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PANJAB



LAND ADMINISTRATION MANUAL

COMPILED BY

J. McC. DOUIE, I. C. S., C. S. I.



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P R E F A C E

The Panjab Land Administration Manual bears the same relation to Mr. Thomason's "Directions for Collectors" as the Settlement Manual bears to his "Directions for Settlement Officers." The work of that distinguished man, even in the edition prepared by the late Mr. D. G. Barkley specially for the use of Panjab Officers, has long been out of date. The present manual has been written under the orders of the Panjab Government. Though not authoritative on matters of opinion it is issued after examination by the Financial Commissioner and with the approval of Government as a guide to revenue officers.

It has been long on the anvil, and bears, I fear, some slight marks of not having been produced *uno ictu*. It may be thought that too much space has been given to the history of the growth of revenue policy, and to discussion of which present practice has been the final fruit. The reasons for such a treatment of the subject are given in the fifth paragraph of the preface to the first edition of the Settlement Manual. Some may think that in certain chapters Acts dealing with revenue matters have been analysed to a needless extent. But Acts of the Legislature form to any well regulated mind an unpalatable diet, and I hope the law may sometimes be more easily digested as presented in the manual than in its original form.

The book includes much matter which is to be found in the Revenue Circulars and the Rules under the Land Revenue and Tenancy Acts. After its publication it should be possible to bring out new and much shorter editions of the Rules and Circulars.

J. McC. DOUIE.

25th July 1908.

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FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 85 L.A.M., DATED LAHORE, 30TH MAY 1912.

Land Administration Manual.

Paragraph 239, lines 2 and 3—

Omit the words "and the Settlement Commissioner "

Correction Slip No. 20 L.A.M., dated 13th July 1909, to same paragraph —

Omit the words "or the Settlement Commissioner "

Paragraph 240, lines 3 and 4—

Omit the words "selected by the Settlement Commissioner "

FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 86 F.A.M., DATED LAHORE, 19TH JUNE 1912.

Land Administration Manual.

Paragraph 561 (ii)—

Add at end :—

"Revenue Officers should bear in mind that in dealing with suspensions and remissions the normal standard of outturn and area of crop is that assumed by the Settlement Officer on which the assessment was based."

FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 86 L.A.M., DATED LAHORE, 19TH JUNE 1912.

Land Administration Manual.

Paragraph 561 (ii)—

Add at end :—

“ Revenue Officers should bear in mind that in dealing with suspensions and remissions the normal standard of outturn and area of crop is that assumed by the Settlement Officer on which the assessment was based.”

FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 84 L.A.M., DATED LAHORE, 19TH JUNE 1912.

Land Administration Manual.

Paragraph 563 (iii), 1st line—

Insert after "are" the following :—

"The extent to which prices have risen since the land revenue demand was framed by the Settlement Officer,"



FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 88 L.A.M., DATED LAHORE, 19TH JUNE 1912.

Land Administration Manual.

Paragraph 570.

Add at end :—

“As in the case of suspensions the Collector is required to take account of the value of the crop harvested as well as of the area and outturn, so in considering the extent to which recoveries of suspended revenue can be made it is necessary not to overlook any rise in prices which may have occurred since settlement and which may cause the value of the estimated produce of subsequent harvests to be materially greater than that which the Settlement Officer adopted for assessment purposes.”

5. JUL 12

FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP NO. 89 L.A.M.. DATED LAHORE, 19TH JUNE 1912.

Land Administration Manual.

Paragraph 577.

Add at end :—

“Where the crop has been markedly inferior, Commissioners should place themselves in close communication with their Collectors at an early period of the harvest with a view to determining what measures of relief generally will be necessary. This is particularly necessary in the case of junior officers and those who have not had much revenue experience.”

3. JUL 12

FINANCIAL COMMISSIONERS OFFICE, PUNJAB.

CORRECTION SLIP NO. 90 L.A.M., DATED LAHORE, 20TH JUNE 1912.

Land Administration Manual.

Paragraph 642.

Cancel paragraph 642 and substitute the following:—

“ Experience has shown that when fodder becomes excessively dear in one part of the province, it can be profitably imported by rail from a considerable distance. If it is obtainable in this way, but only at a price which is beyond the means of the poorer landowners, it is reasonable to make small advances to enable them to buy the food necessary to keep their agricultural cattle alive. Loans for the purchase of fodder should only be made in small sums not exceeding Rs. 20 in each case or, if the advance has to be repeated, on each occasion. These loans are subject to the ordinary rules regarding takavi advances contained in Standing Order 32. It is the custom where herds are kept for pastoral purposes to drive them in seasons of drought into the low hills or the river valleys. There is therefore no object in giving takavi to graziers.”



FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 63-L. A. M., DATED LAHORE, 20th FEBRUARY 1911.

