

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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FIRST SCHEDULE.—FORMS.

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ACT No. XII OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th March, 1881.)

An Act to amend the Law relating to the recovery of Rent in the North-Western Provinces.

Preamble.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called “The North-Western Provinces Rent Act, 1881” :

Local extent.

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the time being occupied by dwelling-houses or manufactories, or appurtenant

appurtenant thereto, so long as such land is not let to agricultural tenants.

This Act shall come into force on the first day of April, 1881. Commence-
ment.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful. Act No.
XVIII of
1873 re-
pealed.

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed, under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder. Rules, &c.,
under re-
pealed Act.

Illustration (a) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859;" the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act. Acts amend-
ed.

3. In this Act, unless there be something repugnant in the subject or context— Interpreta-
tion-clause.

(1) 'Mahál' means— 'Mahál.'

(a) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(b) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

(1A) 'Tenant' includes a thékadár and a kat-kanadár: 'Tenant.'

(2) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land: 'Rent.'

(3) 'Landholder' means the person to whom a tenant is liable to pay rent: 'Landhold-
er.'

(4) 'Sir-land'

‘ Sir-land :’

(4) ‘ Sir-land ’ means—

- (a) land recorded as sir at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;
- (b) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;
- (c) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers :

‘ Collector of a District :’

(5) ‘ Collector of a District ’ means the chief officer in charge of the Revenue Administration of a District :

‘ Commis-
sioner of a
Division :’

(6) ‘ Commisisoner of a Division ’ means the chief officer in charge of the Revenue Administration of a Division :

‘ Board :’

(7) ‘ Board ’ means the Board of Revenue for the North-Western Provinces :

‘ Civil Jail :’

(8) ‘ Civil Jail ’ means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate
holders of
land at rates
unchanged
since perma-
nent settle-
ment.

4. When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

5. When

5. When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate. Tenants at fixed rates.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

6. When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement. Presumption when 20 years' holding at fixed rate is proved.

7. Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages. Ex-proprietary tenants.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

8. Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him. Occupancy-tenants.

Such tenants shall be called "occupancy-tenants."
The occupation or cultivating of the father or
other

other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section :

Tenants barred from right of occupancy.

Provided that no tenant shall acquire, under this section, a right of occupancy—

(a) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates ;

(b) in sir-land ;

(c) in land held by him in lieu of wages :

Time excluded from reckoning period necessary for acquiring right of occupancy.

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sub-lets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable.

9. The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose, or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land : Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant.

10. On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,
or an ex-proprietary tenant,

or

or an occupancy-tenant,
or whether he is a tenant without a right of occupancy.

11. The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Bar to enhancement of rent of tenants at fixed rates. Enhancement in case of ex-proprietary and occupancy-tenants.

12. The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(a) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the *kánungo*:
or

(b) by order of a Settlement-officer passed under the law for the time being in force: or

(c) by order under this Act.

13. (a) Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order.

(b) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(c) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(d) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(e) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(f) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(g) that the value of the produce has, or the productive powers of the land have, been increased otherwise

wise

wise than by the agency or at the expense of the tenant;

(h) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order.

14. (a) Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison.

(b) Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(c) When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others :—

(a) that the area of the land held by him has been diminished by diluvion or otherwise :

(b) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

16. Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (c), (d) and (e), whichever first occurs.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act. Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act.

17. Notwithstanding anything contained in section 16, where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others :—

(a) that the area of the tenant's holding has been increased by alluvion or otherwise :

(b) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant :

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others :—

(c) that the area of the land held by him has been diminished by diluvion or otherwise ;

(d) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder

Grounds of enhancement or

abatement
of rent of
tenant at
fixed rates.

landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

Day before
which ap-
plications for
enhancement
or abatement
must be
made.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Orders when
to take effect.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Considera-
tion of caste
and class of
tenant in
determining
rate of his
rent.

20. In determining, under this chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate ;

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

Tenants-at-
will.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Rent of ex-
proprietary
or occupancy-
tenant fixed
by agree-
ment.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

22A. When

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

Applications to survey land.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise, as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

rent

H

rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land ;

and, subject to the same rules, the landholder shall be bound by such order.

(A.)—Leases.

Contents of lease to which every tenant is entitled.

