

Bihar Tenancy Act, 1885

8 of 1885

[14 March 1885]

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SCHEDULE 1 :- SCHEDULE

SCHEDULE 2 :- SCHEDULE

SCHEDULE 3 :- LIMITATION

Bihar Tenancy Act, 1885

8 of 1885

[14 March 1885]

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:--

CHAPTER 1 PRELIMINARY

1. Short title :-

(1) This Act may be called the Bihar Tenancy Act, 1885.

(2) Commencement.--

It shall come into force on such date (hereinafter called the commencement of this Act) as the State Government with the previous sanction of the Central Government may, by notification in the Official Gazette, appoint in this behalf.

1[(3) Local extent.--

It shall extend to the whole of the State of Bihar except--

(a) the areas comprised within the districts of North Chotanagpur Division, South Chotanagpur Division²[Palanau Division] and Santhal Parganas Division; and

(b) any area constituted or deemed to have been constituted a Municipality under the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922) or part thereof or which is under a cantonment if such area is specified in a notification issued in this behalf by the State Government]

1. Substituted by Act 8 of 1987.

2. Inserted by Act 3 of 1995 (w.e.f. 3.5.1992)

2. Repeal :-

The enactments specified in Schedule I hereto annexed are repealed in the districts to which this Act extends.

(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion hereof.

The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. Definitions :-

In this Act, unless there is something repugnant in the subject or context--

(1) "Estate" means land 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 Collector of a district, and includes Government khas mahals and revenue-free lands not entered in any register;

(2) "Proprietor" means a person owning whether in trust or for his own benefit, an estate or part of an estate;

(3) "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;

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

in sections 53 to 67, both inclusive, sections 72 to 75, both inclusive, Chapter XII, Chapter XIII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

(6) "Pay", "payable" and "payment", used with reference to rent, include "deliver", "deliverable" and "delivery";

(7) "Tenure" means the interest of a tenure-holder or an under tenure holder;

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time;

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy;

(10) "Village" means the area defined, surveyed and recorded as a distinct and separate village in--

(a) the general land-revenue survey which has been made of the districts to which this Act extends, or

(b) any survey made by the Government which may be adopted by notification in the Official Gazette as defining villages for the purpose of this clause in any specific area;

and where a survey has not been made by, or under the authority of the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, ¹declare to constitute a village;

(11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of ²[Baisakh], where the Fasli or Amli year prevails, the year commencing on the first day of ³[Asin], and, where any other year prevails for agricultural purposes, that year: ⁴[Provided that, where the State Government is the landlord, the year commencing from the first day of April shall be the agricultural year for the purposes of this Act;]

(12) "Permanent Settlement" means the permanent Settlement of Bengal, Bihar and Orissa, made in the year 1793;

(13) "Succession" includes both intestate and testamentary succession;

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(15) "Prescribed" means prescribed from time to time by the State Government by notification in the Official Gazette;

(16) "Collector" means the Collector of a district or any officer appointed⁵ by the State Government to discharge any of the functions of a Collector under this Act;

(17) "Revenue-officer" in any provision of this Act, includes any officer whom the State Government may ⁵[appoint, by name or by virtue of

his office, to discharge any of the functions of a Revenue-officer under that provision;

(18) "Registered" means registered under any Act ⁶[for the time being in force for the registration of documents]⁷.

⁸[(19) "To cultivate personally with its cognate expression means to cultivate on ones own account, namely:--

(a) by ones own labour; or

(b) by the labour of any member of ones family which consists of the tenant his or her spouse or spouses and their sons and unmarried daughter; or

(c) by hired labour or by servants on wages payment in cash or in kind, but not in crop share under the personal supervision of oneself or by one or more members of ones family.

Explanation (i).--In the case of an institution or Society or Trust of a public nature, capable of holding property, the land shall be deemed to be cultivated personally if such land is cultivated by hired labour or by servants, under the personal supervision of an employee or authorised agent or Society or trust.

Explanation (ii).--In the case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.]

