

cant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

XII. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of sudder jumma stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the jumma thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

XIII. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other Officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, accordingly to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in Section vi. of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

XIV. If in any case of a sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other Officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other Officer as aforesaid shall give such certificate and delivery of possession as are provided for in Sections xxviii. and xxix. of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in Section vi. of this Act.

XV. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section iii. of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities, for any balance that may remain. And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue. All monies and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

XVI. It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

XVII. No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate the sole property of a minor or minors and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment or managed by a Revenue Officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

XVIII. It shall be competent to the Collector or other Officer as aforesaid, at any time before the sale of an estate or share of an estate wholly exempted from sale, shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other Officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption. Provided, however, and it is hereby enacted, that the Collector or other Officer as aforesaid or the Commissioner shall duly

record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other Officer as aforesaid of the order of exemption.

XIX. Sales shall ordinarily be made by the Collector or other Officer as aforesaid in the Land Revenue Office at the Sudder Station of the District: provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such Office whenever they shall consider it beneficial to the parties concerned.

XX. In case the Collector or other Officer as aforesaid shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it; he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete, the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

XXI. On the day of sale fixed according to Section vi. of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjih or register in use in the Collector's Office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section xxii. of this Act.

XXII. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of the estate or share as the Collector or other Officer as aforesaid may

think necessary, either in cash, Bank of Bengal Notes, or Post Bills, or Government Securities to be valued at the market rate of the day duly endorsed, twenty-five per cent. on the amount of his bid ; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

XXIII. The full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty ; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth : and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase money, and shall be dealt with in the manner herein-after prescribed for the disposal thereof.

XXIV. When default is made in the payment of purchase money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in Section vi. of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred ; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that, if default of payment of purchase money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

XXV. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act, if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section xxiii., or if preferred to the Collector or other Officer as aforesaid for transmission to the Commissioner, on or before the tenth day from the day of sale, and not otherwise ; and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest, at the highest rate of the current Government Securities, on the amount of deposit or balance of purchase money during the period of its being retained in the Collector's Office ; and the order of the Commissioner shall in such cases be final.

XXVI. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale ; and the local Government in any such case may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

XXVII. All sales of which the purchase money has been paid up as prescribed in Section xxiii. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and dismissed by the Commissioner, shall be final and conclusive from the

date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

XXVIII. Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own Office, and in the Courts of the Moonsiffs and Police Thannahs within whose jurisdictions any part of the estate or share sold shall be situated.

XXIX. The Collector or other Officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the Mál cutcherry or in some conspicuous place of the estate or share of an estate purchased.

XXX. The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

XXXI. The Collector shall apply the purchase money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the District; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold or their heirs or representatives to be paid to his or their receipt on demand in the manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

XXXII. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other Officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section xxviii. of this Act; and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of Section xxv. or Section xxvi. of this Act.

XXXIII. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section xxv. of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section xxvii. of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase money. Provided, however, that nothing in this Act contained shall

be constructed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

XXXIV. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favor such decree was passed shall lose all benefit therefrom. And no order for restoring such decreeholder to possession shall be passed until any amount of surplus purchase money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government Securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

XXXV. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

XXXVI. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

XXXVII. The purchaser of an entire estate in the permanently settled Districts of Bengal, Behar and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions:—

First. Istemrarc or mokurrerec tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly. Tenures existing at the time of settlement, which have not been held at a fixed rent. Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly. Talookdaree and other similar tenures created since the time of settlement and held immediately of the proprietors of estates, and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly. Leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Provided always that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any ryot having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

XXXVIII. The following rules for the registration of talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

XXXIX. There shall be two sets of registers, one for common registry and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Government.

XL. The holder of any talookdaree or other similar tenure, such as is described in Section xxxviii. of this Act, desirous of registering it, shall apply by petition to the Collector of the District to which the estate belongs. The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

1. The Pergunnah or Pergunnahs in which the tenure is situated.
2. The nature of the tenure.
3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.
6. The date of the deed constituting the tenure, or the date when the tenure was created.
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the tenure.
9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said Section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

XLI. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his Office, and at the Mál cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

XLII. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding Section. If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue, to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secure so far as it may be affected by the tenure

or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected. If within the limited time any recorded proprietor or any party interested not being a proprietor, object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

XLIII. Leases of lands of the description specified in the fourth exceptional class in Section xxxvii. may be registered, at the option of the holders, in the manner and under the rules herein-before provided for the registry of Talookdaree and other similar tenures.

XLIV. Tenures of the first and second exceptional classes in Section xxxvii. may be registered, at the option of the holders; and when so registered shall be entered only in the special register.

Registration of old tenures. Application for such registry shall contain the particulars specified in Section xl. so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in Section xli. If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected. If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Provido. Provided always that nothing contained in this Section shall be understood as rendering registration necessary for the protection of *bonâ fide* tenures of the description herein referred to.

XLV. *Repealed by Section I, Act III. 1862. (Bengal Council).*

XLVI. The actual expenses of any measurement, survey, or local enquiry made under Sections xlii. and xlv. of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

XLVII. No Civil Court shall be competent to order the Revenue Authorities to enter any tenure or farm in the special register. Provided always that the refusal of the Revenue Authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

Suit for the cancelment of the registry of a tenure or farm.

XLVIII. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm, may file a suit for the cancelment of the same.

XLIX. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue Authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue Authorities to whom they are subordinate, and from the local Government; and all orders passed under the Sections aforesaid shall be open to appeal in usual course. The order of a Commissioner for the special registry of a tenure under the provisions of this Act, shall be open at any time within one year

from the date of registry to revision by the Board of Revenue or the local Government, on the ground of the Government Revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be.

L. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue. Provided that a tenure or farm in the hands of a *bond fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof,—such amount to be fixed by the Collector.

LI. Tenures and farms of the third exceptional class described in Section xxxvii. of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in Section xlii. shall in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue Authorities, upon such application, be in favor of the claimant.

LII. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, saving always and except leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this Section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the *pergunnah*, *mouzah*, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

LIII. Excepting sharers in estates under *butwarrah* who may have saved their shares from sale under Sections xxxiii. and xxxiv., Regulation XIX. 1814, and sharers with whom the Collector, under Sections x. and xi., of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise And of a purchaser of an estate not sold for its own arrears, may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself; shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to under-tenants or ryots, which were not possessed by the previous proprietor at the time of the sale of the said estate.

LIV. When a share or shares of an estate may be sold under the provisions of Section xiii. or Section xiv., the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

LV. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or ryots, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

LVI. Any Collector or other Officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine, to an extent not exceeding two hundred Rupees, commutable, if not paid, to imprisonment in the Civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other Officer as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

LVII. A default to make good a bid by making the deposit to be considered a contempt.

LVIII. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other Officer as aforesaid may purchase the estate on account of the Government for one Rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other Officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

LIX. *Repealed by Section I. Act III. 1862. (Bengal Council).*

LX. The provisions of Regulation VII. 1822 and Regulation IX. 1825 shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

LXI. In the construction of this Act, the word "Collector" shall include a Deputy Collector or other Officer exercising by the authority of Government the powers of a Collector or Deputy Collector.

LXII. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency.

SCHEDULE A.

I certify that A. B. has purchased under Act No. XI. of 1859, the mehal (or share of a mehal) specified below, standing in the towjih of the district of _____ and that his purchase took effect on the _____ day of _____ (being the day after that fixed for last day of payment.)

(Signed) D. E.,
Collector.

SPECIFICATION

(if of an entire Mehal.)

Towjih number.
Name of Mehal.
Name of the former proprietor.
Sudder Junma.

(if of a share of a Mehal.)

Towjee number of the entire Mehal.
 Name of the entire Mehal.
 Sudder Jumma of the entire Mehal.
 Description of the share sold.
 Subordinate Towjee number of the share sold.
 Name of the former proprietor of the share sold.
 Sudder Jumma for which the share sold is separately liable.

ACT III. OF 1862.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL.

(Received the assent of the Governor-General on the 21st April 1862.)

AN ACT to amend Act XI. of 1859 (to improve the law relating to sales of land for arrears of Revenue in the Lower Provinces under the Bengal Presidency.)

WHEREAS it is expedient to extend the period allowed for the registry of under-tenures and farms, and to alter the scale of fees on certain applications for the opening of separate accounts for shares of entire estates, for deposit of money or Government Securities, and for registry of under-tenures and farms; It is enacted as follows:—

Repeal of Sections xlv. and lx. Act XI. of 1859. I. Sections xlv. and lix. of Act XI. of 1859 are hereby repealed.

II. Applications under Sections xl., xliii., and xlv. of Act XI. of 1859, for Time for registration under Sections xl., xliii., and xlv. of Act XI. of 1859, extended. Act XI. of 1859, must be made within three years of the passing of this Act. Applications for the registry of tenures existing at the time of the passing of this Act but created after the passing of Act XI. of 1859, must be made within three months of the passing of this Act. Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the Deed constituting the tenure.

III. The Collector on the part of the Government shall be entitled to demand Fees to be paid at the rates mentioned in the Schedule. from applicants under Sections x. and xi., Sections xv. and xvi., Sections xl., xliii., and xlv. of Act XI. of 1859, fees not exceeding the rates specified in the Schedule to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees are tendered therewith.

This Act to be read as part of Act XI. of 1859. IV. This Act shall be taken and read as part of the said Act XI. of 1859.

SCHEDULE OF FEES.

1. For filing an application under Section x. or Section xi. of Act XI. of 1859, for opening a separate account for a share of an entire estate—

If the annual jumma of the share do not exceed 1,000 Rupees, at the rate of ten per cent. upon the jumma. If the annual jumma of the Share exceed 1,000 Rupees, at the rate of 10 per cent. upon 1,000 Rupees and two per cent upon all above that amount.

2. For filing an application for a deposit of money or Government Securities under Section xv. of the said Act, half per cent. on the amount deposited.

For any interest on Government Securities so deposited, drawn by the Collector, half per cent on the amount drawn.

For filing an application for withdrawal of a deposit under Section xvi. of the said Act, half per cent. on the amount withdrawn.

3. For filing an application, under Sections xl., xliii., or xlv. of the said Act, for the registration of an under-tenure or farm—

If the annual rent of the under-tenure or farm do not exceed 1,000 Rupees, at the rate of five per cent on the rent.

If the annual rent of the under-tenure or farm exceed 1,000 Rupees, at the above rate up to 1,000 Rupees and at one per cent. on all above that amount.

REGULATION VII. OF 1799.

A REGULATION for enabling Proprietors and Farmers of Land to realize their rents with greater Punctuality; for providing against unnecessary Delay in the payment of the Public Revenue assessed upon the Lands; and for securing the ultimate Recovery of arrears of Revenue by a sale of the Landed Property from which it may be due at the close of the year: PASSED by the Vice-President in Council on the 29th August 1799.

I to XX.—*Repealed by Sec. i. Act X. 1859.**

XXI. The foregoing rules will afford proprietors and farmers of land the means of realizing their rents with promptitude and facility, and the utmost punctuality will consequently be expected from them in the payment of their revenue to Government. The motives stated in the preamble to Regulation III. 1794, induced the Governor General in Council to discontinue the

mode of coercion, which had been practised from time immemorial, of confining proprietors of land on their failure in the discharge of the public revenue engaged for by them; and it was expected, that the permanent assessment on their estates, which they were left to improve to the utmost without any addition of revenue, would be paid so readily and punctually as to render it seldom necessary to have recourse to any means of coercion. Instead of fulfilling these reasonable expectations, however, many of the principal zemindars have withheld their revenue; and taking advantage of the want of information in the public officers of the actual produce of their estates, from the discontinuance of former checks and scrutinies, have encouraged, instead of preventing, the public sale of portions of their lands, for the purpose of repurchasing the same in fictitious names at an under rated assessment, or of reducing the assessment upon the residue of their estates by over-rating the proportion sold. The following rules are enacted to remedy abuses of this nature, as well as to secure the more punctual realization of the public revenue without the necessity of frequent sales of land in the course of the year, which have been found liable to many ill consequences; and the Vice-President in Council, still desirous of enhancing the value of landed property, and of promoting as far as possible the ease of the proprietors, by considering their property alone a sufficient security for the public dues, without subjecting them to any personal restraint, except in cases of necessity, has forborn to renew the usage above referred to, whilst there can be a hope of realizing the fixed assessment on their lands according to the stipulated periods of payment without it.

XXII. Proprietors and farmers of land paying revenue immediately to Government are already required by Section ii. of Regulation III. 1794 to cause the whole of the instalment due from them

for each month to be paid into the treasury of the Collector of the zillah, or to the Tehseeldar or the officer appointed to receive the same, on or before the first day of the following month, without waiting for a demand of the amount by the Collector or Tehseeldar; and by Sections iv. and v. of the above Regulation, proprietors of land, who may not discharge the instalment due from them on account of any one month by the fifteenth of the following month, and who after being served with the notice directed in Section iii. of Regulation XIV. 1793, may not liquidate the arrear due from them by the time therein limited, are declared liable to the payment of interest at the rate of twelve per cent. per annum on the amount due from them, and (after reference to the Board of Revenue) to the immediate public sale of their lands under the rules prescribed for the disposal of lands on account of arrears of revenue. Sections iv., v., vi., vii., ix., and x. of Regulation III. 1794 are now rescinded, and the following rules are enacted instead of them:—

XXIII. *First.*—[Interest on arrears.] *Rescinded by Clause First, Sec. ii. Regulation VII. 1830.†*

Second.‡ In the event of any arrear of revenue, as described in Section ii. of Regulation XIV. 1793, being undischarged on the first day of the month succeeding that for which the arrear may be

* Vide Chapter VII.

† Regulation VII., of 1830, was rescinded by Act XII. of 1841. Regarding which see note to Section 23, page 271.

‡ Such parts of this Section as require the revenue officer to issue a process of demand for the revenue due, or to attach estates or farms before a sale, or as restrict him in the selection of land for sale, on account of arrears of revenue, or the period of sale, were rescinded by Cl. 2, Sec. ii. Reg. XI. 1822.

due, the Collector, if the revenue be payable into his treasury, or if not, the Tehseeldar or other public officer to whom the same may be payable, is immediately to require payment thereof with interest at the rate of one per cent. per mensem, in the mode prescribed by Section iii. of the above Regulation; and if the arrear shall not be discharged according to such requisition, or assurance given for the immediate payment thereof to the Collector's satisfaction, he shall proceed without delay to attach the estate of the proprietor from whom the arrear may be due, or such portion thereof as he may consider fully sufficient to make good by a sale the arrear due, with interest; or if the arrear be due from a farmer, shall proceed without delay both to attach his farm and arrest his person (as well as the person of his surety, if he have given security), in the mode prescribed by Sections v. and vi., of Regulation XIV. 1793. This rule, of course, supersedes Section iv. of the above Regulation (which has already been rescinded, as far as respects proprietors of land, by Section iii. of Regulation III. 1794); but is not meant to supersede Section xiii. of Regulation III. 1794, with respect to proprietors or farmers of land paying their revenue to a Tehseeldar, or other mofussil officer, who is thereby directed to demand payment of the arrear by the same process as the Collectors are required to observe in Section iii. of Regulation XIV. 1793, and to report to the Collector in case the arrear be not liquidated by the limited period. If the farmer shall have given security, and the Collector have no reason to believe that he will abscond, he is not to issue the process prescribed in Section v. of Regulation XIV. 1793, for the confinement of the defaulter or his surety, until the defaulter has been served with the written demand for the arrear directed in Section iii. of the above Regulation; but if the Collector have reason to believe that the defaulter or his security is prepared to abscond, he is authorized to issue the process prescribed in Section v. of the above Regulation, both against the defaulter and his surety, without having issued the previous demand directed in Section iii. of the above Regulation; and in like manner, if the Tehseeldar or other mofussil officer entrusted with the collections shall have reason to believe that any defaulting farmer whose revenue may be payable to him, or his surety, is prepared to abscond, so as not to allow time for his making report to the Collector, as directed in Section xiii. of Regulation III. 1794, he is authorized to arrest such defaulter and his surety, without waiting for the Collector's process under Section v. of Regulation XIV. 1793, by a similar process under his own seal and signature, and to cause the party arrested to be immediately conveyed to the Collector, to be further proceeded against as directed in the above Regulation. Instead, however, of carrying the defaulter forthwith to the gaol of the Dewanny Adawlut, as directed in Section v. of Regulation XIV. 1793, the Collector, if the defaulter show any disposition to adjust and satisfy the demand upon him, is at liberty to keep him in the custody of peons during a period not exceeding ten days from the date of his arrival at the Collector's station; at the expiration of which period, if the arrear be not paid or satisfaction given for the immediate payment thereof, so as to induce the Collector to release the defaulter, he is to be brought before the Judge of the Dewanny Adawlut, and confined in the gaol of that Court as directed in the Section above-mentioned. This qualification of the rule contained in that Section is to be considered applicable to all cases under the original rule, or to which it may be extended by the present or any other Regulation; but it is not meant to restrict the Collectors from observing the original rule in any instances where the defaulter may show no disposition to adjust and satisfy the demand upon him; or where, for any other reason, it may appear to them objectionable to suspend the confinement of the defaulter or his surety.

Third. After the attachment of the lands of defaulting proprietors, or the attachment of the farms of defaulting farmers, in conformity to the preceding Clause, if the arrear due, with any further arrear that may become due from the same proprietor or farmer, with interest thereupon at the rate of one per cent. per mensem, be discharged at any period before the end of the current Bengal Fussily, or Willaity year (as the estate or farm may be situated in Bengal, Behar, or Orissa), together with any expense attending the attachment, which may not have been defrayed from the collections, the attachment shall be immediately withdrawn, and a full and fair account rendered of all receipts and disbursements during the continuance of it. Moreover, all receipts from the estate or farm attached, after paying the establishment of officers required to collect

the rents, as provided for by Section vi. of Regulation XIV. 1793, shall be carried to the credit of the defaulter during the current year, in discharge of the arrear and interest due from him. The whole of the provisions in the above Section are also to be considered in full force; except that the injunction to the Ameen to collect according to the engagements subsisting between the defaulter and his under-tenants is not to be considered applicable to engagements evidently collusive, which may have been contracted in expectation of the attachment, with a view to prevent the officers of Government from receiving the just rents during the continuance of it. In such cases, the Ameen is to collect according to the established rates and usages of the pergunnah, as he is directed to do in cases where no engagement exists between the defaulter and his under-tenants. It is further hereby declared, that after the promulgation of this Regulation no anticipation of the rent will be admitted in cases of attachment. The landholders and farmers are forbidden to demand or receive, and the ryots and other under-tenants are forbidden to pay, any part of the rents receivable, by the former, and payable by the latter, before the stipulated or usual period of payment, according to the kistbundy or other engagement, or established local usage; and no person hereafter making anticipated payments against this prohibition, or producing receipts for such, whether collusive or otherwise, shall be entitled to credit for the amount from the officers of Government who may attach the lands or farm, or from the landholder or farmer making the attachment, if it be made for arrears due from an under-tenant under the provisions contained in this Regulation. Nor shall credit be allowed for any payment made to a defaulter after proclamation of the attachment of his estate or farm, until further proclamation be made that such attachment has been withdrawn; unless it can be clearly shown that such proclamation, which is to be made as public as possible throughout the attached lands immediately on the attachments taking place, was notwithstanding unknown to the party making payment to the defaulter at the time when such payment may have been made. Provided, however, that nothing herein contained shall be understood to exonerate the defaulter from crediting to his under-tenants, or otherwise accounting for, all sums received by him, whether in anticipation of the rents or subsequent to the attachment of his estate or farm, the above restrictions having reference to the attachment only.

Fourth. In all cases of attachment, the village putwarries required to be appointed by the original rules for the decennial settlement and by Section lxii. of Regulation VIII. 1793, will of course be bound to furnish the Collector and the Ameen, or other officer deputed by him, with the accounts directed to be kept by them; and the Collectors are hereby required to take immediate measures for ascertaining whether the putwarries have been universally appointed throughout their respective districts as enjoined in the above Section, as well as to cause their immediate appointment where they may be found wanting, by requiring instant compliance from the landholders with the Regulation in question, under the penalty prescribed in the ninth Clause of the Section above-mentioned; which, if necessary, they are to proceed to enforce in the mode therein provided. It is, at the same time, hereby explained, that it was not meant by the above Regulation to require the proprietors of small estates, who may superintend their own lands and be unable to afford the expense of a putwarry, to appoint officers of this description for the purposes mentioned in Section lxii. of Regulation VIII. 1793; but in such cases the proprietors themselves are, when required, to furnish the accounts and information specified in the above Section, in like manner as the putwarries are required to furnish the same, and under the same provisions. Defaulting proprietors and farmers of land, whose estates or farms may be attached under this Regulation, are also required to furnish the Collectors with any accounts that may be required from them relative to the jumma, collections, and outstanding balances of the current year or of preceding years, which may be in their possession, as well as to cause their agents of every description, who may have been employed in the collections of the current year, to attend the Collector, Ameen, or other officer appointed by him. Any proprietor or farmer who, on receiving a written requisition from the Collector under his official seal and signature to the above effect, shall refuse or neglect to comply therewith, shall be liable to such fine as the Board of Revenue, with the sanction of the Governor-General in Council, may think proper to impose upon him on the Collector's report of the circumstances of the case; and the Governor-General in Council

reserves to himself the power of ordering the imprisonment of any landholder or other person, who may persist in refusing to deliver up the accounts required from him in any particular instance.

Fifth. If any arrear remain due from a proprietor of land at the close of the current year, the Collector, immediately on the expiration thereof, is to report the amount to the Board of Revenue, and at the same time transmit a statement of his lands for sale, sufficient to make good the arrear and the interest due thereupon to the time of sale, to be disposed of according to the rules prescribed for public sales on account of arrears of revenue; and if the whole arrear cannot be recovered from a sale of the defaulter's lands, the deficiency will be recoverable from any other property he may possess, or by imprisonment of his person, as prescribed in Section xiv. of Regulation III. 1794.

