

Bengal Rent Act, 1862

06 of 1862

[14 May 1862]

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PREAMBLE

An Act to amend ²[the Bengal Rent Act, 1859.]

Whereas it is expedient to amend Act X of 1859³, so far as the same relates to the Provinces subject to the Government of Bengal. It is enacted as follows:-

1. SHORT TITLE.-This short title was given by the Amending Act, 1903 (I of 1903).

LEGISLATIVE PAPERS.-The Bill (without any Statement of Object and Reasons) was published in the Calcutta Gazette, 1862, p. 602; for Report of Select Committee, see *ibid*, p. 1319.

LOCAL EXTENT.-Since this Act is (see section 21, *post*) to be "read with and taken as part of Act X of 1859, it applied originally, like the latter Act, to the whole of the former Province of Bengal. It has, however, been repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), in the whole of the former Province of Bengal except "the town of Calcutta, the Division of Orissa and the Scheduled Districts".

The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notifications extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

The only portion of the present State of West Bengal in which Ben. Act VI of 1862 appears to be effectually in force at the present time is the Darjeeling district.

2. These words and figure were substituted for "Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal" by section 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

3. The Bengal Rent Act, 1859.

1. [Repealed] :-

[Repeal of certain sections of Act X of 1859].-repealed by section 4 and the Third Schedule of the Amending Act, 1903 (1 of 1903).

2. When Court may award to plaintiff additional damages not exceeding twenty-five per cent :-

¹[In any suit ²* * for rent under Act X of 1859³ if it shall appear to the Court that the defendant has without reasonable or probable cause neglected or refused to pay the amount due by him, and that he has not before the institution of the suit tendered such amount

to the plaintiff or his duly authorized agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per cent, on the amount of rent decreed, as the Court may think, fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of ⁴[six and a quarter] per cent, per annum from the date of decree until payment thereof, and shall be recoverable from the defendant in like manner as sums decreed to be paid by defendants under Act X of 1859³ are recoverable.]

1. In the application of this Act to the District of Darjeeling for the word "twenty-five" substitute the words "twelve and a half, vide section 4 of the Bengal Rent (Darjeeling District Amendment) Regulation, 1945 (Ben. Reg. IV of 1945).

2. The words "hereafter to be brought" were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

3. The Bengal Rent Act, 1859.

4. Substituted by the Schedule to the Bengal Rates of Interest Act, 1939 (Ben. Act III of 1939) for the word "twelve".

3. Court may award to defendant compensation not exceeding twenty-five per cent, on amount improperly sued for :-

¹[In any suit ²* * for rent under Act X of 1859³ if it shall appear to the Court that the plaintiff has instituted the suit against the defendant without reasonable or probable cause, or that the defendant before the institution of the suit duly deposited with the Collector in the manner hereinafter mentioned the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant by way of compensation such sum, not exceeding twenty-five per cent. on the whole amount claimed by the plaintiff, as the Court may think fit; and such sum, with interest at the rate of ⁴[six and a quarter] per cent. per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sums decreed to be paid by defendants under Act X of 1859³ are recoverable.]

1. In the application of this Act to the District of Darjeeling for the word "twenty-five" substitute the words "twelve and a half, vide section 4 of the Bengal Rent (Darjeeling District Amendment) Regulation, 1945 (Ben. Reg. IV of 1945).

2. The words "hereafter to be brought" were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

3. The Bengal Rent Act, 1859.

4. Substituted by the Schedule to the Bengal Rates of Interest Act, 1939 (Ben. Act III of 1939) for the word "twelve".

4. Under-tenant or raiyat may, after tender, pay into Court, without suit brought, what he admits to be due to zamindar, etc. :-

If any under-tenant or raiyat shall, at the mal-cutcherry for the receipt of rents or other place where the rents of the land held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the zamindar or other person in receipt of the rent of such land, and if the amount so tendered shall not be accepted, and a receipt in full forthwith granted, it shall be lawful for the under-tenant or raiyat, without any suit having been instituted against him, to deposit such amount in the Collectors Court, to the credit of the zamindar or other person aforesaid.

And such deposit shall, so far as the under-tenant or raiyat and all persons claiming through or under him are concerned, in all respects operate as and have the full effect of a payment then made by the under-tenant or raiyat of the amount deposited, to such zamindar or other person.