1. For a list of orders made under the last paragraph of sec. 3(10), see the Bihar and Orissa Local Statutory Rules and Orders Vol. I. Part IV.

2. The month of Baisakh corresponds to the last part of April and the first part of May.

3. The month of Asin corresponds to the last part of September and the first part of October.

4. Inserted by Act 19 of 1955.

5. For an order made, under sec. 3(17), see the Bihar and Orissa Statutory Rules & Orders Vol. I, Part IV.

6. See the Indian Registration Act, 1908 (16 of 1903)

7. Further definitions are given in the following section, namely:--

Section 5 ("tenure-holder" and "raiyat")

Section 20 ("settled raiyat")

Section 41 ("non-occupancy-raiyat")

Section 47 ("admitted to occupation"),

Section 49 AA ("complete usufructuary mortgage");

Section 76 ("improvement);

Section 160 ("protected interest");

Section 161 ("encumbrance" and "registered and notified encumbrance")

8. Inserted by Act 8 of 1987.

CHAPTER 2 CLASSES OF TENANTS

4. Classes of tenants :-

There shall be, for the purpose of this Act, the following classes of tenants, (namely):--

- (1) tenure-holders, including under tenure-holder,
- (2) raiyats, and
- (3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under-raiyats;

and the following classes of raiyats (namely):--

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent in fixed perpetuity,
- (b) occupancy-raiyats, that is to say raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

5. Meaning of tenure-holder" and raiyat :-

(1) "Tenure-holder means primarily a person who has acquired from a proprietor or from another tenureholder a right to hold for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.--Where 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 purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to--

- (a) local custom; and
- (b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure holder until the contrary is shown.

CHAPTER 3 TENURE-HOLDERS

6. Tenure held since Permanent Settlement liable to enhancement only in certain cases :-

Where a tenure has been held from the time of the Permanent Settlement, its rent 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 conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving 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 increase demanded, and that lands are capable of affording it.

7. Limits of enhancement of rent of tenures :-

(1) Where the rent of a tenure holder is liable to enhancement, it may, subject to any contract between the parties be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to--

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors-in-interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents

aforesaid.

8. Power to order gradual enhancement :-

The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years, not exceeding five until the limit of the enhancement allowed has been reached.

9. Rent once enhanced may not be altered for fifteen years :-

When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

10. Permanent tenure-holder not liable to ejectment :-

A holder of 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 where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

11. Transfer and transmission of permanent tenure :-

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

12. Voluntary transfer of permanent tenure :-

(1) A transfer of a permanent tenure by sale, gift, exchange or mortgage (other than a transfer by a sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift, exchange or usufructuary mortgage a permanent tenure unless there is paid to him in addition to any fee payable under the law for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called the landlords registration fee) together with the costs necessary for the transmission of the landlords registration fee to the landlord.

(3) The landlords registration fee shall be,--

¹[(a) (i) in the case of a transfer by sale, gift, usufructuary mortgage and exchange, registration fee payable by the land lord may be fixed and notified by State Government time to time;

(ii) ²[xxx]

(b) ³[xxx]

(4) When the registration of any such instrument is complete, the registration officer shall send to the Collector the landlords registration fee, the costs necessary for the transmission of the same and a notice of the transfer and registration in the prescribed form and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice in the prescribed manner.

1. Sub-rule 12(3)(a)(i) Substituted by Act 10 of 2002.

2. Sub-rule 12(3) (b) (ii) Omitted by *ibid*.

3. Sub-rule 12(3)(b) Omitted by *ibid*.

13. Transfer of permanent tenure by sale in execution of decree other than decree for rent :-

(1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall before confirming the sale under rule 92 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into Court the landlords registration fee prescribed by the last foregoing section together with the costs necessary for its transmission to the landlord and such further fee for service of notice of the sale of final foreclosure on the landlord as may be prescribed.

(2) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlords registration fee, the costs necessary for the transmission of the same and a notice of the same or final foreclosure in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice in the prescribed manner.

