Act and there is a long series of rulings by the High Court from 1874 onwards by which it has been finally settled that the word 'purchaser' in section 37 is not used in a personal sense but must be held to include heirs and assignees including lessees. The rulings which have been brought to the Board's notice are printed in the following Volumes:—

Calcutta W. R.	Vol. XXII	Page	29.
" L. J.	" I	"	579.
" W. N.	" X	"	148.
" L. J.	" V	"	204.
" L. J.	" XII	"	1029.
" W. N.	" VIII	"	177.

It seems to the Board impossible to disregard this weight of authority in determining the interpretation to be applied to section 167 B. T. Act where the conditions are very analogous. Moreover the more liberal interpretation seems to the Board to be just and reasonable. If, for example, a purchaser were to die suddenly, it would not be right that his heirs should lose the power of avoiding encumbrances. If the term 'purchaser' is interpreted as applying to his heirs, then it must be interpreted as applying to his assignees; nor is there danger of abuse since the application under section 167 B. T. Act must be made one year of the sale or of the encumbrance coming to his notice.

In these circumstances the Board disagreeing with the learned Commissioner allows the petition and directs that the notice under section 167 B. T. Act be issued.

C. J. Stevenson Moore, Member, Board of Revenue, 19-11-18.

Member in Charge—Ordered that a copy of the above Resolution be forwarded to the Commissioner of the Burdwan Division for information and guidance as also for communication to the petitioners.

2. The records of the case are herewith returned. An acknowledgment of their receipt is requested.

"By order of the Board of Revenue, Bengal."

v. *Krishna Prasad*, 34 Cal. 298, s. c., 11 C.W.N. 497: s. c., 6 C.L.J. 153. S. 167 does not apply to a sale in execution of a rent-decree of a portion only of a tenure or holding and the auction purchaser cannot proceed to annul incumbrances; *Ram Kinkar v. Akhil Chandra*, 11 C.W.N. 350.

Purchaser with knowledge of incumbrance may annul it.

(c) *Purchaser with the knowledge of an encumbrance*: The purchaser of an occupancy holding in execution of a money-decree and with the knowledge that the holding was subject to mortgage re-purchased it in execution of a decree for rent and then wanted to cancel the mortgage, *held* that he was entitled to annul the mortgage and that he did not commit any fraud in re-purchasing it: *Surendra Mohon v. Bansidhar*, 12 C.W.N. 114.

S. 37 of Act XI of 1859.

(d) *Whether the right is exerciseable by one of several joint purchasers*: The right given to auction-purchaser of an entire estate in the permanently-settled districts of Bengal, Behar and Orissa, sold for arrears of revenue under s. 37 of Act XI of 1859 to avoid and annul an under-tenure, is a right that must be exercised by all the purchasers jointly where there are more purchasers than one: *Jatra Mohun v. Aukhil Chandra*, 24 Cal. 334.

Defaulter purchaser.

(e) *Defaulter purchaser not entitled to annul encumbrance*: It was held under Act VII B. C. of 1869 that one of several tenure-holders for whose default in the payment of rent the tenure was sold cannot by purchase of the tenure at a sale for arrears of rent avoid an encumbrance: *Syed Nawab Ali v. Hemanta Kumari*, 8 C.W.N. 117. The purchaser who is found to be the *benamidar* of the judgment debtors cannot annul an encumbrance under s. 167: *Sheikh Mahamed v. Durga Prasad*, 24 C.W.N. 342; where the Collector refused to issue notice (on the application of such a purchaser) to annul an encumbrance, and the purchaser brought a suit to have it declared that he had the right to annul an encumbrance and that the Collector was bound to cause notice to be served, the suit was dismissed: *Ibid*.

Benamidar.

(f) A *benamidar*, in whose name a sale certificate was made out, is the proper person to give a notice under s. 167: *Jogesh Chunder v. Rohini Kumar*, 21 C.L.J. 65.

When property not in possession of purchaser.

(g) *When property is not in possession of purchaser at the time of service*: There is no reason why an incumbrance should not be annulled simply because the property at the time of the service under section 167, was in the possession, not of the purchaser, but of some body else. *Peari Lal v. Maheswari*, 25 Cal. 551.

5. Having power to annul an incumbrance:—See notes under ss. 159, 160 and 161.

Encumbrance must be the creation of the tenant.

Encumbrance not created by the tenant:—A mortgage created by the operation of s. 171 of the Bengal Tenancy Act is not an encumbrance within the meaning of this Chapter (XIV) and as such not liable to be avoided by the purchaser of a tenure at a sale in execution of a decree for arrears of rent: 1 C.W.N. 519. See notes under ss. 161 and 171.

Rent-free grant.

A rent-free grant cannot be considered to be an encumbrance unless the outgoing tenant was in possession of the land at the time when his tenancy was granted: *Biprodas v. Kedar Nath*, 47 I.C. 765.

After a mortgagee has enforced his lien and obtained his decree,

it cannot be held that the decree would remain as an encumbrance on Mortgage the tenure which can be avoided under s. 167; *Akshoy Kumar v. decree. Maharajah Bejoy Chand*, 29 Cal. 813; s. c. 6 C.W.N. 249 (notes).

But it was held in the case of *Banbihari v. Khetra Pal*, 38 Cal. Mortgagee 923, s. c., 16 C.W.N. 259 that a mortgagee who purchased a tenure purchaser. in execution of his money decree cannot be ousted by an auction purchaser of the tenure at a sale for arrears of rent without annulling the mortgage. *Holmwood and D. Chatterjee J.J.*, in deciding this case discussed the case reported in 29 Cal. 813.

In the case of a rent sale with express power to the purchaser Mortgagee to avoid all encumbrances, so long as such power remains in the may ask purchaser, the lien of a mortgagee is in jeopardy: in such a case his lien to be transferred to the mortgagee may abandon his lien and ask to have it transferred to be transferred to the surplus sale proceeds: *Nimchand v. Asutosh*, 9 C.W.N. 117. Where a tenure or holding subject to a mortgage is sold in execution proceeds. of a rent decree ss. 159 and 161 to 167 do not bar a mortgagee to have a charge on the surplus sale proceeds whether the tenure or holding is sold free of encumbrances or not: *Gobind v. Sebdut*, 33 Cal. 878. The effect of s. 73 of the Transfer of Property Act is that the mortgagee has no charge upon the property sold for rent, such charge being taken to be extinguished and transferred to the surplus sale proceeds: *Hem Chandra v. Tafazzal*, 8 C.W.N. 832. See notes under ss. 160 and 161.

6. Mortgage :—After the mortgagee had obtained a decree for Mortgage sale on his mortgage, the landlord of the *jote* which was the subject decree. of the mortgage brought a suit for rent and sold the *jote* in execution; later on it was sold in execution of the mortgage decree, held that the purchaser at the execution sale was entitled to annul the interest of the purchaser at the mortgage sale: *Gopinath Mohapatra v. Kashinath*, 13 C.W.N. 412, s. c., 9 C.L.J. 234. Followed in *Bibi Taibate-numssa v. Pravabati*, 10 C.L.J. 640.

A mortgage of a part of a non-transferable occupancy holding Mortgage is an incumbrance within the meaning of s. 161; *Pram Kishna v. of a part. Atul Krishna*, 22 C.W.N. 662.

The interest of an usufructuary mortgagee or a mortgagee by Interest way of conditional sale of a non-transferable occupancy holding is of usu- binding on the tenant and not upon the landlord or the purchaser of fructuary mortgagee or mort- the holding and as such it is not an encumbrance and no notice is gagee by necessary under s. 167 to annul it: *Abdul Gafur v. Golam Rahaman*, 39 I.C. 460. sale.

A subsequent purchaser under a mortgage decree cannot oust a prior purchaser under a rent-decree even when there has been no notice under s. 167; the former is merely in the position of a second Subsequent purchaser under a mortgage mortgagee who has a right to redeem: *Surat Lal v. Murlidhar*, 46 mortgagee I.C. 921 (Patna case). decree.

The interest of a mortgagee of a part of a holding who has purchased the holding in execution of his mortgage decree is an incumbrance and such a mortgagee purchaser cannot be ejected by the purchaser of the holding in execution of a rent-decree until the encumbrance is annulled under s. 167: *Indra Narayan v. Nabin Chandra*, 47 I.C. 847.

A purchaser under a rent decree is not liable to be ousted by a Mortgage. person who purchases the same property in execution of a mortgage

decree even though the mortgage has not been annulled under s. 167: *Surat Lal v. Lala Muralidhar*, 4 Pat. L.J. 362, see in this connection the following cases: *Banbehari v. Khetra Pal*, 38 Cal. 923, *Sallimulla v. Rahanuddi*, 21 C.L.J. 659, *Kapil Rai v. Sheobadan*, 21 I.C. 120, *Gopinath v. Kasinath*, 13 C.W.N. 112, *Cheoditti v. Quaddress*, 1 Pat. L.J. 161, and *Maherunnissa v. Sham Sunder*, 6 C.W.N. 834.

A purchaser at a sale in execution of a decree for arrears of rent is not bound to give a notice under s. 167 to annul the interest of a previous purchaser of the interest of one of the tenants in execution of a mortgage decree: The mortgagee purchaser cannot maintain that his mortgage still remained an encumbrance: *Sabjan Mandal v. Haripada Saha*, 25 C.W.N. 424; the case of *Bhawani Koer v. Mathura Prosad*, 40 Cal. 89, was followed. See also *Badlu v. Sibram*, 7 Pat. 155.

Where between the date of a decree obtained by a mortgagee of an occupancy holding and purchase in execution thereof by the mortgagee, the holding was sold in execution of the landlord's decree for rent, *held* that the mortgage subsisted at the date of the rent-sale, and not having been annulled under s. 167 within the time allowed by law, the purchaser could not avoid it but was entitled to redeem the mortgagee purchaser; *Bidhumukhi Dasi v. Bhaba Sundari Dasi*, 24 C.W.N. 961; the purchaser at a rent sale who does not annul a subsisting mortgage does not acquire priority over the purchaser at a subsequent sale in execution of the decree obtained on the mortgage by reason of the rent being a first charge upon the holding under s. 65 of the Bengal Tenancy Act: *Ibid*; the case of *Gopinath v. Kashinath*, 13 C.W.N. 412 was not followed.

Mortgage
by an
occupancy
riyat.

Where an occupancy holding was sold at a sale in execution of a decree for arrears of rent and the landlord was the purchaser, *held* that a mortgage of the holding by the tenant must be annulled by a notice under s. 167, otherwise it is binding on the landlord: *Sital Chandra v. Parbati Charan*, 35 C.L.J. 1.

It is submitted that an occupancy holding being non-transferable a landlord is not bound to recognise the transfer and he is not bound by it according to the general law of the country, and therefore it is not necessary for the landlord to annul it, and no notice under s. 167 is necessary.

Sale in
execution
of mort-
gage
decree.

An interest by virtue of a purchase at a sale in execution of a mortgage decree held prior to the purchase of the landlord at a sale in execution of a rent-decree need not be annulled in as much as rent was a first charge and the purchase by the mortgagee was subject to the charge: *Sabjan Mondal v. Haripada*, 66 I.C. 103. (N. R. Chatterjea and Newbould J.J.).

Suit upon
mortgage
against
the tenant
impleading
the land-
lord.

The mortgagee of an occupancy holding in a suit on his mortgage impleaded the landlord of the holding who had purchased the same in execution of a rent decree. The landlord alleged that the incumbrance has been annulled owing to a notice under s. 167, *held* that a mortgage suit or any other suit by the encumbrancer cannot deprive the auction purchaser of his right to encumbrance provided his application is within time; *held* further that once the Collector had issued the notice, the incumbrance must have been deemed to have been annulled. It does not mean that the validity of the notice and the consequent annulment of the encumbrance cannot afterwards be called in question. The effect of the section is only to lay the

burden of proof upon the person questioning the validity of the notice. Therefore, the mortgagee must prove that landlord had notice of the encumbrance than 12 months prior to the landlord's application: *Nandkisore v. Rameshwar Singh*, A.L.R. 1924 Cal. 515. (Dawson Miller C. J. and Mullick J.).

7. Within one year from the date of sale &c. :—(a) *Limitation*: Where a wrong name was mentioned as the encumbrancer in an application to annul the encumbrance, which was made within one year from the date of sale, and subsequently after the period of limitation the applicant was allowed to make the amendment, held that the Collector who was merely a ministerial officer in the matter had no power to do so, and that the application to serve a notice on the real encumbrancer was barred by limitation, as it was not made within one year from the date of sale: *Nritya Gopal v. Golam Rasool*, 28 Cal. 180. Application for amendment of application.

The limitation is not to be calculated up to the date of the actual service of notice but up to the date when the application for the issue of notices was made to the Collectorate: *Delaney v. Khalil*, 9 C.W.N. 123 (notes). Limitation how calculated.

All that the section requires is that the application is to be made within "one year from the date of the sale or the date on which he first has notice of the encumbrance, whichever is later." So where an application is made within time but the service is not properly made, it seems that the applicant may even after the period of one year as prescribed above may put in process-fees for fresh service. Where service is not made.

Ss. 184 and 185 of the Bengal Tenancy Act have not the effect of extending the provisions of s. 7 of the Limitation Act to an application under s. 167: *Akshoy Kumar v. Maharaja Bejoy Chand*, 29 Cal. 813, s.c., 6 C.W.N. 149 (notes). S. 7 of the Limitation Act.

In a suit for possession after annulment of an under-tenure under s. 167 absence of due service of notice on a person who in the suit disclaimed all interest therein cannot prejudice the plaintiff; but if the application for issue of the notice against some of the persons jointly interested in the encumbrance was not made within time, the whole suit must fail: *Delaney v. Rohomot Ali*, 32 Cal. 710. Where service is not properly made.

8. Date of Sale :—The words "date of sale" in s. 167 mean the date on which the sale is confirmed: *Banko Behary v. Krishna Chandra*, 18 C.W.N. 349, s. c. 18 C.L.J. 170. But it has been held by Brett and Sharfuddin J.J., that the words "date of sale" mean the date on which the sale actually takes place and not the date of the confirmation of sale: *Yusuf Gazi v. Asmat Molla*, 17 C.W.N. 440, s. c., 16 C.L.J. 131 (*Yusuf Gazi v. Payarannassa Bewa*). This case was not followed in the case of *Nandalal v. Umes Chandra*, 45 Cal. 151, s. c., 22 C.W.N. 86, s. c., 26 C.L.J. 328 and it was held by their Lordships Fletcher and Newbould J.J. that the words "date of sale" in s. 167, specially where the sale took place under the Civil Procedure Code of 1882 and where the purchaser could acquire no interest until the sale-certificate was issued means the date of the confirmation of sale and not the date on which the sale actually took place; the case of *Matangini v. Sreenath*, 7 C.W.N. 552 was followed and the case of *Banko Behari v. Krishna Chandra*, 18 C.L.J. 173 was referred to. See notes under s. 169. Conflicting rulings.

9. Notice :—*Notice of incumbrance*: Where the purchaser of an occupancy holding at a rent sale had intimation that persons other Knowledge or intima-

tion of
incum-
brance.

than the judgment debtor were cultivating the land, *held* that he had "notice of the incumbrances that these persons had on the land": *Yusuf Gazi v. Asmat Mollah*, 17 C.W.N. 440, s. c., 16 C.L.J. 113. If the purchaser has had knowledge or intimation of an incumbrance, that would be sufficient notice of it within the meaning of s. 167: *Ibid*.

"First has
notice."

First has notice: Suit to recover possession:—Where in a suit for possession by a purchaser at a sale for arrears of rent, defendant said that he was the holder of an incumbrance which had not been annulled and plaintiff became aware of the encumbrance for the first time by the statement made in the written statement, *held* that the plaintiff not being aware of the encumbrance until it was pleaded in the written statement, had a good cause of action and was entitled to recover the property from the defendant subject to the condition that the encumbrance would stand good if not annulled: *Gopi Nath v. Radhe Shyam*, 5 C.W.N. 80 (notes); the plaintiff's right of action having been good and valid when the suit was brought it could not be taken away by what was brought to his notice for the first time in the written statement: *Ibid*.

The purchaser who seeks extension of one year's time for presenting the application to the Collector is to show that the date when he had first notice of the incumbrance was later than the date of the sale: *Makhanlal v. Bejoygopal*, 32 C.W.N. 92 (notes), (B. B. Ghose and Cammiade, J.J., 15th February, 1928). The case of *Nandakisore v. Rameswar Singh*, 78 I.C. 476 referred to.

Effect of
service.

Effect of service of notice:—The service of a notice under s. 167 has the effect of annulling an incumbrance without it being necessary for the purchaser to bring a declaratory suit to have it declared that the incumbrance is annulled: *Peari Lal v. Moheswari*, 25 Cal. 551, s. c., 2 C.W.N. 138 (notes). This is quite clear from the second clause of s. 164 read with s. 167: *Ibid*. But the service of notice under s. 167 annulling a mortgage is no bar to the mortgagee making an application to set aside a sale of the tenure: *Brij Kumar v. Dhanuk Dhari*, 10 C.W.N. 976.

Contents
of notice.

Contents of notice:—A notice to annul an incumbrance is not bad though it does not specify the particulars of the land held by the tenant or the rent payable by him: *Jagabandhu v. Rasho Monjan*, 5 C.W.N. 272. It is not necessary to specify the area of the land in the notice: *Ibid*.

Joint notice.

Joint notice:—A joint notice to several tenants is not bad if it is served in accordance with the prescribed rules: *Ibid*.

Mode of
service.

Mode of service of notice:—Where a notice of annulment was served in the way as provided for the service of summons in the Civil Procedure Code, *held* that the service was in accordance with the Government Rules: *Annada v. Nafar Chandra*, 18 C.W.N. 259 (P. C.).

It is obligatory on the purchaser to show that the notice under s. 167 has been served in the manner prescribed: the entries in the order sheet are not *prima facie* evidence against the incumbrancer that the notice was served: *Radhay Koer v. Ajodiya Das*, 7 C.L.J. 262; this case was followed in *Chatterdhari v. Berenchee*, 15 C.W.N. 88 (notes).

It is necessary that the service of notice should be in accordance

with the statutory procedure laid down in the section : *Badaruddin v. Herajiulla*, 54 I.C. 797. There must be strict compliance with the procedure for service of notice ; the entry in an order sheet is not sufficient : *Profulla Nath v. Shital Khan*, 22 C.W.N. 788, s. c., 47 I.C. 97 ; see in this connection the case of *Radhay Koer v. Ajodhya*, 7 C.L.J. 262.

A notice annulling an incumbrance under s. 167 must, whenever practicable, be served personally ; other methods of service can only be adopted where personal service cannot reasonably be effected : *Ramgobinda v. Rajani Kant*, 53 I.C. 570. A finding of the lower appellate Court that a notice under s. 167 was properly served is not a finding of fact and can be questioned in second appeal : *Ibid*.

The mere production of the ordersheet of the Collector is not sufficient to prove due service of notice : *Krishna Kamini Dassi v. Pratapendra Chandra*, 85 I.C. 790.

Suit for ejectment without giving notice :—Where the purchaser at a rent-sale suing in ejectment, became aware of the existence of an encumbrance in favour of the defendant only when the latter set it up in his written statement, the Court passed a decree for possession in plaintiff's favour subject to the reservation that the incumbrance would stand good if not annulled within one year of the plaintiff's knowledge thereof : *Gopinath v. Radhashyam*, 24 C.W.N. 657. This case was followed in the case of *Easin v. Intijennessa*, 24 C.W.N. 659, and it was held that a suit ought not to fail when the plaintiff purchaser became aware of the encumbrance after the defendant put in the written statement and then gave a notice under s. 167.

S. 85 of the Bengal Tenancy Act does not prevent a raiyat at fixed rate to grant a permanent sub-lease ; therefore a landlord who purchased a fixed raiyati holding is required to annul an under-raiyati lease created by a raiyat at fixed rent : *Prasanna Dasya v. Amar Chand*, 57 I.C. 580 ; this judgment was affirmed in Letters Patent Appeal, in 25 C.W.N. 9 ; see also *Parushulla v. Sital Chandra*, 19 C.W.N. 1110 ; there are contrary observations in *Hari Mohon v. Atul*, 19 C.W.N. 1127.

Where notice is necessary and where not :—An under-raiyati lease if created by an instrument which is not registered is invalid under s. 85, and a landlord purchasing the holding of the raiyat in execution of a decree for arrears of rent is entitled to take *khas* possession by ejecting such under-raiyat without annulling the same by a notice under s. 161 : *Peary Mohun v. Badal Chander*, 28 Cal. 205, s. c., 5 C.W.N. 310. But if a third party purchases the right of occupancy at a sale for arrears of rent, it is necessary for him to follow the procedure prescribed by s. 167 : *Ibid*.

Where a permanent lease was given to an under-raiyat by a registered instrument and the landlord purchased the holding of the raiyat in execution of a decree for arrears of rent and sued to eject the under raiyat, held that the under raiyati lease was invalid under the provisions of sub-sec. 2 of sec. 85 of the Bengal Tenancy Act and that the landlord was entitled to take *khas possession* by ejecting such under raiyat without annulling the same under sec. 167 and without giving a notice in the terms of sec. 49 of the Bengal Tenancy Act. *Gangadhar Mondal v. Rajendra Nath Ghose*, 17 C.W.N. page 860. This case was followed in the case of *Joyal v. Kazem*, 22 C.W.N. 68 (notes).

A person purchasing an occupancy holding at a sale held in execution of a decree for arrears of rent can eject without annulling the incumbrance under s. 167, and without serving a notice to quit under s. 49, if the under-raiyati interest was created without a registered lease and without the consent of the landlord: *Bhuban Mohan v. Sheikh Badan*, 46 Cal. 766, s. c., 30 C.L.J. 210; the cases of *Peary Mohan v. Badal*, 28 Cal. 205 and *Gangadhar v. Rajendra*, 17 C.W.N. 860 were followed and the case of *Amurullah v. Nazir*, 31 Cal. 932, and *Lal Mohamed v. Jagir*, 13 C.W.N. 913 were distinguished. See notes under s. 85.

Where purchaser and encumbrancer is one and the same person.

The purchaser contemplated by s. 167 is a purchaser independently of the encumbrancer, and where the encumbrancer himself purchases the property encumbered to him, in execution of a decree for arrears of rent, it is not necessary for him, to give notice of annulment of his encumbrance under s. 167: *Mastulla Mondal v. Gyan Mahmud*, 28 Cal. 12, s. c., 4 C.W.N. 736; this decision was followed in the case of *Hem Chandra v. Tofazzal*, 8 C.W.N. 332. But it was held in *Goluk Chandra v. Ram Sunker*, 4 C.W.N. 264, that in such a case, i.e., where the purchaser and encumbrancer is one and the same person the encumbrance must be annulled in the way as required by s. 167. The observation made in this case was considered to be an *obiter* by the learned Judges who decided the case of *Hem Chandra v. Tofazzal*, 8 C.W.N. 332. Under s. 101 of the Transfer of Property Act, which is of general application, his encumbrance is extinguished unless he evinces an intention to keep it alive: *Mastulla Mandal v. Gyan Muhmud*, 28 Cal. 12.

But their Lordships Ameer Ali and Brett, J.J., who decided the case of *Mastulla v. Gyan Mohmud*, 4 C.W.N. 736 dissented from the decision in the case of *Goluk Chunder v. Ram Sanker*, 4 C.W.N. 268, and observed as follows:—"The learned pleader for the appellant in support of the construction of s. 167 contended for by him relied upon the case of *Goluk Chunder v. Ram Sunker*, 4 C.W.N. 268. In that case no one appeared in this Court for the respondent, and the question which has been raised here under s. 101 of the Transfer of Property Act, and the other matters to which we have referred in some detail, were not in issue; and we do not think that we are bound by it."

Mortgage.

After a mortgage decree was passed the mortgaged property was sold in execution of a decree for rent and was purchased by the mortgagee decree-holder. The mortgage decree provided that the mortgaged property should be sold in the first instance, and if that should prove insufficient other properties would be sold; the mortgagee, however, applied to sell the other properties without proceeding against the mortgaged property which he had purchased. The lower appellate Court held that there was not sufficient evidence to shew that the mortgaged property which had been sold in execution of the decree for rent had been sold with power to avoid all encumbrances, and even if the sale was so held the encumbrance had not been cancelled by the necessary notices under sec. 167 of the Bengal Tenancy Act, in spite of the fact that the encumbrancer and the purchaser were one and the same person, *held*, that even if the sale was under sec. 165 of the Bengal Tenancy Act the encumbrance had not been annulled by proceedings under sec. 167 and the appeal ought to be dismissed: *Goluk Chandra v. Ram*

Contra.

Sunker, 4 C.W.N. 264. But this case was dissented from in the case of *Mostulla v. Gyan Mahmud*, 4 C.W.N. 735, where it was held that the purchaser contemplated by sec. 167 is a purchaser independently of the encumbrancer, and where the encumbrancer himself purchases the property encumbered to him in execution of a decree for arrears of rent, it is not necessary for him to give notice for annulment of his encumbrance under s. 167 of the Bengal Tenancy Act.

See notes under this section under heading No. 6, "*Mortgage*."

It was further held in the case that under sec. 101 of the Transfer of Property Act which is of general application, his encumbrance is extinguished unless he evinces an intention to keep it alive. S. 101 of the Transfer of Property Act.

A title acquired by adverse possession has been held in a long series of cases to be an incumbrance; see notes under s. 161; and it has been held that such an incumbrance cannot be annulled except by a notice under s. 167: *Kalikanund v. Bipradas*, 17 C.W.N. 340; *Bhusan Chandra v. Srikantha*, 23 C.L.J. 485. All the cases on the point will be found in the notes under s. 161, heading No. 3, "Adverse possession." Adverse possession.

Where an adverse possession commenced before the creation of a tenure, held in a suit by a purchaser at a sale of the tenure in execution of a decree for arrears of rent that Art. 121 of Sch. II of the Limitation Act (XV of 1877) applied: *Bipradas v. Kamini Kumar*, 49 Cal. 27, s. c., 26 C.W.N. 463, (P. C.).

See notes under s. 161.

An under-raiyat's interest cannot be sold for arrears under Chap. XIV; a purchaser of an under-raiyat's interest has therefore no right to annul an encumbrance: *Munsab Ali v. Arsadulla*, 16 C.W.N. 831. Sale of under-raiyati interest.

If the notice is not served on the whole body of encumbrancers it is bad: *Khyanta Kali v. Kedar Nath*, 14 C.W.N. 38 (notes), see also *Dellaney v. Rahumat Ali*, 32 Cal. 710. Notice upon all the incumbrancers.

Until the notice has been properly served under s. 167 upon the incumbrancer, the incumbrance subsists; it is obligatory on the purchaser to show that the notice has been served in the manner prescribed; the entries in the order sheet are not *prima facie* evidence against the incumbrancer that the notice was served: *Radhay Koen v. Ajodhya Das*, 7 C.L.J. 262. The purchaser who relies upon the service of notice must prove it either by the production of the person who served the notice or by any other means recognised by law; and if a question arises as to the validity of the notice, it must be shown that it was a valid notice and was signed by a competent officer as required by cl. (1) of s. 167: *Ibid.* See also *Akhoy Kumar v. Bejoy Chand Mahatab*, 29 Cal. 813. Proper service of notice.

Where an entire estate was sold for arrears of revenue and the auction purchaser served a notice of annulment on a tenure-holder but the *putnidar's* interest was not annulled by the auction purchaser, held that the *putnidar's* interest not having been annulled he was entitled to recover rent from the tenure-holder under him: *Mohim Chandra Saha v. Surja Kumar Lahiri*, unreported second appeal No. 1190 of 1911* (*Sharfuddin J.*) 28th July, 1913 (confirmed on Notice of annulment upon subordinate interest without annulling higher interest.

* The case of *Mofizuddin v. Ashutosh*, 14 C.W.N. 352 followed.

Letters Patent appeal No. 102 of 1913, Jenkins C.J., and N. Chatterjea J.; 24th March, 1914.

S. 159.

Where a *durputnidar* was allowed to have full rights to grant leases or create incumbrances subject only to the restriction that if the *durputni* was sold for arrears of rent, the subordinate titles created by the *durputnidar* should at the same time come to an end, *held* that this agreement did not contravene the provisions of s. 159 of the Bengal Tenancy Act or sec. 10 of the Transfer of Property Act: *Madhusudan v. Midnapur Zemindary Co.*, 45 Cal. 940.

Order of remand by High Court P. C. appeal.

An order of the High Court holding that the notice had been properly served and remanding the case to be tried out on the other issues, is a final decree and an appeal from the decree to the Privy Council would lie: *Ananda Gopal v. Nafar Chandra*, 35 Cal. 918.

Annulment of higher interest necessarily annuls subordinate interest.

When a *durputni* interest is annulled a *seputni* interest necessarily ceases to exist: *Makham Das v. Ram Chandra*, 17 C.W.N. 1064. The purchaser of a tenure at a rent sale cannot annul a subordinate interest leaving untouched a superior interest immediately subordinate to the interest purchased by him: *Mofizuddin v. Ashutosh*, 14 C.W.N. 352.

When the purchaser of a *putni* tenure at a sale for arrears of rent annulled a *durputni* tenure, *held* that the right acquired by a third person against the *durputnidar* by adverse possession necessarily falls through and no separate notice is required to annul the same: *Monmotha v. Anath Bandhu*, 25 C.W.N. 106.

Conditional decree subject to giving of notice for annulment.

Where after the institution by an auction purchaser at a sale for arrears of rent, the plaintiff became aware that the defendant had an incumbrance which had not been annulled, the Court passed a decree for possession subject to the reservation that the incumbrance would stand good if not annulled within one year from the date of plaintiff's knowledge: *Gopinath v. Radhashyam*, 24 C.W.N. 657. This case was followed by Beachcroft J., in the case of *Easin v. Iutijennessa*, 24 C.W.N. 659, and it was held that a suit should not fail where the plaintiff auction purchaser became aware of the incumbrance when the defendant put in his written statement.

Plaintiff's *amin*'s knowledge, if amounts to plaintiff's knowledge.

Where a notice of annulment was served more than a year after the date of sale but within one year from the date of knowledge of the plaintiffs *amin*, *held* that this was not sufficient to show that it was one year within the plaintiff's knowledge and consequently the notice was bad: *Jotindra Mohun v. Bijoy Chand*, A.I.R. 1924, Cal. 396.

Collector.

10. Collector:—"Collector" is defined by cl. (16) of s. 3 of the Act as "the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act." The practice of the Local Government is to appoint officers to perform the functions of a Collector under certain specified sections of the Bengal Tenancy Act. It being the practice of the Local Government to appoint officers to discharge duties under particular sections he is not thereby empowered to discharge duties under any other sections of the Act. The very fact that an officer is only appointed to perform particular duties under particular sections, by implication involves the position that he is not empowered to perform other duties than those under which he is appointed to perform duties. A Sub-divisional Officer who is invested with the

Sub-divisional Officer.

powers of a Collector for the purpose of discharging the functions referred to in ss. 12, 13, 15 and 69 to 71 but not specially appointed by the Local Government to discharge the functions of Collector under s. 167 of the Act has no power to receive an application, nor has he jurisdiction to issue notice annulling an incumbrance, under that section: *Mohabat Singh v. Umahl Fatima*, 28 Cal. 66. An application made to a Deputy Collector *in charge* for annulment of an incumbrance and issued by the Deputy Collector is bad and an incumbrance cannot be annulled by such a notice: *Ramdhan v. Surjya Narayan*, 9 C.W.N. 67 (notes).*

Where an application to annul an encumbrance mentioned the name of a wrong person as encumbrancer, and the Collector allowed the application to be amended, *held* that the Collector was merely a ministerial officer and had no jurisdiction to allow any such amendment to be made: *Nritya Gopal v. Golam Rasool*, 28 Cal. 180.

Where an application for service of a notice under this section was made to the Collector and the application and notice were sealed with the Collector's seal and though it was received by a Deputy Collector "for the Collector" and was received by the Deputy Collector in charge, and the notice was thereafter issued from the Collector, *held* that there was no irregularity, in the service of the notice: *Mahomed Kaem v. Noffar Chandra*, 31 Cal. 911, s. c., 9 C.W.N. 803.

But where the application for the issue of notice was not made to the Collector and the notice was served by the order of the Deputy Collector, *held* that the notice was legally insufficient not only because it was issued by the Deputy Collector but also because the application for the issue of the notice was made to the Collector: *Ramdhan v. Surjya Narayan*, 9 C.W.N. 67 (notes); s. c., 2 C.L.J. 99. See in this connection *Gadadhar v. Basunta Kumar*, 8 C.W.N. 669; *Akhoy Kumar v. Bejoy Chand*, 29 Cal. 813 at p. 820.

There mere circumstance that a notice under s. 167 is signed by a Deputy Collector does not invalidate such notice, if he acted on behalf of the Collector: *Girish Chandra v. Khagendra Nath*, 16 C. W.N. 64, s. c., 13 C.L.J. 613.

If the application for annulling an incumbrance is made before the Collector, the fact that the petition so presented is made over to a Deputy Collector who issues the necessary notice, does not invalidate the proceedings provided the latter officer acts on behalf of the Collector: *Ram Protap v. Jhoomak Jha*, 1 Pat. L. W. 440, s. c., 39 I.C. 943.

It is a question of some importance as to whether the application for annulment of the incumbrance is to be presented before.

- (a) The Collector of the District in whose General Register the estate is included, or
- (b) the Collector of the District in which the rent-suit was brought, or
- (c) the Collector of any District, or
- (d) the Collector of any District in which the land is situate, or
- (e) the Collector of the District where the person or persons upon whom the notice is to be served resides or reside.

Application for annulment of incumbrance. where to be presented.

* A Deputy Collector was not considered to be competent to exercise the functions of the Collector, although the former was put in charge of the Drainage office on a proposal by the Collector and assented to by the Commissioner: *Gadadhar v. Basanta*, 8 C.W.N. 669.

Mesne
profits.

II. Miscellaneous cases :—*Mesne profit where possession is withheld*: Where a landlord purchased his tenant's right and the defendant who was a sub-tenant and whose sub-tenancy was annulled notwithstanding which he remained on the land, *held* in a suit for *khas* possession that mesne profits should be assessed upon the value of crops: *Gopal Chandra v. Bhooban Mohan*, 30 Cal. 536.

Where there were several tenure-holders of different grades, each retaining share of the rent paid by the tenant, and a purchaser at a revenue sale exercised his election to avoid the tenures by commencing a suit to eject them and they in good faith set up but failed to establish a tenure created before Permanent Settlement, and it did not appear that they combined or conspired to keep the plaintiff out of possession: *held*—that the mesne profits should be apportioned amongst the tenure-holders of the different grades so that each tenure-holder would be made liable only for the portion of the rent paid by *raiyat* which has been retained by him, less the costs of collection or other similar charges: *Ram Ratan v. Aswini Kumar*, 37 Cal. 559, s.c., 14 C.W.N. 849, s.c., 11 C.L.J. 503.

Tort-
feasor.

The release of the plaintiff of one of the joint tortfeasors is strong evidence that he has been satisfied for the wrong and this is the foundation of the rule that the absolute release of one joint tortfeasor operates as a release of all: *Ibid*.

Order of
remand.

Order of remand: An order of remand by the High Court by virtue of which it was decided that the service of notice under s. 167 was proved and the finding of the lower Court on this point was reversed and the lower Court was directed to decide the other question, *held* that the order although in the form of an order of remand was a final decree within the meaning of s. 595, C.P.C.: *Ananda v. Naffar*, 35 Cal. 618, s.c., 12 C.W.N. 545.

Mortgage.

Right of mortgagee to apply for setting aside sale:—The service of notice under s. 167 annulling a mortgage is no bar to a mortgagee making an application to set aside a sale of the tenure: *Brij Kumar v. Dhanukdhari*, 10 C.W.N. 976.

12. Onus:—See notes under s. 161 under heading "**Burden of proof.**"

Standing
crop on
ejectment.
Emble-
ments.

13. Standing crops on ejectment:—There is no law of emblements in this country; on the termination of a tenancy, the right of the landlord to re-enter accruing, he is entitled not only to take possession of the land but also of the standing crops: *Akhil Chandra v. Surendra Nath*, 11 C.L.J. 87.

Limitation
Act, Art
121.

Where an auction purchaser of a *putni* tenure at a sale for arrears of rent brought a suit for recovery of possession and declaration of title to certain lands comprised in the *putni* tenure within 12 years of his auction purchase, and it was found that the adverse possession of the defendant commenced before the creation of the *putni*, *held* that the suit was barred and that Art. 121 of Sch. II of the Limitation Act (XV of 1877) did not apply: *Kalikanund v. Bipradas*, 14 C.W.N. 18.

Party.

Where in a suit for possession by an auction purchaser at a sale for arrears of rent one of the incumbrancers who was not originally made a party was so made subsequently, *held* that it did not prejudice the other incumbrancers and the suit was not bad for non-joinder against them: *Annada v. Nafar*, 18 C.W.N. 259 (P.C.).

Where a purchaser of a tenure at a sale held under Act viii of

1865 sued the person in possession for rent and obtained an *ex-parte* decree, and on his bringing a suit for enhancement, the tenant pleaded a permanent right, and the purchaser withdrew the suit and brought a suit for ejectment, *held* that he was not estopped from bringing the suit by reason of his having brought a rent-suit: under s. 167 of the Act, he is allowed to avoid encumbrances and if the defendant would not accept the position of tenant offered him and pay a reasonable rent, the plaintiff is entitled to eject him: *Arsali v. Ram Satya*, 7 C.L.J. 191.

Purchaser at a sale under Act VIII (B.C.) of 1865.

If a landlord elects to treat a person as a tenant the mere fact of his having served a notice on him under s. 167 does not bar a suit for rent: *Rajkumar v. Alimuddi*, 17 C.W.N. 627.

Election, treating a person as a tenant.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of a decree for an arrear of rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

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.

Amendments :—In sub-sec. (1) for the words “decrees for rent” the words, “decree for an arrear of rent” were substituted by Act I (B. C.) of 1907 and Act I, E. B. A. of 1908.

Note.—No notification has yet been published by the Local Government.

169. (1) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say—

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 tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of

XIV of 1882.

the tenure or holding between the institution of the suit and the date of the confirmation of the sale;

- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application :

Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under section 148A or sub-section (1) of section 158B.

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and,

- (ii) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Headings of Notes.

1. AMENDMENTS.
2. RIGHT OF SUIT BY AN UNRECORDED TENANT FOR RECOVERY OF SALE PROCEEDS.
3. SUB-SEC. (1), CL. (C) : DATE OF SALE.
4. INTEREST AND COSTS.
5. CL. (c).

6. TIME WITHIN WHICH APPLICATION IS TO BE MADE UNDER CL. (C).
7. SUB-SEC. (2).
8. PROVISIO.

1. Amendments :—In clause (c) of sub-sec. (1), after the words “the date of” the words “the confirmation of” were inserted by Act I (B.C.) of 1907 and Act I, E.B.A. of 1908.

By the same Act the proviso was added.

Suit by
unrecorded
tenant for
recovery
of sale-
proceeds
maintain-
able.

2. Right of suit by an unrecorded tenant for recovery of sale-proceeds :—Where in execution of a decree for rent obtained against a recorded tenant a tenure was sold, and an unregistered tenant (a purchaser of a share of the tenure after the date of the decree) brought a suit for recovery of the surplus sale-proceeds, held that such a suit was maintainable: *Matangini Chowdhurani v. Sree Nath Das*, 7 C.W.N. 552.

3. Sub-sec. (1), Cl. (C): Date of Sale :—The date of sale means the date of confirmation of sale: *Matangini Chowdhurani v. Sree Nath Das*, 7 C.W.N. 552. The landlord is therefore entitled to deduct from the sale-proceeds the rent for the period up to the confirmation of sale. Maclean, C.J., in delivering judgment said as follows:—Looking to the section it would, I think, be a narrow construction to say that the date of sale means the actual date of sale, as opposed to the date when it becomes absolute. Having regard to ss. 314 and 316 of the Code of Civil Procedure I think it means the date when the sale becomes absolute; and that the construction may fairly be based upon it without straining the language of the section: otherwise the landlord might be driven to bring a separate suit for the rent of the intermediate period. The case of *Matangini v. Sreenath*, 7 C.W.N. 552 was followed in the case of *Nandalal v. Umes Chandra*, 45 Cal. 151, s.c., 26 C.L.J. 328, which was a case in which the question was as to the meaning of the words “date of sale” in s. 167.

Following the case of *Bejoy Chand v. Sashi Bhusan*, 18 C.W.N. 136 it was held that under s. 169 the landlord is entitled to recover rent up to the date of sale merely and not up to confirmation of sale: *Ram Lal v. Bandiram*, 26 C.W.N. 511; ‘rent’ in cl. (c) includes interest: *Ibid*.

4. Interest and costs :—Where a landlord applied under s. 169, cl. (c) for getting the rent and interest due to him between the date of the institution of the suit and the date of the sale from the surplus sale-proceeds and the judgment-debtor raised no objection to it but admitted the justice of the decree-holder’s demand, held that the decree-holder was entitled to get interest on rent; *Bejoy Chand v. S. C. Mookerjee*, 11 C.W.N. 1106: s.c., 5 C.L.J. 27n. Rent as used in cl. (a) does not exclude interest (*Per Ghose, J.*); *Ibid*. There is no provision in the law which enables a Court acting under s. 169 to allow interest; the term rent in this section does not include interest: *Monindra v. Asar Mahmud*, 12 C.W.N. cxliv. The dictum in *Bejoy Chand v. S. C. Mukerjee*, in 11 C.W.N. 1106 has been dissented from in this case. The case of *Bejoy Chand v. S. C. Mookerjee*, 11 C.W.N. 1106 was followed and the case of *Monindra v. Asar Mahmud*, 12 C.W.N. cxliv was dissented from in the case of *Profullanath v. Matabuddin*, 26 C.L.J. 322, s.c., 22 C.W.N. 323 where Fletcher and Smither J.J., held that the landlord is entitled to get from the sale-proceeds not only the arrears of rent but also

Cl. (c).

interest. See also *Rameshwar Singh v. Sheikh Mohommad*, 2 Pat. L.J. 722 ; the costs of an application under s. 169 (c) are not recoverable out of the surplus sale-proceeds : *Ibid*.

Purchaser not liable for rent accruing before date of sale.

5. Cl. (c).—“This provision of the law evidently shews that the Legislature intended that the charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein, shall be transferred from the tenure to its sale-proceeds, and that the tenure shall pass to the purchaser at a sale for arrears of rent-free of all liability created upon it by the default of the previous holder.” (*per* Macpherson and Banerjee, JJ.); *Faez Rahman v. Ramsukh Bajpai*, 21 Cal. 169 (at p. 171). A purchaser at a sale for arrears of rent accruing due before the date of his purchase : *Ibid*. But a tenant is liable to pay rent accruing due after the date of purchase but before the confirmation of sale : *Satyendra v. Nailkantha*, 21 Cal. 383. A landlord decree-holder is entitled in preference to a mortgagee of the tenure to be paid out of the sale-proceeds the amount of rent due in respect of the tenure between the institution of the suit and the date of the sale : *Prabhat Chandra v. Jadupati*, 34 Cal. 724, s.c., 6 C.L.J. 26.

S. 65 of Civil Procedure Code of 1908.

In view of the alteration in the law made by s. 65 of the Civil Procedure Code of 1908, the liability of the surplus sale-proceeds under s. 169 of the Bengal Tenancy Act is limited to arrears accrued due up to the date of the sale and cannot be extended to arrears due up to the date of confirmation therefor : *Bejoy Chand v. Sasi Bhusan*, 18 C.W.N. 136 ; arrears accrued due between these dates cannot be recovered from the judgment-debtor : *Ibid*.

Decrees for earlier periods.

Decrees for rents for earlier periods can be enforced against the surplus sale-proceeds of a *putni* tenure when sold in execution of a decree for rent : *Satya Sanker v. Monmohon*, 22 C.W.N. 131.

Landlord entitled to get from the surplus sale proceeds, even the rent which is barred.

Under cl. (c) to sub-sec. (1) of sec. 169 of the Bengal Tenancy Act, the decree-holder landlord is entitled to have the surplus sale-proceeds paid to him in discharge of arrears of rent due from the date of the institution of the suit to the confirmation of the sale, even though on the date of his application for such payment, a suit to recover those arrears would be time barred : *Narendra Lal v. Sarat Chandra*, 16 C.W.N. 582, s.c., 21 C.L.J. 535. Art. 2 of Sch. III of the Bengal Tenancy Act provides for suits and not for application of this kind : *Ibid*.

6. Time within which application is to be made :—An application under cl. (c) may be made even after the expiry of two months from the date when the sale is confirmed : *Rameswar v. Shaikh Mohomad*, 2 Pat.L.J. 722.

7. Subsec. (2).—Under sub-sec. (2) a tenant can dispute the decree-holder's right to receive any sum on account of rent under sub-sec. (1), cl. (c) on the ground of payment or satisfaction in any other way : *Narendra Lal v. Sarat Chandra*, 19 C.W.N. 582, s.c., 21 C.L.J. 535.

Proviso.

8. Proviso :—Where a sale at the instance of a co-sharer landlord in execution of a rent-decree framed under s. 148A was sought to be set aside by another co-sharer landlord who had obtained a decree for rent although his decree was barred, *held* that the applicant was interested and was competent to apply for setting aside the sale in view of s. 169, proviso, (B. T. Act) : 23 C.W.N. 619.

Bengal and Bihar.

170. (1) Sections 278 to 283 (both inclusive) and 310A of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

Bengal and Bihar.

There is no sub-section (4) in Bengal and Bihar.

East Bengal.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Tenure or 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.
XIV of 1882.

East Bengal.

(4) The withdrawal of the amount deposited under section 310A of the Code of Civil Procedure by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

Headings of Notes.

1. AMENDMENTS: 1. *Bengal*; 2. *East Bengal*.
2. WHAT IS A RENT-DECREE.
3. CIVIL PROCEDURE CODE: CORRESPONDING SECTIONS OF THE NEW CODE AND THE OLD CODE.
4. S. 310A OF THE OLD CODE: (O. 21 R. 89 OF THE NEW CODE).
5. CLAIM.
6. CLAUSE (2).
7. CLAUSE (3):—(1) INTEREST VOIDABLE ON THE SALE," (2) TRANSFEREE OF NON-TRANSFERABLE OCCUPANCY HOLDING, (3) MORTGAGEE, (4) DONEE, (5) HINDU REVERSIONER,

(6) UNDER-TENANT, (7) UNDER-RAIYAT, (8) JUDGMENT-DEBTOR :

8. SS. 170 & 171 APPLY TO EXECUTION PROCEEDINGS AND NOT TO SUITS.
9. EFFECT OF WITHDRAWAL OF DEPOSIT.
10. APPEAL: REVISION.
11. NOTICE.
12. OR. 21, R. 90 C. P. C.

1. Amendments :—1. *Bengal*. In sub-section (1) the word and figures "and 310A" were inserted by Act I (B.C.) of 1907.

(2) *East Bengal*: Sub-section (4) was added in East Bengal by Act I, E. B. A. of 1908.

2. What is a rent decree :—See notes under s. 65, heading no. 6, pp. 379-382; and under s. 143.

It was observed by Mullick J. in the case of *Raziuddin v. Bendishri*, 36 I.C. 769, that a decree not obtained in respect of the entire arrears of a holding is not a decree for rent within the meaning of s. 170 (3); in this case the decree was obtained for the rent of a portion of a tenancy when there was no splitting up.

3. Civil Procedure Code :—Ss. 278 to 283 of the C. P. C. of 1882, correspond to o. 21, r. 63 of the new Code; s. 310A, C. P. C. of 1882, correspond to o. 21, r. 89 of the new Code.

4. S. 310A. (Act XIV of 1882) : (O. 21 r. 89 of the present Code :—In the Bengal section it will be found that s. 310A C. P. C. (Act XIV of 1882) does not apply to Bengal; in the East Bengal section there is no mention of s. 310A C. P. C. S. 310A of Act XIV of 1882 corresponds to o. 21, r. 89 of the new Code and still applies to the districts which were constituted the province of East Bengal.

But to the applicability of s. 310A C. P. C. (Act XIV of 1882) (corresponding to o. 21, r. 89) to East Bengal there is a conflict of rulings. But the sounder view seems to be that s. 310A C. P. C. (o. 21, r. 89 of the present Code) still applies to East Bengal.

It was held in a case that even before the passing of the Bengal Tenancy Amendment Act of 1907, s. 310A of the Civil Procedure Code of 1882 did not apply to a tenure or holding attached in execution of a decree for arrears due thereon: *Asiruddi v. Mokhada*, 35 Cal. 543; Maclean C.J., in delivering the judgment of the court (Maclean C.J. and Coxe J.), observed as follows:—"No doubt, this court has held, although there is some difference of opinion upon the point, that applications under s. 310A may properly be made, where a tenure or holding has been attached in execution of decree for arrears due thereon under the Bengal Tenancy Act. But for the reasons I have pointed out, there was no enactment to that effect under the Bengal Tenancy Act of 1885; nor could there have been any such, because, as I have said, the section was not then in existence."

This case (*Asiraddi v. Makhada*, 35 Cal. 543) was subsequently considered in the case of *Ali Miah v. Ramjan Khan*, 13 C.W.N. 224 and dissented from.

Sharfuddin and Coxe J.J. observed as follows in the case of *Ali Miah v. Ramjan Khan*, 13 C.W.N. 224: "The first question that arises for decision is whether sec. 310A applies to sales of holdings under the Tenancy Act at all. It was held in *Janardhan v. Kali*

Applicability of s. 310A C. P. C. (Act XIV of 1882) corresponding to O. 21 r. 89 of the present Code to East Bengal.
Conflicting rulings.

Asiruddi v. Mokhada, deciding that s. 310A C. P. C. was not applicable to a tenure attached in execution of a decree for rent,

dissented from in *Ali Miah v. Ramjan Khan*;

Observations of

Kristo, 23 Cal. 393 that the section does not apply. Reference may also be made to *Benodini v. Peary Mohon*, 8 C.W.N. 55, *Kunjabehari v. Sambhu Chandra*, 8 C.W.N. 232 and *Omarali v. Basiruddi*, 12 C.W.N. 1xiv. We find also that the Legislative Council of Eastern Bengal and Assam have not thought fit to follow the example of the Bengal Legislature in amending sec. 170, so as specifically to exclude sec. 301A from applying to holdings attached in execution of decrees for rent: and it is clear that the Legislature advisedly intended that sec. 310A should apply to sales under the Act. On the other hand, in *Asiruddi v. Mokhodamoyee*, 35 Cal. 543, s.c., 12 C.W.N. 434, it was held that the section could not apply, because it was not a part of the Civil Procedure Code when the Tenancy Act was passed in 1885, and could not therefore have been made applicable by the second clause of sec. 143. The argument seems to us incontrovertible. If a section of the Civil Procedure Code had been repealed, subsequent to its application to proceedings under the Tenancy Act, the section would certainly have continued to operate in such proceedings. We may refer to Maxwell's Interpretation of Statutes, page 514 (2nd edition) and the cases there cited. It seems to follow that if a new section is added to the Code after its application to proceedings under the Tenancy Act, that section will not have any application to such proceedings.

In this conflict of authority we should have thought ourselves bound to refer the question to a Full Bench, were it not that the point appears to us to be concluded by the Full Bench decision in *Poresh Nath v. Naba Gopal*, 29 Cal. 1, s. c., 5 C.W.N. 321. We are bound by that decision and must in accordance with it hold that persons are entitled to apply under sec. 310A of the Civil Procedure Code to set aside sales under the Tenancy Act."

Where the provisions of Act I of 1908 (E. B. A. C.) i.e., the Amending Act of East Bengal applies a permanent under-tenure holder has locus standi to apply under o. 21, r. 89 C. P. C. for getting the sale set aside: *Sarat Chandra v. Mati Lal*, 23 C.W.N. 597.

See notes under s. 174.

5. Claim:—S. 170 of the Bengal Tenancy Act bars a claim under s. 278, C. P. C. (Act XIV of 1882) to a tenure or holding attached in execution of a decree for arrears due thereon in all cases and the operation is not confined merely to claims to the tenure or holding but extends to claims based on the ground that the property claimed does not form part of the tenure or holding attached: *Amrita Lal v. Nemai Chand*, 28 Cal. 382, s.c., 5 C.W.N. 474 (F.B.).

Upon this question there was a conflict between the decision in the cases of *Jagabandhu Chattopadhyaya v. Deenu Pal*, 4 C.W.N. 732, and *Makbul Ahmed v. Rakhal Das*, 4 C.W.N. 734; the first of these two cases was overruled and the latter approved of by the Full Bench decision of *Amrita Lal v. Nemai Chand*, 28 Cal. 382, s.c., 5 C.W.N. 474 (F.B.).

No claim can be preferred to a tenure attached in execution of a decree for arrears of rent when the plaintiff was the landlord at the date of the suit and also at the date of the decree as such a decree may be executed as a decree for rent: *Khetra Pal v. Kritarithamoyee*, 33 Cal. 566, s.c., 10 C.W.N. 547 (F.B.), s.c., 3 C.L.J. 470.

A sale in execution of a decree obtained by a co-sharer landlord

When claim cannot be preferred.
Sale in exe-

cution of a decree obtained by a co-sharer landlord.

for his share of the rent does not carry with it the special incidents attaching to a sale under the Bengal Tenancy Act: *Sadagar v. Krishna Chandra*, 26 Cal. 937; see notes under ss. 65 and 159. It therefore seems that a claim may be preferred to a tenure attached in execution of a decree for arrears of rent obtained by a co-sharer landlord.

Where the other co-sharers are made party—defendants.

But where a decree for the entire rent of a tenure is obtained by one of several co-sharers by making the other party defendants and is executed by him alone and the defaulting tenure is attached, no claim by a third person under sec. 279, C. P. C., to the attached property is maintainable by virtue of sec. 170 of the Bengal Tenancy Act: *Chandra Shekhar v. Ranee Manjhee*, 3 C.W.N. 386; the decree has in this case the same effect as if the decree has been obtained by all the co-sharers and sec. 188 has no application to a case like the present: *Ibid.*

S. 170 has no application where only a portion of a tenure is attached in execution of a decree for arrears of the whole tenure: *Krishna Chandra v. Dinanath*, 54 Cal. 1064 (Panton & Mitter, JJ.). The case of *Chandra Sekhar v. Rani Manjhee*, 3 C.W.N. 386 referred to.

Decree by a co-sharer landlord.

S. 170 does not apply to a decree obtained by a co-sharer landlord for his share of rent in respect to holdings: *Bipra Das v. Rajaram*, 36 Cal. 765; see also *Hriday Nath v. Krishna Prasad*, 34 Cal. 298, s.c., 11 C.W.N. 497; *Baikanta v. Thakur Debendra*, 11 C.W.N. 676.

Decree for rent of two or more holdings.

S. 170 is no bar to a person preferring a claim under s. 278 C.P. C. (Act XIV of 1882) when in execution of a decree obtained for rent due in respect of two holdings, the holdings are attached, in as much as such a decree is not a decree for rent; *Bipradas v. Rajaram*, 13 C.W.N. 650; see also *Khetranath v. Mahomed Uzir*, 13 C.L.J. 525.

Recital in decree not as rent-decree conclusive.

A claimant under o. 21, r. 60 C.P.C. is in no way bound by the recital in the decree under execution; so where a claim is preferred to a property attached in execution of a decree which purported to be a decree for rent, *held* that the court should investigate as to whether the decree is a decree for rent under the Bengal Tenancy Act: *Sarbasundari v. Harendra Lal*, 12 C.L.J. 549.

Sub-sec. (1)

Sub-sec. (1) does not debar a landlord from challenging the right of a purchaser who has not been recognised by him to make a deposit under o. 21, r. 89 C. P. C. on the ground that the purchaser acquired no title against him (the landlord); *Abdur Rahman v. Promode Behari*, 22 C.L.J. 108.

Where a tenure is attached in execution of a decree which is purported to be a rent-decree, and a claim under o. 21, r. 58 C. P. C. is preferred the Court can go into the question as to whether it is a rent-decree and may entertain the claim if it is not so: *Jotindra Mohan v. Abalanath*, 27 C.W.N. 817.

6. Cl. (2) :—S. 170 (2) is a bar to an application by a decree-holder to set aside a sale on the ground that the decree has been satisfied out of Court, if the application has been made after the tenure has been knocked down to the auction-purchaser: *Jogdhari v. Langot Gope*, 75 I.C. 676; an order refusing to set aside a sale is not open to second appeal: *Ibid.*

7. Clause (3).—

(1) "*Interest voidable on the sale*":—The words "interest voidable on the sale" refer to interests coming within the description of "incumbrances" which, unless steps are taken to avoid them, subsists after the interest of a transferee of the holding from the transferor. *Jharu Mondal v. Kshettra Mohan Bera* (2 P.L.J. 457). See also *Mahadeo Lal v. Langat Singh*, 2 P.L.J. 457 (Special Bench).

To determine as to the right of a person who is not a judgment-debtor to make a deposit under s. 170, it is submitted, is this: if such a person has an interest voidable on the sale, he is entitled to make a deposit. According to s. 159 a purchaser takes the tenure or holding free from incumbrances. An incumbrance is defined in s. 161; an incumbrance is to be avoided or annulled under s. 167. Therefore if only the incumbrance-holders whose interests are voidable on the sale who are entitled to make a deposit. So, in determining the right of a person entitled to make a deposit, it is to be seen whether he has any incumbrance within the meaning of s. 161.

(2) *Transferee of non-transferable occupancy holding*:—A transferee of an occupancy holding either of a part or the whole ceases to have any interest on the sale, and as such it cannot be said that he has an interest voidable on the sale, and therefore he has no right to make a deposit. The transferee of the whole or a part is bound by the decree and the sale.

It is only an incumbrance-holder whose interest may be said to be voidable on the sale, and such encumbrance may be avoided upon a notice under s. 167. It is only such an encumbrance as is defined in s. 161 and which the auction purchaser is required to annul under s. 167, that may be said to be an interest voidable on the sale within the meaning of s. 170 cl. (3).

Moreover, a landlord is not bound to recognise the transfer of a non-transferable holding, and he is therefore entitled to ignore the interest which the transferee might claim against his vendor; and such a transferee is in the position of a stranger to the landlord; and it cannot be said that he has an interest voidable on the sale.

In regard to the question as to whether the transferee of a non-transferable holding can make a deposit under s. 170 (3), there was a conflict of case law both in the Calcutta High Court and the Patna High Court.

The question has now been set at rest by a Special Bench of the Patna High Court and a Full Bench of the Calcutta High Court.

—The Patna High Court in the Special Bench case of *Mahadeo Lal v. Langat Singh* (2 P.L.J. 457) discussed all the cases and has held that the transferee of a part of a non-transferable holding cannot make a deposit. In this respect a part transferee and the transferee of the entire holding stand upon the same footing; it is now settled law that the transferee of a part or whole is not an incumbrance under s. 161.

The Calcutta High Court in the Full Bench case of *Jharu Mandal v. Kshettra Mohan Bera*, 54 Cal. 15, s. c., 30 C.W.N. 729, s. c., 43 C.L.J. 554 (N. R. Chatterjea, Cuming, B. B. Ghose, Panton

Conflict of Case law: Question now settled by Special Bench case of Patna High Court & Full Bench Case of Calcutta High Court, Patna Special Bench Case.

Calcutta Full Bench case.

Present Law.

Purchaser of whole or part of non-transferable occupancy holding, not entitled to deposit.

and Page, J.J.), has held that the purchaser of the whole or portion of a non-transferable occupancy holding, who has not been recognised by the landlord, has not an interest in the holding which is voidable on the sale, and is not entitled to make a deposit under sec. 170 (3) of the Bengal Tenancy Act :

Per *N. R. Chatterjea J.* : The expression "voidable on the sale" refer to interests coming within the scope of "incumbrance," which, unless steps are taken to remove them, subsist after the sale, and the interest of a transferee of the holding itself from the tenant is not such an interest : *Ibid.*

Per *Page, J.* :—The expression "voidable on the sale" indicates the subsistence of some interest which may be avoided after the sale. But where an interest is extinguished on a sale nothing remains afterwards which can be avoided ; the purchaser can neither make the holding transferable by affirmance, nor avoid the transfer by disclaimer : *Ibid.*

The cases of *Tarak Das v. Harish Chandra*, 163 C.W.N. (Mukerjee and Beachcroft J.J.) and of *Ahamadulla v. Prayag Sahu*, 20 C.W.N. 39 (D. Chatterjea and Walmsley J.J.) were overruled : *Ibid.*

The following are some of the principal cases on the point, which were decided before the Full Bench case :

[Cases where it was held that a transferee of a non-transferable occupancy holding cannot make a deposit.]

Jolindra Mohan Tagore v. Durga Dabe, 10 C.W.N. 438, (Henderson and Caspersz J.J.) ; *Nalini Behary v. Fulmani Dasi*, 16 C.W.N. 421, s.c., 15 C.L.J. 388, Stephen and Cox, J.J.) ; *Mahammad Ismail v. Satyesh Chandra Sarkar*, 26 C.W.N. 170 (notes) (Woodroffe and Suhrawardy J.J.) ; *Radha Benode Mandal v. Nilai Chand Santh*, 38 C.L.J. 147, (Panton J.) ; (In this case the transferee was a mortgagee) ; *Narendra Nath v. Abdul Molla*, 27 C.W.N. 175 (notes), *Barada Prasad Roy Chowdhury v. Foijuddi Haldar*, 28 C.W.N. 845 (Newbould & B. B. Ghose J.J.) where the cases of *Tarak Das v. Haris Chandra*, 17 C.W.N. 163 and *Ahamadulla v. Prayag Sahu*, 20 C.W.N. 39 were not followed. *Rameswar v. Raghunandan*, 1 P.L.J. 403, s.c., 38 I.C. 337 ; (Chamier C. J. and Sharfuddin J.) ; *Bishnudoyal v. Jagadis Narain*, 80 I.C. 823 ; *Jogendra Nath v. Shib Narain*, 48 I.C. 965.

[Cases where it was held that a transferee of a non-transferable occupancy holding can make a deposit.]

Tarak Das v. Chowdhury v. Harish Chandra Banerjee, 17 C.W.N. 163, (Mookjee and Beachcroft J.J.) ; *Saleo Singh v. Kuldeep Singh*, 8 C.W.N. 219 (notes) fully reported in 27 I.C. 424, (case of partial transfer) ; (D. Chatterjee and Walmsley J.J.) ; *Ahamadulla Chowdhury v. Prayag Sahu*, 20 C.W.N. 39, s.c., 18 C.W.N. 331 (notes) ; *Bhagraj v. Malhu Singh*, 27 I.C. 424 ;

(3) *Mortgagee*:—An alleged mortgagee of a tenancy made a deposit under s. 170 cl. (3); the tenant judgment-debtor objected saying that the mortgage was not genuine; the court allowed the deposit to be made without deciding the question as to the genuineness of the mortgage, in a suit by the mortgagee for recovery of the deposited money, it was found that the mortgage was not genuine, *held* that he had no right to make the deposit and had no right to recover the money although the tenant had been benefited; *Panchkoree v. Haridas*, 21 C.W.N. 394, s. c., 25 C.L.J. 325: (Sanderson C.J. and Mookerjee J.). A mortgagee who is allowed to make a deposit is entitled to maintain a suit for declaration that a collusive decree by the landlord against the tenant for enhancement of rent is not binding on him: *Carhma Deo v. Sheo Prasad*, 2 Pat. L.J. 663, s. c., 41 I.C. 237. An usufructuary mortgagee has the right to make a deposit: *Sheikh Azmal v. Bibi Tamzan*, 5 Pat. L.J. 83.

Usu-
fructuary
mortgagee,
entitled to
deposit.

See also *Chaudhuri Mahadeo Singh v. Sheikh Azmut*, [1920 Pat.] 49; *Krishna v. Khiban*, 10 C.W.N. 499, *Ganesh v. Kedar*, 27 Cal. 473.

Where an usufructuary mortgagee of a non-transferable occupancy holding who was also a part purchaser of that holding, applied to make a deposit, *held* that he was entitled to make the deposit under s. 170 cl. (3) of the Bengal Tenancy Act: *Brojendra Kumar v. Lal Mia*, 31 C.W.N. 80 (notes), Mitter, J. [The cases of *Prankrishna v. Atul Krishna*, 22 C.W.N. 662; *Panchkoree v. Haridas*, 21 C.W.N. 394, s. c., 35 C.L.J. 1; *Sheikh Azmat v. Bibi Tamzan*, 5 P.L.J. 83 and 39 I.C. 460 referred to. The case of 38 C.L.J. 147 (Panton, J.) not followed. Mitter, J. observed as follows: The decisions on which Panton, J. (sitting singly) has relied on in 38 C.L.J. 147 for the purpose of taking a contrary view are all cases where the transfer was not by way of mortgage but was by way of sale.

(4) *Donee*:—The interest of a donee of a holding at fixed rates is not an interest voidable on the sale and the donee has no *locus standi* to make a deposit under sec. 170 cl. (3): *Gopal Lal v. Hit Narain*, 3 P.L.J. 145.

(5) *Hindu Reversioner*:—A Hindu reversioner has no right to make a deposit under s. 170 cl. (3) when a widow's tenure or holding is advertised for sale: *Mohendra Nath v. Baidyanath*, 26 C.W.N. 167.

(6) *Under tenant*:—A *mukarrari* lease-holder under a fixed raiyat may deposit under cl. (3): *Harimohon v. Atul Krishna*, 19 C.W.N. 1127. The word 'transfer' in s. 18 includes a lease and therefore a fixed raiyat may grant a permanent lease, and the provisions of s. 85 are subject to s. 18; consequently a *mokarari* lease by a fixed raiyat is a valid interest but voidable on the sale of the raiyati holding and as such a *mokarari* lease-holder is entitled to make a deposit: *Ibid*.

A lessee of a raiyat at fixed rate may apply under s. 170 (3): *Ibid*.

Lessee of
a raiyat at
fixed rate,
may deposit
by a dur-
putnidar.

A deposit by a *durputnidar* to save a *putni* from being sold in execution of a decree for arrears of rent comes within ss. 69 and 70 of the Contract Act; *Rajani Kant v. Haji Lal*, 21 C.W.N. 628.

See notes under s. 171.

(7) *Under-raiyat*:—Where an under-raiyat holding under a lease registered in contravention of s. 85 of the Bengal Tenancy Act, which

holding a lease for 9 years can deposit but when holding a lease for a term exceeding 9 years *i.e.* in contravention of s. 85 is not entitled to deposit as such an interest is not an incumbrance.

Whether judgment-debtor includes a purchaser.

purported to be a perpetual lease, (the words being *putra poutrade krame*, *i.e.*, from generation to generation) applied to deposit the decretal amount under s. 170 cl. (3) of that Act and the Court below allowed the deposit, *held* that the interest of such an under-raiyat was not one which was "voidable on the sale" and as such he was not entitled to make the deposit: *Jnanendra Chandra Ghosh v. Royman Sheikh*, 31 C.W.N. 580 (Mukerji & Graham J.J.). An under-raiyati interest is an "incumbrance," but to be so it must be such an under-raiyati interest as the law recognises as valid: *Ibid*.

The word "sub-tenancy" in s. 161 of the Bengal Tenancy Act means only sub-tenancy which is valid under the law.

(8) *Judgment-debtor*:—The Full Bench case in *Dayamayi v. Ananda*, 42 Cal. 172, s. c., 18 C.W.N. 971, s. c., 19 C.L.J. 52 lays down the rule that a purchaser of a non-transferable holding is a representative of the raiyat (judgment-debtor) under s. 244 of Act XIV of 1882 (s. 47 of Act V of 1908) and is competent to have a sale of the holding in execution of decree for arrears of rent set aside on the ground of fraud.

The question which arises under cl. (3) of s. 170 of the Bengal Tenancy Act is as to whether the expression "judgment-debtor" in cl. (3) includes a purchaser from the judgment-debtor and as such he is entitled to make a deposit. This question was not decided by the Full Bench. The expression "judgment-debtor," does not include such a purchaser, for it has been decided in the case of *Tarakdas v. Haris Chandra*, 17 C.W.N. 163, s. c., 16 C.L.J. 548, that the judgment-debtor mentioned in cl. (3) is a person against whom the decree under execution has been obtained. The same meaning has been attributed to the expression "judgment-debtor" under s. 174; see notes under that section.

It is submitted that a previous purchaser claiming to be a tenant to the knowledge of the landlord for 12 years, or a co-sharer of a judgment-debtor whose name has not been registered is not entitled to make a deposit under sec. 170, cl. (3) as the interest of none of these persons is an incumbrance within the meaning of sec. 161 and as such not voidable on the sale.

8. Ss. 170 and 171 apply to execution proceedings and not to suits:—Sections 170 and 171 of the B. T. Act apply to execution proceedings and not to suits: *Sarojendu v. Sannyasi Charan*, 12 C.L.J. 551, s.c., 14 C.W.N. 183.

Effect of withdrawal of deposit: Recognition.

9. Effect of withdrawal of deposit:—Where after the landlord obtained a rent-decree against an occupancy raiyat, a person who had not acquired the tenancy at that time, deposited the decretal amount and the landlord's objection to the right of the said person to deposit under s. 170 B. T. Act was disallowed and the landlord then withdrew the amount so deposited, *held* that the withdrawal of the amount by the landlord deposited by the said person did not confer any right on him in respect of the holding nor did it establish the relationship of landlord and tenant between them: *Sukchand Das v. Giridhari Das*, 44 C.L.J. 127. Mere acceptance of rent by a landlord by withdrawal of rent deposited by a person who has not been recognised by the landlord as a tenant does not create the relationship of landlord and tenant: *Ibid*. [The cases of *Jugal-mohini v. Srinath Chatterjee*, 12 C.L.J. 609, *Thomas Barclay v. Syed Hossein*, 6 C.L.J. 601; *Gadadhar v. Midnapore Zemindari Co.*,

27 C.L.J. 385 were doubted. Surhawardy J. observed "the ground on which the principle of estoppel was applied in these cases is open to question but as they are not applicable in the present case, we need say no further."]

Effect of
withdrawal
of deposit :
Recognition.

Where an application was made by the purchaser of a share of a tenure to deposit the judgment debt under sec. 170 cl. (3), and it was opposed by the decree-holder, and it was decided by the Court that the property in question was a transferable tenure and the applicant was interested in the tenure, and the judgment debt was deposited, which was withdrawn by the decree-holder, *held* that the effect of the decision was, that between the landlord and the transferee of portion of the tenure, the transferee acquired an interest in the tenure by purchase ; that as the landlord withdrew the sum deposited it was no longer open to him to dispute the title of the depositor to deposit the decretal amount in a subsequent application : *Jugal Mohini Dasi v. Srinath Chatterjee*, 12 C.L.J. 609 (Mookerjee and Carnduff, J.J.).

Mere acceptance or withdrawal of a deposit cannot operate to oblige the landlord to recognise the depositor as a tenant : *Fazoo Mia v. Sultan Ahamad Chaudhury*, 55 Cal. 108 (Rankin and Costello, J.J.).

Where a decree-holder disputed the right of the transferee of a portion of a tenure to make a deposit under s. 170 cl. (3) and the court decided against the decree-holder who subsequently withdrew the deposit, *held* that the effect of the withdrawal of the money by the decree-holder was to recognise the transferee as a tenant : *Jugal Mohini v. Srinath*, 12 C.L.J. 609.

Where the money deposited by the transferee of an occupancy holding has been withdrawn by the landlord, the transferee is entitled to maintain a suit to challenge a decree by the landlord collusively against the recorded tenant enhancing the rent : *Lala Barhamdeo v. Sheo Prasad*, 2 Pat. L.J. 561.

Where in execution of a decree for rent by a co-sharer landlord a non-transferable occupancy holding was attached and execution was taken under the Civil Procedure Code (and not under the Bengal Tenancy Act) and a previous purchaser of the holding deposited the decretal amount stating in his application that he is a previous purchaser, *held* that upon such deposit the landlord could not, as in a case under the Bengal Tenancy Act, contest the right of the purchaser to make the deposit and the withdrawal of the deposit did not amount to a recognition of the purchase by the purchaser : *Surendra Narain v. Jugal Kishore*, 20 C.W.N. 849.

Where the transferee of a portion of a non-transferable holding made a deposit under s. 170 (3), *held* that a suit by him for setting aside the decree on the ground of its being a collusive one and for recovery of the money deposited and withdrawn by the landlord is maintainable : *Asarfi v. Ram Khelawan*, 4 Pat. L.J. 115 ; (F.B.).

Where a landlord decree-holder withdraws under protest money deposited under s. 170 (3) and by a transferee of a non-transferable occupancy holding, he thereby does not recognise the transferee as a tenant : *Sheo Prasad v. Barhamdeo*, 38 I.C. 366. The case of *Matookdhari v. Narain*, 19 C.W.N. 1319, s. c., 21 C.L.J. 261 was distinguished ; in this case it was held that acceptance of rent under protest would operate in favour of the payer as a waiver of any

forfeiture incurred ; the cases of *George Henry Davenport v. Her Majesty the Queen*, L.R. 3 App. 115 and *Kalikrishna v. Fuzle Ali*, 9 Cal. 843 were followed.

Where the purchaser of a portion of a holding deposits the amount due under a rent-decree and the landlord withdraws that amount, it is no longer open to the landlord to say that he did not recognise the purchaser as a co-tenant of the holding: *Rajendra Narain v. Mahes Chandra*, 83 I.C. 203.

Appeal :
Revision
under
s. 115,
C. P. C.

10. Appeal : Revision :—No appeal lies from an order under cl. (3). But to allow a transferee of a non-transferable occupancy holding to make the deposit and thus prevent execution is an irregular exercise of jurisdiction open to revision by the High Court: See *Nalin Behari v. Fulmoni*, 16 C.W.N. 421, s.c., 15 C.L.J. 388. See also *Nissa Bibi v. Radhakisore*, 11 C.W.N. 312 ; *Prasanna Kumar v. Bamacharan*, 13 C.W.N. 652. Where an applicant was allowed to make a deposit without an enquiry as to whether a depositor had any interest voidable on the sale, held that the order could be and was set aside under sec. 115 C. P. C.: *Gobinda Sundar v. Chand Mea*, 17 C.W.N. 602.

Notice.

11. Notice :—Notice should be given to the decree-holder, if an application to deposit money under sub-sec. (3) of s. 170 be made by the judgment-debtor ; when the application is made by a stranger, notice ought to be issued to the decree-holder as well as to the judgment-debtor ; *Rama Nath v. Rudia Mahanti*, 18 C.L.J. 142.

Notice to
both credi-
tor and
debtor.

Notice must be given both to the creditor and the judgment-debtor and the matter must be investigated and adjudicated: *Kunja Singh v. Bahro Ray*, 73 I.C. 12.

Or. 21, r. 90,
C. P. C.

12. Or 21 r. 90 C. P. C. :—A transferee of a portion of non-transferable occupancy holding can come in under Or. 21 r. 90 C.P.C. to set aside a sale by the landlord in execution of a rent decree against the recorded tenant: *Abdul Aziz v. Tuffazaddi*, 18 C.W.N. 72 (notes) (Mookerjee and Beachcroft J.J.).

Amount
paid into
Court to
prevent sale
to be in
certain
cases a
mortgage-
debt on the
tenure or
holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this Chapter, *or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913,** 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 centum per annum* and secured by a mortgage of the tenure or holding to him ;
- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent ; and

* The words in italics were inserted by the Bengal Public Demands Recovery Act, (III of 1913) ; similar insertions have been made by the Bihar and Orissa Public Demands Recovery Act. For the words and figures "Bengal Public Demands Recovery Act, 1913," in this section read for Bihar the following words and figures : "Bihar and Orissa Public Demands Recovery Act, 1914."

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Headings of Notes.

1. WHO MAY DEPOSIT.
2. MORTGAGE.
3. DECREE FOR RENT AND OTHER SUMS.
4. RIGHT OF DEPOSITOR.
5. LEASE OR OTHER INCUMBRANCE.
6. APPEAL.
7. RIGHT OF SUIT BY A TENANT AGAINST WHOM THE DECREE FOR RENT WAS NOT OBTAINED.
8. SUIT FOR RECOVERY OF MONEY DEPOSITED—IN WHAT COURT, SUIT LIES.

1. Who may deposit :—See notes under s. 170.

2. Mortgage :—A mortgage created by the operation of s. 171, Mortgage is not an incumbrance within the meaning of this Chapter (Chapter created by XIV), and as such, not liable to be avoided by the purchaser of a operation of tenure at a sale in execution of a decree for arrears of rent : *Pasupati* of law is not an encumbrance. *Mahapatra v. Narayan Dasi*, 24 Cal. 537, s.c. 1 C.W.N. 519.

A mortgagee making payments to save the mortgaged property Payment by from being sold in execution of the rent decree has an additional mortgagee lien on the property for the sums so paid by him : *Rakhori v. Bipradas*, 31 Cal. 975 ; see also *Upendra Nath v. Tara Prasanna*, 30 Cal. 794.

In a suit by the first mortgagee of a property against a subsequent S. 69 of mortgagee of the same, *held* that in taking accounts defendant was Contract Act—Pay- not entitled to get credit of the money paid by him under s. 171 of ment by the Bengal Tenancy Act to save the property, inasmuch as under s. mortgagee. 69 of the Contract Act the first mortgagee was not bound to pay the money : *Gangadas v. Jagendranath*, 11 C.W.N. 403 ; where a plain- tiff in execution of a mortgage decree purchased the tenure mortgaged, and then paid the money due under a decree obtained by the landlord against the tenure-holder for arrears of rent for the period anterior to the confirmation of the sale, *held* that the plaintiff was not entitled to recover the money paid by him for satisfying the rent decree : *Maharani Dasya v. Harendralal*, 1 C.W.N. 458.

Where a mortgagee deposited money and the question as to the genuineness of the mortgage was not gone into, and the mortgagee Deposit by brought a suit for recovery of the money deposited by him, and it mortgagee. was found that the mortgage was not genuine, *held* that ss. 69 and 70 of the Contract Act did not apply and he was not entitled to recover the money deposited by him although the tenant was benefited : *Panchkori v. Haridas*, 21 C.W.N. 394, s.c., 25 C.L.J. 325.

Money paid by a mortgagee to avert a sale for arrears of rent Money paid

by a mort-
gagee—S.
83 of the
Transfer of
Property
Act.

under s. 171 does not become a part of the mortgage money so as to entitle the mortgagee to treat it as included in the amount remaining due on his mortgage under s. 83 of the Transfer of Property Act: *Manmatha Nath v. Sarat Chandra*, 21 C.L.J. 429, the statutory mortgagee under s. 171 is entitled to priority over the charge which he himself holds: *Ibid*.

3. Decree for rent and other sums:—S. 171 applies to a sale in execution of a decree which is mainly for rent although it includes other sums not strictly rent: *Jnanada Sundari v. Atul Chandra*, 32 Cal. 972. Where a decree was obtained for rent reserved in a lease and of "various sums, so much for the *malikana* payable direct to the landlord and so much for Government revenue and other demands which the landlord was himself liable to pay," held that ss. 170 and 171 were applicable to the execution of such a decree: *Jnanada v. Atul Chandra*, 32 Cal. 972; as to what is a rent decree and what not: see notes under ss. 65, 148A and 159.

Possession.

4. Right of depositor:—Possession may be obtained by application to the executing court and a regular suit is not necessary: *Umatul v. Nemai*, 6 C.L.J. 592. This case was followed and applied in the case of *Radhika Nath v. Rakhalraj*, 18 C.W.N. 1175, s.c. 10 C.L.J. 473. When a deposit is made under s. 171 the depositor can, as against the judgment-debtor, obtain delivery of possession of the holding advertised for sale, by application to the execution Court but by such application the depositor is not entitled to invite the executing Court to oust a stranger to the proceeding; if he is met by a stranger, his remedy is by a regular suit for recovery of possession: *Ram Varain v. Lal Das*, 12 C.W.N. 55: s.c., 6 C.L.J. 595.

Recognition.

Suit for re-
covery of
sum deposi-
ted.

An under tenure-holder who has secured a superior tenure from sale in execution of a decree for arrears of rent by a deposit under sec. 171 of the Bengal Tenancy Act is competent to maintain an action for the recovery of the sum deposited by enforcing the charge created in his favour by that section, even when the impending sale was likely to be brought about, partially, at any rate, by reason of his own default: *Hemanta Kumar v. Rajendrabala*, 13 C.L.J. 454. To such a claim for money, the defendant is entitled to interpose an equitable defence, *Ibid*. If part of the sum deposited by the plaintiff to avert the sale was payable by him to the superior landlord he is not entitled to recover that sum from the defendant. *Ibid*.

Deduction
of amount
deposited.

A *durputnidar* saved a putni tenure from sale by making a deposit alleging deliberately that no rent was due by him, he obtained possession of the *putni*, held in a suit for rent by the putnidar that the *durputnidar* could not deduct the amount deposited from the claim of the rent under cl. (3) of s. 13 of the Putni Regulation, as his case fell under cl. (4) of the section: *Kamalanand v. Jarao Kumār*, 17 C.L.J. 96; it was not open to him to resile from the position he deliberately took up at the time he made the deposit: *Ibid*.

Contribu-
tion.

Where a *se-putnidar* after paying money to satisfy a rent decree obtained by a *putnidar* against a *durputnidar* brought a suit for contribution praying for a personal decree and also for a declaration that the *durputni* tenure was liable to be sold for the money paid by him; held, that the money paid was to be charged on the whole tenure and that the charge could not be split up. *Benimadhab v. Purna Chandra*, 14 C.L.J. 134.

Where in execution of a decree for arrears of rent the *putnidar* attached and advertised for sale the *durputni* tenure, and the *seputnidar* made a deposit under s. 171 and obtained an order for possession under sub-sec. (1) cl. (c), but in the meantime before such order the *durputni* had been sold and purchased by A, *held* in a suit for rent by A against the *seputnidar*, the latter was entitled to set off the amount of deposit made by him with interest at the rate of 12 per cent: *Jnanendra Nath v. Bhubaneswari*, 33 C.L.J. 494; the case of *Ram Narain v. Lal Das*, 6 C.L.J. 595 was distinguished.

In an application under s. 171 where the applicant paid money direct to the decree-holder by direction of the Court, it is tantamount to a payment in Court: *Mosafirlal v. Ganes Jha*, [1922 Pat.] p. 347, s.c., 71 I.C. 473. Payment to decree-holder, effect of.

An unrecorded purchaser of a share of *darpatni* tenure may, where the tenure is advertised for sale in execution of a decree for rent by the *patnidar*, apply under s. 171: *Radhika Nath v. Rakhal Raj*, 13 C.W.N. 1175; s.c. 10 C.L.J. 473.

A *darpatnidar* is not entitled to make a deposit under s. 171 to prevent a sale in execution of a decree obtained by the *Zemindar* against some of the *patnidars*: *Khetra Nath v. Mohamed Uzir*, 19 C.L.J. 525.

The interest of a co-tenant is void and not voidable on sale, and a co-tenant on deposit of the decretal amount and on the setting of the sale has no lien on the property under s. 171: *Ashutosh v. Abinash*, 15 Cal. 782. It was held in the case of *Behari Lal v. Fakir Chandra*, 12 C.W.N. 231 (notes) that a co-sharer of a judgment debtor though his name has not been registered may make a deposit. Co-tenant.

5. Lease or other incumbrance:—If a tenant not authorised to create a lease or a mortgage does so, and the lessee or mortgagee makes an application under s. 171 to deposit the amount, the landlord decree-holder may oppose the application saying that he is not bound to recognise such incumbrance and is not therefore bound to avoid it, and such incumbrance so far as he is concerned is void.

6. Appeal:—An order passed upon an application of a person who is not a party to the suit is not appealable: *Gobindasundar v. Chand Meah*, 17 C.W.N. 602; see notes under s. 170.

Where the court decides a controversy between a usufructuary mortgagee and a simple mortgagee as to their respective rights to make the deposit under s. 171, the order is not appealable: *Dwarkanath v. Kangali*, 52 I.C. 980, s.c., 29 C.L.J. 416.

7. Right of suit by a tenant against whom the decree for rent was not obtained:—Where a *putni* was sold in execution of a decree for arrears of rent in a suit, and the *durputnidar* of a share of the *putni* deposited money to save the *putni* from being sold, and an order having been passed under s. 171, one of the *putnidars* who was no party to the decree brought a suit for an injunction that his right was not affected, and a decree was made conditionally upon the plaintiff paying the proportionate share of his debt: *held* that the decree was a good decree: *Rajani Kant v. Hazilal*, 21 C.W.N. 628. Right of suit by tenant against whom decree for rent not obtained.

8. Suit for recovery of money deposited: in what court suit lies:—Where the payment is voluntary the suit lies in the Small Cause Court: *Ramnarin v. Satis Chandra*, 22 C.W.N. 72 (notes portion). Voluntary payment.

Inferior
tenant pay-
ing into
Court may
deduct from
rent.

172. *When a tenure or holding is advertised for sale—*

- (a) *under this Chapter, in execution of a decree against a superior tenant defaulting, or*
- (b) *in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from 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.

Headings of Notes.

1. ESTOPPEL.
2. PROCEDURE.
3. SURRENDER.
4. MORTGAGE LIEN.

1. Estoppel :—Where a landlord did not question the right of a purchaser of the tenure to make the deposit and withdrew the money in deposit he was *held* to be estopped to question his right subsequently : *Thomas Barclay v. Syed Hossein*, 6 C.L.J. 601.

2. Procedure :—The landlord is a necessary party to a proceeding arising out of an application to make a deposit ; *Thomas Barclay v. Syed Hossein*, 6 C.L.J. 601.

3. Surrender :—Where a raiyat surrendered his holding at a time when the holding was in possession of the under-lessee of the raiyat under sec. 171 of the Bengal Tenancy Act, *held* that the superior landlord's claim to *khas* possession by virtue of the surrender should be postponed till the amount due to the under-lessee by virtue of the mortgage under the operation of the law under sec. 171 is satisfied : *Nabadih v. Bhairab*, 13 C.W.N. 97.

4. Mortgage lien :—In the case of a rent sale with express power to the purchaser to annul all incumbrances, so long as such

* The words in italics were substituted by the Bengal Public Demands Recovery Act, (III of 1913) for the following words :—Where a tenure or holding is advertised for the sale under this Chapter in execution of decree against a superior tenant defaulting.

Similar insertions have been made by the Bihar and Orissa Public Demands Recovery Act. For the words and figures "Bengal Public Demands Recovery Act, 1913," in this section read for Bihar the following words and figures :—Bihar and Orissa Public Demands Recovery Act, 1914.

power remains in the purchaser, the lien of a mortgagee is in jeopardy ; in such a case the mortgagee may abandon his lien and ask to have it transferred to the surplus sale-proceeds ; *Nim Chand v. Ashutosh*, 9 C.W.N. 117.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder may bid at sale ; judgment-debtor may not. XIV of 1882.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor.

Headings of Notes.

1. APPEAL.
2. SETTING ASIDE OF SALE.
3. LIMITATION.
4. SUIT TO RECOVER DEFICIENCY OF PRICE.
5. PURCHASE BY A JUDGMENT-DEBTOR OR AN UNREGISTERED TENANT.
6. RIGHT OF UNREGISTERED TRANSFEREE OF TENANT TO APPLY.
7. PURCHASE BY A CO-SHARER OF A REVENUE PAYING ESTATE ; RIGHT OF SUIT BY OTHER CO-SHARERS FOR RECONVEYANCE.

I. Appeal :—No appeal lies from an order setting aside a sale under this section where the question is not between the parties to the suit : *Raghu Singh v. Misri Singh*, 21 Cal. 825. The reason given by their Lordships (Ghose and Gordon, J.J.) is as follows—“The order in question could not be regarded as a “decree” as defined by the Code of Civil Procedure, nor could it fall within s. 244 of that Code, because the appellant was an outsider, and not a party to the suit in which the decree was made. The Bengal Tenancy Act itself does not provide for an appeal like this, and we are not aware of any provision in the Civil Procedure Code allowing an appeal against such an order.”

No appeal when question arises between persons not parties to the suit.

In a suit for possession by a first mortgagee who was the purchaser of the mortgaged property in execution of the mortgage decree, held that the defendants (some of whom were second mortgagees and some purchasers) in redeeming the property were not entitled to for payments alleged to have been made under s. 171 as they were not bound to pay the money under s. 69 of the Contract Act : *Gangadas v. Jogendra*, 11 C.W.N. 403.

Suit for possession.

But where judgment-debtor is appellant, an appeal lies.

But it was held in *Sriram v. Guru Das*, 3 C.W.N. 104 (notes), that an appeal lay where the judgment-debtor was the appellant. In this case it was also held that in as much as the appellant's case was that the purchase was not made by a third party, but by some of the judgment-debtors in *benami* in the name of the auction-purchaser, and if that case is proved the case would come under s. 244 and an appeal would therefore lie: *Ibid.*

Appeal and second appeal when the question is between parties to the suit.

Where the question is between the parties to the suit, an appeal and a second appeal would lie as it is cognizable under s. 244 C.P.C.: *Chand Moni v. Santo Moni*, 24 Cal. 707, s.c., 1 C.W.N. 534.

An order setting aside a sale under s. 173 is not appealable: *Dhramoyi v. Anantaram*, 46 I.C. 748. (Fletcher and Newbould, J.J.). See also *Surendra v. Lakshan*, 87 I.C. 744.

No appeal at the instance of auction-purchaser or a third party.

No appeal lies at the instance of an auction-purchaser against an order setting aside a sale under s. 173 of the Bengal Tenancy Act: *Harabundhu v. Harish Chandra*, 3 C.W.N. 184.

No appeal lies at the instance of the auction-purchaser against an order setting aside a sale under s. 173 of the B. T. Act: *Surendra v. Lakshan*, 87 I.C. 744.

When the Court refused to set aside a sale in an application under s. 173, *held* that an appeal lay at the instance of the judgment-debtor but no appeal lay at the instance of a third party: *Sriram v. Guru Das*, 3 C.W.N. 104 (notes); where the purchase was made by a judgment-debtor *benami* in the name of the auction-purchaser, *held* that the case would come under s. 244 C.P.C.

Appeal by auction purchaser.

Where an auction purchaser preferred an appeal against an order under s. 173, *held* that no appeal lay: *Durlav Pradhaina v. Mahomed Mainuddi*, 13 C.W.N. 100 (notes).

No appeal lies by an auction-purchaser against an order setting aside a sale under s. 173 although there was an allegation of fraud which was found against the petitioner judgment-debtor: *Jadab Chandra v. Joygopal*, 19 C.L.J. 81. (The cases on the point were reviewed).

Appeal by unrecorded tenant does not lie.

Where A, B, C and D were the tenants, and A alone was the recorded tenant, and the landlord in execution of a decree for arrears of rent against the recorded tenant A put the holding to sale, and B made an application to have the sale set aside on the ground that A had purchased the holding in the name of another person, *held* that B was not a representative of A and the order passed in such a proceeding was not appealable: *Joytara v. Prankrishna*, 15 C.W.N. 512, s.c. 13 C.L.J. 257, Mookerjee J., in delivering judgment said as follows:—".....an inflexible rule cannot be formulated that an order under s. 173 is or is not appealable as a decree. The test to be applied in the circumstances of each case is, what is the true nature of the question raised, and who are the parties between whom it arises. The answer must depend largely upon the position of the applicant and the title he claims. We may observe, however, that there are expressions used in some of the cases in the books which may be open to criticism." (13 C.L.J. at p. 260).

Where appeal lies.

Whether an appeal lies or not depends upon whether the question relates to the execution of the decree and whether it is between the parties to the original suit or their representatives so as to bring the order under s. 47 C. P. C.

Where a question decided under sec. 173 of the Bengal Tenancy Act is one which is covered by s. 47 of the C. P. C. an appeal lies against the order made by the Court though no provision for such an appeal is made in the Bengal Tenancy Act itself. The right to appeal, therefore, from an order passed under sec. 173 depends upon the questions raised and the party appealing.

It has been held in the case of *Ananta Charan v. Nirmal*, 6 Pat. 266 (Kulwant Sahay and Macpherson J.J.) that an application under sec. 173 cannot be considered to be an application under s. 47 of the C. P. C. See notes under s. 174.

No appeal lies at the instance of the auction purchaser against an order passed under sec. 173, the reason being that he is not one of the parties to the suit within the meaning of sec. 47 C. P. C.: *Azam Khan v. Umedali Moral*, 85 I.C. 750 (Suhrawardy and Duval J.J.).

Where an application for setting aside a rent sale under Or. 21 r 90, C. P. C. and sec. 173 cl. (3), B. T. Act on the ground as to the former that the sale processes were not duly served and there was material irregularity and gross inadequacy of price and as to the latter that one of the judgment-debtors in collusion with the decree-holders managed to purchase the property in the benami of his daughters, was refused by the Subordinate Judge and allowed in appeal by the District Judge, the auction purchasers preferred a second appeal; it was held that the second appeal was incompetent: *Tamiranesa v. Kachhiman Bibi*, 32 C.W.N. 98. (Mukerji and Roy J.J.).

Where an application for setting aside an execution sale was made on two grounds, first, on the ground under provisions of sec. 173, B. T. Act and secondly, under O. 21 R. 90 of the Code of Civil Procedure and the sale was set aside under the provisions of both, an appeal against the order so far as it purports to be under O. 21 R. 90 of the Code of Civil Procedure, is not entertainable, as the appellate Court cannot give any relief to the appellant, although the order under O. 21, R. 90 might be erroneous: *Durgacharan v. Bishnupada*, 46 C.L.J. 172 (Chakravarti, J.).

2. Setting aside of sale :—The Court holding the sale is the proper Court to determine whether the sale should stand or not: *Gopal Chunder v. Ram Lall*, 21 Cal. 554. If it determines the questions in the negative, it has to put up the property again to sale; a Court, other than the executing Court, is not in a position to do so: *Ibid*.

Where in execution of a decree for arrears of rent against the recorded tenant (who had no existing interest in the tenure and whose interest had been sold previously in execution of a money-decree) the tenure was sold and purchased by the recorded tenant in the benami of another person, held that the sale ought not to be set aside on the ground of the purchase being made by the judgment-debtor: *Gopal Chunder v. Ram Lall*, 21 Cal. 554.

The sale is only voidable and not void: *Ibid*. If the question is between the parties to the suit in which the decree is made a separate suit does not lie to have the sale set aside: *Ibid*.

But a person not a party to the suit may bring a separate suit to have the sale set aside: *Ibid*.

A sale to the judgment-debtor is not void but voidable: *Syed Muhammad Amirul v. Syed Muhammad Jewad*, 74 I.C. 769.

Where a sale was set aside under O. 21, r. 90 C. P. C. s. 173 Bengal Tenancy Act, *held* that the fact that an appeal lay against the order passed under O. 21, r. 90 C. P. C. would not give the aggrieved party a right of appeal against the order setting aside the sale under s. 173 Bengal Tenancy Act: *Amar Prasad v. Gagan Chandra*, A.I.R. 1922 Cal. 180.

Where a purchase is made by a judgment-debtor in the *benami* of another person the sale is only voidable and it is in the discretion of the Court to set it aside or not: where a judgment-debtor purchased in the name of his son and the under-tenant made an application to have the sale set aside on the ground that his interest will be affected by the sale, the High Court *held* that he was not seriously prejudiced in as much as in the event of the tenure or holding being put up to sale again another person might purchase who would be in a position to annul the encumbrance and the High Court therefore refused to set aside the sale: *Brojendra v. Jadunath*, A.I.R. 1925, Cal. 293, s. c., 80 I.C. 708.

It is submitted that the High Court's refusal to set aside the sale ought to have been not in the ground given by it but on the ground as contended by the other party that the applicant was not affected for, if the purchaser was a *benamidar* of the judgment-debtor he could not be entitled to cancel the under-tenant's interest.

It is submitted that the reason given by the High Court is not sound in as much as if the present sale is set aside on the ground of *benami* and the holding is put up for sale again, the under-tenant whose interest is voidable at the sale would have the right to prevent the sale taking place at all by an application under s. 173 cl. (3).

A sale in execution of a decree to the judgment-debtor himself is voidable under sub-clause (2) of s. 173 and remains valid until duly set aside: *Amirul Hassan v. Jewad Hussain*, A.I.R. 1924, Pat. 318.

3. Limitation :—An application under this section is governed by Art. 178 of Sch. II of the Limitation Act (XV of 1877): (Art. 178 of Sch. II of Act XV of 1877 is Art. 181 of Sch. I of the present Limitation Act). *Chand Moni v. Santo Moni*, 24 Cal. 707, s.c., 1 C.W.N. 534. See also *Chandrama v. Maharaja of Dumraon*, 38 I.C. 209.

Limitation
for setting
aside.
sale.

An application to have a sale set aside under this section is governed by Art. 166 of the Limitation Act and is consequently barred if made after 30 days: *Haripada v. Baradaprasad*, 51 Cal. 1014, s.c., 28 C.W.N. 154 (notes portion).

4. Suit to recover deficiency of price:—A suit to recover the deficiency for which the defaulting purchaser is made answerable under s. 9 of Reg. VIII of 1819 is maintainable in a Civil Court: *Raghu Ram v. Mohesh Chunder*, 7 C.W.N. 111.

5. Purchase by a judgment-debtor or an unregistered tenant :—If a judgment-debtor or a person who is a tenant whose name is not registered in the landlord's *sherista* purchases a tenure or holding by himself or through another person he does not acquire the tenure or holding free from encumbrances.

A previous holder of the tenure through whose default the holding or tenure was sold was held under Act VIII B. C. of 1869 not entitled to annul an encumbrance although he purchased at the auction sale in execution of a decree for arrears of rent: *Fakir Chandra v. Ram Kumar*, 31 Cal. 901, s.c., 8 C.W.N. 721; see also *Syed Nawabali v. Hemanta Kumari*, 8 C.W.N. 177.

The law as laid down in s. 173 does not distinguish between one judgment-debtor and another: *Sheikh Mahomed v. Durga Prasad*, 21 C.W.N. 342 at p. 344 column 1: Where a *benamidar* for one of the judgment-debtors purchased a tenure and the Collector refused to issue any notice under s. 167 on the application of the *benamidar*, and the *benamidar* brought a suit for a declaration that he had right to annul the incumbrance or that the Collector was bound by the notice, *held* that the suit was rightly dismissed: *Ibid*.

6. Right of unregistered transferee of tenant to apply:—An unregistered transferee of an occupancy holding against whom no decree was obtained can apply for setting aside a sale under this section: *Azgar Ali v. Asaboddin*, 9 C.W.N. 134.

7. Purchase by a co-sharer of a revenue paying estate: Right of suit by other co-sharers for re-conveyance:—Where a revenue-paying estate was purchased one of the co-sharers at a sale for arrears of revenue, and the other co-sharers brought a suit against the purchaser for a re-conveyance of the property, *held* that the mere fact that the purchaser of estate is one of the co-sharers is not in itself to give the other co-sharers an equity to obtain the reconveyance of their shares: *Khurshed v. Dinanath*, 29 C.L.J. 492; see also the case of *Deonandan v. Janki Singh*, 44 Cal. 573, s.c., 25 C.L.J. 259.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five *per centum* of the purchase-money.

Application by judgment-debtor to set aside sale.

XIV of 1882.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside:

XIV of 1882.

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section; and, if he applies under this section, he shall not be entitled to make an application under section 311 of the Code of Civil Procedure.

XIV of 1882.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this Chapter.

XIV of 1882.

Headings of Notes.

1. AMENDMENT.
2. S. 174 OF THE BENGAL TENANCY ACT AND S. 310A OF THE CIVIL PROCEDURE CODE OF 1882.
3. DECREE FOR CESS.
4. WHERE DECREE WAS PASSED BEFORE THE DATE OF THE PASSING OF THE ACT.
5. WHERE PROCEEDINGS IN EXECUTION COMMENCED BEFORE THE PASSING OF THE ACT.
6. WHO MAY APPLY UNDER S. 310A C.P.C. (ACT XIV OF 1882) (*i.e.* O. 21, r. 89 C.P.C.).
7. WHO CANNOT APPLY UNDER S. 310A, C. P. C.
8. IF SUCH DEPOSIT IS WITHIN THIRTY DAYS.
9. NOTICE.
10. FORMAL APPLICATION NOT NECESSARY.
11. EFFECT OF MISTAKE OF COURT IN CALCULATING THE SUM REQUIRED TO BE DEPOSITED.
12. DATE OF SALE.
13. AMOUNT OF DEPOSIT.
14. DECREE.
15. APPEAL: POWERS OF REVISION.
16. S. 174 APPLIES TO ORISSA.
17. REGULAR SUIT TO SET ASIDE SALE.
18. PROVISIO TO S. 310A C. P. C. (ACT XIV OF 1882).
19. S. 295 C. P. C. (ACT XIV OF 1882).
20. RIGHT OF AUCTION PURCHASER TO RECOVER PURCHASE MONEY UNDER S. 315 C. P. C.
21. ACT X OF 1859.
22. RIGHT OF SUIT.
23. CONTRIBUTION.
24. MONEY DEPOSITED ON BEHALF OF JUDGMENT-DEBTOR.
25. APPLICATION BY PURCHASER AT A SALE HELD UNDER CHAP. XIV OF B. T. ACT TO SET ASIDE SALE ON THE GROUND THAT JUDGMENT-DEBTOR HAD NO SALEABLE INTEREST.

I. Amendment:—To the proviso to sub-sec. (2) the following was added by Act I, B. C. of 1907 and Act I, E. B. A. of 1908:—
 “And if he applies.....Civil Procedure.”

2. S. 174 of the Bengal Tenancy Act and s. 310A of the Civil Procedure Code of 1882:—(O. 21, r. 89 of the new Code): S. 174 of the Bengal Tenancy Act is analogous to s. 310A* (O. 21,

S. 310A of Act XIV of 1882.

* 310A. Any person whose immoveable property has been sold under this chapter may at any time within 30 days from the date of sale apply to have the sale set aside on his depositing in Court—

(a) for payment to the purchaser, a sum equal to five per centum of the purchase money, and,

(b) for payment to the decree-holder, an amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may since the date of such proclamation of sale, have been received by the decree-holder.

If such deposit is made within the thirty days the Court shall pass an order setting aside the sale:

R. 89 of O. 21 of the Code of 1908 which corresponds to s. 310A of old Code is as follows:—

(1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue

O. 21 r. 89 of Act V of 1908.

r. 89 of the new Code) of the Civil Procedure Code, but provisions of the latter are more wide.

Under s. 174 of the Bengal Tenancy Act it is the judgment-debtor alone who can apply to have the sale set aside. But under s. 310A, C. P. C., any one whose immoveable property is sold may apply to have the sale set aside. S. 310A, C. P. C. is not now applicable to Bengal but it is applicable in East Bengal since the passing of Act I (B.C.) of 1907; see notes under s. 170.

Judgment-debtor alone can deposit under s. 174.

It has been held that s. 310A of the Civil Procedure Code (which corresponds to r. 89 of o. 21 of the new Code) applies to a sale of a tenure or holding in execution of a decree for its own arrears: *Bangsheedhur v. Kedar Nath*, 1 C.W.N. 114; *Janardan v. Kali Kristo*, 23 Cal. 393. Since the passing of the Bengal Act I of 1907, s. 310A C. P. C. (of 1882) (O. 21, r. 89 of the new code) does not apply to Bengal but still applies to the districts which were constituted the Province of East Bengal.

S. 310A C. P. C. applies to sales in execution of rent decrees.

S. 54 of Act I, B. C. of 1907 by enacting that s. 310A, C. P. C., shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon, does not repeal any portion of the Bengal Tenancy Act within the meaning of sub-sec. (c) of s. 8 of the Bengal General Clauses Act: * *Asiruddy v. Mukhodamoyee*, 12 C.W.N. 434.

Amendment in Bengal.

S. 310A, C. P. C. (of 1882) (O. 21, r. 89 of the new code) still applies to the districts which were constituted the Province of East Bengal.

But it is was decided in a case that even before the passing of the Bengal Tenancy Amendment Act of 1907, s. 310A C. P. C. (Act xiv of 1882) did not apply to a tenure or holding attached in execution of a decree for arrears of rent: *Asiruddi v. Mokhada*, 35 Cal. 543.

Conflicting rulings.

The question was subsequently considered and dissented from in the case of *Ali Miah v. Ramjan Khan*, 13 C.W.N. 224, where Sharfuddin and Coxe J.J. observed as follows:—

of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court—

- (a) for payment to the purchaser, a sum equal to five per cent, of the purchase money, and
- (b) for payment to the decree-holder the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.
- (2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.
- (3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Provided that if a person applies, under the next following section, to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section.

Nothing in this section shall be construed to relieve the judgment debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

* S. 8 of the Bengal General Clauses Act: Where this Act or any Bengal Act made after the commencement of this Act repeals by enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not affect any right, privileges, obligation or liability accrued or incurred under any enactment so repealed.

S. 310A
applies to
East Ben-
gal.

"The first question that arises for decision is whether Sec. 310 A applies to sale of holdings under the Tenancy Act at all. It was held in *Janardhan Ganguli v. Kali Kristo Thakur*, 23 Cal. 393, that the section does apply. Reference may also be made to *Benodini Dasi v. Peary Mohan Halder*, 8 C.W.N. 55, *Kunja Behari Mondal v. Sambhu Chandra Ray*, 8 C.W.N. 232 and *Omarali Majhi v. Basiruddi Ahmed*, 12 C.W.N. 64 (notes). We find also that the Legislative Council of Eastern Bengal and Assam have not thought fit to follow the example of the Bengal Legislature amending sec. 170, so as specifically to exclude sec. 310A from applying to holdings attached in execution of decrees for rent ; and it is clear that the Legislature advisedly intended that sec. 310A should apply to sale under the Act. On the other hand, in *Asiruddi Mondal v. Mukhodamoyee Dassi*, 35 Cal. 543, s.c., 12 C.W.N. 434, it was held that the section could not apply, because it was not a part of the Civil Procedure Code when the Tenancy Act was passed in 1885, and could not therefore have been made applicable by the second clause of sec. 143. The argument seems to us incontrovertible. If a section of the Civil Procedure Code had been repealed, subsequent to its application to proceedings under the Tenancy Act, the section would certainly have continued to operate in such proceedings. We may refer to Maxwell's Interpretation of Statutes, page 514 (2nd edition) and the cases there cited. It seems to follow that if a new section is added to the Code after its application to proceedings under the Tenancy Act, that section will not have any application to such proceedings.

"In this conflict of authority we should have thought ourselves bound to refer the question to a Full Bench, were it not that the point appears to us to be concluded by the Full Bench decision in *Pares Nath Singha v. Nabagopal Chattopadhyaya*, 29 Cal. 1, s.c., 5 C.W.N. 821. We are bound by that decision and must in accordance with it hold that persons are entitled to apply under sec. 310A of the Civil Procedure Code to set aside sales under the Tenancy Act."

Judgment
debtor,
meaning
of.

The expression 'judgment-debtor' in sub-section (1) of section 174 of the Bengal Tenancy Act means the person against whom a decree has been made, in execution whereof the sale sought to be set aside has taken place : *Abdul Sabhan v. Monabali*, 15 C.L.J. 170.

Application
may be by
judgment
debtor
alone.

An application under s. 174 can be made by a judgment-debtor alone and by no other person : *Ranajit v. Jogendra Nath*, 16 C.L.J. 546.* If a person professes to act on behalf of a party under s. 174, his authority to do so, if challenged, must be duly established : *Ibid*.

An application under s. 174 can be made by a judgment-debtor alone and by no other person : *Surendra Narayan v. Lachmi Koer*, 43 Cal. 100.

Deposit by
some of the
judgment-
debtors
and with-
drawal of
the deposit.
Sale to be
set aside.

Where some of the judgment-debtors deposited the money and prayed to have the sale set aside stating in their application that the tenants had all sold the defaulting tenure and the money deposited had been furnished by the purchaser, and subsequently the money deposited was withdrawn and the sale was not set aside ; *held*, on an application by the purchaser to have the sale set aside that the sale ought to have been set aside as the required amount had been deposited, and the sale was set aside, the judgment-debtors who had

* *Rajendra v. Phady*, 15 Cal. 482 followed.

made the deposit were required to bring back the money, in default the same was to be realised from them in execution: *Nitya Nand v. Udai Narain*, 18 C.W.N. 175.

It was decided in the case of *Rajendra v. Phady Mondul*, 15 Cal. 482, that the word "judgment-debtor" as used in s. 174 of the Bengal Tenancy Act does not include a transferee or assignee from a judgment-debtor, but must be construed strictly as referring to a judgment-debtor alone. S. 310A, C. P. C., is more wide in its application.

3. Decree for cess :—S. 174 of the Bengal Tenancy Act is applicable to the case of a tenure or holding sold by the landlord in execution of a decree for arrears of cesses due thereon, although s. 174 is not specifically mentioned in s. 3, cl. 5, as one of the sections to which the extended definition of rent is applicable: *Kishori v. Saroda Mani*, 1 C.W.N. 30. Decree for cess is decree for rent.

4. Where decree was passed before the date of the passing of the Act :—The Full Bench decision in the case of *Jogodanund v. Amrita Lal*, 22 Cal. 762, decided that the decision in *Lal Mohan v. Jogendra Chunder*, 14 Cal. 636, so far as it held that s. 174 of the Bengal Tenancy Act created a new right in a judgment-debtor and was therefore inapplicable to a case in which the decree had been passed before that Act became law, was wrong.

The case of *Uzir Ali v. Ram Komal*, 15 Cal. 383, and *Girish Chunder v. Apurba Krishna*, 21 Cal. 940, which were based upon the same principle were also held to have been wrongly decided.

S. 310A is applicable to a case where a sale is held after the passing of Act V. of 1894, although the decree is of prior date: *Jogodanund v. Amrita Lal*, 22 Cal. 762 (F.B.).

5. Where proceedings in execution commenced before passing of the Act :—Where proceedings in execution were taken before the passing of Act V of 1894 but the attached property was sold subsequently, held that s. 310A applied: *Rangasami v. Girasami*, 18 Mad. 477.

S. 54 of Act I (B.C.) of 1907 which enacts that s. 310A, C. P. C., shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon, does not repeal any portion of the Bengal Tenancy Act within the meaning of sub-sec. (c) of s. 8 of the Bengal General Clauses Act: *Asiraddi v. Mukhadamayai*, 12 C.W.N. 434. A raiyati holding having been sold on the 7th May, 1907 in execution of a rent-decree, an under-raiyat applied to have the sale set aside under s. 310A, C. P. C. on the 23rd May following, held that the application could not be entertained, the Bengal Tenancy Amendment Act I (B.C.) of 1907 having come into operation on the 22nd May, 1907: *Ibid*. S. 310A, C. P. C. applicable although decree is of date prior to the passing of the Act, also applicable where execution commenced before passing of Act.

An application made after the passing of Act I, B.C. of 1907 to set-aside a sale under s. 310A (in Bengal) was not entertained when the execution proceedings were commenced and sale held before the passing of Act I, B.C. of 1907: *Asiruddy v. Mukhodamoyee*, 12 C.W.N. 434. Effect of passing Act I, B. C. of 1907.

6. Who may apply under s. 310A. C. P. C. :—(O. 21, r. 89, C. P. C.). Where in a case governed by Act I, of 1907 E. B. and A. C. the landlord himself purchased a non-transferable occupancy holding at a sale in execution of a decree for rent obtained against the registered tenant of the holding, a person who had within 12 years Mortgagee may apply if sale is free from mortgage.

purchased the whole holding at a sale in execution of a mortgage decree is not entitled to set aside the sale by making a deposit under o. 21, r. 89 C. P. C. : *Abdur Rahaman v. Promode Behari*, 20 C.W.N. 40.

A mortgagee whether by a simple mortgage or a mortgage by conditional sale, of a tenure or holding sold in execution of a decree for rent due in respect of it, is a "person whose immoveable property has been sold" within the meaning of s. 310A, C. P. C., and is entitled to make an application under that section : *Paresh Nath v. Nobogopal*, 29 Cal. 1, s.c., 5 C.W.N. 821 (F.B.) : The case of *Nitya Nanda v. Hira Lal*, 5 C.W.N. 63, was overruled by this Full Bench case, and the case of *Hamidul v. Matangini*, 2 C.W.N. 258 (notes) was approved of.

A mortgagee may apply under s. 310A, C. P. C. ; *Srinivasa v. Ayyathorai*, 21 Mad. 416 ; *Rakhal Chunder v. Dwarka Nath*, 13 Cal. 346 ; *Asmatunnissa v. Ashruff Ali*, 15 Cal. 488 (491, 492).

Whether a mortgagee can apply under s. 310A, C. P. C., depends upon the nature, not of the mortgage but of the execution sale ; the mortgagee is entitled to apply if the sale is free from the mortgage, but not if it is subject to the mortgage : *Per BANNERJEE, J.*, in *Paresh Nath v. Nobogopal*, 29 Cal. 1, s.c., 5 C.W.N. 821 (F.B.).

A person
having an
interest.

The words "any person whose immoveable property is sold" in s. 310A, C. P. C., include every person who has an interest in the property in question, whether qualified, partial or absolute : *Per Ameer Ali, J.*, in *Paresh Nath v. Nobogopal*, 29 Cal. 1, s.c., 5 C.W.N. 821 (F.B.).

Purchaser
before suit.

Where an application to have a sale set aside under s. 310A, C. P. C. is made by a person who had acquired an interest in the property sold, before the judgment-debtor became liable under the decree, *held* that the applicant was a person whose immoveable property had been sold within the meaning of s. 310A, C. P. C., that he was co-sharer and his interest was not an encumbrance or a protected interest which would be affected by the sale : *Bangsheedhur v. Kedar Nath*, 1 C.W.N. 114.

Benamidar.

A *benamidar* of a person whose immoveable property is sold has a right to apply to have the sale set aside under s. 310A, C. P. C. ; *Basi Paddar v. Ram Krishna*, 1 C.W.N. 135.

Beneficial
owner.

A person claiming to be the beneficial owner of property which has been sold as the property of the ostensible owner can apply to have the sale set aside under s. 311, C. P. C. : *Abdul Guni v. Dunne*, 20 Cal. 488 ; see also *Asmatunnissa v. Ashruff*, 15 Cal. 488. The same rule will apply to application under s. 310A, C. P. C.

Purchaser
of a share.

The purchaser for a share of an occupancy-holding transferable by custom can apply under s. 310, C. P. C. as being a person whose immoveable property has been sold : *Benodini v. Peary Mohon*, 8 C.W.N. 55 ; it cannot be said that he had no interest simply because s. 88 makes sub-division of a holding not binding on the landlord unless it is made with his consent in writing : *Ibid.*

Purchaser
of a portion
of a non-
transferable
holding

The purchaser of a portion of an occupancy holding, whether it is transferable by custom or not, is entitled to make a deposit under s. 310A, C. P. C., to set aside a sale : *Omar Ali v. Moonshi Basiruddeen*, 7 C.L.J. 282.

It is submitted with great respect to the learned Judge who

decided this case that the proposition of law laid down in this case is open to doubt, for the transferee of a non-transferable holding has no right *as against the landlord* and as such so far as against the landlord the transferee cannot say that it is his immoveable property which has been sold ; the landlord is a necessary party to a proceeding and the question of the transferee's title must be gone into in his presence ; the reason that the transferee has a valid title as against his transferor is of no avail against the landlord ; the case of *Benodini v. Peary Mohun*, 8 C.W.N. 55, was relied on by the learned Judges deciding the case of *Omar Ali*, 7 C.L.J. 282, but the former case, *i.e.*, the case of *Benodini*, does not apply as in that case it was assumed or found that the holding was transferable. (See 8 C.W.N. at p. 56, col. 2, lines 13 and 14).

The purchaser of a portion of a non-transferable occupancy holding is entitled to make a deposit under r. 89 of Or. 21 of the C. P. C. to set aside an auction sale: *Fazoo Mia v. Sultan Ahmad Chaudhury*, 55 Cal. 108 (Rankin C.J. and Costello J.). The case of *Omar Ali v. Munshi Basiruddin*, 7 C.L.J. 282 followed : Purchaser of a portion of non-transferable holding : Or. 21, r. 89.

Rankin C.J., observed as follows at p. 111 of 55 Cal. 108: "It does not seem to me to matter, for purposes of rule 89 whether the purchaser is a purchaser of a part or of the whole of a non-transferable occupancy holding. It seems to me unreasonable that any difference should be operated by the fact that the landlord happens to be the auction purchaser himself.

I doubt extremely whether it is true that a mere acceptance or withdrawal of a deposit would operate to oblige the landlord to recognise the tenant.

On the whole I think this (7 C.L.J. 282) is a case where we ought to obey the principle of *stare decisis*. I am far from saying that the question is an easy one. There are serious difficulties in the question before us and when I find that as far back as 1902 this question was decided by a Division Bench (7 C.L.J. 282) in favour of a purchaser of a portion of a non-transferable occupancy holding I am obliged to follow that ruling unless I can be persuaded that it is a ruling from which the Court ought to differ. In that case it could be our duty to refer the matter and a very important matter—to a Full Bench for decision. On the whole I am not prepared to say that I differ from the ruling laid down in the case of *Omar Ali v. Munshi Basiruddin*, 7 C.L.J. 282."

An unregistered transferee of an occupancy-holding has been held to be entitled to apply under s. 311, C. P. C., as a person whose immoveable property has been sold: *Azgar Ali v. Asabooddin*, 9 C.W.N. 134 ; the principle in the Full Bench case of *Ishan Chandra v. Beni Madhab*, 24 Cal. 62, was applied to this case. See also the principle in the case of *Gopinath v. Sajani Kant*, 10 C.W.N. 240. Unregistered transferee.

Where property is sold in execution of a decree a person acquiring an interest in such property from the judgment-debtor within a month after such sale is entitled to make an application under s. 310A, C. P. C.: *Appaya v. Kunhali*, 30 Mad. 214 ; see also *Nanickka v. Rajagopala*, 30 Mad. 507, but see *Hazari Ram v. Badai*, 1 C.W.N. 279, where a contrary rule has been laid down. Purchaser from judgment-debtor after sale.

S. 310A, C. P. C., is applicable to a purchaser subsequent to attachment and prior to sale under the attachment: *Mulchand v. Gobinda*, 30 Bom. 575. Purchaser subsequent to attachment.

A transferee from the judgment-debtor after attachment is competent to make an application under O. 21, r. 89, C. P. C., *Gosto Behari v. Sanker Nath*, 26 C.L.J. 127.

A mortgagee who had previously purchased a holding in execution of his mortgage-decree is a person within the meaning of the words "whose interests are affected by the sale" under O. 21, r. 90 C. P. C., and he may apply under that section to set aside a rent-sale. *Sailabala v. Nritya Gopal*, 22 C.W.N. 143.

Following the principle in the case of *Narain v. Sourindra*, 32 Cal. 107; *Pareesh v. Nabagopal*, 29 Cal. 1 (F.B.); *Benodini v. Peary Mohan*, 8 C.W.N. 55; *Kunjo Behari v. Sambhu Chandra*, 8 C.W.N. 232, it has been held that an under-raiyat can apply under s. 310A, C. P. C. as being a person whose immoveable property has been sold in execution of a decree for arrears of rent due in respect of the superior holding: *Chandra Kumar v. Kamini Kumar*, 11 C.W.N. 742. (The case of *Abed Molla v. Diljan Molla*, 29 Cal. 459, was dissented from).

Attaching
creditor.

7. Who cannot apply under s. 310A, C. P. C. :—An attaching creditor is not "a person whose immoveable property is sold" within the meaning of s. 310A, C. P. C. and he is not entitled to make an application to set aside the sale under that section: *Kedar Nath v. Umacharan*, 6 C.W.N. 57. The words "person whose immoveable property has been sold" are identical in sections 310A and 311, C. P. C.; so the decision in the case of *Matungini v. Monmotha*, 4 C.W.N. 542, to the effect that an attaching creditor is not a person whose immoveable property was sold under s. 311 was held to be an authority in support of the decision in the case of *Kedar Nath v. Umacharan*, 6 C.W.N. 57.

Under
tenant.

Where a tenure is sold free from all encumbrances a person holding a *howla* under the tenure which *howla* was an encumbrance and could be annulled by the auction-purchaser, was held not to be entitled to apply under s. 310A, C. P. C.: *Administrator-General of Bengal v. Mahomed Khalil*, 5 C.W.N. 132 (notes).

Purchaser
of a portion.

The purchaser of a portion of an occupancy holding, whether it was transferable by custom or not was entitled to make a deposit under-section 310A, C. P. C. (Act XIV of 1882): *Omar Ali v. Basiruddi*, 12 C.W.N. 64 (notes); see also *Binodini v. Peary Mohon*, 8 C.W.N. 55 and *Kunja Behari v. Sambhu Chunder*, 8 C.W.N. 232.

Under-
raiyat.

An under-raiyat cannot apply to set aside the sale of a raiyat's holding sold in execution of a decree for arrears: *Abed v. Diljun*, 29 Cal. 459. But this case was dissented from in *Chandra Kumar v. Kamini Kumar*, 11 C.W.N. 742, and in *Narain v. Sourindra*, 32 Cal. 107, as contrary in principle to the Full Bench case: *Pareesh Nath v. Nabogopal*, 29 Cal. 1.

Purchaser
at a private
sale after
sale in
execution.

A purchaser at a private sale from the judgment-debtor after sale in execution has no *locus standi* to make an application under s. 310A, C. P. C.: *Hazari Ram v. Badri Ram*, 8 C.W.N. 279. But this case has been dissented from in the case of *Appay Sketti v. Kunhati Peari*, 30 Mad. 214.

Purchase
prior to
attachment.

A purchaser from a judgment-debtor prior to an attachment is not entitled to come in under s. 311, C. P. C.: *Asmatunnissa v. Asruff*, 15 Cal. 418 (F.B.).

The case of *Abdul Huq v. Mohini mohun*, 15 Cal. 240, was overruled by the decision in the Full Bench case.

A person who purchased a property before it was attached in execution of a decree and who unsuccessfully preferred a claim after it was attached and then brought a regular suit for title, cannot be considered to be a person whose immoveable property has been sold within the meaning of s. 310A, C. P. C. and as such is not competent to apply under that section for setting aside the sale: *Arjan Mollah v. Jadunath*, 7 C.W.N. 243.

Unsuccessful claimant under C. P. C. (old Code), s. 278.

A person who was not the judgment-debtor but a purchaser of the property long before the date of a suit against a third person is not entitled to come in under s. 310A when the property is sold in execution of a decree against the latter: *Ram Chandra v. Rakhmabi*, 23 Bom. 450.

Purchaser before suit.

A person who has contracted to purchase land cannot come in under s. 310A, C. P. C., to have the sale of such land set aside: *Mahadeo v. Vasudeo*, 23 Bom. 181.

Person who contracts to purchase land.

A person whose interest is not sold and cannot have passed under the sale is not entitled to apply under s. 310A, C. P. C.: *Malikar Janudu v. Lingamurti*, 12 Mad. L.J. 679.

Person whose interest does not pass by sale.

A person claiming under the Mahomedan Law a share in some immoveable property which has been sold in execution of a decree against his co-sharers, cannot come in and make a deposit under s. 310A, C. P. C.: *Abdul Rahaman v. Mateyer*, 30 Cal. 425.

Person claiming a share in property sold.

8. If such deposit is within thirty days:—Where the thirtieth day falls on a holiday the deposit may be made on the first day the Court re-opens: *Sashi Bhusan v. Govinda Chunder*, 18 Cal. 231. The broad principle laid down in *Waterton v. Baker*, L.R. 3, Q.B. 173, is that although the parties themselves cannot extend the time for doing an act in Court, yet if the delay is caused not by any act of their own, but by some act of the Court itself such as the fact of the Court being closed, they are entitled to do the act on the first opening day. See also *Mayar v. Harding*, L.R. 2, Q.B. 410; *Hossein Ally v. Donzette*, 5 Cal. 906.

If Court is closed on the thirtieth day deposit may be made the next re-opening day.

Where a petitioner under o. 21, r. 89, C. P. C. was prepared to make a deposit on the last day allowed by law but could not do so, the presiding officer having left the Court earlier than usual, held, that the petition and the deposit were properly received on the next day, as no act of the Court itself ought to be allowed to pre-judice the petition of the petitioner: *Dulhim Mathura Das v. Bansidhar Singh*, 16 C.W.N. 904.

Inability to deposit on the last day on account of Judge's absence.

The Court has no authority to extend the time within which deposit of purchase money has to be made under s. 174: *Raghubar v. Jodunandan*, 16 C.W.N. 736, s.c., 15 C.L.J. 89.

Extension of time cannot be made.

If an amount shorter than the amount payable was deposited within the prescribed period and the balance paid out of time under an order of the Court the sale cannot be set aside: *Raghubar Dayal v. Jodunandan*, 16 C.W.N. 736; s.c., 15 C.L.J. 89.

Where a part of the money is deposited out of time by order of Court.

A judgment-debtor applying to set aside a sale under s. 174 cannot rely on s. 18 of the Limitation Act for an extension of the period of 30 days allowed for such an application on the ground that he had been kept from the knowledge of the sale by the fraud of the decree-holder: *Radhashyam v. Dinabandhu*, 18 C.W.N. 31.

S. 18 of the Limitation Act not applicable.

Where instead of actually depositing the money in Court for the satisfaction of the decree the decree was satisfied by an arrangement come to between the parties, the application by judgment-debtor which otherwise comes under s. 174 still falls under s. 174: *Rani Hemanta Kumari Debi v. Rajendra Kisore*, 97 I.C. 306, s.c., A.I.R. (1926) Cal. 1236 (Cuming & B. B. Ghose, J.J.).

An order under s. 174 is not appealable: *Ibid.*

If notice
necessary
—conflict.

9. Notice :—An auction-purchaser is entitled to a notice before an order is made setting aside the sale: *Bungsheedhur v. Kedar Nath*, 1 C.W.N. 114. But see *Bhairab v. Prem Chand*, 1 C.W.N. clxi, where it is held that no notice to the auction-purchaser is necessary.

A sale in execution of a decree ought not to be set aside under sec. 310A of the Civil Procedure Code, 1882, without notice to the auction purchaser and an opportunity afforded to him to contest the validity of the application: *Sripali v. Pairoo*, 11 C.L.J. 86; see also *Bungshidhar v. Kedar Nath*, 1 C.W.N. 114 and *Nityananda v. Hiralal*, 5 C.W.N. 63.

Where the conditions under s. 174 are complied with it is obligatory on the Court to set aside the sale and no notice is necessary to be served on the persons affected by an application under that section: *Pahlad Singh v. Sajiwan Rai*, 52 I.C. 982.

When de-
posit is
made, sale
ought to be
set aside.

10. Formal application not necessary :—When a deposit is made under s. 174 the sale ought to be set aside and the judgment-debtor should not be required to put in a formal application for it: *Jadu Rai v. Durbari Singh*, (unreported) Civil Rule No. 2042 of 1901, decided by Banerjee and Pratt, J.J.).

Challan,
showing
deposit may
be regard-
ed as an
application.

When the deposit was insufficient and the judgment-debtor therefore paid the balance required by a *challan* and presented a petition "that the execution case may be declared as finally closed," but did not pray in express terms to have the sale set aside: *held* that the Court was bound to set aside the sale notwithstanding that the applicant did not in express terms ask for that relief: *Abdool v. Jadub Chandra*, 25 Cal. 216. The *challan* may be regarded as a sufficient application (*Per Macpherson, J.*): *Ibid.*

Mistake of
an officer
of Court
cannot avail
the judg-
ment-debtor
unless the
officer is one
authorised
to make
the calcula-
tion.

II. Effect of mistake of Court in calculating the sum required to be deposited :—Where the debtor deposited under s. 310A, C. P. C., a sum calculated by some officer of the Court but which sum was subsequently found to be less than what was required to be deposited, *held* that the mistake for an officer of Court in calculating the sum to be deposited cannot avail the judgment-debtor unless he can shew that the mistake was made by an officer whose duty and within whose province it was to give the information: *Chandi Charn v. Banku Behari*, 26 Cal. 449, s.c., 3 C.W.N. 283 (F.B.)

"The principle upon which the case of *Makbul Ahmed Chowdhury v. Bazle Sabhan Chowdry*, (25 Cal. 609) was decided is this: that if the Court which has to deal with an application under s. 310A, declares, though incorrectly, what is the amount that ought to be paid in by the judgment-debtor in accordance therewith, deposits that amount it would be manifestly unjust to hold that by reason of the shortness of the deposit, the judgment-debtor has lost the remedy given to him by that section, the mistake being a mistake of the Court. I shall adhere to that principle": *Per Ghose, J.* in *Chandi Charan v. Banku Behari*, 26 Cal. 449 s.c., 3 C.W.N. 283.

But this case which was one under s. 310A, C. P. C. was held not to apply to a case under s. 174 where the High Court refused to interfere with an order setting aside a sale, although the amount deposited was found to be less than the amount required and where the mistake was owing to a miscalculation by the officer of the Court who ordinarily supplied such information and the chief ministerial officer had also signified his approval of the information by signing the *chalan*: *Sheikh Fakir v. Beraj Mohini*, 11 C.W.N. 116; see also *Abdul Luteef v. Jadub Chundra*, 25 Cal. 216.

When the amount payable by the judgment-debtor under s. 174 of the Bengal Tenancy Act is calculated and settled by an officer of the Court and that amount is paid into Court, an order setting aside the sale must be made by the Court as a matter of right: *Ugra Lal v. Radha Pershad*, 18 Cal. 255. See also *Makbul Ahmed v. Bazle Sabon*, 25 Cal. 609. Where the sum deposited fell short of the required sum through the mistake of the court, (miscalculation of the *Sheresthadar*), and on the deficit being deposited, the sale was set aside, the High Court refused to interfere under s. 115: *Karamali v. Tamijuddin*, 32 C.L.J. 12.

But it was held in a *Patna* case that it is not the duty of the Court officer to inform the judgment-debtor of the amount to be deposited under s. 174, and that in supplying the information sought for by the judgment-debtor the officer does not act as an officer of the Court; therefore when the amount of deposit fell short of the required sum on account of a mistake of an officer of the Court, *held* that the Court has no jurisdiction to set aside the sale: *Sarjod Prasad v. Nonnoo Rai*, 1 Pat. L.J. 459.

12. Date of sale :—The words “date of sale” in s. 310A, C. P. C., mean the actual date of sale when the property is put up for sale and knocked down to the highest bidder; the “date of sale” does not mean the date when the sale is confirmed or when an order setting it aside is reversed by the Appellate Court: *Chowdhury Kesa Sahay v. Giani Ray*, 29 Cal. 626, s.c., 6 C.W.N. 776. A certain property was sold and purchased by the decree-holder on the 22nd May, 1900, the Court held on the 25th that the sale was bad and it was accordingly set aside, the judgment-debtor deposited in Court the decretal amount on the 25th, and on the 29th the execution case was struck off; upon appeal the Appellate Court held on the 2nd August, 1900 that the sale was a good one; a second appeal was dismissed on the 5th September, 1900; on the 12th September the judgment-debtor deposited the 5 per centum of the purchase-money and applied to set aside the sale under s. 310A, C. P. C., *held*, that the application was not within 30 days of the date of sale: *Ibid*.

13. Amount of deposit :—Five per cent. of the purchase-money is to be deposited even where the decree-holder is the purchaser: *Tirmal Rao v. Syed Dastaghiri*, 22 Mad. 286; *Chundi Churn v. Banku Behari*, 26 Cal. 449, s.c., 3 C.W.N. 283: (F.B.).

In calculating the amount which the judgment-debtor must deposit, 5 per cent. on the purchase-money (even where the purchaser is the decree-holder himself) and costs must be included, but the judgment-debtor is not liable to deposit the costs of taking a copy of the decree or of the stamp on the *vakalatnama* or the poundage fee; *Raghubar v. Jadunandan*, 16 C.W.N. 736; s.c., 15 C.L.J. 89; a copy

“Date of sale” means the actual date of sale.

Five per cent. ought to be deposited although decree-holder is purchaser.

Costs.

of the decree of which execution is sought is not necessary for an application for execution: *Ibid*; the authority of a pleader in a case does not terminate with the decree but extends to execution proceedings: *Ibid*; a fresh vakalatnama is therefore not necessary: *Ibid*.

A judgment-debtor is not entitled to have the sale set aside on depositing only the amount specified in the sale proclamation together with 5 per cent. of the purchase money; he is bound to deposit the amount recoverable under the decree with costs, for payment to the decree-holder, together with a sum equal to 5 per cent. of the purchase money for payment to the purchaser: *Mokru Rai v. Sarjug Prasad*, 4 Pat. L.J.

Strict compliance necessary. Deposit of Government Promissory note not sufficient.

Deposit must be payable at once.

Conditional deposit not sufficient.

Conditional deposit.

Where two properties are sold, the sale of one of them cannot be set aside by deducting from the decretal amount the sale-proceeds of the other property.

Poundage fee.

Sale ought to be set aside although poundage fee is not paid.

Application to set aside

A Court has no power to set aside a sale unless the judgment-debtor has strictly complied with the provisions of s. 310A, C. P. C.: *Trimbak v. Ram Chandra*, 23 Bom. 723. Where the judgment-debtor deposited a sum of money in cash and also a Government Promissory note for Rs. 1,000, which, if negotiated, would probably be more than sufficient to cover the balance due, *held* that to claim the benefit of s. 174 the judgment-debtor is bound strictly to comply with the provisions, and that the deposit made should be of such a nature as to be at once payable to the parties and that therefore upon such a deposit the sale ought not to be set aside: *Rahim Bax v. Nanda Lal*, 14 Cal. 321. A deposit under s. 174 must be such as the decree-holder may draw out at once: a deposit not made payable to the decree-holder until a certain event had happened is not a good deposit within the meaning of that section: *Shakoti v. Jotindra Mohan*, 1 C.W.N. 132.

A conditional deposit is not a good deposit under o. 21, r. 89, but where the petitioner withdrew the condition as the decree-holder auction purchaser objected, *held* that there were not sufficient grounds under the circumstances to treat the deposit as invalid; *Dulhin Mathura Das v. Bunsidhar Singh*, 16 C.W.N. 904.

The words "less any amount which may since the date of such proclamation of sale have been received by the decree-holder"—contemplate an actual receipt of the amount by the decree-holder; so where two properties were sold and the judgment-debtor prayed to have the sale of one of the properties set aside and asked the Court to deduct from the decretal amount the sale-proceeds of the other property, *held* that the judgment-debtor was not entitled to have the sale set aside: *Trimbak v. Ram Chandra*, 23 Bom. 723.

The amount to be deposited under s. 174 does not seem to include poundage fee: *Benimadhab v. Bissessur*, 17 C.W.N. 84, s.c., 16 C. L.J. 542.

Where a judgment-debtor paid the 5 per cent. required under cl. (a) of s. 310A C.P.C. upon the whole amount of the purchase money including that deducted by the Court for poundage, and also fulfilled the requirements of cl. (b) *held* that he was entitled to have the sale set aside, even though something more on account of the poundage was recoverable from him under the head of costs provided for in the last clause of s. 310A, C.P.C.: *Muthu Ayyar v. Ramasmi*, 20 Mad. 158.

Where at a sale in execution of a decree the properties attached were sold separately in nine lots, and the judgment-debtor prayed to

have the sale of one of the properties set aside under s. 310A, C.P.C., by tendering the balance (together with the percentage required under the law) due under the decree, after deducting the amounts held by the decree-holder for some of the properties and the amount deposited by the other purchasers: *held*, that s. 310A did not apply to this case and that there was no deposit within the terms of that section: *Kripa Nath v. Ram Lakshmi*, 1 C.W.N. 703.

sale of one of several plots sold separately.

Before a claim can be made for the protection of s. 174, the Court must have the money deposited in the Court itself, so that the Court may know, of its own knowledge, that the provisions of the section have been complied with and may not be driven to rely upon the evidence of other persons who may or may not be interested in the matter: *Kabilasho v. Raghu Nath*, 18 Cal. 481 (at p. 484).

Deposit must be made in the Court itself.

14. Decree:—The word “decree” in s. 174 no doubt primarily refers to the decree of which execution is sought for, but if in the meantime, that is to say, before the sale is actually held, the decree of the first Court of which execution was applied for, is modified in appeal in favour of the judgment-debtor, then necessarily “the decree” must be the decree of the Appellate Court; so where a decree for rent was passed by the first Court on the 11th January and in execution of the decree the defaulting tenure was sold on the 5th June, but in the meantime the decree had been modified by the Appellate Court on the 18th May, *held*, that the judgment-creditor could set aside the sale by depositing within 30 days from the date of sale the amount covered by the decree of the Appellate Court together with a sum equal to five per centum of the purchase-money: *Bhiki Sing v. Bhanu Mahton*, 13 C.W.N. 231.

15. Appeal: Powers of revision by the High Court: Civil S. 153. Procedure Code, s. 622:—Where an application under s. 174 was rejected by a Munsiff who had final jurisdiction in the case under s. 153 on the ground that the amount deposited was short, *held* that the decision of the Munsif was an order deciding a question relating to the title to the land as between parties having conflicting claims thereto and was therefore appealable: *Beni Madhab v. Bissessur*, 17 C.W.N. 84: s.c., 16 C.L.J. 542; the decision of the Full Bench in *Kali Mondal v. Ramsarbaswar*, 32 Cal. 957, s.c., 9 C.W.N. 728 has not been completely superseded by the explanation subsequently added to s. 153: *Ibid*.

An order under s. 174 is an order within s. 47 C. P. C. and a second appeal lies against such order: *Raghubar v. Jodunandan*, 16 P. C.W.N. 736, s.c., 15 C.L.J. 89. “It was pointed out by this Court in the case of *Joytara v. Pran Kishen*, 13 C.L.J. 257, s.c., 15 C.W.N. 612, that the answer to the question, whether an order in execution proceedings is within the scope of s. 47 of the Code of 1908, must depend upon its nature and contents. If it decides a question relating to the execution, satisfaction or discharge of the decree and if the decision has been given between parties to the suit or their representatives in interest, the order of the Court falls within the scope of s. 47 and is a decree within the meaning of s. 2”: *Ibid*.

These two cases 16 C.W.N. 736, s.c., 15 C.L.J. 89, and 13 C.L.J. 257, s.c., 15 C.W.N. 612 were followed in *Aukhuri Prem v. Fahin-unmissa*, 2 Pat. L.J. 525 where it was held that when the holder of a rent-decree purchases the holding in execution of his decree an appeal lies under s. 47 of the Civil Procedure Code from an order of the

Court refusing to set aside the sale on deposit of the decretal amount under s. 174 of the Bengal Tenancy Act.

In a case where an auction purchaser is not a party to the suit no appeal lies against an order under s. 174, but if he is a party to the suit and is a decree-holder in fact, then s. 47 C. P. C. comes into play and an appeal lies, it being a matter arising between the parties to the suit touching the execution, satisfaction or discharge of the decree: *Raghunandan v. Garju Mandal*, 4 Pat. 718, s.c., [1925 Pat.] 183.

Where in execution of a decree for rent the tenant's holding was sold and purchased by a third party and within 30 days of the sale, the deposit of 5 p. c. of the purchase money for payment as compensation to the auction purchaser was made in Court and the deposit was accompanied by a petition stating that the amount recoverable under the decree had been paid to the decree-holder and the decree-holder himself joined in the petition, *held* that sec. 174 of the B. T. Act had not been sufficiently complied with: *Ibid.* *Kabilaso v. Raghunath*, 18 Cal. 481 followed.

Estoppel.

Where the judgment-debtors appealed against an order under s. 174 B. T. Act treating the order under s. 47 C.P.C., it does not lie upon them on second appeal by the decree-holders to urge that such appeal did not lie: *Raghubar v. Jadunandan*, 16 C.W.N. 736: s.c., 15 C.L.J. 89.

Appeal :
no general
rule can be
laid down.

It cannot be affirmed as a general proposition of law either that an order under sec. 174 of the Bengal Tenancy Act or under sec. 310A of the Civil Procedure Code (Act XIV of 1882) is or is not appealable; the test is whether the question raised in the proceedings is one relating to execution, satisfaction or discharge of the decree, and if the question is of this description, whether it arises between the parties to the suit or their representatives. If it so arises, the order is appealable: *Sital Ray v. Nanda Lal*, 11 C.L.J. 202.

Appeal
when ques-
tion arises
between
parties to
the suit.

Whether an order under s. 310A is subject to appeal or to revision under s. 622, C. P. C., depends upon the circumstance of each particular case. Where the purchaser is the decree-holder himself and the question arises between him and the judgment-debtor an appeal lies: *Kedar Nath v. Umacharan*, 6 C.W.N. 57; see also *Chandi Charan v. Banku Behari*, 26 Cal. 449 (F.B.); *Kripa Nath v. Ram Lakshmi*, 1 C.W.N. 703; such an order is one under s. 244, clause (c) and therefore an appeal lies: *Phul Chand v. Nursingh*, 28 Cal. 76. See also *Pita v. Chuni Lal*, 31 Bom. 207; *Sital Ray v. Nanda Lal*, 13 C.W.N. 591. See also *Omar Ali v. Moonshi Pasiruddeen*, 7 C.L.J. 282; *Azgar Ali v. Asaboddin*, 9 C.W.N. 134. Where the auction purchaser is a third person and where upon an application being made by the judgment-debtor under s. 310A, C. P. C., to set aside the sale, it is not contested by the decree-holder, so that no question arises between the decree-holder and the judgment-debtor, the order made by the Court does not fall within s. 244, C.P.C., and is consequently not appealable: *Amir Ali v. Basdeo*, 5 C.L.J. 204. The right to have a sale set aside under s. 174 of the Bengal Tenancy Act is not an abstract right which can be enforced by action against a particular person, but is a right to call upon the Judge to set aside a sale and if he does not do it to proceed in revision under s. 622 of the C.P.C.:

Kabilasho v. Raghu Nath, 18 Cal. 481. No appeal lies from an order under s. 174 of the Bengal Tenancy Act: *Subh Narain v. Goroke*, 3 C.W.N. 344; see also *Kishori v. Saradmoni*, 1 C.W.N. 34: *Subhinarain v. Rajkumar*, 2 C.W.N. ccxliii. But where the auction-purchaser is a stranger, s. 622, C.P.C., is applicable: *Kedar Nath v. Uma Charan*, 6 C.W.N. 57; see also *Jagadananda v. Amrita Lal*, 22 Cal. 767; *Bungshidhur v. Kedar Nath*, 1 C.W.N. 114.

Where the lower Court set aside a sale under s. 310A, C.P.C., in a case to which the section is not applicable, the High Court can interfere under s. 622, C.P.C. as the order is not merely an erroneous order but is made without jurisdiction: *Kedar Nath v. Umacharan*, 6 C.W.N. 57.

No appeal lies from an order under s. 174: *Raziuddin v. Bendeshri*, 36 I.C. 769, (Patna case).

The question whether the judgment-debtor has complied with the requirements of section 174 of the Bengal Tenancy Act for reversal of the sale, is one which decides a question relating to title to lands as between parties having conflicting claims thereto: *Benimadhab v. Bisweswar*, 16 C.L.J. 542; consequently an appeal lies: *Ibid*.

An order under s. 310A, C.P.C. does not determine any question as to the relative rights of the property sold: *per Banerjee, J.*, in *Paresh Nath v. Nobogopal*, 5 C.W.N. 821.

No second appeal lies from an order under r. 89 or r. 92 of o. 21: *Asimuddi v. Sundari*, 38 Cal. 339.

In a proceeding under s. 311, C. P. C., the petitioner failed to appeal and the application was dismissed for default, he then applied under s. 623, C. P. C., to restore the application to the file but that application was also dismissed, *held* that no appeal lay against the order: *Sujauddin v. Reajuddin*, 27 Cal. 415; See also *Padmanand v. Doorga Pershad*, 4 C.W.N. 39. It seems that the same rule will apply to proceedings under s. 310A, C. P. C.

A proceeding under s. 174 of the Bengal Tenancy Act is not a proceeding for the execution of a decree, it may be a proceeding relating to the execution of a decree, but it does not come within the explanation to s. 647, C. P. C., as being an application for the execution of a decree: *Subh Narain v. Goroke*, 3 C.W.N. 334.

No appeal lies from an order passed under s. 310A, C. P. C., refusing to accept a deposit tendered under that section by the judgment-debtor, inasmuch as a purchaser at an auction-sale is not a representative within the meaning of s. 244, C. P. C., of a party to the suit, and the order therefore does not come under s. 244, C. P. C.: *Bashiruddin v. Jhori Singh*, 16 All. 140.

Where the decree-holder is the purchaser, an appeal lies against an order s. 310A, C. P. C.: *Srinivasa v. Ayyathorai*, 21 Mad. 416.

Where the auction-purchaser was a third person, *held* that no appeal lay against an order passed under s. 310A, C. P. C.: *Chinammal v. Athinatha*, 10 Mad. L.J. 228; see also *Bashiruddin v. Jhori Singh*, All. W.N. (1897, p. 7).

Where the auction-purchaser was a third person, *held* that no appeal lay against an order under s. 174 of Bengal Tenancy Act: *Kishori Mohun v. Sarada Moni*, 1 C.W.N. 30. See also *Subh Narain v. Kumar*, 2 C.W.N. ccxliii.

No appeal where auction-purchaser is stranger.

Powers of revision by High Court.

Question as to relative rights.

O. 21 rr. 89 and 92.

S. 311, C. P. C. (Act XIV of 1882).

S. 647, C. P. C. does not apply.

Order refusing to accept a deposit not appealable.

Appeal where decree-holder is purchaser.

No appeal where auction-purchaser is third person.

An order setting aside a sale under the provisions of s. 174 is not appealable at the instance of the auction purchaser. Where however an appeal preferred against such an order is entertained by the appellate Court and the order is set aside, the High Court will interfere in revision if the order of the appellate court is wrong on merits: *Asharfi Dhimar v. Muhammad Dindalal*, 88 I.C. 989, s.c., 7 P.L.T. 11, s.c., A.I.R. (1926) Pat. 55 (Ross J.).

S. 244,
C. P. C.
(Act XIV
of 1882).

An appeal lies under s. 244, C. P. C. against an order made under s. 310A, C. P. C., when the parties stand in the position of decree-holder and judgment-debtor: *Kripa Nath v. Ram Lakshmi*, 1 C.W.N. 703. But when an application to have a sale set aside under s. 310A, C. P. C., is made by a person who acquired an interest in the property sold, before the judgment-debtor became liable under the decree, *held* that such person was not representative of the judgment-debtor within the meaning of s. 244, C. P. C., and such an order is not therefore appealable: *Bungsheedhur v. Kedar Nath*, 1 C.W.N. 114.

Ss. 103 and
311 of Act
XIV of
1882.

No appeal lies against an order rejecting an application of a judgment-debtor, purporting to be one under s. 103, C. P. C., for the purpose of reviving an application under s. 311, C. P. C., which had been dismissed for non-appearance of the judgment-debtor: *Jang Bahadur v. Mahadeo*, 8 C.W.N. 160.

No appeal lies from an order refusing to restore to the file of pending applications an application under s. 310, C. P. C., which had been dismissed for default of appearance: *Ghasiti v. Abdul*, 29 All. 596, the principle applied in *Jung Bahadur v. Mahadeo*, 31 Cal. 207; *Negappa v. Gungawa*, 10 Bom. 433, and *Raja v. Srinivasa*, 11 Mad. 319.

In a second appeal filed by the auction purchaser from an order setting aside a sale under s. 174, *held* that a second appeal did not lie: *Karamali v. Tamijuddin Molla*, 32 C.L.J. 12; the decree-holder was not a party to the proceeding.

Deposit
made by a
judgment-
debtor who
subsequent-
ly denies,
application
by unregis-
tered trans-
feree, if
appeal lies
against dis-
missal for
default.

Where a deposit under s. 174 had been made by a person purporting to be the judgment-debtor for setting aside the sale and subsequently making an application that he has not made the deposit and thereupon the application for setting aside the sale having been dismissed, an unregistered purchaser of the holding who has purchased it before the date of the decree made an application for setting aside the sale alleging that he had made over the money to the judgment-debtor and the latter had made the deposit, and such application was dismissed for default, *held* that no appeal lay against the order dismissing the default but the High Court interfered under sec. 115 C. P. C., under the circumstances of the case for decision on the question of merits: *Debrani v. Sarat Kumar*, 39 C.L.J. 522, s.c., A.I.R. 1924 Cal. 791. (M. N. Mukerji J.). In this case it was not decided nor the question raised as to whether the transferee from the judgment-debtor had any *locus standi* to make such application.

S. 174
applies to
Orissa.

16. S. 174 applies to Orissa :—A sale under Act VIII (B.C.) of 1865 is liable to be set aside in Orissa, under s. 174 of the Bengal Tenancy Act, since the extension of Chapt. XIV being extended there: *Lakshmidar v. Ratnakar*, 48 Cal. 811, s.c., 25 C.W.N. 1009, s.c., 38 C.L.J. 229 (F.B.).

17. Regular suit to set aside a sale :—A suit does not lie to set aside a sale under s. 174 B. T. Act : *Pahlad v. Sajiwan*, 5 Pat. L.J. 16, the case of *Kabilaso v. Raghunath*, 18 Cal. 481 was followed. Regular suit does not lie.

A suit does not lie to set aside an order passed under s. 174 : *Brindaban v. Bhupati Bhusan*, 62 I.C. 743, (Walmsley and Greaves, J.J.).

18. Proviso to s. 310A, C. P. C. (Act XIV of 1882) ; The words "he shall not be entitled to *make* an application under this section" in the proviso cannot mean merely "he shall not be entitled to *present* an application" under this section but the word "make" means "carry on" or "prosecute." So where in a case after an application under s. 310A of the Civil Procedure Code had been made, another application was made under s. 311, *held* that the applicant was not entitled to have the benefit of the former section : *Rajendra Nath v. Nilratan*, 23 Cal. 958. "Make" means "carry on" or "prosecute"—S. 311, C. P. C.

There is no prohibition in the Code against an application being made under o. 21, r. 90, C. P. C., after an application under r. 89 has been made and withdrawn or dismissed : *Basiruddin v. Faimulla*, 17 C.W.N. 476.

The word "applies" in the proviso to s. 174 of the Bengal Tenancy Act means "applies and prosecutes." If a judgment-debtor has made an application under s. 311, C. P. C., he is competent to apply under s. 174 of the Bengal Tenancy Act if he withdraws his application under s. 311, C. P. C. : *Sital v. Nanda*, 13 C.W.N. 591.

But where a person makes an application under s. 310A, C. P. C., and a different person makes an application under s. 311, C. P. C., *held* that the application under s. 311, C. P. C., is maintainable : *Asraf Ali v. Net Lal*, 23 Cal. 682. Application under s. 311 by a person different from the applicant under s. 310A.

It is not open to an applicant under s. 310A, C. P. C., to impugn the sale on the grounds of irregularity in publishing and conducting it : *Phul Chand v. Nursingh*, 28 Cal. 73. S. 311 C. P. C. (Act XIV of 1882).

19. S. 295 C. P. C. :—Section 295, C. P. C. does not apply to a deposit made by a judgment-debtor under s. 310A, C. P. C., this being merely in the nature of a voluntary payment. The words "for payment to the decree-holder" in s. 310A mean that he is the person solely entitled to the money which has been paid into Court : *Roshun Lal v. Ram Lal*, 7 C.W.N. 341 : see also *Hari Sundari v. Shashi Bala*, 1 C.W.N. 195, and *Behari Lal v. Gopal Lal*, 1 C.W.N. 695. S. 295 C. P. C. (Act XIV of 1882).

When property has been sold in execution of a decree and there are other decree-holders who, prior to the sale, have applied under s. 295 C. P. C., for rateable distribution, the person whose property has been sold is competent to have the sale set aside under s. 310A, by depositing only the amount of the decree, for the satisfaction of which the sale was proclaimed and took place : *Hari Sundari v. Shashi Bala*, 1 C.W.N. 195. S. 295, C. P. C. (Act XIV of 1882).

20. Right of auction-purchaser to recover purchase-money under s. 315 C. P. C. :—(Act XIV of 1882). When a sale is set aside under s. 310A, the auction-purchaser is entitled under s. 315, C. P. C., to recover it by way of execution from a decree-holder who had attached the money of the judgment-debtor in the hands of the Court and received it : *Veera Samy v. Liladhara*, 8 Mad. L.R. 110.

Act X of
1859.

21. Act X of 1859 :—S. 310A of the Civil Procedure Code does not apply to sales under Act X of 1859 as the Code of Civil Procedure applies up to sale and does not apply after it: *Horish Chandra v. Ananta Charan*, 2 C.W.N. 127.

Regular
suit to set
aside an
order re-
fusing to
set aside
a sale not
maintain-
able.

22. Right of suit :—No suit lies to set aside an order of a Court refusing to set aside a sale under s. 174: *Kabilaso v. Raghunath*, 18 Cal. 481; s. 174 provides a particular means by which sales can be got rid of after they have been concluded and by which the purchaser at the sale can be compensated for loss but it must be got rid of by order of the Court which made the sale: *Ibid.* A suit is maintainable at the instance of the purchaser of property at a sale held in execution of a rent-decree to set aside an order setting aside a sale under s. 174 of the B. T. Act: *Gulab Chand v. Shaikh Fida Hussain*, 3 Pat. L.J. 122.

Where an application under s. 310A, C. P. C., was rejected and the sale confirmed under s. 312, C. P. C., and subsequently the judgment-debtor brought a suit to set aside the sale, *held* that where an order is passed under s. 312 confirming the sale, it is an order passed against the judgment-debtor, though no application under s. 311 has been made, and that no suit will lie to set aside the sale on the ground of irregularity: *Damader v. Vinayak*, 29 Bom. 40.

S. 174 B. T. Act and O. 21 r. 90 C. P. C. are of limited scope and application, and an application which raises questions as to the execution of a decree, clearly beyond their scope ought to be dealt with under s. 47 C. P. C.: *Abdul Rahim v. Gujeshor*, 52 I.C. 514.

Contribu-
tion.

23. Contribution :—Where a co-tenant got a sale set aside under s. 174 by making the necessary deposit, *held* that besides his right to contribution personally, he did not acquire a charge on the property so far as the shares of his co-tenants were concerned, for the amount paid by him: *Gopi-Nath v. Iswar Chander*, 22 Cal. 800: See also *Kinu Ram v. Mozafier Hosseni*, 14 Cal. 809.

Where a tenant who was not a party to the suit and decree got the sale of an entire tenure set aside by deposit under s. 310A C. P. C. (Act XIV of 1882), *held* that he has a right of contribution against the other tenants: *Suchand v. Balaram*, 38 Cal. 1.

Where property belonging to A was sold in execution of a decree against B, and A had the sale set aside by making a deposit under s. 310A C. P. C., *held* that A has no right to sue the decree-holder for recovery of the amount of the deposit money paid to him: *Kunjo Behari v. Bhupendra Kumar*, 12 C.W.N. 151; A was not bound to apply under s. 310A, C. P. C. to set aside the sale nor had the right to do so: *Ibid.*

Deposit by
a purchaser
from a co-
tenant
against
whom no
decree was
obtained.

Where a tenure was sold in execution of a decree obtained in a suit by a co-sharer landlord against all except one co-tenant, *held* that the purchaser from the co-tenant against whom the suit had not been brought who got the sale aside by a deposit under s. 310A C. P. C. (Act xiv of 1882) had a right of contribution but was not entitled to sue for contribution for the penalty of 5 per cent: *Mohendra v. Bhuban*, 14 C.W.N. 945; s.c., 12 C.L.J. 566.

24. Money deposited on behalf of judgment-debtor :—Where a judgment-debtor made an agreement with another that the latter would advance money to have a sale set aside under s. 310A,

and that the former would sell the property to the latter in consideration of the same and where-upon the latter depositing the money in the name of the former took a conveyance of the property after the setting aside of the sale, held that the order setting aside the sale having been revised by the Appellate Court the decree-holder had no right to attach for the remainder of his decretal debt the money deposited as it did not belong to the judgment-debtor: *Sobharam v. Moheshwar Sarma*, 13 C.W.N. 100.

25. Application by purchaser at a sale held under Chapter XIV of B. T. Act to set aside sale on the ground that judgment-debtor has no saleable interest :—

An auction purchaser in a sale held under Chapter XIV of the Bengal Tenancy Act cannot apply to set aside execution sale on the ground that the tenant judgment-debtor had no saleable interest. He cannot call upon the Court to decide as to the nature of the decree and to treat proceedings taken under the Act as proceedings taken under the Code of Civil Procedure: *Shashadhar v. Bishun Narain*, 43 C.L.J. 279 (Rankin J). In the case of a sale which purports to be held under Chapter XIV of the B. T. Act, which is put up for sale and what the purchaser purports to bid for is the holding itself and not the tenants right and title. Even if the decree is a true rent decree he may take nothing by his purchase and yet cannot set aside the sale. If the decree is not a true rent decree, third parties are not bound by the sale, but the judgment debtor, if he has allowed orders for this form of sale to be made against him, is bound by it. Accordingly, if he has an interest in the holding, it will pass to the auction-purchaser: *Ibid.*

Execution sale, if can be set aside, judgment debtor not having saleable interest in property.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act 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.

Registration of certain instruments creating incumbrances

Notes :—If the judgment-debtor has been prejudiced by the neglect of the Court to let him know that the amount he had deposited was insufficient, he can claim relief. It is the duty of the court to announce the amount of the costs: *Mir Dildar v. Kusum Kumari*, 1924, A.I.R., Pat. 256 (Adami J.)

As to how applications under this section are to be made—see Appendix V, Registration Rules, Rule 27.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in

Notification of incumbrances to landlord.

this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to
create
incum-
brances not
extended.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

Restrictions
on exclusion
of Act by
agreement.

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;
- (c) take away the right of a raiyat to surrender his holding in accordance with section 86;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;
- (e) take away the right of an occupancy-raiyat to sublet subject to, and in accordance with, the provisions of this Act ;
- (f) take away the right of a raiyat to apply for a

reduction of rent under section 38 or section 52;

(g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(h) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:

(i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right:

(ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation. The expression "horticultural land", as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

Headings of Notes.

1. INTERPRETATION.
2. AMENDMENTS.
3. SUB-SEC. (1), CL. (a): CL. (b).
4. SUB-SEC. (1), CL. (d).

5. UNDER-RAIYATI LEASE.
6. TESTAMENTARY DISPOSITION OF OCCUPANCY HOLDING.
7. RE-ENTRY.
8. SUITS INSTITUTED BEFORE THE PASSING OF THIS ACT.
9. SUB-SEC. (1), CL. (b).
10. RIGHT TO TRANSFER.
11. RIGHT OF PRE-EMPTION.
12. COVENANT BY LESSEE NOT TO PURCHASE UNDER-TENANT'S HOLDING.
13. CL. (c) ; EJECTMENT : DENIAL OF LANDLORD'S TITLE.
14. CLS. (d), (e) AND (f).
15. SUB-SEC. (3).
16. SUB-SEC. (3) CL. (a).
17. S. 179.
18. INTEREST.
19. SUB-SEC. 3, CL. (d) : USAGE.
20. ORISSA.
21. RAIYAT AT FIXED RATE.
22. COMPROMISE.
23. FORFEITURE FOR NON-PAYMENT OF RENT.
24. MISCELLANEOUS CASES.
25. LAND ACQUISITION COMPENSATION.
26. REDUCTION OF RENT.
27. S. 155.

1. Interpretation :—S. 178 of the B. T. Act was enacted to safeguard the interests of raiyats.—The scope of that section is to prevent certain contracts between landlord and tenant, the effect of which may be to place the raiyat out of the protection afforded to him by the B. T. Act. Therefore no contract between landlord and tenant can over-ride the express terms of the Act.

2. Amendments :—The following alterations were made by Act I (B.C.) of 1907 and Act I (E.B.A.) of 1908 :—

To the proviso to sub-sec. (2) the following were added—and if he—Civil Procedure.” In proviso (iii) after the words “cultivation of” the words “horticultural or” were inserted.

To the same proviso the Explanation was added.

3. Sub-sec. (1) : Cl. (a) and cl. (b) :—Where a pre-existing occupancy holding was divided between two brothers and it was contended that this division being a contract between the landlord and the tenant had the effect of creating new tenancies and therefore of taking away the pre-existing occupancy rights, *held* that if this was not the intention of the parties, the division could not have the effect : *Nafar v. Rahaman*, 23 C.L.J., 580* ; the provisions of s. 178 (1) (b) of the Bengal Tenancy Act would apply : *Ibid*.

Where the landlord and the tenant stipulated in regard to a pre-existing tenancy that the tenant was to have a perpetual status at a fixed rate, *held* that the kabuliyat created a permanent *mukarrari* interest within the meaning of s. 179 of the Bengal Tenancy Act and therefore s. 29 did not apply : *Gursahai v. Keshwar*, 1 Pat. L.J., 77.

An agreement the effect of which is to prevent a tenant who is a settled raiyat of a village from acquiring a right of occupancy under

* See also *Mulluck Chand v. Satis*, 11 C.L.J. 56, and *William Rekha v. Ram Rekha*, 14 C.L.J. 110.

s. 21 of the B. T. Act falls within the purview of s. 178 of the Act and is void: *Kasem Sheikh v. Tarakeswar*, 85 I.C. 783 (Suhrawardy and Duval, J.J.).

In 1851 H, a proprietor of certain lands let out the same to one R by way of a grant which was in the nature of a *patni* lease, which contained a provision that the lessee would give back to the lessor such portion of the land as he required. In 1862 the putnidar executed in favour of one C a *kaemi istemrari raiyati* lease of these lands on similar conditions. The plaintiff, successor of H, wanted back some of the lands in dispute for the purpose of a market and a college. He brought a suit against the heirs of R for reconveyance of some of the lands which was decreed and reconveyance was made by the Court. But as the heirs of C did not give up possession he brought a suit against them for recovery of possession; held that the covenant entered into by the lessee and the *patnidar* was not an infringement of the provisions of section 178 (1) (a) and (b), B. T. Act, that the same was enforceable and that neither section 179 nor section 178 (1) (a) and (b) of the B. T. Act was applicable to the facts of the case: *Jogesh Chandra v. Asaba Khatun*, 44 C.L.J. 220 (Greaves and Mukerji, J.J.).

Sub-sec. 1
cl. (d) is
controlled
by s. 194.

4. Sub-sec (1), cl. (d):—Sub-sec. (1) cl. (d) is controlled by s. 194: *Akshoy Kumar v. Akman Molla*, 20 C.L.J. 551, s. c., 19 C.W.N. 1197; under sub-sec. (1) cl. (d) read with s. 89 and s. 10, a landlord has no right to eject a tenant except in execution of a decree: *Champaklatika v. Nafar Chandra*, 15 C.W.N. 537; s. c., 13 C.L.J., 300; s. 178 does not operate to make s. 155 inapplicable in the case of a tenant of waste lands, who cannot therefore be ejected without notice under s. 155 being served on him: *Ibid*.

Under-
rai-yati per-
manent
lease void.

But not so
when under-
rai-yati
lease by a
fixed raiyat.

5. Under-raiyati lease:—A lease granted by a raiyat allowing the lessee to hold the land from generation to generation is a nullity; and acceptance of rent from the lessee cannot effect a ratification of the lease: *Mohim Chandra v. Baidya Nath*, 21 C.L.J., 478; see also *Jarip v. Dorja Bewa*, 16 C.L.J., 144 and *Telam v. Adu* 17 C.W.N. 468. See notes under s. 85. A fixed raiyat may grant a permanent sub-lease; for, the word “transfer” in s. 18 includes a sub-lease. S. 18 controls s. 85 in this respect: see *Harimohon v. Atul Krishna*, 19 C.W.N. 1127.

Bequest of
non-trans-
ferable
occupancy
holding.

6. Testamentary disposition of occupancy holding:—Except under a local usage a raiyat is not competent to make a testamentary disposition of a non-transferable occupancy holding; the heir-at-law of the raiyat is not estopped from questioning the validity of the devise: *Amulyaratan v. Tarini Nath*, 42 Cal. 254, s. c., 18 C.W.N. 1290; the case of *Haridas v. Uday Chandra*, 12 C.W.N. 1086, s. c., 8 C.L.J., 261, was dissented from in this case. Following the case of *Amulyaratan v. Tarini Nath*, 42 Cal. 254, it was held by Fletcher and Richardson J.J., in the case of *Kunja Lal v. Umesh Chandra*, 18 C.W.N. 1294 that except under local usage a non-transferable occupancy holding is not capable of being bequeathed by will.

Re-entry
clause.

7. Re-entry:—A valid contract of tenancy providing that the tenant, a raiyat, should hold the land for his life-time, and that the landlord would have the right to re-enter on his death, could be created before the passing of the Bengal Tenancy Act: such a contract does not come within the terms of the provisions in cl. (a) sub-

sec. (1) or cl. (a), sub-sec. (3) of s. 178 and is therefore enforceable : *Baul Chandra v. Nistarini Debi*, 33 Cal. 136, s.c., 10 C.W.N. 533.

In the absence of any right of re-entry reserved in a lease an assignment by a lessee is operative against the lessor from transferring without the permission of the lessor : *Basarat Ali v. Manirulla*, 36 Cal. 745, s. c., 10 C.L.J. 49.

8. Suits instituted before the passing of this Act :—S. 178 does not apply to suits instituted before the date on which the Act came into force : *Moheshwar v. Sheobaran*, 14 Cal. 621.

9. Sub-sec. (1), cl. (b) :—Where an occupancy raiyat before the passing of the Act agreed that he would hold a certain specified area for a term of 5 years, and where at the end of the expiry of the term plaintiff brought a suit in ejectment, the suit being instituted before the passing of the Act, *held* that as the suit commenced before the Tenancy Act came into force, the tenant was not entitled to get the benefit of s. 178 : *Moheshwar v. Sheobaran*, 14 Cal. 621.

Agreement by occupancy raiyat before the passing of the Act.

10. Right to transfer :—Where a tenure-holder contracted with his landlord that he was at liberty to make a transfer of the under-tenure but that unless the transferee furnished security, he was not to be absolved from liability, *held* that the agreement was valid and binding on the tenure : *Dino Bandhu v. Bonnerjee*, 19 Cal. 774.

Agreement by tenure-holder not to be absolved from liability unless security is furnished.

11. Right of pre-emption reserved in a conveyance :—In a conveyance executed by plaintiffs in favour of defendant no. 1's father it was provided that in case he sold property subsequently he would be bound to give preference to the plaintiffs, *i.e.*, his vendors to purchase the same for a certain sum, and on their refusal to accept the offer he would be at liberty to sell the same to others ; after his father's death defendant no. 1 without offering to sell the land to the plaintiffs, though they were willing to purchase it, sold the same to defendants nos. 2, 3, 4 and who had notice of the contract, *held* that the contract was not binding on defendant no. 1 and therefore the sale to defendants nos. 2, 3 and 4 was not liable to be set aside : *Nobin Chandra v. Nabab Ali*, 5 C.W.N. 343 ; see also *Kishen Datt v. Mumtaz*, 6 I.A. 145. In the case of *Tripoora Sqondaree v. Jaggunath*, 24 W.R. 321, it was doubted as to whether a covenant not to dispose of a property except to the parties of the covenant was binding on the heirs of the parties.

12. Covenant by lessee not to purchase under-tenant's holding :—Defendants obtained a lease from plaintiffs in the following terms :—"You shall not purchase the jote of any of the tenants either in your own names or benami ; if you do so, the purchase shall be null and void ; after the expiry of the term the ijara mehals will come to our khas possession. You shall not be able to raise any sort of objection thereto ; if you raise any such objection, it shall be void." The plaintiffs during the term of their lease purchased certain jote rights in execution of decrees for arrears of rent, and brought a suit for recovery of possession of these jotes on the allegation that the defendants had dispossessed them from the same after expiry of their lease ; *held*, that the stipulation in the deed was a valid one and there was nothing against public policy in such a restriction as was contained in the lease ; *Robert Watson v. Ram Chand*, 1. C.W.N. 174. The benefit of such a covenant runs with the land and an assignee of the lessor can claim such benefit : *Ibid*,

Contract not to purchase under-tenant's holding is valid and runs with land.

13. Cl. (c): Ejectment: Denial of landlord's title :—The sections providing the grounds upon which a landlord may eject a tenant are ss. 10, 18, 25, 44 and 49. Denial of landlord's title is no ground of ejectment under any one of the provisions of these sections. So a tenant denying his landlord's title is not liable to ejectment under the Bengal Tenancy Act. See *Debruddi v. Abdur Rahim*, 17 Cal. 197 and *Nizamuddin v. Mamtazuddin*, 5 C.W.N. 263; but a contrary view has been taken in certain cases. See notes under s. 10 where the cases are all discussed.

No ejectment by virtue of agreement but according to provisions of the Act.

Where a tenancy is created by virtue of a decree on compromise, for a period of nine years to be held at a certain annual rent, the tenant is liable to be ejected only in accordance with the provisions of the Bengal Tenancy Act and not in accordance with the provisions of any contract between the parties to the contrary: *Gopal Krishna v. Harinath*, 34 C.L.J. 157.

14. Cls. (d), (e) and (f):—It seems that these restrictions do not apply to agreements made with tenure-holders, in as much as the term "raiyyat" has been used in these clauses.

15. Sub-sec. (3) cl. (h):—S. 67 and 178 (3) (h) apply only to contracts between landlords and tenants as to the terms upon which the latter shall hold their tenancy: *Hari Prasad v. Damri Singh*, 2 Pat. L.J., 367; interest at a rate higher than what is provided in s. 67 may be stipulated in mortgage bond for arrears of rent: *Ibid*.

Agreement to give up land.

16. Sub-sec. (3) Cl. (a):—An agreement by a tenant to give up the land of his tenancy on notice is nugatory under sub-sec. (3) Cl. (a): *Ganga Singh v. The Chairman of the District Board, Patna*, [1919 Pat.] p. 235.

17. S. 179 :—S. 179 is not controlled by s. 178; consequently the provisions of s. 178 do not prevent the holder of a permanent mukurari lease to grant lease "on any terms" he pleases; see notes under s. 179.

18. Interest; Section 67 :—Having regard to s. 178 sub-sec. (3), cl. (h) a landlord is entitled only to the interest secured to him by s. 67, the Interest Act not being applicable: *Monohor v. Khettrath*, 17 C.W.N. 320, s. c., 18 C.L.J., 175 (*Monohor v. Poresch Chandra*).

Interest by a tenant holding over.