For the words "The volumes are kept at the tahsil" in the eleventh line of paragraph 405 of the Land Administration Manual *read* "The books are kept at the district office in the office of the district kanungo,"

and in the twelfth line of the same paragraph *for* "office kanungo" *read* "district kanungo."



FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 62-L. A. M., DATED LAHORE, 21st JANUARY 1911.

To paragraph 222 of the Land Administration Manual add—

“The instructions as to the nature of the training to be given will be found in Standing Order no. 8.”

FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.
CORRECTION SLIP No. 78 L. A. M., LAHORE, DATED 18TH NOVEMBER 1911,
Land Administration Manual.

In the first line of paragraph 360 for "fourth" read "seventh."



FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 79 L. A. M., LAHORE, DATED 18TH NOVEMBER 1911.

Land Administration Manual.

IN paragraph 368 for "the chief document included in which is a jamabandi" read "the chief documents included in which are the village map or *shajra kishwar* and the *jamabandi*".

For "this" in line 6 read "both of these."



FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 80 L. A. M., LAHORE, DATED 18TH NOVEMBER 1911.

Land Administration Manual.

At the end of paragraph 368 add "The instructions regarding the keeping the village map up to date in the interval between two settlements will be found Part F of Standing Order No. 16."



FINANCIAL COMMISSIONERS' OFFICE, PUNJAB.

CORRECTION SLIP No. 81 L. A. M., DATED LAHORE, 19TH DECEMBER 1911

Land Administration Manual—

Add as new paragraphs :—

671-A. The above paragraphs were written when the success of village banks was a matter of speculation. By

Progress of the movement.

1911 the co-operative movement has passed beyond the experimental stage, and the popularity of the village bank in a form suited to the needs and instincts of the villagers is established. The benefits to be derived from co-operative credit have been most quickly grasped by the peasant proprietors of the Central Punjab, and the lead in the movement has been taken by the districts of Jullundur and Gurdaspur. The number of rural societies in July 1911 was 1,074, the two districts mentioned above and Hoshiarpur supplying more than half of this total. Other districts in which the movement has met with more or less success are Gujrat, Lyallpur, Shahpur, Sialkot, Jhang, and Ambala.

To finance these village societies seven Central banks have been formed at the head-quarters of districts, and the societies are also being grouped into unions for the purpose of mutual help and inspection. A few societies have been formed in towns, principally among weavers. The societies are registered, inspected, and generally assisted by a Government staff consisting of a Registrar (with an occasional assistant), 8 Inspectors and 9 Sub-Inspectors, three of the latter being paid for either directly or indirectly, by the societies. There is a number of honorary assistants.

671-B. The type of society which is practically universal in the Punjab

Type of village society.

is one which has been evolved by the people themselves. The members take one or more shares payable in ten yearly instalments and not returnable until the end of ten years. This arrangement gives the bank a steadily growing capital, besides encouraging the habit of saving among the members. Further capital is obtained by deposits from members or from outside, and by loans from the Central banks and Unions.

The village banks usually charge their members $12\frac{1}{2}$ per cent. interest, and as they ordinarily pay 6 per cent. on deposits and 8 per cent. on loans each year shows a growing profit. A quarter of this profit goes to form a reserve fund and the balance is not divisible until the end of ten years, while the latest rules prescribe that the profit will not then be paid out to the members, but will remain to their credit in the form of shares, thus guaranteeing a permanent capital for all time. Except for occasional advice from the Inspector each society arranges its own affairs and keeps its own accounts through an elected committee, which decides how much money shall be borrowed, how the bank's capital shall be lent out among the members, and in what instalments loans shall be recovered. In nearly every case a society is confined to a single village area, so that a bank expresses the idea of a village community on its financial side. After three or four years the average well-managed bank is able to pay off the old debts of its members and to meet all their requirements.

PANJAB LAND ADMINISTRATION MANUAL.

CHAPTER I.

INTRODUCTORY.

UNDER the Governments which administered the country before the extension of British dominion over Northern India, the revenue which the State drew from the land was in most parts of the country scarcely distinguishable from rent. It was levied in money or in kind, often from the actual cultivators, whether proprietors or not, and was collected directly by officials or indirectly by the agency of middlemen or revenue farmers. The latter might be complete strangers to the community or communities for whose revenue they engaged, or powerful men who, as descendants of former rulers, or for some other reason, enjoyed wide local influence, and even received small payments from the cultivating communities, or they might simply be the headmen of the particular village for which they engaged. From the point of view of the Government which appointed them, the profits they were allowed to retain were rather a remuneration for the labour of collecting than an acknowledgment of proprietary right, to which, indeed, many of them had originally no shadow of a claim. But the powers of management which they enjoyed often enabled them to encroach upon, and even destroy, the rights of the cultivating communities. The British Government has so far altered the practice of its predecessors as to distinctly acknowledge that certain individuals are proprietors of the soil and to make their ownership a source of profits by commuting the land revenue into a moderate money charge fixed for a period of years or in perpetuity. But while the form and incidence of the demand has been altered, its essential nature remains unchanged. The State is still a partner in the proprietary profits, and the revenue which it levies is still rent and not a land tax.*

Land revenue
not a tax, but
rent payable
to the State.