14. Transfer of permanent tenure by sale in execution of decree for rent :-

Rep. by the Bengal Tenancy (Amendment) Act, 1907 (Ben Act 1 of 1907).

15. Succession to a permanent tenure :-

¹[When a succession to a permanent tenure takes place, the person succeeding shall within one year from the date of such succession give notice of the succession to the Collector in the prescribed form and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlords registration fee prescribed by sub-section (3)(a) of section 12, together with the costs necessary for its transmission to the landlord and the Collector shall cause the landlords registration fee So be transmitted to, and the notice to be served, on the landlord named in the notice in the prescribed manner.

1. As to the payment of fees under secs. 15 and 18 to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben, Act 3 of 1895), See sec. 20 of that Act.

15A. Penalty for failure to give notice of succession :-

(1) If the person succeeding to a permanent tenure fails to give notice of such succession within the period specified in section 15 and to pay the fees and cost required by the said section to be paid, the Collector may, on the application of the landlord of the tenure, impose on such person a penalty not exceeding twenty-five rupees.

(2) The Collector may award any portion of such penalty to the landlord of the tenure as costs of the application.

16. Bar to recovery of rent, pending notice of succession :-

A person becoming entitled to a permanent tenure by succession shall not be entitled to recovery by suit, distraint or other proceeding any rent, payable to him as the holder of the tenure, until the Collector has received the notice, fees and costs referred to in the last foregoing section.

17. Transfer of, and succession to, share in permanent tenure :-

¹[Subject to the provisions of section 88A, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

1. As to the forfeiture of fees deposited under secs. 12, 13, 15, 17 and 18(a), see secs. 18 C, and 189(2).

18. Incidents of holding at fixed rates :-

RAIYATS HOLDING AT FIXED RATES

¹[A raiyat holding at a rent, or rate of rent, fixed in perpetuity--

(a) 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, and

(b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

1. As to the payment of fees under Secs. 15 and 18 of the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act 3 of 1895), see sec. 20 of that Act,

CHAPTER 4 PROVISIONS AS TO TRANSFER OF TENURES AND HOLDINGS AND LANDLORD'S REGISTRATION FEES

18A. Saving as to statements in instruments of transfer where landlord is not a party :-

Nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, amount or fixity of rent, area, transferability or any incident of any tenure or holding referred to in such instrument.

18B. Saving as to acceptance of landlords fees :-

The acceptance by a landlord of any landlords registration fee payable under Chapter III, Chapter IV or Chapter V in respect of any tenure or holding shall not operate--

(a) as an admission as to the permanence, amount or fixity of rent, area, transferability or any incident of such tenure or holding.

(b) ¹[X X X X].

1. Omitted by Act 23 of 1947.

18C. Forfeiture of unclaimed landlords fees :-

All landlords registration fee paid under Chapter III, Chapter IV or Chapter V which are held in deposit on or after the commencement of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907) may, unless accepted or claimed by the landlord within three years from such commencement or from the date of the service of the notice prescribed in section 12, section 13 or section 15 (as the case may be), whichever is later, be forfeited to the Government.

CHAPTER 5 OCCUPANCY-RAIYATS

19. Continuance of existing occupancy rights :-

¹[(1) Every raiyat who, immediately before the commencement of this Act or the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907) has by the operation of any enactment, by customs, or otherwise, a right of occupancy in any land, shall when this Act or the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907) comes into force, have a right of occupancy in that land.

(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area constituted or deemed to have been constituted a municipality under the provisions of the Bihar and Orissa Municipal Act, 1922 B. and O. Act 7 of 1922) or of any part of such area shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area.

1. Chapter V does not confer a right of occupancy in certain lands-- See Sec. 116.

20. Definition 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 raiyati land situate in any village, whether under a lease or otherwise, 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 the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) 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.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7) If in any proceeding under this Act, it is proved or admitted that a person holds any land as a 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 the land or some part of it as a raiyat.