When a tenant holds over, after the expiration of his lease he does so on the terms of the lease, on the same rent and on the same stipulation as are mentioned in the lease until the parties come to a fresh settlement; there is no general rule of law to the effect that the lease of an agricultural tenant in this country who holds over, must be taken as renewed from year to year, and if any contract is to be implied, it should be taken to have been entered into so soon as the term of the lease rather than at the beginning of each year; so where the plaintiff sued the defendants for rent for a period after the passing of the Bengal Tenancy Act upon the basis of a kabuliyat executed by defendant's predecessor in interest in 1283, B.S. (1876-1877) for five years and the plaintiff claimed interest at 75 per cent. upon the arrears as stipulated in the kabuliyat: held that the defendant was liable to pay interest at the rate stipulated in the kabuliyat; *Kishore Lal v. Administrator-General of Bengal*, 2 C.W.N. 303.

Condition

Where a tenure was put up to sale for arrears of rent against a

tenant whose lease had expired in 1884 and was purchased by the defendant, and the plaintiff afterwards sued the defendant for interest at the rate specified in the lease of the defaulting tenant, *held* that the condition relating to interest was not an ordinary incident of the holding and did not attach to the land after the lease had expired, and the holding by the act of the landlord had passed into other hands, and that therefore the defendant was not liable for the rate mentioned in the lease: *Alim v. Satish Chandra*, 24 Cal. 37. relating to interest not an ordinary incident of the holding.

The case of *Kishore Lal v. Administrator-General*, 2 C.W.N. 303, was not followed in *Ali Mahmud v. Bhagabati*, 2 C.W.N. 525. In the latter case it was decided that where a tenant was holding over on the expiration of a lease which had been executed before the passing of the Tenancy Act, but which expired after it came into force, the landlord was not entitled to interest beyond that provided by s. 67. Contra.

"A distinction was drawn between that case and that of *Kishore Lal Dey v. The Administrator-General of Bengal*, on the ground that the lease had expired after the Tenancy Act had come into operation but that fact does not appear to us to affect the general principle:" (Per Ameer Ali and Brett, J.J.), *Administrator-General of Bengal v. Asraf Ali*, 28 Cal. 227 (at p. 233). *Kishore Lal v. Administrator-General of Bengal*, discussed.

Where a contract was expressly renewed after the passing of the Tenancy Act and the stipulation as to interest was embodied in a new lease, *held* that the tenant was not bound by it and the stipulation was not enforceable under the law: *Administrator-General of Bengal v. Asraf Ali*, 28 Cal. 227. So where an agricultural tenant held under a lease for six years, the terms of which expired in 1881, and had been holding over and the rate of interest specified in the lease was 75 per cent. per annum, and the landlord sued for rent for the years 1893 to 1895 and part of 1896 with interest at the rate specified in the lease, *held* that the plaintiff could not recover interest at a rate higher than 12 per cent.: *Ibid*. Renewal of contract after passing of the Act.

A stipulation for payment of interest upon arrears of rent is an ordinary incident of tenancy in this country unless there is something unusual in the stipulation, and as a rule it attaches to the tenancy so that a purchaser of the tenancy will also be bound by the stipulation: *Rajnarain v. Panna Chand*, 7 C.W.N. 193, but a stipulation for the payment of interest at an unusual and an exorbitant rate cannot be supposed to be an incident of a tenancy which would attach to it even after a sale for arrears of rent; *Kali Nath v. Trailokya Nath*, 26 Cal. 315, s. c., 3 C.W.N. 194. Rampini, J., held that by the sale of a tenancy a new contract is created between the auction-purchaser and the landlord at the date of the sale: *Ibid*. This view of the law was dissented from in an unreported case (Second Appeal No. 238 of 1901—decided on the 14th August 1903—unreported). In this case the rate of interest provided in the kabuliyat was 75 per cent., and it was argued that the defendant was a purchaser of the former tenant's interest and was not bound to pay the interest provided in the kabuliyat. It was contended that the sale was virtually a sale in execution of a decree for arrears of rent. Maclean, C.J., (Geidt, J., concurring) in delivering judgment said as follows:— Stipulation for payment of interest attaches to the tenancy.

The rate of interest in this case is exorbitant but the parties have made their own bargain, and I do not see upon what principle By the sale of tenancy, a new contract is created between landlord and auction purchasers. Contra.

we can make a fresh bargain for them ; there are no circumstances in this case of oppression, or undue influence, nor any equitable considerations which would give us a right to interfere upon the ground that the bargain was an unconscionable one. Much reliance has been placed on the judgment of Mr. Justice Rampini in the case of *Kali Nath Sen v. Troylokya Nath Ray*, 26 Cal. 315 s.c., 3 C.W.N. 194, where he says that under circumstances such as the present a fresh contract must be regarded as having been entered into between the landlord and the purchaser. I am unable to concur in this view."

See notes under s. 67.

Monthly interest.

Subsisting lease.

Purchaser.

S. 179.

A purchaser is bound to pay rent by monthly instalments and interest on arrears will be calculated monthly when the original *kabuliyat* was executed in 1865 and contained that rent should be paid by monthly instalments: *Nadia Sundari v. Girindra*, 7 C.L.J., 24 notes. Where the lease is a subsisting one the purchaser is bound to pay interest in accordance with the lease: *Lalgopal v. Monmotho Lal*, 32 Cal. 258 s. c., 9 C.W.N. 175 (F.B.). This case was followed in *Tiluk Chandra v. Jasoda Kumar*, 11 C.W.N. 215, in which case interest was claimed at a rate of more than 12 per cent. on the basis of a *kabuliyat* executed before the passing of the Bengal Tenancy Act, the tenant being proved to have acquired the holding by private purchase: *held*, that the stipulation as to interest must be given effect to. Where a tenancy was created before the passing of this Act and that it was stipulated that interest would run at the rate of one anna per rupee, *held* that the purchaser of the jama in auction-sale after the passing of the Act was bound by the terms relating to interest. *Ibid.* Rampini, J., discussed and distinguished the case of *Kalinath v. Troiyucka*, 26 Cal. 315, s. c., 3 C.W.N. 194.

S. 67 of the Bengal Tenancy Act does not control the provisions of s. 179 of the Act and that therefore a contract for the payment of interest on arrears of rent, entered into by a landlord and a permanent tenure-holder under him, is enforceable by law, although it may contravene the provisions of s. 67: *Matungini v. Makruru*, 29 Cal. 614, s. c., 5 C.W.N. 431 (F.B.), over-ruling *Basanta Kumar v. Pramatha*, 26 Cal. 130 ; s. c., 3 C.W.N. 36.

The provisions of sub-sec. (3) cl. (h) are applicable to the case of a *kabuliyat* executed after the passing of the Bengal Tenancy Act: *Narendra v. Gorachand*, 33 Cal. 683 ; s. c., 3 C.L.J. 391 parties ought not be allowed to nullify the effect of sub-sec. (3) cl. (h) by contracting themselves out of the provisions of s. 67 by the device of making the rent payable otherwise than quarterly ; *Ibid* ; a contract made after the passing of the Bengal Tenancy Act is not enforceable in so far as it provides for payment of interest at rates higher than 12 per cent. : *Ibid.* See notes under s. 67.

Mokurari lease. Stipulation as to high rate of interest and damages.

In a case where in a *mokurari* lease the stipulation was that the tenant was to pay interest at 75 per cent. per annum "with full damages" there was a difference of opinion between N. R. Chatterjea and Richardson J.J., the former holding that the rate of interest stipulated was unconscionable and that the landlord was entitled to damages, the latter holding that the interest stipulated was recoverable but not the damages: *Nabokumar v. Syed Abdul*, 21 C.W.N. 112.*; Richardson J., observed that stipulation to pay interest at a

* See *Upendra Lal v. Meheraj Bibi*, 21 C.W.N. 112.

26. Reduction of rent: Sub-sec. 3 cl. (f) :—“This clause applies to a raiyat. It does not seem to apply to a tenure-holder.

It was held in a case of permanent *mokurari* lease that this clause did not apply thereto and a tenant holding under a permanent *mokurari* lease was held to be not entitled to get abatement of rent by reason of a portion of the land in his occupation having been diluviated by the action of a river: *Nundo Lal v. Kymuddin*, 9 C.W.N. 86; in this case the stipulation was that the “diluviation” was at the tenant’s risk.

If the *mokurari* tenant is a raiyat and not a tenure-holder it seems that cl. (f) applies, for the clause applies to a raiyat.

27. S. 155 :—The effect of s. 178 of the Bengal Tenancy Act is that even where there is a provision for re-entry in a contract between landlord and tenant (a permanent tenure-holder) made before the passing of the Act, s. 155 applies: *Afiladdi v. Satis Chandra*, 29 C.L.J. 40. Provision for re-entry.

28. Stipulation for higher Rate of rent :—There is nothing illegal in a stipulation to pay rent at a rate higher than that recoverable under the Act. Such a stipulation does not fall within the provisions of s. 178. Neither is such contract void. The mere fact that it is not enforceable in law does not prevent it from being a condition of a contract the failure to comply with which would justify the other party in not carrying out his share of the contract. The covenant to pay the rent at a higher rate than is recoverable under the Act may be enforceable but it may still be a condition precedent to renewal: *Ashraf Ali v. Arman Khan*, 90 I.C. 893. s. c., A.I.R. (1926) Cal. 162 (Greaves and Cuming J.J.). Stipulation for higher rate of rent.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant. Permanent mukarrari leases.

Headings of Notes.

1. LIBERAL AND NOT A NARROW CONSTRUCTION.
2. MOKURARI.
3. COVENANT RESTRAINING ALIENATION.
4. INTEREST.
7. PERMANENT TENURE AND PERMANENT MOKURARI.
6. OTHER STIPULATIONS.
7. PERMANENT TENURE AND PERMANENT MOKURARI.
8. PERMANENTLY SETTLED AREA.
9. CONTRACT.

I. Liberal and not a narrow construction :—“S 179 is intended to save the rights of parties to the freedom of contract which is restricted by the provisions of the section immediately preceding; and a provision of the law in favour of the freedom of contract by parties competent to enter into contract and controlling a provision to the contrary which restricts the rights of parties to enter into binding contracts, should in our opinion receive a liberal construction :” (*Per Banerjee and Brett J.J.*): *Ali Haider v. Abdul Howladar* (Second Appeal No. 1729 of 1901, *unreported*). This section should have a liberal interpretation.

Meaning of
mokurari.

2. "**Mokurari** :—*Relating to what is fixed : as a revenue term it is applied to a tenure held at a fixed and permanent rate of rent when payable to a proprietor, or revenue when payable to the Government." Wilson's Glossary of Judicial and Revenue Terms.

With regard to the meaning of the words *istemrari* and *mokurari* Pratt and Mitra J.J., observed as follows in the case of *Pandit Agin Bind v. Mohun Bikram*, 7 C.W.N. 314 :—

Istemrari
and
Mokurari.

"The words *istemrari* and *mokurari* are both of Arabic origin and literally they mean continuous (running) and fixed. But what is their meaning when used together as a compound and applied to intermediate tenures?

"They might mean continuous or permanent during the lifetime of the grantee or permanent as regards hereditary descent : *Lilanand Singh v. Munorunjun Singh*, 13 B.L.R. 124, see p. 133 (1873) ; *Tulshi Pershad Singh v. Ram Narain Singh*, 12 Cal. 117, see p. 130 (1885). Their lexicographical meaning is, therefore, of little use to us, as observed by the Privy Council in *Tulshi Pershad Singh v. Ram Narain Singh*, 12 Cal. 117, see p. 130 (1885). We have to see to the customary meaning of the words as established by judicial decisions.

"Permanent intermediate tenures at fixed rent were unknown or were seldom recognised in India under the Mahomedans and the British Government were at first reluctant to recognise them. The Bengal Code of 1793 passed by the Government of Lord Cornwallis was decidedly against their creation (Reg. XLIV, sec. 1). The prohibition was repeated in Reg. I, of 1795, sec. 2, and Reg. XLVII of 1803, sec. 2. The proprietors of revenue-paying estates were first permitted to create them by Reg. V of 1812, sec. 2, and Reg. XVIII of 1812, sec. 2, and as regards tenures technically known as *putni*, *durputni* and *se-putni*, they were first recognised by Reg. VIII of 1819. There is no reference in these Regulations to *istemrari-mokurari* tenures. Secs. 16 to 19 of Reg. VIII of 1793 refer to *mokurari* and *istemrari* proprietary rights held directly under the Government. The words are nowhere defined. They seem to have been used as interchangeable expressions and might apply to grant for life as well as heritable grants.

"The decisions of the Sadar Dewani Adawlat at Calcutta and of the High Court and the Privy Council itself as to the meaning of the expression *istemrari-mokurari* were reviewed by their Lordships in *Tulshi Pershad v. Ram Narain Singh*, 12 Cal. 117, see p. 130 (1885). The decisions of the High Court at Calcutta in *Lakhu Kowar v. Ram Hari Krishna Singh*, 3 B.L.R.A.C. 226 (1869) and *Raja Ram narain Sing v. Amir Khan and others*, (Unreported) 4th Sept., 1877, were over-ruled, and their Lordships thus summed up their judgment : "After the review of the decisions their Lordships think it is established that the words *istemrari-mokurari* in a *patta* do not *per se* convey an estate of inheritance but they do not accept the decisions as establishing that such an estate cannot be created without the addition of the other words that are mentioned, as the Judges do not seem to have in their minds that the other terms of the instrument, the circumstances under which it was made, or the subsequent

* See *Upendra Lal v. Meheraj Bibi*, 21 C.W.N. 112.

The words '*Putra Poutradi Krame*,' although literally signify descendants of the male sex, they ordinarily mean and include female heirs where by law the estate would descend to such heirs, and are apt for conferring an estate of inheritance to either male or female heirs: *Panchubala Debi v. Jatindra Nath*, 43 C.L.J. 567 (Cuming & B. B. Ghose, J.J.).

3. Covenant restraining alienation:—A covenant in a permanent lease that in case of any transfer by the lessee it should be in favour of the lessor for proper price is not valid: *Swarna Kumar v. Pralhad*, 26 C.W.N. 874; a covenant that the lessee in case of transfer to a third party should take the permission of the lessor is also valid: *Ibid*.

4. Interest:—S. 67 of the Bengal Tenancy Act does not control the provisions of s. 179. In granting a permanent lease within the terms of s. 179, a condition that interest shall be payable at a higher rate than 12 per cent. per annum as allowed by s. 67, is permissible: *Matungini v. Mukrura*, 29 Cal. 674, s.c., 5 C.W.N. 438 (F.B.); see also *Atulya Charan v. Tulsi Das*, 2 C.W.N. 543: the case of *Basanta Kumar v. Promotha Nath*, 26 Cal. 130, s.c., 3 C.W.N. 36 was over-ruled by the Full Bench decision in the case of *Matungini v. Mukrura*, 29 Cal. 674.

In a case where in a *mokurari* lease the stipulation was that the tenant was to pay interest at 75 per cent. per annum "with full damages" there was a difference of opinion between N. R. Chatterjea and Richardson J.J., the former holding that the rate of interest stipulated was recoverable but not the damages: *Nabo Kumar v. Syed Abdul*, 21 C.W.N. 112. Richardson J., held that stipulation to pay interest at a high rate may be proved to be one by way of penalty, but to justify an inference that it is so, it is not enough to shew that it was a hard bargain.

N. R. Chatterjea J. observed in the case that s. 179 of the Bengal Tenancy Act does not exclude the consideration of the question whether a stipulation in a permanent *mokurari* lease to pay interest at a higher rate than that provided by s. 67 is affected by provisions of law other than the Bengal Tenancy Act. Richardson J. pointed out that the lessee at a permanent lease at an invariable rent is not *prima facie* entitled to the indulgent consideration which might be extended to a needy and improvident debtor in the clutches of a grasping money-lender and though it may be that the provisions of s. 179 must be read subject to the power of the court to intervene under the Contract Act, they cannot be overlooked or left out of account.

5. Stipulation of abwab:—S. 179 of the Bengal Tenancy Act is not controlled by s. 74: consequently the provisions of s. 74 do not prevent the holder of a permanent tenure from granting a permanent *mokurari* lease "on any terms" he pleases, that is even stipulating for the payment of an abwab: *Krishna Chandra v. Sushila Sundari*, 26 Cal. 611 s.c., 3 C.W.N. 608. In the case of *Assanulla v. Tirtha Bashini*, 22 Cal. 680, it is said, though by way of an *obiter dictum*, that though there is some repugnancy between s. 179 and s. 74 there seems good reason for thinking that s. 179 is not controlled by s. 74. Macpherson and Banerjee, J.J., in delivering judgment in that case observed as follows:—"There is

no doubt some repugnancy between this section (s. 179) and s. 74 of the Act, but whether following the principle enunciated by Lord Justice James in *Ebbs v. Boulnois*, L.R. 10 Ch. App. 479 (484), we regard the latter which is a special provision, as a qualification of the former which is a general rule, or adopting the rules stated by Keating J., in *Wood v. Reily*, L.R. 3 C.P. 26 (27), that of two repugnant clauses in a statute the last must prevail there seems to be good reason for thinking that s. 179 is not controlled by s. 74.

Abwabs are not recoverable from a permanent tenure-holder under a lease created before the Bengal Tenancy Act came into operation; they could not be recoverable under Reg. V of 1812 and Act X of 1859 and cannot be recovered under s. 179 owing to the operation of cl. (4) of s. 2 of the Act: *Apurna v. Kasamali*, 10 C.W.N. 527: s.c., 4 C.L.J. 527. See also *Eastern Mortgage Agency v. Ganapat*, 9 C.W.N., 23 (notes).

See notes under s. 74.

Abatement
of rent.

6. Other stipulations:—A stipulation in a *mokurari* lease in a permanently settled area that there would be no abatement of rent for reduction of area is valid, and in a suit for abatement of rent under s. 52 (b) of the Bengal Tenancy Act in respect of the whole tenure on the allegation that there had been a reduction in the area of the entire tenure by diluvion, *held* that the tenant could not claim reduction on the ground of diluvion: *Khettramani v. Jiban Krishna*, 21 C.L.J. 315; the covenant was authorised by s. 179: *Ibid.*

'Where the terms of a *potta* in respect of a *mourashi mokurari* tenure were, *inter alia*, as follows:—"You shall not be entitled to take a plea for remission of the jama fixed on the ground of failure of crops, on account of inundation or drought, on account of death, abandonment, land lying fallow or being in water-logged condition, dispossession or any other such ground. If you do that it shall not be entertained. I shall not be competent to demand anything in excess of the rent fixed on any ground. If Government acquires any land under the *dar mourashi* for its own use or for works of the public good you will get the compensation but shall not get any abatement of rent on that account. If you find it necessary to surrender the jama on account of the inability to pay rent at the rate stipulated you shall surrender after paying in full all arrears of rent and on delivery of possession of the land and jama to me to my satisfaction, otherwise you shall remain liable for the rent as stated above," *held* that the contract was that there should be neither increase nor decrease of the rent on any ground whatsoever; if there be any accession to the land by alluvion the landlord would not be entitled to any increase of the rent and if there be decrease of land by diluvion the tenant would not be entitled to any abatement of rent: *Dwijendranath v. Jitendranath*, 32 C.W.N. 295 (B. B. Ghose and Mallik J.J.).

The right to obtain abatement in case of diluvion is based upon the general principle of law which should be enforced as a rule of justice, equity and good conscience, and unless there is any special contract by which the tenant precluded from obtaining the abatement he is entitled to claim it: *Ibid.*

A *durputni* kabuliyat contained the following clause: "Like yourself, we shall have full rights to grant leases or make settlements of lands in the Maffasil but if these *Durputni* mehals be sold at auction for arrears of rent due to you, then all agreements entered into by us shall be extinct (stand cancelled)"; held that s. 179 controls cl. (b) of the proviso to s. 159: *Madhu Sudan v. Midnapur Zemindari Co.*, 45 Cal. 940, s.c., 27 C.L.J. 511; the restriction runs with the land, and is operative not only between the grantor and the grantee, but also between their representatives in interest and holders of derivative titles; the condition in the lease is not an absolute restraint on alienation, and is for the benefit of the lessor: *Ibid.*

Where the parties stipulated in regard to a pre-existing tenancy that the tenant was to have a perpetual status at a fixed rate, held that the *kabuliyat* created a permanent *mukurari* interest within the meaning of s. 179 of the Bengal Tenancy Act and therefore s. 29 did not apply: *Gur Sahai v. Keshwar*, 1 Pat. L.J. 77. Pre-existing tenancy.

In a perpetual lease, that is, a lease conveying a permanent transferable and heritable interest in the thing demand, the landlord has no right of reversion: *Midnapur Zemindary Co. v. Ramkanai*, [1925 Pat.] 254.

7. Permanent tenure and permanent *mukurari* lease:—"Permanent tenure" means a tenure which is heritable and which is not held for a limited time. See s. 3 sub-sec. (8).

When a tenant could not produce any document to shew under what circumstances and conditions his tenure was created, but there was evidence to shew that he and his predecessors in title had been in undisturbed possession and enjoyment of the tenure at apparently a fixed rent since the year 1203 (1796) *i.e.*, for nearly one hundred years, held that in absence of any evidence to the contrary a strong and reasonable presumption arose that he had a permanent and transferable interest in the tenure, and not an interest of the nature of a tenancy-at will, which was liable to be determined at the pleasure of the landlord: *A. M. Dunne v. Nobo Krishna*, 17 Cal. 144. Gordon J., in delivering the judgment of the Court further observed as follows:—"Further having regard to the habits and customs of the people of this country in matters of this kind, it appears to us that the fact that the *lakhirajdars** have stood by and allowed the appellant and his predecessors in title to continue in uninterrupted possession and enjoyment of the tenure for so many years, without attempting to eject them or vary their rent strongly indicates that they have all along regarded and treated the tenure as one of a permanent character, and their conduct in this respect gives additional strength to the presumption, which, as I have already said, arises in favour of the appellant from long possession." Presumption.

See notes under s. 3, cl. (9) and also under s. 7.

8. Permanently settled area:—A part of the Sunderbans can be a permanently settled area even if settled after 1793, the definition in cl. (12) of s. 3 of the Bengal Tenancy Act notwithstanding: *Khettermanni v. Jiban Krishna*, 21 C.L.J. 315 (D. Chatterji and Mullick J.J.) This decision has been reversed on The Sunderbans, if can be permanently settled area.

**i.e.*, the landlords.

appeal to the Privy Council, 48 I.A. 39, s.c., 48 Cal. 473, s.c., 25 C.W.N. 361.

9. Contract :—S. 179 of the Bengal Tenancy Act pre-supposes a contract made after the passing of the Bengal Tenancy Act: *Afiladdi v. Satis Chandra*, 29 C.L.J. 40.

180. (1) Notwithstanding anything in this Act, a
 Utbandi, char and diara lands. raiyat—

(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as *char* or *diara*,

shall not acquire a right of occupancy—

in case (a), in land ordinary held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *char* or *diara* land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be *char* or *diara* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Headings of Notes.

1. UTBANDI.
2. DIARA.
3. CHUR.

Utbandi meaning of. **1. Utbandi** :—A settlement of revenue with reference to the quality of the land, the description of produce, and customary rate of assessment. (Wilson's Glossary of Judicial and Revenue Terms).

The *Utbandi* system, it appears, had its origin in the district of Nadia. An authoritative account of the system will be found in the Bengal District Gazetteer, 1861 at pp. 112 and 113. See also Hunter's Statistical Accounts of Bengal: An account of the system will also be found in the Report of the Government of Bengal on the

Tenancy Bill in 1884. The *Utbandi* system prevails in the districts of Nadia, Murshidabad, Jessore, Khulna and 24 Parganas. (See Letter No. 24 R.L. dated the 17th September, 1884, from A. Smith Esq., Commissioner Presidency Division to the Secretary to the Government of Bengal, printed at page 183 of the Report of the Government of Bengal on the Bengal Tenancy Bill, 1884, Vol. II). In that Report an analysis of the reports of the District officers regarding *utbandi* tenures is given. The following extracts from that report are quoted below. “In *Jessore* there are few tenures of this description ; they are generally confined to waste lands and *bheel* lands which are, for the whole or greater part of the year, under water and which are cultivated by the raiyats under special contracts generally from year to year. These lands are taken at fixed or progressive rates of rent on terms agreed to by the raiyats. The same raiyats can have the same lands for any number of years but the custom is that he does not acquire a right of occupancy. The raiyat can be ejected at the will of the landlord, as the tenures are not *kaimi* or *pucca*. In *Khulna* the *utbandi* system is known only in one *pargana*, (*Khoraria*). The tenure is not a favourite one with the zemindar as the sole risk is with him. In *Murshidabad* *utbandi* does not prevail to any great extent and is to be found only on the east side of the Bhagirathi, chiefly in *pargana* Goás. The cultivator under this system who has no right whatsoever either of occupancy or otherwise takes the land by verbal permission of the Zemindar. The holding is measured and assessed at the local rates as soon as it has been sown down without any reference to the prospect of the crops. In *24-Parganas* such tenures prevail only in the northern part of the district, where lands in the *khas* possession of the landlords are leased out to cultivators under verbal agreements. The tenancy ceases at the end of either the season or the period of the lease. The usual term is a year after which the land may lie fallow on account of the exhaustion of its strength or because no one has come forward to take it. No occupancy right grows in such tenures, and before the crop is reaped the landlord makes sure of the rent by watching that it is not taken away from the fields before his dues are satisfied. These tenures are known in the south of the district as *korfa* or *thicca*.

Utbandi System.

Extracts from Government Report.

Jessore.

Khulna.

Murshidabad.

24 Parganas.

“Mr. Stevens does not think that the account of such tenures given by Dr. Hunter in his Statistical Report of Nuddea, as they stood in 1872, is in any defective, but that the tenancy is now towards a decrease in the area of such lands.

It is the opinion of Mr. Stevens that so far as *utbandi* and similar tenures in his district are concerned, the saving of customary conditions provided for in the Bill (section 214) is sufficient.

In *Nuddea* the *utbandi* system prevails to a large extent. A full account of these tenures is given in Dr. Hunter's Statistical Accounts. Mr. Tayler reports thus on these tenures: “The *utbandi*—the system under which uncultivated lands are brought under cultivation—and the actual area cultivated is measured and paid for at the rate prevailing in that part of the country. Cultivators who take such lands are not obliged to cultivate them a second year, but as a rule they can keep them for certain for three years if they elect to do so. Generally the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so. There

Nadia.

Utbandi System.

being more lands in the district than are required by the cultivators, they prefer to take lands which have been lying fallow for a term of years, and which are consequently likely to yield the more, to retaining the same land and cultivating it for once 12 years. The Zemindars on the other hand are reluctant to allow cultivators to retain such lands for any length of time, both with the view to prevent their acquiring occupancy rights and to prevent deterioration of such lands. In some cases Zemindars get *selami* when allowing new cultivators to take such lands."

About the system of *utbandi*, it is said in the Bengal District Gazetteer, 1910 at p. 172 that it is common in the District of Nadia where $\frac{5}{6}$ ths of the cultivated lands are held under it. It is an ancient institution in land tenure, which has been existing since time immemorial and has its recorded history since 1861.

"An *utbandi* tenancy is a tenancy from year to year, sometimes from season to season, the rent being regulated, not as in the case of *halhasila* by a lump payment in money for the land cultivated, but by the appraisement of the crop on the ground and according to its character. So far it resembles the tenancy by crop appraisement of the *bhaoli* system; but there is between them this marked difference that, while in the latter the land does not change hands from year to year, in the former it may."—See *Selections from Papers relating to the B. T. Act, 1885 page 371*.

Hunter's Statistical Account.

The safest guide in the matter of what is *utbandi* system is what is to be found in special reports made by Revenue officers, and in the descriptions given in the Statistical Account of Bengal compiled by Sir W. N. Hunter from informations carefully collected through local officers in the districts where the system exists: *Beni Madhab v. Bhuban Mohan*, 17 Cal. 393 (at p. 396).

Utbandi.

Utbandi is applied to land held for a year, or rather for a season only. The general custom is for husbandman to get verbal permission to cultivate a certain amount of land in a particular place at a rate agreed upon when the crop is on the ground. The land is measured and the rent is assessed on it. Quotation from the Statistical report relating to the *utbandi* system in Nuddia: *Beni Madhab v. Bhuban Mohan*, 17 Cal. 393 (at p. 397).

Holdings of which parts are cultivated and other parts lie fallow while the rent for the whole is assessed year by year with reference to the quantity within the holding under cultivation in that year hardly seem to answer to the general conception of *utbandi*, although the rent may be arrived at each year by ascertaining what area has been cultivated: *Ibid*.

"An *utbandi* tenure is one by which a raiyat holds a certain area of land (which I believe is usually defined), but for which he pays rent according to the quantity of that land which year by year he cultivates. The rent will, therefore, vary according to the actual cultivated area": *Per Jackson J., in Dwarka Nath v. Noboo Sirdar*, 14 W.R. 193 at p. 194.

Custom in Nuddea.

"There exists in the district of Krishnagar a custom under which tenants can cultivate land which is not directly let out to other tenants, but remains *khas khamar*, on payment of certain high rates of rent. In the case of such tenants, there exists an implied agreement between the parties, that such rent shall be paid; and the amount of land so cultivated and the rent to be paid it are ascertained each year by actual measurement. The lands in question are

called "*Utbandi*" lands, and the rents are calculated at what are called "*Utbandi* rates:" *Per* Bailey and Jackson J.J., *Mirzan Biswas v. R. T. Hills*, 3 W.R. Act X, p. 159 at p. 160.

Abandonment by utbandi tenant:—An *utbandi* tenant, when he ceases to hold the land, is not bound to give any notice of abandonment to his landlord, in order to avoid liability for rent for future years: *Amrita Lal v. Giridhur*, 11 C.W.N. 581: s.c., 5 C.L.J. 398. Abandonment.

2. Diara:—Alluvion, an island, formed in the bed of river, land gained by recession of a river. *Diara*, meaning of

(Wilson's Glossary of Judicial and Revenue Terms).

The expression '*Char*' or '*Diara*' land has not been defined in the Bengal Tenancy Act. *Char* means a sand bank formed in a river or island in the current of a river or which has accreted to its bank: While *Diara* means an island formed in the bed of a river, land gained by the recession of a river. (Wilson's Glossary of Judicial and Revenue Terms).

Government is entitled to public revenue under Act IX of 1847 from *chars* formed in a non-navigable river, even when it flows through a permanently settled Zemindari, as well as up to the middle line of the river where i.e., the boundary of the Zemindari and this even where it appears that the river bed was part of the permanently settled Zemindari: *Secretary of State for India v. Jatindra Nath Choudhury*, 29 C.W.N. 1 (P.C.). The case of *Secretary of State v. Maharaja of Burdwan*, 48 I.A. 565, s.c., 49 Cal. 103, s.c., 26 C.W.N. 619 followed. Act IX of 1847.

A suit to contest an order of the Board of Revenue under s. 6 of Act IX of 1847 declaring the liability of lands claimed as part of a permanently settled estate, to assessment of revenue is not barred by the one year's rule of limitation laid down in sec. 24 of Reg. II of 1819: *Secretary of State v. Radhakant Aich*, 53 Cal. 952, s.c., 30 C.W.N. 774 (F.B.). (The case of *Prafulla Nath Tagore v. Secretary of State*, 24 C.W.N. 813 was over-ruled).

The following cases may be referred to when dealing with proceedings under Act IX of 1847; *Lopez v. Madan Mohan Thakoor*, 13 M.I.A. 467, s. c., 5 B.L.R. 521 (P.C.); *Harshabai Singh v. Syed Lootf Ali Khan*, 14, B.L.R. 268 (P.C.); *Secretary of State v. Rahamuddinessa Begum*, 17 I.A. 40, s.c., 17 Cal. 590 (P.C.), (this case was distinguished in the case of *Secretary of State v. Bejoy Chand*, 26 C.W.N. 619 (P.C.); *Soudamini v. Secretary of State*, 50 Cal. 822. *Khubi Mahton v. Mahunt Lachmi Das*, 2 Pat. 18; *Jagadindra Nath v. Secretary of State*, 30 Cal. 291; *Ananda Hari v. Secretary of State*, 3 C.L.J. 316.

A raiyat who holds *diara* land cannot until he has acquired occupancy right in his holding by twelve years' continuous possession demand a reduction of rent under cl. (b) of sub-sec. (1) of sec. 52 of the Bengal Tenancy Act: *Srinibash v. Ram Raj*, 18 C.W.N. 598. "Holding" in sub-sec. (1) of sec. 180 of the Act means the holding as the tenant received it from the landlord: *Ibid*. Reduction of rent. Holding.

Presumption under cl. (7) of s. 20:—The presumption created by cl. 7 of s. 20 that a tenant has for 12 years continually held the same land or a part of it does not extend to *diara* lands; the presumption

is only for purposes of s. 20: *Beni Pershad v. Chaturi*, 33 Cal. 444, s.c., 4 C.L.J. 63.

Reg. XI of
1859.

Reg. XI of 1859:—S. 4 of Reg. XI of 1859 does not apply to lands to which recent formations accrete, and which are yearly surveyed and settlements made for year to year. *Ibid.*

Diara proceedings are binding on the proprietor with regard to assessment of revenue but are not binding as between under-tenure-holders claiming the land adversely to each other under different proprietors: *Radhanath v. Chandra Kumar*, 43 C.L.J. 152 (Greaves and Mukerji J.J.).

Object of
s. 180.
*Bihar
Settlement
Manual*,
1927.

“The intention of the Legislature by enacting section 180 of the B. T. Act was to allow landlords to make any terms they pleased with the tenants of *diara* lands in which occupancy rights have not accrued. But while clause (2) of sec. 180 expressly excludes raiyats holding lands under the custom of *utbandi* from the benefits conferred on non-occupancy raiyats by Chap. VI of the Act, no mention is made of the exclusion of *char* or *diara* lands from the operation of that Chapter. The effect is that raiyats of *diara* lands, where they have not acquired rights of occupancy, have all the privileges and rights of non-occupancy raiyats. Chapter VI does not, however, appear to be suitable to the settlement of rents or revenue by Revenue officers in *diara* lands. Under sec. 46, the landlord has to tender to the raiyat an agreement to pay enhanced rent, if enhancement is desired, and, if the agreement is not accepted, there is only one ground for enhancement mentioned in sub-sec. (9) of sec. 46 under which enhancement can be decreed by the Civil Courts, viz., prevailing rate, or regard to the rates generally paid by raiyats for land of the same class in the village, no mention being made of the ground on which all *diara* resettlements are made, viz., the effect of fluvial action. The prevailing rate may be a workable provision in the case of individual holdings in uplands, but in the case of *diara* lands, where the estate covers the whole village, the village rates being what it is proposed to alter the section places difficulties in the way of Revenue officers and furnishes them with no workable guide.

As regards *diara* lands in permanently settled estates, there is really no necessity to do anything in the direction of a survey and the preparation of a record of rights. If anything is to be done, a survey would suffice, but the law at present does not authorise the realisation of the cost of a mere survey unless Chapter X of the Tenancy Act be applied. If the landlords or tenants of permanently-settled *diara* lands want such a survey, they should be required to deposit the estimated cost in advance. If they do not want a survey, such land may be excluded from the operations altogether.” [Extracts from Letter No. 914 T. R. dated 12th October 1896 from M. Finucane Esqr., Secretary to the Government of Bengal to the Secretary to the Board of Revenue.]

Char :
Diara.

“The terms *char* and *diara* have not been defined in the law. For practical purposes and with reference to sub-sec. (3) of sec. 180 the term may be taken to mean the areas which the Collector determines to be subject to fluvial action, such fluvial action being probable within a reasonably short period of time judged by the previous history of the land under consideration. A raiyat who cultivates *char* or *diara* lands must be either an occupancy raiyat or

a non-occupancy raiyat (vide sec. 4 of the Act). If he is an occupancy-raiyat in respect of such lands, there is nothing in sec. 180 to differentiate his rights as such from those which are enjoyed by an occupancy raiyat of ordinary lands. If, however, he is a non-occupancy raiyat, it is a question of some difficulty to determine how far the rights of an ordinary non-occupancy raiyat which are described in Chapter VI of the Act are modified by the provisions of section 180." [Extracts from letter No. 1031A dated 18th March 1911 from E. Lister Esqr., Secretary to the Board of Revenue to all Commissioners of Divisions]. See Bihar and Orissa Survey and Settlement Manual, 1927, Pages 320 to 324. See in this connection *Jahandra v. Ramlal*, 37 Cal. 449.

Bihar Settlement Manual, 1927.

3. Char, Chur :—A sand bank or island in the current of a river, deposited by the water, claims to which were regulated by Ben. Reg. XI of 1825. *Wilson's Glossary of Judicial and Revenue Terms*.

Under s. 180, a raiyat holding a chur land but who has not acquired a right of occupancy, is liable to pay such rent for his holding as may be agreed on between him and his landlord, irrespective of the provisions of s. 43 : *Jahandra v. Ram Lal*, 37 Cal. 449, s.c., 14 C.W.N. 470, s.c., 11 C.L.J. 364. Where a settlement holder of Government *khas mehals* agreed not to enhance the rents of the tenants, held notwithstanding such an agreement if the sub-tenants agree to pay higher rents to the settlement holder, the sub-tenants should be held to waive the benefit and are bound to pay the higher rent : *Ibid* ; also see *Zamin Mandal v. Gopi Sundari*, 32 Cal. 463 note.

S. 43.
Enhancement of rent of sub-tenants.

In a suit for recovery of possession of *chur* land which commenced forming more than 12 years before the suit, onus is on the plaintiff to prove that any portion of the *chur* formed within 12 years of the suit : *Gurudas v. Basanta*, 14 C.W.N. 317 : s.c., on appeal to the P.C., 44 Cal. 858 s.c., 21 C.W.N. 642, *Basanta Kumar v. Secretary of State*.

Onus—suit for possession of *chur* land.

The fact that the Board of Revenue is the Court of Wards does not make the possession by Government of newly formed *chur* during the time a person's property was under the Court of Wards' possession by the latter on behalf of that person : *Guru Das v. Basanta*, 14 C.W.N. 317 ; the Government and the Court of Wards are not identical bodies, nor can the latter be regarded as merely a department of the former : *Ibid*.

Suit for possession of *chur* land : possession of Government is not possession of Court of Wards.

When A came into possession of certain *chur* lands as a raiyat in 1884 and continuously held possession thereof till 1908, but from 1890 to 1898 he held the same and other lands also as *ijaradar*, held that A acquired occupancy right in the land under s. 180, sub-sec. (1) : *Jasimuddin v. Beni Madhub*, 17 C.W.N. 881. Where the tenant paid rent continually for 12 years for *chur* land, the fact that the land had occasionally been submerged would not destroy the right of the raiyat to acquire right of occupancy : *Kesho Prosad v. Jirdhan Ojha*, 2 Pat. L.J. 43.

Occupancy right—*Chur* land.

Chur land : "*Chur*," meaning of :—The word "*chur*" as used in s. 180 of the Bengal Tenancy Act must be understood in its ordinary sense of land formed by fluvial action, that is to say, it is a word

Chur, meaning of.

referring to the character of the soil, and not to the site of the deposit. Lands which are reformation *in situ* would be *chur* lands within the section: *Chandra Kumar v. Jiban Krishna*, 29 C.W.N. 290, s.c., A.I.R. 1925 Cal. 249; (*Walmsley and Mukerji J.J.*); principle in the case of *Lopez v. Muddun Mohon*, 13 M.I.A. 467. (1870) does not apply: *Ibid.* The tenant in regard to such reformed land to escape eviction must prove continuous possession for 12 years of the identical lands: *Ibid.*

Fixing of
uniform
annual
money rent
in respect of
utbandi
lands.

*180A. (1) Notwithstanding anything contained in section 180, when a raiyat who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled raiyat of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the raiyat may apply to have a uniform annual money rent determined for the land.

(2) The application shall include at the discretion of the applicant either—

(a) all *utbandi* lands held in the same village by the same raiyat under the same landlord in which the raiyat has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(b) all the lands held in the same village under the same landlord by the raiyat which the

* Secs. 180A, 180B, 180C have been added by the Bengal Tenancy (Utbandi Amendment) Act X of 1923 which is as follows:—

BENGAL ACT NO. X OF 1923.

THE BENGAL TENANCY (UTBANDI AMENDMENT) ACT, 1923.

Published in the "Calcutta Gazette" of the 19th September, 1923.)

An Act to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be determined for *utbandi* lands and to make further provision in respect of such lands.

VIII of 1885.
Preamble.
2 & 6 Geo.
V, c. 61;
6 & 7 Geo.
V, c. 37;
9 & 10 Geo.
V, c. 101.

Whereas it is expedient to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be determined for land held under the custom of *utbandi* or under any form of tenancy locally known as *utbandi*, and to make such other provisions as hereinafter appear in respect of lands for which a uniform annual money rent has been so determined;

And whereas the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Tenancy (Utbandi Amendment) Act, 1923.

(2) It extends in the first instance only to the districts of Nadia, Murshidabad and Jessore, but the Local Government may, by notification in the *Calcutta Gazette*, extend it to any other district or part of a district in Bengal.

2. After section 180 of the Bengal Tenancy Act, 1885, the following sections shall be inserted, namely:—

(Secs. 180A, 180B, and 180C.)

Short title
and extent.
Insertion of

raiyat, or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy rights therein, or

(c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more raiyats under him and a joint application may be made by two or more raiyats in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Sub-divisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(7) If the application is made in respect of lands in which the raiyat has not acquired occupancy rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five

years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the raiyat has not acquired occupancy rights, a premium to be paid to the landlord, and he shall order that the raiyat shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any :

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under subsection (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent :

Provided that the officer may also take into consideration—

- (a) the average money rent payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity;
- (b) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;
- (c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands as *utbandi* lands but whose rents have been

converted into uniform annual money rents whether under this section or by agreement or otherwise;

- (d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges;
- (e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats;
- (f) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(10) The premium to be paid to the landlord in the case of lands in which the raiyat has not acquired occupancy rights shall be three times the rent, or, if the application is made under clause (c) of sub-section (2), three times the portion of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the raiyat.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the raiyat, order that the premium shall be paid by

instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (8) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(14) The premium or any instalment thereof shall be recoverable as rent and if the premium or any instalment thereof is not paid by the date fixed under sub-section (13) for the payment of such premium or instalment the landlord may make a requisition to the Collector for the recovery of the arrear of the same in the manner set forth in sub-sections (3) and (4) of section 158A, and the provisions of sub-sections (5) to (9) of that section shall apply to the recovery of the said arrear by the Collector as if it were an arrear of rent, recoverable by him under the provisions of that section.

Interest shall not be payable on any instalment in respect of which default has not been made.

The Local Government may make rules prescribing the form of requisition to be made by a landlord under this sub-section and for carrying into effect the purposes of this sub-section.

(15) Any order made under this section shall be subject to appeal in the manner provided in section 109A, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be

brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy raiyat from the date of the order.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

180C. (1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

Period for which rent fixed under section 180A to remain unaltered.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (12) of section 180A.

181. Nothing in this Act shall affect any incident of a *ghatwali* 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.

Headings of Notes.

1. GHATWALI TENURE.
2. TRANSFERABILITY OF GHATWALI TENURES.
3. SUCCESSION OF GHATWALI TENURES.
4. RESUMPTION OF GHATWALI LAND AND DISMISSAL OF GHATWAL.
5. ENHANCEMENT OF GHATWALI TENURES.
6. PRESUMPTION; S. 50: GHATWALI TENURES.
7. OCCUPANCY RIGHT IN GHATWALI, CHOWKIDARI CHAKRAN, AND OTHER SERVICE TENURES.
8. DIGWARI TENURE.
9. SIMANADARI LAND IN BANKURA.
10. CHOWKIDARI CHAKRAN LANDS.
11. SUCCESSION OF CHOWKIDARI CHAKRAN LANDS.
12. RESUMPTION OF CHOWKIDARI CHAKRAN AND OTHER LANDS.
13. RENT IN LIEU OF SERVICE.
14. SERVICE TENURES.
15. THANADARI LANDS.
16. S. 89.

I. Ghatwali tenure :—"Ghatwali tenures were created by the Mahomedan Government in order to provide both a police and military force to watch and guard the passes on the Western Frontier of Mahomedan

Ghatwali tenures created by Mahomedan

Govt. to
provide
both a police
and a
military
force.

Bengal against the lawless hillmen and others": *Per* Ameer Ali and Pratt, J., in *Narain Mullick v. Badi Roy*, 6 C.W.N. 94 (at p. 96).

The mountain or hill districts in India were inhabited by lawless tribes, asserting, a wild independence, often of a different religion from the inhabitants of the plains, who were frequently subjected to marauding expeditions by their more warlike neighbours; to prevent these incursions it was necessary to guard and watch the *ghats*, or mountain passes, through which these hostile descents were made; and the Mahomedan Rulers established a tenure called *Ghatwali* tenure, by which lands were granted to individuals, often of high rank, at a low rent, or without rent, on condition of their performing these duties, and protecting and preserving order in neighbouring districts: *Lilanand v. The Bengal Government*, 6 M.I.A. 101 (at p. 109).

"They were created by the Mahomedan Government in early times, as a means of providing a police and military force to watch and guard the mountain passes from the invasions of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government to persons of high rank, at a low rent, or at no rent at all, upon condition that they should provide and maintain a sufficient military force, to protect the inhabitants of the plains from these lawless incursions; and the grantees on their part subdivided the lands to other tenants (much in the same way as military tenures were created in the feudal age) each of whom, besides paying generally a small rent, held their lands in consideration of these military services, and provided (each according to the extent of his holding), a specified number of armed men to fulfil the requirements of the Government. This was the state of things at the time when the East India Company by Reg. LXXII of 1791 effected the decennial settlement of Bengal, Behar and Orissa. By this settlement the amount of land revenue payable by the superior grantees to the Government, which had theretofore been more or less uncertain, was fixed at a certain rate or *jama* for a period of 10 years. This *jama* was to be ascertained by the Collector upon equitable principles to be approved by the Board of Revenue; certain allowances, called *malikana* and *kurchay*, were made to the zemindars for their maintenance and disbursement, and one of the conditions of this new holding was, that the zemindars should be responsible, as theretofore, for the peace and protection of the district: *Per* Garth, C.J., in the case of *Lilanand Singh v. Thakoor Munrunjan*, 3 Cal. 255, 256.

"These tenures were in existence in many parts of the countries long before the accession of the present Government, and were grants of the land made either by the authority or sanction of the Government, to certain persons as remuneration for their services as police. The head or sirdar of each of these police stations was required to keep up a certain number of men properly armed, to apprehend criminals, protect travellers, keep the peace, and to perform other police duties: *Kastora Koomree v. Monohur Deo*, W.R. 1864, p. 39 (at p. 42).

Onus. While it may well be that the *digwars* or *ghatwals* are subordinate to the Zemindar, it is always a question of fact whether they are or are not subordinate. The burden of proving that the lands of the *digwar* or *ghatwal* though within the geographical limits of the

~~Zemindari are a part thereof~~ is on the Zemindar: *Secretary of State v. Jyoti Prashad*, 30 C.W.N. 745 (P.C.). The case of *Forbes v. Meer Mahomed Tuquee*, 13 M.I.A. 438 referred to.

The Ghatwali estates are not revenue paying estates within subcls. (a) and (d) of cl. v. of sec. 7 of the Court Fees Act as appears *inter-alia* from the fact that the amount payable to Government by the tenure-holder is divided between the Government and the Zemindar of Birbhum. They are parts of the estate of the Zemindar: *Chandra Narayan v. Ashutosh*, 18 C.W.N. 659. It was held in that case that the plaintiff's suit to recover the Ghatwali estate of Rohini is governed by sub-cl. (d) of cl. v. of sec. 7 of the Court Fees Act, and, for purposes of court fee, the estate should be valued according to its market value: *Ibid*.

Ghatwali estates not revenue paying estates.

Although a ghatwal cannot grant a permanent lease, yet if he does so he is estopped from questioning it: *Kangali Charan v. Suraj Narain*, 65 I.C. 305, s.c., [1922 Pat.], p. 9.

In the Santhal Parganas there are for practical purposes three classes of ghatwali tenures, (a) Government Ghatwalis created by the ruling power; (b) Government Ghatwalis, which since their creation and generally at the time of the Permanent Settlement have been included in a zemindari estate and formed into an unit in its assessment; and (c) Zemindari Ghatwalis, created by the zemindar or his predecessors and alienable with his consent. The second of these classes is really a branch of the first: *Satya Narain v. Satya Niranjana*, 28 C.W.N. 351 at p. 361 (P.C.). The law relating to ghatwali tenures has been considered in this Privy Council case.

Santhal Parganas: three classes of Ghatwalis.

Kharackpur Ghatwals have a perpetual hereditary tenure at a fixed jama: *Ibid*; (the case of *Munranjan v. Lelanund*, 3 W.R. 84, s.c., I.A. Sup. Vol. 181, s.c., 13 B.L.R. 124 (P.C.) was referred to).

As to the nature, incidents, heritability, transferability, etc., of ghatwali tenures, see the recent Privy Council case of *Satya Narayan v. Satya Niranjana*, 28 C.W.N. 351.

Ghatwali tenure—Incidents.

Birbhum ghatwali tenures are inalienable except with the consent of the Government; Kharackpur ghatwali tenures are alienable subject to the consent of the landlord to whom the rent or revenue is paid: Beng: Regulation XXIX of 1814 applied to Birbhum ghatwali tenures only: *Phulabti Kumari v. Maheshwari Prasad*, 74 I.C. 668,* (Dawson Miller C.J. and Foster J.).

Where a Ghatwal has been relieved of the personal services and has been directed to pay a certain sum of money to be determined by the Deputy Commissioner for the support of the rural police, the condition of inalienability ceases to attach to the Ghatwali and the Ghatwali may be sold in execution of a money-decree: *Bansidhar v. Thakur Ashutosh*, [1925 Pat.] p. 22.

Birbhum ghatwalis and Rohini Ghatwalis—if alienable.

The incidents of Ghatwali tenures are inconsistent with the acquisition of a right of occupancy in land subject to such tenure in as much as on principle the landlord is entitled to have the land that was given to the Ghatwal in lieu of performance of his duty returned to him in the same condition free from any encumbrance or rights of occupancy.

*As to the incidents attached to the ghatwali tenure in taluk Dumri i.e. as to impartibility, succession, transferability &c., see the aforesaid case, *Phulpati v. Maheshwari Prasad*, 74 I.C. 668, at p. 672.

any other person imposed upon it: *Lal Singh v. Krishto Khutya*, [1924 Pat.] p. 364, s.c., A.I.R. 1925 Pat. 306. (Ross and Sen, J.J.).

Attachment
of future
rents and
profits.

Order.

Appointment
of Receiver.

Sale in
execution.

Seizure of
profits.

Khurackpur
Ghatwali
tenure.

Attachment
in execution
of decree.

Ghatwali
tenure, if
saleable in
execution of
rent decree.

2. Transferability of Ghatwali tenures :—In execution of a money-decree against a ghatwal the decree-holder prayed that the rents and profits that might be due to the ghatwal *minus* the wages payable to chowkidars and other outgoings should be attached and placed in the hands of a Receiver; the Court passed the following order: "Let a prohibitory order issue to the ghatwal not to receive any rents and profits from the raiyats, and also to the raiyats not to pay their rents to the ghatwal," *held* that the order was bad, that future rents and profits, as such, could not be attached and that the practical effect of the order was that the ghatwal being prevented from recovering the rents and profits in future, would not be in a position to pay the wages of the chowkidars, and so to perform the duty which devolves upon him as ghatwal. *Uday Kumari v. Hari Ram*, 28 Cal. 483. But if in such a case a Receiver is appointed there will be no difficulty in receiving the rents and profits as they fall due from time to time, and making provisions for the payment of the wages of the chowkidars and other incidental expenses: *Ibid*.

It has been held in the case of *Bally Dobey v. Ganei Deo*, 9 Cal. 388, that a *shikimi ghatwali* tenure, held under the superior ghatwal, is not liable to be sold in execution, and its proceeds are not liable to attachment for satisfaction of the debt due from its holder.

But the rents due to a ghatwal during lifetime, or rather the profits due to him, after all the necessary outgoings, can be seized and appropriated by the decree-holder for debts incurred by the ghatwal: *Raj Kishwar v. Bunshidar*, 23 Cal. (873, 875).

A ghatwali tenure in Kharagpur is transferable if the zemindar assents and accepts the transfer: *Anundo Rai v. Kali Prosad*, 10 Cal. 677. Such assent may be presumed from the fact of the zemindar having made no objections to a transfer for a period of over 12 years and when such a fact has been found, a Court ought to recognise such a transfer: *Ibid*.

"Ghatwali tenures are not liable either to sale or attachment in execution of decree [*vide* Sudder Dewanny Adawlat Reports, 1st set (1853)]. They are grants of land given in payment of service, and, although the custom of the country has made them hereditary they have not otherwise changed their original character. They are life-tenures only, and the incumbent for the time being has no power to burthen them, after his death, with any of his personal liabilities." *Per* Loch and Glover, J.J.: *Kustoora Koomaree v. Binode Ram*, 4 W.R. Mis. 5.

A ghatwali tenure is not saleable in execution of a decree for arrears of rent, in as much as the right to nominate the ghatwal rests with the Government. *Midnapur Zemindari Co. v. Ajambar Singh*, 1 Pat. L.J. 601. See in this connection *Nilmonnee v. Bokro Nath*, 9 Cal. 208, *Lachmi Narayan v. Satya Narain*, 1 Pat. L.J., 197; *Raja Lilanand v. The Government of Bengal*, 6 M.I.A. 101, *Benode Ram v. The Deputy Commissioner of the Santhal Parganas*, 7 W.R. 178; *Raja Nilmonnee v. Bakranath*, 10 W.R. 225. See also the case of *Purna Chandra v. Soudamini*, 28 C.L.J., 283. The contention that no ghatwali tenure is liable to be sold in execution of a decree is not a sound contention. Khargpur ghatwali lands are liable to be sold

in execution of a decree for rent : *Lakshme Narayan v. Satyanarain*, 1 Pat. L.J., 197.

A mortgage by a ghatwal of a certain property which was subject to certain restrictions on his right of alienation at the time of execution but which were removed afterwards and before the institution of suit, though it operates as a conveyance, is operative as an executory agreement, which attaches to the property, the moment the restrictions are removed and in equity transfers the beneficial interest to the mortgagee without any act done by the mortgagor to confirm the mortgage : *Surendra Nath v. Rajendra Chandra*, 27 C.L.J. 289.

Mortgage by Ghatwal.

The rents of a ghatwali tenure are not liable for the debts of the former deceased holder of the tenure ; *Binode Ram v. The Deputy Commissioner of Santhal Parganas*, 6 W.R. 129 ; *Ibid*, on review, 7 W.R. 178.

Rent of Ghatwali tenure.

As to transferability of a ghatwali tenure, see *Lalla Gosman v. Mr. Hugh Grant*, 11 W.R. 292.

Transferability.

As a general principle a ghatwal is not competent to grant a lease in perpetuity and his successor is not bound to recognise such an incumbrance : *Narain Mullick v. Badi Ray*, 6 C.W.N. 94, also *Grants and the Court of Wards v. Bungshee Deo*, 24 Cal. 149.

Right of Ghatwal to grant lease.

A lease in perpetuity granted by a ghatwal who jointly held with another ghatwal is inoperative even against the ghatwal who grants the lease, as the lease is one and indivisible : *Narain Mullick v. Badi Ray*, 6 C.W.N. 94.

On an application for execution of a decree, although an order directing attachment of a ghatwali estate may be erroneous, an order appointing a Receiver to receive the rents and profits of such estate is sanctioned by authority : *Kesobati v. Mohan Chandra*, 39 Cal. 1010 ; s. c., 16 C.W.N. 802 ; the rents and profits of a Ghatwali tenure may be attached in execution of a decree in the life time of the Ghatwal though the estate itself cannot be attached : *Ibid*.

Attachment of ghatwali estate.

Receiver to receive, rents and property.

Where a ghatwali interest was mortgaged on the representation that it was a jagir and the mortgagor subsequently got a mokurari title to it, held that on a decree for sale upon the mortgage the makurari interest passed to the mortgagee : *Mokhodo v. Umesh*, 7 C.L.J. 381 ; s. c. 12 C.W.N. 23 (notes).

Mortgage by Ghatwal.

3. Succession of Ghatwali tenures :—The result of the decision of the Privy Council as to the nature of the ghatwali tenure is that it is ordinarily hereditary, the estate descending to such male member of the family as the zemindar approves of as competent, and that it is the right of the family, so long as they have male members competent to perform the duties to one or more of them appointed Ghatwals : *Durga Prasad v. Tribeni Singh*, 46 Cal. 362, (P.C.), s. c., 28 C.L.J. 508.

Beerbhoom Ghatwali tenure to be held in perpetuity.

Ghatwali tenures in Beerbhoom are in fact tenures to be held in perpetuity, and are descendible from generation to generation subject to certain conditions and obligations and the Legislature did not intend that they should devolve on issue of the body only and not on heirs generally according to the law which may govern such succession : *Chattra Dhari v. Saraswati*, 22 Cal. 156 ; the words "descendants" in sec. 2 of Bengal Regulation XXIX of 1814 is not to be construed in its restricted meaning, but includes the widow of

Reg. XXIX of 1814, s. 2

A female may hold a ghatwali tenure.

a deceased *ghatwal*: *Ibid.* Ghatwali tenures as described in Regulation XXIX of 1814 were intended to be the exclusive property of the *Ghatwal* for the time being and not joint-family property in the proper sense of the term: *Ibid.*, where in a Mitakshara family a *ghatwal* died leaving a widow and a separated brother, *held* that the widow was the heiress. *Ibid.* A female is not incapable of holding a ghatwali tenure: *Kastoorā Koomaree v. Monohur Deo*, W.R. 1864, p. 39.

Lands descend to a male heir.

Under the death of the ghatwal last seised, the lands descend entire to a male heir, as ghatwal: *Lilanand v. The Government of Bengal*, 6 M.I.A. 101.

Physical incapacity of heir to perform duty.

By Regulation XXIX of 1814 a hereditary tenure was secured to the ghatwals and their descendants, subject only to the condition of punctual payment of rent assessed upon them and fulfilment of their obligation: *Lall Dharee v. Brojo Lall*, 10 W.R. 401: Where on the death of a ghatwal the Commissioner of Revenue rejected the claims of the natural heir upon consideration, not of his physical incapacity to perform the duty of ghatwal, but on purely moral considerations, the ground alleged being that the heir evinced such a want of filial respect and dutiful feeling towards his father, that the Commissioner could have no confidence in his performing the duty of his station: *held* that the Commissioner acted beyond the scope of his authority: *Lall Dharee v. Brojo Lall*, 10 W.R. 401; such an act of the Commissioner can be questioned by a suit in the Civil Court: *Ibid.*

Some of these grants are hereditary.

"Some of these grants were hereditary in their origin and all very soon became so; and it being inconvenient and wholly subversive of the ghatwali system to admit the element of Hindu law which requires an equal division of the deceased father's property among his sons, the ghatwali tenure descended undivided to the eldest son, to the exclusion of the others, who either lived with or were supported by him, or followed their own pursuits. Had the inheritance been regulated by the Mitakshara, or any other system of Hindu law, the property would in the first generation, have been divided among the sons of the first holder of the tenure, and subdivided among their heirs, the party who succeeds to and holds the tenure as ghatwal must be, and has always been looked upon as sole proprietor thereof, and therefore the other members of the family cannot claim to be co-parceners and entitled to share in the profits of the property, though they may, by the permission and good-will of the incumbent, derive their support either from some portion of the property which he may have assigned to them or directly from himself. And if it be so with the nearer members, the distant members of the same family cannot be considered as holding in common with the incumbent, so as to bar the widow or mother's right to succeed. Even, under the Mitakshara Law, the widow and mother would be entitled to succeed, if the property left by the deceased were not held in common; and we have stated above that we do not think that the ghatwali tenures could ever be said, in the sense used in the Mitakshara, to be held in common": *Kastoorā Koomari v. Monohar Deo*, W.R. 1864, p. 39 (at p. 42).

Heritability. A ghatwali tenure existing from before the grant of the Diwani to the East India Company and descending from father to son from many generations and held at a quit rent was held to be permanent heritable: *Jogendra Nath v. Kali Charan*, 9 C.W.N. 663.

A jagir is not necessarily conditional ; it may be unconditional and the mere fact that a tenure is described as a *jagir* is by no means conclusive and its incidents must be determined from other circumstances : *Bhagwat Baksh v. Sheo Prasad*, 18 C.W.N. 297. Long uninterrupted usage that lands have passed from father to son for two or three generations without objection raises an inference that the grant was a grant of inheritance : (*Per Mookerjea J., Ibid.*)

Jagir not necessarily conditional. Inheritance from father to son, effect of.

As to the question of limitation in a suit for recovery of possession by a person who succeeded as *Ghatwal* as an infant ; See the case of *Prasanna Kumar v. Srikantho*, 40 Cal. 173 ; the plaintiff in such a case as *Ghatwal* does not claim through his father as his predecessor within the meaning of sec. 2 of the Limitation Act : *Ibid.*

Suit by an heir of a ghatwal.

4. Resumption of Ghatwali land and Dismissal of a ghatwal :—“It has been doubtless the practice for the Commissioner, or other authority acting on the part of the Government, to enquire into cases of alleged failure to perform the duties of ghatwal or of incapacity to perform such duty, and although I do not wish to express any decided opinion on the question it is conceivable that a person who has held the office of ghatwal might be removed for good cause and that on removal from office he would be incapable of holding the land” : *Per Jackson J., in Lall Dharee v. Brojo Lall*, 10 W.R. 401. Want of filial respect and dutiful feeling towards his father is no ground for the dismissal of a ghatwal : *Ibid.*

Failure to perform duty.

Want of filial respect.

The dismissal of a ghatwal carries with it the forfeiture of his tenure : *The Secretary of State v. Paran Singh*, 5 Cal. 740.

Forfeiture.

It was observed by Lock, J., in the case of *Kastooro Koomaree v. Monohar Deo*, W.R. 1864, p. 42, that ghatwals were liable to dismissal for misconduct or neglect, and any stranger could be appointed in their room.

Misconduct.

“For misconduct and failure to perform the conditions annexed to their tenure they, no doubt, are liable to be and sometimes have been, ejected, and when so vacant, the right of nomination to the office, no doubt rests with the Zemindar. But no instance can be shewn in which the Zemindar on his own mere motion has ejected the ghatwal and determined the tenure, we are quite clear that, under the established usage and constitution of the country he cannot do so” : *Per Trevor and Campbell, J.J., in Munrunjan v. Rajah Lilantand*, 3 W.R. 84.

It is one of the incidents of a *ghatwali* tenure either under the original grant or engrafted on it by usage that when the *Ghatwal* becomes incapable of personally performing the services, a deputy (preferably the next successor) may be appointed to act in his behalf by the Magistrate, it does not follow that an incapacity on the part of the deputy to discharge adequately the duties incidental to the office operates as a forfeiture for the appointment of the principal : *Jogendra Nath v. Kali Charan*, 9 C.W.N. 666 ; where during the lifetime of a *ghatwal* his son who was appointed deputy was dismissed, held that the dismissal of the son did not amount to the dismissal of his father and that after the father's death the son was entitled to succeed : *Ibid.*

Personal incapacity.

Under the provisions of the Decennial Settlement of 1789 the Bengal Government, in 1790, assessed the whole of the zemindari of Khurackpur, including certain *ghatwali* lands at a fixed jumma. This settlement was made perpetual in 1796, under Bengal Regula-

Khurackpur.

tion I of 1793, at the said fixed jumma. In 1838, the Government set up a claim to resume, for the purpose of revenue assessment, the *ghatwali* land in this Zemindari, such claim was dismissed, by reason, *first* that the *ghatwali* lands were part of the zemindari of Khurackpur and were included in the Permanent Settlement of the Zemindari, and covered by the *jumma* assessed on that zemindari; and *second* that lands of *ghatwali* tenure were not liable to resumption under clause 4, sec. 8, Bengal Regulation I of 1793, as included in allowances made to Zemindari for *Thana* or Police establishments: *Lilanand v. The Government of Bengal*, 6 M.I.A. 101.

Rent agreed to be paid upon resumption.

Where upon the resumption of a *ghatwali* tenure by the Government and settlement with the Zemindar, the latter entered into an agreement with A to the effect that the quit rent payable to the *ghatwal* was to be paid by the lessor and a consolidated rent was to be payable by the lessee to the lessor: *held* that a suit for rent by the lessor was not a suit by a co-sharer landlord: *Chandra Mohini v. Kenaram*, 19 C.L.J. 324.

Khurackpur Ghatwali tenure.

5. Enhancement of Ghatwali tenure:—In a suit for enhancement of the tenure of a Khurackpur Ghatwal it was observed that “the *ghatwals* come under the denomination of dependent talukdars as defined in Regulation VIII of 1793; and further they are protected by the first clause of sec. 51 of that Regulation, which is very comprehensive, and includes all talukdars not included in sec. 5” ; *Lilanand v. Thakur Munranjun*, 3 Cal. 251 (at p. 262).

Act X of 1859 ss. 3, 15.

Where it was admitted that the tenure of the defendant who was a *ghatwal* dated from a time anterior to the Decennial Settlement and before the creation of the Zemindari, the defendant was held to be protected from any fresh assessment either under sec. 3 or sec. 15 of Act X of 1859: *James Erskine v. The Government*, 8 W.R. 232.

Long possession.

Long possession and gradual cultivation by a *ghatwal* on payment of a quit-rent are evidence of an implied grant which protects the *ghatwal* from enhancement: *James Erskine v. Manick Singh*, 6 W.R. 10.

Excess area.

A suit lies to assess the lands in the occupation of *ghatwals* in excess of the area recorded in the *isumnovisee* filed by the *ghatwals*: *Rajha Jago Jewen v. Raghunath*, 6 W.R. 197.

When services are not required.

Where grants of land had been made prior to the Permanent Settlement on *ghatwali* tenure at fixed rent, and the Government dispensed with the service on the part of the Zemindar, *held* in a suit by Zemindar for enhancement of the rents of a *ghatwali* taluk situate within his Zemindari of Khurackpur, that so long as the *ghatwals* were able and willing to perform the services, the Zemindar had no right to enforce payment of an enhanced rent on the ground that services were no longer required: *Lilanand v. Thakur Munranjun*, 3 Cal. 251: the *ghatwals* are dependent talukdars within the meaning of Regulation VIII of 1793 and are protected from enhancement by sec. 51 of that Regulation: *Ibid*.

Presumption under s. 50.

6. Presumption: S. 50: Ghatwali tenure:—There is nothing in the nature of a *ghatwali* tenure to show that as long as such a tenure existed, the presumption under s. 50 could not, by reason of s. 181, arise: *Gouri Kant v. Ram Gopal*, 2 C.L.J. 379.

Chowkidari chakran.

7. Occupancy right in Ghatwali, Chowkidari Chakran, and other service tenures: A right of occupancy could be acquired by a tenant even in Chowkidari Chakran lands under s. 6 of Act X of 1859: *Ram Kumar v. Ram Newaz*, 31 Cal. 1021.



From 1859 to 1885 *Ghatwali* lands were subject to the acquisition of occupancy right; s. 181 of the Bengal Tenancy Act does not take away such right acquired or enjoyed: *Sitakanta Ray v. Bipradas*, 27 C.L.J., 556; the following cases were referred to: *Ramkumar v. Ram Newaz*, 31 Cal. 1021, *Mrittunjoy v. Kenatullah*, 5 C.L.J., 53, and the following cases were distinguished: *Mohesh v. Pran Krishna*, 1 C.L.J., 138 and *Upendra v. Ram Nath*, 33 Cal. 630.

If the occupancy rights were acquired in chakran lands held under a service tenure before 1885, they were protected under sec. 19 of the B. T. Act. Under sec. 181 of the B. T. Act, they cannot be acquired after the passing of the Act: *Khetra Mohon v. Lakhikanta*, 44 C.L.J. 271, (Greaves and Panton, J.J.). The provisions of sec. 181, B. T. Act, relate to the prevention of the acquisition of occupancy rights in service tenures during the continuance of the Act itself and they do not affect the rights acquired as under the provisions of sec. 6 of Act X of 1859: *Ibid.* (The cases of *Sitakanta v. Bipradas*, 27 C.L.J. 556 and *Ramkumar v. Ram Newaz*, 31 Cal. 1021 followed.)

The principle is applicable whether chakran lands are of a private nature as well as those which are of a public nature: *Ibid.* (The case of *Satyendra v. Krishna*, 25 C.L.J. 185 followed.)

A right of occupancy cannot be acquired in land held under a service tenure: *Jafaruddin v. Jamini Bullav*, 28 C.L.J.; 249.

A right of occupancy cannot be acquired in *Kotowali Jagir* land: *Jafaruddin v. Brindarani*, 23 C.W.N. 136.

As *Chakran* lands are held in lieu of service a *Chowkidar* in occupation of such lands cannot acquire a right of occupancy: *Kariman v. Nirmal Kumar*, 52 I.C. 181.

Occupancy right cannot be acquired in *ghatwali* lands: *Upendra v. Ram Nath*, 33 Cal. 600, see also *Mohesh Majhi v. Prankrishna*, 1 C.L.J., 138. "I think that upon principle having regard to the nature of *ghatwali* lands, the acquisition of occupancy rights in these lands is inconsistent with the incidents of such tenures": Per Maclean, C.J., in *Upendra v. Ramanath*, 33 Cal. 630.

A person cannot acquire an occupancy or non-occupancy right in resumed chowkidari chakran lands when the settlement is made by a person who has no title to them: *Shaikh Jonab Ali v. Rakibuddin*, 6 C.W.N. 571: s. c., 1 C.L.J., 503. The case of *Binad Lall v. Kalu Pramanick*, 20 Cal. 708, was held to be inapplicable; this case and the case of *Harinarain v. Makanda Lall*, 4 C.W.N. 814, were distinguished in the case of *Upendra v. Pratap*, 8 Cal. 703, where it was held that when under the terms of a *putni* lease, the putnidar is entitled to all resumed lands, and certain *chowkidari chakran* land within the *putni* is resumed by Government and made over to the Zemindar, the Zemindar cannot, by allowing the old chowkidar to remain on the land accepting rent from him, protect the latter from ejectment at the instance of the putnidar.

The Bengal Tenancy Act does not expressly lay down any rule of law with respect to acquisition of either occupancy or non-occupancy right in land held by *ghatwals* as service-tenures, and the incidents of a *ghatwali* tenure, which are declared by s. 181 not to be affected by the Act, are nowhere specified: *Mohesh Majhi v. Prankrishna*, 1 C.L.J. 138; the growth of such rights is inconsistent with the nature of service-tenures, but a custom or local usage may grow up in any local area as to recognition of occupancy rights and such a custom is binding upon successive *ghatwals*: *Ibid.*

Restriction on the growth of occupancy or non-occupancy rights for the benefit of the Ghatwali.

The restriction on the growth of occupancy or non-occupancy rights in ghatwali lands is for the benefit of the ghatwal. When therefore the Zemindar unlawfully dispossesses the ghatwal and settles the land with a raiyat, the latter acquires non-occupancy and occupancy rights against his landlord. The Zemindar's position is not improved if upon resumption of the ghatwali lands by Government, they are subsequently settled with them: *Babu Lal v. Purna Chandra*, 10 C.L.J. 602.

No rights of occupancy accrue in lands held under a service-tenure: *Hurrogobinda v. Ram Rutno*, 4 Cal. 67.

Digwar.

8. Digwari tenure :—There is nothing in the use of the term digwar to raise any presumption in favour of the contention that the holders of the service are personal servants of the Rajah of Ramgurh: *Ramnarain v. Tekait Ganjhu*, 12 C.W.N. 178; nature of Digwari service in Ramgurh discussed: *Ibid*.

Digwari tenure of Manbhumi and Ghatwali tenures in Birbhumi are not analogous.

The Digwari tenures of Manbhumi and the Ghatwali tenures in Birbhumi though similar in some respects, the two kinds of tenures are not analogous: *Durga Prasad v. Brajanath*, 39 Cal. 696, s. c., 16 C.W.N. 482 (P.C.); in regard to a Digwari tenure of Tasra in Manbhumi it was held that the mineral rights remained in the zemindar in the absence of proof that he had parted with them: *Ibid*; the decision of the High Court in this case reported in 12 C.W.N. 193, s. c., 34 Cal. 753 was over-ruled by the Privy Council (39 Cal. 697); see also *Harinarain v. Sriram*, 37 Cal. 723; s. c., 37 I.A. 136.

Heredity.

A Digwari tenure in the District of Bankura which is similar to a Ghatwali tenure is hereditary but the right of the heir to the tenure is subject to the approval or sanction of the Government, and notwithstanding that the tenure is hereditary, the Government, has the power of dismissing the Ghatwal for mis-conduct: *Hemendra Nath v. Upendra Narain*, 18 C.W.N. 1036.

The Digwars of Ghat Bharra in Bankura were the holders of an office remunerated by the enjoyment of land, and the history of the office established a general usage on the death of a Digwar holding office to appoint his heir in his place as the successor to his office: *Hemendra Nath v. Upendra Nath*, 43 Cal. 743, s. c., 22 C.L.J., 419.

Simanadari.

9. Simanadari in Bankura :—The "Bengal District Gazetteer for Bankura" may be referred to by a Court for the purpose of seeing what the duties of *simanadar* were: *Lalu Dome v. Bijoy Chand*, 20 C.W.N. 404.

Village Chowkidari Act.

10. Chowkidari Chakran lands.*—Chowkidari Chakran lands within the meaning of the Village Chowkidari Act, are lands

* McNeile's Report on the Village Watch of the Lower Provinces of Bengal, 1866.

Page 1.

Para 14 :—Much misapprehension has existed in respect to the origin of the term "chowkidar." It is a name which does not appear to have, in common usage, attached before the Decennial Settlement to village watchmen, properly so called, in any part of Bengal. In correspondence of the period the name is applied to the following classes of officers :—

First :—A subordinate class of Thanadari Police who were placed in charge of outposts ("chokies") throughout the Burdwan zemindari. These were also called "Pharidars."

2nd.—The watchmen in the cities of Dacca, Patna and Moorshidabad.

3rd.—Watchmen maintained by individuals to protect their houses, property, &c.

4th.—Preventive officers in the Custom Department.

which having been assigned by Government, have not been taken into account in the assessment of land revenue: *Birbar Narain v. The Secretary of State*, 14 C.L.J., 151; the words "otherwise than under a temporary settlement" in the definition of 'Chowkidari Chakran lands' Act (B.C.) VI of 1870 refer to a settlement by Government and the assignment there referred to is an assignment made by Government at the time of the settlement: *Ibid*.

Where the contract between the parties in a putni lease does not contain any stipulation for rent for the chowkidari lands, the landlord is entitled to some rent for the chowkidari land: *Bijoy Chand v. Krishna Chandra*, 34 C.L.J. 275. Additional rent.

The interest of the putnidar in resumed chowkidari chakran lands comprised in his putni is derived from the putni itself, and the Zemindar cannot claim a share in the profits derived from the settlement of such lands and thus in effect to vary the putni: *Narpat Singh v. Bhupendra*, 26 C.W.N. 943, s.c., 36 C.L.J., 145; the case of *Bijoy Chand v. Krishna*, 34 C.L.J., 275 and the decisions followed therein laying rule to the contrary are wrongly decided in view of the Privy Council decision: *Ranjit v. Kalidasi*, 44 I.A. 117, s.c., 44 Cal. 841, s.c., 21 C.W.N. 609 (P.C.) and *Ranajit v. Maharaj Bahadur*, 46 Cal. 173, s.c., 23 C.W.N. 198: *Ibid*. Settlement of lands—Zemindar and putnidar.

If chowkidari chakran lands are resumed by Government and are settled with a Zemindar, all rights created by the chowkidar in favour of third parties cease: *Satyendra v. Krishnasakha*, 35 C.L.J., 185; if transfer had been made by the zemindar before the resumption, the transferee gets the benefit: *Ibid*. Resumption: Rights of third parties cease.

Adverse possession: Non-rendering of service if it amounts to:—In a suit for resumption by the grantor of a service tenure, held that the mere fact that no service was rendered by the grantee or his transferee for 12 (twelve) years does not amount to adverse possession: *Nand Lal v. Tikait Srinivas*, 1 Patna 292.

Where the question was whether certain lands in thana Indas in the district of Bankura and called "*Simanadari*" lands were Chakran lands within the meaning of s. 1 of the Chaukidari Act (VI. B. C. of 1870), the High Court in second appeal, in the absence of any finding on the point of the lower appellate Court, held, on reference to the Bengal District Gazetteer of Bankura, that the *Simanadars* performed the duties of *Choukidars* and so Act VI of 1870 applied to the case: *Lalu Dome v. Bejoy Chand*, 20 C.W.N. 404.

A chowkidar has to perform police services for the Government and also to render such services to the zemindar personally as might have the sanction of law or usage: *Badya Nath v. Kamini Kant*, 6 C.L.J. 573; see also *Jonab Ali v. Rakebuddin*, 9 C.W.N. 571, s.c., 1 C.L.J. 303. Chowkidar's service.

(Appendix A, page 391).

District.	No.
Burdwan Pharidars	58
Howrah "	15
Hooghly "	159

Page 94.

7th. Clause—The term "chowkidar" has since been gradually extended to the larger majority of the individuals composing the amalgamated force of village Police.

Raja of
Madhupur.

By a *sanad*, the lands which the Raja of Madhupur held under the Mahrattas were confirmed to him in perpetuity at a fixed Jama : *held*, before the Village Chaukidari Act could be applied, it should be shown that the lands which had been dealt with were chaukidari chakran lands within the definition given in that Act. That as in this case, there is no assignment of chaukidari chakran lands, the said Act was not applicable: *Birbar Narayan v. The Secretary of State*, 14 C.L.J., 151.

S. 48 of Act
VI of 1879
(B. C.)

Under s. 48 to the Chowkidari Chakran Act (VI of 1870, B. C.) the resumed lands are to be transferred not to the zemindar of the village in which they are situated geographically but to the zemindar of estate to which the lands appertain and of which they form a part and parcel: *Pratap v. The Secretary of State*, 3 C.L.J. 530. Where chowkidari chakran lands were transferred to the plaintiffs by the Government, who sought to eject the defendant who was formerly a chowkidar and it was found that the plaintiffs took money from the defendant for the right to cultivate and grow the crops as well as to cut and carry them away, *held* that the relation of landlord and tenant was established between the plaintiffs and the defendant and therefore the defendant was not liable to ejectment: *Ram Ranjan v. Janaki Nath*, 4 C.W.N. 64 (notes).

Transfer.

S. 1 of the Chaukidari Chakran Act does not govern cases in which there might be definite and conclusive evidence to satisfy the Court as to what was the nature of the services required from the service tenure-holder: *Satis Chandra v. Natabar*, 28 C.L.J. 281.

A clause in a putni lease to confer on the zemindar the right to appoint and dismiss chowkidars has not the effect of reserving to the Zemindar and excluding from the putni the chaukidari chakran land: *Nafar Chandra v. Bijoy Chand Mahtab*, 22 C.W.N. 487.

Suit by
putnidar
Mesne
profits.

Where a *putnidar* brought a suit against the Zemindar and certain other persons for recovery of possession of certain lands on the allegation that they were chaukidari chakran lands included in the *putni mahal*, that they had been resumed by the Government and thereafter settled the same with the Zemindar, who in his turn had settled the same with those persons. The suit was decreed and mesne profits for three years before the institution of the suit up to the date of his getting possession of the lands were decreed, *held* that the omission to make the tenants parties to the proceeding would not disentitle the plaintiff from recovering mesne profits from the Zemindar on the footing that all these persons were joint trespassers. It was open to the plaintiff to execute the decree as against any of them: *Maharaj Bahadur Singh v. Bhupendra Narayan*, 44 C.L.J. 182 (Greaves and Mukherji, J.J.). That it was on the footing of profits as the Zemindar would make and not on the footing of the profits as the actual cultivators would make out of the lands that the mesne profits should be assessed: *Ibid.*

Succession.

II. Succession of Chowkidari Chakran lands:—For the purpose of establishing family custom of succession to an estate, the evidence must be clear and unambiguous; and the evidence must not fail to give to the alleged custom the character of certainty, which is essential to its validity: *Rama Kanta v. Chowdhury Shamanand*, 9 C.L.J., 497. Where the evidence showed that the office of *Chowdhuri* was held under successive native Governments, for many generations by a member of a family, and lands were assigned to the

holder of that office as a part of his remuneration but the grant was of an office only and to an individual, to be held during good behaviour and the office was not necessarily heritable. The evidence was not clear and unambiguous and that it fell far short of establishing the claim of the eldest branch of the family during the period of native rule: *Ibid.*

12. Resumption of Chowkidari Chakran and other Chakran lands Resumption. :—The title of a zemindar to chakran land is always with him and remains unaffected by the fact that such land is appropriated to the maintenance of an officer who performs the duties of village watchman. Upon the transfer of such land to the Zemindar he may treat it as *mal* or *zerait*, but if he once elects to treat it as *mal*, he cannot afterwards treat it as *zerait*: *Kariman v. Nirmal Kumar*, 52 I.C. 181. Where chowkidari chakran lands are resumed by Government and settled with a Zemindar, all rights created in such lands by the chowkidar in favour of third parties, come to an end: *Krishna v. Mohunt Bhagwan*, 7 C.L.J. 85; but if any transfer has been made by the zemindar before the resumption and the land is settled with him by the Collector, the transferee would be entitled to the benefits of such settlement: *Ibid*; if any transfer is made by the Collector, acting for and on behalf of the chowkidar, such transfer also ceases to have effect after the settlement: *Ibid.*

Where a *putnidar* sought to have transferred to him certain chowkidari chakran lands, which the Government has settled with the zemindar under Act VI of 1870, (B.C.), and where it was found that the lands were part of plaintiff's *putni*, and that the Zemindar had sublet the same to a tenant, held that the *putnidar* was entitled to possession but not to *khas* possession: *Hari Narain v. Mukunda Lal Mondal*, 4 C.W.N. 814.

The effect of the transfer of the Collector of the Zemindari of resumed chowkidari chakran lands is not to separate them from the parent estate and grant a new title to them in favour of the proprietor of the estate. A *putnidar*, if these lands were included within his *putni*, has the right to recover possession of the lands from the Zemindar on condition of his agreeing to a fair and reasonable settlement with the landlord. The terms of the settlement of the resumed chowkidari chakran land with the *putnidar* would depend upon the conditions under which the *putni* was originally created: *Harak Chand v. Charu Chandra*, 15 C.W.N. 5, s.c., 13 C.L.J. 102. Effect of resumption of chowkidari chakran land.

A suit by *putnidar* to recover possession of chowkidari chakran land resumed and transferred to the Zemindar is governed by Art 142 or Art. 144 of the second schedule of the Limitation Act: *Ibid.* See also *Bunwari Mukunda Deb v. Bidhu Sundar Thakur*, 35 Cal. 346, s.c., 12 C.W.N. 459. Suit by Putnidar of chowkidari chakran land.

A suit by a *putnidar* for recovery of chakran lands resumed by Government and subsequently settled with the Zemindar on the ground that the *Putni patta* included these lands is not a suit for specific performance of contract but a suit for possession and is maintainable even if all the parties to the contract were not parties to the suit: *Kumar Banwari v. Bidhu Sundar*, 35 Cal. 346, s.c., 7 C.L.J. 439. See also *Kazi Newaj v. Radha Charan*, 34 Cal. 109: s.c., 11 C.W.N. 201.

It rests on the Government to shew that the settlement with the Settlement

subject to reservations —onus. zemindar was subject to reservations in respect of any land which Government has the power of resuming and assessing it: *The Secretary of State for India in Council v. Kritibas Bhupati*, 19 C.W.N. 65 (P.C.) (confirming 15 C.W.N. 300); the Zemindars are under no obligation to make chowkidari grants when their only obligation under the terms of their sanads is to maintain peace and order within their Zemindaries, and the mere fact that some appointments were with the approval of a Government officer cannot alter the nature of the grants and make them resumable by Government *Ibid*.

Effect of resumption. The resumed chowkidari lands when transferred to the Zemindar, have not the character of an estate impressed upon them for all purposes: *Tincowri v. Satya Niranjan*, 18 C.W.N. 158, s.c., 19 C.L.J. 263; s. 78 of the Land Registration Act is no bar to a suit for rent by the Zemindar's representative in interest, claimed for land which was upon resumption settled with the Zemindar: *Ibid*.

Mortgage —Effect of resumption. Whether upon resumption by Government, chowkidari chakran lands are for all purposes severed from the Zemindari or not, they form part of the Zemindari before resumption, and a mortgage of the Zemindari executed before resumption would cover such lands upon transfer of the resumed chakran lands to the Zemindar. There is an accession to the mortgaged property within the meaning of sec. 70 of the Transfer of Property Act: *Rakhaldas v. Madhab Chandra*, 15 C.W.N. 61, s.c., 13 C.L.J. 109; chowkidari chakran lands upon resumption form a separate estate for one purpose only, viz., as being hypothecated for the chowkidari assessment. Otherwise, it remains a part of the estate: *Ibid*.

Dismissal of chowkidar. In the absence of a contract to the contrary, the zemindar who appoints and dismisses chowkidars and is in enjoyment of their service since the creation of the putni lease is entitled to the lands by the chowkidars after the resumption of such lands by the Government: *Nitya Nund v. Maharajahdiraj Bijoy Chand*, 7 C.L.J. 593.

Resumed lands. When chowkidari land is resumed and transferred by the Collector to the Zemindar the interest of the chowkidar in the land and, along with it, all rights created by him in favour of another, cease: *Krishna Kinkar v. Mohanta Bhagaban*, 35 Cal. 185, s. c., 12 C.W.N. 161.

Suit in respect of resumed lands. Where a plaintiff in a suit by a dur-putnidar of the entire interest in a moujah, in respect of certain resumed chowkidari chakran lands transferred by Government to the Zemindar, prayed for possession of those lands and for the execution of a proper deed of settlement in respect of such lands, held that the suit was not bad as it was for specific performance as well as for possession: *Ranjit Singh v. Kalidasi*, 14 C.W.N. 527; s.c., 37 Cal. 57; the terms on which the transfer should be made are laid down in *Harinarain v. Mukund Lal*, 4 C.W.N. 814: *Ibid*.

A suit by a putnidar against this Zemindar for recovery of resumed chowkidari chakran lands brought on the ground that under the terms of the putni the putnidar became entitled to the chowkidari chakran lands as soon as they were transferred by the Government to the Zemindar, is virtually a suit for specific performance of contract: *Rajendra Nath Mukerjee v. Hira Lal Mukerjee*, 14 C.W.N. 995. The Zemindar would be equitably entitled to refuse settlement asked by the putnidar unless the putnidar agreed to the conditions as to payments of the assessment made

by the Collector and a proportionate share in the profits such as the zemindar would in the circumstances be entitled to impose on him : *Ibid.*

In a suit by a Zemindar for possession of jagir lands formerly held by a *paik* whom he had dismissed, it was found by the Subordinate Judge and the District Judge that the *paik* was a private servant and not a *paik* whom the Zemindar had no power to dismiss, held by the Privy Council that the High Court was not entitled to set aside the decree for possession and remand the appeal for the determination of the question as to whether the lands were *chaukidari chakran* lands and excluded from the assessment : *Ramchandra v. Secretary of State*, 43 I.A. 172, s.c., 20 C.W.N. 1245. jagir lands.

Where certain *chowkidari chakran* lands forming part of a revenue-paying estate, being abandoned by the *chowkidars*, were appropriated by the Zemindar who settled the same with the defendants as tenants, and thereafter the lands were resumed under the provisions of the Village *Chaukidari* Act, 1870, and subsequently transferred to the Zemindar who granted an under-tenure to the plaintiff, held that the plaintiff could not contend that the defendants who were brought on the land by his grantors were trespassers and the plaintiffs' suit in ejectment must fail : *Shib Chandra v. Surendra Chandra*, 45 Cal. 515, s.c., 27 C.L.J. 560. Ejectment
suit after
resumption.

The right of a landlord to claim rent, when making a settlement of resumed *chowkidari chakran* lands with a *putnidar*, is not restricted to the amount of assessment made by the Collector under s. 49 of the *Chowkidari* Act. (Bengal Act of 1870) ; he is entitled to claim a fair and equitable rent : *Gopendra v. Tara Prasanna*, 37 Cal. 598 ; s.c., 14 C.W.N. 1049. Claim of
rent upon
resumption.

Where a conveyance for a *putni taluk* expressly recited that certain resumed *chowkidari chakran* lands appertaining to the *putni taluk* were retained by the vendor ; held that the vendee was not estopped from claiming the *chakran* lands under a subsequent settlement thereof from the zemindar : *Bepin Behari v. Tincowri*, 15 C.W.N. 976. Estoppel—
Vendor and
Vendee.

Neither the fact that the land has been allowed to devolve from father to son, nor the fact that the tenure was created very many years ago, nor the circumstances that of late the Zemindar did not avail himself of the services but still allowed the defendants to hold on, or all those facts taken together, could legitimately lead to the inference that the grant, which was purely in lieu of personal services to be rendered to the Zemindar, was of a permanent character, such that the Zemindar is not entitled to resume, though the grantee may refuse to perform the services, or the services may be no longer required : *Per* Prinsep and Ghose, J.J., in *Radha Pershad v. Budhu Doshad*, 22 Cal. 938 (at p. 942). Services to
be rendered
—whether
tenure
permanent.

A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment : *Hurrogobinda v. Ram Rutno*, 4 Cal. 67. Refusal to
render
services.

The fact that a Zemindar was entitled to make an appointment to the office of a *chowkidar* does not create in him an interest in the lands held by the *chowkidars*, which, upon resumption and transfer to the Zemindar, would pass to the *putnidar* from whose lease they had not been excepted : *Girish Chandra v. Hem Chandra*, 5 C.L.J. 28. Resump-
tion and
transfer.

Sale.

On sale of chowkidari chakran lands for non-payment of the Government assessment (after resumption and transfer to the Zemindars), both the Zemindar and the putnidar are entitled to share in the surplus sale-proceeds: *Haridas v. Nistarini*, 5 C.L.J. 30; the determination of this question does not depend upon the decision of the question of the right of the putnidar to hold the chakran land upon payment of additional rent: *Haridas v. Nistarini*, 5 C.L.J. 30.

Right of a putnidar.

A putnidar is entitled to eject a raiyat settled by the zemindar on chowkidari lands resumed by the Government and transferred to the latter, when the Zemindar granted the putni without any reservation of the chowkidari chakran land: *Kazi Nawaz v. Surendra Nath*, 5 C.L.J. 33; the nature of chowkidari lands and the effect of their resumption is explained in this case.*

Putni lease.

Where a putni lease conveyed to the putnidar all the lands of which the Zemindar at the time of the execution of the lease was possessed in the mouzah of which the putni was granted and the mouzah included *chowkidari* chakran land, held that on resumption by the Government a settlement with the Zemindar under Act VI of 1870, the putnidar became entitled to possession of the chowkidari chakran land, subject only to payment to the Zemindar of the extra assessment of revenue imposed on account of the resumed land: *Kazi Nowaz v. Ram Jadu*, 11 C.W.N. 201, but it was held in the case of *Kashim v. Prosunno*, 33 Cal. 596, s. c., 10 C.W.N. 598, that when chowkidari chakran land is resumed and transferred to the zemindar under s. 50 of Act VI of 1870 (B.C.) such land becomes detached from the parent estate, and the Zemindar hold it under a different title from his other *malgujari* lands. In regard to the case of *Kasim Shaekh v. Prasanna Kumar*, 33 Cal. 596, s. c., 10 C.W.N. 598, s. c., 5 C.L.J. 299, the following observations were made by Mookerjee and Walmsley J.J., in the case of *Sourendra v. Rajendra Nath*, 22 C.W.N. 660 at p. 662: "It may be observed that the decision in *Kasim Shaikh v. Prasanna Kumar* in so far as it ruled that the effect of the resumption and transfer was to grant new title to the proprietor of the estate was doubted by this Court in *Kazi Newaz v. Ram Jadu*, 34 Cal. 109, s. c., 11 C.W.N. 231, s. c., 5 C.L.J. 33 and must now be deemed to have been over-ruled by the opinion of the Judicial Committee in *Ranjit v. Kalidasi*, 21 C.W.N. 609, s. c., 25 C.L.J. 499.

Effect of resumption of Chowkidari-Chakran lands.

The effect of a resumption by the Government of chowkidari chakran lands under the provisions of Beng. Act VI of 1870 is that after the assessment is complete the Collector is under s. 50, by order in the scheduled form, to transfer to the zemindar subject to such assessment; and by section 51 such order operates to transfer the land to the zemindar subject to all contracts thereby made in respect of, under and by virtue of which any person, other than the zemindar, may have any right to any land; portion of his estate or tenure in the place in which such land may be situate." These words are wide enough to include the rights of a putnidar under a putni grant by virtue of which the putnidar is lessee of the

* If in assessing the putni rent, the profits of all the lands including the chakran lands were fully taken into account, the putnidar would not be liable to pay additional rent for the chakran lands when they came into his possession: (Per Mookerjee, J.)

zemindar's interest in the lands resumed, and also the rights of a darputnidar under a darputni grant: *Ranjit Singh v. Kalidasi Devi*, 44 I.A. 117, s. c., 44 Cal. 841, s. c., 21 C.W.N. 609, s. c., 25 C.L.J. 499 (P.C.).

Chowkidari chakran lands, which formed part and parcel of the permanently settled estate, vest in the putnidar, subject to the rights of the chowkidar: *Kiran Sashi v. Ananda*, 132 C.L.J. 15. Right of Putnidar.

On the resumption of the lands by the Government the rights of the putnidar were those conferred on him by the estate and interest created by the putni leases, and it was these rights which were kept alive by s. 51 of Beng. Act VI of 1870: *Ranjit Singh v. Maharaj Bahadur Singh*, 45 I.A. 182, s. c., 46 Cal. 173, s. c., 23 C.W.N. 198, s. c., 29 C.L.J. 193 (P.C.). Zemindar does not acquire a new estate upon resumption and transfer of lands forming part of original estate.

When chaukidari chakran lands included in a Patni Settlement have been resumed and transferred to the Zamindar under Act VI (B.C.) of 1870 he is entitled to the payment of a fair and equitable rent in respect thereof; the fixing of the rent is a condition to the patnidar being put into possession: *Bhupendra Narayan v. Narapat*, 53 Cal. 6, s. c., 42 C.L.J. 227 (P.C.). (The case of *Pryambada v. Manahar*, 52 Cal. 576, s. c., 29 C.W.N. 328 approved. The cases of *Ranjit Singh v. Kali Dasi Debi*, 44 Cal. 841, s. c., 44 I.A. 117 and *Ranjit Singh v. Bahadur Singh*, 45 I.A. 182, s. c., 46 Cal. 173 discussed and distinguished).

Chowkidari Chakran lands form part of the original estate, and when they are resumed and transferred to the zemindar, the latter does not acquire thereby a new estate: *Brojendra v. Debnarain*, 27 C.L.J. 491. The effect of a transfer of chowkidari land is to make the zemindar holding the profit subject to the rights previously created by him in favour of subordinate holders; the rights of the zemindar and the putnidar as between themselves are regulated by the conditions under which the putni was created: *Radha Charan v. Maharaja Ranjit*, 28 C.L.J. 532. Effect of transfer of Chowkidari land.

Where Chowkidari Chakran lands forming part of lands settled in putni were resumed by Government under the provisions of the Village Chaukidari Act and were subsequently transferred to the zemindar who thereupon settled such lands with the plaintiffs who were third parties, held that the zemindar was not competent to make a settlement with plaintiffs and that under the grant which the plaintiffs obtained they had acquired no right as against the putnidars; the putnidars were not bound to take a fresh settlement from the zemindar after resumption: *Sourendra Mohan v. Rajendra Nath*, 22 C.W.N. 660; the case of *Ranjit v. Prasanna*, 21 C.W.N. 609, s. c., 25 C.L.J. 499 was followed and the case of *Kasim Shaikh v. Harek Chand*, 33 Cal. 596, s. c., 5 C.L.J. 299, s. c., 10 C.W.N. 598 was held to be over-ruled. Right of Zemindar and Putnidar.

It was also held in the case of *Sourendra Mohan v. Rajendra*, 22 C.W.N. 660 that the transfer of the lands by Government, subsequent to resumption, did not create a new estate in the zemindar but the estate thus taken by him was in confirmation and by way of continuance of his existing state; the case of *Secretary of State v. Kirtibas Bhupati*, 42 I.A. 30, s. c., 42 Cal. 719, s. c., 19 C.W.N. 65 and *Jai Kissan v. Collector of East Burdwan*, 18 C.L.J. 102 were followed. Transfer of land by Govt. subsequent to resumption does not create new estate.

On equitable grounds, the putnidar and the zemindar must be

Rights of
Zemindar
and
Putnidar.

placed in the position they would have occupied if the chowkidari chakran lands had been resumed before the putni was created ; the assets of these lands would then have been taken into account in settling the amount of putni rent which would have represented the assessment due to the State, as also a fair share of the profit : *Mehdi Hossein v. Umesh Chandra*, 45 Cal. 685 ; see in this connection the following cases : *Ranjit v. Kali Dasi*, 21 C.W.N. 609, *Kazi Newaz v. Ram Jadu*, 34 Cal. 109, *Rajendra Nath v. Hiralal*, 14 C.W.N. 995, *Gopendra v. Tara Prasanna*, 14 C.W.N. 1049 and *Harak Chand v. Charu Chandra*, 15 C.W.N. 5.

Purchaser
at revenue
sale.

Where chowkidari chakran lands resumed by Government were transferred to A, in consequence of whose default to pay Government revenue the estate was sold and purchased by B, and where B sued to recover possession of the same, held that the purchaser of the revenue sale acquired no title to the chowkidari chakran lands which were never put up to sale for realisation of the arrears due from remainder of the estate : *Brajendra Lal v. Debnarain*, 45 Cal. 765 ; the case of *Ranjit v. Kali Dasi*, 44 Cal. 841, s. c., 21 C.W.N. 609 was followed.

S. 48 of Act
VI B.C. of
1870.

S. 48 of Act VI B.C. of 1870 does not require that the chowkidari chakran lands should be transferred to the zemindar of estate within which they are geographically situated, but to the zemindar of the estate to which the lands appertain and of which they form a part and parcel : *Pratap Narain v. The Secretary of State*, 10 C.W.N. 637.

S. 48, Act
VI of 1870.

The Collector has no jurisdiction to settle village chowkidari chakran land with only one of several zemindars under s. 48 of Act VI of 1870 : *Mahammad Abu Zafar v. Ram Pershad*, 37 I.C. 937.

Settlement
by Collector
in disregard
of Govt.
order,
wholly
ultra vires.

A settlement of chakran chowkidari lands made by the Collector with a person in disregard of the order of the Government is wholly *ultra vires* and nugatory : *Aghore Nath v. Kalyaneswari*, 46 I.C. 883.

Village
Chowkidari
Act, 1870,
s. 1 : "As-
signed,"
meaning of.

The word "assigned" in the definition contained in s. 1 of the Village Chowkidari Act, 1870, means assigned by Government or appropriated by its authority or permission with the power of resumption, and the provisions of that Act do not apply to lands assigned to chowkidars by a Zemindar under the circumstances of the case : *Secretary of State v. Kirtibas Bhupati Hari Chandan*, 42 I.A. 30, s. c., 21 C.L.J. 31.

Profits.

If in assessing the putni rent, the profits of all the lands including the chowkidari chakran lands were fully taken into account, the putnidar will not be liable to pay additional rent for the chakran lands, when they come into his possession ; but otherwise the putnidar is bound to pay to the zemindar, in addition to the first amount assessed on resumption, a fair share of the profits derivable from the land : *Khondkar Mehdi Hossein v. Umesh Chandra Mookerjee*, 27 C.L.J. 494.

Death of
chowkidar.

Upon the chowkidar's death the landlord is entitled to eject the under-tenants : *Mritunjay v. Kenatullah*, 11 C.W.N. 46, s. c., 5 C.L.J. 53 ; if at the inception of the tenancy a chowkidar was not a middleman, the simple fact of his subsequently subletting the land would not make him so : *Ibid* : occupancy right was held not to have been created in service-tenure lands when the lands were held for rendering services.

Occupancy
right.

The provisions of s. 51 of the Village Chowkidari Act (VI of 1870) save all contracts entered already with regard to these lands and the Court must look at the contract to see what was the intention of the parties: *Pursottum v. Khetra Pershad*, 5 C.L.J. 143. Contract.

Art. 113 and not Art. 142 of Sch. II of the Limitation Act was held to apply to a suit by a putnidar for possession of chowkidari chakran lands: *Ranjit v. Radha Charan*, 5 C.L.J. 77n. Suit for possession—
Limitation.

Where a landlord brought a suit for ejectment against the holder of a service-tenure who renounced his title and executed a kabuliyat in favour of a third party, *held* that the Transfer of the Property Act applied to the case and that no notice to quit was necessary as the defendant forfeited his tenancy by denying the landlord's title; the landlord before he can eject the tenant must do some act shewing his intention to determine the lease and this intention must be shewn at some time antecedent to the institution of the suit: *Anandamayee v. Lakshi Chandra*, 33 Cal. 339, s. c., 3 C.L.J. 274. The tenant of a service tenure, who refuses to perform his services is liable to be ejected even without a notice to quit: *Ansar Ali v. C. E. Grey*, 2 C.L.J. 403; see also *Hurrogobindo v. Ram Ratno*, 4 Cal. 67; *Radha Pershad v. Budhu Doshad*, 22 Cal. 938; *Suresh v. Madhub*, (1857) S.D.A. 1772. Application of the
Transfer of
Property.
Act.

It is an incident of a service-tenure that the holder thereof is liable to ejectment upon refusal to perform service: *Ansar Ali v. C. E. Grey*, 2 C.L.J. 403; s. 155 does not apply to service-tenures: *Ibid*. Refusal to
perform
services.

A grantor is not entitled to resume the grant before he gives to the grantee notice dispensing with his services: *Radha Pershad v. Budhu Doshad*, 22 Cal. 938. Notice.

Where after a local enquiry a commissioner declared under s. 61 of the Chowkidari Act that the lands appertained to the *Putni* tenure of A, *held* in a suit by another putnidar B that no notice was necessary upon the latter as he was in no way impleaded as contemplated under s. 21 Reg. VII of 1822: *Sarat Chandra v. Secretary of State*, 21 C.W.N. 238.

Once the chakran lands were resumed and settled with a person he has the right to take khas possession of the land and the mere omission on his part to assert that right does not amount to acquiescence on his part to alter the position of a trespasser as a tenant; *Rajkrishna v. Phakir Dome*, 19 C.W.N. 478.

13. Rent in lieu of services:—Where the original donee ceased to do any services and paid rent in lieu thereof and the rent continued to be paid by his descendants, *held* that no service was to be performed and the tenure was to be held on payment of rent: *Mohendra Singh v. Joka Singh*, 19 W.R. 211. Rent in
lieu of
services.

14. Service-tenure:—The words "*Jagir Khud Kast land*" do not necessarily mean a service tenure within the meaning of s. 181 of the Bengal Tenancy Act: *Deno Nath v. Amar Singh*, 45 I.C. 418. *Jagir Khud
kast land*,
meaning of.

Where a service-tenure was created before the passing of the Transfer of Property Act, the tenant is not entitled to continue in possession when he fails to perform his services, and it is competent to the grantor, on the service thus ceasing, to require and take possession of the land without reference to the Court at all*; if the Rights of a
service
tenant.

* *Suresh v. Madhub*, (1857) S. D. A. 1772.

Service
tenure creat-
ed before or
after the
passing of
T. P. Act.

tenancy is created after the passing of the Transfer of Property Act s. III will apply: *Ram Nath v. Siba Sundari*, 25 C.L.J. 332, (Mookerjee and Beachcroft J.J.); a service tenant holds the land on condition that if he refuses to render service the lease shall determine: *Ibid*; Cl. (g) of s. III of the Transfer of Property Act does not render it obligatory upon the lessor to serve a notice upon the lessee who has forfeited his tenancy even a demand for possession is sufficient: *Ibid*.

Chaukidar
Ejection.

A *chaukidar*, so long as he performs the duties of his office, is not a trespasser and is not liable to be ejected from such lands: *Kari-man Ahir v. Nirmal Kumar*, 52 I.C. 181.

When it is found that land is held by a tenant for service but he receives some wages in addition, the land must nevertheless be held to be *chakran* liable to all the incidents of such tenures: *Sati Prasad v. Mahesh Bhunia*, 31 C.W.N. 552 (Duval and Mallik J.J.). When a service tenant refuses service or denies the title of the land-lord to resume the land, the lease to him determines and no notice is necessary to evict him. (*Per Mallik J*): *Ibid*.

Saranjam.

The term "saranjam," is applied specially to a temporary assignment of revenue from villages or lands for the support of troops or for personal military service, usually for the life of the grantee; also to grants made to persons appointed to Civil Offices of the State to enable them to maintain their dignity, and to grants for charitable purposes. These were neither transferable nor hereditary, and were held at the pleasure of the sovereign. They were divided into two classes, viz. (a) grants of revenue only i.e. of the royal share of the produce of the lands comprised in the grant, and (b) grants of the soil itself. It would seem to follow from the nature of saranjams that whether they were grants of the soil itself or of the revenue only of specified lands, they could not and were not meant to interfere with rights in those lands existing previously to and at the time of the grant. If and so far as there were occupancy tenants on those lands, they would retain their rights of possession (whether it can be called ownership or not is immaterial) but subject to paying the assessed land revenue (i.e. the royal share of the produce) payable before the grant to the Government and after the grant to the grantee: *The Secretary of State for India in Council v. Girjabai*, 46 C.L.J. 420 at p. 425 (P.C.). *Per Lord Sinha*. (This was a case from Bombay).

Public and
personal
services.

The distinction between a grant for services of a public nature, and one for services, private or personal, to the grantor, is well understood. In the former case the zemindar is not entitled to resume, while in the latter case he may do so, when the services are not required or when the grantee refuses to perform the services: *Per Prinsep and Ghose, J.J.*, in *Radha Pershad v. Buddhu Doshad*, 22 Cal. 938 (at p. 941). See also *Sanniyasi v. Salur Zemindar*, 7 Mad. 268; *Hurrogobinda v. Ram Rutno*, 4 Cal. 67; *Sreesh Chunder v. Madhub*, S.D.A. 1857, p. 1772; *Nilmoney v. Government*, 18 W.R. 321; *Unide Rajaha v. Pemmasamy*, 7 Moo. I.A. 128.

A distinction exists between the grant of an estate burdened with a certain service, and that of an office the performance of whose duties is remunerated by the use of certain lands; in the former case the zemindar is not ordinarily entitled to resume, even if the service is not required, if the grantee is willing and able to perform the

services, while in the other case he may do so when the office is terminated: *Radha Pershad v. Budhu Doshad*, 22 Cal. 938 (at p. 941).

When lands are held upon a grant subject to a burden of service and not merely in lieu of wages, it is well settled that as long as the holders of the grant are willing and able to perform the services, the Zemindar has no right to put an end to the tenure whether the services are required or not: *Venkata v. Sobhanadri*, 10 C.W.N. 161; see also *Leelanund v. Thakoor Munorunjan*, L.R.I.A. Sup. Vol. 181 at p. 185. As to the circumstances which establish that the grant was a grant subject to a burden of service and not merely in lieu of wages, see *Venkata v. Sobhanadri*, 10 C.W.N. 161.

(*Semble*). In the case of a service-tenure created by all the co-sharers in a Zemindari, not governed by the provisions of the Bengal Tenancy Act, a co-sharer landlord is not competent to sue the tenants for fair and equitable rent payable in respect of his shares, for failure of service originally performed: *Gholam Mohiuddin v. Kairan*, 31 Cal. 786. Co-sharer landlord entitled to sue for rent.

Where it was a condition of a durputni settlement that the tenant who held chakran land for services should pay to the *durputnidar* *Khut rent* (i.e., rent assessed in the proportion of the land-revenue which would be payable to Government on that portion of the estate), held that the payment of the *Khut rent* by the *chakran* holder to the *durputnidar* could not create the relationship of landlord and tenant, and that on resumption of the *chakran* land, the *durputnidar* was entitled to khas possession: *Hazari Lal v. Khaunish Chandra*, 22 C.L.J. 290. Durputni settlement.

Where an Impartible Estate, a *khorphosh* or maintainance grant is created in favour of junior members heritable in the male line and the right of reversion remains in the grantor, the head of the Impartible Raj, the mineral rights do not pass to the grantee, in the absence of words of express grant of minerals or by necessary implication: *Udai Pratap v. Jagat Mohan*, 9 P.L.T. 25 (Dawson Miller C.J. and Kulwant Sahay J.).

The words in a *khorphosh* grant "*chatur sima sub sudha*" (four boundaries all included) do not amount to the grant of mineral rights. *Ibid*. Where a document of grant is produced in evidence and contains no latent ambiguity, extrinsic evidence of intention is inadmissible. *Ibid*.

A *khorphosh* grant, does not on the failure of male descendants in the male line of the grantee, go back by survivorship, but reverts to the parent estate. *Ibid*.

15 Thanadari lands:—While both *lakeraaj* and *thanadari* lands were excluded from the operation of the Permanent Settlement, *lakeraaj* lands were neither assessed nor settled with the zemindar while *thanadari* lands were settled with the zemindar but excluded from the operation of the Permanent Settlement in the sense that resumption and reassessment therefore was reserved by the Government: *Raja Rishikesh Law v. Mandakini Dasi*, 44 C.L.J. 7. (The cases of *Joykishen v. Collector of East Burdwan*, 10 M.I.A. 16, s.c., 1 W.R. (P.C.) 26 and *Secretary of State v. Kirtibas*, 42 I.A. 30, s.c., 42 Cal. 710, s.c., 21 C.L.J. 31 (P.C.) followed. Thanadari lands.

The resumption in connection with *thanadari* lands properly so called was concluded within a short time after the Permanent

Settlement and the Zemindars were not allowed to enjoy the produce of such lands or allowances granted in respect of them to the detriment of the public revenue for any considerable length of time afterwards. *Ibid.*

A person who claims under a settlement from the Collector on the lands having been resumed, is entitled to prove despite all these that the resumption took place on the footing that the lands were thanadari or that the proceedings relating to the resumption were such as were sanctioned by the Regulations or were in accordance therewith and can show by other evidence as well that the lands were thanadafi lands. *Ibid.*

S. 89.

16. S. 89:—Service tenures are excepted from the operation of sec. 89: *Mokbul Hossain v. Ameer Sheikh*, 25 Cal. 131.

Homesteads.

182. 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 or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Headings of Notes.

1. RENT SUIT OF HOMESTEAD LAND.
2. HOMESTEAD LAND.
3. EFFECT OF SALE OF HOMESTEAD HOLDING BY AN AGRICULTURAL TENANT: LIMITATION: DISPOSSESSION BY LANDLORD.
4. EJECTMENT.
5. WHEN A RAIYAT HOLDS HIS HOMESTEAD &C.
6. ENHANCEMENT OF RENT OF HOMESTEAD LAND.
7. DEPOSIT OF RENT.

Rent suit (2) of homestead land not cognizable by Small Cause Court.

1. Rent-suit of homestead land:—A mofussil Small Cause Court has no jurisdiction to entertain a suit for arrears of rent of homestead or bastoo land: *Uma Churan v. Bijan Bewah*, 15 Cal. 174.

2. Homestead land:—S. 182 is not applicable where it is established that the land is not used by the raiyat as his homestead, and it is not sufficient for the raiyat that the character of the land is such as would justify its use as a homestead: *Dina Nath v. Sashi Mohan*, 20 C.W.N. 550, s. c., 22 C.L.J. 219.

Decisions holding that occupancy right accrues to homesteads under a different landlord require further judicial interpretation.

The decision that a settled raiyat of the village under one landlord acquires a right of occupancy in homestead land situate in a different village under a different landlord is very far reaching and may under suitable conditions require further judicial interpretation: *Gunga Singh v. The Chairman of the District Board, Patna*, [1919 Pat.], p. 235.

A part of homestead used by a raiyat for keeping agricultural cattle is governed by s. 182: *Giris Chandra v. Bhabataran*, 37 C.L.J. 524. A homestead land is used for agricultural purposes if the raiyat keeps agricultural cattle: *Ibid.*

Part of homestead used for cattle.

In absence of any local custom or usage an occupancy raiyat does not exceed his rights as an occupancy raiyat by building a pucca house on a homestead land held otherwise than as a part of his

occupancy holding: *Surendra Nath v. Nakoor Chandra*, 64 I.C. 716, (Mookerjee C. J., and Fletcher J.).

A settled raiyat of a village holding a homestead though as an under-raiyat or under a raiyat acquires a raiyati right in the homestead; it is not necessary that the homestead should be the only residential place of the raiyat of the village: *Isapali v. Satish Chandra*, 65 I.C. 504, (Suhrawardy and Cuming J.J.).

In a suit to eject a transferee from a tenant of homestead land (not governed by the B. T. Act) the burden of proof is in the first instance on the plaintiff to prove that the tenancy was created before the passing of the Transfer of Property Act before the onus can be thrown upon the defendant to shew the custom of transferability; in the absence of such proof the case must be governed by s. 108, cl. (j) of the Transfer of Property Act: *Mahadeo v. Dharam Nath*, 72 I.C. 662, (Kulwant Sahay J.).

Onus in ejectment suit.

In absence of a local custom or usage, the homestead portion of an agricultural holding is governed by the provisions of the Bengal Tenancy Act, precisely in the same manner as the portion under actual cultivation: *Rampado v. Ajore Dome*, 40 C.L.J. 307, (Mookerjee and Rankin J.J.).

The question whether a case is governed by the Bengal Tenancy Act or by the Transfer of Property Act, depends upon the nature of the original tenancy and not on the character of the parcels included in the sub-tenancy: *Ibid*.

It is not necessary to investigate the actual origin of the tenancy, it is sufficient if it is established that at the time of the sub-lease, the holding, out of which the sub-tenancy was carved out, was an agricultural holding: *Ibid*.

A permanent tenancy created before the passing of the Transfer of Property Act, for the purpose of habitation, is not transferable, except by custom or express contract to that effect or unless *pucca* buildings have been allowed to be erected thereon: *Safar Ali v. Abdul Rashid*, 29 C.W.N. 428, s. c., 39 C.L.J. 585.

Tenancy created before the T. P. Act—dwelling lease, not transferable.

Before the passing of the Transfer of Property Act, a lease of homestead land was not transferable by custom: *Sarada v. Nabin*, 54 Cal. 333 s.c., 31 C.W.N. 231. (Cuming and Page J.J.).

3. Effect of sale of homestead holding by an agricultural tenant: Limitation: Dispossession by landlord:—Defendant No. 5 had a raiyati holding and some *bastoo* land and house in a certain village; he sold them both to defendant No. 6, who again sold only the house and the *bastoo* land to the plaintiff; plaintiff was dispossessed by the landlord who claimed the house through some other tenant, held that as the plaintiff did not claim to recover possession as an occupancy raiyat and did not hold as part of his own jote and the agricultural lands of the original tenant were not sold to him, he could not be said to be a raiyat of the homestead lands: and that Art. 3 of Sch. II of the Bengal Tenancy Act, therefore, had no application: *Sheikh Abdul v. Musst. Kutbun*, 1 C.W.N. 171 (notes).

Sale of *bastoo* land comprised in a raiyati holding.

4. Ejectment:—In suit for ejectment from a plot of residential land of the defendant who had his dwelling-house there, where the tenancy was created by a kabuliyat and patta not containing any

Patta not containing any words

of inheritance.

words of inheritance or of perpetual tenancy, *held* that the mere fact that the land has been held by tenants at an unchanged rate of rent for a very long period and that it has been the subject of successive transfers do not warrant the inference that the subject was, when first created, intended to be permanent or was subsequently converted into such; *held* further that assuming the tenancy was originally of an agricultural character that would not of necessity, lead to the inference that the tenant had permanent right in the land where it is clear that the land had long ceased to be agricultural, the words "you are to enjoy the land with great pleasure (*parama sukhe*)" do not create a permanent tenancy: *Ismail Khan v. Nilratan*, 6 C.W.N. 352.

Where a tenancy was created by a kabuliyat not containing any words to imply that the holding was hereditary or the rent fixed in perpetuity, *held* that the tenancy was not a permanent one: *Ismail Khan v. Kali Krishna*, 6 C.W.N. 134.

Ejectment-
Compensation.

A tenant who erects buildings on land in which he has no permanent right is not entitled to compensation on being evicted: *Ismail Khan v. Kali Krishna*, *Ibid*.

Homestead
tenancies
not transfer-
able.

In a suit for ejectment with regard to a homestead holding, Mitra, J., observed as follows:—"The argument on the question of the applicability of the provisions of s. 108, cl. (j) is also unsustainable. The tenancy was created long before the Transfer of Property Act came into force; and it was a well established principle in this country that tenancies of homestead lands are not transferable unless custom or contract to the contrary were proved. S. 108 (j) has made an alteration in the law; but that alteration cannot affect a tenancy created long before the passing of the Act: *Chandra Kant Bhowmick v. Mirtunjoy Chackerbutty*; Appeal from Appellate Decree No. 2264 of 1901, decided by Mitra, J., on April 20, 1903 (unreported)."

Transfer-
ability.

The incident of non-transferability was common to ordinary tenancies of agricultural lands and tenancies from year to year of homestead lands before the passing of the Transfer of Property Act: and the party alleging transferability had to prove a custom to that effect: *Madhu Sudan v. Kamini*, 32 Cal. 1023, s. c., 9 C.W.N. 895 see also *Harinath v. Rajchandra*, 2 C.W.N. 122; *Ramcharan v. Haricharan*, 7 C.L.J. 107; *Nabu Mondal v. Cholim Mullik*, 25 Cal. 896, s. c., 2 C.W.N. 405 (F.B.); *Madhab Chandra v. Bejoy Chand*, 4 C.W.N. 574; *Monmoitho Nath v. Anath Bandhu*, 23 C.W.N. 201; *Ananda Mohon v. Gobinda Chandra*, 20 C.W.N. 322. These cases referred to and followed in the case of *Sarada Kanto v. Nabin Chandra*, 54 Cal. 333, s. c., 31 C.W.N. 231. (Page J., Cuming J., agreeing) where it was held that under the law as it stood before the Transfer of Property Act, tenancies whether of homestead or of agricultural lands were not transferable in the absence of a custom to the contrary or of an express contract to that effect: [The observations in *Banee Madhab v. Joykissen*, 12 W.R. 495 are opposed to the settled rule of the Calcutta High Court and cannot be regarded as correctly stating the law. The observation in *Sulin Mohan v. Rajkrishna*, 33 C.L.J. 193 explained.]

Lease of
homestead.

The interest of a lessee of a homestead is transferable under the Transfer of Property Act, unless it was in existence prior to the

* There was no appeal under the Letters Patent against this decision.

coming into operation of the Act: *Mohendra Lal v. Krishna Kumari*, Transfer-46 I.C. 656, (Fletcher and Smither J.J.). A lease of homestead land from year to year which was in existence before the passing of the Transfer of Property Act is not governed by that Act and sec. 108, cl. (j) of that Act does not make it transferable absolutely or by way of sub-lease. Such leases are not transferable except by custom, the burden of proving which is on the party who sets it up: *Ananda Mohon v. Gobinda Chandra*, 20 C.W.N. 322 (N.R. Chatterjea and Mullick J.J.).

With regard to tenancies of homestead land created before the Transfer of Property Act, the tendency of these decisions has been to establish that in the absence of evidence to the contrary, the burden of proof being upon the tenant, these tenancies are non-transferable: *Ambika Prasad v. Baldeo Lal*,* 20 C.W.N. 1113, s. c., 1 Pat. L.J. 253; the only exception to the above rule is when there has been an erection of pucca buildings or a standing by on the part of the landlord while the tenant spends a large sum upon the land:† *Ibid*; mere long continued possession cannot give rise to a presumption of transferability; *Ibid*.

5. When a raiyat holds his homestead &c. :—This section seems to apply only with regard to the homestead of a raiyat, when the raiyat holds his homestead under the landlord under whom he holds his agricultural holding: but if a raiyat holds his homestead under a landlord different from the landlord under whom he holds the agricultural holding, the provisions of the Tenancy Act do not seem to apply to the homestead land. The words "landlord" and "raiyat" are relative terms, and therefore when this section provides "where a raiyat holds his homestead" it means "where a raiyat holds his homestead under the landlord whose raiyat he is." Interpretation of the section.

In Bengal many zemindars who are owners of big estates have occupancy raiyati holdings and as such they are raiyats of the village where the holdings are situated; homestead leases taken by such a zemindar would not be governed by the Transfer of Property Act if a different interpretation is put to this section.

It has however been held that the provisions of the Bengal Tenancy Act are applicable to the homestead of a person who is a raiyat, although he is not a raiyat in the village in which the homestead land is situated and is not a raiyat under the same landlord as the landlord of the homestead land: *Kripanath v. Sahib Amir*, 10 C.W.N. 944, s. c., 4 C.L.J. 332; *Pratap Chandra v. Biseswari*, 9 C.W.N. 416. Contra.

A tenant who is not a raiyat in respect of a piece of *bastu* or homestead land but is so in respect of the agricultural land which he holds in the village and the homestead land is held otherwise than as part of the tenant's holding as a raiyat, must be regarded, in the absence of any allegation of local custom or usage as holding the homestead land in accordance with the provisions of the Bengal Tenancy Act applicable to land held by a raiyat; such a tenant has, under s. 21 of the Act, a right of occupancy in the piece of home- Homestead holding otherwise than as a part of agricultural holding. Homestead under a separate

* The cases of *Banee Madhub v. Joy Kissen*, 12 W.R. 495 and *Durga Pershad v. Bindaban*, 15 W.R. 274 were doubted.

† The cases of *Madhu Sudan v. Kamini Kant*, 32 Cal. 1023, s. c., 9 C.W.N. 895, and *Nabin Mandal v. Cholin Mullik*, 25 Cal. 896 s. c., 2 C.W.N. 405 were relied on.

jama formed by mutual consent of landlord and tenant, B. T. Act not applicable.

stead or *bastu* land as well as in the agricultural land in the village of which he is a settled raiyat: *Golam Mowla v. Abdool Sowar Mandal*, 13 C.L.J. 255.

Where the homestead land was under a separate *jama* formed by mutual consent of landlord and tenant, it was held that the Bengal Tenancy Act was not applicable: *Sadoy Chandra v. Kali Nath*, 23 C.W.N. 16 (notes), s.c., 49 I.C. 267.

Applicability of s. 182, even if the raiyat holds other land as a raiyat in different village.

To obtain the protection of s. 182, it is not necessary that the raiyat should hold other land as a raiyat in the same village; it is sufficient if he is the raiyat of some village: *Ibid*.

Homestead of a raiyat whether part of agricultural holding or not, B. T. Act applicable.

Whether the homestead of a raiyat is or is not part of an agricultural holding, the Bengal Tenancy Act applies to it by virtue either of the general provisions of the Act or of the special provisions as contained in s. 182: *Rai Charan v. Sib Ram*, 46 I.C. 489, (Teunon and Richardson J.J.).

Landlord of raiyati holding and homestead holding different, s. 182 applicable.

Where the landlord of the raiyati holding and homestead holding are different, still the provisions of s. 182 apply: *Ganga Singh v. The Chairman of the District Board, Patna*, 59 I.C. 8, s.c., 1919 Pat. 235, (Atkinson and Manuk, J.J.).

Where the culturable lands of a raiyat are included in the homestead and are part thereof, the defendant is protected from eviction by the provisions of s. 182: *Aswap Ali v. Dula Mia*, 92 I.C. 843, s.c., A.I.R. (1926) Cal. 580. (Greaves and Cuming J.J.).

A raiyat of a certain village acquired a piece of homestead land in another village: *held* in the absence of the local custom to the contrary, the incidents of the homestead would be governed by the B. T. Act: *Bhikariram v. Bahadur Singh*, 43 Cal. 195 s.c., 25 C.L.J. 357.

Applicability of s. 182: special custom or usage.

Where A's predecessor was granted a lease of a piece of land as a homestead in about 1850 and A and his predecessor were in possession from that time and in 1916, A took a certain piece of agricultural land in the same village from some other landlord which he had been holding as a raiyat, *held*, in a suit for ejectment from the homestead land, that the incidents of the tenancy with regard to the homestead land was governed by s. 182 of the B. T. Act: *Sukhlal v. Prosanna Kumar*, 44 C.L.J. 302 (Cuming and B. B. Ghose J.J.).

Where a raiyat was in possession of an agricultural jote and paid rent for two years and then she built a homestead and used it as her own dwelling and lived there, *held* that in the absence of any special custom or usage, s. 182 applies and she must be taken to be a raiyat as regards the homestead: *Iswar Chandra v. Murari Lal*, 26 C.L.J. 88, (Woodroffe and Breachcroft J.J.).

Sublease of homestead land by a raiyat.

Where the lands included in the holding of agricultural raiyat consisted partly of agricultural and partly of homestead lands, and the portion which could be used as homestead was let out for use as homestead, *held* that the under-tenant was an under-raiyat within the Bengal Tenancy Act and the Transfer of Property Act had no application: *Baburam v. Mohendranath*, 8 C.W.N. 454, followed in *Krishna Kant v. Jadu Nasya*, 19 C.W.N. 914, s.c., 21 C.L.J. 475, see also *Abdul Karim v. Abdul Rahaman*, 15 C.L.J. 672.

According to the provisions of s. 182, the provisions regulating

the homestead, of an under-raiyat would be the provisions which regulate the raiyati as to ejectment from the homestead: *Nitaipada v. Sarat Kumari*, A.I.R. 1927 (Cal.) 96. (Greaves and B. B. Ghose J.J.).

It seems that if an agricultural raiyat lets out the whole of the holding for homestead purposes, the under-tenant is an under-raiyat and the Bengal Tenancy Act will apply; the under-tenant cannot acquire any right which his landlord did not possess and as such the Transfer of Property Act cannot apply and also the nature of a holding at its inception cannot be altered by its subsequent use for another purpose.

When a particular tenancy falls within the provisions of s. 49 of the B. T. Act, s. 182 of that Act cannot be invoked in determining the status of the tenant. *Chandra Mohon v. Meherjan*, 44 C.L.J. 311. (B. B. Ghose and Graham J.J.). Where an under-raiyati tenancy consisted of a homestead along with other lands, the provisions of s. 182 of the B. T. Act do not apply to the homestead portion of the under-raiyati tenancy. The landlord is entitled to eject the under-raiyat from the entire lands including homestead under s. 49 of that Act, *Ibid.* (The case of *Krishna v. Jadu*, 19 C.W.N. 914 s.c., 21 C.L.J. 475 was distinguished on the ground that in that case, the tenant held the homestead only under the plaintiff as his landlord and it was held that as the homestead was not held as part of his holding as a raiyat, the incidence of the homestead were to be regulated under the provisions of s. 182 of that Act. The case of *Rahimuddi v. Amina Bibi*, 43 C.L.J. 132 referred to.)

Perpetual-grant:—Where a lease is given for building purposes the Court may well presume that it was intended to be a perpetual grant: *Pramada Nath v. Srigovind*, 9 C.W.N. 463; see also *Juhororeelal v. H. Dear*, 22 W.R. 399; *Ismail v. Kundan Lal*, 26 I.A. 58 s.c., 3 C.W.N. 502. See notes under s. 3, cl. (9).

Where there is a lease for building and residential purposes, in the absence of any intention to the contrary, indicated either in the terms of the grant or in the nature of the tenancy, the lease-hold interest is heritable, and the tenancy does not determine by the death of the lessee, but vests in his legal personal representatives who are entitled to give or receive the usual notice to quit: *Kishori Lal v. Krishna Kamini*, 37 Cal. 377. Such a tenancy, in the absence of any custom or contract to the contrary, is governed by the provisions of the Transfer of Property Act, and is consequently *prima facie* transferable under s. 108 (f) of that Act: *Ibid.*

Sec. 182 of the B. T. Act is not, but the provisions of the Transfer of Property Act are, applicable to a case where land was taken not for the purpose of a homestead from which the lessee was to cultivate his jote but for the purpose of a shop and is used for that purpose: *Purusottam v. Panchanon*, 42 C.L.J. 197, s.c., A.I.R. 1926 (Cal.) 373 (Cuming and Chakravarti J.J.).

Where it was found that defendant who was not a raiyat in the village was in possession of a house in the homestead land of proprietors for about ten years and he had been living in the village, though not in the same house for about 25 to 30 years, and that for a period of ten or eleven years the rent had not varied, that there

Lease for building purposes. Presumption of perpetual grant.

Homestead holding. heretability.

Transfer of Property Act.

was no finding that the landlord had treated the tenancy of defendants as heritable, nor that the site was let out to defendants for building house thereon, *held*: that s. 182, Bengal Tenancy Act, did not apply: that the rights of the parties must be determined by the Contract Act, and that defendants had not acquired permanent rights of tenancy in the land: *Madhusudan v. Jeolal*, A.I.R. (1926) Patna 606. (Kulwant Sahay J.).

Enhancement only upon contract.

6. Enhancement of rent of homestead land:—A suit for enhancement of rent of *bastu* land to which the Bengal Tenancy Act has no application can only be made under a contract or by notice to quit or in the alternative to pay enhanced rent: *Krishna Kant v. Krishna Chandra*, 9 C.W.N. 303.

S. 61.

7. Deposit of rent:—A raiyat of a village holding *bastu* land under a landlord different from the landlord under whom he is the raiyat of the agricultural holding can make a deposit of rent under s. 61 with respect to the *bastu* holding: *Protap Chandra v. Biseswar*, 9 C.W.N. 146.

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-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 or usage, accordingly, wherever it exists, will not be affected by this Act.

Headings of Notes.

1. USAGE.
2. CUSTOM:
3. S. 244 C. P. C. (S. 47 OF THE NEW CODE: OBJECTION BY TENANT AS TO NON-TRANSFERABILITY OF HOLDING).
4. SALE OF OCCUPANCY HOLDING: UNDER-RAIYATI TENANCY: MORTGAGE AND OTHER KINDS OF TRANSFER.
5. RECOGNITION.
6. BEQUEST OF OCCUPANCY HOLDING.
7. ACQUISITION OF RIGHT OF OCCUPANCY BY AN UNDER-RAIYAT.
8. INCIDENTS OF UNDER-RAIYATS WITH RIGHT OF OCCUPANCY BY CUSTOM.

I. Usage:—See notes under s. 23, heading no. 5, at pp. 174 to 176.

No definition of usage is given in the Act.

In order to establish usage it is not necessary to give proof of its existence for any length of time and the statement of persons who

are in a position to know of its existence in their locality are admissible as evidence of it: *Sariatulla v. Prannath*, 26 Cal. 184.

2. Custom:—See notes under s. 23, heading no. 5.

A growing usage of transferability of occupancy holdings is of no effect against the landlord. The usage to be effective must have already grown up: *Rajendra v. Chandranath*, 12 C.W.N. 878. To establish a usage as to transferability of occupancy holdings in a locality it is not enough to prove that several cases of transfers of such holdings have taken place. It is necessary to prove that such transfers have been made with the knowledge and without the consent of the landlord and that no successful objection to such transfer has been made by the landlord: *Ramhari v. Jabarali*, 6 C.W.N. 861.

3. S. 244, C. P. C. (S. 47 of the present Code): Objection by tenant as to non-transferability of occupancy holding:—See notes under s. 23.

Question of saleability of occupancy holding—s. 244, C.P.C

4. Sale of occupancy holding: under-raiyati tenancy: Mortgage and other kinds of transfer.*

Where a raiyat is in possession for more than 12 years, the statute prevents the landlord from contracting with his tenant that the tenant should give up the benefit of the right of occupancy, and the tenant is not liable to be ejected at the expiry of a fresh lease executed by him: *Saiad Sha v. Sridhar*, 47 I.C. 157, (Fletcher and Shamsul Huda, J.J.).

Contract by landlord with raiyat in possession for more than 12 years for giving up right of occupancy, is void.

Where the right of the zuripeshgidar, of a non-transferable holding is recognised by a landlord, and subsequently the holding is sold to the zuripeshgidar, the landlord is entitled to re-enter: *Mukhram v. Sadasi*, 47 I.C. 132 (Roe and Coutts, J.J.).

Ejectment of Zuri-peshgidar. Sale of occupancy holding in execution of money decree.

An occupancy holding or any part of it cannot be sold in execution of a money-decree if the raiyat objects even if the landlord gives his consent: *Bepin Chandra v. Jogat Chandra*, 23 C.W.N. 84 (notes), see also *Dayamayi v. Ananda Mohan*, 42 Cal. 172, s.c. 18 C.W.N. 971, s.c., 20 C.L.J. 52 (F.B.).

A sixteen-anna landlord in execution of a money decree against one of his tenants cannot put up for sale in execution that raiyat's occupancy holding which is not transferable by usage: *Macpherson v. Debi Bhuson*, 2 Pat. L.J. 630.*

Question as to consent of landlord and raiyat.

An occupancy holding or any part of it cannot be sold in execution of a decree for money, when the raiyat objects even if the

* The cases are all collected in the notes under 23.

It seems that a permanent lease granted by an occupancy raiyat amounts to an abandonment by the raiyat and as such the landlord is entitled to re-enter.

It has been held that where a usufructuary mortgagee in execution of the decree upon mortgage purchased and was in possession of a non-transferable holding the landlord was entitled to get *khas* possession. (See notes under s. 25). But it seems that the mere creation of a usufructuary mortgage would not be a ground for ejectment, for, it is not a complete abandonment, the raiyat may still redeem the mortgage and get back his possession.

* The following cases were discussed: *Agar Jan Bibi v. Panulla*, 37 Cal. 687 at p. 693, s. c., 14 C.W.N. 779, s. c., 12 C.L.J. 169; *Dwarka Nath v. Hurish Chander*, 4 Cal. 925, s. c., s. c., 4 C.L.R. 130; *Narayani v. Nabin Chandra*, 44 Cal. 720, s. c., 25 C.L.J. 351, s. c., 21 C.W.N. 400; *Ananda Das v. Ratnakar*, 7 C.W.N. 572; *Shukruddin v. Rani Hemangini*, 16 C.W.N. 420, and *Dwarka Nath v. Tarini Sankar*, 34 Cal. 199, s. c., 11 C.W.N. 513.

Full Bench case of Dayamoyi modified by a Special Bench (Chandra Benode v. Shaikh Ala Bux).

landlord consents to the sale: *Bipin Chandra v. Jagat Chandra*, 51 I.C. 962, (Chatterjea and Walmsley J.J.) ; the following cases were followed: *Narayani v. Nabin Chandra*, 44 Cal. 720 s. c., 21 C.W.N. 400, s. c., 25 C.L.J. 35, and *Macpherson v. Debi Bhusan*, 2 Pat. L.J. 520, s. c., 42 I.C. 36.

The decision in the Full Bench case of *Dayamoyi v. Ananda Mohon*, 42 Cal. 172, was considered in the case of *Chandra Binode v. Shaikh Ala Buksh*, 48 Cal. 184 by a Special Bench of seven Judges. The Special Bench have partially modified the decision of the Full Bench in the case of *Dayamayi*.

The result of the decision was summed up in the following words by Mookerjee C. J., who delivered the judgment of the Court :

(1) *The case of Bhiram Ali v. Gopi Kanth*, 24 Cal. 355,† was erroneously decided.

(2) *The decision of the Full Bench in, Dayamayi v. Ananda Mohon*, 42 Cal. 172, requires partial modification, viz., the following should be substituted for the first proposition enunciated therein regarding the transfer for value of occupancy holdings apart from custom or local usage :—

“I. The transfer of the whole or a part is operative against the raiyat, whether it is made voluntarily or involuntarily.”

See notes under s. 23, heading no. 4, at pp. 172 to 173.

Transferor taking sub-lease and remaining in possession does not amount to abandonment.

When a non-transferable occupancy holding is sold and the transferor takes a sub-lease and remains in possession it does not amount to abandonment and the landlord cannot recover possession: *Separjan v. Ram Deb*, 23 C.W.N. 135 (notes), see also *Madan Mandal v. Mohim*, 33 Cal. 531, *Rajani v. Ekkari*, 34 Cal. 689 and *Salim Sheikh v. Mocham Mondal*, 24 C.L.J. 113.

Where an occupancy raiyat purported to transfer by two documents his holding to his wife and daughter and continued to reside on a portion thereof up to his death and his wife and daughter thereupon came to possess as heirs, held that the landlord was not entitled to re-enter: *Golap Jan v. Dil Mahmud*, 54 I.C. 394.

A tenant of a transferable occupancy holding can transfer a portion of it, although the landlord is not bound to recognise the purchaser as a tenant: *Kunja Bihari v. Sita Ram Singh*, 42 I.C. 101, s. c., 3 Pat. L.W. 292.

Occupancy raiyat can object to sale of his holding in

An occupancy raiyat can object to the sale of a holding in execution of a decree for money, on the ground that his right is not transferable without the consent of the landlord: *Madhu Pathan v. Jagu Jena*, 51 I.C. 139.

† The Rule which was laid down in the case of *Bhiram Ali v. Gopi Kanth*, 24 Cal. 355 was as follows :

In the absence of custom or local usage to the contrary, a raiyati holding in which the raiyat has only a right of occupancy is not saleable at the instance of the occupancy raiyat or any creditor of his, other than his landlord seeking to obtain satisfaction of his decree for arrears of rent.

‡ The Rule of law which was laid down in the case of *Dayamoyi* was as follows :

1. The transfer of the whole or a part is operative as against the raiyat,
 - (a) where it is made voluntarily,
 - (b) where it is made in-voluntarily and the raiyat with knowledge fails or omits to have the sale set aside.
2. A sale is made involuntarily where it is in execution of money-decree, but not of a decree founded on a mortgage or charge voluntarily made.

An under-raiyati interest is *prima facie* not transferable: therefore an usufructuary mortgagee of an under-raiyat acquires no title to the mortgaged property: *Biswambhur v. Nasarat Ali*, 32 C.L.J. 46; see also *Bonomali v. Kailas*, 4 Cal. 135 and *Amirennessa v. Jinnat Ali*, 42 Cal. 751, s. c., 20 C.L.J. 548.

The interest of an under-raiyat is not transferable: a transferee of a portion of an under-raiyati holding cannot get his title declared against his landlord: *Rajani Kanta v. Lala Rout*, 47 I.C. 298 (Fletcher and Shamsul Huda J.J.).

A tenant who holds under a raiyat is an under-raiyat whether the person under whom he holds is a raiyat holding at a fixed rate of rent or an occupancy raiyat or a non-occupancy raiyat: *Kalidas v. Sheikh Nasarath*, 32 C.L.J. 130.

5. Recognition :—See notes under s. 23.

Recognition of a transfer by a landlord after he had parted with his interest though not with his possession and during the pendency of a suit against him for possession by his successor-in-interest is not binding on the latter.

In order to prove a custom of transferability of tenancy it is essential for the person setting it up to show that transferees had a right to be recognised by the landlord after purchasing the holdings without the consent of the landlord. Evidence which merely goes to prove that certain purchasers of tenancies were recognised by their landlords is not, therefore, sufficient to establish such a custom in the absence of proof of the circumstances under which the transfers were recognised: *Fakira Sahu v. Anoop Lal*, 9 P.L.T. 178, (Kulwant Sahay and Macpherson, J.J.)

6. Bequest of occupancy holding :—See notes under s. 23.

7. Acquisition of right of occupancy by an under-raiyat :— Illustration (2) says that the custom or usage 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. From the classification of tenants, it appears that it is only a raiyat who may have occupancy right. From s. 20 also it would seem so; for, it is only a raiyat who may acquire the status of a settled raiyat; it seems therefore that this custom or usage has been, by implication, abolished by the provisions of the Act.

Suppose, for instance, an under-raiyat acquires the right of occupancy: what would be then his status? His tenancy would not be liable to be sold in execution of a decree for rent (see secs. 65 and 66). It is no doubt true that in s. 113 (1) of the amended Chapter X the case of an under-raiyat having a right of occupancy is contemplated.

It has been held, however, that an under-raiyat may by usage or custom obtain a right of occupancy: *Gopal Mondal v. Tapai Sankhari*, 46 Cal. 43; see also *Akhil Chandra v. Hassan Ali*, 19 C.W.N. 246.

See notes under s. 4, heading no. 5 at pp. 72 to 73.

8. Incidents of under-raiyats with raiyat of occupancy by custom :

(I) Applicability of S. 26 :—S. 26 of the B. T. Act does not apply to an under-raiyat with right of occupancy by custom. The

execution of money decree (Patna case)

Usufructuary mortgagee of an under-raiyat acquires no title to mortgaged property.

Tenant holding under a raiyat is an under raiyat irrespective of the status of the raiyat

Under-raiyat. Acquisition of occupancy right.

Under-raiyat can acquire occupancy right by usage or custom.

Incidents of under-raiyats with right of occupancy by custom.

descendant of such an under-raiyat, if he fails to prove heritability under a local custom, is a trespasser and is liable to be ejected without any notice: *Iswar Sant v. Torendra*, 42 C.L.J. 560; *Sudhanya Kumar v. Saik Ismail*, 29 C.W.N. 733. See notes under s. 26, heading no. 7 at p. 218.

(2) APPLICABILITY OF S. 29 :—S. 29 the B. T. Act applies to an under-raiyat who has acquired a right of occupancy by custom: *Azizul Huq Chowdhury v. Kazimuddin Sarkar*, 32 C.W.N. 68 (notes), per Mitter, J. It is submitted with great respect that this decision has not laid down the correct view of the law. See notes under s. 29, heading no. 16 at p. 228.

(3) APPLICABILITY OF S. 49 :—S. 49 of the B. T. Act does not apply to an under-raiyat with right of occupancy by custom: *Gopal Mandal v. Tapai Sankhari*, 46 Cal. 43; *Akhil Chandra v. Hassan Ali*, 19 C.W.N. 246.

[It is submitted that the effect of an under-raiyat acquiring a right of occupancy by custom appears to be only this, that he is entitled to remain in occupation during his life time, or in other words, he having acquired a right of occupancy, is protected from ejectment. By acquisition of a right of occupancy by custom an *under-raiyat* does not become an *occupancy raiyat* but continues to be an under-raiyat. Only s. 49 will not apply to him; in other respects the provisions relating to underraiyats will apply. See notes under s. 29, heading no. 16 at p. 228].

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them, respectively; and every such suit 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 III.

(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.

Headings of Notes.

1. SCOPE.
2. RENT-SUIT.
3. WHERE CAUSE OF ACTION AROSE BEFORE THE PASSING OF THE ACT.
4. SUIT BY OCCUPANCY RAIYAT, NON-OCCUPANCY RAIYAT OR UNDER-RAIYAT FOR RECOVERY OF POSSESSION AGAINST HIS LANDLORD.
5. LIMITATION ACT, s. 7.
6. S. 174.
7. EXECUTION OF DECREE FOR RENT NOT EXCEEDING Rs. 500 OBTAINED BY A CO-SHARER LANDLORD.
8. SUB-SEC. (1).
9. SPECIAL RULE OF LIMITATION.
10. FOREST RIGHTS.
11. EXECUTION OF RENT-DECREE INCAPABLE OF EXECUTION.
12. ACKNOWLEDGEMENT OF LIABILITY.
13. LIMITATION SHOULD BE SPECIALLY PLEADED.

1. Scope :—This section prescribes certain rules of limitation by reference to the Schedule to this Act. In determining what the provision of that Schedule mean, the purpose and scope of the Act must not be lost sight of. The Act was only intended to deal with existing rights between landlord and tenant: *Krishna v. Satis*, 20 C.W.N. 872.

2. Rent-suit :—A suit for recovery of rent is governed by the special rules of limitation contained in Sch. III and one period of limitation in all classes of suit for rent is provided for in the Bengal Tenancy Act, and it does not make any difference whether the lease is registered or not: *Ishwari Pershad v. Crowdy*, 17 Cal. 469. Art. 116 of the Second Schedule to the Limitation Act does not apply

The same period of limitation even if lease is registered. Art. 116 of

Sch. II of the Limitation Act does not apply. Registered contract.

to a suit for rent, although the lease is a registered one: *Ibid.* Suits for rent, founded on registered contracts in respect of lands subject to the provisions of the Tenancy Act, are governed by the limitation provided in that Act: *Mackenzie v. Hazi Syed Mahamed*, 19 Cal. 1. Art. 116 of Sch. II of the Limitation Act has no application to a rent suit: *Ibid.*

Suit for rent by assignee of the arrears not governed by the Tenancy Act

The Bengal Tenancy Act, according to its preamble, is an Act relating to the law of Landlord and Tenant and therefore all its provisions must be applicable only to suits in which the parties stand in the relation of landlord and tenant and therefore Art. 2 of Pt. I, Sch. III is not applicable to a suit for rent by an assignee of the arrears from the landlord as the assignee is not the landlord of the defendant: *Mahendra v. Kailash*, 4 C.W.N. 605.

3. Where cause of action arose before the passing of the Act :—Section 184 of the Bengal Tenancy Act declares that suits specified in Sch. III of the Act shall be instituted within the time prescribed in that schedule.

4. Suit by occupancy-raiyat, non-occupancy raiyat or under-raiyat for recovery of possession against his landlord :—See notes under Art. 3, Sch. III.

5. Limitation Act, s. 7 :—Ss. 184 and 185 of the Bengal Tenancy Act have not the effect of extending the provisions of s. 7 of the Limitation Act to an application under s. 167 of the Bengal Tenancy Act: *Akshoy Kumar v. Maharaja Bejoy Chand*, 6 C.W.N. 249 (notes).

See notes under Sch. III, Art. 2 (b).

6. S. 174 :—S. 18 of the Limitation Act does not apply to an application under s. 174 of the B. T. Act: *Radashyam v. Dinobundhu*, 18 C.W.N. 31.

7. Execution of decree for rent not exceeding Rs. 500 obtained by a co-sharer landlord :—See notes under Art. 6, Sch. III.

Suit to be dismissed although limitation has not been pleaded.

8. Sub-sec. (1) :—Under sub-sec. (1) it is obligatory upon the Court to dismiss the suit on the ground of limitation, although limitation has not been pleaded: *Abdullah v. Asraf Ali*, 7 C.L.J. 152. The question of limitation raised in the written statement but abandoned in the Court of first instance is a clear question of law and can be raised in the Court of appeal: *Ibid.*

9. Special Rule of Limitation :—Where there is a special rule of limitation prescribed by law, that rule is to be followed to the exclusion of the more general rule: *Kali Charan v. Harendra Lal Roy*, 4 C.L.J. 553. In suits for rent, the period of limitation is that prescribed by Art. 2 (b) of Sch. III of the Bengal Tenancy Act, and it cannot be extended by the application of the ordinary rules of limitation prescribed by Limitation Act: *Ibid.* Art. 116 of Sch. II has no application to a rent suit: *Ibid.*; see also *Mackenzie v. Hazi Mahamed*, 19 Cal. 1 (F.B.).

Forest rights, 3 years rule of limitation applicable.

10. Forest rights :—A suit for recovery of money payable in respect of forest rights is governed by Sch. III Art. 2, cl. (b) of the Bengal Tenancy Act: *Abdullah v. Asraf Ali*, 7 C.L.J. 152. A suit for the recovery of money due under a registered contract in writing in respect of forest rights is governed by the three years' rule of

limitation as prescribed in Sch., III Part I, Art. 2 and not by Art. 116 of Sch. I of the Limitation Act: *Sarajubala Debi v. Sarada Nath*, 23 C.W.N. 336.

II. Execution of rent-decree incapable of execution:—A decree which does not specify the reliefs granted is incapable of execution and cannot be considered as time barred even though three years have elapsed from the date of the decree if the execution is applied for within three years from the date of amendment of the decree making it capable of execution: *Mahamaya v. Abdul Hamid*, 18 C.W.N. 266.

12. Acknowledgement of liability:—S. 19 of the Limitation Act is applicable to suits for rent: *Kamal Krishna v. Kedar Nath Kundu*, 10 C.L.J. 517; when a landlord sues for recovery of rent and relies on s. 19 of the Limitation Act his claim does not cease to be a claim for rent: *Ibid*. S. 19 of the Limitation Act applicable to rent suit.

13. Limitation should be specially pleaded:—Under O. 8 r. 2, C. P. C. limitation should be specially pleaded: *Kedar Nath v. Mohesh Chandra*, 28 C.L.J. 216; when limitation has not been specially pleaded and the facts are not apparent on the face of the record, a Judge has no jurisdiction to go into the matter and enquire whether, on certain facts he found, the suit was barred: *Ibid*; where a general plea of limitation is taken that the suit was barred under 12 year's rule, a Judge is not competent to decide a case on a special plea, that the suit is barred under Art. 3, Sch. III of the Bengal Tenancy Act, when such later plea was raised for the first time in the Court of appeal, without raising an issue and allowing the plaintiff to adduce evidence on it: *Ibid*.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section. Portions of the Indian Limitation Act not applicable to such suits, &c.

(2) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

Acknowledgement of liability:—S. 19 of the Limitation Act is applicable to applications for execution of rent decrees, coming under Art. 6, Sch. III of the Bengal Tenancy Act by reason of sub-sec. 2 of s. 185: *Rakhal Chandra v. Hemangini*, 3 C.L.J. 347; s. 19 of the Limitation Act applies to applications for execution of decrees and an acknowledgement of liability under that section can save an application for execution of a decree for arrears of rent for a sum of money not exceeding Rs. 500 from being barred by limitation: *Ibid*; see also *Ramkumar v. Jakur Ali*, 8 Cal. 716, and *Toree Mahomed v. Mahomed Mahbood*, 9 Cal. 730; s. 19 of the Limitation Act is applicable to rent suits: *Kamal Krishna v. Kedarnath*, 10 C.L.J. 517.

Miscellaneous cases:—S. 15 sub-sec. (2) of the Limitation Act, which is made applicable to suits, appeals and applications mentioned in the third schedule annexed to the Bengal Tenancy Act, by virtue of s. 185, sub-sec. (2) does not apply to suits instituted under s. 104 (H) of the Bengal Tenancy Act, which are not mentioned in the third schedule: *Secretary of State v. Gangadhar Nanda*, 27

C.L.J. 374 ; the case of *Radhasyam v. Dinobandhu*, 34 All. 496 was distinguished. Where a tenant brought a suit for recovery of possession of a part of the land leased out and of which possession was not given, *held* that according to s. 185 (2), the period of limitation is governed by Art. 144 Sch. I of the Indian Limitation Act: *Pachoo Kapali v. Jajneswar*, 32 C.L.J. 9. On a plain reading of the provisions of s. 185 of the Bengal Tenancy Act with s. 15 sub-sec. (2) of the Limitation Act, the latter could not be applied to extend the period of six months provided for the institution of suits under s. 104H of the Bengal Tenancy Act: *Secretary of State for India v. Gangadhar*, 45 Cal. 634.

See notes under s. 184 and Sch. III.

Art. 144 of
the Limita-
tion Act

CHAPTER XVII

SUPPLEMENTAL.

Penalties.

Penalties.

186. (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. XLV of 1860.

Tenant's holding, sub-sec. (1) cl. (a):—It seems that the word "holding" is not used here in its strict sense; apparently it includes land held by an under-raiyat in-as-much as it appears that under s. 121 the landlord of an under-raiyat is entitled to distrain.

Damages for denial of landlord's title.

186A. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

Damages for denial of landlord's title.

(2) The amount of damages decreed under sub-

section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, subject to the provisions of section 158B, in any of the modes in which a decree for rent may be executed.

Note :—This section has been inserted by Bengal Act I of 1907 and Act I, E. B. A. of 1908.

Whether Denial of landlord's title is a ground of forfeiture :—See notes under s. 10.

Damages.

Damages :—Before awarding damages under sub-sec. (1) of this section the Court should find, as a fact as to whether there was reasonable or probable cause, and state its grounds for coming to that conclusion, and where the appellate court awards such damages it should also consider in coming to that conclusion and though it was found that the defence was without reasonable cause it was a defence which was accepted by the first court: *Sibu Sant v. Nitai Charan*, 15 C.L.J. 114.

Agents and representatives of landlords. Power of landlord to act through agent.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

Headings of Notes.

1. STAMP.
2. AGENT AUTHORISED TO ACT.
3. EJECTMENT.
4. POWER OF ATTORNEY.
5. TERMINATION OF AGENT'S AUTHORITY.

6. **LIMITATION: SUIT FOR ACCOUNT.**

7. **RIGHT TO TAKE ACCOUNTS NOT ASSIGNABLE.**

1. Stamp :—The written authority should be stamped as a power-of-attorney.

2. Agent authorised to act :—S 187 does not require an agent to be authorised in writing to act on behalf of all the landlords : *Gopinath v. Umakanto*, 24 Cal. 169. No written authority necessary.

3. Ejectment :—Where a certified guardian of a minor without the authority of the Court granted a lease conjointly with the co-sharer of the minor, *held* that the minor was entitled to eject the lessee as trespasser in respect of his own share without making his co-sharers parties to the suit : *Harendra v. Moran*, 15 Cal. 40. Suit by minor for ejectment —Parties.

4. Power-of-attorney: Evidence of identification :—When a document purporting to be a power-of-attorney and to have been executed by a Notary Public is produced before the Court, an affidavit of identification as to the person purporting to make the power-of-attorney being the person named therein is unnecessary : *In the goods of W. H. Mylne*, 9 C.W.N. 986. Power of attorney.

5. Termination of agent's authority :—Where two joint agents were appointed for collection of rent and there was a written contract (kabuliyat) executed in favour of the landlord, *held* that upon the death of one the contract of agency did not terminate against the surviving agent : *Bhagirath v. Premchand*, 17 C.L.J. 201. Agent's authority.

6. Limitation: Suit for account :—A suit for an account against an agent is governed by Art. 116 of Sch. I of the Limitation Act when there is a contract in writing and registered : *Bhagirath v. Premchand*, 17 C.L.J. 201.

7. Right to take account not assignable :—A right to take accounts and to recover such sums as may be found due is not assignable being a mere right to sue within the meaning of s. 6, clause (e) of the Transfer of Property Act, and the assignee is not entitled to maintain a suit for such a purpose : *Khetro v. Biswanath*, 51 Cal. 972. Right to take accounts, not assignable.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them. Joint-landlords to act collectively or by common agent.

Headings of Notes.

1. WHAT A CO-SHARER LANDLORD CAN DO.
2. WHAT A CO-SHARER LANDLORD CANNOT DO.
3. SUIT FOR ADDITIONAL RENT UPON CONTRACT.
4. SUIT FOR ENHANCEMENT OF RENT OR FOR ADDITIONAL RENT.
5. SUIT UNDER SEC. 52.
6. DECREE FOR RENT.
7. ABATEMENT OF RENT.
8. JOINT LANDLORDS.
9. EJECTMENT SUIT.

10. SEPARATE TENANCY.
11. PROCEEDINGS UNDER SEC. 158.
12. SUIT FOR RECOVERY OF DAMAGES.
13. SEC. 106.
14. S. 105.
15. SEC. 91.
16. DECREE BY CO-SHARER LANDLORD, NO EVIDENCE AGAINST ANOTHER CO-SHARER.
17. ADVERSE POSSESSION.
18. SEPARATE LEASES BY CO-SHARERS.
19. REVISION BY THE HIGH COURT.
20. SUIT AGAINST TRESPASSER.
21. RENT SUIT.

Rent suit.

I. What a co-sharer landlord can do :—A co-sharer landlord can bring a suit for whole rent of the tenure making his co-sharers who refuse to join as plaintiffs, defendants in the suit: *Pramada Nath v. Ramani Kant*, 35 Cal. 331, s.c., 12 C.W.N. 249, s.c., 7 C.L.J. 139 (P.C.).

A co-sharer landlord can maintain a suit for the entire rent only when he shews that those entitled to join with him have refused to join or acted prejudicially and the reluctant sharers have been made parties: *Dwarkanath v. Tara Prasanna*, 17 Cal. 160; see also *Pati Hariapur v. Shekhar*, 4 Mad. 141; *Kali Das v. Nathu*, 7 Bom. 217; *Ram Sebak v. Ram Lall*, 6 Cal. 185.

A co-sharer landlord may join with his other co-sharers in bringing a suit for the entire rent of the tenure although he has for a long period collected his share of the rent separately: *Pramada Nath v. Ramani Kant*, 35 Cal. 331; *Akhoy Kumar v. Gopal Kamini*, 10 C.W.N. 952; see also *Guni Mohamed v. Moran*, 4 Cal. 96; *Gopal Chandra v. Umesh Narain*, 17 Cal. 696; *Syama Charan v. Akshoy Kumar*, 33 Cal. 1010; s.c., 10 C.W.N. 787; s.c., 3 C.L.J. 627; *Giris Chandra v. Chhatradhar*, 3 C.L.J. 379, and observations of Brett J., in *Pramada Nath v. Ramani*, 6 C.W.N. 34.

A transferee of the whole interest of one of the co-sharers can maintain a suit for the entire rent of the tenure making the other co-sharers defendants: *Shashi v. Seetanath*, 35 Cal. 744.

[Such a decree is a decree for rent.]

A co-sharer landlord who used to collect his share of the rent separately can sue to recover arrears of rent in respect of his fractional share: *Girindra v. Sreenath*, 7 C.L.J. 512.

Suit for rent is outside the scope of s. 188.

A co-sharer can bring a suit for rent as there is nothing in the Act which requires or authorises a landlord to sue thereunder for arrears of rent; and a suit for arrears of rent is outside the scope of s. 188: *Prem Chand v. Mokshoda*, 14 Cal. 201; *Umes v. Nasir*, 14 Cal. 203 (note); *Khondkar Abdul Hamid v. Mohini Kant*, 4 C.W.N. 508; *Rup Chand v. Gudar Singh*, 5 C.W.N. 30 (notes); *Beni Madhub v. Joad Ali*, 17 Cal. 390 (F.B.).

Additional rent upon contract.

A co-sharer landlord can maintain a suit for additional rent for additional land found on measurement against a raiyat upon a contract: *Gobin Chandra v. Hamidula*, 7 C.W.N. 670; followed in *Sailendra v. Karali*, 2 C.L.J. 534.

Rent for excess land.

A co-sharer landlord can maintain a suit for rent for additional land payable in terms of a lease, such a suit not being a suit under

s. 52 and s. 188. not applying to it: *Ram Chunder v. Giridhar*, 19 Cal. 755.

A co-sharer landlord can maintain a suit for rent in respect of excess land which formed no part of the land originally let out: *Abdul Hakim v. Rajendra Narayan*, 13 C.W.N. 635. See also *Abdul v. Mohini*, 4 C.W.N. 508.

A co-sharer landlord can maintain a suit for recovery of balance of rent due from a tenant, and in the alternative, for recovery of sums which may have been collected by his co-sharers in excess of their legitimate share: *Sham Singh v. Kishun Sahai*, 6 C.L.J. 190: see also *Ahumudeen v. Girish Shamunt*, 4 Cal. 350.

Balance of rent due or rent realised in excess by co-sharers.

A co-sharer landlord can alone maintain a suit against a raiyat to compel him to fill up a tank which the raiyat had without authority excavated in one part of his holding: *Gobind Chand v. Kamizuddi*, 9 C.W.N. 246 (notes); s.c., 16 C.L.J. 127.

Filling up a tank.

A co-sharer landlord can maintain an application for measurement under s. 91 when he obtains a separate kabuliyat entering into separate contract for rent with the tenants: *Jogesh Prokash v. Maniruddi*, 35 Cal. 417.

S. 91.

A co-sharer landlord can dispute an entry under s. 106: *She Bahadur v. Mackenzie*, 7 C.W.N. 400, but cannot maintain an application under s. 105: see notes under headings Nos. 13 and 14.

Ss. 105 and 106.

A co-sharer landlord can sue for recovery of damages for value of trees cut down by a tenant. *Hrisikesh v. Sadhu Charan*, 4 C.W.N. 80; *Fatik v. Atlas*, 15 C.L.J. 225.

Damages for trees.

S. 188 does not apply to a suit by a co-sharer landlord against an occupancy raiyat for damages for value of trees alleged to have been improperly cut and appropriated: *Fatik Chandra v. Atlas Bibi*, 15 C.L.J. 225.

A co-sharer landlord can bring a suit to eject a tenant on breach of the conditions of the lease and s. 188 is no bar to such a suit: *Hari Priya v. Ram Churn*, 19 Cal. 541.

Breach of condition.

A suit to assess rent is consistent with and arises out of the general law and the land-revenue system of the country and is not one which landlord is "required or authorised" to do under the Bengal Tenancy Act within the meaning of s. 188 of the Act; a co-sharer landlord is therefore entitled to institute such a suit: *Dhanajoy v. Upendra Nath*, 22 C.W.N. 685.

A suit by a co-sharer landlord for assessment of rent in respect of a holding under separate agreement is not an act that is "authorised" by the B. T. Act within the meaning of sec. 188, and sec. 52 does not apply to it. *Partap Mahton v. Wazirunissa*, 4 Pat. 604. See notes under s. 52, heading no. 8 at p. 321.

2. What a co-sharer landlord cannot do :—S. 188 prevents a co-sharer landlord from bringing any suit authorised by the Act unless his other co-sharers join him as plaintiffs: *Khetter Mani v. Jiban Krishna*, 21 C.L.J. 315. This section has no reference to joint tenants and cannot be applied by analogy to a co-sharer tenant who brings a suit, authorised by the Act e.g., a suit for abatement of rent: *Ibid.* In cases where s. 188 of the Bengal Tenancy Act applies, the fact that the plaintiff joins his co-sharers as defendants does not justify the court in entertaining the suit "on principles of justice and

Enhancement.

equity": *Dhananjoy v. Upendra Nath*, 22 C.W.N. 685. A co-sharer landlord cannot bring a suit for enhancement or for additional rent and s. 188 is a bar to such a suit: *Gopal v. Umesh*, 17 Cal. 695.

S. 158. A co-sharer landlord cannot make an application under s. 158 and s. 188 is a bar to such an application: *Makub Ali v. Ameer Rai*, 17 Cal. 538.

Khas possession. A co-sharer landlord cannot bring a suit for *khas* possession with an alternative claim for rent, not merely of additional land found in possession of the tenants over and above the land of their own holding but in respect of the entire quantity found in possession of the tenant including the lands of their own holding, (ss. 52 and 188 applying to such a case): *Khondkar Abdul v. Mohini*, 4 C.W.N. 508: see also *Gopal Chander v. Umesh*, 17 Cal. 695.

S. 52. S. 188 is applicable to suits for alteration of area under s. 52: *Ibid*, followed in *Sati Prasad v. Radha Nath*, 16 C.L.J. 1427: see also *Dwarka Nath v. Mathur Lal*, 18 C.W.N. 742.

Enhancement. A co-sharer landlord cannot maintain a suit for enhancement of rent of a raiyat holding even when there is a stipulation to pay rent separately and for enhancement: *Baidya Nath v. Sheikh Jhin*, 25 Cal. 917, s.c. 2 C.W.N. 44.

A suit for enhancement of rent cannot be brought by a co-sharer landlord: *Jatindra Nath v. Prasanna Kumar*, 38 Cal. 270, s.c. 15 C.W.N. 74 s.c., 13 C.L.J. 1 (P.C.).

S. 105. S. 188 is a bar to the maintainability of an application made under s. 105 by one of two or more co-sharer landlords: *Krishna Sardar v. Paresb Sardar*, 10 C.L.J., 485; see also *Behary Lal v. Priya Nath*, 21 C.L.J. 305.

Abatement. A co-sharer has no right to grant abatement of rent: *Shyama Charan v. Sham Molla*, 1 C.W.N. 415.

Rent suit. A co-sharer landlord cannot maintain a suit for rent if he does not make the other co-sharers parties defendants or he does not prove a right to collect his share of the rent separately: *Nepal Chandra v. Mahendra Nath*, 31 Cal. 707.

Joint possession. A co-sharer landlord cannot maintain a suit for recovery of joint possession of his share in land leased out by another co-sharer, when the former has also leased out land in his exclusive possession separately; the remedy lies in a suit for partition: *Syed Ali v. Nawab Ali*, 11 C.W.N. 143.

Ejectment. A co-sharer land cannot bring a suit for ejectment against a tenant for his share of the land, if the tenancy which was created at its inception by all the landlords jointly, has not been determined by all of them; *Syed Gholum Mohiuddin v. Khairam*, 31 Cal. 786 s.c. 8 C.W.N. 325.

Debutter property: Joint Sebais. Joint shebait are, in some respects, joint trustees, and a suit for enhancement of rent cannot be instituted by one of them making the other a party defendant: *Abdul v. Umakanta*, 19 C.W.N. 260.

Rent suit outside the scope of s. 188. *Suit for rent.* A suit for arrears of rent is outside the scope of s. 188: *Prem Chand v. Mokshada*, 14 Cal. 201; *Umesh v. Nasir*, 14 Cal. 203 (note); *Jogobandhu v. Jadu Ghose*, 15 Cal. 47; *Khondkar Abdul Hamid v. Mohini Kant*, 4 C.W.N. 508; *Rup Chand v. Gudur Singh*, 5 C.W.N. 30 (notes).

Agreement either expressly proved or implied by the conduct of the parties may establish the right of co-sharer landlords to sue separately for the shares of rent receivable by them ; but such an arrangement merely affects the right to sue separately for rent, and in no other aspect modifies the terms of the holding ; the right to bring the tenure to sale for arrears of rent remains in tact, as also the right of one co-sharer to sue, making his co-sharers defendants when they will not join as plaintiffs : *Pramada Nath v. Ramani Kant*, 35 Cal. 331 (P.C.). The filing of a suit is not a thing which the landlord is, under the Bengal Tenancy Act, required or authorised to do ; and s. 188 is no bar to a sharer suing (under the general rules of legal procedure) for the whole rent of the tenure making his co-sharers who refuse to join as plaintiffs, defendants in the suit : *Ibid.*

Pramada Nath v. Ramani Kant.

It is a general rule not derived from the Bengal Tenancy Act, but from the general principles of legal procedure that a sharer, whose co-sharers refuse to join him as plaintiffs, can bring them into the suit as defendants and sue them for the whole rent of the tenure : *Pramada Nath v. Ramani Kant*, 35 Cal. 331 (P.C.) ; overruling *Pramada v. Ramani*, 9 C.W.N. 34. Even if there is separate collection and right of separate collection by suit, all the sharers may join together again to bring a suit for rent jointly : *Ibid.*

Rent suit by a co-sharer.

A suit by the assignee of arrears of rent, together with land from one co-sharer for the entire rent of the tenure by making the co-sharers parties defendants is maintainable : *Shashi Kumar v. Seeta Nath*, 35 Cal. 744 : s.c., 7 C.L.J. 425.

Rent suit by an assignee of arrears from a co-sharer. Where separate contract.

S. 188 has no application where one set of landlords obtains separate kabuliyat entering into separate contract for rent with the tenant ; such landlord ceases to be a joint landlord with the other co-proprietors of the land. He becomes a joint owner and not a joint landlord : *Jogesh Prokash v. Maniruddi*, 35 Cal. 417 ; s. 188 has no application where there is a separate contract in favour of one set of landlords ; *Matungini v. Ram Das*, 7 C.W.N. 93 ; *Gobindo Chandra v. Hamidulla*, 7 C.W.N. 670.

A co-sharer landlord who used to collect his share of the rent separately can sue to recover arrears of rent due in respect of his fractional share : *Girindra v. Sree Nath*, 7 C.L.J. 512. See also *Sita Nath v. Pelaram*, 21 Cal. 869, but if he has no right of separate collection his suit must be dismissed if the other co-sharers are not made parties defendants : *Nepal Chandra v. Mahendra Nath*, 31 Cal. 707.

Fractional share.

A suit for recovery of balance of rent due from a tenant, and, in the alternative, for recovery of sums which may have been collected by his co-sharers in excess of their legitimate share is maintainable at the instance of a co-sharer landlord : *Sham Singh v. Kishun Sahai*, 6 C.L.J. 190 ; see also *Ahumudeen v. Girish Shamunt*, 4 Cal. 350.

Suit for rent collected by co-sharers.

Where a tenant after the creation of the holding encroached upon certain lands and one of the co-sharer landlords brought a suit for his share of the encroached land and for assessment of rent, held that the encroachment should be regarded as a new holding and the rent that would be a new rent and a suit for assessment of rent is not an act that is authorized by s. 188, and consequently ss. 52 and 188 would be no bar to such a suit : *Khondkar Abdul v. Mohini*, 4 C.W.N. 508 doubted and followed in *Abdul Hakim v. Rajendra*, 13 C.W.N. 635.

Suit for assessment of rent for encroached land.

S. 188
does not
preclude
joint land-
lords from
ceasing to
be joint.

S. 188 lays down that landlords can only sue for the rent collectively or by common agent. But it does not prescribe that the relation of joint landlords is to endure for ever. It does not prohibit joint landlords from ceasing to be joint, or preclude them from suing their shares of the rent separately when they have ceased, or wish to cease, to be joint landlords. When a defendant is subject to a joint liability, it would without doubt, be unjust to allow him to be sued by one of his joint creditors, who could not release him from his liability to his other creditors. But there would seem to us to be no reason why the creditors should not be allowed to sever their mutual relations and sue their debtor separately for their shares of the debt, provided this be done in such a manner as to free the debtor from all further liability to any of them: (*Per Rampini & Wilkins, J.J.*): *Rajnarain v. Ekadasi*, 27 Cal. 479, s.c., 4 C.W.N. 494.

Partition
between
joint
landlords.

Where the principal defendant was the tenant of two joint landlords and there being a partition between them each of the joint landlords brought a separate suit for his share of the rent against the principal defendant by making the co-sharer landlord a party: *held* that the suits were maintainable, all parties interested having been made parties; that apportionment may take place of the sum due for arrear as well as with regard to future;* that section 188 of the Bengal Tenancy Act was no bar to the suit: *Ibid*.

Suit for pro-
portionate
share of
rent when
there is
joint con-
tract.

A suit by a co-sharer landlord for his proportionate share of the rent cannot be maintained when there is no contract under which the tenant is bound to pay his share separately, although the other co-sharer landlords are made defendants in the suit: *Lala Ram v. Nem Narain*, 6 C.W.N. 327. A suit by a co-sharer landlord for his proportionate share of the rent cannot be treated as claiming in the alternative either the individual share of the plaintiff or the full rent, nor can the plaint be allowed to be amended to convert the suit into one for the recovery of the full rent, as that would contravene the provisions under sec. 52 of the Civil Procedure Code: *Ibid*.

See notes under sec. 159 under heading "what constitutes a separate tenancy."

Right of
suit by a
co-sharer
landlord
when other
co-sharers
refuse to
join.