2. The officer entrusted with the duty of realizing the land revenue is not a mere rent collector, especially in provinces like the Panjab, where the demand is fixed for a period only, and the State continues to have a direct and immediate interest in the improvement of the land. His position is rather that of the steward of a great landowner. As such he is bound to respect himself, and preserve from encroachment by others every private right in the soil which has been created or confirmed by his master. Where the revenue has been fixed for a term only he has not only, to collect it, but also to look forward to a time when it will be revised, and to collect and record in a systematic manner statistical information which will facilitate its equitable re-assessment. He must prevent, so far as may be, the loss of crops from causes which are in any degree controllable by man, and must prepare in ordinary times for those graver

Collector a
land steward.

* See Settlement Manual, paragraphs 1 and 2.

natural calamities which produce intense and widespread scarcity of food. He must encourage and assist every effort made by right-holders for the development of their estates. In many parts of the country, moreover, the State is not only supreme landowner of the soil generally, but also sole landowner of a considerable part of it, and it is the duty of its local representative to administer this property so that it may be profitable to the ruler and, at the same time, beneficial to the people whose prosperity is the first care of a civilized Government.

Scope of handbook. 3. It is the object of this handbook to describe how these various functions can best be carried out by the officer in charge of a district. As a revenue officer he is properly known as the Collector, but the more familiar title of Deputy Commissioner will generally be used in this work. His functions will be described in the several capacities in which he is called upon to act:—

- (1) As a recorder of agricultural statistics.
- (2) As a guardian and registrar of the rights in the soil enjoyed by private persons.
- (3) As a collector of the land revenue.
- (4) As a promoter of the stability and improvement of private property.
- (5) As a custodian of State property.
- (6) As a judge between landlords and tenants.

The head of a district has many other important duties to perform. But these lie outside the scope of this work, which is confined to his functions in connection with the administration of the land.

Book I.—Landlords, Tenants, and Assignees.

CHAPTER II.

LANDOWNERS AND TENANTS.

4. Before describing the machinery of the administration, it is well to say something of the agricultural communities for whose benefit mainly it exists.* The reader is supposed to be familiar with the chapters in the Settlement Manual which deal with "Tenures and the Rights of Landowners" and "The Rights of Tenants."† The former may usefully be supplemented by some account of the law of pre-emption applicable to village lands and of the important change made in the status of landowners of the agricultural class by the passing of the Panjab Alienation of Land Act, XIII of 1900.

5. The Panjab is essentially an agricultural country owned and tilled by peasant landowners. There are a few districts in which there is a considerable number of large proprietors, and one or two where much of the cultivated land is so poor and sandy that a family cannot live on the produce of a very small holding. But if these are excluded, we may say that a typical holding in the plains consists of from three to eight, and in the hills from one to two, acres of cultivated land. The bulk of the population of the Panjab consists of landowners and their dependents, and their prosperity and contentment must always be the chief solicitude of its rulers.

* 6. There are two grave economic dangers which beset the ownership of land in small parcels by peasant proprietors. The first of these is the reduction of the size of many holdings below an area sufficient to support a family in comfort. This is due to the operation of the law of inheritance under which sons on the death of their father each take an equal share of the family land. It is easy to exaggerate the effect of this law. The normal death-rate of the province is high, and in some years exceeds the birth-rate. In tracts where the holdings have nevertheless become very small, the latter is to some extent lowered by the difficulty which men, whose means of livelihood are scanty, find in obtaining brides. Apart from the impossible remedy of interfering with the law of inheritance, there are indirect means of mitigating the evil of over-population. One has of late years been found in the colonization of large tracts of Government land rendered culturable by the excavation of new canals. Another, from which a good deal may be expected in the future, is the development of manufactures.

The second and more serious danger is the transfer of land by sale and mortgage to money-lenders.†

* Chapters VIII and IX. The former may be usefully supplemented by "Tribal Law in the Panjab" by Roe and Battigan. As regards the other classes found in village communities,—the grain-dealers, artisans, and menials,—see paragraphs 130, 338, 390, and as regards rents see paragraphs 311, 312, 322, 339, 344, 355, of the Settlement Manual.

† See in connection with this subject paragraphs 379-381 and 402-406 of the Settlement Manual.

Oscillations
of opinion on
subject.

7 The political advantage of maintaining the old framework of society, and keeping the land in the hands of the tribes we found in possession of it, was fully recognised by the first administrators of the Panjab. There followed a time in which the importance of this object was less keenly felt and the possibility of attaining it was denied. The third phase of opinion, which is that now predominant, regards the disappropriation of the old landowning tribes with at least as much aversion as did the earliest rulers of the province, maintaining that it is not only politically, but also economically, disadvantageous. The causes of these remarkable oscillations of opinion form a curious chapter in the revenue history of the Panjab, which may be noticed briefly before describing the actual provisions in force at different times regarding pre-emption and restrictions on the transfer of land.