21. Settled raiyat to have occupancy rights :-

(1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1983, and the commencement of this Act shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

21A. Settlement of bakasht lands :-

(1) Every person, irrespective of whether he is a settled raiyat of a village or not, shall have a right of occupancy in all land for the time being held by him as a raiyat in that village:

Provided that no person who is not a settled raiyat of a village shall have any such right of occupancy in any bakasht land settled with him by a proprietor or tenure holder whose total acreage of such land in his possession at the date of settlement does not exceed forty acres unless such settlement has been made by a registered instrument:

Provided further that in the case of the said proprietor or tenure holder, the provisions of this section shall have no effect until after the expiration of six months from the date of the commencement of the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

(2) In settling his bakasht land, the proprietor or tenure holder, as the case may be--

(a) shall be bound to give preference to a person resident in the village in which such land is situated and, where no such person be forthcoming to take settlement, to a person of a village adjacent to that village;

(b) shall not be entitled to charge rent at a rate exceeding the rate of rent payable for lands of similar description and with similar advantages in the same village or in the neighbouring villages by more than ten per centum; and

(c) shall not charge any premium or salami,--

(i) in the case of lands which become bakasht before the date of the commencement of section 162A, at a rate exceeding ten times the rent payable in respect of such lands under clause (b); and

(ii) in the case of any other bakasht lands, exceeding the amount for which the land was purchased by the proprietor or tenure holder.

(3) If in consideration of settling any bakasht land, a proprietor, tenure

holder or his agent receives from the person with whom the settlement is made any sum of money or anything in excess of the rent and salami payable by such person under sub-section (2) or if any such proprietor, tenure holder or his agent settles any bakasht land with a person who is not entitled to take settlement under that sub-section, he shall be deemed to have committed an offence under section 75 and he shall be liable to the penalty laid down therein for illegal exaction by landlord or his agent.

Explanation.--For the purposes of this section,--

- (i) the expression "bakasht land" means any land other than the proprietors private land as defined in section 120, which is for the time being in the cultivating possession of a proprietor or tenure-holder;
- (ii) one village shall be treated to be adjacent to another when the boundaries of the two coincide at one or more points]

22. Effect of acquisition of occupancy right by landlord :-

(1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure holder, and the entire interests of the Landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be) but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be in, respect of the land.

(3) A person holding land as an ijaradar or farmer of rents shall not while so holding acquire, by purchase or otherwise, a right of occupancy in any land comprised in his ijara or farm.

Explanation.--A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijara or farm.

23. Right of raiyat in respect of use of land :-

(1) When a raiyat 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 purposes of the tenancy

[except as provided in sub-section (4)].

(2) The following shall not be deemed to impair the value of the land materially or to render it unfit for the purpose of the tenancy, namely:-

-

(a) the manufacture of bricks and tiles for the domestic or agriculture purposes of the raiyat and his family or for any educational or charitable purpose;

(b) the excavation of tanks or the digging of wells intended to provide a supply of water for drinking or other domestic purposes of the raiyat and his family or to any religious or charitable institution; and

(c) the erection of buildings for the domestic or agricultural purposes of the raiyat and his family or for any educational or charitable purpose.

(3) If an occupancy raiyat, who pays for his holding rent in any of the ways specified in sub-section (1) of section 40, excavates a tank on such holding for any purpose mentioned in clause (b) of sub-section (2) the landlord and the raiyat shall be entitled to equal shares in the produce of such tank.

¹[(4) A raiyat may, with the previous permission of the Collector, use his land for the purposes not enumerated in sub-section (2):

Provided that before giving such permission the Collector shall redetermine the rent of such land in the prescribed manner to the extent of five per cent of the market value of the land:

Provided further that if a raiyat has not taken prior permission of the Collector, the Collector may give post facto permission on payment of double amount of the rent which he would have paid for obtaining prior permission, for the period between the date of commencement of use for purposes other than those enumerated in sub-section (2) and the date of application or detection, as the case may be:

Provided also that if a raiyat has been using his land for purpose other than those enumerated in sub-section (2), from before the commencement of this Act, he shall apply within 90 days of the date of commencement of this Act for permission to the Collector who on receipt of such application shall proceed in such manner as if the above use had started on the date of commencement of this Act. If the raiyat fails to do so, he shall be liable for payment of double amount of the rent which he would have been liable to pay, had he applied in time for the period between the date of commencement of this Act and the date of application or detection as the case may be:

Provided further also that the Collector shall have the power to revise the rent so determined after every ten years.

