

Goalpara Tenancy Act, 1929

ASSAM

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Act 1 of 1929

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Goalpara Tenancy Act, 1929 Assam Act 1 of 1929 Last Updated 12th February, 2020 Published in the Assam Gazette of the 27th November, 1929. An Act to amend and consolidate certain enactments relating to the law of landlord and tenant in the district of Goalpara Preamble. - Whereas it is expedient to consolidate and amend certain enactments relating to the law of landlord and tenant in the permanently settled estates of Goalpara ; And whereas the previous sanction of the Governor-General under sub-Section (3) of Section 80-A of the Government of India Act has been obtained to the passing of this Act: It is hereby enacted as follows :

Chapter I Preliminary

1. Short title.

(1) This Act may be called the Goalpara Tenancy Act, 1929. (2) Local extent. - It extends to the district of Goalpara, except-(i) the area which is not permanently settled, (ii) any area constituted or deemed to have been constituted a municipality under the provisions of the Assam Municipal Act, 1923 or part thereof, when such area or part is specified in a notification in this behalf by the Local Government, (3) The Local Government may, by notification, extend the whole or any part of this Act to the temporarily settled area in the district of Goalpara or to any part thereof : Provided that no such notification shall be issued under this section unless-(a) it is previously published in the area concerned or part thereof in the prescribed manner; and (b) the Assam Legislative Council by a resolution recommends that the notification be issued.

2. Amendment.

- The enactment specified in Schedule I is hereby amended to the extent and in the manner mentioned in the fourth column thereof.

3. Repeal.

(1)The enactments specified in Schedule II are hereby repealed to the extent mentioned in the fourth column thereof:Provided that all rules prescribed, orders issued, appointments made, survey or settlement operations commenced or concluded, powers conferred and notifications published under any enactment hereby repealed, and all other rules (if any) in force on the date on which this Act comes into force relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this Act and could be prescribed, issued, made, commenced or concluded, conferred or published thereunder) be deemed to have been respectively prescribed, issued, made, commenced, concluded, or conferred and published thereunder.(2)When this Act or any portion thereof is extended to the area referred to in Clause (i) of sub-Section (2) of Section 1, so much of any Act or Regulation in force therein as is inconsistent with this Act or portion thereof as extended, as the case may be, shall be thereby repealed.

4. Definitions.

- In this Act unless there is anything repugnant in the subject or context-(1)"Agriculture" includes horticulture ;The terms 'Agriculture' and 'cultivation' when used with reference to a holding, do not include the cultivation of tea.(2)"Agricultural year" means the year commencing on the 1st day of Baisakh of the Bengali year ;(3)"Commissioner" means the Commissioner of the Assam Valley Division ;(4)"Deputy Commissioner" in any provision of this Act, means the Deputy Commissioner in-charge of Goalpara district and includes any Revenue Officer, Assistant Commissioner or Extra Assistant Commissioner specially empowered by the Local Government to discharge any of the functions of the Deputy Commissioner under that provision;(5)"Enhancement" and "Enhanced" do not include an increase of rent in respect of land held by a tenant in excess of the area for which rent has been previously paid by him ;(6)"Estate" means lands included under one entry in any of the general registers of revenue paying and revenue-free lands prepared and maintained, under the law for the time being in force by the Deputy Commissioner, and includes Government khas mahals and revenue-free lands not entered in any register ;(7)"Holding" means a parcel or parcels of land held by a tenant, other than a permanent tenure-holder, and forming the subject of a separate engagement with the landlord ;(8)(1) "improvement", with reference to a holding means any work which adds materially to the letting value of the holding and is consistent with the purpose for which it was let and which, if not executed on the building, is either executed for its benefit or is after the execution made directly beneficial to it :Provided that any work which materially diminishes the value of the landlord's other property shall not be deemed to be an improvement.(2)Until the contrary is shown, the following shall be presumed to be improvements within the meaning of the section,-(a)the construction of wells, whether masonry or not, tanks, water channels and other works for the storage, supply or distribution of water for the purposes of agriculture or for the use of men and cattle so employed or for providing drinking water for the tenant;(b)the preparation of land for irrigation ;(c)the drainage, reclamation from rivers or other waters, or protection from flood, or from erosion or other damage by water, of land used for agricultural purposes or waste land which is culturable ;(d)the reclamation, clearance, enclosure or permanent improvement of land and agricultural purposes ;(e)the erection of a dwelling house whether of masonry, bricks, stone or any other material whatsoever, for the tenant and his family together with all necessary

out-offices ;(f)the renewal or reconstruction of any of the foregoing works or alterations therein or additions thereto ;(9)"Jote" means the holding of a jotedar ;(10)"Land" means land which is let out or occupied for agricultural purposes or purposes subservient thereto, and includes the sites of buildings appurtenant to such land ;(11)"Landlord" means a person immediately under whom a tenant holds land, and includes the Government;(12)"Pay", "Payable" and "Payment" used with reference to rent include 'deliver', 'deliverable', and 'delivery';(13)"Permanent settlement" means the permanent settlement of Bengal and portions of Assam made in or about the year 1973, and hereinafter referred to as "the permanent settlement" ;(14)"Prescribed" means prescribed by rules made by the Local Government under this Act;(15)"Proprietor" means a person owning in trust or for his own benefit any estate or part of an estate ;(16)"Registered" means registered under the Act for the time being in force for the registration of documents ;(17)"Rent" means whatever is lawfully payable in money or kind by a tenant on account of the use and occupation of the land held by the tenant, and shall include the share of crop deliverable by a tenant:Provided that where Government is a landlord, rent shall be paid in cash and not in kind."Share of crop" shall mean the share of the principal crop grown in each agricultural year and will be determined by mutual agreement between the landlord and the tenant, subject to the maximum of one-fifth of the produce of principal crop grown in each agricultural year, but shall not exceed fair rent:Provided that landlord's share shall not exceed fair rent.(18)"Revenue Officer" in any provision of this Act, includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue Officer under that provision ;(19)"Succession" includes both intestate and testamentary succession";(20)"Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person and includes person who, under the system generally known as "adhi" (whether Guchiadhi or Gutiadhi), 'barga', 'bhag', 'chukti' or 'chukani', cultivates the land the another person on condition of delivering a share or quantity of the produce of such land to that person but does not include-(a)an ijaradar , that is to say, a person who is primarily farmer of rents; and(b)a person holding land on condition of rendering service :Provided that the labourers employed for personal cultivation shall not be deemed to be tenant within the meaning of this clause.Explanation.-A person who is otherwise a tenant shall not by reason of his holding land under any person referred to in sub-Clause (a) or (b), lose his right as such.(21)"Village" means the area defined, surveyed and recorded, in any survey made by or under the authority of the Government, as a distinct and separate village, and adopted as such by the Local Government for the purposes of this Act by a notification made in this behalf in the Assam Gazette :Provided that, when an order has been made under Section 97 directing that a survey be made and a record-of rights prepared in respect of any local area estate, permanent tenure, jote or part thereof, the Local Government may, by notification in the Assam Gazette, declare that, in such local areas, estate, permanent tenure, jote or part thereof, "village" shall mean the area which for the purposes of such survey and record-of right, may be adopted by the Revenue Officer with the sanction of the Commissioner accorded under Section 119, as the unit of survey and record ;(22)"Principal crop" shall be only one crop for each agricultural year as may be agreed upon mutually between the landlord and the tenant;Provided that where there is no agreement, the principal crop shall be only one agricultural crop grown in each agricultural year in the local area specified as follows:In the district of Goalpara-Sali or such local name generally used in respect of paddy known as winter paddy, the harvesting of which is done in the months of December, January and February corresponding to Pausa, Magha and Phalguna.(23)"Money rent" in relation to rent

payable in crop share for purpose of deposit into court and/or calculation of arrear of rent is the money value of the crop deliverable by a tenant to landlord and such money value shall be computed on the basis of the market value of that crop prevailing at the time of harvesting in the locality concerned.(24)"Personal cultivation" means cultivation by the person himself, or by members of his family or by his hired labourers on fixed remuneration payable in cash or kind but not in crop share, under personal supervision of the person himself or any member of his family ; provided it is accompanied by the bearing of risks of cultivation by the owner and by residence in the village in which the land is situated or nearby village within a distance of 5 miles during the greater part of the agricultural season :Provided that in the case of a person who is a widow or minor, or is subject to any physical or mental disability or is a member of the Defence Forces of the Indian Union or is a student below the age of 21 years of an educational institution recognised by the State Government the land shall be deemed under personal cultivation even in the absence of such personal supervision.(25)"Fair rent" in relation to rent payable in crop share, means the rate of rent not exceeding one-fifth of the produce of the principal crop grown in each agricultural year :Provided that where the crop fails due to natural calamities and the payment of crop share is not possible due to circumstances beyond the control of the tenant, a sum equal to double the annual land revenue or rent payable by his immediate landlord for such holding shall be fair rent.

Chapter II

Tenancies

5. Classes of tenancies.

- There shall be, for the purposes of this Act, besides the class of tenants to in Explanation to Clause (20) of Section 4, the following classes of tenants, namely : (1)Permanent tenure-holders, which expression includes permanent under-tenure-holders.(2)Jotedars, which expression includes Darjotedars.(3)Raiyats.(4)Under-raiyats.

6.

(1)"Permanent tenure-holder" means primarily a person who has acquired from a proprietor or from another permanent tenure-holder a right to hold a heritable and transferable interest in land, otherwise than for a limited time, for the purpose of collecting rents or of bringing it under cultivation either wholly or partly by establishing tenants on it, and includes also the successors in interest of a person who has acquired such a right.(2)"Jotedar" means primarily a person who has acquired from a proprietor or a permanent tenure-holder or from another jotedar a right to hold land for the purpose of bringing it under cultivation, either wholly or jointly by establishing tenants on it, but is not himself a permanent tenure-holder in respect of the land, and includes the successor in interest of a person who has acquired such a right.(3)"Raiyat" means primarily a person who has acquired from a proprietor or a permanent tenure-holder or a jotedar, or from the holder of an ijara' under any of these persons, a right to hold land for the purpose of cultivating it by himself, or by the members of his family, or by servants or labourers or with the aid of partners, and includes also the successors in interest of a person who has acquired such a right.(4)"Under-raiyat" means a tenant

holding land immediately under raiyat and includes a person who, under the system, generally known as adhi (whether guchiadhi or gutiadhi) 'barga' 'bhag' 'chukti' or 'cultivates the land of another person on condition of delivering "chukani" share or quantity of the produce of such land to that person but does not include a tenant holding immediately or mediately under any person holding land on condition of rendering service.(5)(a)In determining whether a tenant is a jotedar or a raiyat, the court shall have regard to the purposes for which the right of tenancy was originally acquired.(b)When the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a jotedar, until the contrary is shown.Explanation. - When a tenant of land has the right to bring it under cultivation he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it, or of grazing cattle on it.

Chapter III

Permanent Tenure Holders and Raiyats at Fixed Rates

7. Transfer of permanent tenures.

- Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

8.

(1)When a permanent tenure, or a portion or share thereof, is transferred by inheritance, bequest, sale, gift, exchange or usufructuary mortgage, the transferee shall, within six months of the transfer-(i)apply for the registration of such transfer in the office of the landlord in the prescribed manner ; and(ii)pay or tender to the landlord a fee (hereinafter called 'the land-lord's fee') of the following amount:(a)when rent is payable in respect of the permanent tenure-a fee of two per cent on the annual rent thereof:Provided that, when only a portion or share of such tenure is transferred, the rest of that portion or share shall, for the purpose of determining 'the landlord's fee', be deemed to be such portion of the rent of the entire tenure as the area or share transferred bears to that of the tenure :Provided also, that no such fee shall be less than one rupee or more than one hundred rupees :(b)when rent is not payable in respect of the tenure or portion or share thereof a fee of two rupees.(2)No suit or application by the transferee as such for the recovery of rent from a tenant holding within such transferred tenure, or portion or share thereof, shall be entertained until such application for registration has been made and "landlord's fee" paid or tendered.(3)When such application, and the payment or tender of "the landlord's fee" have been made after the expiry of six months from the date of transfer the transferee shall not be entitled to recover from his tenant by suit or other proceeding any rent, which may have become due to him as owner of the said tenure or portion or share thereof, for the period between the date of expiry of the said six months and the date of the application for registration.(4)The landlord's fee shall be recoverable by the landlord as if it were an arrear of rent, and the provisions of Sections 51, 52, 53, 54 and 55 of this Act shall, so far as may be, apply to the tender of "the landlord's fee" and its deposit in court as if it were an arrear of rent.(5)The acceptance of "the landlord's fee" under this section shall not operate as an admission of

the amount or fixity of rent or of the area or of any incident of such tenure, or be deemed to constitute an express consent of the landlord to the division of the tenure or to the distribution of the rent payable in respect thereof.(6)Previous transfers not affected.-The provisions of this section shall not apply to transfers of permanent tenures, or of portions or shares thereof, effected before the passing of this Act.

9. Enhancement of rent of permanent tenures.

- The rent of a permanent tenure held from the time of "the permanent settlement" shall not be liable to enhancement except on proof-(a)that the landlord under whom it is held is entitled to enhance the rent thereof, either by local custom or by the considerations under which the tenure is held ; or(b)that the tenure-holder, by receiving a reduction of his rent otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increased demand, and that the lands are capable of affording it.

10. Limit of enhancement and progressive enhancements.

(1)When the rent of a permanent tenure- holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to such limit as the Court thinks fair and equitable.(2)in determining what rent is fair and equitable, the court shall not leave to the permanent tenure-holder as profit less than ten per cent of the balance which remain after deducting from the gross rents payable to him, the expenses of collecting them.(3)If the Court thinks that an immediate increase of rent would produce hardship, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

11. Intervals between enhancements.

- When the rent of a permanent tenure-holder have been enhanced by Court or by contract, it shall not be again enhanced during the fifteen years next following the date on which it has been so enhanced, and for the purpose of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of sub-Section (3) of Section 10, the full rent fixed by such order shall be deemed to have come into effect from the date of such order.

12. Raiyat's fixed rates.

- A raiyat holding at fixed rates, which expression means a raiyat holding immediately under a proprietor or a permanent tenure holder either rent-free for all time or a rent or rate of rent fixed in perpetuity whether he has acquired a right of occupancy in his land or not, shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure.

13.

(1)When a permanent tenure-holder or raiyat and his predecessors in interest have held the tenure or holding at a rent or a rate of rent which has not been changed from the time of "the Permanent Settlement" the rent or rate of rent of such tenure or holding shall not be enhanced.(2)If in any suit or proceeding under this Act, it is proved that a permanent tenure-holder or a raiyat and his predecessors in interest have held the tenure or holding at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is proved, that he and his predecessors in interest have held the tenure or holding at the same rent or rate of rent from the time of "the Permanent Settlement".(3)The provisions of sub-Sections (1) and (2) shall not apply in the case of raiyat who has acquired his interest as such from a jotedar.

Chapter IV**Right of Occupancy-Settled Raiyats and Occupancy Raiyats****14.**

(1)Every raiyat who, immediately before the commencement of this Act has, by the operation of any enactment, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.(2)The exclusion from the operation of this Act, by notification under Clause (ii) of sub-Section (2) of Section 1, of any area referred to in that clause, shall not affect any right, obligation or liability previously acquired, incurred or accrued, in reference to such area or part thereof.