It is only when a co-sharer landlord can shew that those entitled to join with him have refused to join or have otherwise acted prejudicially to their interests, that he is entitled to sue alone and to make the reluctant or refusing co-sharers defendants in the suit: *Dwarka Nath v. Tara Prasanna*, 17 Cal. 160;† see also *Pati Hari Pat v. Chekptr Manakkal*, 4 Mad. 141; *Kali Das v. Nathu*, 7 Bom. 217; *Ram Sebak v. Ram Lall*, 6 Cal. 815.

Where co-
sharer land-
lord is made
a defendant
and after-
wards
made a co-
plaintiff
Limitation.

Where a co-sharer landlord was made a party defendant in violation of the rule laid down in *Dwarka Nath v. Tara Prasanna*, 17 Cal. 160, and was subsequently made a co-plaintiff, *held* that the effect of making him a co-plaintiff was practically to institute a new suit on the date when he was not changed into co-plaintiff, and the question of limitation should be decided reckoning the date of suit as the date when the co-sharer was made a co-plaintiff: *Jibanti Nath v. Gopal Chander*, 19 Cal. 760.

Refusal by

When a co-sharer brought a suit for rent by making his co-sharer

* See also *Sree Nath v. Mohesh*, 1 C.L.R. 453, and *Iswar v. Ram Krishna*, 5 Cal. 902.

† See also *Luke v. South Kensington Hotel Co.*, L.R. 11 Ch. D. 121.

landlord a defendant, alleging that the latter refused to join and had informed him that latter's share of the rent had been paid up, and it was prayed that in case it be found that the latter's share of the rent had not been paid up, extra court-fees might be taken from him, *held* that the suit was maintainable; *Pergash Lal v. Akhowri*, 19 Cal. 735.

When one of several co-sharer landlords thinks fit to pursue his remedies to recover his share of the rent, he must pursue them under the ordinary law of the country, and independently of the Bengal Tenancy Act: *Behi Madhub v. Joadali*, 17 Cal. 390 (F.B.).

One of two sebaits cannot bring a suit for enhancement of rent under s. 30 by making his co-shebait a defendant: *Abdul Gufur v. Umakant*, 19 C.W.N. 260.

3. Suit for additional rent upon contract :—A suit by a co-sharer landlord, entitled to collect his share of the rent separately, for additional rent for land brought under cultivation, payable in terms of a lease, is maintainable: *Ram Chunder v. Giri Dhur*, 19 Cal. 755; such a suit is not one under sec. 52; and sec. 188 is no bar to its maintainability: *Ibid.* See also *Gobindo Chandra v. Hamidulla*, 7 C.W.N. 670. Where a lease stipulated that a particular rent would be assessed in future a suit for assessment of such rent by one of the landlords by making the others as defendants is maintainable and s. 188 has no application: *Bhasai v. Aminuddi*, 25 C.L.J. 469, s.c., 21 C.W.N. 371; the cases of *Pramada Nath v. Ramani Kanth*, 35 Cal. 331 (P.C.) and *Ramchandra v. Giridhar*, 19 Cal. 755 were followed. See also *Partap Mahton v. Wazirunnissa*, 4 Pat. 604. See notes under s. 52 heading no. 8, at p. 321.

4. Suit for enhancement of rent or for additional rent :—Where two or more are joint landlords they must all join in bringing a suit for enhancement or for additional rent; *Gopal v. Umesh*, 17 Cal. 695. Their Lordships (Norris and Macpherson, J.J.) observed as follows: The land which is said to be in excess of the area for which rent has been previously paid has been held, rightly or wrongly, as a part of the original holding. There is here no allegation that it has been taken by trespass. If a decree is obtained, the excess land will be annexed to the land of the original holding, and the additional rent will be added to the original rent. There will be no new holding created. If, therefore, some of several joint landlords cannot enhance the rent of the original holding, they cannot, it seems to us, any the more add to that rent in any other way, and they cannot increase the area of the holding any more than they can reduce it. The right of some of several co-sharers to collect separately their share of the entire rent of an undivided holding is quite distinct. It rests on an entire arrangement between the co-sharers and the tenants as to the mode in which the entire rent shall be collected, but which preserves in fact the original tenancy both as regards the area of the holding and the rent paid. We cannot, therefore, see the analogy, which both the Munsif and the Subordinate Judge find to exist, between a suit for rent and a suit for additional rent when the parties suing are some only of several co-sharers.

This case was followed in the case of *Sati Prosad v. Radhanath*, 16 C.L.J. 472 and also in the case of *Dwarka Nath v. Mathur Lal*, 18 C.W.N. 742 where a co-sharer landlord brought a suit for arrears of rent and also for additional rent on the basis of a *kabuliyaat*

executed by the tenant in favour of the entire body of landlords agreeing to pay additional rent for additional area and made his co-sharers parties to the suits, *held* that the suit for additional rent was not maintainable, as it was not brought by all the landlords jointly under s. 188. The case of *Gobinda v. Hamidulla*, 7 C.W.N. 670 was distinguished on the ground that there was an entirely separate agreement between the tenant and the individual co-sharer landlord which did not exist in the present case.

The institution of a suit for enhancement of rent is a thing "authorised" by the Bengal Tenancy Act, within the meaning of s. 188, in the case of tenure-holders as well as of occupancy raiyats: *Jatindra Nath v. Prasanna Kumar*, 38 Cal. 270, s.c., 15 C.W.N. 74, s.c., 13 C.L.J. 1; a fractional landlord is not entitled to maintain a suit for enhancement of rent, even though he should join his co-sharers as defendants in the suit: *Ibid.*

5. Suit under sec. 52:—Where a co-sharer landlord claims for *khas* possession with an alternative claim for rent, not merely of the additional land found in possession of the tenants over and above the land of their own holding but in respect of the entire quantity of land found in possession of the tenants including the lands of their own holding, *held* that sec. 52 of the Bengal Tenancy Act applied and sec. 188 of the Bengal Tenancy Act would bar the maintainability of such a suit at the instance of a co-sharer landlord: *Khondar Abdul v. Mohini*, 4 C.W.N. 508; see also *Gopal Chunder v. Umesh*, 17 Cal. 695. A suit for rent of excess land which formed no part of the land originally let out is maintainable at the instance of a co-sharer and such a suit is independent of s. 188 and s. 52 has no application: *Abdul Hakim v. Rajendra Narayan*, 13 C.W.N. 635. S. 52 has no application when the suit is upon a contract: *Gobind Chandra v. Hamidulla*, 7 C.W.N. 670, followed in *Sailendra v. Karali*, 2 C.L.J. 534.

One *sebait* cannot bring a suit for enhancement of rent under s. 30 by making his co-*sebait* a defendant: *Abdul Gafur v. Umakant*, 19 C.W.N. 260.

Enhancement of rent: Raiyati holding:—An agreement by a raiyat to pay his share of the rent separately does not constitute a separate tenancy; so, where a co-sharer landlord sued for enhancement of rent on the basis of such an agreement, *held* that such a suit was not maintainable even when it contained a stipulation for such enhancement; the term "holding" means an entire parcel of land: *Baidya Nath v. Sheikh Jhin*, 25 Cal. 917, s.c., 2 C.W.N. 44. This case was distinguished in the case of *Gobind Chandra v. Hamidulla*, 7 C.W.N. 670, and it was *held* that a co-sharer landlord can bring a suit for additional rent against a raiyat upon the basis of a separate contract. See also *Sailendra v. Karali*, 2 C.L.J. 524, where the cases of *Panchanan v. Raj Kumar*, 19 Cal. 610, and *Gobind v. Hamidulla*, 7 C.W.N. 670, were followed.

Joint landlord:—Where a tenure is held under a *zemindari* which originally formed one entire estate, and the estate was subsequently partitioned, and the rest of the tenure was thereupon allotted proportionately to each of the four estates formed by partition

S. 188
applies
to s. 52.

Suit by a
sebait.

Raiyati
holding.

Effect of
partition—
suit for
enhance-
ment.

*See definition of holding, s. 3, sub-sec. (9), and also *Hari Churn v. Rajah Runjit*, 1 C.W.N. 521.

although the land forming the tenure remained undivided ; *held* that the effect of the partition of the parent estate was to create separate and distinct tenures under the proprietors of each of the estates, that the proprietors of the several estates were not joint landlords within the meaning of sec. 188 and therefore a suit for enhancement of rent would lie at the instance of one of the proprietors ; *Hem Chandra v. Kali Prasanna*, 26 Cal. 822; see also *Sarat Sundari v. Anand Mohon* 5 Cal. 273 and *Sarat Sundari v. Sumeroodeen*, 22 W.R. 530. An estate having been partitioned between the plaintiff and his co-sharer under Act VIII B. C. of 1876, a portion of a holding which formerly appertained to the joint estate fell within plaintiff's share: *held* that the partition had the effect of dividing the holding so that the plaintiff became the sole landlord with regard to the portion of a holding that fell within his share of the estate: *Protap Chandra v. Kamala Kant*, 10 C.W.N. 818 ; Act VIII B. C. of 1876 whilst it did not provide for the division of holdings did not also contain any prohibition against any such division: *Ibid*.

6. Decree for rent :—The special provisions of the Bengal Special Tenancy Act, with reference to rent decrees and sales of tenures in execution of such decrees, apply only to decrees obtained in accordance with sec. 188 : *Sheikh Naimaddin v. Srimanta Ghose*, 29 Cal. 219, s.c., 6 C.W.N. 124 ; *Beni Madhub v. Joad Ali*, 17 Cal. 390 ; *Sheikh Naimaddin v. Srimanta Ghose*, 6 C.W.N. 322 (notes) ; *Durga Charan v. Kali Prasanna*, 3 C.W.N. 586 ; *Bhabanath v. Durga Prasanna*, 16 Cal. 326. The correct rule of law as to what passes at a sale held in execution of a rent-decree obtained by a co-sharer landlord would seem to be laid down by their lordships of the Privy Council in *Jiban Krishna v. Brojalal*, 30 I.A. 81 ; s.c., 30 Cal. 550, s.c., 7 C.W.N. 425 ; see also *Afraz v. Kulsumanessa*, 10 C.W.N. 177 ; also see notes under secs. 65 and 159.

Special provisions of the Act apply to decree obtained in accordance with s. 188. Joint landlords.

7. Abatement of rent :—A fractional shareholder of a tenure has no right to grant abatement of rent in respect of a holding within the tenure independently to his co-sharer : *Shyama Charan v. Sham Mollah*, 1 C.W.N. 415.

Abatement of rent at the instance of one co-sharer.

But this section has no reference to joint tenants and cannot be applied by analogy to a co-sharer tenant who brings a suit authorised by the Act, *i.e.*, a suit for abatement of rent : *Khettermoni v. Jibon*, 19 C.W.N. 546, s.c., 21 C.L.J. 315.

Scope :

8. Joint landlords :—The expression "joint landlords" must be taken as including all co-sharers under whom a tenant holds, *Haladhar Shaha v. Rhidoy Sundari*, 19 Cal. 593 ; *Prem Chand v. Mokshada*, 14 Cal. 201 ; *Gopal v. Umesh*, 17 Cal. 695 ; *Beni Madhub v. Joab Ali*, 17 Cal. 390 (F.B.).

If one set of landlords obtains separate kabuliyats entering into separate contracts for rent with the tenants such landlords cease to be joint landlords with the other co-proprietors of the land; they became joint owners and not joint landlords: *Jogesh Prakash v. Maniruddi*, 35 Cal. 417.

In the case of *Haridas Majumdar v. Golam Mahiuddin*, 53 Cal. 955 (F.B.), the following questions were referred to the Full Bench by Suhrawardy and Mukerji, J.J. :

(i) as to whether a co-sharer, collecting his own share of the rent "separately from the other co-sharer or co-sharers, is a joint landlord within the meaning of s. 188 of the Bengal Tenancy Act,

(ii) and whether such a co-sharer is entitled to make an application under section 105 of the Act.

It was held by the Full Bench that as the proceedings were initiated by the landlord under section 105 of the Bengal Tenancy Act and as it appeared from the judgment of the Assistant Settlement officer that it was an admitted fact that the sharers of the entire taluq passed into the hands of the plaintiff's predecessor gradually by sale the point involved in the two questions which had been referred to them did not arise.

When a zemindar has granted a *mourasi* tenure and the *mourasidar* has granted a *dur-mourasi* tenure to a person who with the consent of the zemindar undertakes to pay direct to him the rent payable to the *mourasidar* and to pay to the *mourasidar* his profits, the zemindar and the *mourasidar* are not constituted joint landlords of the *dur-mourasidar* to have the lands measured and rent assessed upon the excess lands at the contract rate: *Matangini v. Ram Das*, 6 C.W.N. 147 (notes) ; s.c., 7 C.W.N. 98.

Where at the time of the institution of a suit for rent the estate is properly represented by the plaintiffs, but subsequently, due to certain events, other persons become interested in the estate and it becomes necessary to join them as plaintiffs, the suit as originally framed does not become defective: *Amiya Pal Chowdhury v. Sarbamangala Debi*, 91 I.C. 657, s.c., A.I.R. (1926) Cal. 737 (Greaves and Cuming, J.J.).

Ejectment
suit on
breach of
condition.

9. Ejectment suit :—A suit by a co-sharer landlord to eject a tenant on a breach of the conditions of lease is maintainable, and sec. 188 is no bar to such a suit: *Hari Priya v. Ram Charan*, 16 Cal. 541. Where a tenant was originally let into possession by all the co-sharers, it must be shewn in order to justify any individual co-sharer in seeking to eject him, that the tenancy so created by all the co-sharers has been determined by all of them and a single co-sharer is not entitled to take separate and independent action even with respect to his own share: *Syed Gholam v. Khairan*, 31 Cal. 786, s.c., 8 C.W.N. 325. Where in a lease it was stipulated that the tenant would not be competent to make any manner of transfer such as sale, gift, mortgage etc., and if the land was transferred or sold for the tenant's debts, it would come into *khas* possession of the landlord, *held* that a suit by one of the joint landlords for *khas* possession against a purchaser is maintainable and s. 188 of the Bengal Tenancy Act is not applicable in as much as such purchaser is a trespasser: *Dwarika Nath v. Mathura Nath*, 24 C.L.J., 40 ; the case of *Radha Pershad v. Esu*, 7 Cal. 414 was followed.

Undertaking
to pay rent
separately
does not
constitute
separate
tenancy.
What con-
stitutes a
separate
tenancy.

10. Separate tenancy :—Where there was a mere under-taking, by the tenant to pay to each of the landlords their proportionate share of the rent, *held* that the effect of that arrangement was not to split up the tenancy, or create a separate tenancy under each of the landlords: *Gopal Chunder v. Umesh Narain*, 17 Cal. 695. But where a tenant, by his own act, gave to one of his co-sharer landlords the power to deal with him as if he was his tenant alone, without any regard to his own interests of the co-sharers, *held* that the effect was that a separate tenancy was created: *Panchanon v. Raj Kumar*, 19 Cal. 610. When a tenant takes a lease from one of several joint landlords in respect of his own share of the holding, the landlord

is entitled to sue for rent without joining his co-sharers: *Behari Churan v. Bhut Nath*, 3 C.W.N. 214.

See notes under sec. 159.

II. Proceedings under sec. 158:—An application under sec. S. 158. 158 cannot be made by one of several co-sharers: sec. 188 is a bar to such an application: *Moheeb Ali v. Ameer Rai*, 17 Cal. 538; and it is not a sufficient compliance with its provisions to make the landlords, who refuse to join, parties to the proceedings: *Ibid*.

12. Suit for recovery of damages:—A suit for recovery of damages for value of trees cut down by a tenant is maintainable at the instance of one of several joint landlords; *Hrisi Kesh v. Sadhu Churn*, 2 C.W.N. 80. Suit for damages.

3. Sec. 106:—Disputing an entry made in the course of a record-of-rights proceeding under sec. 106 of the Act does not come within the meaning of the words “anything which the landlord is under this Act required or authorised to do” as used in sec. 188: *Sher Bahadur Sahu v. M. H. Mackenzie*, 7 C.W.N. 500. S. 106.

14. S. 105:—S. 188 is a bar to an application by a co-sharer landlord under s. 105: *Krishna Sardar v. Paresh Sardar*, 10 C.L.J., 305. S. 105.

In an appeal against the decision in a case brought under s. 105 of the Bengal Tenancy Act, the tenant appellant got the appeal dismissed for non-prosecution against one of the heirs of one of the landlords, *held*, that the appeal against the others was incompetent: *Azimuddin v. Tarasankar*, 28 C.L.J. 201.

15. Sec. 91:—Where a landlord obtains a separate kabuliyat entering into separate contract for rent with the tenants, he can alone make an application for measurement of land under sec. 91: *Jogesh Prakash v. Maniruddi*, 35 Cal. 417. S. 91.

16. Decree by co-sharer landlord no evidence against another co-sharer:—A decree by a co-sharer landlord is not admissible as evidence as to the rate of rent in a suit brought by another co-sharer: *Abdul Ali v. Raj Chandra*, 10 C.W.N. 1084; such a decree is neither conclusive between the plaintiff and the tenant defendant nor is it admissible in evidence between them, the plaintiff not being a party to the previous suit: *Ibid*. See also *Surendra Nath v. Brojo Nath*, 13 Cal. 352, and *Tepukhan v. Rajani Mohun*, 25 Cal. 522. Decree by co-sharer landlord no evidence against another co-sharer.

17. Adverse possession:—Possession or occupation of the property by one co-sharer does not constitute adverse possession against the other co-sharer: *Ujalbi Bibee v. Umakant*, 9 C.W.N. 32; management of joint property on behalf of the co-owners without any assertion of hostile title does not constitute adverse possession against the other co-owner: *Ibid*. See also *Boroda Sundari v. Annada Sundari*, 3 C.W.N. 774, *Balaram Guria's Case*, 24 C.W.N. 7057. Adverse possession between co-sharers.

18. Separate leases by co-sharers:—Where the owners of an *ijmali* mehal leased out lands in their exclusive possession separately, *held* in a suit by one of the co-sharers for joint possession against a lessee who obtained lease from another co-sharer, that the remedy lay in a suit for partition: *Syed Ali v. Nazab Ali*, 11 C.W.N. 143. Separate leases by co-sharers.

The filing of a suit is not a thing which the landlord is, under Act, required or authorised to do. A plaint in a suit for rent is an

application to the Court for relief against an alleged grievance, which the plaintiff is entitled to submit, not by reason of provision of the Tenancy Act, but under general law: *Bhawal Sahu v. Baij Nath*, 12 C.W.N. 249 at p. 256 (P.C.).

19. Revision by the High Court : s. 622 C. P. C. (Act XIV of 1882) s. 115 C. P. C. (Act V of 1908) :—Where a District Judge deciding an appeal arising out of a suit for rent, *held* that a suit for rent was not maintainable by virtue of the provisions of s. 188 of the Bengal Tenancy Act, *held* that an application under s. 622 C. P. C., lay against the decision of the District Judge and it was accordingly set aside: *Jagabandhu v. Jadu Ghose*, 15 Cal. 47.

S. 188 does not apply.

20. Suit against Trespasser :—S. 188 does not apply to suits for ejectment of trespasser: (the suit was against a tenant after the expiry of his lease): *Reajuddin v. Abdul Jubbur*, 69 I.C. 504, (Sanderson C. J. and B. B. Ghose J.).

S. 188 does not apply.

21. Rent suit :—S. 188 does not apply to a rent suit: *Kalipada v. Sati Prasad*, 27 C.W.N. 372, s. c., 36 C.L.J. 234.

Mitakshara family.

The tendency of modern decisions, specially those of the Judicial Committee is in favour of recognition of the representative character of the manager of a joint Hindu family governed by Mitakshara school of Hindu Law though the question must be decided in each particular case subject to the operation of relevant statutory provisions such as s. 188: *Ibid*: A suit for rent by the managing member of a Mitakshara family alone will not necessarily fail because the infant proprietors have not been made joint plaintiffs or made defendants: *Ibid*.

Procedure in suits by joint landlords.

188A. Notwithstanding anything contained in this Act, every suit between landlord and tenant as such instituted by—

- (a) a sole landlord,
- (b) the entire body of landlords, or
- (c) one or more co-sharer landlords,

shall be subject to the provisions of sections 143 to 153 (both inclusive);

Bengal and Behar.

East Bengal.

and, to every decree passed in a suit framed under sub-section (1) or sub-section (2) of section 158B the provisions of Chapter XIV shall, so far as may be practicable, be applicable.

and, to every decree passed in a suit framed under section 148A or section 158B the provisions of Chapter XIV shall, so far as may be practicable, be applicable.

Notes:—This section was inserted by Act I B.C. of 1907 and Act I of 1908 of E.B.A.C.

The Select Committee, in their report on the Bill of 1906 stated as follows:—

“We have recast this clause in order more fully to counteract the ruling in the case of *Jogendra Nath Ghosh v. Paban Chandra Ghosh*

referred to in the note on clause 34. We have made the provisions of Sections 148 to 153 applicable to all suits between landlord and tenant as such instituted by a sole landlord, the entire body of landlords or one or more co-sharer landlords, and have omitted mention of sections 168, 169, 184 and 185, and we have applied the various sections of Chapter XIV of the Act to proceedings in execution of rent decrees in suits framed under section 158B. This was apparently the intention of the framers of the Bengal Tenancy Act, 1885, but the intention was frustrated by the *ratio decidendi* in the case of *Jogendra Nath Ghosh v. Paban Chandra Ghosh* (8 C.W.N. 472)."

Rules under Act.

Rules under Act.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules, consistent with this Act,—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

Power to make rules regarding procedure, powers of officers and services of notices.

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

Ben. Act V. of 1875.

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act;

(3) to prescribe the manner in which landlord's fees shall be transmitted to the landlord; and

(4) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 and 18, clause (a), may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with.

Amendment :—The present sub-sec. (2) was substituted for the former sub-sec. (2) by Act I B.C. of 1907 and Act I E.B.A. of 1908. The former sub-sec. (2) was as follows:

(2) To prescribe the mode of service of notice under this Act where no mode is prescribed by this or any other Act.

Sub-secs. (3) and (4) are new and were inserted by the same Amending Acts.

Rules in Settlement Manual :—The following observations were made by Prinsep, J., in delivering judgment in the case of *The* Rules without sanction.

Secretary of State for India in Council v. Nitye Singh, 21 Cal. 38 (at pp. 48, 49).

"I have no doubt that all rules in the Survey Manual and Settlement Manual relating to the duties of Revenue Officers making a survey and preparing a record-of-rights under the authority of sec. 101 of the Bengal Tenancy Act so far as such Officers act as Judicial Officers, and purporting to be instructions to those officers which have not been passed by Government in the manner prescribed by secs. 189 and 190 of that Act, are altogether without sanction of law and are in no way binding on such officers, and that it is our duty to declare this. They are without legal authority as rules purporting to be made by Government because they have not been passed in the manner required by secs. 189 and 190 of the Bengal Tenancy Act. They are moreover not binding on Revenue Officers so acting under the Bengal Tenancy Act so far as the rules purport to be under the authority of the Board of Revenue, because that Board is not empowered to make such rules or to issue such rules for the instruction and guidance of Revenue Officers in the matter, such Revenue Officers acting under the Bengal Tenancy Act empowered by that Act to exercise certain judicial functions in the course of which they may pass orders subject to appeal to a Special Judge and ultimately to the High Court.

"The Bengal Tenancy Act does not confer authority on the Board of Revenue in such matters and therefore Revenue Officers, in the performance of duties under that Act, cannot be in any way subject to the control and authority of the Board of Revenue, or be required to observe rules passed by that Board. They are bound to observe the laws and such rules as may be regularly passed by Government under secs. 189 and 190 of the Act and also any order passed judicially on appeal by the Special Judge or the High Court, and they are also bound to follow as precedents the orders passed by the Special Judge and High Court in cases of similar character. Revenue Officers in such proceedings are subject to no other authority, consequently in all matters of a judicial nature coming within Chapter X of the Bengal Tenancy Act, a revenue Officer is subject to no orders from the Board of Revenue. They are subject to rules made by Government under that Act and to no other rules and to no departmental instructions in relation to matters regarded as judicial and open to appeal to a Special Judge."

Procedure
for making,
publication
and con-
firmation of
rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement proceedings by a Revenue authority empowered by the Government to make definitely or confirm settlements.

*Provisions
as to tem-
porarily-
settled
districts.*

*Saving as to
tenures held
in estates
which have
never been
permanently
settled.*

Notes :—Sec. 191 has no application where an estate, though not permanently settled in 1893, was subsequently permanently settled in the year 1811: *Tamasha Bibi v. Ashutosh*, 4 C.W.N. 513.

Where a lease granted by the Revenue authority showed that the settlement was a permanent one, at a rate of rent fixed in perpetuity, subject only to the condition that that rent was not to be payable in full until after the expiry of twenty years from the date of the document, *held* that that does not make the lease any the less a permanent lease and that the settlement must therefore be regarded as a Permanent Settlement: *Ibid.* Though certain provisions of Regulation III of 1828 go to shew that the Sunderbuns, up to that date, continued as the property of the State and had not been permanently settled with any one, that was intended to be said generally with regard to the tract of country known as Sunderbuns as a whole, and it could not have been intended to undo the effect of any lease granted by any duly constituted revenue authority: *Ibid.* ; (*Per Banerjea J.*).

A temporary settlement-holder is not, by virtue of the terms of sections 191 and 192 of the Bengal Tenancy Act, precluded from exercising the ordinary powers of a landlord, under ss. 7 and 30 of

the Act: *Makbul Ali v. Jogesh Chandra*, 30 C.L.J. 140. See the cases in 19 C.L.J. 614 ; 35 C.L.J. 14 and *Priyanath v. Ramtaran*, 30 Cal. 81 (P.C.).

Power to
alter rent in
case of new
assessment
of revenue.

192. When a landlord grants a lease or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(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, or of his own motion, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

See notes under s. 191.

Amendment :—Before the words “fix a fair and equitable rent” the words “or of his own motion” were inserted by Act I B.C. of 1907 and Act I E.B.A.C. of 1908.

Settlement of rent without authority, effect of :—Where a tenant in his appeal before the Special Judge against an order for the settlement of rent purporting to have been made under sec. 192 did not take the objection that the settlement of rent was made contrary to the provisions of that section and without jurisdiction—and the decision of the Settlement-officer was affirmed by the Special Judge, *held* that the matter was *res judicata* in a suit for rent and could not be re-opened in the Civil Court owing to the operation of ss. 107, 109 and 109A: *Mohim Chandra v. Kalitara*, 11 C.W.N. 904.

Sundarbuns :—There can be a permanent tenure in the Sunderbuns. A part of the Sunderbuns can be a permanently settled area even if settled after 1793, the definition in cl. (2) of s. 3 of the Bengal Tenancy Act notwithstanding: *Kheiter Moni v. Jiban Krishna*, 21 C.L.J. 315. This decision was reversed on appeal to P. C., 48 I.A. 39, s. c., 48 Cal. 478, s. c., 25 C.W.N. 361, s. c., 33 C.L.J. 214.

Rights of
pasturage,
etc.

Rights of pasturage, &c.

Rights of
pasturage,
forest
rights, etc.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest right, rights over fisheries and the like.

Headings of Notes.

1. PROVISIONS OF THIS ACT SO FAR AS MAY BE &c.
2. SUIT UNDER S. 9, SPECIFIC RELIEF ACT.
3. TANK.
4. JULKUR OR RIGHT OF FISHERY.
5. FERRY TOLLS.
6. DISTRAINT.
7. CHAPTER XIV AND SEC. 65.
8. SUIT FOR RENT OF FISHERY AND AGRICULTURE.
9. PASTURAGE.
10. FOREST RIGHTS.
11. DRIFT AND STRANDED TIMBER.
12. INTEREST FOR JULKUR.
13. SUIT FOR MONEY FOR SALE AND PURCHASE OF CROPS.
14. KATIHARI DUES.

1. Provisions of this Act so far as may be &c. :—S. 153 S. 153. applies to a suit for *Phulkur* rent: *Kanai Mahaldar v. Madhu . Sudhan*, 6 C.L.J. 669, also to a suit for rent for a *julkur*: *Annanda v. Nagendra*, 15 C.L.J. 52.

2. Suit under sec. 9, Specific Relief Act :—A person who has for a time exercised the right of fishing in waters which cover land which does not belong to him, and who is forcibly prevented from fishing in such waters, cannot maintain an action under sec. 9 of the Specific Relief Act: *Fadu Jhala v. Gour Mohan*, 19 Cal. 544 (F.B.).

Forcible dispossession from fishing.

A suit for possession of a *julkur* or right to fish in a *Khal*, the soil of which does not belong to the plaintiff, does not come within the provisions of s. 9 of the Specific Relief Act: *Natabar v. Kubir*, 18 Cal. 81.

Rights to *julkur* & not to soil.

3. Tank :—A suit for rent of a share of a tank does not come under the provisions of this section: *Gour Mohon v. Chandi Charan*, 14 C.W.N. 159 (notes); 11 C.L.J. 63 notes portion. The lease of a tank is not a lease for agricultural or horticultural purposes: *Chandra Mohon v. Ramnarain*, 17 C.W.N. 80 (notes).

Tank.

4. Julkur or right of fishery :—The East India Company as representing the India Government, has a freehold in the bed of a navigable river and in the land between high and low water marks: *Deo De. Seebkristo v. East India Co.*, 6 Moo. I. A. 267.

Government has the right to the bed of a navigable river.

The bed of a tidal navigable river is not the property of any individual, but of the public and if any person claims an exclusive right in such river, he must show that it has been acquired either by grant or by prescription, which is evidence of a grant from Government: *Gureeb Hossein v. Lamb*, S.D.A., 1859, p. 1357. See also *Baban Mayacha Nagu v. Shrivacha*, 4 Cal. 53.

The beds or channel of navigable rivers are ordinarily the property of Government and subject to the right of navigation, and such other rights in such river and, the soil over which they flow, belong to the State: *Bagram v. Collector of Bhulloa*, Gap. No. 1 W. R. 1864, p. 243; but *julkur* rights in such rivers may exist as private property, and what was once common to all or was the property of individuals: *Ibid*.

The right of fishing in navigable rivers does not belong to the

Right of fishing.

public, and Government is not prohibited by any law from granting to individuals exclusive right of fishing in such rivers: *Chunder Jaleah v. Ram Churn*, 15 W.R. 212.

Exclusive right of fishery.

The exclusive right of fishery in tidal navigable rivers may be granted by the Crown to private individuals and such right must in the generality of cases be proved either by proof of direct grant from the Crown or by prescription: *Hari Das v. Mahomed Joki*, 11 Cal. 434.

As to what is necessary for establishing exclusive right of fishery: see *Abhoy Charan v. Dwarka Nath*, 39 Cal. 53, s. c., 15 C.W.N. 972.

Bed of a tidal navigable river.

Ghose and Gordon, J.J., in delivering their judgment in the case of *Satcowri v. The Secretary of State for India in Council*, 22 Cal. 252, discussed the above case and observed as follows:—Upon the cases we have just referred to, it may be accepted as law on this side of India that the bed of a tidal and navigable river is vested in the Crown; and that the right of *julkur* (fishery) in such river, as also the bed of the river itself may be granted by Government (whether it be in the exercise of their prerogative as the Crown or as representing the public) to private individuals to be held by them as private property, subject of course to the right of navigation and such other rights which the public has in such rivers.

Julkur—a benefit arising out of land

A *julkur* or right of fishery is a benefit arising out of land covered by water, and comes within the definition of “immoveable property” as defined in the General Clauses Act (I of 1868) and is therefore immoveable property under s. 106 of the Transfer of Property Act: *Ram Gopal v. Nuru Muddin*, 20 Cal. 446.

and is immoveable property.

Julkur is immoveable property within the meaning of the General Clauses Act, sec. 2, cl. (5), being a benefit arising out of land* and a suit for rent of a fishery is to be brought where the suit for the possession of the fishery would lie, and where it was uncertain in the jurisdiction of which of two Courts a fishery lay, held that secs. 16 and 19, C. P. C. would apply and a suit for rent of the fishery could be brought in either of the two Courts: *Shebu Halidar v. Gopi Sundari*, 1 C.W.N. 87 (notes).

Right of fishing. Easement.

A right of fishing in another's waters is an easement within the meaning of the term as defined in s. 2, cl. (5) of the Limitation Act: *Bibi Ahmadi v. Taraknath*, 18 C.L.J. 396.

Right of fishery without land.

A grant of a fishery right or right of pasturage or the like may be made independent of an interest in land: *Abdulla v. Asraf Ali*, 7 C.L.J. 152.

Land Acquisition Act.

Fishery rights are not land within the meaning of the Land Acquisition Act: *Shyam Chandra v. The Secretary of State*, 12 C.W.N. 569, s. c., 7 C.L.J. 445.

Sub-soil.

Where the grant is merely a right of fishery, the lessee acquires no right in the sub-soil, nor is entitled to retain possession, when the water dries up: *Manananda v. Mogla*, 31 Cal. 937.

Tidal & navigable river.

Government has the right to lease fishery rights in tidal and navigable rivers: *Ayub Ali v. Daya Bibi*, 12 C.W.N. 105.

* The case of: *Fadu Jhala v. Gour Mohon*, 19 Cal. 544 was distinguished in this case.

When no account of a change in the course of a public navigable river an arm of the river ceases to be an arm of the following river, the person who had a right of fishery in the river ceases to have any right to it ; it becomes the property of the adjacent owner : *Ishan Chandra v. Upendra Nath*, 12 C.W.N. 559 ; but where the plaintiff had a julkar in a big river and claimed a right of fishery in a piece of water which was originally a part of the river and still connected with it, though the communication might dry up in the hot weather, he is entitled to fishery in the said water : *Jogendra Narain v. Crawford*, 32 Cal. 1141.

Change in the course of a public navigable river.

When a tidal and navigable river shifts its course, fishery rights continue to subsist in the river in its new course : *Ayub Ali v. Daya Bibi*, 12 C.W.N. 105, see also *Srinath v. Dinabandhu*, 20 C.L.J. 385.

Unless a person can establish his right to a fishery independent of his right to his estate he can have no title to any such right in a navigable river or any part thereof lying outside the boundaries of his estate : *Mathuranath v. Sib Chandra*, 12 C.W.N. 334 ; what evidence is necessary to prove a grant of an independent right of fishery in a navigable river has been discussed in this case.

Where a non-tidal and non-navigable river which formerly flowed through A's estate, by gradual and imperceptible encroachment came to submerge a portion of an adjoining estate owned by B, held that A did not thereby acquire the right of fishery over that portion of the river which covered B's estate : *Narendra v. Suresh Chandra*, 10 C.W.N. 540.

If a river shifts its course, having lakes, *dobas* or sheets of waters in its old bed, the grantee of the exclusive right of fishery in the river retains that right over such lakes and *dobas* so long as these latter remain in communication with the main channel at all seasons of the year : *Bhaba Prasad v. Jogadindra*, 33 Cal. 15.

A right of fishery in a navigable river running through land permanently settled with a person may be presumed in his favour as included in the settlement from a long continued user of such right, although there may not be any express grant : *Sarat Chandra v. Kalaram*, 33 Cal. 1349.

Fishery in a navigable river.

It is now settled law in Bengal that the Government's grantee of a several fishery in a tidal navigable river can follow the shifting course of the river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and down stream limits of his grant, whether the Government owns the soil subjacent to such waters as being the long established bed or whether the soil is still in a riparian proprietor as being the site of the river's recent encroachment : *Raja Srinath Ray v. Dinabandhu Sen*, 20 C.L.J. 385 (P.C.).

The owner of the fishery of the river which has taken a new course and flows through a channel in which another has a right of fishery cannot share in the fishery in the united waters : *Sarada Prasad v. Khaja Mahammad*, 24 C.L.J. 158 ; the case of *Nabin Chunder v. Radha Pearee*, 6 W.R. 17 was referred to and the case of *Srinath Ray v. Dinobandhu*, 42 Cal. 489, s. c., 20 C.L.J. 385 was distinguished.

The right of fishery in a non-tidal and non-navigable river is dependent on and incidental to the ownership of the soil or bed of

Fishery in a non tidal

and non-navigable river.

the river : *Narendra Chandra v. Nripendra Chandra*, 4 C.L.J. 51 ; when therefore, such a river, by slow and gradual shifting, encroached on a neighbouring estate, the original owner of such right lost and the neighbouring proprietor acquired it, over such portion of the river as covered a bed owned by the neighbouring proprietor : *Ibid*.

Adverse possession of fishery right against Government in public navigable river.

An indefeasible title to fishery in a portion of the river can be obtained by adverse possession for 60 years against the Government. Adverse possession of fishery rights can be established in a public navigable river, if exclusive acts of possession are shown for the statutory period. In computing the statutory period of adverse possession, the possession of the mortgagee in possession can be tacked with that of the owner : *Debendra Lal v. Secretary of State*, 46 C.L.J. 322 (Greaves and Mukerji, J.J.). *Thak* authorities have nothing to do with title or possession : *Ibid*. The case of *Jagadindra v. Secretary of State*, 30 I.A. 44 ; s. c., 30 Cal. 291 referred to, and no deduction as to title or possession can legitimately be drawn from *thak* maps : *Ibid*.

Riparian owners.

Riparian owners have equal rights to a usufruct of the waters of an adjacent natural stream, and no proprietor has the right to use the water to the prejudice of other proprietors, above or below, unless he has a prior right to diversion : *Balbhadra v. Najiban*, 4 C.L.J. 370.

Customary right.

A customary right of the tenants in the locality to cut wood for fuel, plough handles, door-posts &c., is a right of customary easement attaching to the locality and not to any collection of individuals ; such a right is known in this country, in the case of free pasturage or a fishery, what in English law is called a *profit a prendre* : *Sitab Rai v. Dubal*, 6 C.L.J. 218.

Income Tax.

Jalkar was included in the assets of the Permanent Settlement and is not liable to further taxation under Income Tax Act : *Maharajadhiraj of Darbhanga v. Commissioner of Income Tax*, [1925 Pat.] p. 49 (Dawson Miller C. J. and Foster J.).

The ground rents of markets as distinguished from tolls or other internal duties in connection therewith were included in the schedule of assets settled with the Zemindar and are therefore exempt from income tax : *Ibid*.

The settlement left to the Zemindar the ground rents of land, shops etc., in all the then existing *hats* except such ; if any, as were specifically excluded and if more *hats* are now shown to exist than appear in the settlement paper, it must not be presumed, in the absence of evidence to the contrary, that they have sprung up since the settlement. If they existed to the Zemindar in the absence of any specific exclusion. The onus is not on the assessee to prove inclusion but upon the Crown to prove exclusion : *Ibid*.

The proprietor is just as much entitled to be paid for the use of the *ghats* for purposes of mooring as he is to take dues from those using the *ghats* for other purposes : *Ibid*.

The income derived from *jalkar hat* and *ghatlagi* is not liable to income tax : *Ibid*.

Income derived from land such as *jalkar* etc., excepting that used for agricultural purposes, in permanently settled estates, is liable to assessment to income tax : *Emperor v. Probhat Chandra*, 31 C.W.N. 165, s.c., 45 C.L.J. 323 (F.B.). Income derived

from *jalkar*, whether or not taken into consideration at the time of fixing the jama at the time of Permanent Settlement is assessable for income tax purposes: *Ibid.* The imposition of income tax on profit derived from permanently settled estate is not a violation of a positive statutory engagement made with the Zemindars at the time of the Permanent Settlement: *Ibid.* (*Emperor v. Probhat Chandra*, 51 Cal. 504 approved; *Emperor v. Indu Bhusan*, 53 Cal. 524, s. c., 30 C.W.N. 524, s. c., 44 C.L.J. 427 overruled).

Incident of an occupancy raiyāt—Julkur:—An occupancy raiyāt has also the right to fishery in the water over it when there is inundation unless the right has been restricted in the grant or when the landlord has acquired such right by adverse possession or custom: *Henry Hill v. Shebaj*, A.I.R. 1922 Pat. 9 (Mullick and Ross J.J.); the case of a tenure-holder is even stronger, he possesses all the rights of a landlord: *Ibid.*

The evidence upon which a man is to claim an exclusive right of fishing in a navigable river must be plain and clear: *Midnapore Zemindari Co. v. Trailakya*, 40 C.L.J. 238. Fishery in a public navigable river.

Where the waters are *publici juris*, every body has a right in India to fish in any navigable water, whether tidal or not: *Ibid.*

It was in the power of the Government—in right of the Crown as successor to the East India Company—to grant exclusive right of fishing in a public navigable water. Since about 1860, the policy of making such grants has been greatly doubted. But such grants were not uncommon in Bengal in earlier times, and, if proved, they are perfectly legal. But they have to be proved. Mere grant of rights to tolls are not rights of exclusive fishery. A mere mention in the revenue documents that certain classes of revenue are not being interfered with, is not to be construed in granting exclusive right in navigable waters, if other adequate and sufficient meaning can be found for them: *Ibid.*

5. Ferry tolls:—The provisions of the Rent Law are not applicable to a suit relating to ferry tolls: *Radha Singh v. Upendra Chandra*, 27 Cal. 239. Ferry tolls.

In a suit to recover sums due under a contract for the defendant plying boats in a private ferry, held that the sum payable was in no sense rent: *Prohlad v. Shashadhar*, 14 C.W.N. 994.

6. Distraint:—It seems that the provisions relating to distraint do not apply to fisheries, &c., for this section says that the provisions of this Act applicable to *suits* for the recovery of arrears of rent shall, as far as may be, apply to &c., &c.; when the provisions applicable to *suits* will apply, it is apparent that the *proceedings* relating to distraint *which are not suits* have no application to fisheries, &c. Distraint.

7. Chapter XIV and sec. 65:—Chapter XIV and sec. 65 seem to apply to suits for recovery of rent of fisheries, &c. Ch. XIV and S. 65.

8. Suit for rent of fishery and agricultural holding:—A suit for a consolidated amount including both the rent of an agricultural holding and the amount contracted to be paid on account of a fishery which the defendants claimed as a right appurtenant to the holding is maintainable in view of s. 45, C. P. C. (Act XIV of 1882): *Shib Prosad v. Vakai*, 33 Cal. 601. Suit for consolidated rent of fishery and agricultural holding.

Pasturage.

9. Pasturage :—It was proved in a suit brought by raiyats against their *putnidar* landlord that the former had been enjoying a right of pasturage over certain indigo and waste lands of the latter from time immemorial, *held* that this entitled the raiyats to a decree declaring their right to graze cattle on the said land, so as not to prevent the *putnidar* or his successors from cultivating or executing improvements on them so long as sufficient pasturage was left to the raiyats and other persons entitled to their right : *Bholanath v. The Midnapur Zemindary Co.*, 8 C.W.N. 425 (P.C.).

Grant of trees as distinct from land.

10. Forest rights :—A grant of the trees as distinct from the land in which the grantor reserves forest right except the one which is granted, is nevertheless the grant of a forest right within the meaning of this section : *Abdullah v. Asraf Ali*, 7 C.L.J. 152. A suit for the recovery of money payable in respect of forest rights is governed by the three years' rule of limitation laid down in Sch. III. Art. 2, cl. (b) of the Bengal Tenancy Act : *Abdullah v. Asraf Ali*, 7 C.L.J. 152. The provisions of the Bengal Tenancy Act applicable to suits for the recovery of arrears of rent are, having regard to the phraseology of s. 193, designedly made applicable to suits for the recovery of sums that are not rent ; and money payable in respect of forest-rights is not rent within the meaning of s. 3 (5) of the Act : *Ibid*.

A grant of the right to fell timber of a particular class and specified size during a defined period of time, though extremely restricted in its scope, which prohibited the lessee from doing any damage to the *bankar mehal*, *i.e.*, to the forest is obviously a grant of forest-rights and cannot be regarded as a sale of timber : *Abdullah v. Asraf Ali*, 7 C.L.J. 152.

Suit for money for forest rights.

A suit for recovery of money on account of forest rights is governed by the Bengal Tenancy Act : *Baudi Ali v. Amad Sarkar*, 19 C.W.N. 415, s. c., 20 C.L.J. 227.

Julkur includes right to drift and stranded timber.

11. Drift and stranded timber :—Julkur or water rights include rights to drift and stranded timber as well as to fishery and similar interest on the produce of the river : *Amriteswari Devi v. The Secretary of State for India in Council*, 1 C.W.N. 249 : s. c., 24 Cal. 504 (P. C.). The Indian Forest Act (VII of 1878) has not the effect of taking away from private owners, and vesting in Government, any rights to drift and stranded timber which such owners possessed before and at the time of the passing of the Act, except in so far as these rights might be affected by their failure to prefer their claims; the object of the Act is regulation and not confiscation : *Ibid*.

Sch. III, Art 2 cl. (b).

12. Interest for Julkur : S. 193 :—Sch. III Art. 2 Cl. (b) applies to a suit for recovery of rent of a julkar : *Krishna Lal v. Salim Mohamed*, 19 C.W.N. 514. Money reserved in such a lease is not rent within the meaning of the Bengal Tenancy Act and interest at the rate of 12½ per cent. under s. 67 cannot be allowed in respect of arrears of such money : *Ibid*.

Suit for money for sale and purchase of crops, not a suit for rent.

13. Suit for money for sale and purchase of crops :—A suit for recovery of arrears of money alleged to be due from the defendant in consideration of the right which had been conveyed to him to collect money from persons who came upon the *khas khamar* land for sale and purchase of crops is not a suit for rent but a suit for money : *unreported appeal from appellate decree No. 1781 of 1913, Arjan Molla v. Ram Lal Ghose*, (decided by Chapman and Walmsley

J.J., 8 March, 1915). Their Lordships relied upon the decision in the Full Bench case of the *Secretary of State for India in Council v. Karuna Kant*, 35 Cal. 82 and particularly on the judgment of Brett J. Their Lordships observed as follows:—"We are of opinion that the money due under their arrangement was not rent. That being so, the suit was not excluded from the cognizance of the Small Cause Court, and being a suit cognizable in the Court of Small Causes and the value of the suit being less than Rs. 500 no second appeal lay to this Court."

14. Katihari dues :—A suit to recover *Katihari* dues, being a profession tax, viz., house rent from a weaver for the carrying on of his trade in his house and the waste land adjoining his house is not to be confounded with a suit for agricultural rent : *Rameshwar v. Bikan Mamin*, 36 I.C. 600. (Patna case).

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this act shall entitle any person occupying land with the estate or tenure to do any act which involves a violation of that rule or condition.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

Excavation of tank :—A granted a permanent tenure to B with a stipulation not to excavate a tank on the land comprised in the tenure ; B granted a raiyati lease to C who excavated a tank without being aware of the restrictive covenant in B's lease not to excavate any tank, *held* that in a suit by A against B and C, B and not C was liable to damages : *Akhoy Kumar Chatterjea v. Akman Molla*, 19 C.W.N. 1197, s.c., 20 C.L.J. 551.

Restrictive covenant as to excavation of tank.

S. 178 sub-sec. (1) cl. (d) is controlled by s. 194 : *Ibid.*

Savings for special enactments.

195. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates.

Saving for special enactments.

- (e) any enactment relating to patni tenures, in so far as it relates to those tenures; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Headings of Notes.

1. ENACTMENT.
2. PUTNI.
3. CL. (a).
4. CL. (b).
5. CL. (c).
6. CL. (d).
7. CL. (e).
8. CL. (f).

Putni Regulation.

I. Enactment :—The Putni Regulation (Reg. VIII of 1819) is specially saved from the operation of the Bengal Tenancy Act by sec. 195 (c) : *Gynada Kantho v. Brahmomoyi*, 17 Cal. 162 ; see notes under sec. 13.

Secs. 15 and 16 do not affect the provisions of Reg. VIII of 1819 and they are therefore applicable to a putni tenure : *Durga Prasad v. Brindabun*, 19 Cal. 504 : see notes under secs. 15 and 16.

“The words ‘in so far as it relates to those tenures’ must, we think, be treated as expressly limiting the provisions to enactments relating to *putni* property and strictly so called, and as intended to exclude those which relate to tenures, which although resembling *putnis*, as *dar-putni*, etc., are not strictly *putnis*, not possessing all the qualities of them,” *held* by the Full Bench in the case of *Mahomed v. Biroja Sundari*, 11 Cal. 360.

Putni tenure.
Construction of lease.

2. Putni :—The use of the expression *putni taluk* in the contract of tenancy does not necessarily create a *putni taluk*, in other words, a *taluk* subject to the summary procedure for realisation of rent under Reg. VIII of 1819 : *Nirad Chandra v. Harihar Chakravarti*, 32 C.L.J. 19. Where certain shares in certain mehals were granted in a permanent lease along with certain jote lands situated in those mehals, by one instrument, which described it as a *Putni* settlement, at a rent fixed in a lump, and where in such a case there was no appropriation of the rent of the jote jamas as distinguished from that of the *putni taluk*, *held* that the settlement created under this lease cannot be regarded as a valid *putni* tenure within the meaning of Reg. VIII of 1819, although that might have been the intention of the parties originally : *Hayes v. Bidyanund*, 3 C.L.J. 373.

Is a Putni tenure governed by the Bengal Tenancy Act ?

It seems that a Putni tenure is not governed by the Bengal Tenancy Act if there are no agricultural tenants upon the land. An objection which was taken by the respondent in a second appeal (*Basanta Kumar v. Khulna Loan Co.*, 20 C.L.J. 1) that a *putni* is governed by the Transfer of Property Act their Lordships observed as follows :—“...a reference to the description of the property given in the schedule to the plaint indicates that the property is situated in various villages which *prima facie* would contain agricultural lands. The respondents are besides not even able to assure us that there is

a real foundation for the theory that this *putni* does not include any agricultural land at all."

As to whether a Putni tenure is governed by the Bengal Tenancy Act, see notes under the Preamble.

The Putni Regulation provides rules for the alienation of the whole or a part of a *putni* taluk and these cannot be affected by anything in the Bengal Tenancy Act in view of s. 195 cl. (e) of the Act: *Shaizuddin v. Muthuramohon*, 18 C.W.N. 338. Transfer of Putni tenure.

A partial transfer of a *putni* taluk is not entitled to be recognised by the zemindar: it is a form of transfer which under the terms of ss. 5 and 6 of Reg. VIII of 1819 the zemindar is not bound to recognise and under s. 195 (e) of the Bengal Tenancy Act the transferee cannot claim recognition by reason of ss. 12 and 17 of the latter Act: *Rakhal Chandra v. Umapada*, 18 C.W.N. 629.

Until registration of the name of a purchaser of a *putni* tenure is effected in the landlord's *sherista*, the transfer does not affect the zemindar's right and, in spite of the transfer, the landlord may ignore the transferee and may continue to hold the recorded tenant responsible for the rent and other obligation imposed upon the tenure. *Krishna Chandra v. Dina Nath*, 54 Cal. 1064 (Panton and Mitter J.J.). The cases of *Joykrishna v. Sarfannessa*, 15 Cal. 345 and *Luckhinarain v. Khettro Pal*, 20 W.R. 380 relied on.

A putnidar may deposit rent under s. 61: *Batakrishna v. Janaki* S. 61. *Nath*, 18 C.W.N. 916.

The special lien which a subordinate tenure holder acquires under s. 13 of Reg. VIII of 1819 by depositing the putni rent in arrears for which the *Putni* has been advertised for sale by the Zemindar under that regulation is not affected by proceeding taken in respect of the *Putni* under the Bengal Tenancy Act, the *Putni* Regulation being a self-controlled Act specially excluded from the operation of the Bengal Tenancy Act by s. 195: *A. H. Forbes v. Maharaj Bahadur*, 18 C.W.N. 747. Reg. VIII of 1819, S. 13.

Resident hereditary cultivators, to whom the proviso to s. 11 of Regulation VII of 1819 is applicable, are not liable to pay higher rent on proof of the condition on which their rent is liable to enhancement under the Bengal Tenancy Act: *Rakhal Chandra v. Bhabadab*, 53 I.C. 271.

3. Cl. (a):—Settlement Law.—See Reg. VII of 1822, IX and XI of 1825, IX 1833.

4. Cl. (b):—Realisation of Rent in Govt. and Ward's Estates. See Acts VII (B.C.) of 1868 and I (B.C.) of 1895.

5. Cl. (c):—Sale for arrears of Govt. Revenue Avoidance of Incumbrances.—See XI of 1859 (ss. 37 and 52), VII (B.C.) of 1868 (ss. 11 and 12), II (B.C.) of 1895.

6. Cl. (d):—Partition of revenue paying estates.—See Act V (B.C.) of 1897.

7. Cl. (e):—S. 195 (e) of the Bengal Tenancy Act, says that the Bengal Tenancy Act would not apply to enactments relating to Putni tenure in so far as it relates to those tenures. Where the Putni law is silent, the provisions of the General Rent Law would apply. This has been settled by authorities. The Putni law is silent as to the

realisation of rent beyond one year and, therefore, the Zemindar is entitled to bring his suit under the ordinary rent law. The Putni law only confers the additional rights to recover rents by a summary process of sale which is restricted to the recovery of rent for one year : *Sheikh Abdul Gaffar v. Downing*, 5 Pat. 415 at page 431 (Jwala Prasad and Bucknill J.J.).

Dar putni tenures are not included within the terms of clause (e) of s. 195. S. 13 of this Act applies to sales of *dar putni* tenures in execution of decrees : *Mahomed Abbas Mandal v. Braja Sundari*, 18 Cal. 360.

S. 195 does not prevent s. 52 from applying to the case of a *putnidar* : *Ranjit Sinha v. Abdur Rahim*, 45 I.C. 190, (Fletcher and Shamsul Huda J.J.).

Right of
occupancy.

8. Cl. (f) :—There is nothing in the Bengal Tenancy Act to indicate that its operation as to the extended means of acquisition of the right of occupancy should not affect a purchaser at a sale for arrears of Government revenue ; the extended connotation of the expression "right of occupancy" does not affect Act XI of 1859, so far as it relates to avoidance of tenancies and encumbrances : *Sarat Chandra v. Asiman*, 31 Cal. 725.

The B. T. Act does not in view of s. 195 (e) affect the rights of putnidars under the Putni Regulation : *Durlav v. Jamiruddin*, 90 I.C. 405 (Suhrawardy and Duval, J.J.).

Construction
of Act.

Act to be
read subject
to Acts here-
after passed
by Lieu-
tenant-
Governor of
Bengal in
Council.

Construction of Act.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

Interpretation of some important words and expressions &c.

Headings of Notes.

1. PREAMBLE.
2. S. 3 CL. 9 : HOLDING.
3. SEC. 16 : BAR TO RECOVERY OF RENT PENDING NOTICE OF SUCCESSION.
4. S. 18 : SUBLEASE BY FIXED RAIYAT.
5. S. 26 : UNDER-RAIYAT WITH RIGHT OF OCCUPANCY BY CUSTOM.
6. S. 29 : APPLICABILITY OF, TO UNDER-RAIYAT WITH RIGHT OF OCCUPANCY BY CUSTOM.
7. S. 30 : ENHANCEMENT OF RENT OF AN OCCUPANCY HOLDING.
8. S. 30 : PREVAILING RATE.
9. S. 48 : LIMIT OF RENT RECOVERABLE FROM UNDER-RAIYAT.
10. S. 49 : RESTRICTION ON EJECTMENT OF UNDER-RAIYAT.
11. S. 54 : VILLAGE OFFICE.
12. S. 61 : DEPOSIT OF MONEY-RENT.
13. S. 65 : APPLICABILITY OF, TO LAND HELD BY UNDER-RAIYAT.
14. S. 66 : SUB-SEC. (3).
15. S. 67 : INTEREST.

16. S. 74: ABWAB.
17. S. 79: CL. (f).
18. S. 84: COLLECTORS' CERTIFICATE.
19. S. 85: SUBLEASES BY FIXED RAIYATS.
20. S. 87: PROVISIONS NOT EXHAUSTED.
21. S. 93: "ESTATE", MEANING OF.
22. CHAPTER X (RECORD OF RIGHTS): CHAPTER X NOT CLEAR OF COMPREHENSION.
23. CHAPTER X: DWELLING HOUSE: NON-AGRICULTURAL HOLDINGS.
24. S. 105: LAND.
25. Ss. 105 AND 105A.
26. S. 106: SUIT FOR POSSESSION.
27. S. 153: CL. (1).
28. S. 155: ANY CASE.
29. S. 160: "PERMISSION TO CREATE".
30. S. 161: INCUMBRANCE.
31. S. 167: DATE OF SALE.
32. S. 169: INTEREST.
33. Ss. 170 AND 174.
34. S. 174: JUDGMENT DEBTOR.

I. Preamble :—".....the preamble of the Bengal Tenancy Preamble. Act which may be referred to as indicating its general scope (See Maxwell on the Interpretation of Statutes, 3rd Ed. p. 59 and *Turquand v. Board of Trade*, L.R. 11 Ap. cas. 286) shews that the Act is intended to amend and consolidate, not the entire law of landlord and tenant, but only certain enactments to that law: (*Per Banerjee J.*, *Maclean C. J.*, concurring) *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763 at p. 766.

See notes at p. 2 ante.

2. S. 3 cl. (9): Holding :—The definition of holding should S. 3 Cl. (9). be read by inserting the word "*entire*" before the words 'parcel' and 'parcels'. The definition therefore will read thus: (the inserted words are in italics).

"Holding" means an *entire* parcel or *entire* parcels of land held by a raiyat and forming the subject of a separate tenancy.

See in this connection: *Hurry Charan v. Raja Ranojit*, 25 Cal. 917, s. c., 1 C.W.N. 521; *Baidya Nath v. Sheikh Jhin*, 2 C.W.N. 44; *Haribole v. Tuslimuddin*, 2 C.W.N. 680; *Ahadulla v. Gagan Molla*, 2 C.L.J. 10; and *Parbaty v. Mathura Nath*, 16 C.W.N. 877, s. c., 16 C.L.J. 9.

It was held by Richardson J., that there can be a raiyati interest in an undivided share of land: *Banka Behari v. Benode Kumar*, 13 C.W.N. 264 (notes); also see observations of Petharam C.J. in *Harry Churn v. Ranjit*, 1 C.W.N. 521; s. c., 25 Cal. 917; also see *Baidyanath v. Sudharam*, 8 C.W.N. 751 and *Jardine Skinner & Co. v. Rani Sarat Sundari*, 3 C.L.R. 140; in the two latter cases it was held that under Act VIII of 1869 (B.C.) a raiyat could acquire a right of occupancy in a share of an undivided property.

See notes at pp. 55, 225 and notes under s. 65.

3. S. 16. Bar to recovery of rent pending notice of S. 16. succession:—The words "recover by suit" in s. 16 are no bar to the institution of a suit, but to the obtaining of a decree: *Kalibar v. Juffer*

Patwari, 24 Cal. 241 s. c., 1 C.W.N. 98; see also *Alimuddin v. Heeralal*, 23 Cal. 87 (F.B.).

See notes at p. 122.

It should be noted that as at present law stands the defect of the service of notice under s. 15 cannot be remedied by the fact that the landlord has recognised the succession.

- S. 18. **4. S. 18; Sub-lease by a fixed raiyat :—**The word “transfer” in s. 18 includes a lease; s. 85 is controlled by s. 18; a fixed raiyat may therefore grant a permanent lease, just as a permanent tenureholder: *Harimohan v. Atul Krishna*, 19 C.W.N. 1127. See notes under s. 18, at p. 132.

5. S. 26: under-raiyat with right of occupancy by custom: Heritability :—

The occupancy right of an under-raiyat with right of occupancy by custom is not heritable by law: *Sudhanya Kumar v. Saik Ismail*, 29 C.W.N. 733. See notes at p. 218.

- S. 29. **6. S. 29: Agreement by an occupancy raiyat by more than 2 ans. in the rupee :—**An agreement by an occupancy raiyat to pay rent by more than two annas in the rupee is wholly void; it is not valid to the extent of two annas in the rupee: *Kristo Dhone v. Bhojo Govindo*, 24 Cal. 895, s. c., 1 C.W.N. 442. *Mothura Mohon v. Moti Sarkar*, 25 Cal. 781.

S. 29, if applies to under-raiyat with right of occupancy by custom: see notes under s. 29, heading no. 16 at p. 228.

- S. 30. **7. S. 30: Enhancement of rent of an occupancy holding :—**The words “The landlord of a holding” in s. 30 means “The landlord of an entire parcel of land forming the subject of a separate tenancy.

See notes under s. 30, at p. 231, under heading s. 3 cl. (93).

- S. 30. **8. S. 30: Prevailing rate :—**As to the meaning of the words “prevailing rate” see notes at p. 231.

- S. 48. **9. S. 48: Limit of rent recoverable from under-raiyat :—**A contract for a rate of rent in excess of the maximum prescribed by s. 48 is not wholly void but nothing in excess of the maximum can be recovered: *Sitanath v. Basudeb*, 2 C.L.J. 540.

- S. 49. **10. S. 49: Restrictions on ejectment of under-raiyat :—**Cl. (b) of s. 49 should be read as if there are the words “for a term” after the words “written lease.” By the insertion of the words “for a term” as stated above cl. (b) reads thus :—

(b) When holding otherwise than under a written lease for a term at the end of the agricultural year following the year in which a notice to quit is served upon by his landlord.

See in this connection the Full Bench case of *Rajkumari v. Barkatulla*, 39 Cal. 278 at p. 283.

See notes at p. 278.

- S. 54. **II. S. 54: Village office :—**A tenant's liability to pay rent remains notwithstanding there is no village office: see notes at p. 348.

- S. 61. **12. S. 61: Deposit of money rent :—**This section speaks as to the deposit of money-rent and no deposit therefore can be made of rent in kind, yet where the parties agreed that upon failure to

deliver the rent in kind, a fixed sum is to be paid in lieu thereof, s. 61 is clearly applicable in such a case: *Sasi Bhusan v. Umakant*, 20 C.L.J. 1.

13. S. 65 :—S. 65 does not apply to land held by an under-rai S. 65. as it is not a holding: *Arsadulla v. Mansabali*, 17 C.L.J. 539; nor does it apply to an undivided share of a holding although there is a separate kabuliyat, in-as-much as an undivided share of a holding is not a holding; See notes under s. 65. Nor does s. 65 apply to a non-occupancy holding and a non-permanent tenure.

14. S. 66: Sub-sec. (3) :—The extension of time authorised by S. 66. sub-sec. 3 can be granted by the Court after decree: *Babu Bodh Narain v. Mahomed Moosa*, 3 C.W.N. 628; s. c., 26 Cal. 639; such powers may be exercised under s. 244 (Act xiv of 1882) which corresponds to s. 47 of the present code.

15. S. 67: Interest :—In granting a permanent lease, within S. 67. the meaning of s. 179 of this Act a condition that interest shall be payable at a higher rate than what is allowed by s. 67 is permissible: *Matungini v. Makruru*, 5 C.W.N. 438 (F.B.); s. c., 29 Cal. 674; See notes under s. 67 and also under s. 179.

16. S. 74: Abwab :—S. 179 is not controlled by s. 74; conse- S. 74. quently the provisions of this section do not prevent the holder of a permanent tenure from granting a permanent *Mokurari* lease "on an abwab: *Krishna Chunder v. Susila*, 3 C.W.N. 608. See also *Gayaratulla v. Girish Chandra*, 12 C.W.N. 175.

17. S. 79: Cl. (f) :—*Suitable dwelling house for the raiyat and S. 79. his family*". See notes under s. 79.

18. S. 84: "On being satisfied on the certificate of the S. 84. Collector that the purpose is reasonable and sufficient" The Collector's certificate is not conclusive and a Civil Court is to hold a judicial enquiry to determine the reasonableness and sufficiency of the matter: *Gohun v. Rameshur*, 18 Cal. 271 (F.B.).

See notes under s. 84.

19. S. 85 :—This section has no application to the granting of S. 85. sub-leases by a fixed raiyat. The word "transfer" in s. 18 includes leases: *Harimohon v. Atul Krishna*, 19 C.W.N. 1127. See also *Amar Chand v. Prasanna Dassi*, 25 C.W.N. 9.

As to the validity of sub-leases granted in contravention of this section, see notes under s. 85.

20. S. 87 :—The provisions of this section are not exhaustive: S. 87. See notes under s. 87.

21. S. 93 :—The word "estate" means an entire estate; the S. 93. word "tenure" means an entire, i.e., a distinct tenure: See *Indu Bhusan v. Annapurna*, 7 C.L.J. 216 and *Saradindu v. The Collector of Rungpur*, 11 C.W.N. 1143.

22. Chapter X. (Record of Rights) :—*Chapter X not clear of Chapter X. comprehension*: "Chapter X of the Bengal Tenancy Act has undergone several amendments and it cannot be said that the successive amendments have made the law clearer of comprehension or easier of practical application"; *Prithi Chand v. Basarat Ali*, 37 Cal. 30 at p. 37 (F.B.) Jenkins C.J., remarks (in the case of *Umedulla v. Ramchandra*, 15 C.W.N. 812) "of the careless drafting which mars this very important Act."

Chapter X.
Non-agricul-
tural tenan-
cies.

23. Chapter X :—*Dwelling-house : Non-agricultural tenancies :* A homestead tenancy is not governed by the Bengal Tenancy Act and consequently a settlement of fair rent of a homestead tenancy under s. 105 is without jurisdiction: *Ram Das v. Bipra Das*, 19 C.W.N. 35. Upon the same principle Chap. X has no application to fisheries or other non-agricultural tenancies.

S. 105.
“Land,”
meaning of.

24. S. 105 : Land :—The word “land” is not equivalent to “holding” and therefore a co-sharer landlord alone is competent in respect to an undivided share of a holding which is held under a separate kabuliyat to maintain an application under this section: see *Sarifunness v. Saferaddi*, 21 C.L.J. 592; see notes under s. 105.

Ss. 105 and
105A.

25. Ss. 105 and 105A :—The correctness of the record-of-rig can be impugned by the landlord also: *Upendra Nath v. Jamini Mohon*, 18 C.W.N. 268.

S. 106.

26. S. 106 :—The correctness of entries may be questioned also under s. 106. *Suit for possession :* A suit for possession cannot be maintained under s. 106. See notes under s. 106.

S. 153.

27. S. 153 : Cl. (I) :—As to the meaning of the words “quest relating to title to land or to some interest in land as between parties having conflicting claims thereto” see notes under that section.

S. 155.

28. S. 155 : Any Case : The expression “in any case, to pay reasonable compensation” means every case: *Pershad v. Ram Pertab*, 22 Cal. 27: see notes under s. 155.

S. 160.

29. S. 160 :—As to the meaning of the words “permission to create”: see notes under s. 160.

S. 161.

30. S. 161 :—As to whether the word “incumbrance” includes “sale”, “exchange” and “a statutory title acquired by a adverse possession”: see notes under s. 161.

S. 167.

31. S. 167 : Date of Sale :—The words “date of sale” means the “date of confirmation of sale” and not the “actual date of sale” *Banko Behari v. Krishna Chandra*, 18 C.W.N. 349, s. c., 18 C.L.J. 170, but see *Yusuf Gazi v. Asmul Mulla*, 17 C.W.N. 440, s. c., 16 C.L.J. 131 where it has been held that the words “date of sale” mean the actual date of sale and not the date of confirmation of sale.

S. 169.

32. S. 169 :—The words “date of sale” mean the date of confirmation of sale: *Matangini v. Sree Nath*, 7 C.W.N. 552.

Interest : As to whether the word “rent” includes interest; see notes under s. 169.

Ss. 170 and
174.

33. Ss. 170 and 174 :—O. 21, 1 89 (C. P. C. of 1908) corresponding to s. 310A (C. P. C. of 1882) still applies to the districts which were comprised the province of East Bengal, see *Ali Meah v. Ramjan Khan*, 13 C.W.N. 224, (Sharfuddin and Cox J.J. in deciding this case dissented from the view taken in the case of *Asiruddi v. Mokhoda*, 35 Cal. 543). See notes under ss. 170 and 174.

S. 174.

34. S. 174 : Judgment debtor :—The expression “judgment-debtor” means the person against whom a decree has been made: see notes under s. 174.

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	SUBJECT OF ACT.	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 for the lands of the zemindars, independent talukdars and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those provinces respectively on the 18th September, 1789, the 25th November, 1789, and 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 zilla of Cuttack, including the parganas of Pattaspur, Kummadichour, and Bagrae, at present included in the zilla of Midnapore.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	Section 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining section 2, Regulation V, 1882, rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
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 I 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.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to given 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.

Act of the Governor-General in Council.

Number and year	SUBJECT OF ACT.	Extent of repeal.
X of 1859	An Act to amend the law relating to the the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.

Note :—A tenant who tenders rent with a request for a receipt in the statutory form, does not seek to impose on the landlord any condition on which he is not entitled to insist, and when the landlord refuses to give such a receipt and offers to grant a receipt in a form which would compromise the position of the transferee, there is an improper refusal of a valid tender. *Rupchand v. Narendra*, 19 C.W.N. 112.

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION.)

1. Serial number of Receipt
2. Estate ; village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—
Nukdi, Bighas ; rent Rs.
Baouli, Bighas ; Maunds or Rs.
 { Julkur, Rs.
 { Bunker, Rs.
 { Phulker, Rs.
 Government Cesses { Road Cess, Rs.
 { Public Works Cess, Rs.
5. Signature of the Landlord or his Authorised Agent.

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION.)

1. Serial number of Receipt
2. Estate ; village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—
Nukdi, Bighas ; rent Rs.
Baouli, Bighas ; Maunds or Rs.
 { Julkur, Rs.
 { Bunker, Rs.
 { Phulker, Rs.
 Government Cesses { Road Cess, Rs.
 { Public Works Cess, Rs.
5. Signature of the Landlord or his Authorised Agent.

FORMS OF RECEIPT AND ACCOUNT.
 (See Section 56 and 57.)

SCHEDULE II.
 SCHEDULE II

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

- (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited and the payment shall be credited accordingly.
- (2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

					DETAILS OF PAYMENTS (LANDLORD'S PORTION.)	
					Date of payment; and name of person through whom paid.	
					Current on account of kist	NUKDI.
					Arrear on account of year kist	
					Current on account of kist	BHAOLI.
					Arrear on account of year kist	
					Current on account of kist	JULKUR, &c.
					Arrear on account of year kist	
					Current on account of kist	CESSES.
					Arrear on account of year kist	
					Signature of the landlord or his authorized agent.	

					DETAILS OF PAYMENTS (TENANT'S PORTION.)	
					Date of payment, and name of person through whom paid.	
					Current on account of kist	NUKDI.
					Arrear on account of year kist	
					Current on account of crop	BHAOLI.
					Arrear on account of year crop	
					Current on account of kist	JUKUR, &c.
					Arrear on account of year kist	
					Current on account of kist	CESSES.
					Arrear on account of year kist	

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	RS. A. P.
<i>Nukdi</i>			
Government Cesses			
	Bighas	Maunds	RS. A. P.
<i>Baouli</i>			
Jalkur	...	...	...
Bunkur	...	...	...
Phulkur	...	...	...
	Maunds		RS. A. P.
4. Demand of the year	...		...
5. Balance of former year (Bakaya)	...		...
			RS. A. P.
6. Total demand (current and arrear)			...
7. Paid each on account of	{ Current demand. Arrear demand.		
8. Paid in kind	Maunds		...
			RS. A. P.
9. Balance outstanding at end of year			...
10. Signature of the Landlord or his authorised Agent.			

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	RS. A. P.
<i>Nukdi</i>			
Government Cesses			
	Bighas	Maunds	RS. A. P.
<i>Baouli</i>			
Jalkur	...	...	...
Bunkur	...	...	...
Phulkur	...	...	...
	Maunds		RS. A. P.
4. Demand of the year	...		...
5. Balance of former year (Bakaya)	...		...
			RS. A. P.
6. Total demand (current and arrear)			...
7. Paid each on account of	{ Current demand. Arrear demand.		
8. Paid in kind	Maunds		...
			RS. A. P.
9. Balance outstanding at end of year			...
10. Signature of the Landlord or his authorised Agent.			

NOTIFICATION. The 30th January, 1888.—Under the proviso to s. 56, clause 3 of the Bengal Tenancy Act, VIII of 1885, the Lieutenant-Governor is pleased to sanction the form of rent receipt annexed to this notification for the areas specified until further orders.—

Specification of areas.

1. Estate No. 162, in pergana Barahakpur in the Rajshaye District.
2. Do. „ 165 ditto ditto ditto
3. Do. „ 167 ditto ditto ditto
4. Do. „ 169 ditto ditto ditto
5. Do. „ 1829 ditto ditto ditto

Sd. P. NOLAN.

Secretary to the Government of Bengal.

FORM OF RENT RECEIPT.

রসিদ রূপেয়া বাবৎ খাজনাদি

পরগণা—

মৌজা—

জমিদার—

প্রজার নাম—

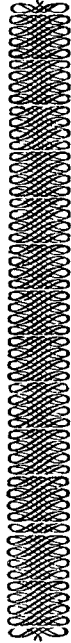
পিতার নাম—

খাজনা সেস একুন
মঃ

আদায়কারীর স্বাক্ষর

টাকা দিবার তারিখ

মন্তব্য। এই খাজনা ১২৯১ সালের পৌষ কিস্তির
পর জমানার হিসাব অনুসারে মুজরা পড়িবে তৎপূর্বের
জমানায় মুজরা পড়িবে না।



রসিদ রূপেয়া বাবৎ খাজনাদি

পরগণা—

মৌজা—

জমিদার—

প্রজার নাম—

পিতার নাম—

খাজনা সেস একুন
মঃ

আদায়কারীর স্বাক্ষর

টাকা দিবার তারিখ

মন্তব্য। এই খাজনা ১২৯১ সালের পৌষ কিস্তির
পর জমানার হিসাব অনুসারে মুজরা পড়িবে তৎপূর্বের
জমানায় মুজরা পড়িবে না।

CALCUTTA GAZETTE, JANUARY 13, 1915.

PART I, 6. 20.

No. 239 Mis.—*The 9th January 1925.*—In exercise of the power conferred by the proviso to sub-section (3) of section 56 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Governor in Council is pleased to prescribe the annexed form of Receipt of Rent for general use in the Presidency of Bengal.

2. The previous orders, issued under the said proviso by the Government of Bengal and the late Government of Eastern Bengal and Assam, are hereby cancelled.

BENGAL TENANCY ACT, 1885.

Book No. _____

FORM OF RENT RECEIPT.

(TENANT'S PORTION.)

1. Serial number of receipt _____
2. Estate _____, village _____, thana _____
3. Tenant's name _____, son of _____
4. Area of tenure or holding, if known { *Nukdi*, area _____
 Baouli, „ _____
- Rent of tenure or holding { Rupees _____
 Maunds _____
 Jalkar Rs. _____
 Bankar „ _____
 Phulkar „ _____
- Government cesses { Road cess, Rs. _____
 Public Works cess, Rs. _____
5. Signature of the land or his authorised agent _____

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

- (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.
- (2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

BENGAL TENANCY ACT, 1885.

Book No. _____

FORM OF RENT RECEIPT.

(LANDLORD'S PORTION.)

1. Serial number of receipt _____
2. Estate _____, village _____, thana _____
3. Tenant's name _____, son of _____
4. Area of tenure or holding, if known { *Nukdi*, area _____
 Baouli, „ _____
- Rent of tenure or holding { Rupees _____
 Maunds _____
 Jalkar Rs. _____
 Bankar „ _____
 Phulkar „ _____
- Government cesses { Road cess, Rs. _____
 Public Works cess, Rs. _____
5. Signature of the land or his authorised agent _____

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

- (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.
- (2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

969

Details of payments (Landlord's portion)

		Date of payment, and name of person through whom paid.
	Current on account of kist	NUKDI.
	Arrear on account of year kist	
	Current on account of crop	BHADLI.
	Arrear on account of year crop	
	Current on account of kist	JALKUR, &c.
	Arrear on account of year kist	
	Current on account of kist	CESSES.
	Arrear on account of year kist	

Details of payments (Tenant's portion)

	Date of payment, and name of person through whom paid.	
	Current on account of kist	NUKDI.
	Arrear on account of year kist	
	Current on account of crop	BHAOLI.
	Arrear on account of year crop	
	Current on account of kist	JALKUR, & C.
	Arrear on account of year kist	
	Current on account of kist	CESRS.
	Arrear on account of year kist	
	Signature of the landlord or his authorized agent.	

CALCUTTA GAZETTE, JANUARY 15, 1915.

PART I, p. 23.

No. 240 Mis.—The 9th January 1915.—In exercise of the power conferred by sub-section (2) of section 57 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Governor in Council is pleased to prescribe the annexed form of Account of Rent for general use in the Presidency of Bengal.

II. The previous orders issued under the said sub-section by the Government of Eastern Bengal and Assam are hereby cancelled.

THE BENGAL TENANCY ACT, 1885.

(SCHEDULE II.—FORMS OF RECEIPT AND ACCOUNT.)

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(areas, rent, &c.)

	Area.	Rate	RS.	A.	P.
<i>Nukdi</i>					
Government cesses					
	Area.	Mds.	RS.	A.	P.
<i>Bhaoli</i>					
Jalkur ...	...				
Bankar ...	...				
Phalkur ...	...				
		Mds.	RS.	A.	P.
4. Demand of the year
5. Balance of former years (*Bakaya*)
6. Total demand (current arrear) ... RS. A. P.
7. Paid each on account of { Current demand
Arrears demand
Mds.
8. Paid in kind ...
9. Balance outstanding at end of year ... RS. A. P.
10. Signature of the Landlord or his authorized Agent.

FORM OF ACCOUNT

1. Year
2. Tenant's name
3. Particulars of holding—(areas, rent &c.)

	Area.	Rate	RS.	A.	P.
<i>Nukdi</i>					
Government cesses					
	Area.	Mds.	RS.	A.	P.
<i>Bhaoli</i>					
Jalkur ...	...				
Bankar ...	...				
Phalkur ...	...				
		Mds.	RS.	A.	P.
4. Demand of the year
5. Balance of former years (*Bakaya*)
6. Total demand (current arrear) ... RS. A. P.
7. Paid each on account of { Current demand
Arrears demand
Mds.
8. Paid in kind ...
9. Balance outstanding at end of year ... RS. A. P.
10. Signature of the Landlord or his authorized Agent.

SCHEDULE III.

LIMITATION.

(See section 184)

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.
1(a) To eject a non-occupancy raiyat on the ground of the expiration of the term of his lease.	Six months.	The expiration of the term.
2. For the recovery of an arrear of rent ² [in a suit brought by— (i) a sole landlord, (ii) the entire body of landlords, or (iii) one or more co-sharer landlords].		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months.	The date of the service of notice of the deposit.

¹ Article 1 (a) in Sch. III was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and Act I E. B. A. of 1908.

² The portion in square brackets was inserted by the same Acts.

Description of suit.	Period of Limitation.	Time from which period begins to run.
(b) in other cases.	Three years	³ [The last day of the agricultural year in which the arrear fell due.]
3. To recover possession of land claimed by the plaintiff as ⁴ [a raiyat or an under-raiyat].	Two years	The date of dispossession.

³ The words in square brackets were substituted for the original entry in col. 3 by the same Acts. The words originally were: 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.

⁴ The words in square brackets were substituted for the original words "an occupancy raiyat" by the same Acts.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days.	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days.	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made ¹[in a suit between landlord and tenant to whom the provisions of this act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	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.

¹ The words in square brackets were substituted for the original words "under this Act or any Act repealed by this Act" by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) s. 61 (4) and by E. B. A. I of 1908.

ART. I & ART. I(a).

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.
¹ (a) To eject a non-occupancy raiyat on the ground of the expiration of the term of his lease.	Six months.	The expiration of the term.

Headings of Notes.

1. AMENDMENT.
2. ZERAIT LAND.
3. SUIT FOR EJECTMENT AND REMOVAL OF TREES.
4. DATE OF CAUSE OF ACTION.
5. INVOLUNTARY SALE.
6. ART. I (a).
7. EXPIRATION OF THE TERM OF HIS LEASE.
8. BREACH OF CONDITION.

1. Amendment :—Art. I (a) was inserted by Act I (B.C.) of 1907 and Act I. (E. B. A.) of 1908.

2. Zerait land :—No right of occupancy or non-occupancy can be acquired in lands known as zerait lands ; Art. I of Sch. III does not therefore apply to a suit for ejectment of a tenant from zerait lands : *Janki Singh v. Jagannath*, 39 I.C. 389, (Atkinson J.) ; but it was held in Letters Patent Appeal in this case by Chamier, C.J. and Chapman J., that a non-occupancy right may be created in zerait land and therefore Art. I (a) applies to eject a tenant from

¹ Article (1) in Sch. III was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and Act I E. B. A. of 1908.

zerait land: [1917 Pat.] 318, s.c., 3 Pat. L.W. 105, 3 Pat. L.J. 1, s.c., 42 I.C. 177 (F.B.).

3. Suit for ejectment and removal of trees :—A suit was brought by the plaintiff to eject the defendants on the ground that under a contract, or according to the custom of the country, the defendant was bound to use the land of his holding for agricultural purposes only, but that the defendant, in contravention of this condition, planted trees upon the land in dispute, and converted it into a garden; the planting of trees took place in Oct. 1876 and the suit was brought on the 19th April, 1879; the plaintiff sought two reliefs, 1st, ejectment of the defendant; 2nd, removal of the trees if the defendant was not liable to be ejected; *held*, that sec. 27 of Act VIII (B.C.) of 1869 only related to such suits as could be brought either by the landlord or tenant under Act X of 1850, and the claim so far as it sought to eject the defendant was a claim which was cognizable by Act X of 1859 and therefore barred by sec. 27 of Act VIII (B.C.) of 1869, that sec. 27 did not apply to that part of the plaintiff's claim in which he sought to compel the defendant to remove the trees and that Art. 120 and not Art. 31 of Schedule II of the Limitation Act applied: *Gunesh v. Gondour*, 9 Cal. 147: see also *Kedar Nath v. Sriti Ratno*, 6 Cal. 34.

Limitation Act Sch. II, Arts. 31 and 120.

Art. 32 of Schedule II of the Limitation Act applies to a suit brought under cl. (a) of sec. 25 and sec. 155 of the Bengal Tenancy Act for the ejectment of a tenant and removal of trees planted by him on land leased out for agricultural purposes; Art. 120 does not apply to such a case: *Soman Gope v. Raghubir*, 24 Cal. 160, s.c., 1 C.W.N. 223: their Lordships in delivering judgment said as follows:—We notice that the Legislature in enacting the Bengal Tenancy Act provided one year's limitation for a suit to eject a raiyat on account of breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach; that is to say, for a suit under cl. (b) of sec. 25 of the Act. They omitted to provide in that Act any limitation for a suit under cl. (a) of that section, and they may possibly have considered that the general law which provides two years' limitation sufficiently dealt with that case. If it were otherwise there would be an extraordinary difference between the periods provided in the one case for a suit where there is written contract, and in the other for a suit of a similar nature where there is no written contract.

Limitation Act, Sch. II, Art. 32—Suit under s. 25 of the Bengal Tenancy Act.

4. Date of cause of action: Date of breach :—Where a suit was brought to eject a tenant on the ground of an alleged breach of conditions of the lease, *viz.*, defendant's failure to plant 2,000 betelnut trees within 5 years from the date of lease, *held* that plaintiff's cause of action was not a continuing one but accrued at the expiration of the stipulated five years: *Kalee Kamal v. Jumut Ali*, 11 W.R. 452.

Where cause of action is not continuing.

5. Involuntary sale :—A covenant for re-entry by the landlord upon an involuntary sale is valid and operative in law: a suit against such a purchaser for ejectment is not governed by Art. 1 of Sch. II of the Bengal Tenancy Act, but by Art. 142 of Sch. I of the Limitation Act: *Dwarika Nath v. Mathura Nath*, 24 C.L.J. 40.

6. Art. I (a) :—This article was inserted by Act I, B.C. of 1907 and Act I (E. B. A.) of 1908. This article practically re-enacts s. 45 of the Act which has been now repealed and which was

as follows:—S. 45. 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.

S. 44 cl. (c).

7. Expiration of the term of his lease. :—Here the word “lease” refers to a registered lease as referred to in s. 44, cl. (c). If the landlord does not bring a suit for ejectment of a non-occupancy raiyat within six months of the registered lease as referred to in s. 44 he cannot bring any ejectment suit on that ground and the tenant will hold over under the same conditions. It should be mentioned here that on the ground of expiry of lease a non-occupancy raiyat may be ejected only when he has been admitted to occupation by virtue of a registered lease.

Ticca lease.

Where after expiry of a *ticca* lease, the landlord brought a suit for ejectment against the *ticcadar* of a non-occupancy holding which the *ticcadar* had purchased during the *ticca* lease and which according to the stipulation of the *ticca* lease the landlord was entitled to recover after the expiry of the *ticca* lease, *held* that the period of limitation would be six months as provided for in Art. (a) of Sch. III : *John Pier Paul v. Ramjee Ram*, [1920 Pat.] p. 168, (Das and Adami, J.J.).

Where a mortgagee in possession settled a non-occupancy raiyat upon the land, and the mortgagor after redemption brought a suit to eject the non-occupancy raiyat, *held* that Art. 1 (a) Schedule III of the Bengal Tenancy Act applied and the suit ought to have been brought within six months after the expiration of the mortgage or after redemption : *Sheo Barat v. Pai Arat*, 52 I.C. 473, (Atkinson J.)

Khamar land.

Where the *khamar* land of a zemindar was held for a term, a suit for *khas* possession is not governed by Art. 1 (a) : *Dwarka Nath v. Tafazer Rahaman*, 20 C.U.N. 1097 ; but it was held in the case of *Gonapat Mahton v. Rishal Singh*, 20 C.W.N. 14 that a suit to eject a raiyat of *zerait* land brought more than six months after the expiry of the term of his lease is barred by Art. (1), (a) of Sch. III of the Bengal Tenancy Act.

Agricultural holding within the Municipal limits of Calcutta.

Where defendant took a five years lease of an agricultural holding in 1898 within the municipal limits of Calcutta but beyond the limits of the town of Calcutta by the proclamations of the Governor-General in Council dated the year 1794, and plaintiff brought a suit for ejectment in the year 1910, *held* that the suit was barred by Art. 1 (a) to Sch. III of the Bengal Tenancy Act : *Jotiram v. Janaki Nath*, 20 C.W.N. 258.

8. Breach of condition :—Where the tenant has broken a condition of the lease by making excavations the landlord is entitled to damages. Where a *kabuliyat* provides a remedy (*e.g.*, by ejectment) for the breach of its conditions that is not the only remedy open to the landlord and the right to obtain compensation under the general law is not affected. Where in a suit for ejectment of a tenant, under s. 155 of the Bengal Tenancy Act for breach of a condition compensation also is claimed, the latter claim is not ancillary to the claim for ejectment and is not governed by Art. 1, Sch. III of the Bengal Tenancy Act. Art. 32 of Sch. I of the Limitation Act applies to such a claim : *Krishna Das v. Mohendra Chandra*, 25 C.W.N. 930.

9. CLAIM FOR RENT IN SUEPENSE DURING PERIOD OF EJECTMENT-SUIT.
10. DUE.
11. SS. 6 AND 7 OF THE LIMITATION ACT.
12. SCH. III, ART. 2 :
13. SUIT AGAINST TENURE-HOLDER.
14. SUIT BY ASSIGNEE OF RENT.
15. EJECTMENT OF A TICCADAR.
16. PROPRIETOR'S PRIVATE LAND.

I. Amendments :—In Art. 2 (a) after the words "arrears of rent" the following were inserted by Act I B.C. of 1907 and Act I E. B. A. of 1908.

"in a suit brought by—

- (i) a sole landlord,
- (ii) the entire body of landlords, or
- (iii) on or more co-sharer landlords."

In Art. 2 (b) for the entry in third column opposite cl. (b), the following entry was substituted, by the said Amending Acts, namely:—

"The last day of the agricultural year in which the arrear fell due."

Deposit of
rent.

2. S. 61: Deposit of rent :—It seems that the shorter period of limitation of six months prescribed in clause (a) applies to the arrear of rent of a *holding* and *not to a tenure* or under-raiyati tenancy. 'Holding' has been defined in s. 3 cl. 9 and means a parcel of land held by a *raiya*.

When co-sharer landlords are jointly and severally entitled to rent, the service of notice on one of the landlords of the deposit of rent under s. 61 of the Bengal Tenancy Act has not the effect of reducing the period of limitation to six months as provided in Art. 2 (a) of Schedule III of the Act; *Rup Chand v. Gaudar Singh*, 29 Cal. 283, s.c., 6 C.W.N. 15.

S. 61.

If a tenant relies upon clause (a) of Art. 2 of Sch. III of the Bengal Tenancy Act, he must prove that there was an application which fulfilled the requirements of sec. 61, sub-sec. (2) and that a deposit was made under s. 61 after the arrear had fallen due; he must also shew that notice under s. 63 was served on the landlord and prove the date when the service was effected; *Mir Tapurah v. Gopi Narayan*, 7 C.L.J. 251.

The period of limitation prescribed in Art. 2 cl. (a) is applicable to a suit for rent wherever rent has been deposited under s. 61, even though the allegation of the tenant that what he had deposited was the full amount due at the time, may ultimately prove to be incorrect: *Sasi Bhusan v. Umakant*, 20 C.L.J. 153; s.c., 19 C.W.N. 1143; the case of *Sati Prasad v. Monmotha*, 18 C.W.N. 84 was not followed and the case of *Sridhar v. Rameshur*, 15 Cal. 166 was explained.

Jalkar.

3. Jalkar :—Art. 2 cl. (d) applies to a suit for rent of jalkar which does not necessarily imply any right to the soil: *Krishna Lal v. Salim Mahamed*, C.W.N. 514.

Outgoing
landlord.

4. Landlord :—Where on the date of the institution of the suit for rent plaintiff had ceased to be landlord, *held* that still

Art. 2 cl. (b) applied: *Balmukund v. Tarini Singh*, 16 C.L.J. 360, (Mookerjee and Beachcroft J.J.). "Whether a suit for the recovery of arrears of rent has been brought by a landlord within the meaning of that article." [Article 2 cl. (b)] "ought to be determined with reference to the relation in which the parties stood when the right to sue accrued, that is, when the arrears of rent claimed fell due." *Ibid*.

A tenure holder who on deposit of *putni* rent is put into possession of the *putni* tenure under s. 18 of Regulation VIII of 1819 is a landlord for the time being, and a suit by him for the unrealised rent which had accrued due before he was put into possession is governed by Art. 2 of Sch. III of the Bengal Tenancy Act: *Abdul Aziz v. Beharilal*, 41 I.C. 711, (Fletcher and Richardson J.J.).

5. S. 169:—Art. 2 provides for suits and not for applications: Application for surplus sale proceeds.
Narendra Lal v. Sarat Chandra, 19 C.W.N. 582; so an application for surplus sale proceeds under cl. (c) to sub-seq. (1) of s. 169 is not governed by this Article and such application may be made in respect to arrears already barred: *Ibid*.

6. Money recoverable as rent:—The period of limitation for a landlord to recover a sum of money payable by a tenant under s. 42 (b) of the Bengal Drainage Act (Act VI of 1880) begins to run from the date on which the landlord engages to pay the costs with which he is charged and not from the date on which the Collector assesses the amount payable by the tenant under s. 44: *Monmohini v. Priya Nath*, 8 C.W.N. 640; the period of limitation for such a suit is three years and such a sum is recoverable as rent and the word "rent" in Sch. III includes "money recoverable under any enactment for the time being in force as if it was rent." *Ibid*; this case was followed in the case of *Naffar Chandra v. Jyoti Kumar*, 11 C.W.N. 57; s.s., C.L.J. 119, and it was held that a suit to recover drainage charges payable by a tenant to his landlord under s. 42 cl. (b) and s. 44, sub-section (1) of the Bengal Drainage Act is governed by Art. 2 of Sch. III of the Bengal Tenancy Act, and must be brought within 3 years from the last day of the Bengali year in which the sum claimed fell due; drainage charges payable by the tenant to the landlord as above are included within the definition of 'rent' in s. 3, sub-seq. (2) of the Bengal Tenancy Act. Bengal Drainage Act. Drainage charges.

A suit upon a registered contract for money due in respect of forest rights is governed by Art. 2 of Sch. III of the Bengal Tenancy Act, and not by Art. 116 of Sch. I of the Limitation Act: *Sarajubala v. Saradanath*, 50 I.C. 862 (Teunon and Richardson J.J.). Forest rights.

A suit for rent of a *myshagari* lease is governed by Art. 2: *Rash Behari v. Tiluckdhari*, 20 C.W.N. 485.

Where the right granted was the right to fell, remove and sell all trees of specified kinds, held that the grant was of forest rights and a suit to recover the dues from the lessee is governed by the special rule of three years under the Bengal Tenancy Act: *Sarajubala v. Saradanath*, 23 C.W.N. 336.

When a creditor was put into possession as *Zuripeshgi* ticcadar, *Zuripeshgi* Ticcadar.
held that an annual sum payable by the ticcadar was a debt and not rent and the three years rule of limitation as provided for by the Bengal Tenancy Act, did not apply but Art. 116 of Sch. I of the

Limitation Act, the deed being a registered one: *Barhamdeo v. Ramanand*, 40 I.C. 594 (Chapman and Atkinson J.J.).

Suit by co-sharer landlord governed by this Act.

S. 188 seems to be a bar to such a suit.

7. Suit for rent by a co-sharer landlord:—Art. 2 (b) of Sch. III applies to a suit for rent by a co-sharer landlord: *Jogendra Nath v. Nogendra Narain*, 11 C.W.N. 1026; it is submitted that this proposition of law is opposed to the principles laid down in the cases of *Jogendra Nath v. Paban Chandra*, 8 C.W.N. 472; *Beni Madhab v. Joadh Ali*, 17 Cal. 390; and *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763; none of the sections specially applicable to a suit brought by a sole landlord or all the landlords jointly is applicable to a suit by a co-sharer landlord. Moreover, s. 188 of the Act is a bar to a co-sharer claiming the privilege of Art. 2 (b); if the Bengal Tenancy Act had not been passed, *i.e.*, if there was no special law the Article which would have applied is Art. 110 of Sch. II of the Limitation Act; it is only under Art. 2 (b) of Sch. III of the Bengal Tenancy Act that a landlord is authorised to claim more than 3 years rent, and s. 188 is a bar to a co-sharer landlord taking a benefit which a landlord has been given under the Bengal Tenancy Act.

Fusli year.

The period of limitation where the Fusli year prevails is three years from the last day of Jeth: if any instalment is due on the last day of Bhadra the period of limitation will expire on the last day of Jeth in the third subsequent year, so that in such a case, the suit must be brought not within three years but within two years and nine months: *Iswardhri v. Ram Brich*, 7 C.L.J. 106.

Limitation Act, Sch. I, Art 120.

Art. 120 and not Arts. 62 and 109 Sch. I of the Limitation Act is applicable to a suit by a co-sharer landlord against another for a share of the rent collected in the supposed right by the latter the rent being due in respect of land held by the latter the rent being due in respect of land held by the co-sharer not separately but jointly: *Bhubaneswar v. Dwarakeswar*, 34 C.L.J. 508.

Suit by assignee.

8. Assignment of rent:—An assignment of arrears of rent does not confer upon the assignee the right to collect arrears of rent within the limitation laid down in the Bengal Tenancy Act: *Hayat v. Hazari*, 63 I.C. 424 (Das and Adami J.J.).

Where claim for rent not in suspense

9. Claim for rent in suspense during period of ejectment suit:—It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of the litigation. The cases of *Surnamoyee v. Shoshee Mukhi*, 11 W.R. 5 (P.C.), s.c., 12 M.I.A. 244 and *Hem Chandra v. Kali Prasanna*, 9 I.A. 52, s.c., 9 Cal. 255 are exceptions to the general rule: *Nagendra v. Sadhuram*, 48 Cal. 65, s.c., 25 C.W.N. 945.

Extension of time not allowed on account of landlord's not being in possession.

10. Due:—The period of three years in this Art. runs from the date when the arrear actually falls due and the landlords does not get an extended time for the fact that the tenant for a period beyond three years was out of possession by virtue of a sale at the instance of the landlord under Reg. VIII of 1819 and the tenant recovering possession by a suit for reversal of the sale on a date within three years, *i.e.*, within the period of limitation: *Maharajadhiraj Bejoychand v. Khoka Sinha*, 40 C.L.J. 97.

Case under the old law.

A *putni* taluk was brought to sale by the zemindar for arrears of rent, the purchaser obtained possession of the *putni* and the

arrears of rent were paid to the zemindar out of the purchase-money ; Where a putni is sold and the sale was afterwards set aside for irregularity at the instance of the putnidar, the purchase-money was refunded and the putnidar, recovered possession with mesne profits for the time he was ousted ; rent suit is brought after putnidar is restored to possession after setting aside of sale. the zemindar then brought a suit to recover the original arrears, and it was held by the Privy Council, that upon the setting aside of the sale and the restoration of the putnidar to possession he took the estate subject to the obligation to pay the rent, and that the arrears claimed must be taken to have become due in the year in which the restoration took place, and further that until the sale had been finally set aside the zemindar was in the position of a person whose claim had been satisfied and his claim might have been successfully met by a plea to that effect: *Rani Surnomoyee v. Shoshee Mukhee Bormani*, 2 B.L.R. P.C., 10 ; s.c., 12 Moo. 244 ; s.c., 11 W.R. 5 (P.C.)

But this case was not held applicable to the case of *Hurro Kumar v. Kali Krishna*, 17 Cal. 251, the facts of which were as follows:— Plaintiff brought a suit in an alternative form asking either for *khas* possession of certain lands which were claimed to be in excess of the land originally comprised in the tenure, or for a declaratory decree assessing the rent thereon in the terms of the *kabuliyat*, he ultimately failed in his prayer for direct possession, but succeeded in getting a declaratory decree and then brought a suit for the rent for the excess land, it was held that the cause of action did not run from the date of the declaratory decree ; see also *Daya Mayee, v. Bhola Nath*, 6 W.R. Act X 77 ; *Huro Pershad v. Gopal Dass*, 9 Cal. 255 ; *Sherif v. Dina Nath*, 12 Cal. 258.

The principle of the case of *Rani Surnomoyee v. Shoshee Mukhee*, was held not to apply to a suit for rent brought by landlord after a suit for *khas* possession brought by him failed: *Hurro Prosad v. Gopal Dass*, 3 Cal. 817 ; but see *Eshan Chandra v. Khajah Eshanoolah*, 16 W.R. 79, where it was held that the principle in *Surnomoyee v. Shoshee Mukhee*, applied to a case where plaintiff brought a suit for rent after being unsuccessful in a suit for *khas* possession.

The principle was also held to apply where the landlord assigned his tenant's rent in favour of his creditor, and subsequently a suit for rent was brought three years after the rent became due on the discovery of the fact that the rent assigned had not been paid by the tenant: *Mohesh v. Gungamonee*, 18 W.R. 59. The correctness of this decision was doubted by their Lordships, Garth C.J. and Macdonell J., in the case of *Hurro Prosad v. Gopal Das*, 3 Cal. 817.

Plaintiff instituted proceedings for arrears of rent due and for ejectment of the defendant for non-payment of rent and obtained a decree: defendant paid rent within the time allowed by the decree and secured the right of continuing as a tenant ; in 1276 plaintiff brought a suit for recovery of rent for 1872 and subsequent years: held, that the case of *Rani Surnomoyee* did not apply: *Dindoyal v. Radha Kishori*, 8 B.L.R. 536.

Plaintiff's suit for rent for 1270 and subsequent years being dismissed, he brought a suit for declaration of his right to recover rent which was decreed, and plaintiff subsequently brought a suit for rent for 1271 to 1279, held that the Privy Council case of *Rani Surnomoyee* did not apply: *Boroda Kant v. Chunder Kumar*, 23 W.R. 280.

Suit for rent after 3 years : cause of action.

Suit for *khas* possession : subsequent suit for rent.

Surnomoyee v. Shoshee Mukhee held applicable.

Surnomoyee v. Shoshee Mukhee held not applicable.

A landlord objected to the registration of the names of the successors of his tenant and brought a suit to eject them and during the pendency of the litigation the landlord sued to recover rent not upon the basis of any lease but for use and occupation treating the tenants as trespassers; both the suits were dismissed: the landlord subsequently sued on the basis of the lease, *held* that the claim for rent beyond three years was barred and it could not be said that the right to demand the rents which fell due during the pendency of litigation: *Watson and Co v. Dhondra*, 3 Cal. 6; where a suit for enhancement of rent was dismissed and subsequently the landlord brought a suit for rent at the admitted rent for the period when the former suit was pending, *held* that the old admitted rent did not become due on the dismissal of the enhancement suit: *Brojendra v. Rakhal*, 2 Cal. 751.

Where
deduction
of time was
allowed.

A landlord may under certain circumstances be allowed a deduction when limitation is pleaded in a suit for rent but the landlord's action must in that case be *bona fide* and he must have brought his suit for ejectment in the full belief that the defendants were trespassers: *Hurro Nath v. Goluck Nath*, 19 W.R. 18.

Rent suit
brought
more than
3 years after
it fell due,
when main-
tainable.

Where a suit for the recovery of arrears of rent was brought more than three years after the due date: *held*, that the fact that a suit for enhancement had been brought by the plaintiff within that period and in that suit the plaintiff had claimed enhanced rate for the year in question, stayed the operation of the law of limitation: *Hem Chandra v. Kali Prasanna*, 8 C.W.N. 1 (P.C.).

Suit for rent
of putni
three years
after date
of sale
under Reg.
VIII of
1819.

Where a putni was sold under Reg. VIII of 1819 and the whole of the arrears was not realised by the sale, and a suit for recovery of the balance was brought within 3 years from the date of sale but more than 3 years from the last day of the Bengali year in which it fell due, *held* that the suit was barred: *Surna Moyi Dassee v. Burna Moyi Chowdhurani*, 23 Cal. 161.

Suit for rent
payable in
four instal-
ments on
four speci-
fied days—
Limitation.
S. 6 and 7
of the
Limitation
Act do
not apply.
Suit for
rent found-
ed upon
registered
lease gov-
erned by
three years
rule of
limitation.

Where a putni lease provided that the rent should be paid in four instalments on four specified days in the year, *held* that the period of limitation began to run from the date on which each instalment fell due and not from the last day of the agricultural year: *Gajadhar v. Thakur Prasad*, 1 Pat. L.J. 506.

II. Ss. 6 and 7 of the Limitation Act:—Ss. 6 and 7 of the Limitation Act are not applicable to a suit for rent; see s. 184. It was also so *held* in *Giriza v. Ratani*, 17 Cal. 263.

12. Sch. III. Art. 2:—Art. 2 includes a suit to recover arrears of rent payable under a lease, and there is no distinction as to whether it is registered or not: *Ishwari Pershad v. Crowdy*, 17 Cal. 469. This case being in conflict with the decision in the case of *Umesh Chunder v. Adarmani*, 15 Cal. 221, the question was referred to a Full Bench, and it was decided by the Full Bench in the case of *Mackenzie v. Hazi Syed*, 19 Cal. 1, that suits for rent founded on registered contracts in respect of lands subject to the provisions of the Bengal Tenancy Act, are governed by the limitation provided in that Act.

The fact that the tenant holds under a registered lease does not bring a suit for recovery of the rent reserved by the lease within the purview of Art. 116 of the Limitation Act: *Gajadhar v. Thakur Prasad*, 1 Pat. L.J. 506 (Roe and Jwala Prasad, J.J.).

There is no reason for holding that when a suit for the rent itself is barred under the provisions of the Bengal Tenancy Act, the mere fact of hypothecation would extend the period to 12 years; in such a case Art. 132 of Sch. II of the Limitation Act has no application but Art. 2 (b) of Sch. III of the Bengal Tenancy Act will apply: *Kali Charan v. Harendra Lal*, 4 C.L.J. 553.

Hypothecation does not extend the period.

The limitation applicable to a suit for rent reserved in a lease granted for building purposes and for establishing a coal depot is governed by the Indian Limitation Act, and when the lease is a registered one Art. 116 of Sch. II of that Act applied; *Raniganj Coal Association v. Jugoonath*, 19 Cal. 489.

Suit for rent reserved in a lease for building purpose &c.

A suit to recover damages for breach of covenants contained in a lease, the terms of which were embodied in a registered *pattah* executed by the lessor only is governed by Art. 116 of Sch. II of the Limitation Act: *Girish Chandra v. Kunjo Behari*, 12 C.W.N. 628; see also *Ambalavana v. Voguran*, 19 Mad. 52; *Kotappa v. Valur*, 25 Mad. 50; *Zemindar of Viznagram v. Behara*, 35 Mad. 507.

Damages for breach of covenant.

13. Sch. III, Art. 2 (b) :—Suits for arrears of rent under the B. T. Act are governed by the provisions of Art. 2, Sch. III of that Act, and s. 110 of the Limitation Act does not apply. The last day on which a suit for arrears of rent can be instituted is the last day of the third year from the close of the year in which the rent became payable: *Kashi Kanta v. Rohini Kanta*, 6 Cal. 325; *Hurro Kumar v. Kali Krishna*, 17 Cal. 251; *Barnamoyi Dasi v. Barnamoyi Chaudhurani*, 23 Cal. 191; *Baikunta v. Sharfunnissa Begum*, 15 W.R. 523. [As to definition of "Agricultural year", see s. 3 cl. 11, at p. 64.]

The limitation of 3 years allowed for a suit for arrears of rent runs, not from the date of instalments, but from the day of the year in which the arrear becomes due: *Gobinda v. Hurogopal*, 11 W.R. 537.

A suit for recovery of rent against a non-occupancy raiyat is to be brought within three years from the last day of the agricultural year in which the arrear fell due, under the provision of article 2 (b) of sch. III of the B. T. Act. The period cannot be extended under the provisions of section 14 of the Limitation Act owing to pendency of proceedings under sec. 46 of the Bengal Tenancy Act, as both are not founded on the same cause of action: *The Port Canning and Land Improvement Co., Ltd. v. Achhiruddi Mollah*, 43 C.L.J. 45 [*Watson & Co. v. Dhonendra*, 3 Cal. 6 distinguished; *Hem v. Kali*, 3 Cal. 1033; s.c., 8 C.W.N. 1 referred to.]

14. Suit against a tenure-holder :—The mere fact that a tenure-holder has acquired a right to hold for the purpose of collecting rent is not sufficient to prove that he is a tenure-holder within the meaning of the Bengal Tenancy Act, it must be proved that the land was let out as a holding for agricultural or horticultural purposes; a suit for arrears of rent against such a tenure-holder is governed by the Limitation Act: *Umasao Bibi v. Mahomed*, 4 C.W.N. 76; s.c., 27 Cal. 205.

Tenure-holder under whom there are no agricultural tenants.

15. Suit by assignee of rent :—Art. 2 does not apply to a suit brought by an assignee of the arrears from the landlord but Art. 110 of Sch. II of Limitation Act applies to such a case: *Mohendra Nath v. Kailash*, 4 C.W.N. 605. The reasons of this

Art 110 of Sch. II of Limitation Act (XV of 1877)

applies to a
suit by an
assignee
of arrears.

decision will appear from the following portion of their Lordship's judgment :—

It is clear that the Bengal Tenancy Act, according to its preamble, is an Act relating to the law of landlord and tenant in Bengal, and that, therefore, all its provisions, including the schedules and the periods of limitation laid down in the schedules, must be applicable only to suits in which the parties stand in the relation of landlord and tenant. Now, the plaintiff in this case is not the "landlord" of the defendant according to the definition of landlord as contained in sec. 3, sub-sec. 4 ; and the defendant is not the "tenant" of the plaintiff, as "tenant" is defined in sec. 3, sub-sec. 3 of the Act : Therefore, although the claim may, according to the decision of the Full Bench,* be rent for the purposes of jurisdiction, yet as the parties to the suit do not stand to each other in the relation of landlord and tenant, we do not think the plaintiff is entitled to take advantage of the extended period of limitation laid down in Sch. III, Art. 2 of the Act for recovery of arrears of rent.

In the Full Bench case of *Siris Chandra v. Nazim Quazi*, 27 Cal. 827, s.c., 4 C.W.N. 357 : it was decided that a suit by an assignee of arrears of rent for recovery of the same lies in the Civil Court and not in the Small Cause Court.

It was argued in the Full Bench case that the assignee was not the landlord of the defendant. But this contention was over-ruled.

*Mohendra
v. Kailash*,
discussed.

It is submitted that the decision in the case of *Mohendra v. Kailash*, is in conflict with the principle of the Full Bench case. If Art. 2 does not apply to a suit for rent by an assignee on the ground that the assignee is not the landlord against a tenant it will follow that sec. 144 will not also apply to such a suit, for sec. 144 applies to "all suits between landlord and tenant". It will also follow that when rent is assigned and the assignor refuses to accept it when tendered by the tenant the latter will not be able to deposit it under sec. 61, for sec. 61 says that rent may be deposited when the landlord refuses to accept it, and the assignor is according to the case of *Mohendra v. Kailash*, not a landlord. But if the judgment of the Full Bench is to be looked at we may conclude from what has been stated there that, when rent is assigned the tenant does not lose the right of depositing rent under sec. 61. If the Limitation Act and not the Bengal Tenancy Act applies to a suit by an assignee of arrears of rent other anomolous results also will follow : e.g., a landlord has under the Bengal Tenancy Act the right to bring a suit for rent for practically 4 years ; so rent which falls in arrear on the last day of the year 1297, B.C. may be sued for by the landlord if he brings his suit on the last day of the year 1300, the assignee cannot sue to recover it as it is already beyond three years. At the same time if the Tenancy Act does not apply to a suit for rent by an assignee he gets an extended period of six years if the lease is a registered one : whereas the period of limitation applicable to a suit for rent brought by the landlord is 3 years whether the lease is registered or not : *Mackenzie v. Hazi Syed*, 19 Cal. 1.

Suit by
assignee
from
landlord.

A suit by an assignee from the landlord for recovery of arrears of rent is governed by Art. 110 of the first Schedule to the Limitation Act and not by cl. (2) of part I of Sch. III of the Bengal Tenancy Act : *Gojadhar v. Thakur Prasad*, 1 Pat. L.J. 506.

* *Sris Chandra v. Nazim Quazi*, 4 C.W.N. 357 : s. c., 17 Cal. 827.

Where a part of the rent reserved in a lease was made payable to the superior landlord and it was stipulated that on default of such payment the lessor would be entitled to sue the lessee, *held* that a suit by the lessor for such amount was not a suit for rent property so called and as such Art. 2 (b) was not applicable: *Hemendra Nath v. Kumar Nath*, 9 C.W.N. 96; such a suit is properly a suit for damages: *Ibid.* The case of *Ratneswar Biswas v. Hurish Chandra Bose*, 11 Cal. 221, was held to apply to this case and it was held that the case of *Ratneswar* was not over-ruled by the Full Bench cases of *Basanta Kumar v. Ashutosh*, 27 Cal. 67, s.c., 4 C.W.N. 3.

Rent payable to superior landlord.

16. Ejectment of a ticcadar :—Where a *ticcadar* purchased a raiyati holding during the period of his *ticca* lease and which according to agreement he was to give back to the landlord after the expiry of his *ticca* lease, held in a suit by the landlord for possession of the raiyati land which had been purchased by the *ticcadar* that the suit was barred by Art. 1 (a) as the *ticcadar* had non-occupancy right: *John Pierpout v. Babu Ramjee Ram*, [1920 Pat.] p. 168, s.c., 5 Pat. L.J. 302, (Das and Adami, J.J.).

Purchase of a raiyati holding by a ticcadar—ejectment suit.

17. Proprietor's private land :—Art. 1 (a) of Sch. III has no application to eject a tenant from the proprietor's private land after the expiry of the lease: *Jagarnath v. Janki Singh*, 40 I.A. 81 s.c., 1 Pat. 340, s.c., 26 C.W.N. 833, s.c., 35 C.L.J. 506 (P.C.). Where a tenant held over after the expiry of his lease of *zerait* land, this Art. does not apply. *Ibid.*

Proprietor's land.

Zerait land: holding over.

18. Cess Act :—The same rules of limitation are to be applied to a case under s. 64A of the Cess Act as would apply in rent suits to recover rent of a transferable tenure or holding, that is, limitation will be governed by rules under Schedule 3, Bengal Tenancy Act: *Satya Niranjan v. Ebrahim Mandal*, 95 I.C. 843, s. c., A.I.R. (1926) Cal. 1069. (Greaves and Panton J.J.).

19. Instalment decree :—Under the B. T. Act the Court has no jurisdiction to make the decree for rent payable by instalments; but if such a decree is made, it is merely an error of law and does not go to affect the jurisdiction of the Court making such a decree, and the period of limitation for execution of such a decree (in this case the decree was by consent) is governed by Sch. III of the B. T. Act: *Achutanand v. Gayan Chand*, 8 P.L.T. 673 s. c., 102 I.C. 781 (Ross and Wort J.J.).

ART 3.

Description of suit.	Period of Limitation.	Time from which period begins to run.
3. To recover possession of land claimed by the plaintiff as ¹ [raiyat or an under-raiyat.]	Two years.	The date of dis-possession.

Headings of Notes.

1. AMENDMENTS.
2. NON-OCCUPANCY RAIYAT AND UNDER-RAIYATS.
3. CASES UNDER ART. 3 AS IT STOOD BEFORE AMENDMENT: SUIT BY NON-OCCUPANCY RAIYAT.
4. BURDEN OF PROOF.
5. EXTINCTION OF RIGHT AFTER TWO YEARS.
6. LIMITATION RUNS FROM DATE OF ACTUAL OUSTER.
7. WHERE ART. 3 APPLIES AND WHERE NOT.
8. DISPOSSESSION BY LANDLORD: CONFLICT OF RULINGS.

1. Amendments:—For the words “an occupancy-raiyat” the words “a raiyat or an under raiyat” were substituted by Act I B. C. of 1907 and Act I E. B. A. of 1908.

Art 3 applies also to non-occupancy raiyat and under-raiyat.

2. Non-occupancy-raiyat and under-raiyat:—By the amending Acts of I, 1907 (B.C.) and I of 1908 (E. B. & Assam Council) this Article has been made applicable to non-occupancy raiyats and under-raiyats: formerly it was applicable to occupancy raiyats only.

Where the dispossession took place more than two years before the Amending Act this Article is not applicable to a suit brought by a non-occupancy raiyat or an under-raiyat; see the case of *Gopeswar v. Jiban Chandra*, 41 Cal. 1125, s. c., 18 C.W.N. 804, s. c., 19 C.L.J. 549 (Special Bench). See also the cases of *Munjhoori v. Akel Mahmud*, 17 C.L.J. 316; *Budhu Koer v. Hafiz*, 18 C.L.J. 274 and also the judgment of N. Chatterjea J., in the case of *Gopeswar v. Jiban Chandra*, 19 C.L.J. at p. 554 (s. c., 41 Cal. 1125, s. c., 18 C.W.N. 804).

Suit by an under-raiyat: The Article now has application to a suit by an under-raiyat but before the amendment of this Article it was held that the Article did not apply to a suit by an under-raiyat: *Bhagaban v. Jagneshar*, 2 C.W.N. 318 (notes).

Cases before amendment of this Article.

3. Cases under Art 3 as it stood before amendment: Suit by non-occupancy raiyat:—It is only in cases of occupancy raiyats that the two years' rule applies. See *Ram Dhan v. Ram Kumar*, 17 Cal. 926 (at p. 930). The case (*Bhagobati v. Luton Mondal*, 7 C.W.N. 218) holding that the limitation applicable to a suit to recover possession by a non-occupancy raiyat who has been dispossessed from his landlord, otherwise than in due course of law, is 6 months from the date of dispossession as provided by s. 9 of the Specific Relief Act has been over-ruled by the Full Bench case of *Tomizuddin v. Ashub Ali*, 8 C.W.N. 446, and it has been held that the period of limitation applicable to the case of a non-occupancy raiyat who has been dispossessed from his holding otherwise than in execution of a decree is either six or twelve years as provided in the Limitation Act: It was also held in that case that the remedy indicated in s. 9 of the Specific Relief Act is not the only remedy when the Legislature has provided for a non-occupancy raiyat who has been dispossessed otherwise than in due course of law.

4. Burden of proof:—Where the question is as to whether the shorter period of 2 years as provided in this Article or the period of 12 years as provided in Art. 142 of the Schedule of the Limitation Act will apply, held that the burden of proof is upon the party who asserts that the case is guided by the special rule of two years' limitation: *Taranath v. Iswar Chandra*, 16 C.W.N. 398; s. c., 14

C.L.J. 598. It must be clearly made out that any particular case falls within the terms of Art. 3: *Rudra Narain v. Natabar*, 42 Cal. 52; s. c., 18 C.W.N. 353, s. c., 18 C.L.J. 89.

5. Extinction of right after two years :—Where a landlord keeps a raiyat out of possession of his holding for the period specified in Art. 3, the raiyat's title in the holding is extinguished even if he held that s. 28 of the Limitation Act does not apply to cases governed by Art. 3 of Sch. III of the Bengal Tenancy Act: *Nand Kumar v. Ajodhya Saha*, 16 C.W.N. 1006, s. c., 14 C.L.J. 292. S. 28 of the Limitation Act. applies to such a case: *Ibid*.

6. Limitation runs from date of actual ouster :—The limitation as prescribed by Art. 3 begins to run from the date of actual ouster, and if subsequent to the ouster some dispute arises between the parties and an order is passed under s. 146 Cr. P. C. attaching the land, the limitation which has already begun to run does not cease, and the plaintiff does not get a fresh start of limitation from the date when the ouster under s. 146 Cr. P. C. is made: *Dewnarain v. C. R. H. Webb*, 28 Cal. 86, s. c., 5 C.W.N. 160.

Limitation runs from date of actual ouster.

7. Where Art. 3 applies and where not :—If a plaintiff had twelve years or a portion of twelve years to bring his suit when the Bengal Tenancy Act came into operation, he was by its operation restricted to two years from the date of his dispossession: *Saraswati v. Haritaran*, 16 Cal. 741: See also *Ramdhan v. Ram Kumar*, 17 Cal. 826.

Where cause of action arose before the passing of the Act.

This article relates only to a suit brought by an occupancy raiyat against his landlord and not to a suit by a tenant against third parties who are trespassers: *Ramjane v. Amoo Baparee*, 15 Cal. 317; (distinguished in 24 Cal. 40); where the suit as laid was not a suit against the defendant as landlord but as a person having no title whatsoever, held that Art. 3 applied as the defendant was in fact the landlord: *Ramdhan v. Ramkumar*, 17 Cal. 926.

Suit against landlord.

This article applies to all suits to recover possession of land which might be brought by an occupancy raiyat and is not limited to merely suits of a possessory nature: *Saraswati v. Haritaran*, 16 Cal. 741.

All suits to recover possession and not limited to merely

The suit mentioned in this Article means a suit by an occupancy raiyat as such, that is, an occupancy raiyat claiming a right of occupancy as against his landlord: *Chandra Kishore v. Raj Kishore*, 15 Cal. 450.

suits of a possessory nature. Suit by an occupancy raiyat as such Dispossession by co-sharer.

The special limitations of two years provided by Art. 3 of Sch. III of the Bengal Tenancy Act is restricted to suits between persons occupying the position of landlord and tenant, for it is in regard to such relations that the Act has been designed. It is of no consequence whether the ejectment is by some co-sharers or by the entire body of landlords: *Annada Sundari Chandalini v. Kebulram Changa*, 7 C.W.N. 542.

After the dispossession of a raiyat by some of the co-sharer landlords, his right to redeem the holding was recognised by the Court in a mortgage suit by another of the co-sharer landlords, held that such recognition by the Court did not extend the period of two years limitation: *Girish Chandra v. Giribala*, 28 C.L.J. 219.

Art. 3 applies only to a suit by a raiyat or under-raiyat against

his landlord, including one or more of several landlords: *Kunti Dai v. Jharu Lal*, 40 I.C., 907. (Chamier C.J. and Mullick J.). *Jaimangal Bati v. Jharu Lal Das*, 2 Pat. L. J. 567.

A suit brought by a person claiming a subsisting tenancy right under the defendant and praying for recovery of the land accordingly, where the ouster was effected by the landlord, is governed by Article 3 of Schedule III of the Bengal Tenancy Act. It makes no difference that ouster is effected by the landlord though the machinery of a Court of Law. It is not reasonable to import into the 3rd column of Article 3 of Schedule III of the Bengal Tenancy Act not merely the words "by the defendant" or "by the landlord," but the words "by the landlord as such": *Satish Chandra v. Hasem Ali*, 54 Cal. 450, s. c., 31 C.W.N. 634. (Rankin C.J., C. C. Ghose and Mitter J.J.). [The case of *Jaimanglabati v. Jharulal*, 2 P.L.J. 567 followed.]

Time runs from date of actual ouster.

Where an occupancy raiyat is dispossessed by a person whom the landlord has set up as a tenant, the dispossession being really by the landlord, the limitation applicable to a suit for recovery of possession by the raiyat is that prescribed by Art. 3: *Rakhit Mohanta v. Puddo Bauri*, 9 C.W.N. 54; see also *Mohorum v. Tukka*, 9 C.W.N. 231 (notes); see also *Bheka Sing v. Nukched*, 24 Cal. 40; *Chintamony v. Upendra*, 4 C.W.N. 326.

Where an occupancy raiyat is dispossessed by a person who has purchased the rights of some of the tenants at auction in execution of a decree for arrears obtained by the landlord, such person must be held to be acting in collusion with the landlord and the suit is governed by the special law of limitation prescribed in Art. 3, Sch. III; *Aminuddin v. Ulfatunnissa*, 13 C.W.N. 108; s. c., 9 C.L.J. 131 dissented from in *Kamaladhari v. Rameshur*, 17 C.W.N. 817.

Where a raiyat obtained a lease from the defendant and was put into possession of a part of the land, and the defendant obtained permission to remain upon the other portion for a period of three months and thereafter refused to vacate the same, and the plaintiff brought a suit for recovery of possession of the same, held that Art. 3 applied; *Panchu Kahali v. Jajneswar Majhi*, 53 I.C. 959.

Art 3 not confined to suit in which landlord himself is defendant.

The special rule of limitation in Art. 3, Sch. III, of the Bengal Tenancy Act is not confined to suits in which the landlord himself is a defendant: *Sekandar Sheikh v. Arun Sarkar*, 38 I.C. 69, (Fletcher and Richardson, J.J.).

Where the plaintiffs, after having obtained a lease, got delivery of possession of a portion of the lands demised and the landlord agreed to vacate the remaining portion after three months, but failed to do so, held that Article 3 applied: *Panchoo Kapali v. Jajneswar Majhi*, 32 C.L.J. 9, (Mookerjee, C.J. and Fletcher, J.).

Dispossession by a co-sharer landlord: Effect of recognition of tenant's title.

Art. 3 does not apply when there is no relationship of landlord and tenant: *Krishna Chandra v. Satis Chandra*, 20 C.W.N. 872, (Jenkins, C. J. and N. R. Chatterjea, J.). Where one of two co-sharer landlords brought a suit to have his right established to sell the occupancy holding of the raiyat in execution of a decree obtained by him, and it was proved that although the other co-sharer landlord had dispossessed the raiyat more than two years before the institution of the suit, but that notwithstanding the unlawful dispossession, the title of

the raiyat was throughout recognised by all parties concerned, and the recognition had been up to within two years of the institution of the suit, *held* that the suit was not barred by the two years' rule: *Sheikh Sarafuddin v. Chandra Mni*, 5 C.W.N. 505.

When a raiyat was dispossessed by a co-sharer landlord, and the Court recognised the right of the plaintiff to redeem in a suit upon a mortgage by another co-sharer landlord, *held* that the period of two years' limitation was not extended thereby: *Girish Chandra v. Gribala*, 28 C.L.J. 210.

A suit brought by an occupancy raiyat to recover possession of his holding in which the landlord is no party, and there is nothing on the record to shew that the landlord had any hand in the ouster of the plaintiff, is governed by 12 years' limitation, though the defendant might claim to hold under the same landlord: *Sheik Eradul v. Daloo Sheikh*, 1 C.W.N. 573. Dispossession by a third party claiming to hold under the landlord.

Where it was not found that the defendant though he had obtained a settlement from the landlord was authorised by him to oust the plaintiff, *held* that the two years' rule in Art. 3 did not apply: *Haran Chandra v. Madan Mohon*, 25 C.W.N. 102; the words in Art. 3 "are to be strictly construed, as repeatedly pointed out in recent decisions of this Court which disapprove of the extension of the principles of constructive dispossession": *Ibid*. The Court will not favour the allegations of constructive dispossession in support of a plea that a suit is barred by Art. 3; it must be shewn on clear evidence that the landlord himself was a party who dispossessed the tenant: *Bhodai Sahu v. Sheikh Manowar Ali*, [1920 Pat.] p. 91 (Mullick and Jwala Prasad J.J.). Art. 3 has no application in a case where the dispossession was by a tenant under an authority conferred by the landlords: *Kedar Nath v. Mohesh Chandra*, 28 C.L.J. 216. Constructive dispossession.

For the Article to operate there must be actual dispossession by the landlord of the tenant; it cannot be extended to the case of constructive dispossession where the landlord has never allowed the tenant to take possession of the land: *Rajani v. Panchanon*, 90 I.C. 793, s. c., A.I.R. (1926) Cal. 350.

A suit by a raiyat to recover possession of a holding against the defendant with whom it was settled by the landlord after he had purchased it in execution of a decree is governed by Art. 3: *Satis Chandra v. Nittya Gopal*, 21 C.W.N. 978. Suit by raiyat against lessee from landlord.

Where an occupancy raiyat is dispossessed and the landlord has had no hand in the ouster, the period of limitation applicable is 12 years and not 2 years as prescribed in Art. 3, Sch. III of the Bengal Tenancy Act: *Ramjiulla v. Ishab Dhali*, 39 Cal. 610, s. c., 6 C.W.N. 702 (F.B.): The case of *Hara Kumar v. Sheikh Nasaruddin*, 4 C.W.N. 665, if it decides the contrary was not rightly decided: *Ibid*. Where landlord has no hand in the ouster.

If the landlord is in any way responsible for the dispossession of the tenant by any person, Art. 3 will apply, otherwise not; the mere fact of the landlord being made a party defendant will not bring the case under Art. 3: *Dwarka Chaudhuri v. Ishwari Pandey*, 58 I.C. 46, (Jwala Prasad, J.). Art 3 will apply if landlord in any way responsible for the dispossession.

Where in a suit by a tenant for possession of his holding it was found that the landlord had no hand in the ouster and he recognised the defendant as a tenant after he had entered into the land on his

own account and had kept the plaintiff out of possession, *held*: that the suit was not barred by the two year's rule of limitation under Art. 3 of Sch. III: *Moharamdi v. Asmat*, 91 I.C. 493, s. c., A.I.R. (1926) Cal. 751 (Chakrabarti, J.).

Art 3 does not apply in a suit by occupancy raiyat against auction purchaser at rent sale.

Art. 3 does not apply to a suit by an occupancy raiyat against an auction purchaser who purchased the holding at a sale in execution of a decree for rent at the instance of the landlord: *Ganesh Chandra v. Beraja Sundari*, 46 I.C. 975 (Fletcher and Huda, J.J.); see also *Durgapada v. Bhusan Chandra*, 21 C.W.N. 373.

In order to make the special rule of limitation laid down in Art. 3, Sch. III of the B. T. Act applicable, it must be shewn that it was the landlord who caused or took part in the dispossession of the tenant. Where, therefore, a landlord who institutes a rent suit and in execution of a decree obtained in that suit brings the holding to sale, dispossession by a third party purchaser does not amount to constructive dispossession by the landlord: *Shyam Sunder v. Gobardhan*, 7 Pat. 129. (Sen and Allanson, J.J.).

[*Krishna Chandra v. Satish Chandra*, 20 C.W.N. 872; *Durgapada v. Bhusan*, 21 C.W.N. 373; *Bhadai v. Sheikh Manowar*, [1920] Pat. 91 followed: *Aminuddin Munshi v. Ulfatunmissa Bibi*, 13 C.W.N. 108 distinguished.]

Art 3 applies even when tenant is dispossessed by landlord on the strength of his purchase at rent sale.

Art. 3 applies even when the tenant has been dispossessed by the landlord on the strength of a purchase of the holding in execution: *Fani Bhuson v. Pulin Chandra*, 21 C.W.N. 976. Where the landlord of a raiyati holding caused it to be sold in execution of a rent decree, purchased it and settled it with new tenants, a suit by the former raiyat to recover the holding would be governed by Art. 3: *Satis Chandra v. Nittya Gopal*, 21 C.W.N. 978.

Where A an occupancy raiyat permitted B to build a house on it on the understanding that he should pay a certain rent, and B after building the house refused to pay rent to A and obtained a settlement of the land, *held* in a suit by A against B that Art. 3 did not apply: *Sonatan v. Chaka Sheikh*, 10 C.L.J. 89 (Jenkins C. J. and Mookerjee J., confirming on Letters Patent appeal the judgment of Brett J.); B having come upon the land by the permission of A, it was in truth no dispossession: (*Per Jenkins C.J.,—Ibid.*).

Dispossession by licensee of raiyat in collusion with raiyat's landlord.

Where a licensee of a raiyat came upon the land and by his conduct the raiyat was compelled to leave the land, *held* that it was not properly dispossession and Art. 3 does not apply in a suit for possession by the raiyat although there was collusion on the part of the landlord with the licensee: *Basanto Kumari v. Nandaram*, 17 C.W.N. 1149, s.c., 18 C.L.J. 86 (Jenkins C.J., and Mookerjee J.).

In this case Jenkins C. J., observed as follows:—

Constructive dispossession by landlord. Remarks of Jenkins C. J.

“This theory of constructive dispossession by landlords has been carried too far, and we are not disposed to encourage the idea that because it can be said that the landlord has favoured the dispossession by him, for that is what is required to bring into play Article 3 in the third Schedule to the Bengal Tenancy Act. The Act is one to amend and consolidate certain enactments relating to the law of landlord and tenant, and its preamble shows that this was its purpose. It is as a part of that scheme that Section 184 prescribes the special law of limitation embodied in Article 3 Schedule III which provided that in a suit for possession of land claimed by the plaintiff as a raiyat

or an under-raiyat, the period of limitation is two years from the date of dispossession. As between the plaintiff and the principal defendants, there was no relationship of landlord and tenant, so that as between them the Article would not apply, and it is only by importing the landlord and saying that he had a hand in the ouster that any suggestion can be made that this rule of special limitation governs this case.* But in fact there has been no dispossession by the landlord, so it cannot be fairly said that this is a suit that falls within Article 3. I therefore, hold that this special plea of limitation fails.”

Art. 3 applies only to suits as between landlord and tenant and is not applicable to a suit where the dispossession is by the defendant, acting, not as landlord, but, expressly in a different capacity, namely, that of auction-purchaser of the right, title and interest of a tenant at a sale held in execution of a rent decree obtained by him as a co-sharer landlord: *Brojo Kishore v. Saraswati*, 6 C.W.N. 333; see also *Abhoy Charan v. Shikh Titu*, 2 C.W.N. 175.

Dispossession by landlord acting not as a landlord but under a different capacity.

It is submitted that in whatever capacity the landlord may dispossess the raiyat this Article ought to apply, for, the dispossession by the landlord in a different capacity is also possession by the landlord.

Where a landlord took a usufructuary mortgage from an occupancy raiyat and continues in possession after the termination of the mortgage, his possession is adverse and a suit by the raiyat is not governed by Art. 3 of Sch. III of the Bengal Tenancy Act: *Khetra Nath v. Lakhan Sardar*, 59 I.C. (Mookerjee C.J. and Fletcher J.).

Art 3 does not apply in a suit by raiyat against landlord who is in adverse possession after the termination of usufructuary mortgage.

A suit for recovery of possession by a raiyat who has been dispossessed by a co-sharer landlord not in his capacity as landlord but by a claim of title independently of his interest as landlord is not governed by Art. 3 Sch. III of the Bengal Tenancy Act, but by Art. 142, Sch. I of the Limitation Act—*Gowher Ali v. Enayat Ali*, 38 Ind. Cas. 777; (Atkinson J.).

•When a suit is brought by a person, alleging that he is an occupancy raiyat, to recover possession of a holding against a person who says that he has derived title from the landlord, the limitation applicable is that applicable to a suit against the landlord, but if the settlement alleged to have been made from the landlord is merely colourable and not made in reality the question would not arise: *Lokenath v. Petambar*, 3 C.W.N. 215. At a sale held in execution of a decree for arrears of rent obtained by a co-sharer landlord against a registered tenant, another co-sharer landlord purchased the holding, and in obtaining delivery of possession, evicted a person other than the judgment-debtor; the person dispossessed sued to eject the auction purchaser, held that Art. 3 had no application to the case, as the dispossession by the defendant was in his character of auction purchaser and not of landlord: *Mahomed Khalil v. Hirendra Nath*, 5 C.L.J. 650.

Dispossession by co-sharer landlord not in his capacity as landlord.

When settlement by landlord a colourable transaction.

The plaintiff sued as an occupancy-raiyat to recover possession of certain lands of which she said she had been dispossessed by the defendants Nos. 1 to 3 who were her landlords, the suit was brought as against those landlords within a period of 2 years but a further defendant, namely, Fakera Pasban, was added as a party defendant in the suit by the Court of its own motion more than two years had expired from the date of alleged dispossession, the following remarks were made by their Lordships: (Rampini and Wilkins, J.J.). The

Addition of a party by a Court of its own motion.

plaintiff did not ask for any relief as against Fakera Pasban and it was not at plaintiff's request that he was made a party to the suit. The question as to whether 2 years limitation applied was not necessary to be decided as the case was disposed of on another ground. But their Lordships remarked as follows:—Fakera Pasban was added by the Court of its own motion, and it was found that he is not in possession and is not a tenant of the land and that being so, it does not appear to us that the suit as instituted is barred by 2 years' rule of limitation provided by Art. 3 of Sch. III of the Bengal Tenancy Act, as regards the defendant No. 4, Kakira Pasban. However that may be, it is not necessary for us to decide this question, seeing that the appeal fails on the first of the grounds we have mentioned: *Fakera Pasban v. Bibi Azimunnissa*, 27 Cal. 540.

Dispossession by landlord as auction purchaser.

Where a landlord obtains a decree for rent and in execution of the same puts the holding to sale and purchases it and obtains delivery of possession through court, held that such dispossession is not dispossession within the meaning of Art. 3: *Kamal Dhari v. Rameshur*, 17 C.W.N. 817. Their Lordships followed the principle in the cases of *Abhoy v. Sheikh Titu*, 2 C.W.N. 175; *Brajo Kishore v. Saraswati*, 6 C.W.N. 333 and *Mahomed Khalil v. Harendra Nath*, 5 C.L.J. 650 and dissented from the view taken in *Aminuddin v. Alfateunnissa*, 13 C.W.N. 108, s. c., 6 C.L.J. 131.

Dispossession in execution of a writ for delivery of possession issued by a Civil Court cannot be said to be a dispossession by the landlord within Art. 3: *Mahadeo Rao v. Pargash Rai*, 97 I.C. 629, s. c., A.I.R. (1927) Pat. 43. (Ross and Kulwant Sahay J.J.) [17 C.W.N. 817 followed; 21 C.W.N. 978 referred to.]

Dispossession by landlord. Conflicting rulings.

"Landlord as such,"—no such words in the Article.

"There are no words in the Article that 'landlord as such,' it seems difficult on the face of the article how we can read such words in the Article:" *Fanibhushan v. Pulin Chandra*, 35 I.C. 838, (Fletcher and Teunon J.J.). The dispossession of a tenant by a person who holds the dual capacity of the landlord and also of the auction purchaser of the holding when he dispossesses comes within Art. 3 of Sch. III. *Ibid*: Fletcher J., in delivering judgment of the Court said as follows: "The decisions in this court on the point are not uniform. It is no use saying that they are.* In some of the decisions it is said that the dispossession referred to in Art. 3 of Sch. III must be a dispossession by the landlord as such. In the case of *Rudra Narain Maity v. Natabar Jana*, 41 Cal. 56, s. c., 18 C.W.N.

Divergence of judicial opinion with respect to the scope of Art 3.

* *Nabin v. Wazid*, 3 C.L.J. 199, (N. R. Chatterjea and Panton, J.J.). There is a divergence of judicial opinion with respect to the scope of Art. 3, Sch. III; and in some cases it has been held that the Article is inapplicable to a case where the dispossession is effected by the landlord not as landlord but as auction purchaser and under process of the Court; See *Abhoy Churn v. Sheikh Titu*, 2 C.W.N. 175; *Brojo Kishor v. Saraswati*, 6 C.W.N. 333; *Mahomed Khalil v. Harendra Nath*, 5 C.L.J. 650; *Kamaldhari v. Rameshur*, 17 C.W.N. 817; *Ram Kinkur v. Sthiti Ram*, 27 C.L.J. 528. On the other hand, a different view has been taken in the following cases: *Aminuddin Munshi v. Pulin Chandra*, 21 C.W.N. 976; *Satis Chandra v. Nitaya Gopal*, 21 C.W.N. 978; *Petambar v. Bhagabat Lal*, 24 I.C. 860; *Joimangalbat v. Jharu Lal Das*, 2 Pat. L. J. 567.

Reference to Full Bench.

Having regard to the difference of opinion on the point, the question was referred to a Full Bench in S. A. Nos. 1224 to 1226 of 1917; but it was held that the question referred did not arise in this case because the dispossession was subsequent to the symbolical possession delivered to the landlord and was made at a time when the plaintiff was in possession as tenant under the landlord.

353, s. c., 18 C.L.J. 89 in which, I may remark, the headnote is far in excess of what was actually decided by the Court, the learned Chief Justice, Sir Lawrence Jenkins, observed: "we recently had occasion to enter a protest against extending the terms of the article by use of figures of speech and metaphors. What we have to see in each case is whether, in fact, there has been such dispossession as the Art. requires. That dispossession, it is conceded, must be by the landlord." That view I adopt *in toto*. The only question is whether the person who holds the dual capacity of the landlord and also of the purchaser of the holding, when he dispossesses the tenant comes within the meaning of the Article. He remains the landlord, that is obvious. There are no words in the Article that say 'landlord as such.' It seems to me difficult, on the face of the Article, to say how we can read such words into the words in the Article. There is a conflict of judicial authorities clearly. In the case of *Aminuddin Munshi v. Ulfutunnissa Bibi*, 13 C.W.N. 108, s. c., 9 C.L.J. 131; the view was taken that the Article applied even when the landlord purchased the holding in execution. That decision was followed by myself and Justice Richardson in the case of *Aminuddin Muhsi v. Ulfutunnissa Bibi*, 13 C.W.N. 108, the view was taken that the Article applied even when the landlord purchased the holding in execution. That decision was followed by myself and Justice Richardson in the case of *Pitambar Mahapatra v. Bhagabat Lal*, 24 Ind. Cas. 860. The decision in *Aminuddin Munshi v. Ulfutunnissa Bibi*, 13 C.W.N. 108; has however been recently dissented from in the case of *Kamal Dhari v. Rameshwar Singh*, 17 C.W.N. 817. In that conflict of judicial authorities, we have not to make up our minds which of these decisions we should follow. I think the decision in *Aminuddin Munshi v. Ulfutunnissa Bibi*, 13 C.W.N. 108 is correct. It is in accordance with the terms of the section and the decision of Jenkins C. J. in *Rudra Narain Maity v. Natabar Jana*, 41 Cal. 52 at p. 56, s. c., 18 C.W.N. 353; s. c., 18 C.L.J. 89."

Dispossession by landlord.

Conflict of rulings.

Where a landlord, in execution of a decree for arrears of rent, puts a holding to sale, purchases it himself and obtains delivery through Court, such dispossession of the tenant is not dispossession within the meaning of Art. 3: *Ram Kinkar v. Sthiti Ram*, 27 C.L.J. 528. A private purchaser does not stand in the same footing as a purchase at an execution sale; so where a landlord claimed by virtue of a private purchase Art. 3 applies: *Nabin v. Wazid*, 31 C.L.J. 199 (N. R. Chatterjea and Panton J.J.).

Art 3 applies when landlord claims by virtue of private purchase.

The plaintiff, an heir of the original tenant brought a suit for joint possession in respect of his share of the land against the defendants who are co-sharer landlords and who having secured a *kabala* of the entire land from another of the original tenant dispossessed the plaintiff *held* that Article 3 applied: *Nabin Chandra v. Shaikh Wajid*, 24 C.W.N. 382 (N. R. Chatterjee and Panton J.J.).

Art. 3 applies where the dispossession was by the landlord in his capacity of landlord or of an auction purchaser: *Gowher Ali v. Enayet Ali*, 40 I.C. 774. (Chamier C. J. and Mullick J.).

Where the dispossession was by a person who got settlement from an auction purchaser at a sale of the holding, for arrears of rent, *held* that Art. 3 did not apply: *Krishna Chandra v. Satis Chandra*, 20 C.W.N. 872, (Jenkins C. J. and N. R. Chatterjea J.); to deprive a tenant of his right of suit there must be a plain dispossession within the meaning of Art. 3: *Ibid*.

Art 3 applies where dispossession is by landlord in his capacity as landlord or auction purchaser (Patna case).

Where A had a raiyati holding and some homestead land and house in a certain village and he sold only the house and the homestead land to the plaintiff who was dispossessed by the landlord who claimed the house through some other tenant, *held* that Art. 3 of Sch. III had no application: *Sheikh Abdulla v. Kutban*, 21 C.L.J. 473 (Rampini J.).

Dispossession in collusion with the landlord.

Where a holding which had been purchased by the plaintiff at a previous rent sale was fraudulently sold in execution of another rent decree obtained against the former tenant, and the plaintiff was dispossessed by the purchaser, but the lower Appellate Court found that the landlord himself had no hand in the ouster but that he was hoodwinked by his *gomastha* who was colluding with the purchaser, *held* on the findings that there was no dispossession by the landlord and Art. 3 of Sch. III of Bengal Tenancy Act did not apply: *Rudranarain v. Natabar*, 42 Cal. 52, s. c., 18 C.W.N. 353; s. c., 18 C.L.J. 89.

Suit for possession of portion of holding.

A suit for recovery of possession of a portion of a holding is governed by this Article: *Johwar Ali v. Alarakhu*, 63 I.C. 481 (Coutts and Ross J.J.).

Suit by one of two joint raiyats.

A suit by one of two joint raiyats for joint possession of his share against certain co-sharer landlords who on the basis of a *Kabala* from another tenant had dispossessed him, *held* that Art. 3 applied *Nabin Chandra v. Sheikh Wajid*, 24 C.W.N. 382.

Suit for recovery of possession and declaration of title.

Where A brought a suit against B and C for recovery of possession against B and for a declaration that A as lessee under B was entitled to claim rent from C, *held* that the suit did not fall under Art. 3 of Sch. III of the Bengal Tenancy Act but the case was governed by the general law of limitation as it was not a suit between landlord and tenant: *Gopinath v. Bhajahari*, 68 I.C. 472 (Greaves and Ghose J.J.).

Constructive dispossession.

The Court will not favour the allegation of constructive dispossession in support of a plea that a suit is barred by Art. 3; it must be shewn by clear evidence that the landlord himself was a party who dispossessed the tenant: *Bhadai Saha v. Sheikh Monowar*, [1920 Pat.] p. 92 (Mullick and Jwala Prasad J.J.).

Dispossession by landlord.

Where the dispossession has been by the landlord or some body acting in concert with him, Art. 3 applies: *Gobinda v. Akhil*, 64 I.C. 858, (Sanderson C. J. and Chotzner J.).

Suit by tenant for land of which landlord did not give possession. Dispossession by landlord's agent.

Where a tenant was not given possession of a portion of the demised premises, a suit for recovery of possession by the tenant is not governed by Art. 3: *Panchoo Kapali v. Jogneswar*, 32 C.L.J. 9.

Dispossession without the agency of the landlord.

Where a co-sharer landlord purchases a holding and settles the land with a third person who dispossesses the former raiyat with the help of the landlord's agent, Art. 3 applies: *Profulla v. Baburam*, 34 C.L.J. 462.

Art. 3 has no application in a suit between two tenants unless the dispossession can be attributed to the agency of the landlord: *Janaki Nath v. Baikuntha Nath*, 27 C.W.N. 259, s. c., 36 C.L.J. 140, (Richardson and Suhrawardy J.J.).

Where the landlord granted a settlement to some of his peons and the dispossession was effected with the help of the landlord's *Barkandazs*, *held* that the two years' rule applied: *Arman Peoda v. Manik Sarkar*, 27 C.W.N. 86 (N. R. Chatterjea and Suhrawardy J.J.).

The plea of special limitation under Act 3 Sch. III is available not only to the landlord but also to person claiming under the landlord and therefore the question relating to special limitation may be inquired into even if the landlords were not parties to the suit, or if the landlords being made parties to the suit, did not appear to contest the suit but were satisfied with the order passed by the Court below and did not challenge it on appeal: *Abdul Mazid v. Goshai Das*, A.I.R. 1925 Cal. 461 (Suhrawardy and Chotzner, J.J.).

Plea of special limitation also available by a person claiming under the landlord.

A purchaser of a portion of a holding in execution of a money-decree to recover possession of the portion purchased by him from a subsequent purchaser in execution of a rent decree, is not governed by Act 3 of Sch. III to the B. T. Act: *Harimohon v. Muhammad Rashidul*, 84 I.C. 130 (Ross and Sen J.J.).

Purchaser in execution of money decree.

Art. 3 applies even to cases where the dispossession is by a fractional landlord. But where in a case plaintiff who was a vendee of a non-transferable holding was recognised as a tenant by all the joint landlords excepting one and the latter having dispossessed the vendee was sued for recovery of possession two years after the date of dispossession, held that the special period of limitation prescribed by Art. 3 did not apply in as much as the dispossession had been made by the fractional landlord who had not recognised the vendee's purchase and as such was a trespasser: *Abdul Kader v. Shaikh Lal Mahomed*, 39 C.L.J. 501. (Mookerjee and Panton J.J.).

Dispossession by a co-sharer landlord of transferee, not recognised by the former.

8. Disposition by landlord: Conflict of Rulings:— "There is a conflict of decisions on the point whether dispossession by a landlord as auction purchaser was caused under Art. 3 Sch. III of the Bengal Tenancy Act." *Profulla v. Baburam*, 34 C.L.J. 462 (N. R. Chatterjea and Pearson J.J.).

Conflict of rulings.

Where A the landlord brought a suit for rent against B treating him as the tenant and in execution purchased the holding and as purchaser dispossessed C. who was found to be the real tenant (and not B) and the decree and sale against B was found to be collusive, held that Art. 3 applied: *Kedar Nath Biswas v. Kamini Sundari*, 28 C.W.N. 482, (Suhrawardy and Page J.J.).

Dispossession by landlord after auction purchase; collusive sale against third person.

A decree passed in a suit by a co-sharer landlord for rent is not a decree under the Bengal Tenancy Act, such a decree is executable under the Civil Procedure Code: *Kesho Prasad v. Ram Deni*, 74 I.C. 454, (Coutts and Dass J.J.).

Decree for rent by a co-sharer landlord.

Summary of the more important Rules laid down in the cases where landlord dispossesses or has hand in the ouster:

Summary of case law

1. This Article does not apply where the landlord is not responsible for the dispossession.*

2. This Article does not apply when the suit is against an auction purchaser who purchased the holding at the sale in execution of a decree for rent at the instance of the landlord.†

* *Dwarka Chaudhuri v. Iswari Panday*, 58 I.C. 46; *Haran Chander v. Madan Mohun*, 25 C.W.N. 102; *Bhadai Sahu v. Sheikh Monowar Ali*, [1920 Pat.] p. 91; *Kedar Nath v. Mohesh Chunder*, 28 C.L.J. 216. Art. 3 does not apply where there is no relationship of landlord and tenant.

See also *Kunti Dai v. Jharulal*, 40 I.C. 907.

† *Ganes Chander v. Biraja Sundari*, 46 I.C. 975 (Fletcher and Huda, J.J.); *Durga Bhuson Chandra*, 21 C.W.N. 373, (Teunon and Sheepshanks, J.J.).

Conflicting Rulings.

3. *The special Rule of Limitation is not confined to suits in which landlord himself is the defendant.**

4. *As to whether this Article applies where the dispossession is by the landlord as such, the rulings are in conflict ;†*

Cases where it has been held that Art. 3 applies where the dispossession is by the landlord, in his capacity as landlord or not.

Fani Bhusan v. Pulin Chandra, 35 I.C. 838, (Fletcher and Teunon J.J.) ; principle in the case of *Rudra Narain v. Natabar*, 41 Cal. 52, s. c., 18 C.W.N. 353, s. c., 18 C.L.J. 89, (observation of Jenkins C. J.).

Nobin v. Wazid, 31 C.L.J. 199 (N. R. Chatterji and Panton J.J.).

Aminuddin Munshi v. Ulfut-unnessa Bibi, 13 C.W.N. 108, s. c., 9 C.L.J. 131 (Rampini C. J. and Doss, J.).

Satis Chandra v. Nititya Gopal, 21 C.W.N. 978. *Gowher Ali v. Enayat Ali*, 40 I.C. 774. (Chamier C. J. and Mullick J.) ; *Pitambar v. Bhagabat Lal*, 24 I.C. 860 (Fletcher and Richardson, J.J.). *Jaimangal Bati v. Jharulal Das*, 2 Pat. L.J. 567 (Chamier, C. J. and Mullick, J.).

Satis Chandra v. Hasemali, 54 Cal. 450, s. c., 31 C.W.N. 634 (Rankin, C. J., C. C. Ghose and Mitter, J.J.).

Cases where it has been held that Art. 3 applies only where the dispossession is by the landlord as such i.e. in his capacity as landlord.

Abhoy Charan v. Shaik Titu, 2 C.W.N. 175 (O'kinealy J. and Hill J.).

Brojo Kishore v. Saraswati, 6 C.W.N. 333 (Maclean C. J. and Banerjee J.).

Mahamed Khalil v. Hirendra Nath, 5 C.L.J. 650 (Rampini and Mookerjee, J.J.).

Kamaldhari v. Rameshwar, 17 C.W.N. 817 (D. Chatterji and N. R. Chatterjee, J.J.).

Ramkinkar v. Sthitiram, 27 C. L. J. 528 (Mookerjee, J. and Walmsley, J.).

ARTS, 4 & 5.

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.

* *Sekunder v. Ann Sarkar*, 38 I.C. 69 (Fletcher and Richardson, J.J.).

† Having regard to the difference of opinion, the question was referred to the Full Bench in S. A. Nos. 1224-26 of 1917; but it was held that the question

ART. 6.

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made ¹[in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years. 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.

Headings of Notes.

1. AMENDMENTS.
2. DECREE FOR RENT BY A CO-SHARER LANDLORD.
3. CO-TENANT.

referred did not arise because the dispossession was subsequently symbolical possession delivered to the landlord and was made at a time when the plaintiff was in possession as tenant under the landlord.

¹The words in square brackets were substituted for the original words "under this Act or any Act repealed by this Act" by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) s. 61 (4) and by E. B. A. I of 1908,

4. OUT-GOING LANDLORD.
5. FINAL DECREE.
6. DATE OF THE DECREE.
7. DECREE BY AN ASSIGNEE OF RENT.
8. ACKNOWLEDGMENT OF LIABILITY.
9. AMENDED DECREE.
10. INJUNCTION, EFFECT OF.
11. INFORMAL APPLICATION ON THE LAST DAY.
12. EXECUTION OF DECREE AFTER 3 YEARS.
13. SUIT FOR DECLARATION THAT LANDLORD IS ENTITLED TO NUGDI RENT AND FOR RECOVERY OF RENT.
14. S. 19 OF THE LIMITATION ACT.
15. CONSTRUCTION SHOULD BE STRICTLY MADE.

Amendment

I. Amendment :—For the words “under this Act, or any Act repealed by this Act,” the words “in a suit between landlord and tenant to whom the provisions of this Act are applicable” were substituted by Act I (E. B. A.) of 1908.

Rent decree by a co-sharer landlord was not governed by Art 3 before amendment.

2. Decree for rent by a co-sharer landlord :—Before the passing of the Amending Acts I of 1907 (B.C.) and 1 (E. B. A. of 1908) it was held that an application for execution of a decree for a sum not exceeding Rs. 500 in value obtained by one of two or more joint landlords for his share of the rent was not governed by the special rule of limitation laid down in Art. 6 of Sch. III of the Bengal Tenancy Act, but by the general law of limitation, namely, Art. 179 of the Second Schedule of Act XV of 1877 : *Kedar Nath v. Ardha Chandra*, 5 C.W.N. 763. The special law of limitation is limited in its operation to decrees made under the Bengal Tenancy Act or any Act repealed by it ; a suit by a fractional co-sharer is maintainable, not as a suit under the Bengal Tenancy Act, but as a suit independent of the Act :* *Ibid*.

but is now governed.

After the amendment of this Article by Act I (B.C.) of 1907 and Act I (E. B. A.) of 1908 it has been held that an application for execution of a decree obtained by a co-sharer landlord for his share of the rent, in a suit to which the other co-sharers were not parties, the decree being for a sum of money not exceeding Rs. 500, is governed by the special limitation provided by Art. 6 : *Narendra Chandra v. Afifannessa*, 19 C.W.N. 751 ; see also *Thakamani v. Mahendra*, 10 C.L.J. 463 ; *Khettra Mohan v. Mohim*, 17 C.W.N. 518 ; *Mrityunjoy v. Bholanath*, 18 C.L.J. 81.

K. B. Dutt's case laying down a contrary rule, not followed in other cases.

In the case of *K. B. Dutt v. Goshta Behari*, 16 C.W.N. 1006, s. c., 16 C.L.J. 379, that a decree obtained by a co-sharer landlord for his share of the rent was not governed by Art. 6. Their Lordships distinguished the case of *Thakamani v. Mohendra*, 10 C.L.J. 463. The case of *K. B. Dutt v. Goshta Behari*, 16 C.W.N. 1006) has not* been followed in subsequent cases ; Carnduff and Beachcroft, J.J., said in the case of *Khettra Mohan v. Mohim*, 17 C.W.N. 518 that their Lordships were disposed to follow the views expressed in *Thakamani v. Mohendra*, 10 C.L.J. 463 rather than the later ruling of Brett and Sharfuddin, J.J., in *K. B. Dutt v. Goshta Behari*, 16 C.W.N. 1006 : 16 C.L.J. 379. In the case of *Mrityunjoy v. Bholanath*

* See *Prem Chand v. Mokshada*, 14 Cal. 201 ; *Jugabandhu v. Jadu Ghose*, 15 Cal. 47. A decree for rent by a co-sharer landlord is not a decree under the Bengal Tenancy Act : *Durga Charan v. Kali Prasanna*, 3 C.W.N. 536 : s. c., 26 Cal. 727 ; *Beni Madhob v. Joad Ali*, 17 Cal. 390.

nath, 18 C.L.J. 81, Mookerjee and Beachcroft, J.J., declined to follow *K. B. Dutt's* case and pointed out that that case overlooks the fundamental fact, that Art. 6 is applicable where the decree has been made in a suit between landlord and tenant to whom (and not "to which") the provisions of the Act are applicable. In an unreported case (Appeal from Order No. 562 of 1912, 26th Jan., 1914) *K. B. Dutt's* case was not followed and the view taken in *Thakamani v. Mohendra*, 10 C.L.J. 463 and *Mrityunjoy v. Bholanath*, 18 C.L.J. 81 was accepted as correct.

Where a decree was obtained by one of several joint landlords for his share of the entire rent and was made in a suit in which rent was claimed in respect of several holdings in the occupation of the tenant, an application for execution was held to be governed by Art. 6: *Mrityunjoy v. Bholanath*, 18 C.L.J. 81. Rent-decree in respect of several holdings.

Where a decree for rent not exceeding Rs. 500 was obtained before the passing of Act I (B.C.) of 1907, but the application for execution was made subsequent thereto, held that Art. 6 applied: *Thakamani v. Mohendra*, 10 C.L.J. 463. Decree passed before amendment but executed subsequently.

Art. 6 applies also to a rent decree by a co-sharer landlord when the other co-sharers have not been joined as parties: *Byomkesh Chakravarti v. Haladhar Mondal*, 19 C.W.N. 127. Art 6 applies to a rent decree by co-sharer landlord.

Art. 6 applies to a decree obtained by a co-sharer landlord as well: *Byomkesh v. Uday Chand*, 43 I.C. 737. See also *Thakamani v. Mohendra Nath*, 10 C.L.J. 463, and *Mritunjay v. Bhola Nath*, 18 C.L.J. 81.

3. Co-tenant :—Art 6 applies to a decree for rent even if it is obtained against a co-sharer tenant: *Binda Bibi v. Mum Singh*, 50 I.C. 33, (Atkinson and Das, J.J.).

4. Out-going-landlord :—Art. 6 does not apply to the execution of a decree for rent obtained in a rent suit brought by a landlord after he parted with his interest as landlord: *Satis Ranjan v. Nasaraddi*, 34 I.C. 145, (D. Chatterjea and Beachcroft, J.J.). Art 6 applies to a rent decree against co-sharer tenant.

5. Final decree :—The "final decree" mentioned in this Article must be the final decree in the suit and does not include an order in appeal upon an application to set aside that decree under s. 108 C. P. C.: *Baikuntha Nath v. Aghore Nath*, 21 Cal. 387. Art 6 does not apply to a decree by outgoing landlord.

6. Date of the decree :—The period of limitation runs from the date of the decree and not from the date fixed for payment: *Ram Saday v. Dwarka Nath*, 22 Cal. 644. A decree was made in a suit for rent on the 26th May, 1890 ordering the sum of Rs. 400 to be paid in the following August; on the 9th August 1893, an application for execution was made, held that the application was barred: *Ibid*. See also *Mamtazal Hug v. Nirbhai Singh*, 9 Cal. 711, *Khetro Mohon v. Mohim*, 17 C.W.N. 518. Final Decree Date of the decree.

The nature of a suit depends on the plaint and not on the decree passed in the suit. Where in a suit for khas possession of property on declaration of title thereto the plaintiff himself denies the existence of tenancy in his plaint, Art. 6 is not applicable to the case: *Mahendra v. Ashutosh*, 91 I.C. 478, s. c., A.I.R. (1926) Cal. 545.

7. Decree by an assignee of arrears of rent :—It seems that a decree obtained by an assignee is a decree made under the Bengal Tenancy Act although it might be said that the assignee is not the Decree by an assignee.

person under whom the tenant held and does not therefore come strictly within the definition of "landlord" as given in the Act. He no doubt stands in the shoes of the assignor and as such cannot have higher rights.

Limitation
Act, s. 19.

8. Acknowledgment of liability : s. 19 of the Limitation Act :—An acknowledgement of liability under s. 19 of the Limitation Act made by a judgment-debtor to the decree-holder's right to execute a rent-decree gives the decree-holder a fresh starting point for counting the period of limitation prescribed by this Article* : *Harihar v. Gunendar*, 9 C.W.N. 1025. In this case the judgment-debtor made a petition containing the acknowledgement of his debt. See also *Rakhal Chandra v. Hemangini*, 3 C.L.J. 347 : *Ram Koomar v. Jakur Ali*, 8 Cal. 716 : *Toree Mohamed v. Mohamed Mabboud*, 6 Cal. 730.

Amended
decree.

9. Amended decree :—An application for execution of a decree for rent which was originally incapable of execution is not barred by limitation although presented more than three years after the date of the decree, but within three years from the date of amendment of the decree making it capable of execution : *Mohamaya v. Abul Hamid*, 18 C.W.N. 266.

Injunction.

10. Injunction, effect of :—Where an application for execution of a decree for rent not exceeding Rs. 100 was made within three years but such proceedings were stayed by an injunction at the instance of the judgment-debtor, and a second application for execution against moveables having been made, the decree-holder made a third application beyond three years from the date of the decree was made for the reliefs contained in the first application, *held* that the third application was not barred and that it was to be considered as a continuation of the first application : *Sarandhari v. Bikram*, 18 C.W.N. 539.

"The second application cannot rightly be treated as an abandonment of the relief claimed in the first application : it must be deemed as an application for additional relief : and in this view, the third application may well be treated as a continuation of the first application" : *Ibid.*

11. Informal application on the last day :—Where an application for execution was made on the last day of the period allowed by Art. 6, but it having been discovered that the judgment-debtor had died previously, the decree-holder without unreasonable delay made the necessary substitution of the heir of the deceased and proceeded with the execution, *held* that the application was in continuation of the proceeding started on the last day of limitation : *Kalanund v. Chandra Kishore*, 14 C.W.N. 971, s.c., 12 C.L.J. 192.

Execution
after
3 years.

12. Execution of decree after 3 years :—Where a decree for rent in a suit not exceeding Rs. 500 was obtained on the 14th June, 1911 and the sale in execution took place on the 25th April, 1914, but the sale was set aside on the 16th September 1914, and on the 28th September, 1914 the execution case was dismissed for default, and

*the acknowledgment under s. 19 does not affect or alter the period of limitation so prescribed, though it may seem practically to do so, but only gives the decree holder a fresh starting point for counting the period prescribed by Art. 6 of Sch. III of the Bengal Tenancy Act.....(Per Rampini and Caspersz, J.J.).

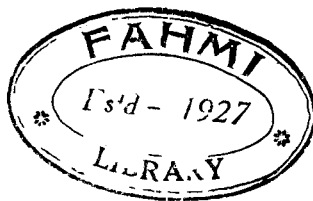
an appeal against the order setting aside the sale was dismissed on the 2nd January, 1915, *held* that a subsequent application for execution made on the 16th February, 1916, i.e., more than three years after the date of the decree was barred by limitation under Art. 6: *Midnapur Zemindary Company v. Dina Nath Sahu*, 22 C.W.N. 766.

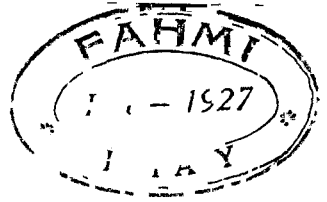
Article 6 of Schedule III of the Bengal Tenancy Act, 1885, prescribes a period of limitation of three years from the date of the decree for the execution of a decree in a suit between landlord and tenant and not being a decree for a sum of money exceeding Rs. 500: *Bishundeo v. Mahadeo Prasad*, 6 Pat. 274, s.c., 102 I.C. 895 (Ross and Kulwant Sahay, J.J.).

13. Suit for declaration that landlord is entitled to *nugdi* rent and for recovery of rent :—Where a landlord brought a suit for a declaration that he was entitled to *nugdi* rent and also for recovery of rent, *held* that a decree passed in such suit was governed by this Article: *Darkahi v. Mango Koer*, [1922 Pat.] p. 5, s.c., 67 I.C. 869, s.c., 1 Pat. 779, (Coutts and Das J.J.).

14. S. 19 of the Limitation Act :—S. 19 of the Limitation Act applied to an application for execution of a decree under Sch. III Art. 6, and therefore where there was acknowledgement of liability within the meaning of s. 19 of the Limitation Act in regard to a decree for rent less than Rs. 500, *held* that the acknowledgement gave a fresh start: *Paresh Nath v. Ismail Sardar*, 26 C.W.N. 486, s.c., 34 C.L.J. 195, (N. R. Chatterjea and Newbould, J.J.).

15. Construction should be strictly made :—The rules of limitation, specially those of special limitation should be construed very strictly: *Golam Yusuf v. Ram Prasad*, 27 C.W.N. 180 (notes); (Rankin and B. B. Ghose, J.J.); where a decree for rent was passed in favour of a co-sharer landlord for a particular sum and in favour of the deft. co-sharer landlord for another sum separately for Rs. 471 odd, when the decree was executed by the deft. decree-holder, an objection was taken by the tenant that it was barred by the special rule of limitation in as much as it was a separate decree below Rs. 500, and the lower Courts over-ruled the contention that the decree was a joint decree exceeding Rs. 500, in favour of all the landlords, *held* in second appeal that the decree was not barred and the rule of special limitation did not apply: *Ibid.*





APPENDICES.

APPENDIX I. Bengal Government Rules.

- II. Important Notifications of the Bengal Government
 - III. Notifications extending the Act. — — — — — 1-37
 - IV. Some of the Amending Acts. — — — — — 5. 67
 - V. Registration Rules. — — — — — 61-13
 - VI. High Court Rules. — — — — — 82-91
 - VII. Former Chapters X and XIII A. — — — — — 91-99
 - VIII. Forms of Notices. — — — — — 99-105
 - IX. Scale of Court fees. — — — — — 105-107
 - X. Final publication of record-of-rights in certain areas. — — — — — 108-111
 - XI. Notes on Miscellaneous matters.
 - XII. Price lists.
Examples working out the rateable enhancement of rent under s. 32.
 - XIII. Extracts from Bihar and Orissa Settlement Manual 1927 (containing rules of procedure for Surveys and Settlement under Chap. X of the B. T. Act, Scale of Court-fees in Settlement operations in Bihar and Orissa, dates of settlement operations in the Province of Bihar and Orissa, commutation of produce rents, etc. etc.).
-

APPENDIX I.

BENGAL GOVERNMENT RULES.

(Published in the Calcutta Gazette, Part I, pp. 2205 to 2226, December 9, 1914.)

Note :—Subsequent amendments have been embodied and noted.

REVENUE DEPARTMENT.

NOTIFICATIONS.

No. 11574L.R.—The 7th December, 1914.—In exercise of the powers conferred by sub-section (7) of section 39, sub-section (2) of section 61, section 134 and section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Governor in Council is pleased to make the following rules for all the districts of the Presidency of Bengal, to which the said Act applies, in supersession of all rules heretofore made under the said portions of that Act by the Government of Bengal and the late Government of Eastern Bengal and Assam.

Calcutta
Gazette,
I. pp. 2205
to 2226
Dec. 9, 1914.

J. H. KERR,

Secy. to the Govt. of Bengal.

RULES UNDER THE BENGAL TENANCY ACT, 1885 (VIII OF 1885.)

CHAPTER I.—GENERAL.

1. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under the Bengal Tenancy Act, 1885 (hereinafter referred to in these rules as "the Act"), shall be subject to the supervision and control of the Local Government; and the proceedings and orders of each Revenue-officers under the Act shall be subject to the supervision and control of the Revenue-officers to whom he may be declared by the Local Government to be for the purposes of the Act, subordinate.

Supervision
and control
by Local
Government.

Act VIII of
1885.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and the progress of such operations.

* 2. Where no other mode of service of notice is prescribed by the Act or by these rules, service shall be effected in the manner prescribed for the service of

Service of
notice where

* Rule 2 stood as follows :—

Where no other mode of service of notice is prescribed by the Bengal Tenancy Act or by these Rules, service shall be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure; and, if it is addressed to a number of persons occupying or owning different holdings in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil

mode not prescribed by the Act or these rules.

summons on a defendant under the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure; and if it is addressed to a number of persons occupying or owning different holdings or tenures in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, or by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid. In the case of uninhabited villages, the posting of the notice shall be made in the nearest inhabited village.

CHAPTER II.—STAPLE-FOOD-CROPS AND PRICE-LISTS.

Local areas.

3. *Section 39.*—Each Sub-division of a District shall form a local area for the purposes of sub-section (1) of section 39 of the Act, and the Collector shall settle the mart within the Sub-division at which prices shall be recorded.

Staple-food-crops.

4. Rice has been declared, and until further orders shall be deemed, to be the staple food-crop in all such local areas.

Date for preparation of price-lists.

5. Price-lists of the staple-food-crop shall be prepared on one market day in the month, at intervals of not less than twenty days. This market-day shall be selected by the Collector, subject to the control of the Board of Revenue.

Method of determining prices.

6. The price recorded shall be the prevailing retail price at which the staple-food-crop was actually sold in the mart to which the price list refers, on the day selected under rule 5.

Price-lists by whom to be prepared.

7. (1) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases, where a Sub-Deputy Collector is not available, the Collector may authorise a Kanungo to prepare the lists.

Procedure, or by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid.

NOTES.

The words in italics were originally added to the old Rule by Government Notification No. 113 L.R., dated the 8th January 1900, Calcutta Gazette, Part I, 10th January, p. 20.

STRICT ADHERENCE TO RULE: Under the rule as it stood originally it was held that a notice to quit addressed to several tenants must be served by proclamation and beat of drums, and that personal service could be effected when the notice was directed to a single tenant: *Thamasha Bibi v. Mathura Nath*, 6 C.W.N. 67; the rule as it originally stood before the 8th January, 1900, did not contain the words in italics.

Rule 3, Chap. I of the Rules made by the Local Government under cl. 2 of s. 189 is intended to apply only to those cases where the Act speaks of the service of a notice and not merely the giving of a notice, if such notice is required to be given in the prescribed manner: *Madhub Ram v. Doyal Chandra*, 2 C.W.N. 109. "Seeing that when the Legislature intended that the notice was either to be served or to be given in the prescribed manner, it has expressly said so, and seeing that in the provisions of the law sub-section 1 of s. 72, now under the consideration, it has not taken care to say so, we do not think that it would be right to hold that it was nevertheless intended that the notice under sub-section 1 of s. 72 should be served in the prescribed manner *Per BANERJEE & WILKINS, J.J. : Ibid.*

(2) Where prices are recorded at marts other than those at the head-quarters of districts, the Collector may, with the sanction of the Commissioner, authorise a Sub-Registrar to prepare the list, on days when no gazetted officer or Kanungo is available.

(3) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price-lists, and the list shall be signed by at least one of them, as well as by the officer preparing it.

8. Every officer charged with the preparation of price-lists shall keep a record, showing, as far as practicable :—

- (a) the date of his visit to the mart at which prices are to be recorded;
- (b) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

9. When the price-lists are prepared at the Sadar Sub-division by an officer other than a Covenanted Deputy Collector, or at other Sub-division by an officer subordinate to the Sub-divisional Officer, or by a Sub-Registrar, they shall be submitted to the Covenanted Deputy Collector or to a Deputy Collector specially nominated by the Collector for the purpose, or to the Sub-divisional Officer as the case may be. Such officer shall scrutinize the lists; he may call for explanations and cause errors to be corrected, and, having satisfied himself of the accuracy of the lists, he shall countersign them.

10. The price-lists shall be published at the marts to which they respectively refer, at the collectorate or sub-divisional office, and at every police-station and of munsifi in the local area.

11. After the expiry of one month from the date of publication in the manner prescribed in rule 10, the price lists shall be submitted to the Board of Revenue with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector on such objections.

CHAPTER III.—LANDLORD'S IMPROVEMENTS.

12. Section 80.—Applications from landlords for the registration of improvements shall be made to the Collector of the district. If any such application be presented to any other Revenue-officer, he shall forward it for orders to the Collector.