Payment into Court to have effect of payment to zamindar, or person entitled.

5. Proceedings on payment into Court :-

The Collector shall receive such deposit on the application of the under-tenant or raiyat, or his agent, made in writing ¹ * * * and on the under-tenant or raiyat, or his agent, making a declaration in the form, or as nearly as circumstances will admit in the forms, set forth in the Schedule A hereto annexed; and the Collector shall give a receipt for the same.

If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall

not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

Upon receiving the money so deposited, the Collector shall issue a notice to the person to whose credit it has been deposited in the form set forth in the Schedule B hereto annexed, and such notice shall be served by the Collector, without the payment of any fee, either upon the person to whom it is addressed or upon his naib, gumastha or other agent; and in the absence of any such agent it shall be served by sticking up a copy of the same in the office of the Collector, and another copy at the mal-cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited.

Payment to creditor.

If the person to whom such notice is issued, or his duly authorized agent, shall appear and apply that the money in deposit be paid to him, it shall be immediately made over to him.

1. The words "upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent under section XXXVII of Act X of 1859 for an amount equal to that which it is intended to deposit" were repealed by section 2 and part II of Schedule III of the Court-fees Act, 1870(VII of 1870).

6. Limitation of suit for further balances :-

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

7. After suit brought, defendant may pay into Court, without costs, money tendered before :-

The defendant in any suit under this Act or under X of 1859¹ instituted after the passing of this Act may, if he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he shall consider to be due to the plaintiff without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff.

Costs if plaintiff goes on with the suit.

If after such payment the plaintiff elects to proceed in the suit, and ultimately recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

1. The Bengal Rent Act, 1859.

8. If no previous tender has been made, defendant may pay into Court what he admits to be due with costs on that sum :-

The defendant in any suit under this Act or under Act X of 1859¹ *² may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff, together with the costs (to be fixed by the Court, if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall immediately be paid out of Court to the plaintiff.

Costs if plaintiff goes on with the suit.

If after such payment the plaintiff elects to proceed in the suit, and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but, if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall (including the sum paid into Court by him in the first instance on account of costs) be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree.

1. The Bengal Rent Act, 1859.

2. The words "instituted after the passing of this Act" were repealed by section 4 and the Third Schedule of the Amending Act. 1903 (I of 1903).

9. Survey and measurement of lands :-

Every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands.

If any person intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land, or if any under-tenant or raiyat, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses to attend and point out such land, such person may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under Act X of 1859¹, and shall pass a decision either allowing or disallowing the measurement, and if the case so require, enjoining or excusing the attendance of any such under-tenant or raiyat.

If any under-tenant or raiyat after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made or any of the proceedings held in his absence.

1. The Bengal Rent Act, 1859.

10. Measurement of lands where it cannot be ascertained who are the persons liable to pay rent :-

If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands or any part of the lands comprised therein, such proprietor or other person may petition the Collector in respect of the lands which he cannot measure as aforesaid; and the Collector thereupon, and on the necessary costs being deposited with him by the applicant, shall proceed to measure the land and to ascertain and record the names of the persons in occupation of the same, or on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine and record the tenures, and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable.

The provisions of section 67 of Act X of 1859¹ shall apply to any proceeding of the Collector instituted under this section.

If after due enquiry the Collector shall be unable to measure the land, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in

such lands or any part thereof, then and in any such case he may declare the same to have lapsed to the party on whose petition he has made the inquiry.

If any person, within fifteen days after the Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms or conditions as he may think proper, alter or rescind his declaration according to the justice of the case.

Save as aforesaid, the decision of the Collector on all matters inquired into and determined by him under this or the last preceding section shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court.

Such appeals shall lie to the Zila Judge or to the Sadar Court, subject to the provisions and conditions contained in sections 160 and 161 of Act X of 1859¹.

1. The Bengal Rent Act, 1859.

11. Measurements to be by pargana pole :-

All measurements made under this Act shall be made by the standard pole of measurement of the pargana in which the land is situated.

12. Form of plaint in suits for arrears of rent :-

In any suit ¹* * for the recovery of an arrear of rent, the statement shall specify the name of the village and estate and of the pargana or other local division in which the land is situated, the yearly rent of the land, the amount (if any) received on account of the year of which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.