15. Acquisition of status of settled raiyats.

(1)Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act has continuously held as a raiyat land situate in any village, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.(2)A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village is surveyed and recorded as, or declared to constitute, a village at a date subsequent to the commencement of the said period of twelve years.(3)A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.(4)A person shall be deemed for the purposes of this section, to have held as a raiyat any land held as such by a person whose heir he is.(5)Land held by two or more co-sharer raiyats shall be deemed for the purposes of this section, to have been held as a raiyat by each such co-sharer.(6)If, a raiyat recovers possession of any land under Section 82, the period during which he was out of possession shall, for the purposes of this section, count as if he had been in possession.(7)If any proceeding under this Act, it is proved or admitted that a person holds any land as raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or

some part of it as a raiyat.(8)A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.(9)A raiyat holding at fixed rates shall be deemed to be settled raiyat of the village if he complies with the conditions set forth in this section.

16. Acquisition of occupancy rights by raiyats.

- Every person, who is a settled raiyat of a village within the meaning of Section 15, shall have a right of occupancy in all lands for the time being held by him as a raiyat in that village :Provided that, in any area which has not been defined as a village and noticed as such Clause (21) of Section 4, every person who has continuously for a period of twelve years, whether wholly or jointly before or after the commencement of this Act, held land as raiyat, shall have right of occupancy in that land, and the provisions of sub-Sections (4), (5), (6) and (7) of Section 15 shall apply in the case of such person.

17.

(1)Notwithstanding anything contained in this Act, a tenant holding land-(a)under a person referred to in Sub-Clause (b) of Clause (26) of Section 4 ;(b)within a proprietor's private lands as defined in Section 123 ;(c)within lands acquired under the Land Acquisition Act, 1894 for the Government or any Local Authority or for a Railway company, or within a cantonment, while such lands remain the property of Government or any Local Authority or Railway company ;(d)within land owned by the Government or by any Local Authority which is used for any public work such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such land continues to be so used or required ;(e)within land known as chur or diara which has not been held for twelve continuous years;shall not acquire a right of occupancy in such land or the status of a settled raiyat by reason of his holding such land :Provided that, in the case of land known as chur or diara, the Deputy Commissioner may, on the application of the landlord or the tenant, or on a reference from the Civil Court, and on payment of the prescribed fee, declare that such land has ceased to be chur or diara within the meaning of this section ; and thereupon all the other provisions of the Act shall apply to such land:Provided also that, for the purpose of determining whether such land has ceased to be chur or diara within the meaning of this section, the Deputy Commissioner shall, except for special reasons to be recorded in writing, make a local inquiry and have regard to such rules as may be prescribed.(2)An appeal shall lie to the Commissioner against any order of the Deputy Commissioner declaring or refusing to declare that any land has ceased to be chur or diara within the meaning of this section.

18. Acquisition of occupancy rights by jotedars.

- When a jotedar himself or through a person whose interest in the jote he has inherited or to whose interest in the jote he has succeeded by virtue of a transfer not inconsistent with the provisions of this Act, has continuously held his holding for a period of twelve years, whether wholly or partly before or after the commencement of this Act, he shall have a right of occupancy in such holding.

19. Succession of jote by inheritance.

- When the interest of a jotedar, or a portion or share thereof, is transferred by inheritance, the provisions of Section 8 shall apply as if such interest were of a permanent tenure.

20.

(1)The interest of an occupancy tenant, that is to say, of an occupation jotedar or an occupancy raiyat, in his holding, or a portion or share thereof, shall subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.(2)When the interest of an occupancy tenant in his holding, or a portion or share thereof, is transferred otherwise than at the stance of the sole landlords or of the entire body of landlord or in execution of a decree under the provisions of Section 139, the transferee shall be deemed to hold the land, transferred on behalf of the landlord of such land, and the landlord shall be entitled to the entire profits arising from the holding or portion or share thereof, until the transferee has served in the prescribed form and manner, notice on the landlord giving the particulars of the transfer and paid or tendered to him a fee, hereinafter called the occupancy transfer fee':Provided that when the notice is served and the 'occupancy transfer fee' paid or tendered within two months of the date of the transfer, or of taking possession of the land by the transferee, whichever is later, the landlord shall have no right to any profit arising from the land except the rent payable for the holding in accordance with the provisions of this Act.(3)The provisions of sub-Section (2) shall not apply to-(i)Successions by inheritance ;(ii)Divisions of tenancies in accordance with the provisions of Sections 16 and 17.(iii)Leases executed in accordance with the provisions of this Act ;(iv)Complete usufructuary mortgages as defined in Section 25 ;(v)Simple mortgage or mortgages by conditional sale, until a final decree for sale or foreclosure is made.

21. Scale of occupancy transfer-fee.

(1)The 'occupancy transfer-fee' shall amount to ten per cent of the market value of the land at the time of the transferor three times the annual rent then payable for the land transferred, whichever is greater.(2)When an occupancy holding, or a portion or share thereof, is transferred under an instrument of sale the consideration money mentioned in such deed, together with any other sum which the transferee has paid or agreed to pay in satisfaction of the sale price, wholly or in part, shall, until the contrary is proved, be presumed to be the market value of such holding, or portion or share, for the purposes of sub-Section (1).(3)When a portion of share of a holding is transferred, the rent of that portion or share shall, for the purposes of sub-Section (1), be deemed to be such proportion of the rent of the entire holding as the area or share transferred bears to that of the entire holding.(4)The provisions of Sections 51, 52, 53, 54, and 55 of this Act shall, so far as may be, apply to the tender of an 'occupancy transfer fee' and its deposit in court, as if it were an arrear of rent.

22. Landlord's remedy in cases of non-payment or insufficient payment.

(1)If the transferee referred to in sub-Section (2) of Section 20-(i)fails to pay or deposit the

'occupancy transfer fee' in compliance with the provisions of Sections 20 and 21 ; or(ii)pays or deposits as 'occupancy transfer fee' an amount which is less than that provided in sub-(1) of Section 21;the landlord shall be entitled-in case (i) within six months of the date of transfer or of taking possession of the land by the transferee, whichever, is later ;in case (ii) within six months of such payment or deposit,to apply to the lowest Civil Court having jurisdiction to try a suit for the recovery of the amount claimed, and recover from the transferee as penalty, in addition to the transfer fee or balance of the transfer fee, as in case may be, a sum not exceeding twice the amount payable as such transfer fee, as the Court may think fit, together with the costs of the application.(2)If, in an application made under the provisions of sub- Section (1), it appears to the Court that the landlord has made an application without reasonable cause, the Court may award to the transferee, by way of damages, such sum, not exceeding twenty- five per cent on the amount claimed by the applicant together with the costs incurred by the transferee, as it thinks fit.(3)If the landlord applies to the Civil Court for the recovery of the transfer fee, or the balance due in respect thereof, under the provisions of sub-Section (1), he shall not be entitled to recover the profits referred to in sub-Section (2) of Section 20, except the rent due.(4)An order under sub-Section (1) or under sub-Section (2) shall have the effect of, and be subject to the like appeal as, a decree.

23. Effect on landlord of acceptance of occupancy transfer-fee.

- The acceptance of the 'occupancy transfer-fee' shall to operate as an admission of the amount of fixity of rent or the area or any incident of the holding transferred, or deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof.

24. Liability for arrears of rent on transfer.

- When an occupancy tenant transfers his holding or a share or portion thereof, the transferor and the transferee shall be jointly and severally liable to the landlord for arrears of rent due at the time of the transfer.

25. What kind of usufructuary mortgage occupancy tenant may execute.

(1)An occupancy tenant shall not be entitled to enter into any form of usufructuary mortgage in respect of his holding or a portion or share thereof except a complete usufructuary mortgage which may be for any period which does not and cannot, in any possible event, by any agreement express or implied, exceed nine years :Provided that every such compete usufructuary mortgage shall be registered under the Indian Registration Act, 1908.(2)Notwithstanding any contract to the contrary such mortgage any be redeemed at any time before the expiry of the said period.(3)Notwithstanding anything contained in this Act or any other law, any document creating or purporting to create any other form of usufructuary mortgage of an occupancy holding or a share or portion thereof shall not have any force or effect and no such document shall be received in evidence or acted upon in any Court or by any public servant.Explanation. - A 'complete usufructuary mortgage' means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan, upon the condition that the loan,

with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgages.

26. Previous transfers not affected.

- Nothing in Sections 19 to 25 shall affect a transfer of the interest of an occupancy tenant or a portion or share thereof effected before the passing of this Act.

27. Rights of raiyats in respect of use of land.

- Where a tenant has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land, or render it unfit for the purpose of the tenancy.

28.

(1)The rent of an occupancy jotedar may be enhanced by contract, subject to the following conditions, namely : (a)the contract must be in writing and registered: Provided that nothing in this clause shall prevent a landlord from recovering rent at a rate at which it has been actually paid for a continuous period of less than three years immediately preceding the period for which rent is claimed ; (b)the rent must not be enhanced so as to exceed, by more than three annas in the rupee, the rent previously payable by the jotedar. (2)(a)The rent of an occupancy jotedar may be enhanced by suit up to such limit as the Court thinks fair and equitable. (b)In determining what enhancement is fair and equitable, the Court shall not leave to the jotedar as profit less than 10 per cent of the balance which remains after deducting from the gross rents payable to him, the expenses of collecting them, and shall have regard to- (i)the circumstances under which the jote was created, for instance, whether the land comprised in the jote, or a greater portion of it, was first brought under cultivation by the agency or at the expense of the jotedar or his predecessors in interest, whether any fine or premium was paid on the creation of the jote, and whether the jote was originally created at a specially low rent for the purpose of reclamation; (ii)whether the rate of rent paid by the jotedar is below the average rate paid by jotedars for land of a similar description and with similar advantages in the village or in the vicinity and whether there is any sufficient reasons of this holding at so low a rate ; (iii)any increase in profit that the jotedar has secured, since his rent was last settled or enhanced, and the expenses incurred in securing such increase; (iv)the improvement, if any, made by the jotedar or the landlord or by their predecessors in interest ; (v)the contract, if any, about any enhancement of rent, entered into between the landlord and the jotedar, or their predecessors in interest, before the passing of this Act. (3)When the rent of an occupancy jotedar has been enhanced by contract or by suit, it shall not be again enhanced during the fifteen years next following the date on which it has been so enhanced. (4)If the court in passing a decree for enhancement considers that the immediately increase of rent would produce hardship, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf, and of the purpose of sub-Section (3) the full rent shall be deemed to have come into effect from the date of the decree.

29. Presumption of fairness of existing rent.

- The rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved.

30. Limitation of enhancement of rent of occupancy raiyats.

- The rent of an occupancy raiyat, who is not a raiyat at fixed rates, may be enhanced by contract, subject to the following conditions : (a) the contract must be in writing and registered : Provided that nothing in this clause shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which rent is claimed ; (b) the rent must not be enhanced so as to exceed by more than three-sixteenth of the rent previously paid by the raiyat ; (c) the rent fixed by contract shall not be liable to enhancement during a term of fifteen years from the date of the contract.

31.

The landlord of holding held by an occupancy raiyat, may subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely : (i) that the rate of rent paid by the raiyat is below the average rate paid by occupancy raiyats for land of a similar description and with similar advantage in the same village or in adjacent villages and that there is no sufficient reason for his holding at so low a rate ; (ii) that there has been a rise, and due to a temporary cause, in the average local price of staple agricultural produce grown in the locality during the currency of the present rent ; (iii) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or wholly or partly at the expense of the landlord during the currency of the present rent ; (iv) that the productive powers of the land held by the raiyat have been increased by fluvial action. Explanation. - "Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable where it was not previously practicable.

32. Intervals between enhancements.

(1) When the rent of an occupancy raiyat has been enhanced by the Court it shall not be again enhanced during the fifteen years next following the date on which it has been so enhanced. (2) If the Court in passing a decree for enhancement considers that the immediate increase of rent would produce hardship, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years the Court may fix in this behalf, and, for the purposes of sub-Section (1), the full rent shall be deemed to have come into effect from the date of the decree.

33. Reduction of rent of occupancy raiyats.

(1)An occupancy raiyat may institute a suit for the reduction of rent on one or more of the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding not otherwise namely :(i)on the ground that the productive powers of the soil of the holding have, without the fault of the raiyat, deteriorated by a deposit of sand or any specific cause whatsoever, sudden or gradual;(ii)on the ground that there has been a fall, not due to a temporary cause, in the average local price of staple agricultural produce grown in the locality during the currency of the present rent.(2)The provision of Clause (ii) of Section 31 and Clause (ii) of sub-Section (1) shall not apply in the case of a raiyat who pays rent in kind.

34. Regard to be had to rules in determining enhancement.

- In deciding a suit for enhancement of rent under Section 10, 28 or 31, or reduction of rent under Section 33, the Court shall have regard to the rules prescribed for the guidance of Revenue Officers in setting rents.

35.

The Deputy Commissioner shall prepare at prescribed intervals periodical lists of the market price of staple agricultural produce grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Local Government for approval or revision.(2)The Deputy Commissioner may, if so directed by the Local Government, prepare for any local area similar price lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Local Government for approval or revision.(3)The Deputy Commissioner shall, one month before submitting a price list to the Local Government under this section, publish it in the prescribed manner within the local area, to which it relates and if any landlord or tenant of land within the local area, or within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Local Government with the list.(4)The price list shall, when approved or revised by the Local Government, be published in the official Gazette ; and any manifest error in any such list discovered after its publication may be corrected by the Deputy Commissioner with the sanction of the Local Government which shall notify such correction in the official Gazette.(5)The local Government shall cause to be compiled, from periodical lists prepared under this section lists of the average prices prevailing throughout each year and shall cause them to be published annually in the official Gazette.(6)In any proceedings under this Chapter for enhancement or reduction of rent on the ground of a rise or fall in the prices, the Court shall refer to the lists published under this section and shall presume that the prices shown in the lists are correct, unless and until it is proved that they are incorrect.(7)The Local Government shall make rules for determining what crops are to be deemed staple agricultural produce in any local area and for the guidance of officers preparing price list under this section.

Chapter V

Non-Occupancy Tenants

36. Definition.

(a) Jotedars and raiyats other than raiyats of fixed rates, who have not acquired a right of occupancy in the lands held by them (hereinafter also referred to as non-occupancy jotedars and non-occupancy raiyats), and (b) tenants referred to in sub-Section (1) of Section 17, shall be called non-occupancy tenants.

37. Incidence of such transfer.

- The interest of a non-occupancy tenant shall be heritable but shall not be otherwise transferable, whether wholly or in part, without the landlord's consent except by way of lease in accordance with the provisions of this Act.

38. Initial rent.

- A non-occupancy tenant shall be liable to pay such rent as may be agreed upon between himself and his landlord at the time when he is admitted to occupation of the land.

39. Enhancement.

- The rent of a non-occupancy tenant shall not be enhanced except by registered agreement : Provided that nothing in this section shall prevent a landlord from recovering rent at a rate which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which rent is claimed.

40. Non-occupancy tenant.

- When the rent of a non-occupancy tenant has been enhanced by registered agreement, the tenant shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement.

Chapter VI

Under-Raiyats

41. Initial rent.

- When an under-raiyat is admitted to occupation of land he shall, subject to the provisions of this Act become liable to pay such rent as may be agreed upon between himself and his landlord at the

time of his admission :Provided that the rent or rate of rent agreed upon shall not be less than the rent or rate of payable by the raiyat to his landlord.