Sixth. If any arrear remain due from a farmer of land at the close of the current year, any land or property belonging to the defaulter, or his surety, is to be brought to public sale as soon as possible after the close of the year, according to the rules, prescribed for such sales, and as provided in Section xxiii. of Regulation XIV. 1793, it will be at the option of the Governor-General in Council either to cancel the lease of the defaulter from the commencement of the ensuing year, or to compel the defaulter or his surety to perform the conditions of the lease until the term of it shall expire. If the Governor-General in Council shall annul the lease, the defaulter, after making good the arrear due from him to Government, is to be at liberty to prosecute the dependent talookdars, under-farmers, or ryots, included in his farm, for any arrears of rent due to him on account of the period during which his lease remained in force, as provided in the latter part of the Section above-mentioned, the preceding part of which is superseded by the rules now enacted. The provisions contained in Section xxiv. of Regulation XIV. 1793, respecting the attachment of the landed property of sureties for farmers of land, or of sureties for proprietors of land (in cases where they may have given security), are moreover still to be considered in full force (under the alterations made by this Regulation with respect to the attachment and sale) when the persons for whom they are bound may be confined, or their lands and farms attached under this Regulation; and the above rule is hereby extended to landed property of defaulting farmers which can be attached, and which, in such case, is to be brought under attachment at the same time that their farms are attached under the present Regulation, subject to the same provisions for withdrawing the attachment on payment of the arrear.

Seventh. The discretion given to the Collectors by Section viii. of Regulation XIV. 1793, to suspend the exercise of the powers vested in them by that Regulation, in cases of drought, inundation, or other calamity of season, or cause of failure not originating in the neglect, mismanagement, or misconduct of the defaulter, is to be considered equally applicable to similar cases under the present Regulation; and the Collector, in such cases, is to suspend the exercise of the powers now vested in him: but, as before required, he is immediately to report the circumstances to the Board of Revenue, with his reasons for not proceeding against the defaulter as directed, and is to be guided by their instructions. The Board of Revenue may suspend enforcement of the current kists, as well as of the interest due thereupon, in such cases; but are not to grant any ultimate remission of the amount demandable on the permanent assessment without the sanction of the Governor-General in Council, as already directed in Section lxiii. of Regulation II. 1793.

Eighth. Nothing in this Regulation is to be understood to preclude the Governor-General in Council from ordering a sale of land, or other property, for the recovery of arrears of revenue, within the current Bengal, Fussily, or Willaity year, in any particular case wherein he may judge it proper to order such sale within the year.

XXIV. The provisions contained in Sections xv., xvi., xvii., xviii., xix., xx., and xxi. of Regulation XIV. 1793, for cases of disobedience or resistance to the processes against defaulting proprietors or farmers and their sureties, authorized by that Regulation,

are declared equally applicable to cases of disobedience or resistance to the processes

Limitation of appeals authorized by the preceding Sections of this Regulation. As, to the Sudder Dewanny Adawlut, however, under Section ii. of Regulation V. 1798, the decrees

of the Provincial Courts of Appeal are declared final to the amount of five thousand sicca rupees, that amount, instead of one thousand rupees (beyond which sum the judgments of the Provincial Courts were appealable to the Sudder Dewanny Adawlut, when Regulation XIV. 1793 was enacted), is to be considered the standard for appeals to the Sudder Dewanny Adawlut, instead of one thousand rupees, as specified in Sections xvi., xix., and xxi. of that Regulation. The same principle is to be applied to all other parts of the Regulations in which an appeal was authorized to the Court of Sudder Dewanny Adawlut, antecedent to the enactment of Regulation V. 1798, for the limitation of appeals to that Court.

XXV. When lands are attached by a Collector, or other officer of Government,

Further powers vested in the Collectors in cases of attachment or khas collection.

under the present Regulation, or become subject to a khas collection on the part of Government under any Regulation authorizing the same, or by any means come under the immediate management of the officers of Government, so that the rents are collected by them from the ryots, jotedars, dependent talookdars, under-farmers, or other descriptions of under-tenants, the Collector, in addition to the power vested in him and in the officers employed under him, by Section xix. and the preceding Sections of this Regulation, is authorized, without any previous application to the Dewanny Adawlut, to proceed against defaulting under-renters, of whatever denomination, from whom arrears of rent may be due, and their sureties, in the same manner as he is authorized by Section xxiii. of this Regulation to proceed against sudder farmers paying revenue immediately to Government, and their sureties, if he shall consider this mode of procedure more likely to be effectual in causing payment of the arrear due from them : and in such cases he is authorized to issue the process directed in Section v. of Regulation XIV. 1793, on the report of the tehseeldar, or other officer employed to make the collections, as in cases of arrears due from proprietors or sudder farmers whose revenue may be made payable to a tehseeldar ; or the tehseeldar, or other collecting officer, may, in particular cases, where he may have reason to apprehend the elopement of the defaulter or his surety, himself arrest and convey him to the Collector, under the provisions contained in the second Clause of Section xxiii. of this Regulation. In all such cases, however, the Collector, before he delivers over the parties to the Dewanny Adawlut, is to satisfy himself that the arrear stated by the tehseeldar or other mofussil officer is justly due ; and he is at liberty to keep the alleged defaulter under mofussil peons during the enquiry that may be necessary for this purpose, although the period should exceed the ten days limited by the above Section ; but all such inquiries are to be brought to a conclusion with the least possible delay.

XXVI. The provisions in the preceding Section are meant to include the estates

Preceding Section meant to include estates of disqualified landholders under the management of serberakars appointed by the Court of Wards.

of disqualified landholders under the management of serberakars appointed by the Court of Wards, under Section viii. of Regulation X. 1793 ; which estates being exonerated from responsibility for the revenue assessed upon them, beyond what may be realized from the rents collected by the officers entrusted with the management of them, and experience having shown that the managers elected under the above Section (which directs a preference to the legal heirs or other near relations of the proprietors, or, in the event of there being no heirs or relations of this description, to creditable servants of the family, and allows female proprietors, not minors or otherwise disqualified, to recommend managers for their estates) are in general wholly disregardful of the public interest in the realization of the revenue assessed upon the estates committed to them, the above Section is hereby rescinded, and the managers of the estates of disqualified landholders, which may be exonerated from responsibility for the public revenue assessed upon them, are to be hereafter chosen by the Collector and approved by the Board of Revenue, without any regard to their connection with the proprietors, or to the will of the disqualified proprietors themselves in the election of such managers, who are to be considered in every respect the officers of Government acting under the Collectors ; and the latter will be held responsible for the nomination of proper persons, both as to character and capacity, for the trust. The Collectors are further directed to take into imme-

diate consideration the conduct of the present serberakars of the estates of disqualified landholders during the period they have acted as managers respectively; and if, from a deficiency in the collections, or misappropriation of their receipts, or other cause, they shall see reason to be dissatisfied with the conduct of any manager, they are to report the same to the Court of Wards, and propose the removal of such manager, with their recommendation of a person better qualified to succeed him.

XXVII. The restrictions contained in Section xlviii. of Regulation XIV. 1793, against the confinement of joint proprietors of estates committed to the charge of managers appointed by the Board of Revenue, as well as against the confinement of disqualified landholders, and female landholders, of every description, are to be considered in full force under the present Regulation; as are all the rules in Regulation XIV. 1793, with respect to the personal responsibility of the Collectors and other public officers, for the due exercise of the powers vested in them, which have not been expressly rescinded or modified by any other Regulation.

XXVIII.—*Rescinded by Clause First, Section ii. Regulation XI., 1822.**

XXIX. *First.*—[Application of Clause Fourth, Section lxii. Regulation VIII. 1793, and extension of Section x. Regulation XLV. 1793, to cases of sales for arrears.] *Superseded by the rescission of those enactments.*

Second to Fifth.—*Rescinded by Clause First, Section ii. Regulation XI. 1822.*

XXX. The Board of Revenue, who are hereafter to conduct the sales of land in the mode prescribed by the Regulations, without any reference to the Governor-General in Council, except in cases wherein they may require his instructions, are to consider themselves responsible for the careful execution of this duty, and are required to be particularly attentive to the proper selection of lands for sale by the Collectors, as well as to the due allotment of the public assessment thereupon, in conformity to the Regulations. They are also authorized to fix the establishments of native officers which may be necessary during the attachment of lands for sale, the expense of which is to be defrayed from the produce of the lands, as provided in Section xxiii; and statements of all such establishments are to be submitted by the Collectors for their approval, as soon as possible after the attachment may take place. In preparing such statements, the Collectors are to be careful not to propose a greater number of officers, or greater allowances to the officers employed, than may be indispensably necessary; and the Board of Revenue, in approving such establishments, are to give particular attention that this principle is duly observed. The Collectors are also to nominate, for the approbation of the Board of Revenue, the ameen and other principal native officers to be employed in the management of lands under attachment, with the sureties to be taken for their appearance under Section xv. of Regulation III. 1794; and will be held responsible for the utmost regard to the qualifications and character of the persons so appointed by them, as well as in all cases wherein native officers may be appointed by them to the charge of a khas collection, whether under this or any other Regulation.

XXXI. In the execution of the duties vested in the Board of Revenue by this Regulation, as in all other cases, they are to be guided by any special orders or instructions which they may at any time receive from the Governor-General in Council (or Vice-President in Council), to whom they are to apply in all cases which they may consider unprovided for by the Regulations, or if it appear to them, in any case, that a new Regulation would be advisable to be printed and published in the form prescribed by Regulation XLI. 1793, they are to prepare such Regulation in the form so prescribed, with a letter stating at large the grounds, on which it may be proposed, and copies of any documents therein referred to, which may not have been already transmitted to the Governor-General in Council. The Collectors are also authorized to propose to the Board of Revenue,

* Regulation XI. of 1822 was repealed by Act XI. of 1841. The greater part of this Act was repealed by Act I. of 1845, which last enactment was subsequently entirely repealed by Act XI. of 1859.

in the prescribed form, any Regulations regarding matters within their cognizance, which their local knowledge and experience may suggest to them as advisable to be adopted; and provided they are drawn out according to the form directed by Regulation XLI. 1793, the Board of Revenue are to forward the same to the Governor-General in Council, whether they approve the Regulation proposed or otherwise. If they disapprove it altogether, they are to state the reasons of their disapproval in a letter to the Governor-General in Council, to accompany the Regulation proposed by the Collector, or a copy of it, and copies of any letter and documents received from him in explanation of it. If they disapprove it in part only, and are of opinion that the remainder should be enacted into a Regulation, with any amendments they may think advisable, they are to state their objections to the part disapproved, and at the same time to submit to the Governor-General in Council a draft of the Regulation they judge expedient, with any requisite explanation of the amendments proposed by them.

REGULATION VIII. OF 1819*.

A REGULATION to declare the Validity of certain Tenures, and to define the relative Rights of Zemindars and Putnee Talookdars, also to establish a Process for the Sale of such Talooks in satisfaction of the Zemindar's demand of Rent, and to explain and modify other Parts of the system established for the Collection of Rents generally throughout Bengal: PASSED by the Governor-General in Council on the 3rd September 1819.

I. By the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mehals,

were declared to be entitled to make any arrangements for the leasing of their lands in talook or otherwise, that they might deem most conducive to their interests. By the rules of Regulation XLIV. 1793, however, all such arrangements were subjected to two limitations: first, that the jumma, or rent, should not be fixed for a period exceeding ten years; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale. The provisions of Section ii. Regulation XLIV. 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by Section ii. Regulation V. 1812; and in Regulation XVIII. of the same year it is more distinctly declared, that zemindars are at liberty to grant talooks or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government Revenue, in the same manner as heretofore. In practice the grant of talooks and other leases at a rent fixed in perpetuity had been common with the zemindars of Bengal for some time before the passing of the two Regulations last mentioned; but notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government Revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V. and XVIII. of 1812, or in any other Regulations, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of Section ii. Regulation XLIV. 1793, should, if called in question, be deemed invalid and void as heretofore. This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force. Furthermore, in the exercise of the privilege thus conceded to zemindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rajah of Burdwan, but has since been extended to other zemindaries; the character of which tenure is, that it is a talook created by the zemindar, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused

* See note at the end of this Regulation.

from this obligation at the zemindar's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zemindar. By the terms also of the engagements interchanged it is amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the zemindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated putnee talooks, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of durputnee talookdars: these again sometimes similarly underlet to seputneedars; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder. In these engagements, however it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether in case the proceeds of sale should exceed the zemindar's demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country, nor the Regulations of Government afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied, or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner. The tenures in question have extended through several zillahs of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a putnee talook as above described, also to declare the legality of the practice of under-letting in the manner in which it has been exercised by putneedars and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the zemindar, or other, for his ruin, as well as to secure the just rights of the zemindar on the sale of any tenure under the stipulations of the original engagements entered into with him.—It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale and the form and manner of conducting such sale; and whereas the estates of zemindars under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Government, it has seemed just to allow any zemindar who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the Regulations in force; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year. It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters. The following rules have accordingly been enacted by His Excellency the Most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the province of Bengal, including Midnapore.

II. It is hereby declared that any leases or engagements for the fixing of rent

Leases fixing rent in perpetuity or for a longer term than ten years, declared valid, though executed while Sec. ii. Reg. XLIV. 1793 was in force.

now in existence, that may have been granted or concluded for a term of years, or in perpetuity, by a proprietor under engagement with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V. 1812, and while the rule of Section ii. Regulation XLIV. 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that

might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question: provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue under the rule of Section v. Regulation XLIV. 1793, unless specially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

III. First. The tenures known by the name of putnee talooks, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.

Second. Putnee talookdars are hereby declared to possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interest, and any engagements so entered into by such talookdars with others shall be legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagements shall operate to the prejudice of the right of the zemindar to hold the superior tenure answerable for any arrear of his rent, in the state in which he granted it, and free of all incumbrance resulting from the act of his tenant.

Third. In case of an arrear occurring upon any tenure of the description alluded to in the first Clause of this Section, it shall not be liable to be cancelled for the same, under the rule contained in the seventh Clause of Section xv. Regulation VII. 1799, for leases conveying a limited interest in the land; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due: subject, however, to the provisions contained in Section xiii. of this Regulation.

IV. If the holder of a putnee talook shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding Section to attach to putnee talooks, in so far as concerns the grantor of such under-tenure. The same construction shall also hold in the case of putnee talooks of the third or fourth degree.

V. The right of alienation having been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee. In conformity, however, with established usage, the zemindar or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent. on the jumma or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account. The zemindar shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jumma or yearly rent payable to him from the tenure, transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply, to the case of sale for an arrear in the rent due to the zemindar or other superior under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though, of course, liable to be called on to give security under the conditions of the tenure purchased.

VI. It shall be competent to the zemindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted: provided, however, that if the security tendered by any purchaser or transferee should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it, and give effect to the transfer without delay. It is hereby provided, that the rules of this and of the preceding Section shall not be held to apply to transfers of any fractional portion of a putnee talook, nor to any alienation other than of the entire interest; for no apportionment of the zemindar's reserved rent can be allowed to stand good, unless made under his special sanction.

VII. In case of the sale of a putnee tenure in execution of a judgment of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of Section v. of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zemindar or other superior shall be entitled, of his own authority, to send a suzawul to attach and hold possession of the tenure, until the forms prescribed be observed. In case, also, of the sale of a putnee tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the zemindar, and the purchaser fail to furnish the same within one month of the date of sale, the zemindar shall similarly be entitled to send a suzawul to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given. Attachments made under this Section shall be regarded as trusts for the benefit and at the risk of the purchasers: consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections, shall be held in deposit for such purchaser: but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zemindar, or other superior making the attachment, shall be received as *prima facie* evidence to warrant process for an arrear so accruing.

VIII.* *First.* Zemindars, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Second.† On the first day of Bysakh, that is, at the commencement of the following year from that of which the rent is due, the zemindar shall present a petition to the Civil Court of the district, and a similar one to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any talookdars, or other holders of an interest of the native described in the preceding Clause of this Section. The same shall then be stuck up in some conspicuous part of the catcherry, with a notice that if the amount claimed be not paid before the first of Jyte following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should, however, the first of Jyte fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the sudder catcherry of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the catcherry, or at the principal

* Vide Reg. I. of 1820, page 231.

† Vide Act XXXIII. of 1850, page 282.

town or village upon the land of the defaulter. The zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear from the tenor of the receipt, or attestation in question, that the notice has been published at any time previous to the fifteenth of the month of Bysakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the outcherry of the nearest moonsiff or if there should be no moonsiff, to the nearest thannah, and there make voluntary oath of the same having been duly published, certificate to which effect shall be signed and sealed by the said officers, and delivered to the peon.

Third. On the first day of Kartick, in the middle of the year, the zemindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aughun, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick to less than one-fourth, or a four-anna proportion of the total demand of the zemindar, according to the kistbundee, calculated from the commencement of the year to the last day of Kartick.

IX.* All sales or saleable tenures applied for under the rules of this Regulation, shall be made in public cutcherry by the register or acting register of the Civil Court, or, in his absence, by the person in charge of the office of Judge, or of Magistrate of the district, within which the lands may be situated; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours. If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal, within two hours of the sale, or an equivalent amount in Government Securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazaar of the sudder station of the zillah, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made (which shall be in such case regarded as part of the proceeds of the sale), and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

X. At the time of the sale, the notice previously stuck up in the cutcherry shall be taken down, and the lots be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the zemindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mofussil, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate roobakarry to be held upon each lot sold. If the sale be of the description provided for in the third Clause of Section

* See Acts XXV. of 1850, and VI. of 1853, pages 282 and 283.

viii. of this Regulation, the kistbundee of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale ; nor shall the sale take place unless this be ascertained. The zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

XI. *First.* It is hereby declared, that any talook or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said talook may have been held. No transfer by sale, gift, or otherwise ; no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar.

Second. In like manner, on sale of a talook for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred ; the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the ryots ; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

Third. Provided nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure to interfere with the engagements intermediate between the zemindar and actual cultivators, to eject a khodkasht ryot, or resident and hereditary cultivator, nor to cancel *bond fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

XII. The rules of the preceding Section being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the zemindar's reserved rent, will equally apply to the case of talooks heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling.

Proviso. Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a talook and the lessees of his predecessor. Neither shall the rule for the fall of under-tenures be considered to apply to any

private transfer by a talookdar in his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talookdar in favor of the zemindar, nor to any act originating with the former holder, other than default as aforesaid : all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

XIII. *First.* With reference to the injury that may be brought upon the holder of a talook of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zemindar, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such talookdars the means of

Reason for allowing under-tenants a means of staying sale.

saving their tenures from the ruin that must attend such a sale ; and the following rules have accordingly been enacted for this purpose.

Second. Whenever the tenure of a talookdar of the first degree may be advertised for sale in the manner required by the second and third Clauses of Section viii. of this Regulation, for arrears of rent due to the zemindar, the talookdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the zemindar on the day appointed for sale ; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the zemindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

Third. If the amount so lodged shall be rent due by the inferior talookdar to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Fourth. If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged as an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the talook so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage ; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons, who, by making the advance may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum, up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.

XIV. First. Should the balance claimed by a zemindar, on account of the rent of any under-tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in Sections ix. and x. of this Regulation ; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged. It shall, however, be competent to any party desirous of contesting the right of the zemindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zemindar for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zemindar or person at whose suit the sale may have been made.

Second. In cases also in which a talookdar may contest the zemindar's demand of any arrear, as specified in the notice advertised, such talookdar shall be competent to apply for a summary investigation at any time within the period of notice ; the zemindar shall then be called upon to furnish his kaboolent and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale. Such award,

Sale not be stayed except the arrear claimed be lodged. But action to lie for its reversal.

Summary investigation may be applied for by defaulter. But not to stay sale without deposit.

if so made, will of course regulate the ulterior process ; but if the case be still pending, the lot shall be called up in its turn notwithstanding the suit ; and if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government Securities or in notes of the Bank of Bengal, by the talookdar contesting the demand ; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.

XV. First. So soon as the entire amount of the purchase-money shall have been paid in by the purchaser, at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment. The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the cutcherry of the zemindar, and upon furnishing security, if required, to the extent of half the jumma or annual rent, he shall receive the usual umul-dustuk, or order for possession, together with the notice to the ryots and others to attend and pay their rents henceforward to him. The zemindar shall also be bound to furnish access to any papers connected with the tenure purchased, that may be forthcoming in his cutcherry ; and should he, in any manner, delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished, or tendered, on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession of the lands by means of the nazir, in the same manner as possession is obtained under a decree of Court ; provided, however, that if the delay be on account of the zemindar's contesting the sufficiency of the security tendered, the rule contained in Section vi. of this Regulation shall be observed.

Second. When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court for the aid of the public officers in obtaining possession of his just rights. A proclamation shall then issue under the seal of the Court and signature of the Judge, declaring, that the new incumbent having, by purchase at a sale for arrears of rent due to the zemindar, acquired the entire rights and privileges attaching to the tenure of the late talookdar, in the state in which it was originally derived by him from the zemindar, he alone will be recognized as entitled to make the zemindarry collections in the mofussil, and no payments made to any other individual will on any account be credited to the ryots, or others, in any summary suit for rent, brought under the provisions of Section xv. Regulation VII. 1799, or in any application to stay process by distraint, under the rules of Regulation V. 1812, or on any other occasion whatever, when the same may be pleaded.

Third. Should the late incumbent, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers, and of all other public officers who may be at hand, and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same ; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

XVI. Under-tenures held under engagements similar to those executed between the zemindar and putneedar, having been declared not to be voidable for an arrear of the rent fixed upon them in perpetuity, it will be necessary that the person to whom the said rent may be payable, should (in case he be desirous of holding the tenure answerable in the manner provided for by stipulation in the deeds interchanged) proceed according to the rules of Section xv. Regulation VII. 1799, and the general Regulations, to have the sale effected at the end of the year

Under-tenures how to be brought to sale for arrears.

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in the same manner as heretofore. But it is hereby provided that every such sale shall be public, and be conducted by the register or acting register of the Zillah Court, or, in his absence, by the person in charge of the office of Judge or of Magistrate, under the rules of this Regulation, as far as the same may be applicable; ten days notice shall be given of such sales, by advertisement, to be stuck up at the cutcherries of the Court and Collector.