5. (a) An appeal against an order passed under this section shall lie within a period of 30 days from the date of such order--

(i) If such order is passed by an officer other than the Collector of a district, to the Collector of the district or to any Officer specially

empowered by the State Government by notification to hear such appeals, and

(ii) If such order is passed by the Collector of a district, to the prescribed authority.

(b) The Collector of the district may, at any time, transfer any appeal filed before him to any officer specially empowered to hear such appeals or withdraw any appeal pending before any officer so empowered, and either hear such appeal himself or transfer it for disposal to any other officer so empowered.

(c) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.]

1. Inserted by Act 21 of 1993.

23A. Right of occupancy raiyat in trees :-

Notwithstanding anything contained in section 23, when a raiyat has a right of occupancy in respect of any and--

(a) if the rent of such land is paid in cash, or if such land is rent-free holding or part of such holding, the raiyat may.--

(i) plant trees and bamboos on such land and cut, cut down and appropriate the same;

(ii) cut, cut down and appropriate any trees or bamboos standing on such land;

(iii) appropriate the flowers, fruits and other products of any trees or bamboos standing on such land;

Provided that if there is any specific entry in the latest record-of-right regarding any tree or bamboos which was standing on any such land before the date of the final publication of such record-of-right to the effect that any right in such tree or bamboo belongs to any person, other than the tenure-holder of such land, the right of the raiyat in such tree or bamboo specified in sub-clauses (ii) and (iii) shall be exercised in accordance with, and subject to, any such entry.

(b) If the rent of such land is paid in any of the ways specified in subsection (1) of section 40, the landlord and the raiyat shall have equal shares in the timber and [the landlord shall have nine-twentieths and the raiyat, shall have eleven-twentieths] in the flowers, fruits and other products of all trees or bamboos growing on such land whether planted before or after the commencement of the Bihar Tenancy (Amendment) Act, 1934. ²[and the raiyat shall be entitled] to plant any tree or bamboo on such land without the consent of the landlord, ¹[but neither] the raiyat, nor the landlord shall, without the consent of the other, be entitled to cut down or appropriate any such tree or bamboo.

²[X X X X X].

24. Obligation of raiyat to pay rent :-

An occupancy raiyat shall pay rent for his holding at fair and equitable rates.

25. Protection from eviction except on specified grounds :-

An occupancy raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejection passed on the ground--

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purpose of the tenancy, or
- (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

25A. Division of holding by partition and distribution of rent thereon :-

(1) When an occupancy holding has been the subject of partition by an order of a Court or otherwise--

- (a) the division of the said holding made in accordance with such partition shall be binding on the landlord;
- (b) if notice in writing of the partition and the distribution of the rent has been served on the landlord in the prescribed form and in the prescribed manner, such distribution of the rent shall be binding on the landlord:

Provided that the landlord may, if he objects to such distribution make an application to the Collector for the distribution of the rent, of the holding.

(2) When an occupancy holding has been the subject of a partition by an order of a Court or otherwise, if the parties to the partition are unable to distribute the rent of the holding by agreement, any of them may apply to the Collector to distribute the rent of the holding.

(3) (a) On receipt of an application under the proviso to clause (b) of sub-section (1) or under sub-section (2), the Collector shall serve on the parties interested, other than the applicant, a notice of the date on which he intends to hear the application.

Explanation.--For the purposes of this clause, the landlord shall be deemed to be a party interested in an application under sub-section (2).

(b) After serving the notice required by clause (a) and hearing the parties and holding such enquiry as he thinks fit, the Collector shall

distribute the rent of the holding in such manner as he considers fit and equitable and his decision shall be final.