Apologetic
tone adopted
by early ad-
ministrators
as to
measures
adopted to
preserve
stability of
village
communities.

8. While experience acquired elsewhere led shortly after annexation to the adoption of measures to prevent the intrusion of aliens into village communities by the purchase of land, it is clear that some of the ablest officers held that these measures were open to the reproach of economic unsoundness, and that the prospect of agricultural improvement by the attraction to the soil of the capital of the monied classes was being sacrificed to the paramount necessity of political stability. In his commentary on the Panjab Civil Code Mr. (afterwards Sir Robert) Montgomery felt constrained to apologize for the maintenance of the law of pre-emption. Later, Mr. Cust remarked in his Revenue Manual: "The principle (of pre-emption) is not defended on any economic grounds, but is maintained for social and political reasons,"* and contemplated without regret "a gradual process" by which the existing village communities might "melt away and give place to a more modern and perhaps more politically nice distribution of property."†

Causes of
increase of
transfers.

9. The disposition to look on unlimited power of transfer as an essential feature of proprietary right and a necessity of economic progress was strengthened by the assimilation of the law and procedure of the Panjab with that of the older provinces, which resulted from the extension of the Code of Civil Procedure to the province in 1866, and the establishment of a Chief Court in Lahore. About the same time the effect of the land revenue settlements in making land marketable began to be felt. Titles had been clearly determined, and the moderation of the demand made the ownership of land an object of desire. The peasant proprietor found his credit enormously expanded. The old system of limited borrowing on the security of crops, cattle, and ornaments was supplanted by one of extravagant borrowing on the security of the land.

Increase look-
ed on as bene-
ficial, or at
least inevit-
able.

10. Sales and mortgages of land to money-lenders became a common feature of village life. At first this was looked upon with little alarm, and by some even with complacency. It was maintained that the resources of the country would be developed by the application to the improvement of the land of the capital of the monied

* Cust's Revenue Manual, page 28.

† Cust's Revenue Manual, pages 29-30.

classes. Even those who disliked the process were disposed to look on it as the outcome of an irresistible economic law.

11. But as time went on, it became clear that with each quinquennium the alienation of land proceeded everywhere at a more rapid rate, and that in some parts of the country the area which had passed out of the hands of the original owners was already very large. The social and political evils likely to spring from the disappropriation of the old landowning classes again came to be keenly felt, and acquiescence became increasingly difficult, and ceased to be regarded as inevitable. The laws so ably expounded by the English economists were no longer considered as equally applicable to every country and stage of society. Experience also showed that the expectation that the new proprietors and mortgagees would be improving landlords was a delusion. Very few of them turned out to be anything but rent receivers, and their tenants could not be expected to devote to the tillage of the land and to its gradual improvement the painstaking labour of peasant owners.

Growth of opinion hostile to free transfer.

12. The interest in primitive institutions aroused by the works of Sir Henry Sumner Mayne, and stimulated by the abundant evidence of their survival in India, worked in the same direction. The records of tribal law compiled by Settlement Officers supplied unmistakable evidence that ownership of the modern western type was wholly alien to the ideas of the rural population. It was seen that the native conception of property in the soil is that it is vested in a family and not in an individual, and that the owner for the time being is not entitled to dispose of it how and to whom he will.

Reasons for change of opi

13. This doctrine invaded the Civil Courts, which are bound by Section 5 of the Panjab Laws Act to decide questions of inheritance, adoption, and gifts primarily on evidence of custom, and from 1887 onwards it formed the foundation of a series of decisions by the Chief Court on sales and mortgages by sonless proprietors, adoption, gifts, and pre-emption.* But these decisions, valuable though they were, hardly affected the action of the great majority of landowners, and in no way reduced the seriousness of the problem which Government had to face.

Civil Courts accept doctrine of limited ownership.

14. The position was at last accepted that the root of the evil was to be found in the inflation of the peasant owner's credit, and that the only hope of checking it lay in lessening his powers of borrowing by imposing legal restrictions on the sale and mortgage of land. This policy was embodied in the Panjab Alienation of Land Act, XIII of 1900, the provisions of which will be noticed presently.

Necessity of restricting credit the basis of Panjab Alienation of Land Act.

15. The measures taken at various times for the protection of the landowners of the Panjab may be classed under the heads—

Classification of measures taken at different times to protect landowner.

- (a) the enforcement of the custom of pre-emption,
- (b) the restriction of transfers by landowners belonging to agricultural tribes,

* See Chapter III of "Tribal Law in the Panjab" by Roe and Battigan.

(c) The exemption from sale in execution of decree of land and other property of agriculturists.

Pre-emption :
its nature.