13. As far as practicable, the application shall be in Form I appended to these rules. The Collector shall either verify the application personally or shall depute a Revenue-officer, not below the rank of Sub-Deputy Collector, to make the verification. In all cases the verification shall be by local inquiry.

14. Before holding a local inquiry under rule 13, the Revenue-officer shall prepare a proclamation, giving general notice to the tenants of every village concerned of his proposed local inquiry and of the date thereof. He shall cause such proclamation to be published by beat of drum in every such village and he shall cause a copy of the proclamation, together with a copy of the landlord's application, to be fixed up, in the presence of not less than two persons, in some conspicuous place of every such village. The expense of such publication shall be borne by the applicant for registration.

15. The Revenue-officer who makes a local inquiry under rule 13 shall ascertain whether the work in question was carried out and, if so, at what time, at whose expense, and at what cost; whether the work is an improvement as defined in section 76, sub-section (2), of the Act, and was lawfully made by the landlord, and, if the improvement comes under clause (e) of that sub-section, whether enhanced rent is already being paid for the original improvement; and what tenants have been benefited thereby and to what extent. The Revenue-officer shall embody in a proceeding the result of his local inquiry. When an officer other than the Collector has made the local enquiry, he shall submit the proceeding to the Collector.

Orders by Collector on local inquiry.

16. The Collector, after considering the proceeding of the local inquiry and after holding such further inquiry as he thinks necessary, shall pass an order directing or refusing the registration of the landlord's improvement; and if he directs registration, he shall record clearly whether it falls under clause (e) of section 76 (2) of the Act, and, if so, what enhancement of rent, if any, is being paid for the original improvement.

Powers of officers recording evidence as to improvement.

17. Section (81) (1).—Every Revenue-officer who records evidence under section 81 (1) of the Act shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII of the Code of Civil Procedure (Act V of 1908).

Application for record of proprietor's private land to whom to be made.

CHAPTER IV.—RECORD OF PROPRIETOR'S PRIVATE LANDS.

18. Section 118.—Application under section 118 of the Act shall be made to the Collector of the district. If any such applications be presented to any other Revenue-officer, he shall forward it for orders to the Collector.

Signature of, and particulars to be contained in, application.

19. The application shall be signed by the party making it, and shall contain the following particulars, so far as the applicant is able to furnish them :—

- (a) the name, tauzi number, and Government revenue of the estate;
- (b) the names of the registered proprietors, and the share held by each;
- (c) the specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known;
- (d) the names of the tenants (if any) in occupation of each such plot; and
- (e) the grounds of the application.

Inquiry on receipt of application.

20. On receipt of the application, the Collector shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings. If the Collector directs that further proceedings be taken, he may transfer the application for inquiry and report to and Revenue-officer subordinate to him.

Measurement of lands, where necessary and deposit of cost thereof.

21. If the area of the lands has not been already ascertained by the measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the Collector shall order that the lands be measured and shall estimate the cost of measurement, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

Record of proceeding.

22. If the Collector determines that the land or any portion thereof is proprietor's private land within the meaning of section 120 of the Act, he shall record a proceeding to that effect and shall attach thereto a map of the land as ascertained by measurement.

Rules 41 to 48 to apply to officer acting under Chapter XI of the Act.

• 23. Rules 41-48 relating to Revenue-officers acting under Chapter X of the Act, shall apply *mutatis mutandis* in the case of Revenue-officers acting under Chapter XI of the Act.

CHAPTER V.—SERVICE OF NOTICES.

Contents of notices under sections 12, 13, 15, 18.

24. Notices under sections 12, 13, 15 and 18 of the Act shall contain, so far as may be possible, the particulars given in the appended forms (Forms 2 to 7).

Manner of service.

25. (1) Where there is a sole landlord, or where two or more persons are joint-landlords, and have a common agent such as is referred to in section 188, or a common manager appointed under section 95 of the Act, the notices specified in rule 24 shall be served on such sole landlord or his agent, or on such common agent or manager, as the case may be.

Posting of notice.

(2) Where there is more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint-landlord.

26. (1) In each case under rule 25, the notice shall be forwarded by post, in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), and the prescribed fee shall be paid for a special acknowledgement.*

(2) For the service of every such notice a process-fee of eight annas shall be levied, provided that where this fee is insufficient to cover the postal charges and the cost of obtaining an acknowledgement, a fee equal to the actual cost incurred shall be levied.

(3) If an acknowledgment for the registered notice cannot be obtained, the notice shall be served by being affixed in the office of the Collector for a period of one week and such notice shall thereupon be deemed to have been duly served.†

27. In the case mentioned in Rule 25 (1) the landlord's fee, except when it is wholly payable to Government or to a Trust Estate under the management of the Board of Revenue, or to an estate under the management of the Court of Wards, in respect of which a personal ledger is maintained in the Treasury, shall be transmitted by money order to the sole landlord or his agent or to the common agent or manager, as the case may be, at the time when the notice is issued. On the coupon attached to the money-order there shall be noted the number and the date of the notice which gives particulars of the landlord's fee to which the money-order relates. Fees payable wholly to Government or to a Trust Estate under the management of the Board of Revenue or to an estate under the management of the Court of Wards in respect of which a personal ledger is maintained in the Treasury shall be credited direct in the Treasury accounts or in the personal ledger of the estate concerned, as the case may be. In such cases the party paying the landlord's fee shall not be required to pay money-order fees.

Trans-
mission of
landlord's
fee by
money
order.

Note.—This Rule has been inserted for the Rule as it originally stood by notification No. 7452 L. R. published in *Calcutta Gazette*, Part I, September 10, 1919, p. 1463.‡

28. If, in cases where the amount of landlord's fee is transmitted by money-order, the sole landlord or his agent, or the common agent or manager, refuse to accept payment thereof, and in all other cases where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice, and on the expiry of that time the Collector of the district may declare that it has been forfeited, and on such declaration being made, it shall be at the disposal of Government.

Deposit of
fee where
there is re-
fusal or no
application.

29. The Collector or any other officer who signs the order for the notice to be served, shall satisfy himself that the landlord's fee, and other fees and charges realised in cash have been paid into the treasury.

Verification
of payment.

30. The agreement under sub-section (2) of section 46 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

* The words "The prescribed fee shall be paid for a special acknowledgment" have been substituted for the original words an acknowledgment obtained by notification No. 1138 L.R., dated the 3rd February, 1917 (*Cal. Gaz.*, 1917) Part I, p. 194.

† This sub-rule (3) has been added by the same notification as is mentioned in the previous foot-note. (Added by Not. No. 1138 L.R., dated 3rd February, *Cal. Gaz.*, Part I, p. 194, Feb. 7, 1917).

‡ Rule 27 as it originally stood was as follows:—In the cases mentioned in rule 25 (1) the landlord's fee shall be transmitted by money-order to the sole landlord or his agent, or to the common agent or manager as the case may be, at the time when the notice is issued. The coupon attached to the money-orders shall contain in every case the number and date of the notice served under sections 12, 13, 15 or 18 of the Act, and shall contain, in addition, so far as may be possible, the particulars given in the appended forms (Forms Nos. 2 to 7).

Filing and service of notice under section 46 (4).

Service of notice of receipt of deposit in cases (a), (b) and (d) of section 61.

Publication of general notice under section 72 (2).

Notice under section 73.

Service of such notice through Civil Court.

Notice by raiyat of intention to surrender.

Notice by tenant of intention to abandon.

Notice to tenant under section 155.

Service of notice of

31. The notice under sub-section (4) of section 46 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

32. In cases (a), (b) and (d) of section 61, referred to in sub-section (2) of section 63 of the Act, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898) or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

33. The general notice referred to in sub-section (2) of section 72 of the Act may be published by the transferee by fixing up a written notice to the tenants in the village office, or, in the presence of not less than two persons, in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice, as hereinbefore prescribed, on payment of the process-fee prescribed by the High Court.

34. Notice under section 73 of the Act shall be in writing and shall be delivered to the landlord or his agent or, where two or more persons are joint-landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95 of the Act, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54 of the Act. When there are two or more joint-landlords without a common agent or manager, the notice shall be served at the village office of the principal co-sharer, or at such other places as may be appointed by each of the landlords for payment of rent under sub-section (2) of section 54.

35. The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

36. If the raiyat elects to proceed under sub-section (2) of section 86 of the Act, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under sub-section (4) of the said section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

37. A notice of the tenant's abandonment of his holding under sub-section (2) of section 87 of the Act shall be in the appended form (Form 8) and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling-house, or tree or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

38. Notice to the tenant under section 155 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

39. (1) When a tenancy is held under a single landlord, or under two or more landlords having one common agent or common manager, such as is referred to in

rule 25 (1), a copy of the instrument referred to in section 176 of the Act shall be served on such landlord or on such agent or manager as the case may be. incumbrance on landlord.

(2) When a tenancy is held under two or more landlords not having one common agent or common manager as aforesaid a copy of the said instrument shall be served—

(a) if none of them have one common agent or common manager as aforesaid, then on each landlord, or

(b) If some of them have one common agent or common manager as aforesaid, then on such agent or manager and also on each of the landlords who have no such agent or manager.

(3) The said copy or copies shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure (Act V of 1908).

(4) The fee to be paid for such service shall be—

(i) in the cases referred to in sub-rule (1), one rupee; and

(ii) in the cases referred to in sub-rule (2), one rupee for the first copy of the instrument and four annas for each additional copy.

40. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible, contain the particulars specified in the appended form (Form 9). The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose. Particulars to be contained in requisition from Civil Court for copies or extract of record-of-rights.

CHAPTER VI.

PART I.

Powers of officers making surveys and preparing record-of-rights.

41. When a Revenue-officer is appointed for the purpose of making surveys and preparing record-of-rights under Chapter X of the Act within any district, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer." Every such officer is hereby vested with— Powers-vested in Settlement and Assistant Settlement Officers.

(a) all the powers exercisable by Civil Court in the matter of procuring the attendance of parties and witnesses and the production of documents and of examining the same;

(b) powers to enter upon any land included within the area, in respect of which the order under section 101 of the Act has been made, and to survey, demarcate, and make a map of the same;

(c) power to cut and thresh the crops on any land, in respect of which the order under the said section 101 has been made, and to weigh the produce with a view to estimating the capabilities of the soil; and Further powers vested in Assistant Settlement Officers.

(d) power to take down evidence with his own hand in the English language, in proceedings held under Chapter X of the Act in which an appeal is allowed in accordance with the procedure laid down in the Code of Civil Procedure for the trial of suits. Bengal Act V of 1875.

42. A Revenue-officer appointed with the additional designation of "Assistant Settlement Officer" is also hereby vested with all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875. Further powers vested in Settlement Officers.

43. A Revenue-officer appointed with the additional designation of "Settlement Officer" is also hereby vested with all the powers of Superintendent of Survey under the Bengal Survey Act, 1875. Further powers vested in Settlement and Assistant Settlement Officers.

44. A Revenue-officer appointed with the additional designation of "Settlement Officer" or "Assistant Settlement Officer" is also hereby vested with all the powers exercisable by a Civil Court in the trial of suits.

Powers of Settlement Officer to make over certain matters to Assistant Settlement Officer.

45. A Revenue-officer appointed with the additional designation of "Settlement Officer" may, by general or special order, make over for disposal to any Assistant Settlement Officer subordinate to him—

- (a) objections under section 103A;
- (b) the settlement of fair rents, including the preparation of a table of rates;
- (c) the preparation of a settlement rent-roll under Chapter X, Part II, of the Act;
- (d) objections under section 104B (3) or section 104E;
- (e) application for settlement of fair rents under section 105;
- (f) suits instituted for the trial of disputes under section 106; and
- (g) applications for the commutation of rents under section 40.

Powers of Settlement Officer to withdraw and transfer cases.

46. A Revenue-officer appointed under the designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer subordinate to him any of the proceedings mentioned in rule 45, and may dispose of them himself, or transfer them for disposal to any other Assistant Settlement Officer subordinate to him. He may also transfer to a competent Civil Court for trial any particular case or class of cases under section 106 of the Act.

Collector of district to discharge functions of Settlement Officer where no such officer appointed.

47. Where no special Settlement Officer has been appointed for any district, the Collector of that district or, in the case of Howrah, the Covenanted Deputy Collector is hereby appointed to discharge all the functions of a Revenue-officer under Chapter X of the Act, and is vested with all the powers of a Settlement Officer under rules 41 to 46.

Powers vested in Director of Land Records.

48. In respect of all operations under Chapter X of the Act which have been placed under the administrative control of the Director of Land Records, that officer is hereby appointed to discharge all the functions of a Revenue-officer under the said Chapter and is vested with all the powers of a Settlement Officer under rules 41 to 46. In respect of such operations, he is further declared, under sections 104B (4), to be the "confirming authority" for tables of rates and settlement rent-rolls which have been prepared by other Revenue-officers and he is declared, under section 104G (1), to be the superior Revenue authority to whom appeals will lie from original orders on objections passed by other Revenue-officers under section 104B (3) or section 104E. In the case of tables of rates and settlement of rent-rolls prepared by the Director of Land Records, the Board of Revenue will be the "confirming authority," and in the case of original orders on objections passed by the Director of Land Records, the Board of Revenue will be the appellate authority.

PART II.

Procedure in the preparation of a record-of-rights.

Applications under sections 101 (2) (a) and 103.

49. (1) Applications under section 101 (2) (a) and under section 103 of the Act shall be made to the Collector who shall forward them with his recommendations through the Director of Land Records to the Commissioner.

(2) Every application under section 101 (2) (a) shall specify :—

- (a) whether the applicant is a landlord or tenant;
- (b) the local area, estate, tenure or part thereof for which the application is made;
- (c) the interest of the applicant in the lands of the local area, estate, tenure or part thereof.

(3) Every application under section 103 shall specify :—

- (a) the status of the applicant, viz., whether he is a proprietor or a tenure-holder or a raiyat;
- (b) the particulars specified in section 102 of the Act, in respect of which the application is made; and
- (c) the number of tenants occupying the estate or tenure or part thereof, in respect of which the application is made, the total rent payable by

them at the time and the estimated area covered by the application (so far as the applicant is able to give these particulars).

(4) If the application under section 101 (2) (a) or under section 103 of the Act, is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under the Land Registration Act, 1876. Beng. Act VII of 1876.

(5) If the application under section 103 is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.

(6) The Commissioner shall forward an application under section 101 (2) (a) with his recommendation to the Local Government for orders.

(7) The Commissioner may allow an application under section 103, or, if he considers that it cannot be granted with advantage to the interests of all persons concerned, he may reject it, recording his reasons for doing so.

(8) When an application under section 101 (2) (a) or section 103 of the Act is allowed, the Collector shall call upon the applicant to deposit one rupee per acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed.

(9) If the amount so deposited proves more than sufficient to cover the costs of the proceedings, the unexpended balance will be refunded on their termination. If the amount deposited proves insufficient to cover such cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so the proceedings may be stopped and the order allowing the application cancelled.

50. (1) When an order has been made under section 101 (1) or section 101 (2) of the Act directing that a survey shall be made and a record-of-rights prepared by a Revenue-officer in respect of the lands of any local area, estate or tenure or part thereof, the survey shall be made and the record-of-rights prepared in the manner described in the following rules (in this part and in Part III of this Chapter) and by the following processes, namely:—

- (i) Traverse survey.
 - (ii) Cadastral survey.
 - (iii) Erection of boundary marks.
 - (iv) Preliminary record-writing (or *khanapuri*).
 - (v) Local explanation (or *Bujharat*).
 - (vi) Attestation.
 - (vii) Publication of the draft record.
 - (viii) Disposal of objections under section 103A.
 - (ix) Preparation of the settlement rent-roll, in cases in which a settlement of revenue is being or is about to be made.
 - (x) Preparation of the final record.
 - (xi) Publication of the final record.
 - (xii) Distribution of the final record and of printed maps; and recovery of costs where ordered under section 114.
 - (xiii) Settlement of fair rents under sections 105 and 105A.
 - (xiv) Trial of suits under section 106.
- Provided that stage (v)—local explanation—may be omitted with the approval of the Director of Land Records.

Procedure for making survey and preparing record-of-rights.

(2) A Revenue-officer who has been appointed with the additional designation of "Settlement Officer" may, at any time before the publication of the final record, direct that any portion of the proceedings in respect of the lands of any local area, estate or tenure or part thereof, shall be cancelled and that the proceedings shall be carried out *de novo* from such stage as he may direct.

(3) When an order has been made under section 103 directing that all or any of the particulars specified in section 102 shall be ascertained and recorded with

respect to any estate or tenure or part thereof, the Revenue-officer shall proceed in accordance with the following rules (in this part and in Part III of this Chapter), so far as they may be applicable.

51. *Traverse Survey*.—The cadastral survey of the notified area shall be based upon a traverse survey, and such traverse shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys.

52. *Cadastral Survey*.—(1) In the course of proceedings under section 101 of the Act, a large-scale map showing roads, rivers, railways and other physical features of the country, as well as homesteads and other fields, shall be prepared for each village contemplated by section 115A of the Act as the unit of survey and record.

(2) When the area contained within the external boundaries of the village maps of the previous survey contemplated by section 115A is unsuitable as the unit of survey and record, or if there has been no such previous survey, the Settlement Officer shall, after ascertaining, as far as possible, the opinions of the landlords and tenants concerned, submit his proposals for the determination of the area to be adopted as the unit of record and survey to the Board of Revenue through the controlling officers to whom he is subordinate. That unit shall, if sanctioned by the Board of Revenue, be adopted in framing the record-of-rights, but shall not be deemed to constitute a village within the meaning of the Act until a notification has been issued under section 3 (10) (b). The Board of Revenue shall submit a copy of its order in each case to the Local Government for the issue of the notification.

53. *Erection of Boundary Marks*.—Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and may also be erected at any other points where this is necessary, in the opinion of the Revenue-officer, for the definition of any boundary.

54. *Preliminary Record-writing*.—At this and the two following stages the draft record shall be prepared. The draft record shall consist of statements of rights which are hereinafter styled the *khatians*. There shall ordinarily be separate *khatian* for each person interested, or each group of persons jointly interested, in the land, whether as proprietor, tenure-holder, raiyat, under-raiyat or occupant, and each *khatian* shall show the rights and liabilities of each person or group of persons according to the particulars which have been specified in the notification under section 101. At this stage all such particulars shall find entry, with the exception that no entry shall be made as to the revenue, rent or cess, the class to which the tenant belongs, or the special conditions and incidents of the tenancy. At this stage there shall also be prepared a field-index or *khasra* arranged according to the serial numbers of the fields in the village. This field-index shall not form part of the draft record. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by a Revenue-officer or a kanungo in a summary manner and on the basis of actual possession.

55. *Local Explanation*.—When the areas of the fields have been extracted and entered in the preliminary record, a copy of each *khatian* shall be made over by a Revenue-officer or a kanungo to the person or body of joint persons in whose names the *khatian* has been opened, or to their representatives. Each *khatian* shall then be examined on the ground, with reference to the village map, by a Revenue-officer or a kanungo, and shall be explained to the person or persons concerned, or their representatives, if present. The Revenue-officer or kanungo shall make such corrections as are necessary in the map, in the draft record, and in the copies of the *khatians* which have been distributed, if they can be produced for this purpose. At this stage entries of the rent which is payable according to the statement of the landlord and according to the statement of the tenant shall be made in the draft *khatians* of the tenants and such copies as are produced; but the other particulars

which were omitted at the stage of preliminary record-writing shall be deferred until the stage of attestation.

56. *Attestation.*—This stage of the operations shall be taken up after the landlords and tenants have been allowed a sufficient interval to study their copies of the *khatians*. The attestation of each village shall be taken up at a convenient place in or near the village. Before attestation begins, a proclamation shall be published in the village giving due notice to the landlords and tenants and calling on them to appear before the Revenue-officer on the date fixed, bringing with them their copies of the *khatians*, read out all the important entries, make corrections where required, the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue-officer in a summary manner and on the basis of actual possession. In the *khatian* of each proprietor or group of proprietors he shall enter with his own hand the revenue payable to Government. In the *khatian* of each tenant or group of tenants shall enter with his own hand the class to which the tenant or group of tenants belongs, the special conditions and incidents (if any) of the tenancy and the rent lawfully payable or deliverable to each landlord or group of landlords. In the *khatian* of each cultivating raiyat as defined in the Cess Act, the Revenue-officer shall, and in the *khatian* of each tenure-holder as defined therein, the Revenue-officer shall, as far as possible, record the cess lawfully payable to each landlord or group of landlords. The Revenue-officer shall sign and date the office copy of the *khatian*, and if the copy of the *khatian*, which, was given to the person or persons concerned, is produced, the Revenue-officer shall see that it corresponds with the office copy as attested. When the Revenue-officer has completed the attestation of all the *khatians* of a village, he shall draw up a formal proceeding to this effect.

Ben. Act IX
of 1880.

57. *Publication of the Draft Record.*—The Revenue-officer shall publish the draft record-of-rights by placing it for public inspection, free of charge, during a period of not less than one month; at such convenient place as he may determine. A proclamation shall previously be published in each village informing the landlords and tenants of the place at which the draft record of that village will be open to public inspection, the period during which it will be open to such inspection, and the last date on which objections may be filed. Notwithstanding anything contained in the proclamation, the Revenue-officer may extend the period which the draft record will be open to inspection and during which objections may be filed.

58. *Objections under Section 103A.*—(1) Blank forms of objection shall be supplied free of charge and objections shall, as far as practicable, be made on such forms. Along with the original objection, the objector shall file a copy or copies for service on all other persons who, in the opinion of the Revenue-officer, are materially interested in the case. The Revenue-officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection, and with each notice to a person other than the objector he shall forward a copy of the objection. Objections regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue-officer on the basis of actual possession. The record shall contain the names of the witnesses examined, and an abstract of the reasons for the decision. When a Revenue-officer directs that a change shall be made in the rent recorded as payable by any tenant he shall direct that a corresponding change shall be made in the cess, if any, recorded as payable by such tenant. Objections shall not be disposed of in the absence of any of the parties materially interested, or their representatives, unless the Revenue-officer be satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

(2) Whenever the Revenue-officer has been unable, before the publication of the draft record, to enter the cess payable by all or any of the tenure-holders in any local area, and whenever, owing to a revaluation duly made after the

publication of the draft record, there have been changes in the cess lawfully payable by all or any of the tenure-holders in such local area, the Collector may, at any time before the final publication of the record, make an objection to the omissions or entries in question, and the Revenue-officer shall thereupon proceed, notwithstanding anything contained in sub-rule (1) of this rule, to consider the objection, and, if necessary, to make in the draft record of such local area entries or revised entries of the cess which is then lawfully payable by each tenure-holder concerned :

Provided that no such entry or revised entry shall be made unless the tenure-holder has been previously informed of the proposed entry and has been given an opportunity of objecting thereto.

59. *Preparation of a settlement rent-roll.*—Where land revenue is being, or is about to be, settled, the Revenue-officer shall prepare a rent-roll for each village, in accordance with the following procedure :—

- (i) Before preparing the rent-roll the Revenue-officer shall issue a proclamation informing the landlords and tenants of the time and place at which the preparation of the rent-roll will begin. If any tenant be absent, the Revenue-officer shall make no entry in the rent-roll which would have the effect of altering the rent of that tenant until a special notice has been duly served on that tenant.
- (ii) When the Revenue-officer is preparing the settlement rent-roll on the basis of a table of rates, he shall consult the landlord and tenants of the village regarding their own classification of the lands therein and regarding the relative capability of each class of land, according to the classification. When specifying in the table of rates the rate of rent which is fairly and equitably payable in respect of each class of land, the Revenue-officer shall specify and have regard to the rate of rent which is now being paid in respect of each class of land, and shall also have regard to the statements of the landlords and tenants as to the classification and relative capability of lands. Before settling any rent upon the application of the table of rates, the Revenue-officer shall consider the circumstances of the tenant and shall compare the total rent which he is now paying with the rent which he would pay according to the table of rates. He shall also consider whether the land held by the tenant is good or bad land of its class.
- (iii) When determining the final entries to be made in the rent-roll, the Revenue-officer shall read out, or cause to be read out in his presence, the principal entries relating to the holding and rent of each tenant whose rent is to be settled, and shall enter in the rent-roll with his own hand the fair rent settled for each such tenant.
- (iv) The Revenue-officer shall enter in the rent-roll the cess which is payable by each tenant to his landlord after the determination of the fair rent.
- (v) The publication of the draft table of rates, if any, and of the draft settlement rent-roll shall be carried out in the manner and for the period prescribed in the case of the publication of the draft record-of-rights.
- (vi) Objections under section 104B (3) or under section 104E of the Act shall ordinarily be disposed of by Revenue-officer, in or near the village in which the land is situated. The Revenue-officer shall record his reasons for each order on an objection. Appeals will lie against these orders to the superior Revenue authority mentioned in rule 48.

60. *Preparation of the Final Record.*—When all objections under section 103A of the Act have been disposed of, and when the settlement rent-roll, if any, has been prepared, sanctioned and incorporated with the record, and when the draft

record has been corrected in accordance with the original and appellate orders on all objections, the Revenue-officer shall proceed to frame the final record. The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of *khatians* prepared on forms which are generally similar to the forms used for the *khatians* of the draft record. The *khasra* shall not form part of the final record. The final record shall be printed or prepared in manuscript, according as the Local Government may, by general or special order, determine.

61. *Publication of the Final Record.*—The Revenue-officer shall publish the final record-of-rights by placing it for public inspection free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the final record of that village will be open to public inspection and the period during which it will be open to such inspection.

62. *Distribution of printed maps and of copies of the Final Record.*—The maps which have been prepared under rule 52 (1) may be printed under the authority of the Local Government, and may be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may, from time to time, by general or special order, direct. Copies of the final record-of-rights, or of portions thereof, shall be printed or prepared in manuscript and shall, after certification under section 76 of the Indian Evidence Act, be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may, from time to time, by general or special order, direct. The printed maps and the copies of the record or of portions thereof, which are distributed under this rule to persons other than public officers shall be distributed free or on payment, according as, in the case of each local area, the Local Government may direct. When payment is required the sums so received shall ordinarily be adjusted against the expenses incurred on account of survey and settlement, should the account of those expenses still be open. I of 1872.

PART III.

PROCEDURE AFTER FINAL PUBLICATION.

Settlement of fair rent under Sections 105 and 105A.

63. (1) When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and, subject to the directions contained in this rule, the Revenue-officer shall adopt, as far as it is applicable, the procedure laid down in the Code of Civil Procedure for the trial of suits.

(2) When the estate or tenure is managed by the Court of Wards or by a manager appointed by the District Judge under section 95 of the Act and a settlement of revenue is not being or is not about to be made, the procedure laid down in this rule for recording and settling rents shall be followed, the manager of the estate or the tenure being regarding as the landlord.

(3) When a landlord or tenant applies for the settlement of fair rent notice shall be served on every person interested in the application, together with a copy of the application, or extract therefrom, or summary thereof, so far as the application concerns such persons.

(4) With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord in the same village may make a joint application for the settlement of rent, or may be joined as defendants in the same proceedings on a similar application by the landlord:

Provided that, if at any time it appears to the Revenue-officer that the question between any two of the parties, of whom one is so joined

with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, for the joint or separate disposal of the application, as he may think fit.

(5) On the date fixed for the settlement of fair rents, or any subsequent date to which the proceedings may be adjourned, the Revenue-officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of section 105 of the Act.

(6) When a landlord or tenant does not attend, after due service of notice has been proved, the procedure may be *ex parte*.

(7) Where a landlord or a tenant appears and the fair rent is not settled under sub-section (5) or sub-section (6) of section 105 of the Act, that is, by the acceptance by the parties of a rent proposed by the Revenue-officer, or by compromise, the Revenue-officer shall record evidence in the manner prescribed in clause (f) of section 148 of the Act for the trial of rent suits, and shall settle a fair and equitable rent according to law :

Provided that in important cases the Revenue-officer may, in his discretion, record evidence at length.

(8) When a fair rent has been settled under these rules, it shall be entered in the *khatian* as the rent payable in respect of the tenancy from the date prescribed by section 110 of the Act.

(9) It shall not be necessary for a Revenue-officer to draw up a separate decree with regard to the fair rent settled; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

(10) A proceeding under section 105A of the Act shall be considered as part of the proceeding under section 105 in which the issue arose, and the record of a proceeding under section 105A shall be considered as part of the record of the proceeding under section 105. In trying and deciding issues under section 105A, the Revenue-officer shall record evidence in the manner prescribed in sub-rule (7) of this rule.

64. *Suits under section 106*.—Proceedings under section 106 of the Act shall be dealt with in all respects as suits between the parties.

64A. Notwithstanding anything contained in these rules, the procedure prescribed in cl. (ff) of, s. 148 of the Bengal Tenancy Act, 1885, as being applicable to suits for the recovery of rent, shall be applicable *mutatis mutandis* to proceedings, under section 105, 105A or 106 of that Act.*

*Rule 64A has been inserted by Notification No. 1549 L. R., the 12th February, 1918, *Calcutta Gazette*; Part I, February 13, 1918, p. 257.

65. The rules issued by the Local Government under Order XXVI, rule 9, of the Civil Procedure Code, 1908, shall not apply to proceedings in the Court of a Revenue-officer under section 105, 105A or 106 of the Act.

66. Application under section 108A of the Act for the correction of *bona fide* mistakes must be dealt with by a Revenue-officer specially empowered by the Local Government. If they are presented to a Revenue-officer not specially empowered under that section, he shall receive them and forward them with his report to the Revenue-officer so empowered. The Court-fee payable on every such application is twelve annas.

NOTES.—By notification No. 628 T. R., dated the 28th October, 1922, and published in the *Calcutta Gazette*, Part I p. 1995, in the last sentence of the above rule the word "twelve" was substituted for "eight."

Rules under Order XXVI rule 9, of the Civil Procedure Code not to apply to proceedings under section 105, 105A or 106 of the Bengal Tenancy Act.

* Applications under section 108A, by whom to be dealt with.

CHAPTER VII.—GENERAL SCALE OF FEES.

67. *Service of Notices.*—(1) For the service of every notice under this Act, Fees for not being a notice issued by any Revenue or Civil Court [fees for serving which service of are regulated by the Court-fees Act, VII of 1870], and not being provided for notice. by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

(2) Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

(3) In addition to the above fee, the actual charge which must be incurred if it is necessary to travel by railway or boat, or to cross ferries, shall be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carried more than one process involving charges for railway fare, boat-hire, etc., the sum leviable shall be charged in equal shares upon all the processes so carried. The rate at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under rule VII of the Rules prescribed by the High Court under clause (ii) of section 20 of the Act VII of 1870, and shall be sufficient only to cover on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of this nature.

(4) If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

68. *Deposits of Rent.*—For deposits of rent under section 61 (2) of the Act fees shall be levied according to the following scale :— Fees for deposits of rent.

	Rs.	A.
On any sum not exceeding ...	5	1
On any sum exceeding ...	5	2
but not exceeding ...	10	
On any sum exceeding ...	10	4
but not exceeding ...	25	

On any sum exceeding Rs. 25, four annas for each complete sum of Rs. 25 and four annas for the remainder; provided that, if the remainder does not exceed Rs. 10, the charge for it shall be only two annas; provided also that in no case shall the fee exceed the sum of Rs. 5.

69. *Distrain of crops.*—(1) The following scale of charges is prescribed on account of processes for distraint and sale under section 134 of the Act :— Fees for processes for distraint.

- (a) in respect of the warrant of distraint—8 annas;
- (b) in respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—8 annas a day; and
- (c) in respect of action taken under sub-rule (2) of section 126 of the Act, for the reaping, storing or preservation of the crop distrained—8 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

(2) In addition to the charges under clauses (a), (b) and (c) of sub-rule (1), railway fare, boat-hire and ferry charges may be levied, when necessary, as under rule 67.

FORM I.

APPLICATION UNDER SECTION 80 OF ACT VIII OF 1885.

(See Rules 12 and 13.)

To

THE COLLECTOR OF

THE application of

son of

resident of

for registration of an improvement under section 80 of the Bengal Tenancy Act, 1885, (VIII of 1885).

Name of pargana and estate in which improvement has been effected.	Name of village in which improvement effected.	Nature of applicant's interest in land improved.	Nature of improvement.	By whom executed and at whose expense.	Cost of improvement	When executed.	Names of all tenants benefited in each village.	To what extent each tenant has been benefited.
1	2	3	4	5	6	7	8	9
					Re. A. P.			

A. B.,

Landlord.

FORM 2.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII OF 1885.

*(See Rule 24.)**(Where there is a single landlord or common agent or Common Manager.)*

To

THE COLLECTOR OF

LET this notice be served on A. B. resident of _____, as required by section 12/18 of Act VIII of 1885. The landlord's fee of Rs. _____, money-order fee of Rs. _____, and Rs. _____ for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury; chalan appended.

C. D.,

Registering Officer.

To

A. B., RESIDENT OF

TAKE notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. _____ is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name and residence of transferer of tenure or raiyati holding at fixed rates.	Name, father's name and residence of transferer of tenure or raiyati holding at fixed rates.	Name of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10

C. D.,
Registering Officer.

ORDERED that this notice be served on the abovenamed landlords.

E. F.,
Collector.

[REVERSE OF THE FORM.]

Serial No. of chalan.	No. of notice	Name of depositor.	Names of persons on whom to be served.	Details of cash receipts with amount.
1	2	3	4	5

FORM 2a.

(Inserted by Notification No. 7452 L. R.—The 8th September, 1919, vide Calcutta Gazette, Part I, September 10, 1919, p. 1463.)

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where the landlord's fee is wholly payable to Government or to a Trust Estate under the management of the Board of Revenue or to an estate under the management of the Court of Wards in respect of which a personal ledger is maintained in the Treasury.)

To

THE COLLECTOR OF

Khash Mahal Deputy Collector

LET this notice be served on the _____ of
Manager

as required by section ¹² of Act VIII of 1885. The landlord's-fee of Rs.
¹⁸

and Rs. _____ for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury; *chalan* appended.

C. D.,

Registering Officer.

To

THE KHASH MAHAL DEPUTY COLLECTOR

_____ OF
MANAGER

Take notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)] specified below of which _____ the Government are
A. B., resident of _____, is
been registered and that the landlord's fee of Rs. _____ has been credited to
account
your _____ in the Treasury :—
personal ledger

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gang in which situated.	Annual rent of tenure or raiayati holding at fixed rates.	Name, father's residence of name and transferer of tenure or raiayati holding at fixed rates.	Name, father's name and transferer of tenure or raiayati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10

C. D.,
Registering Officer.

ORDERED that this notice be served on _____ of
Khas Mahal Deputy Collector
Manager

E. F.,
Collector.

[REVERSE OF THE FORM.]

Serial No. of chalan.	No. of notice.	Name of depositor.	Names of persons on whom to be served.	Details of cash receipts with amount.
1	2	3	4	5

FORM 3.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where there is more than one landlord and no common agent or manager.)

To

THE COLLECTOR OF

• LET this notice be served on A. B., etc., residents of _____, as required by section 12/18 of Act VIII of 1885. A copy for each joint-landlord is herewith forwarded. The landlord's fee Rs. _____, and Rs. _____ for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury; *chalan* appended.

A. D.,

Registering Officer.

To

A. B., ETC., RESIDENTS OF

TAKE notice that the transfer of the tenancy which is alleged to be a tenure [or raiyati holding at fixed rates (as the case may be)] as specified below, of which you are stated to be a joint landlord has been registered, and that the landlord's fee of Rs. _____ will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money order to any person to whom and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government :—

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gana in which situated.	Annual rent of tenure or raiayati holding at fixed rates.	Name, father's name and residence of transferer of tenure or raiayati holding at fixed rates.	Name, father's name and residence of transferer of tenure or raiayati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10

C. D.,
Registering Officer.

ORDERED that this notice be served on the abovenamed landlords.

E. F.,
Collector.

[REVERSE OF THE FORM.]

Serial No. of chalan.	No. of notice.	Name of depositor.	Names of persons on whom to be served.	Details of cash receipts with amount.
1	2	3	4	5

FORM 4.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII OF 1885.¹

(See Rule 24.)

(Where there is a single landlord or common agent or common manager.)

In the Court of the of

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of _____ as required by section 13/18 of Act VIII of 1885. The landlord's fee of Rs. _____ money-order fee Rs. _____, and Rs. _____ for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury; *chalan* appended.

C. D.,
Judge.

To

A. B., RESIDENT OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenancy which is alleged to be a tenure (or raiyati holding at fixed rates) specified below, of which you are alleged to be the landlord, has been confirmed (or made) and that the landlord's fee of Rs. _____ is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government :—

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gana in which situated.	Number of execution case and names of parties.	Name, father's name and residence of person whose interest in the tenure or raiylati holding at fixed rates. has been sold or fore-closed.	Name, father's name and residence of purchaser of tenure or raiylati holding at fixed rates.	Date of con- firmation of sale or the decree ab- solute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge,

ORDERED that this notice be served on the abovenamed landlord.

E. F.,
Collector.

* The words "or order" after the word decree have been deleted by a subsequent notification (No. 7452 L. R., dated 8th September, 1919, vide Calcutta Gazette, 10th September, 1919, Part I, p. 1466.

FORM 4a.

(Inserted by Notification No. 7452 L. R.—The 8th September, 1919, vide Calcutta Gazette, Part I, September 10, 1919, page 1463 at p. 1464.)

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where the landlord's fee is wholly payable to Government or to a Trust Estate under the management of the Board of Revenue or to an estate under the management of the Court of Wards in respect of which a personal ledger is maintained in the Treasury.)

To

THE COLLECTOR OF

LET this notice be served on Khas Mahal Deputy Collector of
Manager

as required by section ¹³ — of Act VIII of 1885, the landlord's fee of Rs. ¹⁸ and
 Rs. ¹⁸ for serving the notice by post in a registered cover and obtaining an
 acknowledgment, have been paid into the Treasury; *chalan* appended.

C. D.,
Judge.

To

THE KHASH MAHAL DEPUTY COLLECTOR
OF
MANAGER

Take notice that the sale of [or decree absolute for the foreclosure of mortgage on] the
 tenancy which is alleged to be a tenure (or raiyati holding at fixed rates) specified below,
 the Government are
 of which alleged to be the landlord, has been made and that
 A. B., resident of , is
 the landlord's fee of Rs. has been credited to your account in the
 Treasury :— personal ledger

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gana in which situated.	Number of execution case and names of parties.	Name, father's name and residence of person whose interest in the tenure or raiya holding at fixed rates. has been sold or fore-closed.	Name, father's name and residence of purchaser of tenure or raiya holding at fixed rates.	Date of con- firmation of sale or the decree ab- solute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on Khas Mahal Deputy Collector of
Manager

E. F.,
Collector

FORM 5.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

*(Where there is more than one landlord and no common agent or manager.)**In the Court of the**of*

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., resident of _____, as required by section 13/18 of Act VIII of 1885. The landlord's fee of Rs. _____ money-order fee of Rs. _____, and Rs. _____ for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury; *chalan appended*.

C. D.,
Judge.

To

A. B., ETC., RESIDENTS OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenure for raiyati holding at fixed rates) specified below, of which you are alleged to be a landlord, has been confirmed or made and that the landlord's fee of Rs. _____ will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some other person authorized on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be so sent. If it is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government :—

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gana in which situated.	Number of execution case and names of parties.	Name, father's name and residence of person whose interest in the tenure or raiya holding at fixed rates has been sold or foreclosed.	Name, father's name and residence of purchaser of tenure or raiya holding at fixed rates.	Date of con- firmation of sale or the decree* ab- solute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Registering Officer.

ORDERED that this notice be served on the abovenamed landlord.

* The words "or order" after the word decree have been deleted by a subsequent notification (No. 7452 L. R., dated 8th September, 1919, vide Calcutta Gazette, 10th September, 1919, Part I, p. 1466.

FORM 6.

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where there is a single landlord or common agent or manager.)

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., resident of
The landlord's fee of Rs. , money-order fee of Rs. and
Rs. for serving the notice by post in a registered cover and obtaining an
acknowledgment are deposited herewith.

C. D.,
Tenure-holder or raiyat
holding at fixed rates.

To

A. B., RESIDENT OF

Take notice that I have succeeded to the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which you are the landlord and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice it will be forfeited to the Government :—

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gana in which situated.	Annual rent of tenure or raiayati holding at fixed rates.	Name, father's name and residence of late tenure- holder or raiayati holding at fixed rates.	Date, if known of death of de- ceased tenure holder or raiayati holding at fixed rates.	Name, father's name and residence of successor to tenure or raiayati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C. D.,

Resident of

ORDERED that this notice be served on the abovenamed A. B.

E. F.,

Collector.

FORM 6a.

(Inserted by Notification No. 7452 L. R.—The 8th September, 1919, vide Calcutta Gazette, Part I, September 10, 1919, page 1463 at p. 1465.)

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where the landlord's fee is wholly payable to Government or to a Trust Estate under the management of the Board of Revenue or to an estate under the management of the Court of Wards in respect of which a personal ledger is maintained in the Treasury.)

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on Khash Mahal Deputy Collector of
Manager
 . The landlord's fee of Rs. . and Rs.
 for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

C. D.,
Tenure-holder or raiyat
holding at fixed rates.

To

THE KHASH MAHAL DEPUTY COLLECTOR
OF
 MANAGER

Take notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which the Government are alleged to be the landlord, has been registered and that the landlord's fee of Rs. A. B., resident of , is has been credited to your
account
in the Treasury :—
 personal ledger

Touzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates trans- ferred, with village and par- gana in which situated.	Annual rent of tenure or raiayati holding at fixed rates.	Name, father's name and residence of transferer of tenure or raiayati holding at fixed rates.	Date, if known of death of de- ceased tenure holder or raiayati holding at fixed rates.	Name, father's name and residence of successor to tenure or raiayati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C D.,
Resident of

ORDERED that this notice be served on the abovenamed Khash Mahal Deputy Collector of
Manager

E. F.,
Collector.

(5) Delete the words 'or order' occurring in the first line of each of the forms of notice to resident and also in the heading of column 7 of the table subjoined to each in Form 4 and Form 5 appended to the said rules.

FORM 7.

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where there is a single landlord or common agent or common manager.)

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., etc., residents of
A copy for each joint-landlord is herewith submitted. The landlord's fee of Rs.
and Rs. for serving the notice by post in a registered cover and obtaining an
acknowledgment, are deposited herewith.

C. D.,
Tenure-holder or raiyat
holding at fixed rates.

To

A. B., RESIDENT OF

TAKE notice that I have succeeded to the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which you are a joint-landlord. The landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some other person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government :—

Touzi No. of estate.	Name of estate.	Description of tenure or raiyyati holding at fixed rates. succeeded to, with village and par- gana in which situated.	Annual rent of tenure or raiyyati holding at fixed rates.	Name, father's name and residence of late tenure- holder or raiyyati holding at fixed rates.	Date, if known of death of de- ceased tenure holder or raiyyati holding at fixed rates.	Name, father's name and residence of successor to tenure or raiyyati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C. D.,
Resident of

* ORDERED that this notice be served on the abovenamed A. B.

E. F.,
Collector.

FORM 8.

NOTIFICATION UNDER SECTION 87 OF ACT VIII OF 1885.

(See Rule 37.)

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of , has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned, and that I am about to re-enter upon it accordingly.

Dated

Landlord.

SCHEDULE OF PROPERTY.

Name of village and pargana in which situated.	Area and boundaries of holding.	Rent of holding.
1	2	3

FORM 9.

REQUISITION TO COLLECTOR FOR A VERIFIED OR CERTIFIED COPY OF, OR EXTRACTS FROM THE RECORD-OF-RIGHTS UNDER SECTION 148 (b1) OF THE BENGAL TENANCY ACT, 1885.

(See Rule 40.)

BE pleased to furnish to this Court on or before the _____ a certified copy of, or extract from, the record-of-rights relating to the undermentioned tenancy, which is required for reference in suit No. _____ of _____

A. B.,
Judge.

Name of village.	Thana.	Thana No.	Tauzi No. and if revenue free, Register No.	Name of landlord at the date of publication of the record of rights.	Name of tenant at the date of publication of the record of rights.	Number of khatian or reference to other document forming part of the record-of-rights, of which copy or extract is required	REMARKS.
1	2	3	4	5	6	7	8

The copy annexed is sent herewith.

C. D.,
Collectorate Record-keeper or
other officer authorised to certify

Copy received.

E. F., -
Sheristadar, Civil Court.

APPENDIX II.

SOME IMPORTANT NOTIFICATIONS OF THE BENGAL GOVERNMENT.

INDEX TO APPENDIX II.

Notifications relating to			Subject.
S. 3 cl. (10)	...	...	Certain areas declared as villages.
S. 3 cl. (16)	...	...	Investing of officers with the powers of a Collector for the purpose of ss. 12, 13, 15 59 and 69 to 71.
S. 3 cl. (17)	...	...	Appointment of all Deputy Collectors to be Revenue-officers under Chaps. X and XI of the Act.
S. 3 cl. (16) and 158 (2)	...	...	Rules as to persons to whom commission should be issued.
S. 31 A (1)	...	...	Extension of s. 31 A.
Ch. VII A	...	...	Extension of Ch. VII A to certain aboriginal castes. Certain tribes declared as aboriginals and Settlement appeals.
S. 54 (2)	...	...	Rules for the payment of rent by means of postal money-order.
S. 56 cl. (3)	...	...	Form of Rent money-order.
Chap. X	...	...	Assistant Settlement Officers authorised to take evidence in English language.
S. 103 B	...	...	Declaration of final publication of Record-of-rights. See App. XI.
S. 104	...	...	In regard to settlement of rent.
S. 105 (3)	...	...	Stamp on petition.
S. 105 and S. 105 A	...	...	Stamp on petition. See App. IX.
S. 106	...	...	Court fees. See App. IX.
Ss. 105 and 106	...	...	As to Court-fees, see notes under ss. 105 and 106.
S. 107 see s. 189 below			
S. 146	...	...	Special Register to be kept by Civil Courts.
S. 158 (2)	...	...	Rules as to persons to whom commission to issue.
S. 158 A	...	...	Vesting of certain officers with powers under Ch. XIII-A.
S. 158 A (5)	...	...	Form used in S. 158-A (5).
S. 163 (2)	...	...	Publication of sale proclamation.
S. 189	...	...	Local enquiry,

APPENDIX II.

IMPORTANT NOTIFICATIONS OF THE BENGAL GOVERNMENT.

Section 3 (cl.) 10. Declaration that certain areas are constituted villages within the meaning of the Bengal Tenancy Act.

Declaration dated the 15th February, 1911 (published in the Calcutta Gazette of 1911, Part I, p. 253).

I, J. A. L. Swan, Officiating Collector of the district of the 24-Parganas, do hereby, in exercise of the power conferred by clause (10) of section 3 of the Bengal Tenancy Act, 1885 (VIII of 1885), and with the sanction of the Board of Revenue, declare the following area to constitute a village within the meaning of the said Act, namely :—

The estate known as the Frasergunge Government Estate, Tauzi No. 3032, situated in the Sundarbans in thana Kulpi, sub-registration district Diamond Harbour, in the district of 24-Parganas, and comprising about 28,555 bighas of land, and bounded as follows :—

North—Chandanpiri Gang, and a portion of Patibunia khal, known as Edward's Creek.

South—Bay of Bengal and a portion of Pukhuriaber khal.

East—Subtormukhi river and a portion of Pukhuriaber khal, and

West—Patibunia khal, known as Edward's Creek.

Declaration dated the 6th March, 1912 (published in the Calcutta Gazette of 1912, Part I., p. 606).

I, J. A. L. Swan, Officiating Collector of the district of the 24-Parganas, do hereby, in exercise of the power conferred by clause (10) of section 3 of the Bengal Tenancy Act, 1885 (VIII of 1885), and with the sanction of the Board of Revenue, declare the following 11 areas, appertaining to the Sundarbans Lot No. 56, Parts I and II, named Tambuldaha, bearing Tauzi Nos. 1345, and 1415, on the revenue-roll of the district of the 24-Parganas, and lying in Pargana Paikhati, thana Matla, in the said district, to constitute "village" within the meaning of the said Act, namely :—

Serial No. of area	Name of area.	Boundaries.	Area in acres.	Tauzi No. of the estate to which the area appertains.
1	Jalghata ...	North—Lot No. 60 South—Bibirabad East—Bakultala and Kaparpuri West—Bibirabad	291.84	1345
2	Bakultala ...	North—Lot No. 60 South—Kaparpuri East—Kaorakhali West—Jalghata	225.07	1345
3	Kaparpuri ...	North—Bakultala South—Chunpuri East—Sabek Mahisara West—Jalghata and Bibirabad	378.74	1345
4	Chunpuri ...	North—Kaparpuri South—The Bidyadhari and Burimari East—Sabek Mahisara West—Bibirabad and Cholikatirabad	364.89	1345 and 1415
5	Baintala ...	North—Kaorakhali South—Sabek Mahisara East—Kater Mahisara West—Sabek Mahisara	314.02	1345
6	Sabek Mahisara	North—Baintala South—Burimari East—Baintala and Kater Mahisara West—Kaparpuri and Chunpuri	318.19	1345 and 1415
7	Burimari ...	North—Sabek Mahisara and Kater Mahisara South and East—Tambuldaha, Part III West—Chunpuri and the Bidyadhari	382.39	1345 and 1415
8	Kater Mahisara	North—Kaorakhali and Khagra South—Burimari and Tambuldaha, Part III East—The Khurutia, Tambuldaha, Part III and Burimari West—Baintala and Sabek Mahisara	653.51	1345 and 1415
9	Kaorakhali ...	North—Lot No. 60 South—Baintala and Kater Mahisara East—Khagra West—Bakultala	449.45	1345
10	Khagra ...	North—Gangachari and the Khurutia South and East—The Khurutia West—Lot No. 60, Kaorakhali and Kater Mahisara	765.49	1345 and 1415
11	Gangachari ...	North—Lot No. 62 South—Khagra East—The Karatia West—Lot No. 60	357.50	1345
		TOTAL ...	4,501.49	

The Calcutta Gazette, May 12, 1915, Part I, p. 866.

REVENUE DEPARTMENT NOTIFICATION :—No. 4726 L. R.—The 7th May, 1915—Whereas by Notification No. 2589 L. R., dated the 13th November, 1912, an order was made under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885) for a survey and record-of-rights in certain estates, including Tushkhali (Tauzi No. 4642) in the District of Backergunge;

And whereas the Board of Revenue has under s. 115A of the said Act, sanctioned the adoption of the amalgamated area contained within the exterior boundaries of the maps of the Revenue Survey of villages Algi (R. S. No. 3487) and Rajgunj (R. S. No. 3480), falling within the said estate of Tushkhali, as a unit of survey and record :

Now, therefore, in exercise of the power conferred by the proviso to clause (10) of s. 3 of the said Act, read with s. 3 of the Bengal, Bihar and Orissa and Assam Laws Act, 1912, the Governor in Council is pleased to declare that the area constituting the said unit shall be a "village" for the purpose of the said clause.

The Calcutta Gazette, Part I, September 15, 1915, Page 1544.

No. 9030 L. R.—The 11th September, 1915—It is hereby notified that the Cadastral Survey carried out in the year 1911-12 under the orders of Government, made under section 3 of the

Midnapur

Bengal Survey Act, 1875 (Bengal Act V of 1875) and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in Notification No. 1649 T. R., dated the 24th September, 1910 (published at page 1323, part I, of the *Calcutta Gazette* of the 28th *idem*), and Notification No. 2866 L. R., dated the 26th November, 1910 (published at pages 1678179, Part I, of the *Calcutta Gazette* of the 30th *idem*), respectively, in respect of all lands comprised within the external boundaries of thana Binpur, in district Midnapore, is adopted as defining villages within the said thana for the purposes of clause 10 (6) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885).

The Calcutta Gazette, Part I, September 29, 1915, Page 1632.

No. 1342 T. R.—The 24th September, 1915—Whereas by Notification No. 2470 L. R., dated the 6th September, 1912, an order was made under section 101 of the Bengal Tenancy

Rajshaye

Act, 1885 (Act VIII of 1885), for a survey and a record-of-rights in respect of all lands in the district of Rajshaye, including thanas Natore and Barigram.

And whereas the Board of Revenue has, under section 115A of the said Act, sanctioned the adoption of certain amalgamated areas contained within the exterior boundaries of the maps of the Revenue survey of certain villages in these two thanas, as per list below, as "units" of survey and record ;

And whereas the Board of Revenue has also, under the said s. 115A, sanctioned the adoption of certain areas formed by the dividing up of the areas contained within the exterior boundaries of the maps of the Revenue survey of certain other villages in the said two thanas, as also per list below, as "units" of survey and record ;

Now, therefore, in exercise of the power conferred by proviso to clause (10) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (Act VII of 1912), the Governor in Council is pleased to declare that the areas constituting the said "units" shall be "villages" for the purposes of the said clause.

LIST I.

Thana Natore.

Serial No.	Old Jurisdiction list number.	Old village.	Area.	Pargana.	Revenue Survey No.	New village name.
			Acre. Rd.			
1	13	Sekhpara ...	265 0	Laskarpur ...	833	Sekhpara.
	14	Jote Anantaram ...	3 0	Tahirpur ...	20	
2	42	Tegharia ...	178 0	Gobindapur	76	Tegharia.
	43	Kismat mauza Tegharia	5 0	Chhindabazu	31	
	55	Panditgram ...	762 0	Laskarpur ...	767	Pandigram.
3	56	Telkopi ...	32 0	Amrul ...	165	
	78	Nazirpur ...	24 0	Gobindapur	103	Nazirpur.
4	79	Chak Nazirpur ...	64 0	Sujanagar ...	36	
	106	Joyrampur ...	90 0	Laskarpur ...	606	Joyrampur.
5	107	Bethorbhag Arazi ...	86 0	Ditto ...	604	Purba Hapania.
6	112	Hapania ...	687 0	Ditto ...	581	Paschim Hapania.
7	118	Rahimanpur Ar. ...	19 0	Ditto ...	586	
	119	Khondakar Malanchi	178 0	Malanchi ...	48	Khondakar
8	122	Bezarpur ...	1 0	Ditto ...	45	Malanchi.
	125	Nurpur ...	516 0	Laskarpur ...	587	Nurpur.
9	139	Kaolaipara ...	438 0	Malanchi ...	37	
	144	Bagatipara ...	20 0	Ditto ...	31	Bagatipara.
10	155	Chak Misripur ...	223 0	Ditto ...	25	
	159	Misripur ...	371 0	Ditto ...	24	Misripur.
11	169	Kholaberia Brahmattar	17 0	Bhaturia ...	232	
	332	Kholaberia ...	1,594 0	Ditto ...	231	Kholaberia.
	203	Bazeapti Par Kholaberia ...	26 0	Tappa Chappargana.	227	Par Kholabar.
12	207	Par Kholaberia ...	386 0	Ditto ...	228	
	218	Chak Sibram ...	12 0	Sujainagar ...	40	Rajapur.
13	219	Rajapur ...	248 0	Ditto ...	41	
	231	Salenpur Amhati ...	107 0	Laskarpur ...	770	Salempur Amhati.
14	232	Gopinathpur ...	11 0	Ditto ...	769	(1) Purba Madhnagar.
15	244	Madhnagar ...	3,440 0	Gobindapur	70	(2) Paschim Madhnagar.
16	247	Durlabhpur ...	644 0	Ditto ...	69	Durlabhpur.
	248	Sadhnagar Arazi ...	83 0	Ditto ...	65	
	249	Sadhnagar ...	56 0	Ditto ...	65	
17	250	Chak Gopal ...	9 0	Ditto ...	64	Sadhnagar.
	252	Sadhnagar, etc. ...	1,270 0	Ditto ...	66	
18	282	Piprol ...	3,057 0	Ditto ...	52	(1) Piprol. (2) Kaliganj. (3) Raisinghpur (4) Bill Piprol.

Thana Natore—(concluded.)

Serial No.	Old Jurisdiction list number.	Old village.	Area.	Parganas.	Revenue Survey No.	New village name.
			Acre. Rd.			
19	294	Malkasha or Gobindapur ...	117 0	Gobindapur	46	Gobindapur.
	295	Jagannathbati ...	2 0	Ditto ...	49	
	296	Gobindapur ...	9 0	Laskarpur ...	47	
20	298	Dhakopara ...	258 0	Gobindapur	778	Dhakapara.
	299	Sonjoybati ...	7 0	Digha ...	48	
21	320	Matikopa ...	464 0		11	(1) Matikopa.
22	321	Hat Halsa ...	252 0	Sonabaju ...	269	(2) Chirakhola.
23	322	Pale Halsa ...	342 0	Tappa Chappila, pargana.	14	(1) Hat Halsa.
				Bhaturia ...		(2) Ray Halsa.
24	324	Halsa ...	197 0	Ditto ...	17	(1) Bipra Halsa.
25	330	Kadim Saturia ...	350 0	Ditto ...	221	(2) Pale Halsa.
26	335	Baraberia Brahmattar ...	48 0	Ditto ...	241	Baraberia.
	336	Baraberia ...	977 0	Ditto ...	242	
	341	Phutkia ...		Not shown in the Boundary Commissioner's list.	139	
27	342	Chak Takinagar Arazi	43 0			Takinagar.
28	348	Takinagar ...	643 0	Laskarpur ...	139	Swarabpur.
	358	Hoberdwaria ...	177 0	Ditto ...	132	
	359	Swaruppur ...	214 0	Ditto ...	134	
29	360	Ganpara ...	435 0	Malanchi ...	3	Chitholiya.
	361	Hat Ganpara ...	1 0	Ditto ...	2	
	366	Chitlia ...	1,270 0	Laskarpur ...	183	
	369	Chak Chitlia ...	17 0	Ditto ...	184	

Thana Baraigram.

			Acre. Rd.			
1	6	Agpurulia ...	524 0	Tappa Chappila pargana.	22	Agpurulia.
				Bhaturia ...		
2	9	Adi Narayan ...	3 0	Ditto ...	24	Rani Nagar.
	8	Chak Bhangam ...	6 0	Ditto ...	26	
	131	Rani Nagar ...	133 0	Ditto ...	27	

Thana Baraigram—(continued.)

Serial No.	Old jurisdiction list number.	Old village.	Area.	Pargana.	Revenue Survey No.	New village name.
			Acre. Rd.			
3	10	Chak Maharajpur ...	2 0	Maharajpur...	58	Maharajpur.
	11	Maharajpur ...	463 0	Ditto ...	59	
	24	Chak Sadhupara ...	0 3	Ditto ...	79	
	46	Chak Sastiram ...	2 0	Ditto ...	61	
4	47	Chak Bhabani ...	8 0	Ditto ...	60	Pampathuria.
	13	Chak Pampathuria ...	1 0	Ditto ...	55	
	14	Pampathuria ...	164 0	Ditto ...	56	
	15	Bokibegpur ...	104 0	Ditto ...	86	
	17	Chak Mahindra ...	30 0	Ditto ...	88	Bakibegpur.
	18	Chak Gobinda ...	3 0	Ditto ...	85	
	19	Bokibegpur ...	156 0	Ditto ...	87	
	26	Chak Gobinda ...	4 0	Ditto ...	76	
6	21	Nidhi Chapila ...	4 0	Ditto ...	82	Bri Chapila.
	22	Chak Durga Charan...	15 0	Ditto ...	81	
	23	Chak Madan Mohan ...	0 3	Ditto ...	80	
	25	Dari Chak ...	3 0	Ditto ...	77	
	27	Khar Pukherpar ...	4 0	Ditto ...	75	
	28	Lakhiraj Acharjya Chapila ...	2 0	Ditto ...	74	
	29	Lakhiraj Acharjya Chapila ...	0 2	Ditto ...	73	
	30	Kumed Chapila ...	9 0	Ditto ...	72	
	31	Dayamai chapila ...	0 3	Ditto ...	71	
	32	Madhai chapila ...	8 0	Ditto ...	70	
	33	Krishnadevpur ...	57 0	Ditto ...	69	
	34	Chak Hari Prasad ...	3 0	Ditto ...	68	
	35	Chak Rampur ...	7 0	Ditto ...	93	
	36	Ahmad Chapila ...	4 0	Ditto ...	92	
	37	Acharjya Chapila Arazi ...	46 0	Ditto ...	65	
	38	Kalu Chapila ...	5 0	Ditto ...	83	
	40	Chak Hari Prasad ...	62 0	Ditto ...	67	
	41	Chak Baidya Nath ...	12 0		66	
6	42	Acharjya Chapila Lakhiraj ...	6 0	Tappa Chapilla pargana Bhaturia.	404	
	50	Ajan Chapila ...	14 0	Ditto ...	94	Bri Chapila.
	53	Majidpara ...	6 0	Malanchi ...	52	
	57	Chak Bhola Nath ...	7 0	Tappa Chapilla pargana Bhaturia.	95	
7	64	Bri Chapila ...	484 0	Ditto ...	91	Paikpara.
	65	Chak Ram Rudra ...	9 0	Ditto ...	106	
	45	Sarandajpur ...	2 0	Ditto ...	63	
	48	Paikpara ...	45 0	Ditto ...	62	

Thana Baraigram—(continued.)

Serial No	Old jurisdiction list number.	Old village.	Area	Parganas.	Revenue Survey No.	New village name.
			Acre. Rd.			
8	51	Chak Kola	23 0	Ditto ...	96	Kola.
	52	Sidampur	20 0	Malanchi	5	
	54	Chak Gouri Narayan	1 0	Tappa Chappila pargana Bhaturia.	100	
	55	Kola	80 0	Ditto ...	97	Kantanagar.
9	59	Krishna Kanta Sarkar.	6 0	Bhaturia	104	Kantanagar.
	60	Chak Ram Kanta ...	10 0	Ditto ...	103	
	61	Gopi Das	0 3	Ditto ...	403	
	62	Kantanagar	176 0	Ditto ..	102	
	66	Chak Nanda Kanta ...	3 0	Ditto ...	105	
10	82	Bhabanipur Chandipur	1,761 0	Ditto ...	208	Bhabanipur.
	82	Chandipur Arazi ..	141 0	Ditto ..	208	
	298					
11	87	Chak Chako Munsii ...	3 0	Ditto ...		Harna.
	88	Harna	689 0	Ditto ..	199	
	89	Chak Gopal	3 0	Bhaturia	201	
12	96	Joari	727 0	Tappa Chappila pargana Bhaturia.	112	Joari.
	98	Chak Bhabani	20 0	Ditto ...	113	
	106	Kismat Joari	21 0	Ditto ...	114	
13	103	Goalpha	509 0	Ditto ...		Goalpha.
	104	Chak Hari Prasad ...	6 0	Ditto ...	116	
	107	Chak Goalpha	32 0	Ditto ...	54	
14	109	Goalpha	9 0	Ditto ...	53	Khamar Pathuria.
	110	Chak Goalpha	12 0	Ditto ...	52	
15	111	Kamar Pathuria	783 0	Ditto ...	51	Noapara.
	108	Noapara Lakhiraj ...	1 0	Ditto ...	423	
	145	Noapara	1,188 0	Ditto ...	49	
	146	Chak Nayananda ...	11 0	Ditto ...	119	
16	117	Til Tupi Arazi	65 0	Ditto ...	46	Kusumhati.
	118	Chak Kaso	54 0	Ditto ...	43	
	119	Chak Kaso	9 0	Ditto ...	42	
17	120	Chak Mahindra	2 0	Ditto ...	40	(1) Mamudpur.
	121	Brikaso	6,444 0	Ditto ...	38	(2) Nazirpur.
	142	Pulimari Arazi	84 0	Ditto ...	47	(3) Bir Gangarampur.
						(4) Jumna-nagar.
						(5) Dastana-nagar.
						(6) Dudhgari.
						(7) Rasidpur.
						(8) Raosanpur.
						(9) Brikaso.

Thana Baraigram (continued.)

Serial No.	Old Jurisdiction list number.	Old village	Area.	Pargana.	Revenue Survey No.	New village name.
			Acre. Rd.			
18	122	Chak Kaso ...	8 0	Ditto ...	39	Bir Gorila.
	123	Hat Gorila ...	6 0	Ditto ...	41	
	124	Chak Ramchandra ...	5 0	Ditto ...	30	
	125	Chak Gorila ...	7 0	Ditto ...	36	
	126	Chak Dayaram ...	3 0	Ditto ...	33	
	127	Ram Gopal ...	13 0	Ditto ...	32	
	128	Brahmottar Bir Gorila ...	9 0	Ditto ...	31	
	130	Bri Gorila ...	628 0	Ditto ...	29	
19	138	Chalk Sarup ...	20 0	Ditto ...	5	Brindabanpur.
	139	Brindabanpur ...	223 0	Ditto ...	7	
20	147	Monkhara ...	186 0	Ditto ...	118	Monkhara.
	148	Chak Abhiram ...	13 0	Ditto ...	120	
21	210	Joy Krishnapur ...	2 0	Ditto ...	133	Lakhshmikol
	213	Lakhikol ...	186 0	Sonabaju ...	253	
22	211	Chak Nandanpur ...	4 0	Tappa Chappara Bha-	132	Rayna
	212	Sibpur ...	8 0	Ditto ...	127	
	214	Chak Ram Saran ...	25 0	Ditto ...	131	
	215	Raina ...	1,469 0	Ditto ...	120	
23	233	Atai ...	499 0	Ditto ...	168	Atal
	234	Chak Mohindra Arazai ...	52 0	Ditto ...	166	
24	236	Chak Mahindra ...	21 0	Ditto ...	166	Nagar
	238	Deonara ...	60 0	Ditto ...	269	
	239	Nagar ...	1,211 0	Ditto ...	268	
25	243	Chak Mohan Arazai ...	57 0	Ditto ...	159	Bardaha
	231		253 0	Ditto ...	162	
26	251	Garfa ...	1,650 0	Ditto ...	274	Carfa
	251	Dighair Arazai ...	158 0	Ditto ...	270	
	300					
27	261	Chak Nimdas ...	6 0	Ditto ...	151	Dwarf Kushi
	262	Jaynagar ...	6 0	Ditto ...	141	
	289	Dari Kushi ...	3,018 0	Ditto ...	149	

Thana Baraigram—(concluded.)

Serial No.	Old Jurisdiction list number.	Old village.	Area.	Pargana.	Revenue Survey No.	New village name.
			Acre. Rd.			
28	275	Balsadigar	7,568 0	Tappa Byas	145	{ (1) Balsa (2) Telkupi (3) Kala Kandar (4) Par Gurudas (5) Gurudaspur (6) Panch Sisa (7) Naribari Dikshinpura (8) Binnabari (9) Hamlaikol (10) Bia Ghat (11) Durgapur (12) Jnanadanagar (13) Jogendranagar (14) Naribari Attarpara (1) Chalan Ali (2) Charkadaha (3) Dandia Talbari (4) Hansmari (5) Dari Hansmari (6) Bamangara (7) Dari Baman-gara (8) Dari Kachhikata (9) Kachhikata (10) Rani Gram (11) Bil Byas-pur (12) Bil Kathor }
29	285	Bil Chalan	4,913 0	Tappa pila-gana Bha-turia	148	{ (6) Bamangara (7) Dari Baman-gara (8) Dari Kachhikata (9) Kachhikata (10) Rani Gram (11) Bil Byas-pur (12) Bil Kathor }
30 {	292	Jonail	414 0	Ditto ...	157	} Jonail
	293	Hatnagar Kondi ...	2 0	Ditto ...	156	

The Calcutta Gazette, Part I, June 14, 1916, Page 1062.

No. 1176 T. R.—The 8th June, 1916—Whereas by Notifications No. 4891 L. R., dated the 20th December, 1904, and No. 354 R., dated the 12th February, 1909, orders were made, under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), for a survey and preparation of a record-of-rights of all lands falling within the administrative boundaries of the district of Faridpur and of all lands in the mauzas of the districts of Tippera and Pabna which fall wholly or partly within five miles of the main stream of the river which forms the administrative boundary between the said districts and the district of Faridpur :

Faridpur

And whereas, in pursuance of the said orders, a survey was made of the said lands :

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), the Governor in Council is pleased to declare that that survey shall be adopted as defining villages for the purposes of the said clause in the aforesaid area.

The Calcutta Gazette, Part I, November 29, 1916, Page 2101.

No. 9306 L. R.—The 23rd November, 1916—Whereas by Notification No. 9076 L. R., dated the 13th September, 1915, an order was made under section 101 (1) of the Bengal Tenancy Act, 1885 (Act VIII of 1885), for a survey and record-of-rights of all lands within 5 miles from the main stream of the rivers Ganges Padma, including also the entire area of villages partly falling within this limit in that portion of the district of Padma which lies opposite the district of Nadia. and in those portions of the districts of Murshidabad and Nadia which lie opposite the districts of Rajshahi and Pabna.

Murshidabad.

And whereas, in pursuance of the said order, a survey was made of the said lands within thanas Lalgola and Damkal, in the district of Murshidabad :

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act 1912 (VII of 1912), the Governor in Council is pleased to declare that that survey shall be adopted as defining villages for the purposes of the said clause in the aforesaid area comprised in thanas Lalgola and Damkal in the district of Murshidabad.

Calcutta Gazette, Part I, June 27, 1917, p. 947.

No. 4620 L. R.—The 25th June, 1917—Whereas by notification No. 2787 R., dated the 8th December, 1908, an order was made under section 101 (1) of the Bengal Tenancy Act, 1885 (Act VIII of 1885), for a survey and preparation of record-of-rights in respect of all lands falling within the administrative boundaries of the district of Mymensingh :

Mymensingh.

And whereas, in pursuance of the said order, a survey has been made of the said lands :

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act of 1912 (Act VII of 1912), the Governor in Council is pleased to declare that that survey shall be adopted as defining villages for the purposes of the said clause in the area comprised in thanas Mymensingh and Phulbaria of the aforesaid district.

The Calcutta Gazette, Part I, July 4, 1917, Page 984.

No. 4782 L. A.—The 30th June, 1917—It is hereby notified that the survey carried out 1916-17 under the orders of Government, made under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), and embodied in Notification No. 10747 L. R., dated the 16th November, 1914 (published at page 2059, Part I of the *Calcutta Gazette* of the 18th idem), of all lands situated within the boundaries of the Government estate Boyarsingha,

Khulna.

bearing tauzi No. 877 on the revenue-roll of the district of Khulna, is adopted as defining the village Boyarsingha, that is to say, the whole of the area comprised in the said survey shall be treated as one village Boyarsingha for the purpose of clause 10 (b) of section 3 of the Act.

The Calcutta Gazette, Part I, May 29, 1918, Page 852.

No. 4450 L. R.—The 27th May, 1918—Whereas by Notification No. 2470 L. R., dated the 6th September, 1912, an order was made, under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), for a survey and the preparation of a record-of-rights in respect of all lands falling within the administrative boundaries of the district of Rajshahi :

Rajshahi

And whereas, in pursuance of the said order, a survey has been made of the lands lying in thanas Puthia, Bagmara and Tanore of the said district :

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), the Governor in Council is pleased to declare that that survey be adopted as defining villages for the purposes of the said clause in the area comprised in the said thana of the said district.

The Calcutta Gazette, Part I, June 5, 1918, Page 883.

No. 4637 L. R.—The 4th June, 1918—Whereas by Notification No. 2470 L. R., dated the 6th September, 1912, an order was made under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), for a survey and the preparation of a record-of-rights in respect of all lands falling within the administrative boundaries of the district of Rajshahi :

Rajshahi

And whereas, in pursuance of the said order, a survey has been made of the lands lying in thana Charchhat of the said district :

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act 1912 (VII of 1912), the Governor in Council is pleased to declare that that survey shall be adopted as defining villages for the purposes of the said clause in the area comprised in the said thanas of the said district.

The Calcutta Gazette, Part I, June 12, 1918, Page 904.

No. 4711 L. R.—The 7th June, 1918—Whereas by Notification No. 2470 L. R., dated the 6th September, 1912, an order was made under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), for a survey and preparation of record-of-rights in respect of all lands falling within the administrative boundaries of the district of Rajshahi :

Rajshahi

And whereas, in pursuance of the said order, a survey has been made of the lands lying in thanas Godagari and Boalia of the said district :

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act 1912 (VII of 1912), the Governor in Council is pleased to declare that that survey shall be adopted as defining villages for the purposes of the said clause in the area comprised in the said thanas of the said district.

The Calcutta Gazette, Part I, August 14, 1918, Page 1148.

No. 6434 L. R.—The 8th August, 1918—It is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the marginally noted notifications, is adopted as defining villages for the purposes of clauses 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-station of Magura, Salikhiya, Sripur, Barkalia and Bagherpara, in the district of Jessore.

Jessore

No. 10773 dated 17th November 1914, published at page 2059, Part I of the Cal. Gaz. of 18th November 1914.

No. 6783 L. R. dated 8th September 1917, Published at page 1458 Part I of the Cal. Gaz. of September 1917.

The Calcutta Gazette, Part I, December 25, 1918, Page 1750.

No. 9657 L. R.—The 21st December, 1918—It is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the marginally-noted notifications, is adopted as defining villages for the purposes of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in police-stations Chhatna, Indpur, Khatra, and Simlapal, in the district of Bankura.

Bankura.

No. 10772 L. R., dated the 7th November 1914, published at page 2059 Part I, of the Calcutta Gazette of the 18th Novem 1914.

No. 1043 T. R., dated the 12th September 1917, published at pages 1495-6 Part I, of the Calcutta Gazette of the 19th September 1917.

The Calcutta Gazette, 1919, Part I, Page 679.

No. 3832 L. R.—The 23rd Aphil, 1919—It is hereby notified that the survey carried out under the orders of Government under section 101 of the Bengal Act, 1885 (Act VIII of 1885), and embodied in the under-noted notifications is adopted as defining villages for

the purpose of section 3 (10) (b) of that Act, in the areas concerned in thanas Gopiballavpur, Jhargram, Binpur, Narayangarh, Kharagpur, Ramnagar, Bhagwanpur, Sutahata and Contai, in the district of Midnapur.

THANA.

NOTIFICATION.

Gopiballavpur	{	No. 2739 T. R., dated 20th October, 1903
		„ 224 L. R., dated 12th January, 1904
		„ 1200 L. R., dated 2nd March, 1906
		„ 303 T. R., dated 2nd May, 1906
		„ 1912 L. R., dated 31st March, 1908
Jhargram	{	„ 500 L. R., dated 25th January, 1904
		„ 2876 L. R., dated 12th November, 1906
		„ 719 L. R., dated 3rd February, 1908
Binpur	{	„ 500 L. R., dated 25th January, 1904
		„ 719 L. R., dated 3rd February, 1908
Narayangarh	{	„ 2739 T. R., dated the 20th October, 1903
Kharagpur	{	„ 499 L. R., dated 25th January, 1904
		„ 2098 T. R., dated 19th October, 1908
Ramnagar	{	„ 499 L. R. and 500 L. R., dated 25th January, 1904

THANA.

NOTIFICATION.

Bhagwanpur	{	No. 499 L. R., and 500 L. R., dated 25th January, 1904
	{	„ 3283 L. R., dated 5th August, 1904
Sutahata	{	„ 499 L. R., and 500 L. R., dated 25th January, 1904
	{	„ 1570 T. R., dated 1st July, 1905
Contai	{	„ 3696 L. R., dated 8th December, 1903
	{	„ * 499 L. R., and 500 L. R., dated 25th January, 1904

The Calcutta Gazette, Part I, August 27, 1919, Page 1326.

No. 6947 L. R.—The 25th August, 1919—Whereas by notification No. 8359 L. R. of the 16th October, 1916, an order was made under section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), for a survey and the preparation of a record-of-rights in respect of all

Malda

lands in villages falling entirely or partly within five miles from the main stream of the river Ganges in the district of Maldah :

And whereas in pursuance of the said order, a survey has been made of such lands lying in police-stations Ratna, Manikchak, Kalichak, Sibganj and Nawabganj of the said district.

Now, therefore, in exercise of the power conferred by clause 10 (b) of section 3 of the said Act, read with section 3 of the Bengal, Bihar and Orissa and Assam Laws Act 1912 (VII of 1912), the Governor in Council is pleased to declare that that survey shall be adopted as defining villages for the purposes of the said clause in the area so surveyed in the said police stations of the said district.

The Calcutta Gazette, Part I, August 27, 1919, Page 1325.

No. 6912 L. R.—The 25th August, 1919—It is hereby notified that the survey carried out under the orders of Government under section 3 of the

Nadia

No. 1595 T. R. dated 1st October 1917, published at page 1568, Part I of the Calcutta Gazette of the 3rd October 1917.

No. 7311 L. R., dated the 6th September 1918, published at page 1276, I, of the Calcutta Gazette of the 11th September, 1918.

Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the marginally-noted notifications, is adopted as defining villages for the purposes of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-station of Chakdah in the district of Nadia.

The Calcutta Gazette, Part I, February 4, 1920, Page 224.

No. 974 L. R.—The 29th January, 1920—It is hereby notified that the survey carried out under the orders of Government under section 3 of the

Jessore

No. 10773 L. R.—dated 17th November 1914. No. 6793 L. R.—dated 8th September 1917. 7532, dated 13th September, 1918.

Bengal Survey Act, 1875 (Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the marginally-noted notifications, is adopted as defining villages for the purposes of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1895) in the police-stations of Kotchandpur, Jhenidah, Narail,

Harinakunda, Naragati, Lohagara, and Sailkopa, in the district of Jessore.

The Calcutta Gazette, Part I, February 4, 1920, Page 224.

No. 977 L.R.—The 29th January, 1920—In exercise of the power conferred by section 103B, sub-section (3) of the Bengal Tenancy Act, 1885 (VIII of 1885), the Government in Council is pleased to declare that a record-of-rights has been finally published under section

Tippera

103 A, sub-section (2) of the said Act, in respect of every village included in police-stations Hajiganj and Kachua, in the district of Tippera.

The Calcutta Gazette, Part I, February 25, 1920, Page 377.

No. 2002 L. R.—The 23rd February, 1920—It is hereby notified that the survey carried out

Bankura

No. 10772 L. R. dated the 17th November 1914 published at page 2059 Part I, of the Calcutta Gazette of the 18th November 1924.

No. 1043 T. R. dated the 12th Sept. 1917, published at pages 1495-6 Part I, of the Calcutta Gazette of the 19th September 1917.

under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the marginally-noted notifications, is adopted as defining villages for the purposes of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in police-stations Raipur and Ranibandh, in the district of Bankura.

The Calcutta Gazette, Part I, March, 24, 1920, Page 562.

No. 3091 L. R.—The 22nd March, 1920—It is hereby notified that the survey carried out

Murshidabad

under the orders of Government under section 3 of the Bengal Survey Act 1875 (Act V of 1875), and section 101 (1) of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-noted notifications is adopted as defining villages for the purpose of section (10) (b) of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-station of Saktipur in the district of Murshidabad :—

(1) No. 1595 T. R., dated the 1st October, 1917.

(2) No. 7311 L. R., dated the 6th September, 1918.

The Calcutta Gazette, Part I, March 24, 1920, Page 562.

No. 3126 L. R.—The 23rd March, 1920—It is hereby notified that the survey carried out

Burdwan

under the orders of the Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the notifications noted below, is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VII of 1885), in the police-station of Katwa and Ketugram, in the district of Burdwan :—

(1) No. 1595 T. R., dated the 1st October, 1917.

(2) No. 7311 L. R., dated the 6th September, 1918.

The Calcutta Gazette, Part I, May 5, 1920, Page 858.

No. 4374 L. R.—The 30th April, 1920—It is hereby notified that the survey carried out

Police station Mahammadpur

No. 10773 dated 17th November 1915, published at page 2059, Part I, Cal. Gaz. of 18th November 1914.

No. 6793 L. R. dated 8th Sept. 1917 published at page 1458 Part I of the Cal. Gaz. of the 12th idem.

under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the marginally-noted notifications, is adopted as defining villages for the purposes of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in police-station of Mahammadpur.

S. 3 cl. (10).

No. 10765 L. R.—The 2nd December, 1924—It is hereby notified that the survey carried out under the orders of the Government under section 3 of the Bengal Survey Act (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the notifications Nos. 2427 T. R., dated 11th October, 1920 and 3564 L. R., dated 10th April, 1923, is adopted as defining villages for the purpose of clause 10

(b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-station of Lalgola in the district of Murshidabad.

The Calcutta Gazette, Part I, January 12, 1925, Page 68.

No. 132 L.R.—The 4th January 1928—It is hereby notified that the survey carried out under the orders of Government under Sec. 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875),

Bakarganj.

and sub-sec. (1) of Sec. 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-mentioned notifications is adopted as defining villages for the purpose of clause 10 (b) of Sec. 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police stations Barhanuddin and Tazumuddin in the district of Bakarganj:—

Notification No. 720 T. R., dated the 15th October, 1924.

Notification No. 721 T. R., dated 15th October, 1924.

Notification No. 7295 L. R., dated the 9th July, 1925.

The Calcutta Gazette, Part I, July 16, 1925, Page 1122.

N. 7215 L. R.—The 8th July 1925—It is hereby notified that the survey carried out under the orders of Government, under section of the Bengal

Bogra

Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the following notifications, is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police stations of Dhunot, Sharaikandi and Sherpur in the district of Bogra:—

No. 1478 T. R., dated the 22nd September, 1919.

No. 1021 T. R., dated the 3rd June, 1920.

The Calcutta Gazette, Part I, September 10, 1925, Page 1453.

No. 9315 L. R.—The 4th September 1925—It is hereby notified that the survey carried out under the orders of Government, under section 3 of the Bengal Survey Act (Bengal Act V of 1875) and sub-section (1) of section 101 of the Bengal

Pabna

Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-noted notifications, is adopted as defining villages for the purposes of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-stations Taras, Ruiganj, Kazipur, Sirajganj, Kamarkhonda, Ullapara, Belkuchi, Shahzadpur and Chauli in the district of Pabna:—

No. 1478 T. R., dated the 22nd September, 1919.

No. 1021 T. R., dated the 3rd June, 1920.

The Calcutta Gazette, Part I, July 29, 1926, Page 1077.

No. 7769 L. R.—The 16th July 1926—It is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal

24-Parganas.

Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-mentioned notifications is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-stations Haroa, Sandeskhali, Baduria, Sarupnagar, Hasnabad and Basirhat in the district of 24-Parganas:—

Notification No. 9780 L. R., dated 8th October, 1923.

Notification No. 7794 L. R., dated 15th September, 1924.

Notification No. 410 T. R., dated 18th September, 1924.

The Calcutta Gazette, Part I, December 2, 1926, Page 1808.

No. 12558 L. R.—The 29th November 1926—It is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-mentioned notifications is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-stations Noda, Dumkal, Sagardighi, Berhampore, Saktipur, Daulatbazar, Hurshi, Jiaganj, Bhakuri. Murshidabad, Beldanga, Raninagar and Hariharpur in the district of Murshidabad :—

No. 2427 T. R., dated the 11th October 1920.

No. 3564 L. R., dated the 10th April, 1923.

The Calcutta Gazette, Part I, November 29, 1926, Page 1808.

No. 12559 L. R.—The 29th November 1926—In connection of Notification No. 9391 L. R., dated the 24th November, 1924, it is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-mentioned notifications is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the villages of Char Molladanga, jurisdiction list No. 125, and Kuthibari, jurisdiction list No. 126 in the police-station of Bhagawan-gola in the district of Murshidabad :—

No. 2427 T. R., dated the 11 October, 1920.

No. 3564 L. R., dated the 10th April, 1923.

The Calcutta Gazette, Part I, April 21, 1927, Page 840.

No. 5789 L. R.—The 4th April 1927—It is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875), and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-mentioned notifications is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-stations Jaynagar, Mathurapur, Kulpi, Kakdip and Sagore, in the district of the 24-Parganas :—

Notification No. 9780 L. R., dated the 8th October, 1923.

Notification No. 7794 L. R., dated the 15th September, 1924.

Notification No. 410 T. R., dated the 18th September, 1924.

The Calcutta Gazette, March 1, 1928, Part I, Page 427.

No. 2887 L. R.—The 25th February 1928—It is hereby notified that the survey carried out under the orders of Government under section 3 of the Bengal Survey Act (Bengal Act V of 1875) and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-noted notifications, is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-stations of Labpur, Nanoor, and Bolpur in the district of Birbhum :—

No. 7541 L. R., dated the 3rd September, 1920.

No. 7534 L. R., dated the 25th August, 1921.

No. 215 L. R., dated the 8th January, 1924.

The Calcutta Gazette, March 1, 1928, Part I, Page 427.

No. 2697 L. R.—The 23rd February 1928—It is hereby notified that the survey carried out under the orders of the Government under section 3 of the Bengal Survey Act (Bengal Act V of 1875) and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-noted notifications, is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in the police-stations of Nabagram, Kandi, Khargram, Bharatpur, and Barwan in the district of Murshidabad :—
 No. 2427 T. R., dated the 11th October, 1920.
 No. 3564 L. R., dated the 10th April, 1923.

Murshidabad

The Calcutta Gazette, March 1, 1928, Part I, Page 428.

No. 2893 L. R.—The 25th February, 1928—It is hereby notified that the survey carried out under the order of Government under section 3 of the Bengal Survey Act, 1875 (Bengal Act V of 1875) and sub-section (1) of section 101 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), and embodied in the under-mentioned notifications is adopted as defining villages for the purpose of clause 10 (b) of section 3 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), in police-stations Patharghatta (thana Matbaria) and Amtali in the district of Bakarganj :—
 Notification No. 679 T. R., dated the 15th September, 1926.
 Notification No. 680 T. R., dated the 15th September, 1926.

Murshidabad.

The Calcutta Gazette, dated the July 21, 1917, Part I, Page 1492.

No. 11439 L. R.—The 14th July, 1927—In exercise of the powers conferred by sub-clause (b) of clause (7) of sec. 3 of the Land Registration Act, 1876 (Bengal Act VII of 1876), the Governor in Council is pleased to adopt the villages lying within the administration units of the district of Nadia as surveyed and recorded under the Bengal Tenancy Act (Act VIII of 1885) in accordance with Notifications No. 7311 L. R., dated the 6th September, 1918, and No. 10334 L. R., dated the 6th September, 1914, as defining mauzas for the purposes of that clause in that district.

Nadia

The Calcutta Gazette, Part I, Page 1556, dated the July 28, 1927.

No. 11898 L. R.—The 23rd July, 1927—In exercise of the power conferred by sub-sec. (b), clause 7, sec. 3 of the Land Registration Act, 1876 (Bengal Act VII of 1876), the Governor in Council is pleased to adopt the villages lying within the administrative units of the Jessore district as surveyed and recorded under the Bengal Tenancy Act, 1885 (Act VIII of 1885), in accordance with notifications Nos. 6434 L. R., dated the 8th August, 1918; 9337 L. R. dated the 11th December, 1918; 974 L. R., dated the 29th January, 1920; 4374 L. R., dated the 30th April, 1920; 6368 L. R., dated the 31st July, 1920; 6587 L. R., dated the 6th August, 1920 and 10211 L. R., dated the 24th November, 1921, as defining mauzas for the purpose of that clause in that district.

Jessore

The Calcutta Gazette, Part I, Page 68, dated the Jan. 12, 1928.

No. 131 L. R.—The 4th January, 1928—In exercise of the powers conferred by sub-clause (b) of clause (7) of sec. 3 of the Land Registration Act, 1876 (Bengal Act VII of 1876), the Governor in Council is pleased to adopt the villages lying in the police-stations Barhanuddin and Tazumuddin within the administrative units of the district of Bakarganj as surveyed and recorded under the Bengal Tenancy Act, (Act VIII of 1885) and the Bengal Survey Act (Bengal Act V of 1875) in accordance with notifications No. 720 T. R., dated the 15th October, 1924; No. 721 T. R., dated the 15th October, 1924, and No. 7285 L. R., dated the 9th July 1925, as defining mouzas for the purpose of that clause in the said police-stations in that district.

Bakarganj

The Calcutta Gazette, Part I, Page 1806, dated September 1, 1927.

No. 13529 L. R.—The 24th August, 1927—In exercise of the power conferred by sub-sec. (b) of clause (7) of sec. 3 of the Land Registration Act, 1876 (Bengal Act VII of 1876), the Governor in Council is pleased to adopt the villages lying within the administrative units of the Bankura district as surveyed and recorded under the Bengal Tenancy Act, 1885, (Act VIII of 1885), in accordance with Notifications No. 10772 L. R., dated the 17th November, 1914; No. 1043 T. R., dated the 12th September, 1917; No. 7535 L. R., dated the 13th September, 1918; No. 9657 L. R., dated the 21st December, 1918; No. 2002 L. R., dated the 23rd February, 1920; No. 2847 L. R., dated the 15th March, 1920, and No. 514 L. R., dated the 21st January, 1921 as defining mauzas for the purpose of that clause in that district.

Bankura

S. 3 (16): Investing of officers with the powers of a Collector for the purpose of S. S. 12, 83, 15, 59 and 69 of 71.

Notification dated the 21st April, 1886 (published in the Calcutta Gazette of 1886, Part I, p. 466).

Under the authority vested in him by Chapter I, section 3 (16) of the Bengal Tenancy Act, VIII of 1885, the Lieutenant-Governor is pleased to invest all officers in charge of sub-divisions with the powers of a Collector for the purpose of discharging the functions referred to in sections 69–71 of the Bengal Tenancy Act.

Notification dated the 28th May, 1886 (published in the Calcutta Gazette of 1886, Part I, p. 652).

Under the authority vested in him by Chapter I, section 3 (16) of the Bengal Tenancy Act, VIII of 1885, the Lieutenant-Governor is pleased to invest all officers in charge of sub-divisions with the powers of a Collector for the purpose of discharging the functions referred to in sections 60–71 of the Bengal Tenancy Act.

Notification, dated the 7th October, 1886 (published in the Calcutta Gazette, of 1886, Part I, p. 1092).

Under the authority vested in him by Chapter I, section 3 (16) of the Bengal Tenancy Act, VIII of 1885, the Lieutenant-Governor is pleased to invest all officers in charge of sub-divisions with the powers of a Collector for the purpose of discharging the functions referred to in sections 12, 13 and 15 of the Act.

Notification No. 1579 T. R., dated the 19th September, 1920 (published in the Calcutta Gazette of 1910, Part I, p. 1323).

In exercise of the power conferred by clause (16) of section 3 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Lieutenant-Governor is pleased to appoint all officers in charge of the sub-divisions in which section 58 of the Act is in force, to discharge in their respective sub-divisions, the functions of a Collector under section 58.

2. The following notifications are hereby cancelled, namely :—

- (1) Notification No. 2978 L. R., dated the 4th August, 1908, published at page 1391 of Part I of the *Calcutta Gazette* of the 5th *idem*, and
- (2) Notification No. 2446 L. R., dated the 22nd August, 1910, published at page 1341 of Part I of the *Calcutta Gazette* of the 24th *idem*.

As to the authorising of the senior Deputy Collector attached to the Sadar station of the following districts to discharge the functions of a Collector under the following sections of the Act :—

Bhagalpur (S. 69), *See Calcutta Gazette*, 1908, Part I, p. 276.

Cuttuck (Ss. 66 and 70), *See Calcutta Gazette*, 1908, Part I, p. 2030.

Gaya (Ss. 69 to 71), *See Calcutta Gazette*, 1893 Part I, p. 274.

Monghyr (S. 69), *See Calcutta Gazette*, 1908, Part I, p. 276.

S. 3 (17): Notification appointing all Deputy Collectors to be Revenue Officers under Chapters X and XI of the Act.

Notification No. 3002 L. R., dated the 19th August, 1907 (published in the Calcutta Gazette of 1907, Part I, p. 1516).

In exercise of the powers conferred on him by section 3 (17) of the Bengal Tenancy Act, VIII of 1885 the Lieutenant-Governor is pleased to authorize all Deputy Collectors in the Lower Provinces of Bengal to discharge the functions of a Revenue-officer under Chapters X and XI of the said Act, and to appoint them to be Assistant Settlement Officers.

Notification relating to the Issue of Commission.

S. 31 cl. (b) Notification dated the 22nd July 1890 ; Calcutta Gazette July 23 1890, part I, p. 756.

In modification of the Government notification, dated the 4th November, 1885, the Lieutenant-Governor has been pleased to make, under section 392 of Act XIV of 1882, the following revised rules as to the persons to whom commission shall be issued under the Bengal Tenancy Act :

Whenever, under sections 31 (b) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local enquiry be held under Chapter XXV of the Code of Civil Procedure the commission shall be issued to such person, not being below the rank of a Sub-Deputy Collector as the Collector of the district may from time to time, select for the purpose.

The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above to conduct the enquiry, and the commission shall be issued to the person so nominated.

S. 31A (1) : Notification extending S. 31A (1) :—

Extension of S. 31A (1) to Tipperah.

Notification No. 1470 T. R. (Calcutta Gazette, Part I, p. 970, 5th September, 1900).

The 1st September, 1900—It is hereby notified for general information that the Lieutenant-Governor has been pleased to extend the provisions of s. 31A (1) of the Bengal Tenancy Act, VIII of 1885, as amended by Act III (B.C.) of 1898, to the District of Tippera.

The provisions of sub-sec. (1) of s. 31A have also been extended to the Government estate of Tangr Barhierk in the District of Monghyr : (*See Calcutta Gazette, 1904, Part I, p. 317.*)

CHAPTER VIIA.

The Calcutta Gazette, Part I, May 21, 1919, Page 820.

No. 4200 L. R.—The 16th May, 1919—In exercise of the power conferred by sub-section (2) of section 49A of the Bengal Tenancy (Amendment) Act, 1918 (Bengal Act II of 1918), the Governor in Council is pleased to declare that the provisions of Chapter VIIA of the said Act shall apply to the following aboriginal castes or tribes living in the districts or local areas specified below, and that such castes or tribes shall be deemed to be aboriginals for the purposes of the said chapter :—

Caste or tribe—District or local area.

Bhumijes—Bankura District.

Maghs—The portion of the Sundarbans included within the police-stations of Amtoli, Galachipa and Burguna of the Bakarganj district.

The Calcutta Gazette, 1919, Part I, Page 853.

No. 507 T. R.—The 24th May, 1919—In exercise of the power conferred by sub-section (2) of section 49A of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1918 (Bengal Act II of 1918), the Governor in Council is pleased to declare that the provisions of Chapter VIIA of the said Act shall apply to the following aboriginal castes or tribes living in the districts or local areas specified below, and that such castes or tribes shall be deemed to be aboriginals for the purposes of the said chapter :—

Caste or tribe—District or local area.

Bhumijes—Bankura District.

Maghs—The portion of the Sundarbans included within the police-stations of Amtoli, Galachipa and Burguna of the Bakarganj district.

2. Bengal Government Notification No. 4200 L. R., dated the 16th May, 1919 (published at page 820 of part I of the *Calcutta Gazette* of the 21st *idem*), is hereby cancelled.

The Calcutta Gazette, Part I, November 12, 1919, Page 1764.

No. 8317 L. R.—The 10th November, 1919—In exercise of the power conferred by sub-section (2) of section 49A of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act (Bengal Act II of 1918), the Governor in Council is pleased to declare that the provisions of Chapter VIIA of the said Act shall apply to the following aboriginal castes or tribes living in the districts or local areas specified below, and that such castes or tribes shall be deemed to be aboriginals for the purposes of the said chapter :—

Caste or tribe—District or local area.

Oraons and Santhals—Rangpur District.

Mundas, Oraons and Santhals—Dinajpur District.

Extension of Chap. VIIA to certain aboriginals castes or tribes—See notes under Chap. VIIA.

The Calcutta Gazette, Part I, November 12, 1925, Page 1795.

No. 11302 L. R.—The 9th November 1925—In exercise of the powers conferred by sub-section (2) of section 49A of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1918 (Act II B.C. of 1918), the Governor-in-Council is pleased to declare that the provisions of Chapter VIIA of the said Act shall apply to the following aboriginal caste or tribe living in the district or local area specified below, and that such caste or tribe shall be deemed to be aboriginals for the purposes of this said Chapter :—

Rajshahi

Caste or tribe—District or local area.

Oraons—Rajshahi.

The Calcutta Gazette, Part I, April 24, 1918, Page 676.

No. 3818 L. R.—The 22nd April 1918—In exercise of the power conferred by the proviso to sub-section (2) of section 49 M of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1918 (Bengal Act II of 1918), the Governor in Council is pleased to direct that every order passed by the Director of Land Records, Bengal, on appeal from an order of the Settlement Officer of Bankura, made under section 49 F. 49 H or 49 J of the said Act, as amended, in the police-stations of Raipur, Ranibandh, Khatra, Indpur, and Chatna, in the district of Bankura, shall be subject to revision and modification by the Board of Revenue, Bengal.

Settlement appeal

The Calcutta Gazette, Part I, April 24, 1918, Page 676.

No. 3817 L. R.—The 22nd April 1918—In exercise of the power conferred by sub-section (2) of section 49 M of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1918 (Bengal Act II of 1918), the Governor in Council is pleased to direct that the Director of Land Records, Bengal, shall be the officer to whom an appeal from an order passed under section 49 F, 49 H, or 49 J of the said Act, as amended by the Settlement Officer of Bankura in the police-stations Raipur, Ranibandh, Khatra, Indpur, Simalpal and Chatna, in the District of Bankura, shall lie.

Settlement appeal

S. 54 (2) : Rules for the payment of rent by means of postal money order :—

Resolution, dated the 19th March, 1891, (published in the Calcutta Gazette of 1891, Part I, p. 287).

PAYMENT OF RENT BY MEANS OF POSTAL MONEY ORDERS.

READ—

Letter from the Board of Revenue, No. 110 A, dated the 18th February, 1891, recommending the extension of the system of payment of rents by postal money orders.

READ AGAIN—

Government Notification of the 16th October, 1886, promulgating rules for the payment of revenue not exceeding Rs. 50 a year in amount by means of postal money orders in the Burdwan and Dacca Divisions.

Government Notification of the 2nd April, 1887, extending the above rules to all the districts in the Lower Provinces.

Government Resolution of the 20th March, 1888, further extending the above rules to all demands on account of land-revenue, of whatever amount, and also to zemindari and other cesses.

Government Resolution, dated 19th July 1889, introducing experimentally the system in the Burdwan Division of payment of rent by means of postal money order.

Government Resolution, dated the 18th May, 1890, extending the above system, to the
• Burdwan, Rajshahi, Presidency and Dacca Divisions.

In the Government Resolution of the 8th May, 1890, it was described how the system of payment of revenue by money order was originally introduced in 1816, as an experimental measure in certain selected districts, and having proved successful was made general throughout those parts of Bengal where the Tenancy Act was in force with effect from the 1st May, 1887. In July 1889 the system was extended to the payment of rent, also as an experimental measure and in the division of Burdwan only, and in April 1890 the Board of Revenue recommended that the privilege of payment of rent by money order should be extended generally. The Lieutenant Governor did not, however, at that time consider it expedient to adopt throughout Bengal a system which might have important consequences, and which had so far been only tried in a single division. It was accordingly ordered that with effect from the 1st July, 1890, rent might be paid by money-order in the Rajshahi, Presidency and Dacca Divisions in addition to that of Burdwan. The Board have now submitted a report which shows that the result of the experiment in those divisions has been very satisfactory, and recommend that the system be extended to all districts of Bengal in which Act VIII of 1885 is in force; and the Postmaster-General considers that the extension is fully justified by the results considered from a postal point of view. The Lieutenant-Governor is accordingly pleased to direct, under section 54 (2) of the Bengal Tenancy Act, VIII of 1885, that from the 1st of July, 1891, payment of rent by means of postal money order will be authorized in all the districts of Bengal in which the Bengal Tenancy Act is in force.

ORDER—Ordered that this Resolution be published in the Calcutta Gazette.

Bihar and Orissa Gazette, 13th April, 1925, Part II, Page 583.

No. 3508 N. L.—6th April, 1927—The following revised rules of the Postal Dept., relating to rent money order published under Bengal Government Notification No. 846 T. R. dated the 22nd May 1905, is published :

Rent money order are issued from all head, Sub and Branch Post offices under the rules which govern the issue of ordinary inland money order, provided they are prepared in prescribed form and are payable in following Districts in the province of Bihar and Orissa in which the B. T. Act of 1885, the C. N. P. T. A. of 1908, and O. T. Act 1913 or C. P. T. Act, 1898 is in force or any other District or to which the local Government may from time to time extend the provisions of any of the said Acts :

Patna, Gaya, Shahabad, Saran, Muzaffarpur, Champaran, Darbhanga, Monghyr, Purnea, Bhagalpur, Cuttack, Balasore, Puri, Sambalpur, Hazaribagh, Ranchi, Palamou, Manbhum, and Singbhum.

Rent due on Government land may be a remitted by rent money order.

REVENUE DEPARTMENT.

Calcutta Gazette Part I, page 2127, December 2, 1914.

NOTIFICATIONS.

No. 11267 L. R.—*The 27th November 1914*—Under clause (3) of section 56 of the Bengal Tenancy Act, VIII of 1885, the following form of rent receipt is prescribed for use by landlords receiving rent paid by postal money orders :—

Rent 1.

*On Postal Service.*

INDIAN MONEY ORDER.

*(Rent).**(Authorized for the Bengal Presidency).*

To

The Postmaster,

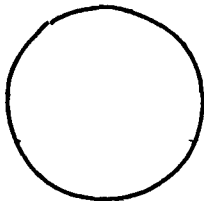
S. O.

H. O.

Fold here

N. B.—This blank space should be used for the post marks of the offices of posting and delivery.

Fold here



Date-stamp of the
office of payment.



Name-stamp of the office of issue.

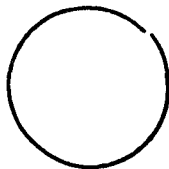
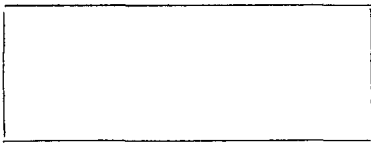
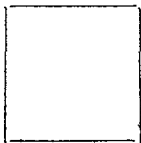
Fold here

(Continued on next page)

Month stamp.

Oblong M. O. stamp on issue.

A. O. stamp.



No. _____ Rent _____ Date _____

Rs. A. P.

For

--	--	--

(In words) _____

M. O. Clerk.

Issuing Postmaster.

Signature of witness to be taken below when the payee is illiterate and in all cases when payment is made by a village postman or to a *pardanashin* woman on her own signature.

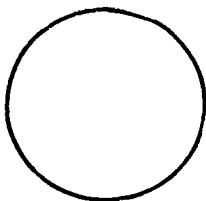
Received the sum specified above.

Date _____

Signature of witness.



Signature (in ink) of payee or thumb impression, if payee is illiterate.



Paid by me.

Oblong M. O. Stamp on payment.

Round M. O. Stamp
authorizing payment.Signature and designation of
officer who paid the amount

Remitter to fill up all entries below except the money-order No. and the entries on the right side of the acknowledgment.

Amount
(in words)

{	
---	--

Name and
address of
the Payee
(in full).

{	
---	--

Date _____

Signature of remitter.

(Continued on next page.)

ACKNOWLEDGMENT. (On Postal Service).

No. Rent

Name of Landlord

Name of Landlord's estate, tenure or holding

Name of Tenant recorded in the Landlord's
serishta and (where there is a record-of-rights)
the tenant's khewat or khatian number.

Name of remitter

Village in which tenancy is situated

Thana in which tenancy is situated

Specification of kist (provided Remitter desires
to specify any):—

For Kist of year †

For Kist of year †

For Kist of year †

Total ...

RENT.		ROAD AND PUBLIC WORKS CESSSES.	
Principal.	Interest.	Principal.	Interest.

Total amount sent by this money-order Rs. a. p.

(In words)

Name and full address
of remitter.

Received the sum specified above on _____ on account of rent _____
particularized there.

Signature (in ink) of Landlord or his Agent
authorized in writing.

APP. LL. J

NOTIFICATIONS OF THE BENGAL GOVERNMENT

(63)

(Continued on next page.)

No. Rént _____

-COUPON (to be retained by the payee).-

Date-stamp of office
of issue.

(64)

Name of Landlord

Name of Landlord's estate, tenure or holding _____

Name of Tenant recorded in the Landlord's _____

serishta and (where there is a record-of-rights)
the tenant's khewat or khatian number.

Name of remitter _____

Village in which tenancy is situated _____

Thana in which tenancy is situated _____

Specification of kist (provided Remitter desires
to specify any):—

* For _____ Kist of year † _____

* For _____ Kist of year † _____

* For _____ Kist of year † _____

Total ...

RENT.		ROAD AND PUBLIC WORKS CESSSES.	
Principal.	INTEREST.	Principal.	INTEREST.

Total amount sent by this money-order Rs. _____ a. _____ p. _____ (in words _____)

Signature and address of remitter

* In words.

* In figures and words.

BENGAL TENANCY ACT

[App. II.]

(Continued on next page.)

INSTRUCTIONS FOR THE REMITTER'S GUIDANCE.

1. The amount of a Rent money-order may include rupees, annas and pies, but not a fraction of a pie.

2. There must be a separate money-order for each tenancy. Rent for two tenancies may not be sent by one money-order.

3. In the absence of special instructions from the landlord, the remitter should make the money-order payable at the place at which rent has previously been paid, and to the landlord himself or his agent, according as rent has previously been paid to the land-lord or an agent.

4. It is optional for the remitter to specify the *kist* to which he wishes the rent paid to be credited. Under section 55 of the Bengal Tenancy Act, if he declares the year, or the year and the instalment, to which he wishes the payment to be credited, the payment shall be credited to the account of such year and instalment as the landlords thinks fit.

5. Post-masters will refuse any rent money-order which contains any entry for which the form does not provide. They will, when requested to do so, help the remitter to make the requisite entries, and, if necessary, will make the entries for him. No fee or any gratification for this service may be demanded or accepted either directly by any officials of the Post Office.

6. The limit of amount of a Rent money-order and the rates of commission are the same as for ordinary money-orders.

Settlement Officers authorised to take down evidence in English language.

Ch. X: Notification No. 4445 L. R.—Calcutta Gazette, 1st January 1902 Part 1, p. 2.

The 24th December, 1901.—All officers who have, or may hereafter be, vested by His Honour the Lieutenant-Governor with the powers of an Assistant Settlement Officer under Rule 1, Chapter VI of the rules under the Bengal Tenancy Act, are hereby authorised, under section 185 (I) of the Civil Procedure Code, to take down evidence with their own hands in the English language in proceedings held under Chapter X of the Bengal Tenancy Act, VIII of 1885, as amended by Act III (B.C.) of 1898, in which an appeal is allowed in accordance with the procedure laid down in the aforesaid Code for the trial of suits.

S. 104: Notification No. 3724 L. R. dated the 30th November, 1909 published in the Calcutta Gazette of 1909, Part 1, p. 1666.)

Whereas it does not appear to the Lieutenant-Governor to be expedient to settle, under section 104 of the Bengal Tenancy Act, 1885 (Act VIII of 1885), the rents payable by the tenants of the jagir lands of the Arazi peons of the Midnapore Collectorate in respect of which a survey and the preparation of a record-of-rights were directed in Notifications Nos. 673 L. R. and 648 L. R., dated the 7th February, 1905, and Nos. 2127 L.R. and 2128 L.R., dated the 2nd July, 1907:

Now, therefore, in pursuance of the proviso to the said section, the Lieutenant-Governor is pleased to direct that the said rents shall not be settled under that section.

S. 105 (3): Notification No. 322 S. R. dated the 19th January, 1899 (published in the Gazette of India of 1899, Part 1, P. 31.)

In exercise of the power conferred by section 105, sub-section (3) of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy Act (Amendment) Act, 1898 (Bengal Act III of 1898), and in supersession of the Notification of the Government of India in the Department of Finance and Commerce, No. 5086 S. R., dated the 11th October, 1894, the Governor-General in Council is pleased to direct that when a record-of-rights is being prepared under Chapter X of the said Act, and an application is made under section 105 thereof for a settlement of rent, such application shall bear a stamp of eight annas for each tenant making, or joining, or joined in the application.

S. 146: Notification prescribing a form of Special Register to be kept by Civil Court.

See Calcutta Gazette, 1886, Part I, p. 142.

*Notifications relating to the Issue of Commission.***S. 158 (2). Notification dated the 22nd July 1890; Calcutta Gazette July 1890 Part I, p. 756.**

In modification of the Government notification, dated the 4th November, 1885, the Lieutenant-Governor has been pleased to make, under section 392 of Act XIV 1882, the following revised rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act :

Whenever, under sections 31 (b) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local enquiry be held under Chapter XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of a Sub-Deputy Collector as the Collector of the District may from time to time, select for the purpose.

The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above to conduct the enquiry and the commission shall be issued to the person so nominated.

VESTING OF CERTAIN CERTIFICATE OFFICERS IN MYMENSINGH AND BACKERGUNGE POWER UNDER CHAPTER XIII A.

See Notification under S. 158A (Calcutta Gazette, Part I, p. 782, dated 9th April, 1924. Notification No. 3419 L. R., dated the 4th April, 1924).

In exercise of the power conferred by sub-section 3 of S. 158A of the Bengal Tenancy Act, 1885 (Act VIII of 1885), the Governor-in-Council is pleased to vest the undermentioned officers, *ex-officio*, with powers to perform the functions of certificate officers under the Bengal Public Demands Recovery Act, 1913, for the purposes of the said section and in respect of the arrears of rent (including cesses) due to the Dacca Nawab estate in the district of Backergunge :—

1. Sudder certificate officer, Backergunge.
2. Sub-divisional officer of Patuakhali in the District of Backergunge.
3. Sub-divisional officer of Pirojpur in the district of Backergunge.

FORM TO BE USED FOR THE PURPOSE OF S. 158A (5).

"Calcutta Gazette," 12th March, 1924, Part I, page 566. Revenue Department, Land Revenue.—Notification No. 2340 L. R., the 10th March, 1924.

In exercise of the power conferred by sub-section (2) of Section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Governor-in-Council is pleased to prescribe the form of certificate used under Section 6 of the Bengal Public Demands Recovery Act 1913 (Bengal Act III of 1913), as the form to be used for the purposes of sub-section (5) of Section 158A of the Bengal Tenancy Act, 1885.

S. 163 (2) Sale proclamation.

Notification dated the 20th February, 1886 (published in the Calcutta Gazette of 1886, Part I, p. 142).

Under section 163 (3), Bengal Tenancy Act, the Lieutenant-Governor is pleased to direct that the proclamation referred to in that section as required by section 287 of the *Civil Procedure Code, Act XIV of 1886*, shall, in addition to the places prescribed in section 163 (3) of the Bengal Tenancy Act, and in section 289 of the *Code of Civil Procedure*, be also published in the *mal kutchery* or rent office of the estate and at the local thana.

RULE.

Whenever a Revenue-officer acting in any proceedings referred to in section 107, sub-section (1) of the Bengal Tenancy Act, 1885, considers that a local inquiry should be held he may direct that a local enquiry be held under Order XXVI in the First Schedule to the Code of Civil Procedure, 1908, by any Revenue-officer invested with powers under Chapter X of the said Bengal Tenancy Act, 1885, or by any Revenue-officer not below the rank of Sub-Deputy Collector.

The Bengal Settlement Manual, 1908
Page 264.

2. Notification No. 5073 L. R., dated the 28th November, 1895, issued under section 392 of Act XIV of 1882 (the Code of Civil Procedure), and published in page 1146 of Part I of the *Calcutta Gazette* section 107 of the Bengal Tenancy Act, 1885 (VIII of 1885), of the 4th December, 1895, is hereby cancelled.

S. 189: Local enquiry under S. 107 (1)

The Calcutta Gazette, Part I, October 13, 1915, Page 1737.

No. 3296J.—The 11th October, 1915—In exercise of the power conferred by section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), and by the proviso to rule 9 in Order XXVI in the first Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Governor-in-Council is pleased to make the following rule as to the persons by whom local inquiries shall be held in this Presidency in cases referred to in sub-section (1) of section 107 of the said Bengal Tenancy Act, 1885 :— ;

RULE.

Whenever a Revenue-officer, acting in any proceedings referred to in sub-section (1) of section 107 of the Bengal Tenancy Act, 1885, considers that a local inquiry should be held, he may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908, by any Revenue-officer invested with powers under Chapter X of the said Bengal Tenancy Act, 1885, or by any Revenue-officer not below the rank of Sub-Deputy Collector :—

The following notifications are hereby cancelled :—

- (1) Notification No. 5073 L. R., dated the 28th November, 1895, issued under section 392 of the Code of Civil Procedure (Act XIV of 1882) and section 107 of the Bengal Tenancy Act, 1885 (VIII of 1885), and published at page 1146 of part I of the *Calcutta Gazette* of the 4th December, 1895.
- (2) Notification No. 2742 J., dated the 7th October, 1909, issued under section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), and the proviso to rule 9 in Order XXVI in the first Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), and published at pages 1390-91 of part I of the *Calcutta Gazette* of the 13th *idem*.

Repealed Notification No. 2742 J., dated the 7th October, 1909 (published in the Calcutta Gazette of 1809, Part I, p. 1390).

In exercise of the powers conferred by section 189 of the Bengal Tenancy Act, 1885, (VIII of 1885), and by the proviso to rule 9 in Order XXVI in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Lieutenant-Governor is pleased to make the following rule as to the persons by whom local enquiries shall be held in cases referred to in section 107, sub-section (1) of the said Bengal Tenancy Act, 1885.

APPENDIX III.

NOTIFICATIONS EXTENDING THE ACT.

JALPAIGURI : IN JALPAIGURI SUB-SECTIONS 2 AND 3 SHOULD BE CONSIDERED TO BE OMITTED.

No. 966 T. R.—*The 5th November, 1898.*

In exercise of the powers conferred by secs. 5 and 5A of the Scheduled Districts Act XIV of 1874, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Bengal is pleased to extend the Bengal Tenancy Act VIII of 1885, to the whole of the Jalpaiguri district except the Western Duars, with effect from the 1st of January, 1899, subject to the following restrictions and modifications, namely :—

- (a) sub-secs. (2) and (3) of sec. 1 of the said Act shall be omitted; and
- (b) the words "in the territories to which this Act extends by its own operation" in sub-sec. (1) and the whole of sub-sec. (2) of sec. 2 of the said Act shall be omitted,

No. 964 T. R.—The 5th November, 1898.

In exercise of the powers conferred by the Scheduled Districts Act XIV of 1874, sec. 5 and 5A (inserted by the Repealing and Amending Act 1891), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Bengal is pleased to extend the Bengal Tenancy Act VIII of 1885, to the portion of the Jalpaiguri districts known as the Western Duars, with effect from the 1st January, 1899, subject to the following restrictions and modifications, namely :—

- I Sub-secs. (2) and (3) of sec. 1 of the said Bengal Tenancy Act shall be omitted.
- II The words "in territories to which this Act extends by its own operation" in sub-sec. (1) and the whole of sub-sec. (2) of sec. 2 of the said Act shall be omitted.
- III Nothing in the said Bengal Tenancy Act, other than the provisions of sub-sec. (1) of sec. 2 as modified by clause II of this notification, shall apply to any lands heretofore or hereafter granted or leased by Government to any person or company under an instrument in writing for the cultivation of tea or for the reclamation of land under the Arable Waste Land Rules.
- IV Where there is any-thing in the said Bengal Tenancy Act which is inconsistent with any rights or obligations of a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land as defined in settlement proceedings heretofore approved by Government or with the terms of a lease heretofore granted by Government to *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land, such rights, obligations, or terms shall be enforceable notwithstanding anything contained in the said Act.

Eastern Bengal and Assam Gazette, November 11, 1908, Part II, p. 1776.

No. 2499 R.—The 7th November, 1908—In exercise of the powers conferred by Sections 5 and 5A of the Scheduled Districts Act XIV of 1874, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Eastern Bengal and Assam is pleased to extend the Bengal Tenancy (Validation and Amendment) Act of 1903 (Bengal Act of 1903) and the Eastern Bengal and Assam Tenancy (Amendment) Act of 1908 (Eastern Bengal and Assam Act I of 1908) to the portion of the Jalpaiguri district, known as the Western Duars, with effect from this date, subject to the following restrictions and modifications, namely :—

- I Nothing in the said Acts shall apply to any lands heretofore or hereafter granted or leased by Government to any person or Company under an instrument in writing for cultivation of tea or for the reclamation of land under the Arable Waste Land Rules.
- II Where there is anything in the said Acts which is inconsistent with any rights or obligations of a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land as defined in settlement proceedings heretofore approved by Government or with the terms of a lease heretofore granted by the Government to a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land, such rights, obligations or terms shall be enforceable, notwithstanding anything contained in the said Acts.

Eastern Bengal and Assam Gazette, November 18, 1908, Part II, p. 1859.

No. 2498 R.—The 7th November, 1908—In exercise of the power conferred by Section 5 of the Scheduled District Act, XIV of 1874, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Eastern Bengal and Assam is pleased to extend the Bengal Tenancy (Validation and Amendment) Act of 1903 (Bengal Act I of 1903) and Eastern Bengal and Assam Tenancy (Amendment) Act of 1908 Eastern Bengal and Assam Act I of 1908, to the whole of the Jalpaiguri district, except the Western Duars, with effect from this date.

Notification extending Act VIII of 1885 (in part) and Bengal Act III of 1898 to the Division of Orissa.

The 10th September, 1891—Under section 1, clause (3) of the Bengal Tenancy Act, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council is pleased to extend the following portions of the Act to the Division of Orissa :—

[Published in *Calcutta Gazette*, 16th September, 1891, Part I, pages 3 to 5, 19 to 26, 41 to 49, 53 to 839.]

No. 2448 L. R.—The 27th June, 1892.

Under section 1, clause (3) of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government's Notification, dated the 10th September, 1891, published in the *Calcutta Gazette* of the 16th *idem*, Part I, page 839, is pleased to extend sections 27 to 38 and 80 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 29th June, 1892, Part I, page 673.]

Nos. 1, 15 L. R.—The 8th January, 1893.

Under section 1, clause (3) of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government Notification No. 2448 L. R., dated the 27th June, 1892, published in the *Calcutta Gazette* of the 29th June, 1892, Part I, page 673, is pleased to extend sections 189 and 190 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 11th January, 1893, Part I, page 20.]

No. 99 L. R.—The 7th January, 1896.

Under section 1, clause (3) of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government Notification No. 115 L. R., dated the 5th January, 1893, published at page 20, Part I, of the *Calcutta Gazette* of the 11th *idem*, is pleased to extend section 39 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 8th January, 1896, Part I, page 28.]

No. 97 I. T. R.—The 17th October, 1896.

Under section 1, clause (3) of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government Notification No. 99, dated the 7th January, 1896 published at page 28, Part I, of the *Calcutta Gazette* of 8th *idem*, is pleased to extend sections 7, 40, 52 and 192 of the Act, to the Division of Orissa.

[Published in *Calcutta Gazette*, 21st October, 1896, Part I, page 1081.]

No. 957 T. R.—The 5th November, 1898.

Under section 1, clause (3) of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, is pleased to extend the provisions of the Bengal Tenancy (Amendment) Act, III of 1898, to the Division of Orissa.

No. 620 L. R.—The 27th January, 1906.

In exercise of the powers conferred by section 1, sub-section (3), of the Bengal Tenancy Act, VIII of 1885, as amended by Act III (B.C.) of 1898, the Lieutenant-Governor with the previous sanction of the Governor-General in Council, and in continuation of the Bengal

Government Notification No. 971 T. R., dated the 17th October, 1897, published at page 1081, Part I of the *Calcutta Gazette* of the 21st *idem*, is pleased to extend sections 93 to 100 of that Act to the districts of Cuttack, Puri and Balasore in the Orissa Division.

[Published in *Calcutta Gazette*, 7th February, 1907, Part I, page 176.]

No. 1816 T. R.—*The 21st August, 1906.*

In exercise of the powers conferred by section 1, sub-section (3), of the Bengal Tenancy Act, 1885 (VIII of 1885), the Lieutenant-Governor of Bengal, with the previous sanction of the Governor-General in Council, is pleased to extend the provisions of Chapter XI of that Act to the districts of Cuttack, Puri and Balasore in the Orissa Division.

[Published in *Calcutta Gazette*, 29th August, 1906, Part I, page 1658.]

No. 20 L. R.—*The 3rd January, 1907.*

In exercise of the powers conferred by section 1, sub-section (3), of the Bengal Tenancy Act, 1885 (VIII of 1885), the Lieutenant-Governor, with the previous sanction of the Governor-General in Council, is pleased to extend the provisions of Chapter XIV of that Act to the districts of Cuttack, Puri and Balasore, in the Orissa Division.

[Published in *Calcutta Gazette*, 9th January, 1907, Part I, page 54.]

Notifications extending Act VIII of 1885 (in part) to certain districts in Bhagalpur Divn.

No. 77 I. L. R.—*The 20th February, 1897.*

Under the powers vested in him by section 3 of Regulation III of 1872 (Sonthal Parganas Settlement Regulation) as amended by Regulation III of 1886, the Lieutenant-Governor directs that section 84 of the Bengal Tenancy Act, VIII of 1885, shall have force and effect in the Sonthal Parganas from this date.

[Published in *Calcutta Gazette*, 24th February, 1897, Part I, page 281.]

No. 1338 L. R.—*The 1st March, 1904.*

Under the powers vested in him by section 3 of the Sonthal Parganas Regulation, III of 1872, as amended by section 3 of the Sonthal Parganas Justice and Laws Regulation, III of 1899, the Lieutenant-Governor directs that section 56 and clauses (1) and (3) of section 58 of the Bengal Tenancy Act, VIII of 1885, shall be deemed to be in force in the Sonthal Parganas from this date.

[Published in *Calcutta Gazette*, 2nd March, 1904, Part I, page 347.]

Notifications extending certain portions to Cuttack, Puri and Balasore.

See Calcutta Gazette, February 26, 1908, Part I, p. 179.

Portions of the Bengal Tenancy Act applicable to Choto Nagpur before the passing of the Choto Nagpur Tenancy Act of 1908.

(*Calcutta Gazette*, February 26, 1908, Part I, p. 179).

***Notification extending parts of Act VIII of 1885 (as amended by Bengal Act VIII 1898) to the Chota Nagpur Division (except the District of Manbhum).**

CHOTA NAGPUR DIVISION EXCEPTING MANBHUM : Sec. 1 sub-sec. (1) which had been extended the notification No. 721 (L. R., dated the 9th February, 1903 (*Calcutta Gazette*, page 172, Part I of 11th February, 1903) excepting s. 1., sub-sec. (1) has been superseded by a notification, dated 22nd February, 1908, see notes under s. 1.

* No. 721 L. R.—*The 9th February, 1903.*—In exercise of the powers conferred by sections 5 and 5A of the Scheduled Districts Act, 1874, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to extend to the Chota Nagpur Division, except the district of Manbhum, the portions of the Bengal Tenancy Act, 1885 as amended by the Bengal Tenancy (Amendment) Act, 1898 (which are specified in column 1 of the following table, subject to the restrictions and modifications specified in column 2 of that table.

CHOTA NAGPUR : In exercise of the powers conferred by secs. 5 and 5A of the Scheduled Districts Act, 1874 (XIV of 1874), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to extend to the Chota Nagpur Division, except the district of Banbhum, the portion of the Bengal Tenancy Act, 1885 (as amended by Bengal Act, III of 1898 and Bengal Act of 1907), which are specified in column 2 of that table.

This supersedes Notification No. 721 L. R., dated the 9th February, 1903, published at page 172, Part I of the *Calcutta Gazette* of the 11th *idem*. (See Appendix).

Portions of the Bengal Tenancy Act, 1885

[as amending by the Bengal Tenancy

(Amendment) Act, 1898 and the

Bengal Tenancy (Amendment) Act, 1907.]

Restrictions and modifications.

Chapter I : section 3, sub-section (1)	...	For Collector read Deputy Commissioner.
" " " " " (2)	...	.....
" " " " " (15)	...	.....
" " " " " (17)	...	.....
" " " " " (1)	...	Omit in any case with the previous sanction of the Governor-General in Council.

Portions of the Bengal Tenancy Act, 1885

[as amended by the Bengal Tenancy

(Amendment) Act, 1898.]

Restrictions and modifications.

1	2
Chapter I : section 1, sub-section (1)	... For Collector read Deputy Commissioner.
" " " 3, clause (1)	... ..
" " " 3, clause (2)	... ..
" " " 3, clause (3) & (4)	... ..
" " " 3, clause (7)	... For or an under-tenure-holder read and includes an under-tenure.
" " " 3, clause (15)	... ..
" " " 3, clause (17)	... ..
Chapter II : " 6, sub-section (1)	... ..

Portions of the Bengal Tenancy Act, 1885

[as amended by the Bengal Tenancy

(Amendment) Act, 1898.]

Restrictions and modifications.

1	2
Chapter X : section 101, sub-section (1)	... Omit 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.
" " " " " (3) & (4)	...
" " " 102	... Omit the words from and may include to the end.
" " " 103A	... In sub-section (2) omit and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-Roll has been incorporated with the record under section 104F., sub-section (3).

Chapter X : section 103B	...	...	<i>For Part read Chapter.</i>
" " " 104G, sub-section (2)	...	...	<i>Omit but not so as to affect any order passed by a Civil Court under section 104H and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned.</i>
" " " 103, (3) & (4)	...	...	
" " " 102	...	...	<i>In cl. (b) after the word tenure-holder insert the words Mundari khunt-kattidar, and omit the words settled raiyat.</i>
" " " 102A	...	...	
" " " 103	...	...	<i>In sub-sec. (2) omit and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-Roll has been incorporated with the record under section 104F, sub-section (3).</i>
" " " 103B	...	...	<i>In sub-sec. (1) for Collector read Deputy Commissioner.</i>
" " " 104G (2)	...	...	<i>For Part read Chapter.</i>
			<i>Omit the words but not so as to affect any order passed by a Civil Court under section 104H.</i>
" " " 111	...	...	<i>Omit subject to the provisions of sec. 104H.</i>
" " " 111A	...	...	<i>Omit or, save as provided in section 104H for the alteration of any entry in such a record of a rent, settled under sections 104A to 104F.</i>
" " " 114	...	...	<i>In the provision omit framed in pursuance of an order made under section 101, sub-section (2), clause (d).</i>
" XIII : " 148 opening words and clause (b).			<i>Omit in any case except where a settlement of land revenue is being or about to be made.</i>
" " " 149	...	...	<i>For section 50 of the Code of Civil Procedure, read sections 46 and 47 of the Chota Nagpur Landlord and Tenant Procedure Act.</i>
" " " 190	...	...	<i>In sub-section (2) omit or High Court and omit in the case of rules made by any other authority, in the prescribed manner.</i>

Portions of the Bengal Tenancy Act, 1885
[as amended by the Bengal Tenancy
(Amendment) Act, 1898.]

Restrictions and modifications.

1

2

Chapter XIII : section 195 *Omit clauses (b), (c), (d) and (e).*

[Published in *Calcutta Gazette*, 11th February, 1903, Part I, page 172.]

" " " 108A *In the proviso before the words an appeal insert the words a suit or and for section 109A read sections 160 and 161, Chota Nagpur Landlord and Tenant Procedure Act, 1879, and sections 9A (8) and 9A (10) Chota Nagpur Computation Act, 1897.*

Chapter X : section 109B (1) & (3)	...	<i>In sub-section (1) omit this Act and insert the Chota Nagpur Landlord and Tenant Procedure Act, 1879.</i>
" " " 111	...	<i>Omit subject to the provisions of section 104H, and and application made under section 158 or</i>
" " " 111A	...	<i>Omit or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F. In the proviso omit framed in pursuance of an order made under section 101, sub-section (2) cl. (d).</i>
" " " 114	...	<i>Omit in any case except where a settlement of land-revenue is being or is about to be made.</i>
Chapter XIII : section 140 opening words and cl. (b) and cls. b(1) and b(2).		<i>In cl. (b) for section 50 of the Code of Civil Procedure, read sections 46 and 47 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and in the proviso to clause b(1) for Collector read Deputy Commissioner.</i>
Chapter XVII, section 189, opening words* and sub-sections (11 & 12).		<i>In sub-section (2) after the words under this Act insert the words or under the Chota Nagpur Landlord and Tenant Procedure Act, 1879 and for this or any other Act, read these or any other Act.</i>
Chapter XVII, section 189	...	<i>In sub-section (2) omit or High Court, and omit and, in the case of rules made by any other authority, in the prescribed manner.</i>
" " " 195	...	<i>Omit clauses (b) (c) (d) and (e).</i>

No. 957 T. R.—*The 5th November, 1898.*—Under section 1, clause 3 of the Bengal Tenancy Act, VIII of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, is pleased to extend the provisions of the Bengal Tenancy (Amendment) Act III of 1898, to the Division of Orissa.

[Published in *Calcutta Gazette*, 8th November, 1898, Part I, page 1156A.]

Extension of s. 31A (1) to Tipperah and a part of Monghyr, see notes under s 31A.

S. 84 of the B. T. Act was extended to the Sonthal Parganas before the passing of the Chota Nagpur Tenancy Act of 1908; see *Calcutta Gazette*, 24th February, 1897, Part I, page 281.

APPENDIX IV.

SOME OF THE AMENDING ACTS.

1. Bengal Tenancy Amendment Act (III B. C. of 1898).

(Received the assent of the Lieutenant-Governor on the 5th April, 1898, and of the Governor-General on the 3rd May, 1898.)

An Act to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1898.

Whereas it is expedient to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885, in the manner hereinafter appearing;

And whereas, the said Act having been passed by the Governor-General of India in Council, the previous sanction of the Governor-General has been obtained, under section 5 of the Indian

Councils Act, 1892, to the requisite amendment being made by an Act of the Lieutenant-Governor of Bengal in Council;

And whereas the sanction of the Governor-General has similarly been obtained to the amendment of the Court-fees Act, 1870, which is proposed by section 105 (7) of this Act;

It is hereby enacted as follows :—

1. (1) This act may be called the Bengal Tenancy (Amendment) Act 1898; and

(2) It shall come into force on the day on which it is first published in the *Calcutta Gazette* after having received the assent of the Governor-General.

2. For clause (a) of section 30 of the Bengal Tenancy Act, 1885, the following shall be substituted namely :

[See s. 30 cl. (a)]

3. After clause (d) of section 32 of the Act the following shall be inserted namely :

[See s. 31.]

4. After section 31 of the said act the following shall be inserted namely :—

[See ss. 31A and 31B.]

5, 6, 7, for Chapter X of the said Act the following shall be substituted, namely :—

[See Chapter X.]

8. All records published under section 105 of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form, shall be deemed to have been duly published.

9. (1) Every settlement of rent or decision of a dispute by a Revenue Officer under section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties and shall be final;

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

10. In section 119 of the Bengal Tenancy Act, 1885, the words and figures "sections 103A, 103B, 106, 107, 108, 109 and 109A" shall be substituted for the words and figures "section 105 to 109, both inclusive.

11. Bengal Act V of 1894 (*an Act to remove doubts which have arisen in connection with the re-settlement of land-revenue in temporary-settlement areas, and to amend the Bengal Tenancy Act, 1885*) is hereby repealed.

2. Bengal Tenancy (Validation & Amendment) Act (I of 1903.).

[Published in the *Calcutta Gazette* of the 25th February, 1903]

An Act to validate certain transfers, made under the Bengal Tenancy Act, 1885, of permanent tenures and holdings at fixed rents and of share in the same : and to amend section 106 of that Act.

WHEREAS doubts and difficulties have arisen respecting the meaning and effects of section 12, 13, 17, and 18 of the Bengal Tenancy Act, 1885, and regards the payment of the prescribed landlord's fee, and the effect of the non-payment of such fee;

And whereas it is expedient to declare to that registered transfers and sales and decrees or order for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of

permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing;

And whereas, the said Act having been passed by the Governor-General of India in Council, the sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows :—

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding, shall be deemed to be valid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has been paid.

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a court of competent jurisdiction which has become final before the commencement of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee, shall not bar a suit for rent which became payable subsequently to such claim.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement of this act,

or within two years of the date of confirmation of the document effecting the transfer,

or within two years of the date of registration of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

3. Nothing in section 1 shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885.

4. For section 106 of the said Act the following shall be substituted, namely :—

“ 106. In proceedings under this part, a suit may be instituted before, a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made from the record, whether such dispute be between landlord and tenant or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free properly so held, or as to any other matter, and the Revenue-officer shall hear and decide the dispute;

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

5. This Act may be called the Bengal Tenancy (Validation and Amendment) Act, 1903.

3. Bengal Tenancy (Utbandi Amendment) Act, (X of 1923)

[See under s. 180A.]

4. Bengal Land Records Maintenance Act (III of 1895)

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 19th April, 1895, and of the Governor-General on the 21st May, 1895.)

An Act to provide for the Maintenance of Records of Tenant-rights in Bengal, and for the recovery of the cost of Cadastral Surveys and Settlements.

WHEREAS it is expedient to provide for the maintenance of records of tenant-rights and of settlement records in Bengal, and for an alternative method of recovering the cost of cadastral surveys and settlement; It is hereby enacted as follows :—

Preamble.

PART I.

Preliminary.

Short title.

1. (1) This Act may be called "*The Land Records Maintenance Act, 1895.*"

(2) It shall come into force only in Districts or parts of Districts of which a field survey and a record-of-rights have been made under Chapter X of the Bengal Tenancy Act, 1885, or under any other law for the time being in force, and to which the Local Government

Extent.

may, from time to time, extend it by an order published in the *Calcutta Gazette*;

and thereupon this Act shall commence and take effect in the Districts or parts of Districts named in such order on the day which shall be in such order provided for the commencement thereof.

Commencement.

2. (1) In this Act all words and expressions defined in the Bengal Tenancy Act, 1885, shall have the meanings attributed to them, respectively, in that Act, and the word "addition" shall have the meaning attributed to it in the Indian Registration Act, 1877.

Interpretation clause.

(2) By the term "record of rights" shall be understood the settlement record of tenant-rights called the *khatian* or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue to form the record of rights for any District or part of a District. A record of rights includes entries duly made in a Register of Mutations.

PART II.

Registration of Mutations.

3. The Sub-Registrar appointed under the Indian Registration Act, 1877, shall be Registrars of Mutations under this Act.

4. The Registrar of Mutations shall keep such registers as shall, from time to time, be prescribed by the Local Government, including, for every village within the limits of the sub-district, a Register of Mutations, in which there shall be recorded changes affecting the record of rights of that village, and containing such particulars as the Board of Revenue may, from time to time, with the sanction of the Local Government, prescribe.

Registers.

5. (1). Whenever the Local Government shall issue a notification in the *Calcutta Gazette* to that effect, every landlord shall, within the period prescribed in the notification, file, in the office of the Registrar of Mutations, within sub-district in which his tenants' land is situated, a statement, in a form to be prescribed by

Landlords' statements.

the Local Government, showing truly, to the best of his knowledge and belief, the changes, if any, which have taken place in his tenants' rights, by reason of transfer or succession, since the record of rights was prepared, or since the last statement was filed.

(2). The Collector of the district shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the district, and in any other manner which the Local Government may from time to time prescribe.

6. Every tenure-holder, raiyat at fixed rates and occupancy raiyat, who transfers his tenure

Notice of transfer or holding, or any part thereof, and every person claiming to be succession to be given to in possession of any tenure or holding as a tenure-holder, raiyat at Registrar of Mutations..

fixed rates, or occupancy raiyat in consequence of a transfer or of intestate or testamentary succession, shall, within four months from the date upon which he gave or took possession, as the case may be, give notice of the fact to the Registrar of Mutations within whose sub-district the whole or some portion of the land to which the notice relates is situate, at his office :

Provided that a notice under this section is receivable although the prescribed period has elapsed :

Provided further that when any person has duly given notice under this section, all other persons are released from the obligation of giving notice in respect of the same transfer or succession :

Provided further that when an instrument effecting a transfer of tenant-right has been registered under the provisions of the Indian Registration Act, 1877, all persons are released from the obligation of giving notice under this section in respect of the same transfer.

7. The notice shall contain :—

(a) in the case of a transfer, the names of the transferor and the transferee, or in the

The contents of the case of a succession, the name of the deceased and his notice, successor,

(b) a specification of the nature of the interest transferred or acquired,

(c) the survey number of the lands as entered in the record of rights, and

(d) such further particulars as the Local Government may, from time to time, prescribe.

8. (1) The Registrar of Mutations shall, on receipt of a notice under section 6, whether given within the prescribed period or not, from a transferor or

Duty of Registrar on receipt of notice from transferor or transferee. transferee, ascertain if both the transferor and the transferee, or in the case of the death of either party since the transfer, if the

one party and the representative of the other party admit the transfer, or in the case of the death of both parties if their respective representatives admit the transfer, and if both transferor or transferee or their respective representatives admit the transfer, he shall, after satisfying himself as to the identity of the persons appearing before him, cause the following particulars to be endorsed on the notice (that is to say) :

(a) the signature and addition of every person admitting the transfer ; and if such transfer has been admitted by the representative or agent of any person, the signature and addition of such representative or agent.

(b) any payment of money or delivery of goods made in the presence of the Registrar of Mutations in reference to the transfer, and any admission of receipt of consideration in whole or in part, made in his presence in reference to such transfer, and shall affix the date and his signature to these endorsements,

and shall register the transfer in the Register of Mutations in such manner as the Local Government shall from time to time by rule prescribe.

(2) If necessary, the Registrar of Mutations may issue a summons for the attendance of either or both the transferor and transferee, or their respective representatives, either simultaneously or at different times, at his office :

Provided that, in lieu of issuing a summons, he shall either himself go and examine, or issue a commission for the examination of any person who is :—

(a) exempt by law from personal appearance in Court,

(b) unable, by reason of bodily infirmity, without risk or serious inconvenience, to attend at the office, or

(c) in jail under Civil or Criminal process.

9. The Registrar of Mutations on receipt of a notice under section 6, whether within the prescribed period or not, from a person claiming by succession, shall, after satisfying himself as to the identity, of such person and causing the signature and addition of such person to be endorsed on the notice, by a notice affixed in a conspicuous place, and by

Duty of Registrar on receipt of notice from successor.

beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice, and deny the succession, and if within that period no one appears and denies the succession, he shall endorse a statement of the fact on the notice affixing the date and his signature to the endorsements, and shall register the succession in the Register of Mutations in such manner as the Local Government shall from time to time by rule prescribe.

10. Notwithstanding anything contained in sections 8, 9 and 12, any person may attend at the office of the Registrar of Mutations by agent duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

11. (1). For the purpose of the last preceding section, the powers-of-attorney here mentioned shall alone be recognized—

(a) if the principal at the time of executing the power-of-attorney resides in British India, a power-of-attorney executed before and authenticated by any Magistrate or the Registrar or Sub-Registrar appointed under section 6 of the Indian Registration Act, 1877, within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any office or Court for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this section :—

persons exempt by law from personal appearance in Court ;

persons who by reason of bodily infirmity are unable without risk or serious inconvenience, so to attend ; and

persons who are in jail under Civil or Criminal process.

(2) In every such case the officer, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court. To obtain evidence as to the voluntary nature of the execution, the officer may go to the person purporting to be the principal and examine him or issue a commission for his examination. Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the officer hereinbefore mentioned in that behalf.

12. The law for the time being in force as to summons commissions and the compelling the attendance of persons summoned in suits before Civil Courts shall, *mutatis mutandis*, apply to any summons or commission issued, and any person summoned, under this Act.

Law as to summonses and commissions.

13. Whenever a Registrar of Mutations, after receipt of a notice under section 6, does not register the transfer or succession in respect of which it is given, he shall make an entry of the fact and state his reasons in such manner as the Local Government may from time to time prescribe.

Reason for refusal to register to be recorded.

14. If any of the persons purporting to have signed the notice, or any one mentioned therein as transferor or transferee or in the case of the death of Procedure on denial of transfer, either, if his representative denies the transfer,

or if any such person appears to be a minor, an idiot, or a lunatic, or

if any person, where the claim is by succession, appears before the Registrar on issue of a notice under section 9, and denies the succession, the Registrar of Mutations shall refuse to register the mutation.

15. If the name of a transferor, or of a deceased person through whom succession is claimed, inserted in a notice given under section 6, is not recorded Procedure when transferor's name not in record of rights. in the record of rights as that of the person in possession of the land specified in the notice, the Registrar of Mutations shall, without registering the transfer or succession, as the case may be, by a notice, affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desire to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny that the alleged transferor, or deceased person through whom succession is claimed, was at the time of the alleged transfer in possession of the land specified in the notice. And if no person within the prescribed period so appears and denies, the Registrar of Mutations shall, if the other provisions of the Act are complied with, record the transfer or succession, the subject of the notice, in the Register of Mutations.

16. (1) When a Registrar of Mutations has made an order refusing to register a transfer or succession, an appeal shall lie within thirty days from the date Appeal against refusal to register. of the order against such order to the Collector of the District to whom such Registrar of Mutations is subordinate; and the Collector may, after taking such evidence as he thinks necessary, reverse or alter such order; and if the Collector directs the transfer or succession to be registered, the Registrar of Mutations shall obey such order,

and such registration shall take effect as if the transfer or succession had been registered when the notice was first given under section 6.

(2) No appeal shall lie from any order of a Collector passed under this section.

17. The Registrar of Mutations shall give to the person giving a notice under section 6 a receipt therefor and shall, upon his application, grant to him, Registrar to give receipt for notice and, if required, copy of entries in register. free of charge, a copy of the entries made in the Register of Mutations in pursuance of such notice.

18. (1) On payment of the prescribed fees, the Register of Mutations shall be open to Registrar to allow inspection and to give certified copies of entries in Register. inspection by any person applying to inspect the same, and a copy of any entry therein shall be given to any person applying therefor.

(2) Copies given under this section shall be signed and sealed by the Registrar of Mutations and shall be admissible for the purpose of proving the contents of the original entry.

19. (1) The Local Government shall from time to time prepare tables of fees Fees to be fixed by the payable— Local Government.

(a) for the registration of mutations—

(i) within the prescribed period,

(ii) after the prescribed period,

(b) for copies of entries in the Register of Mutations,

(c) for inspecting the Register of Mutations,

(d) for notices, processes and commissions given or issued under this Act.

(e) for such other matters as appear to the Local Government necessary to effect the purposes of this Act, and may from time to time alter such tables.

(2) Tables of fees so payable shall be published in the *Calcutta Gazette*, and a copy thereof in English and the Vernacular language of the district shall be exposed to public view in the office of every Registrar of Mutations.

(3) All fees for the registration of mutations shall be payable at the time when the notice is given under section 6.

20. The fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885, may be paid to the Registrar of Mutations, when notice is given under section 6, and such payment shall be held to be payment to the Collector, and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector, and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.

21. Any non-occupancy raiyat or under-raiyat, if he thinks fit, may give any notice which a tenure-holder, raiyat at fixed rates and occupancy raiyat is bound to give under section 6, and if he gives such notice, the provisions of this Act, as far as they are applicable, shall thereupon apply.

22. A Sub-Registrar, registering an instrument effecting a transfer of tenant-right, or, under the provisions of sections 64 and 65 of the Indian Registration Act, 1877, receiving a memorandum of a transfer of tenant-right, shall, as Registrar of Mutations, make an entry in the Register of Mutations as if he had received a notice under section 6.

23. (1) No person bound to give notice under section 6 shall, after the period therein mentioned, be entitled to obtain a decree for, or recover, the rent of any land the subject of the transfer or succession until he has given such notice, and if the defendant denies that the notice has been given, or if the Court thinks fit, it may require him to file a certified copy of the entry in the Register of Mutations relative to such land, or to adduce evidence to the satisfaction of the Court that the notice was duly given.

(2) No tenant bound to give notice under section 6 shall, after the period therein mentioned, in any suit in which his landlord is plaintiff and he is a defendant, be entitled to adduce evidence that he is a tenure-holder, raiyat at fixed rates or raiyat with a right of occupancy in the land held by him until he has given such notice, but the Court in which any such suit is tried shall afford the defendant sufficient time to enable him to give such notice.

24. Whoever voluntarily or negligently omits to give, within the prescribed time, notice Penalty for omission under section 6, shall be liable to such fine, not exceeding fifty rupees, as the Collector of the District may see fit to impose.

25. After a notification has been issued under section 5, whoever voluntarily or negligently omits to file, within the period therein specified, the required statement, shall be liable to such fine, not exceeding one hundred rupees, as the Collector of the District may see fit to impose :

Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector of the District at any time after such institution, has filed the statement required by section 5 or given the notice required by section 6.

26. Every Registrar of Mutations and every person employed in his office for the purposes of this Act, who being charged with the duty of making any entry in the Register of Mutations, voluntarily omits to make such entry, or makes any entry therein which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to two years or with fine, or with both.

27. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to two years or with other offences. fine, or with both :—

(a) intentionally makes any false statement, whether on oath or not, and whether Making false state- it has been recorded or not, before any Registrar of Mutations in ments before Registrar of any proceeding or enquiry under this Act; Mutations.

(b) falsely personates another, and in such assumed character presents any notice or False personation. makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act;

(c) abets, within the meaning of the Indian Penal Code, anything made punishable Abetment of certain offences, under this or the last preceding section.

PART III.

Recovery of Expenses of a Survey and Preparation of a Record of Rights.

28. It shall be lawful for the Local Government, instead of proceeding under section 114 Recovery of expenses of initial survey, &c.

of the Bengal Tenancy Act, 1885, to recover, from all or any of the proprietors, landlords, tenants and rent-free owners and occupiers in any District or part of a District, either in one year or several years, and in the manner specified in the sections following, their shares of all the expenses declared by the Local Government to be recoverable from proprietors, landlords, tenants, and rent-free owners and occupiers, which have been incurred in making a survey and record of rights and a settlement of rents under Chapter X of the Bengal Tenancy Act, 1885, such costs not having been incurred for the purposes of a settlement of land revenue.

29. The Local Government may from time to time determine the total expenses which Area, rate and date of recovery of expenses. have been incurred in any District or part of a District in making a survey and record of rights, and the amounts (in such proportions as the Local Government may from time to time determine) which shall be paid by the proprietors, landlords, tenants and rent-free owners and occupiers respectively in such District or part of a District, and the date from which the expenses aforesaid shall be recovered; and may specify the rate per acre to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.

30. The amount due from proprietors shall be paid together with such instalment of land revenue as the Local Government may direct, and arrears Payment of expenses by proprietors. shall be recoverable under the law for the time being in force for the recovery of public demands.

31. The amount due from tenants and rent-free owners and occupiers shall, subject to any order passed by the Local Government under section 28, be Payment of expenses by tenants and rent-free owners and occupiers. paid by them to the Settlement Officer, on tender of such extract from the record of rights as they may be entitled to receive. Arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

32. When any proprietor, landlord, tenant or rent-free owner or occupier liable to pay any portion of the expenses under an order passed under this Part Recovery from succe- sors in interest. since such expenses were incurred, has died or has transferred, in whole or in part, his interest in any land on account of which he may have become liable, and such portion of the expenses remains unpaid, it shall be lawful for the Collector to recover the said expenses, or any portion thereof, from the person in possession of such interest or portion thereof. Such expenses shall be recoverable under the law for the time being in force for the recovery of public demands.

PART IV.

Miscellaneous.

33. Every Sub-Registrar appointed under this Act to be a Registrar of Mutations, and Registrars of Mutations every person appointed temporarily to discharge the duties of any to be public servants, such office, shall be deemed to be a public servant within the and their records public meaning of section 21 of the Indian Penal Code, and all official records. records and papers kept by any such officer under this Act shall be held to be public records and the property of Government.

34. Every order of a Registrar of Mutations affecting any entry in the Register of Appeals. Mutations shall be appealable for a period of one month from the date thereof to the Collector of the District. No appeal shall lie from any order of a Collector passed under this section.

35. The Local Government may from time to time vest any officer other than the Collector of the District with special appellate powers under this Act: and Local Government may every officer so vested shall be competent to hear and decide any vest officer with special appellate powers. appeal which the Collector of the district is competent to hear and decide under this Act.

36. (1) The Local Government or the Board of Revenue with the sanction of the Local Power to make rules Government, may from time to time, make, repeal and alter rules for selection, etc., of Sub- Registrars, consistent with this Act—

(a) regarding the appointment, control, discipline and payment of all Registrars of Mutations and their establishments;

(b) prescribing the manner of making entries of mutations in the record of rights, preparing new editions of such records, and republishing them from time to time, or otherwise making them available for public information;

(c) regarding the distribution of the expenses incurred under Part III, and

(d) generally for the purpose of giving effect to the provisions of this Act.

(2) The provisions of section 190 of the Bengal Tenancy Act, 1885, shall apply to rule made under clauses (b), (c) and (d).

APPENDIX V.

REGISTRATION RULES.

Rules for the registration of documents under the Bengal Tenancy Act, VIII of 1885.

1. The sections of the Tenancy Act which refer to the registration of documents, are Leading provisions. sections 12, 18, 85, 17 and 176.

Section 12 has been amended by Act VIII of 1886, and has reference only to the transfer of a permanent tenure by gift, voluntary sale, or usufructuary mortgage, i.e., where the mortgagor delivers possession and authorises the mortgagee to retain the rents and profits accruing from the property mortgaged [section 58 (d) of the Transfer of Property Act, IV of 1882].

Section 18 enacts that a raiyati holding at a fixed rent or fixed rate of rent is subject to the same provisions with respect to its transfer by gift, sale or mortgage as a permanent tenure.

The period allowed by section 175 for the registration of a certain class of documents expired on the 31st October, 1886, and after that date their registration was barred.

Section 176 relates to the notification of incumbrances to the landlord. For definition of "incumbrance" see section 161.

2. A document presented for registration under sections 12, 18 and 175 shall be first examined with reference to Registration Rule 41, and next with reference to the particular section of the Tenancy Act under which it is presented. Care should be taken not to carry out the procedure under sections 12 and 18, unless it appears on the face of the deed itself that the tenure transferred is a permanent tenure, or that the holding transferred is a permanent tenure, or that the holding transferred is a holding at a rent, or rate of rent fixed in perpetuity.

The Lieutenant-Governor sanctioned the withdrawal of Rule No. 3, see Notification No. 1881 P., dated the 19th September, 1899, *Calcutta Gazette*, Part I, September 20, 1899, page 1233. Rule 3 stood thus :—

3. Under section 88 of the Tenancy Act, a division of a tenure or holding, or distribution of the rent payable in respect thereof shall not be binding on the landlord, unless it is made with his consent in writing. When, therefore, it appears from the documents that only a fractional, share of a tenure or holding is being transferred, and the landlord's consent in writing is not produced, the procedure under sections 12 and 18 should not be carried out.

4. When a sub-lease executed by raiyat purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, viz., "Not admissible under sub-section 2, section 85 of the Bengal Tenancy Act." The note shall be signed, sealed, and dated by the registering officer. The order of refusal will be entered in Book II.

5. In certifying the admissibility to registration of a document presented for registration under these rules, the registering officer shall quote Registration Rule 41 as well as the particular section of Tenancy Act under which it is admitted. Thus: *Admissible under Rule 41, also under section of the Bengal Tenancy Act. Correctly stamped under the Indian Stamp Act, Schedule.*

The fees levied shall be noted below the certificate of admissibility in the following manner, viz. :—

Fees paid A	...	...	...	...	1 0	
Fees paid R	...	...	...	...	1 0	
					—	2 4
Landlord's fee	...	...	...	...	2 0	
Process (in court-fee stamps)	...	...	...	...	0 12	
Peon's charges, etc.	...	...	...	...	0 8	
					—	3 4
						—
Total	...	...	...	...	5 8	

Sub-Registrar.

6. The amount of landlord's fee, peon's charges, shall be entered in the printed receipt for the document granted under section 52 of the Registration Act. In calculating the amount of landlord's fee, pie should be omitted.

7. The document shall be entered in the registration fee-book in order of presentation in the same manner as any other document presented under the Indian Registration Act. The registration fee shall be credited in column 7 with the necessary details, and included in the total of other registration fees for credit to All documents to be entered in the ordinary Registration Fee-book.

Government. The serial number of the document in the Tenancy Act fee-book shall be noted in the column of remarks of the registration fee-book with letters T. A. for reference.

8. Fees for process shall be paid in court-fee stamps. These stamps shall be affixed to the application for issue of processes issued, certifying that the fees have been paid and the applications being retained

Process fee. in the offices of the registering officers. The stamps shall be cancelled by the registering officers in the manner prescribed in section 30 of the Court Fees Act, i.e., by punching out the figure head so as leave the amount designated on the stamps untouched. The pieces punched out shall be immediately destroyed.

9. Charges on account of peons' railway fare, boat hire or ferry charges shall be levied according to the rule quoted in paragraph 3 of Appendix A, subject to the instructions of the Collector of the District.

10. Landlord's fees, process fees, and charges, on accounts of peon's railway fare, boat hire, or ferry charges, shall not be shown in the registration fee-book, but shall be shown separately in a fee-book

Tenancy Act Fee-book.

called the Tenancy Act fee-book.

Tenancy Act Fee-book.

Serial number of notice.	Serial number of document in Book I.	Date of presentation.	From whom received.	Nature of document.	Annual rent.	Landholder's fees.	Process fee in court-fee stamps.	Peon's boat-hire, railway fare or ferry tolls.	Number of chalan or money-order used for remitting the fees to the Collector.	Number and date to letter sending notices to the Collector.	Signature of the Registering Officer.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13
					Rs. A.	Rs. A.	Rs. A.	Rs. A.				

11. Column 1 of the Tenancy Act fee-book should be filled up on the presentation of the document, whether the particular notice is ready or not. The number in that column should be transferred to the notice when it is ready. Columns 3 to 9 should also be filled up immediately on the presentation of the document. Columns 10 and 11 should be filled up on the date on which the notice and landlord's fees are sent to the Collector or the Sub-divisional Officer, as the case may be. The registering officer should affix his initials to each entry in column 11 of the Tenancy Act Fee-book. The serial number of a copy sent under section 176 should be entered in the column of remarks.

12. Columns 7, 8 and 9 of the Tenancy Act Fee-book shall be totalled daily, and the daily total of all cash receipts—that is, all receipts except process fees paid in court-fee stamps—shall be posted in the cash-book under the heads of landlord's fees and peons' charges, etc.

Preparation and forwarding of Notices under sections 12 and 18 of the Tenancy Act.

13. In the case of documents relating to the transfer of tenures under section 12, or of raiyati holdings at fixed rates under section 18, notices shall be prepared in accordance with

Rule 1, Chapter V of the General Rules under the Tenancy Act, reprinted in Appendix B, as soon as execution has been admitted and the executant identified, and the endorsements referring thereto have been recorded. The form of the notice is shewn in Schedule 1 of Appendix B.

14. The scale of fees to be levied for the service of notices is laid down in Appendix A.

15. When two or more persons are joint landlords and have no common Agent or Manager only one notice should be issued and a single process fee levied.

16. The notice referred to in the preceding rule should be served in the manner directed in Appendix B, Postal charges for sending copies of notices under section 12 of the Bengal Tenancy Act to landlords should be met from, and not added to, the process fee. Postal charges for sending copies of notices to the Collector for transmission to landlords should be debited to the Registration Department, and those that may be incurred for their despatch to landlords from the Collectorate should be made by the Collector.

17. All notices or copies of notices shall be prepared in duplicate and shall, with peon's charges, etc., be forwarded to the Collector of the district or the Sub-divisional Officer of the sub-division as the case may be, in which the landlords reside, for service upon them, under a covering letter and form of the notice will be found in Appendix B.

The landlord's fees will be forwarded to the Local Treasury Officer or Sub-Treasury Officer, as the case may be, under a covering letter to the following effect:—

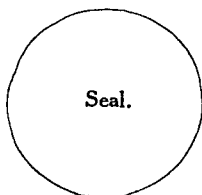
Treasury
To—The _____ Officer of
Sub-Treasury

SIR,

Please receive for deposit Rs _____, being the amount of landlord's fees deposited by _____ for payment _____ to _____, the landlord or to some person authorized on his behalf to receive it. The amount should remain at his credit, and should be paid to him, or sent to him, through peon or transferred to his revenue account, on application.

I have, etc.,
Sub-Registrar.

Serial number of notice sent to landlords.	Name of landlords.	Their addresses.
56		
57		
58		
Total ...		



18. Where it is necessary to issue more notice than one, only one serial number should be entered in column 1 of the Tenancy Act Fee-book. There will thus be one original notice in which the names of all the proprietors concerned will be entered, and as

Copies of original notice.

many copies of this original notice will be made as are necessary, each copy bearing the serial number of the original notice.

19. One copy of the original notice shall be filed for reference in the Registration office, a note being made upon it of the number of copies sent.

20. The Lieutenant-Governor sanctioned the withdrawal of the Rule 20, Notification No. 1713 P. See *Calcutta Gazette*, August 7, 1901, Part I, p. 1015, Rule 20 was as follows:—

No notice required when landlord is himself the transferee. 20. When the landlord is himself the transferee there is no occasion to levy fee or send notice.

Notices for landlord in Calcutta. 21. Notices for landlords in Calcutta should be sent to the Collector of the 24-Parganas for service.

22. When a transferred tenure or holding is held jointly by several landlords residing in different districts, the notices with peon's charges and the landlords' fees should be sent to the Collector and the Treasury Officer, respectively, of the district in which the tenure or holding is situate.

Notification No. 593P.

The 19th February, 1900.—It is notified for general information that the following rule has, with the approval of the Lieutenant-Governor, been substituted for Rule 23 of the Rules for the registration of documents under the Bengal Tenancy Act, VIII of 1885, framed under section 69 of the Indian Registration Act III of 1877, which were published under Government Notification No. 919P., dated the 21st March, 1898, at pages 255 to 330 in Part I of the *Calcutta Gazette* of the 23rd *idem*:

23. Landlords' fees shall be remitted to the treasury with the same regularity as is required in the case of remittance to the treasury of ordinary registration receipts, provided that such fees shall not be forwarded to the treasury until the registration of the deeds on which they are levied has been completed."

The former Rule stood thus:—

23. Landlord' fees must be remitted to the Treasury Officer with the same regularity as is required in the case of remittance to the Treasury of ordinary registration receipts.

24. Two separate chalans shall be prepared, one for the landlord's fees credited in the Tenancy Act Fee-book and sent to the Treasury Officer, and the other for the peon's charges, etc., credited in the Tenancy Act Fee-book and forwarded to the Collector. For this purpose the details shall be entered on the reverse of the chalans. These shall be as follows:—

A

Details of landlords' fees deposited.

1	2	3	4
Serial number of chalan.	Amount of landholder's fees deposited.	Name of Depositor.	Name of the landholder to whom payable.
	Rs. A. P.		

B

Details of peon's charges, etc.

1	2	3	4	5		
Serial number of chalan.	Number of notices.	Name of Depositor.	Name of the person to whom to be served, and details of peon's charges, &c.	AMOUNT.		
				Rs.	A.	P.

25. Any fees realized which may remain in the hands of the registering officer may be refunded if the document is refused registration, a note to that effect being made in the column of remarks in the fee-book. Court-fee stamps may be returned, if they have not been punched. It is not necessary to enter these funds in the monthly returns.

26. A statement of operations under section 12 and 18 of the Tenancy Act shall be submitted monthly by Sub-Registrars. A statement for the whole district counter-signed by the Collector and the Treasury Officer, shall be submitted by each Registrar to the Inspector-General. The form of the statement will be found in the Appendix. The statement can be easily compiled from the fee book, if columns 5 is carefully filled up.

Notification of incumbrance to the Landlord under Section 167 of the Tenancy Act.

27. An application under section 176 for the notification of incumbrances to the landlords may be made either verbally or in writing, and when made in writing it shall bear a court-fee stamp of annas eight. It shall be accompanied by the fee for the copy under Articles G and H of the schedule of fees under the Registration Act, as well as by the amount of process fee. A receipt for the amounts thus taken shall be granted in the form (with necessary alteration) of receipt prescribed under Section 52 of the Registration Act.

28. An entry shall at the same time be made in the Registration fee-book, and the fees credited to the Registration Department. The process fee shall be accounted for in the Tenancy Act fee-book, as directed in Rule 10. The serial number of the copy sent shall be noted in the column of remarks in the Tenancy Act fee-book.

29. The copy of the instrument under section 176 shall be forwarded to the Collector or the Sub-divisional Officer, as the case may be, with a copy of instrument to be forwarded with covering letter. covering letter to the following effect :—

No.

Dated

To—The

SIR,

I have the honour to forward the copy herein enclosed, and to request that it may be served on A. B., resident of _____, as required by section 176, Act VIII of 1885. Court-fee stamps for process fee of Rs. _____ are affixed to the copy.

I have, etc.,

Sub-Registrar of

A notice in the form prescribed in Rule 17 is not required in transmitting a copy to the Collector or the Sub-divisional officer under section 176. The stamps received under that section are to be treated in the same manner as directed in Rule 8.

30. A copy of an instrument served in order to notify an incumbrance is equivalent to a notice under section 12 and registration officers are referred to rule 3, Chapter I of the General Rules under the Tenancy Act, quoted below for the procedure to be followed in serving such a copy.

Process fee.

31. For every copy made under section 176 of the Bengal Tenancy Act, VIII of 1885, such copying fee, or copying and searching fees shall be charged as may be leviable under Article G or under Articles G and H of the schedule of fees under the Registration Act for the time being in force. These shall be shown in the ordinary registration fee-book, and not in the Tenancy Act fee-book.

Copying fees.

APPENDICES TO REGISTRATION RULES UNDER THE TENANCY ACT.

APPENDIX—A.

Scale of Fees (Sections 12 and 176 of the Bengal Tenancy Act, VIII of 1885—See Chapter VII of the General Rules framed by Government under the Tenancy Act.

(1) *For Services of Notices.*—For the service of every notice under the Bengal Tenancy Act, VIII of 1885, not being a notice issued by any Revenue or Civil Court (fees for serving which are regulated by the Court-fees Act), and not being provided for by any other rule made under this Act, a process fee of 12 annas shall be levied if the notice be directed to one or more persons residing in the same village.

(2) Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

(3) In addition to the above fee, the actual charge, which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, will be levied from, and paid by, the person at whose instance the process is issued, before issue of the process. If a peon carries more than one process, involving charges for railway fare, boat-hire, etc., the sum leviable will be charged in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause 2, section 20, Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

APPENDIX—B.

Service of Notices under section 12 of the Bengal Tenancy Act, VIII of 1885—See Chapter V of the General Rules.

(1) *Section 12.*—Notices under this section shall contain, so far as may be possible, the particulars given in the forms specified in Schedule I, and shall be served on the landlord or his agent; or, where two or more persons are joint landlords, on their common agent, referred to in section 188, or on their common manager appointed under section 95, as the case may be, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served by being posted on the landlord's village office; if any; and if there be no village office, by fixing it up in presence

of not less than two persons on some conspicuous place on the tenure, and a copy shall also be forwarded by post in a letter registered under Part III of the Indian Post Office Act, to the person or persons to whom immediately preceding the transfer the rent had ordinarily been paid. The landlord's fee will be held in deposit in the Collector's office until applied for by the landlord or some other person authorised on his behalf to receive it, or to send it to him through peon. The officer who will sign the notices, shall initial the entry on account of the landlord's fee in the Deposit Register kept in the Treasury.

SCHEDULE I.

Notice under Section 12 Act VIII of 1885.

Collector

To—The _____

Sub-divisional Officer,

Let this notice be served on *A. B., resident of* _____ *as required by*
 section _____, Act VIII of 1885. Peon's charges, etc., amounting to Rs. _____
 is forwarded herewith.

C. D.,
Registering Officer.

To—*A. B., resident of—*

Take notice that the transfer of the tenure [or raiyati holding at fixed rate (as the case may be)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. will be held in deposit in Collector's Office till applied for by you, or some person authorized on your behalf to receive it. The amount stands at your credit, and will be paid to you or sent to you through peon or transferred to your revenue account on application :—

Tauzi number of estate.	Name of estate.	Description of tenure, transferred with village and pargana in which situated.	Annual rent of tenure.	Name, father's name and residence of transferor of tenure.	Name, father's name and residence of transferee of tenure.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C. D.,
Registering Officer.

ORDERED that this notice be served on the abovenamed landlord.

E. F.,
Collector.

RECEIVED a copy of the abovementioned notice.

Landlord.

(90)

Registry Office at

189

[illegible]

BENGAL TENANCY ACT

[App. V.]

Countersigned.

Collector.

Registrar.

Calcutta Gazette, December 30, 1898.

PART I, PAGE 2092.

No. 8768.—The 29th December, 1898.—In exercise of the power conferred by section 22 of the Indian Registration Act, 1877 (III of 1877), as amended by the Indian Registration Act, 1899 (XVII of 1899), the Lieutenant-Governor of Bengal is pleased to make the following rule, and to direct that it shall come into force on the 15th January, 1909 :—

In all areas within the districts of Monghyr, Patna, Midnapore, Murshidabad and Khulna, of which a cadastral survey has been made a record-of-rights has been published in draft, houses, not being houses, in towns, and lands shall be described, for the purpose of section 21 of the Indian Registration Act, 1877, by reference to the detailed map prepared in the course of that survey.

APPENDIX VI.

High Court Rules and Circular Orders, Etc.

CONTENTS.

S. 58 (4)	S. 142
S. 61	S. 143
S. 100	S. 147B
S. 101	S. 148(b1) and (b2)
S.S. 103B, 111, 147(B), 148(b1) & (b2)	S. 162
Chapter XII	S. 169
	Powers of Muktears

S. 58 (4)

(See General Rules and Circular Orders, p.p. 257 and 259).

60. (a) The High Court does not consider it necessary to prescribe the use of any particular form of Report, leaving it to the District Judges to put on record the main features in the administration of the year in the manner which may appear to them most suitable.

(b) The following matter must, however, receive notice :—

(i) The number of cases reported during the year to the Collector under section 58 (4) of the Bengal Tenancy Act and the Judge's observation thereon (Rule 16, Chapter II).

(See General Rules and Circular Orders, p. 63).

Reports to Collector under section 58 (4) of failure of landlord to grant rent receipts.

16. (a) In cases where it appears to a Civil Court that the provisions of sections 56 and 57 of the Bengal Tenancy Act have been evaded without reasonable cause, a report of the matter should be made to the Collector as contemplated by section 58 (4) of the Act.

(b) A record should be kept by all Civil Courts of the number of cases reported to the Collector under section 58 (4) of the Act, which should be referred to in the annual reports on the administration of Civil Justice, and the matter should also receive notice in the reports on the inspection of Subordinate Courts.

S. 61

(See General Rules and Circular Orders, p.p. 150, 151, 154, 155).

Orders by the Governor-General in Council under section 35 of the Court-fees Act.

10. "Under Section 35 of the Court-fees Act, VII of 1870, and in suppression of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely :—

36. To declare that the proper fee to be charged upon an application to deposit in any Court rent, not exceeding the sum of fifteen rupees, shall be as follows :—

Proper fees.

If the amount deposited does not exceed Rs. 2-8	...	...	One anna.
If the amount deposited exceeds Rs. 2-8 but does not exceed Rs. 5-0	...	...	Two annas.
If the amount deposited exceeds Rs. 5-0 but does not exceed Rs. 10-0	...	...	Four annas.
If the amount deposited exceeds Rs. 10-0 but does not exceed Rs. 15-0	...	...	Six annas.

Provided that no fee (a) shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule (b) framed under sub-section (2) of section 61 of the Bengal Tenancy Act, VIII of 1885.

(a) The only fees remitted by the Government of India in connection with applications for the deposit of rent are those on applications in respect of which fees have already been paid under section 61 (2) of the Bengal Tenancy Act, VIII of 1885, in accordance with the Notification of the Government of Bengal, dated the 21st December, 1885, (G. L. No. 1 of 11th January, 1894).

(b) The following fees, as fixed by the Government of Bengal in Rules 68 and 69 of Chapter VII of the Rules issued under the Bengal Tenancy Act are those now in force :—

68. *Deposit of Rent.*—For deposit of rent under section 61 (2) of the Act fees shall be levied according to the following scale :—

On any sum not exceeding Rs. 5-0	...	...	One anna.
On any sum exceeding Rs. 5-0 but not exceeding Rs. 10-0	...	...	Two annas.
On any sum exceeding Rs. 10-0 but not exceeding Rs. 25-0	...	...	Four annas.

On any sum exceeding Rs. 25, four annas for each complete sum of Rs. 25 and four annas for the remainder; provided that, if the remainder does not exceed Rs. 10, the charge for it shall be only two annas; provided also that in no case shall the fee exceed the sum of Rs. 5.

69. *Distrain of Crops.*—(1) The following scale of charges is prescribed on account of processes for distraint and sale under section 134 of the Act :—

(a) In respect of the warrant of distant, 8 annas;

(b) in respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession, 8 annas a day; and

(c) in respect of action under sub-section (2) of section 126 of the Act, for the reaping,

storing or preservation of the crop distrained, 8 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

(2) In addition to the charges under clauses (a), (b) and (c) of sub-rule (1), railway fare, boat-hire and ferry charges may be levied, when necessary, as under rule 67.

(See *General Rules and Circular Orders*, p. 190).

9. Judges will, as far as possible, in their transaction with the public, avoid the direct receipt and payment of money under head (a) of Rule 5. Cash must, however, be received—

(c) At out-stations in the case of rent deposits under section 46, Landlord and Tenant Procedure Act, 1869, and sections 61 and 62, Bengal Tenancy Act, 1885.

S. 100

(See *General Rules and Circular Orders*, p.p. 63 and 64).

1. Every manager, appointed under Chapter IX of the Bengal Tenancy Act, shall in all matters act in accordance with such orders as may, from time to time, be issued by the District Judge.

2. The manager shall pay the Government revenue, rent and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

3. No manager shall have power to sell or mortgage any property nor shall he grant or renew a lease for any period exceeding three years without the express sanction of the District Judge. Provided that this rule shall not render valid any lease for a shorter time than three years if the District Judge directs by a written order that his sanction is to be obtained as regards all leases granted by the manager.

NOTES : In the case of *Amar Chandra Kundu v. Shosi Bhusan Roy*, decided by their Lordships of the Judicial Committee on the 10th December 1903 (8 C. W. N. 225) an objection was taken that this rule was *ultra vires* sale and mortgage being included in the terms "for the purpose of management" contained in section 28 (3) of the Act. This objection was overruled.

Under section 28 (3) of the Act a manager appointed under s. 93 has power to sell and mortgage : *Ibid*.

The appointment of a manager does not take away from a co-owner his power of dealing with his own share, and any interest which a mortgagee or a purchaser would acquire from a co-owner during the period of management would be subject to any charge on the estate that might be properly incurred by the manager during the period : *Ibid*.

4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense.

5. No manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge.

S. 101

(See *General Rules and Circular Orders*, p. 67).

S. 106.

Record-of-rights under section 101.