Rules for disposing of the purchase-money of sales for arrears under this Regulation.

One per cent. to be carried to account of Government.

Third. The balance Zemindars' balance and expenses to be next made good.

on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the talook to sale) to the zemindar or other person to whom the same may be due; provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual talookdar, and must be recovered in the same way as other debts by a regular suit in the Court.

Fourth. Any excess that may remain after satisfying the demand of the zemindar, in the manner above described, shall be forthwith sent by the officer conducting the sale, to the Treasury of the Collector, or Assistant Collector, of the district, to be there held in deposit to answer the claims of the talookdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the talook sold, or on any part of it.

Fifth. It shall be competent to any one conceiving himself to possess such an interest, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale. If the Court shall on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled, and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

Sixth. Provided, however, that no talookdar of the second degree, or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such assignment upon its becoming cancelled by sale of the superior talook, except after exhibiting proof that, the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Seventh. Should no claims upon the purchase money of a talook, sold as above, be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be,

and he shall receive a certificate under the seal of the Court of there being no claims, to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favor of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid, severally to their receipts by the Collector.

Eighth. It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government Securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shewn by the *Government Gazette* last received.

XVIII. and XIX.—*Repealed by Section I. Act X. 1859.*

REGULATION I. OF 1820.

A REGULATION for providing that all sales of certain Talooks made answerable by sale for arrears of the Zemindar's rent, shall be conducted in the mode prescribed by Regulation VIII. 1819, for the sales therein described: PASSED by the Governor-General in Council on the 11th January 1820.

I. Whereas it has been omitted to provide in the rules of Regulation VIII. 1819, whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in Clause First, Section viii. of that Regulation, for the realization of arrears of rent due thereupon by any legal process other than that prescribed by the second and third Clauses of the said Section, such sale should be made in the public manner provided for the periodical sales therein described; and whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the zemindar's rent, the sale should be public, for the security of the interests of the owner of the tenure sold; which object can in no manner be duly secured, except the sales to be so made be conducted by an officer of Government, in the same manner as the periodical sales provided for by Section viii. of the said Regulation: the following additional rule has accordingly been passed by the Governor-General in Council, to take effect from the date of its promulgation, within the several districts of Bengal, including Midnapore.

II.* *First.* Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in Clause First, Section viii., Regulation VIII. 1819, to be sold for arrears of rent due to him on account thereof, and shall, under any summary process authorized by the general Regulations, have acquired the right of causing such sale to be made, the same shall be conducted, after application from the zemindar, by the register or acting register of the Zillah or City Court, or, in his absence, by the person in charge of the office of Judge of the district, in the mode prescribed by Regulation VIII. above quoted, for periodical sales.

Second. Ten days' notice shall be given before proceeding to sale, by proclamation, to be stuck up at the cutcherry of the Court, and at that of the Collector of the district.

Part of Reg. VIII. 1819 extended to sales under this Regulation.

Third. The rules of Sections ix. xi. xiii. xv. and xvii. Regulation VIII. 1819, are extended to all sales made after the manner herein provided.

* This Section is modified by Section xvi., Regulation VII. of 1832. Regarding this see also Acts XXXIII. of 1830, XXII. of 1832, and VI. of 1833, pages 282 and 283.

ACT VIII. OF 1835.

1. *Partially rescinds Regulation VII. 1799, Section xv. and Regulation VII. 1822, Section xxiii., Clause 2, and transfers from the Judges of the Dewanny Adawlut to the Collectors the power of selling land in satisfaction of Summary Decrees for rent.*
2. *All sales for recovery of arrears of rent or revenue to be made by the Collector or his deputy or assistant, and publicly, and after ten days' notice.*

Be it enacted, that such parts of Clause 7, Section xv., Regulation VII., 1899, of the Bengal Code, and other Regulations in force, as vest the Judge of Dewanny Adawlut with the power of bringing to sale, in execution of Summary Decrees for Rent, the Talook or other tenure of the defaulter, and so much of Clause 3, Section xxiii., Regulation VII. of 1822, of the same Code, as prohibits the Collectors from selling land in satisfaction of Summary Awards for arrears of rent which may have accrued thereon, be rescinded, and that the power heretofore vested in the Judges of the Dewanny Adawlut of selling land in satisfaction of Summary Decrees for rent, be transferred to the Collectors of Land Revenue.

II. And be it enacted, that all sales for the recovery of arrears of rent or revenue, held under Clause 7, Section xv. or Clause 6, Section xxiii. or Section xxv., Regulation VII. of 1799, shall be public, and be conducted by the Collector, his deputy or duly authorized assistant, and that ten days' notice shall be given of such sales, by advertisement, to be stuck up at the cutcherry of the Zillah Court or local Adawlut, and that of the Collector.

ACT NO. XXV. OF 1850.*

An Act for the forfeiture to Government of Deposits made on incomplete Sales of Land under Regulation VIII. 1819, and Act IV. 1846.

WHEREAS Putneedars and Judgment Debtors fraudulently avail themselves of the provisions in Section ix. Regulation VIII. 1819, of the Bengal Code, and in Section v. Act IV. 1846, that forfeited deposits at sales of land in execution of decrees or for arrears of rent shall be applied as if they were purchase money; It is enacted as follows:—

I. So much of Section ix. Regulation VIII., 1819, of the Bengal Code and of Sections v. and ix. Act IV., 1846, as provides that the deposit at any sale of land, or any interest in land under the said Regulation or Act, if forfeited, shall be regarded as part of the proceeds of the sale or applied as if it were purchase money, is repealed.

II. Any such forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be forfeited to Government.

ACT XXXIII. OF 1850.

RECEIPTS REGULATION VIII. 1819, SECTION 8, CLAUSE 2.

1. *Zemindar in future to present petition to Collector and not to Civil Court.*
2. *All sales of putnee tenures without petition to Civil Court, to be valid, if no proceeding for reversal commenced, &c.*
3. *Putneedar may recover from Zemindar compensation for loss through irregular sales hereby made valid.*

An Act for amending the forms necessary for the sale of Putnee tenures in Bengal.

WHEREAS by Clause 2, Section viii., Regulation VIII. 1819, of the Bengal Code, it is provided that Zemindars shall be entitled, in certain cases, to apply for the sale of

* By Act X. of 1861 the whole of this Act so far as it relates to forfeited deposits of sales of lands, or any interest in land, in execution of decrees, is repealed.

Putnee tenures on which the right of sale for an arrear of rent is reserved, by presenting a petition to the Civil Court of the district, and a similar one to the Collector, and whereas the petition to the Civil Court has not been presented previous to many of such sales, and it is not necessary for protection of the putneedar; It is enacted as follows :—

I. After the passing of this Act, it shall not be necessary for the Zemindar in any such case to present a petition to the Civil Court, but a petition to the Collector shall be sufficient.

II. All sales of putnee tenures before the passing of this Act, which were held without presenting such petition to the Civil Court, and for the reversal of which no suit was commenced before the Fourth day of April in the year 1850, shall be deemed as valid as if such petition to the Civil Court had been presented.

III. Every putneedar whose tenure shall have been sold before the passing of this Act without such petition having been presented to the Civil Court, and the sale of which is hereby declared valid, shall be entitled to recover in a suit against the Zemindar or person at whose instance the sale has been effected, or his representatives, the amount of any actual loss or damage sustained by such putneedar, by reason only of such sale having been made without the presentation of such petition to the Civil Court.

ACT XXII. OF 1852.

AN ACT to avoid Doubts as to the Validity of certain Decisions in summary Suits for Arrears of Rent, and of certain Sales of Putnee Talooks and other saleable Tenures : PASSED by the Governor-General of India in Council, on the 30th April, 1852.

WHEREAS by Regulation VIII. of 1831, of the Bengal Code, the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the judges of the Zillah or City Courts to the collectors of the several districts; and whereas by Regulation VII. of 1832, of the Bengal Code, the superintendence of the sales of putnee talooks and other saleable tenures of the class specified in Clause First, Section viii., Regulation VIII. of 1819, of the same code, was transferred to the collector or deputy collector of land revenue, or head assistant to the collector or deputy collector, subject to an appeal as therein provided; and whereas by Act VIII. of 1835, the conduct of sales of talooks or other saleable tenures in execution of summary decrees for rent, in conformity with Regulation VII. of 1799, of the same code, was transferred to the collectors of land revenue; and whereas doubts have been entertained in some instances as to the district within which such summary suits or claims should have been decided, and such sales made, by reason that the jurisdiction of the several Zillah and City Courts is not conterminous with the jurisdiction of the several collectors of land revenue, it is enacted as follows :—

I. No order or decision already made in any such summary suit, and no such sale as aforesaid already made, which has not been questioned before a code of competent judicature before the passing of this Act, on the ground of having been decided or made by a collector of land revenue, his deputy or duly authorized assistant, having no jurisdiction therein, shall be liable to be annulled or disputed on that ground.

Orders and decisions anterior to this Act, not open to question on ground of no jurisdiction.

ACT VI. OF 1853.

AN ACT relating to Summary suits for arrears of rent, to sales of Putnee Talooks and other saleable tenures, and to sales of land in satisfaction of Summary decrees for rent.

WHEREAS by Regulation VIII. 1831 of the Bengal Code the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the Judges of the Zillah or City Courts to the Collectors of Land Revenue of the several districts; and whereas, by Regulation VII. 1832 of the Bengal Code, the conduct of sales of Putnee Talooks and other saleable tenures under Regulations

VIII. 1819, and I. 1820 of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of Land Revenue, or Head Assistant to the Collector or Deputy Collector, subject to an appeal as therein provided; and whereas by Act VIII. 1835, the power theretofore vested in the Judges of the Dewanny Adawlut of selling land in satisfaction of Summary decrees for rent was transferred to the Collector of Land Revenue, and it was enacted that all sales for the recovery of arrears of rent held under Clause 7, Section xv. Regulation VII. 1799, should be conducted by the Collector, his Deputy, or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the cutcherry of the Zillah Court or local Adawlut, and that of the Collector; and whereas it is expedient that Act XXV. 1850, and Section ix. Regulation VIII. 1819 of the Bengal Code, as modified by Clause 1, Section xvi. Regulation VII. 1832 of the same Code, and as altered by the said Act XXV. 1850, should be extended to sales under Act VIII. 1835; and whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the above-mentioned Regulations and Acts where lands situate within the Zillah or other District of one Collector form part of an entire estate paying revenue to the Collector of another Zillah or District. In order therefore to avoid such doubts, and also to define who are the proper Officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in Putnee or other tenure at one entire rent, are situate in two or more Collectorates, and to prevent any such decision or sale already made from being held invalid upon the ground of its having been made by an officer of a wrong district; It is enacted as follows:—

I. If the lands which may be the subject of any such sale, or to the rent of

The Collector, in whose Collectorate the greater part of the lands are situate, shall conduct the sale thereof, and try summary suits.

which any such suit may relate, be all situate in one Collectorate, the Collector of such Collectorate is the Collector to conduct the sale, or to hear and decide the suit. If one talook or tenure shall comprise lands situate in two or more Collectorates, or if any lands situate in two or more Collectorates be held under one lease or engagement or at one entire rent, the Collector in whose Collectorate the greater part of such lands shall be situated is the Collector to conduct the sale of such talook or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

II. If a Collector to whom application shall be made to exercise any of the

If in doubt, Collector may refer to the Board of Revenue for orders.

powers above-mentioned, shall entertain any doubt as to whether the lands or the greater part of them are situate within his Collectorate, he shall report the case for the order of the Board to which he is subordinate, and if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

III. The word "Collectorate" in this Act means the zillah or other district to

Defines the term "Collectorate."

which a Collector is appointed, and no lands situate beyond the limits of such zillah or district shall be deemed to be situate within the Collectorate, by reason of their forming part of an estate paying revenue to the Collector thereof.

IV. An independent Deputy Collector may, within his Deputy Collectorate,

An independent Deputy Collectorate to be deemed a Collectorate.

exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his Collectorate, and with reference to the exercise of such powers and jurisdictions, his Deputy Collectorate shall be deemed a Collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

V. An independent Deputy Collector is an officer appointed by Government to act

Defines the term "independent Deputy Collector."

as Deputy Collector, independently of a Collector, whether his office is one for the receipt of Revenue or not. A Deputy Collectorate is the district within which an independent Deputy Collector is directed by Government to act.

Notice may be stuck up at cutcherry of independent Deputy Collector.

An independent Deputy Collector may exercise all powers in all parts of his district.

Notice to be stuck up in what Zillah Court.

be stuck up at the Zillah Court or local Adawlut, within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

IX. No order, decision, or sale, made in the discharge of any of the duties aforesaid under any of the aforesaid Regulations, or under the aforesaid Act, before the passing of this Act, shall be disputed, or deemed invalid, upon the ground that the Collector, Deputy Collector, or other Officer making the same, was not the Collector, Deputy Collector or Officer of the proper district, or upon the ground that the cutcherry at which notice of such sale was given, was not the cutcherry of the proper district, unless proceedings shall, previously to the passing of this Act, have been commenced, for the purpose of disputing the validity of such order, decision, or sale, upon such ground.

X. Act XXV. 1850, and Section ix. Regulation VIII. 1819, of the Bengal Code, as modified by Clause 1, Section xvi. Regulation VII. 1832, of the same Code, except so far as the same has been altered by the said Act XXV. 1850, are hereby extended to all sales under Act VIII. 1835.

VI. In cases of sales by an independent Deputy Collector under the above mentioned Regulations or Act, any notice thereby required to be stuck up at the cutcherry of the Collector, may be stuck up at the cutcherry of the Deputy Collector.

VII. An independent Deputy Collector may exercise the powers assigned to him over any part of his Deputy Collectorate wherever the same may be situate or held.

VIII. Any notice required by the above-mentioned Regulations or Act to be given by advertisement to be stuck up at the cutcherry of the Zillah Court or local Adawlut, shall

at the cutcherry of the Zillah Court or local Adawlut, within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

RULES REGARDING SALES FOR ARREARS OF REVENUE

PREScribed BY THE BOARD OF REVENUE, L. P.

UNDER Section iii., Act XI. of 1859, the Board of Revenue have determined, that, until otherwise notified, the dates undermentioned shall be the latest days for the payment, in the permanently settled districts of the Lower Provinces and in the Province of Orissa, of all arrears of revenue, and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of Revenue, in default of which payment, the estates in arrear, except as provided for in the Act, will be sold by Public Auction to the highest bidders.

In Districts and for Estates in which the Bengal or Amli Era is current, with the exception of Zillahs Sylhet and Chittagong.

28th June.
28th September.
12th January.
28th March.

In Districts and for Estates in which the Fasli Era is Current.

7th June.
28th September.
12th January.
28th March.

In Sylhet.

28th September.
18th January.
18th April.

In Chittagong.

25th May.
25th September.
26th December.
25th February.

In the Province of Orissa.

28th April for the 8 Punnee Kist.
8th November for the 16 do. do.

II. Petty estates, the revenue of which does not exceed 10 Rupees are liable to sale only once in the year, viz., on the first sale day which may occur, after the instalment of Cheyt shall have become due; estates with a revenue, exceeding 10 Rupees and not exceeding 50 Rupees are liable to sale twice in the year; and estates with a revenue exceeding 50 Rupees and not exceeding 100 Rupees, are liable to sale three times in the year.

The following are the latest dates, fixed for the payment of the revenue of small estates.

	Estates paying revenue not exceeding 10 Rupees.	Estates paying revenue above 10 Rupees and not exceeding 50 Rupees.	Estates paying revenue above 50 Rupees and not exceeding 100 Rupees.
Bengal and Amli Districts,	28th June, ... {	28th June and 12th January, {	28th June, 12th January, and 28th March. {
Fasli Districts, ... {	7th June, ... {	7th June and 12th January, {	7th June, 12th January, and 28th March. {
Sylhet, ... {	18th April, ... {	18th April and 18th January, {	18th April, 28th September, and 18th January. {
Chittagong, ... {	25th May, ... {	25th February and 25th May, {	25th May, 26th December, and 25th February. {

III. When the latest day of payment falls on a holiday, being a day on which the Collector's Office is authorized to be closed, the first open day after the holiday or holidays is to be taken as the latest day.

IV. On the latest day of payment, the Collector is to be present at the office in person until sunset, and he must regard this as a duty to which no other should be preferred. If his attendance in person be impossible, the Assistant or a Deputy Collector, is to attend.

V. When payments made on the last day are so numerous, that the whole cannot be received in the usual form, the money is to be given in in sealed bags, which bags are to be locked up under the joint key of the Collector and Treasurer. The parties are to be present at the opening of the bags, and must stand the consequence, should the payment prove to be short.

VI. A Collector is at liberty under the provisions of Section vi., Act XI. of 1859, either to refuse or accept tender of payment after the latest day, it being understood that the acceptance of the tender does not necessarily bar sale. Under peculiar circumstances, it might be convenient to the defaulters to pay in the arrears in whole or in part, and in such case the Collector need not refuse the money, it being clearly explained to the party that the law would be allowed to take its course notwithstanding.

VII. When a party by authority pays his revenue into the treasury of a District other than that in which his estate is situated, if he presents the Bill of Exchange, Chalan or Receipt granted by the Collector into whose treasury the payment was made, showing payment to have been made before sunset of the latest day, previous to the Schedule of Estates in Arrears being made out, the Collector will not advertize the estate for sale: if after the publication of the Schedule, the estate will be exempted from sale under Section xviii. Act XI. of 1859.

VIII. Estates should be advertised for sale in the order in which they stand on the Towjih, in which order under Section xxi., Act XI. of 1859, they are to be sold, without reference to the nature of the demand for which they are sold.

The notice to be published in the *Gazette* is to be in the following form :—

FORM.

NOTICE is hereby given, under Section vi., Act XI. of 1859, that the undermentioned estates in Zillah _____ will be put up to public and unreserved sale at the Collector's office of that district, on the _____ day of _____ 18____, for arrears of revenue, and other demands, which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, due on the _____ day of 18____.

Estate to be sold for arrears due on other Estates.

One moiety of the rights and interests of _____ in the 10 annas share of No. 100 Pergunnah Hogla; Government Revenue Rs. 4,866-9-0½.

Permanently settled Estates.

No. 2762. Kismut Kamalpore, Pergunnah Mahomedshye, Recorded proprietor Government Revenue Rs. 605-9-10.

Estates to be sold for arrears due on other Estates.

No. 3062. Kismut Kashdea, Pergunnah Mahomedshye; Recorded proprietor Government Revenue Rs. 580.

Temporarily settled Estates.

No. 3626. Kismut Chur Bhyrub Shikatee, Pergunnah Jussubpore; Government Revenue Rs. 1,580-11.

No. 3678. Chur Bhudden Mundardangah, Pergunnah Mallye, Government Revenue Rs. 3,000.

No. 4290. Kismut Beel Burnee, Pergunnah Suleemabad; Government Revenue Rs. 4,464-8-9.

No. 4448. Kismut Koomlye, Pergunnah Madhoodla. Nemuck Khalaree Mehal, Government Revenue Rs. 4,141-1.

No. 4512. Kismut Chur Shāhpore, Pergunnah Gajunberpore; Sudder Jumma Rs. 790-8.

IX. The notice is to be published in the language of the District in the *Vernacular Government Gazettes*, and an English version also is to be published in the *English*

Gazette. Collectors will forward the notices to the publishers of the *Gazettes*, endorsed as follows:—

Notice of sale for publication in the *Gazette*

Zillah

Date

A. B.

Collector.

The signature to this notice is to be written *very plainly* and *in full*. * There is no occasion to send a letter.

X. The publishers of the *Gazette* are held by Government responsible for the timely publication of all sale notices duly received by them. They have consequently been requested by the Board to acknowledge the receipt of such notices in the issue of the *Gazette* following their receipt, in all cases where, from whatever cause, the notices themselves cannot appear. Should neither the notice, nor the acknowledgment appear in the issue in which, calculating the time required for transit by post, it should have appeared, the Collector should lose no time in transmitting a duplicate of the notice to the publisher, in order that its timely publication may be ensured.

XI. Should the Civil Court be closed on or immediately after the latest day of payment, the Notification under Section vi.; Act XI. of 1859 is to be issued after the opening of the Courts.

XII. A Collector may exempt an estate from sale, if the amount of the arrear has been liquidated by the sale of previous lots belonging to the same Proprietor.

XIII. Only Estates can be legally sold under Act XI. of 1859. Under-tenures cannot be sold under that Act.*

XIV. But free Estates which it may be necessary to bring to sale on account of their having been pledged as security for the revenue of a defaulting farmer, or on account of any other demand legally realizable as an arrear of revenue, may be sold under the provisions of Act XI. of 1859.

XV. An estate the proprietors of which have agreed to a settlement, though the settlement may not have been confirmed by the controlling authority, may be sold for arrears of Revenue.

XVI. Estates, summarily settled are not to be sold if sale be avoidable. Should sale be inevitable, only the interests of such of the sharers as may have entered into engagements can be sold.

XVII. The authority of the agents bidding at a sale is to be carefully ascertained. The power of attorney which an agent may hold is to be delivered up and recorded with the proceedings.

XVIII. When the amount bid does not cover the arrear, Collectors are authorized by Section lviii., Act XI. of 1859 to purchase on behalf of Government. But this power must be exercised with discretion. A Collector is not bound to buy for Government whenever the bidding falls short of the balance, nor is it expedient for him to purchase, as a matter of course, estates on account of Government when there is no advantage in doing so.

XIX. In sales under Act XI. of 1859, the Collector is bound to knock down the estate to the highest bidder. He cannot refuse a bid upon suspicion of the bidder's solvency, but he is at liberty to test it by immediately requiring the deposit, prescribed in Section xxii. of the Act.

XX. Deputy Collectors under Regulation IX. of 1833, are precluded from purchasing lands at public sales in the district within which they are employed.

XXI. Surplus proceeds of Estates sold under the provisions of Act XI. of 1859 are not to be paid away to any parties whose names have not been registered in the Collector's Books, or who do not produce a Certificate under Act XX. of 1841 from the Civil Court, that they are the heirs of parties so registered.