42. Incidents of such tenancies' transfer.

- The interest of an under-raiyat shall be heritable during the period of his lease but shall not, except with the consent of the landlord, be otherwise transferable in any way whatsoever.

43. Enhancement.

- The provisions of Sections 29 to 35, both inclusive shall, so far as may be, apply in the case of an under-raiyat who holds under an occupancy raiyat and has been in continuous possession of the land comprised in his holding as an under-raiyat for a period of twenty years, whether before, or partly before and partly after, the commencement of this Act.

Chapter VII

Rent

44. Instalments of rent.

- Subject to agreement express or implied, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

45.

(1)Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.(2)The payment of tender of rent may be made-(i)at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord, or(ii)by postal money-order in the manner prescribed either generally or for any specified local area.A tender may also be made by depositing the rent in Court in accordance with the provisions of Section 51.(3)When rent is sent by postal money order in the manner prescribed and the postal receipt in the prescribed form for a money order, alleged to have been sent in payment of such rent to the address of the landlord or his agent, is produced in support, of the plea of tender, the Court shall presume, until the contrary is proved, that such tender has been made.(4)When the landlord accepts rent sent by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form or that he has waived his rights under Section 20 or Section 22.(5)Any instalment or part of an instalment of rent not only paid at or before the time when it falls due shall be deemed an arrear.

46.

(1)When a tenant makes a payment on account of rent he may declare the year or the year and instalment to which he wished the payment to be credited, and the payment shall be credited accordingly.(2)If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

47. Rent receipts.

(1)Every tenant who makes payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord or his agent duly authorised in that behalf.(2)The landlord shall prepare and retain a counterfoil of the receipt.(3)The receipt and counterfoil shall be in the prescribed form and shall specify the particulars prescribed either generally or for any particular local area or class of cases.(4)If a receipt does not contain substantially the particulars so prescribed, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

48. Tenant may demand statement of account.

(1)Within three months after the end of the agricultural year, a tenant shall, on payment of the prescribed fee, be entitled to get from the landlord a statement of account which shall be in the prescribed form and shall specify the particulars prescribed either generally or for any particular local area or class of cases.(2)The landlord shall prepare and retain a copy of the statement containing similar particulars.

49. Penalty for omission to deliver receipt or statement of account.

(1)When a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement as required by Sections 47 and 48 the Deputy Commissioner may, in a proceeding under this section, after making such inquiry as he may deem necessary order the landlord to pay as penalty a sum to exceeding fifty rupees for each default, and may, in his discretion award to the tenant as compensation such portion of the penalty as he thinks fit.(2)The existence of a dispute as to the rent or area of tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver-(a)a receipt for any annual account actually paid on account of rent, or(b)the statement of account required by Section 48, and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by Section 47.(3)The Deputy Commissioner may hold the inquiry under sub-Section (1) either on information received from a Revenue Officer or upon complaint of the party aggrieved, within one year, or upon a report of the Civil Court.(4)When in any proceeding instituted under sub-Section (1) the Deputy Commissioner discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false, the

Deputy Commissioner may, by his order discharge or direct the tenant to pay to such landlord or agent compensation, not exceeding fifty rupees, as he thinks fit.(5)No order shall be passed against any landlord under sub- Section (1) or against any tenant under sub-Section (4) unless he has been allowed a reasonable opportunity to show cause against such order.(6)An order made by the Deputy Commissioner imposing any penalty under sub-Section (1) or awarding any compensation under sub-Section (3) shall, for the purposes of appeal, be treated as a decree passed under the provisions of the Code of Civil Procedure, 1908, by the lowest Civil Court competent to pass a decree for the amount.

50.

(1)When rent is due to the proprietor,manager, or mortgagee of an estate , the receipt of the person registered under Chapter IV of the Assam Land and Revenue Regulation 1886, as proprietor, manager or mortgagee of that estate or of his agent authorised in that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered, that the rent is due to any third person.(2)Nothing in sub-Section (1) shall affect any remedy which any third person may have against the registered proprietor, manager or mortgagee.

51.

In any of the following cases, in which money-rent is due-(a)when a tenant tenders the full amount of rent due from him and the landlord refuses to receive it or intimates his unwillingness grant a receipt for it;(b)when a tenant has reason to believe, owing to tender having been refused, or a receipt withheld on a previous occasion that the person to whom rent is payable will not be willing to receive it, and to grant him a receipt for it;(c)when rent is payable to co-sharers jointly and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf ;(d)when the tenant entertains a bona fide doubt as to who is entitled to receive the rent, or(e)when the landlord is an absentee landlord who possesses no village-office and has not appointed a convenient place for the receipt of rent, the tenant may present to the Court, having jurisdiction to entertain a suit for rent of his tenancy, and application in writing for permission to deposit a sum not less than the amount of the money then due.

52. Form of application.

(1)The application shall contain, in addition to such other particulars as may be prescribed, a statement of the grounds on which it is made.(2)The application shall be signed and verified as a plaint under the Code of Civil Procedure, 1908 and shall be accompanied by the prescribed costs of transmission of the money deposited to the landlord and in cases (c) and (d) of Section 51, by a fee of the prescribed amount.

53. Court to grant receipt.

(1) If it appears to the Court to which an application is made under Section 51 that the applicant is entitled under that section to deposit the rent and if the conditions imposed by Section 52 have been fulfilled, it shall receive the rent and give a receipt for it under the seal of the Court. (2) Effect of each deposit.-A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent, as if that amount had been received. In cases (a), (b) and (c) of Section 51 by the person specified in the application as the person to whose credit the deposit was to be entered. In any other case, by the person or persons entitled to the rent.

54. Procedure of Court on receiving deposits.

- The Court receiving a deposit-(i) in case (a), (b) or (c) of Section 51 shall forthwith forward the same by postal money-order to the address of the landlord or of his common agent, if any, empowered to receive the rent ; (ii) in case (c) or (d) of that section, shall forthwith cause to be affixed in a conspicuous place at the court house a notification of the receipt thereof containing a statement of all the prescribed particulars ; and if the amount of deposit is not paid away under Section 35 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith-in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village office, if any, and in some conspicuous place in the village in which the tenancy is wholly or partly situated, and in case (d) cause a like notice to be served free of charge on every person who, it has reason to believe, claims, or is entitled to, the deposit.

55. Further procedure in certain cases.

(1) The court may pay then amount of the deposit notified under Clause (ii) of Section 54 or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled. (2) If no payment is made under this section before, the expiration of three years from the date on which a deposit is made, the amount of rent in deposit may, in the absence of any order of a Civil Court to the contrary, be repaid to depositor upon his application. (3) No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government in respect of anything done by a court receiving a deposit under Section 53 or 54, but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this or the preceding section.

56. Interest on arrears of rent.

- An arrear of rent shall bear simple interest at the rate of twelve and half per cent, per annum from the expiration of that quarter of the agricultural year in which an instalment falls due on the date of payment.

57.

(1) If, in any suit brought for the recovery of an arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages not exceeding twenty-five per cent on the amount or rent decreed, as it thinks fit: Provided that interest shall not be decreed when damages are awarded under this section: Provided also that when damages are awarded—(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit under Section 56; and (ii) interest on the arrear shall be awarded from that date up to the date of payment at the rate mentioned in Section 56. (2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause the Court may award to the defendant, by way of damages, such sum not exceeding twenty-five per cent on the whole amount claimed by the plaintiff, as it thinks fit.

58. Alteration of rent on alteration of area.

- Subject to the provisions of any contract between the landlord and tenant, every tenant shall—(a) be liable to pay fair and equitable rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, or, in the case of a rent-fee tenancy, which has previously constituted his tenancy; (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area for which rent has been previously paid by him.

59.

(1) In a suit for assessment of rent (whether such relief has been claimed as an alternative to ejectment or not)—(i) for excess of land under Clause (a) of Section 58, where such land is continuous to any other land held by the tenant under the same landlords; (ii) for any other land in possession of a person without the consent of the landlord, the landlord may claim, in addition to the rent assessed,—in case (i), a premium amounting to five times the annual rent assessed by the Court, and in case (ii), a premium amounting to ten times such annual rent, and the Court may grant relief accordingly: Provided that no premium shall be ordered to be paid—(a) in case (i), where the tenant has been in possession of the excess land for twelve years continuously, or (b) when the landlord is unable to indicate the particular land in excess in possession of the tenant. (2) Nothing in Section 58 or in this section shall prevent—(i) a landlord from recovering an arrear of rent, rent which he is lawfully entitled to recover, or (ii) the ejectment of a trespasser and the recovery of damages for use and occupation of land.

60. Petition of tenant or person assessed to rent under foregoing sections.

(1) When a person has been assessed to rent under the provisions of Section 58 or Section 59, such person shall, on payment of the amount recoverable under the decree, be deemed to have become a raiyat or an under-raiyat of the land, as the case may be, from the date of such assessment, and shall

if he becomes a raiyat, be entitled to remain in occupation of that land at the rent so fixed, for five years from the date of the order.(2)In determining the area for which rent has been previously paid under Clauses (a) and (b) of Section 58 and what addition, reduction or assessment of rent, under Clauses (a) and (b) of Section 58 or Section 59 is fair and equitable, the Court shall have regard to the rules prescribed for the guidance of Revenue Officers in determining such area and in setting rents for each land.

Chapter VIII

Improvements, Ejectment and Compensation

61.

(1)When a raiyat holds at fixed rates or has right of occupancy in his holding, or when a jotedar has a right of occupancy in his holding, neither the tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding except on the ground that he is willing to make it himself:Provided that no tank, the site of which exceeds one standard bigha in area, shall be made without the permission of the proprietor or permanent tenure-holder within whose estate or tenure such tank is made.(2)Save as provided in sub-Sections (3) and (4), if both the tenant and the landlord wish to make the same improvement, the tenant shall have the prior right to make it.(3)If an improvement affects more than one holding held under the same landlord, the landlord shall have the prior right to make it, unless the tenants of the holdings agree to make to improvement jointly.(4)A landlord shall have the prior right to make an improvement if it affects land not held by any tenant and one or more holdings held by tenant under him.(5)Nothing in sub-Section (2) shall entitle tenants to make an improvement jointly, unless each such tenant has the right to make the particular improvement.

62. Deputy Commissioner to decide when disputes arise.

- If a question arises between the tenant and the landlord of a holding-(a)as to the right to make an improvement,(b)as to whether a particular work is an improvement, or(c)as to whether a particular work is liable to affect another holding or other land held under or by the same landlord, the Deputy Commissioner may, on the application of either party, decide the question and his decision shall be final.

63. Improvement which non-occupancy tenant, under-raiyat holding under occupancy raiyat may make.

- A non-occupancy tenant of the kind referred to in Clause (a) of Section 36, and an under-raiyat holding immediately under an occupancy raiyat shall be entitled to construct, maintain and repair a well, whether masonry or not, and to erect a dwelling-house other than of bricks stone or masonry, for himself and his family with all necessary out offices, but shall not be entitled to make any other improvement in respect of his holding without his landlord's permission.

64.

(1)A landlord may, by application to the Deputy Commissioner, register any improvement which he has lawfully made or which has been made wholly or partly at his expense, or which he has assisted a tenant in making, in respect of a holding.(2)The application shall be made in the prescribed form and in the prescribed manner.(3)The officer receiving the application may reject the application if it has not been made within twelve months-(a)in the case of improvements made before the commencement of this Act-from the commencement of this Act;(b)in the case of improvements made after the commencement of this Act-from the date of the completion of the work.Ejectionment

65. Protection from ejectionment.

- No tenant shall be ejected from his tenancy except in execution of a decree.

66. Permanent tenure-holders.

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

67. Occupancy tenants and raiyats at fixed rates.

- When a raiyat holds at fixed rates or when a jotedar or a raiyat has acquired a right of occupancy in his holding, he shall not be ejected by his landlord except on the ground-(i)that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or(ii)that he has broken a condition, relating to the use and occupation of the land of his tenancy and consistent with the provisions of this Act, on breach of which he is under the terms of a contract between himself and his landlord liable to be ejected.

68. Restrictions in certain cases.

- A permanent tenure-holder, a raiyat at fixed rates of an occupancy tenant, shall not be liable to ejectionment for arrears of rent, but his tenure or holding shall be liable to sale in execution of decree for the rent thereof, and the rent shall be a first charge thereon.

69. Non-occupancy tenants.

- A non-occupancy tenant shall, subject to the provisions of this Act, be liable to be ejected on one or more the following grounds, and not otherwise :(a)on the ground that he has failed to pay an arrear of rent;(b)on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition relating to the use and occupation of the land of the tenancy, and consistent with the provisions of this Act, on breach of which, he is, under

the terms of a contract between himself and his landlord, liable to be ejected ;(c)on the ground that the term of his lease has expired when he holds under a written lease ;(d)on the ground that the tenancy has been terminated by his landlord by six months' notice expiring when the end of the agricultural year, when he holds the land otherwise than under a written lease, and the period of five years referred to in Sections 40 and 60 has expired and has not acquired a right of occupancy in the land.

70. Under-raiyat.

- An under-raiyat shall be liable to be ejected by his landlord on one or more of the following ground and not otherwise, namely : (a)on the ground that he has failed to pay an arrear of rent; (b)on the ground that the term of his written lease has expired when he holds under a written lease ; (c)on the ground that the tenancy has been terminated by his landlord by twelve months' notice expiring with the end of the agricultural year, when the under-raiyat holds otherwise than under a written lease: Provided that, an under-raiyat who holds under an occupancy raiyat, and has been in continuous possession of the lands comprised in his holding for a period of twenty-years, whether before, or partly before and partly after, the commencement of this Act shall to be liable to be ejected from such holding except on the ground- (i) that he has failed to pay an arrear of rent ; (ii) that he has used the land in a manner rendering it unfit for the purpose of the tenancy ; or (iii) that he has broken a condition, relating to the use and occupation of the land of his tenancy and consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

71. Court shall allow time.

- In passing a decree for ejectment for an arrear of rent against a non-occupancy tenant or an under-raiyat, either in a suit where a decree for an arrear of rent has been made, or in a suit where no decree for such arrear has been claimed, the Court shall allow such tenant time for thirty days to pay into Court the arrear due together with interest or damages and costs of the suit, and, if the amount is paid within the time allowed the decree shall not be executed.

72. Procedure in certain cases.

(1) A suit for ejectment of a tenant, on the ground- (a) that he has used the land in a manner which renders it unfit for the purpose of the tenancy, or (b) that he has broken a condition relating to the use and occupation of the lands of his tenancy, on breach of which he is, under the terms of a contract between himself and the landlord, liable to ejectment, shall not be established, unless the landlord, who has instituted the suit, has served in the prescribed manner a notice on the tenant specifying the particular misuse or breach complained of and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same and, in any case whatsoever to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with the request. (2) In passing a decree for ejectment in any such suit the Court shall allow the defendant such time as it thinks fit to remedy the misuse or breach, or, when it is not capable of remedy, to pay a suitable compensation declared by the Court to be recoverable for the misuse or

breach.(3)If the misuse or breach is remedied, or the compensation declared to be recoverable is paid, within the time allowed or within such further time as may be allowed by the Court, the decree for ejectment shall not be executed.