If the arrear is alleged to be due from any raiyat, the statement shall further specify the quantity of land, and, where fields have been numbered in a Government survey, the number (if it be possible to give it) of each field.

¹. See foot-note 2 on page 6 , ante.

In any suit ¹* * for the recovery of an arrear of rent, the statement shall specify the name of the village and estate and of the pargana or other local division in which the land is situated, the yearly rent

of the land, the amount (if any) received on account of the year of which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.

If the arrear is alleged to be due from any raiyat, the statement shall further specify the quantity of land, and, where fields have been numbered in a Government survey, the number (if it be possible to give it) of each field.

1. The words "instituted after the passing of this Act" were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

13. Order under section 58 of Act X of 1859 to set aside judgment to be final, but rejection of application to set it aside appealable :-

In all cases in which the Collector shall pass an order under section 58 of Act X of 1859¹ for setting aside a judgment, the order shall be final; but in all appealable cases in which the Collector shall reject the application an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable:

Provided that the appeal be preferred within the time allowed for an appeal from such final decision. ² XXX XXX XXX

1. The Bengal Rent Act, 1859.

2. The words "and be written upon stamp paper of the value prescribed for petitions to the Court to which the appeal lies where a stamp is required for petitions" were repealed by section 2 and Part II of Schedule III of the Court-fees Act, 1870 (VII of 1870).

14. Fees to agents and mukhtars :-

³* * * * In awarding costs to either party in any suit²* * * under ⁴[Act X of 1859¹] or under this Act, it shall be competent for the Collector to award to such party, on account of the fees of any agent or mukhtar employed

by him, such a sum, not exceeding the rate of fee chargeable under the provisions of ⁵[section 27 of the Legal Practitioners Act, 1879,] (XVIII of 1879) for pleaders in the Civil Courts, as the Collector may direct.

1. The Bengal Rent Act, 1859.

2. The words "and be written upon stamp paper of the value prescribed for petitions to the Court to which the appeal lies where a stamp is required for petitions" were repealed by section 2 and Part II of Schedule III of the Court-fees Act, 1870 (VII of 1870).

3. The words "So much of section LXXI of Act X of 1859 as directs that no fee for any agent shall be charged as part of the costs of suit in any case under the Act is hereby repealed." were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

4. Substituted for the words "the said Act" by section 3 and the Second Schedule, *ibid*.

5. Substituted for the words "section VII of Act I of 1846" by section 3 and the Second Schedule of the Amending Act, 1903 (I of 1903).

15. Language of Collectors judgment :-

The Collector shall pronounce judgment in all cases tried under this Act or under Act X of 1859¹ in open Court.

The judgment shall be written in the vernacular language of the Collector, and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced:

Provided that, if the vernacular language of the Collector be not English, and the Collector be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

1. The Bengal Rent Act, 1859.

16. Attachment before judgment :-

The provisions relating to attachment before judgment contained in sections 81 to 90, both inclusive, of Act VIII of 1859¹ (for simplifying the Procedure of the Courts of the Civil Judicature not established by Royal Charter) are hereby extended to all suits ²* *
* under this Act or Act X of 1859¹.

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1. Act VIII of 1859 was repealed and re-enacted by Act X of 1877. The present Code of Civil Procedure is Act V of 1908, and this reference should now be taken to be made to sections 95 and 104(g) of. and rules 5 to 11 in Order XXXVIII and rule I(g) in

Order XLII in Schedule I to, the latter Code-see section. 158 thereof.

2. The words "and be written upon stamp paper of the value prescribed for petitions to the Court to which the appeal lies where a stamp is required for petitions" were repealed by section 2 and Part II of Schedule III of the Court-fees Act, 1870 (VII of 1870).

17. Execution to issue at time of decree on oral application; afterwards on application in writing :-

Process of execution in any suit ²* * under this Act or under Act X of 1859¹ may be issued against either the person or the property of a judgment-debtor, but process shall not be issued simultaneously against both person and property.

It may be issued on the oral application of the judgment-creditor his agent or mukhtar, made at the time the judgment is pronounced or thereafter upon the written application of the judgment-creditor, his agent or mukhtar presented to the Court by which the judgment was given.