* It has been held, that the special limitation of one year provided in Section xxxiii., Act XI. of 1859, does not apply to cases to which the Act is irrelevant, as regards either the subject or object of the sale. Thus the general law of limitation will obtain, when the thing sold under Act XI. of 1859 was not an estate, or when the demand for which the sale was made was not legally realizable as an arrear of revenue.

XXII. A Commissioner of Revenue may authorize any Officers subordinate to him who may legally exercise the powers of a Collector, to hold sales of land. As a general rule, it is desirable that the Collectors should themselves preside at sales for arrears of revenue, and that subordinate Officers should be authorized to hold such sales only when urgent circumstances make such an arrangement necessary.

XXIII. The defaulters are to be charged with the expense of serving the notices prescribed by Section vii. of the Act. The peons are to be paid, in the first instance, by the Collector, who will deduct the amount from the proceeds of sale, when a sale takes place, or recover it from the defaulter, as a condition of exemption, when the estate is exempted from sale. The other notices required by the Act must be paid for by the parties for whose benefit they are issued. When a sale is reversed, the notice prescribed by Section xxxii. must be issued at the expense of Government.

XXIV. Quarterly Returns of estates, and rights and interests sold, and of estates exempted from sale, and estates forfeited, but regained by the former proprietors under Section xxiv., Act XI. of 1859, in the forms prescribed in the Periodical Returns are to be sent to the Board of Revenue.

SALE OF LANDS OF DEFAULTING FARMERS AND THEIR SURETIES.

XXV. The lands of farmers of the Government Revenue, and of farmers holding from the Court of Wards, and of their sureties, may be brought to sale for arrears on any of the sale days within the year, under the provisions of Section v., Act XI. of 1859.

XXVI. It is to be remarked that, as under Section v. of the Act, notice must be given for fifteen clear days before the latest day fixed for payment, the last instalment due on the day fixed cannot be admitted into the Notification. For instance, the Jeyt instalment falls due on the 14th June, and the 28th June is one of the quarterly latest days for payment; sufficient notice cannot therefore be given to warrant the demand of payment of the Jeyt instalment by the 28th June on pain of sale.

On the 1st June, notice should be issued declaring the 28th June the latest day for the payment of the Bysakh and preceding instalments.

On the 1st September, similar notice should issue for the payment of instalments up to Aghun, by the 12th January.

On the 1st March, notice should issue for the payment of instalment up to Magh, by the 28th idem.

It will thus happen that the revenue of farmers may be one month more in arrear than the revenue payable by the owners of estates settled in perpetuity; but under the law, it is not practicable to enforce payment of the revenue of farms with greater punctuality than is attainable by strict attention to these instructions.

SALE OF PERSONAL PROPERTY OF DEFAULTERS.

XXVII. Under Section xliv., Regulation XIV. of 1793, if the sale of the lands of a defaulter do not realize a sum sufficient for the liquidation of the public demand, any other real or personal property which the defaulters may possess is to be sold to make good the deficiency. Sales of land were in 1793, and again in 1799 (by Regulation VII.) limited to the end of the year, and other property could of course be sold only with the same condition. But the lands of all defaulting proprietors and farmers are now under the provisions of Act XI. of 1859, sold quarterly, and should an arrear not be liquidated by the sale of the lands of a defaulter at a quarterly sale, recourse may be had to the attachment and sale, under Act VIII. of 1835, of any undertenures which he may possess, as well as of that of his chattels. In accordance with Section xliv., Regulation XIV. of 1793, any lands (estates) which a defaulter may possess must be brought to sale, before recourse is had to the sale of any other property.

OTHER PROCESS FOR RECOVERY OF ARREARS OF REVENUE.

XXVIII. In the permanently settled Districts the primary process for the recovery of arrears of revenue due from Zemindars, is now always the sale of their estates; and when farmers or their sureties are possessed of land, the payment of revenue should be enforced by sale, rather than by the issue of warrants or other processes.

XXIX. The form of agreement to be signed by a party depositing money or Government Securities with the Collector for the protection of an Estate from sale, is annexed.

FORM OF AGREEMENT.

Whereas I the undersigned A. B. am the recorded proprietor of the estate (or the recorded proprietor of _____ annas of the estate, or one of the recorded co-partners of the estate) called _____ which is numbered _____ on the rent-roll of the district of _____; and whereas I am desirous that the revenue of the said estate should be regularly paid into the treasury of Government according to the established instalments; and whereas from accident, negligence, or other cause, it may occur that an arrear of revenue remains due from the said estate after sunset of the latest day of payment fixed under Section iii., Act XL of 1859.

Therefore, in order to save the said estate from liability to sale in consequence of such default on my part or on the part of my agents (or on the part of any of my co-partners in the said estate) I have this day deposited in the treasury of Government at the sum of rupees (or the undermentioned Government Securities) for the purpose of being appropriated to the liquidation of any arrear of revenue which may be due on any of the said latest days of payment from the said estate bearing number on the rent-roll of the district, and I hereby authorize the Collector of for the time being to apply the said sum of rupees (or the said Government Securities with such interest as may accrue thereon) to the payment of any arrear of revenue which may become due from the said estate, and which may remain unpaid at sunset on the latest day of payment as aforesaid, in accordance with the provisions of Section xz. of the said Act XI. of 1859, to all which provisions I do hereby consent and agree, and this agreement shall be binding on my heirs and assigns. Signed and executed by in the presence of

CHAPTER VII.

RENT LAW.

CHAPTER VII.

ACT X. OF 1859.

(Received the assent of the Governor-General on the 29th April 1859.)

AN ACT to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

* * In the precedents quoted bearing upon this Act *S. D. A.* = Sudder Dewanny Adawlut.
H. C. = High Court.

WHEREAS it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

I. The following Regulations and Acts and portions of Regulations and Acts are Laws repealed and hereby repealed, except in so far as they repeal any other modified. Regulation or Act, and except as to proceedings commenced

before the date of this Act coming into force, namely,
Regulation XVII. 1793 (*to empower landholders to distrain and sell the personal property of ryots, &c.*),

So much of Regulation IV. 1794 (*to determine disputes regarding the grant of pottahs to ryots, &c.*) as is still in force,

Regulation XXXV. 1795 (*for better enabling individuals to recover arrears of rent or revenue due to them*),

Regulation XLV. 1795 (*to empower landholders in the Province of Benares to distrain, &c.*),

Sections ix. and x. Regulation LI. 1795 (*respecting ryotty pottahs in the Province of Benares*),

Sections i. to xx., Regulation VII. 1799 (*to enable landholders to realize their rents with greater punctuality, &c.*),

Sections i. to xx., Regulation V. 1800 (*to enable landholders in the Province of Benares to realize their rents with greater punctuality, &c.*),

Regulation XXVIII. 1803 (*to empower landholders in the Ceded Provinces to distrain, &c.*),

Sections ix. and x., Regulation XXX. 1803 (*prescribing rules for the grant in the Ceded Provinces of pottahs to ryots, &c.*),

Section iv., Regulation II. 1805 (*to provide a limitation of time for certain suits, &c.*),

Section xix., Regulation VIII. 1805 (*for extending certain Regulations to the Ceded and Conquered Provinces, &c.*),

Sections v. to xxiii., Regulation V. 1812 (*for amending some of the rules at present in force for the collection of the Land Revenue*),

Sections xv. and xvi., Regulation XIX. 1817 (*for amending certain Regulations in force relative to process for recovery of arrears of rent, &c.*),

Sections xxvii., Regulation XX. 1817 (*relating to resistance to distraint for arrears of rent, &c.*),

Sections xviii. and xix., Regulation VIII. 1819 (*relating to Putnee Talooks and the system established for the collection of rents generally, &c.*),

Sections iv., Regulation II. 1821 (*relating to the duties of City and Zillah Judges, &c.*),

Section xxii. and so much of Section xx. and the following Sections of Regulation VII. 1822 (*relating to the settlement of the Land Revenue in the Ceded Provinces and Cuttack, &c.*) as apply to suits for rent, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of pottahs or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants respecting the rent and occupancy of land.

Regulation XIV. 1824 (*for modifying the rules in force for referring to the Collectors' summary suits in cases of arrear or exaction of rent*),

Regulation VIII. 1831 (*for amending the existing provisions relative to the trial of summary suits and claims for arrears or exactions of rent*),

Act I. of 1839 (*relating to the appointment of persons to sell property distrained for the recovery of arrears of rent*),

Act X. of 1846 (*for regulating the proceedings in certain cases of distraint for arrears of rent*),—and

Act VIII. of 1848 (*to modify the provisions of Sections ix., x., xi. and xiii. of Regulation V. 1812 of the Bengal Code*).

Sections xiv. and xv., Regulation IX. 1833 (*for the more speedy decision of certain suits, and for enforcing the production of village accounts, &c.*), so far as the same are applicable to the territories under the Government of the Lieutenant-Governor of Bengal, are also repealed.

Such parts of Regulation VIII. 1793 (*prescribing rules for the decennial settlement of the public Revenue in Bengal, Behar, and Orissa, &c.*), and Regulation XXX. 1803, as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent and for the exaction of any sums as abwab or in excess of the amount specified in any engagements for the payment of rent, and such parts of Section xxvi., Act I. of 1845 (*to amend Act No. XII. of 1841, entitled "An Act for amending the Bengal Code in regard to sales of land for arrears of Revenue"*), as relate to the enhancement of rents and the ejection of tenants by the purchaser of an estate sold for arrears of Government Revenue, are declared subject to the following modifications:—

II. Every ryot is entitled to receive from the person to whom the rent of the Ryot entitled to a land held or cultivated by him is payable, a pottah containing the following particulars:—

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

The amount of annual rent.

The instalments in which the same is to be paid.

And any special conditions of the lease.

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

A Ryot is not entitled to demand a Pottah for land, an accretion to his jote, from a party to whom he does not pay rent for the same.—*Kishen Dhan Adhikari, Appellant, H. C., 12th August 1862.*

III. Ryots who, in the Provinces of Bengal, Behar, Orissa, and Benares hold Ryots holding land at lands at fixed rates of rent, which have not been changed fixed rates to receive from the time of the permanent settlement, are entitled to pottahs. receive pottahs at those rates.

The only issue is whether the rent has been changed since the permanent settlement or not. The nature of the original pottah, granted before the permanent settlement, is immaterial:—and subsequent transfers of possession do not affect the right under this Section. Nothing in Section xxxvii. Act XI. of 1859 affects the right declared by this section.—*Ram Nath Lall Bhokut, Appellant, H. C., 27th July 1863.*

IV. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said Provinces, has not been changed for 20 years. been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

If a Defendant pleads that he has held at the same rent, on a pottah of a date subsequent to that of the permanent settlement, although upwards of 20 years, the defence annuls the presumption of law, and the case must be decided according to the Pottah.—*Rajah Manmohun Singh, Appellant, H. C., 12th August 1862.*

There must have been a holding by a Ryot, or by some person through whom he claims, for 20 years next before the commencement of the suit, at a rent which has not been changed during that period. Any interruption of possession annuls the presumption.—*Latif-un-nissa Bibi, Appellant, H. C., 22nd August 1862.*

Persons possessing an interest in land intermediate between the proprietor of an estate and the Ryots, are not Ryots and cannot claim rights of occupancy under Sections iii. and iv.—*Maharajah Narendranarayan Bhojp, Appellant, H. C., July 1863.*

V. Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding Sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by a ryot shall be deemed to be fair and equitable,* unless the contrary be shown in a suit by either party under the provisions of this Act.

* Vide precedents quoted under Section xvii. Clause 2.

The rates of rent assessed in a case decided *ex parte* and without any local enquiry, are no good criterion for the rates assessable on other lands in the same village.—*Ramanand Mandal, Appellant, S. D. A., 27th March 1862*.—*Nara Hari Mahant, Appellant, H. C., 12th August 1862*.

A Ryot with a right of occupancy only, has no such interest in the land as to entitle him to a share of the rent. He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. He may or may not, according to circumstances, be entitled, on account of increased expenditure, to a share of any increase of proceeds, but he is not entitled to a share of the net proceeds, or rent of the land.—*James Hills, Appellant, H. C., 2nd Sept. 1863*.

VI. Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same, but this rule does not apply to khomar, neejjote, or seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor, (as respects the actual cultivator), to lands sublet for a term or year by year by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this Section.

The occupancy spoken of in this section is not interrupted by transfer or inheritance.—*Nand Kumar Mandal, Appellant, H. C., 29th July 1863*.

VII. Nothing contained in the last preceding Section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Pottahs to which ryots not having rights of occupancy are entitled.

VIII. Ryots not having rights of occupancy are entitled to pottahs, only at such rates as may be agreed on between them and the persons to whom the rent is payable.

IX. Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted a kubooliyet or counterpart engagement in conformity with the terms of the pottah. The person granting pottah entitled to counterpart engagement.

The tender to any ryot of a pottah such as the ryot is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a kubooliyet from such ryot.

X. Every under-tenant or ryot, from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Act, whether as abwab or under any other pretext, and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Exactions in excess of rent or receipt withheld. and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose. Payment of rent to be enforced only under this Act.

XI. The power heretofore vested in Zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them, other than are authorized by the provisions of this Act.

XII. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred Rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

XIII. No under-tenant or ryot, who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable

Enhancement of rent of ryot holding without, or after expiry, &c., of written engagement.

for arrears of revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable

to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Cheyt, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector on the application, (which may be on plain paper), of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If for any reason the notice cannot be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence, or if he have no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mal cutcherry of such land or other conspicuous place thereon, or at the village Chowree or Chowpal or at some other conspicuous place in the village in which the land is situate.

When a Plaintiff in a suit for a Kabulyat under Sec. xxiii. clause 1, gets a decree, he is thenceforward entitled to receive rent at the rate specified in the Kabulyat. No previous notice is necessary to the tenant under Section xiii. although the rate sued for be in excess of that at which the tenant has hitherto held.—*Goursundar Choudhary, Appellant, S. D. A., 29th May 1862.*—*Ishan Chandra Roy, Appellant, S. D. A., 26th June 1862.*

XIV. Any under-tenant or ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

A suit was brought to resist a notice of enhancement altogether and to obtain an Istamrari Pottah. The Plaintiff contended that he was not liable to enhancement, that he had held for 48 years at a fixed rate, and that under Sections iii. and iv. of Act X. he had a right to hold at that rate. The Judge found he had not so held. He was right in not going into the question whether the enhancement sought to be imposed, was fair or not, as that was not the point at issue.—*Ganga Prasad Singh, Appellant, H. C., 11th November 1862.*

XV. No dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryots, who, in the Provinces of Bengal, Behar, Orissa, and Benares, holds his talook or tenure, (otherwise than under a terminable lease), at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section li. Regulation VIII. 1793, or in any other law, to the contrary notwithstanding.

XVI. Whenever, in any suit under this Act, it shall be proved that the rent at which a talook or other tenure is held in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

XVII. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

That the rate paid by him is below that prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

That the value of the land, &c., has increased independently of the ryot.

That the value of the produce or the productive powers of the land have been increased, otherwise than by the agency or at the expense of the ryot.

In a suit for enhancement of rent on the ground of increased value of produce.—Held that: The enhanced rate need not bear the same proportion to the original rent as the increased value of produce to the original value of produce.

Even if the original rent were fixed upon the principle of allowing the landlord a particular portion of the produce or of the net profit, it would not follow that this principle must be acted upon in fixing the rent under the new state of circumstances, having reference to the increased value of the produce.

In a suit for enhancement of rent or to recover rent at an enhanced rate, the decree cannot be for more than the old rent, in addition to the full amount of the increased value of produce proved. Within that limit, and up to the amount he has sued for, a landlord is entitled to recover whatever is fair and equitable.

The rent cannot be enhanced beyond the amount warranted by the ground of enhancement stated in the notice, but it may be enhanced as far as that ground warrants, up to a fair and equitable amount.

A temporary and passing increase in the value of the produce, is not a sufficient cause for enhancement.

Any increase to the expense of cultivation must be taken into account.

A right of occupancy is a right to occupy at fair and equitable rates, but in a revision of rent in consequence of an increase in the value of produce, a ryot with a right of occupancy is not entitled in strictness to have it fixed at a lower rate than that which a tenant not having a right of occupancy would give for it.

The following definition of rent by Mr. Malthus is the best guide the Court can lay down. "That portion of the value of the whole produce which remains to the owner of the land, after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profit of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being."

"Outgoings" here include a fair and equitable rate of wages for the labor employed in cultivating the land, whether that of hired labourers paid out of capital, or the labor of the ryot himself or of his family; and also, when the rent is paid in money, the labor and expense of carrying the produce to market or of converting it into money.

In determining what portion of the increased value is to be added to the rent, a Collector must be guided by all the circumstances of the case. In the absence of proof to the contrary, he may take the old rent as a fair and equitable rent with reference to the former value of the produce. He must take into consideration the circumstance under which the value of the produce has increased; whether these circumstances are likely to continue; and whether the value of the produce is likely to keep up to the present average in the ensuing year. He must also consider, whether the costs of production including fair and reasonable wages for labor, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased, and he must make a fair allowance on that account.—*Ishwar Ghose, Appellant, James Hills, Respondent, H. C., 24th September 1862.*

In calculating the outgoings of cultivation, interest may be allowed on the wages of labour, but not on the cost of a house, unless the provision of a house be held, as a matter of fact, to fall upon the landlord as a charge of the nature of wages, so that a lower rate of wages has been allowed in consideration of a house being provided.

It is not necessary, certainly, to allow a house, and a certain number of bullocks for a certain area of land, whatever the size of a ryot's holding; less stock in proportion will probably be necessary in a larger holding.

If the value of the produce is calculated from the results of an average of years, it is an error to make any further allowance for risk of cultivation; especially if an exceptionally high rate of profit is allowed, which must in fact be held to cover all risks. Moreover, interest upon the expenditure necessary for food, and upon capital, includes such risks. The Court cannot take into consideration the fact that ryots are ordinarily compelled to borrow their capital at a high rate of interest, and a ryot thus compelled to borrow cannot be allowed a profit on his borrowed capital. One rate of profit on capital only can be allowed whether it be the property of the ryot or whether it be borrowed.

The rate of rent which a landlord has a right by law to demand, does not depend upon the size of the holding or the circumstances of the ryot.

A ryot with a right of occupancy only, has no such interest in the land as to entitle him to a share of the rent. He has merely a right to occupy the land in preference to any other tenant so long as he pays a fair and equitable rent. He may or may not, according to circumstances, be entitled, on account of increased expenditure, to a share of any increase of proceeds, but he is not entitled to a share of the net proceeds or rent of the land.

In a suit for enhancement of rent, the Court cannot fix the rent, for a term of years; although a fresh enquiry is not intended to be carried on every year. When once the rent is fixed, it will continue to be the rent of the holding until fresh circumstances arise which will justify enhancement under this Section or will entitle the ryot to claim an abatement.

But in a suit by a land-owner to recover rent at enhanced rates, or for a kadyat at enhanced rates, the rent cannot be fixed for a period of years as it can be under Section lxxvi., in a suit by a ryot with rights of occupancy for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the landlord a right to compel him to continue his occupation.

In this case, which arose in the district of Nuddea, the following was the account finally allowed by the High Court, though with considerable reservations in favor of the landlord:—

Produce of 16 Bighas of Matan land, or, including fallow, 23 Bighas, ... Rs. 148.

Outgoings.

1 Wages of ryots, including provision of house	...	...	...	43	8
2 Additional hired labor	...	...	...	12	0
3 Feed of bullocks, and cowherd's wages	...	...	...	12	0
4 Interest on half the above* sums for half the year at 50 per cent.	...	...	...	7	8
5 Seed, one rupee per bigha	...	...	...	16	0
6 Interest on the undermentioned stock† at 50 per cent.	...	...	...	29	0
				120	

Nett rent for 23 Bighas Rupees 28 or per Bigha 1 a. 3 pie.

* Interest is not calculated upon Rs. 7-8-0 of item No. 1 which the Judge had charged as interest upon the value of a house. The High Court disallowed the charge in that sense, but added it to the wages, because it could not be ascertained, without a remand, whether the Judge had not, in consideration of this charge, allowed less wages. The Court did not allow interest upon this item as part of the wages.

† Stock.

4 Bullocks at 12 Rupees	...	...	...	...	...	48	0
Cowshed	...	...	...	...	...	4	0
Granary	...	...	...	...	...	3	0
Plough and Implements	...	...	...	...	...	3	0
						58	0

Item allowed by the Judge, but disallowed by the High Court.—

For risk of cultivation, ten per cent. on produce Rs. 15 0

James Hills, Appellant, Ishwar Ghose, Respondent, H. C., 2nd September 1863.

That the quantity of land held by the ryot is greater than he has paid rent for.

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

XVIII. Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

XIX. Any ryot, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent, in or before the month of Chait of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land or his agent, refuse to receive any such notice and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector, who shall thereupon cause the notice to be served on such person, or his agent in the manner provided in Section xiii.

A proprietor of a tenure whose name is registered in the Zemindar's Office, is not exempt from the payment of rent during the time he was out of possession of the said tenure, unless he can shew that his ouster took place by some act of the Zemindar.—*Mussamat Mohun Malah, Appellant, S. D. A., 27th March 1862.*

A landlord cannot sue a tenant for rent of land which is allowedly not in such tenant's possession, and which the landlord admits he knows has been taken by Government for a public purpose.—*Ram Kishen Dass, Appellant, S. D. A., 26th March 1862.*

XX. Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and unless otherwise provided by written agreement, shall be liable to interest at twelve per cent. per annum.

Does not apply to a case in which the defendant is not a tenant, but a co-sharer in the estate.—*Golak Chandra Roy, Appellant, H. C., 16th September 1862.*

XXI. When an arrear of rent remains due from any ryot at the end of the Bengal year, or at the end of the month of Jeyt of the Fusly or Willaity year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due. Provided that no ryot having a right of occupancy or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Vide following Section.