73. When plaintiff may claim alternative relief.

- A plaintiff may, in a suit for the ejectment of a trespasser, if he thinks fit, claim as an alternative relief that the defendant be declared liable to pay, for the land in his possession a fair and equitable rent to be determined by the Court, and if the Court determines such rent, the provisions of Sections 59 and 80 shall apply in such case. Compensation

74. When to be awarded.

(1)Every tenant who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof, in accordance with this Act, by him or by his predecessor in interest, and for which compensation has not already been paid.(2)Whenever a Court makes a decree or order for the ejectment of a tenant from his holding, it shall determine the amount of compensation, if any, due under this section to the tenant for improvement, and shall make any decree or order of ejectment conditional on the payment of that amount to the tenant:Provided that no compensation shall be ordered to be paid when the improvement has been effected in pursuance of a contract in consideration of some substantial advantage to be obtained by the tenant and which has been obtained by him.(3)The Court which executes a decree to the ejectment of a tenant from the holding may, in its discretion, make an order for the payment of-(a)compensation to the tenant for crops sown or planted on the land by him, and not gathered it before his ejectment;(b)compensation to the tenant for the cultivation or preparation of the land for ordinary agricultural purposes, when the tenant has not been able to sow or plant the crops before his ejectment ;(c)compensation to the landlord, in lieu of rent, for the use and occupation of the land, when the landlord allows the tenant to retain possession of the land after the date of the decree, and to use it for the purpose of tending or gathering crops sown or planted before such date ;(d)compensation to the tenant for trees standing on his land which he is entitled to cut and appropriate :Provided that in the case of a tenant other than a permanent tenure holder, no compensation shall be payable under Clause (d) when the tenant is being ejected on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy :Provided also, that in the case of non-occupancy tenant or an under-raiyat, no compensation shall be payable under Clause (d) when such tenant is being ejected for an arrear of rent.

75.

(1)In estimating the amount of compensation due to a tenant for an improvement made by him, the Court shall have regard-(a)to the amount by which the letting value or the produce of the holding, or the value of that produce, is increased by the improvement;(b)to the condition of the improvement and the probable duration of its effect;(c)to the labour and capital required for the making of such an improvement;(d)to any reduction or remission of rent or any advantage given by the landlord to the tenant in consideration of the improvement; and(e)in the case of a reclamation or of the

conversion of unirrigated into irrigated land, to the length of the time during which the tenant has had the benefit of the improvement at an unenhanced rent.(2)The Court may, when awarding compensation, if the landlord and the tenant agree, direct that instead of being paid wholly in money, it shall be paid wholly or jointly in some other ways.

Chapter IX

Miscellaneous Provisions Affecting Landlords and Tenants

76.

Subject to the provisions of Section 77, a division of a tenancy, or a distribution of rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or with that of his agent duly authorised in that behalf:Provided that if there is proved to have been made in any landlord's rent-roll any entry showing that any tenancy has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

77. Civil Courts empowered to effect division or distribution.

- A competent Civil Court may, in a suit brought by a landlord or a tenant for the division of a tenancy or distribution of the rent payable in respect thereof, pass a decree for such division or distribution :Provided that when the suit has been brought by a tenant, the Court-(i)shall not pass such decree when such distribution may jeopardise the security for the rent due, or where such distribution will result in the creation of unreasonably small holdings, unless the landlord agrees to such distribution or division ; and(ii)shall, when it passes a decree for such distribution or division, make an order for the payment of a fee to the landlord amounting to rupees two or twice the amount of rent made payable by the tenant, whichever is greater for each separate account ordered to be opened, or for each separate tenancy created by the division, and the decree shall not take effect until such fee has been paid.

78. Sub-letting by jotedar.

- A jotedar may sub-let the whole or a portion of his holding :Provided that the terms of the sub-lease are not inconsistent with the provisions of this Act:Provided also that the rent payable by the jotedar's tenant shall not in any case be less than the proportionate rent or rate of rent which the jotedar himself pay to landlord.

79.

(1)An occupancy raiyat may sub-let his holding or a portion thereof for a period not exceeding nine years :Provided that such sub-lease shall not be valid as against the landlord unless it is made with his consent or by a registered instrument.(2)A non-occupancy raiyat may sub-let his holding or a

portion thereof for a period not exceeding five years with the consent of the landlord.(3)When a raiyat has, without the consent of the landlord, granted a sub-lease by an instrument registered before the commencement of this Act, such sub-lease shall not be valid for more than nine years after the commencement of this Act in the case of an occupancy raiyat, or for more than five years in the case of a non-occupancy raiyat.(4)Save as provided in this section, no sub-lease granted by any raiyat shall be valid, as against his landlord, nor shall such sub-lease be valid as between the raiyat and his sub-lease.(5)Nothing contained in this section shall empower an occupancy raiyat to eject an under-raiyat referred to in Section 43 except in accordance with the proviso to Section 70.

80. Homesteads.

- When a raiyat or an under-raiyat holds his homestead otherwise than as part of his holding, the incidents of his tenancy of the homestead shall be registered by the provisions of this Act applicable to the land on which the homestead stands.

81. Surrender.

(1)A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding, but he shall not be entitled to surrender a portion or share only of his holding.(2)Notwithstanding such surrender, unless the tenant gives to the landlord notice in writing in the prescribed manner at least three months before the surrender or his intention to surrender, he shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of surrender.(3)When the tenancy is subject to an incumbrance secured by a registered instrument, the surrender of the tenancy shall not be valid unless it is made with the consent of the landlord and the incumbrancer.(4)Save as provided in sub-Section (3), nothing in this section shall affect any arrangement by which a tenant and landlord may agree to the surrender of the whole or any portion of the holding.

82. Abandonment.

(1)If a raiyat voluntarily abandons his residence, if any, in the village, and ceases to cultivate his holding either by himself or by some other person, without arranging for the payment of his rent as it falls due and giving notice of such arrangement to the landlord, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and- let it to another tenant or take it into cultivation himself:Provided that when there is in such abandoned holding a bona fide and valid sub-tenancy, the sub-tenant shall be entitled to continue to hold his land as a sub-tenant under the landlord, as if the tenancy abandoned were still in existence, or under any person to whom the landlord has let the abandoned holding, for the remaining period of his sub-lease:Provided also that on proof that the land is held by sub-tenant at a rent which was not at the time the sub-lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.(2)Before a landlord enters under this section he shall file a notice in the prescribed form in the Deputy Commissioner's office stating that he has treated the holding as abandoned and is about to enter on it accordingly and the Deputy Commissioner shall cause a notice to be published in such manner as may be prescribed.(3)When a

landlord enters, under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land, in the case of an occupancy raiyat, within two years, and in the case of a non-occupancy raiyat, within six months, from the date of the publication of the notice, and thereupon the Civil Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as the Court may seem just.

83.

If-(i)the lands of a tenancy are wholly lost by dilution and the tenant obtains on that account exemption from payment of rent in respect of such tenancy, or(ii)any portion of the lands of a tenancy is lost by dilution and the tenant obtains on that account an abatement of rent in respect of such portion, the tenant shall, unless there is a contract to the contrary made by registered instrument, be deemed to have surrendered his rights to such lands or portion thereof and his tenancy and rights therein shall be extinguished.

84. Rights to trees.

(1)A permanent tenure-holder or a raiyat at fixed rate shall have all dominion over all trees standing or grown on his land, unless there is contract to the contrary.(2)Subject to the provisions of Section 27, an occupancy tenant, shall, as against his landlord, have full dominion over all trees, standing or grown on his land, except sal or sisu.(3)A non-occupancy tenant and an under-raiyat shall not without his landlord's consent, cut down or appropriate any 'valuable tree' standing or grown on his land.Explanation. - A 'valuable tree' means a tree valuable for the timber or fruits which may be specified as such in a notification made in this behalf by the Local Government either generally or for any local area :Provided that no such notification shall be issued under this section unless it is previously published in the area or part thereof in the prescribed manner.(4)Nothing in this section shall-(a)prevent a tenant from clearing his land of scrub- jungle, or from enjoying the fruits of trees standing on his land, or from propagating lac on trees standing on his land taking the produce thereof;(b)prevent an occupancy tenant from cutting sal or sisu, or a non-occupancy tenant or an under-raiyat from cutting a 'valuable tree' standing or grown on his land, which obstructs the cultivation of such land or otherwise renders it unfit for the purpose of the tenancy ; provided that he has, in the case of such tree, given his landlord thirty days' notice in the prescribed manner ;(c)entitle a landlord to consent to a tree being cut or appropriated, which he could not himself cut or appropriated.

85.

(1)The Deputy Commissioner may, on the application in the prescribed manner of a proprietor, permanent tenure-holder or jotedar, and on being satisfied that such person is desirous of acquiring a parcel of land held, whether immediately or mediately, in the interest under him-(i)for some reasonable and sufficient purpose having relation to the good of his estate, tenure or jote, including the use of the land as building ground, or(ii)in the case of a proprietor or permanent tenure- holder, for any charitable, religious or educational purpose or for any purpose of general public utility,

authorise the acquisition thereof by the proprietor, permanent tenure-holder or jotedar of the estate, tenure or jote in which it is comprised, upon such conditions as the Deputy Commissioner may think fit, and shall require every tenant, or other person who holds any valid interest, whether immediate or mediate, in such parcel of land, to sell his interest in such land to the applicant, upon terms, including compensation to those concerned, as may be approved by the Deputy Commissioner.(2)If the applicant tenders to the tenant, or other person having such interest, such sum as the Deputy Commissioner has approved under sub-Section (1) for payment to such tenant or person and the tenant or person refuses to receive the sum, the applicant may deposit the same with the Deputy Commissioner, and thereupon the land shall pass to the applicant free of all incumbrances from the date of such deposit, and the Deputy Commissioner shall, at the request of the applicant, deliver possession of the land to him in the prescribed manner.(3)In giving effect to the provisions of sub-Sections (1) and (2) the Deputy Commissioner shall have regard to the rules prescribed in this behalf.(4)An appeal shall lie to the District Judge against any order passed by the Deputy Commissioner under this section.

86. Common managers.

- (i) When any dispute exists between co-owners of an estate or permanent tenure or of lands held jointly between two or more estates or permanent tenures as to the manager thereof; or(ii)when, owing to the existence of a large number of co-owners in an estate or permanent tenure, or in lands held jointly between two or more estates or permanent tenures, the tenants or landlords are put to inconvenience and harassment in the payment or receipt of rent due, and a common agent has not been appointed for the receipt or payment thereof;the District Judge may, if it appears to him to be just and convenient, on the application of-in case (i)-(a)the Deputy Commissioner, or(b)any one having an interest in the estate or tenure or in any of the estates or tenures,in case (ii)-(a)more than one-fourth of the tenants, or(b)co-owners holding more than half the aggregate interest in the estate or tenure or in any of the estate of tenures,direct notice to be served on all the co-owners calling on them to show cause why they would not appoint a common manager-in case (i), either for the whole of the estate or tenure or tenures, as the case may be, or for those portions of the estate or tenure or tenures, as the case may be, which are effected by the dispute, and in case (ii), for the estate or tenure or estates or tenures in which the tenants or landlords are put to inconvenience or harassment:Provided that a co-owner of an estate, or permanent tenure or a co-owner of lands held jointly between two more estates, or permanent tenures, shall not be entitled to apply under this section unless, he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of this interest are registered under Chapter IV of the Assam Land and Revenue Regulation, 1886.

87. Power of District Judge to make order when no cause shown.

- If the co-owners fail to show cause as aforesaid within one month after service of a notice under Section 86, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

88. Alternative powers of District Judge.

- If a co-owner do not within such period, not being less than one month, after the making of an order under Section 87 as the District Judge may fix in this behalf, or where the order has been served as directed by that section, within a like period after such service appoint a common manager, and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time-(a)direct that the estate or tenure or the estates or tenures, or the portion thereof, be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof, or(b)in any other case, appoint a manager.

89. Local Government may nominate manager for local area.

- Local Government may nominate a person for any local area to manage all estates and permanent tenures within the local area for which it may be necessary to appoint a manager under Clause (b) of Section 88, and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless, in the case of any estate or permanent tenure, the District Judge thinks fit to appoint one of the co-owners themselves as manager.

90. Applicability of Court of Wards Act in certain cases.

- In any case in which the Court of Wards undertakes under Section 88 the management of an estate or permanent tenure, so much of the provisions of the Bengal Court of Wards Act, 1879, as relates to the management of immovable property, shall apply to the management.

91. Provisions applicable to manager.

(1)A manager appointed under Section 88, may if the District Judge thinks fit, be remunerated at a fixed salary or percentage of the money collected by him as a manager, or partly in one way and partly in the other, as the District Judge may, from time to time, direct.(2)He shall give such security for the proper discharge of his duties as the District Judge may direct.(3)He shall, subject to the control of the District Judge, have for the purpose of management, the same powers as the co-owners jointly might, but for his appointment, have exercised, and the co-owners shall not exercise any such power.(4)He shall deal with and distribute the profits in accordance with the orders of the District Judge.(5)He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts, at such intervals and in such manner as the District Judge may direct.(6)He shall pass his accounts at such periods and in such form as the District Judge may direct.(7)He may make an application which the proprietors could make under Section 97 or Section 121 or Section 170.(8)He shall be removable by the order of the District Judge but not otherwise.

92. Power to restore management.

- When an estate or permanent tenure, or any portion of it, has been placed under the management of the Court of Wards, or a manager has been appointed for the same under Section 88 the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or to the tenant of such estate or tenure.

93. Certain provisions to apply in case of jote or ijara.

- The provisions of Sections 86 to 92 shall, so far as may be, apply in the case of a jote or an ijara granted by a proprietor or permanent tenure holder or jotedar for the purpose of collecting rents and in the case of lands held jointly between two or more jotes or ijarars.

94. High Court may define managers' duty by rule.

- The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

95. Illegal cesses prohibited.

(1) All impositions upon a tenant for the use and occupation of the lands of his tenancy, in addition to the actual rent, which are not specially authorised by the Act, or by any other Act or Regulation of the time being in force, shall be illegal and all stipulations and reservations for the payment of sum shall be void. (2) Where any such illegal imposition has been made by a landlord or his agent, the Deputy Commissioner may, in a proceeding under this section, on the complaint of a tenant within six months of such extraction, after giving such landlord or agent a reasonable opportunity to show cause and after making such inquiry as he may deem necessary, order the landlord or his agent, as the case may be, to pay to the tenant a sum equal to the sum so extracted, and also impose upon him a penalty not exceeding fifty rupees and may, in his discretion, award to the tenant as compensation such portion of the penalty as he thinks fit: Provided that when the Deputy Commissioner is satisfied that the complaint was false, he may, in his discretion, direct the tenant to pay to the landlord such compensation not exceeding fifty rupees, as he may think fit. (3) An order made by the Deputy Commissioner under sub-Section (2) directing the payment of a sum equal to that extracted from a tenant, or imposing any penalty or awarding any compensation shall, for the purpose of the appeal, be treated as a decree, passed under the provisions of the Code of Civil Procedure, 1908, by the lowest Civil Court competent to pass a decree for the amount.