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding apply for, a lease containing the following particulars :—

- (a) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field :
- (b) the amount of annual rent payable for such land :
- (c) the instalments in which, and the dates on which, such rent is to be paid :
- (d) any special conditions of the lease :
- (e) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

Leases to which tenants at fixed rates are entitled.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which ex-proprietary and occupancy-tenants are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which other tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Landholder granting lease entitled to reciprocal engagement.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed

executed by the tenant, and conformable with the terms of the lease.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

Lease for period exceeding term of landholder's engagement.

(a) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(b) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (a) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

Resumption of rent-free grants.

(b) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to

Applications to resume.

the

the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Validity of grants which grantor has expressly agreed not to resume.

(c) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

When rent-free tenure confers proprietary right.

(d) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

(e) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(f) Nothing in this section shall apply to either of the following cases :—

- (1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision :
- (2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, Schedule II, No. 130.

(B.)—*Relinquishment and Ejectment.*

Relinquishment of land by tenant not holding under a lease.

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish

relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Proviso.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsildár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsildár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Mode of serving notice.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

33A. When any such notice has been received by or served on a landholder or his agent, he may, within fifteen days from such receipt or service, apply

Application by landholder to set aside notice.

to

to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

Liability of tenant to pay interest on arrear and to be ejected.

34. (a) When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Bar to ejectment without decree.

(b) No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Ejectment not to be decreed for certain acts or omissions.

(c) No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

- (1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or
- (2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (a) and (b) the word 'tenant' does not include a thékadár and a katkana-dár.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into court within fifteen days from receipt of the notice, he will be ejected from his land.

If

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Service of notice on tenant for limited period.

37. The notice of ejectment shall be written in the vernacular language and character of the district: it shall specify the land from which the tenant is to be ejected;

Language and contents of notice.

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

38. The notice shall be issued and served through the office of the tahsildár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Mode of serving notice.

39. (a) The tenant on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

Effect of failure of tenant to institute suit to contest liability to ejectment.

(b) When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(c) On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day :

Provided also that the tenancy shall not cease under this section when, after the service of the notice, the landholder authorizes the tenant to continue in the occupation of the land.

Procedure to
enforce
ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(a) that the notice was duly served on such tenant under section 38 ;

(b) that he has not been authorized by the landholder to continue in occupation ;

(c) that the tenant has not made the application mentioned in section 39, clause (a) ; or

(d) that if such application has been made, the question has been determined adversely to the tenant :

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of
ejectment
when void.

41. If the landholder expressly authorize the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

42 (a) Any

42. (a) Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor.

Rights of ejected tenant.

(b) Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Effect of tender by landholder of payment for crops.

(c) In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Power to determine rent and price.

(d) The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Set-off of rent.

43. (a) Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

Application for officer to divide produce or appraise crop.

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

(b) On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend

Procedure on such application.

attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisal shall be made.

(c) If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties, and one by the officer deputed to divide the grain, or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops.

(d) Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(e) The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(C.)—*Compensation for Improvements made by Tenants.*

Tenant's
right to com-
pensation for
improve-
ments.

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word “tenant” does not include a thékadár or a katkanadár, and the word “improvements” means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(a) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(b) works for the drainage of land, or for the protection

protection of land from floods or from erosion or other damage by water,

(c) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(d) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

45. Such compensation may, at the option of the landholder or his representative, be made—

Mode of making compensation.

1st, by payment in money;

2nd, by a rent to be charged on the land;

3rd, by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4th, partly by one or by any two of the said ways, and partly by the others or other of the same ways.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

Settlement of difference as to amount of value of compensation.

On receiving such application, the Collector of the District or Assistant Collector shall—

(a) cause notice thereof to be served on the other party,

(b) take such evidence as the parties or either of them may adduce,

(c) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(d) determine the amount of the payment in money, and the amount and incidence of the rent-charge,

charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(D.)—*Compensation for wrongful Acts and Omissions.*

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid.

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word “tenant” does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(E.)—*Deposit*

(E.)—Deposit of Rent in Court.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his court to the credit of the landholder.

Deposit of amount tendered by tenant and refused.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Form and verification of application.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Penalty for false statement.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district, in the form (B) in the first schedule hereto annexed, or to the like effect.

Notice to issue on deposit being made.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

53. Such notice shall be served through the tahsildár upon the person to whom it is addressed, or upon his recognized agent.

Mode of serving notice.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

54. If at any time before the expiration of three years from the date of the deposit the person on whom such notice is served, or his recognized agent, appears, and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid

Payment to person served with notice on his application.

or

or paid in accordance with the provisions next hereinafter contained.