XXII. When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled, and the lease-holder to be ejected. Provided that no such lease shall be cancelled nor the lease-holder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Sections xxi., xxii. and lxxviii. of Act X. must be read together, and those parties only can be ejected under Section lxxviii. who come within the purview of Sections xxi. and xxii. Persons with a permanent or transferable interest, do not come under these Sections, and consequently Section lxxviii. does not apply to them; but a decree-holder must realize his dues from such persons by the mode enjoined in Section cv. of the Act, viz., by the sale of the tenure; and if that does not suffice, by the sale of any other property moveable or immovable belonging to the debtor.—*Nand Lal Ghose and others, Appellants, S. D. A., 31st December 1860.*—*Ram Kishen Dass, Appellant, S. D. A., 26th March 1862.*

If a lease provides that, in case of default of payment of rent, the lessor is to have the power of re-entry, without expressly mentioning the mode of effecting it, the lessor is bound to exercise this power according to the provisions of Section xxii. But the parties may contract that there shall be a power of re-entry without applying to any Court.—*R. Solano, Appellant, H. C., 23rd December 1862.*

XXIII. 1. All suits for the delivery of pottahs or kuboolyets, or for the determination of the rates of rent at which such pottahs or kuboolyets are to be delivered ;

A Zemindar, having established his right to resume Lakhiraj land, can, after issue of notice to the tenant of the rates of rent demanded for the land, institute a suit under this Clause to obtain the confirmation of those rates, and procure a kabulyat in accordance therewith, but no arrears of rent can be decreed to him in such a suit.—*Joy Kishen Mukherjya, Appellant, S. D. A., 13th July 1861.*

The fact of there being a small arrear of rent due is no answer to a suit for a pottah.—*Sri Ram Roy, Appellant, H. C., 22nd January 1863.*

It is competent to a Zemindar after issue of notice, to a ryot, of enhancement of rent under Section xiii., to institute a suit to determine the rates of enhanced rent, and to enforce the delivery of a kabulyat under this clause at the rates determined. Whenever a proprietor is willing to grant a pottah, and tenders the same to a ryot, he is entitled to demand a kabulyat, and to enforce that demand by a suit: the institution of the suit is in itself evidence of the tender of a pottah and demand of kabulyat sufficient to justify the action.—*Joy Kishen Mukherjya, Appellant, S. D. A., 31st March 1862.*

When a Plaintiff in a suit for a kabulyat gets a decree, he is thenceforward entitled to receive rent at the rate specified in the kabulyat. No notice is necessary to the tenant under Section xiii., although the rate sued for be in excess of that at which the tenant has hitherto held. But if it be so in excess, the enhanced rate will be payable only from the commencement of the year following the decree.—*Gour Sundar Chowdhary, Appellant, S. D. A., 29th May 1862.*—*Ishan Chandra Roy, Appellant, S. D. A., 26th June 1862.*

It is not necessary, in an action for a kabulyat at an enhanced rate, that attention should be called to this fact in the plaint. The Officer deciding the case should determine the rate of rent at which the kabulyat is to be given.—*Messrs. Cohn Feilman and Co., Appellants, S. D. A., 14th June 1862.*

A ryot is not entitled to demand a pottah for land, an accretion to his jote, from a party to whom he does not pay rent for the same.—*Kishen Dhan Adhikari, Appellant, H. C., 12th August 1862.*

In a suit by a land-owner to recover rent at enhanced rates, or for a kabulyat at enhanced rates, the rent cannot be fixed for a period of years as it can be under Section lxxvi., in a suit by a ryot with right of occupancy for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the landlord a right to compel him to continue his occupation.

2. All suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress ;

3. All complaints of excessive demand of rent, and all claims to abatement of rent ;

4. All suits for arrears of rent due on account of land either kherajee or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like ;

When rent for a particular year, has been sued for and decreed, the presumption, *æ rebuttable one*, arises that the rent for years prior to that for which a decree has been given, has been paid.—*Siva Narayan Bhattacharyya, S. D. A., 5th September 1861.*—*Kishen Jivan Bakshi, S. D. A., 21st May 1862.*

The Revenue Courts are not competent to investigate pleas of *set-off*, when the accounts which include the items on which *set-off* is claimed, have not been previously admitted by Plaintiff, or when the matter of the *set-off* involves enquiries beyond the restricted jurisdiction of those courts.—*Maulavi Abdul Ali, Appellant, S. D. A., 5th October 1861.*

In a suit for arrears, Defendant pleaded a *set-off* to the effect that a third party, who was his debtor, had to receive a certain amount from Plaintiff on account of some other property. It was held that such a claim was no *set-off* at all, and that no *set-off* can be listened to, but what arises immediately between Plaintiff and Defendant.—*Parvati Charan Pal, Appellant, S. D. A., 11th June 1862.*

A landlord cannot sue a tenant for rent of land which is allowed not in such tenant's possession, and which the landlord admits he knows has been taken by Government for a public purpose.—*Ram Kishen Das, Appellant, S. D. A., 26th March 1862.*

If a suit for arrears of rent for any year has been dismissed, a second suit for the same rent in which the propriety of the order of dismissal is called in question, will not lie.—*Ishwar Chandra Bose, Appellant, S. D. A., 27th March 1862.*

If a party against whom a decree of the Civil Court has been given, be not ousted from possession in execution of such decree, he is entitled to collect rents subject to account to the decree-holder for the same.—*Punchanan Banerjya, Appellant, S. D. A., 27th March 1862.*

Plaintiff sued as purchaser of an under-tenure sold, under Section cv. of this Act, in satisfaction of a decree for arrears of rent. Defendant, in reply, questioned Plaintiff's title, alleging that the tenure was purchased by private sale before the sale in execution, and that he, Defendant, held under the representative of the private purchaser. Held that this objection could not be entertained.—*Messrs. Cohn Feilman and Co., Appellants, S. D. A., 14th June 1862.*

A Plaintiff brought a suit for arrears of rent against two parties, one as the real, and the other as the ostensible proprietor of an under-tenure. The Court considered that the Revenue Courts under Act X. of 1859, have full power of determining, in such a case, whether one party or another is the real lessee.—*Golok Chunder Eaboo and others, Appellants, S. D. A., 26th June 1862.*—*Hira Lal Bakshi, Appellant, H. C., 11th November 1862.*

A suit for arrears of house-rent, and for ejectment of the tenant from the house, is not a suit cognizable by the Revenue Authorities.

House-rent includes the rent of the ground upon which the house stands, but as the items are not separable, the claim cannot be heard.—*Nawab Haji Mahammad Khan Kualbush, Appellant, S. D. A., 28th June 1862.*

A suit against a lessee for rent, and, in default, against his surety, may be heard under this clause.—*Kumar-un-nissa Bigam, Appellant, S. D. A., 28th June 1862.*

The Defendant having admitted himself to be a ryot of the Plaintiff for a portion of the land referred to in the suit, the burden of proving a plea that he was not plaintiff's ryot for the rest of the land, was clearly upon Defendant.—*Guru Prasad Roy, Appellant, H. C., 5th August 1862.*

As the law only contemplates the occupancy, by a proprietor, of a defaulting tenant's tenure by a Sazawal, during the current year, the tenant is not liable for the short collections of a Sazawal beyond that period.—*J. Dalrymple, Appellant, S. D. A., 24th April 1862.*

In a suit against the heirs of a deceased farmer for rent accruing after his death, it was held that the obligation to pay rent depends upon proof of occupancy either actual or constructive. A decree against the heirs up to a certain year, though strong *prima facie* proof that they continued in possession the following year, is capable of being rebutted by clear evidence to the contrary.—*Kheja Abul Hussain Khan, Appellant, S. D. A., 23rd May 1862.*

The mere denial by the Defendant that he is a tenant of the Plaintiff, does not take the case out of the jurisdiction of the Revenue Courts. Such a plea must be established by proof to have that effect.—*Hari Prosad Mali, Appellant, H. C., 19th August 1862.*

A person to whom a Zemindar has assigned the right to recover rents, may proceed under this Clause for the recovery of the same.—*Syama Sundari Dasi, Appellant, H. C., 4th December 1862.*

A suit for the right to erect ghahs at certain ghats on the land, and also to collect certain duties from persons who used these ghats and ghahs and for other purposes, was held not cognizable under this clause.—*Mr. James Fortlong, Appellant, H. C., 17th November 1862.*

5. All suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled ;

If a tenant holds over after the expiration of his lease, the operation of the lease does not cease, and a condition, therein contained, of ejectment in case of an arrear accruing, may be enforced.—*Hari Prosanna Roy, Appellant, S. D. A., 31st December 1861.*

The appeal, in a suit to eject a ryot under this clause upon the plea that he is a defaulter, lies to the Judge, not to the Commissioner.—*Chandhari Singh, Appellant, S. D. A., 26th May 1862.*

In a case of ejectment, if a third party pleads a permanent tenure conveyed to him by defendant, the onus probandi is upon him, and not upon the plaintiff.—*Lakshmi Narayan Paramanik, Appellant, S. D. A., 12th June 1862.*

A landlord cannot re-enter for default of the payment of rent for one year, if he have received the rent on account of a subsequent year.—*Shekh Fir Baksh, Appellant, H. C., 28th July 1862.*

6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same ;

In a suit for possession under this clause, the intervention of a third party claiming a right to the tenure, does not take the case out of the Collector's cognizance.—*Karuna Kanth Choudhary, Appellant, H. C., 16th July 1863.*

7. All suits arising out of the exercise of the power of distraint conferred on Zemindars and others by Sections cxii. and cxiv. of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided ;

A party sued against a distraint alleging that his rent was Rs. 24 not Rs. 112; the burden of proof was on him; as he failed to prove his allegation, it was not necessary to consider the proofs adduced by the defendant.—*Sheikh Khoda Baksh, Appellant, S. D. A., 12th June 1862.*

An appeal will lie under this Section by an under-tenant upon whom a distress is made for the rent of his lesser, the crop distrained having been sold by the distrainer without giving the notice required by the Act.

It is sufficient to show that the Act complained of was done by the defendants in exercising the powers of distraint conferred by the Act.—*Nundaza, Appellant, H. C., 29th January 1863.*

shall be cognizable by the Collectors of land revenue and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court or by any other Officer, or in any other manner.

A Plaintiff is bound to prove his case as laid in the Plaint; a Plaintiff having relied upon a document which has been rejected by the Court, cannot be permitted, subsequently, to set up a fresh case.—*Nora Hori Mahant, Appellant, H. C., 12th August 1862.*

A suit concerning land situated in the Revenue jurisdiction of one District, and the Civil Jurisdiction of another, is properly instituted before the Collector of the Revenue District; but the appeal will lie to the Judge within whose Civil Jurisdiction the land is situated.—*Lutif-un-nissa Bibi, Appellant, H. C., 22nd August 1862.*

The jurisdiction of a Collector under Act X. of 1859, is not affected by the nature of the defence set up. Section cxvii., Act VIII. of 1859, is not applicable to suits brought under the provisions of Act X. of 1859. Under this last Act, which was passed after Act VIII., a certain class of suits as detailed in Section xxiii., of the former Act, are made cognizable by the Collector and by the Collector alone; any suit therefore which falls within the provisions of Section xxiii., is not cognizable by the Civil Court. Act X. lays down a course of procedure to be followed in the trial of suits under that Act. This procedure varies from that laid down in Act VIII., and there is no enactment that in all other respects the procedure shall be governed by Act VIII. of 1859. If the Legislature intended that the procedure under Act VIII., was to be applicable in its entirety to suits under Act X., it would have been obviously unnecessary to enact such clauses as Section lxvii. and Section cxli. in the latter Act. The whole of the procedure of Act VIII. would have been imported without any reservation into Act X.—*Dayal Chandra Ghose and others, Appellants, H. C., 16th September 1862.*

XXIV. Suits by Zemindars and others in receipt of the rent of land, against

Suits by Zemindars any agents employed by them in the management of land or against their agents for collection of rents, or the sureties of such agents, for money or accounts.

received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

XXV. If any Zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated *ticca zur-i-peshgee* or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

Ejectment of cultivators, farmers, &c., by Zemindars.

Provido.

If a tenant holds over after the expiration of his lease, the operation of the lease does not cease, and a condition therein contained of ejectment in case of an arrear accruing, may be enforced.—*Hari Prasanna Roy, Appellant, S. D. A., 31st December 1861.*

In a case of ejectment, if a third party pleads a permanent tenure conveyed to him by Defendant, the onus probandi is upon him, and not upon the Plaintiff.—*Lakshmi Narayan Paramanik, Appellant, S. D. A., 12th June 1862.*

A Zemindar, installed by the Collector under this Section, must be held to be in actual possession and enjoyment of the estate.—*Mohesh Chundra Pal Chowdharry and others, Appellants, S. D. A., 14th June 1862.*

A Collector has no jurisdiction, in a suit for ejectment under this Section, to interpret the terms of a deed of compromise made between the parties before him in a Civil Suit.—*Dasharati Patnaik, Appellant, H. C., 28th June 1862.*

A suit to contest the orders of a Collector under this Section, may be brought under Section xxiii., or in the Civil Court as the case may be.

An appeal from an order of the Collector passed under this Section, lies to the Commissioner, and not to the Judge.—*C. J. Phillip, Appellant, H. C., 3rd June 1863.*

XXVI. Repealed by Section I., Act VI. of 1862, (Bengal Council.)*

XXVII. All dependent talookdars and other persons possessing a permanent

Registry of transfers transferable interest in land intermediate between the Zemindar and the cultivator are required to register in the

Sherishteh of the Zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every Zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions. If any Zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession. Provided that no Zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the Zemindar or superior tenant.

Provido.

XXVIII. So much of Section x., Regulation XIX. 1793, Section x., Regulation XXI. 1795, Section vi., Regulation XXXI. 1803, Section xxi., Regulation VIII. 1805, and Section xxiv., Regulation XII. 1805, as authorizes and requires proprietors and farmers of estates and dependent talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Section, of their own authority to collect the rents of such land, and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or talook in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provision of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period

Applications to dispossess grantees of land exempt from revenue.

* For equivalent Sections in Act VI. of 1862, see Sections ix., x. and xl., pages 326 & 327.

has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

There is nothing in this Section to prevent a Plaintiff suing under Regulation II. of 1819, Section xxx., using of course the full stamp: under that law, the burden of proving the title falls upon the Defendant.—*Bholanath Ghose, Appellant, S. D. A., 5th September 1861.*

An application to the Collector under this Section is a suit, and the appeal lies to the judge not to the Commissioner.—*Bishwambhar Mittera, Appellant, H. C., 18th March 1863.*

XXIX. All suits which under the provisions of this Act may be brought by or
Suits by or against against Zemindars or other persons in the receipt of the rent of
Surburakars or Tehseeldars of estates held khas. land, may be brought by or against Surburakars or Tehseeldars of estates held under khas management, whether such estates are the property of Government, or of individuals. If the Collector or the Surburakar or Tehseeldar of any such estate in the Provinces of Bengal, Behar, and Orissa, proceed against any defaulting ryot or under-tenant of such estate under the powers vested in him by Section xxv., Regulation VII. 1799, and not according to the provisions of this Act, such ryot or under-tenant may contest the demand, on account of which he is so proceeded against, by suit in the Civil Court.

ACT LIII. OF 1860, SECTIONS 1 & 2.

I. The following proviso shall be read as part of Section xxx., Act X. of 1859:—"If in any suit to which this Section is applicable, the cause of action shall have accrued before the first day of August 1859, such suit shall be instituted within two years from that day, or, reckoning from the passing of this Act, within a period equal to the period of limitation for the institution of the suit that remained unexpired at the date of the passing of Act X. of 1859. Provided that no such period shall extend beyond the 31st July 1861.

II. Any suit or appeal instituted under Act X. of 1859, which may have been
Revival of certain suits dismissed or rejected on the ground that the suit had not
and appeals dismissed or been commenced within the period prescribed in Section
rejected. xxx. of the said Act, may be revived if the order of dismissal or rejection shall be contrary to the provisions of the foregoing Section, and a petition for the revival of the same shall be presented within four months of the passing of this Act, to the Collector or Court by which such suit or appeal may have been dismissed or rejected. The petition may be written on the Stamp required for petitions presented to such Collector or Court.

XXX. Except as otherwise herein provided, all suits instituted under this Act
Time for commencement of suits generally. shall be commenced within the period of one year from the date of the accruing of the cause of action.

The mere fact that no rent has been paid for 21 years, is no bar to the hearing of a suit, when use and occupation are admitted.—*Musamat Fajjah Kumiwar and others, Appellants, S. D. A., 26th June 1862.*

XXXI. Suits for the delivery of pottahs or kuboolyets and for the determination of the rates of rent at which such pottahs or kuboolyets are to be delivered, may be instituted at any time during the tenancy,
Time for commencement of suits for grant of pottahs, &c. the tenancy.

XXXII. Suits for the recovery of arrears of rent shall be instituted within three
Time for the commencement of suits for arrears of rent. years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Fusly or Willaity year in which the arrear claimed shall have become due. For

arrears of rent due at the passing of this Act, suits shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the suit be for the recovery of rent

at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under Section xiii., and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeyt of the Fusly or Willaity year, on account of which such enhanced rent is claimed.

XXXIII. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent, may be brought at any time during the agency or within one year after the determination of the agency of such agent, or, in the case of claims now existing, within one year after the passing of this
Time for the commencement of suits against agents for money, papers, or accounts.

Act or within the period now allowed for the institution of such suits in the Civil Court whichever may first expire. Provided that if the person having the right to

Proviso. sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

XXXIV. Suits under this Act shall be instituted by presenting to the Collector Mode of instituting a plaint or statement of claim which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim, and the date of the cause of action.

XXXV. The statement of claim shall be presented by the plaintiff, or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

Verification of statement. XXXVI. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

I, A. B., do declare that the above statement is true to the best of my knowledge and belief.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

The Principal is not liable to be indicted for perjury for a false statement by his agent.—*Tara Prosad Roy Chowdhary, Appellant, H. C., 12th August 1862.*

XXXVII. Repealed by Section I., Act XXXVI. of 1860.*

XXXVIII. If the plaintiff rely in support of this claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

The proper course for a party bringing a suit under Act X. is, to file with his plaint, the original document on which his claim is based, unless he has some excuse. The neglect to do so, however, does not necessitate the dismissal of the suit, if the case can proceed without the production of such document.—*Musamat Umarath Deyya, Appellant, S. D. A., 16th January 1861.*

A Plaintiff having relied upon a document which has been rejected by the Court, cannot be permitted subsequently to set up a fresh case.—*Nara Hari Mahunt, Appellant, H. C., 12th August 1862.*

XXXIX. If the plaintiff require the production of any document in the possession or power of the defendant, he may at the time of presenting his statement of claim, deliver to the Collector a description of the document in order that the defendant may be required to produce the same.

XL. Repealed by Section I., Act VI. of 1862, (Bengal Council.)†

XLI. If the suit be for the ejectment of a ryot, farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and if necessary for the identification of the land, shall set forth the boundaries of such land.

XLII. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

* Act XXXVI. of 1860, repealed by Act X. of 1862, see Chapter X.

† For an equivalent Section in Act VI. of 1862, see Section XII., page 327.

XLIII. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

XLIV. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form (A) contained in the Schedule to this Act, or to the like effect.

XLV. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's Office.

Endorsement by Nazir
if summons has been
personally served or not.

it has been served.

XLVI. If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how

XLVII. If the usual place of abode of the defendant be in another District, the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such District, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the Officer by whom it was transmitted to him.

XLVIII. The amount of the cost of serving the summons, or if a warrant be issued as provided in the next succeeding Section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaintiff or statement of claim is presented to the Collector. If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in Section cxlvi.), the case shall not be brought on the file of suits: but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

XLIX. If in any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his agent, on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *prima facie* grounds for believing the claim to be well-founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. The Collector shall fix a reasonable time for the return of the warrant which shall

Warrant of arrest in
what cases to be issued.

be in the form (B) contained in the Schedule to this Act or to the like effect, and the Officer entrusted with the service of the warrant shall at the time of arresting the defendant deliver to him a notice addressed to the defendant (which shall be in the form (C) in the Schedule or to the like effect) containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

L. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody unless he deposit in Court such sum as may be specified in the notice.

Procedure after arrest of defendant. **LI.** When a defendant is brought before the Collector under warrant, the Collector shall, with all convenient speed, proceed to try the case in the manner hereinafter provided; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the Civil jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order. The security bond shall be in the form (D) contained in the Schedule to this Act or to the like effect.

Procedure when defendant is brought before the Collector under warrant. **LII.** If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own Office and at the residence of the defendant fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding Section.

Form of security bond. **LIII.** If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred Rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause. **LIV.** If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions.

Consequence of neither party appearing on the day of trial. **LV.** If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs, provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If defendant only appear to dispute the demand, Collector shall pass judgment by default; but if defendant admit the claim, Collector shall decree upon such admission. **Proviso.** **LVI.** If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evi-

If plaintiff only appear, Collector may proceed ex-parte.

dence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex-parte* against the defendant.

LVII. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding Section, the Collector may upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

LVIII. No appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all such cases if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Revival, reversal, and alteration of decrees *ex-parte* or by default.

LIX. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. At the time of examination, the defendant, if he think fit, may file a written statement of his defence.

On appearance of parties, the parties to be examined by the Collector, and may cross-examine each other.

LX. The examination of the parties or their agents or such other persons as aforesaid, shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses. The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

Examination of parties, &c.

Witnesses to be examined.

LXI. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

LXII. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Documentary evidence to be produced by defendant.

LXIII. If after the examination required by Section lix., and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

LXIV. If on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as

Consequence of inability of agent to answer.

aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other order as he may deem proper in the circumstances of the case.