(4) The order of the Collector under sub-section (3) shall take effect, on an application under the proviso to clause (b) of sub section (1), from the date of the partition, and, on an application under sub-section (2), from such date as the Collector may specify in his order.

(5) The Collector shall have the power to award costs to any party to any proceeding under this section, and any sum ordered to be paid as costs shall be recoverable from the party by whom it is payable as a public demand.

(6) Nothing in this section shall apply to a portion of an occupancy-holding made by an order of a Court or otherwise between the transferor and the transferee of a share in, or a portion of, such holding, or between persons to whom the entire holding has been transferred whether jointly or separately, and any distribution of the rent of holding, as settled on such partition, between the transferor and the transferee, or between persons to whom, the entire holdings has been transferred as aforesaid, shall not be binding on the landlord save in accordance with the provisions of section 88A.

26. Devolution or occupancy right on death :-

If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Government his right of occupancy shall be extinguished.

26A. Transfer and bequest of occupancy-holdings or portions thereof :-

(1) Every occupancy-holding or a portion thereof, together with the right of occupancy therein, shall be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property, and all transfers made by sale, exchange or gift and all bequests shall, subject to the provisions of sub-section (2), be binding on the landlord.

(2) Every transfer of an occupancy-holding or a portion thereof together with the right of occupancy therein, by sale, exchange or gift and every bequest of such holding or portion, together with the right of occupancy therein, shall be made in the same manner and subject to the same conditions as a permanent tenure in respect of registration and the payment of landlords registration fee.

26B. Notice of transfers made before the commencement of

the Bihar Tenancy (Amendment) Act, 1938 :-

If a person who became entitled to an occupancy-holding or a portion thereof by transfer at any time before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), has not given to the landlord notice of the transfer nor paid the landlords transfer fee payable under the law in force immediately before the date of the commencement of the said Act, he may at any time after the said date give notice of the transfer to the Collector in the prescribed form, and pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlords registration fee prescribed by section 12 as if such holding or portion were a permanent tenure or a portion of a permanent tenure together with the costs necessary for its transmission to the landlord, and the Collector shall cause the notice to be served on, and the landlords registration fee to be transmitted to the landlord named in the notice in the prescribed manner and such transfer shall thereupon be binding in the same manner and to the same extent as a transfer made after the date of the commencement of the said Act;

Provided that if the transfer was made before the first day of January, 1923, it shall be binding on the landlord, and no notice shall be necessary and no landlords registration fee shall be payable.

26C. Compulsory registration of certain transfers :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26D. Landlords transfer fee :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26E. Payment of landlords transfer fee to the landlord or its deposit with the Collector :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26F. Effect of payment of landlords transfer fee to landlord--landlords consent :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26G. Collector to serve notice on landlord :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26H. Application for payment of landlord :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26I. Procedure to be followed by the Collector when no application received, or when the only applicant is the landlord in whose favour the sum was deposited :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938.)

26J. Hearing of application :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26K. Disposal of undelivered sums :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26M. Sale of occupancy-holding in execution of decree of certificate :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26N. Landlords consent deemed to have been given to transfer of occupancy-holding made before 1st January, 1923 :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26O. Transfers of occupancy-holding made after 1st January 1923 and before date of commencement of Bihar Tenancy (Amendment) Act, 1934--transferee may pay the landlords transfer fee to landlord or deposit it with Collector. Amount of landlords transfer fee. :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

26P. Sums recoverable as public demands :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

Enhancement of rent

27. Presumption as to fair and equitable 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.

28. Restriction on enhancement of money-rents :-

Where occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

29. Enhancement of rent by contract :-

The money rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:--

(a) the contract must be in writing and registered:--

(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:--

Provided as follows:--

¹[x x x x x]

(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

1. Clause (i) & (iii) of proviso Omitted by Act 23 of 1947.

30. Enhancement of rent by suit :-

The landlord of a holding held at a money-rent 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):--

(a) ¹[x x x x x]

- (b) that there has been a rise in the average local prices of staple foodcrops during the currency of the present rent;
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;
- (d) 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 when it was not previously practicable.