Refund to
depositor.

55. If no application be made by such person or his recognised agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in
court of rent
claimed by
two or more
persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of
land hypo-

56. The produce of all land in the occupation of

a

a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

theated for rent.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

Recovery of arrears by distress.

57. Provided—

(a) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained :

Distress of produce barred by security given for rent.

(b) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator :

Sharer when entitled to distrain.

(c) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein :

Distress by manager.

(d) that in pattidári maháls distress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the pattidár who is entitled to collect the rent.

Distress in pattidári maháls.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year ;

No distress for over-due arrear, nor, without agreement, for excess over past year's rent.

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánúngo.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court

Distress by managers under Court

of Wards,
&c.

Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

Liability for
illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written
authority to
servants em-
ployed to
distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing
crops and
crops gather-
ed liable to
distress.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act.

Exception.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Defaulter to
be served
with written
demand and
account.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

Mode of ser-
vice.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to
be propor-
tionate to
arrear.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property

property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

List of property to be prepared and copy served on owner.

64. (a) Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

Standing crops, &c., when distrained, may be reaped and stored.

(b) If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(c) In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

(d) Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops or products, or any part of the same, are fit for reaping or gathering.

Sale of products which cannot be stored.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Assistance to distrainer opposed or apprehending resistance.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

67. Within

Application
for sale.

67. Within five days from the time of the storing of any distrained crops or products,

or, if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsil in which they are situate.

Contents of
application.

68. The application shall be in writing and shall contain—

(a) an inventory or description of the property distrained,

(b) the name of the defaulter and his place of residence,

(c) the amount due, and the date of the distress, and

(d) the place in which the distrained property is.

Fee for
service of
notice.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

Procedure
on receipt of
application.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the person charged

charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(a) a description of the property,
and shall specify—

(b) the demand for which it is to be sold, and

(c) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

Suspension of sale on receipt of Collector's certificate of institution of suit.

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

Suit to contest distrainer's demand before issue of notice of sale.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

Distress when to be withdrawn.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and,

if

if so requested, shall serve the distrainer with notice of the same ;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

When sale
may be pro-
ceeded with.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

Place of sale.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Manner of
sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable ;

Withdrawal
of distress
when demand
and costs
satisfied.

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

If fair price
be not
offered, sale
may be post-
poned and
shall be then
completed.

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

Payment of
purchase-
money.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary ;

and,

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

78. Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such

Postponement of sale, and report to

Collector
when owner
has not re-
ceived due
notice.

Order of
Collector.

such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Levy of
charge when
sale-officer
attends, and
no sale takes
place.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Recovery
from owner.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Recovery
from dis-
trainer.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector :

Limit to
charge.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Order of sale
when amount
adjudged
due.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property ;

Second pro-
clamation of
sale.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day

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, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (a) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(b) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

(c) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Compensation in case of vexatious distress.

83. (a) If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Suit by person claiming property distrained for arrears alleged to be due from another.

(b) When

Release of
property on
security
being given.

(b) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Order of Col-
lector when
claim dismiss-
ed.

(c) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Decree for
release and
compensation
when claim
upheld.

(d) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require :

Saving of
prior claim of
person enti-
tled to rent
of land.

(e) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Procedure
where right
to distrain is
claimed by
person other
than distrain-
er.

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

Saving of
right to sue
in civil Court.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Persons pre-
vented from
suing in time

85. If any person whose property has been distrained

distraigned for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

to save property from sale may sue for damages.

86. If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

Wrongful acts of distrainer.

or if any distraigned property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distraigned or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Suit by owner against person distraining or selling without authority.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Penalty in addition to damages.

88. Provided

*Limitation of
suits under
sections 85,
86, 87.*

*Procedure in
case of resist-
ance of dis-
tress.*

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

89. (a) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

(b) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(c) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

*Proceedings
of officers
subject to re-
vision and
orders of Col-
lector.*

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

CHAPTER IV.

CHAPTER IV.

PROCESS.

91. (a) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Nazir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued. Mode of serving process.

(b) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued: Deposit before issue.

(c) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge. Power to direct service gratis.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice. Punishment for resisting process.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest. Power to issue summons and warrant.

CHAPTER V.