1. Every Civil Court trying a suit under section 106, or disposing of an appeal in such a suit, shall communicate to the Collector of the district, a note of its final decision in the case for incorporation in the final record-of-rights prepared under the Bengal Tenancy Act, 1885.

S. 103B (3), 111, 147(B), 148 (b)₁ & (b)₂*(See General Rules and Circular Orders, p. 68.)**Supply to Civil Courts of Information regarding Survey and Settlement proceedings.*

1. In order that the Civil Courts may enforce the provisions of sections 103B (3), 111, 147 (B), 148 (b)₁ and (b)₂ of the Bengal Tenancy Act, the Government of Bengal have issued instructions (Rule 387 of the Survey and Settlement Manual) to the effect that District Judges should be supplied with information regarding (1) areas notified for Survey and Settlement, (2) areas of which a record-of-rights has been, or is being prepared, and (3) areas of which a record-of-rights has been finally published. The following is the procedure prescribed so far as the Civil Courts are concerned :—

- (1) The Director of Land Records will in November every year forward to the District Judge copies of lists of areas of which a record-of-rights has been or is being prepared, corrected up to 30th September preceding for distribution amongst the courts under him.
- (2) During the following year the Settlement Officer (which term includes the Collector as *Ex-officio* Settlement Officer) will send to the District Judge particulars of any areas of which a record-of-rights has been finally published after the preparation of the above lists as soon as such records are finally published.
- (3) Copies of notifications ordering the preparation of a record-of-rights will be forwarded by Government to the District Judge concerned.

Chapter XII*(See General Rules and Circular Orders, p.p. 257 and 259).**Rules under Chapter XII.*

1. (a) The High Court does not consider it necessary to prescribe the use of any particular form of Report, leaving it to the District Judges to put on record the main features in the administration of the year in the manner which may appear to them most suitable.

(b) The following matters must, however, receive notice :—

- (i) The extent to which the Subordinate Courts comply with the provisions of sections 122, 123 (1) and 123 (2) of Chapter XII of the Bengal Tenancy Act, 1885, regarding Distraint.

S. 142*(See General Rules and Circular Orders, p.p. 64 to 67).**Rules under Chapter XII.*

1. All application to distraint shall be presented and heard in open Court. The examinations mentioned in section 123 sub-section (2), shall be on oath or affirmation.

2. All such applications and all notices of distraint under section 141 shall be entered in a register to be called the "Distraint Register," which shall be kept in the form annexed. A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint and a copy of the notice under section 242, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property.

Form of Distinct Register prescribed by Rule 7.

SERIAL No. OF		Date of application to distrain or of notice of distrain under section 141.	Name and address of the applicant under section 121 or of the person giving notice under section 141.	Name and address of the defaulter.	Amount of areas claim- ed and period in res- pect of which it is claimed.	Purport of the order passed and date on which it is passed.	Name of the officer de- puted to distrain, or to take charge of pro- perty distrained.	Date of distrain.	Date of sale proclama- tion.		AMOUNT RETAINED BY SALE.				AMOUNT (IF ANY) REGISTERED UNDER SECTION.		REMARKS.
Application under section 121.	Notice under section 141.										Arrear.	Costs.	Surplus.	Total.	Arrear.	Costs.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

The following foot-note was added by a notification published in the *Calcutta Gazette* of March 2, 1892, Part I, page 282.

NOTE.—In the column for remarks shall also be entered the date of each remand granted.

3. The officer deputed to make a distraint under section 124, or to take charge of produce distrained under section 141 must in all cases be able to read and write the language of the district.

4. The written demand under section 125, shall be framed in accordance with entries contained in the application or notice referred to in Rule 2.

5. The notification of distraint directed in section 124, Act VIII, 1885, shall be published by fixing up in a conspicuous part of the holding, or other place, in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

6. The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of arrear due, and it shall direct any person intending to reap, gather or store the crop or produce, if unreaped or ungathered, or intending to do any act necessary for its preservation, to give notice of his intention to the person who has been placed in charge.

7. The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce.

8. In the event of it being necessary for the distraining officer, or the officer placed in charge of distrained property, to reap, gather, or store any crop of produce, or to do any other acts, for the due preservation of the same, as provided by section 126 the person at whose instance the distraint was made shall advance the funds necessary to this end.

9. The officer holding a sale under section 131, shall record a description of the property offered to sale, the names of persons bidding for the same, and the amount bid by each; and if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where, and the time when, the sale will be held.

10. When the sale is concluded and the sale-proceeds are realised the officer who held the sale shall, after paying the cost of the distraint and sale, as directed in section 134, forthwith pay the balance into Court.

11. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, sub-section (1), and if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so.

12. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down.

13. All officer deputed to distrain property under this chapter shall, if there is a post office in the vicinity, report to the Court by letter immediately the distraint is made, or, if there is no such post office, shall immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name of the person (if any) placed in charge of the crop, and the day fixed for the sale, or if the sale has taken place, the day on which it took place. He shall also immediately on his return file an account of all money received and disbursed by him, together with the receipts for the same and the record of the buildings at the sale, if a sale has taken place.

14. Every person, distraining produce by virtue of the authority conferred on him under section 141 of Act VIII, 1885, shall give notice of such distraint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce, in a tabular form which shall contain the following particulars :—

- (a) The name and address of the person at whose instance the distraint was made and a description of his interest in the property, whether as proprietor, tenure-holder, or raiyat.
- (b) The name of the defaulter, and of the place in which he resides, or was known to be last residing.
- (c) The amount of the arrear with interest, if any, and the period in respect of which it is claimed.
- (d) The holding in respect of which the arrear is claimed, the boundaries thereof, or such other particulars as may suffice for its identification.

- (e) The description and approximate value of the produce distrained and if the same been reaped or gathered, the place in which it is stored.
- (f) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.
- (g) The date on which the distraint was made.
- (h) If the crop or produce is standing or ungathered the time at which it is likely to be cut or gathered.

S. 143.

(See General Rules and Circular Orders Appellate side, High Court, 1918, Vol. I, p. 67.)
Rules under section 143.

36. (a) In original decrees in suits between landlord and tenant for the recovery of rent, in the place of Form No. 2 (Simple Money decree) prescribed by Schedule I, Appendix D, of the Code of Civil Procedure, Form No. 22 of Volume II shall be used.

(b) Notwithstanding the provisions of Order XX, Rule 6 of the Code of Civil Procedure, it shall not be necessary for a Court in suits between landlord and tenant for the recovery of rent to draw up a formal decree, as required by that section, in suits where—

(i) the suit is dismissed for default in the absence of both parties, and

(ii) the claim is satisfied before the date of hearing of such suit has arrived.

(c) It shall not be necessary to include the memorandum of appeal in the decree of the Appellate Court in suits between landlord and tenant for the recovery of rent.

(See General Rules and Circular Orders, pages 59 and 60.)

The Landlord and Tenant Procedure Act, 1869 (Bengal Act VIII of 1869) and the Bengal Tenancy Act, 1885 (VIII of 1885 (Rules 3 to 8).

Rules for the prompt trial of undefended and other Suits for Arrears of Rent in the Civil Courts.

3. Every summons in any suit for arrears of rent, not being a suit in which enhancement is sought, brought under the provisions of Bengal Act VIII of 1869 and Act VIII of 1885, shall command the defendant to appear on a date to be fixed by the Court or at the expiration of fourteen clear days after the service thereof, whichever date is later. The Court should so fix the date that the interval after the service of the summons will be not less than fourteen clear days and not more than is reasonably necessary, regard being had to the number of cases for trial.

4. The suit shall then be entered in a List of Causes in the following form, to be stuck up in the Court-house specifying the day for hearing, which shall be the day fixed for the appearance of the defendant, or the earliest day on which the Court shall sit after such day :—

List of Rent Suits in the Court of the of-

Number of case on the Register.	Names of Parties.	Date fixed for trial.	Claim.

5. Each such suit shall be called in its turn at the sitting of the Court, and before suits of any other description upon the day for the hearing thereof, and in every case in which it shall be shown that the defendant has been duly served with the summons in proper time to enable him to appear and defend the suit, but the defendant does not, either in person or by any authorised agent or pleader, appear or make answer to the suit, the case shall be forthwith taken up and heard *ex parte*, unless in any particular case the Court, for special reasons to be recorded in the proceedings, shall think fit to order otherwise.

6. Provided, nevertheless, that no suit for arrears of rent shall be called on and tried *ex parte* when the summons shall not have been served at least fourteen clear days before the day of hearing.

7. When it appears that the summons has not been duly served, or that fourteen clear days have not elapsed from the date of the due service of the summons, the case shall be adjourned to a date not less than fourteen clear days from the date of the due service of the summons.

8. Where the defendant appears and makes answer or desires to contest the claim, the case shall ordinarily be placed in the list of defended causes and come on in its turn; provided that if the case appear likely to be a short one, the Judge may take it up and try it immediately after the undefended cases fixed for the day, or may set it down for hearing on an early day, if either of such course appear to him to be expedient with reference to the state of his file or the convenience of the parties.

FORM OF DECREE.

The following Rules having been made by the High Court of Judicature at Fort William in Bengal in the exercise of the powers vested in it by section 143 of the Bengal Tenancy Act, VIII of 1885, approved by the Governor-General in Council, are published for general information.

The 2nd February, 1906.
HIGH COURT, }

By order of the High Court
A. P. MUDDIMAN,
Registrar.

(CIVIL.)

Rule No. 2 of 1906.

*Rules made with the approval of Governor-General in Council under section 143,
Bengal Tenancy Act, VIII of 1885.*

1. Notwithstanding Section 644, Code of Civil Procedure, original decrees in suits between landlord and tenant for the recovery of rent, in the place of Form No. 127 (Simple Money decree) prescribed by the 4th Schedule of the Code of Civil Procedure, the following form of decree shall be used:—

In the Court of

Rent Suit No.

of

19

versus

Plaintiff,

Defendant.

Claim for Rupees
account of rent for the period from
at the yearly rent of Rs.
land held in Mauza

, Pargana

on
to
in respect of

In the presence of the parties on*

*Enter here date ordered of and decreed that the sum of Rs.
of judgment, (which includes rent calculated at a yearly rental of Rs.
and interest at 12 per cent, damages at per cent) be paid by to

together with interest at _____ per cent. until realisation and that costs be paid as directed at the foot of the Schedule given below.

Costs of the suit.

Plaintiff.	Amount.			Defendant.	Amount.		
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint ...				Stamp for power ...			
2. Stamp for power ...				Stamp for petition ...			
3. Stamp for Exhibits ...				Pleader's fee ...			
4. Pleader's fee on Rs. ...				Subsistance for witnesses ...			
5. Subsistance for witnesses for attendance. ...				Service of process ...			
6. Service of process ...							
TOTAL ...				TOTAL ...			

Cost Rs. _____ payable to _____ with interest at _____ per cent. until realisation.

Notice to take back documents.

The parties in this case are hereby required to take back, as soon as this decree shall have become final, the documents produced by them which are exhibits in the case. If they fail to take them back, the documents will be destroyed, either when the record is destroyed, or on the expiry of one year from the date of this decree becoming final. (Rules 35, 35A, and 35B, Chapter III, pages 81 and 82 of the High Court's General Rules and Circular orders, Civil).

Signature of the Presiding Officer.

2. Notwithstanding the provisions of section 206 of the Code of Civil Procedure, it shall not be necessary for a Court in suits between landlord and tenant for the recovery of rent to draw up a formal decree as required by that section in suits where—

(a) the suits is dismissed for default in the absence of both parties, and

(b) the claim is satisfied before the date of hearing of such suit has arrived.

3. Notwithstanding the provisions of Section 579, Civil Procedure Code, it shall not be necessary to include in the decree of the Appellate Court in suit between landlord and tenant for the recovery of rent the memorandum of appeal required by that section.

S. 147 (B)

See S. 103 (B)

S. 148 (b)₁ & (b)₂

See S. 103 (B)

CHAPTER XIV.

*Sale of Property—Court Fees.**(See General Rules and Circular Orders, pp. 140, 143, 145, 146).*

. PART II.

Table of Fees in the Courts of Judges and Subordinate Judges, and in the Revenue Courts when the suit in the Revenue Courts in which the process is issued is valued at a sum exceeding Rs. 1,000.

	Rs.	a.	p.
<i>Article 7.</i> —Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885, is issued—			
(a) for proclaiming the order of sale under Order XXI, Rule 66 of the Code of Civil Procedure, a fee of	...	...	2 0 0
(b) for selling the property, a percentage or poundage on the gross amount realized by the sale, up to Rs. 1,000, at the rate of	...	2	p. c.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of	...	1	p. c.

Provided that when a sale of immovable property is set aside under Order XXI, Rules 89, 91 or 92 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act, VIII of 1885, any poundage or other fee charged for selling the property shall, on application, be refunded.

PART III.

Table of Fees in the Courts of Munsifs and of Small Causes and in the Revenue Courts, when Part II does not apply [except in the suits specified in Part IV]—

	Rs.	a.	p.
<i>Article 7.</i> —Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885, is issued—			
(a) for proclaiming the order of sale Order XXI, Rule 66 of the Code of Civil Procedure, a fee of	...	...	1 0 0
(b) for selling the property, a percentage or poundage on the gross amount realized by the sale, up to Rs. 1,000, at the rate of	...	2	p. c.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of	...	1	p. c.

Provided that when a sale of immovable property is set aside under XXI, Rules 89, 91 or 92 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act, VIII of 1885, any poundage or other fee charged for selling the property shall, on application, be refunded.

PART IV.

Table of Fees in the Courts of Munsifs, in Small Cause Courts, and in the Revenue Courts, where the suit is for debt or damage to personal property, or for rent, and where the claim does not exceed Rs. 50.

	Rs.	a.	p.
<i>Article 7.</i> —Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885, is issued—			
(a) for proclaiming the order of sale Order XXI, Rule 66 of the Code of Civil Procedure, a fee of	...	...	1 0 0
(b) for selling the property, a percentage or poundage on the gross amount realized by the sale, up to Rs. 1,000, at the rate of	...	2	p. c.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of	...	1	p. c.



Provided that when a sale of immovable property is set aside under XXI, Rules 89, 91 or 92 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act, VIII of 1885, any poundage or other fee charged for selling the property shall, on application, be refunded.

S. 162.

(See General Rules and Circular Orders, p. 35.)

98. Every person applying under section 162 of the Bengal Tenancy Act, 1885, for the simultaneous attachment and sale of a tenure or of a holding of a raiyat holding at fixed rates, or applying only for the sale of such tenure or holding already under attachment shall, in such application, specify the registered and notified encumbrances, subject to which the tenure or holding is to be sold. Such specification shall be verified, in the manner prescribed by the Code of Civil Procedure for pleadings (Order VI, Rule 15), by the holder of the decree in execution of which the tenure or holding is to be sold, or by some other person (approved of by the Court) if the Court be satisfied that he is acquainted with the facts mentioned in it.

S. 169.

(See General Rules and Circular Orders of the High Court, Calcutta, Ed. 1918, p. 26).

(5) It is desirable that a formal order should be drawn up after an adjudication under section 169 of the Bengal Tenancy Act as to apportionment of sale-proceeds of tenures or holdings sold in execution for arrears of rent.

Powers of Mukhtears.

(See General Rules and Circular Orders, p.p. 63 and 64).

Rules as to the functions of Mukhtears practising in Subordinate Courts, framed under section 11 of Act XVIII of 1879. (Rules 35 to 38).

35. The following are the functions, powers, and duties of Mukhtears practising in the Subordinate Courts :—

35 To deposit rent, under section 61 of the Bengal Tenancy Act (VIII of 1885).

36 To apply to establish a right to measure land, under section 9 of the Bengal Tenancy Act (VIII of 1885).

37 To apply to have lands measured under section 103 of the Bengal Tenancy Act (VIII of 1885).

38 To apply for execution, distraint, and sale under the Bengal Tenancy Act (VIII of 1885).

APPENDIX VII.

CONTENTS.

CHAPTER X OF THE ACT AS IT STOOD BEFORE THE PASSING OF ACT III (B.C.) OF 1898.

CHAPTER XIII A OF THE ACT AS IT STOOD BEFORE THE PASSING OF ACT III (B.C. OF 1913 (BENGAL PUBLIC DEMANDS RECOVERY ACT).

Chapter X as it stood before the passing of Act III (B.C.) of 1898.

Record-of-Rights and Settlement of Rights.

Chapter X, as it stood before the passing of Bengal Act III of 1898, was as follows :—

101. (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 hereafter mentioned, make an order directing that a survey be made, and a record-of rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(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, or gives security for, such amount, for the payment of expenses, 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 ;
- (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 ; and
- (d) Where a settlement or 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.

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

- (a) the name of each tenant ;
- (b) the class of which he belongs, that is to say, whether he is a tenure-holder raiyat holding at fixed rate, occupancy-raiyat, non-occupancy-raiyat or under raiyat, and if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;
- (c) the situation, 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 and incidents, if any, of the tenancy ;

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

104. (1) When in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (d), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

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

105. (1) When the Revenue-officer has completed a record made under this Chapter, he shall cause draft thereof to be locally published in the prescribed manner and for the prescribed period, 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 frame the record, and shall cause it to be locally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this chapter.

106. 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 not being (an entry of a rent settled

under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue officer shall subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for trial of suits and his decision in every such proceeding shall have the force of a decree.

108. (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 this chapter. •

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry to the record shall be presumed to be correct until the contrary is proved.

110. When any rent is settled under this chapter the settlement shall take effect from the beginning of the agricultural year next-after the final publication of the record.

111. When an order has been made under section 101 :—

(a) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies ; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

112. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare invest a Revenue-officer acting under this chapter with the following powers or either of them, namely :—

(a) power to settle all rents ;

(b) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government take action under this section, the settlement record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

113. When the rent of tenure or holding is settled under this chapter, it shall not except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy holding for fifteen years and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 111, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine ; and proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

CHAPTER XIII AS IT STOOD BEFORE THE PASSING OF ACT III (B. C.) OF 1913, (BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913, AND OF ACT IV OF 1894 (BIHAR COUNCIL) (BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914).

SUMMARY PRODUCE FOR THE RECOVERY OF RENTS UNDER
THE PUBLIC DEMANDS RECOVERY ACT, 1895.

Note. This Chapter was inserted by the Amending Acts of Bengal and East Bengal Act I of 1907 and Act I of 1908 respectively.

158A. (1) Any landlord whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained, may apply to the Local Government, through the Controller of the district in which his land is situate, for the application of the procedure prescribed by the Public Demands Recovery Act 1895, to recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

(4) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the Form prescribed, to such Revenue officer as the Local Government may appoint for the purpose of this section, to perform the functions of a Certificate Officer under the Public Demands Recovery Act 1895, for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord marking it, in accordance with the provision of sections 51 and 52 of the Code of Civil Procedure as to the verifications of plaints; and there shall be payable in respect of every such requisition a Court fee of the same amount as is payable under the Court Fees Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such requisition.

(5) On receipt of such requisition the Revenue Officer may, in accordance with as the Local Government may prescribe in this behalf, issue certificates in the form prescribed therefor for the recovery of the arrears alleged to be due.

and any such certificate shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court passed in a suit for the recovery of rent, and the provisions of Chapter XIV shall, so far as may be practicable, be applicable, to all proceedings for the execution of such certificate :

Provided that—

- (a) no certificate shall be issued for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) the arrears of rent sought to be recovered have accrued ; and,
- (b) if after the issue of a certificate it is found that such a suit has been instituted in a Civil Court before the issue of the certificate, such certificate shall be cancelled.

(6) The following provisions of the Public Demands Recovery Act, 1895, shall, so far as they are applicable, apply to the proceedings for the execution of all certificates for the recovery of arrears of rent issued under sub-section (5) namely :—

the proviso to sub-section (1) of section 7, and sections 10 to 17 (both inclusive), and 22 to 33 (both inclusive).

(7) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3) ;

and, subject to the provisions of section 15 of the Public Demands Recovery Act, 1895, no tenant shall, after the issue of any certificate against him under sub-section (3) institute a suit in, or apply to, a Civil Court for alteration of the rent payable by him or the determination of his status as a tenant, in respect of the period during which the arrears of rent of which such certificate was issued have accrued.

(8) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately, and where the Revenue-officer issues a certificate on requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

APPENDIX VIII.

Forms of Notices under Ss. 49, 86 and 167.

S. 49 : Notice to eject an under-raiyat under S. 49 of the Bengal Tenancy Act.

1. An under-raiyat is a tenant who holds immediately or mediately under a raiyat ; so an under-raiyat may be a tenant directly under a raiyat or under an under-raiyat. So the landlord of an under-raiyat may be a raiyat or an under-raiyat.

2. An under-raiyat is liable to be ejected by his landlord upon the grounds mentioned in s. 49 and on no other ground.

3. The words "written lease" in cl. (b) of S. 49 mean "written lease for a term ;" see *Raj Kumari v. Barkatulla*, 39 Cal. 279 : s. c., 14 C.L.J. 407 ; s. c., 16 C.W.N. 6.

4. To determine an annual tenancy the notice should require the tenant to quit at the end of the year of the tenancy : *Hemangini v. Sreegovindo*, 6 C.W.N. 69.

5. The landlord can serve a notice to quit at any time in the course of the year but he shall not eject the raiyat until the end of the year next following the year in which the notice to quit is served, that is to say, an under-raiyat must under any circumstances get a full year expiring at the end of the agricultural year from the time when the notice is served : *Naharulla v. Modan*, 1 C.W.N. 133, followed in *Dwarkanath v. Ram Dassi*, 28 Cal. 310.

6. Postal service is not legal but notice is to be served under the Local Government Rules : *Tara Das v. Ram Doyal*, 2 C.W.N. 125.

7. "S. 49 does not prescribe any form of notice. . . . it would be deplorable to introduce, into matters of this kind, the intricacies of English law. . . ." *Per Jenkins, C. J. Harifulla v. Benode Behary*, 17 C.W.N. 932.

8. As to other matters see notes under S. 49.

Notice to quit under s. 49 cl. (b).

Whereas you hold under me an under-raiyati jama described below, and whereas I intend to bring the same into my khas possession, I do hereby give you notice to quit the same at the end of the year 1323 B.S.

Dated the

day of 1322 B. S.

(Here state the description of the under-raiyati jama).

S. 86 : Notice of Surrender under s. 86 sub-sec. (1).

1. There may be a valid surrender of a holding without a written document ; *Khodkara Abdur Rahaman v. Ali Hafez*, 5 C.W.N. 351, s. c., 28 Cal. 256.

2. The raiyat may, if he thinks fit, cause the notice to be served through the Civil court within the jurisdiction of which the holding or any portion of it is situate ; [s. 86 sub-sec. (4)]. It seems that the notice may be served by post or in such manner as the raiyat thinks fit.

3. A surrender of a lease of a cultivator is exempted from stamp duty : see notes under s. 86.

4. As to other matters see notes under s. 86.

Notice of Surrender under s. 86 sub-sec. (1).

Please take notice that I surrender the holding which I hold under you and which is described below.

Date the _____ of Chaitra 1321 B. S.

(Here state the description of the holding.)

S. 167 : Notice under s. 167 to annul an incumbrance.

1. *Mode of annulment.*—The mode prescribed by s. 167 for annulling an incumbrance is the only mode in which encumbrances can be annulled : *Soshee Bhusan v. Gagan Chunder*, 22 Cal. 364.

2. *Mode of service.*—See Rule 3 of Local Government Rules.

3. Where an application is presented under s. 167 sub-sec. (1) to the Collector for service on the incumbrancer a notice declaring that the incumbrance is annulled, the Collector is required under sub-sec. (3) or s. 167 to cause the notice to be served on the incumbrancer ; and the incumbrance shall be deemed to be annulled from the date on which it is served. So, while the section requires the application to be made to the Collector within one year from the date of the service of the notice. Where the notice is not properly served, the applicant has the right to ask the Collector for fresh service of the notice. The law does not say that only one attempt should be made for the service of the notice. Sub-sec. (3) of s. 167 says that the Collector is to cause the notice to be served ; so long as the notice is not properly served the applicant has the right to have fresh service at the costs of the applicant.

Notice under S. 167.

Whereas I have purchased a tenure (here give description,) at a sale on the—, (in execution of a decree for arrears due in respect thereof) with power to annul all incumbrances, and whereas the said sale was confirmed on—* and whereas you hold an under-tenure (or “ there is a mortgage of the said tenure to you ”) and whereas the said under-tenure (or mortgage) is an incumbrance and which is described below, and whereas I am desirous of annulling the said incumbrance, I do hereby give you notice declaring that the said incumbrance is annulled. *Be it stated* here that I was first aware of the incumbrance on—*).†

Here state the description of the incumbrance.

Application to the Collector under S. 167 (1) requesting him to serve on the incumbrancer notice that the incumbrance is annulled.

To the Collector of.

Be pleased to cause the notice to be served on A. B., resident of—. The notice is herewith filed.

* The words in italics are not necessary when the application under s. 167 is made within one year from the sale. S. 167 speaks of the application to be made to the Collector within one year from the date of sale. So, the date of the confirmation of sale need not be mentioned when the application to the Collector is made within one year from the date of actual sale. As to the meaning of the words “ date of sale ” there is a conflict of decisions. According to one decision the words “ date of sale ” mean the date of confirmation of sale, *Banko Behary v. Krishna Chandra*, 18 C.L.J. 170, s. c., 18 C.W.N. 349 ; according to another decision, the words “ date of sale ” mean the actual date of sale : (*Yusuf Gazi v. Asmat Mulla*, 17 C.W.N., 440, s. c., 16 C.L.J. 131).

† These words in italics are not necessary when the sale was held within a year of the notice.

S. 180A : Form of Requisition under s. 180A, sub-sec. 14.

(Inserted by Notification No. 13070 L.R.—The 7th December, 1926, vide Calcutta Gazette, Part I, December, 16, 1926, p. 1931).

(FORM OF REQUISITION UNDER S. 180A SUB-SEC. 14).

1. Requisition for certificates shall be made by landlords in the form given below :—

To

THE COLLECTOR OF THE DISTRICT.....

I request you to recover the undermentioned sum of Rs. (rupees) which I am satisfied after inquiry is due to me from (Name)..... as premium in accordance with an order under section 180A (8) of the Bengal Tenancy Act, a certified copy of which is enclosed herewith.

Landlord.

(Verification.)

- (1) Name of certificate-debtor
- (2) Address of certificate-debtor
- (3) Amount of the demand for which the
requisition is made
- (4) Description of the demand, i.e., whether
the entire premium or only an instal-
ment and the date when the payment
was due
- (5) Number and year of the case in which
demand was ordered and the date of the
order

2. The rules in schedule II of the Bengal Public Demands Recovery Act, 1913, shall be followed, and the forms appended to that schedule, except form No. 2., shall be used in carrying into effect the purposes of the sub-section.

APPENDIX IX.

Scale of Court-fees in Settlement operations under the Bengal Tenancy Act,
being Appendix J., of the Bengal Survey and Settlement Manual, 1917.

Serial number.	Nature of document, claim, etc.	Stage of operations or sections.	Officer before whom filed or person to whom given.	Court-fees chargeable.	Authority.	REMARKS
1	2	3	4	5	6	7
1	Applications and petitions generally, unless ordered otherwise.	...	Revenue Officer. Director of Land Records.	Annas 8 ... Rupee 1 ...	Schedule II, clauses 1 (b) and 1(c) of the Court-fees Act.	
2	Applications and petitions of objection to any entry made or proposed to be made in a draft record-of-rights.	Before draft publication of the record under section 103A.	Any officer	<i>Nil.</i>	India Notification No. 321 S. R., dated 19th January, 1899.	
3	Application for settlement of rents.	Section 105.	Settlement Officer or Assistant Settlement Officer.	Annas 8 for each tenant making or joining in the application.	India Notification No. 322 S. R., dated 19th January, 1899.	Tenant means "tenancy" which may be held by co-sharers.
4	Plaints in suits ...	Section 106.	Ditto ...	<i>Ad-valorem</i> fee subject to maximum of Rs. 10.	India Notification Nos. 1897 F., dated 24th March, 1911, and 3110 F., dated 22nd May, 1911.	<i>Ad-valorem</i> fee is calculated under clause (1) of Schedule 1 of the Court-fees Act, when the amount of such fee would be less than Rs. 10.
5	Application or petitions.	Section 105.	Ditto ...	Annas 8 ...	Schedule II, clause 2(b) of the Court-fees Act.	
6	Ditto ...	Section 106.	Ditto ...	Annas 8 if the value of suit is Rs. 50 or above, and anna 1 if it is below Rs. 50.	Schedule II, clauses 1 (a) and (b) of the Court-fees Act.	
7	Applications for commutation.	Section 40.	Ditto ...	Annas 8 per tenancy.	Schedule II, clause 1(b) of the Court-fees Act.	
8	Applications for revision.	Section 108 or 108A.	Ditto ...	Annas 8 per tenancy.	Ditto ...	

Court-fees on plaints under S. 106.

*Technical Rules and Instructions of the Settlement Department, 1916,
Chapter XVIII, page 102.*

5. 1.—(a) *Section 105*.—A fee of 8 annas must be paid for each tenancy concerned in the application.

(b) *Section 106*.

(i) Suits filed under section 106 of the Bengal Tenancy Act are of a declaratory nature where no consequential relief is asked for (15 C.W.N. 110). The court-fees payable on plaints in such cases is Rs. 10 under Article 17, clause (iii) of Schedule II of the Court-fees Act. This has been reduced (*vide*) Government of India Notification No. 189F., dated the 24th March, 1911, and 311F., dated the 22nd May, 1911, to the amount of an *ad valorem* fee chargeable under Article I of Schedule I of the Act in cases where such amount would be less than Rs. 10. It follows, therefore, that when possible, an *ad valorem* fee should be charged.

The principles according to which such valuation should be made are laid down in Government Order No. 778—T.R., dated the 22nd September, 1914 [Appendix D (3)], and the Settlement Officer of each district should fix a multiple or scale for valuing different kinds of claims with reference to the circumstances of his district or any particular part of it.

(ii) In a suit to establish or disprove a right of occupancy the Court-fee is 8 annas—[*vide* Schedule II (5) of the Court-fees Act].

Petitions under Ss. 105 and 105A.

The following notification, issued by the Government of India in the Finance Department, published in the *Gazette of India*, dated the 10th August, 1918, was republished for general information in the *Calcutta Gazette*, August 28, 1918, part IA page 415 : Notification : Separate Revenue, Stamp, Simla, the 8th August, 1918.

No. 2254F.—In exercise of the powers conferred by section 105, sub-section (3) of the Bengal Tenancy Act 1885 (VIII of 1885), and in supersession of the Notification of the Government of India in the Department of Finance and Commerce, No. 322 S. R., dated the 19th January 1889 published at page 31 of Part I of the *Gazette of India*, dated the 21st idem, so far as it related to the Presidency of Bengal, the Governor-General in Council is pleased to direct that an application made under the said section for a Settlement of rent during the preparation of the record-of-rights in the presidency of Bengal under Chapter X of the said act, shall bear :—

- (a) A stamp of eight annas for each tenant making or joining or joined in the application, and,
- (b) if, at any time “ during the hearing of the application an issue is raised the applicant under section 105A of the said Act, in addition a stamp to amount of an *ad valorem* fee chargeable under Article I Schedule I of the Court-fees Act, 1870, (VII of 1870). subject to a maximum of ten rupees.

This notification has been modified as follows :—

In exercise of the powers conferred by S. 105, sub-sec. (3) of The Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Devolution Act, 1920 (XXXVIII of 1920) and in modification of the Government of India's Notification No. 2254F, dated the 8th August, 1918, published in the *Gazette of India* of the 10th idem and republished at page 465, Part IA of the *Calcutta Gazette* of the 14th idem, the Governor in Council is pleased to direct that an application made under the said section for a settlement of rent during the preparation of a record of rights under Chapter X of the Bengal Tenancy Act shall bear—

- (a) a stamp of twelve annas for each tenant making or joining or joined in an application, and
- (b) if at any time during the hearing of the application, an issue is raised by the applicant under S. 105A of the said Act, in addition, a stamp to the amount of an *ad*

valorem fee chargeable under Art 1, Sch. of the Court Fees Act, 1870 (VII of 1870), as amended by the Bengal Court Fees (Amendment) Act, 1922 (IV of 1922), subject to a maximum of twenty rupees.

NOTES.—A stamp of eight annas is to be levied in respect of each *tenancy*, not in respect of each tenant who may be one of the group of tenants holding a particular tenancy : *Sachidananda Thakur v. Mahes Chandra Das*, 50 Cal. 903, s. c., 28 C.W.N. 116 (Mookerjee, J.)

S. 106.

Technical Rules and Instructions of the Settlement Department, 1916—Page 119.

NOTIFICATION.

No. 3119F., dated the 22nd May, 1911.—In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), the Governor-General in Council is pleased to reduce the fees chargeable under clause (iii) of Article 17 of Schedule II of the said Act on plaints relating to suit instituted in Eastern Bengal and Assam under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under Article 1 of Schedule I of the Act, in cases where the amount of such fee would be less than ten rupees.

This Notification has been modified as follows by Notification No. 3789 L.R.—The 3rd April, 1922, published in the *Calcutta Gazette*, April 5th, 1922.

Calcutta Gazette : April 5, 1922, Part I, p. 689. Notification No. 3789 L.R.—The 3rd April, 1922.—In exercise of the power conferred by S. 35 of the Court Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in modification of the Government of India's Notification Nos. 1897 F., dated the 24th March, 1911, published at p. 222, Part I of the *Gazette of India* of the 25th idem and No. 3119 F., dated the 22nd May, 1911, published at p. 366, Part I of the *Gazette of India* of the 27th idem, the Governor in Council is pleased to reduce the fees chargeable under clause (iii) of Art. 17 of Sch. II of the Court Fees Act, 1870 (VII of 1870), as amended by the Bengal Court Fees Amendment Act, 1922, on plaint relating to suits instituted under S. 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under Art. I of Sch. I of the Act in cases where the amount of such fee would be less than twenty rupees.

Mode of Valuation.

Appendix D (3) of Bengal Technical Rules of the Settlement Department, 1916, p. 119.

Extract from letter No. 778 T.—R., dated Darjeeling, the 2nd September, 1914, from the Secretary to the Government of Bengal, Revenue Department, to the Director of Land Records, Bengal.

3. The Governor in Council is, however, of opinion that it is not practicable to lay down a general scale of fees applicable to the whole Province. Thus in the case of a suit regarding a *mukarrari* claim, the valuation must be based primarily on the *salami* payable for the conversion of an ordinary tenancy into a *mukarrari* tenancy. Similarly in the case of a dispute regarding the transferability of a holding, the logical basis of the valuation is the *salami* which the landlord would be able to obtain if the holding were not transferable without his consent. In both cases, the valuation may conveniently be expressed in terms of a multiple of the rent, but the multiple must be based on the rates of *salami* prevalent in the districts concerned. These rates vary in different localities, and it would not be fair to fix an arbitrary multiple of 15 times or 5 times the rent for the whole Province. The Settlement Officer should accordingly fix a multiple for each district, and in selecting a multiple should have regard—

(a) in the case of *mukarrari* claims to the sums usually paid as *salami* when variable rents are converted into invariable, and

(b) in the case of transferability claims, to the rate of sale *salami* which prevails in the district.

4. As regards rent-free claims a more logical basis would be the difference in the sale price of rent-paying and rent-free lands in the district. The Settlement Officer should fix a valuation rate, not exceeding Rs. 100 per acre, for cases of this kind. In fixing the rate he

should have regard to the difference in the sale price of rent-paying and rent-free land in the district, e.g., if rent paying land sells at Rs. 180 per acre, while rent-free land sells at 250 per acre, the Settlement Officer should take Rs. 70 as his standard. A rent free claim for $1\frac{1}{2}$ acres would then be valued at Rs. 70—35—105. If the Settlement Officer thinks fit he may fix one figure for tenures and another for holdings, both to apply throughout the district.

Court fees on petitions.

Bengal Technical Rules of the Settlement Department, 1916, Chapter XVIII, page 102.

II.—The Court-fees on petitions, etc., other than plaints filed in connection with cases under section 105, 106 and 108A are as follows :—

(a) *Sections 105 and 108 and 108A.*—Eight annas.

(N.B.—This includes the first application under section 108 or section 108A).

(b) *Section 106.*—(1) One anna if the suit be valued under Rs. 50. (2) Eight annas if the suit be valued at Rs. 50 or more or cannot be valued.

Affidavits.

Bengal Technical Rules of the Settlement Department, 1916, Chapter XVIII, page 102.

III.—Affidavits filed by a party require a Court-fee of Re. 1 only, *vide*, Rule 9, Chapter VI, page 153, of the High Court Rules (Civil) Volume I. Affidavits would ordinarily be required when a plaintiff intends to substitute the heirs or successors of a deceased defendant or to add the guardian of a minor defendant.

Process fees.

Bengal Technical Rules of the Settlement Department, 1916, Chapter XVIII, page 102.

6. The following scale of fees will be applied. A copy of the rules regarding process-fees should be hung up in the Court in English and Bengali under section 21 of the Court Fees Act :—

No. of persons to be summoned.	VALUE OF SUIT.		
	Up to Rs. 50	Over Rs. 50 but not over Rs. 1,000.	Over Rs. 1,000.
1	0 8	1 0	2 0
2	0 8	1 0	2 0
3	0 8	1 0	2 0
4	0 8	1 0	2 0
5	0 12	1 4	2 8
6	1 0	1 8	3 0
7	1 4	1 12	3 8
8	1 8	2 0	4 0
9	1 12	2 4	4 8
10	2 0	2 8	5 0

and so on; 4 annas for each extra person to be summoned in suits valued at less than Rs. 1,000; 8 annas in suits above Rs. 1,000.

It will be sufficient in all section 105 cases to issue processes on the lowest scale, namely, 8 annas for the first four persons and 4 annas for each additional person.

Process fees.

Survey and Settlement Manual, 1917, Chapter VI, Page 34, Rule 111.

111. The scale of process-fees charged under the Bengal Tenancy Act is given in Rule 67 of the Government Rules under the Bengal Tenancy Act. In all proceedings for the settlement of rents under Part III, Chapter X, and in all proceedings under section 106 of the Bengal Tenancy Act, the fees on processes are subject to the rules framed by the High Court under section 20 of the Court-fees Act VII (B.C.) of 1870. The scale of process-fees in these cases is given in the Case-work Rules.

APPENDIX X.

Final publication of Record-of-Rights in certain areas.

- Declaration by Local Government (under S. 103B, sub-sec. (2) of the Bengal Tenancy Act) of the final publication of Record-of-Rights under S. 103A, sub-sec. (2).

Reference to <i>Calcutta Gazette</i> .	No. of Notifications and date.	District.	Area.
28th June, 1922, Part I, p. 1217	No. 5984 L. R., dated the 19th June, 1922	Jessore.	Every village included in police stations, Salikha, Abhoynagar, Kalia, Kotchandpur, Narail, Noraganti in the district of Jessore.
13th September, 1922, Part I, p. 1767	No. 8385 L. R., dated the 11th September, 1922	Burdwan.	Every village included in police stations, Gangajalghati in the district of Bankura and in respect of every village included in police stations in Asansole and Ranigunge in the district of Burdwan.
1st February, 1923, Part I, p. 279	No. 2023 L. R., dated the 24th February, 1923	Jessore.	Every village included in police stations, Kaligunge, Alfadanga, Lohagora and Bhagerpara in the district of Jessore.
18th July, 1923, Part I, p. 985	No. 5219 L. R., dated the 12th July, 1923	Jessore.	In parts of Jessore in respect of every village in police stations in Bongaon, Sarsa, Mahespur, Gaighata in the district of Jessore.
9th April, 1924, Part I, p. 782	No. 3606 L. R., dated the 7th April, 1924	Jessore.	Every village included in police stations, Manirampur and Jhinkargacha in the district of Jessore.
21st May, 1924, Part I, p. 1034	No. 4764 L. R., dated the 15th May, 1924	Jessore.	Every village included in police stations Magura and Sripur in the district of Jessore.
8th January, 1925, Part I, p. 72	No. 49 L. R., dated the 2nd January, 1925	Nadia.	Every village included in police stations Haringhata, Chakdah, Santipur, Kaligunge, Krishnagore (Kotwali) Nakasipara, Nadia (Nabadwip), Meherpur, Tehatta, Chapra, Hanskhali, Jibonnagore, Bhairamara, Gangania, and Daulatpur in the District of Nadia.
29th January, 1925, Part I, p. 172	No. 775 L. R., dated the 20th January, 1925	Pabna.	Every village included in police stations, Faridpur, Chatmohur, and Sujanagore (Dulai) in the district of Pabna, excluding the area comprised in police station Sujanagore (Dulai) in respect of which a record-of-rights was declared to have been finally published under Notification No. 2101 L. R., dated the 22nd February, 1915.

Reference to <i>Calcutta Gazette</i> .	No. of Notifications and date.	District.	Area.
18th June, 1925, Part I, p. 919	No. 6292 L. R., dated the 12th June, 1925	Bankura ... Burdwan ...	Every village included in the police stations Mejhia, Bankura, Barjora, Taldanga, Vishnupur, Patrasaer, and Sonamukhi in the district of Bankura and in respect of every village included in the police stations of Ondal and Kansa in the district of Burdwan.
11th Feb., 1926, Part I, p. 202	No. 1691 L. R., dated the 8th February, 1926.	Nadia ...	Every village included in the police stations Ranaghat, Damurhuda, Chuadanga, Alamdanga, Kushtia, Kumarkhali, Khoksa, and Kissenganj in the district of Nadia.
3rd June, 1926, Part I, p. 765	No. 5722 L. R., dated the 25th May, 1926	Bogra ...	Every village included in the police stations Alamdighi in the district of Bogra.
15th July, 1926, Part I, pp. 1023 to 1025	No. 7403 L. R., dated the 7th July, 1926	Burdwan ...	Every village included in the police stations Katwa, Ketugram, Purbasthali, and Kalna in the district of Burdwan. (For the names of the villages see Gazette).
15th July, 1926, Part I, p. 1024	No. 7405 L. R., dated the 7th July, 1926	Murshidabad.	Every village included in the police station Saktipur. (For the names of the villages see Gazette).
15th July, 1926, Part I, p. 1024	No. 7406 L. R., dated the 7th July, 1926	24 Parganas.	Every village included in the police station Naihati.
15th July, 1926, Part I, p. 1024	No. 7404 L. R., dated the 7th July, 1926	Hooghly	Every village included in the police station Balagarh, Hooghly and Magra in the district of Hooghly. (For the names of the villages see Gazette).
20th August, 1925, Part I, p. 1317	No. 8652 L. R., dated the 17th August, 1925	Khulna ...	Every village included in police stations Kalaroa, Debhata in the district of Khulna.
5th Nov., 1925, Part I, p. 1733	No. 10961 L. R., dated the 31st October, 1925	Bankura ...	Every village included in the police stations Ouda, Kutulpur, Joypur, and Indus in the district of Bankura.
2nd Dec., 1926, Part I, p. 1808	No. 12402 L. R., dated the 25th Nov., 1926	Bogra ...	Every village included in the police stations Joypurhat, in the district of Bogra.
10th March, 1927, Part I, p. 563	No. 3807 L. R., dated the 10th March, 1927	Bogra ...	Every village included in the police station Shibganj in the district of Bogra.

Reference to <i>Calcutta Gazette</i> .	No. of Notifications and date.	District.	Area.
10th March, 1927, Part I, p. 563	No. 3809 L. R., dated the 10th March, 1927	Pabna ...	Every village included in the police station Chaukali in the district of Pabna.
19th May, 1929, Part I, p. 1023	No. 6819 L. R., dated the 13th May, 1927	Khulna ...	Every village included in police stations Tala, Daulatpur, Terakhada, Phultala, Dumuria, Paikgacha, Baitaghata, and Dacope in the district of Khulna.
6th Jan., 1928, Part I, p. 68 ...	No. 208 L. R., dated the 6th Jan., 1928	Bogra ...	Every village in the police stations Sherpur, and Dhunat, in the district of Bogra.
28th Feb., 1928, Part I, p. 380	No. 2580 L. R., dated the 28th Feb., 1928	Pabna ...	Every village included in police stations Belkuchi, Rayganj, Kamarkhanda, Kazipur, and Bera in the district of Pabna in respect of which a record-of-rights was declared to have been finally published under Notification No. 2101 L. R., dated 22nd February, 1915.

APPENDIX—XI.

Notes on Miscellaneous matters.

I

Relationship of landlord and tenant.

1. **Tenancy by occupation** :—Tenancy in this country is created not only by contract, but also by occupation of land, so far as agricultural lands are concerned, *Azim Sardar v. Ram Lal*, 25 Cal. 324 at p. 327. The embodiment of this principle of law, in s. 157 of the Bengal Tenancy Act does not, however, mean that every case where a tenancy is created by mere occupation must come under that section and that all other legal remedies are shut off from the landlord : *Kali Prasanna v. Bhagaban*, 17 C.L.J. 431, "Here it is a very usual thing for a man to squat on a piece of land. Tenancy in great many districts in Bengal commences in this way, and where it so commences it is presumed that the cultivator cultivates by the permission of the landlord and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded : as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so although he may never have expressly acknowledged the landlord's right, or entered into express contract with him for the payment of rent. If he chooses to cultivate the zemindar's land, and the zemindar lets him, there is an implied contract between them creating a relationship of landlord and tenant," *Nityanand v. Kissen*, W.R., Act X, Rulings 82.

When therefore a landlord waives the dispossession and is willing to consider the trespasser as his tenant a decree for rent or compensation may be given for use and occupation, *Lala Monee v. Sona Monee*, 22 W.R. 334 ; *Lakshi Kanta v. Sumeeruddi*, 21 W.R. 208, s. c., 13 B.L.R. 243 ; *Surnamoyee v. Dinanath*, 9 Cal. 608. A right to claim rent may arise under s. 157 upon the establishment of plaintiff's right to a land notwithstanding that his previous suit for rent was dismissed : *Dwarkanath v. Ram Chand*, 3 C.W.N. 266.* The rule that in order that the relationship of landlord and tenant may be established between parties, the consent of both sides is essential may be the law in England, but it is not the law in this country :—*Kali Prasanna v. Bhagaban Mali*, 17 C.L.J. 431.

2. **Acquisition of right under a trespasser** :—When a person acquires a right to hold land *bona fide* from one whom he *bona fide* believes to have the right to let him into possession of the land, he is a raiyat, although the person under whom he holds may be a trespasser, *Binod Lal Pakrasi v. Kalu Pramanik*, 20 Cal. 701 (F.B.). In delivering the judgment of this case Petheram, C. J., whose judgment was concurred in by the members of the Full Bench, observed as follows :—"The possession of the land in question for the purpose of cultivating it was acquired a good many years ago by the defendant from the persons who at that time were in actual possession of the zemindari within which it was situated ; and who were the only persons who could give possession of the zemindari to cultivators. It is not suggested that the defendants did not then obtain possession as tenants under the *bona fide* belief of the title of their landlords but since then it has been ascertained by a judgment of a Court of Law that the zemindari did not belong to these persons, but to the plaintiffs, and the question is whether, now that the plaintiffs have established their right to the zemindari, they can treat all cultivators who have been settled on the lands by the persons whom they have ousted from its possession as trespassers, and obtain khas possession of all the raiyati lauds from them at any moment without any compensation even for the crops on the land."

This case was discussed and distinguished in the cases of *Peary Mohun v. Radhika Mohun*, 8 C.W.N. 315 and *Upendra Narain v. Pratap Chandra*, 8 C.W.N. 320. See also the cases of *Pandab v. Annand*, 14 C.W.N. 897 and *Kali Prasanna v. Bhagawan*, 17 C.L.J. 431.

The principle of the Full Bench decision in *Binod Lal Pakrasi v. Kalu Pramanik*, (20 Cal. 708) is applicable to a case where tenants are settled upon land by a person in *defacto* possession as landlord is afterwards found to have no title. It is inapplicable to a case when such a landlord is not in actual possession of the land at the time of settlement made with the

tenant : *Mohes Chandra v. Hemendra Nath*, 46 C.L.J. 575. (The case of *Tepu Muhamamad v. Tefayet Muhammad*, 19 C.W.N. 722 followed).

3. Where plaintiff sues as an adopted son :—In a suit for rent where plaintiff sued as the adopted son of the deceased landlord, and defendant denied the relationship of landlord and tenant, *held* that as plaintiff's adoption had been declared by a competent Court, the mere fact of an appeal to the Privy Council did not alter his position as the successor to the right of the person who was the landlord : *Huronath v. Goluknath*, 9 W.R. 18.

4. Attornment when not necessary :—Where the defendant got a lease from the lessor of the plaintiff in 1850 and the plaintiff got his lease in 1860, and the lease granted to the plaintiff distinctly gave him the right of collecting rents from the defendant in accordance with the terms of the lease granted to him (the defendant) in 1850, *held* that in a case of this sort no attornment was necessary : *Sree Chand v. Budhoo Sing*, 13 W.R. 501.

5.—Contract :—Where two parties bind themselves under an indenture drawn up in the English form, the one to lease certain lands and the other to pay rent for the same, *held* that the contract is complete, and a suit for arrears of rent due under that contract will lie : *Kishen Das v. Hurry Jeeban*, 10 W.R. 324.

6. Relationship of landlord and tenant :—Where a landlord A creates a tenancy in favour of B and C jointly, whether each is liable for the entire rent must depend upon the intention of the parties : *Kashikinker v. Satyendra*, 12 C.L.J. 642.

II

Right of Pre-emption.

In a lease it was provided as follows :—“ Let it be known that if you find it necessary to transfer the *nim howla* tenure, you will transfer it to me for proper price. You will not be at liberty to transfer it to any person other than myself. If you transfer it to any other person, such transfer will not be valid,” *held* in a suit by an auction purchaser of the *nim-howla* in an execution sale that there being no covenant for re-entry, the plaintiff acquired a good title by purchase : *Pramode Ranjan v. Aswini Kumar*, 18 C.W.N. 1138.

III

Eviction by title paramount.

Eviction by title paramount would be a good defence to a suit for rent, but to constitute a good defence three conditions must be fulfilled :—

First, the eviction must be from something actually forming part of the premises demised.

Secondly, the party evicting must have a good title, and

Thirdly, the tenant must have quitted against his will.

Noorijan v. Bimala Sundari, 18 C.W.N. 552. The doctrine of *quasi* eviction should apply in this country, but it does not apply to a case when the tenant is induced to attorn to the superior landlord by an offer to accept a reduced rent : *Ibid.* See also *Surendra v. Dinanath*, 43 Cal. 554 ; *Jitendra v. Ashutosh*, 27 C.W.N. 381.

IV

Recitals of boundaries in documents not interpartes :

Recitals of boundaries of other lands in documents between third parties are not admissible in evidence either as regards the question of the boundary or as to the nature of the land : *Pramathanath v. Krishna Chandra*, 28 C.W.N. 1092. (The case of *Sarojkumar v. Umedali*, 25 C.W.N. 1022, s. c., 35 C.L.J. 19 was followed. The case of *Abdullah v. Kunj Behari Lal*, 16 C.W.N. 252, s. c. 14 C.L.J. 467 was dissented from. See also *Braja Mohun v. Gayaprasad*, 30 C.W.N. 761, s. c., 45 C.L.J. 55. (*Suhrawardy & Graham*, J.J.).

This decision followed *Saroj v. Umedali*, 25 C.W.N. 1022, s. c., 35 C.L.J. 19 and *Pramatha v. Krishna*, 30 C.W.N. 1092. The cases of *Abdulla v. Kunja Behari*, 16 C.W.N. 252, s. c., 14 C.L.J. 467 and *Imrit v. Sridhari*, 17 C.W.N. 108, s. c. 15 C.L.J. 7 were dissented from.

The case of *Brajamohun v. Gayaprasad*, 30 C.W.N. 761, s. c., 45 C.L.J. 55 was followed in the case *Kumuda Kumar v. Dilsook Roy*, 45 C.L.J. 138 (Duval and Mitter, J.J.), where it was held that the inadmissibility of documents depends upon the general principle that if a party is not bound by the recital in an instrument to which he was no party the document will not be allowed to affect his rights in any way. Recitals of boundaries other than those in suit, contained in document between third parties is inadmissible in evidence whether the executant of the document is dead or alive: *Ibid.* See also *Promotha v. Krishna*, 28 C.W.N. 1092. For a contrary view see *Sheikh Ketabuddi v. Nafar Chandra*, 44 C.L.J. 582 (B. B. Ghose & Panton, J.J.). Where an executant of a document containing recitals of boundaries of other lands is called as a witness and he gives his evidence and in support of that he produces a document executed by him, a statement in the document is admissible under s. 157 of the Evidence Act as corroborative of the evidence given by the witness in the witness box. Where an executant of a document containing recitals of boundaries of other lands is alive and does not give his evidence in the case, a statement in such document is not admissible either under section 11 or section 13 of the Evidence Act. *Ibid.* The case of *Promotho v. Krishna*, 28 C.W.N. 1902 was dissented from in the case of *Promotha Nath v. Bejoy Singh*, 44 C.L.J. 587 (B. B. Ghose and Cammiade, J.J.). Omission to take objection to a document which is irrelevant or inadmissible does not make it admissible in evidence: see 43 C.L.J. 274.

As to Zemindar's right to sue *Putnidar* for assessment of rent on *Chowkidari chakran lands*: *Priyambada v. Monahar*, 29 C.W.N. 328.

As to meaning of *Malik*, 26 C.W.N. 129, 425; 35 C.L.J. 314; 28 C.W.N. 541 (P.C.).

V

Res-judicata.

Question of title :—The decision of a question of title raised in a suit does not operate as *res judicata* in a subsequent suit for title when such question is raised only incidentally in the rent-suit: *Srihari Banerjee v. Khittish Chander*, 1 C.W.N. 509. See also *Run Bahadur v. Lucho Koer*, 11 Cal. 301.

As to when a decision on a matter in a previous rent suit operates as *res-judicata* in a subsequent suit: see *Mone Muhammad v. Dhani Mahammad*, 17 C.W.N. 76. As to whether a decision in a previous suit is *resjudicata* in a subsequent suit: see *Bakshi v. Nizamuddi*, 20 Cal. 505. See 24 C.W.N. 717. As to area, see *Upendra Kumar v. Shamlal*, 11 C.W.N. 1100. The decision of the question as to area in a rent suit was held to operate as *resjudicata* in a subsequent suit for additional rent for additional area: *Radhika v. Satya Narain*, 74 I.C. 96. See also *Radhika Raman v. Sainarain*, A. I. R. 1924 Pat. 307. As to question of title, see *Dwarkanath v. Ram Chand*, 26 Cal. 428 (F.B.); *Nilmadhab v. Brajanath*, 21 Cal. 286; *Rajendra v. Tarangini*, 1 C.L.J. 248; as to a decision in a rent-suit operating as *res-judicata* in a subsequent suit for declaration of title, see *Nand Kumar v. Ram Kishore*, 19 C.L.J. 457; see 30 C.W.N. 593, s. c., 43 C.L.J. 146.

The decision in a previous rent suit that rent was payable as *Bhauli* rent does not operate as *resjudicata* in a suit for rent of subsequent years at the cash rent system. The previous decision is merely presumptive evidence of the rent of future years and the presumption may be rebutted: *Parmeshwar Prasad v. Narsing Rai*, A.I.R. 1924 Pat. 371.

A joint *ex-parte* decree for the entire rent of a tenure against all the tenants operates as *resjudicata* in a subsequent suit against them disentitling any one of them to object to the passing of a joint decree and setting up the case of a separate tenancy: *Sarojini v. Lakshi Priya*, 29 C.W.N. 253, s. c. 40 C.L.J. 507.

Consent decree, if constitutes *resjudicata*: 43 C.L.J. 116.

Denial of plaintiff's title :—DISMISSAL OF RENT SUIT—SUBSEQUENT SUIT TO ESTABLISH TITLE :—In a suit for rent where the sole defendant denied the plaintiff's title and set up the title of third person and the suit for rent was dismissed on the ground that the plaintiff failed to

* See also *Nauek Chandra v. Teluchdaye Koer*, 5 Cal. 265; *Dirgopa v. Bolakee*, 5 Cal. 269; *Raj Kissen v. Radha Madhab*, 21 W. R. 349.

prove his title, *held* in another suit for establishment of title, brought by the plaintiff against the tenant and the third person whose title had been set up, that it was barred by the rule of *res judicata*: *Gopaldas v. Gopinath Sircar*, 12 C.L.R. 38.

When question of title does not operate as *res judicata*:—Plaintiff brought a suit to obtain a declaration that the plaintiff had a *mahatran* and *kayemi ijara right* to the land in suit and that the defendant No. 1 was a *karsa raiyat* under him and to recover *khas* possession upon ejectment of Defendant No. 1; the plaintiff stated in his plaint that he had previously brought a suit for rent against the defendant No. 1 and that the defendant No. 1 in that suit denied existence of relationship of landlord and tenant between him and the plaintiff and alleged that a third party, who was made defendant in the present suit, was his real landlord and that the rent-suit having been dismissed the plaintiff brought the present suit. The defence mainly was that the suit was barred by the rule of *res judicata*. The prayer for ejectment was abandoned in the first Court. The only question that remained to be decided between plaintiff and defendant No. 1 was whether the plaintiff was entitled to claim any rent from the defendant No. 1 as his tenant. Banerjee and Rampini, J.J., dissented from the ruling in the case of *Gopal Das v. Gopinath*, 12 C.L.R. 38, and referred the question to the Full Bench which decided that the former decision did not operate as *res judicata*: *Dwarika Nath v. Ram Chand*, 26 Cal. 428 (F.B.). Their Lordships did not express any opinion as to whether the case of *Gopal Das v. Gopinath*, 12 C.L.R. 28 was rightly decided.

Where a question of title was decided in a suit for rent in which the issue was whether the relation as landlord and tenant existed between the parties; *held* that in a subsequent suit brought by the same plaintiff for establishment of his title the decision in the rent suit does not operate as *res judicata*: *Nityananda v. Ram Narain*, 6 C.W.N. 86. The Full Bench case of *Dwarika Nath v. Ram Chand*, 26 Cal. 428 was followed in this case. Their Lordships (Rampini and Gupta, J.J.), in delivering judgment in the case of *Nityananda v. Ram Narain* thus distinguished the case of *Radha Madhab Haldar v. Monohor*, 15 Cal. 756:

"The pleader for the respondent, however, relies upon the case of *Radha Madhub Haldar v. Monohor Mukerjee*, in which it is laid down that the decision of rent suit, which involves a question of title is *res judicata* in a subsequent suit.

"It is sufficient to say in reply to this argument that the question of title was not directly and substantially involved in the previous suit. The judgment in that rent suit has not been made part of the paper-book of the present appeal. But we gather from the judgment of the District Judge that the issue, as framed in the suit was—"Does the relation of landlord and tenant exist between the parties?" That according to the District Judge was the issue raised and decided. Accordingly the question of title was directly and substantially in issue between the parties in the previous suit. The learned Judge seems to think that the question was *res-judicata* because of the decision of the issue. "Does relation of landlord and tenant exist between the parties" depends upon the decision of two issues of fact, *namely* (i) has he proved the defendant's admission as a tenant by the predecessor through whom the plaintiff claims? We, however, do not agree with the Judge in this respect. The question of title may have been incidentally enquired into in the former rent suit. It may have been incidentally involved in the issue as to whether the relation of landlord and tenant exists between the parties. But it was certainly not directly raised between them, and there is nothing to show that it was decided in that suit in such a manner as to make the question of title in this case *res judicata*.

Decree obtained by an *ijaradar*:—A decree obtained in a previous suit for rent by an *ijardar* does not operate against the tenant as *res judicata* on the question whether the relation of landlord and tenant exists in a subsequent suit for rent brought by the superior landlord; *Balaram v. Kartick Chunder*, 4 C.W.N. 161.

Proceedings under S. 158 of the Bengal Tenancy Act:—A decision as to the question of relation of landlord and tenant in a proceeding under s. 158 of the Bengal Tenancy Act does not operate as *res judicata* between the parties in a subsequent regular suit: *Peary Mohun v. Ali Sheikh*, 20 Cal. 249.

Question of *benami* not raised in the former suit:—One B. D. brought a suit for rent against one K. M. which was decreed in plaintiff's favour on the defendant's failing

to make out his plea of payment. The same plaintiff brought another suit for arrears of rent of subsequent years against the same defendant. In this latter suit the defendants pleaded, amongst other things, that the plaintiff was a mere benamidar of one A. G. who was the real proprietor in possession of the lands. Both the lower Courts held that this plea, although not raised in the previous suit, ought to have been made a ground of defence, in that suit, and that under the provisions of Explanation 2 to s. 13 of the Code of Civil Procedure, the defendant was precluded from raising the plea in the latter suit. On appeal by the defendant to the High Court, *held* that assuming that the matter now in issue could not be said to have been heard and finally decided in the former suit, and that consequently Explanation 2 to sec. 13 of the Civil Procedure Code does not preclude the defendant from raising the plea in the subsequent suit: *Kailas Mondal v. Baroda Sundari*, 1 C.W.N. 565 : 24 Cal. 711.

Illegal cess :—Where a landlord claimed an illegal cess in a suit for rent and the tenant objected to the same, *held* that the mere fact that in a former suit the tenant did not raise the objection did not preclude him from raising the plea: *Woomesh Chandra v. Baroda Das*, 28 Cal. 17. Their Lordships Ameer Ali and Brett, JJ., in deciding this case relied upon the case of *Kailas Mondal v. Baroda Sundari*, 24 Cal. 711, s.c., 1 C.W.N. 565, and observed as follows :—The decision, however, in *Kailas v. Baroda Sundari Dasi*, shews that, although upon a literal interpretation of the words of Explanation 2, s. 13 of the Civil Procedure Code it might be contended that a point not raised and not decided in a previous litigation might still be taken as conclusive in a subsequent suit between the parties, yet upon a proper construction of the section the question ought not and cannot be treated as *res judicata* unless there is a judicial determination express or implied on the matter not directly put in issue.

A decree for cess at a certain rate is admissible in evidence in a subsequent suit for cess claimed at a higher rate and may raise a presumption in favour of the tenant but does not operate as *res judicata*: *A. T. Ricketts v. Rameswar*, 28 Cal. 109.

Amount of Jama :—In a suit for rent the question was "what is the amount of the jama" and the Court found as follows: "Considering the whole evidence and the circumstances of the case, I hold that the plaintiffs have entirely failed to prove their allegation of the jama. They are therefore entitled to the jama admitted by the defendant," in a suit for subsequent period Plaintiff claimed at the same rate as he had claimed in the previous suit; there was no agreement subsequent to the previous suit altering the rate of rent; *held* that the decision in the earlier suit operated as *res judicata* in the latter one: *Hurry Behari v. Pargon Ahir*, 19 Cal. 659; see also *Bukshi v. Nizamuddi*, 20 Cal. 505.

The decision as to the rate of rent in a previous suit for rent was held to operate as *res judicata* in a subsequent suit: *Mane Mahammed v. Dhani Mahammad*, 17 C.L.J. 71. An *ex-parte* decree for rent cannot operate as *res judicata* as to the rate of rent in favour of the landlord: *Nafar Chandra v. Bhusi Molla*, 65 I.C. 581.

Exparte decree :—An *ex-parte* decree for rent is *res judicata* in a subsequent suit for rent unless the tenant can establish that the relationship of landlord and tenant ceased since the passing of the decree: *Mahammed Gauhar v. Samiruddin*, 18 C.W.N. 33.

As to *res judicata* in *ex-parte* decrees :—see also *Chandra Kumar v. Joy Chandra*, 19 W.R. 213; *Goya Prasad v. Tarini Kant*, 23 W.R. 149; *Birchandra v. Ram Krishna*, 23 W.R. 128; *Mahamed Kana Miah v. Ram Mahamed*, 24 W.R. 254; *Bir Chandra v. Harish Chandra*, 3 Cal. 383; s. c. 1. C.L.R. 585, *Bhagirath v. Ram Luchan*, 8 Cal. 275; *Nilmani v. Hiralal*, 7 Cal. 23; s. c. 8 C.L.R. 257; *Bishnu Prakash v. Ratangir*, 20 W.R. 3; *Hiralal v. Johar Molla*, 20 W.R. 273; *Nrisingh Dass v. Kamaruddin*, 20 W.R. 412; *Madhusudan Saha v. Brae*, 16 Cal. 300 (F. B.).

An *ex-parte* decree in a suit for rent operates as *res judicata* upon the question of relationship of landlord and tenant: 17 C.W.N. 327. A decree for rent passed *ex-parte* is conclusive as to the relationship between the parties at the time to which the suit referred: *Hiranmoy v. Ramjan Ali*, 20 C.W.N. 48, s. c., 43 Cal. 170. Under illustration (d) to S. 114 of the Evidence Act it is open to the Court in a subsequent suit between the parties to presume that that state of things has continued. *Ibid*.

See notes under Sec. 65 at p. 403.

Issue in Rent Suit:—In a suit for rent, no issue need be framed, but where issues are framed, the non existence of a direct issue of this character has to be seriously taken into account in determining whether the question of right or liability for all times was really directly and substantially in issue. *Gnanendra v. Nalinibala*, 43 C.L.J. 146.

Suit for enhancement:—In a suit for enhancement of rent it was held that the plaintiff had the right to enhance but the suit was dismissed on the ground that the rent paid by the defendant was not lower than the rate paid by other similar tenants, held in a subsequent suit for enhancement that the decision in the prior suit did not operate as *resjudicata* inasmuch as the decision upon the question of the right to enhance the rents was not the basis of the decree which was ultimately made: *Parhate v. Mathura*, 40 Cal. 29.

When A brought a suit against B and the latter pleaded that he was tenant of A's landlord, and A's suit was decreed, held in a suit brought by B for declaration of title against A and his landlord, that B's suit was barred by *res judicata*: *Sreenath v. Kaser Sheikh*, 18 C.W.N. 116.

Resjudicata between co-defendants:—In order that a finding in a case can be *resjudicata* between co-defendants three things are necessary (1) that there should be a conflict of interest between co-defendants; (2) that it should be necessary to decide on that conflict in order to give to the plaintiff the relief appropriate to the suit; (3) that the judgment should contain a decision of the question raised as between the co-defendants: *Jadab Chandra v. Kailash Chandra*, 15 C.L.J. 332; *Sarada Prasad v. Kailashbasini*, 17 C.W.N. 128; *Syed Latif Hossain v. Basdeo Singh*, 20 C.W.N. 1177; *Rajkumar v. Abdullah*, 22 C.W.N. 891. See also 51 Cal. 997, s. c. 30 C.W.N. 415; 54 Cal. 114; 46 C.L.J. 118 and 30 C.W.N. 482 (P.C.), s. c. 5 Pat. 461.

Erroneous decision on a point of Law:—An erroneous decision on a point of law may under certain circumstances operate as *res judicata*: *Rambehari v. Surendra*, 19 C.L.J. 34. See also 30 C.W.N. 83.

The order of a Settlement officer in a Survey and Record of rights under s. 106 of the B. T. Act as originally passed, is a decree under s. 9 of Act III (B. C.) of 1898 which operates as *resjudicata* on points raised and decided; *Nikunja Behari v. Radha Kishore*, 22 C.L.J. 148.

Judgment in a previous suit may operate as *res judicata* notwithstanding the fact that no appeal was allowed by law against the decision: *Rambehari v. Surendra*, 19 C.L.J. 34.

A plea of *resjudicata* not taken in the written statement was allowed to be taken up on appeal: *Krishnadayal v. Amiral Hossein* 19 C.W.N. 942.

Heirs:—It is the duty of the persons succeeding by inheritance to a permanent tenure to notify the succession and it is not the duty of the superior landlord to find out who all the heirs of a deceased decree-holder are; there is no law which compels a landlord in order that he might succeed in a suit for rent to sue all the heirs of a deceased tenure-holder when he has no notice who the heirs are. Where the defendant was admittedly one of the heirs and in possession as such, he is liable for the rent, and he cannot defeat the plaintiff's suit by shewing that there were other heirs equally liable, unless he also shews that their names were notified to the landlord as successors: *Khetter Mohon v. Pran Krishto*, 3 C.W.N. 372.

VI

Rate of Rent.

Proof:—Oral evidence is not admissible for the purpose of contradicting a statement made in a registered *kabuliyat* as to the amount of rent, but evidence is admissible to shew that the *kabuliyat* was never intended to be acted upon or enforced or that there was a waiver of some of its terms: *Beni Madhab v. Lal Mati*, 6 C.W.N. 242; the evidence that since the execution of the *kabuliyat* a lower rate was paid is admissible: *Ibid.* See in this connection *Manindra Chandra v. Durga Sundari*, 20 C.W.N. 680; *Durga Prosad v. Rajendra Narain*, 37 Cal. 293, on P.C. 41 Cal. 493, s. c. 18 C.W.N. 66; *Kailas*

(*Kalish*) *Chandra v. Darbarai Sheikh*, 20 C.W.N. 347. An agreement is none the less oral because it is to be inferred from the conduct of parties: *Lakhatulla v. Biswamber*, 12 C.L.J. 646. See also *Binod Lal v. Prio Mohan*, 20 C.W.N. 52 notes.

The mere fact that rent for some years has been received at a reduced rate does not bind the lessor to accept rent at that rate: *Baij Nath v. Raghu Nath*, 16 C.W.N. 946; *Kailash Chandra v. Darbarai Sheikh*, 20 C.W.N. 347; also see the cases cited therein.

When the joint tenants of a homestead holding allow one of them to have his name registered in the landlord's books, a decree obtained by the landlord against such registered tenant is admissible in evidence against the other tenants as to the rate of rent: *Moti Lal v. Nripendra*, 2 C.W.N. 172.

As to whether a decree by a co-sharer landlord as to rate of rent, if admissible in evidence in a suit by another co-sharer landlord.

See the cases collected under s. 65, heading No. 32, at pp. 402 and 403, and at p. 684. See also 43 C.L.J. 153.

An *ex-parte* decree by a co-sharer landlord who realised the decretal amount by execution is admissible in evidence as to the rate of rent in a suit by another co-sharer landlord: *Kanta Mohan Mullick v. Gopinath Santra*, 32 C.W.N. 91 (notes): See also *Madhu Manjari v. Jhumar Bibi*, 1 C.W.N. 120; *Mati Lal v. Nripendra*, 2 C.W.N. 172; *Rajkumar v. Alimuddi*, 17 C.W.N. 627. An *ex-parte* decree which has never been executed is no evidence as to the rate of rent: *Ram Chandra v. Hara Gobindo*, 1 C.W.N. 128 (notes).

VII

Contribution.

Although the landlord sues only the recorded tenant, this would not relieve the unrecorded tenants from the equitable liability of paying their share of the rent to those of the recorded tenants who are obliged to pay the whole. The fact that one of the co-tenants (whose name was not recorded and who was not a party to the suit for rent) sold away his interest before the date of the suit, would not relieve him of the liability although he did not derive any benefit from the payment made: *Gobind Chandra v. Basanta Kumar*, 4 C.W.N. 384.

A suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer is exempted from the cognizance of Small Cause Court under Art. 41 of the Second Schedule of Act IX of 1887: *Chandradaya Sen v. Bhagaban Chandra Sen*, 20 C.W.N. 40 (notes). Rent is, by operation of law, the first charge on a tenure and a person, who purchases the same at an execution sale, must, in the absence of anything to denote the contrary, be taken to purchase it charged with the rent due which is due in respect of it at the time of its purchase and there being no privity between him and the judgment debtor, he cannot recover from the latter the money he is obliged to pay for rent so due at the time of purchase. *Ibid*.

Sec. 69 of the Indian Contract Act is intended to include cases not only of personal liability but all liabilities to payment for which owners of lands are indirectly liable, when such liabilities are imposed on lands held by them: *Sarajubala v. Kamini*, 43 C.L.J. 142. *Mathuranath v. Krista Kumar*, 4 Cal. 369 followed.

See also *Registered Jessore Loan Co., v. Gopal Hari Gosh*, 30, C.W.N. 366, 43 C.L.J. 83.

As to rulings on contribution and suit for damages; See at p. 272 of the book.

VIII

Proof of Tenancy Right.

Proof of lease:—A tenant can prove his tenancy right without proving his lease, even if he has any: *Lala Surabh v. Kartick Gharami*, 8 C.W.N. 424.

A tenant can prove his tenancy right, without proving his lease if he has one which is inadmissible for want of registration: *Fazel Shaikh v. Keramuddi*, 6 C.W.N. 916.

Where a *kabuliyat* was executed, but was not registered and never came into operation, oral evidence is admissible to prove the rent agreed upon by the parties: *Ameer Ali v. Yakub Ali*, 41 Cal. 347; s. c. 19 C.L.J. 428.

A tenancy can be proved without proving the lease even if there be any: *Ameer Ali v. Yakub Ali*, 41 Cal. 357, see also *Banka Behari v. Raj Chandra*, 41 Cal. 347.

In this country it is possible to establish a tenancy without the production of a lease by proof of payment of rent by the tenant and acceptance of rent by the landlord: *Raj Kumari Baishnabi v. Shyama Bibi*, 25 C.W.N. 163 (notes).

IX

Adverse possession.

Adverse possession when rightful owner is in possession as tenant:—A trespasser will acquire title to land by adverse possession, if the rightful owner holds it under him as tenant for the statutory period: *The Secretary of State v. Krishnamoni*, 6 C.W.N. 617, P.C. (on appeal from the High Court of Bengal, 3 C.W.N. 99). The terms of the Permanent Settlement do not prevent Government from acquiring khas proprietary right, by limitation, over lands permanently settled, if the proprietor chooses to hold such lands as an *Ijaradar* or tenant under Government, for the statutory period. *Ibid*.

In order to establish adverse possession by one tenant in common against his co-tenants there must be exclusion or ouster and the possessor subsequent to that must be for the statutory period. Mere non-participation of rents and profits would not necessarily of itself amount to exclusion but such non-participation or non-possession may in the circumstances amount to an adverse possession: *Aynenussa v. Sheikh Isuf*, 16 C.W.N. 849.

A co-tenant's possession cannot become adverse until there is an ouster or the equivalent of an ouster, of the other co-tenant: no mere mental determination is sufficient: *Faijuddin v. Reju Akab*, 21 C.L.J. 192.

As to adverse possession between co-owners: see *Balaram v. Syama Charan Mandal*, 24 C.W.N. 1057 (Mukerjee, Acting C. J. and Fletcher, J.) in which the cases on the point have been reviewed. See also 26 C.W.N. 65, 206, 890. The principle does not depend upon whether the parties are members of a joint family but rests upon the ground that they are co-owners and is applicable to all classes of co-owners. See *Ibid*, at page 892. See also 27 C.W.N. 624; 40 C.L.J. 30; 50 Cal. 487. As to the applicability of the principle to Mahomedan Co-sharers; see 21 C.L.J. 192; 20 I.C. 584, 16 C.W.N. 849.

As to acquisition of fishery right by adverse possession: *Dependra Lal Khan v. Secretary of State*, 31 C.W.N. 473.

Presumption as to rent free grant:—Adverse claim in settlement proceedings: see *Kalimohan v. Birendra Kishore*, 22 C.L.J. 309. Adverse possession—Relationship of landlord and tenant: see *Birendra Kishore v. Nabin Chandra*, 22 C.L.J. 306; *Birendra Kishore v. Ram Kumar*, 22 C.L.J. 308.

See notes at pp. 39, 40, 43, and 764 of this book.

X

Parties to Rent Suit.

Parties to Rent Suit:—Parties should not be added in a suit for rent so as to transform it into a complex title suit though question of title may be incidentally investigated in a suit for rent: *Abdul Gafur v. Ali Miah*, 28 C.W.N. 805. In a rent suit where the defendant sets up the right of a third party the Court ought not to make such a third party a party in the suit and convert it into a complicated title suit. There must be an enquiry into the Plaintiff's title when it is derivative: See *Indra Narain Manna v. Sarbaseva Davi*, 41 C.L.J. 341.

See notes under S. 65, heading Nos. 23 and 24, pp. 396-400.

XI

Books of Accounts.

As to admissibility of Collection papers, etc., under S. 32 or S. 34 of the Evidence Act, see notes under S. 50 at pp. 311-312.

Jaibaki papers :—*Jaibaki* papers brought from the plaintiff's own possession cannot be used against a defendant without shewing that he has in some way agreed to them : *Baidyanath v. Rasik Lal*, 9 W.R. 274.

Jamabandi papers :—*Jamabandis* represent the rent roll of the estate. "They shew the quantity of land by each cultivator, its different qualities (i.e., what is grown upon it), the rate of rent for each kind of land, the total rent for all the land of that particular kind in each cultivator's possession, and lastly the grand total for all the land of every kind held by him" : see *Field's Evidence*, 7th Edition, p. 134.

Jamabandi papers can be used as corroborative evidence of the same value as that which is attached to books of accounts : : *Gajju Koer v. Ali Ahmed*, 14 W. R. 472. They can never be treated as independent evidence : see also *Chamarni Bibee v. Ayenullah*, 9 W.R. 451.

Jamabandi papers.—A raiyat signing a *jamabandi* is bound by it, has signature there-to being regarded as admission of the correctness of its contents : *Watson and Co. v. Mohendranath*, 23 W.R. 436. Where increased rent is imposed in the course of settlement proceedings the Collector's *jamabandi* must shew the consent of all the raiyats before he can be held to be bound by it : *Reajoodin Mahomed v. McAlpin*, 22 W.R. 540.

Jamabandi papers, without the personal testimony of the *putwaree* who filed them, are valueless : *Pundit Bhawan Dutt v. Sheo Mungal Singh*, 22 W.R. 256; 20 W.R. 142.

Jamabandi papers filed by a *malik* in *butwara* proceedings, to which the tenant is not party, cannot be used against such tenant in a suit for arrears of rent : *Kishore Dass v. Parson Mahtoon*, 20 W.R. 171.

An auction purchaser of a *khas* Mahal cannot sue the tenant for enhanced rent upon a *jamabandi* to the terms of which the tenant never consented : *Enayetollah Mia v. Nobo Kumar*, 20 W.R. 207.

In the case of *Taru Patur v. Abinash Chandra Dutta*, 4 Cal. 79 it was held that a *Jamabandi* prepared by a Deputy Collector, while engaged in the settlement of land under Reg. VII of 1822, was a public document within the meaning of section 74 of the Evidence Act and it was not necessary to shew the raiyat affected was a consenting party to the terms specified. But see the case of *Ram Chandra Sao v. Buseedhur Naik*, 9 Cal. 741 where the case in 4 Cal. 79 was doubted—In order to make the enhanced rent stated in a *jamabandi* as settled under the said Regulation, binding upon a tenant, there must be either an assent to that enhancement, or else a compliance with the provisions of the rentlaw with reference to enhancement of rent in force at the time of such enhancement : *Akshoy Kumar Dutt v. Shama Charan*, 16, Cal. 586; *Desilva v. Rajkumar*, 16 W.R. 53.

Where entries in the *Jamabandi* papers began over 70 years before the trial, the presumption was that the person who made them was dead and could not be called, and as they were made in the ordinary course of business by the landlords agents, they were relevant without any corroboration : *Dukha v. W. M. Grant*, 16 C.L.J. 24. See also *Aktowli v. Tarakhnath*, 16 C.L.J. 328, s.c. 17 C.W.N. 774.

Jama-wasil Baki or collection papers are not evidence by themselves. The mere production of such papers is not enough. But, when coupled with other evidence, they often afford a very useful guide to the truth : *Roushan Bibee v. Hurray Kristonath*, 8 Cal. 926 at p. 931.

Taken by themselves, they are not admissible as independent evidence of the amount of rent mentioned therein but a person who has prepared such papers may refresh his memory from the same when giving evidence. *Akhil Chander v. Naya*, 10 Cal. 248. *Jama-wasil-baki* papers can only be used as corroborative evidence. *Ibid*; see also 5 W. R. 243; 7 W.R. 828; 8 W.R. 464; 8 W.R. 280; 10 W.R. 193; 10 W.R. 291; 11 W.R. 165; 10 C.L.R. 545.

Jama-wasil-baki papers are yearly accounts shewing the total rent demandable for the current year, the balance of previous years, the amount collected during the year and the balance due.—See *Field*, 7th edition at p. 132.

Jama-wasil-baki papers filed and attested by *gomosthas* are not conclusive proof of variation of rent unless it can be shewn, not merely that the *jama-wasil-baki* and similar papers shew a varying rate but that the raiyat has paid at a varying rate : *Gopal Mandal*

v. *Nobokristo*, 5 W.R. (Act X) 83. As they are private memoranda made for the Zemindars own use they must be looked upon with suspicion: *Allyat Chinaman v. Juggut Chander*, 5 W.R. 242.

Jama-Wasil-Baki papers :—"I must confess that I have the most serious doubts whether a set of Jama Wasil Baki papers, merely fastened together at the corner by a thread, can be dealt with as a book, or looking at the mode in which such papers are usually prepared, that they can be described as "kept in the regular course of business": *Per Jackson, J.*, in *Bejoy Govind v. Bheekoo Ray*, 10 W.R. 291.

The terms of S. 34 of the Evidence Act do not give jama-wasil papers any weight beyond that of corroborative evidence: *Surnomoyi v. Johur Mohamed*, 10 C.L.R. 545; see also *Roushan Bibee v. Hurray Kristo*, 8 Cal. 926 (931).

In a proceeding under S. 105 of the B. T. Act the landlord produced evidence of jama-wasil-baki papers 70 years old, held they were admissible and their genuineness could be presumed under S. 90: *Nirod Krishna v. Prodyot Kumar*, 45 C.L.J. 129, s. c. 32 I.C. 129: Jama Wasil Baki papers, in the absence of circumstances mentioned in S. 32 of the Evidence Act, such as in the absence of proof that the writers or the makers of the entries therein, at the date of the trial, were dead or could not be procured without unreasonable expense or otherwise, are evidence which in the presence of other substantive evidence may be used as corroborative but cannot be regarded as proving any fact by itself: *Jonab v. Siva Kumari*, 46 C.L.J. 253.

Talab-baki papers :—They are not sufficient under S. 34 of the Evidence Act, to charge a person with liability; they may be evidence under sec. 32 cl. (2), but before they may be admitted under that section the landlord has to show that the person making the statement is dead and the entries were made by him in the ordinary course of business: *Umedali v. Nawab Khaje Habibulla*, 31 C.L.J. 68.

Entries in books of account:—

It would be giving a too limited meaning to S. 34 of the Evidence Act to hold that "books of account regularly kept in the course of business" mean books entered up from day to day or from hour to hour as transactions take place. The time of making the entries may affect the value of them but should not, made from day to day or from hour to hour, make them entirely irrelevant: *The Deputy Commissioner of Bara Banki v. Munshi Ram Pershad*, 4 C.W.N. 141 (P.C.): s.c., 27 Cal. 118. This case overruled the case of *Munchershaw v. New Dhniumsey, S. & W. Co.*, 4 Bom. 576.

Entries in books of account are admissible in evidence, not only for refreshing the witness's memory, but also as corroborative evidence of the story which he tells: *Bhoy Hong Kong v. Ramnath*, 6 C.W.N. 401. Books of account professing to record facts relating only to the particular transaction in question, are less reliable than a book in which the same is recorded in common with other transactions in the ordinary course of business: *Ibid.*

It is essential in every case where reliance is placed upon books of account to establish that they have been regularly kept in the course of business; but it is not sufficient to prove the correctness of the books, the entries themselves have to be proved, unless the necessity for such proof is removed by the admission of the opposite party: *Immambandi v. Haji Mata Suddi*, 15 C.L.J. 621.

S. 34 of the Evidence Act makes the entries relevant in a book of account regularly kept in the course of business. It is not sufficient to prove the correctness of the book. The entries themselves have to be proved in deed; the necessity for such proof is removed by the admission of the opposite party: *Hingu Meath v. Heramba Chandra*, 13 C.L.J. 139.

The absence of entry of payment in an account book is a relevant fact not under S. 34 but under Ss. 9 and 11 of the Evidence Act. *Gangaram v. Lachiram*, 19 C.W.N. 611. Books regularly kept in the course of business can be used not only for the purpose of refreshing the memory of a witness but also as corroborative evidence of the story he tells: *Bhoy Hong v. Ramanath Chetty*, 28 Cal. 774.

Isam-navisi paper.

They are returns submitted by the Police in respect of GHATWALI lands. They are admissible in evidence, merely as corroborative, but not as independent evidence: *Fergusson v. Government*, 9 W.R. 158; *Farquharson v. Dwarakanath and Govt. of India*, 8 B.L.R. 504 (P.C.), s.c. 16 W.R. 29, s.c. 14 M.L.A. 259; *Erskine v. Government*, 8 W.R. 158.

Collection papers.

Collection papers :—are no evidence *per se* and can only be used where they are produced by a person who has collected rent and who merely uses them for the purpose of refreshing his memory; See *Mahomed v. Safarali*, 11 Cal. 407 at p. 409 *Gobinda Chander Chunder v. Aulo Beebee*, 1 W.R. 49; *Allya Chinaman v. Jugut Chander*, 5 W.R. 242; *Kheero Monee v. Beejoy Gobind*, 7 W.R. 533; *Ram Lall v. Tarasundari*, 8 W.R. 280; *Sheikh Newazee v. Lloyd*, 8 W.R. 464; *Beejoy Gobind v. Bheekoo Roy*, 10 W.R. 291 *Moheema Chunder v. Purna Chunder*, 11 W.R. 165; *Belaet Khan v. Rash Behari*, 22 W.R. 549; *Surnomoyi v. Johur Mahomed*, EZ C.L.R. 545. Rent collection papers, which are not proved by persons who made them cannot be treated as independent evidence as to the rate of rent: *Maijuddin v. Agni Kumar*, 71 I.C. 300.

Admissibility of certified copies of Survey measurement chittas etc. :—Certified copies of survey measurement Chittas, field books and maps are admissible in evidence: *Gopeenath Singh v. Anundmoyee Debye*, 8 W.R. 167 see also *Ekowrie v. Heera Lal*, 11 W.R. (P.C.) 2; L.C. 2 B.L.R. (F.B.) 4; *Sham Chand v. Ram Krishto*, 19 W.R. 309.

Chittas :—Produced from the collectorate, when there is nothing to show that they are the record of measurements made by any Government Officer, are not public documents: *Natyanand v. Abdur Raheem*, 7 Cal. 76. But a *chitta* prepared for the purpose of distributing the public revenue in a partition of an estate is a public document and is evidence of the state of affairs then existing and admissible in evidence: 15 C.W.N. 515.

As to admissibility in evidence of Government Chittas, see 24 W.R. 192, 450; 10 W.R. 340; 15 W.R. 444. Certified copies of Chittas and maps relating to partition under Regulation XIX of 1814 are admissible in evidence apart from anything in Sec. 35: 23 C.W.N. 48.

XII

Quinquennial papers.

Quinquennial registers—are admissible in evidence: see *Udaimoni Debya v. Bishnonath*, 7 W.R. 14; *Kashi Chandra v. Nur Chande*, 1849 S. D. A. Decisions, Beng. 113.

Quinquennial papers prepared by the revenue authorities from 1795 to 1799 under the provisions of Regulation XLVIII of 1783 are admissible in evidence. Reliance can be placed upon hand sketches drawn up by the parties on the basis of the information derived from the quinquennial papers and the *Haqiqat Chauhaddi* papers. *Secretary of State v. Wazed Ali Khan Pani*, 34 C.L.J. 141.

See also *Sashi v. Girish*, 20 Cal. 940.

XIII

Haquiquat Papers.

Haquiquat papers being submitted by the Zemindars have no value as evidence as against the tenant: *Hem Chandra v. Brinayah*, 86 I.C. 538.

Haquiquat chonhaddibandi (boundary papers) are to be deemed *prima facie* accurate as between the Government and the Zemindars: *Harodas v. Secretary of State*, 26 C.L.J. 590 (P. C.).

XIV

Kanangoe Papers.

Kanangoe papers are good evidence on questions of pargana rates, standard of measurement and the like, 2 W.R. (Act X) 13; 7 W.R. 533; 8 W.R. 517. Pargana and Kanangoe registers are not kept punctually and are not admissible to prove an omission of an entry therein as to lakhrāj: *Biprodas v. Monorama*, 45 Cal. 574, s. c., 22 C.W.N. 396.

XV

Butwara Papers.

Entries in *Butwara* papers prepared under the Estates Partition Act are admissible in evidence: *Chattranath v. Babar Ali*, 29 C.W.N. 333 ; see also 38 I.C. 491 and A.I.R. 1922 (Pat.) 447. They are evidence of the existence of relationship of landlord and tenant and also as to rent payable in a suit for rent: *Jatindra v. Isof*, 53 I.C. 19.

Butwara Khasra prepared under the Estates Partition Act is not a record within the meaning of sec. 35 of the Evidence Act and is inadmissible, 17 C.W.N. 779, s. c., 17 C.L.J. 462 : see also 25 Cal. 90 and 6 C.L.R. 139. It can be put in under s. 39 to show the history of the land before the creation of the tenancy : 68 I.C. 676. But see 38 I.C. 491; 53 I.C. 19; A.I.R. 1922 (Pat.) 447; and 36 I.C. 513.

A *Butwara khasra* is not a public document within the meaning of s. 35 of the Evidence Act and is not admissible in evidence as such: *Ramsarup v. Ramnarain*, 7 Pat. 85 (Mullick, A.C.J. & Jwala Prasad, J.).

The case of *Nandalal v. Chanurput Das*, 17 C.W.N. 779 followed.

But a *butwara barwarda* prepared under the provisions of Chapter VII of the Estates Partition Act, 1876, by the Deputy Collector in the course of his official duty is admissible as a public document under section 35 and is evidence against the landlord in whose presence it was made. *Ibid.* (*Sri Ano Das v. Jugat Pal Lal*, 38 I.C. 205 referred to).

XVI

Reports and maps under Sec. 145.

As to admissibility of reports and maps referred to in orders under sec. 145 Cr. P.C., see *Dinamoni v. Brojomohini*, 29 Cal. 187 ; s. c., 6 C.W.N. 386 (P. C.).

XVII

Thak and Survey Maps.

It can be presumed as a matter of law that the state of things described in the *thak* and survey maps existed at the time of the Permanent Settlement. The question, what lands were included in the Permanent Settlement is a question of fact and not of law which may or may not be satisfactorily proved by subsequent survey maps. The onus of proving that any particular lands were included in the Permanent Settlement of 1793 is on those who affirm that such was the case, and the burden of proof is not necessarily shifted by the production of the *thak* and survey maps shewing that specific lands are included in a particular estate. The *thak* and survey maps are valuable evidence of the state of things at the time they were made, but it does not follow that they shew conclusively what was the state of things at the time of the Permanent Settlement: *Ibid.* As to preference between Survey and *Thak* maps: See *Maharaja of Cooch Behar v. Raja Mahendra Ranjan*, 34 C.L.J. 465. See also 36 C.L.J. 336 ; 24 C.W.N. 639 s. c., 31 C.L.J. 320

As to value of *thak* map on the question of title and possession, see *Debendra Lal v. Secretary of State*, 31 C.W.N. 473. *Thak* map not showing particular river as Government property if can warrant inference as to non-navigability of river: *Ibid.*

In a suit in which one of the issues was whether certain lands was *mal* or *lakhraj* the *thak* map was admitted as relevant evidence as it was necessary to show in such maps the lands claimed as *lakhraj*: *Rajkumar v. Basanta Kumar*, 7 C.W.N. 612. There is a *prima facie* presumption of accuracy of *Thak* and Survey maps. It may be shown to be incorrect by the admission of the parties or adjudication by a Court or by evidence intrinsic or extrinsic to the maps. *Taramoni v. Gopal*, 65 I.C. 182.

Thak and Survey maps afford important evidence of possession at the time they were made, and as evidence of possession is evidence of title, they afford also valuable evidence of title. In case of disagreement between the *thak* and survey maps, the one that necessarily agrees with the local landmarks is to be followed: *Nawab Bahadur v. Gopinath*, 13 C.L.J. 625. See also 6 C.W.N. 629, 22 Cal. 252 ; 30 Cal. 291 (P. C.) ; 15 C.W.N. 786 ; 7 C.W.N. 849.

Thak and survey maps are not conclusive and may be shewn to be wrong ; but in the

absence of evidence to the contrary they may be judicially received in evidence to the contrary, they may be judicially received in evidence as correct when made : *Jugadindra v. Secretary of State*, 30 Cal. 291 (P. C.).

XVIII

Benamidar.

An action may be maintained by a *benamidar*. A proceeding by or against the *benamidar* is fully binding on the beneficial owner : *Showdhri Gur Narayan v. Sheolal Singh*, 46 Cal. 566. s. c., 23 C.W.N. 521 (P.C.).

As to presumption of *benami* arising from purchase in wife's name : *Sura Lakshmiah Chetty v. Kothandarama*, 29 C.W.N. 1013, s. c., 42 C.L.J. 8 (P. C.).

Where the tenant is a *benamidar* of another person a suit for rent lies against the beneficiary : *Judoonath v. Prasanna Nath*, 9 W.R. 71.

Where a suit is prosecuted by one person for the benefit of another who is the real party in the interest, the latter is bound by the judgment : *Rambehari v. Surendra*, 19 C.L.J. 34.

As to proof of *benami*, 27 C.W.N. 294 ; as to probabilities of *benami*, 28 C.W.N. 131, s. c., 39 C.L.J. 140 ; as to tests of *benami*, 28 C.W.N. 62 and 131.

XIX

Road Cess Return.

Road Cess Return.—See notes under s. 65 heading no. 34 pp. 403, 404. As to probative value of Zemindar's cess return, see 28 C.W.N. 679. Road cess return filed by landlord is admissible against him to prove the relationship of landlord and tenant : *Sadhu Saran v. Ambika Lal*, 68 I.C. 675.

XX

Estoppel.

As to cases on estoppel, see notes at pp. 41 to 42 and notes under sec. 85, heading no. 7 pp. 459 to 466. See *Lodai Molla v. Kali Das Roy*, 8 Cal. 238 ; *Venkata Chetty v. Aiyanna*, 40 Mad. 561 (F.B.).

Denial of landlord's title during continuance of tenancy—Tenant if can plead cessation of liability to pay rent wholly or partially or for a time—Eviction by title paramount as defence against covenant to pay rent. Onus to prove eviction by title paramount on party setting it up : *Jogendra Lal v. Mahesh Chandra*, 32 C.W.N. 559 (Cuming & Mukerji, J.J.).

XXI

Miscellaneous Matters.

The Feudal laws of England are no guide to the principles affecting land tenures in Bengal : *Udai Pratap v. Jagat Mohan*, 6 Pat. 638 (Dawson Miller C.J. and Kutwant Sahay J.).

Nazar or *Selami* paid by a tenant to a landlord for recognition of a non-transferable holding is rent or revenue within the meaning of sec. 2 (1) (a) of the Indian Income Tax Act and, as such, is exempt from income tax : *Nawabzadi Meher Banu v. Secretary of State*, 53 Cal. 34, s. c., 29 C.W.N. 969 (F.B.). (The case of *Birendra Kisore v. Secretary of State*, 48 Cal. 766 over-ruled).

In spite of the Permanent Settlement Regulations income from land in permanently settled estates, subject to exemptions in the Income Tax Act, is liable to income-tax, whether or not the sources were taken into consideration at the time of the Permanent Settlement : *King Emperor v. Raja-Probhat Chandra*, 31 C.W.N. 765 (F.B.).

Fees received from land used for storing purchases of crops do not come within the definition of "agricultural income" in sec. 2 of the Income Tax Act ; nor does *punyaha nazars* paid by tenants of agricultural holdings, nor does *nazars* paid with petitions dealing with questions of succession, settlement and partition : *King Emperor v. Probhat Chandra*, 31 C.W.N. 1047 (Rankin C.J. and Majumdar J.). The case of *Meher Bano v. Secretary of State*, 53 Cal. 34 distinguished.

Nazar paid for recognition of succession, partition, settlement, etc., as distinguished from

that merely paid with petitions dealing with those matters may come within the definition of "agricultural income": *Ibid*.

Where a person cultivates land and pays rent not exceeding Rs. 100 per annum, such a person is a "cultivating raiyat" within the meaning of section 4, Cess Act, irrespective of the character of his holding under the Bengal Tenancy Act; and he is liable to pay cess at half the rate paid by a tenure-holder: *Shaikh Abdul v. Shaikh Taj Ali*, 6 Pat. 13 (Das and Adami, J.J.).

As to counsel's authority to compromise. The general authority of counsel to compromise their client's suit does not extend beyond matters in the suit: *Johor Mull v. Kedarnath*, 55 Cal. 113 (Rankin C.J. and Mitter J.).

The rule of practice in England regarding general authority of counsel to compromise a suit without reference to his client should not be applied in this country particularly to the mufasil: *Tarubala v. Sourendra*, 29 C.W.N. 597 (Walmsley and B. B. Ghose, J.J.).

A counsel while acting in the cause in Court enters into a compromise it is binding upon the party for whom he acts: *Askaran v. E. I. Railway Co.*, 29 C.W.N. 566 (Page J.). See also *Johurmull v. Kedarnath*, 31 C.W.N. 953.

A compromise which contains matter covered by the subject matter if embodied in a decree does not require registration: 24 C.W.N. 328.

Where a *solenama* purports to create a lease of immoveable property it is inadmissible without registration. Such a *solenama* is not exempt as being an order or a decree of the Court from the requirement of registration: *Rajanikanto v. Rajkumari*, 31 C.W.N. 1099 (Rankin, C.J. and Mitter J.). The case of *Hemantakumari v. Midnapur Zemindary Co.*, 46 I.A. 240, s. c., 47 Cal. 485 s. c., 24 C.W.N. 177 referred to.

A tenant having a real right to be in possession, the mere fact that a claim is asserted that the right will subsist for ever does not enable him to prescribe a permanent tenancy as against his landlord, 31 C.W.N. 1099. No tenant of land can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the land. The cases of 28 C.W.N. 840, 857 and 809 followed.

Permanent lease by one co-sharer before partition, if binding on the other co-sharer on partition.

A person to whom a parcel of land has been allotted by a decree for partition of a Civil Court does not take it subject to a permanent lease granted by his former co-owners without his concurrence when land was the joint property of all the co-sharers: *Niranjani Mukherjee v. Saudamini Dasi*, 30 C.W.N. 511, s. c., 43 C.L.J. 333 (F.B.).

The fact that the Municipal and Survey Numbers of a holding as given in a lease do not tally with the boundaries does not affect the validity of the lease where the land demised can be identified as lying within the boundaries. In such cases the mistake in the numbers is mere false description: *Damodar v. Masoodan*, 105 I.C. 172 (Das and Kulwant Sahay J.J.).

The intentional inclusion in a lease of a small item of land situate in a different locality from that in which the bulk of the property demised lies, with the object of obtaining registration of the lease-deed at a particular Registry Office will not by itself render the registration of the deed at that place invalid. *Ibid*. (*Durga Prasad v. Tameswar Prasad* 46 All. 754 followed, and *Biswanath v. Chandra Narain* 48 I.A. 127 (P. C.) s. c., 48 Cal. 509, distinguished.).

A tenancy can be proved by other evidence where the lease evidencing the transaction is inadmissible for want of due registration. A tenancy can be proved by the doctrine of part performance. *Ibid*. (*Ameer Ali v. Aykub Ali*, 41 Cal. 347 s. c., 19 C.L.J. 428 followed).

A sub-lease of agricultural lands under which the sub-lessee is to hold possession of the sub-leased property and by making cultivation and proper management to pay the fixed amount of rent falls within the purview of the B. T. Act. *Ibid*.

The purchaser of a non-transferable occupancy holding is not entitled to deposit rent under sec. 52 of Act VIII of 1869 in order to avoid ejectment of tenant: *Baneswar v. Sheikh Abdul Hassan*, 31 C.W.N. 1016. There is nothing in Act VIII of 1869 which makes the provisions of Civil Procedure Code applicable to sales under that Act: *Ibid*.

Merger :—The law of merger as it existed before the passing of the T. P. Act of 1882 and the Bengal Tenancy Act of 1885 with regard to interests of landlords and tenants was not the

same as exists at the present day under the provisions of the Bengal Tenancy Act : *Parmeshwar Singh v. Musst. Sureba Kuer*, [1925 Pat.] 185.

Marfatdari receipts :—As to meaning of *Marfatdari* receipts.—Whether grant of *marfatdari* receipts creates tenancy : *Kumar Kamakhya Narayan Singh v. Bechu Singh*, [1925 Pat.] 209 (Das and Adami, J.J.).

Verification by son of decree-holder, if sufficient : *Gobind Prasad v. Hriday Thakur*, [1925 Pat.] 235.

S. 78 of the Land Registration Act is no bar to a person recovering rent although the person who should have been registered as the proprietor and through whom he claims, has not been so registered.

S. 78 of the Land Registration Act is inapplicable to the case of an assignee of rent, though the name of the assignor has not been registered under the Act : *Prasanna Kumar De Mahajan v. Nanigopal De*, 42 C.L.J. 134 (Greaves and Chakravarti, J.J.).

The mortgagor is entitled to set off the rent payable to him as against the *zerpeshgi* money at the time of redemption : *Umatus v. Mahendra Narain*, A.I.R. 1927 (Pat.) 285 (Das and Scroope, J.J.).

Mortgagee in possession.—A liability arises on the part of a person to pay rent who has enjoyed the rents and profits, so a mortgagee in possession was held to be the person liable to pay rent in suit by the landlord : *E. Maenaghten v. Bheekaree Singh*, 2 C.L.R. 323.

An *ex-parte* rent decree cannot be wholly set aside at the instance of some only of the defendants; it should be set aside, on sufficient grounds, as against such defendants only : *Kesav Chandra Chowdhury v. Joyfulnessa Bibi*, 32 C.W.N. 507.

Co-sharer,—exclusive possession by, when amounts to ouster—claim for joint possession.

See *Nabadwip Chandra v. Bhagaban Chandra*, 31 C.W.N. 496; *Lakhan Malo v. Gopal Sheikh*, 31 C.W.N. 60; *Bibi Aimana Khatun v. Saburannessa Bibi*, 32 C.W.N. 449.

As to decree against a dead man, 30 C.W.N. 39. Executing Court, if can question validity of decree, 29 C.W.N. 948 (F.B.).

As to setting aside of fraudulent decree, see 29 C.W.N. 51 (notes); 29 C.W.N. 325; 30 C.W.N. 560; 31 C.W.N. 258; 23 C.W.N. 133; 24 C.W.N. 133; 48 Cal. 298; 30 C.W.N. 59. As to meaning of *Kaimi mourashi raiyati*, 46 C.L.J. 78.

As to *mesne* profits, 53 Cal. 992, s. c., 31 C.W.N. 112; 30 C.W.N. 361 (P.C.). *Mesne* profits *pendente lite* beyond the pecuniary limit of Munsif's jurisdiction, 53 Cal. 14, s. c., 42 C.L.J. 49 (F.B.). Limitation for application for *mesne* profits, 5 Pat. 223.

As to non-representation of minor in execution proceedings, 30 C.W.N. 86. Minor, if can avoid a decree arising from guardians's negligence, 48 All. 44. Minor, if bound by contract of sale by guardian, 30 C.W.N. 263.

Putni Sale, omission to specify all putnidars, 53 Cal. 1 (P.C.). Setting aside of putni sale, 46 C.L.J. 51.

Suit for correction of settlement entries, 31 C.W.N. 499, s. c., 44 C.L.J. 467.

As to Shebait's power to transfer right of worship, 30 C.W.N. 389.

Decree against widow, how far binding upon reversioners, 30 C.W.N. 313 (P.C.).

Comparison of thumb impression, 43 C.L.J. 79.

Symbolical possession, effect of, on limitation, 29 C.W.N. 34.

As to Rent decree or money decree, 30 C.W.N. 494.

Rent decree as *res judicata*, 30 C.W.N. 593, s. c., 43 C.L.J. 146.

As to notice to quit, 42 C.L.J. 475.

Interest at *Kabuliyat* rate, 30 C.W.N. 83; 29 C.W.N. 118.

As to adverse possession against property of idol, 24 A.L.J. 351.

As to partial ejectment, 44 C.L.J. 311.

Major Rennels' Maps were not made for revenue purposes, and, being based on Surveys of 1764-1777, cannot be treated as safe guides in determining the boundaries of estates or indicating the existence or actual position of rivers at the time of the Decennial Settlement of 1789 : *Secretary of State for India v. Kalika Prasad Mukerji*, 15 C.L.J. 281 (Mookerjee & Carnduff, J.J.).

APPENDIX XII.

Price Lists of Staple Food Crops under S. 32 of the Bengal Tenancy Act.

- I. References to the pages of the Calcutta Gazette, Eastern Bengal and Assam Gazette and Bihar and Orissa Gazette in which the Price Lists have been published.
 - II. Price Lists of—
 1. West Bengal Districts.
 2. Eastern Bengal Districts.
 3. Behar Districts.
 4. Orissa Districts.
 - III. Illustrations shewing how sums are worked out to find out the increased rent on the ground of prices of staple food crops.
-

References to the Gazette Notifications in which the annual price lists of the staple food crop (rice) were published. (Bengal and East Bengal.)

Year in which the price prevailed.	Number and date of Government Notification.	Date and page number of the Gazette, Part I, in which published.	Remarks.
		Page	
1887	1st August, 1888	1st August, 1888 688	Cal. Gaz.
1888	11th June, 1889	12th June, 1889 503	Ditto
1889	24th June, 1890	25th June, 1890 671	Ditto
1890	25th May, 1891	27th May, 1891 539	Ditto
1891	19th April, 1892	20th April, 1892 429	Ditto
1892	23rd November, 1893	15th November, 1893 491	Ditto
1893	No. 3826 L. R. of 1st August, 1894	1st August, 1894 830	Ditto
1894	„ 4050 L. R. of 24th August, 1895	28th August, 1895 839	Ditto
1895	„ 3789 L. R. of 21st September, 1896	23rd September, 1896 968	Ditto
1896	„ 2407 L. R. of 9th August, 1897	11th August, 1897 1056	Ditto
1897	„ 277 T. R. of 13th June, 1898	22nd June, 1898 620	Ditto
1898	„ 2557 L. R. of 1st August, 1899	2nd August, 1899 1039	Ditto
1899	„ 701 T. R. of 2nd June, 1900	6th June, 1900 584	Ditto
1900	„ 792 T. R. of 24th June, 1901	26th June, 1901 772	Ditto
1901	„ 1435 T. R. of 5th July, 1902	9th July, 1902 977	Ditto
1902	„ 948 T. R. of 9th June, 1903	17th June, 1903 898	Ditto
1903	„ 1030 T. R. of 27th May, 1904	1st June, 1904 831	Ditto
1904	„ 1692 T. R. of 8th July, 1905	12th July, 1905 1225	Ditto
1905	„ 2594 L. R. of 18th August, 1906 (W.B.)	22nd August, 1906 1628	Ditto
	„ 2183 C. of 4th Dec. 1906 (E. B.)	8th December, 1906 994	E. B. Gaz.
1906	„ 666 T. R. of 13th May, 1907 (W. B.)	22nd May, 1907 881	Cal. Gaz.
	„ 7604 C. of 26th June, 1907 (E. B.)	29th June, 1907 633	E. B. Gaz.
1907	„ 1100 T. R. of 13th June, 1908 (W. B.)	17th June, 1908 1113	Cal. Gaz.
	„ 2524 E. of 12th October, 1908 (E. B.)	21st October, 1908 1230	E. B. Gaz.
1908	„ 998 T. R. of 4th June, 1909 (W. B.)	9th June, 1909 798	Cal. Gaz.
	„ 3882 L. R. of 3rd April, 1909 (E. B.)	8th April, 1909 697	E. B. Gaz.
1909	„ 402 T. R. of 12th May, 1910 (W. B.)	18th May, 1910 624	Cal. Gaz.
	„ 1139 A. G. of 2nd December, 1910 (E. B.)	7th December, 1910 1999	E. B. Gaz.
1910	„ 320 T. R. of 2nd May, 1911 (W. B.)	10th May, 1911 693	Cal. Gaz.
	„ 1296 R. of 17th June, 1911 (E. B.)	28th June, 1911 896	E. B. Gaz.
1911	„ 1672 of 2nd May, 1912	8th May, 1912 829	Cal. Gaz.
1912	„ 1463 T. R. of 11th June, 1913	18th June, 1913 881	Cal. Gaz.
1913	„ 4212 L. R. of 14th April, 1914	22nd April, 1914 759	Ditto

Year in which the price prevailed.	Number and date of Government Notification.	Date and page number of the Gazette, Part I, in which published.			Remarks.
				Page	
1914	„ 4245 L. R. of 21st April, 1915	28th April, 1915	...	765	Ditto
1915	„ 4145 L. R. of 28 April, 1916	3rd May, 1916	...	845	Ditto
1916	„ 4087 L. R. of 29th May, 1917	30th May, 1917	...	778	Ditto
1917	„ 3731 L. R. of 22nd April, 1918	24th April, 1918	...	6770	Ditto
1918	„ 5087 L. R. of 19th June, 1919	25th June, 1919	...	101	Ditto
1919	„ 5880 L. R. of 12th July, 1920	14th July, 1920	...	1307	Ditto
1920	„ 2831 L. R. of 11th April, 1921	17th April, 1921	...	683	Ditto
1921	„ 6800 L. R. of 19th July, 1922	26th July, 1922	...	1448	Ditto
1922	„ 5884 L. R. of 1st August, 1923	8th August, 1923	...	1110	Ditto
1923					
1924					
1925	„ 6851 L. R. of 26th June, 1926				
1926	„ 13116 L. R. 15th August, 1927				

Year.	Cal. Gaz. Part I. page.	Date of the Cal. Gaz.	East Bengal and Assam Gaz. Sup. page.	Date of the E. B. Gaz. Sup.	Behar and Orissa Sup. page.	Date of B. and O. Gaz. Sup.	REMARKS.
1912	882	18 June, 1913	.....	.....	Average of the 1st quarter ...		
					2nd		
					3rd .. 186	22 Jan., 1913.	
					4th .. 434	26 March, 1913	
1913	759	22 April, 1914	.....	.....	Average of the 1st quarter 745	9 July, 1913	
					2nd .. 1028	8 Oct., 1913	
					3rd .. 1334	31 Dec., 1913	
					4th .. 330	8 April, 1914	
1914	764	28 April, 1915	.....	.....	Average of the 1st quarter 667	8 July, 1914	
					2nd .. 929	30 Sept., 1914	
					3rd .. 1285	23 Dec., 1914	
					4th .. 343	7 April, 1915	

Year.	Cal. Gaz., Part I. Page.	Date of the Calcutta Gazette.	Date of the E. B. Gazette Sup.	Bihar and Orissa Gazette, Sup. Page.	Date of B. & O. Gazette, Sup.	REMARKS.
1915	845	3 May, 1916		363	5 April, 1916	
1916	778	30 May, 1917		339	4 April, 1917	
1917	677	24 April, 1918		383	10 April, 1918	
1918	1010	25 June, 1919		383	9 April, 1919	
1919	1307	14 July, 1920		377	24 March, 1920	
1920	Sup. 738	20 April, 1921		727	30 June, 1920	
1921		19 July, 1922			11 Jan., 1923	
1922		1 August, 1923			12 May, 1923	
1923	1222	25 June, 1924		638	14 May, 1924	
1924				594	6 May, 1925	

I. BENGAL.

I. BURDWAN DIVISION.

The prices are stated in seers and chattacks.

District		Local areas.		Mart at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892
Burdwan		1 Sadar Subdivision		Burdwan (1)		Rice ...	22-11 $\frac{2}{3}$ $\frac{5}{6}$	20-13	15-7 $\frac{1}{2}$	15-13 $\frac{1}{4}$	15-10 $\frac{7}{12}$	12-3 $\frac{1}{2}$
		2 Assansol		Ranigunj		" ...	23-6 $\frac{1}{2}$	19-10-2	16-0 $\frac{5}{12}$	17-3 $\frac{3}{4}$	16-13 $\frac{1}{4}$	12-11
		3 Katwa		Katwa		" ...	21-11 $\frac{2}{3}$ $\frac{5}{6}$	20-6-9	15-7 $\frac{1}{2}$	15-11 $\frac{5}{6}$	16-2 $\frac{1}{2}$	12-15 $\frac{5}{6}$
		4 Kalna		Kalna		" ...	21-2 $\frac{1}{4}$ $\frac{9}{14}$	18-13-75	14-4 $\frac{1}{6}$	14-10 $\frac{2}{3}$	14-13 $\frac{1}{2}$	11-8 $\frac{1}{2}$
	1898	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	12-4 $\frac{1}{2}$ $\frac{1}{4}$	14-11 $\frac{1}{12}$	16- $\frac{1}{4}$	12-10 $\frac{1}{4}$	9-7 $\frac{1}{12}$	13-8	15-13 $\frac{2}{3}$	13-0 $\frac{1}{6}$	11-11	11-1 $\frac{1}{4}$	11-11 $\frac{2}{3}$	13-0 $\frac{5}{6}$
2	13-2 $\frac{7}{12}$	15-1 $\frac{1}{2}$	18-5 $\frac{1}{3}$	13-15 $\frac{5}{6}$	9-14 $\frac{1}{3}$	14-13 $\frac{2}{3}$	16-5	12-15 $\frac{1}{3}$	12-1 $\frac{1}{2}$	12-8 $\frac{2}{3}$	12-1	13-11 $\frac{1}{3}$
3	12-10 $\frac{1}{6}$	14-13 $\frac{2}{3}$	17-2	13-3 $\frac{1}{12}$	10-0 $\frac{1}{3}$	14-8	16-15 $\frac{1}{12}$	13-11 $\frac{5}{12}$	12-2 $\frac{1}{12}$	12-9 $\frac{1}{4}$	12-10 $\frac{2}{3}$	13-1 $\frac{1}{3}$
4	11-3	12-15 $\frac{1}{6}$	15-1 $\frac{1}{6}$	11-12 $\frac{3}{4}$	9-7 $\frac{1}{12}$	12-14 $\frac{1}{12}$	14-3 $\frac{2}{3}$	12-4	10-8 $\frac{1}{12}$	10-14 $\frac{1}{2}$	11-7 $\frac{7}{12}$	12-1 $\frac{1}{12}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
1	13-5 $\frac{1}{6}$	9-3	7-10 $\frac{1}{4}$	7-13 $\frac{1}{4}$	9-10	11-4	11-14	9-12	9-2	8-12	7-6	7-8
2	14-3 $\frac{2}{3}$	9-12	7-15 $\frac{1}{2}$	7-4 $\frac{1}{2}$	9-4	11-6	11-1	10-1	9-8	8-10	7-15	8-7
3	13-12 $\frac{1}{6}$ $\frac{3}{4}$	9-10 $\frac{1}{2}$	7-13 $\frac{1}{4}$	7-4	10-9	12-13	12-11	10-5	8-13	8-5	7-7	7-14
4	11-9 $\frac{1}{2}$ $\frac{3}{4}$	8-4 $\frac{1}{4}$	7-2 $\frac{1}{4}$	6-15 $\frac{3}{4}$	9-7	10-15	11-3	9-6	7-10	7-8	7-3	7-11
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
1	9-9	10-8	5-6	5-2	5-11	6-10	7-11	6-13	5-15	5-10		
2	11-1	10-2	5-9	5-13	5-11	6-15	8-8	7-5	6-9	5-15		
3	9-15	10-11	6-0	5-6	6-2	6-15	8-0	7-1	6-3	5-10		
4	9-9	9-10	5-4	5-1	5-13	6-2	7-3	6-4	5-7	5-2		

(1) From Burdwan Natungunj

BURDWAN DIVISION—contd.

District.		Local areas,		Mart at which prices were taken.		Staple food Crops.		1887	1888	1889	1890	1891	1892
Birbhum ...		1. Sadar Sub. Dvn.		Suri ...		Rice ...		23-2 $\frac{5}{4}$	19-0-5	15-0 $\frac{1}{3}$	17-2 $\frac{1}{6}$	16-10	12-14 $\frac{1}{3}$
		2. Rampur Hat ..		Rampurhat ...		" ...		22-14 $\frac{1}{8}$	19-3-8	14-3 $\frac{3}{8}$	16-9 $\frac{1}{8}$	16-6 $\frac{7}{8}$	12-9 $\frac{5}{12}$
		3. Sadar ..		Bankura ...		" ...		22-2 $\frac{1}{10}$	19-2	16-11 $\frac{1}{2}$	17-14 $\frac{1}{6}$	17-7 $\frac{5}{8}$	12-13 $\frac{1}{2}$
Bankura ...		4. Vishnupur ..		Vishnupur (1) ...		" ...		25-3 $\frac{1}{2}$	22-13-75	18-0 $\frac{5}{8}$ (a)	18-7 $\frac{2}{3}$	18-0	13-7 $\frac{2}{3}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	
1	13-12 $\frac{1}{3}$	15-3 $\frac{5}{8}$	17-13 $\frac{1}{2}$	13-13	9-7 $\frac{1}{2}$	14-4	16-13	12-10	11-12	12-14 $\frac{1}{3}$	13- $\frac{1}{2}$	13-10	
2	13-4 $\frac{1}{2}$	14-8 $\frac{1}{3}$	17-8 $\frac{1}{2}$	13-14 $\frac{1}{2}$	9-15	14-8 $\frac{2}{3}$	16-10	13-9	12-6 $\frac{6}{12}$	12-15	12-15	14-7 $\frac{1}{2}$	
3	12-12 $\frac{1}{4}$	16-1 $\frac{1}{12}$	19-7 $\frac{3}{4}$	15-14	11-6	16-6 $\frac{1}{2}$	17-6 $\frac{2}{3}$	13-12 $\frac{5}{6}$	12-5 $\frac{1}{2}$	13-11 $\frac{1}{2}$	12-13 $\frac{1}{12}$	14-5	
4	13-0 $\frac{5}{8}$	17-3 $\frac{1}{4}$	18-14 $\frac{1}{4}$	16-7 $\frac{1}{4}$	11-8	old 14-11 new 17-0(b)	17 1 $\frac{1}{3}$	13-1 $\frac{1}{6}$	11-13 $\frac{1}{3}$	12-10 $\frac{2}{3}$	12-8 $\frac{2}{3}$	14-15 $\frac{1}{3}$	
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	
1	14-0	9-1	7-8 $\frac{3}{4}$	7-5	9-11	12-2	11-14	9-11	8-5	8-4	7-11	8-4	
2	14-4 $\frac{5}{8}$	9-7 $\frac{1}{4}$	8-12 $\frac{1}{2}$	7-14	9-4	12-13	12-1	10-8	8-8	8-6	7-8	8-9	
3	14-4 $\frac{5}{8}$	10-6 $\frac{1}{2}$	7-14 $\frac{3}{4}$	7-14 $\frac{3}{4}$	10-6	12-15	12-7	10-10	8-9	8-15	7-10	8-5	
4	14-11 $\frac{1}{3}$	10-12 $\frac{1}{4}$	8-3 $\frac{1}{2}$	7-9	10-4	12-1	12-11	11-1	9-5	9-4	7-15	8-0	
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	
1	11-8	1-11	5-14	6-1	6-1	6-10	8-0	7-2	6-4	5-9			
2	11-0	12-0	5-11	6-0	6-2	6-14	7-15	7-2	6-15	6-2			
3	11-3	10-6	5-12	5-13	6-0	6-12	8-4	7-13	6-15	6-3			
4	11-1	10-15	6-2	5-12	6-6	6-14	8-9	7-2	6-5	5-6			

(a) Average of price of new rice during fourth quarter.

(b) Average for one quarter.

(1) From 1918 'Visnupur'.

(136)

BENGAL TENANCY ACT.

[App. XII.]

District.	Local areas.			Marts at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892
Midnapur...	1. Sadar Sub. Dvn.			Midnapure (1)		Rice ..	24-1 $\frac{5}{8}$	22-12	16-13 $\frac{2}{3}$	17-6 $\frac{1}{8}$	17-5 $\frac{7}{12}$	12-14 $\frac{1}{12}$
	2. Ghatal ..			Ghatal (2) ...		" ..	23-5	21-11-8	16-9 $\frac{1}{4}$	16-1 $\frac{5}{8}$	17-3 $\frac{1}{12}$	13-3
	3. Tamluk ..			Tamluk (3) ...		" ..	21-0 $\frac{7}{8}$	20-12	14-2 $\frac{1}{4}$ (a)	15-4 $\frac{2}{3}$	16-3	12-3 $\frac{2}{3}$
	4. Contai ..			Contai (4) ...		" ..	25-3 $\frac{1}{3}$	24-3-3	17-3 $\frac{3}{4}$	19-8 $\frac{1}{2}$	18 9 $\frac{1}{2}$	13-14 $\frac{2}{3}$
	5. Jhargram ..			Jhargram (5) ..								
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	12-10 $\frac{2}{3}$	14-12 $\frac{1}{2}$	18-10 $\frac{1}{2}$	15-7	10-5 $\frac{5}{8}$	old 13-5 $\frac{1}{3}$ (b)	16-10 $\frac{2}{3}$	12-12 $\frac{2}{3}$	11-13 $\frac{1}{2}$	13-1 $\frac{2}{3}$	12-13 $\frac{5}{6}$	15-4 $\frac{2}{3}$
2	12-12 $\frac{1}{2}$	14-8 $\frac{1}{2}$	16-15 $\frac{5}{12}$	14-7 $\frac{1}{12}$	11-4 (b)	new 18-0	16-7 $\frac{1}{12}$	13-7 $\frac{7}{8}$	11-8 $\frac{1}{3}$	12-12 $\frac{1}{12}$	11-14	14-2 $\frac{2}{3}$
3	11-7 $\frac{1}{3}$	13 10 $\frac{1}{6}$	16-1 $\frac{1}{3}$	13-12 $\frac{2}{3}$	10-13 $\frac{1}{12}$	14-2 $\frac{1}{12}$	14-4 $\frac{5}{8}$	11-6 $\frac{2}{3}$	10-6 $\frac{5}{6}$	11-11 $\frac{1}{4}$	11-9	12-14 $\frac{2}{3}$
4	14-2 $\frac{2}{3}$	16-11 $\frac{1}{2}$	21-13 $\frac{5}{8}$	18-8	9-12 $\frac{5}{12}$	12-9 $\frac{5}{8}$	17-5 $\frac{1}{3}$	13-0	11-9 $\frac{1}{3}$	13-6 $\frac{2}{3}$	13-14 $\frac{2}{3}$	17-4
					11-6 $\frac{2}{3}$	14-14 $\frac{1}{3}$						
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
1	14-7 $\frac{1}{4}$	9-11 $\frac{3}{4}$	8-5 $\frac{1}{2}$	7-9 $\frac{1}{4}$	10-9	12-13	12-5	10-9	9-4	8-4	8-3	8-9
2	13-6 $\frac{2}{3}$	9-12	8-6 $\frac{3}{4}$	7-13 $\frac{3}{4}$	9-10	12-0	11-10	9-12	8-12	8-11	8-0	8-3
3	13-4	9-4 $\frac{1}{4}$	7-11 $\frac{1}{4}$	6-15 $\frac{3}{4}$	8-14	11-1	10-1	8-7	7-14	7-13	7-13	8-6
4	16-9 $\frac{1}{3}$	10-5 $\frac{1}{4}$	8-11	8-15 $\frac{1}{2}$	12-8	14-13	13-3	9-14	8-14	8-14	9-0	9-8
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
1	10-13	12-4	6-1	5-9	6-3	7-3	8-7	7-9	6-13	6-7		
2	10-4	11-6	5-14	5-7	6-7	6-13	7-10	6-15	6-4	5-11		
3	10-6	10-13	6-3	5-6	6-1	6-6	7-1	6-14	6-4	5-15		
4	12-9	12-13	6-14	6-2	6-8	8-2	9-8	9-0	6-14	5-12		
5	...	...	...	...	...	...	...	...	7-3	6-10		

(a) Average for price of new rice for one quarter. (b) Average for one quarter. (1) Colonel Gola & School Bazar, Town Midnapur from 1915.

(2) Ghatal Municipal Market from 1915. (3) Tamluk Bazar from 1915. (4) Kantonala Bazar Town Contai from 1915. (5) Jhargram from 1925.

BURDWAN DIVISION—contd.

District		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Hooghly		1. Sadar Sub. Dvn.		Hooghly		Rice	17-3	16- 0-1	12-9 $\frac{1}{2}$	13-0 $\frac{1}{2}$	13-5 $\frac{5}{8}$	10-9 $\frac{3}{4}$
		2. Serampore „		Baidyabati † (1)		„	19-1 $\frac{7}{8}$	17-12-8	13-8 $\frac{1}{4}$	14-5 $\frac{1}{2}$	14-6 $\frac{3}{4}$	11-6 $\frac{2}{3}$
		3. Arambagh „		Arambagh * ...		„	23-2 $\frac{1}{2}$	21-68	16-6 $\frac{3}{4}$	16-11 $\frac{2}{3}$	17-2 $\frac{1}{2}$	13-1 $\frac{1}{2}$
		4. Howrah „		Howrah † (2) ...		„	19-7 $\frac{1}{2}$	17-4-7	12-14 $\frac{3}{4}$	14-5 $\frac{2}{3}$	14-12 $\frac{1}{3}$	10-14 $\frac{1}{2}$
		5. Ulubaria „		Ulubaria		„	20-12 $\frac{2}{3}$	19-6-7	13-11 $\frac{1}{3}$	14-9 $\frac{1}{3}$	14-11 $\frac{1}{3}$	11-5 $\frac{1}{3}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	10-4 $\frac{1}{8}$	11-14 $\frac{3}{8}$	13-12 $\frac{1}{3}$	10-15 $\frac{5}{12}$	8- $\times$ 1 $\frac{1}{2}$	11-11 $\frac{1}{2}$	13-0 $\frac{1}{2}$	10-15 $\frac{1}{4}$	9-12 $\frac{1}{6}$	10-9 $\frac{1}{4}$	10-10 $\frac{5}{12}$	11-12 $\frac{5}{6}$
2	10-12 $\frac{1}{2}$	12-3 $\frac{7}{12}$	14-5 $\frac{1}{3}$	12-9 $\frac{1}{3}$	9-1 $\frac{5}{12}$	11-11 $\frac{1}{6}$	13-10 $\frac{3}{4}$	10-14 $\frac{3}{4}$	10- $\frac{3}{4}$	10-7 $\frac{1}{2}$	11-6 $\frac{7}{12}$	12-4 $\frac{1}{6}$
3	11-15 $\frac{1}{2}$	14-13 $\frac{5}{8}$	17-6 $\frac{1}{2}$	14-3 $\frac{5}{8}$	10-3 $\frac{2}{3}$	13-12 $\frac{2}{3}$	16-7	13-8	11-14 $\frac{7}{12}$	12-0 $\frac{1}{4}$	12-0 $\frac{1}{2}$	14-1 $\frac{2}{3}$
4	10-12 $\frac{3}{4}$	12-1 $\frac{3}{4}$	15-7 $\frac{2}{3}$	13-0 $\frac{1}{2}$	9-4 $\frac{2}{3}$	11-15 $\frac{5}{12}$	12-15 $\frac{1}{2}$	11-11 $\frac{7}{12}$	9-12 $\frac{7}{12}$	11-2 $\frac{1}{2}$	11-2	12-3 $\frac{5}{12}$
5	10-12 $\frac{5}{8}$	11-3	14-8 $\frac{2}{3}$	13-12	9-4 $\frac{2}{3}$	12-5 $\frac{1}{3}$	14-8	11-8 $\frac{1}{3}$	9-8	10-12	11-1 $\frac{1}{3}$	12-10
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
1	11-15 $\frac{1}{8}$	8-0 $\frac{3}{4}$	7-1	7-0 $\frac{1}{2}$	8-10	10-6	10-9	8-9	7-8	7-6	6-12	7-6
2	11-13 $\frac{1}{4}$	7-15 $\frac{1}{2}$	6-13 $\frac{2}{3}$	6-12 $\frac{1}{2}$	8-7	10-2	10-2	8-13	7-7	7-3	6-8	6-7
3	13-13 $\frac{3}{4}$	9-13 $\frac{1}{2}$	8-2 $\frac{2}{3}$	7-10 $\frac{1}{2}$	9-9	11-5	12-0	10-1	9-4	9-5	8-3	7-14
4	12-3 $\frac{1}{3}$	8-5 $\frac{1}{2}$	7-9 $\frac{1}{2}$	7-4 $\frac{1}{2}$	8-9	10-6	9-4	8-5	7-9	7-5	6-13	7-1
5	12-6	8-4	7-15 $\frac{1}{2}$	7-3	9-4	11-11	11-0	9-7	7-12	7-9	7-2	7-5
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
1	8-14	9-0	5-4	4-11	5-4	5-11	6-12	6-1	5-8	5-4		
2	7-9	8-14	5-12	5-2	5-4	5-10	6-7	6-4	5-10	5-4		
3	10-1	11-2	6-4	5-8	5-15	6-15	8-3	7-5	6-2	5-7		
4	8-3	8-14	5-7	5-9	5-7	5-8	6-9	6-5	6-8	5-12		
5	8-5	9-2	5-8	4-14	5-13	6-6	7-5	7-0	5-14	5-8		

† Before 1920 read "Bhadreswar" for "Baidyabati."

(1) For 1915 read "Serampore" for "Baidyabati."

* Formerly "Jahanabad."

† Formerly. "Mohiari."

(2) From 1915 read "Ramkrishnapur" for "Howrah."

2. PRESIDENCY DIVISION.

District.		Local areas		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
24-Parganas		1. Sadar Sub. Dvn. 2. Barasat, Dum- Dum and Barrack- pur sub-divisions.		Chelta Hat ...		Rice Amon	18-6 $\frac{3}{4}$	16-12-7	12-9 $\frac{7}{8}$	13-15 $\frac{1}{2}$	14-16 $\frac{1}{2}$	10-7 $\frac{3}{4}$	
				Barasat ...		" Aus	18-12	18-10	14-2 $\frac{2}{3}$	13-10 $\frac{1}{3}$	14-3 $\frac{1}{2}$	11-0	
						" Amon	18-15 $\frac{1}{2}$	17-7-7	14-2 $\frac{2}{3}$	13-10 $\frac{1}{3}$	14-3 $\frac{1}{2}$	10-12 $\frac{1}{6}$	
				2 (b) Bistopore		" Aus	1-94	14-6	...	...	...		
		1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	10-10 $\frac{1}{3}$	11-6 $\frac{5}{8}$	14-2 $\frac{2}{3}$	11-5	8-9 $\frac{1}{6}$	11-4 $\frac{5}{8}$	13-4 $\frac{11}{12}$	11-5 $\frac{11}{12}$	9-10 $\frac{1}{3}$	10-11	11-12 $\frac{5}{8}$	11-15 $\frac{7}{8}$	
2	10-13	12-9 $\frac{2}{3}$	15-2 $\frac{5}{8}$	10-6 $\frac{2}{3}$	9-0 $\frac{1}{6}$	12-3 $\frac{1}{3}$	15-4 $\frac{5}{8}$	11-9 $\frac{1}{2}$	9-10	11-5 $\frac{1}{3}$	10-14 $\frac{2}{3}$	10-14 $\frac{2}{3}$	
2 (b)	10-12 $\frac{1}{6}$	...	...	...	...	...	...	13-15 $\frac{1}{3}$ x	...	...	...	...	
		1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
1	11-2 $\frac{1}{4}$	8-13	7-14 $\frac{1}{4}$	7-7 $\frac{1}{4}$	8-12	10-7	9-4	8-8	7-5	7-6	6-13	7-0	
2	11-3 $\frac{1}{8}$	7-11 $\frac{3}{4}$	6-12	6-8 $\frac{3}{4}$	7-12	10-12	10-0	8-7	7-9	7-15	7-9	7-12	
2 (b)	...	...	...	7-2 $\frac{3}{4}$ (a)	7-13	...	...	...	...	...	...	...	
		1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
1	8-11	9-5	5-4	5-2	5-8	5-9	6-3	6-9	6-0	5-14			
2	8-10	9-13	5-10	5-1	5-12	5-10	7-5	6-10	5-10	5-2			
		...	...	...	...	...	...	...	...	...			

* 1901 (for Barrackpur)

(a) For mart at Bishnupur.

(1) From 1915 Read "Barasat and Barrackpur Sub-divisions."

PRESIDENCY DIVISION—contd.

(140)

District.	Local areas.		Marts at which prices were taken.		Staple food crop.		1887	1888	1889	1890	1891	1892
24- Parganas	3. Diamond Harbour sub-division ...		Mograhath ...		Rice ...		21-3 $\frac{1}{2}$ No sale of Aus	19-3 $\frac{7}{8}$	14-5 $\frac{5}{8}$	16-5 $\frac{1}{2}$	14-11 $\frac{5}{8}$	11-6 $\frac{1}{4}$
	4. Basirhat „ ...		Baduria Baron (1)		„ ...		20-0 $\frac{1}{8}$ No sale of Aus.	19-2 $\frac{9}{8}$	14-4	11-6 $\frac{1}{2}$	15-14 $\frac{1}{2}$	11-7 $\frac{5}{8}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
3	11-14 $\frac{5}{8}$	11-13 Aman	15-14 $\frac{1}{4}$	12-12 $\frac{3}{4}$	9-13 $\frac{1}{4}$	12-10 $\frac{1}{2}$	14-8 $\frac{1}{2}$	13-4 $\frac{7}{8}$	10-11 $\frac{1}{2}$	11-15 $\frac{1}{4}$	11-15 $\frac{7}{8}$	13-5 $\frac{1}{8}$
4	11-3 $\frac{1}{4}$	13-4 $\frac{1}{4}$ Aus 13-5(w)	18-0 $\frac{3}{4}$	11-13 $\frac{5}{8}$	9-9 $\frac{7}{8}$	13-15 $\frac{5}{8}$	17-11 $\frac{5}{8}$	13-10 $\frac{3}{8}$	10-5 $\frac{3}{4}$	12-1 $\frac{1}{2}$	12-12 $\frac{1}{2}$	13-8 $\frac{3}{8}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
3	12-12 $\frac{3}{8}$	9-6 $\frac{3}{4}$	8-3 $\frac{1}{4}$	7-15 $\frac{3}{4}$	9-14	13-4	11-5	9-2	8-9	8-13	8-6	8-6
4	13-4 $\frac{1}{4}$	8-6 $\frac{3}{4}$	7-6	7-8 $\frac{3}{4}$	10-5	11-12	10-14	8-13	8-0	8-2	7-11	7-14
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
3	10-1	10-15	6-2	5-6	6-4	6-7	7-8	7-8	5-15	5-6		
4	9-1	11-13	6-3	5-2	6-7	6-11	7-12	6-13	5-11	5-8		

(w) Average for one quarter.

(1) From 1918 Baduria.

BENGAL TENANT ACT.

[App. XII]

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Jessore ...		1. Sadar Sub-Dvn.		Jessore ...		Rice ...	(op) 17-13 $\frac{1}{2}$ 22-8 $\frac{1}{8}$ (op)	Amon. 19-1-8 19-2-9 Aus	13-12 $\frac{7}{12}$ 14-10	13-2 $\frac{1}{6}$ (op) 13-14 $\frac{1}{3}$ (mn) 13-7 (op)	15-8 $\frac{5}{8}$ 15-11 (op) 16-2 $\frac{3}{8}$	12-11 $\frac{2}{3}$ (y) 12-6 (y)	
		2. Narail ..		Narail (1) ...		Do. ...	24-1 $\frac{1}{8}$ $\frac{2}{3}$ $\frac{7}{2}$ 29-6 $\frac{1}{4}$	Amon. 22-0-9 21-2 Aus,	14-9 $\frac{7}{12}$ 13-0 $\frac{1}{3}$	16-1 $\frac{2}{3}$ (op) 13-12 (op)	15-10 $\frac{2}{3}$ 16-8 $\frac{1}{2}$	13-2 $\frac{1}{2}$ 12-8 $\frac{1}{4}$	
		1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	{	11-13 $\frac{1}{3}$	11-12 $\frac{1}{12}$	Amon 16-9 $\frac{1}{2}$ Aus.	12-3 $\frac{5}{8}$	9-14 $\frac{1}{6}$ (y)	12-9 $\frac{1}{3}$	15-9 $\frac{1}{12}$	13-12 $\frac{2}{3}$	10-14 $\frac{1}{3}$	11-12 $\frac{5}{12}$	12-12 $\frac{2}{3}$	15-0 $\frac{1}{3}$
2		{	11-3 $\frac{1}{6}$ 11-12 $\frac{1}{4}$	13-9 $\frac{3}{4}$ 11-12 (y) 18-4 $\frac{2}{3}$ (w)	16-14 $\frac{8}{9}$ (y) { 19-6 $\frac{1}{12}$	11-4 $\frac{8}{9}$ 12-4 $\frac{1}{6}$	10-13(x) { 10-14 $\frac{2}{3}$ 12-5(w)	14-11 (y) 14-9 $\frac{7}{12}$	16-5 $\frac{3}{4}$ (y) 18-10 $\frac{7}{12}$	14-1 $\frac{1}{3}$ (x) { 14-4 $\frac{1}{3}$ $\frac{7}{4}$ 13-1(x) }	11-5 $\frac{3}{4}$ 11-0 $\frac{8}{9}$ (y) 11-8 $\frac{1}{3}$ (x)	12-0 $\frac{1}{3}$ (w) 11-9 $\frac{5}{8}$	13-15 $\frac{1}{4}$ 14-13 $\frac{7}{12}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	
1	{	12-11 $\frac{1}{3}$	8-3	7-7 $\frac{3}{4}$	8-3 $\frac{1}{2}$	10-5	12-9	12-4	9-10	7-15	8-1	7-13	8-6
2		{		14-2 $\frac{2}{3}$ 12-9 $\frac{5}{8}$	7-12	7-4	8-1 $\frac{1}{2}$	10-8	11-12	11-12	9-3	7-9	7-15	7-10	7-13
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	
1	9-12	11-13	6-0	5-12	7-0	7-2	7-9	7-6	6-1	6-0			
2	10-1	12-11	6-4	5-11	8-1	7-8	8-7	7-10	5-6	5-5			

(mn) Average for the first and the second quarter. (op) Average for the third and the fourth quarter. (w) Average for one quarter.

(n) Average for two quarters.

(y) Average for three quarters.

(1) From 1915 Rugganje.

PRESIDENCY DIVISION—contd.

(142)

BENGAL TENANCY ACT.

[App. XII.]

District.	Local areas.			Marts at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892
Jessore— contd.	3. Magura Sub. Dvn. 4. Jhenida ...			Magura ... Jhenida ...		Rice ... Do. ...	23-9 $\frac{5}{8}$ $\frac{9}{8}$	Amon. 21-8-9	13-14 $\frac{5}{24}$	13-5 (op) 14-7 $\frac{1}{2}$ (mn)	15-3 $\frac{5}{8}$ 16-3	13-6 $\frac{1}{2}$
							27-3 $\frac{2}{5}$	20-1-8 Aus	12-4 $\frac{1}{2}$ (op)	13-9 (op) 15-0 (op)	13-9 $\frac{3}{4}$ (op) 13-6 $\frac{2}{5}$	
							22-11 $\frac{7}{8}$	Amon. 20-9-7	14-1 $\frac{2}{3}$	13-9 $\frac{7}{12}$ (mn)	15-13 $\frac{1}{3}$	
							24-3	19-12-8 Aus	14-12 $\frac{7}{9}$	12-12 (op)	15-4	14-3 $\frac{1}{3}$ (op)
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
3	11-6 $\frac{5}{12}$	11-9 $\frac{1}{3}$	Amon. 17-15 $\frac{1}{6}$	12-0 $\frac{1}{2}$	9-11 $\frac{1}{6}$	14-0 $\frac{1}{2}$	17-3 $\frac{5}{6}$	14-12 $\frac{2}{3}$	11-13 $\frac{7}{12}$ (y)	12-1	13-13 $\frac{1}{3}$	14-13 $\frac{2}{3}$
	10-6 $\frac{1}{3}$ (y)	12-12 (w)	Aus. 17-2 (x)	11-0 (w)		15-10 $\frac{2}{3}$ (w)	17-13 (x)		11-13 $\frac{1}{3}$ (y)	12-4		
4	10-14 $\frac{1}{3}$	12-14 $\frac{1}{12}$	17-10 $\frac{5}{8}$	11-15 $\frac{1}{12}$		13-4	16 8 13-3 $\frac{5}{12}$		13-15 $\frac{1}{6}$ 15 2 $\frac{2}{3}$		13-15 $\frac{1}{3}$	14-1 $\frac{1}{3}$
	13-3 $\frac{1}{8}$ (w)								12-15 $\frac{1}{6}$			
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
3	12-4 (w)	7-7	7-5 $\frac{1}{2}$	8-9 $\frac{1}{2}$	11-2	11-10	11-13	10-8	7-7	7-13	7-8	7-12
4	12-9 $\frac{2}{3}$	7-15 $\frac{3}{4}$	7-5 $\frac{1}{2}$	8-2 $\frac{1}{2}$	13-3	12 0	12-0	11-0	7-14	7-13	7-7	8-0
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
3	9-14	12-8	6-9	5-9	7-12	7-11	7-14	7- 4	5-6	5-3		
4	9-13	12-13	7-0	5-13	7-8	7-5	7-15	17-15	5-15	5-10		

(mn) Average for the first and the second quarter. (op) Average for the third and second quarter. Should w be inserted here Average for one quarter

(x) Average for two quarters. (y) Average for three quarters.

District.		Local areas.		Mart at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Jessore <i>contd.</i>		5. Bongong ...		Bongong ...		Rice {	20-12 $\frac{3}{8}$	Amon. 19-10-1	13-1 $\frac{1}{2}$	12-14 $\frac{5}{8}$	14-0 $\frac{7}{8}$	10-13 $\frac{3}{4}$
Khulna ...		1. Sadar Subdivision		Khulna (1) ...			25-24 $\frac{1}{10}$	Aus. 22-4-6	16-5 $\frac{1}{8}$	14-13 $\frac{1}{8}$	16-1 $\frac{5}{8}$	13-0 $\frac{1}{4}$
		2. Katwa ..		Satkhira (2) ...			21-34 $\frac{9}{10}$	20-14-6	14-13 $\frac{1}{2}$	12-15 $\frac{1}{4}$	14-12 $\frac{1}{2}$	12-11 $\frac{1}{4}$
						20-12 $\frac{3}{8}$	19-18	12-15 $\frac{1}{8}$				
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
5 {			Amon									
			Aus.									
	9-12 $\frac{1}{4}$	11-9 $\frac{1}{2}$	16-5 $\frac{1}{2}$	10-7 $\frac{3}{4}$	8-9	11-14 $\frac{5}{8}$	13-3 $\frac{1}{4}$	13-5 (w)	...	12-4 $\frac{1}{2}$	13-2 $\frac{1}{2}$	13-11 $\frac{2}{3}$
	12-2 $\frac{1}{6}$	14-11	18-8 $\frac{1}{2}$	13-4 $\frac{5}{8}$	10-9 $\frac{7}{8}$	14-10 $\frac{1}{3}$	17-9 $\frac{1}{2}$	14-5 $\frac{5}{8}$	12-0 $\frac{1}{2}$	12-5(x)	13-13 $\frac{1}{2}$	15-4 $\frac{2}{3}$
1	11-6 $\frac{5}{8}$	12-11 $\frac{5}{8}$	18-4 $\frac{1}{8}$	12-4	10-0 $\frac{1}{2}$	15-0	18-12	14-1 $\frac{3}{4}$	11-3	12-3	13-13 $\frac{1}{2}$	15-4 $\frac{2}{3}$
2	10-12 $\frac{1}{4}$	12-6 $\frac{2}{3}$	16-2 $\frac{1}{2}$	10-11 $\frac{1}{4}$	9-4 $\frac{2}{3}$	14-4 $\frac{5}{8}$	15-4	12-14	10-2	10-13 $\frac{1}{3}$	12-1 $\frac{1}{3}$	12-1 $\frac{1}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
5	13-5 $\frac{1}{2}$	8-7	7-1 $\frac{3}{4}$	7-8 $\frac{1}{4}$	9-7	11-11	11-3	8-11	7-13	8-1	7-6	7-15
1	13-4 $\frac{1}{2}$	7-6 $\frac{1}{4}$	7-8	8-5 $\frac{1}{4}$	10-3	10-15	12-6	10-3	7-15	7-10	7-9	8-5
2	12-4 $\frac{1}{2}$	7-12	7-2 $\frac{2}{4}$	7-8	9-12	9-10	10-9	8-11	7-6	7-9	6-13	7-9
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
5	10-1	12-2	6-4	5-6	6-8	6-13	7-2	7-3	6-2	5-15		
1	9-8	12-2	5-12	5-6	7-1	7-4	7-10	6-7	5-9	5-11		
2	8-14	11-12	6-2	5-1	6-13	7-2	7-14	6-10	5-4	5-3		

(w) Average for one quarter.

(1) From 1915 Khulna Bazar *alias* Saheberbat.

(x) Average for two quarters.

(2) From 1915 Satkhira Bazar *alias* Pranshire.

PRESIDENCY DIVISION—*contd.*

District.	Local areas,			Mart at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Khulna <i>contd.</i>	3. Bagirhat Sub. Dvn.			Bagirhat ...		Rice ...	25-2 $\frac{4}{8}$ $\frac{5}{8}$	22-12 19-4	14-15 $\frac{2}{8}$	14-2 $\frac{1}{4}$ $\frac{1}{2}$	17-9 $\frac{3}{4}$	12-12 $\frac{1}{4}$ $\frac{1}{2}$
Murshidabad	1. Sadar subdivision			Berhampur(1) ...		" ...	21-1 $\frac{9}{16}$ $\frac{4}{10}$	Amon. 18-15	14-0 $\frac{1}{12}$ $\frac{5}{6}$	15-1 $\frac{1}{2}$ $\frac{5}{6}$	15-5 $\frac{2}{3}$ $\frac{1}{6}$	11-15 $\frac{1}{6}$ $\frac{1}{6}$
	2. Lalbagh ..			Lalbagh (2) ...		" ...	21-6 $\frac{4}{24}$ $\frac{4}{10}$	Ans. 19-2-7	13-10 $\frac{5}{6}$ $\frac{5}{6}$	14-12 $\frac{5}{6}$ $\frac{5}{6}$	14-11	12-0 (x) ..
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
3	12-4 $\frac{1}{12}$ $\frac{1}{2}$	13-12 $\frac{1}{4}$	20-10 $\frac{2}{8}$ $\frac{2}{8}$	12-13 $\frac{1}{2}$	10-5 $\frac{1}{4}$	14-11 $\frac{1}{12}$ $\frac{1}{2}$	19-4 $\frac{5}{8}$ $\frac{5}{8}$	14-1 $\frac{1}{12}$ $\frac{1}{2}$	11-4 $\frac{2}{8}$ $\frac{2}{8}$	12-8 $\frac{5}{12}$ $\frac{5}{12}$	14-15	15-12 $\frac{5}{12}$ $\frac{5}{12}$
1	12-9 $\frac{1}{12}$ $\frac{1}{2}$	13-7 $\frac{5}{12}$ $\frac{5}{12}$	16-2 $\frac{3}{4}$	12-11 $\frac{5}{12}$ $\frac{5}{12}$	9-7 $\frac{1}{2}$	13-12 $\frac{1}{6}$ $\frac{1}{6}$	15-15 $\frac{1}{4}$	13-1 $\frac{5}{12}$ $\frac{5}{12}$	11-8 $\frac{3}{4}$ $\frac{3}{4}$	12-2 $\frac{1}{4}$	12-6 $\frac{2}{4}$ $\frac{2}{4}$	12-10 $\frac{3}{4}$ $\frac{3}{4}$
2	...	...	...	...	...	..	...	13-6	11-5 $\frac{1}{3}$ $\frac{1}{3}$	11-11 $\frac{1}{3}$ $\frac{1}{3}$	12-8 $\frac{1}{4}$ $\frac{1}{4}$	13-8 $\frac{1}{3}$ $\frac{1}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
3	14-2 $\frac{1}{2}$ $\frac{1}{4}$	8-6 $\frac{2}{4}$ $\frac{2}{4}$	7-4	8-9	10-7	11-7	12-2	10-6	8-5	8-1	7-2	7-5
1	12-4 $\frac{1}{10}$ $\frac{1}{10}$	8-11 $\frac{1}{2}$ $\frac{1}{2}$	7-5 $\frac{1}{4}$ $\frac{1}{4}$	7-9	9-13	12-8	11-10	9-13	8-4	8-6	7-12	7-13
2	12-8 $\frac{5}{8}$ $\frac{5}{8}$	9-0 $\frac{1}{2}$ $\frac{1}{2}$	7-11 $\frac{3}{4}$ $\frac{3}{4}$	7-5 $\frac{1}{2}$ $\frac{1}{2}$	10-1	12-9	11-6	10-0	7-15	8-6	7-11	8-3
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
3	9-0	11-10	6-0	5-7	7-5	7-3	7-15	6-8	4-13	5-0		
1	10-2	10-11	5-12	5-11	6-2	6-14	7-14	6-14	6-4	5-8		
2	10-6	10-14	5-11	5-10	6-4	6-14	8-4	6-12	6-2	5-13		

(1) From 191b Berhampur Khagra.

(2) From 1915 Jiaganje.

(x) Average for one quarter.

(144)

BENGAL TENANCY ACT.

[App. XII.]

PRESIDENCY DIVISION—*contd.*

App. 19

District.		Local areas.		Marts at which prices were taken.		Staple food crops.		1887	1888	1889	1890	1891	1892
Murshida- bad.	{	3. Kandi subdivn.		Kandi	...	Rice	...	25-0- $\frac{1}{2}$	21-12-3	16-2	17-8 $\frac{2}{3}$	16-12 $\frac{1}{2}$	
		4. Jangipur „	...	Jangipur (1)	...	Do.	...	22-2- $\frac{10}{14}$	19-9	14-9- $\frac{5}{2}$	16-6 $\frac{1}{4}$		12-3 $\frac{7}{2}$
									Aman				
Nadia	...	1. Sadar „	...	Goari	...	Do.	...	19-10- $\frac{2}{4}$	17-12-9	14-2 $\frac{1}{3}$		16-6	12-6 $\frac{1}{2}$
									Aus		13-10- $\frac{1}{2}$	14-6	11-5- $\frac{1}{2}$
									17-14	14-15			
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	
3	13-12 $\frac{2}{3}$	14-7 $\frac{1}{2}$	17-9 $\frac{2}{3}$	13-11 $\frac{5}{8}$	10-2	15-2 $\frac{1}{2}$	18-4 $\frac{1}{2}$	14-9 $\frac{1}{2}$	13-2 $\frac{2}{3}$	13-10 $\frac{5}{8}$	13-9 $\frac{1}{8}$	13-11 $\frac{1}{2}$	
4	13-3 $\frac{3}{4}$	14-1	17-1 $\frac{5}{8}$	13-9	10-0 $\frac{1}{2}$	14-7	16-6 $\frac{1}{2}$	13-12	11-0 $\frac{2}{3}$ (y)	1-9	13-10 $\frac{3}{4}$	13-15 $\frac{1}{2}$	
1	11-9- $\frac{1}{2}$	12-14 $\frac{1}{2}$	15-7- $\frac{7}{2}$	11-13 $\frac{1}{2}$	8-10 $\frac{1}{2}$	12-7 $\frac{2}{3}$	14-4- $\frac{5}{2}$	11-12- $\frac{5}{2}$	10-8 $\frac{3}{4}$	10-8 $\frac{5}{8}$	11-3 $\frac{1}{4}$	11-12 $\frac{1}{8}$	
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	
3	14-4 $\frac{1}{2}$	9-12 $\frac{1}{2}$	8-1 $\frac{1}{2}$	7-15 $\frac{1}{2}$	11-2	14-0	13-3	11-4	9-6	9-6	8-8	8-13	
4	13-9 $\frac{5}{8}$	9-3 $\frac{1}{4}$	8-7 $\frac{1}{4}$	8-3	10-5	13-13	12-14	11-3	9-0	9-2	8-2	8-12	
1	12-3 $\frac{3}{8}$	8-11 $\frac{1}{2}$	7-7	7-0	9-2	10-14	10-5	9-1	7-13	7-14	7-4	7-5	
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	
3	11-5	12-2	6-3	5-11	6-13	7-7	8-10	7-9	7-0	6-3			
4	11-9	11-7	6-1	6-3	6-12	7-6	8-8	7-6	6-15	5-15			
1	9-7	10-4	5-14	5-9	6-6	6-12	7-6	6-7	5-15	5-10			

From 1916 Raghunathganj.

(y) Average for three quarters.

App. XII.]

PRICE LISTS.

16-1

PRESIDENCY DIVISION—contd.

(146)

District.	Local areas.		Marts at which prices were taken		Staple food crops.	1887	1883	1889	1890	1891	1892	
Nadia— contd.	2 Ranaghat sub-division.		Ranaghat ...		Rice ...	{ Aman, 22-7 ⁵ / ₈ 44- ³ / ₈ Aus	Aman. 21-5-2 23-2 5 Aus.	15-2 ³ / ₈ 15-2 ¹ / ₈	(m n o) 14-9 14-11 ² / ₈	15-4 ¹ / ₈ 15-9 ¹ / ₈	12-14 ¹ / ₈ 12-4(p)	
	3. Meherpur sub-division.		Kalibazar (1) ...		Do. ...	{ Aman 17-10 ¹ / ₂ 21-13 ¹ / ₂ Aus	Aman. 17-3 19-4-8 Aus	{ 13-0 15-11 ¹ / ₈	12-10 ¹ / ₂ 13-1 ¹ / ₆	13-0 ³ / ₈ 15-0 ³ / ₈	12-6 ⁷ / ₄ 13-1	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
2	12-5 ¹ / ₂	{ 13-15 ¹ / ₈ (y) 14-3 ¹ / ₈	Aman. 17-1 ⁷ / ₈ 18-3 ¹ / ₂ Aus.	{ 12-6 13-9 ³ / ₄	8-10 ³ / ₈ 10-3 ³ / ₈	12-7 ¹ / ₈ 14-14 ³ / ₈	14- ¹ / ₆ 17-13 ¹ / ₈	11-2 ¹ / ₄ 14-8 ⁵ / ₈	10-2 ¹ / ₈ 12-13 ⁵ / ₈	10-4 13-3 ³ / ₈ (x)	11-6 ⁵ / ₈	12-4 ⁷ / ₈
3	{ 11-8 ³ / ₈ 11-11 ³ / ₈	13-0 ¹ / ₂ (x) 13-7 ¹ / ₆	Aman 15-8 ³ / ₈ 1-3 ¹ / ₆ Aus.	{ 11-14 ³ / ₄ 12-3	9-6 ¹ / ₂ 11-6 ¹ / ₆ (y)	11-13 ⁵ / ₈ 12-15 ¹ / ₄	14-4 ¹ / ₈ 15-3 ³ / ₄ (x)	12-7 ¹ / ₂ 12-11 ⁵ / ₈ x	10-11 ⁵ / ₈ (y) 12-11 ¹ / ₂	{ 11-4 ³ / ₄	11-15 ³ / ₄	12-2 ⁵ / ₈
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
2	{ 11-10 ³ / ₈ 13-0(w)	{ 8-6 ¹ / ₄	7-6	7-12 ¹ / ₂	9-3	10-15	11-4	9-8	6-14	7-2	7-2	6-13
3	11-4 ¹ / ₄	8-13 ¹ / ₄	7-2 ¹ / ₂	6-14	9-3	11-4	10-15	8-15	6-12	6-7	7-0	6-12
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
2	8-15	10-0	5-5	5-0	5-10	5-12	6-12	6-6	5-5	4-15		
3	8-8	10-8	6-11	6-2	7-4	7-1	7-2	7-9	6-7	6-0		

BENGAL TENANCY ACT.

[App. XII]

(1) 1918 Meherpur, Kalibazar. (m) Average for the first quarter. (n) Average for the second quarter. (o) Average for the third quarter.

(p) Average for the fourth quarter. (w) Average for one quarter. (x) Average for two quarters. (y) Average for three quarters.

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Nadia (contd.)		3 Chuadanga ditto		Chuadanga ...		Rice ...	Aman 17-2 $\frac{3}{4}$ Aus 19-12 $\frac{3}{4}$	Aman 17-4-2 Aus 20-0	13-14 $\frac{1}{2}$ 13-10 $\frac{2}{3}$ 13-12 $\frac{3}{4}$	13-5 $\frac{3}{4}$ 13-13 $\frac{5}{8}$ Aman 14-1 (op) 15-6 $\frac{1}{2}$ (mn) Aus 14-5 $\frac{1}{2}$ op	13-11 $\frac{1}{2}$ 14-10 $\frac{3}{4}$ 14-10 15-3 $\frac{1}{2}$	13-5 13-5 12-2 $\frac{1}{2}$ 13-2 (op)
		4 Kustia ditto		Bahadurkhali ...		Do ...	Aman 20-4 $\frac{1}{2}$ Aus 21-0	Aman 19-2-9 Aus 20-3-4	13-12 $\frac{3}{4}$ 13-3 $\frac{1}{2}$ op			
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
3	{ 11-8 11-9 $\frac{1}{2}$ 11-4 12-8 (x)	12-5 $\frac{1}{2}$	Aman 15-9 $\frac{2}{3}$	11-15 $\frac{1}{2}$ y	8-6 $\frac{5}{6}$	12-0 $\frac{3}{4}$	13-14 $\frac{1}{4}$	12-15 $\frac{2}{3}$	10-13 $\frac{7}{8}$ y	11-5 $\frac{1}{2}$	13-11 $\frac{5}{8}$	13-12 $\frac{1}{8}$
4		13-15 w	15-13 $\frac{1}{3}$ Aus	12-10 $\frac{2}{3}$	9-5 $\frac{1}{2}$	12-6 $\frac{2}{3}$	16-8 $\frac{1}{2}$ x	14-0 $\frac{2}{3}$	12-2 $\frac{5}{8}$	11-13 $\frac{5}{8}$		
		12-9 $\frac{2}{3}$		14-12 $\frac{3}{4}$ {	9-4 $\frac{4}{5}$ (y)	11-4 $\frac{4}{5}$ (y)	16-5 $\frac{1}{2}$ w	...	...			
		14-10 w	15-15 $\frac{1}{2}$		9-6 $\frac{2}{3}$ (x)	15-13 $\frac{1}{2}$ (w)	17-3 $\frac{5}{8}$ (y)	14-8	10-8	11-2 $\frac{3}{4}$	13-8	14-0 $\frac{2}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
3	11-8	8-4 $\frac{1}{4}$	7-2 $\frac{1}{4}$	7-8 $\frac{1}{2}$	9-14	11-13	11-1	10-3	7-14	7-11	7-1	7-13
4	13-6 $\frac{5}{8}$	8-3 $\frac{1}{4}$	7-7 $\frac{3}{4}$	7-8 $\frac{1}{4}$	9-4	10-14	10-8	9-13	7-8	7-6	7-3	7-12
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
3	9-4	10-11	6-3	5-9	7-2	-11	7-9	7-8	6-3	6-0		
4	9-3	10-4	5-12	5-1	5-12	6-7	7-8	6-9	5-13	5-9		

(m) Average for the first quarter. (n) Average for the second quarter. (o) Average for the third quarter. (p) Average for the fourth quarter.
(w) Average for one quarter. (x) Average for two quarters. (y) Average for three quarters.

II. EASTERN BENGAL.

DACCA DIVISION.

(148)

District.	Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Dacca.	1. Sadar sub-div.		Dacca † (1) ...		Rice ...	18-14 $\frac{1}{8}$	20-3 $\frac{1}{4}$	14-3	14-6 $\frac{1}{2}$	15-13 $\frac{1}{4}$	12-9	
	2. Narayanganj Do.		Muddenganj (2)		Do ...	Aman. 19-4 $\frac{3}{8}$ (24-5 $\frac{3}{8}$ Aus.	21-12	Aman. 14-1 $\frac{1}{2}$ 15-5 (p)	14-14 $\frac{5}{8}$	15-13 $\frac{5}{8}$ 17-12(d)	12-8 $\frac{1}{2}$	
	3. Manikganj Do.		Manikganj (x) (3)		Do ...	19-12 $\frac{3}{4}$ $\frac{5}{8}$	20-6	Aus. 13-9 $\frac{3}{8}$	13-15 $\frac{1}{4}$	15-9 $\frac{3}{4}$	13-0 $\frac{3}{8}$	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	10-9 $\frac{5}{8}$	11-15 $\frac{1}{2}$	16-12 $\frac{5}{8}$	10-14 $\frac{5}{8}$	8-12 $\frac{1}{2}$	12-5 $\frac{3}{4}$	16-12 $\frac{3}{4}$	13-0 $\frac{3}{4}$	9-15 $\frac{1}{4}$	11-14 $\frac{3}{8}$	14-0 $\frac{1}{4}$	14-3 $\frac{5}{8}$
2	10-2 $\frac{1}{8}$	10-3 $\frac{1}{2}$	15-9 $\frac{1}{8}$ (w) 22-13	10-10 $\frac{7}{8}$	8-7 $\frac{1}{2}$	11-3 $\frac{5}{8}$	16-14 $\frac{7}{8}$	12-12 $\frac{3}{8}$	9-6 $\frac{3}{8}$	10-7	13-1 $\frac{3}{8}$	15-9 $\frac{7}{8}$
3	10-7 $\frac{1}{4}$	11-5 $\frac{1}{2}$	16-8 $\frac{1}{2}$	11-1 $\frac{2}{3}$	8-11	11-5 $\frac{1}{2}$	17-13 $\frac{1}{4}$	13-1 $\frac{5}{8}$	10-2 $\frac{3}{8}$	11-6 $\frac{3}{8}$	13-8 $\frac{5}{8}$	15-5
	1905	1906	1907	1908(p)	1909(y)	1910(p)	1911†	1912	1913	1914	1915	1916
1	11-11 $\frac{1}{4}$	7-7 $\frac{3}{8}$ $\frac{5}{8}$	8-0 $\frac{1}{2}$	8-0	9-14 $\frac{7}{44}$	10-4 $\frac{1}{2}$	10-0	9-5	7-6	7-3	6-12	7-8
2	12-3	7-12 $\frac{1}{8}$	7- $\frac{3}{8}$	7-14	9-4 $\frac{1}{2}$	10-2 $\frac{3}{4}$	9-8	8-5	7-14	7-8	6-15	7-5
3	11-11 $\frac{3}{4}$	7-3	6-10 $\frac{1}{2}$	7-10	9-4 $\frac{1}{2}$	10-4	10-6	9-0	7-5	6-8	6-9	7-5
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
1	8-11	9-13	5-2	4-15	6-11	6-12	7-7	6-0	5-3	5-13		
2	8-9	10-0	5-2	4-15	6-13	7-1	7-10	6-4	5-2	4-14		
3	9-0	10-11	5-4	5-5	6-11	6-11	7-9	6-5	5-2	5-0		

BENGAL TENANCY ACT.

[App. XII.]

(p) Average for the fourth quarter. (w) Average for one quarter. (x) Manickganj Dasora Bazar from 1912. † Average for the third quarter.

DACCA DIVISION—*contd.*

District.	Local areas.			Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Dacca— <i>contd.</i>	4. Munshiganj Do.			Mirkadem † (A)		Rice ..	Amon. 19-4 $\frac{3}{8}$ $\frac{1}{2}$ Aus 23-6 $\frac{5}{8}$ $\frac{1}{2}$	Amon. 20-15 $\frac{4}{8}$ Aus 22-12 $\frac{5}{8}$	13-13 $\frac{1}{2}$ 13-9 $\frac{5}{8}$ 13-13	14-5 (<i>op</i>) 14-7 $\frac{1}{2}$ (<i>mn</i>) 16-5 $\frac{1}{2}$ (<i>op</i>) 13-12 $\frac{5}{8}$ <i>op</i> 14-6 $\frac{1}{4}$ (<i>mn</i>) 1(-0 $\frac{1}{8}$ (<i>op</i>))	15-11 $\frac{5}{8}$ 17-12 15-14 $\frac{7}{8}$	12-5 $\frac{1}{2}$.. 12-7 $\frac{1}{4}$
				Munshir-Hat(B)			Amon, 19-7 $\frac{3}{8}$ $\frac{5}{8}$ Aus 21-14 $\frac{3}{8}$ $\frac{1}{2}$	Amon 21-4 $\frac{3}{8}$ Aus 22-2 $\frac{5}{8}$	12-14 $\frac{3}{8}$			
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
4 {	10-2 $\frac{1}{2}$	(A) 11-12 $\frac{3}{8}$	15-8 $\frac{1}{8}$ 20-0(<i>w</i>)	10-7 $\frac{1}{2}$	8-7	11-5 $\frac{5}{8}$	16-7 $\frac{1}{2}$	13-3 $\frac{1}{2}$	10-10 $\frac{1}{2}$	11-11 $\frac{1}{8}$	13-10	14-8 $\frac{3}{8}$
	10-3 $\frac{3}{8}$	(B) 11-5 $\frac{3}{4}$	15-10 $\frac{1}{4}$ (<i>w</i>) 20-0	10-7 $\frac{1}{2}$	8-6 $\frac{7}{8}$	10-15 $\frac{7}{8}$	...	...	...	...	...	..
	1905	1906	1907	1908(<i>p</i>)	1909(<i>p</i>)	1910(<i>p</i>)	1911(<i>p</i>)	1912	1913	1914	1915	1916
4 {	19-2	8-1 $\frac{1}{2}$	7-7 $\frac{1}{2}$	8-0	9-9 $\frac{5}{8}$	10-5	10-3	9-8	7-2	6-9	6-14	7-6
	...	...	...	...	...	...	...	...	...	...	...	...
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
4 {	8-10	10-3	5-6	5-6	7-2	7-4	8-3	6-10	5-6	5-6		
	...	...	...	...	...	...	...	...	...	...		

APP. XII.]

PRICE LISTS.

(11)

App. XII.]

PRICE LISTS.

(149)

(*m*) Average for the first quarter. (*n*) Average for the second quarter. (*o*) Average for the third quarter.

(*p*) Average for the fourth quarter. (*w*) Average for one quarter. † *Vide* Government Notification No. 2644 L. R. dated 8th August 1899.

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Faridpur		5 Sadar sub-divn.		Faridpur ...		Rice ...	Amon 20-15 $\frac{1}{8}$	Amon 22-12-5	13-5 $\frac{1}{2}$ 10-1	14-14 $\frac{1}{4}$ (op) 14-3 $\frac{1}{3}$ (mn)	16-1 14-13 $\frac{1}{3}$	13-2 $\frac{1}{2}$ 12-7 $\frac{5}{8}$
		6 Goalunda ..		Goalunda† ...		Do. ...	24-0 $\frac{1}{4}$ Aus	20-3Aus.	13-0 $\frac{1}{3}$	13-3 $\frac{1}{4}$ (op)	17-1 $\frac{2}{3}$	12-14
		7 Madaripur ..		Madaripur ...		Do. ...	18-5 $\frac{5}{8}$	16-12-9	14-0	13-14 $\frac{2}{3}$	...	...
		*7 A Gopalzunge ..		Gopalzunge ...		Do. ...	21-14	21-7-9		15-1 $\frac{1}{3}$		
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
5	11-0 $\frac{5}{8}$	13-3 $\frac{1}{2}$	17-6	11-7 $\frac{1}{3}$	9-2 $\frac{3}{8}$	14-1 $\frac{1}{2}$	17-8 $\frac{1}{4}$	13-0 $\frac{1}{2}$	10-6 $\frac{5}{8}$	10-13 $\frac{7}{8}$	13-13 $\frac{1}{4}$	14-15 $\frac{1}{8}$
6	11-10 $\frac{7}{8}$	12-1 $\frac{1}{3}$ (w)	16-9 $\frac{5}{8}$	11-14 $\frac{1}{3}$	8-10 $\frac{2}{3}$	14-4 $\frac{2}{3}$	16-8 $\frac{1}{2}$	12-10 $\frac{2}{3}$	10-0 $\frac{1}{4}$	11-7 $\frac{5}{8}$	13-8	14-15 $\frac{1}{2}$
7	11-2 $\frac{1}{3}$	12-10 $\frac{2}{3}$	19-1 $\frac{1}{3}$	11-12 $\frac{2}{3}$	9-8 $\frac{2}{3}$	13-5 $\frac{1}{2}$	18-12	14-9 $\frac{1}{3}$	10-5 $\frac{1}{3}$	11-10 $\frac{2}{3}$	13-8 $\frac{2}{3}$	14-7 $\frac{1}{3}$
7A	...	13-6 $\frac{2}{3}$	...	...	...	...	...	...	...	...	...	...
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
5	11-9 $\frac{1}{2}$	7-12 $\frac{7}{8}$	7-1 $\frac{1}{2}$	7-10	9-1 $\frac{5}{8}$	11-3 $\frac{1}{4}$	10-15	10-0	7-3	7-4	6-12	7-5
6	11-12	7-13 $\frac{11}{14}$	6-14 $\frac{5}{8}$	7-2	8-14 $\frac{1}{8}$	10-7 $\frac{1}{8}$	10-10	9-7	7-5	7-3	7-5	7-13
7	12- $\frac{1}{2}$	7-8 $\frac{1}{3}$	7-5 $\frac{2}{3}$	8-2 $\frac{2}{3}$	8-9 $\frac{2}{3}$	9-11	10-8	9-11	7-7	7-8	6-15	7-10
7A	...	...	...	...	...	9-8	12-9	10-7	7-11	7-14	7-8	8-0
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
5	9-1	10-14	5-8	5-4	7-0	6-11	7-10	6-6	5-1	4-14		
6	9-11	11-6	5-13	5-4	6-4	6-9	7-4	6-11	5-2	5-2		
7	8-14	10-13	5-8	5-8	7-3	7-4	8-4	6-11	5-8	5-3		
7A	9-10	12-2	5-10	5-10	7-11	7-4	8-4	7-1	5-3	5-2		

(w) Average for the first quarter. (n) Average for the second quarter.

(w) Average for one quarter.

* Prices for the year 1910.

* Rajbari from 1908 Goalondo 1910.

DACCA DIVISION—contd.