1. Omitted by Act 23 of 1947.

31. Rules as to enhancement on ground of prevailing rate :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

31A. What may be taken in certain districts to be "prevailing rate" :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

31B. Limit to enhancement of prevailing rate :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

32. Rules as to enhancement on ground of rise in prices :-

Where an enhancement is claimed on the ground of a rise in prices.--

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;
- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one third of their excess over the average prices during the earlier period;
- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

33. Rules as to enhancement on ground of landlords

improvement :-

(1) Where an enhancement is claimed on the ground of a landlords improvement--

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(b) in determining the amount of enhancement the court shall have regard to--

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement;

(ii) the cost of the improvement;

(iii) the cost of the cultivation required for utilizing the improvement; and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Rules to enhancement on ground of increase in powers due to fluvial action :-

Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action--

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable but not so as to give landlord more than one-half of the value of the net increase in the produce of the land.

35. Enhancement by suit to be fair and equitable :-

Notwithstanding anything in the foregoing section, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

36. Power to order progressive enhancement :-

If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say that the rent shall increase yearly by decrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

37. Limitation of right to bring successive enhancement suits

:-

(1) A suit instituted for the enhancement of the rent of a holding on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March 1883 or if within the said period of fifteen years the rent has been commuted under section 40 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on the ground aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 372 of the Code of Civil Procedure (14 of 1882)]¹.

1. Now see Code of Civil Procedure, 1908 (5 of 1908), Rule 1, Order XXIII.

38. Reduction of rent :-

Rep by the Bihar Tenancy (Amendment) Act, 1937 (Bihar Act 8 of 1937).

39. Price-lists of staple food-crops :-

(1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market prices of staple food-crops-grown in such local areas as the State Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the State Government prepare for any local area like price-lists relating to such past times as the State Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue 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, within the said period of one month, presents to him in writing any objection to the lists, he shall submit the same to the Board of Revenue with the list.

(4) The price-list shall, when approved or revised by the Board of Revenue, be published in the Official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The State Government shall cause to be complied from the

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 for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court or the Collector, as the case may be, shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The State Government shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

Commutation.

40. Commutation of rent payable in kind :-

(1) Where an occupancy raiyat pays for his holding rent in kind or rent at rates varying with the crop or partly in one of those ways and partly in other, or partly in the one or those ways and partly in cash, either the raiyat or his landlord may apply to have the rent commuted to money rent.

(2) The application may be made to the Collector or Subdivisional Officer, or to a Revenue officer appointed by the State Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose specially authorised in this behalf by the Board of Revenue.

(3) (a) If the landlord has applied under sub-section (1) and the raiyat object of the commutation of his rent to money rent, the officer shall examine the ground for the application and the objections thereto, and may accept or refuse the application as he thinks fit:

Provided that if he refuses the application he shall record in writing his reasons for the refusal.

(b) If an application of the landlord is accepted under sub-section (1) and the raiyat agrees to the commutation of his rent to a money rent, or if the raiyat has applied under sub-section (1), the officer shall determine the sum to be paid as money-rent and shall order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to--

(a) the average money-rent payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity:

(b) the average value of the rent actually received by the landlord

during the preceding ten years or during any shorter period for which evidence may be available:

Provided that in dealing with application pending on the date on which the Bihar Tenancy (Second Amendment) Act, 1946, comes into force or applications which may be made on and from that date and until such period as may be fixed by notifications in this behalf by the State Government, the officer shall in making the determination have regard to the average value of the rent actually received by the landlord during the five years before the first day of Asin 1347 Fasli or for any shorter period before the said date for which evidence may be available;

(c) the charges incurred by the landlord in respect of irrigation under the system of the rent in kind, and the arrangements made no commutation for continuing those charges; and

(d) improvements effected by the landlord or by occupancy-raiyat in respect of the raiyats holding, to the rules laid down in section 33 regarding enhancement of rent on the ground of a landlords improvement.