JURISDICTION OF COURTS.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suit shall be heard and determined in the said Courts of Revenue in Suits cognizable by revenue Courts only.

in the manner provided in this Act, and not otherwise:

(a) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest rights, fisheries or the like;

(b) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(c) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(cc) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (b) or clause (c);

(d) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(e) suits for compensation for withholding receipt for rent paid;

(f) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(g) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(h) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(i) suits by muáfídárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(j) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(k) suits

(k) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Limitation of suits under this Act.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued :

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (g), the Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lam-bardárs.

95. No Courts other than Courts of Revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made : and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise :—

Applications cognizable by revenue Courts only.

(a) Application to determine the nature and class of a tenant's tenure, under section 10.

(b) Application by a landholder, or his agent, to compel a patwári to produce his accounts relating to land.

(c) Application to resume rent-free grants under section

section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant, under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application

(s) Application under section 33A to have a notice of relinquishment declared invalid.

(t) Application to take out of deposit any amount deposited under section 55A.

For the purposes of the Court-fees Act, 1870, applications under clauses (c), (l), (m), (n), (o) and (p) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (a) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(b) All orders passed on applications under section 95 shall be proved in the same manner, and, when proved, shall have the same effect, as if they were judgments of the civil Courts.

(c) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(d) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(e) Applications under clauses (m) and (n) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The

Power to invest officers with Assistant Collector's powers, and withdraw them.

Suits and applications cognizable by Assistant Collectors.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

(a) suits for arrears of rent or the money-equivalent of rent on account of land, or on account of any rights of pasturage, forest-rights, fisheries or the like;

(b) suits for compensation for withholding receipts for rent paid, under section 48;

(c) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(d) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(e) suits by muáfídarís or assignees of the Government-revenue for arrears of revenue due to them as such;

(f) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(g) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwárís;

(h) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(i) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(j) applications

(j) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(k) applications by tenants for leave to deposit rent;

(l) suits under section 93, clause (k), to recover arrears of revenue;

(m) applications under section 22A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(a) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(b) suits to cancel a lease for any breach of any condition binding on the tenant;

(bb) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (a) or clause (b);

(c) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(d) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(e) applications by a landholder to eject a tenant, under section 35;

(f) applications under section 39 by a tenant contesting notice of ejectment;

(g) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served;

(h) applications for compensation for wrongful dispossession;

(i) applications

(i) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(j) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(k) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(l) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(m) applications under section 33A to have a notice of relinquishment declared invalid;

(n) applications to take out of deposit amounts deposited under section 55A.

Additional applications triable by Assistant Collector, first class, with special powers.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications :—

(a) applications for enhancement or determination of rent;

(b) applications for abatement of rent;

(c) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(d) applications to determine the nature or class of a tenant's tenure.

Power to make over cases.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to withdraw cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal

disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

103. The Collector of the District may exercise—

(a) all powers given by this Act to Collectors of Districts,

(b) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Powers exercisable by Collector of District.

Investment of officer in charge of sub-division with powers of Collector of District. Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

(a) the name, description and place of abode of the plaintiff;

(b) the name, description and place of abode of the defendant, so far as they can be ascertained;

(c) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(d) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of maháls, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant

Place of instituting suits.

Plaint.

Managers of maháls to be, for purpose of litigation, deemed landholders. Suits by co-sharers in undivided property.

tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Plaint by
whom pre-
sented.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Verification
of plaint.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

“I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief.”

False aver-
ment.

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Document
relied on by
plaintiff to be
presented
with plaint.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Admission
afterwards.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Procuring
production of
document in
possession of
defendant.

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

Plaint in
suits for ar-
rears of rent.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues, under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division, in which the land is situate:

and

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111 If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff. Defendants added to be served.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them

them shall be deemed to have begun only on the service of such summons :

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

When defendant added, plaintiff to amend.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

Time for taking objections as to non-joinder or mis-joinder of parties.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Procedure on admitting plaint.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Concise statements.

Issue of summons.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Order for personal attendance or appearance by agent.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally

or

or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process.

Order to bring witnesses.

And it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons. Mode of serving summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered

Service when defendant resides out

to

of British India and has no agent to accept service.

to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service through British Resident or Agent of Government.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons,

or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

Effect of failure to deposit.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

Procedure when plaintiff desires issue of warrant of arrest.