District.		Local areas.		Mart at which prices were taken.		Staple food crops.	1887.	1888	1889	1890	1891	1892	
Mymensing		8 Sadar Sub-divn.		Nasirabad ...		Rice ...	18 1 $\frac{1}{2}$ $\frac{1}{4}$	18-12	14-1 $\frac{3}{8}$	12-7	14-2 $\frac{5}{8}$	11-9 $\frac{1}{8}$	
		9 Tangail		Kagmari ...		.. ...	20-6 $\frac{5}{4}$	20-6-9	13-13 $\frac{2}{8}$	13-5 $\frac{2}{8}$ op	14-9 $\frac{1}{4}$	12-8 $\frac{1}{2}$	
		10. Jamalpur		Jamalpur (1) ...		.. ...	17-4 $\frac{5}{12}$	Aman.	11-4 $\frac{5}{12}$	11-11 $\frac{5}{8}$ mu	13-9 $\frac{5}{12}$	11-6 $\frac{1}{4}$	
							23-6 $\frac{7}{8}$	18-6-3	12-12	12-0 $\frac{1}{2}$ op	14-3 $\frac{2}{8}$	11-5 $\frac{1}{2}$	
		1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
8	9-13 $\frac{1}{4}$	10-15 $\frac{3}{4}$	14-6 $\frac{7}{8}$	10-2 $\frac{1}{4}$	10-5(w)	12-7 $\frac{1}{2}$	17-12 $\frac{1}{8}$	13-6 $\frac{1}{2}$	9-5	11-15 $\frac{1}{8}$	14-9 $\frac{1}{2}$	14-10 $\frac{5}{8}$	
9	10-4 $\frac{5}{8}$	11-5 $\frac{7}{8}$	15-10 $\frac{3}{8}$	10-11 $\frac{1}{3}$	8-2 $\frac{1}{2}$	12-0 $\frac{7}{8}$	17-3 $\frac{1}{2}$	13-7 $\frac{1}{4}$	10-5 $\frac{1}{2}$	11-5 $\frac{1}{4}$	13-13 $\frac{1}{3}$	14-0 $\frac{1}{2}$	
10	9-3 $\frac{5}{8}$	10-3 $\frac{1}{2}$	13-7 $\frac{3}{8}$	9-12 $\frac{1}{3}$	8-3 $\frac{2}{3}$	11-12 $\frac{5}{8}$	18-14 $\frac{1}{4}$	13-14 $\frac{1}{2}$	9-8 $\frac{3}{4}$	12-7 $\frac{3}{8}$	15-4 $\frac{2}{3}$	15-14	
		1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
8	12-2 $\frac{1}{4}$	7- $\frac{1}{4}$	6-7 $\frac{7}{8}$	7-6	8-3 $\frac{7}{8}$	9-7 $\frac{1}{4}$	9-12	9-13	7-6	6-7	5-9	7-0	
9	11-11 $\frac{1}{4}$	7-7 $\frac{7}{8}$	6-8 $\frac{3}{4}$	7-1	7-13	9-15 $\frac{3}{8}$	9-14	9-4	6-11	6-3	6-1	7-4	
10	13- $\frac{1}{4}$	7-6 $\frac{5}{8}$	6-12 $\frac{2}{4}$	7-6	8-7 $\frac{1}{3}$	10-1 $\frac{1}{3}$	10-1	10-2	7-13	6-15	6-13	7-2	
		1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
8	7-15	9-8	5-8	5-4	7-2	7-0	7-10	5-14	5-4	5-0			
9	8-2	10-0	5-0	4-10	5-15	6-6	6-11	5-8	4-15	5-3			
10	8-1	9-10	5-7	4-15	6-15	7-5	7-14	6-11	5-4	5-10			

App xii.]

PRICE LISTS.

App xii.]

PRICE LISTS.

151)

(m) Average for the first quarter. (n) Average for the second quarter. (o) Average for the third quarter. (p) Average for the fourth quarter.

(w) Average for one quarter.

(x) Average for two quarters.

(1) From 1915 Raniganj.

DACCA DIVISION—*contd.*

152)

District.		Local areas.		Marts at which prices were taken.		Staple food crops.		1887	1888	1889	1890	1891	1892
Mymensing —contd.		11. Kishoreganj Sub-divh.		Kishoreganj ...		Rice ...		16-14 $\frac{7}{8}$ $\frac{3}{4}$	Aman. 19-9 6 Aus 21-7	13-13 $\frac{3}{4}$ (<i>op</i>) 12-2 $\frac{5}{8}$	13-14 $\frac{5}{8}$ <i>op</i> 13-11(<i>mn</i>) 16-11 $\frac{1}{2}$ (<i>op</i>)	16-4 $\frac{2}{3}$ 17-15 $\frac{5}{8}$	12-11 $\frac{1}{2}$ 12-5 $\frac{1}{2}$
		12. Netrokona Sub-divn.		Netrokona ...		Do ...		23-13 $\frac{1}{2}$	Aman 23-8 25-13 5 Aus	15-7 $\frac{1}{8}$ (<i>op</i>) 11-12	13-12 $\frac{3}{4}$ (<i>op</i>) 14-1 $\frac{7}{8}$, <i>mn</i> 14-9(<i>op</i>)	15-6 $\frac{1}{2}$ 17-9 $\frac{5}{8}$	13-0 $\frac{1}{2}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	
11	10-2 $\frac{5}{8}$	{ 11-4 $\frac{5}{8}$ (<i>x</i>) 15-0 $\frac{1}{8}$ 11-6 $\frac{1}{2}$	{ Amon. 15-10 $\frac{1}{8}$ Aus 17-9 $\frac{1}{2}$ <i>mp</i> 16-12 $\frac{5}{8}$	{ 9-11 $\frac{2}{3}$ 8-10 $\frac{1}{8}$ (<i>x</i>) 10-7 $\frac{1}{2}$	{ 8-2 $\frac{5}{8}$ 9-1(<i>x</i>) 10-6 $\frac{2}{3}$	{ 12-6 $\frac{1}{8}$ 14-7 $\frac{5}{8}$ 14-10 $\frac{1}{2}$	{ 17-1 $\frac{2}{3}$ <i>y</i> 17-7 $\frac{1}{2}$ 21-9 $\frac{1}{8}$	{ 13-14 $\frac{7}{8}$ 15-7 $\frac{1}{8}$	{ 9-8 $\frac{1}{2}$ 9-11 $\frac{1}{2}$	{ 11-5 $\frac{7}{8}$ 12-13 $\frac{3}{4}$	{ 14-0 $\frac{2}{3}$ 15-10 $\frac{2}{3}$	{ 14-2 $\frac{1}{4}$ 15-15 $\frac{5}{8}$	
12	11-8 $\frac{1}{8}$												
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	
11	12-3	6-14 $\frac{1}{2}$ $\frac{1}{4}$	6-6 $\frac{5}{8}$	7-3	9-4 $\frac{1}{8}$	9-17 $\frac{7}{8}$	9-8	9-9	7-15	6-10	6-5	6-9	
12	13-8	6-14 $\frac{5}{8}$	7-3 $\frac{5}{8}$	8-9	9-1 $\frac{1}{2}$	9-10	9-10	9-15	8-0	6-5	6-10	6-12	
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	
11	8-0	9-12	5-6	5-4	6-11	6-11	7-3	5-12	5-0	5-3			
12	7-15	9-12	5-6	4-8	7-0	7-1	7-7	6-4	5-3	5-11			

BENGAL TENANCY ACT.

[App.]

(*m*) Average for the first quarter. (*n*) Average for the second quarter. (*o*) Average for the third quarter. (*p*) Average for the fourth quarter.

(*x*) Average for two quarters.

(*y*) Average for three quarters.

(152)

BENGAL TENANCY ACT.

[App. XII.

DACCA DIVISION—contd.

App. 20

[App. XII]

PRICE LISTS,

(153)

District.		Local areas.		Mart at which prices were taken.		Staple food crops.		1887	1888	1889	1890	1891	1892
Backergunge		13. Sadar subdivision		Barisal	...	Rice	...	18-8 $\frac{7}{12}$	17-5'8	12-2 $\frac{1}{2}$	12-14 $\frac{5}{8}$	14-2 $\frac{1}{4}$	10-9
		14. Patuakhali Ditto.		Patuakhali †	...	Do.	...	21-0 $\frac{9}{14}$	19-12'5	13-2 $\frac{1}{4}$	13-11 $\frac{1}{2}$	15-9 $\frac{1}{2}$	10-14 $\frac{3}{4}$
	1893	1894	1895	1896	1897	1898		1899	1900	1901	1902	1903	1904
13	10-0 $\frac{5}{8}$	10-10 $\frac{1}{12}$	15-8 $\frac{5}{8}$	10-9 $\frac{1}{3}$	{ Amon. 8-14 $\frac{1}{12}$ Ans.	old 11-9 new(w)12-0 17-14 (x)	14-0 $\frac{1}{2}$ (w) 14-6 $\frac{2}{3}$ 16-4	{ 13-6 13-8 (w) 13-4 $\frac{2}{3}$ (w)	9-11 $\frac{1}{4}$ 11-10(w) 10-7 $\frac{3}{8}$ (x)	{ 11-10 $\frac{1}{6}$ 11-4 $\frac{1}{3}$	12-15 $\frac{1}{3}$	14-3 $\frac{3}{4}$	
14	10-4 $\frac{2}{3}$	10-11 $\frac{1}{4}$	16-8 $\frac{3}{2}$	11-6 $\frac{2}{3}$	{ 11-4(w) 9-11 $\frac{1}{6}$ 12-8 $\frac{3}{4}$ (x)	old 11-13 $\frac{1}{2}$ new 11-13 $\frac{1}{2}$ 19-3	13-15 $\frac{1}{2}$ (w) 14-13 $\frac{1}{2}$ (x) 14-11	{ 13-4 $\frac{2}{3}$ (w) 15-0 $\frac{1}{2}$	12-8 $\frac{1}{2}$		12-14 $\frac{1}{4}$	14-0 $\frac{1}{12}$	
	1905	1906	1907	1908(p)	1909(p)	1910(p)		1911(o)	1912	1913	1914	1915	1916
13	12-1	7-3 $\frac{1}{3}$	6-15 $\frac{3}{4}$	8-13 $\frac{1}{2}$	8-12	9-4		10-13	9-10	7-1	7-4	6-11	7-6
14	13- $\frac{3}{4}$	7-14 $\frac{1}{24}$	7-8 $\frac{5}{8}$	10-2	12-1	9-10 $\frac{2}{3}$		10-4	9-11	7-9	7-13	6-14	7-9
	1917	1918	1919	1920	1921	1922		1923	1924	1925	1926	1927	1928
13	8-9	9-12	5-5	5-1	6-11	6-13		7-7	6-6	5-5	5-0		
14	8-9	10-7	5-6	5-4	6-6	6-6		7-0	6-11	5-2	5-4		

(w) Average for one quarter. (x) Average for two quarters.

(p) Average for the last quarter.

† Patuakhali (New Bazar) from 1909.

(o) Average for the third quarter.

Patuakhali 1918.

DACCA DIVISION—contd.

District.	Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Backergunge	15. Pirojpur ditto.		Perojpur ...		Do. ...	20-13 $\frac{4}{8}$	21-8·2	13-0 $\frac{1}{2}$	13-11 $\frac{7}{12}$	16-4 $\frac{7}{12}$	11-1 $\frac{1}{2}$	
	16. Dakhin Shabazpur ditto.		Bhola ...		Do. ...	20-0 $\frac{7}{4}$	20-2·3	13-4 $\frac{5}{8}$	14-9 $\frac{1}{4}$	15-0 $\frac{1}{2}$	11-3 $\frac{3}{8}$	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
15	13-3 $\frac{1}{4}$	11-2 $\frac{1}{12}$	16-6 $\frac{3}{4}$	10-15 $\frac{5}{12}$	9-0 $\frac{3}{4}$	11-15 $\frac{1}{4}$	14-9 $\frac{3}{4}$	12-3 $\frac{7}{12}$	{ 9-2 $\frac{5}{8}$ (w) 9-9 9-11 $\frac{5}{8}$ 12-1(w) }	{ 10-10 (y) 11-0 (x) }	11-10 $\frac{2}{3}$	14-0 $\frac{1}{4}$
16	10-8 $\frac{2}{3}$	12-15 $\frac{1}{3}$	15-13 $\frac{5}{8}$	10-3 $\frac{1}{4}$	{ Amon. 9-3 $\frac{1}{2}$ Aus. 10-5(x) }	12-1 $\frac{1}{2}$ 18-7	{ old 14-8 $\frac{7}{12}$ new 15-12 (w) 15-4 $\frac{1}{2}$ (x) }	{ 13-12 $\frac{5}{12}$ (w) 13-3 $\frac{1}{2}$ }			13-7	13-4 $\frac{1}{2}$
	1905	1906	1907	1908(p)	1909(p)	1910(p)	1911(o)	1912	1913	1914	1915	1916
15	12-9 $\frac{1}{4}$	7-5 $\frac{1}{3}$ $\frac{9}{10}$	7-1 $\frac{1}{2}$	8-0	11-4	7-5 $\frac{1}{2}$	10-2	9-8	7-2	7-3	6-8	7-2
16	11-10 $\frac{1}{2}$	7-2 $\frac{1}{2}$ $\frac{7}{4}$	6-15 $\frac{5}{8}$	6-15 $\frac{1}{2}$	{ Amon. 10-5 $\frac{1}{2}$ Aus.13-0 }	8-5 $\frac{1}{2}$	9-13	9-2	7-4	6-13	6-8	7-7
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
15	7-13	10-6	5-5	5-1	6-1	6-13	7-7	6-7	5-4	5-2		
16	7-14	9-12	5-0	4-13	6-12	6-13	7-4	6-4	5-0	5-2		

(w) Average for one quarter. (x) Average for two quarters. (y) Average for three quarters.

(p) Average for the last quarter. (o) Average for the third quarter.

2. RAJSHAHI DIVISION.

District.		Local areas.		Mart at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Rajshahi ...		1. Sadar Subdivision		Boalia (a) (1) ...		Rice ...	21-0 $\frac{3}{4}$	19-5'3	13-8	14-12 $\frac{1}{2}$	14-6 $\frac{1}{4}$	11-7 $\frac{1}{2}$
		2. Nowgong Do.		Nowgong ...		do ...	23-2 $\frac{1}{4}$ $\frac{1}{8}$	21-8'1	16-2 $\frac{3}{4}$	15-6 $\frac{5}{8}$	15-11 $\frac{1}{12}$	11-15 $\frac{1}{3}$
		3. Nator Do.		Nator ...		do ...	24-0 $\frac{1}{2}$	21-10	15-11 $\frac{1}{4}$	15-11 $\frac{1}{4}$	15-10 $\frac{1}{6}$	12-15
	1893	1894	1895	1896.	1897	1898	1899	1900	1901	1902	1903	1904
1	11-7	12-13 $\frac{1}{2}$	15-9 $\frac{1}{2}$	11-11 $\frac{1}{3}$	8-15 $\frac{5}{8}$ 10-8 (x)}	13-11 $\frac{1}{6}$	17-3 $\frac{1}{2}$	13-10 $\frac{1}{2}$	11-2 $\frac{1}{4}$	11-12 $\frac{3}{4}$	13-13'	14-4
2	11-13 $\frac{3}{8}$	13-0- $\frac{1}{6}$	16-12 $\frac{5}{8}$	12-9	8-10 $\frac{1}{3}$	13-11 $\frac{1}{3}$	18-3 $\frac{1}{2}$	14-4 $\frac{1}{6}$	11-3 $\frac{1}{12}$	12-10 $\frac{2}{3}$	14-7	15-0 $\frac{5}{8}$
3	12-2	13-7	17-11	12-10 $\frac{2}{3}$	9-7 $\frac{1}{2}$	14-3 17-4 (r) }	18-14 18-12 (x) }	15-6	11-10	12-8	15-0 $\frac{1}{4}$	15-12 $\frac{2}{3}$
	1905	1906	1907	1908(p)	1909(p)	1910(p)	1911	1912	1913	1914	1915	1916
1	12-3 $\frac{1}{2}$	7-12 $\frac{1}{12}$	7-3 $\frac{1}{11}$	7-4 $\frac{2}{3}$	11-14	11-0	10-8	10-3	7-4	7-8	7-0	7-6
2	12-3 $\frac{1}{2}$	7-9 $\frac{3}{4}$	7-2 $\frac{7}{8}$	7-2 $\frac{1}{8}$	12-11 $\frac{2}{3}$	11-0	10-12	10-2	7-8	7-7	7-2	8-2 7-8
3	12-6	7-15	7-2 $\frac{1}{2}$	7-12	10-14	12-13 $\frac{1}{3}$	10-4	9-9	6-15	7-4	7-13	
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
1	8-3	9-12	5-7	5-10	6-15	6-11	7-7	6-12	6-1	5-3		
2	9-6	10-0	5-11	5-10 5-9	6-10	6-9	7-2	6-13	5-14	5-7		
3	7-15	9-14	5-14		6-6	6-8	7-0	6-10	5-8	5-9		

(x) Average for two quarters.

(a) From 1909 Saheb-bazar.

(p) Average for the last quarter.

(1) Shaheb Bazar from 1916.

(r) Average for the third quarter.

App. xii.]

PRICE LISTS.

(155)

District.		Local areas.		Marts at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892
Pabna ...	4A.	Suddar ... Sirajganj ...	...	Pabna † (1) ... Sirajgunj (2) ...	...	Rice ... " ...	2-9 ⁷ / ₁₀ Am. 24-5 ¹ / ₄ Aus	20-2'1	14-11 ¹ / ₂	14-12 ¹ / ₂	14-6 ⁷ / ₂	12-9 ¹ / ₂
							...	...	...	...	...	...
Rangpur ...	5.	Sadar Sub-dvn.	...	Rangpur (3) ...	...	" ...	Amon. 18-10 ¹ / ₂ 21-4 Aus.	Amon. 19-1'7 20-13 Aus	14-5 ¹ / ₂	14-3 ¹ / ₂	13-5	10-9 ¹ / ₂ (mn) 11-5 ¹ / ₂
							...	...	14-2 (o)	...	...	...
	1893*	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
4	11-12 ¹ / ₄	13-2 ¹ / ₄	17-4	12-15 ¹ / ₂	9-3 ¹ / ₆	13-13	18-2 ¹ / ₂	14-7 ¹ / ₂	{ 11-0 (y) 11-4 (w)	{ 11-13	14-4 ¹ / ₂	16-3 ² / ₃
4A	...	...	...	12-4 ¹ / ₂ (w) 9-9	8-5 ¹ / ₂ 8-12 ¹ / ₂ (x)	13-2 ¹ / ₃ 17-0 ¹ / ₆	17 6 ¹ / ₄ 18-0 (w)	...	...	...	...	...
5	11-5 ¹ / ₂	11-6 ¹ / ₂	13-2 ⁷ / ₂	...	...	...	...	13 13 ¹ / ₄	10-7 ⁵ / ₆	11-0	12-15 ¹ / ₆	13-1 ¹ / ₆
	1905	1906	1907	1908(p)	1909(p)	1910(p)	1911(o)	1912	1913	1914	1915	1916
4	12-0	8-1	7-4 ¹ / ₂	7-12 ² / ₃	11-1 ¹ / ₂	12-0	10-1	10-7	7-12	6-15	7-3	8-0
4A	...	...	...	...	...	...	...	10-1	7-1	7-5	6-7	6-15
5	12-2	7-8 ⁵ / ₉	6-15 ² / ₃	5-13 ¹ / ₂	7-4	8-15 ² / ₃	8-12	10-0	7-0	6-8	6-11	8-2
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
4	8-8	10-11	5-11	5-4	5-14	6-7	7-4	6-4	5-9	5-1		
4A	8-1	9-1	4-15	4-12	6-6	6-6	6-7	5-5	4-15	4-14		
5	8-9	9-14	5-11	5-3	6-1	7-2	6-11	5-12	5-11	5-7		

(m) Average for the first quarter. (n) Average for the second quarter. (o) Average for the third quarter. (w) Average for one quarter.

(x) Average for two quarters. (y) Average for three quarters. (p) Average for the last quarter. † Pabna Bazar from 1914.

(1) From 1919 Pabna Bazar. (2), From 1915 Fariapaty at Sirajgunj. (3) From 1915 Nawabgunj Chalia amad Rangpur.

District.	Local areas.			Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Rangpur ...	6. Nilphamari ...			Niphamari (1) ...		Rice ...	Amon. 20-7 $\frac{3}{8}$ 20-11 $\frac{1}{15}$	Amon. 19-5'2 19-14'6	14-13 $\frac{1}{8}$ 15-12 $\frac{1}{4}$	Amon. 14-9 $\frac{1}{2}$ (p) 14-15 $\frac{3}{8}$ m,n, Aus. 16-2 (p)	14-15 10-14 $\frac{2}{3}$	11-4 $\frac{1}{8}$
	7. Kurigaon Do			Kurigaon ...		Do. ...	Aus. Amon. 19-12 $\frac{5}{8}$ 22-15 $\frac{1}{2}$ Aus.	Aus. Amon. 19-8'3 22-5'3 Aus.	(op) 16-7 $\frac{1}{4}$ 16-6 $\frac{3}{8}$	12-5 $\frac{1}{2}$...	13-3 $\frac{1}{3}$	10-14 $\frac{2}{3}$ 12-15 $\frac{1}{8}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
6	11-14	12-2 $\frac{2}{3}$	13-13 $\frac{1}{3}$	12-11 $\frac{2}{3}$ {10-14	9-1 $\frac{1}{8}$	13-11 $\frac{2}{3}$	18-13 $\frac{2}{3}$	15-0	11-10 $\frac{1}{3}$	11-15 $\frac{2}{3}$	13-11 $\frac{1}{2}$	14-1 $\frac{1}{4}$
7	10-10 $\frac{7}{12}$	10-10	11-12	11-2(x) 10-2(y)	7-13 12-12 (w)	12-4 12-12 (w)	16-6 20-0 (x)	15-5 $\frac{1}{3}$...	9-14 12-0(w)	10-12	12-2	14-2 $\frac{2}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
6	12-2 $\frac{3}{4}$	7-14 $\frac{1}{4}$	7-1 $\frac{3}{4}$	6-8	9-11 $\frac{2}{3}$	11-8 $\frac{2}{3}$	10-3	10-4	8-0	7-6	7-7	8-9
7	12-11 $\frac{3}{4}$	6-13 $\frac{2}{3}$	6-1 $\frac{1}{3}$	6-2 $\frac{2}{3}$	8-0	9-14	9-13	9-13	7-8	6-15	6-14	7-3
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
3	8-15	10-4	6-3	5-7	6-4	7-15	7-2	5-15	5-5	5-6		
4	7-14	9-4	6-4	5-1	6-7	7-2	6-4	5-6	5-3	4-14		

PRICE LISTS.

(m, n, o) Average for the first three quarters. (x) Average for two quarters. (y) Average for three quarters. (p) Average for the fourth quarter.
(w) Average for one quarter. (a) Average for the last quarter. (b) Average for the third quarter. (1) From 1915 Sagamacha.

RAJSHAHI DIVISION.

District.	Local areas:			Marts at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892
Rangpur ...	8. Gaibanda Sub. division.			Gaibandha ...		Rice	Aman. 18-13 $\frac{3}{4}$ Aus. 21-13 $\frac{5}{8}$	19-2.75	13-2 $\frac{5}{8}$	12-1 $\frac{1}{3}$ 14-1 m, n, o 13-2 (p)	12-14 $\frac{5}{12}$ 14-5 $\frac{1}{3}(p)$	Aman. 11-6 $\frac{5}{8}$
Malda (r) ...	9. District of Malda.			Balua Nawabganj†		Do ...	21-6 $\frac{5}{8}$	20-5.9	15-13	17-3 $\frac{1}{2}$	16-8 $\frac{5}{8}$	12-11 $\frac{1}{6}$
Dinajpur	10. Do. Dinajpur.			Ry. Bazarhat ...		Do. ...	23-7 $\frac{3}{4}$ 18 $\frac{3}{8}$	22-5.6	16-8 $\frac{1}{2}$	17-9 $\frac{1}{2}$	15-13 $\frac{1}{3}$	11-8 $\frac{5}{8}$
	10A. Do. Thakurgaon			Thakurgaon (1)		Do. ...	...	...	...	...	...	...
	1893	1894	1895	1896	1897	1-98	1899	1900	1901	1902	1903	1904
8	11-5 $\frac{1}{3}$	10-2 $\frac{2}{3}$	12-4 $\frac{7}{8}$	10-5 $\frac{1}{6}$	7-9 $\frac{1}{3}$	12-11 $\frac{3}{4}$	19-12 $\frac{3}{4}$	14-5 $\frac{1}{2}$	9-12 $\frac{2}{3}$	11-12 $\frac{7}{8}$	13-9 $\frac{7}{8}$	14-6 $\frac{1}{4}$
9	13-11 $\frac{7}{8}$	13-14 $\frac{1}{3}$	16-11 $\frac{1}{2}$	14-0 $\frac{7}{8}$	8-5 $\frac{1}{2}$	14-7 $\frac{7}{8}$	17-15 $\frac{5}{8}$	15-7 $\frac{5}{8}$	12-4 $\frac{1}{3}$	12-12 $\frac{1}{3}$	14-3 $\frac{1}{5}$	12-12 $\frac{5}{8}$
10	13-1 $\frac{1}{2}$	13-5 $\frac{1}{2}$	15-14 $\frac{1}{2}$	13-1 $\frac{5}{8}$	8-13 $\frac{5}{8}$	14-12 $\frac{1}{2}$	18-7 $\frac{3}{8}$	15-7 $\frac{1}{2}$	11-10 $\frac{3}{4}$	12-12 $\frac{1}{3}$	14-7 $\frac{3}{4}$	15-0 $\frac{7}{8}$
10A	...	...	...	...	...	...	...	...	...	...	...	...
	1905	1906	1907	1908(a)	1909(a)	1910(a)	1911(b)	1912	1913	1914	1915	1916
8	12-13	6-15 $\frac{1}{4}$	6-10 $\frac{1}{2}$	6-1 $\frac{1}{3}$	8-13 $\frac{2}{3}$	10-6 $\frac{1}{3}$	9-12	9-13	8-14	7-3	7-3	7-9
9	12-9 $\frac{1}{2}$	8-5 $\frac{5}{8}$	8-6 $\frac{1}{3}$	6-15 $\frac{2}{3}$	11-14	14-1 $\frac{2}{3}$	11-11	11-3	8-6	8-6	8-9	9-9
10	13-2	8-12 $\frac{2}{3}$	7-11 $\frac{1}{3}$	7-3 $\frac{2}{3}$	11-7	13-13	11-11	11-3	8-4	8-4	7-12	8-9
10A	...	...	...	...	...	...	12-5	11-5	8-5	7-5	7-5	9-7
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
8	8-4	9-9	5-4	5-7	6-10	7-3	6-13	5-10	5-2	5-7		
9	10-1	11-15	6-2	6-1	6-15	7-4	8-6	7-4	6-4	6-0		
10	9-12	10-9	5-12	5-11	6-11	8-0	7-14	6-14	6-1	6-0		
10A	10-9	14-0	6-12	6-4	6-9	8-8	9-2	7-8	7-2	6-9		

(p) Average for the fourth quarter. (m) Average for one quarter. (x) Average for two quarters. (v) Average for three quarters.

(m, n, o) Average for the first quarter. (r) Transferred to Rajshahi Division from Bhagalpur Division by the Partition of Bengal. † Formerly English Bazar and then Rahanpur. (a) Average for the last quarter. (b) Average for the third quarter. (1) From 1915 Laherihat.

District		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Dinajpur ...	10B Balur Ghat ...	Balur Ghat ...		Balur Ghat ...		Rice	...	...	...	...	...	12-7 $\frac{1}{4}$
Bogra ...	11 District Bogra	Bogra (2) (1) ...		Bogra (2) (1) ...		Do	24-2	23-10	16-6	17-0 $\frac{1}{8}$	16-1	...
Jalpaiguri {	12. Sadar Sub. Dvn.	Jalpaiguri† (3)		Jalpaiguri† (3)		Do	...	...	...	...	...	...
	12A Alipur Duar ...	Alipur (2) ...		Alipur (2) ...		Do	...	...	...	...	...	...
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
10B	...	...	...	...	...	...	...	...	...	...	...	...
11	12-9 $\frac{2}{8}$	13-8 $\frac{1}{2}$	16-10	12-7 $\frac{7}{12}$	8-15 $\frac{1}{2}$	14-5	20-1	15-5 $\frac{1}{2}$	17-7	12-14	16-1	16-3
12	...	...	...	...	...	...	...	14-11 $\frac{3}{8}$	(11-5 $\frac{1}{2}$ w	{ 11-10	12-5 $\frac{1}{8}$	12-10 $\frac{1}{2}$
12A	...	...	...	...	...	...	...	14-14	(11-13 $\frac{3}{8}$		...	...
	1905	1906	1907	1908(<i>v</i>)	1909(<i>p</i>)	1910(<i>p</i>)	1911(<i>o</i>)	1912	1913	1914	1915	1916
10B	...	...	...	...	...	...	13-0	12-0	8-7	8-0	7-11	9-1
11	12-10	8-3 $\frac{1}{8}$	7-3 $\frac{1}{4}$	7-8	13-12	12-0	10-8	10-14	7-11	7-9	7-0	8-13
12	11-3 $\frac{3}{4}$	7-12 $\frac{1}{2}$	6-15 $\frac{5}{8}$	6-7 $\frac{1}{8}$	8-6	11-0 $\frac{2}{8}$	10-5	10-7	7-4	7-0	...	7-14
12A	...	...	...	...	...	...	13-2	10-8	6-12	6-6	6-0	7-15
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
10B	10-4	11-8	6-5	6-1	7-0	7-10	7-14	6-13	6-1	5-15		
11	10-2	11-8	5-14	5-11	6-13	7-11	7-6	6-7	5-8	5-10		
12	8-7	9-15	5-9	5-1	5-7	6-14	7-1	6-0	5-7	4-15		
12A	8-13	8-13	5-12	5-0	5-13	7-12	6-14	5-11	5-3	5-9		

(w) Average for one quarter (o) Average for the third quarter. (p) Average for the last quarter.

(1) Government Notification No. 638 T.—R., dated the 23rd June, 1920, Dinbazar 1914, 1912. (2) Kalitalahat from 1909.

(1) From 1916 Kalitala Hat. (2) From 1917 Alipur Duar. (3) From 1915 Dinbazar.

CHITTAGONG DIVISION.—*contd.*

(160)

District.	Local areas			Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Chittagong	{	2 Sadar Sub-dvn.		Chittagong (1) ...		Rice ...	18-6 $\frac{5}{8}$ $\frac{1}{2}$	18-14-7	14-7 $\frac{1}{4}$	15-9 $\frac{1}{2}$	16-0 $\frac{1}{2}$	11-1 $\frac{1}{2}$
		2 Cox's Bazar do		Cox's bazar ...		Do ...	18-5 $\frac{1}{2}$	18-1-3	14-10 $\frac{2}{3}$	16-12	16-0 $\frac{2}{3}$	11-12
Noakhali ...		2 Sadar Sub-dvn.		Kalitalahat (2)...		Do ...	20-12 $\frac{1}{6}$	Aman 19-6-4 20-4-5 Aus	13-7 $\frac{1}{6}$ (p) 15-8	14-12 $\frac{7}{8}$	16-4 $\frac{5}{8}$ 18-10 $\frac{1}{2}$	12-1 $\frac{1}{4}$ ^{mn} 12-12 $\frac{1}{2}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	11-14 $\frac{1}{4}$	12-15 $\frac{5}{8}$	14-7 $\frac{1}{2}$	11-0 $\frac{1}{2}$	9-9 $\frac{1}{2}$	11-13 $\frac{5}{8}$	14-13	13-8 $\frac{1}{2}$	11-12 $\frac{1}{2}$	12-14 $\frac{7}{8}$	13-6 $\frac{5}{8}$	13-8 $\frac{1}{2}$
2	12-6	14-13 $\frac{1}{2}$	17-14 $\frac{2}{3}$	12-14 $\frac{2}{3}$	9-6 $\frac{2}{3}$	12-12	18-6	14-13 $\frac{1}{2}$	12-11 $\frac{1}{2}$	13-13 $\frac{1}{2}$	14-4	14-4
3	10-3 $\frac{5}{8}$	(12-8 $\frac{1}{2}$ (x)) 16-6 $\frac{7}{8}$	18-8(w) 18-15	11-10 $\frac{1}{8}$ w 11-4	9-14	13-3 $\frac{1}{2}$	16-13 $\frac{7}{8}$	14-11 $\frac{1}{2}$	11-4 $\frac{1}{2}$	12-6 $\frac{2}{3}$	15-14 $\frac{1}{8}$	15-3 $\frac{5}{8}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
3	11-2 $\frac{1}{4}$	9-1 $\frac{2}{3}$	8-14 $\frac{5}{8}$	9-0	10-2 $\frac{2}{3}$	12-0	10-8	9-8	9-8	8-3	8-5	8-2
1	11-15 $\frac{1}{2}$	8-12	9- $\frac{1}{2}$	11-0	9-4	10-0 $\frac{2}{3}$	10-11	9-12	9-3	8-1	7-7	8-1
2	12-7 $\frac{3}{4}$	7-12 $\frac{3}{4}$	7-8 $\frac{5}{8}$	8-10 $\frac{1}{2}$	12-2 $\frac{1}{6}$	11-12 $\frac{1}{2}$	10-3	9-4	8-1	7-3	7-5	7-12
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
3	9-5	10-3	6-4	5-6	6-7	6-10	6-9	6-4	6-0	6-0		
1	9-11	12-4	6-7	5-5	6-3	6-7	7-2	6-8	5-7	5-4		
2	8-7	10-8	5-14	5-8	7-4	7-10	7-8	6-7	5-6	5-3		

BENGAL TENANCY ACT.

[App. XII.]

(m) Average for the first quarter. (n) Average for the second quarter. (o) Average for the third quarter. (p) Average for the last quarter.
 (w) Average for one quarter. (z) Average for two quarters. (1) From 1907 Buxy Hat. (2) From 1919 Kalitara Hat.

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Noakhali —contd.		4. Fenny sub-dvn.		Fenny Hat*† (r).		Rice ...	Amon. 24-10 $\frac{2}{3}$ 29-12 Aus.	25-12 $\frac{4}{4}$	16-0 $\frac{1}{2}$	17-1	Amon. 18-2 $\frac{2}{3}$ Aus. 18-8 16-0 $\frac{2}{3}$	12-15 $\frac{5}{8}$ 12-10 11-10 $\frac{2}{3}$
Tippera		5. Sadar Do.		Comilla (Rajgunj) (1)		Do. ...	Amon. 19-11 $\frac{1}{2}$ 26-8 $\frac{5}{8}$ Aus.	22-2	14-8 $\frac{1}{4}$	14-5 $\frac{5}{6}$		
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
4 {	11-11 $\frac{1}{4}$	{ 12-8 $\frac{5}{8}$ 18-10 $\frac{1}{6}$	20-12 $\frac{5}{8}$ 22-8	{ 12-1 $\frac{1}{4}$	10-3 $\frac{1}{4}$	{ 12-4 $\frac{2}{3}$ 19-15 $\frac{1}{2}$	16-15 $\frac{1}{3}$ 17-0	{ 14-3 $\frac{5}{12}$	12-1 $\frac{5}{12}$	13-10 $\frac{5}{6}$	16-7 $\frac{1}{2}$	16-0 $\frac{1}{12}$
5	10-4 $\frac{5}{8}$	{ 11-3 $\frac{2}{3}$ 20-0	17-5 $\frac{5}{8}$ 20-6 $\frac{3}{8}$	10-5 $\frac{1}{4}$ 10-10 $\frac{2}{3}$	{ ...	13-4 $\frac{1}{2}$	16-12 $\frac{5}{6}$	12-15 $\frac{5}{12}$	{ 9-7 $\frac{7}{12}$ 11-0 $\frac{1}{2}$	{ 12-10	15-10 $\frac{5}{8}$	13-14 $\frac{5}{8}$
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
4	13-8 $\frac{1}{2}$	7-15 $\frac{3}{4}$	7-7 $\frac{1}{2}$	8-15	11-8 $\frac{1}{2}$	11-3 $\frac{1}{4}$	11-12	11-3	8-13	8-1	7-5	8-0
5	12-5 $\frac{3}{4}$	7-5 $\frac{1}{4}$	7-4 $\frac{1}{12}$	8-11	9-2 $\frac{5}{6}$	9-13 $\frac{1}{2}$	10-3	9-6	7-6	7-8	6-10	7-5
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
4	10-3	12-1	6-2	5-3	6-13	7-2	7-5	6-11	5-12	5-2		
5	9-6	11-0	5-7	4-14	6-4	6-8	7-5	6-3	5-7	5-8		

(1) From 1918 Rajganja Bazar, Comilla.

(r) Raja's Hat, Fenny from 1908.

* Government Notification dated 9th April, 1889.

† Formerly Panchgachia Hat.

CHITTAGONG DIVISION—contd.

District.	Local areas.		Marts at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892	
Tippera— contd.	6. Brahmanbaria Sub. dvn.		Brahmanbaria ...		Rice	Amon. 18-5 $\frac{9}{14}$ Aus 24-6 $\frac{5}{8}$ 4	Amon 21-8 $\frac{7}{2}$ Aus 25-7 $\frac{2}{2}$	15-7 $\frac{1}{3}$ 17-3 $\frac{8}{9}$	14-5 $\frac{6}{12}$ 15-7 $\frac{1}{4}$	17-1 $\frac{1}{4}$ 17-15 $\frac{1}{8}$	12-1 $\frac{1}{6}$ 13-6 $\frac{1}{2}$	
	7 Chandpur Do.		Chandpur (1)		Do.	Amon. 21-9 $\frac{8}{2}$ Aus. 25-1 $\frac{3}{2}$ 2	21-10 $\frac{2}{2}$	14-15 $\frac{5}{2}$	15-1 $\frac{5}{8}$	16-15 $\frac{1}{2}$	13-2 $\frac{1}{2}$	
	1893*	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
6	10-2 $\frac{1}{4}$	11-11 $\frac{7}{12}$	18-0 $\frac{5}{8}$	10-11	Amon 9-1 $\frac{5}{12}$ Aus	11-1 $\frac{1}{2}$	16-7 $\frac{1}{2}$	12-7 $\frac{1}{12}$	9-8 $\frac{1}{2}$	11-4 $\frac{5}{8}$	13-9 $\frac{1}{4}$	14-8 $\frac{1}{2}$
7		14-14 $\frac{1}{2}$ 12-11 $\frac{5}{8}$	18-5 17-0 $\frac{1}{2}$	9-9 $\frac{1}{2}$ 11-6 $\frac{7}{12}$	8-15 $\frac{2}{8}$ 8-13 $\frac{1}{4}$	17-5 $\frac{5}{8}$ 12-15 $\frac{1}{6}$	19-8 17-6 $\frac{1}{12}$	15-5 $\frac{6}{7}$ 13-11 $\frac{3}{4}$		12-6 12-4 $\frac{3}{4}$		14-0 $\frac{1}{8}$	14-14
	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916
6	11-14	7-5 $\frac{3}{8}$	6-15 $\frac{1}{24}$	8-2	9-9 $\frac{7}{12}$	9-13	9-7	9-7	8-2	7-0	...	6-14
7	12-3 $\frac{3}{4}$	8- $\frac{5}{8}$	7-7	8-10	9-7 $\frac{2}{3}$	11-5 $\frac{3}{4}$	10-10	9-5	8-5	7-12	7-10	8-4
	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
6	8-13	11-6	5-9	5-3	6-2	6-7	7-2	6-2	5-1	5-0		
7	9-15	11-9	5-13	5-8	7-2	6-11	6-11	5-13	4-14	4-14		

† Patuakhali (New Bazar, from 1909).

(1) From 1915 Chandpur old Bazar.

NOTE:—Where rice is the staple food crops and two prices have been mentioned the upper one indicates the price of *Amon* and the lower one indicates the price of *Aus*.

(192)

BENGAL TENANCY ACT.

[App. XII.]

III BIHAR.

1. PATNA DIVISION.

Quantity per Rupee in seers of 80 tolas company's weight. Seers and Chattricks.

(app. XII.)

PRICE LISTS.

District.	Local areas.			Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Patna	...	1. Sadar Sub-dvn. excluding thana Maner		Maroofgunge ...		Makai upland	27-7 $\frac{1}{4}$ $\frac{3}{8}$	23-2-7	19-6 $\frac{3}{4}$	20-15 $\frac{1}{2}$	19-0 $\frac{1}{2}$	21-6
						Rice low-land	18-3 $\frac{5}{8}$ $\frac{3}{8}$	16-15-8	13-10	16-6 $\frac{1}{2}$	15-11 $\frac{1}{2}$	13-6 $\frac{5}{8}$
		2. Barh subdivision		Barh ...		Makai do.	28-25 $\frac{5}{8}$	22-1-8	19-15 $\frac{3}{8}$	20-6 $\frac{3}{4}$	20-10 $\frac{2}{8}$	19-13 $\frac{5}{8}$
	1893	1894	1895	1896	1897	Rice do	20-5 $\frac{5}{8}$ $\frac{3}{4}$	14-9-4	11-14 $\frac{1}{2}$	16-11	15-2 $\frac{7}{2}$	11-12 $\frac{7}{2}$
1	21-10 $\frac{3}{4}$ 13-14 $\frac{3}{8}$	18-15 $\frac{1}{2}$ $\frac{3}{4}$ 13-0 $\frac{1}{2}$	22-11 16-1 $\frac{3}{4}$	19-12 $\frac{1}{2}$ 15-2 $\frac{1}{2}$	11-11 $\frac{1}{4}$ 9-8 $\frac{5}{2}$	22-7 $\frac{1}{4}$ 14-5 $\frac{1}{8}$	30-14 $\frac{5}{8}$ 18-1 $\frac{1}{2}$	20-0(x) 14-10 $\frac{1}{4}$	19-15 13-0 $\frac{3}{4}$	23-3 12-15 $\frac{1}{2}$	25-9 $\frac{1}{2}$ 14-12	27-6 $\frac{1}{8}$ 15-15 $\frac{1}{8}$
2	20-8 $\frac{3}{8}$ 13-6 $\frac{1}{2}$	17-4 $\frac{1}{2}$ 13-12 $\frac{5}{2}$	23-7 $\frac{3}{8}$ 16-7	19-2 $\frac{1}{2}$ 13-1 $\frac{1}{4}$	12-15 $\frac{5}{2}$ (y) 9-0 $\frac{3}{8}$	22-15 $\frac{5}{8}$ 13-12 $\frac{3}{8}$	23-4 $\frac{7}{2}$ 14-14 $\frac{1}{8}$	21-2 $\frac{3}{8}$ 1-1 $\frac{1}{8}$	17-14 12-0 $\frac{1}{2}$	22-3 $\frac{1}{2}$ 12-6 $\frac{1}{8}$	23-12 13-11 $\frac{1}{2}$	25-5 $\frac{1}{2}$ 13-13 $\frac{5}{8}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915 p	1916(p)
1	19-11 $\frac{7}{2}$ 13-8 $\frac{1}{2}$	12-9 10-2	13-8 $\frac{1}{2}$ 8-10	10-11 $\frac{3}{4}$ 7-13 $\frac{3}{4}$	11-15 10-0	18-14 12-12	19-15 13-3	16-8 9-6	13-14 8-11	12-1 8-0	13-6 7-7	17-2 10-2
2	18-2 12-15 $\frac{3}{8}$	12-0(x) 9-9 $\frac{1}{4}$	11-10 $\frac{1}{2}$ 7-11 $\frac{3}{4}$	10-9 7-5	15-4 8-13	18-6 12-14	19-0 12-15	16-5 9-5	13-8 8-14	12-4 8-8	13-3 7-12	16-5 9-1
	1917(p)	1918(p)	1919(p)	1920(p)	1921	1922	1923 †	1924 †	1925	1926	1927	1928
1	18-11 11-11	10-2 6-12	7-9 $\frac{1}{2}$ 7-9	8-3 6-9	9-3 6-9	10-11 6-12	11-7 8-4	10-15 7-9	9-6 7-5	9-7 6-8		
2	19-3 12-1	10-0 6-2	7-13 5-7	7-15 6-9	9-11 6-10	10-0 5-14	11-10 6-8	11-15 6-5	10-2 5-14	9-3 5-10		

App. xii.

PRICE LISTS.

(163)

(m) Average for the first quarter.

(x) Average for two quarters.

(p) Average for the last quarter.

† Average for three quarters.

District.	Local areas.*		Marts at which prices were taken.		Staple food crops.		1887	1888	1889	1890	1891	1892
Patna-contd.	3. Bihar Sub-dvn.		Bihar . . .		Wheat up-land (a) Rice low-land		17-10 $\frac{1}{6}$ Aman.	14-10 $\frac{4}{5}$	15-1 $\frac{7}{8}$	10-9 $\frac{3}{4}$	15-1 $\frac{1}{2}$	12-8 $\frac{5}{8}$
	4. Dinapur ditto with thana Maner.		Dinapur . . .		Barley up-do. Rice low-land		18-4 $\frac{5}{8}$ Aus 24-3 28-3 $\frac{2}{3}$ 18-0 $\frac{2}{3}$	15-12 $\frac{6}{5}$ 22-13 $\frac{6}{5}$ 16-5 $\frac{6}{5}$	14-3 19-6 $\frac{2}{3}$ 13-7 $\frac{1}{3}$	17-12 $\frac{1}{2}$ 21-0 15-1 $\frac{2}{3}$	16-9 $\frac{1}{4}$ 22-10 14-10	13-2 $\frac{1}{8}$ 19-14 $\frac{1}{6}$ 11-1 $\frac{6}{8}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
3	13-0 $\frac{1}{2}$	13-9	14-2 $\frac{1}{2}$	10-14 $\frac{1}{2}$	8-7	14-15	15-15 $\frac{7}{8}$	12-6 $\frac{1}{8}$	10-7 $\frac{5}{8}$	12-2	14-4 $\frac{2}{3}$	16-14 $\frac{5}{8}$
4	15-4 $\frac{1}{2}$	16-7 $\frac{1}{3}$	18-4 $\frac{1}{2}$	14-13 $\frac{2}{3}$	9-11 $\frac{7}{8}$	15-14 $\frac{7}{8}$	17-5	12-4 $\frac{1}{4}$	10-5 $\frac{1}{8}$	11-7 $\frac{2}{3}$	13-8 $\frac{2}{3}$	14-2 $\frac{1}{3}$
	20-9	21-2	23-2 $\frac{2}{3}$	18-12 $\frac{2}{3}$	12-2 $\frac{2}{3}$	23-4 $\frac{2}{3}$	26-1 $\frac{1}{2}$	18-2	18-2 $\frac{2}{3}$	20-6 $\frac{2}{3}$	23-1 $\frac{1}{2}$	25-14 $\frac{2}{3}$
	14-2 $\frac{2}{3}$	15-3 $\frac{2}{3}$	19-6	15-2 $\frac{2}{3}$	9-13	15-9 $\frac{2}{3}$	16-1 $\frac{1}{3}$	12-13	11-14 $\frac{1}{5}$	12-14 $\frac{2}{3}$	14-7 $\frac{2}{3}$	14-14 $\frac{2}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
3	13-2 $\frac{1}{6}$	10-7 $\frac{3}{4}$	8-14 $\frac{1}{4}$	10-7	14-0	20-12	21-13	17-0	8-10	13-8	12-8	14-3
4	12-6 $\frac{1}{4}$	10-1 $\frac{1}{4}$	8-11	7-1 $\frac{1}{4}$	8-10	13-0	13-8	9-8	8-10	8-3	7-5	11-1
	20-4 $\frac{3}{4}$	15-4 $\frac{3}{4}$	13-15 $\frac{3}{4}$	12-2 $\frac{1}{2}$	16-9	20-14	20-14	14-11	15-2	11-8	11-10	13-5
	11-8 $\frac{1}{6}$	9-10 $\frac{1}{4}$	8-3 $\frac{3}{4}$	7-10	9-5	12-7	12-13	9-3	8-8	7-8	6-12	8-12
	1917(p)	1918(p)	1919 (p)	1920m	1921	1922	1923	1924	1925*	1926	1927	1928
3	18-11	9-14	6-4	7-10	8-10	8-14	12-2	11-6	12-6	11-6		
4	13-3	6-10	5-8	7-1	6-6	6-7	8-2	7-6	6-12	6-0		
	14-5	11-2	7-0	7-0	9-5	9-11	13-8	12-3	11-8	11-5		
	12-0	7-4	5-9	5-14	6-10	6-6	8-2	7-2	6-10	6-0		

(a) Marua up land from 1009.

(p) Average for the last quarter.

(m) Average for the first quarter.

* Average price for three quarters.

District.		Local areas.		Mart at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Gaya	...	5. Sadar Subdivision		Gaya		Wheat up-land.	16-6 $\frac{2}{4}$	14-15 $\frac{8}{8}$	16-4 $\frac{3}{4}$	16-4 $\frac{5}{8}$	14-3 $\frac{1}{2}$	12-10 $\frac{5}{8}$
		6. Nawada Do.		Nawada		Rice low-land. Do.	26-13 $\frac{2}{8}$ 21-8 22-5 $\frac{2}{4}$ $\frac{1}{0}$	13-14 14-9-3 15-6 $\frac{5}{5}$	14-2 $\frac{1}{2}$ 14-12 15-10	15-10 $\frac{2}{8}$ 17-12 $\frac{2}{8}$ 18-12 $\frac{5}{8}$	13-13 $\frac{3}{8}$ 16-1 $\frac{3}{8}$ 17-6	10-12 $\frac{2}{8}$ 13-4 $\frac{2}{8}$ 13-9 $\frac{1}{2}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
5	14-1 $\frac{1}{2}$ 12-3 $\frac{3}{8}$	13-13 $\frac{3}{8}$ 13-5 $\frac{5}{8}$	13-0 $\frac{7}{8}$ 14-10 $\frac{1}{8}$	10-4 $\frac{1}{2}$ old 7-11 $\frac{1}{2}$ new 8-14 $\frac{1}{2}$	old 7-11 $\frac{1}{2}$ new 8-14 $\frac{1}{2}$ old 7-10 $\frac{3}{4}$ new 8-10 $\frac{1}{2}$ new 13-4 $\frac{2}{8}$ new 12-14 $\frac{1}{2}$ new 14-5 $\frac{2}{8}$	13-2 $\frac{5}{8}$ 14-3 $\frac{1}{8}$	16-0 $\frac{1}{8}$ 15-2 $\frac{5}{8}$	12-4 $\frac{5}{8}$ 12-2	11-9 $\frac{1}{4}$ 10-10 $\frac{2}{8}$	13-4 $\frac{7}{8}$ 12-2 $\frac{1}{2}$	14-9 $\frac{1}{2}$ 13-2 $\frac{1}{2}$	16-9 13-3 $\frac{7}{8}$
6	15-6 $\frac{1}{2}$ 16-8	15-14 $\frac{1}{2}$ 17-10 $\frac{3}{4}$	15-10 $\frac{1}{2}$ 17-12 $\frac{1}{6}$	12-14 $\frac{1}{2}$ 14-5 $\frac{2}{8}$	8-10 $\frac{1}{2}$ 8-15 $\frac{7}{8}$ 9-14 $\frac{1}{8}$	15-8 $\frac{2}{8}$ 17-14 $\frac{2}{8}$	17-12 $\frac{1}{4}$ 18-9	13-12 $\frac{1}{6}$ 14-0 $\frac{1}{2}$	11-3 $\frac{3}{8}$ 11-9	12-9 $\frac{2}{8}$ 12-10 $\frac{1}{2}$	14-8 $\frac{2}{8}$ 14-1 $\frac{1}{2}$	17-3 $\frac{1}{2}$ 13-2 $\frac{1}{2}$
	1905	1906	1907	1908(a)	1909(a)	1910(a)	1911(b)	1912	1913	1914	1915	1916(p)
5	14-1 $\frac{1}{4}$ 13-14 $\frac{1}{2}$ 11-9 $\frac{1}{2}$	11-5 $\frac{1}{4}$ 10-6 $\frac{1}{4}$ 11-3 $\frac{1}{2}$	9-8 $\frac{1}{4}$ 8-3 $\frac{3}{4}$ 9-8 $\frac{1}{2}$	7-11 $\frac{1}{2}$ 7-3 $\frac{1}{2}$ 7-12	8-8 9-7 9-8	11-9 12-8 12-12	13-2 12-11 14-13	10-11 8-5 11-0	9-8 7-13 10-2	9-3 7-12 9-5	7-8 7-0 7-0	9-7 8-11 9-9
6	13-6 $\frac{3}{4}$	10-5 $\frac{1}{2}$	8-6	7-4	9-10	13-12	14-6	9-9	9-2	8-0	8-1	10-0
	1917(p)	1918(p)	1919 (p)	1920m	1921	1922	1923	1924	1925	1926	1927	9 8
5	9-3 12-0	5-13 7-2	5-13 5-13	5-8 6-9	6-1 7-1	6-4 6-10	8-11 7-14	7-9 7-6	6-7 6-12	6-4 6-3		
6	9-7 12-13	6-1 6-1	5-1 5-3	5-11 6-11	6-3 6-10	6-2 6-8	8-3 7-12	7-12 7-13	6-8 7-3	6-5 6-5		

(p) Average for the last quarter.

(w) Average for one quarter.

(a) Marua up-land from 1909.

(o) Average for the first quarter.

PATNA DIVISION—*contd.*

(16)

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Gaya— <i>contd.</i>		7. Jahnabad sub-division. 2. Aurangabad sub-division.		Jahnabad ... Aurangabad		Wheat up-land. Rice low-land. Do.	16-12 $\frac{7}{4}$ 20- $\frac{5}{8}$ 10-11 $\frac{1}{8}$ 19-7 $\frac{2}{8}$	15-1'5 16-3'2 16-12'7 14-7'2	15-2 $\frac{5}{12}$ 14-2 $\frac{1}{2}$ 17-7 $\frac{1}{8}$ 15-7 $\frac{5}{8}$	15 1 $\frac{1}{2}$ 16-12 $\frac{1}{8}$ 18-7 $\frac{1}{8}$ 16-15 $\frac{5}{8}$	14-12 $\frac{1}{3}$ 16-3 16-6 $\frac{5}{8}$ 15-8 $\frac{1}{4}$	12-12 $\frac{1}{6}$ 11-10 $\frac{1}{4}$ 13-15 $\frac{7}{8}$ 12-1 $\frac{5}{6}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
7	13-2 $\frac{5}{8}$ 12-9 $\frac{2}{8}$	13-10 13-13 $\frac{1}{2}$	12-4 16-8 $\frac{1}{2}$	10-7 $\frac{5}{8}$ 13-10 $\frac{1}{8}$	9-9 $\frac{1}{2}$ 9-4 $\frac{1}{6}$	13-7 $\frac{2}{8}$ 14-9 $\frac{1}{8}$	15-9 $\frac{1}{8}$ 15-2	11-14 $\frac{1}{2}$ 12-9	11-14 $\frac{2}{8}$ 11-5 $\frac{1}{8}$	12-9 $\frac{1}{2}$ 12-4 $\frac{1}{8}$	13-14 14-1 $\frac{2}{8}$	16-3 $\frac{1}{4}$ 13-15 $\frac{1}{8}$
8	16-5 $\frac{2}{8}$ 14-5 $\frac{5}{8}$	15-1 $\frac{1}{2}$ 16-5 $\frac{1}{2}$	13-8 $\frac{5}{8}$ 16-1 $\frac{1}{6}$	12-3 12-13 $\frac{1}{2}$ 14-2 $\frac{2}{8}$	9-6 $\frac{2}{8}$ 10-1 $\frac{1}{2}$ 9-5 $\frac{3}{4}$	14-7 $\frac{2}{8}$ 15-14 $\frac{2}{8}$ 16-11 $\frac{2}{8}$	18-3 $\frac{1}{8}$ 20-0 $\frac{2}{8}$ 18-4 $\frac{2}{8}$	12-9 14-4 $\frac{2}{8}$ 1 $\frac{1}{2}$ 10	12-2 $\frac{2}{8}$ 13-2 $\frac{1}{4}$ 11-7 $\frac{1}{2}$	13-0 $\frac{1}{8}$ 12-9 $\frac{2}{8}$ 12-5 $\frac{5}{8}$	15-14 $\frac{3}{4}$ 14-10 $\frac{2}{8}$ 15-0 $\frac{1}{8}$	19-1 $\frac{1}{2}$ 21-13 $\frac{1}{8}$ 14-15 $\frac{1}{8}$
	1905	1906	1907	1908	1909	1910	1911	1912 (p)	1913 (p)	1914 (p)	1915 (p)	1916 (p)
7	14-1 $\frac{1}{8}$ 13-14 $\frac{1}{2}$	11-4 10-2 $\frac{1}{2}$	9-12 $\frac{1}{4}$ 8-8 $\frac{1}{2}$	7-12 7-7	9-9 9-11	11-13 12-13	13-3 13-12	10-15 10-1	9-13 8-5	9-8 8-5	7-2 7-10	9-0 10-0
8	17-0 $\frac{1}{2}$ 14-13 $\frac{1}{8}$	12-11 11-14 $\frac{1}{2}$	10-9 $\frac{1}{2}$ 9-1 $\frac{1}{4}$	7-13 7-6 $\frac{1}{2}$	10-7 14-1	13-12 14-1	15-12 14-6	12-12 9-11	9-4 9-6	9-11 8-1	7-5 7-12	10-15 9 15
	1917 (p)	1918 (p)	1919	1920 m	1921	1922	1923	1924	1925	1926	1927	1928
7	10-0 13-5 10-7	6-13 8-4 6-14	5-4 5-11 5-5	5-7 6-15 5-5	6-10 7-6 6-13	6-4 7-2 6-14	7-13 7-7 8-15	7-11 7 13 8-8	6-7 7-1 7-4	6-3 6-12 8-0		
8	11-1	7-13	5-5	6-10	7-6	7-1	7-13	7-3	6-3	6-3		

BENGAL TENANCY ACT.

[App. XII

(x) Average for two quarters. (p) Average for the last quarter. (m) Average for the first quarter.

DACCA DIVISION—contd.

District.		Local areas.		Mart at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Shahabad		9. Sadar Subdivision		Arrah	{	Wheat up-land Rice	15-14 ⁷ / ₈	15-4 ³ / ₈	14-13 ¹ / ₃	15-12 ¹ / ₂	14-3	13-1 ⁷ / ₂	
		10. Buxar ditto.		Buxar		low land	18-2 ¹ / ₈	11-3 ⁶ / ₈	14-7 ¹ / ₂	15-9 ¹ / ₃	14-15 ³ / ₄	11-13 ³ / ₈	
						Wheat up-land Rice	15-3 ¹ / ₂	15-8 ¹ / ₂	14-12	15-9 ¹ / ₃	13-14 ³ / ₈	14-3 ⁷ / ₂	
						low land	Red 16-13 ³ / ₄	Red 16-2	15-14	15-14	14-8 ¹ / ₃	12-0 ³ / ₄	
		1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
9	{	13-1 ³ / ₄	13-14 ⁵ / ₁₂	13-4 ¹ / ₂	11-4 ¹ / ₂	9-3 ¹ / ₆	13-12 ¹ / ₂	15-14 ⁵ / ₁₂	11-11 ¹ / ₂	11-11 ¹ / ₂	12-10 ² / ₃	14-5 ¹ / ₃	17-2 ¹ / ₆
		13-2	13-3 ¹ / ₄	14-10 ¹ / ₄	13-9 ¹ / ₂	8-15 ³ / ₄	13-9 ¹ / ₂	15-2 ¹ / ₂	11-9 ⁵ / ₁₂	11-6 ¹ / ₂	11-3 ⁵ / ₆	14-0 ⁷ / ₇	13-15 ³ / ₄
10	{	13-12 ² / ₃	14-9 ² / ₃	White	11-11	9-10	14-7 ¹ / ₃	15-5 ² / ₃	11-15 ¹ / ₃	11-14	13-3 ¹ / ₃	12-15 ¹ / ₃	16-12 ² / ₃
		13-10 ¹ / ₅	13-4	Red. 14-4 ² / ₃	11-1(0 ² / ₃ x)	9-5 ² / ₃	13-4 ² / ₃	15-11 ¹ / ₂	12-1	12-4	13-5 ² / ₃	14-8 ² / ₃	16-5 ¹ / ₃
				14-13 ¹ / ₃	12-12 ² / ₃		15-0(w)	15-7 ¹ / ₂	12-10 ² / ₃	12-3 ¹ / ₃	11-14	14-12 ² / ₄	15-5 ¹ / ₃
		1905	1906	1907	1908(p)	1909	1910	1911	1912(p)	1918(p)	1914(p)	1915(p)	1916(p)
9	{	13-14 ⁷ / ₈	10-15 ¹ / ₄	10-7 ¹ / ₄	7-14 ¹ / ₄	9-9	10-11	12-5	11-4	9-13	9-9	7-5	9-6
		13-4 ⁷ / ₈	10-7	9-1	7-15	9-11	12-2	12-12	10-7	9-0	9-0	8-10	9-3
10	{	13-10	11-2 ² / ₃	10-7 ¹ / ₄	7-12 ³ / ₄	9-6	10-10	13-6	11-9	9-14	8-5	7-10	9-13
		14-0	10-14 ¹ / ₂	9-1 ³ / ₄	7-12 ¹ / ₄	9-11	12-10	12-15	11-1	10-2	8-12	8-0	9-8
		1917(p)	1918(p)	1919(p)	1920(m)	1921	1922	1923	1924	1925	1926	1927	1928
9	{	9-3	6-8	5-15	5-13	6-5	6-0	7-13	8-2	7-1	6-4		
		11-8	7-2	5-8	6-7	6-12	6-10	8-13	9-0	7-1	6-14		
10	{	9-3	6-0	5-13	5-13	6-3	6-5	8-6	8-0	7-1	6-7		
		12-11	7-5	5-7	6-3	7-3	7-2	9-3	8-11	8-0	6-11		

(p) Average for the last quarter.

(w) Average for one quarter.

(x) Average for the two-third quarter.

(y) Average for three quarters.

(m) Average for the first quarter.

App. XII.]

PRICE LISTS.

(167)

PATNA DIVISION—contd.

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Shahabad --contd		11 Sasaram sub-division.		Sasaram	...	Wheat up-land.	18-4 $\frac{6}{12}$ 16-14 $\frac{1}{2}$	16-11 $\frac{4}{4}$ 16-2-9	13-13 $\frac{1}{12}$ 15-14 $\frac{5}{12}$	16-8 $\frac{1}{4}$	14-7 $\frac{1}{2}$	13-6
		12 Bhabua sub-division		Bhubooah	...	Rice low-land. "	17-7 $\frac{3}{8}$ 15-15 $\frac{7}{2}$ 16-2 $\frac{5}{6}$	15-2 15-8 13-5 3	14-8 $\frac{2}{3}$ 14-14 $\frac{3}{4}$ 12-14	15-1 $\frac{1}{2}$ 15-13 $\frac{1}{2}$ 13-6 $\frac{2}{3}$	14-14 $\frac{1}{8}$ 13-3 $\frac{1}{2}$ 13-0 $\frac{2}{3}$	11-8 $\frac{1}{2}$ 13-4 10-14 $\frac{1}{2}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
11 {	14-12 $\frac{1}{4}$ 13-0 $\frac{1}{2}$	13-11 $\frac{1}{6}$ 14-4	13-10 $\frac{2}{3}$ 15-12	12-11 $\frac{1}{2}$ 13-10 $\frac{1}{2}$	9-14 8-9 $\frac{7}{2}$	13-15 $\frac{7}{2}$ 13-12 $\frac{1}{2}$	16-10 $\frac{1}{4}$ 16-14	12-6 12-7 $\frac{5}{2}$	12-4 $\frac{7}{2}$ 11-4 $\frac{1}{2}$	13-8 $\frac{1}{4}$ 12-1 $\frac{7}{2}$	15-4 $\frac{1}{2}$ 15-7	16-11 $\frac{1}{2}$ 14-15 $\frac{2}{3}$
12 {	13-13 $\frac{1}{2}$ 12-3 $\frac{1}{2}$	13-10 15-0	15-2 $\frac{2}{3}$ 14-2	11-10 11-10 $\frac{2}{3}$	9-6 9-9	14-2 $\frac{1}{2}$ 12-4 $\frac{2}{3}$	16-9 $\frac{7}{2}$ 15-14 $\frac{3}{4}$	11-8 $\frac{2}{3}$ 12-0 $\frac{7}{2}$	12-0 $\frac{2}{3}$ 10-5	13-10 $\frac{1}{6}$ 12-11 $\frac{1}{2}$	15-15 $\frac{1}{2}$ 15-11 $\frac{2}{3}$	18-2 $\frac{2}{3}$ 15-13 $\frac{1}{2}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
11 {	14-1 $\frac{3}{4}$ 14-7 $\frac{7}{8}$	12-1 $\frac{1}{2}$ 11-2 $\frac{1}{4}$	10-10 $\frac{3}{4}$ 8-13	7-7 $\frac{1}{2}$ 7-7 $\frac{1}{2}$	9-9 9-7	11-11 13-4	13-8 12-6	11-11 9-12	9-11 9-9	8-6 8-4	7-2 6-15	9-10 10-5
12 {	15-4 14-14 $\frac{1}{2}$	12-4 $\frac{1}{2}$ 11-13	11-3 $\frac{1}{4}$ 9-9	8-0 $\frac{1}{2}$ 6-6 $\frac{2}{4}$	9-8 9-12	11-12 12-9	14-15 13-2	12-5 10-1	10-5 9-7	9-2 8-7	7-7 8-8	10-6 9-11
	1917(p)	1918(p)	1919(p)	1920(m)	1921	1922	1923	1924	1925	1926	1927	1928
9 {	9-10 11-15	6-2 6-15	5-13 5-8	5-9 5-15	6-13 6-15	6-11 6-9	8-12 8-5	8-7 8-6	6-12 7-9	6-13 6-10		
10 {	10-11 13-5	6-9 7-0	5-15 5-13	6-0 6-7	6-8 6-11	6-6 7-6	9-2 9-10	8-5 9-8	7-5 8-4	6-14 7-6		

(w) Average for the last quarter.

(m) Average for the first quarter.

(168)

BENGAL TENANCY ACT.

[App. XII.]

TIRHUT DIVISION.

App. 22	District	Local areas.		Marts at which prices were taken.		Staple food crops.	1887.	1888	1889	1890	1891	1892
Muzaffarpur		13. Sadar sub-divn.		Muzaffarpur		Makai up-land	37-7 $\frac{1}{2}$	23-4	19-6	9-13	18-7 $\frac{5}{8}$	23-4 $\frac{1}{2}$
		14. Sitamarhi		Sitamarhi		Rice low-land	17-15 $\frac{5}{8}$	16-6 $\frac{3}{4}$	13-4	15-2 $\frac{3}{4}$	14-7 $\frac{3}{8}$	12-7 $\frac{5}{8}$
						Makai Do.	35-15 $\frac{3}{4}$	30-9 $\frac{1}{2}$	29-3	25-7 $\frac{3}{8}$	20-13 $\frac{7}{8}$	23-8
						Rice Do.	23-4 $\frac{3}{4}$	18-9 $\frac{1}{2}$	12-4 $\frac{1}{2}$	17-13 $\frac{1}{4}$	16-0 $\frac{3}{4}$	12-10 $\frac{1}{8}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
13	20-9 $\frac{5}{8}$	19-8 $\frac{1}{4}$	24-3 $\frac{5}{8}$	19-6 $\frac{1}{4}$	13-2	22-2 $\frac{3}{8}$	20-11 $\frac{1}{4}$	16-15	19-8	22-5 $\frac{3}{4}$	24-9 $\frac{3}{4}$	25-1 $\frac{1}{2}$
	13-9 $\frac{5}{8}$	13-6 $\frac{1}{6}$	14-15 $\frac{3}{4}$	12-2	8-15 $\frac{3}{8}$	12-1 $\frac{1}{6}$	13-19 $\frac{3}{4}$	12-9	11-10	11-15 $\frac{3}{8}$	13-13 $\frac{3}{8}$	14-8
14	23-5 $\frac{1}{2}$	21-13 $\frac{3}{8}$	28-10	23-6 $\frac{3}{8}$	12-4	25-8	22-13 $\frac{3}{8}$	20-14 $\frac{3}{8}$	23-5 $\frac{3}{8}$	25-7	29-7 $\frac{3}{8}$	31-0
	15-1 $\frac{3}{8}$	14-0 $\frac{3}{8}$	18-8	14-8	old 8-4 $\frac{3}{8}$	12-15 $\frac{3}{8}$	13-15 $\frac{3}{8}$	14-7 $\frac{3}{8}$	12-10 $\frac{6}{8}$	12-13 $\frac{1}{8}$	15-2 $\frac{5}{8}$	14-13 $\frac{3}{8}$
					new 15-0							
					(w)							
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
13	18-6 $\frac{1}{2}$	12-0	13-3 $\frac{1}{2}$	10-15 $\frac{1}{4}$	16-5	18-6	20-1	16-5	13-0	12-13	13-5	15-11
	11-15 $\frac{1}{2}$	8-15 $\frac{3}{4}$	8-10 $\frac{3}{4}$	8-3 $\frac{1}{4}$	10-0	12-12	12-13	10-0	8-13	8-3	7-2	9-11
14	22-0	12-12 $\frac{1}{2}$ (y)	12-13 $\frac{1}{4}$	11-2 $\frac{1}{2}$	17-6	21-3	21-0	16-11	13-10	13-12	13-9	16-5
	13-6 $\frac{3}{8}$	9-8 $\frac{1}{2}$	8-13	7-11 $\frac{1}{4}$	8-8	13-7	13-2	9-15	8-8	9-1	8-8	10-11
	1917(p)	1918(p)	1919(p)	1920(m)	1921	1922	1923	1924	1925	1926	1927	1928
13	19-5	9-10	7-13	8-1	9-0	9-14	11-2	11-3	9-6	9-2		
	11-5	7-8	5-8	5-8	4-14	5-11	7-9	6-12	6-11	5-6		
14	21-11	11-10	8-3	7-13	1-8	9-7	9-8	10-12	10-6	9-2		
	11-12	7-5	5-3	5-12	6-1	6-1	7-4	6-13	6-12	6-2		

(p) Average for the last quarter. (w) Average for one quarter. (y) Average for three quarters. (m) Average for the first quarter.

App. XII.]

PRICE LISTS.

(169)

TIRHUT DIVISION—contd.

(170)

BENGAL TENANCY ACT.

[App. XII.]

District.	Local areas.			Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Muzafferpur— contd.	15. Hajipur Sub- division			Hajipur ...		Makai up- land	28-2 $\frac{1}{3}$ ₀	21-9	18-11 $\frac{5}{2}$	19-0 $\frac{1}{2}$	19-2 $\frac{5}{2}$	20-0 $\frac{1}{4}$
Darbhanga ...	15. Sadar do.			Darbhanga ...		Rice low land	16-8 $\frac{1}{2}$	15-8·8	13-10	15-13 $\frac{1}{2}$	14-9 $\frac{7}{2}$	12-1 $\frac{1}{2}$
						Murwa up-do	32-13 $\frac{3}{2}$ ₂	30-1 $\frac{5}{2}$	21-0 $\frac{5}{8}$	27-0 $\frac{1}{2}$	14-9 $\frac{1}{2}$	21-11 $\frac{1}{2}$
						Rice low land	20-15 $\frac{3}{8}$	18-0·7	14-7	17-15 $\frac{3}{8}$	15-1 $\frac{1}{2}$ ₁	13-5 $\frac{1}{2}$ ₁
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
15 {	21-1 $\frac{3}{8}$	20-2 $\frac{1}{2}$ ₄	23-12 $\frac{1}{2}$	19-0 $\frac{1}{2}$ ₂	12-14 $\frac{1}{2}$	22-5 $\frac{3}{8}$	23-4(y)	13-2 $\frac{1}{2}$	19-1 $\frac{3}{8}$	23-2 $\frac{5}{8}$	24-13	25-9
16 {	14-3 $\frac{1}{2}$ ₂	13-15 $\frac{3}{4}$	17-2 $\frac{3}{4}$	14-2 $\frac{3}{4}$	9-8 $\frac{1}{2}$	13-12 $\frac{1}{2}$	14-6 $\frac{5}{8}$	12-14 $\frac{1}{2}$	11-15 $\frac{1}{2}$ ₂	11-9 $\frac{1}{8}$	14-8	14-8 $\frac{1}{4}$
	24-0 $\frac{1}{2}$ ₂	24-6 $\frac{7}{2}$	25-12 $\frac{1}{2}$ ₂	23-5 $\frac{3}{4}$	14-14	22-14 $\frac{3}{8}$	22-12	22-5 $\frac{1}{4}$ ₂	21-14 $\frac{3}{4}$	23-11 $\frac{7}{2}$	29-9 $\frac{1}{2}$	30-12 $\frac{1}{2}$ ₂
	15-0 $\frac{1}{4}$	14-11	16-3 $\frac{1}{2}$	14-15 $\frac{1}{4}$	9-13	12-2 $\frac{1}{2}$ ₂	12-15 $\frac{3}{8}$	14-10 $\frac{7}{2}$	13-2 $\frac{1}{2}$ ₂	13-2 $\frac{3}{8}$	15-6 $\frac{1}{4}$	16-5 $\frac{1}{2}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
15 {	18-10 $\frac{7}{2}$	12-4 $\frac{1}{2}$	12-12 $\frac{1}{4}$	10-6 $\frac{1}{2}$	15-2	17-9	18-13	16-5	12-10	12-9	12-3 $\frac{1}{2}$	14-9
16 {	13-6 $\frac{7}{2}$	9-5 $\frac{1}{2}$	8-4	7-9 $\frac{1}{2}$	8-15	12-9	12-12	10-6	8-12	8-6	7-2	10-3
	25-10 $\frac{3}{8}$	14-9 $\frac{1}{4}$	14-4 $\frac{1}{2}$	11-14 $\frac{3}{4}$	18-1	20-14	10-8	19-0	13-11	13-2	12-13	13-3
	15-2 $\frac{1}{6}$	9-6 $\frac{3}{4}$	7-11 $\frac{1}{4}$	6-12	8-9	13-1	12-15	10-6	7-8	8-1	7-9	8-12
	1917(p)	1918(p)	1919(p)	1920(m)	1921	1922	1923	1924	1925	1926	1927	1928
15 {	17-3	8-12	7-8	7-15	8-12	9-3	10-6	11-4	10-1	8-5		
16 {	10-8	6-14	5-5	5-11	5-13	6-10	7-2	6-13	6-13	5-13		
	21-0	12-11	8-6	7-8	9-13	9-14*	10-7	10-7	10-3	8-15		
	10-13	7-3	4-14	5-4	5-15	6-0	7-8	7-0	6-9	6-1		

(y) Average for three quarters.

(r) Average for the last quarter,
Average price of three quarters.

(m) Average for the first quarter.

TIRHUT DIVISION—contd.

District.	Local areas.		Marts at which prices were taken.		Staple food crops	1887	1888	1889	1890	1891	1892	
Darbhanga- contd.	17. Madhubani sub-division.		Madhubani ...		Murwa up-land	37-14 $\frac{1}{8}$ ₀	32-38	21-1 $\frac{1}{6}$	26-11 $\frac{1}{2}$	23-10 $\frac{3}{4}$	21-13 $\frac{1}{2}$	
	18. Samastipur ditto.		Samastipur ...		Rice low-land	22-14 $\frac{1}{2}$ ₇ ⁷ ₀	19-34	14-0 $\frac{7}{12}$	18-12 $\frac{1}{2}$	16-4 $\frac{2}{3}$	14-2 $\frac{2}{3}$	
					Makai up. do	28-11 $\frac{3}{8}$ ₀	22-124	19-0 $\frac{1}{2}$	20-12	19-6	20-4	
					Rice low land	19-3 $\frac{1}{2}$	16-143	13-7 $\frac{2}{3}$	16-9 $\frac{5}{8}$	15 4	12-6 $\frac{1}{2}$	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
17	27-13 $\frac{1}{2}$ 15-15 $\frac{1}{2}$	24-12 14-15 $\frac{1}{6}$	31-0 18-0	27-12 $\frac{5}{8}$ 14-15 $\frac{5}{8}$	14-13 $\frac{5}{8}$ 9-13 $\frac{3}{8}$	23-7 $\frac{1}{2}$ 18-8 $\frac{1}{2}$	21-8 $\frac{1}{2}$ 14-1	21-11 $\frac{1}{2}$ 14-4 $\frac{5}{8}$	20-9 $\frac{2}{3}$ 12-13 $\frac{3}{4}$	23-6 $\frac{1}{2}$ 13-5 $\frac{5}{8}$	26-15 $\frac{1}{2}$ 15-12 $\frac{5}{8}$	30-13 $\frac{7}{8}$ 16-3 $\frac{5}{8}$
18	21-11 $\frac{7}{8}$ 14-11 $\frac{1}{2}$	21-15 14-5 $\frac{3}{4}$	26-2 $\frac{5}{8}$ 18-3 $\frac{5}{8}$	20-6 $\frac{1}{6}$ 14-13 $\frac{7}{8}$	12-13 $\frac{1}{2}$ 9-13 $\frac{1}{4}$	22-15 $\frac{1}{2}$ 14-7 $\frac{1}{2}$	23-8 $\frac{1}{2}$ 15-6	18-2 13-13 $\frac{7}{8}$	20-3 $\frac{1}{2}$ 13-2 $\frac{2}{3}$	22-23 $\frac{1}{2}$ 12-10	23-10 $\frac{1}{2}$ 14-9 $\frac{1}{2}$	27-12 15-6
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
17	26-1 14-2	13-15 $\frac{1}{2}$ 9-5	13-4 $\frac{1}{4}$ 8-6 $\frac{3}{4}$	11-6 $\frac{1}{4}$ 8-7	19-5 9-12	22-2 13-10	21-10 13-6	19-8 10-9	14-6 8-14	12-11 9-0	14-10 8-0	14-0 11-0
18	19-14 $\frac{2}{3}$ 14-2 $\frac{1}{2}$	12-6 $\frac{3}{4}$ 9-0 $\frac{3}{4}$	13-3 $\frac{1}{4}$ 7-2 $\frac{1}{4}$	10-12 $\frac{3}{4}$ 7-3 $\frac{1}{4}$	16-3 8-8	19-7 11-13	20-2 11-9	16-11 8-13	13-6 8-8	12-7 8-0	13-12 7-12	16-5 10-3
	1917(p)	1918(p)	1919(p)	1920 m	1921	1922	1923	1924	1925	1926	1927	1928
17	22-13 12-3	14-0 8-1	8-12 5-9	8-0 5-8	9-10 6-2	9-14 7-9	11-10 8-6	10-10 7-0	11-12 6-6	10-2 6-2		
18	20-0 11-13	10-2 7-10	7-15 5-11	8-1 6-8	9-9 5-15	10-4 6-5	10-14 7-1	10-2 7-7	9-1 6-2	9-2 5-9		

PRICE LISTS.

(p) Average for the last quarter.

(m) Average for the first quarter.

TIRHUT DIVISION—contd.

(172)

District.	Local areas.			Marts at which prices were taken		Staple food crops.	1887	1888	1889	1890	1891	1892
Champan	19. Sadar sub-division.			Motihari ...		Makai up-land	31-13 $\frac{1}{4}$ ⁸	25-14	18-7 $\frac{1}{2}$	17-4	19-15 $\frac{3}{4}$	20-11
	20. Bettia sub-division.			Bettiah ...		Rice low-land Makai do. Rice do.	21-1 $\frac{9}{16}$ 31-3 $\frac{3}{4}$ 21-13 $\frac{3}{4}$	18-0 8 25-13 3 18-10 $\frac{3}{4}$	12-12 $\frac{1}{2}$ 12-2 $\frac{3}{4}$ 15-1 $\frac{1}{2}$	16-1 $\frac{1}{2}$ 22-15 $\frac{3}{4}$ 18-6 $\frac{3}{4}$	15-10 $\frac{1}{2}$ 20-1 16-6 $\frac{1}{2}$	13-14 $\frac{5}{8}$ 21-1 15-4
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
19	21-12 $\frac{1}{2}$ 15-10 $\frac{3}{8}$ 22-2	20-10 $\frac{1}{2}$ 15-8 $\frac{5}{8}$ 22-3 $\frac{1}{2}$	25-13 17-0 $\frac{3}{4}$ 27-11 $\frac{1}{2}$	19-15 14-14 $\frac{1}{4}$ 19-7 $\frac{3}{4}$	13-1 $\frac{1}{4}$ 10-1 $\frac{1}{4}$ 13-12	21-11 $\frac{1}{2}$ 13-8 $\frac{3}{4}$ 24-0	21-3 14-4 22-11 $\frac{1}{2}$	18-2 $\frac{5}{8}$ 13-0 $\frac{3}{4}$ 19-14 $\frac{1}{8}$	20-15 12-2 $\frac{1}{2}$ 22-2	24-13 $\frac{1}{8}$ 14-2 $\frac{3}{4}$ 26-4 $\frac{3}{4}$	25-14 16-4 28-12	30-0 16-15 $\frac{1}{2}$ 30-14 $\frac{3}{4}$
20	16-3 $\frac{1}{2}$	15-14 $\frac{3}{4}$	17-14	15-4	10-9 $\frac{3}{4}$	15-5 $\frac{1}{8}$	14-15 $\frac{1}{8}$	14-0 $\frac{3}{4}$	13-13 $\frac{1}{2}$	15-7 $\frac{1}{2}$	17-8	17-4 $\frac{3}{4}$
	1905	1906	1907	1908	1909	1910	1911	1912 (p)	1913 (p)	1914 (p)	1915 (p)	1916 (p)
19	20-12 14-11 19-14	11-15 $\frac{1}{2}$ 9-15 $\frac{3}{4}$ 12-6 $\frac{1}{4}$	13-2 $\frac{1}{2}$ 8-12 12-5	11-8 8-3 $\frac{1}{4}$ 12-8 $\frac{1}{4}$	17-1 10-4 18-3	19-2 13-5 18-13	19-14 13-4 19-9	20-0 11-0 19-11	14-12 9-13 15-0	13-8 9-5 13-7	13-6 9-5 13-5	18-11 11-11 17 13
20	4-10	9-15 $\frac{1}{4}$	9-4 $\frac{1}{4}$	8-15 $\frac{1}{4}$	11-6	12-12	13-8	11-8	10-5	9-13	9-8	12-13
	1917 (p)	1918 (p)	1919 (p)	1920 (m)	1921	1922	1923	1924	1925	1926	1927	1928
19	20-4 12-11 19-8	11-0 8-0 10-9	7-13 15-12 7-15	8-0 5-15 8-0	9-7 6-11 10-0	9-11 6-15 10-5	10-8 7-15 10-1 $\frac{1}{2}$	12-6 7-9 12-2	9-14 6-11 9-8	9-10 7-4 9-14		
20	13-5	8-8	5-0	5-12	6-11	6-15	8-2	7-0	6-6	7-4		

(p) Average for the last quarter. (m) Average for the first quarter.

BENGAL TENANCY ACT.

[App. XII]

District.	Local areas.			Mart at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Saran	21. Sadar Sub-dvn.			Sahebgun a)		Makai upland Rice low land	28 9 $\frac{5}{8}$ 20-10 $\frac{2}{9}$	22-07 16-15 $\frac{3}{8}$	19-6 $\frac{5}{8}$ 11-11 $\frac{1}{4}$	18-15 11-15 $\frac{1}{2}$	18-9 $\frac{3}{8}$ 11-10 $\frac{1}{4}$	20-10 $\frac{5}{8}$ 10-3 $\frac{1}{8}$
	22 Gopalganj Do.			Mirganj*		Makai up-land Rice low-land	27-7 $\frac{1}{8}$ 17-5 $\frac{1}{4}$	24-1 15-9 $\frac{9}{8}$	20-4 $\frac{1}{2}$ 12-8 $\frac{1}{4}$	19-4 $\frac{3}{4}$ 14-13 $\frac{3}{4}$	18-2 $\frac{1}{4}$ 13-14 $\frac{1}{2}$	22-6 $\frac{1}{8}$ 13-10
	23. Siwan Do			Siwan —		Makai up-land Rice low-land	27-0 $\frac{3}{8}$ 18-12 $\frac{1}{4}$	23-12 $\frac{5}{8}$ 16-7 $\frac{5}{8}$	11-13 $\frac{1}{8}$ 12-14 $\frac{3}{8}$	18-13 $\frac{5}{8}$ 15-0 $\frac{5}{8}$	17-10 $\frac{3}{4}$ 15-0 $\frac{1}{4}$	21-6 $\frac{1}{2}$ 12-15 $\frac{3}{4}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
21	20-3 $\frac{5}{8}$ 13-15 $\frac{3}{4}$	19-8 14-3 $\frac{1}{2}$	22-14 16-6 $\frac{3}{8}$	9-3 $\frac{1}{4}$ 13-10 $\frac{5}{8}$	11-12 $\frac{3}{8}$ 9-12	22-2 $\frac{5}{8}$ 14-4 $\frac{1}{8}$	22-5 Old 13-14 $\frac{1}{2}$ new 17-23 w	17-2 $\frac{1}{2}$ 12-14	19-5 $\frac{1}{4}$ 10-14 $\frac{1}{8}$	22-12 $\frac{2}{8}$ 11-12 $\frac{1}{2}$	25-3 14-10 $\frac{3}{8}$	25-14 $\frac{3}{8}$ 15-6 $\frac{3}{8}$
22	20-0 $\frac{3}{4}$ 14-9 $\frac{1}{2}$	19-15 $\frac{1}{4}$ 14-5 $\frac{7}{8}$	21-14 $\frac{5}{4}$ 15-3 $\frac{1}{2}$	18-12 $\frac{5}{8}$ 13-12 $\frac{1}{2}$	12-11 $\frac{1}{4}$ 10-1 $\frac{1}{2}$	22-7 $\frac{5}{4}$ 14-3 $\frac{5}{8}$	21-6 $\frac{1}{4}$ 14-6 $\frac{5}{8}$	16-13 $\frac{7}{8}$ 12-13 $\frac{1}{2}$	20-0 $\frac{1}{8}$ 11-10	23-13 11-15 $\frac{3}{4}$	25-11 $\frac{1}{4}$ 14-4 $\frac{1}{2}$	25-6 $\frac{5}{8}$ 14-15 $\frac{1}{2}$
23	21-14 $\frac{5}{8}$ 14-7	18-15 $\frac{1}{8}$ 13-10 $\frac{3}{8}$	19-8 $\frac{1}{2}$ 14-13 $\frac{1}{8}$	17-14 $\frac{1}{4}$ 12-12 $\frac{1}{2}$	13-4 $\frac{5}{8}$ 10-1 $\frac{1}{2}$	22-10 $\frac{5}{8}$ 13-15 $\frac{1}{2}$	21-4 $\frac{1}{8}$ 14-11 $\frac{1}{2}$	16-6 $\frac{1}{2}$ 12-9 $\frac{7}{8}$	20-2 $\frac{1}{4}$ 12-4 $\frac{5}{8}$	23-0 $\frac{1}{8}$ 12-13 $\frac{1}{8}$	25-2 14-12 $\frac{3}{4}$	25-13 $\frac{5}{8}$ 15-2
	1905	1906	1907	1908	1909*	1910	1911	1912 (p)	1913 (p)	1914 (p)	1915 (p)	1916 (p)
21	18-13 $\frac{3}{8}$ 13-9 $\frac{1}{8}$	13-1 $\frac{1}{2}$ 9-11 $\frac{1}{2}$	12-14 $\frac{3}{4}$ 8-10 $\frac{1}{4}$	10-15 $\frac{1}{4}$ 7-9	16 0 8-13	18 11 11-8	20-3 11-8	19-0 10-5	14-0 8-9	1-1 9-3	13-2 8-2	15-11 10-0
22	18-9 $\frac{3}{4}$ 13-10 $\frac{1}{8}$	12-12 $\frac{3}{8}$ 10-0 $\frac{1}{2}$	13-4 $\frac{3}{4}$ 9-1 $\frac{1}{2}$	11-12 $\frac{3}{4}$ 8-0 $\frac{1}{2}$	16-9 10-5	18-6 12-5	19-15 12-0	18-13 10-7	14-14 9-11	14-2 9-1	13-8 8-4	16-8 9-14
23	18-5 $\frac{5}{8}$ 13-8 $\frac{1}{4}$	12-13 $\frac{1}{4}$ 9-9 $\frac{1}{4}$	13-1 $\frac{3}{4}$ 8-4 $\frac{1}{2}$	11-6 $\frac{1}{2}$ 8 5 $\frac{1}{2}$	16-0 10-7	18-10 12-14	19-0 12-14	18-15 11-3	14-12 9-13	13-11 9-0	12-15 8-15	15-14 11-5
	1917 (p)	1918 (p)	1919 (n)	1920 (m)	1921	1922	1923	1924	1925	1926	1927	1928
21	18-0 12-0	9-13 7-4	8-5 5-15	8-4 6-0	8-7 6-8	9-10 6-14	10-14 7-10	11-6 7-5	10-1 6-13	9-8 6-9		
22	18-3 11 0	10-8 7-13	8-12 6-1	8-5 5-15	9-11 6-6	9-8 6-9	11-5 7-11	11-7 7-4	9-10 6-15	9-12 6-9		
23	17-12 12-12	10-9 7-8	8-8 5-3	8-7 6-2	8-13 6-5	9-2 6-5	10-14 7-2	11-0 6-13	8-13 5-13	8-8 5-6		

(p) Average for the last quarter.

(w) Average for one quarter.

(a) Formerly Chapra.

(m) Average for the first quarter.

* In 1922 and 1923 read Gopalganj

3. BHAGALPUR DIVISION.

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Monghyr ...		1. Sadar sub-dvn.		Monghyr ...		Wheat up-land.	18-0 $\frac{3}{4}$ $\frac{1}{8}$	15-5	15-14 $\frac{1}{2}$ $\frac{1}{2}$	16-11 $\frac{5}{8}$	14-3 $\frac{2}{3}$	13-4 $\frac{1}{2}$ $\frac{1}{2}$
						Rice low land	18-14 $\frac{1}{8}$ $\frac{3}{8}$ $\frac{0}{0}$	16-12	13-7 $\frac{3}{4}$	15-9 $\frac{1}{4}$	14-2 $\frac{1}{3}$	11-2 $\frac{1}{3}$
		2. Begusarai ditto		Begusarai ...		Wheat up-land.	19-5 $\frac{3}{4}$ $\frac{1}{8}$ $\frac{0}{0}$	16-10 $\frac{6}{8}$	16-0 $\frac{1}{4}$	17-4 $\frac{1}{2}$	15-14 $\frac{1}{2}$	13-1 $\frac{1}{4}$
						Rice low-land	19-4 $\frac{3}{8}$ $\frac{3}{8}$ $\frac{0}{0}$	18-1 $\frac{1}{2}$	14-3 $\frac{3}{8}$	17-0 $\frac{1}{2}$	15-5 $\frac{1}{4}$	13-1 $\frac{1}{8}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1 {	15-11 $\frac{1}{2}$	15-5 $\frac{1}{4}$	15-11 $\frac{1}{2}$ $\frac{1}{4}$	12-9 $\frac{1}{8}$	9-5 $\frac{1}{8}$	15-6 $\frac{3}{8}$	16-11 $\frac{1}{2}$	13-8 $\frac{1}{4}$	13-7 $\frac{7}{8}$ $\frac{1}{2}$	14-10 $\frac{1}{3}$	15-6 $\frac{5}{8}$ $\frac{1}{2}$	17-6 $\frac{5}{8}$ $\frac{1}{2}$
2 {	13-2 $\frac{1}{8}$	12-14	15-1 $\frac{3}{4}$	11-15 $\frac{7}{8}$	8-12 $\frac{1}{2}$	12-13 $\frac{1}{2}$ $\frac{1}{2}$	13-0 $\frac{3}{8}$	11-11 $\frac{3}{8}$	12-4 $\frac{1}{2}$	10-14 $\frac{5}{8}$	11-3	12-14 $\frac{1}{3}$
	14-10 $\frac{1}{4}$	15-0 $\frac{5}{8}$	16-1 $\frac{1}{4}$ $\frac{1}{4}$	11-14 $\frac{1}{4}$	8-13 $\frac{1}{2}$ $\frac{1}{2}$	14-14 $\frac{1}{4}$	17-11 $\frac{1}{8}$	14-2 $\frac{1}{2}$ $\frac{1}{2}$	12-8 $\frac{1}{2}$	13-14 $\frac{1}{2}$	16-3	17-15 $\frac{1}{4}$
	14-10 $\frac{3}{8}$	14-9 $\frac{1}{2}$	17-3 $\frac{3}{8}$	13-0 $\frac{3}{8}$	8-11 $\frac{1}{2}$ $\frac{1}{2}$	13-12 $\frac{1}{2}$	14-4 $\frac{1}{8}$	13-1 $\frac{3}{8}$	11-6 $\frac{1}{2}$ $\frac{1}{2}$	12-4 $\frac{3}{8}$	15-1 $\frac{5}{8}$ $\frac{1}{2}$	14-11 $\frac{1}{2}$ $\frac{1}{2}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
1 {	15-0 $\frac{3}{4}$ $\frac{3}{8}$	11-7 $\frac{3}{4}$ $\frac{1}{4}$	10-4 $\frac{1}{4}$	8-9 $\frac{3}{4}$	9-15	12-12	14-11	11-3	10-6	8-7	7-0	9-0
2 {	12-9 $\frac{5}{8}$ $\frac{1}{8}$	8-14 $\frac{1}{4}$ $\frac{1}{4}$	8-1 $\frac{1}{4}$	7-5 $\frac{1}{4}$	9-9	13-4	13-5	8-15	7-6	7-10	7-0	9-3
	14-6 $\frac{1}{2}$ $\frac{1}{2}$	10-5 $\frac{1}{4}$	9-6 $\frac{3}{4}$	8-3 $\frac{1}{4}$	9-4	11-7	13-12	10-11	10-5	8-3	7-0	10-5
	13-11 $\frac{1}{2}$ $\frac{1}{2}$	9-0	7-13 $\frac{3}{4}$	7-14 $\frac{1}{4}$	8-15	13-1	12-12	9-10	7-13	7-0	7-4	9-5
	1917(p)	1918(p)	1919(p)	1920(m)	1921	1922	1923	1924	1925	1926	1927	1928
1 {	9-0	6-0	6-4	6-5	6-3	6-11	8-12	8-6	8-1	6-10		
2 {	11-8	7-0	5-5	6-4	5-9	6-1	7-0	6-6	6-6	5-8		
	9-0	6-5	6-1	5-7	6-1	6-5	8-2	7-12	7-2	6-15		
	11-5	6-10	5-12	5-12	5-13	6-14	7-9	6-2	5-12	5-5		

174)

BENGAL TENANCY ACT.

[App. xi]

(p) Average for the last quarter.

(m) Average for the first quarter.

3. BHAGALPUR DIVISION—*contd.*

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Monghyr <i>contd.</i>		3. Jamui sub dvn.		Jamui ...		Wheat up-land	17-15 $\frac{7}{9}$	14-1 $\frac{5}{5}$	14-14 $\frac{5}{12}$	16-13 $\frac{3}{3}$	14-10 $\frac{2}{2}$	12-2 $\frac{2}{2}$
Bhagalpur		4. Sadar ditto		Bhagalpur ...		Rice low-land	19-5 $\frac{5}{9}$	16-3 $\frac{6}{6}$	14-7 $\frac{1}{6}$	16-15 $\frac{1}{4}$	15-10 $\frac{1}{2}$	11-11 $\frac{1}{2}$
						Makai up-land	34-8 $\frac{8}{13}\frac{7}{2}$	25-4 $\frac{3}{3}$	19-11 $\frac{8}{9}$	22-6 $\frac{1}{12}$	21-5 $\frac{1}{2}$	21-3 $\frac{1}{4}$
						Rice low-land	22-0 $\frac{1}{2}\frac{9}{4}$	18-12 $\frac{7}{7}$	15-10 $\frac{1}{12}$	17-15 $\frac{2}{3}$	16-11 $\frac{1}{4}$	12-9 $\frac{1}{2}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902,	1903	1904
3 {	13-3	15-15 $\frac{5}{6}$	16-7 $\frac{7}{12}$	11-13 $\frac{1}{3}$	9-0 $\frac{1}{4}$	15-0	17-6 $\frac{2}{3}$	13-10 $\frac{2}{3}$	11-8	12-10	13-14 $\frac{3}{4}$	17-5 $\frac{1}{3}$
4 {	13-4 $\frac{2}{3}$	15-7 $\frac{1}{12}$	16-1 $\frac{7}{12}$	13-3 $\frac{2}{3}$	9-8 $\frac{1}{2}$	15-4	15-12	13-2 $\frac{2}{3}$	11-5 $\frac{1}{3}$	11-14 $\frac{3}{4}$	13-7 $\frac{7}{12}$	13-2
	23-13 $\frac{1}{6}$	21-5 $\frac{2}{3}$	23-0 $\frac{5}{6}$	20-4 $\frac{1}{12}$	13-0 $\frac{5}{6}$	28-3 $\frac{1}{4}$	23-11 $\frac{1}{12}$	16-7 $\frac{1}{4}$	19-6 $\frac{1}{6}(x)$	24-4 $\frac{1}{6}(v)$	23-9 $\frac{2}{3}$	24-1 $\frac{1}{4}$
	14-10 $\frac{7}{12}$	15-2 $\frac{5}{6}$	18-6 $\frac{2}{3}$	14-5 $\frac{1}{4}$	9-11 $\frac{1}{3}$	15-6 $\frac{1}{4}$	16-1 $\frac{1}{12}$	14-1 $\frac{1}{3}$	13-0 $\frac{5}{12}$	12-11 $\frac{1}{3}$	14 0	13-11 $\frac{1}{12}$
	1905	1906	1907	1908	1909	1910	1911	1912 (p)	1913 (p)	1914 (p)	1915 (p)	1916 (p)
3 {	14-2 $\frac{3}{4}$	11-6 $\frac{3}{4}$	9 15	7-11	9-8	12-13	14-6	11-3	9-8	8-11	6-5	5-4
4 {	13-2 $\frac{3}{4}$	9-12	8-3 $\frac{1}{4}$	7-1 $\frac{1}{4}$	9-2	13-2	13-3	8-13	9-5	7-8	6-13	10-3
	21-4 $\frac{1}{6}$	12-12 (x)	12-11 $\frac{1}{4}(x)$	11-4 $\frac{3}{4}$	15-8	21-10	20-9	8-11	13-11	12-12	15-2	18-5
	11-1 $\frac{3}{4}$	9-7 $\frac{3}{4}$	8-5 $\frac{3}{4}$	7-15 $\frac{3}{4}$	9-1	12-10	12-13	9-15	8-9	7-13	7-5	10-1
	1917 (p)	1918 (p)	1919 (p)	1920 m	1921	1922	1923	1924	1925	1926	1927	1928
3 {	9-11	5-8	5-1	5-9	6-4	5-15	8-2	7-14	7-3	7-1	6-12	
4 {	12-11	6-0	5-11	6-4	6-0	6-2	7-14	6-14	6-14	5-11	5-5	
	20-3	9-14	7-15	8-7	9-7	10-10	12-1	10-8	10-4	9-9	9-6	
	12-4	6-8	5-6	6-4	5-15	-1	7-10	6-9	6-10	6-4	6-2	

(p) Average for the last quarter. (w) Average for one quarter. (x) Average for two quarter. (m) Average for the first quarter.

A pp. xii.]

PRICE LISTS.

(175)

3. BHAGALPUR DIVISION—contd.

District.	Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Bhagalpur contd.	5. Banka sub-dvn.		Banka ...		Makai up-land	13-10 $\frac{2}{3}\frac{3}{4}$	21-0.5	23-12	16-10	24-6(p)	20-5	
					Rice low-land	25-1 $\frac{2}{3}\frac{3}{4}$	18-2.2	15-7 $\frac{3}{4}$	19-2 $\frac{6}{8}$	17-3 $\frac{1}{3}$	12-14 $\frac{5}{8}$	
	6. Madhipura Do.		Madhipaura ...		Makai do.	54-0 $\frac{1}{6}$	45-14	29-13 $\frac{1}{2}$	34-8	35-2	20-8 $\frac{2}{3}$	
					Rice do.	28-12	23-1.7	12-2 $\frac{2}{3}$	25-1 $\frac{1}{2}$	19-6 $\frac{2}{3}$	14-13 $\frac{1}{3}$	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
5 {	20-2	30-3(w)	22-3	18-6 $\frac{1}{6}$	10-4 $\frac{1}{3}$	25-4 $\frac{1}{2}$ (y)	21-4	18-12(x)	16-10 $\frac{2}{3}$ (y)	19-9 $\frac{1}{3}$	21-11 $\frac{1}{2}$	20-8 $\frac{1}{3}$
6 {	15-6 $\frac{2}{3}$	16-12	19-11 $\frac{5}{8}$	14-3 $\frac{1}{4}$	9-14 $\frac{1}{2}$	16-2 $\frac{3}{8}$	16-4 $\frac{1}{2}$	14-13 $\frac{1}{2}$	14-12 $\frac{3}{4}$	13-5 $\frac{1}{3}$	13-13 $\frac{1}{3}$	12-8 $\frac{5}{8}$
	29-14 $\frac{5}{8}$	31-6	38-5 $\frac{1}{2}$	34-10 $\frac{2}{3}$	21-2 $\frac{3}{4}$	36-3 $\frac{1}{2}$	31-13 $\frac{1}{2}$	21-4	29-9 $\frac{1}{3}$	30-8 $\frac{1}{3}$	36-10 $\frac{1}{6}$	39-10
	17-9 $\frac{3}{4}$	19-2 $\frac{2}{3}$	22-9 $\frac{1}{3}$	17-13 $\frac{1}{3}$	Amon 11-14 Aus. 14-0w	18-14 $\frac{2}{3}$	17-15 $\frac{1}{2}$	18-4 $\frac{2}{3}$	16-4 $\frac{2}{3}$	15-9 $\frac{1}{6}$	17-4 $\frac{1}{3}$	18-14 $\frac{2}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913 (p)	1914 (p)	1915(p)	1916(p)
5 {	19-13 $\frac{1}{2}$	11-6 $\frac{3}{4}$ (x)	11-15 $\frac{3}{4}$ (x)	10-12 $\frac{1}{2}$	14-1	20-5	...	...	...	...	...	13-8
6 {	14-10 $\frac{6}{8}$	9-8	8-1 $\frac{1}{2}$	7-9 $\frac{1}{4}$	9-7	12-14	14-14	9-6	9-2	9-3	8-1	12-3
	13-4	16-5 $\frac{1}{4}$	14-9 $\frac{1}{4}$	12-11 $\frac{1}{4}$	21-2	28-7	28-8	21-15	14-5	13-11	12-8	13-0
	16-4	10-9 $\frac{1}{2}$	9-15 $\frac{3}{4}$	8-3	9-14	16-8	15-0	11-12	10-0	9-0	8-10	13-3
	1917(p)	1918(p)	1919 (p)	1920 m	1921	1922	1923	1924	1925	1926	1927	1928
5 {	...	10-0	8-2	5-3	8-14	9-12	10-1	9-7	10-5	9-7		
6 {	15-3	6-10	6-4	6-10	6-5	7-3	8-1	7-0	7-8	6-4		
	24-0	...	10-11	10-0	11-4	11-11	13-6	10-5	8-14	9-14		
	15-11	9-4	5-8	6-5	6-11	7-11	8-9	6-6	6-9	6-8		

(p) Average for the last quarter.

(w) Average for one quarter.

(x) Average for two quarters.

(y) Average for three quarters.

Marua up-land from 1909.

(m) Average for the first quarter

(176)

BENGAL TENANCY ACT.

[4 pp. XII.

3. BHAGALPUR DIVISION—contd..

App. XII

District.		Local areas.		Marts at which prices were taken.		Staple food crops.		1887	1888	1889	1890	1891	1892
Bhagalpur —contd. Purnea ...		7. Supaul sub-dvn.		Supaul ...		Makai up-land.		42-6 $\frac{1}{8}$	38-6	24-13 $\frac{5}{8}$	31-5 $\frac{3}{8}$	28-0 $\frac{1}{2}$	23-6 $\frac{5}{8}$
		8. Sadar Do.		Beamasganj* ...		Rice low-land. Makai do. Rice do		21-1 $\frac{1}{4}$ 20-15 $\frac{3}{4}$ 22-10 $\frac{1}{2}$	21-2'9 17-15'1 20-1'4	16-1 $\frac{1}{2}$ 16-3 15-2 $\frac{3}{8}$	20-11 $\frac{3}{4}$ 17-12 19-1 $\frac{1}{2}$	17-5 $\frac{3}{4}$ 14-11 $\frac{1}{2}$ 15-15 $\frac{1}{2}$	13-10 $\frac{5}{8}$ 12-4 12-10 $\frac{7}{8}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	
7	28-1 $\frac{3}{4}$ 18-6 $\frac{3}{8}$ 14-0 $\frac{1}{2}$	27-14 $\frac{2}{3}$ 15-8 $\frac{5}{8}$ 16-8	37-14 $\frac{5}{8}$ 20-0 15-14	31-12 $\frac{2}{3}$ 17-15 $\frac{3}{4}$ 13-0	18-2 $\frac{2}{3}$ 11-1 $\frac{1}{2}$ 8-15 $\frac{1}{2}$	29-12 $\frac{2}{3}$ 17-6 14-7 $\frac{1}{2}$	26-10 16-13 16-10 $\frac{2}{3}$	24-6 $\frac{1}{2}$ 16-15 $\frac{2}{3}$ 15-3 $\frac{2}{3}$	24-5 $\frac{1}{2}$ 14-7 $\frac{1}{2}$ 14-12	29-11 14-12 $\frac{1}{6}$ 13-2 $\frac{2}{3}$	34-6 $\frac{2}{3}$ 17-7 $\frac{1}{2}$ 14-14 $\frac{1}{2}$	40-14 $\frac{2}{3}$ 18-13 $\frac{1}{2}$ 15-2 $\frac{2}{3}$	
8	13-14 $\frac{1}{2}$	16-1 $\frac{1}{2}$	20-7 $\frac{1}{2}$	14-10 $\frac{2}{3}$	10-5 $\frac{1}{2}$	17-0	16-14	14-14 $\frac{2}{3}$	11-14 $\frac{1}{6}$	11-1 $\frac{5}{6}$	12-15 $\frac{1}{2}$	14-5 $\frac{1}{2}$	
	1905	1906	1907	1908	1909	1910	1911	1912 (p)	1913 (p)	1914 (p)	1915 (p)	1916 (p)	
7	33-4 $\frac{1}{2}$ 17-9 $\frac{1}{4}$	15-12 $\frac{3}{4}$ 10-8 $\frac{1}{4}$	14-1 $\frac{1}{2}$ 9-0 $\frac{3}{4}$	12-7 $\frac{3}{4}$ 8-7 $\frac{1}{4}$	21-4 11-3	25-0 13-6	25-11 15-1	21-11 11-11	15-0 9-5	12-5 9-5	15-0 9-10	15-11 12-0	
8	14-9 $\frac{1}{2}$ 11-9 $\frac{1}{2}$	10-2 7-7	9-8 $\frac{3}{4}$ 8-1 $\frac{1}{2}$	8-4 $\frac{1}{2}$ 7-10 $\frac{1}{2}$	8-4 8-7	12-2 14-2	16-1 12-13	11-0 8-13	9-5 7-0	7-11 7-7	7-5 7-1	9-11 8 11	
	1917 (p)	1918 (p)	1919 (p)	1920 m	1921	1922	1923	1924	1925	1926	1927		
7	25-0 14-11	18-0 9-2	10-0 5-8	8-10 6-3	11-12 7-3	12-10 7-8	13-11 8-12	11-0 8-0	10-15 7-9	10-7 6-15			
8	10-8 11-3	6-5 7-10	5-12 4-15	6-0 5-15	6-5 5-8	8-4 7-0	9-14 7-15	8-3 6-14	7-13 6-8	7-0 5-15			

* Formerly Khasha. † Marua up-land from 1909.

(p) Average for the last quarter.

(m) Average for the first quarter.

App. XII

PRICE LISTS.

(177)

3. BHAGALPUR DIVISION—*contd.*

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Purnea-- <i>contd.</i>	{	9. Araria Sub-dvn.		Arrareah ...		Wheat up-and (a)	24-3 $\frac{2}{5}$	20-14·7	16-6 $\frac{2}{3}$	19-14 $\frac{2}{3}$	16-13 $\frac{3}{4}$	12-0
						Rice low-land	23-15 $\frac{1}{3}$	20-5·3	15-14 $\frac{2}{3}$	20-8	17-13 $\frac{1}{3}$	14-1 $\frac{1}{3}$
		10. Kishanganj Do.		Kishanganj ...		Wheat up-do.	12-12 $\frac{2}{3}$	12-12·7	12-1 $\frac{1}{3}$	14-2 $\frac{1}{3}$	12-9 $\frac{2}{3}$	10-5 $\frac{2}{3}$
						Rice lowland	22-10	18-14	15-4	19-10 $\frac{2}{3}$	15-13 $\frac{1}{3}$	11-3 $\frac{1}{3}$
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
9 {	17-0 16-12	17-9 $\frac{1}{3}$ 17-4	14-0 20-5 $\frac{1}{3}$	13-8 15-12	8-13 $\frac{1}{3}$ 10-9 $\frac{1}{2}$	14-6 17-9 $\frac{1}{3}$	21-2 $\frac{2}{3}$ 18-1 $\frac{1}{3}$	17-12 17-2 $\frac{2}{3}$	15-9 $\frac{1}{3}$ 12-15 $\frac{1}{3}$	15-5 $\frac{1}{3}$ 12-15 $\frac{1}{3}$	16-10 $\frac{2}{3}$ 14-15	17-10 $\frac{2}{3}$ 16-10 $\frac{2}{3}$
10 {	9-15 $\frac{1}{3}$ 13-15 $\frac{1}{3}$	12-10 $\frac{1}{3}$ 14-7 $\frac{1}{3}$	12-15 $\frac{1}{3}$ 18-2 $\frac{2}{3}$	10-13 $\frac{1}{3}$ 13-14	7-10 $\frac{1}{3}$ 9-10 $\frac{2}{3}$	9-10 $\frac{2}{3}$ 16-5 $\frac{1}{3}$	11-14 $\frac{2}{3}$ 17-14 $\frac{2}{3}$	10-14 15-6 $\frac{2}{3}$	9-12 11-4	9-0 10-15 $\frac{7}{12}$	10-0 $\frac{1}{3}$ 13-7 $\frac{1}{3}$	11-14 14-2 $\frac{2}{3}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
9 {	14-14 $\frac{2}{3}$ 12-15 $\frac{1}{3}$	10-13 8-1 $\frac{3}{4}$	9-6 $\frac{1}{2}$ 7-10	9-7 $\frac{1}{2}$ 7-14	8-11 9-8	15-3 14-9	14-14 13-4	11-0 9-5	9-2 7-5	8-3 7-12	9-10 8-10	13-5 11-0
10 {	11-4 $\frac{2}{3}$ 11-1 $\frac{1}{3}$	10-2 $\frac{1}{4}$ 7-5	9-5 7-5 $\frac{1}{2}$	6-11 $\frac{1}{4}$ 6-15 $\frac{3}{4}$	7-8 8-8	10-0 11-13	10-15 11-11	10-0 9-5	9-5 6-5	6-12 6-8	6-7 6-10	8-0 8-5
	1917(p)	1918(p)	1919(p)	1920m	1921	1922	1923	1924	1925	1926-	1927	1928
9 {	11-11 12-0	6-5 9-8	6-8 5-11	7-13 6-4	7-12 5-14	9-1 8-8	10-13 8-9	8-11 6-13	8-4 6-6	7-4 5-11		
10 {	8-3 11-0	7-3	5-8 5-15	6-3	6-9	8-3	8-11	7-11	6-13	5-8		

(m) Average for the last quarter.

(m) Average for the first quarter.

(178)

BENGAL TENANCY ACT.

[App. XII.

District.		Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892
Cuttack		1. Sadar Sub-dvn.		Cuttack		...	...	...	...	...	...	...
		1. A.		Charchikahat (a)		...	...	...	...	...	...	
		2. Jaipur Do.		Jaipur town		...	...	...	...	...	...	
		3. Kendrapara Do.		Kendrapara town		...	...	...	...	...	...	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
1	...	...	...	15-15 $\frac{3}{8}$ (nop)	11-14 $\frac{1}{8}$	14-1 $\frac{3}{4}$	15-12 $\frac{1}{4}$	13-12 $\frac{1}{2}$	13-7	14-2 $\frac{1}{2}$	16-1 $\frac{5}{8}$	17-13 $\frac{2}{9}$
1A	...	...	...	...	...	...	...	...	...	...	...	...
2	...	...	...	18-11 $\frac{1}{2}$	14-3 $\frac{1}{2}$	17-2 $\frac{3}{4}$	17-9	16-14 $\frac{3}{4}$	14-9 $\frac{1}{6}$	14-0 $\frac{5}{8}$	14-15 $\frac{5}{12}$	21-0
3	...	...	...	(nop)	...	...	...	...	...	...	...	...
				20-9 $\frac{5}{8}$ nop	14-5 $\frac{5}{8}$	18-11	19-5 $\frac{7}{12}$	18-0 $\frac{3}{4}$	15-7 $\frac{5}{12}$	16-0 $\frac{7}{12}$	20-2	22-6 $\frac{3}{4}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
1	15-1 $\frac{3}{4}$	11-3 $\frac{1}{2}$	9-9 $\frac{1}{2}$	8-6 $\frac{1}{2}$	11-3	12-13	12-13	10-8	9-1	9-3	9-6	9-10
1A	...	...	...	...	12-5	14-4	14-0	11-11	10-1	9-13	10-1	11-8
2	19-2 $\frac{1}{2}$	12-13 $\frac{3}{4}$	9-2 $\frac{3}{4}$	7-11	11-5	14-1	14-10	11-6	9-10	8-11	9-10	11-2
3	20-0 $\frac{1}{4}$	13-7 $\frac{3}{4}$	9-10	8-9 $\frac{1}{2}$	13-9	17-1	15-12	13-2	8-13	9-10	9-6	10-15
	1917(p)	1918(p)	1919(p)	1920(m)	1921	1922	1923	1924	1925	1926	1927	1928
1	12-4	8-8	5-14	6-9	6-5	6-0	7-13	8-2	7-1	6-4		
1A	13-2	9-4	6-12	7-10	6-12	6-10	8-13	9-0	7-1	6-14		
2	14-0	9-6	5-13	7-3	6-3	6-5	8-6	8-0	7-1	6-7		
3	12-11	10-8	6-0	6-12	7-3	7-2	9-3	8-11	8-0	6-11		

(a) Charchikahat is a part of the Sudder Sub-division from 1909. (p) Average for the last quarter. (nop) Average for 2nd, 3rd and 4th quarters.

*Amended by Government Notification No. 4307 L R., dated 7th November, 1896, Cal. Gaz. Part I page 1150.

NOTES.—The prices since the passing of the Orissa Tenancy Act, 1913, have been published under S. 46 of that Act. Before the passing of that Act the prices were under S. 39 of the Bengal Tenancy Act. (m) Average for the first quarter.

District.	Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Cuttack-contd.	4. Banki Sub-dvn.		Charchika hat (a)		Rice ...	...	...	...	...	...	...	
Puri ...	5. Sadar Do.		Purt ...		Do. ...	...	...	...	...	...	...	
	5A Do. Do.		Banamalipur (b)		Do. ...	...	...	...	...	...	...	
	6. Khurda Do.		Khurda ...		Do. ...	...	...	...	...	...	...	
	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904
4	...	...	...	23-9 $\frac{1}{2}$ (nop) not prepared.	15-0 $\frac{5}{8}$	17-15 $\frac{7}{12}$	18-9	14-6 $\frac{1}{12}$	15-2 $\frac{1}{2}$	15-8 $\frac{5}{12}$	19-3 $\frac{1}{4}$	23-9 $\frac{5}{18}$
5	...	...	...	...	15-13 $\frac{7}{12}$ y	15-2 $\frac{5}{8}$	16-9 $\frac{1}{8}$	13-8 $\frac{1}{12}$	13-11 $\frac{11}{12}$	14-10 $\frac{1}{4}$	15-13 $\frac{5}{12}$	17-14 $\frac{1}{8}$
5A	...	...	...	...	...	...	...	...	...	...	...	...
6	...	...	...	not prepared	11-7 $\frac{3}{8}$	old 15-1 $\frac{1}{2}$ new 19-2 $\frac{3}{8}$ w	17-7 $\frac{3}{8}$	14-15 $\frac{5}{16}$	15-15 $\frac{7}{12}$	16-10 $\frac{5}{8}$	19-10 $\frac{11}{12}$	21-8 $\frac{3}{4}$
	1905	1906	1907	1908	1909	1910	1911	1912(p)	1913(p)	1914(p)	1915(p)	1916(p)
4	17-8 $\frac{3}{8}$	13-1	10-1	8-5 $\frac{1}{2}$ 7-8 $\frac{3}{4}$ 9-8	...(a)	...(a)	...(a)	...(a)	...(a)	...(a)	...(a)	...(a)
5	15-11 $\frac{1}{8}$	12-0 $\frac{3}{4}$	10-1 $\frac{3}{4}$	Bano-mlipur.	9-11	12-10	12-1	9-9	9-2	9-13	7-15	10-9
5A	...	...	...	...	12-9	15-5	14-1	13-11	9-5	10-4	9-8	11-1
6	15-12 $\frac{1}{2}$	12-2 $\frac{3}{4}$	10-2 $\frac{3}{8}$	9-3 $\frac{1}{4}$	12-11	14-15	14-13	11-12	10-4	11-13	9-15	10-14
	1917(p)	1918(p)	1919 (p)	1920m	1921	1922	1923	1924	1925	1926	1927	1928
4	...(a)	...(a)	...(a)	...(a)	8-10	8-14	12-2	11-6	12-6	11-6		
5	11-13	8-5	4-14	5-10	6-6	6-7	8-2	7-6	6-12	6-0		
5A	11-8	9-10	6-2	5-7	9-5	9-11	13-8	12-3	11-8	11-5		
6	15-3	9-10	6-6	7-10	6-10	6-6	8-2	7-2	6-10	6-0		

(a) Charchika hat is a part of the Sudder Sub-division of Cuttack from 1909; as to the prices from 1909 to 1914 see ante.

(b) From 1909. (nop) Average for 2nd, 3rd and 4th quarters. (p) Average for the last quarter. (w) Average for one quarter.

(y) Average for three quarters. (x) Average for two quarters. (m) Average for the first quarter.

* Amended by Government Notification No. 4307 L. R. dated 7th November 1896, Cal. Gaz. Part I Page 1150.

District.	Local areas.		Marts at which prices were taken.		Staple food crops.	1887	1888	1889	1890	1891	1892	
Balasore ...	7. Balasore Sadar Sub-division.		Balasore ...		Rice ...	...	...	...	...	...	...	
	8. Bhadrak sub-division.		{ Bhadrak A		Do. ...	...	...	...	...	...	...	
			{ Chandbali B		Do. ...	...	...	...	...	...	...	
1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	
7	...	...	...	11-14	15-0	16-7 $\frac{5}{8}$	13-10	12-14 $\frac{1}{2}$	14-9	15-3	18-1 $\frac{1}{2}$	
8 {	A ...	...	20-10 $\frac{3}{8}$	13-8	17-0 $\frac{3}{4}$	18-9 $\frac{5}{8}$	16-9 $\frac{1}{8}$	16-0	16-6	14-12 $\frac{5}{8}$	19-0	
	B ...	...	17-10 $\frac{3}{8}$ <i>nop</i>	12-6 $\frac{2}{3}$ (y)	16-0	19-5 $\frac{1}{2}$	15-10 $\frac{3}{8}$	13-14 $\frac{3}{8}$	15-11 $\frac{1}{2}$	17-9 $\frac{1}{2}$	20-0	
	1905	1906	1907	1908	1909	1910	1911	1912 (p)	1913 (p)	1914 (p)	1915 (p)	1916 (p)
7	15-1 $\frac{1}{2}$	10-12 $\frac{1}{2}$	8-13 $\frac{1}{4}$	8-5 $\frac{3}{4}$	11-9	13-15	13-3	9-11	9-8	10-5	7-14	9-7
8 {	18-0	13-3 $\frac{1}{2}$	10-2 $\frac{3}{4}$	8-4 $\frac{1}{2}$	12-11	14-11	15-10	12-11	9-8	9-0	8-5	10-8
	17-13 $\frac{1}{2}$	12-4	9-7 $\frac{3}{4}$	8-5 $\frac{1}{2}$	12-1	14-11	14-10	11-0	8-0	8-0	8-5	9-0
	1917 (p)	1918 (p)	1919 (p)	1920m								
7	12-0	8-6	6-11	7-0								
8 {	14-5	9-8	6-3	7-8								
	12-0	9-10	6-3	7-0								

(nop) Average for 2nd, 3rd and 4th quarters.

(y) Average for 3 quarters.

(p) Average for the last quarter.

* Amended by Government Notification No. 4306 L.R., dated 7th November, 1896, *Calcutta Gazette*, Part I, page 1150.

† Added by Government Notification No. 4306 L.R., dated 7th November, 1896, *Calcutta Gazette*, 11th edition, Part I, page 1149.

(m) Average for the first quarter.

Mode of Calculation in a Suit for enhancement of rent on the ground of rise of prices of staple food crops.

Where an enhancement of rent is claimed on the ground of rise of prices under Sec. 30 Cl. (b), the limit to which the rent may be enhanced having regard to the provisions of Sec. 32, may be found out as follows :

Let the amount of rent after enhancement be represented by the letter a ;

Let the amount of rent which is being paid by the tenant at the date of the suit be represented by the letter b ;

Let the average price during the decennial period immediately preceding the institution of the suit be represented by the letter c ;

And let the average price during the earlier decennial period be represented by the letter d ;

Then, according to Sec. 32 Cl. (b), we have the rule of proportion—

$$a : b :: c - \frac{1}{3}(c - d) : d$$

$$\text{i.e. } \frac{a}{b} = \frac{c - \frac{1}{3}(c - d)}{d}$$

$$\text{i.e. } \frac{a}{b} = \frac{\frac{2}{3}c + \frac{1}{3}d}{d} = \frac{1}{3} \left(1 + \frac{2c}{d} \right)$$

$$\text{i.e. } a = \frac{b}{3} \left(1 + \frac{2c}{d} \right)$$

So that if b , c and d are known, we can find out a with the help of the above formula.

Illustration I.*

L , the landlord of an occupancy raiyat R , brings a suit for enhancement of rent, in the Burdwan Sadar Munsif's Court, on the ground that there has been a rise in prices of staple food crops. The rent payable by R to L is Re. 1 for one bigha. What will be the enhanced rent?

Suppose the suit is instituted on the 2nd January, 1913.

As stated above

a = the enhanced rent;

b = the existing rent;

c = the average price during the decennial period immediately preceding the institution of the suit e.g., from 1903 to 1912; and d = the average price during an earlier decennial period, say from 1893 to 1902.

* In a suit for enhancement of rent on the ground of rise of prices of staple food crops, the lower courts relied on the price-lists appearing in this work (second edition). In the High Court it was argued that the lower courts ought to have referred to the price-lists as published in the Gazette and therefore s. 39 of the Bengal Tenancy Act was not complied with and that the price-lists published in this work ought not to have been referred to. Holmwood, ^(*)J. Chapman, J. concurring) overruled the contention and observed that "implicit reliance" can be placed upon the price-lists compiled in this work as referred to above: *Alimuddin v. Rupendra Lochan*, 19 C.W.N. 140 (notes).

Then a is the unknown quantity required to be found

$b = \text{Re. 1.}$

c and d are to be calculated from the price-lists of staple-food crops given in the Appendix. From the price-lists, we get,

In 1903 the quantity sold per rupee was ...	...	...	11 seers	11 $\frac{2}{3}$ ch.
" 1904 " " " " " "	...	...	13 "	0-6/6 "
" 1905 " " " " " "	...	...	13 "	5 $\frac{1}{2}$ "
" 1906 " " " " " "	...	...	9 "	3 "
" 1907 " " " " " "	...	...	7 "	10 $\frac{1}{4}$ "
" 1908 " " " " " "	...	...	7 "	13 $\frac{1}{4}$ "
" 1909 " " " " " "	...	...	9 "	10 "
" 1910 " " " " " "	...	...	11 "	4 "
" 1911 " " " " " "	...	...	11 "	14 "
" 1912 " " " " " "	...	...	9 "	12 "

Therefore the price of a seer in 1903 is	...	...	.085	of a rupee.
" " 1904 is	...	...	.076	"
" " 1905 is	...	...	.075	"
" " 1906 is	...	...	.108	"
" " 1907 is	...	...	.130	"
" " 1908 is	...	...	.127	"
" " 1909 is	...	...	.103	"
" " 1910 is	...	...	.088	"
" " 1911 is	...	...	.084	"
" " 1912 is	...	...	.102	"

Therefore the average price of a seer during this period = $\frac{1}{10}$ of $(.085 + .076 + .075 + .108 + .130 + .127 + .103 + .088 + .081 + .102)$ of a rupee = $.0978$ of a rupee = $.098$ of a rupee (approximately).

$\therefore c = .098$ of a rupee

Similarly the average price of a seer during the year 1893 to 1902 is found in the following way;

The quantity sold per rupee during the years 1893 to 1902 are respectively 12 seers $4\frac{1}{2}$ ch., 14 s. $11\frac{1}{2}$ ch., 16 s. $7\frac{1}{4}$ ch., 12 s. $10\frac{1}{4}$ ch., 9 s. $7\frac{1}{2}$ ch., 13 s. 8 ch., 15 s. $13\frac{3}{8}$ ch., 13 s. $0\frac{1}{8}$ ch., 11 s. 11 ch., and 11 s. $11\frac{1}{4}$ ch.

Therefore the prices of a seer in those years are respectively, .081, .067, .060, .070, .105, .074, .063, .076, .075, and .085 of a rupee; (calculated up to three places of decimals).

Therefore the average price of each seer during this period = $\frac{1}{10}$ of the sum of the prices stated above = $.0766$ of a rupee = $.077$ of a rupee (approximately).

$\therefore d = .077$ of a rupee

Substituting these values in the formula

$$a = \frac{b}{3} \left(1 + \frac{2c}{d} \right).$$

We have $a \times \text{Rs. } \frac{1}{3} \left(1 + 2 + \frac{.098}{.077} \right).$

$\therefore a = \text{Re. 1.2 ans} = 10.909 \dots \text{pies.}$

Leaving out the fractions of a pie the approximate rate of enhancement is 17.71 per cent.

Illustration II.

A similar suit is instituted at Narail (Dt. Jessore); what will be the enhanced rent?

Working out in a similar way, on a reference to the price-lists, we find the average price per seer at Narail during the decennial period from 1903 to 1912 is $.0972 \dots$ of a rupee

So that $c = .097$ of a rupee approximately.

And the average price per seer during the years 1893 to 1902.

$= .0758$. . . of a rupee.

$d = .076$ of a rupee approximately;

Then from the formula

$$a = \frac{b}{3} \left(1 + \frac{2c}{d} \right)$$

We get

$$a = \frac{1}{3} \left(1 + 2 \frac{.007}{.076} \right) \text{ rupees.}$$

$= \text{Re. } 1 - 2 \text{ ans} - 11 - 368 \dots \text{pies.}$

Therefore in this case the rate of enhancement $= 18.23$ per cent approximately.

APPENDIX XIII

Extracts from Bihar and Orissa Settlement Manual, 1927 (containing rules of procedure for Surveys and Settlement under Chap. X of the B. T. Act, Scale of Court Fees in Settlement Operations in Bihar and Orissa, dates of Settlement operations in the Province of Bihar and Orissa, commutation of produce rents, list of estates in Bihar allowed to recover rent under Summary Procedure, etc., etc.).

A. Procedure ordinarily adopted in Behar in preparation of Record of Rights.

The following extracts from the *Bihar and Orissa Survey and Settlement Manual, 1927*, will throw light on the subject.

Part I, Chap. II.—Initiation of Survey & Settlement operations.

Laws under which operations are initiated. 6. Survey and Settlement operations are initiated under the following laws:—

- (a) Chapters X and XI of the Bengal Tenancy Act.
- (b) Chapters XII to XV of Choto-Nagpur Tenancy Act.
- (c) Chapters XI and XII of the Orissa Tenancy Act.
- (d) Section 9 of Regulation III of 1872 for the Santal Parganas
- (e) Chapter III of the Central Provinces Land Revenue Act for Sambalpur.
- (f) Section 6 of Regulation IX of 1825 for the settlement of land revenue.
- (g) Section 3 of the Bihar and Orissa Municipal Survey Act for Municipalities.

7. A notification under the authority of the local Government is required for initiation of survey and settlement operations under any of the laws cited in rule 6 with the exception of operation under Regulation VII of 1822, section 103 of the Bengal Tenancy Act and section 115 of the Orissa Tenancy Act for which operations the authority of the Board is sufficient.

8. (1) Where the Bengal Tenancy is in force the settlement operations are initiated by notification under section 101 of the Act, where the Orissa Tenancy Act is in force by a notification under section 112 of the Act and where the Choto-Nagpur Tenancy Act is in force by a notification under section 80 of the Act.

(2) Notifications under section 101, Bengal Tenancy Act or section 112, Orissa Tenancy Act or section 80, Choto-Nagpur Tenancy Act are usually preceded by a notification under

section 3 of the Bengal Survey Act (see rule 9). When notifications under both sections have issued for whole districts or thanas, care should be taken to ascertain at an early date whether the district or thana includes areas liable to fluvial action, which it may be desirable to exclude or partially from survey and settlement by an amending notification.

(3) The Board is advised by the Legal Remembrancer that by virtue of section 104 of the Bengal Tenancy Act and section 118 of the Orissa Tenancy Act, Part II of Chapter X of the Bengal Tenancy Act and Part II of Chapter XI of the Orissa Tenancy Act apply automatically to temporarily-settled and Government estates lying within an area covered by a notification under section 101 (1) of the Bengal Tenancy Act or section 112 (1) of the Orissa Tenancy Act. In Choto-Nagpur, settlement of fair rents can be made under section 85 of the Choto-Nagpur Tenancy Act, in any area in respect of which a survey is made and a record-of-rights is prepared under section 80 of the Choto-Nagpur Tenancy Act, provided that the local Government has so directed. When any area has been notified under section 101 (1) of the Bengal Tenancy Act or section 112 (1) of the Orissa Tenancy Act or section 80 of the Choto-Nagpur Tenancy Act, the Collector in consultation with the Settlement Officer should proceed without delay to compile a list of all temporarily-settled estates and Government estates within the notified area; and the Commissioner or the Director of Land Records and Surveys should be moved to obtain the orders of Government whether, in the circumstances of each estate included in the list, a settlement of land revenue is necessary or desirable.

(4) Where an application under section 103 of the Bengal Tenancy Act or section 115 of the Orissa Tenancy Act is made by a landlord or tenants for the preparation of a record-of-rights the operations are initiated under the orders of the Board of Revenue (*vide* rules 98 and 104 of the Government Rules under the Bengal Tenancy Act and the Orissa Tenancy Act respectively).

9. Settlements of land revenue and the preparation of a record-of-rights and settlement of fair rents under the Bengal, Orissa and Choto-Nagpur Survey precedes settlement. Tenancy Acts are always (save in exceptional cases to be reported to the Board of Revenue) to be preceded by survey.

In large survey and settlement operation it is often convenient to extend the provisions of the Bengal Survey Act 1875 to the area to be surveyed, before the issue of the notification under the Tenancy Act concerned. This will enable work to begin on village boundaries and, if necessary, on cadastral survey, without excluding the jurisdiction of the Civil Courts under section 111 of the Bengal Tenancy Act and section 140 of the Orissa Tenancy Act and of the Deputy Commissioner or the Civil Courts under section 91 of the Choto-Nagpur Tenancy Act, before it is necessary to issue the notification under the Tenancy Act.

Specimen notifications for the initiation of survey and settlement operations will be found in Appendix C.

10. When settlement operations are undertaken under section 101 of the Bengal Tenancy Act or sec. 112 of the Orissa Tenancy Act or section 80 of the Choto-Nagpur Tenancy Act the particulars to be specified in the notification. of the Choto-Nagpur Tenancy Act the particulars to be recorded must be specified in the notification. For these particulars a reference should be made to section 102 of the Bengal Tenancy Act, section 113 of the Orissa Tenancy Act and section 81 of the Choto-Nagpur Tenancy Act respectively.

11. The Settlement of rents and the reduction of rents may also be undertaken under section 112 of the Bengal Tenancy Act or section 143 of the Orissa Tenancy Act or Section 85 (2) (ii) of the Choto-Nagpur Tenancy Act in exceptional circumstances. The Settlement of rents. proceedings in all cases will be initiated by a notification of the local Government.

12. (1) Any area constituted a municipality under the Bengal Municipal Act 1884 or the Bihar and Orissa Municipal Act 1922 or any part thereof Municipalities. can be excluded from the operation of the local Tenancy Act by a notification of the local Government under section 1 (3) of the Bengal Tenancy Act or section 1 (3) of the Orissa Tenancy Act or section 1 (2) of the Choto-Nagpur Tenancy Act.

(2) In the absence of such an excluding notification, if the area notified for settlement includes a municipality the municipality will come under the settlement operations. The provisions of the Tenancy Act for the preparation of a record-of-rights and the settlement of rent apply only to agricultural lands, including horticultural and orchard lands and the home-steads of agriculturists, and a record-of-rights will be prepared for such lands only and not for non-agricultural tenancies.

(3) A special survey and record of any or all lands within a municipality can be made under the Behar and Orissa Municipal Survey Act 1920.

Note.—When it is desired to exclude a municipality from the settlement operation under one of the Tenancy Acts the simplest plan is to draft the notification initiating the operations in such a manner that the area covered by the notification may not include the municipality.

B. Settlement of Fair Rents After Final Publication.

A—Settlement of Fair Rents under Part III, Chapter X of the Bengal Tenancy Act and Part III, Chapter XI of the Orissa Tenancy Act when a settlement of Land Revenue is not being, or is not about to be, made.

421. Parties may apply for the settlement of fair rents within a period of two months from the date of the certificate of final publication under section 103A (2), Bengal Tenancy Act or three months from the date of the certificate of final publication under section 116 (2), Orissa Tenancy Act. Such applications should be filed at the head quarters of the settlement office, or, should the settlement office have been closed, at the Collectorate, and should be entered in a register of original civil suits such as is used in Civil Courts.

422. Where a single tenancy extends over more than one village, it may happen that the period of limitation will expire in respect of the lands in one village before the records of a second village, also commuted in the suit, are finally published. In such cases the plaintiff would be well advised to file his plaint within the period of limitation of the first village. The Settlement Officer may allow supplementary plaints to be filed in respect of the subsequent villages. Stamp duty should of course be calculated upon the whole tenancy, and the suit should be tried as a single suit.

423. The procedure for the settlement of fair rents, when proceedings are taken under Part III of Chapter X of the Bengal Tenancy Act or Part III of Chapter XI of the Orissa Tenancy Act, is prescribed in the statutory rules under the Acts and in the Board's instruction thereon. Proceedings under section 105A, Bengal Tenancy Act, and section 129, Orissa Tenancy Act, shall be dealt with in all as suits between the parties and Revenue Officers acting under this part exercise the powers of Civil Courts in the trial of suits.

424. When a landlord or tenant applies to the Revenue Officer for the settlement of rent, but fails to proceed further, or when such application is rejected or dismissed, the Revenue Officer should not settle any rent as a fair rent, but should leave untouched the existing rent recorded as payable. When, however, the Revenue Officer has heard the application and has decided that no sufficient cause has been shown for increasing or diminishing the tenant's rent he should not dismiss the application but should settle as the fair rent the existing rent legally payable.

429. If on a day fixed for the disposal of an application both parties appear, but either of them fails without sufficient cause to produce evidence, and the Revenue Officer pronounces judgment, (acting on the presumption that the existing rent is fair), he will settle the rent and the settled rent will be entered in the record as a fair rent. Again, if the applicant appears and the opposite party does not appear, and it is proved that the notice in form 87 prescribed in the Tenancy Act Rules was

served on him in sufficient time to enable him to appear and answer on the day fixed, Revenue Officer may proceed to try the case *ex-parte* and deliver judgment. In these and in all other cases in which the Revenue Officer pronounces judgment, he must settle a fair rent and cause it to be entered in the khatian; it will not be sufficient for him merely to leave untouched the record of the existing rent.

430. Rents may be settled (i) by ratifying compromises between the parties, (ii) by the acceptance of rents proposed by the Revenue Officer as fair, and (iii) by a judicial decision after evidence has been recorded. Regarding compromises, the Revenue Officer

Method of settlement. should not ratify them unless he is satisfied that the amount agreed upon is fair and equitable. If he is not so satisfied, he may accept the present rent, or propose a new rent himself according to section 105 (6), Bengal Tenancy Act or section 128 (6), Orissa Tenancy Act. As regards proposals for fair rent, the Revenue Officer should follow the instructions which have been given in Chapter XXII for the enhancement or reduction of rents.

431. In compromises purporting to be agreements to alter the rent recorded as payable on any of the grounds mentioned in the Act, including the ground of excess area, the Revenue Officer must satisfy himself as to the fairness and equity of the rent settled by

Procedure for compromise. him. In all cases in which compromises are put forward the Revenue Officer shall, after enquiry as may be necessary to test the fairness of the rents agreed upon, record an order stating definitely whether, he is or is not satisfied that the rents proposed are fair and equitable, and giving his reasons. If he is so satisfied he should settle the rents agreed upon by the parties; if he is not, he should settle a fair rent under sub-sections (4) and (5).

432. If it appears to the Revenue Officer that a compromise filed before him contains provisions which will unfairly or inequitably effect the rights

Compromises affecting third parties. of third parties, and are matters which he is capable of trying as issues under section 105A, Bengal Tenancy Act or section 129, Orissa Tenancy Act, he should frame issues under that section and decide them, and he is not bound to accept compromises with regard to such issues.

[*Extracts from Chap. XXV, Bihar & Orissa Survey Settlement Manual, 1927.*]

C. Decision of Suits under Section 106 of the Bengal Tenancy Act and Section 130 of the Orissa Tenancy Act and Section 87 of the Choto Nagpur Tenancy Act.

446. Under section 106, Bengal Tenancy Act or section 130, Orissa Tenancy Act or section 87, Choto Nagpur Tenancy Act, a formal suit may be

When a formal suit may be instituted. instituted before the Revenue Officer within three months from the date of certificate of final publication of the record of rights. The plaint is liable to stamp duty under the Court-fees Act. (See Appendix E.)

448. The suit may refer to any entry in, or omission from, the finally-published record.

Jurisdiction under these sections. The dispute may be regarding possession or regarding right or title, and specific examples are given in the sections while it is stated that "any other matter" may be the subject of a suit before the Revenue Officer.

- Suits for possession. 450. Suits to obtain possession may be accepted but should be referred to the Civil Court.

451. Suits under these three sections should be registered in a register of original civil suits such as used in Civil Courts. (See the Technical Rules.)

- Registration of suits. 453. Suits under the Bengal and the Orissa Tenancy Acts are to be tried according to the procedure of the Civil Procedure Code for the trial of civil suits, subject to any rule made by the local Government.

The Tenancy Act Rules, however, make no exceptions, and direct that the cases be tried as civil suits between the parties. The procedure of these class of cases in the Revenue Officer's

Court should differ in no respect from that followed by a Munsif sitting in a Civil Court, and a separate decree should be drawn up in every case in accordance with the provisions of the Civil Procedure Code. Suits under the Choto Nagpur Tenancy Act are to be tried according to the procedure given in Chapter XVI of the Act for the trial of suits by the Deputy Commissioner, so far as it may be applicable. The provisions of the Civil Procedure Code which apply to such suits are given in section 265 (3).

457. Revenue officers must themselves execute decrees for costs in cases which have been. Execution of decree for cost. decided by them, if application is duly made.

458. When the Settlement Officer or Assistant Settlement Officer who has passed a decree has left the district on transfer or at the close of the operations, any Revenue Officer who would have had jurisdiction to try the suits in which the decree was passed, or who is in charge of the records of the case can execute it. (Vide the ruling in Indian Law Reports, 6 Cal. 513.).

[Extracts from Chap. XXVI, Bihar & Orissa Survey and Settlement Manual, 1927.]

D. Appeals under the Bengal and Orissa Tenancy Acts lie as follows :—

Original Court.	First Appellate Court.	Second Appellate Court.
1	2	3
(1) In settlements not under the Collector		
(a) Assistant Settlement officer ...	Settlement Officer.	Commissioner.
(b) Settlement officer ...	Commissioner.	No Second appeal.
(2) In Settlements under the Collector		
Assistant Settlement officer or Settlement officer ...	Collector.	Commissioner.

Appeals under the Choto Nagpur Tenancy Act lie as follows :—

Original Court.	First Appellate Court.	Second Appellate Court.
1	2	3
Assistant Settlement Officer ...	Settlement Officer.	Commissioner.
Settlement Officer ...	Commissioner.	No Second appeal.

Under the Choto Nagpur Tenancy Act all appeals must be filed within 30 days of the date of order. Under the Bengal Tenancy Act and the Orissa Tenancy Act the period is 30 days for appeals to the Commissioner and 15 days for appeals to the Settlement Officer or Collector.

but the Settlement Officer or Collector may accept an appeal filed after 15 days if he is satisfied that it has been filed within what is, in the circumstances of the particular case, a reasonable period and that there are sufficient grounds for interference. The Commissioner also has discretion to admit an appeal after time.

Revision and Correction of mistakes in the Published Record and Map.

466. When any order is passed in the course of settlement operations, on appeal or in revision, declaring any entry in the published record to be incorrect, the published record must be corrected by the Settlement Officer or, if he has left the district, by the Collector.

467. It has been ruled that where it is desired to correct an entry in the finally published records that has been procured by fraud the Settlement Officer has an inherent right to order the excision of the fraudulent entry, and his act in doing so is a ministerial act, not open to appeal. At the same time the Settlement Officer should make the correct entry, leaving a note against the excised entry that it is fraudulent, and either stating his reasons in the record or making in the record a reference to a proceeding in which those reasons have been stated, as may be more convenient.

[Extracts from Chap. XXVIII, Bihar & Orissa Survey and Settlement Manual, 1927.]

E. Commutation of Produce Rents.

459. Applications for the commutation of produce rents under section 40, Bengal Tenancy Act and section 47, Orissa Tenancy Act, may be made to any Who may receive applications. Assistant Settlement officer or Settlement Officer appointed for the purpose of making a survey and record-of-rights. Under the Choto Nagpur Tenancy Act a Settlement Officer or Assistant Settlement Officer cannot try commutation suits unless he has been specially empowered by Government to act as a Revenue Officer under section 61 of the Act.

460. Such applications are accordingly decided, when a settlement of land revenue is being made, at the time of the settlement of fair rents and, Applications, when to be where a settlement of land revenue is not being made, after decided. final publication at the time of the decision of objections to the published records and of applications for the settlement of fair rents. When applications for commutation are filed before an Assistant Settlement Officer engaged in attestation he should make a reference to the Settlement Officer for orders whether the applications are to be decided at once or postponed till after final publication.

461. In settlements under the Bengal Tenancy Act and the Orissa Tenancy Act the Settlement Officer is empowered by the statutory rules to make Power of Settlement Officer. over to or to withdraw from any Assistant Settlement Officer subordinate to him any such applications. Under the Choto Nagpur Tenancy Act the Settlement Officer has no such power unless he has been specially empowered by Government under section 269 of the Act.

462. The principles of rent commutation and the procedure to be followed in commuting produce rents will be found in the manual entitled "The Principles of rent commutation. Commutation of Rent Manual, 1924," issued by the Board of Revenue.

[Extracts from Chap. XXVII, Bihar & Orissa Survey and Settlement Manual, 1927.]

F. Apportionment, Computation, Recovery of Costs and Distribution of Copies.

(See pages 162—169, Bihar and Orissa Survey and Settlement Manual, 1927.)

G. Dates of main District Settlement Operations in the Province of Bihar and Orissa.

(App. B, page 280, Bihar & Orissa Survey and Settlement Manual, 1927.)

Serial No.	District.	Date of original settlement operations.	Dates of revisional settlement operations.
1	2	3	4
1	Patna	1907—1912	
2	Gaya	1911—1918	
3	Shahabad	1907—1916	
4	Saran	1893—1901	1915—1921
5	Champanan	1892—1899	1913—1919
6	Muzaffarpur	1892—1899	
7	Darbhanga	1896—1903	
8	Bhagalpur	1902—1910	
9	Morighyr (north and south) ...	1905—1912	
10	Purnea	1901—1908	{ 1888—1894 1898—1910
11	Santal Parganas	1873—1879	
12	Ranchi	1902—1910	
13	Hazaribagh	1908—1915	
14	Manbhum—		
	Parganas Barahabhum and Patkum	1907—1912	
	Rest of district	1918—1925	
15	Singhbhum—		
	Kolhan	1897	1913—1919
	Porahat	1900—1907	
	Dalbhub	1906—1911	
16	Palamau	1913—1920	
17	Cuttack		{ 1906—1912 1922
18	Puri	1890—1900*	
19	Balasore		
20	Sambalpur	1885—1889	{ 1902—1906 1923—1925
21	Angul (Sadar Sub-division) ...	1905—1908	

* Excluding certain permanently settled estates.

H.—Scale of Court Fees in Settlement operations in Behar
(*App. E, pp. 292—297, Bihar and Orissa Survey and Settlement Manual, 1927.*)

Serial No.	Nature of document, claim, etc.	Stage of operations or section.	Officer before whom filed or persons to whom given.	Court-fees to be charged.	Authority.	Remarks.
1	Application and petitions generally unless ordered otherwise.	.....	Revenue officer.	Annas 12.	Sch. II, cl. 1 (b) of the Court Fees Act, 1870 as amended by Sch. C. Bihar and Orissa Court Fees (Amendment) Act 1922.	
2	Applications or petitions of objection to any entry made or proposed to be made in a draft record-of-rights.	Before draft publication of the record under S. 103A B. T. Act.	Commissioner or Board of Revenue.	Rupee 1 and annas 8 only.	Bihar and Orissa Govt. Notification No. 2576, dated the 5th Dec. 1921.	
3	Objection to entry in draft record-of-rights.	After draft publication under S. 103A, B. T. Act.	Any officer.	No fee.		
4	Application for settlement of rents.	After draft publication under S. 103A, B. T. Act.	Revenue Officer.	Annas 12.	Sch. II, cl. 1 (b) of the Court Fees Act, 1870 as amended by Sch. C. Bihar and Orissa Court Fees (Amendment) Act.	
5	Issues raised by the applicant in application for settlement of rents.	S. 105, B. T. Act.	Settlement Officer or Assistant Settlement Officer.	Annas 12 to be charged for each tenant or group of joint owners of a tenancy making or joining or joined in the application.	Bihar and Orissa Govt. Notification Nos. 6422-II T-33 R, 6423-II T-33 R, and 6426-II T-33 R, dated the 10th July, 1926.	
		S. 105A, B. T. Act.	Ditto.	An <i>advalorem</i> fee subject to a maximum of Rs. 15 in respect of any one tenant.	Ditto.	

H.—Scale of Court Fees in Settlement operations in Behar,—(contd.)

(192)

BENGAL TENANCY ACT

Serial No.	Nature of document, claim, etc.	Stage of operations or section.	Officer before whom filed or persons to whom given.	Court-fees to be charged.	Authority.	Remarks.
6	Plaints in suit.	S. 106, B. T. Act.	Ditto.	An <i>advalorem</i> fee subject to a maximum of Rs. 15.	Bihar and Orissa Govt. Notification No. 6425-II T-33 R, 6424-II T-33 A and 6427-II 2-33. R, dated the 10th July, 1926.	
7	Miscellaneous applications or petitions.	In the course of the trial of suits under Ss. 105, 105A, and 106, B. T. Act.	Ditto.	Annas 12 if the value of suit be Rs. 50 or above and annas 2 if below.	Sch. II, cl. 1 (a) and cl. 1 (b) of the Court Fees Act, 1870 as amended by Sch. C. Bihar and Orissa, Court Fees (Amendment) Act, 1922.	
8	Application for commutation of produce rent.	S. 40, B. T. Act.	Ditto.	Annas 12.	Sch. II, cl. 1 (b).	
9	Application for revision.	Sec. 108 and 108A, B. T. Act.	Ditto.	Annas 12.	Ditto.	
10	Applications or petitions relating to matters connected with the assessment of land or the ascertainment of rights, thereto, or interest thereon.	When the proceedings are under Part II of Chap. X of the B. T. Act before final confirmation under S. 104 F (3).	Revenue Officer.	No fee	Sec. 19 (ix) of the Court Fees Act, 1870.	
11	Appeals in land revenue settlements.	Sec 104G (1), B. T. Act if presented after final confirmation under S. 104F (3).	...	Rupee one.	Sch. II, cl. II (a) of the Court Fees Act, 1870, as amended by Sch. C., Bihar and Orissa Court Fees (Amendment) Act, 1922.	

12	Application for revision.	Sec. 104G (2), B. T. Act.	Board of Revenue.	Rupee one and Annas 8.	Sch. II, cl. I (c) of the Court Fees Act, 1870, as amended by Sch. C, Bihar and Orissa Court Fees (Amendment) Act, 1922.
13	Certified copies of final record.	Distributed to landlords and tenants under the statutory rules.	Each landlord or tenant.	No fee.	Bihar and Orissa Govt. Notification No. 2576, dated the 5th Dec., 1921.
14	Certification of copies of final record.	At any time.	Any one.	The total Court-fees are limited to a maximum of 8 as. for a village or a portion of a village.	Ditto.
15	Application for copies.	Ditto.	Revenue Officer.	Annas 2.	Sch. II, cl. I (a) of the Court Fees Act, 1870, as amended by Sch. C, Bihar and Orissa Court Fees Act, 1922.
16	Muktearnama or Vakalatnama.	Ditto.	Ditto.	Rupee 1.	Sch. II, cl. 10 (a) of the Court Fees Act, 1870.
			Commissioner of Division. Board of Revenue.	Rupees 2. Rupees 3.	Sch. II, cl. 10 (a) of the Court Fees Act. Sch. II, cl. 10 (b) of the above.
17	Affidavit.	...	Revenue and Civil Courts.	Rupee 1.	Rule II, Page 115 of the High Court Rules, Vol. I.

I.—List of Estates which have been allowed by the Bihar Government under s. 158A (2) of the B. T. Act to arrears of rent under the Summary Procedure :

Champaran District :—Pipra Concern; Rajpur Concern; Tetaria, Turkaulia, Padumkar, Telahra, Moorla, Mullyah, Karnaul, Byreah, Dhokraha, Sathi, Loheria, Motihari Concern, Parsa Concern, Sirni Tejpurwa Concern, Farm Lauria Concern, Patahi Concern, Hurdia Concern, Chainpatia-Saidpur.

Monghyr District :—Captain H. N. Christian.

Shahabad District :—Surajpura Estate, No. 1, Dumraon Estate.

Saran District :—Hathwa Estate, Pratabpore Co., Ltd. Babu Deokinanda Prasad Sahi, and Babu Sheo Prasad Sahi of Hathwa, Jogapa Concern.

[For references to Bihar and Orissa Gazette, see Supplement to the Bihar and Orissa Local Statutory Rules and Orders, 1917, Vol. I, pages 13, 14, (published 1927)].

INDEX.

	PAGE.
ABANDONMENT :	
as to, of permanent tenure	114
effect of non-payment of rent when amounts to,	142
meaning of	170
as to right of khas possession on,	178
as to, by sale of portion	180
as to, of all lands except a small portion	180
as to transfer of whole or part	170
as to, by sale without giving up possession	180
transfer by usufructuary mortgage if amounts to,	188, 189
as to, if raiyat parting with the holding remains in actual possession as an under raiyat	182
voluntary, by a raiyat, s. 87	475
procedure to be adopted by a landlord for re-entry on abandonment by a raiya, 87	476
limitation in suit for recovery of possession by tenant of abandoned holding, s. 87	476
landlord before entering on holding under s. 87 must give notice through Collector, s. 87 (2)	476
when landlord enters on holding under s. 87, the right of occupancy raiyat and non-occupancy raiyat to sue for possession within 2 years and 6 months date of publication of notice, s. 87 (3)	476
when holding has been sublet by registered instrument landlord before entering under s. 87 shall offer it to sublessee for remainder of term on condition of his paying up arrears, s. 87 (4)	476
provisions of s. 87 not exhaustive	476
usufructuary mortgage, if establishes abandonment	188, 189, 477, 478
what amounts or does not amount to abandonment within the meaning of s. 87	178, 182, 477, 482
transfer of non-transferable holding	178, 478, 479
abandonment by ceasing to cultivate	477, 478
do—non-payment of rent	478
transfer of portion of occupancy holding	180, 480
mere execution of usufructuary mortgage not sufficient to establish abandonment	188, 189, 478
what amounts to, principally a question of fact	478
mixed question of law and fact	481
sale of holding by raiyat and then remaining in possession after taking sublease from transferee	182, 481, 482
s. 87 does not require personal service to be affected upon tenant	482
as to, of submerged land	477
non-payment of rent coupled with the fact of a raiyat cultivating, effect of	478
as to right of tenant to bring a suit under s. 9 of the Special Relief Act	482
where transferee holds possession on behalf of tenant he cannot be ejected	479
as to, by <i>ut-bandī</i> tenant	885
test of abandonment of homestead land	480
surrender after transfer of portion	480
as to, by Hindu widow	481
as to covenant in <i>Kabuliyat</i>	480
as to elements necessary for,	477, 478
ABATEMENT OF RENT :—See Reduction of Rent :	
non-occupancy raiyat not entitled to maintain a suit for, s. 42,	262
where putnidar not entitled to,	336
suit for declaration that tenant not liable for whole rent is not a suit for, a claim for, may be made for land acquired by Govt. for public purpose,	335, 336
as to, in a rent suit	246, 334
as to, in case of diluvion	337, 339
wrong resumption by Government of portion of tenure	335
as to, of rent of portion of which tenant not obtaining possession,	335
abatement of rent for diluvion in regard to <i>mokurari</i> lease,	337, 338
tenant not entitled to, when in possession of less quantity by his own default,	337
when partial eviction, apportionment of rent	34, 339

ABATEMENT OF RENT—*Contd.*

tenant entitled to claim, of rent though he has paid full rent for several years ...	341
question of limitation in suit for, upon agreement, ...	342
claim for, may be made by way of set off ...	334
cosharer has no right to grant, s. 188 ...	934, 939
cosharer collecting rent separately, if can grant, ...	246, 334
as to, by one of several joint tenants ...	246
as to <i>resjudicata</i> on the question of, ...	341
as to, when dispossession by title paramount ...	337, 339
as to, by raiyat holding <i>diara</i> land ...	337

ABATEMENT OF APPEAL :

as to, on the death of one of the co-appellants ...	612, 684
---	----------

ABETMENT :

of illegal interference with produce amounts to abetment of criminal trespass within meaning of Penal Code, s. 186 (2) ...	929
--	-----

ABORIGINAL TRIBES :

as to extension of Ch. VII A to certain, in Midnapur and Mymensingh	289, 290
B. T. Act Amendment (II of 1918) ...	289 295
as to provisions of B. T. Act relating to ...	289, 295

ABWAB :

all abwabs illegal and stipulation for payment of abwabs void, s. 74 ...	436
what is an, ...	438, 440
What is not an, ...	440, 443
"actual rent," meaning of ...	438
" <i>malguzari</i> ," meaning of ...	438
true test, ...	440, 443
<i>purvibhiksha</i> is, ...	439
performance of beggar services without remuneration is, ...	439
<i>dastur</i> , <i>hazzatenama</i> and <i>sonari</i> are abwabs, ...	439
<i>batta</i> if an, ...	439
stipulation to deliver goats in addition to rent, if an, ...	427
true test of, interpretation of contract is an, ...	443
cess not included in contract is an, ...	439
collection charge is not an, ...	440
cess incorporated with rent is not an, ...	441
<i>tewari</i> is not an, ...	441, 442
<i>selami</i> if an, ...	439, 441, 442
<i>holi</i> , if an ...	440
<i>bhet</i> , if an ...	439, 442
beggar, if an ...	439
<i>bhiksha</i> , if an ...	439
cess for grazing cattle, if an ...	439
stipulation to deliver goats at the time of <i>Doorga Puja</i> ...	440
<i>purabi</i> (festival cess) if; ...	441
<i>pujakharchi</i> , if ...	439
chowkidari tax when not an, ...	441
company's <i>batta</i> , if ...	441
<i>peshkosh</i> , if ...	442
<i>kattihari charge</i> , if ...	443
<i>dak</i> and <i>bhet</i> expenses, if ...	442
road cess, not an ...	445
s. 179 not controlled by s. 74 ...	444
permanent tenure holder can stipulate for payment of, ...	444
personal covenant ...	443
claim of abwab under the old Act ...	19
not recoverable even if recovered before or decreed in previous suit ...	443
as to suit against a <i>tasildar</i> , for, collected by him ...	444
payable at the time of permanent settlement, if can be recovered ...	444
recoverable when <i>wokurari</i> lease within meaning of s. 179 ...	444
as to, in enhancement of rent ...	444
putwari's wages and allowances are in the nature of illegal cesses ...	445
contract by a tenant to pay whole cess payable by landlord ...	44, 445
<i>resjudicata</i> regardin, ...	443, 444
expenses for <i>puja</i> in excess of rent is an, ...	443

ABWAB—Contd.

penalty for exaction by landlord from tenant of sum in excess of rent payable, s. 75	...	...	...	445
increase of rent agreed to be paid in consideration of remission of <i>selami</i> by landlord for recognising transferee of non-transferable holding, is not,	...	...	...	441
claim for rent higher than stated in the record of rights	...	...	...	441
stipulations and reservations relate to both past and future	...	...	...	442
sum agreed to be paid in lieu of fruit, bamboos and fish	...	...	...	439
cess in excess of tenant's portion	...	...	...	47
not recoverable from permanent tenure holder under lease created before this Act	...	...	...	...
s. 74 does not prevent permanent tenure holder to stipulate for payment of 'abwab in granting lease under s. 179	...	...	...	...
rulings as to stipulation of,	...	...	...	...

ACCEPTANCE :

of rent at the same rate for a long period, effect of	...	...	...	52
of rent under protest, effect of	...	...	...	352
of rent from transferee of non-transferable holding not as transferee but as agent or representative of original tenant does not amount to recognition of validity of the transfer	...	...	...	199, 434
of rent through usufructuary mortgagee of non-transferable holding, effect of	...	...	...	196, 432
of rent by gumustha if binds the landlord	...	...	...	196, 197, 433
of rent by <i>putwari</i> or rent collector, effect of	...	...	...	433
of rent from purchaser as <i>sarbarakar</i>	...	...	...	434
of rent from purchaser as <i>baidar</i>	...	...	...	434
of rent effect of—if assent of transfer of holding	...	...	...	431
ruling as to, of rent by landlord, effect of	...	...	...	195—200, 432—435
of reduced rent, effect of	...	...	...	224, 258

ACCOUNT :

tenant entitled to statement of, at close of year, s. 57 (2)	...	...	...	355
landlord to retain a copy of, s. 57 (3)	...	...	...	356
fee to be paid in cash	...	...	...	356
forms of receipt and account, see Sch. II	...	...	...	...
penalty and fine for withholding statement of account, s. 58	...	...	...	356
object of sub-sec. 3 to 8 of s. 58	...	...	...	358
forms of account to be prepared by the Local Government and to be kept for sale, s. 59	...	...	...	359
ruling as to suit for,	...	...	...	681
District Judge cannot call upon a person to deliver, and papers to manager,	...	...	...	516
right to take, not assignable	...	...	...	...
as to suit for, by common manager against ex-common manager	...	...	...	518
as to suit for, against common manager	...	...	...	518
see—Common manager	...	...	...	518
Common manager when liable to,	...	...	...	518

ACCOUNT BOOKS : See Books of Account.

ACCRETED LAND :

acquisition of occupancy right in, s. 21	...	...	...	152
rent free tenure holder liable to pay rent in respect of	...	...	...	...
rate of assessment of, see Accretion,	...	...	...	339
as to status of tenant in,	...	...	...	340
as to rent suit for,	...	...	...	685
occupancy and non-occupancy raiyat entitled to,	...	...	...	152, 201, 262
but not a tenant from year to year	...	...	...	202
permanent tenant if entitled to	...	...	...	339
assessment of rent of accreted land	...	...	...	340
rate of rent	...	...	...	340
conditions laid down in Reg. XI of 1825	...	...	...	340

ACCRETION—Contd.

holder of a rent free holding, entitled to, but not entitled to hold the same rent-free	...	...	...	202
should be assessed at the same rate as the parent tenure	...	...	...	340
increased rent on,	...	...	...	240
reformation—suspension of rent	...	...	...	339

ACKNOWLEDGMENT :

by a tenant, effect of, to save limitation in a rent suit, s. 184, ...	884
s. 19 of the Limitation Act is applicable to suit for rent ...	884
of debt, Sch. III Arts 4 and 5 ...	...

ACQUISITION :—See Occupancy right :

of occupancy right under the old and new law ...	139—141
of occupancy right in undivided share of land ...	61, 140, 151
of occupancy right in—dwelling house ...	140
—nijjote ...	141, 153
—khamar ...	141
—tank ...	141
—julkur ...	141
—by fixed raiyat ...	139, 149
—chakran land... ..	147
effect of acquisition of occupancy right by landlord, s. 22 ...	150
of occupancy right by an under-raiyat ...	151, 273, 649
s. 113 ...	648
s. 183 ...	920
acquisition of land for building and other purposes, s. 84 ...	454

ACQUIESCENCE : See Waiver.

by landlord ...	209
injunction cannot be issued when landlord stands by and tenant plant mangoe trees on agricultural land ...	209
landlord not entitled to eject tenant when the latter erects pucca house in contravention of agreement and landlord stands by ...	209
injunction—mining operations ...	209
balance of convenience ...	209
waiver—making of bricks ...	209
onus ...	209

ACRE :	83, 506
--------	---------

ACT OF (I. C.):

1835, XVII (introduction of Company's rupees) ...	441
1836, XIII (sicca rupees ceased to be legal tender) ...	441
1839, XXXII (see Interest Act), ...	...
1858, XXXI (Diara Act) ...	...
1859, X, s. 3 ...	...
s. s.—14 ...	...
s. 10 ...	...
s. 11 ...	436, 447
s. 15 ...	861
s. 16 ...	304
s. 105 ...	2
s. 108 ...	2
effect of repeal of,—abwab ...	...
right of occupancy under, ...	139, 145
effect of non-registration of name ...	122
principle now embodied in s. 50 (3) of B. T. Act is in accordance with, ...	306
surrender of a holding under ...	470
1859, XI—see Revenue Sale Law ...	142
1860, XIV—see Penal Code	
1870, VII—see Court Fees Act	
1872, I—see Evidence Act	
1872, IX—see Contract Act ...	352
1874, XIV—See Schedule District Act	
1877, I—see Specific Relief Act	
1877, III—see Registration Act	
1877, XV—see Limitation Act	
1882, IV—see Transfer of Property Act ...	349
1882, XIV—see Civil Procedure Code	
1885, VIII—see Bengal Tenancy Act	
1886, VIII—s. 12 ...	436
1887, IX—see Provincial Small Causes Court Act	

ACT OF (I. C.)—*Contd.*

1908, V—see Civil Procedure Code	
1908, IX—see Limitation Act	
1920, XXXVIII (Devolution Act) ...	248

ACT OF (B. C.):

1862, VI—s. 9 ...	505
1868, VII	
1869, VIII	406
s. 38	505
1869, VIII—s. 59	2
s. 64	2
whether denial of landlord's title a ground of forfeiture under,	104
right of occupancy acquired under,	139
suit when, in force	149
1869, VIII, decree obtained under, but sale afterwards unregistered tenant purchasing under,	785
1870, VI—see Village Chowkidari Act	
1871, V	
1874, XIV—see the Scheduled Districts Act	
1875, —see Bengal Survey Act	524
1876, III—Irrigation Act	524
1876, VII—see Land Registration Act	
1876, VIII—see Estates Partition Act	513
1876, VIII—see Estates Partition Act	531
1879, I—see Choto Nagpur Landlord and Tenant Procedure Act	
1879, VI—see Chowkidari Chakran Act	
1879, VIII	524
1879, IX—see Court of Wards Act	
1880, VI—see Drainage Act	524
1880, IX—see Cess Act	445
1882, II—Embankment Act	524
1884, III—see Bengal Municipal Act	10
1887, I—Calcutta Survey Act	
1894, I—Land Acquisition Act	
1894, V	646
1895, I—see Public Demands Recovery Act	
1897, V—see Estates Partition Act	531
1898, III—(The whole Act is set out in the Appendix)	656
1899, III—see Calcutta Municipal Act	10
1903, I	122
1908, VI—see Choto-Nagpur Tenancy Act	
1913, III—see Public Demands Recovery Act	765
1918, II (B. T. Amendment Act), Chap. VIIA	289
1923, X—(Utbandi Act)	
1925, I—(B. T. Amendment Act), s. 20	144

ACTS REPEALED:

s. 2, B. T. Act	16, 18
see Sch. I	961, 962
extent of repeal, see Sch. I	961, 962

ADHÁAR: see *Burgadar*:

of Rangpur is a tenant and not a labour	6
test as to whether a person is a servant or tenant	5

ADDITIONAL RENT FOR ADDITIONAL LAND: see *Alteration of rent for alteration of area*

as to suit by co-sharer for, upon contract	317
in a suit for, all landlords must join, s. 188	
right to, a recurring right	343

ADDITIONAL JUDGE:

decree or order passed by, in rent suits under s. 153,—appeal,	724
has no powers of revision under s. 153	739
distinction between District Judge and Additional Judge in s. 153	739

ADMISSION :

in kabuliyat that land is <i>khudkast</i> is not binding on tenant, ...	...
in kabuliyat as to character of land is relevant evidence to shew that land is <i>zerait</i> as to, subsequent to 2nd March 1883 ...	667
in kabuliyat is evidence as to character of land; the probative value of such such evidence is a question of fact ...	667
	659

ADMISSION BY CO-TENANT :

kabuliyat by a co-tenant—suit by landlord against the other tenants upon that basis ...	778
kabuliyat by a co-tenant at an enhanced rent for the entire tenure, effect of ...	778
as to, as to the rate of rent ...	686
as to, that a particular person is the landlord ...	686

ADMITTED TO OCCUPATION :

explanation of, used with reference to non-occupancy raiyat, s. 47, ...	269
raiya executing lease after being in occupation with a view to continuance of his occupation, not liable to ejectment under cl. (c) of s. 44 ...	266, 269

ADVERSE POSSESSION :

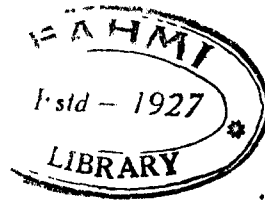
landlord not entitled to additional rent of land of which tenant has acquired title by, ...	32
adverse possession by tenant, ...	33, 39, 687
adverse claim by tenant ...	39
setting up by a tenant of a higher interest ...	39
repudiation of tenancy by a tenant ...	39
dispossession by a third person of land in tenant's possession ...	39
tenant holding over after expiry of lease ...	31, 315
dispossession by title paramount ...	41
is an incumbrance under the Revenue Sale Law, ...	798
the Putni Law, ...	798
the Assam Land and Revenue Regulation, ...	798
the Bengal Tenancy Act, ...	798
discussion as to whether adverse possession is really an incumbrance, ...	798, 799
possession of a trespasser during the continuance of lease does not become adverse as against the lessor ...	687, 799
against proprietor of revenue paying estate ...	800
a title by, must be proved to have been created before the sale of the tenure ...	799
a title by, of a portion of the lands comprised in a tenancy is an incumbrance interest created by, is incumbrance and must be annulled under s. 167 ...	800
possession of property by one co-sharer does not constitute, against the other co-sharer ...	(122)
as between co-tenants ...	(122)
management of joint property on behalf of co-owners without assertion of hostile title does not constitute, against the other co-owner, s. 188, ...	898
when rightful owner is in possession as tenant ...	(120)
as to, against property of idol ...	(129)
as to, between Mahomedan co-sharers ...	(122)
as to acquisition of fishery right by ...	(122)
as to effect of adverse claim in settlement proceedings ...	(122)
See Encroachment :	
See Incumbrance :	

AGACHA :—see Trees.

cutting down and appropriation of, by raiyat, ...	167
tamarind tree is not an <i>agacha</i> ...	167

AGENT :—see Gumustha.

tortious acts of servant—distrain—knowledge of landlord ...	675
naibs of gumusthas to be recognised agents within the meaning of the Civil Procedure Code ...	689
suit by agent—authority ...	689
suit for rent by Gumustha not maintainable ...	689
stamp in a deed for appointment of, ...	690
written authority, should be stamped as a power of attorney ...	690
gumustha, if may consent to transfer of holding ...	690
bribe paid to landlord's agent ...	690
Naib or gumustha, if can grant leases ...	690



AGENT—Contd.

PAGE.

as to recovery of illegal cesses collected by, ...	690
agents and representatives of landlords—power of landlord to act through agent	
—agent appointed under written authority, powers of, ss. 187, 188	930
termination of authority of, ...	931
s. 187 does not require an, to be authorised to act on behalf of all landlords, ...	931
suit for account against, limitation ...	690, 931
suit for account against an, governed by Art. 116 of Sch. I of the Limitation Act when contract is in writing and registered, ...	931
joint landlords to act collectively or through common agent, s. 188, ...	931
liable to penalty for withholding receipts and statements of account and failing to keep counterparts, s. 58 cl. (3) ...	356
may get compensation if Collector finds complaint of tenant to be false or vexatious, s. 58 cl. (5) ...	357

AGREEMENT :—see Compromise; Contract.

to pay enhanced rent by tenant in consideration of his being released from obligation of cultivating crop, not affected by s. 29 cl. (b), s. 29 (proviso iii) in settlement of dispute, s. 29	219
agreement that non-occupancy raiyati holding not heritable may be valid	262
common manager by, of co-owners ...	508, 513
power of Revenue officer to give effect to, Chap. X, s. 109 B, ...	634
power of Revenue officer to settle rents on, s. 109 C, ...	635

AGRICULTURE :—See Agricultural Lease.

it is of wider application than the term cultivation	7
as to what are agricultural purposes, see notes under s. 5	7
a lease of land for betel cultivation is an agricultural lease	11
see—Agricultural lease and Agricultural purpose.	