Chapter X

Part I

Measurement

96. Measurements by landlords.

(1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any other person authorised by him in this behalf, enter on and measure all land comprised in his estate, permanent tenure or jote. (2) Any landlord shall, not, without the consent of the tenant or the written permission of the Deputy Commissioner, be entitled to measure land held by a tenant more than once in ten years, except in the following cases, namely : (a) where the area of the tenancy is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on area, (b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ; (c) where the landlord is a purchaser, otherwise than by voluntary transfer, and not more than two years have elapsed since the date of his entry under the purchase ; (d) where the land held by the tenant is contiguous to his landlord's khas lands and the landlord has reason to believe that the tenant has encroached upon such land, and one year has elapsed from the date of the last measurement. (3) The ten years shall be computed from the date of the last measurement whether made before or after the commencement of this Act. (4) The measurement shall be by such standard as may be prescribed. (5) Presumption in certain circumstances. - Before proceeding to make the measurement, then landlord may serve a notice in the prescribed manner on the tenant to attend and point out the boundaries of the land, and, if the tenant fails to comply, a map or other record of the boundaries and measurement of the last, prepared by the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is proved.

Part II

Record-of-Rights

97. Power to order survey and record-of-rights.

(1) The Local Government may make an order directing that a survey be made and a record-of-rights prepared by a Revenue Officer in respect of all lands in any local area, estate, permanent tenure or jote or part thereof, whether such lands have been let out or occupied for agricultural purposes or not: Provided that, when any person having an interest in such lands make, an application for an order under this section, he shall deposit or give security for such amount for the payment of expenses, as the Local Government may direct: Provided also that the provisions of Sections 101, 102, 112 and 116 shall not apply in respect of land other than land as defined in this Act. (2) A notification in the official Gazette of an order under sub-section (1) shall be conclusive evidence that the orders has been duly made. (3) The survey shall be made and the record-of-rights prepared in the prescribed manner.

98.

(1) When an order is made under Section 97, the particulars to be recorded shall be specified in the order and may include, either without or in addition to other particulars, some or all of the following, namely: (a) the name of each person in occupation of the land whether as proprietor, permanent tenure holder, jotedar, raiyat or under-raiyat and of any other person has, under this Act or otherwise an interest in the land ; (b) the class or classes to which each tenant belongs, that is say, whether he is- (i) a permanent tenure holder, and if so, whether his rent is liable to enhancement or not, (ii) a jotedar and, if so, whether he has acquired a right of occupancy in this holding, (iii) a raiyat and, if so, whether he holds at fixed rates or not, whether he is a settled raiyat or not and whether he is an occupancy raiyat or a non-occupancy raiyat, (iv) an under-raiyat, and, if so, whether he is of the kind described in Section 43, or (v) a tenant within the meaning of sub-Section (1) of Section 17 ; the character of such occupation or such interest ; (c) if the person in occupation is not a tenant within the meaning of this Act, or if the person has an interest in the land which is not comprised within any of the classes mentioned in Clause (b)- (d) the situation and quantity and one or more prescribed boundaries of the land held by each tenant or other occupant ; (e) the rent, if any, payable at the time the record of rights is being prepared ; (f) the amount payable, if any, if the time the record of rights is being prepared, in respect of any rights of pasturage, forest rights, rights over fisheries and the like which the tenant enjoys by reason of his holding the tenancy, the conditions and incidents appertaining to such rights, and, if the amount is a gradually increasing amount, the time at which, and the steps by which, it increases ; (g) the mode in which the rent referred to in Clause (c) or the mode referred to in clause (f) has been fixed, whether by contract, by order of a Court, or otherwise ; (h) if the rent is gradually increasing rent, the time at which, and the steps by which, it increases ; (i) the rights and obligations of each tenant and landlord in respect of- (i) the use by tenant of water for agricultural purposes, whether obtained from a river, bill, tank or well, or any other source of supply, and (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land ; (j) the special conditions and incidents, if any, of the tenancy ; (k) any right of way or other easement over or appurtenant to the land for which the record of rights is being prepared ; (l) if the land is claimed rent free whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land and without payment of rent, and, if so entitled, under what authority, and subject to what conditions, if any. (2) Where lands have not been let out of occupied for purposes connected with agriculture, it shall be sufficient to record that fact, together with such particulars as may be prescribed.

99. Preliminary publication of amendment and final publication of record.

(1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner, and for the prescribed period, and shall receive and consider any objections which may be made during the period of publication to any entry therein, or any omission therefrom. (2) When such objections have been considered and disposed of in the prescribed manner, the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter. (3) Separator draft of final records may be published under

sub-Section (1) or sub-Section (2) for different local areas, estates, permanent tenures or jotes or parts thereof.

100.

(1)When a record-of-rights has been finally published under Section 99, the Revenue Officer shall, within such time as the Commissioner may by general or special order direct, make a certificate stating the fact of such final publication and the date thereof, and shall date and inscribe the same with his name and official title.(2)The certificate of final publication or in the absence of such certificate, a certificate signed by the Deputy Commissioner, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication, and the date thereof.(3)The Local Government may, by notification, declare, with regard to any specified area, that a record of rights has been finally published for every village included in such area, and such notification shall be conclusive proof of such publication.(4)In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.(5)Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

101. Settlement of rent.

(1)If, within four months from the date of the certificate of the final publication of the record-of-rights under Section 99-(i)the landlord,(ii)the tenant, or(iii)the occupant, in case the occupant has been recorded in pursuance of Clause (1) of Section 98, as entitled to hold the land but not without payment of rent, applies for a settlement of rent, the Revenue Officer shall, on payment of the prescribed fee, settle a fair and equitable rent in respect of the land held by such tenant or occupant.(2)In settling rents under this section, the Revenue Officer shall have regard to the prescribed rules.

102.

Where, in any proceeding for the settlement of rents under Section 101, of any of the following issues arises, namely :(a)whether the land is, or not liable to the payment of rent,(b)whether the land, although entered in the record-of- rights as being held rent-free is liable to the payment of rent,(c)whether the relation of landlord and tenant exists,(d)whether the land has been wrongly recorded as part of a particular' estate or tenancy, or wrongly omitted from the land of an estate or tenancy ;(e)whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;(f)whether the special conditions and incidents of the tenancy, or any right-of-way or other easement over or appurtenant to the land, have not or has not been recorded or have or has been wrongly recorded ;(g)whether the rent recorded as payable at the final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at the time,the Revenue Officer shall, on payment of the prescribed fee, try and decide such issue, and settle the rent under Section 101 accordingly :Provided that the Revenue Officer shall not try any

issue under this section which has been, or is already directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided or is already being tried, by a Revenue Officer in a suit instituted before him under Section 103.

103.

(1) In proceedings under this Chapter, a suit may be instituted before a Revenue Officer, at any time within four months from the date of certificate of the final publication of the record-of-rights under sub-Section (2) of Section 99, for the decision of any dispute regarding any entry, which a Revenue Officer has made in, or any omission which he made from the record, whether such dispute be—(a) between landlord and tenant, or (b) between landlords of the same or of neighbouring estates, or (c) between tenant and tenant, or (d) as to whether the relationship of landlord and tenant exists, or (e) as to whether land held rent-free is properly so held, or (f) as to any other matter, and the Revenue Officer shall hear and decide the suit: Provided that the Revenue Officer may, subject to such rules as may be prescribed, transfer any particular case or class of cases to a competent Civil Court for trial: Provided also that, in any suit under this section, the Revenue Officer shall not try any issue which has been, or is already, directly or substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of the rents under this Chapter, where such issue has been tried and decided, or is already being tried, by a Revenue Officer under Section 102. (2) Where the Revenue Officer, before whom a suit is instituted under sub-Section (1), is the officer who at an earlier stage has made or confirmed the entry in or omission from the record in respect of which the dispute has arisen, such Revenue Officer shall transfer the suit to another Revenue Officer or to a competent Civil Court for trial.

104. Limitation.

- Where the land of a tenancy in respect of which an application is made under Section 101, or the lands to which a dispute referred to in Section 103 relates, are situated in local areas for which separate records are framed, the period of limitation specified in sub-Section (1) of Section 101 or sub-Section (1) of Section 103, shall begin to run from the date of certificate of final publication of the last record which contains entries relating to such tenancy or lands as the case may be.

105.

In all proceedings under Section 101 or Section 102 and suits under Section 103, the Revenue Officer shall, subject to such rules as may be prescribed, adopt the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits, and his decision in every such proceeding or suit shall have the force and effect of a decree of a Civil Court in a suit between the parties and shall, subject to the provisions of Sections 106, 107 and 109 be final.

106. Revision of certain orders by Revenue Officer.

- Any Revenue Officer specially empowered by the Local Government in this behalf may, on application or of his own motion, with two years from making any order or decision under Section 102, Section 103 or Section 111, revise the same whether it was made by himself or by any other Revenue Officer but not so as to affect any order passed or decree made under Section 109 :Provided that no such order or decision shall be so revised if an appeal from it has been filed under Section 109, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

107. Correction of record by Revenue Officer.

- Any Revenue Officer specially empowered by a Local Government in this behalf may, on application or on his own motion, within two years from the date of the certificate of final publication of the record- of-rights under sub-Section (2) of Section 99, correct any entry in such record-of-rights which, he is satisfied, has been made owing to a bona fide mistake:Provided that no such correction shall be made if an appeal affecting such entry has been filed under Section 109 or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

108. Bar to jurisdiction of Civil Court.

- Subject to the provisions of Section 109, a Civil Court shall not entertain any application or suit concerning any matter which is, or has already been the subject of an application made, suit instituted, proceedings taken or correction made under Section 101 (both inclusive) :Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which-(a)was the subject-matter of an application under Section 101, or Section 102, or of a suit under Section 103, if such application or suit has been dismissed for default or withdrawn with or without liberty to make a fresh application or file a fresh suit as the case may be, or(b)has not been finally adjudicated upon in any such proceeding or suit.

109. Appeal from order or decision of Revenue Officer.

(1)An appeal shall lie to the District judge, or a Subordinate judge specially empowered by the Local Government in this behalf, from the order or decision of a Revenue Officer under Sections 101 to 107 and the provisions of the Code of Civil Procedure, 1908, relating to appeals shall, as far as may be, apply to all such appeals.(2)Subject to the provisions of Sections 100 to 103, Section 107, Section 108 and Section 144 of, and Order XLII in Schedule 1 to the Code of Civil Procedure, 1908, an appeal shall lie to the High Court against any decision of the lower Appellate Court:Provided that if, in a second appeal, the High Court alters the decision of the lower Appellate Court in respect of any of the particulars with reference to which the rent of any tenancy has been settled, the Court may settle a new rent for such tenancy, but in so doing shall be guided by the rents of the other tenancies of the same class comprised in the same record as ascertained under Section 98 or settled under Section

101, 106 or 107.(3)The Local Government may, on application or if its own motion, in proceedings undertaken within one year from the date of the order of a Revenue Officer settling a fair rent under Section 101, direct the revision of the rent to be settled :Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

110. Power of Revenue Officer to give effect to agreement or compromise.

- In framing a record-of-rights and in deciding disputes and suits and in all other proceedings under this Chapter, the Revenue Officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant and may presume that an agreement or compromise made or entered into by a landlord and his tenant is lawful:Provided that when the terms of the agreement or compromise are such as might unfairly and in equitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter, and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

111. Entry of decisions and orders in record.

- A note, under the signature of a Revenue Officer of all rents settled under Section 101, of all decisions of issues under Section 102, or disputes under Section 105 and of all orders regarding the same on revision under Section 106, or as corrected under Section 107, or on appeal under Section 109, shall be made in, or appended to the record-of-rights finally published under sub-Section (2) of Section 99 and such note shall be considered as part of the record.

112. Date from which settlement of rent to take effect.

- Where a rent is settled by a Revenue Officer under this Chapter, it shall have effect from the beginning of the agricultural year next after the decision fixing the rent or from such later date as the Revenue Officer may fix :Provided that, if the existing rent has been fixed by contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term or from such other date after the expiration of that term as may be fixed by the Revenue Officer.

113.

When an order has been made under Section 97 directing the preparation of record-of-rights and is subsisting, a Civil Court shall not, until four months after the final publication of the record-of-rights, entertain any application made under Section 124, or any suit or application for the alteration of the rent or the determination of the status of any tenant the area to which the period of record-of-rights applies.

114. Limitation of Civil Court's jurisdiction in certain matters.

- Except as provided in this Act, no suit shall be brought to any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing, or alteration of such a record or of any part of it.

115.

(1)When a record-of-rights in respect of any land has been prepared and finally published under this Chapter, no application or suit affecting any such land or any tenant thereof, shall, within four months' time from the date of the certificate or final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely : (a) whether the land is or is not liable to the payment of rent ; (b) whether the relation of landlord and tenant exists ; (c) whether the land is part of a particular estate or tenancy ; (d) whether there is any special condition or incident of the tenancy, or (e) whether any right-of-way or other easement exist over or is appurtenant to the land. (2) If, before the final publication of the record-of-rights in such area a suit involving the decision of any issues mentioned in sub-Section (1) has been instituted in a Civil Court, the Revenue Officer shall not in any proceeding under Section 102, or in a suit under Section 103, try such issues unless in such Civil Court such issue is not in fact tried or decided. (3) Where, in the course of settling fair rents under Section 101, the Revenue Officer finds that by reason of a suit involving the decision of any of the issues mentioned in sub-Section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue Officer under Section 103, he is unable to settle a fair rent until such issue is decided, the Revenue Officer shall stay the proceeding for the settlement of a fair rent pending a final decision on the issue. And, after the issue has been finally decided he shall settle a fair rent as if the record-of-rights had been framed in accordance with such decision. (4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-Section (1), the period of four months therein mentioned shall be excluded in computing the period of limitation provided for such application or suit.

116. Period for which rents settled are to remain unaltered.

- For the purpose of determining the admissibility of any future enhancement or reduction of rent, the rent of a tenancy settled under this Chapter shall, from the date on which it takes effect, be treated as if it were an enhancement or reduction secured by the landlord under the provisions of this Act.

117. Recovery of expenses.

(1) When the preparation of a record of-rights has been directed or undertaken under this Chapter, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, permanent tenure, jote or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of

this Chapter) or such part of these expense as the Local Government may direct, shall be defrayed by the landlords, tenants and other occupants of land in that local area, estate, permanent or jote or part, in such proportions, and in such instalments, if any, as the Local Government having regard to all the circumstances may determine.(2)The cost of preparing copies of survey maps and extracts from record-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.(3)The estimated amount of expenses likely is be incurred for the maintenance, repair, or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses has been already incurred.(4)The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land revenue due in respect of the said local area, estate, permanent tenure, or jote or part.

118. No presumption as to fixity of rent after record-of-rights.

- When the particulars mentioned in Clause (b) of Section 98 have recorded under this Chapter in respect of any tenancy, the presumption under Section 13 shall not thereafter apply to that tenancy.

119.

(1)In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue Officer shall, so far as possible and subject to the provisions of Part B of Chapter III of the Assam Land Revenue Regulation, 1886, preserve as the unit of survey and record, the areas contained in the exterior boundaries of village maps of the revenue survey or other survey any, adoption under Clause (21) of Section 4 as defining villages' and where village maps prepared at any such revenue or other survey exist, he shall not, without the sanction of the Commissioner, adopt any other area as such limit.(2)In any area where villages have not been surveyed and recorded in a revenue survey made by or under the authority of Government a Revenue Officer shall, in fixing his unit of survey and record, have regard to any village unit adopted by the landlord as a basis of his survey and record.

Part III

Record of Proprietor's Private Lands

120. Survey and record of proprietor's private land.

- The Local Government may make an order directing a Revenue Officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands.

121. Survey and record of proprietor's private land.

- In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land on his depositing the required amount for expenses, a Revenue Officer may, subject to and in accordance with such rules as may be prescribed in this behalf, ascertain and record whether the land is or is not a proprietor's private land.