16. The origin of pre-emption is clearly explained in "Tribal Law of the Panjab." "It has been usual to regard this as a village, not as a tribal, custom, and as originating in the Muhammadan Law. I think that this is quite an erroneous view, and that pre-emption is merely a corollary of the general principles regulating the succession to, and power of disposal of, land. In these matters the holder of the estate for the time being is subject, generally speaking, to the control of the group of agnates who would naturally succeed him. . . . They can, as a general rule, altogether prevent alienations by adoption or gift, or by sale for the holder's own benefit; it would be only a natural rule that, when a proprietor was compelled by necessity to sell, these agnates should be offered the opportunity of advancing the money required, and thus saving what is really their own property."*

Early provisions in Panjab Civil Code, etc.

17. The first administrators of the Panjab brought a knowledge of the existence of pre-emption in village communities from the North-West Provinces. In 1852 the Board of Administration issued a circular (No. 28 of 1852) requiring a landowner who wished to sell his share to offer it in the first instance to the whole community or to some individual coparcener at a reasonable price to be fixed by agreement, failing which the revenue officer and three assessors were to determine the fair value. Two years later this instruction was embodied and elaborated in Section XIII of the Panjab Civil Code. Pre-emption was there declared to apply to village lands and sites in villages and *kasbas* occupied by shareholders in the estate, and to extend to private sales, sales in execution of decree, and foreclosures of mortgage. If none of the owners wished to buy, the hereditary tenants (if any) might exercise the right. Provision was made for the valuation of land in case of dispute by a committee appointed by the revenue authorities. Pre-emption suits were to be brought in the Civil Courts, but any issues as to priority among contending claimants and the value of the land were to be referred for decision to the revenue authorities. The Chief Commissioner in 1856, with the object of preserving the integrity of village communities, extended the right to usufructuary mortgages.†

Entries in village administration papers.

18. The customs governing pre-emption were also recorded in village administration papers drawn up at settlements made before the passing of the Panjab Laws Act, IV of 1872. "In nearly all the old *wajib-ul-arz* we find a provision securing this right either to the next heirs, or to the agnates generally, and after them to all members of the village community to the exclusion of strangers."‡

Right restricted by Civil Courts.

19. Two early judgments of the Chief Court robbed pre-emption of most of its value. The Court held that the right did not

* "Tribal Law in the Panjab" by Roe and Rattigan, pages 82-83.

† Financial Commissioner's Circular No. 41 of 1856.

‡ "Tribal Law of the Panjab" by Roe and Rattigan, page 83.

extend to usufructuary mortgages, except where the village administration paper provided otherwise,† and that a proprietor by purchase, though a stranger to, and at bitter strife with, the original village brotherhood, had as good a title to claim pre-emption as any member of it.†

20. The same limitation of the right as regards the transf- Provisions of
action in respect of which it exists, and the same extension of it Panjab Laws
as regards the persons who may claim to exercise it, were unfortu- Act, IV of
nately embodied in the sections of the Panjab Laws Act, IV of 1872.
which deal with pre-emption. That Act as amended by Act XII
of 1878 provided that the right arises in the case of sales under a
decree or otherwise and foreclosures of mortgage,‡ and that, unless
a custom or contract to the contrary is proved, it exists in all
village communities, and extends—

- (a) to the village site and houses,
- (b) to all lands within the village boundary,
- (c) to all transferable rights of occupancy in such lands.§

In the absence of custom to the contrary the right was declared to belong to the following persons in the order stated.—

- (a) first, in the case of joint undivided immoveable property, to the co-sharers ;
- (b) secondly, in the case of villages held on ancestral shares, to co-sharers in the village, in order of their relationship to the vendor or mortgagor ;
- (c) thirdly, if no co-sharer or relation of the vendor or mortgagor claims to exercise such right, to the landowners of the *patti* or other sub-division of the village in which the property is situate, jointly ;
- (d) fourthly, if the landowner of the *patti* or other sub-division make no joint claim to exercise such right, to such landholders severally ;
- (e) fifthly, to any landholder of the village ;
- (f) sixthly, to the tenants (if any) with rights of occupancy in the property ;
- (g) seventhly, to the tenants (if any) with rights of occupancy in the village.

In the case of transfers of rights of occupancy under Section 5 of the Panjab Tenancy Act, XVI of 1887, the prior right of the landlord was secured by Section * 53 of that Act. If he failed to exercise it, preemption belonged, first, to the tenants (if any) having a share in the occupancy right proposed to be sold, and, secondly, to the other occupancy tenants in the village.|| Where the *chakdari* tenure

* 2 Panjab Record, case No. 87.

† 4 Panjab Record, case No. 4.

‡ Section 9.

§ Section 10.

|| Section 12. By a proviso to the section if Government owned the trees growing on land, it had a right of pre-emption in the land superior to that of any private individual.

prevails * the *adna maliks* possessing shares in a well had a right of pre-emption in these shares in preference to the *ala malik*.†

Where two or more persons were equally entitled to pre-emption, the vendor or mortgagor might determine which of them should exercise it.‡

Sections 13 to 18 of the Act provided for the enforcement of the right. The matter was left entirely to the Civil Courts, no provision being made for the reference of any question in dispute to the revenue officer.