AGRICULTURAL LAND :

a Zemindar is the owner of underground rights appertaining to a tenure granted by him	50
conversion of, into a dwelling house	449

AGRICULTURAL LEASE :

betel cultivation	11
lease for ploughing cattle or for storing manure &c.	8
meaning of	10
breeding and grazing cattle	11
pasture land	11
gathering and storage of crops	11
agriculture and cultivation, distinction between	11
horticultural purposes, if agricultural	7
garden	7
gathering fruits and trees	7
lease of tank including the land underneath is not for agricultural purpose	9, 725
suit for rent of tank governed by the B. T. Act	725
agricultural leases governed by the Bengal Tenancy Act	7
homestead holding under an agricultural raiyat governed by the Bengal Tenancy Act	7, 8
putni lease, if agricultural and governed by B. T. Act	11, 12
see—Agriculture and Agricultural purpose.	

AGRICULTURAL PURPOSE :

cultivation of indigo if, ...	8
manufacture of indigo cakes out of indigo plant if, ...	8
erection of indigo factory if renders land unfit for, ...	8
lease for purpose of gathering fruits from trees on land, is not for	7
see—Agriculture and Agricultural lease.	

AGRICULTURAL YEAR :

meaning of, ...	64
definition of, s. 3 cl. (11) ...	64
notice to an under-raiyat to quit, s. 49	278
Agricultural Holdings Act, 46 & 47 of 1883 (Vict. C. 68) ...	440
sch. III, art. 2, cl. (b), limitation ...	837

ALLUVION :—see Accretion,

	PAGE.
ALTERATION OF RENT FOR ALTERATION OF AREA :	
s. 52 : ...	317
presumption under s. 50 (2) applies even if there be, ...	305
suit upon contract not a suit for, ...	321
suit for rent upon kabuliyat where a part of rent was unassessed originally, not a suit for ...	322
what other suits are not suits for, ...	322
land within defined boundaries ...	325
encroachment, ...	332
abatement ...	334—338
accretion ...	339, 340
increment ...	340
measurement ...	341
practice of measurement refers to the measurement of the time of original settlement ...	342
claim for reduction in a rent suit. ...	339
apportionment of rent ...	339
framing of suit under s. 52 ...	334
land acquired for public purposes; claim for abatement ...	336
resjudicata ...	341
limitation ...	341
AMALDASTAKS :	
meaning of ...	49
AMALGAMATION—see consolidation :	
as to, tenures, when constitutes new tenancy ...	306
AMALNAMA :	
as to what is an amalnama as distinguished from a lease, see notes under s. 3, cl. (18) ...	69
as to what is, as distinguished from lease ...	69
as to registration of, ...	69
construction of, ...	69
intention of parties ...	69
dowl ...	70
AMENDMENTS :	
Amending Acts : ...	16, 17
XX of 1885	
VIII of 1886	
XII of 1891	
V of 1894	
III of 1898	
I of 1903	
I of 1907	
I of 1908 (E. B. & Assam)	
III of 1913 ...	763
II of 1918 ...	289
X of 1923 ...	888
I of 1925 ...	16
amendments ...	16
effect of repeal ...	18
amendment and consolidation of certain enactments ...	2
AMLI YEAR :	
... ..	64
ANGUL :	
in Province of Bihar and Orissa by Proclamation dated 22nd March 1912 ...	14
Bengal Tenancy Act not in force in, ...	14
ANNUAL TENANCY :	
ejectment, notice to quite ...	281
renewal of lease from year to year, effect of, ...	316
tenant when holds over, if his tenancy is from year to year ...	316

	PAGE.
ANNULMENT :—see Incumbrance.	
power of, of incumbrances, s. 159	770
of higher interest necessarily annuls subordinate interests	802; 820
under rayati tenancy in contravention of s. 85 not required to be annulled by- landlord purchasing rayati right in execution of rent decree	817
application for, where to be presented	821
as to, of under-tenure	801
purchaser in execution of rent-decree has power to annul mortgage incumbrance which has been transformed into mortgage debt	813, 814
procedure for annulling incumbrances, s. 167	808
mode of annulling incumbrance	810
purchaser with knowledge of incumbrance can annul it	812
notice of, upon subordinate interest without annulling higher interest, effect of, s. 167	819
APPEAL :	
order under s. 40 (5) subject to appeal in like manner as an order in an ordinary revenue proceeding	259
order under s. 58 sub-secs. (3) and (5) subject to appeal to Commissioner and revision by Board	357
orders under ss. 104 B sub-sec. (3) and s. 104 E to superior Revenue authority, —see section 104 G	570
lies to Special Judge from decisions of Revenue officers under s.s. 105 to 108 A 629; 633	619
lies from decision under s. 108	619
lies to High Court from decision of a Special Judge, s. 109 A (3)	628
does not lie from an order of remand of a Special Judge under the B. T. Act "decision settling rent" meaning of	629, 631
no appeal lies from an order under cl. (3) of s. 170	836
orders under s. 171, 173, 173 : when appeals lie and when appeals do not lie 680, 839, 841, 857	841
no appeal lies when question arises between persons not parties to suit, s. 173 ...	842
but when judgment-debtor is appellant an appeal lies	842
does not lie against an order passed by Civil Court under s. 84	455, 680
an order made under s. 91 on an application under s. 90 not appealable	506, 680
does not lie from order passed by Civil Court under chap. XII, s. 140	675
if lies against an order passed in a suit under s. 149 sub-sec. (3)	722
rulings as to when second appeal lie and do not lie under s. 153	726, 735
to be dismissed for non-substitution of heirs of deceased plaintiffs respon- dents, s. 153	726
meaning of order in s. 153	739
title to land or some interest in land as between parties having conflicting claims there to	732, 735
where a third party whose title is set up is not made a party	734
where both plaintiff and defendant claim under the same landlord	734
where defendant sets up a proprietary title	735
decision that jama set up formed part of bigger jama	730
no appeal when decree at the admitted rate	729
question as to cess	728, 729
where rent is payable in money or kind, s. 153 applicable	729
question as to area	735
question as to instalments in which rent is payable	729, 732
suit by an assignee of back rent	736
benami	736
suit by a co-sharer landlord s. 153 applicable	737, 738
where finding is that there is no cosharer, if appeal lies	732
rent for tank, s. 153 applies	725
rent for phulkar, s. 153 applies	725
rent for julkur, s. 153 applies	725
execution proceedings	743, 745
order of remand	739
no appeal from decree or order or District, Additional or Subordinate Judge in rent suits when amount claimed does not exceed Rs. 100, s. 153 (a)	724
or when decree or order is passed by any other Judicial officer specially empowered to exercise final jurisdiction, s. 153 (b)	724
unless decree or order has decided a question relating to title to land or to some interest in land or a question of a right to enhance or vary rent or a question of amount or rent annually payable, s. 153,	724

APPEAL—*Contd.*

amount of rent annually payable; where appeal lies, rulings	728,	732
decision allowing suspension of rent, if appeal lies	...	730
decision between defendants tenants, <i>interse</i> , as to who is the real tenant	...	735
as to second appeal when first appeal was wrongly entertained, s. 153	...	736

APPLICATION :

by tenant to deposit rent, in Court, s. 61	...	367
one applicable under s. 121 for two or more holdings not maintainable,	...	669
application under s. 174 can be made by judgment debtor alone,	...	669
when deposit is made under s. 174 sale ought to be set aside and no formal application necessary,	...	854
for commutation of produce rent to whom to be made, s. 40 (2),	...	249
for appraisal or division of produce, s. 69,	...	419
for registration of landlord's improvement, s. 80,	...	452
to record evidence as to improvement, s. 81 (1),	...	452
for appointment of common manager, s. 93,	...	510
to settle rent when settlement of land revenue is not being or is not about to be made, s. 105,	...	578
cases in which, application for distraint may be made, s. 121,	...	668
what to be specified in an, for distraint, s. 122,	...	670
form of,	...	670
procedure on receipt of, for distraint, s. 123	...	670
deposit on application for setting aside <i>ex parte</i> decree, s. 153 A	...	745
for determination of incidents of tenancy, s. 158	...	757
for execution of decree by one or more co-sharer landlords by sale of tenure or holding, notice of, to other co-sharers, s. 158 (2)	...	758
for service on incumbrancer of notice declaring incumbrances to be annulled, s. 167	...	808
for declaration that land has ceased to be char or diara land, s. 180	...	882
limitation for applications—see Sch. III	...	973
for surplus sale proceeds under cl. (c.) to subsec. (1) of s. 169 not governed by Sch. III, Art 2 of this Act	...	979
by landlord for registration of improvement under s. 80, to whom to be presented—Appendix I	...	...
for record of proprietor's private land to whom to be made—Appendix I	...	(6)
signature and particulars to be contained in such application—Appendix I	...	...
under ss. 101 (2) (a) and 103 of this Act—procedure, App. I	...	(10)
under s. 105 A by whom to be dealt with, App. I	...	(15)

APPORTIONMENT :

as to, of rent when rent is per acre or bigha	...	34
as to, of rent even where rent reserved is a lump sum for the whole land	...	34
as to dispossession by landlord: apportionment of rent	...	34, 35. 339
tenant bound to pay proportionate rent where in the beginning of the tenancy he did not get possession of a portion of the land demised	...	36
apportionment of rent in case of lands originally belonging to lessee having been included in the lease by mutual mistake	...	37
all co-sharers must be made parties in a suit for,	...	430
separate payment of rent is not conclusive evidence of,	...	430
there may be, in respect of both arrears and future rent	...	430
as to separate suits for, by joint landlords	...	430
in case of severance of tenure by sale of share	...	488
on the basis of assets	...	489
of costs under s. 114	...	650
as to, of settlement costs	...	650, 651

APPRAISEMENT:—See Produce rent :

order for appraising or dividing produce, s. 69	...	419, 423
---	-----	----------

APPROPRIATION :

of rent, s. 55	...	351
of payment of rent to interest,	...	352
ss. 59, 60, Contract Act	...	352
expenses of proceedings under Chap. X	...	649
of trees by tenant	...	163, 167

AREA :

of a tenancy, when exceeds 10 bighas, presumption of its being a tenure.	
s. 5 cl. (5) :..	75
alteration of rent for alteration of, s. 52	317
tenant entitled to reduction of rent for deficiency in, s. 52	318
what the court should consider in determining, s. 52	318
meaning of "area for which rent has been previously paid" s. 52	326
stated by way of description	325
land within defined boundaries	325
dispossession : see apportionment	34, 339
—by a title paramount	339
reduction of rent of occupancy raiyat, s. 38	245
reduction of rent may be claimed by tenant defendant in rent suit	245
area when to be stated in a plaint in a rent-suit, s. 148 cl. (b)	245
auction purchaser bound by the decision as to, in a suit for rent	706
proceeding under s. 158 : additional rent for additional rent for additional,	759

ARREAR : see Rent.

ASSESSMENT OF RENT :—

as to, upon contract	321, 324
as to,	726
suit for, maintainable under s. 158	757, 761
for encroachment	332, 334
• suit for after tenant held liable to pay fair rent in proceeding under s. 106	588
for lands claimed as rent free—Record of Rights	589, 611
suit for, brought more than 12 years after an adverse title had been set up	
is barred by limitation—see Appendix XI (notes on miscellaneous matters)	(114)
as to, on Chowkidari Chakran land	(115)
as to suit for, s. 153 if applies—see (Addenda).	

• ASSESSORS :

Collector may appoint, for appraising or dividing produce, s. 70 (1)	424
Local Government may make rules for appointment of, for purpose of estimating compensation to be awarded for raiyat's improvement, s. 82 (5)	453

ASSIGNEE : see Assignment.

rulings as to suit for rent by,	3
effect of sale at the instance of assignee of landlord's interest in land	3
suit for rent by, from unregistered proprietary, s. 60	366
assignee for arrears of rent cannot apply for execution unless landlord's interest	
in vested in him, s. 148 cl. (h)	699
cl. (h) of sec. 148 to be strictly interpreted	702
rulings as to effect of payment to assignee	703
actual substitution of assignee's name not necessary but assignee may apply	
in his own name	703
cl. (h) of s. 148, does not apply to decree by assignee	705
assignee does not include trustee, s. 148	705
operation of cl. (h) of s. 148, if retrospective	706
rulings as to suit for rent by,	736
suit for back rent by assignee from previous landlord is not suit by landlord	
against tenant and so s. 153 does not apply	736
suit by, for arrears of rent is not suit of a nature cognizable by Small Cause	
Court and so appeal and second appeal lie	736
sale held by, who is not assignee of land does not affect interest of unrecorded	
tenants who are not parties	781
suit for rent by, of arrears if governed by this Act	773, 774
rent suit by an, of arrears from a co-sharer	935

ASSIGNMENT : see Assignee.

landlord's right to receive or enhance rent in the case of lease of same land	
to 2 persons	4
effect of, of arrears of rent but not landlord's interest in land	3
rent, when assigned continues to retain character of rent	45
rent assigned to be paid to superior landlord cannot be sued for by intermediate	
landlord as long as arrangement of, subsist	47
rent suit where assignment by landlord of portion of interest to a mortgagee, s. 60	361
effect of cessation of landlord's interest, rulings as to,	384, 386

	PAGE.
ASSIGNMENT—Contd.	
effect of cessation of tenants interest rulings as to,	395
rulings as to assignment of decree	703
cl. (h) of s. 148 does not prohibit assignment but prohibits the making of an application	703
during pendency of suit is an ordinary civil demand	704, 705
assignment before this Act, effect of	706
assignment by tenant operative though agreement by him not to transfer without letter from landlord	110
restrictions on assignment	114
assignment by operation of law	114
of government revenue, effect of	382
ATTACHMENT :	
distrain of property which is under, s. 139	674
order of, and proclamation of sale to be issued simultaneously, s. 163	805
tenure or holding to be released from, only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree holder, s. 170	827
of future rents and profits	896
ghatwali tenures not liable either to sale or attachment in execution of decree	896
ATTACHING CREDITOR :	
is not "a person whose immoveable property is sold" within the meaning of s. 310A, C.P.C.	852
ATTESTATION :	
meaning of	528, 533
ATTORNMENT :	
as to,	42
when not necessary	(116)
AUTHORISED :	
institution of suit for enhancement of rent is a thing "authorised" by B. T. Act within meaning of s. 188 in case of tenure holders as well as of occupancy raiyats	931
AVERAGE STRIKING AN :	
is wrong in determining prevailing rate of rent, s. 30	232
rate actually prevailing must be found	232
rate paid by largest number of tenants when accepted as the prevailing rent	232
BABUANA GRANT :	
incidents of	785
as to, by the Durbhanga Raj	785
holders of, property in Durbhanga Raj liable to pay good revenue, and cess to the Raj	49
difference between, and <i>sohag</i> grant	49
as to nature of,	50
BACK RENT :	
may be claimed under s. 52	320
cannot be claimed at enhanced rate	320
can be claimed for additional area under s. 52	320, 748
compromise decree in proceeding under s. 105 to pay, at an enhanced rate, legality of	748
BAGAT :	
as to,	7, 539
BAKASHT :	
meaning of	534, 664
BAROKTA :	
meaning of,	81, 96
BANKAR—see Forest Rights.	
right to	49
meaning of—forest rights	952
suit for recovery of money on account of forest right is governed by B. T. Act	952
as to limitation	926

BARGADAR : see *Burgadar*.

BASTU LAND—see Homestead land.

raiya holding <i>bastu</i> land when can deposit rent under s. 61	...	...	369
occupancy right if can be acquired in	...	...	141
homestead land recorded as <i>bagan</i> governed by T. P. Act	...	...	539
incidents of, to be regulated by local custom and usage	...	...	914
rent suit of, not cognizable by Small Cause Court	...	...	914
as to transferability of,	...	...	915, 916, 917
as to enhancement of rent of	...	...	920
as to heritability in	...	...	919
when a raiyat holds his homestead etc., meaning of, s. 182	...	...	917
it is not necessary that the raiyat should hold land as a raiyat in the same village	...	...	918
where the landlord of the raiyati holding and homestead holding are different, still the provisions of s. 182 apply	...	...	918

BATTA :

when an abwab and when not, s. 74	...	...	441
—Company's <i>batta</i>	...	...	441

BEGGAR SERVICES :

when abwab	...	...	439
------------	-----	-----	-----

BELAGAN :

in settlement record, meaning of	...	...	562
<i>Bemiadi patta</i> (lease without a term) does not make the lease a permanent, one although it was heritable and rights to mines were granted	...	...	57

BENAMI : See Benamidar.

as to plea of, in a suit for rent	...	...	42, 360
appeal : s. 153	...	...	736
where the tenant is a benamidar of another person a suit for rent lies against the beneficiary	...	...	(127)
as to proof of,	...	...	(119)
as to probabilities of,	...	...	(127)
as to tests of,	...	...	(127)
as to presumption of, arising from purchase in wife's name	...	...	(127)

BENAMIDAR : see Benami.

when tenant may plead that rent is due to a third person	...	...	361
in a rent suit brought by a person registered as proprietor a tenant is precluded by s. 60 from raising a defence that plaintiff is <i>benamidar</i> of another person and as such not entitled to rent	...	...	360
when can sue for ejectment after giving notice under s. 167	...	...	812
in a suit for rent by, when can the tenant deny his right to sue on the ground that he is not the person entitled	...	...	41
as to rent suit by,	...	...	27
as to suit by	...	...	27, 404, (127)
may apply to set aside sale under s. 310A	...	...	850

BENGAL :

list of Districts constituting the Province of,	...	...	14, 15
Bengal Government Rules, Appendix I	...	...	(1)—(38)
important notifications of Bengal Government, App. II	...	...	(39)—(67)

BENGAL DRAINAGE ACT :—VI of 1880. See Drainage.

money payable under s. 42 (b) of, is recoverable as rent	...	...	45
period of limitation for recovery of money payable by tenant under—Sch. III, Art. 2	...	...	...

BENGAL EMBANKMENT ACT : II of 1882.

claims under, recoverable as rent	...	...	45
s. 23 and Chap. IX of the B. T. Act do not repeal	...	...	449

BENGAL MUNICIPAL ACT :—III of 1884.

any area constituted a municipality under the provisions of, not governed by the Bengal Tenancy Act, unless specified in notification by Local Government	...	...	13
---	-----	-----	----

BENGAL SURVEY ACT: V of 1875.

claims under, recoverable as rent	45
Local Government may make rules investing Revenue officers with any power exercisable by an officer under s. 189 (1) cl. (b)	943

BENGAL TENANCY ACT:—VIII of 1885.

an Act to amend and consolidate certain enactments relating to landlord and tenant	1
received the assent of the Governor-General on the 14th March 1885,	1
not a complete code	2
entire law of landlord and tenant has not been amended	2
non-agricultural leases do not come under purview of,	7
distinction between cases coming under, and cases coming under T. P. Act	7
has no operation as regards homestead lands whether situated in towns or outside towns	8
provisions of, applicable to homestead of raiyat and under raiyat	8
provisions of, whether applicable to share of a tank	9
not applicable to ferry	12
applies to land for agricultural and horticultural purposes	7
if applies to garden land	7
time of commencement of,	
local extent of,	13—16
applicable to municipal area under III (B. C.) of 1884 unless exempted in a notification by Local Government	18
does not extend by its own operation to the Town of Calcutta, Municipalities, Orissa or the Scheduled Districts	17
Districts in Bengal	14, 15
Districts of Bihar where this Act applies	14
Scheduled Districts	18
extension to Jalpaiguri and Orissa	18
amending Acts	16
supplementary Acts	17
applies to lands outside the limits of the town of Calcutta but within its Municipal boundaries as defined by Act III of 1888 (B. C.)	17, 18
no notification having been published by Local Government exempting any Municipal areas in the mofasil	18
putni lease if governed by this Act	11
not applicable to transfer of putni tenure	119
manager appointed under s. 95 of this Act must have his name registered before he can recover rent	129
ss. 12 and 13 of this Act do not apply to <i>Putni tenures</i>	119
ss. 15 and 16 of this Act apply to putni tenure	119
s. 52 not exhaustive	321
s. 53 does not apply to produce rents	347
s. 65 does not apply to an under-raiyati holding	376
s. 65, if applies, to under-raiyat with right of occupancy by custom	376
s. 188 does not apply to a suit to compel tenant to fill up tank	451
sublease by raiyat of homestead portion of his holding if governed by this Act	466
decree under, not payable by instalments	686
recording of evidence in English instead of in the language of the Court in a suit under this Act, is an irregularity curable under s. 578 C. P. C.	680
ss. 278 to 283 C. P. C. not applicable to a tenure or holding attached in execution of decree for arrears	680
does not prevent landlord from claiming back rent for any additional area under s. 52	837
where s. 150 of, applies and where not	723
lease of a share of a tank including the land underneath is not within,	725
phulqur rent is within meaning of	725
s. 153 of, applies to a suit by co-share landlord	737—738
suit for rent by assignee of arrears not governed by this Act	926
ss. 184 and 185 of this Act do not extend s. 7 of the Limitation Act to application under s. 167	926
s. 18 of the Limitation Act not applicable to application under s. 174 of this Act	926
Art 116 of Sh. II does not apply to rent suit	925
s. 19 of the Limitation Act applies to suit for rent	927

	PAGE.
BENGAL TENANCY ACT—Contd.	
suit for money for forest governed by this Act	926
this Act to be read subject to Acts here-after passed by Lt.-Governor in Council, s. 196	956
does not affect ghatwali or other service tenures, s. 181	893
subject to local custom, usage, applies to homestead land, s. 182	914
does not affect custom, usage or customary right not inconsistent with or expressly or impliedly abolished by it, s. 183	920
does not affect powers and duties of settlement officers as defined by any law not expressly repealed by this Act, s. 195 (a)	953
or procedure for realisation of rent in Government or Ward's Estates, s. 195 (b)	953
or enactment relating to avoidance of tenancies and incumbrances by sale for arrears of Government revenue, s. 195 (c)	953
or enactment relating to partition of revenue paying estates, s. 195 (e)	953
or any special or local law not expressly or impliedly repealed, s. 195 (f)	953
BENGAL TENANCY (VALIDATION) ACT:—I of 1903.	
[the who Act has been set out in Appendix]	(77)
an Act to validate certain transfers of permanent tenures and holding of fixed rate	134
provisions of,	134
preamble to this Act, object of	134, 137
BENGALI YEAR :	
meaning of "agriculthral year," where, prevalent, s. 3 cl. (II)	64
BEQUEST : see Will.	
of permanent tenure, s. II	109
of occupancy holding	214
heir of occupancy raiyat, if bound by, made by the raiyat	214
heir at law not estopped to deny legatee's title	215
occupancy raiyat has no right to bequeath his holding in the absence of custom or local usage	214
s. 178 (3) cl. (d)	865
of ghatwali tenure, s. 181	893
BETEL CULTIVATION :	
a lease of land for, if lease for agricultural purposes	11
BHAOLI : See Produce rent.	
<i>bonafide</i> dispute as to whether rent is <i>bhaoli</i> or <i>nakdi</i> ousts the jurisdiction of Collector under ss. 69 and 70 of this Act	423
conversion of <i>nakdi</i> into, not enhancement under s. 29	220
as to claim for,	(Addenda)
BHADRALOQUE :	
the fact that a person is a, does not by itself shew that the lands were not acquired by him for the purpose of cultivation	80
BHAGCHASIS—See Burgadar.	
cultivate land rendering a share of the produce to the landlord; may or may not have an interest in land	6
may or may not be tenant	80
BHET :	
when an abwab	439, 442
BHIKSHA :	
when an abwab	439
BIL MOKTHA :	
meaning of,	878
BOARD OF REVENUE :	
pricelists of staple food crops to be prepared by collector and submitted to, for approval or revision, s. 39	247
power of, to revise price lists of staple food crops, s. 39	247
price lists of staple food crops when approved or revised by, to be published in the official Gazette	247
all proceedings and orders of Revenue officers under this Act shall be subject to the supervision and control of, Appendix I, Chap. I	(3)

BOARD OF REVENUE—*Contd.*

may direct revision of record of rights at any time within two years from date of certificate of final publication, s. 104 (g) ...	570
may on application made or of its own motion direct revision of rent settled under subsec. (1) of s. 109 (c) ...	635
fees for service of notice on incumbrancer, Appendix 1, Chap. VIII, Rules 67—69 (17) ...	808
may fix fee for service of notice to be paid by purchaser under s. 167 ...	808

BOAT :

sum due under a contract for plying, in private ferry is not rent ...	12
---	----

BOOKS OF ACCOUNT :

entries in, admissibility of,—311, See Appendix XI, (122)—(126), (Addenda)	
--	--

BOUNDARIES :

of land to be stated in plaint in suit for recovery of rent s. 148 (b) ...	696
dismissal of suit on default of tenant to furnish summons containing boundaries not legal, ...	702
one application, against several tenants under s. 91 maintainable, for an order upon tenant to attend and point out, ...	505
where boundaries and quantity of land mentioned in a lease are certain, and where uncertain—intention of parties of parties ...	325, 326
dispute as to,—Record of rights ...	(116)—(117)
recitals of, in deed if admissible— ...	531
question of boundary dispute may be settled by settlement officer ...	610
decision as to boundary dispute between neighbouring estates is not a decision about the correctness of an entry in the record of rights ...	605
as to cases involving title between neighbouring landlords ...	605

BRAHMOTTUR :

effect of a grant of a rent-free, of the whole of a moujah made before or after the Permanent settlement is not to transfer any mining rights ...	58
as to Mogoli, ...	57

BREACH :

of conditions of contract, liability to ejectment for, ss. 10, 18 (b), TL (b), cc (b) 100, 131, 208, ...	264
breach of condition, cases under ...	211
suit for ejectment of tenure-holder or raiyat on account of breach of condition to be instituted within one year from date of breach, Sch. III, Art I ...	971
ejectment of tenant on the ground of, of condition of lease, s. 155 ...	748
amount of compensation payable to landlord for, s. 155 ..	751

BUJHARAT :

meaning of ...	528, 533
----------------	----------

BUILDING :

acquisition of land by landlord for building and other purchases through court, s. 84 ...	454
occupancy raiyat may erect building on his holding, s. 23 ...	203
tenant erecting, on land having no permanent interest in it not entitled to compensation after rejection on termination of his tenancy ...	449
lease for,—perpetual grant— ...	52
erection of, if within meaning of “improvement” in s. 76 ...	449
lease of land having permanent building is a protected interest within meaning of s. 160 ...	786
the 4th exception to s. 37 of the Revenue Sale Law is limited only to such portion of land as is covered by building, tank &c. ...	790

BURDEN OF PROOF : see Onus of proof.

BURGADAR :

status of, if tenant or servant ...	5
produce rent ...	252
what constitutes a, a tenant:—test ...	6
may or may not be a tenant, ...	
as to whether burgadar is a tenant or servant it depends upon nature of agreement ...	5
undertaking to cultivate does not by itself make burgadar a tenant ...	5

BURGADAR—Contd.

—see the <i>Law of Master and Servant</i> by Holdsworth and McIlraith (Ed. 1907)	6
suit for produce rent or its money value payable by, is suit for rent under this Act and not cognizable by Small Cause Court, s. 69	423
suit for produce rent when lies in Small Cause Court and when not	423
produce rent payable by, is rent	45

BURNING OR BURYING GROUND: S. 160	786
--	-----

BUSTEE:

when land is used as	8
-----------------------------	---

BUTWARA KHASRA:

prepared under Estates Partition Act (VIII of 1876 B. C.) if admissible in evidence under s. 35 of the Evidence Act	532, (126)
if a public document	(126)

BUTWARA PAPERS:

entries in, if evidence	(126)
--------------------------------	-------

CADASTRAL SURVEY: see Record of Rights.

meaning of, —	526
----------------------	-----

CALCUTTA:

Bengal Tenancy Act not applicable to the town of, s. 1 cl. (3)	13
meaning of the town of, s. 1 cl. (3) expl.	13
town of, does not include all lands within Municipal limits	17
inclusion of any area in, not to affect any right, obligation or liability previously acquired, incurred or accrued s. 19 cl. (2)	138

CALCUTTA MUNICIPAL ACT: (1899)

s. 637	13, 138
town of Calcutta	13
inclusion of any area in the town of Calcutta by notification under s. 637 of, shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area, s. 19 cl. (2)	138

CANAL:

a protected interest, s. 160 cl. (c)	786
---	-----

CASTE:

shall not be taken into consideration in determining rate of rent payable by raiyat, s. 31 cl. (c)	237
---	-----

CERTIFICATE:

of Collector for acquisition of land, s. 84	454
of Collector for acquisition of land not conclusive	455
under s. 103B conclusive evidence of final publication of record of rights	553
under the Certificate Procedure Act:—see Certificate Procedure.	

CERTIFICATED GUARDIAN:

lease by, without sanction of District Judge is voidable at the instance of the minor	31, 263
--	---------

CERTIFICATE PROCEDURE: See Summary Procedure.

recovery of arrears by, (Ch. XIII A)	763
Bengal Tenancy Act does not affect, for recovery of rent by Government or by Court of Wards, s. 195 cl. (b)	953

CESS:—see Abwab.

rent includes, in s. s. 53 to 68 and 72 to 75, s. 3 cl. (5)	44
recoverable as rent	44
payable by a raiyat whether he pays rent in money or in kind	47
prohibition of all impositions of illegal cesses, s. 74,	436
illegal cess not recoverable even if recovered before	443
erroneous decision of law on the question of, when amounts to resjudicata	443
stipulations as to payment of illegal cess before the passing of this Act void	438
ḍāk cess regarded as rent	45
question as to the amount of,—appeal	728, 729
decree for cess is decree for rent	380, 849

	PAGE.
CESS—Contd.	
road cess is not an abwab	445
road cess return by one shareholder if binding upon others	99
a zemindar and a tenure-holder may contract themselves out of the provisions of s. 41 of the Bengal Cess Act	47
contract by tenant to pay to the superior malik the whole of the road cess payable by the landlord is legal	47
provisions of s. 174 applicable to sales in execution of decrees for road cess ...	849
liability to pay, of a rent free tenure is liability to Govt. and not a charge on the tenure	379
claim of, question as to <i>resjudicata</i>	(117)
CESS ACT :—(IX of 1880)	
amount of cess payable to Collector under, is not a charge on the estate in respect of which they are due	379
s. 41 of, does not prevent landlord from realising whole amount of cess from tenant under a contract	44
CHANDINA :	
as to meaning of,	9, 539
as to record of rights in,	539, 560
CHAR :	
meaning of,	886, 887
question of occupancy right in, s. 180	j82, 887
s. 13 of this Act does not apply in the case of char hand	264
enhancement of rent in char land	264
onus in suit for possession of,	887
collector when may declare any land to have ceased to be, s. 180 cl. (3) ...	882
CHARGE : see Rent	
rent is a first charge	375
purchaser at rent sale has priority over the purchaser in execution of mortgage decree	377
how charge is enforced	378
there cannot be two first charges standing against a tenure	379
amount of dusses payable to Collector under the Cess Act is not a, on the estate in respect of which they are due,	379
"charge" referred to in s. 65 of this Act is not such a charge as is defined in s. 100, T. P. Act, and landlord is at liberty, under this Act, to execute a decree for rent against the person or other property, whether moveable or immoveable, of the tenant	376
personal liability of tenant	376
CHITTAGONG :	
the Hill Tracts of, a Scheduled District	14
CHOTA-NAGPUR LANDLORD AND TENANT PROCEDURE ACT (1899) :	
notice to quit	494
service of notice under,	265
decree against some only of registered tenants under,	387
completion of 12 years after service of valid notice to quit would not make non-occupancy raiyat acquire a right of occupancy	146
Chota-Nagpur Tenancy Act, VI of 1908	387
CHOWKIDARI CHAKRAN LAND : See Service Tenure	
occupancy right in,	147, 900
effect of transfer of resumed, to Zemindar	367
origin of the term of,	902
services of chowkidar	905
resumption of,	903, 905
effect of resumption of,	905
refusal to render services, effect of	907, 909, 911
Chowkidari Chakran Act (VI of 1870 B.C.), s. 48	903, 910
chukidar, meaning of	902
succession of,	904
suit in respect of	906

CHOWKIDARI CHAKRAN LAND—*Contd.*

claim of rent upon resumption of	907
sale of, for non-payment of rent	868
landlord entitled to eject under-tenants on death of chowkidar	910
ejectment of Chowkidar	907
right of Zemindar and Putnidar upon resumption of—	909—911
right of putnidar in	908, 909
Village Chowkidari Act	904

CHOWKIDARI TAX :

payable by putnidar under putni settlement is rent	45
if an abwab	441

CHUKANI :

£

in the District of Rangpur	50
it is a raiyati interest which may develop into occupancy right	50

CHUR—See Char.

CIVIL COURT :

transfer of case under s. 106, to	599
bar to jurisdiction of, s. 109	620
jurisdiction of, to determine correctness of commutation over under s. 40	251
no suit lies in, to question propriety of order under s. 40	251
stay of suits in, in which certain issues arise, s. 111B	645
regard to be had by, to entries in record of rights, s. 147B	695, 696

CIVIL PROCEDURE CODE, (ACT V OF 1908).

O. 20, r. 11 does not apply to a decree for rent; decree cannot be made payable by instalments,	393, 686
instalment decree by consent may be passed	393, 686
O. 40, r. 6, applies to a rent decree	393

CIVIL PROCEDURE CODE, (ACT XIV OF 1882) :

s. 210 does not apply to rent decree	393
s. 546—applies to a rent decree	393
sections applicable to rent suits, see s. 148 B. T. Act	696
sections applicable to tenure or holdings attached in execution of rent decree see sec. 170 B. T. Act	827
procedure relating to	656
appeals—Act III (B.C.) of 1898	656
s. s. 278 to 283 and s. 310 A not applicable to tenure or holding attached in execution of decree for arrears (Bengal and Bihar)	828
applicability of s. 310A in East Bengal,—conflicting rulings	828, 829

CLAIM :

under s. 278 C.P.C.—s. 170 of B. T. Act if a bar to, conflicting rulings	829
when claim cannot be preferred	829

COLLECTOR :

député collector of Howrah invested with powers of, under s. s. 69—71	66, 423
senior deputy collector of Gaya invested with powers of, under ss. 69—71	66, 423
includes sub-divisional officers invested with the powers of collector	66
authority of, to transfer cases s. 58	359
all sub-divisional officers authorised to discharge function of a, under s. 58	359
if court, s. 609	422
certificate of, under s. 84 not conclusive	66
collector signing for Govt.	66
deputy collector signing for, when sufficient	66
powers of a	65
may hold a summary enquiry under s. 58 (4)	357
may award compensation to landlord for false or vexatious complaint by tenant, s. 58 (5)	357
shall have power to summon witnesses and enforce their attendance for an enquiry, s. 58 (8)	357
shall prepare periodical lists of market prices of staple food crops, s. 39	347
may make order for appraising or dividing produce, s. 69	419

	PAGE.
COLLECTOR— <i>Contd.</i>	
has no jurisdiction to proceed under ss. 69 and 70 where there is <i>bonafide</i>	
dispute as to whether rent is <i>nagdi</i> or <i>bhaoli</i>	423
appointment of assessors by; under s. 70	424
may refer disputes as to appraisal or division of produce to Civil Court, s. 70	424
order of, under, s. 70 (5) being set aside does not give a fresh cause of action	424
order of, under s. 70 (5) final	424
to decide question as to right to make improvement &c., under s. 78	451
permission of, necessary for a landlord to measure land more than once in ten	
years except in certain cases, s. 90	503
to serve notice of annulment of incumbrance, s. 167 (3)	809
on application of landlord or tenant may declare that land has ceased to be	
char or diara land, s. 180 (3)	882
appeal from order of, to be brought to the Commissioner within 30 days,	
Art. 5, Sch. III	
COLLECTION CHARGE :	
if abwab	440
<i>Saranjami</i> , if	684
COLLECTION PAPERS : See <i>Jama wasil baki papers</i> .	
admissibility of, in evidence	311, See Appendix XI, (122)—(126)
COMMON MANAGER :	
may be appointed where dispute amongst some only of several co-owners	507, 510
dispute as to settlement of holdings	511
dispute as to boundaries	511
appointment of, in regard to a portion of an estate invalid	507, 511
one application for appointment of, by the same owner of several estates	511, 512
appeal does not lie against an order for appointment of,	512
appointment of, without service of notice, not valid,	511
Act XI of 1859, ss. 5 and 17 have no application to the case of an estate	
appointed by a common manager	507, 511
consent of parties to make over estate to Court of Wards	508, 514
consent order, effect of	507, 513, 514
"injury to private rights," meaning of	512, 521
District Judge has no jurisdiction to appoint, by consent of parties	507
proceeding for the appointment of a, is a proceeding in the nature of a suit	
within the meaning of s. 141 of the C.P.C.	509, 512
right of suit to set aside order for appointment of,	507, 517
security of	507, 517, 519
co-owner, power of, during management by	508, 516, 520
consent of parties do not give jurisdiction to a District Judge for appointment of,	508
Civil Procedure Code, (Act XIV of 1882), s. 2375 does not apply to appointment of,	508
co-owner, power of to deal with his own share, during common	
management	508, *516
purchase from a co-owner during common management	508
mortgage by a co-owner during common management	508
power of District Judge	508, 516
powers of District Judge	509
District Judge, powers of, not exhausted by death of common manager	508
District Judge, powers of, calling upon a person to deliver papers and accounts	
to common manager	509, 516
District Judge, powers of, to consider the propriety of the appointment of	
common manager at any stage	509
powers and duties of,	509, 515
powers of common manager :	
(i) to sell	509
(ii) to collect rent	509
(iii) to use	509, 515
(iv) to defend suit... ..	509, 515
(v) to mortgage	509, 515, 520
common-manager may be appointed in respect to shebait property	509
shall get his name registered under s. 78 of the Land Registration Act before	
he can recover rent from the tenants	509, 516
accountability of common manager to the District Judge	518

COMMON MANAGER :

accountability of, to co-owners	...	...	...	...	518
common manager is in a position analogous to that of a Receiver	...	...	...	...	517
suit by, against ex-common manager for account is maintainable	...	...	...	...	518
common manager is a public officer within the meaning of s. 2 (17) (d) of the C. P. C.	...	...	...	...	518
suits for accounts against a, is not maintainable without the sanction of the court which appointed him	...	...	...	...	518
no such suit is maintainable without a notice to the, under s. 80 of the C.P.C.	...	...	...	...	518
where co-owner in separate receipt of rent	...	...	...	...	511
control of, by District Judge,	...	...	...	...	513
power of District Judge to call upon co-owners to shew cause why they should not appoint common manager	...	...	...	...	510
grounds for appointment of,	...	...	...	...	510
court fee in an application for appointment of common manager of several estates	...	...	...	...	512
estate under attachment under Revenue Sale Law,	...	...	...	...	513
power of District Judge to appoint manager if order is not obeyed	...	...	...	...	513
management includes collection of rent	...	...	...	...	516
appointment of successor of,	...	...	...	...	516
receiver, appointment of, of property in the hands of a common manager	...	...	...	...	517
appointment of Receiver when an application is made for appointment of,	...	...	...	...	517
common manager by agreement of parties an agent of the other co-owners under Art. 89 of the Limitation Act	...	...	...	...	517
Local Government, power of, to nominate person to act in all cases under cl. (b) of s. 95—see s. 96	...	...	...	...	519
Court of Wards Act, applicable to management by Court of Wards, s. 97	...	...	...	...	519
permission of the District Judge for reference to arbitration by the Court of wards not necessary	...	...	...	...	519
remuneration of retired common manager	...	...	...	...	521
salary of,	...	...	...	...	519
co-owners, powers of, in abeyance during common management	...	...	...	...	520
powers of District Judge in case where title of co-owner is in dispute	...	...	...	...	520
District Judge, power of, to restore management to co-owners,	...	...	...	...	521
is not a necessary party in an application by co-owners under s. 99 of the B. T. Act, for restoration of management of their estate	...	...	...	...	521
High Court may make rules defining powers and duties of (s. 100)	...	...	...	...	521
the rules made by High Court should not be interpreted as imposing any restriction on the powers conferred by law except such as can be inferred from the wording used	...	...	...	...	522

COMMUTATION :

of rent payable in kind, rules for, s. 40	...	...	...	248,	258
amendments made by Act I, B. C. of 1907 and s. II of the E. B. T. Amendment Act of 1908	...	...	...	249,	250
a decision as to whether rent is payable in money or kind is not resjudicata in a subsequent application for, s. 40	...	...	...	...	251
made by Court of Wards binding on minor	...	...	...	...	252
where there can be, and where not	...	...	...	253—	257
non-delivery of paddy-money rent: market value or amount stated in kabuliyat: case law	...	...	...	253—	257
an order under s. 40 is final and no suit lies in civil court	...	...	...	...	...
Civil Court has jurisdiction to determine whether an order under s. 40 by a Revenue Officer is without jurisdiction though the propriety of the order cannot be gone into	...	...	...	251,	257
a Small Cause Court, like a Civil Court, is not bound by the decision of a Revenue officer in a, proceeding	...	...	...	...	251
as to, of a raiyat paying fixed quantity of paddy	...	...	...	...	252
no commutation of rent of tenant of <i>khamar</i> land,	...	...	...	...	253
rent of an under-raiyat cannot be commuted under s. 40,	...	...	...	...	251
application for, of rent should be determined by the officer to whom it is presented: transfer without jurisdiction	...	...	...	...	251
order for, shall be in writing and shall state the grounds on which it is made, s. 40, cl. (5)	...	...	...	...	249
order for, without notice is <i>ultravires</i>	...	...	...	...	257

	PAGE.
COMMUTATION :	
provision of cl. (5) imperative	257
essentials necessary under s. 40 :	
(1) parties must be in the relation of landlord and tenant	
(2) tenant must be an occupancy raiyat holding rent in kind as provided for in cl. (1) of s. 40	258
consent of both landlord and tenant necessary for reversion to original rent after, dowl evidencing, if registration necessary	257
conversion of cash rent into rent in kind cannot be regarded as enhancement within the meaning of s. 29 or 43 of the Act	258
effect of acceptance at reduced rate	258
at what stage the application is to be made	258
applications under s. 40 (2) are dealt with at the stage of objections under s. 103A	258
grounds upon which application for, may be refused	259
as to transfer of commutation case	251
appeals against order of,	259
period for which commuted rents are to remain unaltered (s& 40A)	260
landlord's or raiyat's right to apply for, of rent not taken away by anything in any contract made after passing of B. T. Act, s. 178 (3) (g)	866
COMMENCEMENT :	
of Bengal Tenancy Act, 1885	17
—Act I (B. C.) of 1907	17
—Act I of 1908 (E. B. and Assam)	17
COMMISSION—See Appendix III.	
COMMISSIONER :	
appeal to, from order of Collector to be brought within 30 days from date of order appealed against, Sch. III, Art 4	357
COMPANY'S RUPEES :	
introduction of,	441
change of <i>sicca</i> rupees into,	303
claim for company's <i>batta</i> if <i>abwab</i>	441
COMPENSATION :	
an occupancy raiyat has a right to a share in, under the Land Acquisition Act	204
proof of loss to be proved before getting decree for, under s. 140	675
to landlord from tenant for bringing false complaint under s. 58	357
appeal lies to Commissioner from order of Collector awarding compensation s. 58	357
compensation awarded under sec. 58 may be recovered as like a public demand for raiyat's improvements in case of ejectment, s. 82	452
no law of emblements in this country	453
principle on which compensation is to be estimated, s. 83	453
suit for compensation for wrongful distraint, s. 140	453
suit for compensation for illegal distraint maintainable only on ground that distraint was made in violation of sec. 121 of this Act, s. 140	675
ruling as to suit for compensation for wrongful distraint, s. 140	676
in a suit for recovery of, onus lies upon plaintiff to prove the annual rent payable by him	676
if the tenant pleads payment the onus is on him to prove the allegation	676
servant's act on landlord's authority	676
limitation in a suit for illegal distraint of crops	676
relief against forfeiture by payment of, s. 155	748
period for payment of compensation fixed by, decree under s. 155 may be extended by Court, s. 155 (3)	748
claim of compensation in the alternative can be taken in a suit for ejectment, s. 155	751
compensation under s. 155, how to be determined	751
suit for injunction and compensation : limitation	750
nothing in any contract can take away or limit right of tenant to claim compensation for improvements made by him, s. 178 (1) (d)	

COMPROMISE :—See *Solenama*.

power of Revenue officer to give to, s. 109 B ...	634
power of Revenue officer to settle rents on, s. 109C ...	635
compromise of suits between landlord and tenant, s. 147A ...	691
compromise under s. 147A is valid even if it contains extraneous matters to the suit and is not registered ...	691, (128)
compromise subsequently retracted ...	695
cl. (2) of s. 147A empowers a Court to give effect to a, and to pass a decree, even if the parties subsequently retract from it ...	695
compromise of suits contravening the provisions of s. 29 ...	227
s. 29 applies to an enhancement made in a compromise as to unregistered compromise petition ...	30
as to counsel's authority to ...	(128)

COMPULSORY SALE :

occupancy holding not transferable by, except by local custom of usage ...	182
--	-----

CONCURRENT LEASES :

effect of ...	27
---------------	----

CONFIRMATION OF SALE :

no bar to an application by judgment debtor to raise the question that the property which has been sold could not be sold ...	191
tenant cannot raise the question after, if aware of sale ...	191
"date of sale", in s. 167 if mean the date of, conflicting rulings ...	815

CONFIRMATORY LEASE :

after Permanent settlement if rebuts presumption under s. 50 ...	309
--	-----

CONSENT :

sale of occupancy holding in execution of money decree, question as to consent of landlord and tenant ...	921
case of <i>Chandra Binode v. Shaikh Ali Bux</i> (Special Bench) ...	922
previous to Special Bench, conflict of rulings as to whether tenant's interest can pass by involuntary sale when landlord alone consents but tenant objects ...	184
transfer of occupancy holding with, of landlord ...	184
transfer of occupancy holding in accordance with usage is valid ...	184
sale in execution of decree with, of landlord ...	257
of both landlord and tenant necessary for reversion to original rent after commutation under s. 40 ...	485
consent in writing by landlord to division of tenure or holding amounts to a new contract ...	485
separate receipt of rent does not amount to, in writing as to sub-division of tenancy ...	485
receipt granted by <i>Surnamaris</i> not being collector of rents and having no authority to grant receipt does not amount to, in writing the landlord ...	90
division of tenancy not binding on landlord without his consent, s. 188 ...	485
<i>Gumastha's</i> authority to recognise sub-division ...	485
<i>Patwari</i> or rent collector, if he power to, to transfer of occupancy holding ...	514
order appointing common manager on consent of parties is an order under s. 95 ...	184
sale with consent of landlord ...	184
effect of landlord's consent ...	184
transfer of occupancy holding not transferable by custom or usage may be validated by, of landlord ...	393
instalment decree in rent suit can be passed by, ...	508
District Judge has no jurisdiction to appoint common manager by consent of parties ...	

CONSOLIDATION OF JUMMAS :

consolidation of several jummas into one tenure does not deprive a tenant of the benefit of presumption under s. 50 ...	306
cases regarding ...	306
effect of, ...	306

CONSTRUCTION :

• of Act, s. 196 ...	956
interpretation of some important words and expressions &c. ...	956—960
"written, lease" in cl. (b) of s. 49 meaning of ...	279
"any case" in s. 155 ...	749
"date of sale" in s. 160, meaning of ...	749
"incumbrance" in s. 161, if includes "sale," and "exchange" ...	800, 801
"prevailing rate" in s. 30, meaning of ...	231
agreement by an occupancy raiyat to pay rent by more than 2 as in the rupee, s. 29, void ...	226
"holding" in s. 3, cl. (9), meaning of ...	60
<i>mokurari, istemari</i> , meaning of ...	51
<i>mourashi, tika mohito, poor dastur</i> , meaning of ...	94, 95, 96
of lease for reclamation, cases relating to ...	98
provisions of Chap. X obscure and not clear of comprehension ...	532
of s. 103B and s. 113 ...	553

CONTRACT :

rent of tenure-holder once enhanced by Court or by contract may not be altered for 15 years, s. 9 ...	100
enhancement of rent by, s. 29 ...	218
contract agreeing to enhancement of rent by more than 2 as in the rupee wholly void, s. 29 ...	226
contract for enhancement or rent in excess of maximum allowed by s. 48 not void but nothing in excess of maximum can be recovered ...	275
what rights not affected by contract between landlord and tenant made before or after passing of this Act, s. 178 (1) ...	865
contract and custom, Ch. XV ...	865
nothing in contract made between landlord and tenant since 15th July 1880, and before passing of this Act, shall prevent acquisition of occupancy right, s. 178 (2) ...	865
what rights not affected by contract between landlord and tenant made after passing of this Act, s. 178 (3) ...	865
provisos to s. 178 ...	866
sub-sec. (1) cl. (d) of s. 178 controlled by s. 194 ...	867
re-entry clause, s. 178 ...	868
contract not to purchase under-tenant's holding is valid and runs with land, s. 178 ...	869
s. 179 not controlled by s. 178 ...	870
renewal of contract after passing of the Act, s. 178 ...	871
s. 67 of this Act, does not control s. 179 ...	872

CONTRACT ACT :

ss. 59, 60 ...	352
s. 69 ...	837

CONTRIBUTION :

• rights to, as between co-tenants ...	391
as to limitation, in a suit for, ...	391
right of co-tenant to, s. 174 ...	862
right of suit : contribution from unrecorded tenant see App. XI ...	(121)
contribution and suit for damages ...	390
a suit for, by co-sharer in respect of payment made by him of money due from another co-sharer if exempted from Small Cause Court ...	277, (121)
as to cases on, ...	277, (121)

CONTROL :

manager appointed by co-owner if under control of District Judge ...	513
--	-----

CO-OWNER: See Co-sharer and Common Manager.

law as to enjoyment by, ...	25
power of, to deal with his own share during common management ...	508
purchase from, during common management ...	508
power of, during common management by common manager ...	508, 516
mortgage by, during common management ...	508, 516
power of lessee under, during common management ...	508

CO-OWNER :

consent by, for appointment of common manager, effect of	508, 513, 514
co-owner not concerned in dispute, see Common Manager	...
limitation in a suit against common manager when appointed by consent of,	517
accountability of common manager to,	518
powers of, if in abeyance during common management	520
manager appointed by, is under control of District Judge	513
common manager appointed by consent of,	508, 513

COPY OF STATEMENT OF ACCOUNT :

landlord to prepare and retain, s. 57 (3)	357
penalty for failure to deliver, to the tenant or to prepare and retain a, s. 58 (3)	357

CO-SHARER : See Co-sharer landlord and Co-owner.

each co-sharer raiyat acquires status of settled raiyat s. 20 (4)	143
tenant may deposit rent payable to co-sharers, when he is unable to obtain their joint receipt s. 61 (1) (c)	367
interest of co-tenant is void and not voidable on sale, and a co-tenant on deposit of decretal amount and on setting aside of sale has no lien on the property under s. 171	...
co-sharer of a judgment debtor whose name has not been registered, if entitled to make a deposit under cl. (3) of s. 170	...
appointment of common manager without notice to, invalid,	507, 511
as to relationship of landlord and tenant between co-sharers	23
as to permanent lease by, before partition, if binding on other co-sharer after partition	(128)
as to exclusive possession by, ouster, joint possession	(129)

CO-SHARER LANDLORD :

suit for enhancement of rent under s. 30 must be brought by all the landlords	234
as to right of, to bring suit for enhancement of rent, s. 29,	...
s. 29 applies to contract for enhancement of rent by,	220
cannot maintain a suit under s. 52	324
when s. 188 not a bar to a suit by, under s. 52	322, 324
as to suit for assessment of rent by, under separate agreement	322
application under s. 69 by, not maintainable	423
suit by, for compelling tenant to fill up tank; s. 188 does not apply	451
cannot make an application under s. 84	455
not entitled to eject unless tenancy is determined by all co-sharers,	501
has no right to make an application under s. 91 for measurement,	505
cl. (h) of sec. 148 not applicable to a decree by co-sharer landlord,	699
suit for arrears of rent by, s. 148A	707
—difference between Bengal and East Bengal	708
right of one co-sharer to sue for whole rent even when there is separate collection	709
entitled to maintain suit for entire rent if other co-sharers made defendants	710
suit by, for rent with alternative claim against co-sharer landlord	710
decree by, for his share of the rent in a suit not brought under s. 148A or s. 158B is a money decree	710
usufructuary mortgagee from a, is in the position of a co-sharer and is entitled to bring a suit for rent under s. 148A	710
joint shebais are not, but co-worshippers and cannot sue separately	711
as to rent suit by a manager of a <i>Mitakshara</i> family	401, 711—713, 942
as to applu under s. 105 by a Manager of a <i>Mitakshara</i> family	587
as to rent suit by, who has always collected rent	712
remedy of a, to recover rent : summary of rulings	713—716
courses left open to a, for recovery of rent	713
essential principles underlying s. 148A	715
as to essentials of a plaint under s. 148A	717, 718
decree in a suit framed under s. 148A binds a purchaser of a portion of the holding	716
where made defendant and afterwards made plaintiff—limitation	936
one co-sharer cannot be invested by others to sue for ejectment	712
one co-sharer cannot maintain a suit for entire rent	719
refusal by, to be plaintiff, effect of	893
decree by co-sharer landlord as to rate of rent if admissible in evidence against another co-sharer	402, 403, 941, (120)

	PAGE.
CO-SHARER LANDLORD—Contd.	
possession by, does not amount to adverse possession ...	941, 160 ⁹
as to separate leases by effect of ...	942
s. 153 applies to a suit for rent by co-sharer landlord, ...	737
usufructuary mortgagee from one of several, is in the position of, within meaning of s. 158B subsec. (1) cl. (e) ...	734
what a co-sharer landlord can do ...	932, 933
what a co-sharer landlord cannot do ...	933—937
suit for additional rent upon contract ...	932, 937
suit for rent of excess land ...	932, 933
suit for balance of rent due or rent realised in excess by co-sharers	933
application for measurement under s. 91 under certain circumstances ...	933
suit against raiyat for filling up of tank ...	933
can dispute an entry under s. 106 ...	933
but cannot maintain an application under s. 105 ...	933
suit for damages for cutting of trees, ...	933
ejectment suit on breach of condition, ...	933
cannot bring suit for enhancement or additional rent ...	937, 938
application under s. 158 ...	934
suit for ejectment with alternative claim for rent ...	890
co-sharer landlord has no right to grant abatement of rent ...	934, 938
suit for joint possession ...	934
ejectment suit by, ...	501, 934
application under s. 69 ...	423
rent suit by assignee of arrears of rent from a, ...	935
as to decree by, for use and occupation ...	400
effect of settlement by, if the other co-sharer has right to sue for joint possession	40
as to permanent lease by, before partition if binding on other, after partition	(128)
as to effect of exclusive possession by co-sharer purchaser ...	162
as o effect of purchaser by ...	160—162
COSTS: see Expenses.	
record of rights—landlord entitled to, in proceedings under s. 105 ...	590, 611
as to execution of decree for costs, s. 105 ...	590
in proceedings under s. 106 ...	613
as to appointment of costs, s. 114 ...	650—652
CO-TENANT:	
as to relinquishment by, ...	203
is entitled to bring a suit for abatement of rent ...	939
COUNSEL:	
as, to counsel's authority to compromise ...	(128)
COUNTERFOIL:	
landlord to keep, of receipt given to tenant, s. 57 (3) ...	356
landlord or his agent liable to penalty for failing to keep, of receipt or statement, s. 58 ...	356
COURT:	
jurisdiction of, to determine incidents of tenancy under s. 158 ...	757
power of, to fix fair rent as alternative to ejectment, s. 157 ...	755
power of, to extend period fixed under subsec. (2) of s. 155 ...	748
to grant receipt under s. 152 ...	724
payment in, of money admitted to be due to landlord, s. 150 ...	722
payment in, of money admitted to be due to third person, s. 149 ...	719
receipt granted by, for rent deposited to be valid acquittance, s. 62 ...	373
payment by, of deposit, s. 64 ...	374
notification of receipt of deposit by, s. 63 ...	373
court other than executing court has no right to set aside sale under s. 173 ...	843
effect of mistake of court in calculating the sum required to be deposited under s. 174 ...	854
COURT FEES:	
scale of court fees in Bengal see Appendix IX. ...	(108)
scale of court fees in Bihar—see Appendix XIII,	

COURT FEES—*Contd.*

PAGE.

as to, payable for, in Bengal and Bihar		
(1) application for commutation of produce rent under s. 40	...	258
(2) application under s. 105 for settlement of rent	...	591
(3) application under s. 105A	...	599
as to, in appeals and revisions, s. 104 (G) (1) and (2), ss. 108 and 108A,	619,	620
as to declaratory suits under s. 104H	...	573, 574
applications for service of notice of surrender exempt from,	...	475
as to, in an application under s. 91	...	506
court fee payable under, in requisitions under Ch. XIII A	...	763, 764

COURT OF WARDS :

commutation at the instance of, if binding on minor	...	252
lease granted by manager of, without order of Court is not void but voidable	...	31

COURT OR WARDS ACT, IX (B.C.) OF 1879 :

applicable to management by Court of Wards under s. 95	...	513, 519
s. 14	...	23
s. 39	...	23
District Judge may under certain circumstances direct that an estate or tenure		
be managed by, s. 95 (a)	...	514
nothing in B. T. Act affects procedure for realisation of rent in estates under		
management of, s. 195 (b)	...	953

COVENANTS :

what covenants run with land and what do not	...	112, 881
as to, by lessee not to purchase under tenants' holding	...	869
as to, restraining alienation	...	879
as to, regarding fees	...	164
as to, for renewal of lease	...	286
as to, personal covenant	...	443

CROP : See Produce rent.

rules for preparation of price lists of staple food crops, s. 39	...	247
commutation of rent payable in kind, s. 40	...	248
tenant not entitled to crop when ejected	...	422
suit against depositary of, not barred by ss. 69 and 70	...	422
in a suit for value of crops, damage was for the value of crops at the time		
they were due and not subsequently,	...	496
a suit is maintainable by tenant against a third party for recovery of crops		
awarded to the latter by Collector, s. 69	...	422
as to dominion over crop cut, s. 69	...	...
rights and liabilities as to possession of, s. 71	...	424
right to reap distrained, s. 126	...	427
suit for declaration of title to standing crop, s. 140	...	675
rights of ejected raiyats in respect of, s. 156	...	754
when crops may be so standing, s. 129	...	672
penalties for illegal interference with, s. 186 (1)	...	929
rights of ejected raiyats in respect of, and land prepared for sowing, s. 156	...	754
Local Govt. may empower Revenue-officers to cut and thresh crop and weigh		
produce with a view to estimating capabilities of the soil, s. 189 (1) (c)	...	943.
no lord of emblements in this country	...	822
landlord's right to standing crops on termination of tenancy	...	406
suit for money for sale and purchase of crops is not a rent suit	...	952

CROP CUTTING REPORT :

as to evidentiary value of, s. 71	...	428
if public document,	...	260

CROWN :

on failure of their permanent tenure escheats to,	...	115
---	-----	-----

CUSTOM :—See Usage.

proof of, what facts necessary	...	174
essential attributes of	...	177
as to custom of transfer by piecemeal	...	177

CUSTOM—Contd.

as to usage in Comilla of sale of holding without consent of Maharaja of Tippera	...	...	...	...	177
as to, of transferability on payment or nazar	...	...	...	...	175
question as to, a question of law	...	...	...	...	177
sale or mortgage to landlord does not prove custom of transferability	...	...	...	...	176
"custom" and "usage" are not synonymous terms	...	...	...	...	174
court shall have regard to, in determining whether tenant is tenure holder or raiyat, s. 5 (4)	...	...	...	...	75
landlord may enhance rent of tenure in accordance with, s. 6 (a)	...	...	...	...	88
right of occupancy may be acquired by, s. 19	...	...	...	...	138
payment of nazar, no evidence of custom or usage	...	...	...	...	175
occupancy holding not transferable except by custom or usage	...	...	...	...	177
occupancy raiyat not entitled to cut down trees in contravention of local custom, s. 23	...	...	...	...	162
onus on landlord to establish custom prohibiting cutting down of trees by occupancy raiyat	...	...	...	...	164
onus upon tenant to prove custom to cut down mango tree	...	...	...	...	164
property in trees—custom	...	...	...	...	164, 165
onus upon tenant to shew that he is entitled by local custom to appropriate trees when felled	...	...	...	...	165
customary right to cut and appropriate trees is an incumbrance within meaning of s. 11 of Reg. of 1819	...	...	...	...	165
onus to prove local custom to contrary is upon tenant	...	...	...	...	166
to be regarded by Revenue officer in determining whether land is private land, s. 120 (2)	...	...	...	...	865
contract and custom, Ch. XV	...	...	...	...	882
custom of utbandi, s. 180	...	...	...	...	882
custom of utbandi in Nuddea, Jessore, Khulna, Murshidabad, and 24 Pargannas	...	...	...	...	882—885
incidents of tenancy of homestead to be regulated by local custom and subject to it by provisions of this Act, s. 182	...	...	...	...	914
saving of custom, s. 183	...	...	...	...	920
nothing in this Act to affect custom, usage of customary right	...	...	...	...	920
not expressly or impliedly modified by its provisions, s. 183	...	...	...	...	920
non-occupancy raiyati holdings are not transferable except by local custom and usage	...	...	...	...	262
under-raiyat may acquire right of occupancy by	...	...	...	...	72, 273, 923
under-raiyati holding not transferable except by custom	...	...	...	...	273
heritability of under-raiyati holding—custom	...	...	...	...	274, 288

CUSTOMARY RATE :

rent of tenure holder, when liable to enhancement, may be enhanced up to the limit of, s. 7 (1)	...	...	...	...	92
where no customary rate exists it may be enhanced up to such limit as the Court thinks fair and equitable, s. 7 (2)	...	...	...	...	92

DAKCESS :

when may be recovered as rent	...	...	...	...	45
denial of liability to pay—second appeal	...	...	...	...	727

DAKHILA : See *Rent Receipt*.

of 20 years not necessary for the purpose of the presumption arising under s. 50 (2)	...	...	...	...	299
proof of	...	...	...	...	300
form of, see Sch. II	...	...	...	...	963—970
entry in, as "dakhilkar" : recognition	...	...	...	...	432
entry in, as <i>marfatdar</i>	...	...	...	...	196, 199, 432
entry in, through mortgagee	...	...	...	...	196, 432

DAMAGES :

for use and occupation not rent	...	...	...	...	46
not to be awarded for failure to pay rent on account of poverty or illness	...	...	...	...	419
landlords' right to, on breach of covenant to excavate tank, s. 76	...	...	...	...	437
where interest and not, should be awarded	...	...	...	...	419
power to award, on rent withheld without reasonable cause, s. 68	...	...	...	...	418
may be allowed where no stipulation for payment of interest	...	...	...	...	418

DAMAGES—Contd.

landlord not entitled to, when he does not realise rent in the midst of a dispute	...	...	...	...	419
in excess of 25 p.c. cannot be recovered	...	...	...	...	419
measure of, for waste committed by tenant,	...	...	...	...	450
as to, for excavation of tank where no actual damages	...	...	...	...	450
distrain for, not allowed, s. 121	...	...	...	...	669
proof of loss to be proved before decree may be had for compensation under s. 140	...	...	...	...	675
rulings regarding suit for compensation for wrongful distraint s. 140	...	...	...	...	676, 677
damages for not raising crops	...	...	...	...	775
for denial of landlords' title, s. 186A	...	...	...	...	929

DAMAGES FOR USE AND OCCUPATION: see Rent.

landlord entitled to compensation for use of land where he is unable to prove kabuliyat,	...	...	...	...	47, 48
a suit for, can be maintained against a tenant who has occupied premises by permission or sufferance of the landlord	...	...	...	...	48
in such a case the law implies a contract or promise by the tenant to pay the landlord a reasonable sum for use and occupation	...	...	...	...	48
for breach of condition of lease there may be 2 remedies of damages and forfeiture,	...	...	...	...	208
where no alternative claim made for use and occupation in a suit for rent, no rent can be decreed on that footing	...	...	...	...	47, 48

DANABANDI SYSTEM:

of appraising and dividing produce, description of, s. 69	...	...	...	...	421
---	-----	-----	-----	-----	-----

DARBUST ZEMINDARI HAKUK: See Putni, Mineral rights.

grant of a <i>putni</i> containing the words, includes the mining rights	...	...	...	...	56
--	-----	-----	-----	-----	----

DARJEELING:

a scheduled District	...	...	...	...	18
----------------------	-----	-----	-----	-----	----

DARPATNI:

applicability of s. 12 to transfer of,	...	...	...	...	119
not exempted from provisions of B. T. Act by virtue of s. 195 (e)	...	...	...	...	956

DASTAK:

meaning of	...	...	...	...	69
------------	-----	-----	-----	-----	----

DASTUR:

is an <i>abwab</i>	...	...	...	...	439
--------------------	-----	-----	-----	-----	-----

DATE OF SALE:

in s. 167, meaning of,—if means the actual date of sale or the date of confirmation of sale:—conflicting rulings,	...	...	...	...	815
---	-----	-----	-----	-----	-----

DEARAH:—see Diara.**DEATH:**

of an occupancy raiyat without heirs, landlords' right to khas possession	...	...	...	...	188
as to abatement of appeal on the, of co-appellant	...	...	...	...	684
of execution creditor or judgment debtor	...	...	...	...	706, 707
of common manager	...	...	...	...	508
of chowkidar: ejection	...	...	...	...	910

DEBUTTUR: see Shebait.

as to possession and management of	...	...	...	...	509
as to Shebait's power to transfer right of worship	...	...	...	...	(129)

DECREE:

for rent, what is	...	...	...	...	379—382, 773—775
what is not	...	...	...	...	382—384, 775—778
effect of cessation of landlord's interest after suit but before, and after decree but before execution	...	...	...	...	384—385
for enhancement of rent of a tenure, gradual, s. 8	...	...	...	...	100

	PAGE.
DECREE—Contd.	
for enhancement of rent of an occupancy holding, ss. 29 and 30	218, 228
no tenant can be ejected exempt in execution of, s. 89	492
ejectment of occupancy raiyat in execution of, s. 25	208
ejectment of non-occupancy raiyat in execution of, s. 44	264
execution of, for arrears, s. 65	375
for ejectment against a tenant who is not a permanent tenure-holder or a fixed raiyat or occupancy raiyat, s. 66	404
against burgadar if rent decree	6
for rents of 2 or more tenures	384
by an assignee for arrear of rent	383, 389
against some of several heirs of recorded tenant	383
against one of several joint tenants	396
for rent by ticcadar	383
against unregistered transferee	386
against widow, how far bunding upon reversioners	(129)
separate decrees for rent by different co-sharers	387
money decree against the registered tenant	387
decree against a putnidar	381, 782
decree against an outgoing tenant	395
for dakcess, road cess, drainage is rent decree	380
purchaser at a sale in execution of fictitious,	376
s. 65 does not apply to an under raiyati holding	376
decree holder may bid at sale, judgment debtor may not, s. 173	841
by registered proprietor	390
for sale of defaulting tenure bad	376
Order XL r. 6 of the C. P. C. applies to a rent,	
decree for rent cannot be made payable by instalments	393
instalment decree by consent can be passed	393
for rent against a Hindu widow	394
decree after cessation of tenant's interest	395
setting aside of a fraudulent rent decree	400
suit includes the execution proceedings based on the final decree	
made in the suit	680
decree passed before the Act	706
order under s. 84 is not a decree,	455, 680
order in proceeding under s. 90 not a decree,	680
as to whether orders under ss. 173 and 174 are decrees	680
decree in contravention of sec. 174A if a nullity	694
rulings as to assignment of decree	704, 705
cl. (h) of s. 148 does not apply to a decree by outgoing landlord or assignee	704
application of execution of decree by trustees,	705
assignment of rent decree, effect of	705
decree at the admitted rate,	729
date from which decree for enhancement takes effect, s. 154,	747, 379
decree against the recorded tenant	386, 387
decree by fractional landlord	780
transferee when bound by decree against his vendor	781
and when not	781
as to two decrees for rent	378
decree holder may proceed against any property of the judgment debtor	377
decree, for cess is decree for rent	849
s. 310A C. P. C. applicable although decree is of date prior to the passing of the Act, also applicable where execution commenced before passing of the Act,	849
"decree" in s. 174, meaning of,	857
decree by co-sharer landlord evidence against another co-sharer	402, 403
as to, against a dead man	(129)
validity of, if can be questioned by executing Court	(129)
as to setting aside of fraudulent decree	(129)
as to rent decree or money decree	(129)

DECREE HOLDER—See Decree.

DEFINITIONS :

of terms in this Act, s. 3	20—70
of "settled raiyat," s. 20 (1)	142
as to meaning of certain terms	79—81

DEMAND :

mere demand for rent does not create relationship of landlord and tenant ...	31
It is utmost an offer of tenancy	31

DENIAL OF LANDLORD'S TITLE : See Disclaimer, Forfeiture.

denial of landlord's title no ground of forfeiture under the B. T. Act : summary of case law	102—108
when is, ground of forfeiture	104
given effect to by a decree of court	104
in suits for ejectment on dismissal of rent suit for, question of relationship of landlord and tenant barred by <i>resjudicata</i>	106
by lessee of service tenure	107
by recorded tenant does not bind unrecorded tenant	107
in a suit for rent brought by some of several joint landlords	107
renunciation of tenancy without,	107
express denial necessary	107
as to damages for, s. 186A	930

DEPOSIT :

of rent by transferee in the name of the recorded tenant and his own, effect of	199, 433
withdrawal of, by landlord, effect of,	199, 369
in court by tenant of amount less than arrears due, not a valid deposit under s. 61 application to, rent in court, s. 61	370 368
may be made by third person on behalf of tenant	369
validity of, cannot be disputed by landlord after granting of receipt of court, s. 61	370
"full amount of the money then due" meaning of, s. 61	370
mistake in name of taluq does not invalidate deposit, s. 61	372
if can be made of rent in kind under s. 61	372
under tenant when may deposit	368
applicant not required to file notice to be served upon the landlord along with the application for, of rent	368
of rent of homestead land governed by s. 182 of the B. T. Act may be made under s. 61	369
right of putnidar to make a	955
payment to co-sharer	369
refusal to grant receipt in statutory form for rent tendered, effect of	369
of proportionate share of rent to co-sharer	369
dismissal of rent suit when a valid,	370
of rent without the interest then due is not sufficient deposit within s. 61	371
validity of tender : place : person	371
omission to use for rent of the period between deposit and suit	371
limitation	371, 372
in whose name money is to be deposited	372
court fee for application for, under s. 61	see Appendix IX
refusal of tender : deposit under s. 61 not necessary to stop interest running	372
notification of receipt of s. 63	373
payment or refund of s. 64	373
deposit under s. 66 by whom to be made	407
where the last day of, is a holiday,	407
as to effect of, with protest	408
as to effect of error in copy of decree	408
deposit on application to set aside ex-parte decree under s. 153A	745
mode of application of the money deposited under s. 153A	745
court can order deposit whether there is admission or not	746
date from which decree for enhancement takes effect s. 154	747
judgment debtor or any person having in the tenure or holding any interest voidable on the sale may make a deposit under s. 170 cl. (3),	827
"interest voidable on the sale," meaning of	831
transferee of whole or part of non-transferable occupancy holding can, under s. 170 cl. (3)	831, 832
mortgagee, if entitled to	833
usufructuary mortgagee, if entitled to,	833
under-rayat holding a lease exceeding 9 years, if entitled to	833, 834
by a donee of a holding at fixed rate	833
by a lessee of a holding a fixed rate	833
a darpudnidar	833

DEPOSIT—*Contd.*

mukarari lease holder under a fixed raiyat may	...	...	833
whether "judgment debtor" in cl. (3) includes purchaser	...	...	834
s. s. 170 and 171 apply to execution proceedings and not to suits	...	...	834
deposit allowed without enquiry as to whether applicant has right to make	...	...	...
deposit under s. 170, effect of	...	...	836
effect of withdrawal of, amounts to recognition	...	...	834—836
appeal does not lie from order under cl. (3) of s. 170 but High Court has	...	...	...
power of revision	...	...	836
right of depositor	...	...	838
suit of recovery of sum deposited	...	...	838
as to deduction of amount deposited	...	...	838
judgment debtor can alone make deposit under s. 174	...	...	838
judgment debtor can alone make deposit under s. 174	...	...	847
"judgment debtor" in s. 174, meaning of,	...	...	848
deposit by some of judgment debtors and withdrawal of deposit, effect of,	...	...	848
mortgagee if may apply if sale is free from mortgage	...	...	848
who may apply under s. 310 A. C. P. C.	...	...	849—852
who cannot apply under s. 310A, C. P. C.	...	...	852—853
if court is closed on the 30th day deposit may be made the next re-opening	...	...	...
day, s. 174	...	...	853
inability to deposit on the last day on account of judge's absence, effect of,	...	...	853
where a part of the money is deposited out of time by order of Court, s. 18	...	...	...
of the Limitation Act not applicable,	...	...	853
when deposit is made under s. 174 sale ought to be set aside and no formal	...	...	...
application necessary	...	...	854
challan shewing deposit may be regarded as an application, s. 174	...	...	854
five per cent. to be deposited although decree holder purchaser	...	...	855
amount of deposit under s. 174	...	...	855
deposit of Govt. Promissory notes not sufficient, s. 174	...	...	856
deposit under s. 174 must be payable at once	...	...	856
conditional deposit not sufficient,	...	...	856
deposit must be made in Court itself, s. 174	...	...	857
order refusing to accept deposit under s. 174 not appealable,	...	...	859
amount to be deposited under s. 174 does not seem to include poundage fee	...	...	856
of crops by order of collector s. 69	...	...	422

DEPUTY COLLECTOR :

of Howrah and Gaya authorised to discharge functions of Collector, s. s. 69—71	422
--	-----

DEMARCATIION :

of village boundaries, s. 115A	655
--------------------------------	-----

DIARA :

a raiyat holding diara land cannot demand a reduction of rent under cl.	...	...	...
(b) of sub-sec. (1) of s. until he has acquired occupancy right by 12 years	...	...	...
possession	...	...	337, 885
meaning of	...	...	885, 886
acquisition of occupancy right in, s. 180	...	...	882
presumption under cl. (7) of s. 20 does not extend to diara lands	...	...	885
as to object of s. 180,	...	...	886
extracts from Bihar Settlement Manual 1927	...	...	886—887

DIGWARI TENURE : See Service tenure.

of Manbhoom and ghatwali tenures of Birbhum not analogous	...	...	902
meaning of "digwar"	...	...	902
nature of Digwari service in Ramgurh	...	...	902
no presumption that holders of, are personal servants of <i>Rajah</i> of Ramgurh	...	...	902
in Bakura	...	...	902
of Ghat Bharra in Bankura : appointment of heir	...	...	902
heredity of	...	...	902
in Manbhoom, incidents of	...	...	902

DIHI PANCHANNANGRAM TENURES :

are soleable under Act I of 1859 by virtue of the provisions of Act VII of 1868	21
held under Govt. in Dihi Pachanangram in the District of 24 Parganas	21

	PAGE.
DILUVION :	
reduction of rent on account of, s. 52	357, 338
no abatement of rent for, in regard to <i>mokurari</i> lease,	337
loss of part of tenant's land by, if entitles to a suspension of entire rent	339
permanent tenure holder if entitled to abatement for,	875
as to effect of remission of rent for,	338
diluvion—"on any other ground"	338
DISCHARGE :	
tenant entitled to full, or statement of account at close of year, s. 57	355
penalty for failing to give or copy of, s. 58 (2) and (3)	356
DISCLAIMER : See Denial of landlord's title, Forfeiture.	
where the tenant puts the landlord to the proof of his alleged title of purchase there is no disclaimer of relationship of landlord and tenant	107
nor there is any disclaimer where tenant questions extent of landlord's interest and his title to receive entire rent	107
what amounts to disclaimer	107
to constitute, it must be the renunciation by a party of his character as tenant by setting up a title in third person or by claiming title in himself	107
must be before the date of ejectment suit	107
contained in the written statement cannot be made the basis of a decree for ejectment	107
permanent tenant if liable to forfeiture on the ground of disclaimer of landlord's title	107
DISPOSSESSION : see Eviction.	
by landlord : suspension of rent : apportionment of rent	34—38
tenant not liable for rent if there is interference in collection of rent by landlord	35
tenant not liable for rent if there be substantial interference with the tenant's enjoyment though there may not be actual eviction	36
what constitutes,	35
tenancy not terminated by eviction	35
of a part or whole	35
entry in record of rights	35
sale in execution of decree if purchaser does not get possession	35
as to, big third person of land in tenant's possession	39
by title paramount : apportionment of rent	40, 41
eviction by title paramount is a good defence to a suit for rent	41
tenant is entitled to withhold rent where his landlord is directly or indirectly concerned in the dispossession	35
partial eviction : abatement of rent	35
tenant liable to pay rent in the case of the landlord taking <i>kabuliyats</i> from the under-tenants but the tenant not being dispossessed	35
limitation against landlord in the case of dispossession of land in tenant's possession by a third person	35
tenant liable for rent when not actual dispossession	36
by superior landlord, effect of	493
right of suit by landlord for recovery of possession when tenant is dispossessed by third party—limitation	39
by landlord—limitation in suit for possession by tenant, Schedule III, Art 3	493
dispossession by landlord, meaning of,—see notes under Sch. III, Art 3	985—996
DISPUTE :	
dispute between co-owners, see Common manager	510
decision of, by Revenue officer in cases where a settlement of land revenue is not being or is not about to be made, s. 106	599
effect of s. 9 of Act III (B. C.) of 1898 is to make final the decision of Revenue officer made under s. 106 before commencement of the amending Act, only in regard to, which he decided under that section	607
dispute as to length of the standard of measurement is not a, as to correctness of an entry in the record of rights,	609
distinction if any, between "objections" and "disputes" as used in ss. 105 and 106	609
decision as to boundary dispute is not a decision about correctness of an entry in the record of rights,	610
settlement officer has jurisdiction to decide a question of boundary dispute between two neighbouring estates under his powers as a survey officer	531

DISPUTE—*Contd.*

before final publication of record	610
appeals from decisions of, by Revenue officer, s. 109A	628
power of Revenue officer to give effect to agreement or compromise in deciding, under Chap. X, s. 109B	634
as to appointment of Common manager when there is, amongst some only of several co-owners	507, 510
as to settlement of holdings	511
as to boundaries	511
where no objection under s. 105 and no dispute is raised under s. 106, the decision of settlement officer under s. 104 operates as <i>resjudicata</i> as to amount of rent annually payable under s. 107	617

DISTRAINT :

a tenant cannot deny the right of a registered proprietor to distrain and plead payment to third person, s. 60	361
as to right to sue to set aside wrongful,	424
cases in which an application for, may be made, s. 121,	668
by proprietor whose name is registered under the Land Registration Act for damage not allowed	669
for rent for the year preceding the current year not allowed,	669
once application for two or more holdings not maintainable,	669
landlord has no right to distrain from a person not in possession	669
from of application for, s. 122	670
procedure on receipt of application for, s. 123	670
execution of order for, s. 124	670
service of demand and account, s. 125	670
right to reap produce, s. 126	670
sale proclamation to be issued unless demand is satisfied, s. 127	671
place of sale, s. 128	671
when produce may be sold standing, s. 129	671
manner of sale, s. 130	671
postponement of sale, s. 131	671
payment of purchase money, s. 132	671
certificate to be given to purchaser, s. 133	672
proceeds of sale how to be applied, s. 134	673
certain persons may not purchase, s. 135	673
procedure where demand is paid before the sale, s. 136	673
amount paid by under-tenant for his lessor may be deducted from rent, s. 137	674
distrain of property which is under attachment, s. 139	674
rulings as to suit for compensation for wrongful distrain, s. 140	675
distrain in violation of s. 121	675
limitation in suit for compensation for wrongful distrain, s. 140	677
onus on tenant to prove loss for getting a decree for damages on the ground of illegal distrain	676
power for Local Govt. to authorise distrain in certain cases, s. 141	677
power of High Court to make rules, s. 142	678
High Court Rules made under s. 142, Chap. XII, see Appendix VI	(89)
penalties for distraining or attempting to distrain produce of tenant holding otherwise than in accordance with this Act, s. 186	929
no appeal lies from order passed by Civil Court under Chap. XII, s. 140	675
provisions relating to, do not apply to fisheries	951

DISTRICT JUDGE :

may call for records under s. 153	724
Addl. District Judge has no powers of revision, s. 153,	739
refusal to exercise jurisdiction by, s. 153	742
erroneous exercise of jurisdiction by,—revision by High Court	741, 742
may order co-owners to appoint common manager if cause is not shewn, s. 94	513
manager appointed by co-owners, if under control of,	513
cannot call upon a person to deliver accounts and papers to manager	516
accountability of common manager to, where appointment is under this Act	518
has jurisdiction under sub-sec. (3) of s. 98 to direct common manager to retain disputed share of the rent in his hand,	519
may at any time direct that the management of estate or tenure be restored to co-owners from the Court of Wards or common manager, s. 99	521
if may appoint successor to the manager on his resignation, s. 95	615, 517

DIVISION :

of tenancy not binding on landlord without his consent, s. 88	483
rent receipt shewing the shares of tenants and rents payable by each, effect of	485
separate receipt of rent does not amount to consent in writing as to sub-division of tenancy	485
rulings as to sub-division of tenancy by receipts granted by landlord or agent	484, 485
suit for rent when sub-division or separate tenancy	486
various ways in which zemindar may recognise the division of holding	487
whether sub-division of lands creates new tenancies depends upon the intention of parties	
landlord's consent by a <i>solanama</i> decree to a transfer of the whole of a holding, if amounts to his consent to the division or distribution of rent	486
partition of estate has the effect of dividing the holding	488
as to transfer piecemeal by permanent tenure holder, effect of	488
undivided share in a holding is not a holding even if landlord and tenant consent to such a division	490
division of produce, s. 69	419

DOCUMENTS—see Registration.

required to be in writing and registered under the B. T. Act,	67, 68
under the T. P. Act	68
document varying rent reserved in a registered lease requires registration	70
if necessary to create permanent tenure	68
document not necessary for surrender	69, 469
as to recitals of boundaries in, not <i>interpartes</i> , if admissible	(116)

DOWL :

what is,	70
evidencing commutation, if registration necessary	258

DRAINAGE :

of land used for agricultural purposes or of culturable waste land, to be presumed an improvement until the contrary is shewn, s. 76 (2), cl. (c)	448
---	-----

DRAINAGE ACT :—(VI of 1880 B. C.)

money payable under s. 42 (b) of, is recoverable as rent	45
limitation in a suit to recover drainage charges	979

DRAINAGE CHARGES :

payable by the tenant to the landlord are included within the definition of "rent" in s. 3, sub-sec. (2) of the B. T. Act	979
---	-----

DURBHANGA RAJ :

as to holders of babuana property in	49 785
as to family custom	52

DURBUST ZEMINDARI HAKUK : see Darbust Zemindari hakuk.

meaning of, if includes mining rights	50
---------------------------------------	----

DWELLING HOUSE : see Homestead.

erection of, for raiyat and his family together with all necessary out-offices, to be presumed an improvement until the contrary is shewn, s. 76 (2) (f)	448
conversion of agricultural land into a dwelling house	449
dwelling house of a raiyat within meaning of s. 76 need not necessarily be of a temporary description	450
whether occupancy raiyat has right to erect a <i>pucca</i> building as,	449
tenant erecting building on land without having permanent interest not entitled to compensation in case of eviction,	449
non-occupancy raiyat entitled to erect suitable dwelling house for himself and family with all necessary out-offices, s. 79 (1)	436, 451
lease of land on which dwelling houses have been erected to be deemed a protected interest in case of sale of tenure or holding for arrears, s. 160 (c)	786

EASEMENT : see Prescription.

a tenant cannot acquire an easement by prescription in other lands of his lessor	43
tenant cannot claim easement against landlord even if permanent tenant	43

	PAGE.
EASTERN BENGAL AND ASSAM :	
list of Districts transferred to East Bengal and again been retransferred	14, 15
list of Districts in which Act I of 1908 (E. B. A. Council) applies ...	14, 15
s. 310A, C. P. C. if applies to,—conflicting rulings—sounder view is that it applies ...	848
sections of E. B. and Assam Tenancy Act where differ from B. T. Act :—	
see—ss. 3 (10), 22, 69 (3), 88, 103B, 105A, 106, 109B, 111B, 112, 115A, 147A, 148, 148A, 170 of this Act.	
EJECTMENT: see Suit.	
grounds on which permanent tenure holder is liable to, s. 10 ...	100
grounds on which raiyat holding at fixed rate is liable to, s. 18 (b) ...	131
grounds on which occupancy raiyat is liable to, s. 25 ...	208
grounds of, of nonoccupancy raiyat, s. 44 ...	
conditions of, of non-occupancy raiyat on ground of expiration of lease, s. 45 ...	264
of under raiyat, s. 49 ...	266
suit for rent for a period prior to ejectment suit ...	278
tenant if still on land after transfer if liable to, ...	180
suit for, must, be for the whole and not for a part of the holding ...	208
reversioner is not entitled to bring a suit for, as he has no right to immediate possession ...	208
landlord if entitled to khas possession of portion transferred after surrender: conflict of rulings: ...	470—473
tenant not a necessary party in a suit for ejectment against a transferee ...	200
non-payment of rent no ground for ejectment of an occupancy raiyat ...	211
onus in ejectment suits ...	212, 496—500
of non-occupancy raiyat on ground of refusal to agree to enhancement, s. 46 ...	267
tenant holding over liable to be ejected after expiration of lease, without intervention of court ...	317
permanent tenure holder, raiyat at fixed rate and occupancy raiyat not liable to, for arrears of rent, s. 65 ...	404
effect of, right to crops ...	406
no tenant to be ejected except in execution of decree, s. 89 ...	492
notice to quit not necessary for ejectment of licensee ...	502
suit for, not maintainable in respect of portion of holding ...	502
suit for, defence—specific performance ...	502
in a suit for, rent due up to the time of the institution of the suit may be claimed where rent claimed for a period subsequent to the default, suit for, dismissed	501
suit for, did not lie, where <i>ticcadar</i> of Plff. accepted rent from transferee of holding ...	502
suit for, and arrears of rent ...	501
of tenant's sublessee by superior landlord ...	492
remedies against illegal ejectment ...	492
suit for non-payment of rent ...	498
co-sharer landlord not entitled to eject unless tenancy is determined by all co-sharers, ...	501
suit for, on the ground of transfer of a non-transferable holding is not a suit under this Act ...	681
relief against forfeiture in suit for, s. 155 ...	748
where suit for, failed the ancillary prayer for injunction was refused ...	749
a suit for, is not bad merely because compensation was demanded in the alternative, s. 155 ...	749
notice to quit not necessary in suit for, on ground of landlord's title ...	750
no notice necessary to eject holder of service tenure who refuses to perform services ...	750
holder of service tenure is, liable to, upon refusal to perform services ...	911
<i>Chowkidar</i> not liable to, so long as he performs the duties of his office ...	912
suit for arrears of rent prior to decree for, ...	213
suit for enhancement not a bar to suit for ...	235
tenant of waste land not liable to, without notice under s. 155 ...	753
objection that forfeiture has been waived may be taken in proceedings in execution of decree for, ...	753
rules regarding rights of ejected raiyats in respect of crops and land prepared for sowing, s. 156 ...	754
dismissal of rent suit, subsequent suit for ...	755
dismissal of rent suit, subsequent suit for ...	755
ejectment where patta not containing any words of inheritance ...	715
decree for, what to specify, s. 155 (2) ...	758

EJECTMENT—*Contd.*

power of court to fix fair rent as alternative to, s. 157	755
as to, of service tenures	912
nothing in any contract, made before or after passing of this Act shall entitle landlord to eject tenant otherwise in accordance with provisions of this Act, s. 173 (1) (c)	841
suit for, by co-sharer landlord on breach of condition.—s. 188 if bar to such suit	940
holding over: ejectment	301
under-raiyat holding under a lease for indefinite term liable to, upon notice to quit under s. 49 cl. (b)	279
as to, of lessee of homestead under raiyat notice under s. 49 (b) if necessary	279
s. 49 does not prescribe any form of notice for a suit for, nor there is any indication in this Act as to the length of notice	280
suit for, by co-sharer landlord who purchased raiyati interest	287
lessee if entitled to deny lessor's title in ejectment suit after expiry of lease	287

EMBANKMENT :

the general provisions contained in s. 23 and Chap. IX of the B. T. Act do not repeal the Embankment Act	449
--	-----

ENACTMENTS :

repealed by this Act, s. 2, Sch. I,	18
effect of repeal of,	19
savings for special enactments which are not affected by this Act, s. 195	963
Putni Regulation (VIII. of 1812) specially saved from operation of B. T. Act	954

ENCROACHMENT :

rule of English law as to,	333
—if applicable in India in <i>khas</i> land of landlord	333
tenant bound to hold encroachment as a tenant but landlord not bound to recognise tenancy	31
encroachment upon landlord's lands for benefit of landlord	32
upon third person's land	32
as tenant	33
character of encroachment, intention	33
when regarded as, a new holding	332
tenant holding excess land may be treated as a tenant or trespasser	332
when presumed to be for benefit of landlord	332
tenant has no right to compel landlord to treat him as tenant when encroachment is upon land of his landlord outside his tenure	332
presumption as to,	333
by tenant—adverse possession for 12 years—title by limitation	333
as to excess land, suit for rent independently of s. 52	333
as to, by tenant on third party's land	333

ENHANCEMENT :

what tenures are liable to	218
decree for, has no retrospective operation	89
of rent, and additional rent	89
onus on plff. to prove existing rate below customary rate	91
agreement to pay, of rent by one of several joint tenants	98
road cess return filed by a co-sharer in a suit for,	99
stay of operation of limitation in rent during pendency of suit for,	99
fiar and equitable rent in suit for	99
limits of, of rent of tenures, s. 7	92
suit for, different from a suit for rent at the old rate	90
presumption in suit for	90
of rent by <i>ijardar</i>	91
lease on progressive rent when liable to enhancement	94
agreement barring enhancement, meaning of	95
rent if once enhanced by compromise if can be enhanced again	96
effect of fresh arrangement superseding a decree for	98
a suit for both enhancement and arrears of rent is maintainable	90
court may order gradual enhancement: s. 8	99
rent once enhanced cannot be altered for 15 years	100
of rent of occupancy raiyat by more than 2 as in the rupee is void, s. 29	218, 226
of rent of occupancy raiyat by contract s. 29	218

ENHANCEMENT—*Contd.*

means an enhancement of the same kind, s. 29	220
as to conversion of cash rent into rent in kind, effect of, s. 29	220
s. 29 does not apply when a kabuliyat is executed for increased rates for increase of area	221
s. 29 cl. (b) has no retrospective effect and does not apply to kabuliyat executed before the passing of this Act	226
agreement to, in the settlement of dispute	221
s. 29 deals with, of money rent and not of rent in kind	220
agreement to pay enhanced rent by one of several joint tenants, effect of,	98
all landlords must join to bring a suit for, of rent, under s. 30	234, 937
s. 29 applicable to contracts for, of rent by co-sparer landlords as also to those by sole landlords	220
s. 29 does not apply to contracts for settling <i>bonafide</i> disputes whether as to the rate of rent or as to area of land comprised in the tenancy	221
agreement to pay future rent in contravention of s. 29 is void and not voidable if there was no existing dispute	221
to what cases s. 29 applies and to what cases it does not apply	220—224
prospective rent stipulated is in violation of s. 29	222
distribution of rent by agreement of parties	223
onus of proving that kabuliyat contravenes s. 29 (b) is upon tenant	225
s. 29 does not apply to kabuliyats executed before the passing of this Act	226
proviso (1) of s. 29 does not control sub-sec. (b)	226
on account of improvement	227
rent paid at a rate which is more than 2 as in the rupee is not recoverable even if paid for more than 3 years	226
rent fixed in contravention of s. 29 to be excluded in assessing enhanced rent	227
in determining prevailing rate of rent, rent settled in contravention of s. 29 cannot be taken into consideration	233
presumption under s. 20 (7), effect of—in determining question as to whether an agreement for enhancement is or is not void under s. 29	227
s. 29 applies to an enhancement made in a compromise	227
of rent by suit s. 30	228
entry in the record of rights need not be set aside before bringing suit for,	230
s. 78 of the Land Registration Act is no bar to a suit for, under s. 30	230
"prevailing rate" in s. 32 is not average rate	231
court to refer to price lists prepared under s. 39 in suit for of rent under s. 30	233, 242, 248
suit for, not a bar to a suit for <i>khas</i> possession	235
suit for, both enhancement and arrears of rent is maintainable	235
adoption of the lowest rate as the prevailing rate under s. 30 cannot be challenged by the tenant	233
limit to, prevailing rate, s. 31B	241
of rent under this Act means the increase of rent in amount without alteration in kind	264
raiyyat holding <i>chur</i> land but who has not acquired right of occupancy is liable to pay any rent agreed between him and his landlord, irrespective of the provisions of s. 43	263
as to the effect of a widow signing a kabuliyat on behalf of her minor son to pay enhanced rate s. 29	218
as to effect of compromise of suits contravening provisions of s. 29	226
suit upon kabuliyat for rent of land, part of which was assessed at the date of kabuliyat is not a suit for, of rent	220
s. 29 has no application where tenant is given a perpetual status at a fixed rate	221
s. 29 does not apply to a case where landlord gives a <i>mokurari</i> interest	221
agreement to, of rent upon recognition of transferee if contravenes s. 29	221
stipulation for, of rent after measurement	222
limitation in a suit for,	236
s. 188 is a bar to a suit for, under s. 80 by a co-shebait	234
where a lease did not expressly exclude,	234
meaning of prevailing rate	231
rules as to, of rent of occupancy raiyyat on ground of prevailing rate, s. 31	236
rules as to, of rent of occupancy raiyyat, on ground of rise in prices, s. 32	241
rules as to, of rent of occupancy raiyyat on ground of landlord's improvement, s. 33	242
rules as to, of rent of occupancy raiyyat on ground of increase in powers due to fluvial action, s. 34	243
the provisions of s. 33 to be strictly compiled with	242

ENHANCEMENT—*Contd.*

enhancement by suit to be fair and equitable s. 35	243
power of Court to order progressive, s. 36	243
provisions of s. 36 do not apply to the case of tenant who was in possession for some years without paying any rent at all	244
limitation of right to bring successive enhancement suits against occupancy raiyat, s. 87	244
meaning of, ...	264
“enhanced by contract” in s. 37, meaning of, “contract” means valid contract	245
conditions of ejectment on ground of refusal to agree to, ...	267
one suit for, under ss. 30 and 52 maintainable	321
effect of conversion of cash rent into rent in kind	264
of rent of non-occupancy raiyat, conditions of, s. 43	263
of rent of under-raiyat, provisions of, retrospective in its operation	274
tenure protected from, under s. 4 of Act X of 1859	322
a tenant who holds lands in excess cannot be sued for, ...	321
pendency of a suit for, cannot excuse tenant from paying rent at the old rate, s. 54	263
of rent of under-raiyat, provisions of, retrospective in its operation	274
tenure protected from, under s. 4 of Act X of 1859	322
a tenant who holds lands in excess cannot be sued for, ...	321
pendency of a suit for, cannot excuse tenant from paying rent at the old rate s. 54	351
date from which decree for, under s. 154 takes place	747
enhancement of rent of homestead land only upon contract	920
one <i>sebait</i> cannot bring a suit for, of rent under s. 30 by making his co- <i>sebait</i> a defendant	938
effect of partition—suit for, of rent	938
joint landlords must sue together for,	234
suit for, of rent, s. 188	938
of <i>ghatwali</i> tenure,	900

ENQUIRY ;

as to existing rent, cl. (d) of s. 158	759
court has no jurisdiction to determine what the rent should be under cl. (d) of s. 158	759
additional rent for additional area cannot be assessed in such proceeding	759

ENTRY UPON LAND : See Ejectment.

purchaser of distrained crops may enter on land for purpose of tending, reaping and gathering them, s. 129 (2)	672
Local Govt. may empower Revenue officer to enter upon land, and survey, demarcate and make map, s. 189 (1) (b)	943
rulings as to, by landlord upon abandonment by tenant, s. 87	479

ENTRY IN THE RECORD OF RIGHTS : see Record of Rights.

need not be set aside before bringing an enhancement suit	230
it neither creates, nor extinguishes rights, it is merely a rebuttable piece of evidence	230, 559
in respect of non-agricultural lands, effect of	560
if evidence against strangers	560
as to weight to be attached to,	558, 561
cannot override the Statutory prohibition in s. 20 of the Cess Act	558
cannot override well settled principles of law	558
as to limitation for regular suit against,	562, 641

ESCHEAT :

as to, of a hereditary <i>mokurari</i> tenure	115
of permanent tenure to crown, on failure of heirs	115

ESTATE :

definition of, s. 3 (1)	20
whether part of an estate is an estate	20, 959
“estate” in ss. 60 and 93 of this Act seems to include a portion of an estate	20
lands joint with another estate, when an entire estate	20
as to registration of name when estate situated both in Assam and Bengal s. 60	362
appointment of Common Manager with regard to one of several <i>moujas</i> comprising an estate is invalid, s. 93	507, 511

	PAGE.
ESTATE—Contd.	
as to restoration of,	521
discussion on the point	511
appointment of common manager must be to the entire estate and not to a portion thereof	511
appointment of common manager with regard to the entire, when dispute amongst some only of several co-owners	510
s. 5 of Act XI of 1859 has no application to the case of an, under the common manager	511
effect of transfer of resumed chakran lands to Zemindar is not to impart to such land the character of an "estate" for all purposes	367
putnidar or ijaradar is not a proprietor of an interest in an estate within the meaning of the Land Registration Act	363
it is not necessary for putnidar or ijaradar to register his name under the Land Registration Act to sue for rent	363
ghatwali tenures are not revenue paying estates	895
saving as to tenures held in estates which have never been permanently settled, s. 191	945
power of landlord to alter rent in case of new assessment of revenue in estates not permanently settled, s. 192,	946
partition of an, effect of	438
as to permanent tenure in <i>Sunderbans</i>	946
separate suits for rent after partition between landlord apportionment	480
does not provide for division of holding but also does not contain any	
ESTATES PARTITION ACT, VIII (B.C.) OF 1876 :	
partition of an estate under, effect of	488
does not provide for division of holding, but also does not contain any prohibition against such division	488
<i>Butwara khasra</i> prepared under, not admissible under s. 35 of the Evidence Act	532, (126)
ESTOPPEL :	
no estoppel against Act of Legislature	363
the principle of, does not override the provisions of s. 78 of the Land Registration Act or s. 60 of the B. T. Act	363
where tenant in possession under a former owner agreed to pay rent to the subsequent landlord in ignorance of the defect in the latter's title he may shew that his landlord has no title	41
a tenant obtaining possession from a landlord is estopped from denying his title suit for rent by <i>benamidar</i> , tenant not estopped from questioning his right to sue tenant cannot deny landlord's title without restoring possession to landlord by surrender	42
lessee cannot after expiry of the term deny lessors' title at the time of the lease so long as he retains possession	42
under raiyati leases in contravention of s. 85 : estoppel	458
landlord not questioning right of purchaser of tenure to make deposit and withdrawing the deposit is estopped from questioning his right	340
as to,	459—466, (127)
EVICTION : See Ejectment, Dispossession.	
as to, by title paramount	337, (116)
EVIDENCE :	
application to record evidence as to improvement, s. 81	452
the rules for recording evidence of witnesses prescribed by s. 169, C.P.C. shall apply in rent suits, s. 148 (f)	698
contemporaneous oral agreement, s. 92 of the Evidence Act	246
entries in a draft record of rights published under s. 103A not admissible in evidence	550, 557
evidence prior to publication of record of rights admissible where entry in records of rights is conclusive evidence that a temporary settlement was duly made under the Regulation	559
as to decree by co-sharer landlord	402
EVIDENCE ACT :— I of 1872.	
entries in a draft record of rights published under s. 103A not admissible under the,	550, 557
evidence prior to publication of record of rights admissible,	557

EVIDENCE ACT—Contd.

entries in <i>Khwats</i> and <i>Khatians</i> made under Reg. VII of 1822 are admissible under s. 35 of, ...	532
<i>Butwara Khasra</i> prepared under Estates Partition Act (VIII B.C. of 1679) is not admissible in, ...	532, (126)

EXACTION :

penalty for, by landlord from tenant of sum in excess of the rent payable, s. 75	445
s. 75 of this Act contemplates exaction by means other than by process of law	446
rulings as to limitation in suits under s. 75	446
suit under s. 75 lies in Small Cause Court	446

EXCAVATION : See Tank and Damages.

permanent tenant cannot make excavations which cause substantial damage	213
contract by permanent tenure holder ot to excavate tank; breach of covenant by raiyat: tenure holder and not raiyat liable to damages to superior landlord	450
damages for, of tank where no actual damages	450
excavation of tank for purposes of drinking water is not "improvement" within the meaning of s. 76	450
of tank for drinking water and agriculture	450

EXCHANGE : See Incumbrance.

if an incumbrance within meaning of s. 161	794
if there is any distinction between "exchange" and "sale,"	801

EXECUTION : See Sale for arrears of rent :

execution of rent decree under the old law	2
of provisions of this Act applicable to execution proceedings where decree obtained before passing of Act but execution taken subsequently	19
transfer of permanent tenure by sale in, of decree other than decree for rent, s. 13	120
purchaser at execution sale cannot recover from the former holder of the tenure the arrear of rent paid by him	123
decree for rent against non-permanent tenure to be executed as a money decree of decree for ejectment to be stayed on payment of decretal amount and costs with 15 days or within such time fixed by Court s. 66 (2) and (3)	404
of order for distraint, s. 124	671
no ejectment except in execution of decree, s. 89	492
court may, when passing decree in rent suits, order on the oral application of the decree-holder execution thereof except in case of decree for ejectment for arrears, s. 148 (g)	699
transfer by operation of law during the pendency of execution proceedings	705
where an application for, of rent decree was made within time, but on notice under s. 248 C.P.C. it was found that the judgment debtor was dead	706
death of execution creditor or judgment debtor, effect of	707
if defendant pays compensation and where misuse or breach is capable of remedy decree shall not be executed, s. 155 (4)	748
passing of tenure or holding sold in execution of decree, s. 158B	767
sale in, of decree ought not to be set aside under s. 310A C.P.C. without notice to auction purchaser	854
ss. 170 and 171 apply to execution proceedings and not to suits	834
ss. 170 and 171 apply to execution proceedings and not to suits	834
"suit" in s. 153 includes execution proceedings	740

EXPARTE DECREE :

for rent operates as resjudicata as to relationship of landlord and tenant, deposit on application to set aside, s. 153A	745
for rent, if resjudicata, See Appendix XI	403, (117)—(120)
as to setting aside of by one of the Defendants	(129)

EXPENSES : See Costs.

of proceedings under Chap. X, s. 114	649
apportionment of costs	650—652

EXTENSION :

of the Act to Orissa, Jalpaiguri, Choto Nagpur, Santal Parganas and of particular sections to certain districts	14—16
of time in a decree for ejectment, s. 66	407

	PAGE.
EXTENSION—Contd.	
court has no authority to extend time within which purchase money is to be deposited under s. 174	853
judgment debtor applying to set aside sale under s. 174 cannot rely on s. 18 of the Limitation Act for extension of the period of 30 days	853
FAIR AND EQUITABLE RENT :	
enhancement of rent of tenure holder under s. 7 to be	92
under sub-sec. (2) of sec. 22	153
presumption as to, under s. 27	218
enhancement by suit to be, s. 35	243
court to determine, under s. 46	267
FARD REWAJ BHAOLI :	
if part of the record of rights	557
admissible in evidence under s. 35 of the Evidence Act	557
FARMER ;	
of rents shall not acquire right of occupancy in land comprised in this farm s. 22 (3),	155
FASLI YEAR :	
meaning of, s. 3 (11)	64
period of limitation in rent suit where fasli year prevails	
FEES :—See Court fees and Landlord's fee.	
court has jurisdiction to take landlord's fee after confirmation of sale	122
effect of non-payment of landlord's fee	122
previous holder liable for rent if not paid	122
judgment debtor cannot object to auction purchasers taking possession if sale confirmed without landlords fee	122
as to service of notice and transmission of landlord's fee—See App. I App: (6)—(9)	
application for deposit of rent, to be accompanied with, s. 61,	368
general scale of, Government rules regarding, App. I, Chap. VII,	App. (17)
as to process,	(711)
for deposit of rent	368
for processes for distraint	
tenant entitled to receive statement of account under s. 57 on payment of fee	356
to be paid in cash under s. 57	356
power of Local Govt. to make rules under s. 189 prescribing	
the manner in which landlord's fees shall be transmitted	943
FERRY : *	
B. T. Act not applicable to,	12
provisions of this act not applicable to suit relating to ferry tolls	951
sum due under contract to ply boat in a, is not rent	951
FINE :	
landlord liable to, for failure to give counterpart of receipt, s. 58	356
under s. 58 to be recovered as a public demand	357
FISHERY :—See Julkur, Tank.	
as to right of occupancy in,	141
applicability of provisions for recovery of arrears of rent to suit for recovery of anything or deliverable in respect of, s. 193	947
forcible dispossession from fishing: suit under s. 9, Specific Relief Act	947
s. 153 applies to a suit for rent for phulkur	947
right to julkur and not to soil: s. 9, Specific Relief Act	947
Govt. has right of, in navigable river	947
right of, in navigable rivers	947
what is necessary to establish exclusive exclusive right of,	948
julkur, meaning of	948
—if immoveable property	948
right of fishing in another's waters may be an easement	948
right of, without an interest in land	948
fishery rights are not land within the meaning of Land Acquisition Act	948
Govt. has right to lease fishery rights in tidal and navigable rivers	948

FISHERY—Contd.

right of, if continues to subsist in a tidal and navigable river when it shifts its course	...	...	...	...	949
when are of a public navigable river ceases to be arm of the following river it becomes property of the adjacent owner, and person having right of fishery in the river ceases to have any right to it	...	...	...	...	949
right of, in lakes, dobas or sheets of water in old bed of river	...	...	...	...	950
right of, riparian owners,	...	...	...	...	950
provisions relating to distraint do not apply to,	...	...	...	...	951
Ch. XIV. and s. 65 apply to suit for recovery of rent of,	...	...	...	...	951
suit for consolidated rent of fishery and agricultural holding maintainable	...	...	...	...	951
julkur includes right to drift and stranded timber as well as to fishery	...	...	...	...	952
as to acquisition of fishery right by adverse possession	...	...	...	...	(122)
FIXED RATES, RAIYAT AT :—See Fixity of rent, Raiyat at fixed rates.					
incidents of, s. 11	...	...	...	...	132
where differs from permanent tenure holder	...	...	...	...	132
raiayat holding at produce rent whether may be a fixed raiayat	...	...	...	...	132
it can acquire occupancy right	...	...	...	73, 132,	791
if has same right to trees as permanent tenure holder	...	...	...	...	133
has the right to cut and appropriate trees	...	...	...	...	...
cannot be ejected for arrears, s. 65	...	...	...	...	375
presumption under s. 50 if operates to convert occupancy raiayat into,	...	...	...	...	...
raiayat entitled to the presumption under s. 50 (2) comes within the definition of a, within the meaning of s. 4 subsec. (3)	...	...	...	...	132
s. 85 does not apply to a,	...	...	...	...	456
can grant permanent lease	...	...	...	...	456
FIXITY OF RENT : see Raiyat at fixed rates.					
"Kaimi" does not import,	...	...	...	81, 131,	878
in case of produce rent	...	...	...	...	132
rules and presumption as to, s. 50	...	...	...	...	296
presumption under s. 50 if a right or rules of evidence	...	...	...	...	297
where presumption under s. 50 applies and where not	...	...	...	297—	303
tenant paying rent in kind entitled to presumption under s. 50	...	...	...	...	297
onus upon tenant to prove,	...	...	...	...	304
presumption under s. 50 if operates to convert occupancy raiayat into fixed raiayat	...	...	...	...	307
statements in instrument of transfer where landlord no party, shall not be evidence against landlord as to, s. 18A	...	...	...	...	136
raiayat holding at fixed rates cannot be ejected for arrears, s. 65	...	...	...	...	375
presumption as to, not to apply where record of rights has been prepared,	...	...	...	...	...
s. 115	...	...	...	...	652
presumption as to, arises in a proceeding under s. 105 or s. 106,	...	...	...	...	588
presumption as to, even in cases not governed under s. 50,	...	...	...	...	298
nominal variation in rent does not deprive a tenant of the presumption under s. 50 as to,	...	...	...	...	303
additional rent for additional land and addition of small illegal cess are not such variations as to deprive tenant of the presumption under s. 50 as to,	...	...	...	...	305
FIXTURES :					
English law as to,—	...	...	...	...	753
FLOWER GARDEN :					
it for horticultural purpose	...	...	...	...	7
FLUVIAL ACTION :					
suit may be brought against occupancy raiayat for enhancement of rent on the ground that the productive powers of the land held by him have been increased by, s. 30 (d)	...	...	...	...	229
rules as to enhancement of occupancy raiayat's rent on ground of meaning of,	...	...	...	...	229
FOREST RIGHTS :—See Trees.					
suit for money on account of, overruled by this Act	...	...	...	...	952
applicability of provisions of this Act for recovery of arrears of rent to suits in respect of, s. 193	...	...	...	...	946

FOREST RIGHTS—*Contd.*

grant of trees as distinct from land	952
money payable in respect of, is not rent within meaning of s. 3 (5) of the Act	952
grant of right to fell timber of particular class and specified size during defined period of time and prohibiting the lessee from doing any damage to the forest is a grant of, and cannot be regarded as sale of timber	952
suit for recovery of money in respect of, governed by 3 years rule of limitation laid down in Sch. III, Art. 2, cl. (b) of this Act	952

FORFEITURE :—See. Ejectment, Denial of, landlord's title, Disclaimer, ...

clause of, in a mokurari lease that lease liable to be cancelled in default of payment of rent in no way affects its permanent character	53
non-payment of rent is no ground of, under this Act	211
denial of landlord's title no ground of forfeiture : summary of case law	104
when denial of title is ground of,	104
extract, from the Hon'ble Mr. Ilbert's speech against the amendment proposed at the time of the passing of the Bengal Tenancy Bill that denial of landlord's title might be made a ground of eviction under s. 44,	103
effect of withdrawal of suit for rent in the appellate stage when rent suit was dismissed in 1st court : denial in such a case does not operate as a forfeiture of unclaimed landlord's fees, 18C	137
transfer of a part of holding, not a ground of,	180
transfer by usufructuary mortgage when operates as a,	188
a condition of, should not be extended beyond its words,	211
for breach of condition of lease there may be 2 remedies of damages and forfeiture	211
relief against, in suit for ejectment under s. 155	748
as to, for non-payment of rent	874

FORM :

of spécial register of rent, s. 146	690
re-receipt and account, Sch. II	963—970
of rent receipt	963—970
of application under s. 80 of B. T. Act, <i>Appendix I</i>	(18)
of rent receipt by postal money order, <i>Appendix II</i>	(61)
of notice under ss. 12 and 18 of the B. T. Act appendix V	(19)—(36)
of chalan— <i>Appendix V</i> —	(86)
of notices under Bengal Govt. Rules, App. I	(19)—(36)
of Distraint Register prescribed by rule 7 of the High Court Rules App. VI	(95)
of decree under High Court Rules, App. VI	
of notices under ss. 49, 87 and 167 :—see <i>Appendix VIII</i>	(105), (106)

GARDEN :

permanent, to be deemed a protected interest under s. 160	786, 788
horticulture means cultivation of, or science of cultivating or managing garden including growing flower, fruits and vegetables	7
provisions of this Act applicable to garden land with reservations regarding trees	7
as to <i>bagat</i> ,	7
as to land taken for flower,	7

GAYA :

senior Deputy Collector of, invested with powers of Collector to exercise functions referred to in ss. 69 to 71	423
--	-----

GAZETTE :

price lists of staple food crops to be published in, s. 39 (4)	247
lists of average prices to be annually published in, s. 39 (4)	247
notification in, of order for survey and preparation of record of of rights to be conclusive evidence that order has been duly made, s. 101 (3)	535
publication in, of rule made under this Act to be conclusive that it has been made, s. 190 (5)	945

GENERAL CLAUSES ACT :

words used in singular include the plural and <i>vice versa</i> unless is anything repugnant in the subject or context	425
---	-----

	PAGE.
GENERAL PROVISIONS AS TO RENT :—See Rent.	
rules and presumptions as to amount and fixity of rent, s. 50 ...	296
where presumption under s. 50 applies and where not, rulings ...	297—303
presumption under s. 50 how rebutted ...	309
presumption in cases not governed by s. 50 ...	...
presumption does not operate to convert occupancy raiyat into raiyat at fixed rate ...	307
presumption as to amount of rent and conditions of holding, s. 51 ...	313
alteration of rent on alteration of area, s. 52 ...	317
payment of rent, ss. 53—55 ...	344—353
receipts and accounts of rent, ss. 56—60 ...	353—367
deposit of rent, ss. 61—64 ...	367—374
arrears of rent, ss. 65—68 ...	375—419
GHATWALI LANDS :—See Ghatwali tenures.	
occupancy right cannot be acquired in ...	153, 896, 900
acquisition of occupancy or non-occupancy right in, rulings ...	901
GHATWALI TENURES :	
presumption under s. 50 ...	301
saving as to, s. 181 ...	893
incidents of, not to be affected by this Act, s. 181 ...	893
created by Mohemedan Govt. to provide police and military force ...	893
ghatwali estates not revenue paying estates ...	895
transferability of ...	897
right of ghatwali to grant lease ...	897
right of ghatwal to mortgage ...	897
if liable to sale or attachment in execution of decree ...	896
appointment of receiver in, ...	896
succession of, ...	897
in Beerbhum, incidents of, ...	897
if female can grant ...	898
lands of, descend to male heir ...	898
as to physical incapacity of heirs to perform duty, effect of ...	898
heritability of, ...	898
as to suits by heir of ghatwal ...	899
resumption of, and dismissal of ghatwal ...	899
in Khuracpur, incidents of, ...	899, 900
enhancement of rent of, ...	900
presumption under s. 50 in, ...	900
acquisition of occupancy right in, ...	901
of Birbhum and digwari tenures of Manbhum not analogous ...	902
simandari tenures in Bankura ...	902
long possession and gradual cultivation by ghatwal on payment of quit rent are evidence of implied grant which protects ghatwal from enhancement ...	900
suit lies to assess lands in occupation of ghatwals found to be in excess ...	900
dismissal of ghatwal carries with it forfeiture of his tenure, ...	899
GIFT :—See Bequest.	
procedure on transfer of permanent tenure by, s. 12 ...	115
GOMOSTHA : See Gumustha.	
GOVERNMENT : See Local Government.	
has the right to the bed of navigable river ...	947
has right to lease fishery rights in tidal and navigable rivers, ...	948
included in the definition of landlord, s. 3 (4) ...	22
GOVERNMENT ESTATE :	
included in definition of estate, s. 3 (1) ...	20
nothing in the Act affects procedure for realisation of rents in, s. 195 (b) ...	953*
GOVERNOR-GENERAL :	
rules made by High Court declaring that portions of Civil Procedure Code shall not apply to rent suits to be subject to approval of the, s. 143 ...	679

GRANT :

leasehold interest without grant of land	...	...	...	5
of <i>jagir</i> land implies no grant of the soil but a personal grant only of the revenue thereof to the grantee	...	...	...	50, 52
of <i>putni</i> containing the words <i>Durbast Zemindari</i> hakook includes the mining rights	...	...	...	56
rent free grant may reasonable be inferred from long possession without payment of rent	...	...	...	43
Govt. has right to, lease of fishery rights in tidal and navigable rivers	...	...	...	948
of forest rights	...	...	...	952
incidents of <i>babuana</i> grant	...	...	...	785
of trees as distinct from land	...	...	...	952
<i>grazing</i> , B. T. Act applies to land used for,—s. 5 (5)	...	...	...	75
cess for, cattle it <i>abwab</i>	...	...	...	439

GUJARATDAR : (See *Marfatdar*, Recognition).

in rent receipt does not of itself prove recognition	...	...	...	434
--	-----	-----	-----	-----

GUMUSTHA :—See Agent, Naib.

powers of,	...	...	...	196, 197
as to effect of receipt by,	...	...	...	196, 197
act of, how far binding upon landlord	...	...	...	197
as to authority of, to grant <i>amalnama</i>	...	...	...	197
as to authority of, to settle and holding	...	...	...	197
as to authority of, to consent to transfer of holding	...	...	...	197, 690
receipt of rent by, when sufficient for recognition	...	...	...	197
accountability of, to landlord for illegal cesses recovered from tenants	...	...	...	...
recognised agent of landlord for purpose of suit and application under this Act, s. 145	...	...	...	689
as to suit by agents	...	...	...	689
suit for rent by, in his own name not maintainable, s. 145	...	...	...	690
stamp in a deed for appointment of an agent, s. 145	...	...	...	690
bribe paid to landlord's agent by tenant, effect of, in a suit by landlord to avoid lease	...	...	...	690

HAJABAD RENT :

plea of custom for remission of entire rent for the <i>bajabad</i> lands,	...	...	...	338, 683
as to entry of custom of, in record of rights	...	...	...	543

HAQUIQUAT PAPERS :

as to admissibility of	...	...	...	(125)
------------------------	-----	-----	-----	-------

HARSANA PATTA :

by underraiyat : ejection	...	...	...	279, 458
---------------------------	-----	-----	-----	----------

HEIR :—See Heritability.

a suit for rent by a person as heir of his father is a suit for rent and no succession certificate is required	...	...	...	45
on failure of, permanent tenure escheats to crown	...	...	...	115
of an occupancy raiyat if bound by bequest of the holding in favour of a stranger	...	...	...	203
as to suit for rent against one or some of several heirs of an occupancy raiyat, effect of	...	...	...	216
rent suit if maintainable when all the heirs are not made parties	...	...	...	396—400
of an occupancy raiyat bound by bequest made by raiyat	...	...	...	214
of the last record occupancy raiyat if entitled to recognition	...	...	...	203
as to liability for rent when heir of an occupancy raiyat not in possession	...	...	...	217, 470
nature of right of, of an under-raiyat	...	...	...	274
of an under-raiyat when entitled to inherit and remain in possession for unexpired portion of lease for a term as provided in s. 85	...	...	...	274

HERITABILITY :—See Heir.

of permanent tenure, s. 3 cl. (8)	...	...	...	50
of non-permanent tenure	...	...	...	109
lease for a definite term : heritability	...	...	...	110
of holding of settled raiyat, s. 20 cl. (3)	...	...	...	143
of occupancy raiyat, s. 26	...	...	...	213

	PAGE
HERITABILITY— <i>Contd.</i>	
of holding of a non-occupancy raiyat, s. 41 ...	261
of holding of an under-raiyat, s. 48 ...	270
as to, of under-raiyati holding with right of occupancy, ...	218, 274
HIGH COURT :	
power of, to make rules defining powers and duties of managers under s. 100	521
power of revision where mistake in law, s. 153 ...	739
power to revision where exercise of jurisdiction illegally or with court, p. 31, Chap. I, rule 26 ...	804
power of, to revise under s. 115 C. P. C. an order under cl. (3) of section 170	827
appeal lies to, from decision of a Special Judge, s. 109A (3), ...	628
power of, to make rules for regulating procedure in all cases under Ch. XII, s. 142 ...	678
may, with approval of Governor General in Council, modify Civil Procedure Code in its application to landlord and tenant suits, s. 143 & ...	679
may make rules for service of summons by registered letter on defendant in suits for recovery of rent, s. 148 (d) ...	697
procedure to be followed by, for making publication and confirmation of rules under this Act, s. 190 ...	...
rules framed by, under s. 142,—See Appendix, VI ...	...
rules framed by, under s. 100,—See Appendix, VI ...	...
HINDU WIDOW :	
as to surrender by, ...	475
as to permanent lease by, ...	...
as to decree against, how far binding on reversioner ...	(129)
as to occupancy right under, ...	72
as to right of, to sue for enhancement ...	231
HOLDING :—See Occupancy holding, Non-occupancy holding,	
definition of s. 3 (9), ...	957
undivided share in a, if a holding within meaning of s. 3 (9) ...	957
land held by under-raiyat not a holding within meaning of s. 3 (9) ...	...
"parcel or parcels of land" in s. 3 (9), meaning of ...	392
undivided share in lands comprised in a holding is not a "holding," ...	784
even if landlord and tenant agree to such a division ...	490
discussion as to whether an undivided share in a holding may be a "holding" ...	60
raiya could acquire a right of occupancy in a share of an undivided property under the old law ...	61
distinction between tenure and holding ...	83
sale in execution of decree obtained for rent of an undivided share of a "holding" is not free from encumbrances ...	392
s. 26 of this Act does not apply to an ordinary holding ...	215
under s. 30 means of an entire holding ...	231
effect of division of consolidation of holding, s. 50 ...	306
presumptions as to amount of rent and conditions of, s. 51 ...	313
may be sold for arrears of rent, s. 65 ...	375
s. 65 does not apply to an under-raiyati holding ...	376
liability for rent after transfer of occupancy holding, s. 73, ...	430
transferee of a portion of a, rights of, ...	389, 431
acquisition of land of holding for building and other purposes, s. 84 ...	454
as to surrender of, ...	467
right of raiyat to surrender, s. 86 ...	467
heirs of occupancy raiyat liable to pay rent even when not in possession unless they surrender the holding ...	470
portion of, cannot be surrendered ...	470
effect of surrender of portion of, right of landlord to eject transferee ...	470—473
there may be valid surrender of occupancy holding without written document ...	469
meaning of holding as used in s. 89, if it includes tenancy of under-raiyat ...	492
right of gumustha to give consent to transfer of, ...	690
one suit for two or more holdings ...	778
abandonment of, s. 87 ...	475
transfer of portion effect of and rights of transferee ...	490
division of holding not binding on landlord without his consent, s. 88 ...	483
partition of an estate has the effect of dividing the holding ...	486
subdivision of transferable holding, effect of, ...	486
no tenant shall be ejected from his tenure or holding except in execution of decree, s. 89 ...	492

HOLDING—Contd.

passing of, in execution of decree, s. 158B	767
sale of holding at fixed rates subject to registered and notified incumbrances and effect thereof, s. 164	806
sale of holding at fixed rates within power to avoid all incumbrances and effect thereof, s. 165	807
sale of occupancy holding with power to avoid all incumbrances and effect thereof, s. 166	808
holding to be released from attachment on payment of amount of decree with costs etc., s. 170	827
ss. 278 to, 283 C. P. C. and s. 310A (in Bengal and Bihar) not applicable to holding attached in execution of rent decree, s. 170	827
as to bequest of non-transferable occupancy holding	868

HOLDING OVER :

tenant holding over does so upon the same conditions as of original lease	314
right of occupancy can be acquired by holding over after the expiry of a lease	315
tenant holding over, not a trespasser	314
meaning of,	314
holding over by one co-tenant does not make another liable for rent	314
an implied contract	316
rate of rent at which rent to be paid on,	317
tenant holding over liable to be ejected on expiration of lease without intervention of Court	317
as to interest payable by tenant when,	
no presumption of, simply because landlord does not institute ejectment suit after expiry of tenant's lease	501
as to limitation in cases of	315

HOMESTEAD LAND :—See Bastu land.

Bengal Tenancy Act has no operation as regards, whether situated in towns or outside towns	7
where purpose of tenancy is residential B. T. Act has no application	7, 10
non-agricultural tenancies do not come under B. T. Act and therefore Chap. X has no application to such tenancies	524
provisions of B. T. Act applicable to homestead of raiyat and under-raiyat	8
acquisition of occupancy rights in,	8
incidents of tenancy of, when held by raiyat otherwise than as part of his raiyati holding to be regulated by this Act, subject to local custom and usage	8
tenant of homestead land under a raiyat is an under-raiyat	
deposit of rent for, may be made under s. 61	369
raiya holding homestead otherwise than as part of his holding as raiyat, incidents of, s. 182	914
rent suit of, not cognizable by Small Cause Court	914
effect of sale of homestead holding by agricultural tenant : limitation : dis-possession by landlord	915
"when raiyat holds his homestead etc.," s. 182, interpretation of,	917—920
sub-lease of, by raiyat	918
heritability of,	919
enhancement of rent of, only upon contract	920
s. 182 applies even when landlord of raiyati holding and homestead holding are different	918
s. 182 applies even if raiyati holds land as a raiyat in different village	918
transferability of,	917
s. 182 not applicable if land not used by raiyat as his homestead	914
as to, before the T. P. Act, transferability of	915

HORTICULTURE :—See Agricultural lease.

meaning of,	7
land for horticultural purposes governed by this Act	7
meaning of "horticultural land" in proviso (iii) of s. 178	866
nothing in s. 178 shall affect conditions of any contract for temporary cultivation of horticultural land with agricultural crops	832, 866
"flower garden, if	7

~~INDEX~~

HOWRAH :

Deputy Collector of, invested with powers of Collector to exercise referred to in ss. 69 to 71 of this Act

IDOL :—See Shebait.

~~IJARADAR :~~

enhancement of rent by,
 settlement by, after purchase of occupancy holding, with under-raiyat, effect of right of, to accept surrender
 as to acquisition of occupancy right by,
 cannot acquire right of occupancy in any land comprised in his *tijara* by purchase or otherwise but does not lose occupancy right in land by becoming, s. 22 (3)
 decree obtained by, question of res-judicata, See Appendix XI
 by purchase of occupancy holding in execution of decree for rent is in position of a raiyat and his under-tenant an under-raiyat 160
 is not proprietor of an interest in an estate within the meaning of the Land Registration Act 362
 need not register his name under the Land Registration Act to entitle him to sue for rent 363

IMPROVEMENT :

s. 29 of this Act is no bar to enhancement of rent by more than 2 as in the rupee on the ground of "improvement" 219, 227
 by landlord, enhancement of occupancy raiyat's rent under s. 30 cl. (c) 229
 amount of enhancement authorised on account of, by landlord shall not be taken into account in ascertaining prevailing rate, s. 31 cl. (d) 237
 rules as to enhancement on ground of, by landlord, s. 33 242
 reconsideration of decree under s. 33 if improvement does not or ceases to produce the estimated effect, s. 33 (2) 242
 definition of, used with reference to raiyat's holding, s. 76 448
 what shall be presumed to be, under s. 76 448
 conversion of agricultural land into a dwelling house 449
 right to make, in case of holding at fixed rates and occupancy holding, s. 77 ... 451
 Collector to decide question as to right to make, s. 78 451
 right to make, in case of non-occupancy holding, s. 79 451
 registration of, by landlord, s. 80 452
 application to record evidence as to, s. 81 452
 compensation for, by raiyat, in case of ejectment, s. 82 452
 principle on which compensation is to be estimated, s. 83 453
 nothing in any contract shall take away or limit right of tenant to make, and claim compensation, s. 178 (1) (d) 865
 erection of *pucca* building by occupancy raiyat, is improvement under s. 76 ... 448
 digging of tank for purpose of providing drinking water is not improvement under s. 76 450
 by landlords, rules framed by Government regarding, Appendix I (9), ... (10)

INCIDENTS OF TENANCY :—See Tenancy.

application to determine, under s. 158 757

INCUMBRANCE :

customary right to cut trees if, 166
 meaning of, 473, 474
 general powers of purchaser of tenure or holding as to avoidance of s. 159 ... 770
 putnidar purchasing revenue paying estate at a sale under Act XI of 1859 not entitled to annual subordinate tenure under the putni 771
 customary right to cut and appropriate trees not an incumbrance within meaning of s. 11 of Reg. VIII of 1819 794
 interest of underraiyat holding a permanent lease, if 834
 meaning of, and of registered and noticed incumbrance, s. 161 794
 mortgage created by operation of s. 171 no incumbrance, s. 161 795
 sale if incumbrance, s. 161 795
 incumbrance may be created by non-occupancy raiyat by way of sub-lease mortgage is an incumbrance, s. 161 795
 adverse possession on incumbrance under the Revenue sale law 798
 also under the Putni law 798

BENGAL TENANCY ACT

PAGE.

ANCE—Contd.

under the Assam and Land Revenue Regulation, ...	798
under the B. T. Act ...	798
ations as to whether adverse possession is incumbrance ...	800
of portion of non-transferable occupancy holding is not in cumberance, s. 161 ...	800
change of land is an incumbrance, s. 161 ...	801
he does not ipso facto cancel incumbrance ...	801, 810
ale of tenure or holding with power to avoid all incumbrances and and effect thereof, s. 165 ...	807
procedure for annulling incumbrances, s. 167 ...	808
mode for annulling incumbrance, s. 167 ...	810
purchaser with knowledge of incumbrance may annual it ...	812
incumbrance must be the creation of tenant ...	812
"within one year from date of sale":—rulings regarding s. 167 ...	815
"date of sale" ins. 167, meaning of,—conflicting rulings ...	815, 825
when purchaser and incumbrancer is one and same person no notice necessary to cancel incumbrance under s. 167 ...	181
mortgage created by operation of law not an encumbrance ...	837
judgment-debtor or unregistered tenant purchasing tenure or holding does not acquire it free from encumbrances, s. 173 ...	841
registration of certain instruments creating incumbrances, s. 175 ...	863
notification of incumbrances to landlord, s. 176 ...	863
power to create incumbrances not extended, s. 177 ...	864
form of notice to annul, ...	See Appendix VIII (106)

INDIGO :—See Agricultural purpose.

cultivation of, if agricultural purpose ...	209
manufacture of, out of indigo plants, if so ...	209
erection of indigo factory if renders land unfit for agricultural purpose ...	209
occupancy right if can be acquired in indigo concern or firm, ...	146

INJUNCTION :

a suit for, lies against permanent tenant from making excavations which may cause substantial damage to property though he may be entitled to the right of excavation by the terms of the lease ...	212
ancillary prayer for, on failure of suit for ejectment ...	749
as to, restraining tenant from cutting down and appropriating trees ...	167

INQUIRY : See Enquiry.

INSTALMENT :

rent payable by tenant, subject to agreement or established usage in four equal instalments, s. 52 ...	344
"established usage" meaning of; it is not usage between the parties but established usage of the locality ...	345
sanbasan in patta or kabuliyat, meaning of ...	345
s. 67 of this Act applies only to cases where rent is payable quarterly, stipulation 'as to payment of interest upon default of kists where there are more than four kists, effect of ...	344
where agreement to pay rent in monthly instalment is not enforced ...	345
s. 53 does not apply to produce rent ...	347
such rent subject to agreement, may be payable at the end of the year ...	347
time and place for payment of, of rent, s. 54 ...	347
not paid up to the sunset of the last day of payment becomes an arrear ...	347
decree for rent cannot be made payable by instalments, s. 210 C. P. C. not applying to such a decree, ...	393
where court passed instalment decree in rent suit Hindu Court refused to set it aside as it was only an error of law ...	393
instalment decree in rent suit may be passed by consent of parties ...	373, 680

INTEREST :

rent does not necessarily include interest ...	42
rent in s. 169 does not include interest ...	42
interest payable upon an over-due instalment is not rent ...	42
may be recovered along with rent by application under s. 121 ...	409
tenant holding over, liable to pay, at the old rate ...	411

	PAGE.
INTEREST— <i>Contd.</i>	
contracts for, on arrears of rent, made after passing of Act ...	411
landlord not entitled to claim, at a rate higher than that provided for in s. 67	411
as to, payable by tenant holding over where lease, providing interest at more than 12 P. C., expired after passing of this Act ...	411
ambiguity of the terms as to, ...	411
purchaser liable to pay, at the rate provided for in the kabuliyat of his predecessor ...	413
stipulation to pay, if an incident of tenancy ...	413
s. 67 is controlled by s. 179 ...	414
effect of, at an exorbitant rate ...	414
at 75 p. c. per annum if legal ...	414
liability to pay, when landlord has no village office ...	415
as to application of money to, when paid as rent ...	415
if to be paid when there is no agreement to pay, in a kabuliyat before passing of this Act ...	415
if to be allowed where there is no stipulation ...	415
if recoverable where no stipulation in a mortgage bond ...	416
rent as used in cl. (c) in s. 169 does not exclude interest ...	417
tenant not liable for, for enhanced rent unless it is determined ...	417
as to waiver of, ...	417
damages may be allowed where no stipulation for payment of, ...	417
effect of stipulation to pay, according to custom and law ...	416
decision as to rate of, if operates as res judicata in a subsequent suit ...	416
effect of agreement to pay, in excess of what is allowed by law ...	416
rent includes interest ...	729
rent does not include interest on an over due instalment, s. 153 ...	729
amount claimed in the suit, meaning of, if it includes interest, s. 153 ...	726
no second appeal lies when decision only as to whether landlord entitled to interest, ...	728
landlord entitled only to interest secured to him by s. 67, the Interest Act not being applicable, ...	870
interest payable by tenant who holds over, ...	870
condition relating to, not an ordinary incident of holding, ...	871
stipulation for payment of, as a rule attaches to tenancy ...	871
s. 67 of this Act does not control provisions of s. 179 ...	872
interest may be payable at a higher rate than 12 p. c. per annum in a permanent lease granted within terms of s. 179 ...	879
INTEREST ACT: XXXII of 1839.	
where there is no agreement to pay interest, effect of ...	415
See—Interest.	
INTERMEDIATE INTEREST:	
if can be created between a zemindari and a <i>putni</i> ...	4, 25, 73
INTERPLEADER SUIT:	
cannot be brought by tenant against his landlord ...	44, 686
not maintainable at the instance of tenant ...	369
as to, ...	44, 396, 686, 720, 722
IRRIGATION:	
preparation of land for, to be presumed an improvement until the contrary is shown, s. 76 (2) (b) ...	448
ISAMNAVISI PAPER:	
as to, evidence ...	(125)
ISSUE:	
primary, in a rent suit ...	685
ISTEMRARI:—See Mokurari.	
ITMAM: (Etmam).	
meaning of, ...	81, 99
does not <i>per se</i> convey an estate of inheritance ...	99
as to in Chittagong ...	99

JAGIR:

grant of jagir does not imply grant of the soil but a personal grant only of the revenue thereof to the grantee ... 52

JAIBAKI PAPERS:

admissibility of, in evidence ... 311, See Appendix XI, (123)

JALPAIGURI:

the whole of this act is practically applicable to Jalpaiguri with ...

JALKUR:—See Fishery.

right of occupancy in, ... 141
 provisions of s. 153A applicable to suits for recovery of rents ... 725, 947
 right to, and not to soil; s. 9, Specific Relief Act ... 947
 meaning of, ... 948
 if immoveable property ... 948
 income derived from, if liable to income tax ... 950
 interest for, ... 952
 Schedule III, Act 2 cl. (b) of Limitation Act applies to suit for recovery of rent of ... 952
 as to, in public navigable river ... 947—951
 as to, in non-tidal and non-navigable river ... 949
 as to right of occupancy right to, ... 951
 meaning of, ... See App. XI, (121)

JAMABANDI PAPERS:

admissibility of, in evidence ... 311, See Appendix XI, (123)

JAMAWASILBAKI PAPERS:

admissibility of, in evidence ... 311, See Appendix XI, (123), (124)

JESSORE:

date of permanent settlement in, ... 304

JOINT FAMILY:

karta of a Hindu, has authority to consent to transfer of occupancy holding on behalf of the family ... 195

JOINT LANDLORDS:—See Co-sharer Landlord.

to act collectively or by common agent, s. 188 ... 931
 rulings as to ... 932—942
 to make application under s. 158 ... 934
 to sue for alteration of rent for alteration of area under s. 52 ... 934
 to grant abatement of rent ... 934
 to bring ejectment suit ... 934
 suit for recovery of damages maintainable at the instance of one of several ... 941
 to apply under s. 105 ... 941
 one of several, can apply under s. 106 ... 941
 s. 188 does not preclude joint landlords from ceasing to be joint ... 936
 partition between ... 936
 all landlords to join in a suit for enhancement of rent ... 937
 meaning of ... 937
 procedure in suits by, s. 188A ... 942

JOINT TENANTS:—See Tenant.

agreement to pay enhanced rent by one of several, effect of, ... 937
 kabuliyat by one of several, does not bind the other tenants ... 778
 notice to quit addressed to all the, living jointly but handed over to one of them, if good service of notice ... 751

JOINT POSSESSION:

where some of several joint landlords have assented to transfer of non-transferable holding, the other co-sharers are entitled to recover, of their share ... 501
 as to effect of settlement by one co-owner, if the other co-owner has, right to recover, ... 40
 as to claim by co-sharer for, ... (129)

INDEX

JOINT SHEBAIT :—See Shebait.

cannot sue separately 7

JOTE :

description of property as, does not necessarily shew that it is not a tenure ... 80
(Addenda)
it does not necessarily mean the interest of a cultivator ... 80
though the tenancy is described as a jote it may be shewn that its real
character is that of a tenure 80

JOTEDAR :

not necessarily a "proprietor or a 'permanent tenure-holder' within the
meaning of s. 22" 159

JUDICIAL OFFICER :

as mentioned in s. 153, meaning of 739

JUDGMENT DÉBTOR :—See Representative.

cannot bid at sale, s. 173 841
purchase by, effect of 844
appeal lies against order under s. 173 where judgment debtor is the appellant ... 842
as to right of, to deposit, under s. 174 847
non-payment of landlords' fee does not affect the position of, 134
"judgment-debtor" in sub-sec. (1) of s. 174, meaning of 848, 960
as to, s. 170 834

JUDICIAL PROCEDURE :

power of High Court to modify Civil Procedure Code in its application to
suits between landlord and tenant, s. 143 679
applicability of provisions of Civil Procedure Code to this Act 679
what are not suits 680
suit includes appellate stage 680
application under s. 93 not a suit 680
proceeding under s. 103 is a suit 680
proceeding under s. 90 is not a suit 680
applications under ss. 61 and 171 are not suits 680
order under s. 84 not appealable 680
procedure applicable to proceedings which are not suits 680
ss. 121 to 127, 129, 305, 320 to 326 of the Code of Civil Procedure (Act XIV
of 1882) shall not apply to rent suits 680
s. 210 C. P. C. applies to a suit for money and not to a rent suit and therefore
decree for rent cannot be made payable by instalments 680
recording of evidence in English instead of in the language of the Court in
a suit under this Act, is an irregularity curable under s. 578 C. P. C. ... 680
ss. 278 to 283 C. P. C. not applicable to a tenure or holding attached in
execution of decree for arrears 680
jurisdiction proceedings under Act XIV of 1882 680
in what Courts suits between landlord and tenant are to be brought, s. 144 ... 688
jurisdiction to entertain suit for possession of tenure 688
decree in a rent suit is a decree under Art. 6, Sch. III of this Act ... 681
operation of s. 144 of this Act confined to landlord and tenant 681
naib or gumasthas to be recognised agents of landlord for purposes of suit
and application under this Act, s. 145 689
rent suits to be entertained in special register, s. 146 690
successive rent suits not to be brought until lapse of 3 months from institution
of previous suit, s. 147 691
date of suit should be taken to be that on which plaint is originally filed
and not the date on which it is filed as an amended plaint, s. 147 ... 691
compromise of suits between landlords and tenant, s. 147A 691
regard to be had by Civil Courts to entries in record of rights, s. 174B ... 695
rules regarding procedure in rent suits, s. 148 696
portions of the Civil Procedure Code applicable and not applicable to this Act 700
what is a sufficient description for identification 702
cl. (h) of sec. 148 should be strictly interpreted 702
cl. (b) of sec. 148 not applicable to a decree by co-sharer landlord ... 702
rulings as to assigned becomes an ordinary civil demand 705
suits for arrears of rent by co-sharer landlord, s. 148 A 707
court fee and claim of suit 710

SPECIAL PROCEDURE—Contd.

payment into court of money admitted to be due to third person ...	719
interpleader suit ...	720
question of title if may be decided in a suit under sub-sec. 3 of sec. 149 ...	721
s. 149 does not contemplate a suit for establishment of relationship of landlord and tenant ...	721
payment into court of money admitted to be due to landlord, s. 150 ...	722
s. 150 applies where plea is of confession and avoidance, ...	723
what amounts to an admission under s. 150 ...	722
interpretation of s. 150 ...	723
provision as to payment of portion of money, s. 151 ...	723
court to grant receipt for amount paid into court, s. 152 ...	724
appeals in rent suits, s. 153 ...	724
rulings as to where appeals lie and where appeals do not lie ...	728
deposit on application to set aside <i>exparte</i> decree, s. 153A ...	745
elief against forfeiture in suits for ejectment, s. 155 ...	748
rights of ejected raiyats in respect of crops and land prepared for sowing, s. 156 ...	754
power of court to fix fair rent as alternative relief in suit for ejectment of trespasser, s. 157 ...	755
power of court to determine incidents of tenancy on application of landlord or tenant, s. 158 ...	757
object of, s. 158 ...	758
one application under s. 158 with respect to more than one tenancy maintainable dispute as to status of tenant cannot by finally decided by Revenue Court in proceeding for commutation of rent under s. 40 ...	760
s. 158 does not authorise one application against separate tenants ...	760
cl. (3) of s. 170 ought not to be narrowly construed ...	831
ss. 278 to 283 C. P. C. not applicable to tenure or holding attached in execution of rent decree ...	828
s. 310A, C. P. C. not applicable to tenure or holding attached in execution of rent decree (Bengal and Bihar) ...	828

JULKAR:—See Jalkar.

JUNGLE:

lease for clearing, ...	92
s. 52 not applicable in a case where the land was at the time of letting waste and jungly and was not measured ...	322

JUNGLEBOORI LEASE:

provision as to progressive rent in, ...	234
--	-----

JURISDICTION:

refusal to exercise, by District Judge, s. 153 ...	742
erroneous exercise of, by District Judge, s. 153 ...	742
of Revenue officer to determine question of relationship of landlord and tenant in proceeding under s. 103 of this Act ...	759
of Court to determine existing rent under cl. (d) of s. 158 ...	758
jurisdiction in proceedings under this Act, s. 144 ...	688

KABILLAGAN:

meaning of, it describes a tenancy for which rent is not actually paid but which is liable to pay rent ...	562
--	-----

KABULIYAT:

if sufficient to prove lease ...	27
onus of proving that a, contravenes the provisions of s. 29 (b) is upon tenant ...	225
by one of several joint tenants does not bind the other tenants ...	778
<i>mokurari</i> , <i>kaimihowladari</i> , <i>kaimi</i> , <i>sthayeeekarsha</i> , <i>bil-moktha</i> , meanings of ...	878
where <i>kabuliyat</i> is an agreement to settle <i>bona fide</i> disputes s. 29 does not apply ...	221
admission in, is evidence as to character of land ...	659

	PAGE.
KAIMI :	
effect of addition of, to settled raiyat	301
does not import fixity of rent but only permanence of occupation of land	80
meaning of,	878
kaimi-howladari, incidents of	878
KAIMI MOURASHI RAIYAT :	
meaning of	81
KAMAT :—See Proprietor's private land.	
tenant of <i>kamat</i> land does not acquire right of occupancy by holding it over after expiry of the lease	663
KHAMAR :—See Proprietor's private land.	
law relating to, ss. 116—120	658—667
meaning of,	658, 661
occupancy right in,	663
no commutation of rent of tenant of <i>khamar</i> land	253
KARSHA :	
<i>sthayee karsha</i> , meaning of,	878
KARTA : See Joint family.	
of a joint Hindu family has authority to consent on behalf of joint family to the transfer of occupancy holding	195
KATIHARI DUES : (profession tax).	
a suit to recover, is not a suit for agricultural rent	684
meaning of,	953
KHAS MAHALS :	
included in term "estate" in s. 3	20
lessee of Govt. Khas mahals if can claim enhancement of rent from his tenant against the stipulation in the settlement jamabandi	264
KHANAPURI :	
meaning of	527, 534
KHASRA :	
meaning of	527, 534
KHAS POSSESSION :—See Ejectment.	
KHATIAN :	
meaning of	527, 534
KHEWAT :	
meaning of	527
KHUDKAST LAND :	
acquisition of occupancy right in,	663
if proprietor's private land	663
KISTWAR :	
meaning of	534
KORFA :	
a, tenant is not necessarily an under-tenant of a raiyat, he is a sub-lessee, whether of a taluqdar or of a raiyat	270
meaning of	527
LAKHERAJ :	
meaning of,	26
<i>nishkar</i> is used in the same sense as <i>lakheraj</i>	26
the word <i>lakheraj</i> is often used loosely; in strictness, it indicates a freedom from liability to revenue but it is constantly used as indicating exemption from liability to pay rent	26
maintenance grant	27
holder of rent free holding is entitled to accretion but is not entitled to hold the same rent	27
landlord has no right under s. 9, Act VI of 1862 (B.C.) to measure <i>lakheraj</i> lands	505
question as to <i>mal</i> or <i>lakheraj</i> could not be decided by Settlement officer under the Act before its amendment	531
settlement officer had no power to resume and assess with rent land which had been held as <i>lakheraj</i> before the passing of Act III of 1898 (B.C.)	531
as to <i>mal</i> or <i>lakheraj</i> , onus	101

	PAGE.
LAND :—See Homestead land, Agricultural land, and Tenancy.	
as to applicability of this Act to ...	...
(i) homestead land ...	7
(ii) garden ...	7
(iii) land for horticultural purposes ...	7
(iv) <i>bastu</i> land ...	8
(v) homestead land of tenant under a raiyat ...	8
(vi) lease of share of tank including land underneath ...	9
(vii) homestead lands situated in towns or outside towns ...	7
"land" in s. 105 is not equivalent to "holding" ...	960
lands of one estate when joint with another, effect of ...	20
person holding, under a trespasser if can acquire right of occupancy ...	...
land held as nij-jote and also through sub-tenant, incidents of, ...	84
fishery rights are not land within meaning of Land Acquisition Act ...	948
occupancy right if can be acquired in ...	...
(i) <i>chowkidari chakran</i> land ...	900
(ii) <i>ghatwali</i> land ...	901
(iii) <i>diara</i> land ...	885
(iv) <i>chur</i> land ...	141
(v) <i>khamar</i> land ...	141
incidents of proprietor's private lands ...	657—667
incidents of proprietor's private lands ...	657—667
as to land within defined boundaries, s. 52 ...	325
as to land acquired for public purposes ...	335
as to encroachment on <i>khas</i> land ...	333
LAND ACQUISITION ACT :	
as to compensation under, where tenant has no transferable interest ...	24
fishery rights are not land within meaning of, ...	948
claim for abatement of rent may be made for land taken by Govt. for public purpose ...	335
raiayat having right of occupancy—compensation ...	204
as to abatement for land acquired by, ...	336
acquisition of land for building and other purposes, s. 84 ...	454
LAND IMPROVEMENT LOANS ACT :	
the terms of s. 76, B. T. Act follow closely those of s. 4 of ...	449
LANDLORD : See Joint landlord, Co-sharer landlord and Landlord and Tenant ...	22
definition of, s. 3.cl. (4) ...	22
interest can be created between a <i>zemindari</i> and a <i>putni</i> ...	4, 28
assignee of land and of arrears of rent is "landlord" within meaning of this Act ...	3
effect of non-registration of name in the landlord's <i>sheristha</i> ...	127
as the right of, to trees ...	166
as to effect of decree by outgoing landlord ...	3
how the relation of landlord and tenant constituted ...	23, 29, 30
denial of landlord's title no ground of forfeiture ...	...
effect of acquisition of occupancy right by, s. 22 ...	153
bound to give tenant a receipt for each payment of rent, s. 56 ...	383
effect of withdrawal of deposit of rent by, ...	369
effect of sale in execution of decree with consent of, ...	184
question of transferability, if can be raised by, ...	190
recognition of transferee by, ...	195
as to consent of, for sale of occupancy holding in execution of money decree : rulings on the point ...	183—187, 921—923
effect of receipt by, through mortgagee ...	196
—through <i>marfatdar</i> ...	196
when bound, by acts of <i>gumustha</i> ...	196
all the landlords need not join in an ejectment suit ...	200
s. 188 no bar to an ejectment suit by a co-sharer landlord ...	200
acquiescence by, ...	210
not entitled to compensation when permanent tenant does not take reduction of rent ...	336
may claim back rents for additional area, s. 52, ...	320
if bound to accept a part of arrears of rent ...	348
payment to a joint co-sharer landlord is a payment to all, s. 54 ...	351
has no right to dispute validity of deposit under s. 61 after granting of receipt by court ...	370

	PAGE.
LANDLORD—Contd.	
effect of withdrawal of money by, deposited under s. 61 ...	369
co-sharer, if competent to sue ...	380
transfer of landlord's interest, s. 72 ...	429
has no right to recognise transferee of a part as transferee of whole ...	431
how far bound by act of gumustha ...	435
suit by, against tahsildar for abwabs collected by him ...	444
penalty for exaction by, from tenant of sum in excess of rent payable ...	445
suit by, against tesildar for illegal cesses realised from tenants ...	447
purchasing raiyati holding in execution of rent decree can avoid invalid under- rai-yati lease without notice under ss. 49 and 67 ...	457
may enter on surrendered holding, s. 86 ...	467
landlord not entitled to eject where transferee holds possession on behalf of tenant ...	479
when not entitled to recognise transfer ...	487
not entitled to alter extent and nature of holding without consent of tenant ...	491
if entitled to sue for <i>khas</i> possession if holding is transferred ...	490
dispossession by landlord,—limitation ...	493
right of, to measure under s. 91 where there is an intermediate tenant ...	505
co-sharer landlord has no right to apply under s. 91 ...	506
not entitled to distrain for damages, s. 121 ...	669
may apply for determining incidents of tenancy s. 158 ...	757
meaning of "landlord" in s. 158A. ...	765
entitled to bring one suit for total rents of three separate holdings ...	778
but such decree cannot be executed as rent decree ...	778
bound to recognise transfer of portion of tenure ...	781
electing to treat a person as tenant, mere fact of service of notice under s. 167 on tenant does not bar a suit for rent ...	823
right of, to standing crops on termination of tenancy ...	822
damages for denial of landlord's title, s. 186A ...	929
agents and representatives of, s. 187 ...	930
power of, to act through agent ...	930
savings for conditions binding on landlords, s. 194 ...	953
LANDLORD'S FEE :	
non-payment does not affect the position of judgment-debtor ...	134
as to effect of mistake in payment of landlord's fee ...	133
confirmation of auction sale without payment of, under s. 13 of B. T. Act : Court's jurisdiction to take landlord's fee subsequently ...	134
saving as to acceptance of, ...	135
forfeiture of unclaimed, s. 18C. ...	137
Local Govt. to prescribe the manner in which, shall be transmitted to the landlord, s. 189 (3) ...	943
Local Govt. to prescribe the authority by whom the fees deposited under ss. 12, 13, 17, and 18 (a) may be declared to be forfeited and the mode in which such fees, when forfeited, shall be dealt with, s. 189 (4), ...	943
LANDLORD AND TENANT : See Landlord, Tenant.	
the feudal laws of England are no guide to the principles affecting land tenures in Bengal ...	(127)
Bengal Tenancy Act, an Act to amend certain enactments, relating to, ...	1, 2
demand for rent does not create relationship of, ...	31
relationship of, does not cease for non-payment of rent ...	43
where tenant puts landlord to the proof of alleged title of purchase there is no disclaimed of relationship, ...	107
nor where tenant merely questions extent of landlord's interest and his title to receive entire rent ...	107
both jointly can confer title by transfer ...	185
if relationship of, once established mere non-payment of rents not sufficient to shew that it has ceased ...	211
consent of both, necessary for reversion to original rent after commutation under s. 40— ...	257
suits between, rulings regarding :	
(a) miscellaneous cases ...	681
(b) one suit for rent of several tenures ...	682
(c) suit for rent assigned to be paid to superior landlord ...	682
(d) assessment of rent ...	682

	PAGE.
LANDLORD AND TENANT— <i>Contd.</i>	
(e) suit for consolidated rent of agricultural holding and fishery ...	683
(f) suit for rent of a fishery	683
(g) forest rights	683
(i) suit for rent of homestead or bastoo land	683
suits between,—jurisdiction	685
operation of s. 93 confined to suits between,	681
s. 149 does not contemplate a suit for establishment of relationship of, ...	721
as to compromise of suits between s. 147A	691
suit for back rent by assignee from previous landlord is not suit by landlord	
against tenant and so s. 153 does not apply	756
consent of, if essential to establish relationship of,	756
power of court to determine incidents of tenancy on application of s. 158 ...	757
what matters may be determined in application under s. 158 by,	157, 758
jurisdiction of revenue officer to, determine question of relationship of, in	
proceeding under s. 103 of this Act,	759
what rights not affected by contract between, before or after passing of this	
Act, s. 178 (1)	865
nothing in contract made between, since 15th, July 1880, and before passing	
of this Act shall prevent acquisition of occupancy right s. 178 (2)	865
what rights not affected by contract between, made after passing of this Act	
s. 178 (3)	865
as to permanent mokurari lease on any terms between, s. 179	875
LAND REGISTRATION ACT: VII of 1876 (B.C.)—See Registration.	
receipt of person registered under the, as proprietor, manager or mortgagee	
shall be a sufficient discharge for the rent, s. 60	359
landlord though not registered under, may sue for rent upon written	
contract	362, 363
when registration under the, not necessary,	364, (129)
unregistered proprietor may sue upon a written contract,	363
effect of registration of name under the,	364
suit by unregistered proprietor maintainable and it is sufficient if registration	
is made before decree	363
suit by legal representative of deceased person; if registration of his name	
necessary	365
suit by proprietors of whom some are registered, effect of	366, (129)
s. 78 has no application to the case of a person to whom rent has been assigned	
by proprietor whose name has not been registered	366
common manager under this Act must have his name registered before he can	
recover rent,	366
s. 78 is no bar to claim for malikana	367
person not registered under, not entitled to distrain, s. 121,	669
LAW:	
question as to the nature of tenancy is a question of law	177
question as to custom and usage is a question of law,	177
erroneous decision on a point of, if operates as resjudicata	(188)
question of limitation raised in the written statement but abandoned in the	
court of first instance is a clear question of, and can be raised in the	
court of first instance is a clear question of, and can be raised in the Court	
of appeal	926
LEASE:	
of the same land to 2 persons, effect of,	28
as to agricultural and non-agricultural lease; rulings:	7—11
construction of, variation in boundaries and area	28
not defined in this Act	29
kabuliyat if sufficient to prove lease	29
as to what is an amalnāma as distinguished from a lease, see notes under	
s. 3, cl. 18	30
a solenāma by which no immediate interest is created and whereby there has	
been no demise does not amount to a lease	30
realisation of rent by lessor at a reduced rate for some time does not disentitle	
the lessor to claim rent at the original rent	30
where lease not proved suit for rent may be treated as one for use and	
occupation	30
lease by manager not void for want of sanction of Collector	31

LEASE—*Contd.*

PAGE.

document varying rent in a registered lease requires registration ...	...
where lease given for building purposes presumption arises that it was intended to be a perpetual grant ...	48
for breach of condition of, there may be 2 remedies of damages and forfeiture, ...	211
as to <i>jungleboori</i> lease, ...	234
"written lease" in cl. (b) of s. 49, meaning of, ...	278
contract for fresh lease by under-raiyat with raiyat, if valid, ...	233
construction of, as to boundaries and quantity, s. 52 ...	325, 326
under-raiyati lease, registered in contravention of s. 85 wholly void and inadmissible in evidence, ...	463
who may question as to the invalidity of sub-lease granted in contravention of s. 85 ...	464
as to effect of sub-lease taken by transferee after transfer of non-transferable occupancy holding ...	182
no presumption of holding over, merely because landlord does not institute ejectment suit after expiry of tenant's lease, ...	500
in sub-sec. (4) of s. 37 of the Revenue Sale Law does not mean a lease from Zemindar only ...	789
of tank without any portion of surrounding land not protected under cl. (4), sec. 37 of Act I of 1859 ...	789
under-raiyati permanent lease void but not so when created by fixed raiyat ...	868
<i>mokurari</i> , <i>kaimi howladari</i> , <i>kaimi</i> , <i>sihayee karsha</i> , <i>bil moktha</i> , meanings of ...	878
forfeiture clause in a, for non-payment of rent does not render lease not permanent if other terms give permanent character ...	877
<i>kaimi howladari</i> lease ...	878
<i>putni</i> lease <i>prima facie</i> a lease under the Transfer of Property Act ...	...
<i>putni</i> lease if governed by B. T. Act ...	...
fixed raiyat can grant permanent lease ...	958
"expiration of the term of the lease" in Sch. III, Art I (a): "lease" refers to registered lease as referred to in s. 44 cl. (c) ...	876
suit for rent founded upon registered lease governed by 3 years limitation ...	982
lessee and licensee, distinction of ...	5, 26
sub-lessee from raiyat in regard to portion of homestead land comprised in the holding for homestead purposes is an under-raiyat ...	279
leases in contravention of s. 85, effect of ...	458
covenant by, not to assign with lessor's consent runs with land, and applies to re-assignment to the original lessee ...	211
mistake in municipal and survey numbers in a, ...	(128)

LESSEE—See Lease.

lessee and licensee, distinction of ...	5, 26
---	-------

LESSOR:—See Lease.

power of re-entry by, ...	211
leases in contravention of s. 85: rights of lessor and lessee ...	458
where grant did not contain words limiting to life ...	47
when grant for indefinite term, effect of ...	47

LIMITATION ACT:

s. 6 ...	982
s. 7 ...	815, 982
s. 18 ...	201
s. 19 ...	381, 1000
Sch. I, Art. 14 ...	446
Sch. II, Art. 2 ...	677
Art. 28 and 29 ...	679, 987
Art. 31 ...	975
Art. 32 ...	210, 975
Art. 36 ...	677
Art. 48 and 49 ...	166
Art. 89 ...	975
Art. 120 ...	...
Art. 121 ...	...
Art. 139 ...	...
Art. 142 ...	991
Art. 143 ...	...
Art. 178 ...	884

LIMITATION ACT—*Contd.*

what sections are applicable to suits under s. 184 B. T. Act	926
s. 18 of, does not apply to application under s. 174 of B. T. Act	926
ss. 184 and 185 of B. T. Act have not the effect of extending the provisions of s. 7 of the, to an application made under s. 167 of B. T. Act	926
s. 19 of the, is applicable to suits for rent	927
Art. 32 of Sch. II of, applies to a suit under cl. (a) of s. 25 and s. 155 of B. T. Act	975
ss. 6 and 7 of, not applicable to a suit for rent	982
Art. 116 of, Sch. II of, applies to a suit for rent reserved in a registered lease granted for building purposes and for establishing coal depot	982
suit to recover damages for breach of covenants contained in a registered lease governed by Art. 116 of Sch. II of,	983
Art. 116 of Sch. II, applies to a suit by an assignee for arrears	983
application under s. 173 governed by Art. 178 of Sch. II of,	844
Art. 116 of Sch. II of, does not apply to a suit for rent although lease is a registered one	928

LIMITATION :

no limitation in regard to an ejectment suit against the transferee of an occupancy raiyat	201
suit to compel defendant to remove trees from lands leased for agricultural purpose is governed by Art. 120, Sch. II of the Limitation Act	210
of right to bring successive rent suits	244
objection to price list to be made within one month, s. 39 (3)	247
suit under s. 52 may be brought after any interval of time	244
right of landlord to recover additional rent for increased area, is a recurring one and there is no limitation	341
payment on account of rent cannot be accreted to arrears beyond the term of limitation, s. 50	355
as to rent suit for recovery of arrears before date of deposit under s. 61, Sch. III, Art. 2 (b)	371
when tenant holds over limitation begins to run against the landlord on the expiry of the term of the lease under Art. 139 Sch. II of the Limitation Act	315
Art. 35 (f) of Sch. II of the Provincial Small Cause Courts Act (IX of 1887) applies only to suits for damages for wrongful distraint and does not apply to suits for recovery of money paid, s. 140	676
applicable to a suit for illegal distraint of crops is one year from date of wrongful seizure, Art. 28 or 29 and not Art. 2 of Sch. II of Act XV of 1877 applies to such suits, s. 140	676
in suit for injunction and compensation s. 155	750
limitation in a suit for rent by an assignee	773
application under s. 173 is governed by Art. 178 of Sch. II of the Limitation Act	844
suit to be dismissed though limitation not pleaded	925
s. 19 of the Limitation Act applies to suit for rent and to application for execution of decrees	927
portions of Limitation Act not applicable to suits and applications mentioned in s. 183	927
suit for account against agent governed by Art. 116 of Sch. I of Limitation Act when contract is in writing and registered	931
Sch. III, Art. 2 cl. (b) of Limitation Act applies to suit for recovery of rent of julkur	998
in suits, appeals and applications, See Sch. III	971—973
service of notice on one of the landlords of the deposit of rent under s. 61 of the B. T. Act has not the effect of reducing the period of, to 6 months as provided in Art. 2 (a) of Sch. III of the Act	978
in suit by putnidar to recover possession of resumed choudidari chakran land transferred to zemindar, Art. 142	925
same period of, in rents suits even if lease registered	925
suit for rent by assignee of arrears not governed by B. T. Act	926
in suit by occupancy raiyat, non-occupancy raiyat, or under-raiyat for recovery of possession against landlord Art. 3, Sch. III	926
ss. 184 and 185 of B. T. Act not applicable to application under s. 174 of the B. T. Act	926
Art. 2, cl. (b) of Sch. III applies where plaintiff ceases to be landlord on the day of the institution of the suit for rent	978
Art. 2 of Sch. III provides for suits and not for applications	...

LIMITATION—*Contd.*

Art. 2 cl. (b) of Sch. III applies to a suit for rent by co-sharer landlord ...	900
period of, where <i>fusli</i> year prevails is 3 years from the last day of Jeith ...	980
suit for rent founded upon registered lease governed by 3 years limitation ...	982
Art. 3 of Sch. III applicable to non-occupancy raiyat and under-raiyat of 6 months prescribed in cl. (a) of Art. 2 Sch. III applies to the arrear of rent of a holding and not to a tenure or under-raiyati tenancy ...	978
application for surplus sale proceeds under cl. (c) to sub-sec. (1) of s. 169 is not governed by Art. 2 of Sch. III ...	979
as prescribed by Act 3 of Sch. III of B. T. Act runs from date of actual ouster for an application to avoid an incumbrance, s. 167 (3) ...	987
for revision of record of rights, s. 104 G (2) ...	809
where there is special rule of limitation that rule is to be followed to the exclusion of the more general rule ...	570
suit for recovery of money payable in respect of forest rights is governed by Sch. III, Art. 2 cl. (b) ...	926
Art. 3 of Sch. III is not applicable to a suit brought by non-occupancy raiyat or under-raiyat when dispossession took place more than 2 years before the amending Act ...	926
cases under Art. 3, Sch. III as it stood before amendment: suit by non-occupancy raiyat ...	986
burden of proof is upon that party who asserts that the case is guided by special rule of 2 years limitation ...	986
applicability of Art. 3, Sch. III where cause of action arose before passing of this Act ...	986
Art. 3, Sch. III relates only to a suit brought by occupancy raiyat against his landlord and not to a suit by a tenant against third parties who are trespassers ...	986
Art. 3, Sch. III applies where dispossession is by some co-sharers or the entire body of landlords ...	988
where Art. 3, Sch. III does not apply ...	987—995
where landlord has no hand in the ouster limitation is 12 years ...	989
applicability of Art. 3 Sch. III where dispossession is by landlord acting not as landlord but under a different capacity ...	991
summary of case law relating to limitation where landlord dispossesses or has hand in the ouster ...	995
period of limitation as prescribed by Art. 6, Sch. III runs from "date of decree" and not from the date fixed for payment ...	997
informal application for execution on the last day, effect of, ...	1000
drainage charges, decree for—limitation ...	979
for application for surplus sale proceeds, s. 169 ...	979
claim for rent beyond 3 years ...	982
for application to set aside a sale under s. 173 ...	844
portions of the Indian Limitation Act not applicable to rent suits, s. 185 ...	927
question of, raised in the written statement but abandoned in the court of first instance is a clear question of law and can be raised in the court of appeal ...	927
Art. 116 of Sch. II of the Limitation Act has no application to a rent suit ...	927

LIMITED COMPANY:

zemindars may form into a ...	23
-------------------------------	----

LOCAL ENQUIRY:

may be directed by court as to prevailing rate of rent, s. 31 (b) ...	241
duty of civil court in ordering, ...	241
may be directed by court for ascertaining any incident of tenancy under s. 158 (2) ...	758

LOCAL EXTENT:

of Bengal Tenancy Act ...	14—16
---------------------------	-------

LOCAL GOVERNMENT:

power of, to fix time for commencement of the Act ...	13
to prepare form of receipt and account, s. 59 ...	359
rules framed by, under s. 163 (3), ...	805
power of, to make rules regarding procedure, powers of officers and service of notices, s. 189 ...	943

LOCAL GOVERNMENT—*Contd.*

to make rules for determining what are to be deemed staple food crops, s. 39 (7) ...	247
to make rules authorising tenant to pay rent by postal money order, s. 54 (2), ...	347
to prescribe fees to be paid on deposit of rent, s. 61 (2) ...	367
any officer may be appointed by, to discharge functions of revenue officer, s. 3 (17) ...	62
may nominate person to be common manager for certain local area, s. 96 ...	579
to publish notification exempting any municipal area from the operation of this Act ...	13, 18
may appoint revenue officer to register landlord's improvement, s. 80 (1) ...	452
power of, to order survey and preparation of record-of-rights s. 101 ...	534
to order survey and record-of-rights of proprietors, private land, s. 117 ...	664
to make rules prescribing scale of charges for distraint and sale of distrained property, s. 134 (1) ...	673
may prescribe special form of register for rent suits, s. 146 ...	690
may fix fees to be charged by revenue officers for notifying incumbrances to landlords, s. 176 ...	863
procedure to be followed by, for publications of rules, 189 (2), ...	943
to prescribe rules for issue of certificates for recovery of rent bd summary procedure, s. 158A. (5) ...	764
rules framed by, under this Act, Appendix I ...	
see—ss. I (2), 1 (3), 3 (16), 3 (17), 39 (1), 39 (5), 39 (7), 46 (2), 54 (2), 56 (3), 59, 61, 80, 82, 87, 92, 96, 107, 108, 112, 114, 117, 118, 834, 141, 153, 158, 168, 176, 190.	

LOCAL LAW:

Bengal Tenancy Act does not affect any, not expressly or impliedly repealed by it, s. 195 (f) ...	954
right of occupancy cannot be acquired by, ...	147
facts necessary to constitute, ...	175—177
proof of, ...	174
custom and usage not synonymous terms ...	174
cases as to, regarding transferability of occupancy holdings ...	175
payment of <i>nazarana</i> does not prove existence of, as to transferability of occupancy holding ...	175
question as to, a question of law ...	177
usage in Comilla as to raiyat's right to sell holding ...	177

MAFI:

what is ...	730
is not rent ...	47, 729

MAHAL:

the word, is not used in connection with the interest of a raiyat ...	80
"without right <i>jote mahal</i> ," meaning of ...	80

MAHANUNDA RENT:

as to meaning of, ...	49
-----------------------	----

MAHTUT: see Abwab.

s. 74 ...	436
-----------	-----

MAHATARAN:

as to meaning of ...	81
----------------------	----

MAI-HAK-HAKUK:

meaning of ...	28
----------------	----

MALGUZARI:

meaning of ...	47
----------------	----

MALIK:

as to meaning of, ...	(117)
-----------------------	-------

MALIKANA:

is not rent ...	367, 778
s. 78 of the Land Registration Act is no bar to a claim for, ...	367

MANAGER: see Common Manager.

as to registration of name of, appointed under this Act, ...	129, 366
appointed under s. 95 of the B. T. Act must have his name registered before he can recover rent ...	366
rules framed by High Court under s. 100, Appendix VI ...	(903)

MANAGER UNDER COURT OF WARDS :

right of, to grant a lease 31

MANBHUM :

in Province of Bihar and Orissa, by Proclamation dated the 22nd March, 1912 14

MAPS :

presumption as to correctness of, prepared under s. 94, when tenant does
not attend measurement and point out boundaries, s. 91 (2) ... 505
maps and reports in s. 145 Cr. P. C., admissibility of ... (126)
as to thak and survey maps ... (126)
as to Major Rennel's maps ... (129)

MARTS :

at what, prices of staple food crops shall be recorded, Appendix I ... (9)
see price lists of food crops in Appendix XII ... (125)

MAFATWARI RENT RECEIPTS :

as to meaning of ... (129)
the words *marfatdar* and *gujratdar* in rent receipts do not themselves prove
recognition of tenancy ... 196
each case depends upon its own circumstances ... 196
effect of, ... 369—372; 193—198; 419—423; 194—200; 379—382; 431—435

MASTER AND SERVANT :

cases relating to, ... 5, 6
burgadar if a servant ... 6
what constitutes the relation of, depends upon nature of agreement ... 5

MEANING :

of words, phrases and clauses ... 956—960

MEASUREMENT :

standard bigha ... 83
alteration of rent on alteration of area in tenure or holding proved by s. 52 ... 317
when landlord unable to indicate precise plots proved by measurement to
have been acquired by tenant in excess, then the rent should be calculated
at the average rate, s. 52 ... 319
landlord's right to measure, s. 90 ... 503
area for which rent has been previously paid, meaning of, s. 52 ... 326
standard of, s. 52 ... 341, 504, 506
court has no power to deal with question as to standard of, in proceeding
under ss. 90 and 91 ... 504
right of, when there are intermediate tenants ... 504
proceeding under s. 91 not a suit, ... 504
right of, with a certain pole, ... 504
right of landlord to measure where there is an intermediate tenant ... 504
presumed to be correct, meaning of, s. 91 ... 506
court-fee for an application under s. 90 is eight annas ... 506
acre ... 506
power of Court to order tenant to attend and point out boundaries, s. 91 ... 505
made by order of Civil Court or Revenue officer to be made by acre unless
there be order to contrary, s. 92 (i) ... 506
jurisdiction of Court to determine standard of, in proceeding under ss. 90, 91 ... 504
as to right of landlord to measure lakheraj lands ... 505
one application for, with reference to several tenants if maintainable ... 505
as to 10 p.c. deduction from area ascertained from area ascertained by
validity of ... 343
one application for, with reference to several tenants if maintainable ... 505

MERGER :

applicability of the doctrine of, in this country, ... 152
as to cases where the law of, applies, and where not ... 153
as to question of, on the acquisition of occupancy right by proprietor, joint
proprietor, permanent tenure-holder, joint permanent tenure-holder, s. 22 153, 154
as to law, before the T. P. Act and B. T. Act ... (128)

MESNE PROFITS :—See Wasilat.

suit for recovery of, by person dispossessed from immoveable property not maintainable	...	...	...	...	...	757
proper remedy is to institute suit for declaration of title and recovery of possession with mesne profits	...	...	...	...	...	757
as to,	...	...	...	...	...	(129)
as to, <i>pendente lite</i>	...	...	...	...	...	(129)
limitation for application for	...	...	...	...	...	(129)

MINERALS :—See Underground rights.

a permanent lease including "all rights of various kinds" with the exception of homestead includes,	...	...	...	...	...	...
mineral rights in Digwari tenure	...	...	...	...	...	...
grant of <i>putni</i> containing the words <i>durbust zemindari hakuk</i> includes the mineral rights	...	...	...	...	...	53
<i>bogoli Brahmoittar</i> grant of mouja does not pass any minerals under it to the grantee	...	...	...	...	...	53
will not be held to have formed part of the grant in the absence of express evidence to that effect	...	...	...	...	...	53
grant of jagir land implies no grant of the soil	...	...	...	...	...	52
it should be presumed that the Zemindar is the owner of the under ground rights in the absence of evidence that he has parted with them	...	...	...	...	...	51
effect of a grant of rent free <i>Brahmoittar</i> is not to transfer any mining rights	...	...	...	...	...	33
the interest of <i>khorphosdar</i> (i.e., of maintenance grant) does not carry with it the subsoil rights	...	...	...	...	...	53
as to right of <i>Putnidar</i> to,	...	...	...	...	...	(114)

MINOR :

commutation of rent made by Court of Wards binding on,	...	...	...	...	...	252
disability of minority does not apply in rent suits, s. 185	...	...	...	...	...	...
lease by certificated guardian without sanction of District Judge is voidable at the instance of	...	...	...	...	...	263
as to non-representation of, in execution proceedings	...	...	...	...	...	(129)
if can avoid a decree arising from guardian's negligence	...	...	...	...	...	(129)
if bound by contract of sale, by guardian	...	...	...	...	...	(129)

MISTAKE :

of an officer of Court in calculating the sum required to be deposited cannot avail judgment debtor unless that officer is authorised to make the calculation	...	...	...	...	...	854
in name of taluk does not invalidate deposit,	...	...	...	...	...	372
as to jurisdiction of settlement officer to correct,	...	...	...	...	...	550
in municipal and survey numbers in a lease	...	...	...	...	...	(128)

MISTAKSHARA FAMILY :

application under s. 105 of the B. T. Act not maintainable at the instance only of the managing member of,	...	...	...	...	...	587
rent suit by the head of,	...	...	...	...	...	682
as to recognition of transferee by <i>karta</i> of,	...	...	...	...	...	195

MOGLI :

meaning of	...	...	...	...	...	46
------------	-----	-----	-----	-----	-----	----

MOGOLI BHAHMOTTAR :

grant of mouja does not pass any minerals under it to the grantee	...	...	...	...	...	57
---	-----	-----	-----	-----	-----	----

MOKURARI : See Istimrari.

meaning of,	...	...	...	...	...	47, 91, 841—843
a hereditary mokurari tenure, on the death of the grantee, goes to the crown by escheat	...	...	...	...	...	115
grant of permanent mokurari lease under s. 179	...	...	...	...	...	875
implies permanency, heritability and transferability,	...	...	...	...	...	877
difference between permanent tenure and permanent mokurari lease	...	...	...	...	...	881
when applied to tenure means a tenure held at a fixed and permanent rate of rent,	...	...	...	...	...	877
"mokurari" alone raises no presumption that tenure is intended to be hereditary	...	...	...	...	...	5
the words "mokurari" and "istimrari" are interchangeable expressions.	...	...	...	...	...	5
"mokurari istimrari" tenure shall be presumed to be heritable until the contrary is proved,	...	...	...	...	...	...