122. Procedure.

- When a Revenue Officer proceeds under either Section 120 or 121, the provisions of Sections 99, 100, 103, 105, 106, 107, 108, 109 and 117 shall apply.

123. What land to be record to be recorded as proprietor's private land.

(1)The Revenue Officer shall record as proprietor's private land-(a)land which is proved to have been cultivated as nij- jote or khamar by the proprietor himself with his own task or by his own servants or with the aid of labourers, for twelve years immediately preceding the passing of this Act; and(b)cultivated land, which though not cultivated in the manner mentioned in Clause (a) for twelve continuous years immediately preceding the passing of this Act, is proved to have been recognised by local custom or usage as proprietor's nij-jote or khamar on the 1st day of July 1916 ; and(c)land commonly known as khanabari, that is to say, land, whether cultivated or not, which is proved to have been recognised as included within an area reserved by the proprietor or permanent tenure-holder for the accommodation of his family and relations or of his personal and estate staff, for the which no rent is realised.(2)The word "proprietor" in Sections 120 and 121 in Clause (a) of sub-Section (1), and in sub-Section (4) of this section includes a permanent tenure-holder and a jotedar and in Clauses (b) and (c) of sub-Section (1) it includes a permanent tenure-holder.(3)Any nij-jote or Khamar land held by a jotedar shall, notwithstanding such record, ceased to be nij-jote or khamar if at any time after the passing of the Act it is held by a tenant or tenants under such jotedar for twelve years continuously.(4)if any question arises in any Court as to whether any land is not a proprietor's private land, or as to whether in the case of jotedar any such land has ceased to be nij-jote or khamar, the Court shall have regard to the principles laid down in this section for the guidance of Revenue Officer.

Part IV

Application to Determine Incidents of Tenancy in the Civil Court

124.

(1)Subject to the provisions of Section 113, the Court having jurisdiction to determine a suit for possession of land may, on the application either of the landlord or the tenant of the land, determine all or any of the following matters, namely :(a)the situation, quantity and boundaries of the land ;(b)the names and description of the tenant thereof (if any);(c)the class or classes to which he

belongs that is to say, whether he is a permanent tenure-holder, jotedar a raiyat holding at fixed rates, occupancy jotedar, non-occupancy raiyat, ordinary under-raiyat, or under-raiyat of the kind mentioned in sub- Section (1) of Section 17, and, if he is a permanent tenure- holder whether his rent is liable to enhancement during the continuance of his tenure ;(d)the rent payable by him at the time of the application ; and(e)any other incident of the tenancy.(2)If in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in Schedule to the Code of Civil Procedure, 1908 by such Revenue Officer as the Local Government may authorise in that behalf by the rule made under Rule 9 of Order XXVI in Schedule I to the said Code.(3)The order, on any application under this section, shall have the effect of, and be subject to the like appeal, as a decree.

Chapter XI

Part I

Judicial Procedure

125.

(1)The Local Government may from time to time with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portion of Code of Civil Procedure, 1908 shall not apply to suits or proceedings between landlords and tenants as such, or to any specified classes of such suits or proceedings, or shall apply to them subject to modification specified in the rules.(2)Subject to any rules so made, subject also to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits or proceedings.

126. Jurisdiction to suits and proceedings under the Act.

(1)Notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 1908 no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local limits of whose jurisdiction the lands of the tenancy are wholly or partly situated.(2)When, under this Act, a civil court is authorised to make an order on the application of a landlord or a tenant, the application shall be made to the Court within the local limits of whose jurisdiction the lands are wholly or partly situated.

127. Special register of suits under Act to be kept.

- The particulars mentioned in Rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908, shall in the case of such suits instead of being entered in the register of civil suits provided by Rule 2 of Order IV in Schedule 1 to the said Code, be entered in a special register to be kept by each Civil Court, to such form as may be prescribed in this behalf.

128.

Subject to the provisions of Rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908, when a landlord has instituted a suit against a raiyat or an under raiyat for the recovery of any rent of his holding the landlord shall not institute another suit against him for the recovery of any rent of that holding until after six months from the date of the institution of the previous suit: Provided that when a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-Section (4) of Section 139, the date of the institution of the subsequent suit shall, for the purpose of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

129. Complaint in rent suits to contain particulars.

(1) The complaint in a suit for recovery of rent shall contain, in addition to the particulars specified in Rules 1, 2, 4, 5 and 6 and sub-Rule (2) of Rule 9 of Order VII in Schedule I to the Code of Civil Procedure, 1908, a statement of the situation, designation, extent and boundaries of the land held by the tenant, or, when the plaintiff is unable to give the extent or boundaries in lieu thereof, a description sufficient for its identification and it shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land and statement of the value of the land. (2) When the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the complaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights and of the area and rental of the tenancy according to such record, unless the court is satisfied for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statements: Provided that, in all cases in which the Court admits a complaint which does not contain such statement the Court shall, and in any other case in which it seems fit, the Court may, require the Deputy Commissioner to supply, without payment of fee, a verified or certified copy of, or extract from the record-of-rights relating to the tenancy: Provided also, that when the complaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as provided in sub-Section (1) shall be required. (3) Where an alteration has been made in the area of the tenancy, since the record-of-rights was prepared and finally published, the plaintiff shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed.

130.

Every naib-tahsildar or gumasta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall as such, for the purposes of every suit or application mentioned in Section 126, be deemed to be the recognised agent of the landlord within the meaning of the Code of Civil Procedure, 1908, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made, and every such naib-tahsildar or gumasta shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, be entitled as such to verify the pleadings on the behalf of the landlord.

131.

(1)The summons in a suit for recovery of rent shall for for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.(2)The summons shall contain a concise statement of the facts alleged in the plaint and shall be in the prescribed form, and, notwithstanding anything contained in Rule 2 of Order V in Schedule 1 to the Code of Civil Procedure, 1908, it shall not be necessary to serve on the defendant any copy of the plaint, unless the Court, for reasons to be recorded in writing otherwise direct.(3)The service of summons may, if the Local Government by rule, either generally or specially of any local area so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898.(4)When a summons is so forwarded in a letter, and it is found that the letter was duly posted and registered, the court may presume that the summons has been duly served.(5)Notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder, the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due enquiry as to the identity of the person on whom, or the house or property where the summons is to be served, and the summons shall be served in the presence of at least two persons, and the serving officer shall, whenever possible, require the signature of those persons to be endorsed on the original summons, and, when he is unable to serve the summons, he shall whenever possible, require the signature of two persons of the locality to be so endorsed.(6)Notwithstanding anything contained in sub-Rule (3) of Rule 4 of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he shall be treated as the guardian of such defendant in respect of such suit unless he appears and objects within such time be being less than fourteen clear days after the service of the notice. Such natural guardian shall, unless the Court otherwise directs be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit.

132. Written statement optional.

- A defendant in a suit for the recovery of rent shall not be required to file a written statement, unless the Court, for reasons to be recorded in writing, otherwise directs.

133. Evidence in suits under Act.

(a)The rules for the recording of evidence of witnesses contained in Rule 13 of Order XVUI in Schedule I to the Code of Civil Procedure, 1908, shall apply to a suit for the recovery of rent, whether an appeal is allowed or not.(b)When any account books, rent-rolls, collection papers, measurement papers, maps or extracts from record-of-rights have been produced by a party before any Court, and have been admitted in evidence in a suit pending therein, copies of or extracts from such documents may be certified by a duly authorised officer of such Court to be true copies and copies or extracts may, with the permission of the court for substituted on the record for the originals which may then be returned to the party ; and thereafter copies and extracts so certified may be admitted in evidence

in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals.

134.

A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him : Provided that—(i) the claim in respect of such tenancy shall be stated separately in the plaint; (ii) separate decrees shall be made in the respect of each tenancy ; (iii) the costs of the suit shall be apportioned by the Court in respect of such tenancy, and (iv) separate court fee shall be levied on the plaint in respect of the claim on account of each tenancy.

135. Decree for rent valid against entire tenancy when defendants represent entire body of tenants.

(1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants and their successors in interest shall be liable to the landlord jointly and severally for that rent payable to such landlord on account of the tenancy whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessor in interest and the right, title and interest of such tenants, as are made parties defendant to the suit, shall pass by a sale in execution of a decree obtained against him. (2) Notwithstanding anything contained elsewhere in this Act or in any other law a decree for arrears of rent due in respect of a tenancy by a sole landlord, or by a co-sharer landlord in accordance with the provisions of Section 139, and a sale in execution of such decree, shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not, and against the holding in the manner provided in Part II of this Chapter, if the defendants to the suit are found by the Court; which decides the issue to have represented the entire body of co-sharer tenants in the tenancy for the rent of which the suit was brought. (3) The entire body of co-sharer tenants in the tenancy shall not, for the purposes of sub-Section (2) be deemed to be represented by the defendants to the suit unless such defendants include—(i) all the co-sharer tenants in the tenancy who are actually residing in the village or villages in which the lands of the tenancy are wholly or partly situated at the time of the institution of the suit, (ii) such of the co-sharer tenants in the tenancy as may have, at any time during the three years provision to that for the rent of which the suit is brought, made any payment of rent due in respect of the tenancy, and (iii) all other co-sharer tenants in the tenancy whose names are entered in the landlord's rent-roll.

136. Right of co-tenant to join as defendants.

(1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have joined as a co-tenant defendant in a suit for the arrears of rent due in respect of a tenancy may, at any time before the hearing of the suit has been commenced, apply to be made a party defendant in the suit and the Court shall consider his claim and, if it finds that he should have been so joined, shall join him as a partly defendant. (2) The provisions of sub-Sections (2) and (3) of

Section 135 shall, so far as may be, apply to the case of a co-tenant joined as a defendant under sub-Section (1) of this section.

137. Regard to be had to entries in record-of-rights.

- In all areas for which a record-of-rights has been prepared and finally published under sub-Section (2) of Section 99, a Civil Court shall in all suits between landlord and tenants as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and when a Civil Court passes at variance with such entries, it shall record its reasons for so doing.

138. Agreement or compromise not to be confirmed-When illegal.

(1)Notwithstanding anything contained in Rule 3 of Order XXIII in the Schedule I to the Code of Civil Procedure, 1908, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not order an agreement or compromise to be recorded, and shall not pass a decree in accordance with such agreement or compromise, unless it is satisfied, for reasons to be recorded in the writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act.(2)When the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise unless and until it is satisfied by evidence that the statements made by parties thereto are correct.Illustration.-A, a proprietor agrees the B, this tenant, shall be recorded as an occupancy raiyat. This affects the rights of the tenant of it. The Court must under this sub-section enquire whether B is a permanent tenure-holder, jotedar or a raiyat as defined in Section 6. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement but shall not do so if it finds that B is a permanent tenure-holder or jotedar.(3)A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final, so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

139. Procedure in suit for rent by co-sharer landlords.

(1)A co-sharer landlords may institute a suit to recover the rent due to him in respect of his share in a tenancy, by making all the remaining co-sharer landlords parties defendants to the suit, and claiming that relief, be granted to him in respect of his share of the rent against the entire tenancy.(2)On the plaint being admitted, the Court shall, by summons in the prescribed form, call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiff, for their share of the rent due to them in respect of the tenancy up to the date of the institution of the suit.(3)On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to join in this suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.(4)If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (2), instituted a separate suit to recover his share of the

tenancy, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of suit under sub-section (1):(5)The summons on all the defendants to the suit, other than co-sharer landlords, shall thereafter be served, and the Court shall thereupon proceed to the trial of the suit.(6)A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.(7)When a suit has been instituted under the provisions of sub-Section (1), no co-sharer landlord who has been made a partly defendant thereto and duly served with summons issued under sub-Section, (2) shall entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenancy for the period in suit or for any period previous thereto.(8)When a suit, instituted under the provisions of sub-Section (1), has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided this section shall apply to such fresh suit when instituted and to the parties thereto.(9)In the event of tenancy not being sold as a result of a suit instituted, under sub-Section (1) nothing contained in Rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude co-sharer landlord who has been joined as plaintiff under sub-Section (3) or is deemed to be a co-plaintiff under sub-Section (4) from receiving by suit, rent and interest due to him and damages, if awarded, in respect of the tenancy for the period subsequent to the date of the institution of the suit under this section.(10)If the rent claimed in a plaint as amended under sub-Section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of sub-Section (9) or of clause (c) of sub-Section (1) of Section 160.

140. Payment into court of money admitted to be due to third persons.

(1)When a defendant admits that money is due from him on account of rent, but pleads that it is due, not to the plaintiff but to a third person, the Court shall refuse to take cognizance of the plea unless the defendants pays into Court the amount so admitted to be due.(2)When such payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.(3)Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff, and therein obtains an order restraining payment out of the money it shall be paid out to the plaintiff on his application.(4)Nothing in this section shall affect that right of any person to recover from the plaintiff money paid to him under sub-Section (3).

141. Payment into court of money admitted to be due to landlord.

- When a defendant admits that money is due from him to the plaintiff on account of rent but pleads that the amount claimed is in excess of the amount due, the Court shall, whatever may be the nature of other matter in dispute between the parties, refuse to take cognizance of the plea unless the defendant pays into the Court the amount so admitted to be due.

142. Payment of portion of admitted amount.

- When a defendant is liable to pay money into Court Section 140 or Section 141, if the Court thinks there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into court such reasonable portion of the money as the Court directs.

143. Effect of receipt of such payment by Court.

- When a defendant pays money into Court under Section 140 or Section 141 the Court shall give the defendant a receipt, and the receipt shall operate as an acquittance in the same manner and to the same extent, as if it had been given by the plaintiff or the third person as the case may be.

144.

Subject to the provisions of Section 153, the Court may, when passing a decree or arrears of rent, order, on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment or for arrears.

145. No copy of decree or fresh vakalatnama required.

(1)Notwithstanding anything contained in sub-Rule, (3) of Rule 11 of Order XXI in Schedule 1 to the Code of Civil Procedure, 1908 the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh vakalatanama for the purpose of executing the decree.(2)An application for the execution of a decree for arrears of rent obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him, notwithstanding anything contained in Rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908.

146. Bar of certain provisions of Civil Procedure Code.

- Sections 68 to 72 of the Code of Civil Procedure 1908, and Rules 1 to 13 of Order XI, Rule 83 of Order XXI and Rule 2 of Order XLVIII in Schedule I to the said Code and Schedule III to the said Code, shall not apply to any suit for recovery of rent.

147.

An appeal shall not lie from any decree or order passed, whether in the first instance, or on appeal, in any suit instituted by a landlord for the recovery of rent, together with interest under Section 56 or damages under Section 57, where-(a)the decree or order is passed by a District Judge, or Additional Judge or Subordinate Judge, and the total amount claimed in the suit does not exceed on hundred rupees ;(b)the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the total amount claimed in the suit does not exceed fifty rupees, unless in either case the decree or order has decided

a question relating to the title to land, or to some interest in land, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant, including a question as to relating to the suspension or abatement of rent or a question as to relationship of landlord and tenant when such question has been raised and decided :Provided that the District Judge may call for the record of any case in which a judicial officer aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested or has in him by law, or failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit. Explanation.-A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent, is not a question relating to title to land or to some interest in land.