LXV. If on such examination as aforesaid, it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

LXVI. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

LXVII. The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act.

LXVIII. If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in Section liv. If on any such day, one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

LXIX. When suits under this Act are instituted or defended by Naibs, Gomastahs, or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomastahs, or other persons; and anything which by this Act is required or permitted to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

LXX. A plaintiff or defendant shall not be required to attend in person if of the female sex, and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

LXXI. Any party to a suit may employ an authorized agent or mookhtar to conduct the case on his behalf, but the appointment of such agent or mookhtar shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court; **and no fee for any agent shall be charged as part of the costs of suit in any case under this Act.*

LXXII. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further

* The italicised portion of this Section is repealed by Section xiv, of Act vi, of 1862, (Bengal Council), *vide* page 323.

proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

In a case involving title, and where an absentee landlord was Defendant, it was held that the Collector ought to have allowed him time beyond the ordinary period to file his defence.—*Maharajah Narrendra Narayan Bhoip and others, Appellants, S. D. A., 31st July 1861.*

It is optional with the Collector to give time to a party under this Section or not.—*Jotanchundra Roy, Appellant, S. D. A., 26th June 1862.*

LXXIII. The Collector may at any stage of a case cause a local enquiry. Collector may cause and report respecting the matter in dispute to be made local enquiry to be made. by any Officer subordinate to him, or by any other Officer of Government with the consent of the authority to whom such Officer is subordinate, or may himself proceed to the spot and make such local enquiry in person. The provisions of the law for the time being in force relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any Officer under this Section, and, so far as they are applicable, to enquiries made by the Collector in person. In the latter case, the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

LXXIV. *Repealed by Section i. Act vi., of 1862, (Bengal Council.)**

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

LXXVI. If on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper. Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

Proviso.

If on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

In a suit by a land-owner to recover rent at enhanced rates, or for a kablyat at enhanced rates, the rent cannot be fixed for a period of years as it can be, under this Section, in a suit by a ryot with rights of occupancy, for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the landlord a right to compel him to continue his occupation.—*James Hills, Appellant, H. C., 2nd September 1863.*

LXXVII. When in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Proviso.

If in actions for rent a third person appear as claimant, he is to be made a party to the suit.

A ryot on being sued for rent, pleaded that he had sold a part of his lands and paid a portion of the rent to the farmer of the estate. Neither the Farmer nor the Vendee were made Defendants, nor did they appear of their own accord before the Collector. The suit being decreed, the farmer and the vendee appealed to the judge with the ryot, but were not heard. It was held by the Sudder Court that the judge should have remanded the case to the Collector to be tried *de-novo* under this Section.—*Tara Chand Poddar, Appellant, S. D. A., 5th September 1861.*

* For equivalent Sections in Act VI. 1862, see Sections 7 and 8, page 326.

In a suit for the rent of certain lands, the Civil Court set aside a kabilyat given to A by B and ordered B to pay rent to C. In this Civil case, A. was not a party. Subsequently, A sued B for the rent of the same land upon the strength of the same kabilyat. Held, with reference to the provisions of this Section, that A. was prevented by the Civil Court's decree from obtaining the rent from B until he had established a superior title to C.—*Anand Mohan Ghose and others, Appellants, S. D. A., 27th March 1862.*

A suit on a kabilyat which the Court did not trust, was rightly dismissed without trying the case as between Plaintiff and an intervenor under this Section.—*Aziz Ahmad Ghazi, Appellant, S. D. A., 24th April 1862.*

A purchaser of a transferable tenure may defend a suit brought against his vendor for arrears said to be due before the date of purchase, even although he should not have registered the transfer, as the tenure is imperilled should such arrears be proved.—*Siva Narayan Bhattacharjya, Appellant, S. D. A., 5th September 1861.*

In a suit for arrears of rent not exceeding 100 Rupees in amount, to which a third person, who claims a right to receive the rents, is made a party under this section, no question of right or title is necessarily involved such as to justify an appeal to the judge from the decision of a Deputy Collector.—*Bhagavati Deyya, Appellant, S. D. A., 1st October 1861.*—*Pran Nath Roy Chowdhary, Appellant, S. D. A., 5th December 1861.*

If a party against whom a decree of the Civil Court has been given, be not ousted from possession in execution of such decree, he is entitled to collect rents, subject to account to the decree-holder for the same.—*Panchanan Banerjee, Appellant, S. D. A., 27th March 1862.*

This Section applies only to cases where two parties claim rent from the same ryot, and not to a case where the intervenor claims rent from a ryot other than the party sued by the Plaintiff.—*Pran Nath Roy Chowdhary, Appellant, H. C., 5th December 1861.*

A Collector is not competent, under this section, to pass a judgment which determines a question of right to rent upon the ground of legal title to the land. The only point he can decide is whether the third party in the suit has hitherto received the rents in good faith, and in doing so, no question of title to the land can be adjudicated upon.—*Messrs Watson & Co., Appellants, S. D. A., 6th March 1862.*

In a suit for arrears of rent, the Defendant urged that the lands were not in Plaintiff's village, but in another village, the property of a third party, who also appeared and supported Defendant in the above answer. An Ameen was appointed to visit the land, and he reported that there was no such village as that alleged by Defendant and third party, and that the land really was in Plaintiff's village. Plaintiff got a decree accordingly. This decision was considered defective, because as the third party averred that he received the rents from Defendant, that was the point to be determined in the case under this section.—*Chatouri Miser and others, Appellants, S. D. A., 8th May 1862.*

A person alleging himself to be a perpetual lessee of some land, sued a ryot for rent. The ryot's defence was that plaintiff was not the real lessee, and that he was not his ryot. The zemindar supported this defence, saying that he had not given a lease to the plaintiff, but to another person, and as this person was dead, the lease had reverted to him, the Zemindar. The lower Court found that the lease held by Plaintiff was a valid document, and decreed the claim. Case remanded that evidence might be taken under this section as to which of the claimants had received the rents of the land.—*Shama Charan Haldar, Appellant, S. D. A., 13th May 1862.*—*Mirza Zahid Ali, Appellant, H. C., 5th August 1862.*

Whenever a third party in a suit for arrears of rent, claims to have been in possession, and to have collected the rents from the tenants during the time for which rent is claimed, such third party must be made a party to the suit as directed in this Section. The case must not be decided as only between Plaintiff and Defendant.—*Kundru Pradhan and others, Appellants, S. D. A., 11th June 1862.*

In a case involving a question of right and title, the Plaintiff is entitled to have his evidence heard and considered by the Court of first instance before he is referred to the Civil Court.—*Sheik Mobarrach Hossain and others, Appellants, S. D. A., 12th June 1862.*

A Zemindar installed by the Collector under Section xxv., must be held for the purposes of this Section to be in actual possession and enjoyment of the estate.—*Mohesh Chandra Pal Chowdhary and others, Appellants, S. D. A., 14th June 1862.*

A claim to receive the rent of the ryots as tenant of the Plaintiff may be heard under this Section and if established will bar the suit against the ryot by the land-holder.—*Gunga Dhur Ghose, Appellant, H. C., 27th January 1863.*

LXXVIII. Any person desiring to eject a ryot or to cancel a lease on account of

Suits for ejectment or non-payment of arrears of rent, may sue for such ejectment or cancellation of lease. or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount together with interest and costs of suit be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

Sections xxi., xxii. and lxxviii. of Act X. must be read together and those parties only can be ejected under Section lxxviii., who come within the purview of Sections xxi. and xxii. Persons with a permanent or transferable interest, do not come under those Sections, and consequently Section lxxviii. does not apply to them: but a decree-holder must realize his dues from such persons by the mode enjoined in Section cv. of the Act, viz. by the sale of the tenure, and, if that does not suffice, by the sale of any other property, moveable or immovable belonging to the debtor.—*Nand Lal Ghose and others, Appellants, S. D. A., 31st December 1860.*—*Ram Kishen Das, Appellant, S. D. A., 26th March 1862.*

In a suit for arrears of rent and for ejectment under this Section, the appeal lies to the Judge, not to the Collector, although the amount of the arrear be less than 100 Rs.—*Kaluchand Chuckerabarthi, Appellant, S. D. A., 26th June 1862.*

A suit for arrears of house-rent and for ejectment of the tenant from the house, is not a suit cognizable by the Revenue authorities under this Section which makes no mention of the rent of houses.—*Nawab Haji Muhammad Khan Kuzalbash, Appellant, S. D. A., 28th June 1862.*

A suit was brought under this Section for arrears of rent due up to the end of 1267 and for ejectment of the tenant; but as the Plaintiff had received rent from the tenant for the year 1268, it was held that the receipt of rent for 1268, barred the landlord's right to eject the tenant for the

non-payment of rent due up to the end of 1267; in other words, a land-lord cannot re-enter for default of the payment of rent for one year, if he have received the rent on account of a subsequent year. The receipt of the rent for 1268 had the same effect, as if the landlord had at the commencement of 1268 created a new tenancy.—*Shekh Pir Baksh, Appellant, H. C., 28th July 1862.*

If a lessee provides that, in case of default of payment of rent, the lessor should have the power of re-entry, without expressly mentioning the mode of effecting it, the lessor is bound to exercise this power according to the provisions of Section xxii. But parties may contract that there shall be a power of re-entry without applying to any Court.—*R. Solano, Appellant, H. C., 23rd December 1862.*

LXXIX. Repealed by Section I., Act VI. 1862, (*Bengal Council.*)*

LXXX. When a decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Collector may grant a pottah in conformity with the terms of the decree under his own hand and seal, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

LXXXI. When a decree is given for the delivery of a kubooliyet, if the person required by the decree to execute such kubooliyet shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kubooliyet executed by the said person.

LXXXII. If the decree be for the ejectment of any ryot from land occupied by him, or for the reinstatement of any ryot in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

LXXXIII. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator) or for the re-instatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

LXXXIV. If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to Jail or appear pursuant to the conditions of any security bond given under Section li., the Collector may order that he be detained in or committed to the Civil Jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

LXXXV. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do; process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety. If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

LXXXVI. Repealed by Section I., Act VI. 1862, (*Bengal Council.*)†

LXXXVII. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the Judgment-creditor, but if the creditor is unable to furnish such list he may apply for a general attachment of property.

* For the equivalent Section in Act VI. 1862, see Section 15, page 328.

† For the equivalent Section in Act VI. of 1862, see Section 17, page 328.

the debtor's effects to the amount of the Judgment and costs. In either case the property to be seized shall be pointed out to the Officer entrusted with the execution of the process by the creditor or his agent.

LXXXVIII. Every warrant of execution shall bear date on the day on which it is signed by the Collector and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

LXXXIX. Second and successive Warrants of execution may be issued by order of the Collector on the application of the Judgment-creditor after the expiration of the period fixed for the continuance in force of a previous Warrant.

XC. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

XCI. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

XCII. No process of execution of any description whatsoever shall be issued, on a judgment under this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred Rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

No suit can be maintained in a Civil Court to enforce a decree of a Revenue Court, which the Revenue Court has refused to execute upon the ground that it has been satisfied.—*Anund Moyi Dasi, Appellant, H. C., 3rd June 1863.*

XCIII. If a warrant issue for taking in execution the body of any person, the Officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the Civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree. Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty Rupees, or six calendar months when such amount does not exceed five hundred Rupees, or two years in any other case.

Limit of Imprisonment. If the decree against any person arrested under a warrant be for the delivery of papers or accounts and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the Civil jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree.

XCIV. Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed one hundred Rupees, the Collector may declare such discharged person absolved from further liability under that decree. In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

XCV. Any person applying for a warrant of arrest under Section xlix., or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet money for one month of thirty days at such rate as the

Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

XCVI. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

XCVII. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet money not so spent shall be returned to the person who deposited the same.

XCVII. In executing a writ of execution against the moveable property of a debtor liable under this Act, the Officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held together with a copy of the said list at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his Office.

XCIX. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale the property shall be deposited in some fit place or it may remain in custody of some fit person approved by the Officer executing the writ. The provisions of Sections cxxix. to cxxxiii., so far as the same are applicable, shall be applied to sales under this Section.

C. If before the day fixed for the sale a third party appear before the Collector and claim a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and if he see sufficient reason for so doing may stay the sale of such property.

CL. The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original such claims. suit as shall seem fit. In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

CII. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

CIII. No appeal shall lie from any order passed by the Collector under the two last preceding Sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

CIV. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

CV. If the decree

Sale of transferable tenures in execution of decrees for arrears of rent.

be for an arrear of rent due in respect of an under-tenure which by the title deeds or the Custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immovable, belonging to the debtor and any such immovable property may be brought to sale in the manner provided in Section cx. of this Act.

Plaintiffs sued as purchasers of an under-tenure sold in satisfaction of a decree for arrears of rent under this Section. Defendant, in reply, questioned Plaintiffs' title, alleging that the tenure was purchased by private sale before the sale in execution, and that he (defendant) held under the representative of the private purchaser. Held that this objection could not be entertained.—*Messrs. Cohn Feilman and Co., Appellants, S. D. A., 14th June 1862.*

CVI. If before the

If third party claim to be the lawful possessor of such under-tenure, Collector to stay the sale and to enquire into and adjudicate upon the claim.

day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and allege that such third party and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in Section c. for the examination of third parties, and if he see sufficient reason for so doing and such party shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to enquire into and adjudicate upon the claim. * Provided that no transfer of an

Proviso.

under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the Sherishteh of the Zemindar or superior tenant shall be recognized unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

CVII. In trying such claim the Collector shall be guided by the rules contained

Mode of adjudicating such claims.

in this Act, so far as the same may be applicable, and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

CVIII. If a decree is given in favor of a sharer in a joint undivided estate, dependent talook, or other similar tenure for money due to him

Execution of decrees given in favor of sharers in undivided estates or tenures.

on account of his share of the rent of an under-tenure situate in such undivided estate or talook or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the District in which the suit was instituted and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in Section cv., may be brought to sale in execution of the decree in the same manner as any other immovable property may be sold in execution of a decree for money under the provisions of the two next following Sections.

CIX. In the execution of any decree for the payment of money under this

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immovable property.

Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the District in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor.

CX. If the immoveable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property and the provisions of Sections xviii. and xcix. shall be applicable to the execution of such process. If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.

CXI. If, before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in Section c. for the examination of third parties, and if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in Section cvii.

CXII. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent as defined in Section xx. of this Act, is due from any cultivator of land, the zemindar, lakhirajdar, farmer, dependent talookdar, under-farmer, or other person entitled to receive rent immediately from such cultivator instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules. Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to distraint. Provided also that no sharer in a joint estate, dependent talook, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same. Provided further that, in Putteedaree estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces, distraint shall be made only through a Lumberdar.

CXIII. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

CXIV. The power of distraint vested by Section cxii. in Zemindars and other persons entitled to receive rent from cultivators of land, may be exercised by managers under the Court of Wards, Surburakars, and Tehseeldars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the Naibs, Gomastahs, and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power of attorney in that behalf. Provided that, if any illegal act is committed by any such Naib, Gomastah, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

CXV. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

CXVI. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

Defaulter to be served with a written demand, &c., before or at the time of distraint.

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

Distress to be proportionate to the arrear if not paid or tendered.

CXVIII. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other place as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which from their nature do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

Standing crops, &c., when attached, to be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainer.

CXIX. If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public Officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an Officer to support the distrainer in making the distraint.

CXX. When any person, empowered to distrain property under Section cxii. or Section cxiv. shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

CXXI. If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

CXXII. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court Ameen or other Officer authorized to sell property in satisfaction of decrees of

Distrainer may apply for aid to the Collector upon occasion of resistance made or apprehended.

Persons empowered to distrain may give written authority to their servants to do so.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

Application for sale.

the Civil Court within the circle in which the distrained property is situate, or to such other public Officer as the local Government shall appoint for the purpose.

CXXIII. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited. Together with the application, the distrainer shall deliver to the Civil Court Ameen or other Officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

CXXVI. Immediately on receipt of the application the Civil Court Ameen or other Officer shall transmit a copy of it to the Collector; and Procedure by Civil Court Ameen, &c., on receipt of application. shall serve a notice (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect) on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall at the same time send to the Collector for the purpose of being put up in his Office, and if in the North-Western Provinces, in the Outcherry of the Tehseeldar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

CXXV. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen or other Officer, or if so requested shall deliver to the owner of the distrained property a certificate of the institution of such suit; and on such certificate being received by or presented to the Ameen or other Officer, he shall suspend proceedings in regard to the sale of the distrained property.

CXXVI. A person whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding Section. If thereafter application for the sale of the property is made to the Civil Court Ameen or other Officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

A party sued against a distraint alleging that his rent was Rs. 24 not Rs. 112. The burden of proof was on him, and as he failed to prove his allegation, it was held not necessary to consider the proof adduced by the Defendant.—*Sheikh Khuda Baksh, Appellant, S. D. A., 12th June 1862.*

CXXVII. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit, and when such bond is executed the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same; and upon such certificate being presented to the distrainer by the owner of the property or served on him by order of the Collector, the property shall be released from distraint.

CXXVIII. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Ameen or other Officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

CXXXIX. The sale shall be held at the place where the distrained property is deposited, or at the nearest gunge, bazar, haut, or other place of public resort, if the Civil Court Ameen or other Officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as the Officer holding the sale may think advisable; and if the demand with the costs of the distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

CXXX. If on the property being put up for sale, a fair price in the estimation of the Officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market day, if a market be held at the place of sale, the sale shall be postponed until such day and shall be then completed at whatever price may be offered for the property.

CXXXI. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the Officer holding the sale shall think necessary; and in default of such payment the property shall be put up again and sold. 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.

CXXXII. From the proceeds of the sale of distrained property, the Officer holding the sale shall make a deduction at the rate of one anna in the Rupee on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in Section cxxiv. to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made with interest thereon up to the day of sale, and if there be any overplus it shall be delivered to the person whose property shall have been sold.

CXXXIII. 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 property sold by such Officers.

CXXXIV. Civil Court Ameen and other Officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under color of this Act; and if in any case, on proceeding to hold a sale of property, the Civil Court Ameen or other Officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section cxxiv. or pass such other order as he may think proper.

CXXXV. When a Civil Court Ameen or other Officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding Section, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Ameen or other Officer, the charge of one anna in the Rupee on account of expenses shall be leviable and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary. In every other case it shall be paid by the distrainer and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector. Provided always that in no case shall a larger amount than ten Rupees be recoverable under this Section.

CXXXVI. All proceedings under this Act of the Civil Court Ameens and other Officers as aforesaid shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statement of business performed by the Civil Court Ameens and other Officers as may be

Proceedings of Civil Court Ameens, &c., subject to revision and orders of Collectors.

thought necessary.

CXXXVII. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue and order to the Civil Court Ameen or other Officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Ameen or other Officer, such Ameen or Officer shall publish a second proclamation in the manner prescribed in Section cxxiv., fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and unless the amount adjudged to be due with the costs of distress be paid immediately, shall proceed to sell the property in the manner hereinbefore provided.

Second proclamation of sale.

CXXXVIII. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favor of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding Section if the distress has not been withdrawn, and if any balance due after such sale by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If on the other hand the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff as the circumstances of the case shall seem to require.

CXXXIX. If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer, and such other person, to try the right to the property in the same manner, and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require. Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Proviso.

CXL. If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be enquired into,

Procedure if distrainer's right to distrain be disputed.

and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

CXLI. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand or to try the right to the property as the case may be within the period allowed by Sections cxxiv. and cxxxix. and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

CXLII. If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

CXLIII. If any person not empowered to distrain property under Sections cxii. and cxiv. of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell or cause to be sold any property under color of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

CXLIV. Provided always that any suit which may be instituted under any of the last three Sections shall be commenced within three months from the date of the occurrence of the cause of action.

CXLV. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the Civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred Rupees, or in default of payment thereof to imprisonment for a period not exceeding two months.

CXLVI. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir or by such other Officer as the Collector may direct at the cost of the party at whose instance it issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

CXLVII. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil justice.

When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors under this Section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section cli.

CXLVIII. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction, provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

Collector competent to hold a Court in any part of his jurisdiction. *

Proviso.

CXLIX. Any person may practise as an agent or mookhtar in a Court held by a Collector under this Act without any formal license from the Collector. But it shall be competent to the Collector to prohibit any person, who has been convicted by a competent Court of a criminal offence or who has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as agent or mookhtar, to practise as an agent or mookhtar in his Court. When any agent or mookhtar is charged by the Collector or any other person with fraudulent or dishonest conduct in the discharge of his duty, the Collector shall proceed in the manner prescribed in Section iv., Act XVIII. of 1852, or any other law for the time being in force for the trial of charges against pleaders.

Agents or mookhtars.

Collectors and Deputy Collectors to be subject to direction and control of the Commissioners and the Boards of Revenue.

CL. *Repealed by Section i., Act VI. 1862, (Bengal Council.)**

CLI. In the performance of their duties under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate. All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner: and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

CLII. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days from the date of the order. Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case, and pass such orders thereon as they may think proper.

An appeal presented by mistake to the Judge, instead of the Commissioner, cannot, with reference to the terms of this Section, be presented subsequently to the Commissioner, if the 30 days allowed by law from the date of the order appealed against, is expired.

But the appellant has a remedy in a regular suit either under the provisions of Section xxiii. of this Act, or in the Civil Court as the case may be.—*C. J. Phillip, Appellant, H. C., 3rd June 1863.*

CLIII. In suits under Clauses 2, 4, and 7, of Section xxiii. and under Section xxiv. of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred Rupees, the judgment of the Collector shall be final, and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections cli. and clii. of this Act.

No appeal from any decree of Collector for money below 100 Rs. unless the decision involve some question of right to enhance rents or some question relating to a title to land.

* For the equivalent Section in Act VI. 1862, see Section XIX, page 328.

CLIV. In suits in which the judgment of the Collector is final as provided in the last preceding Section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce at the time of trial.

CLV. When any such suit as aforesaid, in which if tried and decided by a Collector the judgment of the Collector would be final, is tried on appeal from decision of the Collector, and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Where in a suit tried under Section lxxvii. no decision has been passed injurious to the right of the third party, the appeal, if the value be within 100 Rupees, lies to the Collector under this Section.—*Pranmath Roy Chowdhary, Appellant, S. D. A., 5th December 1861.*

CLVI. The petition of appeal shall be written on Stamp paper of eight annas value and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

CLVII. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If, on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

CLVIII. If an appeal be dismissed for default of prosecution, the appellant may within fifteen days from the date of the dismissal apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

CLIX. After hearing the appeal, the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

CLX. In all suits other than those in which when tried and decided by a Collector the judgment of the Collector is declared to be final or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zillah Judge; unless the amount or value in dispute exceed five thousand Rupees, in which case the appeal shall lie to the Sudder Court.