MOKURARI LEASE :

as to abatement for diluvion in regard to,	337
perpetual lease implies that tenancy is permanent, heritable and transferable and that rent is fixed in perpetuity	877
provisions of s. 74 do not prevent the holder of a permanent tenure from granting a permanent mukurari lease on any terms he pleases, even stipulating for the payment of abwab, s. 179	879
difference between "permanent tenure" and "permanent mukurari lease"	881

MOKURARI TENURE :

on failure of heirs, escheats to crown	115
---	-----

MONEY DECREE : See Decree.

MOURASHI :

meaning of,	94
--------------------	----

MORTGAGE :

transfer by usufructuary mortgagee operates as a forfeiture	188
procedure on transfer of permanent tenure by, s. 12,	115
transfer of permanent tenure by fore-closure of, s. 13	120
if an incumbrance within the meaning of s. 161	795, 796
purchaser in execution of rent-decree has power to annual a mortgage incumbrance which has been transformed into a mortgage debt,	803
as to mortgage lien,	837
created by operation of law is not an incumbrance within the meaning Ch. XIV	837

MORTGAGEE :

registered under the Land Registration Act entitled to sue, s. 60	359
effect of receipt of rent by registered mortgagee, s. 60	359
if may apply under s. 174,	852
if may deposit under s. 171,	837

MUNICIPALITY :

this act if applies to municipal areas in the muffasil	18
B. T. Act not to extend to any area constituted a municipality and specified in a notification in this behalf by the Local Govt., s. 1 (3)	13
no notifications yet published by Local Govt. exempting any municipal area from operation of this Act,	18
exclusion of this Act from any, by Local Govt. not to affect occupancy rights already accrued, s. 19 (2)	138

MUSTAGIRI :

suit for rent under a mustagiri lease	9
--	---

NAIB :—See Agent, Gumustha.

NAZAR : See Nazarana.

as to, for recognition if exempt from income tax	(127)
as to, paid with petitions	(127)
as to <i>punyaha</i> nazars	(127)

NAZARANA :—See Custom.

payment of, does not prove custom or usage as to transferability of occupancy holding	175, 176
there may a custom as to transferability of occupancy holding by payment of <i>nazar</i>	175
how to prove such custom,	175
in such case where <i>nazar</i> is not paid the landlord is entitled to eject transferee, case law as to recognition by landlord upon payment of <i>nazar</i>	176

NIJJOTE :—See Proprietor's Private Land.

right of occupancy in,	141
meaning of,	659
sale of estate : right to <i>nijjote</i> lands	663
enhancement of,	663

NISHKAR :

meaning of,	27
<i>nishkar</i> and <i>lakheraj</i> , meanings of	26, 27
as to relationship of landlord and tenant in rent-free grants	27
as to <i>Brahmottar</i>	59

NOABAD TALUQ :

implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation	...	...	...	51
it is not necessarily temporarily settled; it may be a permanently settled one	21,	51		
forms part of government revenue	...	...	...	21, 51

NOABAD :

meaning of,	...	...	...	...	50, 51, 80
-------------	-----	-----	-----	-----	------------

NON-AGRICULTURAL :—See Agriculture.

governed by the Transfer of Property Act	...	...	...	7
case law as to what are "agricultural leases" and what are "non-agricultural leases"	...	...	...	7, 8, 9, 10
where lease is for purpose of gathering fruits from trees on land it is for non-agricultural purpose	...	...	...	7
distinction between cases coming under the T. P. Act and those coming under the B. T. Act is constituted by the fact of the land being non-agricultural or agricultural	...	...	...	7
nature of the original tenant and not that of sub-tenancy to be looked at to determine as to whether T. P. Act or B. T. Act is applicable	...	...	...	9
a lease of a share of a tank including the land underneath is not for agricultural purpose	...	...	...	9
non-agricultural tenancies do not come under B. T. Act and therefore Chap. X has no application to such tenancies	...	...	...	524
as to effect of entries in record-of-rights of, lands	...	...	...	560

NON-OCCUPANCY RAIYAT :—See Raiyat.

definition of, s. 4 (3) (c)	...	...	...	...	261—269
law relating to, ss. 41—47	...	...	...	...	261—269
initial rent of, s. 42	...	...	...	...	263
entitled to bring a suit for alteration of area under s. 52	...	...	...	...	262
if can bring a suit under s. 38	...	...	...	...	262
holding of a, is heritable	...	...	...	...	146, 261
agreement that holding of, will not be heritable may be valid	...	...	...	...	262
if entitled to claim an accretion to his holding	...	...	...	...	201
not transferable except by custom or usage	...	...	...	...	262
non-occupancy raiyat holding under a trespasser, effect of, if liable to ejectment by true owner	...	...	...	...	265
as to right or, in accreted land	...	...	...	...	262
not entitled to sue for abatement	...	...	...	...	263
conditions of enhancement of rent of, s. 43	...	...	...	...	263
grounds on which, may be ejected, s. 44	...	...	...	...	264
explanation of "admitted to occupation," s. 47	...	...	...	...	263, 269
transfer by, no ground of forfeiture	...	...	...	...	265
denial of landlord's title by, no ground of forfeiture	...	...	...	...	265
holding over by, effect of,	...	...	...	...	265
of 10 years' standing and holding over on the land is not trespasser and cannot be ejected unless tenancy has been determined by a notice to quit or some other legal manner	...	...	...	...	265
right of, under s. 9 of the Specific Relief Act,	...	...	...	...	266
limitation for ejectment of, Art. 32, Sch. II, Limitation Act,	...	...	...	...	266
ejectment of, when raiyat surrenders his holding,	...	...	...	...	266
conditions of ejectment of, on ground of expiration of lease, s. 45,	...	...	...	...	267
conditions of ejectment of, on ground of refusal to agree to enhancement s. 46, sub-sec. (9) of s. 46 not exhaustive,	...	...	...	...	267
limitation applicable to a suit to recover possession by, who has been dispossessed of his holding by landlord, is either 6 years or 12 years,	...	...	...	...	493
incumbrance may be created by non-occupancy raiyat by way of sub-lease,	...	...	...	...	796
limitation to eject, on the ground of expiration of the lease is 6 months from the expiration of the term, Art. 1 (a) of Sch. III, of this Act,	...	...	...	...	940
Art. 3, of Sch. III, is applicable to a suit brought by,	...	...	...	...	451
what improvements he may make upon his holding, s. 79,	...	...	...	...	404
liable to ejectment on arrears of rent, s. 66 (1),	...	...	...	...	648
rent of, settled in proceeding under Chap. X, to remain unaltered for 5 years, s. 113,	...	...	...	...	648

NON-PAYMENT OR RENT :—See Rent.

does not determine the relation of landlord and tenant, ...	101
is no ground of forfeiture, ...	101
is no ground of ejectment of permanent tenure holder and occupancy raiyat, ss. 10, 25, ...	97, 203, 211
mere non-payment of rent does not extinguish or amount to a relinquishment of the right of occupancy, ...	211
but may amount to where land was completely submerged for a number of years, ...	211
when relationship of landlord and tenant has once been proved to exist mere non-payment, though for many years is not sufficient to shew that it has ceased ...	211
tenant in such a case to prove that he is in possession of the land, ...	211
is ground of ejectment of non-occupancy raiyat, s. 44, ...	264

NON-TRANSFERABLE OCCUPANCY HOLDING :—See Occupancy Holding.

transferee of,—if entitled to make a deposit under cl. (3) of s. 170, ...	831—834
purchaser of, if representative of a raiyat, ...	832
transferee of, may acquire right of occupancy by holding the land on the assertion of adverse title, ...	150

NOTICE :

period of, in s. 49, ...	280
notice to quit in case of annual tenancy, ...	281
suit itself under s. 49 cl. (b) not to be regarded as a, ...	281
to quit under s. 49, by post, ...	281
form of, under s. 49, ...	Appendix VIII, (105)
length of, under s. 49 ...	282
to eject under-raiyat, form of, ...	281
purchaser of raiyati interest entitled to eject under raiyat without notice, ...	283
when notice necessary for a purchaser of raiyati interest to eject under-raiyat suit to eject under-raiyat without notice, effect of, ...	285
applicant under s. 61 not required to file, to be served upon landlord ...	368
under s. 63 does not give fresh cause of action, ...	374
as to, under sec. 72, ...	429
under ss. 49 and 167 not necessary for a landlord for avoiding invalid under-raiyati lease under s. 85 after purchasing raiyati holding in execution of rent decree, ...	457
as to form of notice of surrender under s. 86, see Appendix VIII ...	(105)
s. 87 does not require personal service to be effected upon the tenant ...	482
as to, for ejectment, ...	494—496
mere demand for possession sufficient for a tenant at will, ...	494
notice not bad if it includes land not belonging to tenant, ...	494
notice not giving true area, effect of, ...	494
suit when sufficient notice, ...	495
notice to quit with notice of demand of damages for non-compliance effect of, ...	495
signing of, by Collector on behalf of Govt., ...	495
notice to quit when not sufficient, ...	496
as to what is a reasonable notice is a question of fact ...	496
question of notice not raised in the lower appellate court can be raised in second appeal ...	496
as to what is good notice ...	496
appointment of common manager without service of notice to all co-sharers, effect of, ...	511
as to object of notice under s. 155 ...	750
where there is no claim for compensation in the notice, effect of such notice ...	749
notice if sufficient though it does not require the tenant to remedy the misuse ...	750
notice to quit not necessary in suit for ejectment on ground of denial of landlord's title, ...	750
no notice necessary to eject holder of service tenure who refused to perform service, ...	750
notice to joint tenants, acknowledgment by one, effect of, ...	717
notice through Post Office, ...	717
tenant of waste land cannot be ejected without notice under s. 155 being served on him, ...	753
sale does not ipso facto cancel incumbrance, notice must be given under s. 167, ...	801
if purchaser has knowledge or intimation of incumbrance that is sufficient notice under s. 167, ...	815

NOTICE—*Contd.*

"first has notice" in s. 167, meaning of, ...	816
effect of service of, under s. 167, ...	816
contents of, under s. 167, ...	816
form of notice under s. 167 to annul incumbrance—See Appendix VIII ...	(106)
joint notice under s. 167 to several tenants if bad, ...	816
mode of service of, s. 167, ...	816
where purchaser and incumbrancer is one and same person no notice necessary to annul incumbrance under s. 167, ...	818
notice not served on the whole body of incumbrancers is bad, s. 167, ...	819
proper service of notice, s. 167, ...	819
benamidar if entitled to give, under s. 167 ...	812
mere production of ordersheet of Collector, if proves service of, ...	817
ejectment suit without giving, ...	817
proof of service of notice, s. 167 ...	819
notice of annulment upon subordinate interest without annulling higher interest, effect of, s. 167, ...	819
under s. 167 when signed by Deputy Collector does not invalidate such notice if he signed on behalf of Collector, ...	821
to be given to decree-holder if judgment-debtor applies to deposit money under cl. (3) of s. 170 ...	836
when application is made by stranger, notice to be issued to decree holder as well as to judgment-debtor, ...	836
auction purchaser if entitled to notice before an order is made setting aside sale, conflicting rulings, ...	854
power of Local Govt. to make rules regarding service of, ...	943
forms of notices under ss. 49, 86 and 167—See Appendix VII ...	(105)
Bengal Govt. Rules as to service of, Appendix I, Chap. V. ...	(6)—(9)
of the transfer and registration of permanent tenure to be served on the landlord, ...	113
forms of notice under ss. 12 and 13,—see Appendix I ...	(24)—(42)
service of notice and transmission of landlord's fee: see Appendix, ...	(11)—(13)
of succession to permanent tenure, s. 15, ...	123
misstatement as to area in, effect of, ...	210

NOTIFICATION:

important notifications of the Bengal Government, see Appendix II, ...	(40)—(67)
extending the Act—See Appendix III ...	(67)—(73)
as to continuance of existing occupancy rights, s. 19 ...	138
as to court fees under s. 106, ...	608
vesting Sub-divisional officers with powers of a Collector under ss. 12, 13, and 15 and 69—71 of this Act, ...	66, (57)
authorising Deputy Collectors to discharge functions of Revenue officers, see Appendix ...	(57)
vesting Deputy Collector of Howrah and senior Deputy Collector of Gaya with powers of Collector under ss. 69—71, ...	66
fixing time of commencement of this Act, ...	13, 17
extending this Act to Jalpaiguri, ...	16
constituting the Province of Bihar and Orissa, ...	14
no notification yet exempting any municipal area from the operation of this Act ...	18
as to publication of proclamation for sale under 163 (3) ...	805

OBJECTION:

distinction between objection and disputes, s. 106 ...	609
effect of order disallowing objection; 103A ...	550
irregular disposal of, has no effect of <i>resjudicata</i> , 103A ...	550
as to validity of gift of non-transferable holding by landlord or his representative ...	190

OCCUPANCY HOLDING:—See Occupancy Raiyat, Occupancy right, Holding,

Non-transferable Occupancy holding and Raiyat. ...	
sale of, in execution of money decree: question as to consent of landlord and tenant ...	183—187
case of <i>Chandra Benode v. Sheikh Ala Bux</i> (Special Bench) ...	172, 185
previous to Special Bench, conflict of rulings as to whether tenant's interest can pass by involuntary sale when landlord alone consents but tenant objects ...	186
ransferee of, if entitled to make deposit under cl. (3) of s. 170, and set aside sale under s. 310A, C. P. C. ...	837, 83

OCCUPANCY HOLDING—*Contd.*

as to bequest of,	868
usage or custom as to transferability of, summary of case law	174
growing usage of transferability of, is of no effect against the landlord,	175
transferee of non-transferable occupancy holding may acquire right of occupancy by holding on the assertion of adverse title,	150
liability to sale of, for arrears of rent, s. 65,	375
liability for rent after transfer of, s. 73,	430
as to surrender of, s. 86,	467
as to abandonment of, 87,	475
sale of, with power to avoid all incumbrances and effect thereof, s. 166,	808
heirs of, entitled to recognition,	217
transfer of a portion of:—right of purchaser,	431
mere non-payment of rent does not extinguish or amount to relinquishment of the right of occupancy,	478
sale of, does not <i>ipso facto</i> cancel incumbrance,	810
s. 22 applies transferable occupancy holdings and not to non-transferable occupancy holdings,	159

OCCUPANCY RAIYAT:—See Occupancy right, Occupancy holding, Non-transferable Occupancy holding, Holding and Raiyat.

definition of, s. 4 (3) (b)	71
raiayat at fixed rate if can be an,	73
distinction between, and settled-raiyat	152
as to right of, to cut trees,	163—167
where question of transferability can or cannot be raised by, or does not arise	190—193
has no right to transfer or bequeath his holding except by local usage or custom,	203
heir of, bound by bequest of the holding made by the latter in favour of a stranger,	203
as to his right to cut trees, s. 23	162
as to the effect of mortgage, by,	187
effect of sale by, with consent of landlord,	184
where question of transferability can be raised by,	190
objection as to the validity of the gift of non-transferable occupancy holding can only be taken by landlord or his representative in interest	188
execution of usufructuary mortgage by, effect of	188
mortgage of occupancy holding and sale in execution of mortgage decree	187
conflict of rulings as to whether consent of, necessary to pass title in case of non-transferable holding being sold in execution of money decree	183—187
question of transferability if can be raised by trespasser,	191
as to right to accretion of	201
may erect a building,	203
as to right to a share in the compensation under the Land Acquisition Act,	204
meaning of "person interested" in s. 3 cl. (b),	204
enhancement of rent of, ss. 27-37,	218—245
enhancement, by contract, of rent of, s. 29,	218
effect of payment of rent for 3 years,	219
money rent paid by, not enforceable except under this Act, s. 28,	218
enhancement of rent of, by suit, s. 30,	228
rules as to enhancement of, on ground of prevailing rate, s. 31	236
what may be taken in certain districts to be the prevailing rate as ground of enhancement of rent of, s. 31A,	239
limit of enhancement of rent of, on the ground of prevailing rate, s. 31B,	241
prevailing rate, meaning of,	241
status of,	209
effect of one consolidated jama for agricultural and non-agricultural lands	208
obligation of, to pay fair and equitable rent, s. 24	205
protection from eviction of, except on special grounds, s. 25	208
denial of landlords title on ground of forfeiture	107, 213
non-payment of rent no ground for ejectment of an,	211
devolution of occupancy right, on death of, s. 26,	213
heir of, bound by bequest made by raiyat,	214
effect of suit against one or some of several heirs of,	215, 216
as to liability for rent when heirs of, not in possession,	217
heirs of, entitled to recognition	217
rules as to enhancement of rent of, on ground of rise in prices, s. 32,	241

OCCUPANCY RAIYAT—*Contd.*

rules as to enhancement of rent of, on grounds of landlord's improvement, s. 33,	242
rules as to enhancement of rent of on ground of increase in productive powers due to fluvial action, s. 34,	243
enhancement of rent of, by suit, to be fair and equitable, s. 35,	243
power of court to order progressive enhancement of rent of, s. 36,	243
limitation of right to bring successive enhancement suits for rent of, s. 37,	244
grounds on which a suit for reduction for rent may be instituted, s. 38,	245
s. 40 if applies to a raiyat paying a fixed quantity of paddy	252
raiayat holding over acquires right of occupancy,	315
holding of, liable to be sold for arrears of rent, s. 65,	375
it is not necessary for, to record name in landlord's sheristha for perfecting his title	431
entitled to use holding in any manner but not to injure to the landlord's detriment,	449
as to the right of, to erect pucca building, s. 76,	448
as to the right of, to dig tank, s. 76,	450
has right to make improvements on his holding s. 77,	451
restrictions on subletting by, s. 85	455
as to landlord's right to khas possession on the death of, without heir	467
right of transferee of portion of occupancy holding,	467
suit by transferee of a portion of a non-transferable holding maintainable against landlords,	467
a suit to recover possession of land claimed by plaintiff, as an, governed by Sch. III, Art 3 of the Act,	493
raiayat at fixed rate, not an,	131, 139
agreement by, before passing of this Act,	140, 146, 865
as to right of landlord to eject occupancy raiyat when he takes sublease under the transferee:	...

OCCUPANCY RIGHT :—See Occupancy raiyat, Occupancy holding, Non-transferable Occupancy holding and Holding.

right of occupancy if can be acquired in	
(i) dwelling house, bastoo land	136, 148
(ii) <i>Niz jote</i>	141
(iii) <i>Khamar</i> ,	141, 661
(iv) <i>Khamat</i> ,	664
(v) land for grazing horses	141
(vi) tank,	141
(vii) fishery or julkur,	141
(viii) service tenure,	141, 901
(xi) indigo concern,	146
(x) chowkidari chakran land,	147, 901
(xi) urban areas	151
(xii) ghatwali lands,	153, 901
(xiii) <i>khudkast</i> land,	874
(xiv) <i>utbandi</i> lands, s. 180	882
(xv) <i>diara</i> land s. 180	882
(xvi) <i>chur</i> , s. 180,	882
(xvii) accreted land,	...
(xviii) undivided share of a holding,	55, 138
(xix) by holding over after expiry of lease,	152
(xx) by purchase,	152
(xxi) by a fixed raiyat,	132
(xxii) by local usage,	147
(xxiii) by <i>ijardar</i> ,	159
(xxiv) by under-raiyat,	151, 923
(xxv) by <i>zuripeshgidar</i> ,	78
(xxvi) holding under a trespasser,	74
(xxvii) by co-sharer purchasing an occupancy holding,	157
(xxviii) by <i>ticqadar</i>	149, 159
(xxix) by a firm of capitalists	146
(xxxi) in <i>kotowali jagir</i> land	901
(xxxi) in <i>chakran</i> land	974
(xxxii) in <i>zeraif</i> land	138
in an undivided share of a holding	151
previously existing, continues under the Act, s. 19	138
transferable by custom,	177

OCCUPANCY RIGHT—Contd.

PAGE.

occupancy or non-occupancy holding if not held by <i>khudkast</i> raiyat is an incumbrance and not protected from ejectment by the terms of cl. (3) of s. 11 of Rsg. VII of 1819 but may be annulled at a sale under the said Regulation, ...	203
raiya at fixed rate if can be an occupancy raiyat ...	132
a right of occupancy acquired under the old Act is not forfeited by its repeal an agreement before the passing of the present Act that a tenant would not acquire a right of occupancy during his lifetime is valid and does not come within the prohibitory term of s. 178 sub-sec. (1) or sub-sec. 3 (a) ...	140
under-raiyat cannot acquire occupancy except by custom or usage ...	67
"a right of occupancy," meaning of, in Revenue Sale Law, ...	142
effect of acquisition of, by landlord, s. 22, ...	153
this Act cannot revive rights which had already been extinguished, ...	140
distinction between, and settled raiyat, ...	152
when, several, ...	...
as to acquisition of occupancy right in a zuripeshgi lease, ...	146
a right of occupancy cannot be acquired by local usage, ...	151
a transferee of non-transferable holding may acquire right of occupancy by holding on the assertion of adverse title, ...	150
a right of occupancy may be acquired in an undivided share of land, incidents of, ss. 23—26, ...	151 162—218
(i) heritable, s. 26, ...	213
(ii) transferable by custom, ...	163, 167
(iii) it may be surrendered, s. 87, ...	163
(iv) improvements may be made on the holding by erecting dwelling house, digging a well &c. ss. 76, 77, ...	163
(v) occupancy raiyat can grant subleases under certain restrictions, s. 85, ...	163
(iv) occupancy, right cannot be annulled by a purchaser of a superior tenure at a sale in execution of a decree for arrears of rent s. 160, s. 22 applies only to occupancy holdings, which are transferable, ...	163 159
meaning of "otherwise" in s. 22, ...	161
a fixed raiyat cannot have a right of occupancy, ...	...
effect of acquisition of, by proprietor or permanent tenure-holder and joint proprietor and joint tenure holder, s. 22 (1), (2), ...	153, 154
effect of acquisition of, by iyardar or farmer, s. 22 (3) (4), ...	155
as to transferability of occupancy holding, summary of the law, ...	167
as to custom of transferability on payment of nazar, ...	176
as to custom of transferability by sale or mortgage to landlord, ...	177
as to abandonment of occupancy holding by sale and sublease ...	...
as to surrender of occupancy holding after transfer, ...	182
occupancy holding not transferable by compulsory sale except by local custom or usage, ...	182
as to effect of mortgage of occupancy holding, ...	187, 188
effect of sale of occupancy holding with consent of landlord, ...	184
as to right of the landlord to raise question of transferability, ...	190
devolution of occupancy right on death of, s. 26, ...	213
mere non-payment of rent does not extinguish right of occupancy, purchase of, by co-sharer landlord, effect of ...	478
but non-payment of rent coupled with the fact of the raiyat not cultivating may extinguish, ...	478

OCCUPATION :

admitted to, explanation of, ...	263, 269.
as to tenancy by ...	(115)

ONUS OF PROOF :

in a suit for possession by a landlord on the ground that the land is <i>mal</i> and not <i>lakheraj</i> of the deftd. the burden of proof lies on the landlord ...	101
where defendant claims a permanent tenure the burden of proof lies on him ...	109
onus of proving that <i>kabuliyat</i> contravenes s. 29 (b), is upon tenant, ...	225
as to rights of settled raiyat, s. 20 (7), ...	144
upon tenant to prove uniformity of rent, ...	304
as to right of cutting down trees, ...	164, 165, 166
of transferability of occupancy rights, ...	174—177
onus on tenant to prove tender of rent, ...	350
onus in ejectment suit, s. 49 ...	287

	PAGE.
ONUS OF PROOF—Contd.	
as to onus in ejectment suit,	496—501
where plaintiff's title is proved,	497, 500
where plaintiff has general title to the property,	497
where plaintiffs are admittedly proprietors,	497
defendant to prove allegation of mokurari,	498
defendant to prove permanent occupancy,	498
defendant to prove intermediate tenure,	498
landlord to prove tenant's encroachment,	499
plaintiff to prove title where defendant is in possession for a long time, ...	499
tenure holder or raiyat, onus upon defendant,	499
in suit for resumption of lakhiraj lands,	500
in suit for resumption of land as part of his <i>mal</i> ,	500
in a suit for recovery of compensation under sec. 140 lies upon plaintiff to prove annual rent payable by him,	676
in a suit by tenant for damages for wrongful distraint landlord to prove fact of tenancy and amount of jama, s. 140,	676
but if tenant pleads payment onus on tenant to prove his allegation, s. 140, ...	676
tenant for obtaining decree for damages on ground of illegal distraint must prove what loss he has actually sustained, s. 140,	676
in suits to annul incumbrance under s. 167	803
as to, in ejectment suit against tenant of homestead land	915
ORCHARD LAND :	
provisions of s. 178, imposing restrictions on contract do not affect contracts for the temporary cultivation of orchard land with agricultural crops, s. 178 proviso (iii),	866
ORISSA :	
Tenancy Act does not extend by its own operation, but may be extended to, s. 1 (3),	13
contract may be made in, between landlord and tenant modifying provision of s. 67 with regard to payment of arrears of rent,	873
s. 6 of Act X, no longer in force in,	19
portions of B. T. Act extended to,	19
—see Appendix,	
on extension of B. T. Act to enactments in force there inconsistent therewith stand repealed, s. 2 (2),	18
the Orissa Tenancy Act passed for, by the Legislative Council of Bihar and Orissa,	19
tenant of a <i>nijjote</i> land in occupation for more than 12 years after introduction of ss. 20 and 21 of B. T. Act to, acquired the status of settled raiyat, 153, ...	657
s. 116 extended to the Districts of Cuttack, Puri and Balasore,	637
OUTGOING LANDLORD :	
as to execution of rent decree by,	3
a suit by <i>ticcadar</i> after his expiration of lease for rent which fell due before can be brought under the B. T. Act,	774
cl. (h) of s. 148 of this Act does not apply to a decree by,	704
cannot bring defaulting tenure to sale in execution of his decree,	775
cases relating to,	775
PARTITION :	
Bengal and East Bengal :—Province of Bihar and Orissa,	14, 15
s. 12 does not apply to a case of transfer by partition,	120
between joint landlords, effect of,	938
effect of partition suit for enhancement	938
nothing in this Act affects any enactment relating to the, of revenue paying estates s. 195, (d)	953
right of pre-emption reserved in, deed is valid as between co-owners	112
as to effect of permanent lease before partition by one co-sharer, if binding on other co-sharer after,	... (128).
PARTY :	
in a suit for <i>khas</i> possession	503
tenant not a necessary party in a suit for <i>khas</i> possession against a transferee ...	200
rent suit maintainable when all the heirs are not made parties	396—400

PARTY—Contd.

addition of parties in a rent suit	685, (122)
where minor defendants were sued as majors	396
in possession	396
in s. 105	594, 595
as to defect of,—appeal	595
addition of, by Court	991
as to, in suit for apportionment of rent	711

PASTURAGE :

provisions of this Act for recovery of arrears of rent shall apply to suits for recovery of anything due in respect of, s. 193,	946
right of occupancy can be acquired in land for grazing horses,	141

PATTA :—See Lease.

if necessary to create a permanent lease	29
---	----

PATNI :—See Putni.

PATWARI (Rent Collector) :—See Consent.

if has power to consent to transfer of occupancy holding	485
---	-----

PAYMENT :

into Court of rent admitted to be due to third persons s. 149	719
s. 149 of this Act does not contemplate a suit for establishment of the relationship of landlord and tenant,	721
into Court of money admitted to be due to landlord, s. 150	722
into Court of portion of money, s. 151	723
court to grant receipt in case of payment into Court, s. 152	724

PAYMENT OF RENT :

non-payment of rent does not determine tenancy	211
subject to agreement or usage to be made in 4 equal instalments, s. 53	344
as to, in monthly instalment,	345
time and place for, s. 54	347
appropriation of s. 55	351
as to appropriation of rent to interest	352
tenant entitled to receipt on, s. 56	353
payment of deposit of rent how to be made, s. 64	374
if can be made at the end of the year in case of produce rent,	347
as to, to co-sharer,	348, 351
as to, in advance	349, 350
as to, pending a suit for enhancement,	351
as to, tender of,	350
as to, if the landlord has no village office,	348
as to, by postal money order,	350
omission of tenant to declare year and instalment,	363

PENAL CODE :

ss. 193, 199	516
as to sanction for prosecution by District Judge,	516

PENALTY :

on landlord for withholding receipt and failing to keep counter-part, s. 58	356
for illegal interference with produce, s. 186,	929
for exaction by landlord of sum in excess of rent payable s. 75... ..	445
—see ss. 186 (1) (a) and (1) (b)	929

PERMANENTLY :

meaning of, s. 38,	246
---------------------------	-----

PERMANENT LEASE :

permanent lease including "all rights of various kinds" with the exception only of homestead land would include the minerals	52
as to, by raiyat, effect of,	464
who may question as to the invalidity of such lease,	464
but such lease is binding between the parties,	464

PERMANENT LEASE—Contd.

as to, by under-raiyat s. 85 not applicable and cannot be applied even by analogy	...	...	...	...	...	456
as to, by fixed raiyat,	...	...	...	...	...	132, 456
if registration necessary	...	...	...	...	...	50

PERMANENT SETTLEMENT :—See Presumption.

Reg. VII of 1793	...	...	...	...	...	87
meaning of, s. 3 (12),	...	...	...	...	...	59
when tenure has been held since time of, on what grounds its rent may be enhanced, s. 6	...	...	...	...	...	86
presumption under s. 50	...	...	...	...	...	296
date of, in Jessore	...	...	...	...	...	304
presumption under s. 50 arises even when the estate within which the tenure in question is situated was not permanently settled in the year 1793	...	...	...	...	...	304

PERMANENTLY SETTLED AREA :

the <i>Sunderbans</i> if can be,	...	...	...	...	...	881
----------------------------------	-----	-----	-----	-----	-----	-----

PERMANENT TENANT : See Permanent Tenure.

inference as to,	...	...	...	...	...	52—56
facts necessary to establish	...	...	...	...	...	54
permanency of tenancy	...	...	...	...	...	55

PERMANENT TENURE :—See Tenure.

definition of, s. 3 (8)	...	...	...	...	...	50
how a permanent tenure is created : if registered document necessary	...	...	...	...	...	50
meanings of <i>mokurari</i> , <i>istemrari</i>	...	...	...	...	...	51
transfer and transmission of, s. 11	...	...	...	...	...	109
heritability of,	...	...	...	...	...	109
incidents of,	...	...	...	...	...	108
transfer of, when complete	...	...	...	...	...	116, 117, 118
as to transfer of Putni tenures	...	...	...	...	...	117
as to service of notice and transmission of landlord's fee—see Appendix 1,	...	...	...	...	...	(7)
as to transfer of a share	...	...	...	...	...	111, 118
succession to, s. 15	...	...	...	...	...	123
as to transfer of and succession to share	...	...	...	...	...	124, 129
rulings as to onus of proof of transferability of,	...	...	...	...	...	109
as to pre-emption clause in a lease of,	...	...	...	...	...	112
as to surrender of,	...	...	...	...	...	113
as to abandonment of	...	...	...	...	...	114
hereditary <i>mokurari</i> tenure reverts to the Crown by escheat on the death of the grantee without heirs,	...	...	...	...	...	115
as to right of reversion in,	...	...	...	...	...	115
if origin of lease known acceptance of rent at the same rate for a long period does not shew that the lease was of a permanent nature	...	...	...	...	...	52
tenant under a lease of permanent character cannot make excavations as to cause substantial damage to the property demised	...	...	...	...	...	108
sub sec. (3) cl. (f) of s. 178 does not apply to permanent <i>mokurari</i> lease	...	...	...	...	...	865
difference between "permanent tenure" and "permanent <i>mokurari</i> lease"	...	...	...	...	...	881
contract by permanent tenure-holder not to excavate tank : breach of the stipulation by raiyat without knowledge of restrictive covenant : permanent tenure holder liable to damages to his landlord	...	...	...	...	...	953
s. 178 sub sec. (1) (d) controlled by s. 194	...	...	...	...	...	953

PERSONAL COVENANT :—See Covenant.

as to,	...	...	...	...	...	113
--------	-----	-----	-----	-----	-----	-----

PHUL PHAL :

meaning of,	...	...	...	...	...	167
if includes the natural products of the trees	...	...	...	...	...	167

PHULKUR :

phulkur rent is within meaning of this Act and s. 153 applicable to a suit for such rent,	...	...	...	...	...	725
---	-----	-----	-----	-----	-----	-----

	PAGE.
PLAINT :	
what to contain in suits for recovery of rent, s. 148 (b) ...	697
essentials of a, under s. 148 A ...	717
dated of suit should be taken to be that on which plaint is originally filed and not the date on which it is filed as an amended plaint, s. 147 ...	691
what is a sufficient description for identification for boundaries in a, ...	702
dispute under s. 106 can only be decided by presentation of a, on stamped paper, ...	611
as to signature of, by Collector and acting Govt. Pleader on behalf of Govt., effect of,— ...	65
PLANTATION :	
betel leaf <i>baroj</i> may be, within meaning of s. 160, ...	791
assemblage of plants, if comes within s. 160 (c), ...	791
to be deemed a protected interest in case of sale of tenure or holding for arrears, s. 160 (c), ...	786
PLEADING :	
a party may plead tenancy and limitation in the alternative ...	43
POSSESSION :—See Ejectment.	
* may be obtained by application to the executing Court and a regular suit is not necessary ...	838
mortgagee in, when liable to pay rent in a suit by landlord—see App. XI.	
POSSESSORY SUIT :	
by <i>ticca</i> tenant on dispossession by landlord, ...	266
POUNDAGE FEE :	
amount to be deposited under s. 174 does not include poundage fee, ...	856
sale to be set aside though poundage fee not paid s. 174, ...	856
PRAJA :	
means a tenant ...	79
PRAJAGIRI SETTLEMENT :	
* when may be a tenure ...	83
PRE-EMPTION :	
stipulation as to pre-emption in a conveyance, ...	112
in a lease, ...	(116)
right of, reserved in conveyance, s. 178, ...	869
right of, reserved in a partition deed is valid ...	113
PRESCRIBED :	
meaning of, in this Act, s. 3 (15), ...	66
PRESCRIPTION :—See Easement.	
tenant cannot an easement by prescription in other lands of his lessor, ...	43
PRESUMPTION :—See Fixity of Rent.	
elements necessary to raise, of permanent tenancy ...	54
as to tenant being tenure holder where area of his tenancy exceeds 100 <i>bighas</i> , s. 5 (5), ...	75
of sec. 20 (7) does not apply to <i>diara</i> or <i>chur</i> land, ...	146
under s. 20 does not arise in a suit for rent, ...	147
as to fixity of rent, s. 50, ...	296
under s. 50, whether a right or rule of evidence, ...	297
where applies and where not under s. 50. ...	297—303
even in cases not governed by s. 50, ...	298
as to fixity of rent under s. 50, if applies to tenancies of which rent is payable in kind, ...	
consolidation of several jummas into one tenure does not deprive a tenant of the benefit of the presumption under s. 50, ...	306
also applies in the case of a division of a holding, s. 50, ...	306
in case of subdivision of tenancy, intention of parties, s. 50 ...	306
s. 50 merely gives rise to a, but does not confer any right upon the tenant ...	307

PRESUMPTION—*Contd.*

when the area held by a tenant is less than 100 bighas there is no presumption that the tenant is a raiyat, ...	80
in case of splitting up of tenancy, s. 50, ...	306
arises by proof of 20 years uniform payment of rent, s. 50, ...	300
does not operate to convert occupancy raiyat into fixed raiyat, s. 50, ...	307
how to be rebutted, s. 50, ...	309
as to rebuttal of, under s. 50 ...	309—312
under s. 50 (2) applies even if there has been an alteration of the area ...	...
presumption as to amount of rent and conditions of holding, s. 51, ...	313
arising under s. 51 of this Act has reference to the conduct of the holding over, ...	314
ruling as to, in respect of holding over, ...	314—317
as to encroachment, ...	332, 333
arising under sub sec. (4) of sec. 56, ...	354
payments of each year by tenant must be presumed for the current year, s. 56, ...	355
as to notice of surrender having been given, s. 86 (3), ...	467
as to correctness of may or other record of boundaries and measurements of land, s. 91 (2), ...	505
as to correctness of standard of measurement declared by Govt. to be in use in any local area, s. 92 (3), ...	506
as to correctness of record of rights, s. 103 B, ...	551
as to rent settled under s. 104 J, ...	576
as to fixity of rent not to apply when record of rights has been prepared, s. 115 ...	652, 654
after final publication of record of rights tenant is debarred by the provisions of s. 115 from claiming the, under s. 50 ...	654
meaning of "thereafter" in s. 115 ...	654
as to land not being proprietor's private land until the contrary is shewn, s. 120 (2), (3), ...	665, 665

PREVAILING RATE :

meaning of, ...	231, 232
is not average rate, ...	232
how to determine, ...	232
in determining, rent settled in contravention of s. 29 cannot be taken into consideration, ...	*233
enhancement of occupancy raiyat's rent on ground that rate of rent paid by him is below, s. 30 (a) ...	229
fair rate may be allowed as, ...	234
rules as to enhancement of occupancy raiyat on ground of, s. 31 ...	236
lowest rate where can be taken as, ...	239
what may be taken in certain districts to be, s. 31 A ...	239
limit to enhancement of, s. 31 B ...	241

PRICE LISTS :—See Staple food crops.

of staple food crops, rules regarding preparation of, s. 39, ...	247
must be referred to in a suit for enhancement on the ground of rise in prices of staple food crops, ...	248
rules framed by Govt. under this Act regarding, ...	...
Appendix I, Chapter II, ...	(4)—(5)
as to price lists of staple food crops published in the Gazette from 1887—1923—see Appendix XII ...	(130)
I. references to the pages of the Calcutta Gazette, E. B. and Assam Gazette and Bihar and Orissa Gazette in which the price lists have been published, Appendix XII ...	...
II. price lists of ...	...
(i) West Bengal Districts	...
(ii) Eastern Bengal Districts	...
(iii) Bihar Districts	...
(iv) Orissa Districts	...
—see Appendix XII ...	(131)
III. illustrations shewing how sums are worked out to find out the increased rent on the ground of rise of prices of staple food crops, ...	...

PRICES :

enhancement of occupancy raiyat's rent by suit on the ground of rise of, of staple food crops, s. 30 (b) ...	229
--	-----

PRICES—*Contd.*

rules as to enhancement of occupancy raiyat's rent on ground of rise in, s. 32	241
reduction of rent may be claimed by occupancy raiyat on the ground of a fall in, s. 38	245

PRINCIPAL AND AGENT :

as to cases relating to,	(131)
--------------------------	-------

PROCEDURE :—see Judicial Procedure.

Local Govt. may make rules for, of Revenue officers in proceedings under this Act, s. 189 (1),	943
--	-----

PROCEEDINGS :

stay of, in Civil Court during preparation of record of rights, s. III,	638
---	-----

PRIVATE LAND :—See Proprietor's Private Lands and Land.

Chap. XI of this Act does not apply to a tenure holder's private lands,	659
<i>Khamar, Nij, Nijjote and Sir</i> , meanings of,	658, 659
procedure for recording, s. 119,	665

PROCLAMATION :

of sale of tenure or holdings for arrears, what to contain and how to be published, s. 163 (2) and (3),	805
---	-----

PRODUCE RENT :—See Crop.

raiyyat holding at, if may be a fixed raiyyat,	132
s. 50 if applies to tenancies of which rent is payable in kind,	248, 249
procedure for commutation for, s. 40,	252
system of,	251
transfer of commutation case, effect of	251
decision as to the nature of rent (i.e., as to whether rent is payable in money or kind) is not <i>resjudicata</i> in a subsequent suit,	251
commutation of rent made by Court of Wards if binding on minor and his successor,	252
order by Revenue Court under s. 40 if final and whether suit lies in Civil Court against that order,	257
* essentials necessary under s. 40	258
as to interpretation of leases wherein rent in kind is stipulated to be paid and a price is also mentioned in case rent is not paid in kind: canbict of decisions	253—257
change of money rent into, does not shew a variation in the rate of rent	304
after commutation consent of both landlord and tenant necessary for reversion to original status,	257
as to effect of occasional deviation,	258
as to right of landlord to sue for rent in kind although money rent was paid before,	253—257
rulings regarding,	419
order for appraising and dividing produce, s. 69,	421
<i>danabandi</i> system,	423
<i>bonafide</i> dispute as to whether rent is <i>nakdi</i> or <i>bhaoli</i> ousts the jurisdiction of Collector under ss. 69 and 70,	423
suit for, are rent suits	423
suit for, when lies in Small Cause Court and when not	423
as to whether <i>burgadar</i> is tenant,	5
procedure when officer appointed to appraise or divide produce, s. 70,	424
dispute as to appraisement or division of produce may be referred by Collector to Civil Court, s. 70 cl. (5),	424
as to effect of conversion of cash rent into,	258
rent commuted to remain in force unaltered for 15 years, s. 40A,	260
rent includes, sec. 3 cl. (5),	41
payable by <i>burgadar</i> is rent,	41
application by co-sharer landlord under s. 69 not maintainable	423
as to <i>resjudicata</i> about,	424
rights and liabilities as to possession of crop, sec. 71	427
suit against depositary of produce rent if maintainable,	422
suit for money value of, will lie,	423

PRODUCE RENT—*Contd.*

refusal of landlord to accept rent in kind and dismissal of suit for money value, effect of, ...	424
claim for, in excess of the rent stated in the record of rights, ...	695
penalty for illegal interference with produce in case of, s. 186 (1) (c), ...	929

PRODUCTIVE POWERS :

occupancy raiyat's rent may be increased on the ground of increase in, of land, due to landlord's improvement or due to fluvial action, s. 30 (c) (d) 229	229
rules as to enhancement on ground of increase in, of land due to above grounds, ss. 33, 34, ...	242, 243.

PROOF :—See Onus of Proof.

at to, of tenancy right without proving lease ...	(120)
---	-------

PROPRIETOR :

definition of, s. 3 (2) ...	21
as to merger of occupancy right on acquisition by, s. 22, ...	153
a jotedar not necessarily a "proprietor or a permanent tenure holder within the meaning of s. 22," ...	159
proprietors in separate possession of holdings as purchasers, effect of, ...	161
effect of receipt by registered, s. 60, ...	359
right of registered, to distrain, ...	361
rent suit by, whose name is not registered, effect of, ...	362
suit for rent by assignee from unregistered, ...	366
unregistered proprietor if may sue upon written contract, ...	363
person acquiring title by adverse possession if competent to get his name registered as, ...	363
plea of <i>benami</i> if can be raised in a suit by a person registered as, ...	360
putnidar or <i>ijaradar</i> not a, of an interest in estate within meaning of Land Registration Act, ...	362
applicability of sec. 60 to a suit by legal representative of, ...	365
effect of suit by proprietors of whom some are registered, s. 60, ...	366
when receipt by mortgagor proprietor does not operate as a valid discharge ...	361
suit by unregistered, maintainable and is sufficient if the registration is made before decree ...	362
as to manner of transfer of proprietorship ...	366
as to record of private lands of, s. 116, ...	657
tenant not entitled to violate conditions binding on, s. 194 ...	953

PROPRIETOR'S PRIVATE LAND :

provisions of Chap. V, and Chap. VI, if applicable to tenancies in, s. 116, ...	657
provisions of Chap. V, and Chap. VI, not applicable to, when land is held under a lease for a term of years or from year to year, ...	657
as to occupancy right in, ...	657
saving as to <i>khamar</i> land, ...	657
Chap. XI only applies to, and has no application to a tenure holder's private lands, ...	659
meaning of the words : <i>Khamar</i> , <i>Nij</i> , <i>Nijjote</i> , <i>Sir</i> , ...	658, 659
cl. (1) (a) of Sch. III not applicable to the ejectment of a raiyat of <i>khamar</i> land : tenant of <i>khamar</i> land not a non-occupancy raiyat ...	658
<i>Khudkasht</i> does not necessarily mean <i>Zerai</i> or private lands of the proprietor ...	659
long possession in respect of <i>khamar</i> lands does not give a right of occupancy, ...	661
onus in a suit for recovery of possession of <i>zerait</i> land, ...	661
the right to hold <i>nijjote</i> lands passes with sale to the auction purchaser ...	663
as to enhancement of rent of, ...	663
tenant may acquire the status of settled raiyat in, ...	663
tenant of <i>khamat</i> land does not acquire a right of occupancy by holding it over after expiry of lease, ...	664
as to assessment of mesne profits when proprietor is dispossessed of his <i>zerait</i> lands, ...	664
power of Govt. to order survey and record of, s. 117, ...	664
power of Revenue officer to record private land on application of proprietor or tenant, s. 118 ...	665
procedure for recording, s. 119, ...	665
rules for determination of, s. 120, ...	665
indigo <i>zerait</i> lands if come within the definition of, ...	667
Govt. rules regarding record of, Appendix I, Chap. IV, ...	(10)

PROTECTED INTEREST :

what shall be deemed to be, at sale of tenure or holding, s. 160 ...	786
as to cases of, under the Revenue Sale Law, ...	787
as to burden of proof in cases under s. 160 (a), ...	787
lease of tank without any portion of surrounding land is not, under cl. (4) of sec. 37 of Act I of 1859, ...	790
dwelling house consisting of huts not protected under s. 37 of Act XI of 1850	790
lease for cultivation of paddy and clearing away jungle if can be regarded as plantation, ...	790
a betel leaf <i>barof</i> may be plantation within meaning of s. 160, ...	791
interest of a raiyat at fixed rate if a, ...	791
interest of an under-raiyat with right of occupancy by custom, if ...	792
rulings as to miscellaneous cases under s. 160, ...	793, 794
zemindar by planting gardens of mango and other trees if can become his own raiyat so as to get, ...	790
mortgage if, ...	...
right or <i>seputni</i> if, ...	759
non-occupancy raiyat if may, ...	758
Sch. II, Art. 35 (f), ...	651

PUBLIC DEMANDS RECOVERY ACT :

Act III of 1913 (B. C.) ...	763—766
Act IV of 1914 (Bihar and Orissa), ...	763—766
summary procedure for the recovery of rents under ...	763—766
summary procedure for the recovery of rents under ...	763—766
object of s. 158A ...	765
estates in Bengal allowed to recover rent under the summary procedure	766
estates in Bihar—App. XIII.	...

PUBLIC OFFICER :

Common Manager, if ...	518
------------------------	-----

PUBLIC SERVANT :

ameen appointed under s. 69 not a public servant ...	422
--	-----

PUNYAHA DAY :

payment of rent on, effect of ...	352
-----------------------------------	-----

PURCHASER :

general powers of, at a sale under the Act as to avoidance of incumbrances, s. 159 ...	770
when purchaser liable for rent for a period anterior to date of sale ...	778
test whether purchaser acquires rights under s. 159, ...	771
includes transferee, s. 159 ...	778, 810
purchaser from a purchaser can also annul incumbrances ...	785, 810
onus upon purchaser to prove that interest sought to be annulled is incumbrance, in execution of rent decree has power to annul mortgage incumbrance which has been transformed into mortgage debt ...	802
purchaser with knowledge of incumbrance may annul it ...	812
where purchaser and incumbrancer is one and same person no notice of annulment necessary under s. 167 ...	878
purchaser contemplated under s. 167 is a purchaser independent of the incumbrancer, s. 167 ...	878
whether "judgment debtor" in cl. (3) of s. 170 includes a purchaser ...	834

PUTNI :

intermediate interest if can be created between Zemindari and a Putni	4, 28
putni lease if a lease for agricultural purposes and governed by this Act	11, 954
as to partial transfer of ...	119
this Act not applicable to transfer of putni tenure	119
ss. 16, 17, of this Act apply to a putni tenure ...	119, 124
gift of ...	126
putni tenure if governed by B. T. Act	11, 954
transfer of ...	955
if transfer of Zemindar's interest ...	955
<i>darputni</i> is governed by the B. T. Act	119

	PAGE.
PUTNIDAR :—See Putni.	
revenue payable by the Zemindar and agreed to be paid by the, is rent, ...	46
as to right of, to minerals ...	57, 58
if may deposit rent under s. 61 ...	369, 955
grant of, containing the words <i>durbast zemindari hakuk</i> , includes the mining rights ...	56, 57
s. 195 does not prevent s. 52 from applying to the case of a <i>Putnidar</i> ...	956
if liable to pay additional rent to Zemindar for chaukidari chakran land— See (<i>Addenda</i>).	
if competent to use or lease out land for manufacture of bricks ...	389
as to rent suit by intermediate holder between Zemindar and, ...	389
PUTNI REGULATION : VIII of 1819.	
intermedite interest created between a zemindari and putni, if can be created according to the spirit of ...	77
suit for recovery of money illegally recovered under ...	447
incumbrance under ...	203
rules of succession under ...	119
rules of transfer in, not affected by B. T. Act ...	119
resident and hereditary cultivator although he holds land under a <i>miraspatia</i> cannot be ejected by a purchaser of a <i>Putni</i> tenure sold in execution of sale under ...	790
customary right to cut and appropriate trees if an incumbrance within the meaning of s. 11 of ...	794
<i>seputni</i> if protected interest under ...	794
ss. 3, 4 ...	794
s. 11 ...	794
s. 14 ...	446
omission to specify all putnidars, effect of putni sale ...	(129)
B. T. Act does not affect the rights of putnidars under the, ...	956
setting aside a sale under, effect of ...	389
QUINQUENNIAL REGISTERS :	
if admissible in evidence ...	(125)
what are, ...	(125)
QUIT RENT :	
as to, in ghatwali lands ...	898
RAIYAT :—See Raiyat at fixed rates, Settled raiyat, Occupancy Raiyat, Non-occupancy raiyat, Under-raiyat, Fixity of Rent, Landlord and Tenant, Tenancy, and Tenant ...	
definition of, s. 5 (2) ...	74
classes of raiyats, s. 4 ...	71
definition of, not exhaustive ...	77
jote not necessarily a raiyati holding ...	80, 82
tenant of homestead land under a, is an under raiyat under B. T. Act ...	84
subsequent conduct of tenant if alters the nature of tenancy ...	84
true test to determine whether a tenant is tenure holder or raiyat tenancy originally for cultivation if can be converted for collection of rent ...	84
where at the inception of the lease the character of the tenancy is <i>raiya</i> ti, it is not altered to a tenure if subsequently it is let out to tenants ...	85
rights as, may be acquired under trespasser ...	...
raiayat holding at produce rent if may be a fixed raiyat ...	78
raiayat holding over can acquire occupancy right ...	152, 314
raiayat holding over not a trespasser ...	314
raiayat holding over entitled to a notice to quit before ejectment ...	314
rights of raiyat in respect of use of land, s. 23 ...	162
person holding land for horticultural purposes is a, under this Act ...	7
rights of ejected raiyats in respect of crops and land prepared for sowing, s. 156, ...	754
raiayat holding his homestead otherwise than as part of his holding as a raiyat, s. 182 ...	914
as to sublease of homestead land by raiyat ...	918
not competent to make testamentary disposition ...	202
tenant holding under a, is an under-raiyat irrespective of the status of the raiyat ...	923
has prior right to landlord to make improvement unless it affects another holding, s. 77 ...	451

RAIYAT—*Contd.*

compensation for improvement by, s. 82	...	...	...	452
power of, to sublet, restriction on s. 85	...	...	...	455
lease created by, in contravention of s. 85 void	...	...	...	458
power of, to surrender holding, s. 86	...	...	...	467
may surrender without written document	...	...	...	469
cannot surrender portion of his holding	...	...	...	470
effect of surrender of portion by,	...	...	...	470—473
as to surrender by, after transfer of portion : Right of landlord to eject transferee :	...	...	...	470—473
conflict of rulings :	...	...	...	470—473
as to abandonment by, s. 87	...	...	...	475
effect of abandonment by,	...	...	...	475
permanent lease by, is binding between him and his lessee	...	...	...	456
sublease by, of homestead portion of his holding governed by B. T. Act	...	...	...	466
if may erect building on his holding	...	...	...	915
if entitled to accretion to his holding	...	...	...	201, 262
as to right of, to cut trees,	...	...	...	164, 165, 203
principles of s. 38 should be applied to all, whatever their status	...	...	...	246
sale by, of a portion of his holding if incumbrance	...	...	...	464
effect of surrender by,	...	...	...	474
usufructuary mortgage by, if sufficient to establish abandonment under s. 87	...	...	...	477
mere non-payment of rent by, does not extinguish his right of occupancy	...	...	...	477
transfer of his holding—right of landlord to <i>khas</i> possession	...	...	...	477
has no right to transfer or bequeath his holding except by local custom or usage	...	...	...	203, 214, 868
restriction on exclusion of Act by agreement between landlord s. 178	...	...	...	865
restriction on exclusion of Act by agreement between landlord s. 178	...	...	...	865

RAIYAT AT FIXED RATE :—See Fixed rate, raiyat at

if can acquire the status of a settled raiyat	...	...	73, 131, 146,	791
incidents of	...	...	...	132
can grant permanent lease	...	...	...	456, 959
raiayat holding at produce rent if may be,	...	...	...	132
if has same right to trees as a permanent tenure holder	...	...	...	133
has right to make improvements on his holding, s. 77	...	...	...	451
s. 85 if applies to a,	...	...	...	456

RATES, TABLE OF :—See Settlement of rent.

contents of, s. 104B	...	...	...	...	567
effect of, s. 104B (6)	...	...	...	...	568
application of, s. 104C	...	...	...	...	568
rules and principles to be followed in framing and settling rents in accordance therewith s. 104D	...	...	...	...	568

RATE OF RENT :

proof as to,	...	...	...	...	see App. XI (120)
receipt at a reduced rate does not bind the lessor to accept at that rate	...	...	...	...	(121)
decision as to, appeal under s. 153	...	...	...	...	924
a decree by co-sharer landlord for rent if evidence as to, in a suit by another co-sharer	...	...	...	...	402, (120)—(121)
a decree against registered tenant if admissible in evidence against other tenants as to,	...	...	...	...	(121)
ex-parte decree which has never been executed is no evidence as to,	...	...	...	...	684, (121)
oral evidence, if admissible to prove, where the kabuliyat is unregistered	...	...	...	...	685
as to, decided in earlier suit, review	...	...	...	...	684
rate on compromise cannot be affected by Diara Act	...	...	...	...	576

RECEIPT :

tenant making payment to his landlord entitled to a, s. 56	...	...	...	...	353
proof of rent receipt,	...	...	...	...	354
if conclusive evidence of payment of rent,	...	...	...	...	353
landlord to prepared and retain a counterfoil, s. 56 (2)	...	...	...	...	353
receipt and counterfoil what to specify, s. 56 (3)	...	...	...	...	353
not containing particulars required by s. 56, shall be presumed to be receipt in full, s. 56 (4)	...	...	...	...	354
landlord liable to penalty for withholding or failing to keep counterfoil of,	...	...	...	...	356
s. 58	...	...	...	...	356

	PAGE.
RECEIPT :	
forms of, to be prepared and kept for sale at subdivisional offices, s. 59	359
modified forms of rent receipts in particular areas	355
of rent, effect of, by registered proprietor, manager or mortgagee, s. 60	359
for deposit of rent granted by Court to be a valid acquittance, s. 62	373
by landlord of rent from transferee of holding not on his own account but as agent of the transferor is not recognition of transfers,	198
to be granted by Court for rent paid into Court in suits for arrears, s. 152	724
forms of, Sch. II	...
RECEIVER :	
O. 41, 1, 1 of C. P. C. is not controlled by s. 95 of B. T. Act and receiver may be appointed in regard to property in the hands of a Common manager	517
as to appointment of, when an application is made for appointment of Common manager	517
as to appointment of, in ghatwali lands	896
position of Common Manager analogous to,	516
RECLAMATION :	
of land, to be deemed an improvement of a raiyat's holding until the contrary is shewn, s. 76 (2) (c) (d)	448
RECOGNITION :	
as to, by landlord upon payment of nazar,	175
of transferee by landlord,	195
by receipt of rent through mortgagee	196
through marfatdar,	196
effect of deposit of rent by transferee in the name of the recorder tenant and his own,	198
effect of receipt by gumustha	199
acceptance of rent from agent of tenant if amounts to	199
what does amount to	431
what does not amount to	198, 432—435
as to effect of, by some of several joint tenants	432
as to effect of, by some of several joint tenants	432
do not of themselves prove recognition	434
of transfer of part is not recognition of transfer	485
as to, of division of holding	487
effect of landlord accepting rent	489
effect of withdrawal of deposit under cl. (3) of s. 170, when amounts to recognition by landlord	843
as to, by marfatwari rent receipts	431
as to meaning of marfatwari receipts	(129)
RECOGNISED AGENT :— See Agent and Gumustha.	
RECORD-OF-RIGHTS :	
procedure ordinarily adopted in Bengal in preparation of	525—331
VARIOUS STAGES.	
First year :—	
the Survey Department makes a "traverse survey" of the area	526
Second year :—	
the detailed 16 inches map is now begun; this work is known as "Cadastral Survey." Draft record. "Khanapuri" which means the filling of columns. Next stage: <i>Bujharat</i> or "local explanations;" Decision of disputes	526—528
Third year :—	
"attestation" of the draft record takes place. Hearing of objections	528, 529
Fourth year :—	
the record is now "finally framed"	529
Fifth year :—	
final publication of record of rights	530
chapter X has no application to non-agricultural tenancies	524, 538, 561
as to application of chap. X to municipal areas	524
laws under which survey and settlement operations are initiated	525

	PAGE.
RECORD OF RIGHTS—Contd.	
as to <i>resjudicata</i> under former chap. X	531
as to decision by settlement officer of a question of boundary dispute between two neighbouring proprietors	531
as to decision of the question as to <i>mal</i> or <i>lakhiraj</i>	531
as to suit for rent after final publication	531
suit to set aside proceedings under chap. X on the ground of fraud maintainable	532
<i>Batwara Khasra</i> under the Estates partition Act not admissible in evidence	532
rights of parties not affected by omission of entries	532
suit to set aside fraudulent entry	532
meanings of certain terms used in the record of rights	533, 534
as to <i>chandina</i> or bazar lands	539, 560
final publication of, during pendency of appeal: order for retrial	563
survey indispensably necessary for,	540
entry in, as to right of a person to rear and catch fish	544
can a record of rights be ordered to be prepared after once a record has been prepared and finally published	537
Chap. X not clear of comprehension	536
Entries	
weight to be attached to	532, 561
omission to make, effect of	532
in regard to non-agricultural lands, effect of	560
if evidence against strangers	560
as to village custom: <i>hajabad</i>	543
operate in the same way between landlords of neighbouring estates as between landlord and tenant	563
conclusive, s. 104J	577
remedy against, Part II, Chap. X	566
as to suit for correction of	557
in draft records not admissible	559
not considered in a rent suit may be considered in a subsequent suit	559
when conclusive evidence	559, 566
remedy regarding	559, 566
as to notice to Secretary of State in a suit for correction of entry	569
if conclusive if no suit is brought	548
procedure in proceedings under s. 101 and s. 103 same	548
preliminary publication, amendment and final publication of, s. 103A	550
omission to make objection	550
in framing, Revenue officer must record the proprietors according to possession	550
settlement officer has inherent jurisdiction to correct obvious mistake even after final publication of records	550
Presumption:	
of correctness of record after final publication	551, 553
whether can be shewn to be wrong in proceeding under s. 105	553
rebuttable	554
entries in draft records not admissible	557
entries not lightly to be discarded	558, 561
as to when the entries are correct	558
in a suit before publication of record	559
how rebutted	557, 559
applies in all suits	559
where entry conclusive evidence	559
power of Local Government to order and prepare record of rights of lands, s. 101	534
of water, 102A	545
as to re recording of a right of way	544
in making entry of village customs settlement officer acts as public servant	544
dispossession by landlord: entry that no rent payable	545
particulars to be recorded, s. 102	540, 546
homestead and non-agricultural tenancies cannot be subject matter of	538
homestead, Board's instruction as to	543
under-raiyat, status of	543
rent free title	544
as to <i>khata</i> number,	545
hostile title	562
power of Revenue officer to record particulars on application of proprietor, tenure-holder or large proportion of raiyats, s. 103	546

RECORD OF RIGHTS—*Contd.*

s. 188 does not apply to an application under s. 103	...	...	...	546
in a proceeding under s. 103 record may be prepared without order of Govt.	...	...	...	546
particulars recorded under s. 102 in a proceeding under s. 103 whether	...	...	...	546
Record of Rights	...	...	...	546
presumption as to final publication and correctness of record of rights,	...	...	...	551, 553
s. 103B	...	...	...	554
as to entry of Katihari charge	...	...	...	555, 557
evidence prior to publication of record of rights admissible	...	...	...	558
entry cannot override the statutory prohibition contained in s. 20 of the	...	...	...	558
Cess Act	...	...	...	558
entry cannot over-rule well settled principles of law	...	...	...	559, 642
entry does not create any title	...	...	...	576
as to rents settled under ss. 104A to 104G s. 104J.	...	...	...	564
settlement of rents and preparation of settlement Rent Roll when to be under-	...	...	...	564
taken by Revenue officer, s. 104	...	...	...	565
effect of settlement of rent and decisions by Revenue officers made before the	...	...	...	565
commencement of this Act	...	...	...	565
as to jurisdiction of settlement officer to settle rent	...	...	...	565
settlement of rent	...	...	...	565
decision settling rent, if has effect of a decree	...	...	...	565
land held by a person not a tenant	...	...	...	566
Settlement Roll, procedure for preparation of, s. 104A	...	...	...	567, 569
table of rates	...	...	...	574
final revision of Settlement Roll	...	...	...	573
remedies against incorrect entries or omission	...	...	...	575, 576
finality to fixation of rental assets	...	...	...	578—656
limitation in suits under s. 104H	...	...	...	
settlements of rents and decision of disputes in cases where a settlement of	...	...	...	
land-revenue is not being or is not about to be made, ss. 105 to 115	...	...	...	

Settlement of Rent, S.S. 105, 105A

entries, correction of, whether may be gone into,	...	...	...	582
status, question of, whether may be gone into,	...	...	...	582
a decision settling a fair rent of non-agricultural tenancy is without jurisdiction	...	...	...	581
as to parties in a proceeding under s. 105	...	...	...	594
law as it stood before the introduction of s. 105A	...	...	...	582
effect of introduction of, s. 105	...	...	...	581, 582
questions arising under s. 106, if may be determined in a proceeding under	...	...	...	582
s. 105,	...	...	...	383
lakheraj, question of,	...	...	...	583
agreement of parties,	...	...	...	584
co-sharer landlord cannot apply under s. 105,	...	...	...	587
managing member of a Mitakshara family if can maintain an application under	...	...	...	588
s. 105	...	...	...	625
as to application under s. 105 ammuktear of landlord	...	...	...	583
as to withdrawal of application under s. 105 by one of the landlords, effect of	...	...	...	584
co-sharer landlord in receipt of a separate kabuliyat from raiyat for an undivided	...	...	...	588
share, may apply	...	...	...	588
right of suit in a Civil Court when no application under s. 105	...	...	...	588
application by landlord whose name does not appear in the khatian	...	...	...	588, 625
withdrawal of, or non-prosecution of, application, effect of,	...	...	...	583
as to settlement of rent on excess land	...	...	...	584
enhancement of rent under s. 30 (b) can be determined in a proceeding under	...	...	...	585
s. 105	...	...	...	585
s. 188 does not apply to a suit for assessment of rent	...	...	...	585
as to effect of withdrawal of application under s. 105 by one of joint landlords,	...	...	...	585
effect of	...	...	...	585
as to defect of parties: appeal	...	...	...	585
if purchaser at auction sale bound by a decree under s. 105	...	...	...	585
presumption under s. 50 applicable in a proceeding under,	...	...	...	585
presumption rebuttable,	...	...	...	585
power of settlement officer to grant enhancement at a reduced rate	...	...	...	585
regular suit to set aside result of proceeding under s. 105	...	...	...	585
settlement of rent amounts to a decree,	...	...	...	585
rent-free title,	...	...	...	585
execution of decree for costs,	...	...	...	585

	PAGE.
RECORD OF RIGHTS—Contd.	
costs, landlord entitled to,	590
court fees' in applications under s. 105	590
where application is to be made,	591
right of tenant to apply under s. 150 when he took settlement from a sharer ...	592
landlord may impugn correctness of entries in application under ss. 105, 105A	598
scope of s. 105A: <i>resjudicata</i> and constructive <i>resjudicata</i>	598
Institution of suit under s. 106 for correction of entry.	
scope of s. 106,	602—605
scheme of s.s. 105, 106,	605
former section	601
Act III, B. C. of 1898, s. 9	502, 607
question of possession and not of title can be gone into,	603
question of title,	603
boundary dispute,	610
regular suit without proceeding under s. 106,	603
suit for possession does not lie under s. 106,	603
consecutive records of rights: limitation	605
question of rent-free title,	606
transfer of case to Civil Court,	607
court-fees,	608
standard of measurement,	609
objections and disputes	609
co-sharer landlord, suit by, maintainable	611
presumption under s. 50,	611
occupier and occupant,	611
s. 106 not exclusive remedy	602
withdrawal of suit under s. 106	612
PROCEDURE :	
proceedings under, s.s. 105, 105A.	578
Civil Procedure Code applicable, s. 107,	613
force of decree,	614
effect of decree	615
appeal, court-fee for memo of,	615
order for dismissal for default,	611
<i>res-judicata</i> ,	616, 623
presumption,	617
right of suit,	623
revision by Revenue officer, s. s. 108, 108A.	617, 619
court-fees,	620
mistake as to area, revision of,	620
accuracy of record,	620
bar to jurisdiction of Civil Courts concerning matters which are subject of application under s. s. 105 to 108,	620
right of suit: <i>resjudicata</i>	623
Sec. 109 :	
interpretation of the words "subject of an application"	622
withdrawal of application under s. 105: s. 109, if bar to fresh suit	622
s. 109 not a bar to suit where the question of status was not raised in a proceeding under s. 105	627
s. 109 does not provide an exclusive remedy	627
s. 109 is no bar to a suit for assessment of rent	627
s. 109 is no bar to set aside proceedings under Chap. X on the ground of fraud	627
order of remand to Special judge not appealable,	629
Appeal :	
decisions of Special Judges settling a rent, not appealable,	629
'settling a rent,' meaning of,	629
when second appeals lie and when they do not lie,	629, 631
no second appeal from an order settling a rent	637
appeal from an order refusing to hear an appeal dismissed for default ...	632
no second appeal from a decision illegally settling a rent	630
limitation as to filing of	633
effect of transfer of case to Civil Court	633
power of Revenue officer to give effect to agreement or compromise, s. 109B ...	634

RECORD OF RIGHTS—*Contd.*

PAGE.

power of Revenue officer to settle rents on agreement, s. 109C, ...	635
note of decisions on record, s. 109D, ...	637
date from which settled rent takes effect, s. 110, ...	637
stay of proceeding in Civil Court during preparation of record of rights s. 111, ...	638

Right of suit in Civil Court, s. 111 :

meaning of "entertain" in s. 111, ...	639
right of suit,	639
right of suit,	
1. For cancellation of certificate, ...	639
2. Assessment of rent, ...	639
3. Order of Special Judge affirming fair rent cannot be re-opened ...	639
4. Suit for rent, ...	639
5. Order under s. 104, ...	640
6. Limitation in suit for alteration of rent, ...	640
7. Suit for possession, ...	641
old law, ...	640
object of s. 111 ...	639
suit prematurely filed cannot be dismissed ...	639
limitation of jurisdiction of Civil Courts in matters other than rent relating to record of rights, s. 111A ...	641
when a regular suit may be brought ...	641
effect of an entry ...	642
limitation in such suits ...	642
consecutive record of rights : limitation ...	642
suit for declaration of rent-free title ...	642
technical defects ...	644
suit for alteration of rent ...	644
stay of suits in which certain issues arise : s. 111B ...	645
suit prematurely filed ...	646
power of Local Government to invest Revenue officer for special settlement in special cases : s. 112 ...	647
period for which rents as settled are to remain unaltered, s. 113, ...	648
where rent has been settled under Chap. X, there cannot be enhancement of rent for 15 year even on the ground of prevailing rate ...	649
s. 113 is not applicable to a mere entry of an existing rent in the Record of rights ...	649
expenses of proceedings under Chap. X, s. 114 ...	649
presumption as to fixity of rent not to apply where record of rights has been prepared, s. 115, ...	652
meaning of "have been recorded under this chapter" ...	652
meaning of "thereafter" ...	653, 654
presumption in enhancement suits ...	653
presumption in proceedings under s. 105 ...	653
demarcation of village boundaries, s. 115A ...	656
assessment of lands claimed as rent free ...	656
validation of publication of past records : s. 8 of Act III (B.C.) of 1898 ...	656
effect of settlement of rent and decisions by Revenue officers made before the commencement of the Bengal Tenancy Act ...	656

RE-ENTRY :—See Entry, Ejectment.

REDUCTION OF RENT :—See Abatement of rent.

entitling landlord of permanent tenure to enhance rent, s. 6 cl. (b) ...	88
receiving reduction of rent, s. 6 cl. (b) meaning of, ...	88
grounds on which occupancy raiyat may institute suit for, s. 38, ...	245
s. 38 does not take away right of tenant to claim, in a suit for rent ...	246
s. 38 does not take away right of tenant to claim, in a suit for rent ...	246
acceptance of reduced rent, effect of, ...	246
contemporaneous oral agreement for reduction of rent if can be proved when there is a registered kabuliyat, ...	246
every tenant entitled to, in respect of deficiency in the area of his tenure or holding, s. 52 cl. (b), ...	318
raiyyat holding <i>diara</i> land when can claim, under cl. (b) of sub-sec. (1) of s. 52, ...	337
tenant holding under permanent <i>mokurari</i> lease is not entitled to, by reason of diluvion, ...	337

	PAGE.
REDUCTION OF RENT— <i>Contd.</i>	
—sub-sec. 3 cl. (f) of s. 178 if applicable to tenure holder, ...	875
when reduction of rent may be claimed, ...	318
co-sharer tenant not entitled to claim, ...	321
landlord not entitled to compensation when permanent tenant does not take, ...	336
abatement—compensation, ...	335, 336
claim for, may be established otherwise than by measurement—s. 52 not exhaustive ...	339
Local Government with sanction of Governor-General may empower Revenue officers, to reduce rents in special cases, s. 112 ...	647
nothing in any contract made before or after passing of this Act to take right of raiyat to apply for, s. 178 (3) (f) ...	865
as to subsequent agreement reducing rent in a registered lease ...	70
REGISTERED :—See Registration.	
meaning of, s. 3 (18) ...	67
court shall not grant enhancement unless improvement is, s. 33 (1) (a)—	242
registered sublease of more than 9 years wholly void, s. 85 ...	455
documents required to be in writing and registered ...	67
REGISTERS :	
of rent suits, s. 146 ...	...
REGISTERED TENANT :	
decree against, binds the real tenant ...	386, 387
a decree against, is evidence against other tenants as to rate of rent ...	...
REGISTRATION :—See Land Registration Act, Registered and Receipt	
documents required to be in writing and registered under the B. T. Act ...	67
under the T. P. Act ...	68
permanent tenure under B. T. Act to be made by registered instrument ...	68
correctness of this decision ...	68
putni tenure is required to be in writing and registered ...	68
amalnama does not require registration ...	69
documents requiring registration under the Act—	69
—See secs. 12, 17, 18, 29, 43, 48, 85, 87, sec. 176	
document varying the rent reserved in a registered lease requires registration ...	70
mere registration of conveyance may not pass title were parties intend otherwise	120
effect of non-registration of name in landlord's sheristha ...	122
dowl evidencing commutation requires, ...	258
as to, of name, when estate situated both in Assam and Bengal, s. 60 ...	362
when registration under the Land Registration Act not necessary ...	362
effect of, of name under the Land Registration Act ...	364
as to, in specific monzas, ...	364
suit by proprietors of whom some are registered ...	365
actual registration of name is necessary to enable a person to recover rent, 61, ...	367
suit by unregistered proprietor maintainable and it is sufficient if registration is made before decree ...	127, 365
manager appointed under this Act must have his name registered before he can recover rent, ...	129, 366
suit for rent by assignee from unregistered proprietor ...	128
it is not necessary for putnidar or ijardar or assignee to register his name to sue for recovery of rent ...	363
shebait succeeding to the former shebait must give a notice of succession to the landlord ...	127
of landlord's improvements, s. 80 ...	452
of subleases by raiyats, s. 85 ...	455
of certain instruments creating incumbrances, s. 175 ...	863
Rules of the Registration Department—See Appendix V ...	(79)—(87)
in order to enable a person to recover rent, actual registration of name required : mere order of Civil Court for registration not sufficient, s. 16 ...	125
it is sufficient if name is registered before a decree is made ...	127
it is not necessary for putnidar or ijardar to register name to sue for rent, s. 60, ...	363
effect of land if made before decree ...	364
as to, of <i>Soleinama</i> , , ...	(128)

	PAGE.
REGULATIONS :	
VIII. of 1793	
ss. 16 to 19	876
Reg. VIII. of 1793 s. 51	436
s. 55	88
Reg. VIII. of 1793	876
XLIV. of 1893, s. 1.	
Reg. VIII. of 1819, (Rules	
of succession and transfer	119
—, gift of a Putni	389
VIII. of 1819	389
VIII. of 1793 s. 55	436
V. of 1812 s. 3,	436
VII. of 1822 s. 9, cl. 1,	436
XVIII. s. 2	876
V. of 1812	516
VIII. of 1919 see Putni Regulation,	876
VII. of 1822, s. 9	436
RELINQUISHMENT :— See Surrender, Abandonment.	
tenure cannot be surrendered except by consent of landlord	113
conditions of	113
what is not valid	469
as to, by permanent tenure holder	114
application for service of notice of relinquishment of land not chargeable with	
court-fee	475
as to, by Hindu widow	475
REMAND :	
order in s. 153 does not mean merely a final order but includes an interlocutory	
order such as an order of	739, 740
RENEWAL CLAUSE :	
Dosara (second) settlement, stipulation for, in a lease	466
RENNELS' MAPS :	
value of	(129)
RENT :— See Enhancement, Tenure holder, Payment of rent, Suit, Receipt, rent	
receipt,	
definition of, s. 3 (5)	44
rent payable to superior landlord,—limitation	3
rent falling due after date of decree	4
a sum due under a contract for plying boats in a private ferry is not rent	12
where lease not proved suit for rent may be treated as one for use and occupation	30
demand for rent does not create relationship of landlord and tenant	31
it is at most an offer of tenancy	31
mere non-payment of rent even for a long period does not affect landlord's	
right to rent where the tenant gave a kabuliyat originally	23, 40
relationship of landlord and tenant does not cease for non-payment of	43
money recoverable as rent :—	
cess :	45
chowkidari tax, dakcess, produce rent payable by a bargadar	45
suit for rent by a person as heir of his father is a suit for rent	45
rent, when assignment retains the character of rent	45
what is not rent :—	
damages for use and occupation, interest	46
decree by co-sharer landlord for his share of the rent	46
sum agreed to be paid by putnidar as Govt. revenue	46
sum payable by previous putnidar to subsequent lessee is rent	46
stipulation in a lease to pay certain amount over and above what is mentioned	
in the lease as rent is a personal undertaking of the tenant and the additional	
sum is not recoverable as rent	46
where no alternative claim is made for use and occupation in a suit for rent, no	
rent, can be decreed on that footing	46
suit for both arrears of rent and enhancement is maintainable	
suit for rent for a period prior to ejectment suit	102
suit for assessment of, lies in Civil Court	205
effect of conversion of cash rent into rent in kind	258
non-payment of, no ground of ejectment of an occupancy raiyat	211

	PAGE.
RENT— <i>Contd.</i>	
of tenure holder, grounds on which it may be enhanced, s. 6 ...	88
of what tenures is liable to enhancement ...	93
enhancement of, by ijaradar ...	91
limits of enhancement of, of tenures ...	92
gradual enhancement of, by Court, s. 8 ...	99
of tenure-holder once enhanced may not be altered for 15 years, s. 9 ...	100
in s. 18, if includes rent in kind ...	132
of occupancy raiyat, enhancement of, ss. 27—37 ...	218—245
payable by occupancy raiyat to be fair and equitable ...	218
commutation of, payable in kind, s. 40 ...	248
of non-occupancy raiyat, conditions of enhancement of, s. 43 ...	263
definition of, s. 3 (5) ...	44
includes cess ...	45
chowkidari tax is ...	45
dakcess is ...	45
produce rent payable by burgadar, is ...	45
damages for use and occupation are not ...	46
does not include interest ...	46
a sum agreed to be paid by putnidar as Government revenue is not ...	46
enhancement of, of occupancy raiyat by more than 2 as. in the rupee, effect of ...	226
enhancement of, of occupancy raiyat by ...	218
(i) contract, s. 29 ...	218
(ii) suit, s. 30 ...	228
(iii) on the ground of prevailing rate, s. 31 ...	236
(iv) on ground of rise in prices, s. 32 ...	241
(v) on ground of landlord's improvement s. 33 ...	242
(vi) on ground of increase in productive powers due to fluvial action, s. 34 ...	243
effect of payment of, for 3 years, ...	226
a suit for both enhancement and arrears of, maintainable ...	230, 235
reduction of,—grounds for which occupancy raiyat may institute suit, s. 38 ...	245
rulings as to what is rent ...	41, 42
rulings as to what is not rent ...	42, 43
fair and equitable, how to be determined by court, s. 46 ...	267
limit of enhancement recoverable from under raiyat, s. 48 ...	270
general provisions as to ...	296—447
rules and presumption as to fixity of, s. 50 ...	296
rules and presumptions as to amount of rent, s. 50 ...	296
presumption as to fixity of, if a right or rule of evidence, s. 50 ...	297
presumption as to fixity of, if applies to tenancies of which rent is payable in kind, s. 50 ...	297
presumption as to amount of rent and condition of holding, s. 51 ...	313
holding over by one co-tenant does not make another liable for rent ...	314
alteration of rent in respect of alteration of area, s. 52 ...	317
one suit under ss. 30 and 52 maintainable ...	321
"area for which rent has been previously paid" meaning of ...	326, 329
what is to be proved in a suit for additional rent, s. 52 ...	327
suit upon contract not a suit under s. 52 ...	321
suit upon kabuliyat for rent of land a part of which was unassessed at the time of kabuliyat, not a suit under s. 52 ...	322
onus upon tenant to prove uniformity of ...	304
change of money rent into rent in kind does not shew variation in the rate of rent ...	304
effect of payment of higher rent under compulsion, s. 50 ...	304
addition of a small illegal cess is not a variation in the rate of, s. 50 ...	304
additional rent for additional land does not shew that the old rent for the old land has increased ...	305
effect of division or consolidation of holdings on presumption, s. 50 ...	306
abatement of, ...	334
effect of remission of, for diluvion ...	337
landlord may claim back rent for additional area, s. 52 ...	320
tenant can claim reduction in a suit for rent, s. 52 ...	...
as to apportionment of ...	339
a claim for abatement of, may be established otherwise than by measurement, s. 52 ...	339
as to suit for abatement of, upon agreement, s. 52 ...	339
right to additional, a recurring one, s. 52 ...	341, 343
subject to agreement or usage, to be paid in 4 equal instalments, s. 53 ...	344

RENT—*Contd.*

demand for, cannot be considered to be in suspense during the pendency of	
a suit for ejectment ...	346
time and place of payment of, s. 54 ...	347
does not accrue from day to day ...	349
effect of payment of, in advance ...	349
includes money recoverable as rent, s. 54 ...	348
as to tender of payment of, onus ...	350
how tender of, kept good, ...	350
appropriation of payments of, s. 55 ...	351
acceptance of, under protest, s. 55, effect of ...	352
appropriation of payment of, under ss. 59 and 60 of the Contract Act ...	352
proof of rent-receipts, s. 56 ...	354
receipts are <i>prima facie</i> evidence of payment of rent but not conclusive evidence	355
penalties and fine for withholding receipts and statements of account and	
falling to keep counterparts, s. 58 ...	356
tenant making payment to his landlord entitled to a receipt for s. 56 ...	353
Local Government to prepare form of receipt and account, s. 59 ...	359
effect of receipt of, by registered proprietor, manager, or mortgagee, s. 60 ...	359
as to plea of <i>benami</i> in a suit for, s. 60 ...	360
when tenant may plead that rent is due to a third person, s. 60 ...	361
it is not necessary for a <i>putnidar</i> or <i>ijaradar</i> to register name to sue for, s. 60 ...	363
malikana is not ...	367
as to deposit of, ss. 61—64 ...	367
when tenant may make deposit of, s. 61 ...	374
receipt for, deposited to, to be a valid acquittance, s. 62 ...	373
notification of receipt of deposit of, s. 63 ...	373
service of notice of deposit, s. 63 ...	374
payment or refund of deposit, s. 64 ...	374
dismissal of suit for, where a valid deposit, ...	370
effect of omission to sue for, of the period between deposit and suit, s. 61 ...	371
tenure or holding liable to be sold for arrears of, s. 65 ...	375
a first charge, s. 65 ...	377
effect of fictitious suit for arrears of ...	376
landlord's charge on land for, prior to charge created by tenant in favour of	
mortgagee, s. 65 ...	377
as to suit for arrears of, for period anterior to sale ...	378
effect of two decrees for, ...	378
tenant also personally liable for, ...	378, 379
definition of, ...	379
what is a decree for, ...	379
co-sharer if competent to sue for, ...	380
separate collection of, effect of, ...	381
what is not a decree for, ...	382
decree for, by <i>ticcadar</i> ...	383
decree by an assignee for arrear of, ...	383
decree by an assignee for arrear of ...	383
suit for, by intermediate holder between <i>zemindar</i> and <i>putnidar</i> ...	389
liability of auction-purchaser for, due after sale ...	390
suit for, maintainable against some of the heirs or successors in interest of	
the deceased tenant ...	396
decree for, cannot be by instalments, ...	393
where decree obtained for, of an undivided share of holding, the sale in	
execution of decree not free from encumbrances ...	392
as to parties in a suit for, ...	396
suit for, against some of several joint tenants, ...	396—400
decree for, against a non-permanent tenure, to be executed as a money decree, ...	405
includes produce rent, see sec. (3), cl. (5) ...	406
where <i>bonafide</i> dispute as to a nature of, Deputy Collector has no jurisdiction	
to proceed under ss. 69 and 70, ...	423
liability for, on change of landlord or after transmission of tenure or holding,	
s. 72 ...	428
<i>marfatdar</i> and <i>gujratdar</i> in rent receipts do not of themselves prove recognition,	
rent receipt shewing the shares of the tenants and rent payable by each,	
effect of, s. 88 ...	485
separate receipt of, does not amount to consent in writing as to sub-division	
of tenancy, s. 88, ...	485

RENT—Contd.

PAGE.

as to suit for rent when sub-division or separate collection, ...	486
purchaser of a portion of tenure whether jointly liable for entire rent, ...	387
effect of landlord accepting rent, ...	487
payment of proportionate parts of, ...	487
though tenants pay separately, one rent suit against all maintainable, ...	488
when landlord unable to indicate precise plots to have been acquired by tenant in excess, then rent to be calculated at the average rate, s. 52, ...	319
distrain for, for the year preceding the current year not allowed, s. 121, ...	669
decree in a rent is a decree under Art. 6, Sch. III. of this Act, ...	681
rent-suit exceeding Rs. 1,000 with regard to a tenure the value of which is Rs. 4,500 cognizable by a Munsif, ...	688
rulings as to	
• (a) one suit for rent of several tenures, ...	682
(b) suit for rent assigned to be paid to superior landlord, ...	682
(c) assessment of rent, ...	682
(d) suit for consolidated rent of agricultural holding and fishery ...	683
(e) suit for rent of fishery ...	683
(f) suit for rent of homestead or bastoo land, ...	683
(g) suit for recovery of arrear of rent for forest rights ...	683
primary issue in a rent suit, ...	685
claim for rent for several successive years constitutes one whole claim in respect of cause of action within meaning of s. 43 C. P. C. ...	689
as to suit for rent with alternative prayer against co-sharer landlord, ...	681
as to suit for, accrued due prior to ejectment decree, ...	682
suit for, of fishery maintainable in ordinary Civil Courts having jurisdiction in rent suits, ...	683
suit for rent from tenant for right of grant to cut and remove trees not maintainable in Small Cause Court, ...	683
primary issue in rent suit is whether the rent claimed for the particular period is due, ...	685
suit for, by gumustha not maintainable, s. 145, ...	690
rent-suits to be entered in special register, s. 146, ...	690
assignment of rent decree, effect of, ...	703
right of one co-sharer to sue for whole rent even when there is separate collection, s. 148A, ...	709
decree obtained by co-sharer-landlord for his share of rent in a suit brought under 148A or s. 158B is simple money decree, ...	710
suit for, of tank governed by s. 153, ...	725
provisions of secs. 153 and 153A applicable to suits for recovery of rents of julkur, ...	725, 746
phulkur rent is within meaning of this Act and s. 153 applicable to suit for such rent, ...	725
suit for assessment of, ...	726
question as to amount of rent annually payable, 153, rulings, regarding ...	728
does not include interest on an overdue instalment, ...	729
dispute as to rate of rent if a question as to the amount of rent, s. 153, ...	730
amount of, annually payable need not be in issue in second appeal to give party the right of appeal, s. 153 ...	730
decision as to the amount of, on behalf of a party does not bar an appeal on his behalf, s. 153 ...	736
s. 153 if applicable to a suit for rent by co-sharer landlord, ...	737
rulings as to suit by assignee for back rent, ...	736
rulings as to back rent, ...	748
includes interest, chowkidari tax and dakcess ...	729
this Act does not prevent landlord from claiming back rent for any additional area under s. 52 ...	748
dismissal of rent suit, subsequent suit for ...	755
rent-free tenure holder liable to pay rent in respect of accreted land ...	756
inquiry as to existing, under cl. (d) of s. 158 ...	759
summary procedure for recovery of, under Public Demands Recovery Act,—s. 158A ...	763
what is not a decree for rent ...	775
parties in a rent suit ...	777
malikana is not ...	778
rent suit of jagir tenure against eldest son of last recorded tenant ...	781
purchaser not liable for, accruing before date of sale ...	778

RENT—*Contd.*

landlord entitled to get from surplus sale proceeds even rent which is barred ...	826
rent-suit of homestead land not cognizable by Small Cause Court ...	914
enhancement of rent of homestead land only upon contract ...	920
as to deposit of, under s. 61 by raiyat holding bastu land ...	920
execution of rent decree when incapable of execution ...	927
power to alter rent in case of new assessment of revenue, s. 192 ...	946
sum due under contract to ply boat in a private ferry not rent ...	951
suit for consolidated rent of fishery and agricultural holding maintainable ...	951
Sch. III, Art. 2, cl. (b) of Limitation Act applies to suit for recovery of, of julkur ...	952

RENT-DECREE :—See Decree, Rent.

against some of the heirs, effect of, ...	383
as to, or money decree ...	129
as to, as <i>resjudicata</i> ...	(117)—(120), (129)
as to rent free <i>Brahmottar</i> ...	(59), (60)

RENT-FREE LAND :

as to assessment of revenue in, s. 192 ...	946
as to entry of rent-free title ...	544, 555, 562
a tenant of, is liable to pay rent in respects of accreted land ...	340, 756
as to rent free grant ...	26, 59

REPEAL :—See Enactments.

of enactments, s. 2 ...	18
—Sch. I, ...	961, 962
extent of, ...	961, 962

RENT-RECEIPT :—See Receipt, Dakhila.

how to be proved ...	354
no conclusive evidence of payment of rent—only <i>prima-facie</i> evidence ...	355
receipt for rent : confirmation of lease ...	355
modified forms of, in particular areas ...	355
forms of,—Sch. II ...	963—970

RENT-SUIT :—See Suit and Rent.

against some of the heirs, maintainable ...	383, 396—400
---	--------------

REPRESENTATIVE :—See Heir.

purchaser of portion of non-transferable holding is a representative of the raiyat (judgment-debtor) under s. 244 of the C. P. C. (s. 47 of the present code) and is competent to set aside sale on the ground of fraud ...	389
as to effect of rent-suit against some of the representatives of the original tenant ...	396—400
as to effect of rent-suit against one or some of several heirs of occupancy raiyat : rulings on the point ...	215—217
all the heirs of a deceased tenant have a right to be made parties in a rent suit ...	217
liability for rent even when heirs are not in possession ...	217
common manager is a, of the proprietors for defending and instituting suits ...	515
heirs succeeding to a permanent tenure to notify succession ...	(120)

RES-JUDICATA :

as to constructive, ss. 105, 105A ...	598
as to decision on the question of relationship of landlord and tenant in proceeding under s. 105A ...	598
in cases for reduction of rent ...	341
in suits for produce rent ...	424
in cases of illegal cesses ...	443
decision by settlement officer as to which of 2 persons claiming to be tenant ought to be recorded as such does not operate as <i>resjudicata</i> in a subsequent suit between the two tenants ...	531
under former Chap. X ...	531
as to, of decisions of Revenue officer under s. 106 ...	610
as to, of decisions under s. 104 ...	565
effect of s. 109 is not to override the rules of, ...	623
as to cases of, under s. 109 ...	623—628
withdrawal of application under s. 105 ...	625

RESJUDICATA—*Contd.*

decision as to whether rent is payable in money or kind is not res-judicata in a subsequent application under s. 40	...	...	...	351
decision in previous suit as to amount of rent annually payable does not operate as res-judicata in suit for rent of subsequent years	...	...	...	317
rule of, does not apply when objection of abatement of rent not taken in previous suit, s. 52	...	...	...	341
but applies when in a previous suit question as to area was decided	...	...	...	341
erroneous decision of law if, in a subsequent suit	...	...	...	443, 444
erroneous decision is a previous suit does not operate as, in a subsequent suit	...	...	...	416
decision upon a pure question of law, if operates as	...	...	...	416
order under s. 192 when operate as	...	...	...	...
question of title in rent suit, if and when <i>resjudicata</i> —See App. XI	...	...	...	(117)—(120)
exparte decree for rent, when	...	...	...	403, (117), (119)—(121)
as to decree by ijaradar, if	...	...	...	...
as to illegal cess	...	...	...	...
as to amount of jama	...	...	...	...
as to, between co-defendants	...	...	...	...
rent decree as, ...	...	...	...	...
as to, s. 109A	...	...	...	...
consent decree, if constitutes,	...	...	...	...

RESUMED CHAKRAN LAND :

effect of transfer of, to Zemindar and applicability of s. 78 of Land Registration Act to a rent-suit by Zemindar	...	...	...	367
---	-----	-----	-----	-----

REVENUE :

nothing in this Act affects any enactment for avoidance of tenancies or incumbrances for arrears of, s. 195 (c)	...	...	...	953
there is nothing in B. T. Act to indicate that its operation as to the means of acquisition of the right of occupancy should not affect a purchaser at a sale for arrears of,	...	...	...	956
revenue-free lands included in the definition of "estate" s. 3 (1)	...	...	...	20

REVENUE OFFICERS :—See Record-of-Rights.

definition of, s. 3 (17)	...	...	...	62
appointment of Deputy Collectors to discharge the functions of,—	...	...	...	(60)
rights of, preparing record of rights, ss. 102A—115A	...	...	...	545—656
order by, under s. 40 if final and if suit lies in Civil Court against that order,	...	...	...	251
power of, to record private land on application of proprietor or tenant, s. 118,	...	...	...	665
power of Local Govt. to make rules to regulate the procedure of, in the discharge of any duty under this Act, s. 189	...	...	...	943
rules in the Survey and Settlement Manual as to duties of	...	...	...	943, 944
dispute as to status of a tenant cannot be finally decided by, in a proceeding for commutation of rent under s. 40,	...	...	...	762
power of, to alter rent in case of new assessment of revenue, s. 192,	...	...	...	946

REVENUE SALE LAW :—Act XI of 1859.

right of occupancy under,	...	...	...	152
estate for which Common Manager is appointed is not an estate under attachment under,	...	...	...	507
tenures held under Government in Dihl Panchannagram in the District of 24 Parganas saleable under,	...	...	...	21
s. 5	...	...	...	507
ss. 10, 11	...	...	...	21
s. 37,	...	...	...	142

REVERSIONER :

is not entitled to bring a suit for ejectment as he has no right to immediate possession	...	...	...	208
--	-----	-----	-----	-----

REVIEW :

deposit on application for, of judgment, s. 153A	...	...	...	746
application may be made for, of judgment passed by the original Court as well as the appellate Court in all suits between landlord and tenant	...	...	...	746

REVISION :

interference by High Court in, by converting second appeal into an application under s. 115 C. P. C. ...	738, 739
error of law cannot be corrected in, under proviso to s. 153 B. T. Act, powers of, under s. 153 are similar to those as contained in s. 115 C. P. C. ...	739
by High Court where refusal to exercise jurisdiction by District Judge, s. 153 ...	741
where erroneous exercise of jurisdiction by Dt. Judge, s. 153 ...	742
High Court's power of, under s. 115 C. P. C. of order under cl. (3) of sec. 170, Revenue officer under s. 108 may revise his decision under ss. 106, 107 ...	836
of record of rights by Revenue authorities, ss. 104 (g) (2) ...	617
of orders of Revenue officer under ss. 105, 108 ...	570
	578—619

ROAD CESS :—See Cess, Abwab and Rent.

is not abwab ...	445
------------------	-----

ROAD CESS RETURN :

by one shareholder if binding upon others ...	99
as to admissibility of ...	403, 404, (127)
as to, against a third party ...	403
as to probative value of ...	(127)

RULES :—

power of High Court to make, defining powers and duties of managers, s. 100	521
power to make, by Local Government regarding procedure, power of officers and service of notice, s. 189 ...	943
rules in Settlement Manual—rules without sanction, ...	943
procedure for making, publication and confirmation of rules, s. 190	944
framed by the Bengal Government—Appendix I ...	(3)—(38)
framed by High Court under this Act—Appendix VI ...	(91)—(101)
of Registration Department under the B. T. Act,—Appendix V ...	(82)—(91)

RUPEES :

see sicca rupees ...	441
company's rupees ...	441

SALE :

transfer of permanent tenure by deed of, s. 12, ...	115
transfer of permanent tenure by, in execution of decree other than decree for rent, s. 13 ...	120
as to right to khas possession by landlord on sale of occupancy holding ...	178
as to sale occupancy holding in execution of money decree: question as to consent of landlord and tenant ...	1
liability to, for arrears in case of permanent tenure, holding at fixed rate or occupancy holding, s. 65, ...	375
decree for, first of defaulting tenure bad, ...	376
s. 65 does not apply to an under raiyati holding ...	376
liability of auction-purchaser for rent due after, ...	391
effect of reversal of ...	394
transfer by involuntary sale, when complete, ...	435
an order setting aside sale is governed by s. 158, ...	740
Ch. XIV does not apply to sale of an under-raiyat's interest, ...	773
sale purporting to be at the instance of sole landlord but subsequently transpiring that there is co-sharer landlord, effect of, ...	774
for arrears accruing subsequent to previous sale, ...	782
sale does not ipso facto cancel incumbrance, s. 161, ...	801, 810
application for sale of tenure or holding, s. 162, ...	804
of tenure or holding subject to registered and notified incumbrance and effect thereof, s. 164 ...	806
effect of, at a price below the decretal amount, ...	807
sale of tenure or holding with power to avoid all incumbrances and effect thereof, s. 165, ...	807
sale of occupancy holding with power to avoid all incumbrances and effect of, s. 166, ...	808
"date of sale" in s. 167, meaning of,—conflicting rulings, ...	815
decree holder may bid at sale, judgment debtor may not, ...	841
court other than executing Court has no right to set aside sale under s. 173, ...	843
sale under s. 173 voidable and not void, ...	843

SALE—Contd.

right of unregistered transferee of tenant to set aside sale under s. 173, ...	845
application by judgment debtor to set aside sale, s. 174, ...	845
"date of sale" in s. 310A, C. P. C. meaning of, ...	885
where two properties are sold the sale of one of them cannot be set aside by deducting from the decretal amount the sale proceeds of the other property, ...	856
sale ought to be set aside although poundage fee not paid, s. 174, ...	856
regular suit to set aside an order refusing to set aside a sale maintainable ...	861
of distrained crop, ss. 123—135 ...	672, 673
occupancy holding not liable to compulsory sale except by local custom or usage ...	182
sale of occupancy holding is no ground of forfeiture ...	180
if occupancy holding can be sold by creditor in execution of money decree ...	167, 183

SALE CERTIFICATE :

if can over-ride sale proclamation and writ of attachment as to property sold ...	402
what passes by the sale—construction of, ...	402
mistake in plot numbers ...	786
benamidar, in whose name sale certificate is issued is to give notice under s. 167 ...	812

SALE FOR ARREARS OF RENT :

under decree, Chap. XIV ...	767
passing of tenure or holding sold in execution of decree s. 158B ...	767
general powers of purchaser as to avoidance of incumbrances, s. 159 ...	770
what shall be deemed to be protected interests, s. 166 ...	808
meaning of "incumbrance" and "registered and notified incumbrance," s. 161 ...	794, 795
ruling as to miscellaneous cases under s. 160, ...	803
adverse possession if incumbrance under s. 161, ...	798, 800
mortgage is an incumbrance, ...	801
sale is not incumbrance, ...	801
exchange is incumbrance, ...	801
sale does not ipso facto cancel incumbrance, ...	801
application for sale of tenure or holding, s. 162, ...	804
order of attachment and proclamation of sale to be issued simultaneously, s. 163 ...	805
effect of sale at a price below the decretal amount, ...	807
sale of tenure or holding with power to avoid all incumbrances and effect thereof, s. 165, ...	807
sale of occupancy holding with power to avoid all incumbrances and effect thereof, s. 166, ...	808
procedure for annulling incumbrances, s. 167, ...	808
"date of sale" in 167, meaning of :—conflicting rulings, ...	815
miscellaneous cases : mesne profits where possession withheld, ...	822
power of Local Government to direct that occupancy holding be dealt with under foregoing sections as tenures, s. 168, ...	823
rules for disposal of sale proceeds, s. 169, ...	823
tenure or holding to be released from attachment only on payment into Court of amount of decree holder, s. 170, ...	827
ss. 278 to 283 of Act XIV of 1882 not applicable to tenure or holding attached in execution of rent-decree, ...	827
s. 310A, C. P. C. not applicable to (Bengal and Bihar) ...	828
s. 310A, C. P. C., applicability of to East Bengal, conflicting rulings, ...	828
right of deposit by previous purchaser, ...	831—834
whether judgment-debtor includes purchaser, ...	834
conflicting rulings as to who are entitled to deposit, ...	831—834
ss. 170 and 171 apply to execution proceedings and not to suits ...	834
effect of withdrawal of deposit, when it amounts to recognition, ...	834, 835
as to service of notice under cl. (3) of s. 170, ...	836
appeal does not lie from order under cl. (3) but High Court has power of revision under s. 115, ...	836
amount paid into Court to prevent sale to be in certain cases a mortgage debt on the tenure or holding, s. 171, ...	836
decree holder may bid at sale; judgment-debtor may not, s. 173, ...	841
application by judgment-debtor to set aside sale, s. 174, ...	845
s. 174 of this Act and s. 310A of C. P. C. ...	846
who may apply under s. 310A, C. P. C. ...	849

	PAGE.
SALE FOR ARREARS OF RENT—Contd.	
who cannot apply under s. 310A, C. P. C. ...	852
a benamdar has right to apply under s. 310A, C. P. C. ...	850
purchaser of portion of non-transferable occupancy-holding if entitled to make deposit to set aside sale, ...	851
registration of certain instruments creating incumbrances, s. 175, ...	863
notification of incumbrances to landlord, s. 170, ...	863
power to create incumbrances not extended, s. 177, ...	864
nothing in this Act affects enactments for avoidance of tenancies and incumbrances by, s. 195 (c) ...	953
SALE PROCLAMATION :	
purchaser at a rent sale is not bound by the description of the holding in, (Addenda)	
SARANJAMI :	
ordinarily signifies collection charges and does not include Govt. revenue ...	684
SARASARI :	
whether the word, refers to the variability of the rent or the nature of the tenancy is one of construction ...	80
SARBARAKAR :	
as to recognition by landlord by receipt of rent through, ...	434
where the old tenant's name occurred in the rent receipts under the heading "tenant's name" and the name of purchaser from the tenant under different heading as "Sarbarakar" held that the landlords by those receipts did not recognise the purchaser as tenant, ...	434
SARBARAKARI TENURE :	
if permanent and transferable ...	114
in Cuttack, incidents of, ...	114
Sarbarakari jama ...	23, 80
SCHEDULES :	
to B. T. Act, Sch. I, II and III ...	961—1001
SCHEDULED DISTRICTS :	
Bengal Tenancy Act not in force, but may be extended to, s. 1 (3) ...	13
list of, ...	18
SCHEDULED DISTRICTS ACT : XIV of 1874.	
Bengal Tenancy Act not applicable to districts under Part III, Sch. I of, ...	13
SECOND APPEAL : See Appeal.	
SELAMI :—	
if liable to income tax ...	(127)
SERVICE OF NOTICE : See Notice.	
SERVICE TENURE :— See Ghatwali tenures, Tenures.	
are exempted from operation of s. 89, ...	
rulings as to, ...	893
savings as to, s. 181, ...	893
incidents of, not to be affected by this Act, s. 181 ...	893
as to ghatwali tenures, ...	893—902
acquisition of occupancy right in, ...	900
presumption under s. 50 may arise in, ...	900
effect of resumption of, ...	905
SET OFF :	
in a rent suit ...	334, 686
SETTLED RAIYAT :	
fixed raiyat if can be a settled raiyat, ...	73, 146, (Addenda)
status of a, not transferable ...	149
distinction between an occupancy raiyat and a, ...	152
co-sharer raiyats can acquire rights of, s. 20 (4) ...	143

	PAGE.
SETTLED RAIYAT— <i>Contd.</i>	
retention and recovery of rights s. of, 20 (5) and (6)	144
onus of proof of rights of, s. 20 (7)	144
has occupancy rights, s. 21	148
retrospective effect of provisions as to acquisition of occupancy rights by, s. 21 (2)	148
status of a, if may be acquired in respect to an undivided share of land,	
though tenancy in such undivided share may not amount to a "holding"	
every settled raiyat is an occupancy raiyat but every occupancy raiyat is not	
necessarily a settled raiyat, meaning of,	152
tenant of <i>nijote land</i> , who was in occupation for more than 12 years after the	
introduction of ss. 20 and 21 of B. T. Act to Orissa, acquired the status of a,	153, 657
"village" in ss. 20, and 21, meanings of	147, 151
tenant may acquire the status of, in proprietor's private lands,	663
SETTLEMENT :—See Record of Rights.	
Rules framed by Govt. under this Act under Chap. X, Appendix I, Ch. VI (14)—(22)	
rights of parties not affected by omission of entries in settlement records, ...	532
evidence to be recorded in English in settlement proceedings under Chap. X,	
entries in <i>Khwats</i> and <i>Khatians</i> made at, under Reg. VII of 1882 are admissible	
in evidence under s. 35 of the Evidence Act	532
but <i>batwara khasra</i> under the Estates Partition Act (VIII of 1876) not so	
admissible	532
entries in draft record of rights not admissible in evidence	550
Chap. X if applies to homestead and non-agricultural tenancies,	538, 539
of fair rent of homestead tenancy under s. 105 is without jurisdiction ...	
purchaser of non-transferable occupancy holding cannot have his name entered	
in settlement proceeding	542
effect of, of rent and decision of Revenue officer made before commencement	
of this Act	565, 656
presumption as to rents settled under ss. 104A—104G,	576
of rent amounts to a decree,	589
right of tenant to apply under s. 105 when he took settlement from a co-sharer	
regular suit to set aside result of settlement proceedings not maintainable ...	589
trespasser cannot be entered as an occupier in, records	611
power to authorise special, in special cases, s. 112	647
period for which rents as settled are to remain unaltered s. 113,	648
—see Chap. X, ss. 101—115A—	534—656
survey and record of rights may be prepared without order of Govt. in a	
proceeding under s. 103	545
of fair rent, Bengal Govt. Rules	(15)—(16)
SETTLEMENT MANUAL :	
Extracts from Bengal,	525—530
Extracts from Bihar and Orissa,	see App. XIII.
SETTLEMENT RENT ROLL :—See Record of Rights.	
s. 104H	(14), 570
SETTLEMENT OFFICER : See Record of Rights.	
appointment of Deputy Collectors to discharge functions of	66
nothing in this Act affects powers and duties of, as defined by any law not	
repealed by this Act, s. 195 (a)—	953
officers appointed by Local Govt. to be settlement officers to have also same	
powers of a Civil Court and powers under s. 189 (1) (a) (b) and (c) of	
B. T. Act, Appendix I, Chap. VI,	
has jurisdiction to decide question of boundary dispute,	531
as to jurisdiction of, to settle rent under s. 104	565
as to power of, to grant enhancement at a reduced rate,	589
as to execution of decree by other Revenue officer when, or Asst. Settlement	
officer has left the District,	590
as to inherent jurisdiction of, for correction of mistakes,	550
has no jurisdiction to decide question of title under s. 106,	602
apmentA...sO ...La] R..... stp .....j shrdlu cmfwyp cmfwyp cmfwypcmfwyp	
order of dismissal of a suit under s. 100 for default by, is not a decree within	
the meaning of s. 107,	616
s. 108 does not empower a, to revise entries as to <i>mal</i> lands in the record of	
rights,	618

SHEBAIT :

right to bring a suit for rent of a dedicated property is vested in the shebait and not in the idol, ...	23,	125
as to debuttar : permanent tenancy ...	...	59
suit by shebait for possession of land covered by permanent lease granted by his predecessor in interest without any legal necessity and not for the benefit of the endowment is barred if brought 12 years after the grant ...	...	59
joint shebait is not co-sharers but co-worshippers and they cannot sue separately ...	...	711
suit by a co-shebait ...	...	234
suit by one of two shebait for enhancement of rent under s. 30 by making co-shebait defendant if maintainable, ...	...	937
common manager may be appointed in respect to shebait property, ...	...	509
as to power of, to transfer right of worship, ...	...	(129)
as to adverse possession against property of idol ...	...	(129)

SHELLAC :

ownership does not carry with it a right to go on the lessee's land to cultivate shellac on the trees reserved ...	...	167
--	-----	-----

SHOP :

as to applicability of B. T. Act to, ...	...	9
--	-----	---

SICCA RUPEES :

legal tender (Act XIII of 1836), ...	...	441
as to contract to pay rent in, ...	...	46

SIGNED :

definition of, s. 3 (14), ...	...	65
notice to quit under sec. 49 to an under-raiyat need not be actually signed by the landlord if the notice is at the instance of the landlord calling upon the under-raiyat to quit the land, ...	...	65
notice signed by Dy. Collector on behalf of Govt. not invalid, ...	...	65
as to signing of plaint on behalf of Government ...	...	65
as to signature on one of several pages of a deed, effect of, ...	...	65
signature by a person in another's name under authority, effect of, ...	...	65
as to touching of pen by illiterate witnesses, effect of, ...	...	65
as to Deputy Collector signing for Collector ...	...	66

SIGNATURE : See Signed.

SIMANDARI :

as to incidents of, in Bankura, ...	...	902
also, see Bengal District Gazetteer for Bankura.		

SIR :—See Proprietor's Private land.

meaning of, ...	...	659
-----------------	-----	-----

SMALL CAUSE COURT :

suit under s. 75 is cognizable by, ...	...	446
suit for produce rent or its money value not cognizable by, ...	...	423
when such suit lies in, ...	...	423
suit for declaration of title to standing crop is not a suit maintainable in, ...	...	676
as to jurisdiction of, in suits for compensation for illegal distraint, ...	...	676
small cause court like a civil court, is not bound by the decision of a Revenue officer in a commutation proceeding ...	...	251
as to jurisdiction of, in suits by assignee for arrears of rent, ...	...	984

SOHAG GRANT :—See *Babuana grant*.

difference between <i>babuana</i> and, ...	...	46
--	-----	----

SOLENAMA : See Compromise.

when amounts to a "lease" within meaning of cl. (d) of s. 17 of the Registration Act requires registration ...	...	30, (128)
containing matter covered by the subject-matter if embodied, in a decree does not require registration ...	...	(128)
as to, by which no intermediate interest is created ...	...	30
as to unregistered ...	...	30
as to Counsel's authority to Compromise ...	...	(128)

	PAGE.
SONTHAL PARGANAS :	
a scheduled district,	18
SPECIFIC RELIEF ACT :	
suit for declaration of right, s. 111A, B. T. Act,	641
s. 9,	482, 492
SPECIAL ENACTMENTS :	
saving for, s. 195,	953
SPECIAL JUDGE :	
appeals to lie to, from decisions of settlement officers and from decisions of, to High Court, s. 109A,	628
appeal to, to be brought within 30 days from date of decree or order appealed against, Art. 4, Sch. III,	972
SPECIAL LAW :	
Tenancy Act does not affect any, not expressly or impliedly repealed by it, s. 195 (f),	954
SPLITTING UP OF TENANCIES :	
effect of,	306
STAMP :	
"written authority" under s. 187 by landlord to agent is to be stamped as power of attorney,	931
STANDARD BIGHA :	83
STAPLE FOOD-CROPS :—See Price lists of staple food-crops.	
preparation by Collector of price lists of, s. 39	247
Govt. Rules under the Act regarding, Appendix I, Chapter II	(8)—(9)
for statement of price lists of, for Bengal, East Bengal, Bihar and Orissa from 1887—1926	See Appendix XII, (135)
references to Gazette notifications	(131)—(134)
mode of calculation	See Appendix XII
mode of calculation	See Appendix XII
STHAYEE KARSHA :	
meaning of,	132
SUB-DIVISION :—See Division.	
SUB-DIVISIONAL OFFICER :	
authorised to discharge the function of Collector	357
vested with powers of Collector under ss. 12, 13 and 15, 69, 70, 71 of B. T. Act	61, (60)
when not vested with the power of a Collector under s. 167 has no power to annul an incumbrance, s. 167	821
SUB-LEASE :—See Subletting.	
SUBLETTING :	
raiyyat at fixed rate may grant permanent sub-lease	456
under-raiyyat if can grant permanent sub-lease	456
effect of such lease,	455
restriction on, by raiyyat, s. 85,	455
s. 85 does not apply to raiyyat at fixed rent or fixed rate of rent,	456
as to effect of sub-lease taken by transferee after transfer of non-transferable occupancy holding	456
as to right of non-occupancy raiyyat to create sub-lease,	456
lease in contravention of s. 85, effect of,	458
rights of lessee under a raiyyat :	
(1) between raiyyat and under raiyyat	...
(2) between under raiyyat and stranger	...
(3) between under raiyyat and raiyyat's landlord	...
(4) between under raiyyats claiming under the same landlord	459—463
who may question as to invalidity of sub-leases granted in contravention of s. 85	464
as to invalidity of sub-lease as between under-raiyyat and raiyyat,	465
sub-lease for 9 years with stipulation for a re-settlement, effect of,	464
effect of renewal clause in a sub-lease,	466
sub-lease by raiyyat of homestead portion of his holding if governed by this Act,	466
when whole or part of holding has been sublet by registered instrument, landlord before entering on it shall offer whole holding to sub-lessee for remainder of term on condition of his paying up arrears, s. 87 (4)	476

SUBLETTING—*Contd.*

produce of any part of holding which tenant sublet with consent of landlord cannot be distrained, s. 121 proviso (3) ...	668
nothing in any contract before or after passing of this Act can take away occupancy raiyat's right to sub-let, s. 178 (3) (e) ...	865

SUBORDINATE JUDGE :

appeal to, and from, in rent-suits, s. 153 ...	724
--	-----

SUCCESSION :

includes intestate and testamentary, s. 3 (13) ...	64
does not include the case of the vesting of an occupancy holding upon the landlord on the death of an occupancy raiyat ...	64
procedure in case of, to permanent tenure, s. 15 ...	123
as to notice of, ...	124
bar to recovery of rent pending notice of, s. 16 ...	125
ss. 15 and 16 are not retrospective ...	124
—apply to a putni tenure ...	124
procedure in case of, to a share in a permanent tenure, s. 17 ...	129
procedure in case of, to a holding at fixed rates, s. 18 ...	131
as to, of occupancy right on death, s. 26 ...	213
s. 16 is no bar to the institution of a suit, ...	125
as to, of a shebait in regard to property of a Hindu idol, ...	125
as to when s. 16 applies and when not ...	127
s. 16 does not apply to a suit by a surviving administrator or receiver appointed in a partition suit ...	127
effect of non-compliance of ss. 15 and 16 by some of several co-sharers ...	128

SUCCESSION CERTIFICATE :

not required for recovery of arrears of rent ...	686
--	-----

SUIT :—See Rent.

for both enhancement and arrears of rent is maintainable ...	90
one suit under ss. 30 and 52 maintainable, ...	321
upon contract not a suit under s. 52, ...	321
upon kabuliyat for rent of land a part of which was unassessed at the time of the kabuliyat, not a suit under s. 52, ...	322
s. 188 applicable to suit under s. 52, ...	323
as to, by head of Mitakshara family under s. 52, ...	324
when s. 188 no bar to a suit by a co-sharer, ...	324
a tenant holding excess land cannot be sued for enhancement, ...	332
by registered proprietor, as to plea of rent being due to a third person, s. 60 ...	361
by lessee and registered proprietor, s. 60 ...	361
as to, for rent by a proprietor whose name not registered, s. 60 ...	362
by unregistered proprietor, if maintainable, s. 60, ...	362
by legal representative of deceased proprietor, applicability of sec. 60, ...	365
effect of, by proprietors of whom some are registered, s. 60 ...	366
for rent by assignee from unregistered proprietor, applicability of sec. 79 of Land Registration Act, s. 60, ...	366
interpleader, not maintainable at the instance of tenant, ...	369
dismissal of rent suit where a valid deposit, ...	370
deposit under s. 61 does not interfere with limitation for suits for enhanced rent, ...	372
effect of fictitious suit for arrears of rent, s. 65 ...	376
for rent may be brought against one of two or several joint tenants ...	389
for rent by intermediate holder between zemindar and putnidar, ...	389
as to, for contribution and damages, ...	390
for registration of name in landlord's sheristha, ...	393
for rent against some of several joint tenants, ...	396
as to, for rent after ejectment decree for period prior to ejectment, ...	406
for value of crops, ...	422
for rent after a proceeding under ss. 69 and 70 is quashed ...	422
against depositary if maintainable, ...	422
for burga not cognizable by Small Cause Court, ...	423
when so cognizable, ...	423
maintainable by tenant against third party for recovery of crops awarded to the latter by Collector, s. 69 ...	422
against some of the heirs of the last recorded tenant ...	216

SUIT—Contd.

PAGE.

by tenant to compel landlord to recognise as tenant, ...	435
right of, by transferee, ...	435
against teshildar for abwabs collected by him, ...	444
under s. 75 by tenant for recovery of excess payment made by him in respect of the rent of the holding is cognizable by Small Cause Court, ...	446
by landlord against a tasildar for illegal cesses recovered by latter from tenants, ...	444
by co-sharer for compelling tenant to fill up tank, s. 76, ...	451
as to, for rent when sub-division or separate collection, ...	486
as to separate suits for rent after partition, ...	486
one rent suit against all maintainable though tenants pay separately, ...	488
by tenant liable to be dismissed if tenancy is at an end, ...	493
for arrears of rent after ejectment decree, ...	501
proceeding under s. 91 not a suit, ...	504
rulings regarding suits for compensation for wrongful distraint, s. 140, ...	675
for declaration of title to standing crops, ...	676
ground on which suit for compensation for illegal distraint maintainable, s. 140, ...	676
against a landlord who abuses his power of distraining crops under s. 141 ...	677
proceeding under s. 93 is a suit, ...	680
application under s. 93 not a suit, ...	681
suit includes the appellate stage, ...	680
it includes execution proceedings based on final decree made in a suit, ...	680
s. 210 C. P. C. applies to a suit for money and not to a rent suit and therefore decree for rent cannot be made payable by instalments, ...	680
ss. 121 to 127, 129, 305, 320, to 326 C. P. C. not applicable to rent suits, ...	680
recording of evidence in English instead of in the language of Court in a suit under this Act, is an irregularity curable under s. 578 C. P. C. ...	680
rent suit not exceeding Rs. 1000 with regard to tenure the value of which is Rs. 4,500 cognizable by Munsif, ...	688
decree in a rent suit is a decree under Act 6, Sch. III of this Act, ...	681
between landlord and tenant: rulings regarding—	
(a) miscellaneous cases, ...	681
(b) one suit for rent of several tenures, ...	682
(c) suit for recovery of money due on an instalment bond, ...	682
(d) suit for rent assigned to be paid to superior landlord, ...	682
(e) assessment of rent, ...	682
(f) suit for consolidated rent of agricultural holding and fishery, ...	683
(g) suit for rent of fishery, ...	683
(h) forest rights, ...	683
(i) suit for rent of homestead or bastoo land, ...	683
(j) for damages for use and occupation of land ...	683
operation of s. 93 confined to suits between landlord and tenants, ...	681
as to suit for rent accrued due prior to ejectment decree, ...	682
for rent of fishery maintainable in ordinary Civil Court having jurisdiction in rent suit, ...	683
for rent from tenant for right of grant to cut and remove trees not maintainable in Small Cause Court, ...	683
primary issue in rent suit, ...	685
s. 144 of this Act determines the jurisdiction within which suit is to be instituted for ejectment on the ground of transfer of non-transferable holding is not a suit under this Act, ...	681
suit for rent by Gumustha not-maintainable, s. 145, ...	690
date of suit should be taken to be that on which plaint is originally filed and not the date on which it is filed as an amended plaint, s. 147 ...	691
suit for rent by co-sharer landlord falls within purview of s. 153, ...	
right of co-sharer landlord to sue separately ...	709
right of co-sharer to sue for whole rent, ...	709
interpleader suit, rulings as to, ...	720
nature of interpleader suit, ...	720
s. 149 does not contemplate a suit for establishment of relationship of landlord and tenant, ...	721,
suit under s. 149 not to be stamped as a title-suit ...	721
question of title if may be decided in a suit under sub-sect. (3) of s. 149, ...	721
suit for rent of, of tank governed by s. 153, ...	725
provisions of s. 153A, applicable to suit for recovery of rent of <i>julkur</i> , ...	725
s. 153 applicable to a suit for <i>phulkur</i> , ...	725
for assessment of rent, rulings regarding, ...	726
amount claimed in suit under s. 153 includes interest, ...	726

	PAGE.
SUIT—Contd.	
includes execution proceedings, s. 153,	740
suit under s. 153, meaning of,	740
decree in a suit before passing of this Act, effect of,	741
suit for back rent by assignee from previous landlord is not suit by landlord against tenant and so s. 153 does not apply,	736
suit for arrear of rent is not of a nature cognizable by Small Cause Court and so appeal and second appeal lie,	736
suit for ejectment should include all lands in the tenancy,	749
dismissal of rent suit, subsequent suit for ejectment,	755
suit for rent by assignee,	773
parties in a rent suit,	777
one suit for two or more holdings,	778
suit by unrecorded tenant for recovery of sale proceeds if maintainable,	325
s. s. 170 and 171 do not apply to suits,	834
as to suit to recover deficiency of price, s. 173,	844
regular suit to set aside an order refusing to set aside a sale not maintainable,	861
s. 178 does not apply to suits instituted before the passing of this Act,	869
in respect of resumed Chowkidari Chakran land,	905—911
suit for rent by assignee of arrears not governed by this Act,	926
suit to be dismissed though limitation not pleaded,	926
suit for account against agent governed by Art. 116 of Sch. I of the Limitation Act, when contract in writing and registered,	931
suit for enhancement of rent under s. 30 by sebaït making co-hebaït defendant if maintainable,	938
suit for consolidated rent of fishery and agricultural holding maintainable,	951
Sch. III, Art. 2, cl. (b) applies to, for recovery of rent of <i>julkar</i> ,	952
SUMMARY PROCEDURE :	
for the recovery of rents under the Public Demands Recovery Act, s. 158A,	763
estates in Bengal allowed to recover rent under,	766
estates in Bihar	See Appendix XIII
SUMMONS :	
special provisions regarding the issue and the service of, in rent suits, s. 148 (c) (d),	697
SUPPLEMENTARY ACTS :	
of the Bengal Tenancy Act,	17
SURRENDER :	
there is no law requiring that, should be in writing	113
no provision as to surrender of a tenure	113
provision as to surrender of a holding	113
tenure cannot be surrendered except by consent of landlord	113
as to surrender by putnidar	113
as to, by tenant,	113
as to when a raiyat may surrender, s. 86,	467
raiya not bound by lease or other agreement for fixed period may surrender his holding at the end of agricultural year, s. 86 (1)	467
but liable for rent of following year unless he has given 3 months' notice of surrender, s. 86 (2)	467
notice to be presumed to have been given, if raiyat takes new holding or ceases to reside in same village 3 months before end of year, s. 86 (3)	467
raiya may cause notice to be served through Civil Court, s. 86 (4)	467
landlord may enter on the holding on surrender by tenant, s. 86 (5)	468
when holding subject to incumbrance surrender not valid unless made with consent of landlord and incumbrancer, s. 86 (6)	455, 468
distinction between surrender and abandonment,	468
implied surrender,	469
portion of a holding cannot be surrendered,	470
heirs of occupancy raiyat liable to pay rent even when not in possession unless they surrender the holding	470
surrender after transfer of a portion: right of landlord to eject transferee: conflict of rulings: Full Bench decision of Calcutta and Patna High Courts,	470—474
surrender of portion, effect of	470
surrender, effect of	474

	PAGE.
SURRENDER— <i>Contd.</i>	
surrender after an order under s. 171	474
as to relinquishment by permanent tenure holder,	113
relinquishment: incumbrance	473
conditions of relinquishment,	113
what is not valid relinquishment,	473
application for service of notice of relinquishment of land not chargeable with court fee,	475
when surrender of lease exempted from duty,	475
as to, by Hindu widow	475
SURVEY:	
power of Local Govt. to order survey and preparation of record of rights, s. s. 101, 101A	534
Local Govt. may empower Revenue Officer to survey, s. 189 (1) (b)	943
SURVEY ACT:	
s. 38	45, 447
as to value of survey maps	124
as to preference between survey and thak maps	(132)
as to admissibility of certified copies of survey measurement chittas	(123)
SUSPENSION OF RENT:—See Apportionment.	
dispossession by landlord: Suspension of rent: Apportionment of rent	34—39
as to apportionment even where rent is lump rental	34—36
as to meaning of eviction	38
as to entry by settlement officer that no rent payable where dispossession by landlord of a portion of the land	545
entire rent not suspended where part of the land comprised in a tenancy was lost by diluvion and on reformation of the same was settled by the landlord with a third person	36
tenant not entitled to claim suspension of rent when dispossessed not by the landlord but by other lessees of the landlord,	35
entry in record of rights	36
as to effect of eviction from a part or whole	35
interference in collection of rent	35, 36
tenure holder entitled to withhold rent when his landlord is directly or indirectly concerned in the dispossession	36
as to eviction by title paramount	40, (116)
when Art. 3, Sch. III applies and when not	987—996
TABLE OF RATES:	
—see ss. 104A—104D	566—568
as to incidents of Noabad taluks	21
<i>Istemrari, mokurari</i>	876
TAMARIND TREE:	
if <i>agacha</i> (valueless tree)	167
right of raiyat as to cutting down and appropriation of,	167
TANK:	
a lease of a share of a, including the land underneath is not governed by this Act	9, 725
occupancy right in respect to a,	141
digging of, for providing good drinking water not an improvement under s. 76	450
contract by permanent tenure holder not to excavate tank, effect of	450
suit for rent of, governed by s. 153	725
lease of, if a lease for agricultural or horticultural purposes	775, 947
lease of, without any portion of surrounding land not protected under cl. (4) of sec. 37 of Act I of 1859	789
suit for rent of share of, does not come under the provisions of s. 193,	947
excavation of, by raiyat without knowledge of restrictive covenant by his landlord not to excavate,—who is liable for damages	953
a protected interest at a sale of a tenure or holding for arrears of rent due thereon, s. 160 (c)	786
effect of restrictive covenant as to excavation of tank in a lease granting permanent tenure	953
right to rear fish in another's tank is not an easement, entry in record of rights	544

TEMPORARILY SETTLED DISTRICTS :

provisions as to, ss. 191, 192	945
settlement of rent in, without authority, effect of resjudicata	946
"never have been permanently settled" in s. 191, meaning of	945

TENANCY :—See Tenant, Landlord and Tenant.

by occupation	See App. XI (115)
acquisition of right under a trespasser	See App. XI (115)
how created, proof of	26, (120)
if may be proved without lease	29, 30
as to distinction between a license and a lease	26
as to, under a trespasser	78
as to, by sufferance	48
as to proof, without proving lease	(121)—(122)
kabuliyat if sufficient to prove lease	29
as to, in the name of another person	27
where origin of, not known,	53
implied contract of	52, 65
use and occupation creating a,	
demand for rent not sufficient to creat relationship of landlord and tenant, it is utmost an offer of tenancy	31
purpose of, to be considered in determining whether tenant is tenure holder or raiyat, s. 5 (4) (b)	75
nature of, if question of law	75
original purpose of, when to be considered	83
in deciding the nature of tenancy not only the origin but subsequent conduct of parties should be considered	84
question as to the nature of a tenancy is a question of law	86
originally for cultivation if may be converted for collection of rent	86
where area of, exceeds 100 bighas, tenant to be presumed to be tenure holder, s. 5 (5)	75
division of, not binding on landlord without his consent, s. 88	483
subdivision of,	434
rent receipt shewing the shares of the tenants and rent payable by each, effect of separate receipt of rent does not amount to consent in writing as to sub-division of	485
suit by tenant liable to be dismissed if tenancy is at an end	493
ruling as to, by occupation of land	755
created not only by contract but also by occupation of land	755
court has jurisdiction under s. 158 only when tenancy is admitted	759
one application with respect to two or more tenancies held by same tenant maintainable, s. 158	760
what constitutes a separate tenancy	782,—785
agreement to pay rent separately does not give rise to a separate tenancy	784
effect of payment of rent separately by tenants to different co-sharers	83
where tenant agrees to allow one co-sharer landlord to deal with him as if he were his own tenant, effect is to create separate tenancy	783
stipulation for payment of interest as a rule attaches to tenancy	
undertaking to pay rent separately does not constitute separate tenancy	784
application to determine incidents of, s. 158	767
TENANT :—See Raiyat Occupancy raiyat, Non-occupancy raiyat, Under-raiyat, Landlord and Tenant, Fixity of Rent	
definition of, s. 3 (3)	21
classes of tenants, s. 4	71
1. Tenure holders	71
2. Raiyats :	
(i) holding at fixed rates	71
(ii) occupancy	71
(iii) non-occupancy	71
3. Under-raiyat	71
4. Settled raiyat	142
when liable to pay damages for use and occupation of land	47
ruling relating to permanent tenant	47
subsequent lessee of the same land cannot treat the former as a tenant without assignment of the landlord's right to receive or enhance rent	4
burgadar, if a	5
cannot bring interpleader suit against his landlord	44
true test to determine whether a tenant is a tenure holder or raiyat	84, 85

TENANT—Contd.

relationship of landlord and tenant must subsist before the B. T. Act can be applied	3
shall not be ejected except in execution of decree, s. 89	492
person may be a, though holding under a trespasser	262
relinquishment by co-tenant, effect of	203
thica tenant, meaning of	266
co-sharer tenant not a tenant within the meaning of s. 52	321
can claim abatement in a rent suit,	321
tenant, if still on land after transfer, not liable to ejectment	180
as to consent of, for sale of occupancy holding in execution of money decree : ruling on the point	187
if can raise question of transferability of occupancy holding	190
not a necessary party in a suit for ejectment against a transferee	200
onus of proving that kabulyat contravenes s. 29 (b) is upon,	225
holding over hold on the term of his expired lease	315
holding over by one co-tenant does not make another liable for rent	315
a raiyat holding over acquires a right of occupancy	315
tenant holding over, not a trespasser	314
by sufferance, status of,	315
holding over, liable to be ejected without intervention of Court	315
holding excess land may be treated as a tenant or trespasser	332
has no right to compel landlord to treat him as a tenant	332
has no right to compel landlord to treat him as a tenant	332
holding excess land cannot be sued for enhancement of rent	332
not entitled to abatement when in possession of a less quantity by his own default	337
can claim reduction in a suit for rent, s. 52	337
no suspension of rent where tenant did not get possession, s. 52	339
purchaser becomes tenant from date of confirmation of sale,	348
making payment to landlord entitled to a receipt, s. 56,	353
payment by, in each year must be presumed for the current year, s. 56	355
where entitled to receipt in full discharge or statement of account at close of year, s. 57	355
when may plead that rent due to a third persons, s. 60,	361
cannot deny, the right of registered proprietor to distrain, s. 60,	361
deposit of rent by, 61,	367
not homestead land may make deposit under s. 61,	369
interpleader suit not maintainable at the instance of,	369
deposit under s. 61, may be made by third person on behalf of,	369
personally liable for rent,	377
effect of decree, against a registered,	386
not entitled to crop when ejected,	406
suit for rent against some of the heirs of a,	411
holding over liable to pay interest at the old rate,	421
remedy of, when landlord does not attend under s. 69 of this Act,	421
may bring a suit against third party for recovery of crops awarded to the latter by Collector, s. 69	421
not liable to transferee of landlord's interest for rent paid to former landlord, without notice of transfer,	429
what does amount to recognition as,	431
what does not amount to recognition as,	432—435
suit by, to compel landlord to recognise as tenant,	435
though tenants pay separately one rent suit against all is maintainable,	488
bound to prove title in a title suit by him,	493
suit by, liable to be dismissed if tenancy is at an end,	493
power of Court to order tenant to attend and point out boundaries, s. 91	505
one application under s. 91 with reference to several tenants maintainable,	505
application under s. 91 against several tenants,	505
of waste land cannot be ejected without notice s. 155 being served on him,	753
when one co-tenant may be regarded as a representative of others,	778
kabulyat by one of several joint tenants does not bind the other tenants,	778
incumbrance must be the creation of tenant,	795
unrecorded tenant if may sue for recovery of sale proceeds	825
inferior tenant paying into Court may deduct from rent, s. 172,	840
interest payable by tenant holding over,	870
tenant not enabled by Act to violate conditions binding on landlord, s. 194,	953
deposit under s. 61 may be made by a third person on behalf of the,	369

	PAGE.
TENANT FROM YEAR TO YEAR :	
under the B. T. Act there is no tenant from year to year ...	74
as to ejectment of,	494
TENANT AT WILL :	
may be created verbally notwithstanding the provisions of s. 107 of the T. P. Act ...	30
as to ejectment of,	494
TENANT AND LICENSEE :	
distinction between,	26
TENDER :	
effect of refusal of,	372
when is a tender valid :	371
TENURE : See Permanent Tenure, Fixity of Rent, Sale for arrears of rent.	
definition of, s. 3 (7)	49
permanent tenure, definition of, s. 3 (8)	50
as to ownership of underground rights in a,	56
ruling relating to heritability of,	51
as to mineral rights in a <i>digwari</i> ,	57
distinction between tenure and holding	84
tenure held from the time of the Permanent settlement : proof	90
no provision as to surrender of a tenure	113
non-payment of rent cannot be a ground of forfeiture,	101
as to onus to prove permanent tenure,	101
may be sold for arrears of rent, s. 65	375
purchaser of a portion of, whether jointly liable for entire rent,	487
severance of tenure, alienation of portion of, effect of,	490
sale of portion of,	777
sub-division of,	777
sale of tenure with power to avoid all incumbrances and effect thereof, s. 165,	807
sale of tenure below decretal amount, effect of	808
tenure to be released from attachment on payment of decree with costs or on confession of satisfaction by decree holder, s. 170	827
s. s. 278 to 283 C.P.C. and s. 310A (in Bengal and Bihar) not applicable to tenure attached in execution of rent decree, s. 170	827
saying as to tenures held in estates which have never been permanently settled, s. 191	945
as to service tenure	911
TENURE HOLDER :	
definition of, s. 5 (1)	74
definition of tenure holder not exhaustive	77
how to determine whether tenant is a, or a raiyat	76
limits of enhancement of rent of, s. 7	92
rent of, settled under Chap X to remain unaltered for 15 years, s. 113	648
rent free tenure holder liable to pay rent in respect of accreted land,	756
sub-sec. 3 cl. (f) of s. 178 does not apply to,	875
permanent tenure-holder can grant permanent <i>mokurari</i> on any terms, s. 179	875
THAK.	
as to value of Thak maps	(126)
as to preference between, and survey maps	(126)
TICCA TENANT :	
possession as <i>ticcadar</i> does not confer occupancy right	74
suit by, under s. 9 Specific Relief Act	493
meaning of,	81
acceptance of rent by <i>ticcadar</i> from the transferee amounts to recognition by the landlord	198
a lease by <i>ticcadar</i> of lands exceeding 100 bighas when may be a tenure	83
eviction of <i>ticcadar</i> —merger	159
TIKA MOHTO :	
can never be construed as conferring a permanent or <i>mourashi</i> lease at fixed rate	94

TOWN OF CALCUTTA: See Calcutta.

this Act applies to lands outside the limits of, but within its municipal boundaries 17

TRANSFER:—See Sale, Sub-letting, Transferability

a raiyat at fixed rate can, 167—173
 as to transferability of occupancy holding: summary of the law laid down in
 as to transferability of occupancy holding: summary of the law laid down in
dayamoyi's case 172
 rules laid down in *Dayamoyi's* case as modified by *Special Bench* 188, 189
 as to, by usufructuary mortgage 481, 482
 as to sale and sub-lease 161
 does not include surrender, nor devolution after death, s. 22 690
 effect of transfer of occupancy holding consent of landlord 690
 gumustha cannot give consent to transfer of a holding 173
 See, s.s. 11, 12, 13, 14, 17, 18 18A, 72, 73, 88, 178, (3) (d), 181 470—473
 as to usage or custom to, occupancy holdings 831
 as to surrender after transfer, 173
 transferee of occupancy holding if can apply to set aside sale under s. 173 831

TRANSFER OF PROPERTY ACT:—

distinction between cases coming under, and cases coming under Rent law ... 7—11
 distinction between cases coming under, and cases coming under Rent law ... 7—11
 incidents of non-transferability to agricultural land before passing of, ... 178
 lease under, how created, and whether lease includes kabuliyat 29
 s. s. 54, 59 119
 s. 73 786
 s. 100 376
 s. 111 cl. (d) 153
 s. 117 494
 s. 123 119

TRANSFERABILITY:—See Occupancy holding, Transfer, Sale.

of permanent tenures, s. 11 109
 of occupancy rights, 162
 where question of, can or cannot be raised 190
 usage or custom as to, of occupancy holding 175
 on payment of nazar 175
 question as to custom of, if a question of law 175
 as to, of homestead lands 190
 trespasser cannot raise question of, 19
 tenant, if can 190
 question of, cannot be gone into under s. 158 759

TREES:

case law regarding trees 163—167
 as to whether a raiyat at fixed rent or rate of rent has the same right to trees
 as a permanent tenure holdre 133, 163
 permanent tenure holder and raiyat at fixed rate have the right to cut and
 appropriate trees 163, 164
 customary right to cut and appropriate, if incumbrance, 166
 property in, vested in the landlord, 164
 as to right of a occupancy raiyat to cut down and appropriate, 164, 165
 law as to, before T. P. Act and B. T. Act 165
 as to tenant's right to what to what he grows on the land 165
 as to property in timber grown on a tenant's holding 165
 as to effect of acquiescence: growth of custom or usage 166
 reasonableness or unreasonableness of custom—a question of law 164
 as to landlord's right to cut down and appropriate trees 164, 166
 suit by co-sharer landlord for damages for value of trees cut by 933
 occupancy raiyat does not come under s. 188, 167
 as to raiyat to *agachas*, (valueless trees) 167
 tamarined tree is not an *agacha* 167
 as to trees of prescribed size 167
 as to right to *phulphal* 167
 as to property in trees in non-agricultural lease 165
 onus of proof as to cutting down and appropriation of, 164
 limitation in suit for damages for cutting trees 166

TREES—*Contd.*

as to lessor's right to cultivate shellac on the trees reserved ...	167
as to injunction restraining tenant from cutting and appropriating trees ...	167

TRESPASSER :

person holding land under a trespasser may be a raiyat ...	78, 26, (115)
person occupying land for 12 years acquires a right of occupancy even if the person under whom he holds is a trespasser ...	78
question of transferability if can be raised by, ...	191
may be made to pay fair rent as alternative to ejectment, s. 157 ...	755
may plead tenancy and plea of limitation ...	756
as to tenancy by occupation ...	756, (115)
cannot be entered as an occupier in the record of rights ...	611
purchaser of non-transferable holding is a, within the meaning of Chap. X and his name cannot appear in the record of rights ...	611
suit against a, with alternation claim for rent ...	757
s. 188 does not apply to suit for ejectment of, ...	942
acquisition of right under ...	See App. XI, (115)

TRUSTEE :

not precluded from executing a decree as rent decree though landlord's interest not vested in him ...	4
---	---

UNCONSCIONABLE CONTRACT :—See Interest.

contract to pay interest at the rate of 75 p.c. ...	414
---	-----

UNDERGROUND RIGHTS :—See Minerals.

belong to zemindar if he has not parted with them ...	56
the owner of, is entitled to do all such acts as may reasonably be necessary ...	56
as to extent of, ...	57

UNDER-RAIYAT :

definition of, s. 4 (3) ...	71
meaning of, ...	270
under-raiyat cannot acquire occupancy right except by custom or usage 72, 273, ...	923
as to heritability of an, with occupancy right by custom ...	218
holding under a permanent leases under a raiyat, liable to eject where the holding put to sale in execution of rent decree by landlord, s. 22, ...	160
sub-lease by, in contravention of s. 85, effect of, ...	456
as to heritability by, ...	274
contract in excess of maximum prescribed by s. 48 is not wholly void, ...	275
as to sub-lease by, of different portions of the holding to different persons, effect of, ...	275
provision as to enhancement of the holding of an, retrospective in its operation, ...	275
s. s. 65 and 159 of this Act not applicable to the case of an, ...	277
as to suit for contribution by, ...	277
ejectment of, restrictions on s. 49, ...	278
onus in ejectment suit against, ...	287
"written lease" in cl. (b) s. 49, ...	278
homestead lease under a raiyat is an under-raiyati lease, ...	278
period of notice to eject, ...	280
notice to eject, form of, ...	280, 283
permanent lease by, effect of, ...	271
purchaser of raiyati interest entitled to eject, without notice, ...	280
when notice necessary for a purchaser of raiyati interest to eject, ...	280
suit to eject, without notice, effect of, ...	282
holding land under lease from raiyat, effect of, ...	...
as to settlement by an ijaradar of the purchaser of occupancy holding with, ejectment of, ...	286
contract for fresh lease by, effect of ...	286
limit of rent recoverable from, under s. 48 ...	...
s. 65 does not apply to holding of an, ...	270, 376
s. 65 does not apply to holding of an, ...	270, 376
can grant a permanent sub-lease ...	456
under-raiyati holding not transferable, ...	273, 467
Ch. XIV does not apply to sale of the interest of an, ...	733
under-raiyati interest in contravention of s. 85 if an incumbrance ...	797

	PAGE.
UNDER-RAIYAT— <i>Contd.</i>	
under-raiyati lease registered in contravention of s. 85 sub-sec. (2) not operative	
against superior landlord of occupancy raiyat, ...	797
as to settlement of fair rent of, ...	595
permanent lease by, void, ...	868
but not so when given by fixed raiyat ...	868
acquisition of occupancy right by, ...	881
as to contribution between under-raiyats ...	277
decree for recovery of rent against an, cannot be executed as a rent-decree ...	277
tenant of homestead land under a raiyat is an under-raiyat under the B. T. Act ...	277
as to incidents of ...	228, 923—924
not liable to ejectment under s. 49 ...	288, 924
not heritable by law : s. 26 not applicable to, ...	228, 288
s. 29 if applies to, ...	228, 924
when notice necessary, ...	282
as to when notice is necessary to eject ...	280—283
may acquire right of occupancy and sell his holding by custom or usage, s. 183	
ill. (1) and (2) ...	920
USAGE : See Local Usage and Custom.	
right of occupancy cannot be acquired by local usage, ...	147
as to case law on usage or custom to transfer occupancy holdings ...	174—177
under-raiyat may acquire right of occupancy by custom or usage, s. s. 183	
ill. (1) ...	920
under-raiyat may sell his holding by custom or usage, s. 183 ill. (1) ...	920
what facts are necessary to prove custom or usage of transferability of	
occupancy holding ...	174
custom and usage are not synonymous terms ...	174
usage to be effective must not be a growing usage but one which has already	
grown up ...	174, 175
question as to, if a question of law ...	176, 177
growing usage of transferability of occupancy holding is of no effect against	
landlord ...	175
custom of transferability on payment of <i>nazar</i> ...	175
payment of <i>nazar</i> , if proves existence of, as to transferability of occupancy	
holding ...	175
as to effect of <i>marfatwari</i> dakhilas—usage of transferability ...	176
as to effect of purchase by landlord ...	176
essential attributes of custom or usage ...	177
as to transfer by piece-meal ...	177
as to usage in Comilla ...	177
nothing in this Act to affect any, not inconsistent with and not expressly or	
impliedly abolished by it, s. 183 ...	920
UTBANDI :	
meaning of, ...	
custom of, s. 180 ...	882
incidents of, ...	882
custom of, in Nuddea, Jessore, Khulna, Murshidabad, 24 Parganas ...	882—885
extracts from Government Report ...	883—885
as to what is <i>ut-bandi</i> system—See Hunters' Statistical Account of Bengal ...	843, 844
settlement under the <i>ut-bandi</i> system is for one year only and the cultivator	
is not bound to cultivate it for a second year ...	884
as to acquisition of occupancy right in <i>ut-bandi</i> lands, s. 180 ...	882
Chap. VI not to apply to raiyats holding land under the custom of, s. 180 (2) ...	882
tenant not bound to give any notice of abandonment ...	885
tenant of char land for a term of years by unregistered lease at a certain rate	
per bigha for such land as may be brought into cultivation is non-occupancy	
raiayat, and not <i>ut-bandi</i> tenant ...	261
insertion of s. 180A, 180B 180C by B. T. (Utbandi Amendi) Act X of 1923 ...	888
VALIDATION :	
Bengal Tenancy Validation Act (1903) ...	
of publication of past records published under s. 105, s. 8 of Act III of 1898	
(B.C.) ...	581
VALUELESS TREE : See Tree.	
right of raiyat as to cutting down and appropriation of, ...	167

VILLAGE :

definition of, s. 3 (10)	61
former clause (10)	63
"Village" before amendment by Act I (B.C.) of 1907 was held to be not confined to non-urban areas	63, 147
certain areas in the 24 Parganas constituted as villages	63
as to s. 20 cl. (1A): amendment	143, 144
as to acquisition of occupancy right in	64
list of areas constituted as villages,	App. III
demarcation of boundaries of, in course of record of rights and settlement, s. 115A	629
person who has held land for 12 years in same village becomes settled raiyat, s. 20 (1)	143
where there has been no survey, the status of a settled raiyat cannot be acquired in such area which has not been constituted a village	147

VILLAGE CHAUKIDARI ACT : *

definition of Chowkidari chakran lands	902
s. 1	904
s. 48	904

VILLAGE OFFICE :

tenant's liability to pay rent remains notwithstanding there's no.	348
---	-----

WAIVER :

evidence that since execution of kabuliyat tenant paid rent at a lower rate than that stated in the kabuliyat is admissible to shew that there had been a waiver of the terms of the kabuliyat by the parties	225
receipt of rent by landlord subsequent to decree for ejectment impossible	406
landlord can not re-enter for non-payment of rent for one year if he receives rent for a subsequent year	406
acceptance by landlord of rent due after forfeiture, when operates as,	753
omission to claim interest for past years does not amount to a, of landlords' right to claim interest in future,	417
suit for compensation for use and occupation amounts to waiver of right to eject as to question of, in execution proceedings	406 753

WARDS, COURT OF : See Court of Wards.

WASILAT : See Mesne profits

should be assessed on the basis of produce and not rent when proprietor is dispossessed of his <i>zirat</i> lands	664
as to,	(129)
as to <i>pendente lite</i> ,	(129)

WASTE LAND :

nothing in s. 178 shall affect the terms of a lease for re-clamation of, except that after expiry of the lease nothing shall prevent the lessee from acquiring occupancy right if he be so entitled under Chap. V, s. 178 proviso (i)	866
when landlord has reclaimed by his own labour, there is a bar of accrual of occupancy right in it for 30 years, s. 178 proviso (ii)	866
tenants of, cannot be ejected without notice under s. 155	753

WATER :

works for the storage, supply or distribution of, for purposes of agriculture or for use of men, and cattle employed in agriculture to be presumed an "improvement" within meaning of s. 76 (2)	448
record of rights may be prepared as to, s. 102A	545
particulars to be recorded as to rights and obligations of landlord and tenant as regards use and supply of, s. 102 (gg). (i) (ii)	540

WELL :

to be presumed an improvement under s. 76 (2) (a)	448
as to right of raiyat at fixed rates, occupancy raiyat, and non-occupancy raiyat to construct, s. s. 77, 79	448—451

	PAGE.
WITHDRAWAL :	
effect of, of a suit in the appellate stage when rent suit was dismissed in the 1st court	106
effect of, of application under s. s. 105 to 108	622, 623, 626
effect of, by landlord of deposit under cl. (3) of s. 170 if amounts to recognition	834-836
of suit, effect of	244
WILL—See BEQUEST.	
WORSHIP :	
places of to, be deemed protected interests in case of sale of tenure or holding for arrears, s. 160 (c)	786
YEAR :	
agricultural, definition of, s. 3 (11)	64
see notes under Sch. III, Art. 2	
WRITTEN STATEMENT :	
disclaimer contained in a, cannot be made the basis of a decree for ejectment	107
plea of <i>resjudicata</i> not taken in the, allowed to be taken up in appeal	See App. XI (120)
ZEMINDAR :	
Zemindars may form into a limited company	23
<i>durbust zemindari hakuk</i> , meaning of	56
ZERAIT LAND :—See Proprietor's Private land	
entry in record of rights as,	561
as to right of occupancy or non-occupancy in,	658, 659, 974
<i>durbust hakuk</i> , meaning of	56
chapters V and VI of B. T. Act not applicable to,	659
proprietor may hold other lands besides, in khas possession	661
onus in suit for recovery of possession of	661
as to ejectment suit in respect to	662
a lessee of, cannot create a tenancy in excess of the term of the lease	658
<i>khudrasht</i> does not necessarily mean,	659
as to holding over of, limitation	664
as to assessment of mesne profits when proprietor is dispossessed of,	664
tenant if may acquire the status of settled raiyat in	663
admission in a kabuliya as to character of land is relevant evidence to shew that the land is	666, 667
ejectment suit : limitation	662, 663
as to effect of such admission subsequent to 2nd March 1883	666, 667
indigo zeraif land if comes within the definition of proprietor's private land	667
ZERIPESHGIDAR : see <i>Zuripeshgi Lease</i> .	
as to ejectment of	92
is not a tenant but a mortgagee	87
ZURIPESHGI LEASE :	
incidents of	87
as to tenant's possession under a	87
acquisition of occupancy right by zuripeshgidar	146
person in possession as a raiyat by taking a, does not lose his raiyati status or divests himself of his right to acquire a right of occupancy in that land	87
may be both a lease and a mortgage	87

ADDENDA.

S. 3 Cl. (7), Cl. (9).

The term "jote" does not necessarily mean an "occupancy holding". Ordinarily it means a "holding" in the general sense: *Tarini Charan v. Sirish Chandra*, 32 C.W.N. 587 (Suhrawardy and Graham, J.J.).

S. 5.

As to whether a lease for the purposes of growing grass can be regarded as a lease for the purpose of cultivation. A tenant who, under a lease, is given the right to bring the land under cultivation is a raiyat: *Hiralal v. Matukdhari*, 7 Pat. 275. (Dawson Miller, C.J., and Mullick, J.).

Tenure or raiyati. Presumption under s. 5 cl. (5): *Satyendra v. Shyamsunder*, 7 Pat. 212.

Ss. 13 & 18.

Sale of holding at fixed rates—Landlord's fee not deposited on the false representation that the holding is an occupancy holding—Information of transfer not given to the landlord—Decree for rent by landlord against recorded tenants, effect of—Previous purchaser is estopped from contending that the rent suit against his transferor is not properly constituted: *Saraswati Charan v. Surajdeo*, 7 Pat. 167 (Dawson Miller, C.J. and Adami, J.). (The cases of *Surapati v. Ramnarayan*, 39 Cal. 26 (P.C.), *Kristo Bulluv v. Kristo Lal*, 16 Cal. 642 and *Hemendra v. Kumarnath*, 12 C.W.N. 478 distinguished.)

Ss. 18, 50.

A raiyat holding at a fixed rent may acquire the right of occupancy and so an occupancy raiyat may acquire the status of a raiyat holding at a fixed rent: *Tarini Charan v. Sirish Chandra*, 32 C.W.N. 587. (Suhrawardy and Graham, J.J.).

S. 22 (2).

Where a fractional proprietor obtains a transfer in his own favour of occupancy rights he does not become an occupancy raiyat but nevertheless acquires a separate interest in the raiyati holding paying to his co-proprietors their proportionate share of the rent of the holding. If such fractional proprietor subsequently transfers his proprietary interest the raiyati interest held by him also passes to the transferee and the latter can sublet such interest to the transferor who thereupon becomes a raiyat of the holding: *Gopi Singh v. Jagdeo Singh*, 102 I.C. 386, s.c., 8 P.L.T. 69 (Dawson Miller, C.J. and Foster, J.). (Quære: Whether such a raiyat can acquire an occupancy right by twelve years occupation).

S. 40.

As to whether the landlord is entitled to the market price of the paddy at the date of the suit or only to the amount fixed in the kabuliyat as the price of the paddy: *Gopal Chandra Mandal v. Prasannyamayee Debi*, 32 C.W.N. 467 (see notes under s. 40 at p. 256).

Claim for *Bhaoli* produce—Arbitrary reduction by comparing it with the commuted rent: *Bhuneshwari Kuer v. Numeshwar Singh*, 9 P.L.T. 294.

S. 50.

Books of account admitted under s. 34 of the Evidence Act may be used to rebut the presumption under s. 50 of the B. T. Act without any corroboration: *Gopeswar Sen v. Bijoy Chand Mahatab*, 32 C.W.N. 580 (Cuming and Mukerji, J.J.).

S. 65.

To obtain a rent decree the landlord must ordinarily (apart from any question of representation) implead all the co-tenants including the heirs or legal representatives of a deceased tenant, and the question whether one of several tenants can be regarded as a representative of the rest is a question of fact and depends on the circumstances of each case: *Shyam-sunder v. Gobordhan*, 7 Pat. 129; [*Chamalkari v. Triguna*, 17 C.W.N. 833; *Beradar v. Raghunanda*, (1920) C.W.N. (Pat.) 9 referred to.]

A purchaser at a rent sale is not bound by the description of the holding in the sale proclamation: *Tarini Charan v. Sirish Chandra*, 32 C.W.N. 587.

Rate of Rent—Decree by co-sharer landlord if evidence as to rate of rent by another co-sharer landlord: *Kanta Mohan Mullick v. Gopinath Santra*, 32 C.W.N. 91 (notes), Mallik, J. See also *Kanta Mohan Mullick v. Jadab Chandra Khara*, 32 C.W.N. 100 (notes), Mitter, J. (See notes under s. 65 heading No. 32 at p. 402).

Ss. 70, 71 (4).

A Collector has jurisdiction to make an order under s. 70 of the B. T. Act even where some of the crops which are divided have been damaged or misappropriated: *Bhuneshwari v. Sukhdeo*, 7 Pat. 281 (Ross and Wort, J.J.). S. 71 (4) applies to proceedings before the Collector.—*Ibid.*

S. 88.

No inflexible rule of law can be laid down to the effect that the landlord is bound by every statement made by his *gumustha* in the rent receipt. The question depends on the extent of the authority given to the *gumustha*. Where there was an entry in the *dakhila* made by the *gumustha* of a landlord that a holding was a *mokurari mourashi* one, held that it is not usual for a *gumustha* to confer any permanent right on tenants or to make any admission in respect of a tenant's right, which may be binding on the landlord. In the absence of proof by the landlord of the extent of the authority of his *gumustha*, it cannot be laid down as an inflexible rule that the presumption must be that the *gumustha* had authority for doing everything which he may do even to the detriment of his master in connection with matters which are not properly within the scope of his employment: *Manmatka v. Rajeswar*, 55 Cal. 355. (Rankin, C.J. and Mitter, J.).

[*Beni Pershad v. Goberdhan*, 6 C.W.N. 823; *Beni Pershad v. Ram-dahin Pandey*, 10 C.W.N. 216; *Bhojohuree v. Aka Golam*, 16 W.R. 97 referred to; *Pyarimohan v. Gopal Paik*, 25 Cal. 531 (F.B.) explained.]

Ss. 105 & 107.

A decree of a Settlement Officer in proceedings under s. 105 of the B. T. Act operates as a civil court decree and cannot be treated as a nullity even when it happens to be erroneous: *Manmatha v. Debendra*, 107 I.C. 743 (Mukerji, J.).

S. 120.

The term "*Bakasht malik* or *thikedar*", means "in cultivating possession of the malik or thikedar" and applies to those lands which are held directly by the malik or thikedar but which are not zerait land as defined in s. 120 of the B. T. Act: *Hira Lal v. Matukdhari*, 7 Pat. 275 (Dawson Miller, C.J. and Mullick, J.). The case of *Dhakeshwar v. Gulab Kuer*, 5 Pat. 735 (P.C.) distinguished.

S. 120 (2) (a).

Recitals in deeds executed subsequently to the 1st March 1883, are relevant evidence and have to be taken into consideration in deciding whether lands are proprietor's private lands or not: *Satyendra v. Shyam-sundar*, 7 Pat. 212 (Das and Kulwant Sahay, J.J.).

Proprietor's private land—never cultivated by the proprietor or recognised by village usage as such—presumption—rebuttable by evidence—tenant, admission of, as to the zerait character of disputed land, admissibility of: *Santokhi Mandar v. Rameshwar*, 7 Pat. 187 (Das and Wort, J.J.).

[*Bindheshwari Prasad v. Kesho Prasad*, 5 Pat. 634, followed. *H. B. Dalgilish v. Damodar*, 8 C.L.J. 533, dissented from.]

S. 153.

Rent suit—Plea of suspension of rent—Appeal: *Daliluddi v. Muthar Ali*, 107 I.C. 470 (Mukerji, J.).

The mere fact that fraud is alleged does not give rise to a question of title so as to take the case out of the substantive provision of s. 153 of the B. T. Act and thus give a right of appeal which is forbidden by that section: *Mujibuddin v. Reajuddi*, 107 I.C. 471 (Mukerji J.). (The case of *Maharaj Bahadur Singh v. Karani Mai*, 32 C.W.N. 57, s.c., 45 C.L.J. 6 followed). See notes under s. 153 at p. 744.

S. 167.

The mere fact that the Court fails to issue simultaneously the order for attachment and the sale proclamation cannot make the decree any less a decree for rent: *Kuldip Narain v. Ramlal*, 7 Pat. 260 (Das and Kulwant Sahay, J.J.). (The case of *Dhunmun v. Lachmilal*, 57 I.C. 492 followed).

Once a notice under s. 167 of the B. T. Act has been issued by the Collector, the incumbrance must be deemed to have been annulled, and the onus of establishing that the notice was not served within the period of limitation is on the person questioning the validity of such notice—*Ibid.* (The case of *Nandkishore v. Rameshwar*, 78 I.C. 476 followed). See notes under s. 167 at p. 816.

Miscellaneous matters.

"Cultivating raiyat", in s. 4 of the Cess Act, meaning of: *Sarat Chandra v. Dharanimohan*, 32 C.W.N. 610 (Rankin, C.J. and C. C. Ghose, J.).

Covenant coming into operation after the expiry of the lessor's lease—covenant, if runs with land—Guardian of minor, if can bind the minor by the covenant: *Mahendra v. Kailash*, 47 C.L.J. 376 (B. B. Ghose and Cammiade, J.J.).

Suit in Civil Court to set aside collectorate partition. Limits explained: *Beas Singh v. Baldeo Pathak*, 9 P.L.T. 267.

Cosharers—Joint possession—Exclusion and Ouster, meaning of: *Chandra Kishore v. Biseswar*, 45 Cal. 396 (Page and Graham, J.J.).

Legal Representative: one of the representatives of deceased Respondent already on the record—appeal whether abates: *Basist Narayan Singh v. Modnath Das*, 7 Pat. 285 (Das and Kulwant Sahay, J.J.).

Attornment: Denial of landlord's title during continuance of tenancy—Eviction by title paramount: *Jogendra v. Mahesh*, 32 C.W.N. 559, s.c. 47 C.L.J. 387 (Cuming and Mukerji, J.J.).

THE BENGAL TENANCY ACT

BY
RAI SURENDRA CHANDRA SEN BAHADUR

ADVOCATE, HIGH COURT, CALCUTTA AND A MEMBER
OF THE B. T. ACT AMENDMENT COMMITTEE.

1418 pages

**Sixth Edition
1928**

Price Rs. 14.

BY
HEMENDRA CHANDRA SEN, M.A., B.L.,
VAKIL, HIGH COURT, CALCUTTA.

*Thoroughly revised and re-written, considerably enlarged and
brought up to date.*

(With all up-to-date case law, Government and High Court Rules,
Notifications, Registration Rules, Rules and Procedure of Settlement
operations in Bengal and Bihar, Price Lists, Court
fees in Settlement operations, and thirteen
Appendices containing many useful
matters, and exhaustive Index).

“THE BEST AND STANDARD EDITION ON THE SUBJECT.”

*Invaluable Book for the Bench and the Bar and for Officers of the
Settlement Department.*

Rt. Hon'ble Sir Lawrence Jenkins : The work of a recognised
authority on a very difficult branch of the law.

Rt. Hon'ble Sir Lancelot Sanderson, : Most useful edition.

Lord Sinha : The well known work on the B. T. Act. Most useful to
the Bench and the Bar.

Sir George Rankin, Chief Justice, Calcutta High Court : A mine of
learning.

Sir Dawson Miller, Chief Justice, Patna High Court : So well known an authority that it would be almost impertinent on my part to offer any commendation of it. Of the greatest value.

His Excellency Sir John Kerr : Most useful book.

Hon'ble Mr. S. R. Das, Law Member, Viceroy's Council : The Best annotation on the B. T. Act.

Sir Nalini Ranjan Chatterjee, Ex-Chief Justice, and Member, Bengal Executive Council : The Standard treatise on the subject.

Sir John Woodroffe : The Best edition.

Justice Sir C. C. Ghose : The Surest and safest guide to the B. T. Act.

Justice Sir Arthur Cuming : The Best work on the subject.

Mr. Justice B. B. Ghose : Most useful book.

JUDICIALLY NOTICED :

"A well known and recognised work of reference upon the B. T. Act," 19 C.W.N. 140 (notes) (Holmwood and Chapman, J.J.).

"Mr. Sen's Valuable work on the B. T. Act," 23 C.W.N. 136, s. c., 28 C.L.J. 249 (Fletcher & Shamsul Huda, J.J.).

"Well known edition of the B. T. Act by Mr. Surendra Chandra Sen," 28 C.W.N. 482 at p. 485 (Suhrawardy & Page, J.J.).

"Mer Sen's well-known edition of the B. T. Act," Per Greaves & B. B. Ghose, J.J. in S.A. 1106 of 1923, decided on 12th June 1925.

"The Most Popular commentary and complete book of reference on the Tenancy Law of Bengal. So widely known and appreciated Invaluable to Legal Practitioners," 30 C.W.N. 20 (notes), Nov. 30, 1925.

M. C. SARKAR & SONS,
LAW PUBLISHERS & BOOK SELLERS,
90/2A, Harrison Road,
CALCUTTA.

The Calcutta Law Journal, 16th July 1925 (42 C.L.J. 9 (n).)

THE LATE RAI SURENDRA CHANDRA SEN BAHADUR.

"It is our painful duty to record the death of Rai Surendra Chandra Sen Bahadur which took place on Friday, the 3rd of July, 1925 at about 9 p.m. He was an acknowledged authority on Tenancy law and his valuable services in connection with the Committee appointed to consider amendment of the Bengal Tenancy Act are still in our memory. To quote the words of His Excellency the Governor of Bengal he placed his unrivalled knowledge and experience ungrudgingly at the disposal of the Committee and Government owes him a great debt of gratitude.

REFERENCE IN COURT.

Tributes to the memory of late Rai Surendra Chandra Sen Bahadur were paid by the Bench and the Bar at the Calcutta High Court on Monday the 6th of July, 1925 before a full Court composed of the Chief Justice and all other Judges.

On their Lordships taking their seats, Mr. Mahendra Nath Ray, President of the Vakils' Association said :—

"It is with a heavy heart that we have to convey to your Lordships the mournful news of the untimely death of Rai Surendra Chandra Sen Bahadur, a well-known Advocate of your Lordships' Court. His death took place on last Friday night at a comparatively early age of 59 years. He was in indifferent health for some time, but latterly he was reported to be progressing favourably. Mr. Sen commanded an extensive practice, specially in cases involving the land laws of Bengal, of which subject he was recognised as an authority. After 35 years of strenuous work in the profession he has passed away. Mr. Sen's annotated edition of the Bengal Tenancy Act is a monument of great scholarship, research and industry. The book is treated both by the Bench and the Bar as the leading authority and the indispensable book on the subject. It made Mr. Sen famous. His very valuable services as a member of the Bengal Tenancy Act Amendment Committee were specially appreciated by Government.

Mr. Sen was also a good Bengali writer and gave his leisure to writing essays and poems ; one of such works was only published last week.

His genial and kindly disposition, simplicity of character and never failing courtesy endeared him to all who came in contact with him. His family attachment was unparalleled.

The Advocate-General (Mr. S. R. Das) on behalf of the Bar said that he came to know the deceased a few years after he joined the Bar. Even then his great ability, his good manners and courteous disposition marked him out for the success that he attained afterwards. His loss will not only be felt by the profession but will be a personal loss to many people who came in contact with him.

Mr. Mohini Mohan Chatterjee, on behalf of the Incorporated Law Society, associated himself with what the previous speakers had said.

The Hon'ble the Chief Justice (**Sir Lancelot Sanderson**) then said :—

"Every one who knew him will be exceedingly sorry to hear of the death of Mr. Surendra Chandra Sen. He was one of those who, in my

opinion, can be ill-spared and his death will cause a severe loss not only to the Court, but also to his large circle of friends.

"I was always glad to see Mr. Sen in Court, for I knew that the points which he desired to argue would be stated forcibly, clearly and concisely without any waste of time. Further more I was sure that if there were any real objections to the case which he was presenting he would not fail to bring them to the attention of the Court. He was well-known as a sound lawyer and in one particular branch of it he was recognised as an expert and whenever he appeared in Court he was a real assistance to it.

"He was one of the old school, a true gentleman in the real sense of the word, always reliable and invariably considerate and courteous. I regarded him as a personal friend and I regret very much that I did not know that he was ill, for I should have liked very much to have seen him, at any rate, once more before he died.

"I should be glad, Mr. Roy, if you will convey the sympathy of my learned brothers and of myself to the members of his family for the great loss which they have sustained."

Calcutta Weekly Notes, 13th July 1925 (29 C.W.N. 177 n.).

THE LATE RAI SURENDRA CHANDRA SEN BAHADUR.

"It is with deep sorrow that we record the death of Rai Surendra Chandra Sen Bahadur, which took place on Friday, the 3rd of July last. He was for long very intimately connected with our journal and reports. In fact he was our chief reporter on the Appellate Side of the Court as Mr. S. R. Das, the present Advocate General was the chief reporter on the Original Side of the Court, at the very start of the journal. It was only a few years ago when he became too busy to attend to the reporter's duties that he gave up the work. But he continued to take interest in the journal and we always received very valuable help from him. He made a special study of the Bengal Tenancy Act and the land laws of Bengal and came to be recognised as an authority on the same. His annotated edition of the Bengal Tenancy Act has passed through many editions and is recognised as *the standard work on the subject*. He belonged to an intellectual Vaidya family of Kalia in Jessore.

Mr. Sen was very simple in his habits, amiable and thorough gentleman in every way. He was a very popular member of the legal profession and commanded the respect of the Bench. He will be missed much by both. We endorse the tribute paid to his memory by the Hon'ble the Chief Justice and publish it in another column": (See page 180 (notes) 29 C.W.N.).

His Excellency Sir John Kerr, Acting Governor of Bengal :

"I had hoped to see him in Calcutta and to discuss with him various matters relating to the Amendment of the B. T. Act on which we worked so long and harmoniously together. I had a very high opinion of his work and greatly valued his assistance in the Committee. I had a great admiration for his knowledge and learning and his death is a serious loss to the Government."

SOME OF THE OPINIONS ON THE PREVIOUS EDITIONS.

Justice Sir Asutosh Mookerjee ...	Characteristic features: ACCURACY, LUCIDITY OF STATEMENT AND LOGICALITY OF ARRANGEMENT.
Justice Sir Earnest Fletcher ...	VALUABLE WORK: MONUMENT OF GREAT LEARNING ON THIS BRANCH OF INDIAN LAW.
Justice Sir John Woodroffe ...	The BEST edition on the subject.
Justice Digambar Chatterji ...	Of IMMENSE USE to the Bench and the Bar in groping through the mazes of this Act.
Justice Sir Nalini Ranjan Chatterji	STANDARD treatise on the subject. Of well deserved reputation for thoroughness and accuracy.
Justice Sir T. W. Richardson ...	The book is now a STANDARD one.
Justice Sir W. Teunon ...	VERY USEFUL and VALUABLE work.
Justice Sir Hugh Walmsley ...	MOST USEFUL book.
Justice Sir Ewart Greaves ...	VALUABLE BOOK on the Tenancy Act, already bears a high reputation.
Justice Sir B. B. Newbould ...	VALUABLE WORK of very great assistance.
Justice Sir G. C. Rankin ...	A MINE OF LEARNING.
Justice C. C. Ghosh ...	The SUREST AND SAFEST GUIDE to the Bengal Tenancy Act. I turn to this book for light and guidance whenever any question comes before me for consideration.
Justice A. H. Cuming ...	VALUABLE COMMENTARY, I first used it in 1916 and since then I use no other.
Justice E. B. H. Panton ...	I have at once taken your book into CONSTANT USE.
Justice Atkinson ...	Of the GREATEST USE.
Sir Rash Behari Ghosh ...	MOST USEFUL to the profession.

Calcutta Weekly Notes, FEBRUARY 13, 1922:—"It has already taken a FRONT RANK amongst the most reputed legal publications of this side of India. The COMPLETEST commentary and book of reference on the B. T. Act."

Calcutta Law Journal:—"The MOST RELIABLE and convenient guide to the endless intricacies of the Law of Landlord and Tenant in Bengal."

The A. B. Patrika:—"The BEST EDITION of the Act."

The Bengalee:—"Pre-eminently the BEST WORK on the subject."

Hindusthan Review:—"STANDARD work on the subject."

Legal Miscellany and Review:—"ADMIRABLE work."