Interpreta-
tion put on
as regards
customary
rights of pre-
emption.

21. It will be observed that as regards the persons entitled to pre-emption, the Act expressly saved custom.‡ But in practice its 12th section was usually taken, both by Settlement Officers and Civil Courts, as disposing of the whole matter. The entry on the subject usually made by the former in codes of tribal custom (*riwaj-i-am*) was that pre-emption is now regulated by the Panjab Laws Act.§ Of recent years the Chief Court has held that the village administration papers furnish valuable evidence of custom as regards the persons entitled to claim pre-emption.||

Panjab Act
No. II of
1905.

22. The recasting of the law of pre-emption with the object of bringing it into accord with village custom and ideas became imperative when the Panjab Alienation of Land Act came into force. The necessary amendments have been effected by Panjab Act No. II of 1905. The right of pre-emption is declared to exist in respect of agricultural land, as defined in the Panjab Alienation of Land Act, and village immoveable property, i.e., immoveable property within the limits of village sites other than agricultural land.** It extends to sales of both proprietary and occupancy right in agricultural land.** In respect of such land no one has a right of pre-emption except "a member of an agricultural tribe" as defined in the Alienation of Land Act. But this is subject to the proviso that "if the vendor is not a member of an agricultural tribe the right of pre-emption may be exercised also by a member of the same tribe as the vendor, who is recorded as the owner or as the occupancy tenant of agricultural land in the estate in which the property is situate and has been so recorded for twenty years previous to the date of the sale either in his own name or in that of any agnate who has previously held his agricultural land."†† The most important section of the Act is Section 12, which declares the persons who are entitled to pre-emption and the order in which they can claim it. The intention of Sections 11 and 12, of course, is to bring the law into conformity with village custom. Section 12 runs:—

* See paragraphs 167-170 of the Settlement Manual.

† Section 20.

‡ Section 12.

§ "Tribal Law in the Panjab" by Roe and Battigan, page 83.

|| Panjab Record No. 98 of 1894. See "Tribal Law in the Panjab," pages 128, 130.

** See Section 3 (1) and (2) and section 5. The provisions which relate to urban immoveable property lie outside the scope of this work.

** Section 3 (1).

†† Sections 3 (4) and 11.

Subject to the provisions of Section 11, the right of pre-emption in respect of agricultural land and village immoveable property shall vest,—

- (a) in the case of the sale of such land or property by a sole owner or occupancy tenant, or, when such land or property is held jointly, by the co-sharers,—
 - in the persons who but for such sale would be entitled to inherit the property in the event of his or their decease, in order of succession ;
- (b) in the case of a sale of a share of such land or property held jointly—
 - first*, in the lineal descendants of the vendor in the male line in order of succession ;
 - secondly*, in the co-sharers, if any, who are agnates, in order of succession ;
 - thirdly*, in the persons described in sub-clause (a) of this sub-section and not hereinbefore provided for ;
 - fourthly*, in the co-sharers, (i) jointly, (ii) severally ;
- (c) if no person having a right of pre-emption under sub-clause (a) or sub-clause (b) seeks to exercise the right,—
 - first*, when the sale affects the superior or inferior proprietary right and the superior proprietary right is sold, in the inferior proprietors, and when the inferior proprietary right is sold, in the superior proprietors ;
 - secondly*, in the owners of the *patti* or other sub-division of the estate within the limits of which such land or property is situate, (i) jointly, (ii) severally ;
 - thirdly*, in the owners of the estate, (i) jointly, (ii) severally ;
 - fourthly*, in the case of a sale of the proprietary right in such land or property, in the tenants (if any) having rights of occupancy in such land or property, (i) jointly, (ii) severally ;
 - fifthly*, in any tenant having a right of occupancy in any agricultural land in the estate within the limits of which the property is situate.

Explanation 1.—In the case of a sale of a right of occupancy, clauses (a), (b) and (c) of this sub-section, with the exception of sub clause fourthly of clause (c), shall be applicable.

Explanation 2.—In the case of sale by a female of property to which she has succeeded through her husband, son, brother, or father, the word 'agnates' in this section shall mean the agnates of the person through whom she has so succeeded.

Chapter IV of the Act deals with procedure. It maintains the jurisdiction of the Civil Courts, but makes careful provision to prevent pre-emption being used to defeat the objects of the Panjab Alienation of Land Act, XIII of 1900.*

* Sections 20, 21, 26, and 27.

Commissioner's sanction to transfers to strangers formerly required.