119. (a) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

(b) When such application is presented, the Court

Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *prima facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(c) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D, and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(d) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff

Procedure when defendant cannot

be arrested
under war-
rant.

plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

Compensa-
tion for
arrest applied
for without
reasonable
cause.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Consequence
of neither
party appear-
ing on day
fixed.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Judgment by
default.

Judgment
upon admis-
sion of claim.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs :

Proviso.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If plaintiff
only appear,
Court may
proceed *ex*
parte.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation

proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or other evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (a) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(b) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(c) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason, to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination

130. If

Examination
and cross-
examination
of agents.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Defendant
may file writ-
ten state-
ment.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Verification
of written
statement.
False aver-
ment.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Mode of exa-
mination.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

Witness pro-
duced may
be examined.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Document
relied on by
defendant to
be produced
at first hear-
ing.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

Decree after
examination,
if no further
evidence is
required.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence

evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

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

Procedure when parties at issue on question requiring evidence.

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

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except

Provisions regarding attendance, examination, &c., of witnesses.

so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Case to be struck off if neither party appears.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Trial of issue *ex parte*.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on such agents.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

Personal attendance of female plaintiff or defendant when not required.

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

Parties may employ agents.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Personal attendance when not excused.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Fec for agents not chargeable as costs.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the

the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason, to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local enquiries by Amíns or Commissioners, under orders of the civil Courts, shall apply to any local enquiry made by any officer under this section,

Provisions applied to such enquiry.

and, so far as they are applicable, to enquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of enquiry by Court.

146. The defendant in any suit under this Act may pay into court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

147. No

No interest to plaintiff after date of deposit by defendant.

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

In suits where right to receive rent is disputed, third person who has received it may be made a party.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry :

Saving of right to sue in civil Court to prove title to rent.

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Court may allow tenant to repair damage caused by certain acts or omissions.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

Delivery of judgment.

150. Every judgment under this chapter shall be pronounced in open Court.

Its language and contents.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced :

Provided

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language. When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion. To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing. Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter. Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs. Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed. Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto. Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party Magistrate to give it effect in case of opposition.

party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Power to order detention in, or commitment to, civil jail in certain cases.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into court the amount of the decree with costs, or otherwise complies with the terms of the decree.

Process against surety on failure to deliver judgment-debtor into custody.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process of execution against person or property, but not both.

156. (a) A writ of execution 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.

Applications on which it may issue.

(b) Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Form of writ of execution.

(c) Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first Schedule hereto annexed, or to the like effect.

Execution against moveable property.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles
exempted
from attach-
ment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days), calculated from such date.

Date and
duration of
writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and
successive
writs.

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

After one
year execu-
tion not to
issue without
notice to
party con-
cerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution
not to issue
against heir
or representa-
tive of de-
ceased party
without
notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process
of execution
after three
years, unless
judgment be
for sum
exceeding
500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in

Regulation
of period in
such case.

force

force in respect to the period allowed for the execution of decrees of the civil Court.

Procedure in execution of writ against person.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

If such person does not then deposit in court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree :

Limit of imprisonment.

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

or six months when such amount does not exceed five hundred rupees

or two years in any other case.

No person to be imprisoned a second time under same judgment.

164. (a) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

When further liability extinguished.

(b) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When not extinguished.

(c) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

165. Every

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

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

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

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

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive),
so

Provisions applied to sale.

so far as the same are applicable, shall apply to sales under this section.

Sale not vitiated by irregularity.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Right to sue for compensation.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court :

Limitation.

Provided that such suit be brought within one year from the date of sale.

In executing decrees for money, when execution may be applied for against immoveable property.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

Process when the immoveable property is not a mahál.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property : and the provisions of sections 168, 169 and 170 shall be applicable.

Possession to be given to auction-purchaser.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the District in which such property is situate.

Procedure when it is a mahál.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the

the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sir-land of such debtor, he shall, until such property is restored to him, be treated

Proprietor to be treated as ex-proprietary tenant of sir-land.

as

as an ex-proprietary tenant of such sîr-land under section 7.

Report of
case to
Board.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Procedure
on receipt of
report.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Power to
order sale of
property.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Examination
of third party
claiming
interest in
property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Stay of sale.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Adjudication
of such
claims.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Rules ap-
plied.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Compensa-
tion award-
able against
claimant

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time
of

1881.] of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

181. (a) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

(b) But the party against whom the same is passed may institute a suit in the civil Court to establish his right at any time within one year from the date of the order:

(c) Provided that, if the order be for the sale of the property taken in execution, and the property is such property, the suit shall not be for the recovery of the property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

failing to establish right.