Judgments passed in appeal by the Zillah Judges under this Section, are open to special appeal.—*Hallodhar Biswas, Appellant, S. D. A., 30th March 1861.*

The misconstruction by the Court of a written document which forms the basis of a plaintiff's claim or a defendant's answer under this Act, is a substantial error in Law, and consequently may be made the ground of special appeal.—*Rajah Frankishen Singh Sarma, Appellant, S. D. A., 1st October 1861.*

An under-tenant sued a ryot for arrears of rent. The Zemindar appeared as third party, and urged that under the provisions of Section xxv., he had applied to the Collector to remove the Plaintiff under-tenant and instal him, the Zemindar, in possession, he having lately purchased the estate at a sale for arrears of revenue. The Deputy Collector dismissed the claim which was for less than 100 Rupees; an appeal was made to the Judge, who reversed the Deputy Collector's order, and decreed in Plaintiff's favor. Held that the Judge had no jurisdiction in this case, and that the appeal should have been to the Collector.—*Mohes Chander Paul Chowdhary and others, Appellants, S. D. A., 14th June 1862.*

In a case of arrears of rent and for ejectment under Section lxxviii., the appeal lies to the Judge, not to the Collector, although the amount of the arrear be less than 100 Rupees.—*Kala Chand Chakravarti, Appellant, S. D. A., 26th June 1862.*

If a misapprehension by a Judge of the finding of a Lower Court, cause an error in procedure by which a party to the suit may be prejudiced, a special appeal will lie.—*Dino Nath Mookherjya, Appellant, H. C., 3rd July 1863.*

When the jurisdiction of the Collector and of the Civil Judge of a district are not contentious, suits will be instituted before the Collector in whose jurisdiction the land which is the subject of the suit lies, but the appeal will lie to the Judge in whose civil jurisdiction the land is situate.—*Latif Unissa Bibi, Appellant, H. C., 22nd August 1862.*

CLXI. The petition of appeal shall be written on the Stamp Paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal; and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or Sudder Court under this Act.

Where an appeal has been made by mistake to the Collector, instead of to the Judge, and so the time allowed by the Law ordinarily for an appeal to the Judge is lost, the Judge should exercise the discretion allowed to him by the Law, and admit the appeal after time.—*Bhoja Hari Dhara Singh, Appellant, S. D. A., 4th June 1862.*

A Judge is competent to review his Judgment in an Act X. case, as Act VIII. of 1859 has been declared to apply, as far as it is applicable, to suits under the former Act, and Section cccxxvi. of Act VIII. allows a Judge under certain conditions, to review his Judgment.—*Sheikh Najib and others, Appellants, S. D. A., 11th June 1862.*

A Judge upon review cannot, however, allow a Plaintiff to shift his ground, and set up a new case.—*Nara Hori Mahanto, Appellant, H. C., 12th August 1862.*

CLXII. *Repealed by Section I. Act VI. 1862, (Bengal Council.)**

Except as above, Collector not to exercise jurisdiction in respect to lands situate beyond his District.

the Treasury of the said District.

Deputy Collector entrusted with Police functions, not to exercise judicial powers under this Act.

What powers to be exercised by Assistants to Collectors.

Saving of rights of proprietors in respect of Putnee Talooks, &c., under Regulation VIII. 1819, provisions of Regulation VIII. 1819.†

Commencement of Act.

CLXVIII. The words "Civil Jail" as used in this Act shall include the Civil Jail of the Zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Nazir" shall include any Officer of a Court authorized to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

"Nazir."

"Number."

"Gender."

CLXIII. Except as provided in the last preceding Section, no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the District to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the Treasury of the said District.

CLXIV. No Deputy Collector appointed under Regulation IX. 1833 of the Bengal Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions.

CLXV. Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

CLXVI. Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent, Putnee Talooks and other similar tenures under the provisions of Regulation VIII. 1819.†

CLXVII. This Act shall commence and have effect from and after the 1st day of August 1859.

* For the equivalent Section in Act VI. 1862, see Section xx., page 328.

† Vide Chapter VI., page 272.

SCHEDULE.

FORM A. (See Section 44.)

FORM OF SUMMONS TO DEFENDANT.

No. _____ (of suit) dated _____

In the Court of _____

A. B., Plaintiff.

[Name, description, and address of Plaintiff.]

C. D. Defendant.

[Name, description, and address of Defendant.]

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*) you are hereby required to appear in person in this Court on the _____ day of _____ [*if not specially required to appear in person, state, "in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"*] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B. (See Section 49.)

FORM OF WARRANT OF ARREST.

No. _____ (of suit) dated _____

In the Court of _____

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of—

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the _____ day of _____ to be dealt with according to law.

Dated this _____ day of _____ 185 _____

FORM C. (See Section 49.)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of _____

A. B., Plaintiff.

[Name, description, and address of Plaintiff.]

C. D., Defendant.

[Name, description, and address of Defendant.]

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM D. (See Section 57.)

FORM OF SECURITY BOND FOR APPEARANCE OF DEFENDANT.

Whereas A. B., plaintiff, has instituted a suit in the Court of the Collector of _____ against C. D., defendant, and the said C. D. has been required to give security

for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.

FORM E. (See Section 86.)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of—

Whereas the said C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM F. (See Section 86.)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of—

Whereas C. D. was directed by a decree of this Court under date the day of 185 to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of . for costs of executing this process, by seizure and sale of such moveable property of the said C. D. as (is described in the list annexed, and) [if no list is furnished, these words to be omitted] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

FORM G. (See Section 124.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of

Commissioner for sale of distrained property.

A. B., Distrainer.

[Name, description, and address of the owner of the property.]

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

Dated this day of 185 .

ACT VI. OF 1862.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Governor-General on the 1st May 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.)

WHEREAS it is expedient to amend Act X. of 1859, so far as the same relates to the Provinces subject to the Government of Bengal; It is enacted as follows:—

Repeals Sections 26, 40, 74, 79, 86, 150, and 162 of Act X. of 1859.
passing of this Act.

I. Sections xxvi., xl., lxxiv., lxxix., lxxxvi., cl., and clxii. of Act X. of 1859 are hereby repealed, except as regards suits under the said Act X. of 1859 instituted prior to the

II. In any suit hereafter to be brought for rent under Act X. of 1859, if it shall appear to the Court that the defendant has without reasonable or probable cause neglected or refused to pay the amount due by him and that he has not before the institution of the suit tendered such amount to the plaintiff or his duly authorized Agent, or, in case of refusal of the plaintiff or such Agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per cent. on the amount of rent decreed, as the Court may think fit. These damages if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per cent. per annum from the date of decree until payment thereof, and shall be recoverable from the defendant in like manner as sums decreed to be paid by defendants under Act X. of 1859 are recoverable.

III. In any suit hereafter to be brought for rent under Act X. of 1859, if it shall appear to the Court that the plaintiff has instituted the suit against the defendant without reasonable or probable cause, or that the defendant before the institution of the suit duly deposited with the Collector in the manner hereinafter mentioned the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant by way of compensation such sum, not exceeding twenty-five per cent. on the whole amount claimed by the plaintiff as the Court may think fit, and such sum, with interest at the rate of twelve per cent. per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sums decreed to be paid by defendants under Act X. of 1859 are recoverable.

IV. If any under-tenant or ryot shall, at the Mal cutcherry for the receipt of rents or other place where the rents of the land held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the Zemindar or other person in receipt of the rent of such land, and if the amount so tendered shall not be accepted, and a receipt in full forthwith granted, it shall be lawful for the under-tenant or ryot, without any suit having been instituted against him, to deposit such amount in the Collector's Court, to the credit of the Zemindar or other person aforesaid; and such deposit shall, so far as the under-tenant or ryot and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of a payment then made by the under-tenant or ryot, of the amount deposited, to such Zemindar or other person.

V. The Collector shall receive such deposit on the application of the under-tenant or ryot, or his agent, made in writing upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent under Section xxxvii. of Act X. of 1859 for an amount equal to that which it is intended to deposit, and on the under-tenant or ryot, or his agent, making a declaration in the form, or as nearly as circumstances will admit in the form set forth in the Schedule (A) hereto annexed, and the Collector shall give a receipt for the same. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Collector shall issue a notice to the person to whose credit it has been deposited, in the form set forth in the Schedule (B) hereto annexed, and such notice shall be served by the Collector, without the payment of any fee, either upon the person to whom it is addressed or upon his Naib, Gomastah, or other Agent, and in the absence of any such Agent it shall be served by sticking up a copy of the same in the Office of the Collector, and another copy at the Mal cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorized Agent, shall appear and apply that the money in deposit be paid to him, it shall be immediately made over to him.

VI. Whenever a deposit shall have been made under the provisions of this Act, no suit shall be brought against the person making the deposit or his representatives on account of any rent which accrued due prior to the date of the deposit, unless such suit is instituted within six months from the date of the service of the notice in the fifth Section of this Act mentioned:

VII. The defendant in any suit under this Act or under Act X. of 1859 instituted after the passing of this Act may, if he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he shall consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

VIII. The defendant in any suit under this Act or under Act X. of 1859 instituted after the passing of this Act, may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff, together with the costs (to be fixed by the Court if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall immediately be paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall (including the sum paid into Court by him in the first instance on account of costs) be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree.

IX. Every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained

from doing so by express engagement with the occupants of the lands. If any person intending to measure any land which he has a right to measure, is opposed in making such measurement by the occupant of the land; or if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, such person may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under Act X. of 1859, and shall pass a decision either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made or any of the proceedings held in his absence.

X. If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands or any part of the lands comprised therein, such proprietor or other person may petition the Collector in respect of the lands which he cannot measure as aforesaid, and the Collector thereupon, and on the necessary costs being deposited with him by the applicant, shall proceed to measure the land and to ascertain and record the names of the persons in occupation of the same, or on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. The provisions of Section lxvii. of Act X. of 1859 shall apply to any proceeding of the Collector instituted under this Section. If after due enquiry the Collector shall be unable to measure the land, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such lands or any part thereof, then and in any such case he may declare the same to have lapsed to the party on whose petition he has made the enquiry. If any person, within fifteen days after the Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms or conditions as he may think proper, alter or rescind his declaration according to the justice of the case. Save as aforesaid, the decision of the Collector on all matters enquired into and determined by him under this or the last preceding Section, shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court. Such appeals shall lie to the Zillah Judge or to the Sudder Court, subject to the provisions and conditions contained in Sections clx. and clxi. of Act X. of 1859.

Measurements to be made by the Pergunnah pole.

XI. All measurements made under this Act shall be made by the Standard pole of measurement of the Pergunnah in which the land is situated.

XII. In any suit hereafter to be brought for the recovery of an arrear of rent, the statement shall specify the name of the village and estate and of the Pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the statement shall further specify the quantity of land, and where fields have been numbered in a Government Survey the number (if it be possible to give it) of each field.

XIII. In all cases in which the Collector shall pass an order under Section lviii. of Act X. of 1859 for setting aside a judgment, the order shall be final; but in all appealable cases in which the Collector shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable: provided that the appeal be preferred within the time allowed for an appeal.

from such final decision, and be written upon Stamp Paper of the value prescribed for petitions to the Court to which the appeal lies where a Stamp is required for petitions.

XIV. So much of Section lxxi. of Act X. of 1859 as directs that no fee for any Agent shall be charged as part of the costs of suit in any case under the Act, is hereby repealed. In awarding costs to either party in any suit hereafter to be brought under the said Act or under this Act, it shall be competent for the Collector to award to such party, on account of the fees of any Agent or Mooktear employed by him, such a sum, not exceeding the rate of fee chargeable under the provisions of Section vii. of Act I. of 1846 for Pleaders in the Civil Courts, as the Collector may direct.

XV. The Collector shall pronounce judgment in all cases tried under this Act or under Act X. of 1859 in open Court. The Judgment shall be written in the vernacular language of the Collector, and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced. Provided that if the vernacular language of the Collector be not English, and the Collector be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

XVI. The provisions relating to attachment before judgment contained in Sections lxxxi. to xc. both inclusive, of Act VIII. of 1859 (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*) are hereby extended to all suits hereafter to be brought under this Act or Act X. of 1859.

XVII. Process of execution in any suit hereafter to be instituted under this Act or under Act X. of 1859 may be issued against either the person or the property of a judgment debtor, but process shall not be issued simultaneously against both person and property. It may be issued on the oral application of the judgment creditor, his Agent, or Mooktear, made at the time the judgment is pronounced, or thereafter upon the written application of the judgment creditor, his Agent, or Mooktear, presented to the Court by which the judgment was given. Process of execution against the person or moveable property of a debtor shall be in the Form (E) or the Form (F) contained in the Schedule to Act X. of 1859, or in a form as nearly resembling those forms as the circumstances of the case may admit.

XVIII. If any person shall after the date of the passing of this Act be arrested under Section cxlv. of the said Act X. of 1859, he shall be brought before the Collector with all convenient speed, and the Collector shall proceed forthwith to try the case. If the case cannot be at once heard and determined, the Collector may, if he think fit, require the person arrested to give security for his appearance whenever the same is required. In default of such security the person arrested shall be committed to the Civil Jail till the case is heard.

XIX. All the powers vested in the Collector by any of the Sections of this Act or of Act X. of 1859, may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference by any Deputy Collector placed in charge of any Sub-division of a District, or who is specially authorized by Government to receive such cases; and all applications and reports allowed or required by the said Act X. of 1859 or by this Act to be made to the Collector, may be made to any Deputy Collector having such local jurisdiction or such special authority as aforesaid.

XX. Suits under this Act or under Act X. of 1859 shall be preferred in the Revenue Office of the District, or when a Sub-division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Sub-division in which the cause of action shall have arisen, or when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a Sub-division, but who has been specially authorized by Government to receive such suits, then in the Office of such last mentioned Deputy Collector. Provided always

that the Collector may withdraw any suit from any Deputy Collector, and try it himself, or refer it to another Deputy Collector. If the lands comprised in any talook, farm, or other tenure, or any lands held under one lease or engagement, or at one entire rent, in respect of which arrears of rent may be due, are situated in more than one District or Sub-division, or within the local limits of the jurisdiction of more than one Deputy Collector so specially authorized as aforesaid, the District, or Sub-division, or local limits in which the greater part of such lands is situate, shall be held to be the District, or Sub-division, or local limits in which the cause of action has arisen, and if any question shall be raised respecting the District, or Sub-division, or local limits within which the greater part of the lands is situate, the Board of Revenue, or, if all the lands be situate in one District, the Collector of the District shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

When the jurisdiction of the Collector and of the Civil Judge of a district are not continuous, suits will be instituted before the Collector in whose jurisdiction the land which is the subject of the suit lies, but the appeal will lie to the Judge in whose civil jurisdiction the land is situated.—*Latif Un-mssa Bibi, Appellant, H. C., 22nd August 1862.*

This Act to be read with Act X. of 1859.

XXI. This Act shall be read with and taken as part of Act X. of 1859, except as regards suits instituted thereunder before the passing of this Act.

SCHEDULE A.*

I, A. B., of &c., do solemnly declare that I did personally (or by my Agent C. D.) on the _____ day of _____ tender payment to E. F. at his Mal-cutcherry (or at _____) the place where the rent of the lands at _____ held or cultivated by me under or from the said E. F., are usually payable, of the sum of _____ Company's Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of _____ to the month of _____ both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the same.) And I do declare that to the best of my belief the sum of _____ Company's Rupees _____ so tendered and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of _____ to the month of _____ both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands.

SCHEDULE B.†

Court of the Collector (or Deputy Collector) of _____

Dated the _____ day of _____

18 _____

To E. F. of &c.

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

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

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

RULES REGARDING RENT SUITS

PRESCRIBED BY THE BOARD OF REVENUE, L. P.

I. Suits and cases under Act X. of 1859 may be heard and decided at all times, when the office of a Collector is open for the despatch of general business. But it is incumbent on the Revenue Authorities to exercise a sound discretion in regard to the dismissal of suits for non-attendance of the parties at seasons, when the Regular Courts are closed, and the transaction of Civil business is in a great measure suspended.

II. If a Collector, during his absence from the station on duty, has left a Covenanted Deputy Collector or a Covenanted Assistant with the powers of a Deputy Collector in charge of the current duties of the office, it is competent to him, by a proceeding, to delegate to the officer so left in charge the duty of deciding any cases that may be instituted under the provisions of Act X. of 1859, or of distributing such cases amongst the officers authorized to decide the same.

III. Security bonds in cases under Act X. of 1859, taken under the provisions of Sections li. and cxvii., must be on stamp paper of the value indicated in Article 12, Schedule A, Regulation X. of 1862. They must be executed or acknowledged before the Collector or other Officer, before whom the case is. The acknowledgment of the party executing the bond should be noted by the deciding Officer on the bond. Property need not be pledged by either party; the security of a person of substance is what is required; but when objection to the sufficiency of the security is made by the opposite party, the authority before whom the bond is brought should make enquiries before accepting it. The registration of security bonds in suits under Act X. of 1859, is not necessary.

IV. All suits under Clauses 1, 2, 3, 5, 6, 7 of Section xxiii., suits for papers or accounts under Section xxiv., applications under Sections xxv., xxvi., xxvii., and xxviii., claims under Sections lxxvii., c., cvi., objections under Section cxi., applications under Section cix., complaints under Section cxlv., must be written upon stamp paper of 8 annas value.

V. Article 4 of Schedule B, Act X. of 1862, requires that copies of decrees in suits, of which the value of the claim is above 50 Rupees shall be taken on stamped paper. In suits under Act X. of 1859 of which the claim is below that amount, the copies of decrees will be given on plain paper, and may, of course, be filed on such paper as exhibits in other cases.

VI. The date on which a party applies for a copy of a decree, (which in suits for amounts above 50 Rupees will be the date on which he gives in the stamped paper on which the copy is to be written), is to be noted on the copy when given. The Collector should also, at the time of signing the copy, note in his own hand the date of signature. If the party or his agent be present, the copy is to be immediately delivered or tendered to the one or the other in open Court, and the fact of such delivery or tender is to be noted on the copy. Should the party or his agent not appear when duly called upon in open Court to take the copy, the fact of his absence is to be noted on it, and it is to be filed with the record of the case. Should the party subsequently apply for the copy, the application may be on plain paper. It will be filed with the case, and the date of delivery will be noted on the copy of the decree.

VII. The office of a Collector or other Officer, empowered to decide suits and cases under Act X. of 1859 is a Court within the intent of Section i., Act XXIII. of 1840, and process is to be served on parties, living in Calcutta, according to the following Rules.

1st. Every process in a suit under Act X. of 1859 is to be forwarded in an envelope to the address of the Deputy Sheriff of Calcutta, either by post, or by a peon or other public Officer, as may be most convenient, with a letter drawn up in the Form A. in the Appendix.

2nd. All subordinate Revenue Officers, empowered to try suits under Act X. of 1859, will submit the processes of their Courts in suits which may require execution under Act XXIII. of 1840, to the Collector, to be by him forwarded in the prescribed manner to the Deputy Sheriff.

3rd. All processes are to be drawn up in the Forms B, C, D, E, F. and G. in the Appendix, or in such other Forms, as may from time to time be circulated by the Board of Revenue, and in no other.

4th. The party, at whose requisition any witness is summoned under these Rules, must be prepared to pay the witness such sum for his expenses, as the Judges of the High Court may consider reasonable and proper.

5th. Any money, that it may be requisite to send to the Deputy Sheriff, is to be forwarded by a draft on the Bank of Bengal.

VIII: Persons in attendance on a Criminal Court on bail to answer to a criminal charge, and persons in attendance on a Collector to defend a suit or claim pending before that officer, are protected from arrest under civil processes. The protection will last only so long, as the party is in actual attendance, or coming to or returning from the Court.

IX. Under-tenures in estates under khas management, including Government estates, are saleable for arrears of rent under Section xxv., Regulation VII. of 1799. A previous decree is not necessary to a sale under that Section. An appeal against such a sale may be heard and determined by the Commissioner, only if preferred on the ground of irrelevancy of the law.

X. Act VIII. of 1835 is applicable to sales made under Section cv., Act X. of 1859, and the following is the course of procedure to be observed :—

1st. All sales shall be made in public Court by the Collector or Deputy Collector of Land Revenue, or the Assistant duly authorized under Section clxv. of Act X. of 1859.

2nd. Each lot shall be sold to the highest bidder, and every one, not the actual defaulter, shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of a defaulter whose tenure may be exposed to sale.

3rd. Fifteen per cent. of the purchase money shall be paid immediately the lot is knocked down, and the officer conducting the sale, shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose or will be produced in two hours.

4th. If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal within two hours of the sale, or an equivalent amount of Government Securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth day from the first sale, by proclaiming the same by beat of drum through the bazaar of the chief Station of the District, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit to the Government the advance of 15 per cent. already made, and be answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one, such deficiency to be levied by the process for the execution of the decrees of the Civil Court.

XI. Saleable under-tenures against which execution is applied for under Section cx. (not for their own arrears,) will be sold under Sections ccxlviii. *et seq.* : of Act VIII. of 1859. Where it is necessary to sell Estates or separate shares of Estates in execution, they will be sold under the provisions of Act XI. of 1859.

XII. Commissioners will see that the proceedings of the Lower Courts are in all respects regular, whenever cases under the Act come under review either in appeal or incidentally; and in their annual circuits this should be a point for special enquiry.

XIII. Applications for aid under Section cxix., Act X. 1859 should be made by the distrainer himself, and an agent should be required to show his power of attorney, before being recognized in that capacity.

XIV. To support a distrainer legally, a Collector is to depute a single mazkúri peon. This officer, as the representative of the constituted authorities, will give sanction by his presence to all legal proceedings on the part of a distrainer, and it will be his duty to discountenance and to report at once to the Collector any

illegality that may come to his notice. He is not empowered to use physical force, or to do any thing which the distrainer himself is not entitled to do. Under no circumstance is a Collector justified in sending to the assistance of a distrainer a number of peons whose only use can be to intimidate the ryots by an illegal display of physical force, and who become mere instruments of oppression in the distrainer's hands and naturally obey his orders, whether they be legal or not.