Process of execution against the person or moveable property of a debtor shall be in the Form E³ or the Form F³ contained in the schedule to Act X of 1859¹, or in a form as nearly resembling those forms as the circumstances of the case may admit.

1. The Bengal Rent Act, 1859.

2. The words "hereafter to be instituted" were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

3. These forms have not been reprinted with Act X of 1859, because they were repealed by the Amending Act, 1891, (XII of 1891). The present reference was, however, saved by section 3 of that Act.

18. If person is arrested under section 145 of Act X of 1859, case to be disposed of at once :-

If any person shall ¹* * be arrested under section 145 of the said Act X of 1859², he shall be brought before the Collector with all convenient speed, and the Collector shall proceed forthwith to try the case.

If the case cannot be at once heard and determined, the Collector may, if he think fit, require the person arrested to give security for his appearance whenever the same is required.

In default of such security the person arrested shall be committed

to the civil jail till the case is heard.

1. The words "after the date of the passing of this Act" were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

2. The Bengal Rent Act, 1859.

19. Deputy Collectors powers :-

All the powers vested in the Collector by any of the sections of this Act or of Act X of 1859¹ may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference by any Deputy Collector placed in charge of any subdivision of a district, or who is specially authorized by ²[the State Government] to receive such cases; and all applications and reports allowed or required by the said Act X of 1859¹ or by this Act to be made to the Collector may be made to any Deputy Collector having such local jurisdiction or such special authority as aforesaid.

1. The Bengal Rent Act, 1859.

2. The words "the State Government" were first substituted for the word "Government" by para. 3 and Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the word "State" was substituted for the word "Provincial" by para. 4 (I) of the Adaptation of Laws Order, 1950.

20. In what Court suits are to be instituted :-

Suits under this Act, or under Act X of 1859¹ shall be preferred in the revenue office of the district or, when a subdivision of a district has been placed under the jurisdiction of a Deputy Collector, in the revenue office of the subdivision in which the cause of action shall have arisen, or, when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a subdivision, but who has been specially authorized by ²[the State Government] to receive such suits, then in the office of such last-mentioned Deputy Collector:

Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector.

If the lands comprised in any taluk, farm or other tenure, or any lands held under one lease or engagement, at or one entire rent, in

respect of which arrears of rent may be due, are situated in more than one district or subdivision, or within the local limits of the jurisdiction of more than one Deputy Collector so specially authorized as aforesaid, the district or subdivision or local limits in which the greater part of such lands is situate shall be held to be the district or subdivision or local limits in which the cause of action has arisen; and, if any question shall be raised respecting the district or subdivision or local limits within which the greater part of the lands is situate, the Board of Revenue, or, if all the lands be situate in one district, the Collector of the district, shall decide the question; and such decision shall be conclusive on the point of jurisdiction.

1. The Bengal Rent Act, 1859.

2. The words "the State Government" were first substituted for the word "Government" by para. 3 and Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the word "State" was substituted for the word "Provincial" by para. 4 (1) of the Adaptation of Laws Order, 1950.

21. This Act to be read with Act X of 1859 :-

This Act shall be read with, and taken as part of, Act X of 1859¹.

² XXX XXX XXX

1. The Bengal Rent Act, 1859.

2. The words "except as regards suits instituted thereunder before the passing of this Act" were repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

SCHEDULE 1

SCHEDULE A

SCHEDULE A 1

I, A. B., of etc., do solemnly declare that I did personally (or by my agent C. D) on the day of tender payment to E. F. at his mal-cutcherry (or at), the place where the rent of the lands at held or cultivated by me under or from the said E. F. are usually payable, of the sum of ²* * * rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the same). And I do declare that to the best of my belief the sum of ²* * * rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of to the month of , both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands.

+ If this declaration is made by an agent, it must be altered accordingly.

1. Schedule A is referred to in section 5, ante.

2. The word "Company's" was repealed by section 4 and the Third Schedule of the Amending Act, 1903 (I of 1903).

SCHEDULE 2

SCHEDULE B

SCHEDULE B 1

Court of the Collector (or Deputy Collector) of

Dated the day of

18

To E.F., of, etc.

With reference to the within declaration you are hereby informed that the sum of 2* * * rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you or to your duly authorized agent on application. And take notice that, if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

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

1. Schedule B is referred to in section 5, ante.

2. See foot-note 4 on page 13, ante.