23. There was an old rule which required the sanction of the Commissioner to the transfer to a stranger of a share of land in a village community. It must be regarded rather as a device to ensure that reversioners had an opportunity of exercising their right of pre-emption than as an attempt to restrict freedom of contract. Mr. Cust, in 1860, explained it as follows: "The right of pre-emption is not to be evaded: the sanction of the Commissioner must precede all such mutations, and, within a period of three months from the transfer taking place or being made known to the parties concerned, the validity of the transfer may be disputed by a regular revenue suit under paragraph 11, Part I, Chapter XIII, of Panjab Civil Code."*

The rule was retained in the instructions on mutation procedure contained in Chapter E-I of the Rules under the first Panjab Land Revenue Act, XXXIII of 1871. But it was there directed that "if the transferee has obtained possession, and no suit for pre-emption is brought within the term of limitation, or if such suit, when brought, is dismissed, mutation of names shall be sanctioned." It is possible that in the early days of the English administration of the Panjab the requiring of the Commissioner's sanction may have had some effect in discouraging transfers to strangers, the tendency being to regard a transaction of the sort as incomplete till it had been recognized by an entry in the record-of-rights.

Far reaching change effected by Panjab Land Alienation Act.

24. The causes which led to the passing of the Panjab Alienations of Land Act, XIII of 1900, have already been explained. The direct restraints which it has imposed on freedom of transfer have no parallel in the previous revenue history of the Panjab, or indeed of any other Indian province. It must be regarded as a bold experiment demanded by the emergence of a grave social evil. The change which it has effected in the tenure of land in the Panjab is so far reaching that it is expedient to give here a full account of its provisions.

Scope the Act.

25. The Act came into force on the 8th of June 1901. It extends to the whole of the Panjab,† but power is given to exempt by notification any area, person, or class of persons wholly or partially from its operation.‡ The only exempted district is Simla, but all municipal and cantonment areas in other districts have been excluded from the operation of the provisions restricting freedom of transfer.§ The Act has been held to apply to the rights of occupancy tenants as well as to those of landowners.|| It classifies alienations as "permanent" and "temporary." The former includes sales, exchanges, gifts, and wills; ¶ the latter mortgages and leases.

* Paragraph 13 of Financial Commissioner's Book Circular No. XLVII of 1860.

† Section 1 (2).

‡ Section 24.

§ Panjab Government Notification No. 111, dated 17th October 1901. The provisions forbidding mortgages by way of conditional sale (Section 10) and sale in execution of decree of land belonging to a member of an agricultural tribe (Section 16) apply to municipal and cantonment areas.

|| See Civil Judgment No. 11, Panjab Record of February 1904. As to transfers by occupancy tenants, see also Chapter V of the Panjab Tenancy Act, XVI of 1887.

¶ Section 2 (4). Gifts for a religious or charitable purpose, whether made *inter vivos* or by will, are not permanent alienations for the purpose of the Act,

26. Mortgages are broadly divided into usufructuary and collateral mortgages. *In the former the mortgagee takes possession of the mortgaged land, enjoying the rents and profits and paying the land revenue, the difference between the rent and the revenue being regarded as equivalent to the interest on the mortgage debt.* In a collateral mortgage the mortgagor retains possession of the land so long as he pays interest and instalments of principal according to the terms of the mortgage-deed. If he makes default the mortgagee can claim to be put in possession.

27. The provisions of the Act which deal with temporary alienations only recognize two classes of persons—

- (a) those who are, and
(b) those who are not } members of agricultural tribes.

"Members of Agricultural Tribes" and "Agriculturists."

But those relating to permanent transfer introduce a third class described as—

- (c) agriculturists.

28. The first class consists of persons belonging to the tribes notified as "agricultural" under the powers conferred by Section 4 of the Act, and the second obviously includes all other persons. Subject to the exceptions noted below, the lists of agricultural tribes which have been gazetted† comprise every tribe dependent on the land for support, which owns any considerable area of land in the district under which its name is shown. Shekhs with certain exceptions and Brahmans have been excluded for the present even from the list of those districts in which they own much land and cultivate with their own hands, because in many parts of the province they are largely engaged in money-lending and other non-agricultural pursuits.

"Members of Agricultural Tribes"—meaning of term.

29. The first two groups are in the main natural ones, but the third, or that of "agriculturists," is purely artificial. It embraces most, but not all, members of the first, and some members of the second, group. The term "agriculturist" is defined‡ as "a person holding agricultural land, who either in his own name or in the name of his ancestor in the male line was recorded as the owner of land or as an occupancy tenant in any estate at the first regular settlement or, if the first regular settlement was made in or since the year 1870, than at the first regular settlement or at such previous settlement as the Local Government may by order in writing determine." It follows that a money-lender who acquired rights in land before the first regular settlement, and was recorded as a landowner or an occupancy tenant in the settlement record then made, is an "agriculturist" for the purposes of the Act.

"Agriculturists"—meaning of term.