XV. The Collector is not on any account to depute an officer to assist in the execution of a decree, as if it were a distraint; a decree can be enforced only by regular process of law. A Collector though not bound, when applied to for assistance under Section cxix., to enquire judicially into the legality of the distraint, should refuse assistance when the purpose for which it is sought is patently illegal.

XVI. The provisions of Section cxxxii., Act X. of 1859, which relate primarily to the sale of distrained property, are by Section cxix. of the Act, made applicable to sales of moveable property in execution of decree. Section cx. again extends Section cxix. to cases of sale of houses or other buildings. The deduction of one anna in the Rupee therefore, on account of the costs of the sale, and the credit of this amount to Government, which is prescribed by Section cxxxii. should be carried out in cases of sale of houses and buildings as well as of moveable property, in execution of decree. This will of course not apply to sales of estates and under-tenures.

XVII. The question has been raised, whether Nazirs or Civil Court Ameens are the proper Officers to hold sales in execution of decree under Act X. of 1859. The Board are of opinion that Section cxii. contemplates that the Officer appointed to sell distrained property, shall also hold sales in execution of decree. Although the Form F., referred to in the repealed Section lxxxvi., Act X. of 1859, and again in Section xvii., Act VI. of 1862 (B. C.) is addressed to the Nazir, this is evidently intended as a mere formula for general use, and the Civil Court Ameen may, without any deviation from the intention of the Law, be substituted.

XVIII. The Civil Court Ameens should generally be employed to hold such sales as well as sales of property distrained for rent.

XIX. Civil Court Ameens have no claim for extra remuneration for the performance of any duties that may be required of them in cases under Act X. of 1859, but they will be allowed the travelling expenses which they have *bond fide* incurred, when deputed on such duties, and those expenses will be disbursed by the Collectors, upon the usual audit, as a contingent charge. Fees for the services of Ameens, when employed on local enquiries, will be levied under the Civil Court Rules and credited to the Head of Account X., "Law and Justice."

XX. Where the Nazir is employed to sell property, in execution of decree, he should be allowed a sum sufficient to cover actual travelling and other expenses incurred; and in special cases, the Collector may, with the sanction of the Commissioner, allow him such further remuneration as may seem proper. These charges will be disbursed by Collectors, upon the usual audit, as a contingent charge, the one anna in the Rupee, leviable under Section cxxxii. of the Act on account of the costs of sale, being credited to the Head of Account X., "Law and Justice," as above. No further charge on account of costs can, in such case, be imposed on the parties.

XXI. Appendix H. contains the periodical reports and statements, which the Board, under the authority vested in them by Section cxxxvi. of the law, direct that the Civil Court Ameens or other officers authorized to sell distrained property shall submit to the Collectors. They will be submitted every quarter.

APPENDIX

A.

Form of a Letter to Deputy Sheriff.

I beg leave to enclose you (here mention the description of process) which I request you will have the goodness to present to the Judges of the High Court of Judicature conformably to Act XXIII. of 1840.

2nd. On your intimating to me the expenses of serving this process, the amount will be forwarded to you by a draft on the Bank of Bengal. A person will attend hereafter (or a person accompanies this letter) to point out the parties.

B.*Form of Warrant.*

To

NAZR ALI,

Názir of the Collector's Office for the District of Nuddea.

Whereas Baboo Kalachand of Santipore has instituted a suit in this Court against Sheik Gumaní of Dharmtolah, in the town of Calcutta, under the provisions of Act X. of 1859, for the recovery of arrears of rent to the amount of Rs. 100, you are hereby authorized and commanded to require the said Sheik Gumaní, either to give you good and sufficient security in the sum of Rupees for his personal appearance before this Court, or to deposit in your hands the said sum of Rs. 100, together with the sum of Rupees as and for the costs of this process, to be paid by you into this Court, and in the event of the said Sheik Gumaní failing to give such good and sufficient security, or to make such deposit as aforesaid, you are further authorized and commanded to take the said Sheik Gumaní into custody and to bring him before this Court.

Given under my hand and the seal of this Court this day of 18

(Sd.) A. B.,

*Collector or Deputy Collector, or Assistant, or
Uncovenanted Deputy Collector as the case may be.*

C.

PROCLAMATION FOR THE ATTENDANCE OF THE DEFENDANT,

In the Court of the Collector for the District of Nuddea.

To

SHEIK GUMANÍ, of Dharmtolah, in the Town of Calcutta.

Whereas Baboo Kalachand, of Santipore, has instituted a suit against you in this Court, under the provisions of Act X. of 1859, for the recovery of arrears of rent, amounting to Rs. 100, and whereas a warrant was duly issued for your arrest, and whereas it appears from the return of the Nazir (or from the return of the Deputy Sheriff of Calcutta) that, after diligent search, you were not to be found, and that the said warrant could not therefore be executed upon you according to the exigence thereof: Proclamation is therefore hereby made, agreeable to Section III., Act X. of 1859, that this Court, after days from the date hereof, will proceed to an investigation of the above demand against you, and in case of your non-attendance, will pass judgment upon the documents and proofs, that may be exhibited by the plaintiff *ex-parte*.

Given under my hand and the seal of this Court, this day of 18

(Sd.) A. B.,

*Collector or Deputy Collector, &c., as before.***D.***In the Court of the Collector for the District of Nuddea.*

BABOO KALACHAND OF SANTIPORE,

*Plaintiff,**Versus*

SHEIK GUMANÍ, OF DHARMTOLAH, IN THE TOWN OF CALCUTTA,

Defendant.

To

SHEKH MUNGLOO, of Dharmtolah, in the town of Calcutta.

Whereas your attendance is required to give evidence on behalf of the plaintiff (or of the defendant) in the above case, you are hereby required personally to appear before this Court on the day of 18 for that purpose.

Given under my hand and the seal of this Court, this day of 18

(Signed) A. B.,

Collector or Deputy Collector, &c., as before.

N. B.—The Security-bond should be in the same form, *mutatis mutandis*, as that executed by way of Bail-bond for the appearance of a defendant in a Regular suit, see No. 6 of Forms of Sudder Dewanny Adawlut, Civil Process, appended to the Court's Circular of the 1st March 1841.

E.*Warrant for the apprehension of a Witness.*

To

NAZR ALI,

Názir of the Collector's Office for the District of Nuddea.

Whereas Shekh Mungloo, of Dharmtolah, in the Town of Calcutta, was duly subpoenaed on the day of 18 to give evidence on behalf of Baboo Kalachand, of Santipore, plaintiff, and whereas Sheik Edoo Peadah has declared to the due service of the said subpoena, and also that the sum of Rs. was tendered to the Shekh Mungloo for his expense; and whereas the said Shekh Mungloo has neglected and refused to appear according to the exigency of the subpoena, you are hereby authorized and commanded to apprehend the said Shekh Mungloo and to produce him before this Court. In this fail not.

Dated this day of 18

(Signed) A. B.,

*Collr. or Depy. Collr., &c., as before.***F.***Writ of Execution against the Person.*

To

NAZR ALI,

Názir of the Collr.'s Office for the District of Nuddea.

Whereas in the suit instituted by Baboo Kalachand, of Santipore, plaintiff, against Sheik Gumaní, of Dharmtolah, in the town of Calcutta, defendant, for the recovery of arrears of rent, the sum of Rs. 100 has been adjudged to be due to the said plaintiff, with interest at 12 per cent. per annum to the day of payment, which to this date amounts to Rs. 10, and 15 Rupees for costs of suit, amounting to Rs. 125 (or the sum of Rs. 50 has been awarded to the said defendant as costs and damages) and whereas the said defendant (or the said plaintiff) has failed to liquidate the award against him, these are to command you to apprehend the said Sheik Gumaní, defendant (or the said Baboo Kalachand, plaintiff) and unless the said Sheik Gumaní (or the said Baboo Kalachand) shall forthwith pay to you the said sum of Rupees 125 (or the said sum of Rupees 50) together with the costs of this process, to produce him before this Court, to be dealt with according to law.

Given under my hand and the seal of this Court this day of 18

(Signed)* A. B.,

*Collr. or Depy. Collr., &c., as before.***G.***Writ of Execution against the Effects.*

To

NAZR ALI,

Názir of the Collector's Office for the District of Nuddea.

Whereas in the suit instituted by Baboo Kalachand, of Santipore, plaintiff, against Sheik Gumaní of Dharmtolah, in the town of Calcutta, defendant, for the recovery of arrears of rent, the sum of Rupees 100 has been adjudged to be due to the said plaintiff, with interest at 12 per cent. per annum to the day of payment, which to this date amounts to Rupees 10, and 15 Rupees for costs of suit, amounting to Rupees 125 (or the sum of Rupees 50 has been awarded to the said defendant as costs and damages) and whereas the said defendant (or the said plaintiff) has failed to liquidate the award against him, these are to command you to levy the said sum of Rupees 125 (or the said sum of Rupees 50) together with the costs of process, by distress and sale of the goods and chattels of the said Sheik Gumaní, defendant, (or the said Baboo Kalachand, plaintiff,) and you are hereby further commanded to certify to me what you shall do by virtue of this writ.

Given under my hand and seal of this Court, at Nuddea, this day of 18 .

(Sd.) A. B.,

Collector or Deputy Collector, &c., as before.

H-1.

Quarterly Statement of Business in the Office of the
of 1859-60.

for the Quarter

Description of cases.	Remaining from last quarter.	Instituted during the quarter.	Total.	Number compromised or withdrawn or struck off in default of the parties.	Number terminated in sale.	Number in which security was given to Collector.	Total.	Remaining.	REMARKS.
Applications for sale of distrained property.	5	5	10	2	1	1	4	6	

H-2.

Diary in the Office of the
for the Month of

No.	3rd January 1860.
1	

H-3.

Cash account in the Office of the
for the Month of

Receipts.	Disbursements.

CHAPTER VIII.

ABKAREE AND OPIUM LAWS.

CHAPTER VIII.

ACT No. XXI. OF 1856.

(Received the assent of the Governor-General on the 22nd November 1856.)

AN ACT to consolidate and amend the Law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal.

WHEREAS it is expedient that the laws relating to the manufacture of spirits and the sale of spirituous and fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom, should be consolidated and amended; It is enacted as follows:—

I. Regulation II. 1802; Regulation X. 1813; Regulation XVII. 1814; Section xli. and the following Sections of Regulation XIII. 1816; Regulation XI. 1818; Regulation VII. 1824, except the first five Clauses of Section xviii. and Sections xxiii. and xxiv., and Regulation VIII. 1826, of the Bengal Code; and Act XXV. of 1840, Act IX. of 1841, and Act XXIII. of 1848, are hereby repealed, except so far as they repeal the whole or part of any other Regulation or Act, and except as to acts done, offences committed, and liabilities incurred, before the passing of this Act.

II. The collection of the revenue arising from the manufacture of spirits, and the sale of spirits and spirituous and fermented liquors and intoxicating drugs, shall be ordinarily under the charge of the Collectors of Land Revenue, who shall perform the duties connected therewith under the control and direction of the Commissioners of Revenue, and of the Board of Revenue. But the Government may appoint any other person to be Superintendent of Abkaree Revenue in any district or place; and any person so appointed shall exercise, in such district or place, all the powers and authority vested by this Act or by Act XI. of 1849 in the Collector of Land Revenue; and such powers and authority shall cease to be exercised in such district or place by the Collector of Land Revenue during the continuance of such appointment.

III. The Government may also appoint a Commissioner or Commissioners for the control and direction of the officers having charge of the Abkaree revenue in any district or districts; and when such appointment is made, the Commissioner of Abkaree shall exercise within such district or districts the powers and authority vested by this Act or by Act III. of 1856 in Commissioners of Revenue; and the Revenue Commissioner shall cease to exercise such powers and authority in the said district or districts during the continuance of such appointment.

IV. Collectors may appoint darogahs, jemadars, peons, surveyors, gaugers, and other officers, for the collection of the Abkaree revenue and for the prevention of smuggling, and the officers so appointed shall, in addition to their ordinary designations, be styled Abkaree officers. In districts where there are tehseeldars and other local officers for the collection of the Land Revenue, the office of Abkaree darogah may be united with that of tehseeldar, naib tehseeldar, or peshkar; and in such cases, the tehseeldar, naib tehseeldar or peshkar and the officers subordinate to him, shall be held and deemed to be Abkaree officers within the meaning of this Act.

V. It shall not be lawful for any person to construct or work a distillery after the manner in which distilleries are constructed and worked in England, without a license under the signature of the Collector of the district in which such distillery is situated, or in case the distillery is within twenty miles of

Calcutta, or such other distance less than twenty miles, as may from time to time be prescribed by the Lieutenant-Governor of Bengal, under the signature of the Collector of Calcutta.

VI. The Board of Revenue, with the sanction of Government, may prescribe such rules relative to the granting of licenses under the preceding Section, to the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work, to the size and description of the stills, to the passing and storing of the spirits, to the inspection and examination of the distillery and warehouses, and of the spirits manufactured and stored therein, and to the furnishing of statements and lists of such spirits, and of the stills, coppers, casks, and other utensils used in the distillery, as may from time to time be judged expedient.

VII.* A duty shall be levied on spirits manufactured at distilleries worked according to the English method, at the rate of one Rupee the imperial gallon of the strength of London-proof, to be augmented or reduced in proportion to the strength of the spirit. No spirit shall be removed from any such distillery, or the warehouses connected therewith, upon which the aforesaid duty has not been paid, or for the duty chargeable on which a bond has not been executed as hereinafter provided; and for all spirits removed upon payment of duty or under bond, passes shall be issued by the Collector, which shall specify the quantity and strength of the spirit, the place of its destination, the person to whom it is consigned, and whether the duty has been paid or secured by bond.

VIII. A drawback of the duty paid as above on spirits manufactured after the English method, and exported by sea in the manner hereinafter prescribed, to any port not subject to the Government of the East India Company, or to any port in the Settlement of Prince of Wales' Island, Singapore, and Malacca or to the Port of Aden, shall be allowed by the Collector of Customs at the port of exportation. Provided always, that the exportation shall be made within one year from the date of the payment of duty under this Act, and that the spirits, when brought to the Custom House, shall be accompanied by the pass in which such payment is certified.

IX. *Repealed by Section I., Act XXIII. of 1860.*

X. Spirits brought to the Custom House for exportation by sea shall, previous to shipment, be gauged and proved by an officer of the Customs. The amount of drawback to be allowed upon spirits for which duty has been paid shall be regulated according to the strength and quantity of the said spirits, as ascertained by such proof and gauge; and the quantity of spirits, for which credit is to be given in the settlement of any bond, shall be determined in the same manner. Spirits under bond shall be taken from the distillery direct to the Custom House, under passes to be granted for that purpose by the Collector.

XI. When spirits are passed from a distillery under bond, duty shall be recoverable upon any difference between the quantity of spirits so passed from the distillery and the quantity ascertained by gauge and proof at the Custom House, less such allowance for ullage and leakage as may be prescribed by the Board of Revenue.

XII. Spirits brought to the Custom House under bond for exportation may nevertheless be removed for local consumption under passes to be granted for that purpose by the Collector of Revenue, upon payment of the prescribed duty on the quantity so removed; and credit for such payment shall be given on the settlement of the bond.

* So much of this Section as prescribes that the duty leviable on spirits, manufactured at distilleries worked according to the English method, for the Imperial gallon of the strength of London-proof shall be one rupee is repealed by Section I., Act XXIII. of 1860, and it is thereby further declared "that on and after the 21st of January 1860 it shall be lawful for the Government to levy the duty as aforesaid at the rate of three rupees, and the duty shall be rateably increased as the strength exceeds London-proof." See page 332.

XIII. Any sum which may remain due to Government upon the settlement of a bond executed according to the provisions of this Act, may be recovered by any process which is or may be in force for the recovery of arrears of revenue due from farmers of land or their sureties, or by suit on the bond in any Court of competent jurisdiction.

Recovery of sums due under bond.

XIV. No drawback shall be allowed on any duty-paid spirits, nor shall the duty due on any spirits under bond be remitted, unless the spirits shall be shipped from the Custom House, and upon a vessel to which a Custom House officer has been appointed to superintend the receipt of export cargo. Spirits shipped for exportation shall not be re-landed without a special pass from the Collector of Revenue in addition to the usual order of the Collector of Customs.

Spirits how to be shipped.

Spirits shipped for exportation not to be re-landed.

XV.* No drawback shall be allowed on spirits exported to any port subject to the Government of the East India Company, other than the ports mentioned in Section viii. of this Act, or on spirits shipped as stores; nor shall spirits under bond be so exported or shipped without payment of the duty prescribed by this Act.

No drawback on spirits exported to Indian ports or shipped as stores.

XVI. Rum shrub, cordials, and other liquors, prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery, shall be charged with duty according to the quantity of spirit used in the preparation; and all the provisions contained in this Act respecting spirits manufactured after the English method, except such as relate to gauge and proof, shall be applicable to such liquors. When any such liquors are removed for exportation without payment of duty, the bonds to be executed by the persons removing them shall be in the annexed form.

Rum shrub, &c., how to be charged with duty—may be exported under the same rules as spirits.

XVII. All licensed distilleries, constructed and worked after the English method, and situated within twenty miles of Calcutta, or such other distance less than twenty miles, as may, from time to time, be prescribed by the Lieutenant-Governor of Bengal, shall be under the superintendence and control of the Collector of Calcutta, who shall exercise, with respect to such distilleries and to the spirits manufactured therein, all the powers vested in Collectors by this Act; and the Collectors of districts in which any such distilleries are situated shall have no jurisdiction with respect to such distilleries.

Distilleries within twenty miles of Calcutta to be under the Collector of Calcutta.

XVIII. Every person who shall construct or work a distillery after the English method, without a license from the Collector, shall forfeit for every such offence a sum not exceeding one thousand Rupees; and all spirits manufactured at any such distillery, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

Penalty for constructing or working a distillery or collecting materials without license.

XIX. Every proprietor or manager of a licensed distillery constructed and worked after the English method, who shall omit to furnish any notice or any statement or list required by the rules prescribed by the Board of Revenue under Section vi. of this Act, or shall wilfully do any thing in contravention of the said rules, shall forfeit for every such offence a sum not exceeding two hundred Rupees; and if any such offence be committed a second time with respect to the same distillery, the license granted for the working of such distillery may be withdrawn by the Collector.

Penalty for non-observance of rules prescribed by Board of Revenue.

XX. Every person who shall remove, or attempt to remove, from any licensed distillery constructed and worked after the English method, any spirituous liquors upon which the duty has not been paid, or for the duty on which a bond has not been executed, or any spirituous liquors for which a pass has not been issued by the Collector, shall forfeit for every such offence a sum not exceeding one thousand Rupees; and the liquors, together with the vessels containing the same and the animals and con-

Penalty for removing spirituous liquors without payment of duty.

* So much of this Section, as prohibits spirits under bond from being exported or shipped to any port in India without payment of duty, is repealed by Sec. 1, Act XXIII. of 1860; see page 352.

veyances used in carrying them, shall be liable to confiscation. If it shall appear to the Collector that the offence was committed with the consent or knowledge of the proprietor or manager, the license granted for the construction and working of the distillery from which such liquors have been removed or attempted to be removed may be withdrawn.

XXI. Every person who shall re-land, or attempt to re-land, any spirituous liquors shipped for exportation, without a special pass from the Collector of Revenue at the place of exportation, shall forfeit for every such offence a sum not exceeding five hundred Rupees; and the liquors, together with the casks and vessels containing the same, and the carts, boats, and animals employed in carrying them, shall be liable to confiscation.

XXII. Spirituous liquors manufactured at the foreign settlement of Chandernagore, or at any other place in India beyond the limits of the Company's territories, shall, on passing the limits of the Company's territories subject to this Act, be charged with the duty prescribed for proof spirits in Section vii. of this Act: and any person who may be found in possession of any such liquors, without a pass from the Collector certifying the payment of such duty, shall forfeit for every such offence a sum not exceeding two hundred Rupees; and the liquors, together with the vessels containing the same, and animals and conveyances used in carrying them, shall be liable to confiscation.

XXIII. It shall not be lawful for any person to construct or work a brewery, or to manufacture any description of malt liquor, without a license from the Collector of the district. The Board of Revenue, with the sanction of Government, may prescribe such rules relative to the granting of licenses for constructing and working breweries as may from time to time be judged expedient.

XXIV. Every person who shall construct or work a brewery, or manufacture malt liquor, without a license, shall forfeit for every such offence a sum not exceeding five hundred Rupees.

XXV. Spirituous liquors passed from distilleries worked according to the English method, fermented liquors manufactured at a licensed brewery, and spirituous and fermented liquors imported either by land or by sea, shall not be sold except under license from the Collector.

XXVI. Persons taking out licenses for the whole-sale vend of spirituous and fermented liquors as aforesaid shall pay, for every such license, the sum of sixteen Rupees. The license shall be current only during the official year, and in the district in which it is granted. But travelling merchants may obtain a general license, authorizing them to sell by wholesale, in any district which they may visit in the course of their travel, without taking out a fresh license for that district, under such rules and restrictions as may be from time to time prescribed by the Board of Revenue.

XXVII. Persons taking out licenses for the retail sale of spirituous and fermented liquors as aforesaid shall pay for every such license such fee or tax as may be fixed by the Board of Revenue; and such fee or tax shall be payable at such periods as the said Board may direct. Provided that such fee or tax shall be at such rate for each license as shall not exceed the total sum of one hundred Rupees for the whole year. Any sale of spirituous or fermented liquors as aforesaid, in less quantity than two imperial gallons or one dozen of quart bottles, shall be held to be a retail sale.

XXVIII. It shall not be lawful for any person to manufacture spirits after the native process, nor to sell such spirits, or taree, or puchwey, or ganjah, bhang, churrus, opium, or any preparation or admixture of the same, except under license from the Collector.