No appeal from order under section 179 or 180.

Right to sue in civil Court.

Proviso.

CHAPTER VIII.

APPEAL, RE-HEARING AND REVIEW.

(A.)—From Decrees in Suits.

182. In suits under this Act, tried and decided by the Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same

Procedure on appeal.

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 does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

Re-admission
of appeal.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

Judgment in
appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Re-hearing of
suits not
open to
appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the 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.

Appeal to
District
Judge.

189. Notwithstanding anything contained in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined

determined between parties making conflicting claims thereto :

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B.)—*From Orders on Applications or relating to the Execution of Decrees.*

(1) *Assistant Collectors of the Second Class.*

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) *Assistant Collectors of the First Class.*

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(a) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(b) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(a) orders on applications mentioned in section 98 ;

(b) orders

(b) orders on applications mentioned in section 99;

(c) orders passed in the course of a suit and relating to the trial thereof.

Final orders
of Assistant
Collector of
first class.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

(a) applications mentioned in section 98;

(b) applications mentioned in section 99, where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) *Collector of the District.*

Appeal from
certain orders
of Collector
of District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

(a) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(b) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) *Commissioner of the Division.*

Finality of
orders of
Commissioner of
Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Appeal to
Board from
his decisions
on appeals
against
orders on
applications
mentioned in
section 100.

198. An appeal from the decisions of the Commissioner of Division, on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100, shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

In such case the provisions of section 199 shall apply.

Power of
Board to call
for cases and
pass orders
thereon.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which

which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of. Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period. Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) *Review.*

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order. Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial. Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded. Time to be excluded in computing limitation period.

In

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

Rule as to last day for presentation or deposit, when Court is closed on such day.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Power to state case involving point of law for opinion of District Judge.

204. (a) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

(b) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(c) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(d) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(e) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

Power to refer to High Court question as to jurisdiction.

205. (a) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this

this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

(b) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(c) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to

Power to refer party to civil Court.

such

such Court that any question in issue is more proper for decision by a civil Court, such revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(a) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(b) for the guidance of officers assessing rent under section 30,

(c) as to the dates on which instalments of rent shall fall due,

(d) as to the procedure to be followed on all applications under section 95.

All

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Power of Board to make rules.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

Instalments when to be deemed in arrear.

THE FIRST SCHEDULE.

FORM A. (See section 51.)

I, *A. B.*, of _____, solemnly declare that I did personally [or by my agent *C. D.*], on the _____ day of _____, tender payment to *E. F.* of the sum of Rs. _____ as and for the whole amount due from me on account of rent from the month of _____ to the month of _____ both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, and I declare that, to the best of my belief, the sum of _____ rupees _____ so tendered, and which I now desire to pay into court, is the full amount I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (See section 52.)

Court of the Collector of _____, dated the _____ day of _____

To *E. F.*, &c.

WITH reference to the written declaration of *A. B.*, you are hereby informed that the sum of rupees _____ therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into court.]

FORM C.

FORM C. (See section 69.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of
property.

Commissioner for sale of distrained

A. B., Distrainer.

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

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

Dated this

day of

188 .

FORM D. (See section 114.)

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

[Name, description and address of plaintiff.]

C. D., Defendant.

[Name, description and address of Defendant.]

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

FORM E.

FORM E. (See section 119.)

FORM OF WARRANT OF ARREST.

No. (of suit) dated
In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

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

Dated this day of 188 .

FORM F. (See section 119.)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[Name, description and address of plaintiff.]

C. D., Defendant.

[Name, description and address of defendant.]

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

FORM G. (See section 121.)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D., defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. *If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*

FORM H.

FORM H. (See section 156.)

WRIT OF EXECUTION AGAINST THE PRISON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said C. D. was directed by a decree of this Court, under date the day of 188 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (See section 156.)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS C. D. was directed by a decree of this Court, under date the day of 188 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said C. D. as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(See section 1.)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumáon and Garhwál.

II. The

- II. The Tarai Parganas, comprising—Bázipúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.
- III. The portion of the Mirzápúr District lying to the south of the Kaimor Range.
- IV. The Family Domains of the Mahárájá of Benares comprising the following parganas:—
Bhadohi and Kera Mangror in the Mirzápúr District.
Kaswár Rájá in the Benares District.
- V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.