148. Deposit on application to set aside ex-parte decree.

- Every application for an order under Rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, to set aside a decree passed ex parte for a review of judgement under Section 114 and Rule 1 of Order XLVII in Schedule I to the said Code, in a suit between landlord and tenant as such shall contain a statement of the injury sustained by the applicant by reason of the decree or judgement; and no such application shall be admitted-(a)unless the applicant has, at or before the time when the application is admitted, deposited in the Court, to which the application is presented, the amount, if any, which he admits to be due from to the decree holder, or such amount as the Court may, for reasons to be recorded in writing, decree ; or(b)unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded in writing, that no such deposit is necessary.

Part II

Sales for Arrears Under Decree

149. Passing of tenancy sold in execution of decree or certificate.

(1)When a tenancy is sold in execution of-(a)a decree for arrears of rent due in respect thereof, or(b)a decree for damages under Section 175, or(c)a certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913,the tenancy shall, subject to the provisions of Section 176, pass to the purchaser, if such a decree was obtained by-(i)a sole landlord, or(ii)the entire body of landlords, or(iii)one or more co-sharer landlords who has, or have, sued for the rent due in respect of a tenancy in manner provided in Section 139,or if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords.(2)When one or more co-sharer landlords, having obtained a decree in a suit framed under Section 139, applies or apply for the execution of the decree by the sale of the lands of the tenancy, the Court shall, before proceeding to sell those lands, give notice of the application for execution to the other co-sharers.

150. General power of purchaser to avoid incumbrance.

- When a tenancy is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to any subordinate interests defined in this Chapter as 'protected interests', but with power to annul any interests defined in this Chapter as 'incumbrances': Provided as follows: (a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf; (b) the power to annul shall be exercisable only in manner by this Chapter directed.

151. Protected interests.

(1) The following shall be deemed to be protected interests within the meaning of this Chapter: (a) any permanent under-tenure existing from the time of 'the Permanent Settlement'; (b) the interest raiyat at fixed rates holding from the time of 'the Permanent Settlement'; (c) any lease in respect of land whereon, in accordance with the purpose of the lease granted by the tenant whose interest is being sole, permanent dwelling house, manufactories or other permanent buildings have been erected, or permanent gardens or plantations, tanks or canals, public places of worship, or public burning or burial grounds have been made; provided that such tenant was under the terms of the engagement with his landlord entitled to grant such leave; (d) any right of occupancy; (e) the right of a non-occupancy tenant to hold for five years at a rent enhanced by a registered agreement under Section 39 or settled by a Revenue Officer under Part II of Chapter X; (f) any right conferred on an occupancy tenant to hold at a rent which may fair and reasonable at the time the right was conferred; and (g) any right of interest, consistent with the provisions of this Act, which the landlord, at whose instance the tenancy is sold, or his predecessor in title, his expressly and in writing, given the tenant for the time being permission to create. (2) In the case of a raiyat at fixed rates having a right of occupancy in the lands of a holding not existing from the time of 'the Permanent Settlement'; the right to continue to hold at such rates shall not be deemed to be a protected interest under sub-section (1), but such shall continue to hold the lands on payment of such rent as would be payable for land of a similar description with similar advantages in the same village, or at such other rate as may be deemed fair and equitable by the Court.

152. Meaning of "incumbrance" and "registered and notified incumbrance".

- For the purposes of this Chapter- (a) the term "incumbrance", used with reference to tenancy, means any lien, sub-tenancy, easement, or other right or interest created by the tenant on this tenancy, or in limitation of his own interest therein, and not being a protected interest as defined in Section 151; (b) the term "registered and notified incumbrance" used with reference to a tenancy sold or liable to sale in execution of an arrear of rent due in respect thereof means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided; (c) the terms "arrear" and "arrear of rent" in this section shall be deemed to include interest decreed under Section 56 or damages awarded in lieu of interest under Section 57.

153. Application for sale of tenancy.

- When a decree has been passed for an arrear of rent due in respect of a tenancy, and the decree-holder applies under sub-Rule (2) of Rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, for the attachment and sale of the tenancy in execution of the decree he shall produce a statement showing the pargana, estate and village in which the land is situated, the yearly rent payable for the same, and the total amount recoverable under the decree.

154. Combined order of attachment and proclamation of sale to issue.

(1)Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in Section 158, the Court if it admits the application under Ruler 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and sale-proclamation in the prescribed form.(2)The proclamation shall, in addition to stating and specifying the particulars mentioned in Rule 66 of Order XXI in Schedule I to the said Code, announce-(a)in the case of a permanent tenure, or holding of a raiyat at fixed rates or jotedar that the tenure or holding will first be put up to auction to the registered and notified incumbrances, and will be sold subject to those incumbrances, if the sum bid is sufficient to liquidate the amount of the decree and costs; and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances ; and(b)in the case of the holding of an occupancy raiyat held otherwise than at fixed rates, that the holding will be sold with power to annul all incumbrances.(3)Notwithstanding anything contained in sub-Rule (2) of Rule 66 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 it shall not be necessary for the court to draw up the sale proclamation after notice to the judgement debtor in the case of lands ordered to be sold for arrears of rent due in respect thereof:Provided that if the defendant disputes the correctness of the value of the lands of the tenancy as stated in the plaint, the value stated by the defendant in the suit at any time before the sale-proclamation is issued, shall also be specified in the sale-proclamation.(4)Notwithstanding anything contained in Rule 54 and sub-Rule. (1) and (2) of Rule 67 of Order XXI in Schedule I to the said Code, the attachment shall be made an the sale -proclamation shall be published in the following manner :(a)by beat of drum at some place on or adjacent to the land comprised in the tenancy ordered to be sold, and by fixing up a copy of the combined order of attachment and sale-pro-clamation in a conspicuous place on such land ;(b)by affixing a copy thereof in a conspicuous place at the court-house of the issuing court;(c)by sending in the prescribed form by registered post to the judgement-debtor a concise statement of the order of attachment and proclamation at the time of issue of the order of attachment and proclamation, and(d)in such manner as may be prescribed.(5)Notwithstanding anything contained in Rule 68 of Order XXI in Schedule I to the said Code, the sale shall not, without the consent in writing of the judgement-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land of tenancy ordered to be sold.

155. Sale of tenure or holding at fixed rates or jote subject to registered and notified incumbrances, and effect thereof.

(1)When a permanent tenure or holding of a raiyat at fixed rates or a jotedar has been advertised for sale under Section 154, it shall be put up to auction subject to registered and notified incumbrances ; and if binding reaches a sum sufficient to liquidate the amount of the decree and costs of sale, the tenure or holding shall be sold subject to such incumbrances.(2)The purchaser at a sale under this section may,in manner provided in Section 158, and not otherwise, annul any incumbrance upon the tenure or holding , not being a registered and notified incurmbance.

156. Sale of tenure or holding at fixed rates or jote with power to avoid all incumbrances and effect thereof.

(1)If the binding for a permanent tenure or a holding of a raiyat at fixed rates or a jotedar put up to auction under Section 155 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale, and publish a fresh proclamation under sub-Section (4) of Section 154, announcing that the tenure or holding will be put up to auction, and sold with power to avoid all incumbrances, upon a future day specified therein not less than fifteen or more than thirty days from the date of the postponement and upon that day, the tenure or holding shall be put up to auction, and sold with power to avoid all incumbrances.(2)The purchaser at a sale under the section may, in manner provided by Section 158, and not otherwise, annul any incumbrance on the tenure or holding.

157. Sale of holding of occupancy raiyat with power to avoid all incumbrances and effect thereof.

(1)When the holding of an occupancy raiyat has been advertised for sale under section 154, it shall be put up of auction, and sold with power to avoid all incumbrances.(2)The purchaser at a sale under this section may, in manner provided in Section 158 and not otherwise, annul any incumbrance on the holding.

158. Procedure for annulling incumbrances under the foregoing section.

(1)A purchaser having power to annul an incumbrance under Section 155, Section 156 or Section 157, or under the Bengal Public Demands Recovery Act, 1913, and desiring to annul the same, may, within one year from the date of the sale, or the date on which he first has notice of the incumbrance, whichever is later, present to the Court which passed the decree or the Revenue Officer who made the order, as the case may be, for the sale of the property, an application in writing accompanied by the prescribed fee, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.(2)When an application for service of a notice is made in manner provided in this section to the Court of the Revenue Officer, as the case may be, he shall cause the notice to be served in compliance therewith and the incumbrance shall be deemed to be

annulled from the date on which it is so served.(3)When a permanent tenure or holding is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913 for arrears due in respect thereof, and there is, on the tenure or holding, a protected interest of the land specified in Clause (b) of Section 151, the purchaser may, if he has power under this Chapter or that Act to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not, at the time the lease was granted, a fair rent, the court may enhance the rent to such an amount as appears to be fair and equitable. This sub-section shall not apply to land which has been held for a term exceeding twelve years at a rent equal to the rent of good arable land at the time the lease was granted.

159. Power to direct that holdings of occupancy raiyats be dealt with under foregoing sections as tenures.

(1)The Local Government may, from time to time, by notification in the official Gazette, direct that holdings of occupancy raiyats or any specified class of such holdings in any local area put up for sale in execution of a decree for an arrear of rent or a certificate signed under the Bengal Public Demands Recovery Act, 1913, be put up subject to registered and notified incumbrances, and may, by like notification, rescind any such direction.(2)While any such direction remains in force in respect of any local area, all holdings of occupancy raiyat or, as the case may be, such holdings of the specified class, in that local area, shall, for the purposes of sale under the foregoing sections of this Chapter, be treated in all respects as if they were permanent tenures.

160.

(1)In disposing of the proceeds of sale under this Chapter, the following rules, instead of those contained in Section 73 of the Code of Civil Procedure, 1908 shall be observed, that is to say-(a)there shall first be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale ;(b)there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;(c)if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which the Court, after giving notice to the judgement-debtor, finds to have fallen due to the decree-holder in respect of the tenancy between the institution of the suit and the date of the sale, together with interests and costs ;(d)the balance, if any, remaining after the payment of the rent mentioned in Clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgement debtor upon his application unless the Court for reasons to be recorded in writing otherwise directs :Provided that where the tenancy has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under Section 139.-(a)payment of the amount due under such decree, shall, notwithstanding anything contained in Clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and(b)if there remains a balance, payment of any rent which may have fallen due in respect of the lands between the institution of the suit and the date of the sale shall, notwithstanding anything contained in Clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-Section (2) of any dispute as to the respective rights to recover such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the

tenancy.(2)If the judgement-debtor disputes the right of the description to receive any sum on account of rent under Clause (d), the Court shall determine the dispute and the determination shall have the force of a decree.

161. Tenancy to be released from attachment only on payment into Court of amount of decree with costs or on confession of satisfactions by decree-holder.

(1)Rules 58 to 63, both inclusive of Order XXI in Schedule I to the Code of Civil Procedure, 1908 shall not apply to any tenancy attached in execution of a decree for arrears due in respect thereof.(2)Where an order for the sale of a tenancy in execution of such a decree has been made, it shall not be released from attachment unless before it is knocked down to the auction purchaser, the amount of the decree, including the costs decreed together with the costs incurred in bringing the tenancy to sale, is paid into the Court, or the decree-holder makes an application for the release of the lands of the tenancy on the ground the decree has been satisfied out of Court.(3)The judgement-debtor, or any person whose interests are affected by the sale, may pay money into Court under this section.(4)The withdrawal of the amount deposited under this section or under Section 165 shall not operate as an admission of the transferability of the lands of the tenancy sold in execution of the decree.

162. Amount paid into the Court to prevent sale to be in certain cases a mortgage-debt on the tenancy.

(1)When any person having, in a tenancy advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913, an interest which would be voidable upon the person pays into Court the amount requisite to prevent the sale-(a)the amount so paid by him shall be deemed to be a debt bearing interest at twelve and a half per cent per annum and secured by a mortgage of the lands of the tenancy to him ;(b)his mortgage shall take priority of every other charge on the lands of the tenancy other than a charge for arrear of rent; and(c)he shall be entitled to possession of the lands of the tenancy as mortgagee of the tenant, and to retain possession of them as such, until debt with the interest due thereon, has been discharged.(2)Nothing in this section shall affect any remedy to which any such person would be entitled.

163. Inferior tenant paying into court may deduct from rent.

- When a tenancy is advertised for sale-(a)under the Chapter ; or(c)in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913 ;or when such sale is set aside under Section 165 ;and any tenant, holding immediately or mediately under the defaulter, pays money into Court in order to prevent the sale or to set aside the sale, as the case may be,such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid, from any rent payable by him to his immediate landlord and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by

him to the immediate landlord, and so on until the defaulter is reached.

164. Decree-holder may bid at sale, judgement holder may not.

(1)Notwithstanding anything contained in Rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a tenancy is sold under this chapter may, with the permission of the court, bid or purchase the tenancy.(2)The judgement-debtor shall not bid for or purchase that tenancy so sold.(3)When a judgement-debtor purchases himself, or through another person the tenancy so sold, the court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the judgement debtor.

165. Application by judgement-debtor or other person whose interests are affected to set aside sale.

(1)Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenancy has been sold for arrears of rent due thereon, but in such cases the judgement-debtor, or any person whose interests are affected by the sale may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing-(a)for payment to the decree-holder, amount recoverable under the decree up to the date when the deposit is made, with costs ;(b)for payment to the auction purchaser, as penalty a sum equal to five per cent of the purchaser money, but not less than one rupee.(2)When a person makes an application under sub-Section (3) for setting aside the sale of his lands, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under sub-Section (1).(3)When a tenancy has been sold for arrears of rent due thereon, the decree-holder, the judgement-debtor or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale apply, to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale:Provided as follows :(a)no sale shall be set aside on any such ground unless the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud ; and(b)no application made by a judgement-debtor under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded in writing, that such deposit is not necessary.(4)Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure 1908, shall not apply to any sale under Part II of this Chapter.(5)An appeal shall lie against an order setting aside or refusing to set aside a sale :Provided that where the Court has refused to set aside the sale on the application of the judgement-debtor and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the applicant deposits such amount in Court.

166. Sale when to become absolute or be set aside and return of purchase money in certain cases.

(1)When no application is made under Section 165, or when such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.(2)When such application is made and allowed, and when, in the case of an application under sub-Section (1) of section 165, the deposit required by that sub-section is made within thirty days from the date of the sale, the Court shall make an order setting aside the sale :Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.(3)No suit to set aside an order made under this section shall be brought by any person against whom such order is made.(4)When a sale is set aside this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment, with or without interest as the Court may direct.

167. Registration of certain instruments creating incumbrances.

- Notwithstanding anything contained in Part IV of the Indian Registration Act, 1908, an instrument creating an incumbrance upon the lands of any tenancy which has been executed before the commencement of this Act, and is not required by Section 17 of the said Regulation Act to be registered, shall be accepted for registration under this Act, if it is presented for the purpose to the proper officer within one year from the commencement of this Act.