* This was the almost universal form of usufructuary mortgage in the Panjab before the passing of Act XIII of 1900. "Possession" means, of course, possession of the rights of a landlord. The mortgagor was often retained in cultivating possession as tenant-at-will under the mortgagee. For the legal definition of "usufructuary mortgage" see Section 2 (5). It embraces cases in which the rents and profits are appropriated, not only in lieu of interest, but also "in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money."

† Panjab Government Notification No. 68, dated 18th April 1904,

‡ Section 2 (1).

reduce the land he retains to less than is required for the support of himself and his family.

- (iv) If the Deputy Commissioner is satisfied that there is no intention of evading the Act, sanction may be given to the alienation of land for building purposes near towns or village sites.
- (v) Sanction may be given to the alienation of land—
 - (a) by wealthy *zamindars* owning much land, for commercial reasons, or to improve or consolidate their properties,
 - (b) by indebted *zamindars* owning mortgaged land and desiring to sell a part of their land in order to raise money to redeem the whole or part of the rest.
- (vi) *Zamindars* who, by reason of their insignificant numbers, have not been classed in the particular district as members of agricultural tribes will ordinarily be able as agriculturists to acquire, under Section 3 (i) (b), land situated in their own villages. Subject to these instructions, and particularly to (i), and when there is no reason to suppose that such *zamindars* are mere intermediaries attempting to evade the Act, sanction may be freely given to alienations of land situated elsewhere proposed or effected in their favour.
- (vii) The instructions in (vi) apply also in the case of persons holding land in districts of the United Provinces adjoining Panjab districts who, if they had held land in the Panjab districts, would have been deemed to belong to agricultural tribes. To applications for sanction in favour of subjects of Native States adjoining Panjab districts somewhat different considerations apply; and such applications should be dealt with on their merits.
- (viii) No Deputy Commissioner, unless specially authorized in this behalf by the Local Government, may, on his own authority, sanction an alienation to a money-lender, whether the money-lender is a *zamindar*, or a *bania*, or any one else. It will generally be possible to ascertain from the income-tax papers whether any person is a money-lender or not. If it is clear that sanction might be given consistently with the objects of the Act, and that there would be hardship in refusing it, the Deputy Commissioner may transmit the file to the Commissioner and ask his permission to give sanction. The case will then be disposed of as the Commissioner may direct. If, however, there is any doubt, the Deputy Commissioner should refuse sanction and leave the parties, if so minded, to appeal.

38. The only restraint on mortgage which the Act makes generally applicable is contained in its 10th section, which abolishes the form of mortgage by way of conditional sale.

Mortgages by way of conditional sale abolished.

39. The other provisions regarding mortgages apply only to those made by members of agricultural tribes in favour of persons who are *not* members of the same tribe or of a tribe in the same group, or in other words, as matters at present stand, in the same district.* When hypothecating his land to such persons a member of an agricultural tribe must choose between three kinds of mortgages. Two of these are usufructuary mortgages, the mortgagee acquiring for the time being the rights of landlord.

Scope of other restrictions.

40. The first is a mortgage for a limited period not exceeding twenty years, all the rights of the mortgagor being suspended, and the rents and profits enjoyed by the mortgagee being taken as extinguishing by the end of the term his claim for both principal and interest.† This form of mortgage was not unknown in the Panjab before the Act was passed, but it was rare.‡

Usufructuary mortgage for limited period, usufruct extinguishing principal and interest.

41. In the second form of usufructuary mortgage the term is subject to no statutory limitation, the mortgagor reserves the rights of an occupancy tenant at such cash rent as may be agreed upon, consisting of—

Usufructuary mortgage for unlimited period with reservation of right of occupancy.

(a) the land revenue, plus

(b) the rates and cesses, plus

(c) an additional sum not exceeding (a),

and this rent is taken as equivalent to interest. The mortgagor tenant cannot alienate his right of cultivation, and he can only be ejected on some ground which would under Section 39 of the Tenancy Act justify the ejection of an occupancy tenant.§ Should he abandon the land or be ejected from it, the mortgage takes effect as one in the first form for such term not exceeding twenty years from the date on which his possession came to an end, and for such a sum of money as the Deputy Commissioner may think reasonable.||

42. The third form of mortgage is a collateral one, in which the mortgagor retains all rights of ownership and cultivation, subject, however, to the condition that, if he fails to pay principal and interest in accordance with the terms of the contract, the mortgagee may apply to the Deputy Commissioner to put him in possession of the land. The mortgage then becomes converted into a usufructuary one of the first form for such a term not exceeding twenty years as the Deputy Commissioner thinks reasonable. It is also his duty to determine what the principal of the debt in the case of the new mortgage shall be. This will consist of whatever amount he finds to be due on

Collateral mortgage.

* Section 6 (1). No distinction is made between mortgagees who are, and those who are not, "agriculturists."

† Section 6 (1) (a).

‡ In Ambala a mortgage of this description was known as "chakola rahu."

§ Section 6 (1) (e).

|| Section 6 (2).