168. Notification of incumbrances to landlords.

- Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant and creating an incumbrance on the tenancy , shall, at the request of the tenant or the person in whose favour the incumbrance is created, and on payment by him of the prescribed fee, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

169. Power to create incumbrances not extended.

- Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Chapter XII

Summary Procedure for the Recovery of Rents Under the Bengal Public Demands Recovery Act, 1913

170. Recovery of arrears of rent under the certificate procedure in certain cases.

(1)Any landlord, whose land is situated in an area for which a record-of-rights has been prepared and finally published, may apply to the Local Government through the Deputy Commissioner, for the application of the procedure provided by the Bengal Public Demands Recovery Act, 1913, to the

recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.(2)The Local Government may, after considering the manner in which the landlord maintains his accord, reject any such application, or may allow its subject, to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.(3)When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue Officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate Officer under the Bengal Public Demands Recovery Act, 1913 for the recovery of any arrears of rent he alleges are due to him from any tenant.(4)Every such requisition shall be signed and verified by the landlord making it, in the manner provided by Rule 1, Schedule II of the said Act as amended for the time being rules made under Section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.(5)On receipt of such requisition, the said Revenue Officer may, in accordance with such rules as may be prescribed and if he is satisfied that the arrear is due, sign a certificate in the prescribed manner for stating that the arrear is due, and shall include in the certificate the fee paid under sub-Section (4) and shall cause the certificate to be filed in his office :Provided that-(a)no certificate shall be signed for the recovery of the arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-Section (3) that the arrears of rent sought to be recovered have accrued ; and(b)if, after the signing of a certificate, it is found that such a suit was instituted in a Civil Court before the certificate was signed such certificate shall be cancelled.(6)The person in whose favour any certificate is signed under sub-Section (5) shall be deemed to be the certificate holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the sad amount, and the proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and/or his cost and on his responsibility, and not otherwise.(7)The Bengal Public Demands Recovery Act, 1913, with such restrictions and modifications, if any, as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution of certificates filed under sub-Section (5).(8)No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-Section (3); and, subject to the provisions of Section 34 of the Bengal Public Demands Recovery Act, 1913, no tenant shall, after the signing of any certificate against him under sub-Section (5) of this section, institute at suit in or apply to a Civil Court for the alteration of the rent payable by him or the determination of his status as a tenant, in respect of the period during which the arrears of rent, for which such certificate was signed, have accrued.(9)The word 'landlord' in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately ; and where a Revenue Officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

Chapter XIII

Special Provisions Regarding Contracts

171. Restrictions on exclusion of Act by agreement.

(1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall-(a) prevent a jotedar or a raiyat from acquiring in accordance with the Act, an occupancy right in land ;(b) take away an occupancy right in existence at the date by contract;(c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act ;(d) take away or limit the right of a tenant, as provided by this Act, to make improvements, and claim compensation for them ;(e) take away or limit the right of an occupancy tenant to transfer his holding, or any share or portion thereof, in accordance with the provisions of Sections 20 to 25 ;(f) take away or limit the rights of occupancy tenancy, who are not raiyat at fixed rates, in trees on their holdings as provided in Section 84 ; or(g) affect the provisions of Section 56 relating to interest payable on arrears of rent.(2) Nothing in any contract made between a landlord and a tenant after passing of this act shall-(a) take away or limit the right of an occupancy-tenant to use land as provided by Section 27 ;(b) take away the right of a raiyat to surrender his holding in accordance with Section 81 ;(c) take away the right of an occupancy-raiyat to sub- let subject to, and in accordance with, the provisions of this Act;(d) take away the right of a raiyat to apply for reduction of rent under Section 33 or Section 58 ;(e) take away the right of a tenant to such compensation as may be payable to him under the provisions of this Act or under any other Act for the time being in force.

172. Saving as to permanent mukarrari leases.

- Nothing in this Act shall be deemed to affect the terms of a permanent mukarrari lease granted by a proprietor or a permanent tenure holder before the commencement of this Act: Provided that the proprietor or tenure-holder shall not be entitled to recover interest at rate exceeding that set forth in Section 56 or anything the recovery of which is illegal under the provisions of Section 95. Co-sharer landlords

173. Action to be taken collectively by co-sharer landlords or by their common agent except in certain cases.

(1) Subject to the provisions of Section 139, where two or more persons are co- sharer landlords, anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together or by an agent authorised to act on behalf of both or all of them : Provided that one or more co-sharer landlords if all the other co-sharer landlords are made parties defendant to the suit or proceeding in the manner prescribed in sub-Sections (1) and (2) of Section 139, and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants may-(i) bring a suit for ejectment of a tenant on the grounds specified in Section 66, Section 67, or Section 70 ;(ii) bring a suit for enhancement of the rent of a permanent tenure under Section 10 of the holding of an occupancy jotedar under Section 28, or of the holding of an

occupancy raiyat under Section 31, or for alteration of rent on account of alteration in area under Section 58 ;(iii)bring a suit under Section 103 ;(iv)apply to the Deputy Commissioner for a declaration under the first proviso to sub-Section (1) of Section 17 ;(v)make an application as regards improvements under Section 62 or Section 64 ;(vi)apply for measurement under Section 96 ;(vii)file an application under Section 161 ;(viii)apply for a record of private land under Section 121 ;(ix)apply for the determination of the incidents of a tenancy under Section 124 :Provided also that it shall be competent for any co-sharer to serve a notice under Section 72, or to file a notice under Section 82, if he has served in the prescribed manner a copy of such notice on the other co-sharer landlords.(2)Any decree passed or under made in a suit or proceeding, in which the conditions set forth in sub-Section (1) of this section are complied with, shall have the effect of a decree passed or order made on the application of the sole landlord or the whole body of landlords shall take effect as regards the entire tenancy as the case may be :Provided that, when a suit is brought under Section 10 or Section 28 or Section 31 for enhancement of rent, or when an application is made under Section 101 by a co-sharer landlord for settlement of rent, the Court of Revenue Officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy, whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co- sharer-landlords as if they had sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-Section (1) of this section together with the plaintiff or applicant.Agents and representatives of landlords

174. Power of landlord to act through agent.

(1)Any appearance, application, or act in, before or to any Court or authority required or authorised by this Act to be made or done by a landlord may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.(2)Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given, to the landlord in person.(3)Every document required by this Act to be signed or certified by a landlord, except an instrument, appointing or authorising an agent, may be signed or certified by an agent or the landlord authorised in writing in that behalf.

175. Damages for denial of landlord's title.

(1)Where, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up, without a reasonable or probable cause, title in a third person or himself, the Court may pass a decree favour of the landlord for such amount of damages not exceeding ten times the amount of the annual rent payable by the tenant as it may consider to be just.(2)The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenancy ; and the landlord may execute such decree for damages and interest either as a decree for a sum of money, or, subject to the provisions of Section 149, in any of the modes in which a decree for rent may

executed.

176. Merger.

(1)When the entire interests of the immediate landlord and tenant in the whole of the tenancy be come united in the same person by transfer, succession or in by other way whatsoever, the tenancy is extinguished :Provided that the tenancy shall be deemed to continue only in respect of any incumbrance validly created by the tenant in favour of a third person.(2)A persons holding land as an ijaradar or farmer of rents shall not, while so holding, acquired by purchase, or in any whatsoever, a right of occupancy in any land comprised in the ijara or farm.Recovery of certain dues

177. Rights of pasturage, forest rights etc.

- The provisions of this Act applicable to arrears of rent and to suits and proceedings for the recovery thereof, shall, so far as may be, apply to anything payable or deliverable in respect of any rights of pasturage, forest rights, rights over the fisheries and the like :Provided that the provisions of Chapter XII shall only apply to the recovery of such dues-(i)when the particulars mentioned in Clause (f) of Section 98 have been recorded and the record has been finally published under Part II of Chapter X, and(ii)subject to the conditions specified in sub-Sections (1), (2) and (3) of Section 170.Limitation

179. Limitation in suits, appeals and applications in Schedule III.

(1)The suits, appeals, and, applications, specified in Schedule III annexed to the Act, shall be instituted and made within the time provided in that Schedule for them respectively ; and any such suit or appeal instituted, and application made, after the period of limitation so provided, shall be dismissed,although limitation has not been pleaded.(2)Nothing in this section shall revive the right to institute any suit or appeal, or make any application, which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.(3)Sections 6, 7, 8 and 9 and sub-Section (2) of Section 29 of the Indian Limitation Act, 1908 shall not and, subject to the provisions of this section, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act.Rules under the Act

180. Power to make rules regarding procedure, powers of officers and service of notice.

- The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act-(1)to regulate the principles and the procedure to be followed by Revenue Officers and the Deputy Commissioner in the discharge of any duty imposed upon them by or under this Act and may, by such rules, confer upon any such officer-(a)any power exercised by a Civil Court in the trial of suits ;(b)power to enter upon any land, and to survey, demarcate, and make a map of the same and any power exercisable by an officer under Part B of Chapter 111 of the Assam Land and Revenue Regulations, 1886 ;(2)to prescribe the forms to be used, and the mode of service

of notices and processes issued under this Act, when no form or mode is provided in this or any other Act; and (3) to provide of all or any of the following matters, namely : (a) the manner of publication of- (i) the notification under sub-section (3) of Section 1, (ii) price lists under sub-section (2) of Section 35, (iii) the notification referred to in the Explanation to sub-section (3) of Section 84, (iv) the draft record-of-rights under sub-section (1) of Section 99, (v) the record-of-rights under sub-section (2) of Section 99, (vi) proclamation under Clause (d) of sub-section (1) of Section 151; (b) the amount of fee referred to- (i) in the first proviso to sub-section (1) of Section 17, (ii) in sub-section (1) of Section 48, (iii) in sub-section (2) of Section 52, (iv) in sub-section (1) of Section 101, (v) in Section 102, (vi) in Section 163 ; (c) the amount of cost of transmission of any money deposited in Court, (d) the manner of payment or tender of rent by postal money order under sub-section (2) of Section 45, (e) the particulars referred to in sub-section (3) of Section 47, (f) the particulars referred to in sub-section (1) of Section 48, (g) the particulars referred to in sub-section (1) of Section 52, (h) the particulars referred to in Clause (ii) of Section 54, (i) the manner of making an application for registration of an improvement under sub-section (2) of Section 64, (j) the manner of making an application of acquisition of land under sub-section (1) of Section 85, (k) the manner of delivery of possession of under sub-section (2) of Section 85; (l) the standard of measurement referred to in Section 96, (m) the manner of making a survey and preparing a record-of-rights under sub-section (3) of Section 97, (n) the particulars referred to in sub-section (1) of Section 98, (o) the period of publication of the draft record-of- rights under sub-section (1) of Section 99, (p) the manner in which objections shall be considered and disposed of under sub-section (2) of Section 99, (q) the manner of preparing a record-of-right of proprietor's private lands under section 121, (r) the restrictions and modifications referred to in sub-section (7) of Section 170, and (s) any other matter required or permitted under this Act to be prescribed. Saving for conditions binding on landlords

181. Tenant not enabled by Act to violate conditions binding on landlords.

- When a proprietor or a permanent tenure-holder or jotedar holds his estate, tenure or jote subject to the observance of any specified rule or condition not inconsistent with the provisions of this Act, nothing in this Act shall entitle any person anything land within the estate or tenure to do any act which involves a violation of that rule or condition. Savings for special enactments

182. Savings for special enactments.

- Nothing in this Act shall affect- (a) the powers and duties of Settlement Officers as defined by any law not expressly repealed by this Act; (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government or under the management of the Court of Wards or of the revenue authorities ; (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue ; (d) any enactment relating to the partition of revenue- paying estate ; (e) any enactment relating to patni tenures, in so far as it relates to those tenures, except that the expression "Khudkast, raiyat or resident and hereditary cultivator" in sub-section (3) of Section 11 of the Bengal Patni Taluks Regulation, 1819, shall be deemed to include all raiyats having a right of occupancy ; or (f) any other special or local law not repealed, either expressly or by necessary implication, by this Act.

183.

(1)The Assam Adhiars Protection and Regulation Act, 1948, so far as it applies to the areas in which the principal Act (The Goalpara Tenancy Act, 1929) is applicable, is hereby repealed.(2)On such repeal, all the provisions of this act shall be applicable to the Adhiars within the meaning of the Assam Adhiars Protection and Regulation Act, 1948 hereby repealed and such Adhiars will require the status of an under-raiyat with or without a limited right of occupancy as the case may be, under this Act.

184.

On the repeal of the Assam Adhiars Protection and Regulation Act, 1948-(1)The Adhi Conciliation Board shall be deemed to have been abolished and all the members thereof and the officers working therein shall be deemed to have relinquished their posts as members or officers, as the case may be, of the Board.(2)All the proceedings pending before the Adhi Conciliation Board shall stand transferred to the Civil Court competent to entertain and dispose of the matter as if the proceedings were rent suits between the parties and the Court shall proceed to dispose of the same as rent suit.

I

[See Section 3]Enactment Amended

Year	No.	Short Title	Amendment
1	2	3	4
1825	XI	The Bengal Alluvion and Diluvion Regulation	In Clause (1) of Section 4-(a) for the words "RegulationII of 1819" the words, "The Assam Land and RevenueRegulation 1 of 1886" shall be substituted ;(b) the words commencing with "nor if annexed to a subordinatetenure" to "any increase of rent to which he may be jointly liable" shall be omitted.

II

[See Section 3]Enactments Repealed

Year	No.	Short title	Extent of repeal
1	2	3	4
1. 1993	VIII	Bengal Regulation The Landlord and	Sections 51, 52, 53, 54, 64 and 65.
2. 1869	VIII	Tenant Procedure Act (Bengal)	The whole Act.
3. 1885	VIII	The Bengal Tenancy Act as modified up to	(1) Sections 93-100 as modified under Assam Notification No.2023-R of the 14th June, 1916.(2) Sections 103-A 103-B,

1st September, 1913 105,105-A, 106, 107, 108, 108-A 109, 109A, 109-B, 109-C, 110, 111,111 -A, 111 -B, 114, 147-B, as modified under Assam NotificationNo. 1383-R of the 16th April, 1920.(3) Sections 150, 151, 152as modified under Assam Notification No. 2693-R of the 20thOctober, 1922.

The Assam Land and Revenue Regulation as amended by RegulationII of 1889 and II of 1905

4. 1886 I Sections 40, 41, 42.

III

Limitation

Part I

Suits

	Description of Suit	Period of Limitation	Time from which period begins to run
	(1)	(2)	(3)
1.	(a) To eject any permanent tenure-holder, jotedar or raiyat on account of breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach	One year	The date of the breach.
	(b) To eject a non-occupancy tenant admitted to occupation under a written leave on the ground of the expiration of the term of this lease	Six months	The expiration of the term.
	(c) To eject a non-occupancy tenant on the ground of the expiration of the period of notice	One year	The expiration of the period of notice.
2.	For the recovery of an arrear of rent in a suit brought by-(i) a sole landlord,(ii) the entire body of landlords, or (iii) one or more co-sharer landlords :		
	(a) when the arrear fell due before a deposit was made under Section 51 on account of the rent of the same tenancy	Six months	The date of the service of the notice of deposit or presentation of the postal money order, as the case may be.

	(b) In other cases	Three years	The last day of the agricultural year in which the arrear fell due.
3.	To recover possession of land claimed by the plaintiff as ajotedar, raiyat or an under-raiyat	Two years	The date of dispossession.
Part II Appeals			
4.	From any decree or order under this Act to the Court of a District Judge or a Subordinate Judge	Thirty days	The date of the decree or order appealed against.
Part III Applications			
5.	For the execution of a decree or order made in the suit between landlord and tenant to whom the provisions of this Act are applicable, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed but inclusive of the cost of executing such decree, except when the judgement-debtor has, by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908 : Provided that, where a sale in execution of a decree for arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of each sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article	Three years	(1) The date of the decree or order; or (2) Where there has been an appeal, the date of the final decree or order of the appellate Court; or (3) Where there has been a review of judgement, the date of the decision passed on the review.