(5) The order shall be in writing and shall state the ground on which it is made and the time from which it is to take effect.

(6) (a) An appeal shall lie from an order referred to in sub-section (5),-

(i) if such order is passed by any officer other than the Collector of a district, to the Collector of the district or to any officer specially empowered by the State Government by notification to hear such appeals;

(ii) if such order is passed by the Collector of a district, to the prescribed authority;

and the decision of the Collector of the district or of any officer so empowered or of the prescribed authority on any such appeal shall be final.

(b) The Collector of the district may, at any time, transfer any appeal already filed before him to any officer specially empowered under sub-section (1) of clause (a) to hear such appeals, or withdraw any appeal pending before any officer so empowered, and either hear such appeal himself or transfer it for disposal to any other officer so empowered.

(7) Appeals under the section shall be heard and disposed of in accordance with the prescribed procedure.

40A. Period for which commuted rents are to remain unaltered

:-

(1) Where the rent of a holding has been commuted under section 40, it shall not except on the ground of a landlords improvement or of a

subsequent alteration of an area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding or under clause (c) or (e) of sub-section (i) of section 112A.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 40.

40B. Right to apply for commutation in respect of trees and procedure on receipt of such application :-

(1) Where a raiyat has a right of occupancy in any land and the raiyat and the landlord have shares in the timber and in the flowers, fruits or other products of all trees or bamboos growing on such land in accordance with the provisions of clause (b) of section 23A, either the raiyat or his landlord may apply to the Collector to have the rent of such trees or bamboos commuted to money-rent.

(2) If an application is made under sub-section (1), the Collector shall deal with such application as if it were an application under section 40, and may pass such order thereon as he could have passed if it were an application under the said section:

¹[x x x x x x],

²[(3) Notwithstanding anything contained in any law, if an order under sub-section (2) commuting the rent of any tree or bamboo into money rent is passed the landlord shall not be entitled to any share in the timber of such tree or bamboo and the raiyat shall be entitled to cut down and appropriate any such tree or bamboo without the consent of the landlord.

1. Repealed by Act 14 of 1951.

2. Inserted by *ibid*.

CHAPTER 6 NON-OCCUPANCY RAIYATS

41. Application of Chapter :-

¹[This Chapter shall apply to raiyat not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

1. Chapter VI does not apply to certain lands--sec. S. 116.

42. Intail rent of non-occupancy-raiyat :-

When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

43. Conditions of enhancement of rent :-

The rent of a non-occupancy-raiyat not to be enhanced except by registered agreement or by agreement under section 46:

Provided that nothing in this section 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 the rent is claimed.

44. Grounds on which non-occupancy-raiyat may be ejected :-

A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):--

- (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 consistent with this Act and on breach of which he, is under the terms of a contract between himself and his landlord liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold as such a rent has expired.

45. Conditions of ejectment on ground of expiration of lease :-

Rep. by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907).

46. Conditions of ejectment on ground of refusal to agree to enhancement :-

(1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the State Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3) he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he 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, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyat for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

47. Explanation of "admitted to occupation" :-

Where a raiyat has been in occupation of land a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER 7 UNDER-RAIYATS

48. Limit of rent recoverable from under-raiyats :-

The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same (namely):--

(a) when the rent payable by the under raiyat is payable under a

registered lease or agreement.--

fifty percent; and

(b) in any other case-twenty-five per cent:

¹[Provided that, where the land held by such under raiyat is a portion of the holding of such landlord; the rent calculated for the entire holding in the aforesaid manner shall be reduced in such proportion as the area of the land held by the under raiyat bears to the total area of the holding:

Provided further that, if the lands comprised in such holding are of different qualities, the proportionate rent recoverable from the under raiyat shall be calculated in the prescribed manner.

1. Inserted by Act 19 of 1955.

48A. Limit of produce-rent recoverable from under raiyats :-

When an under-raiyat pays for the land held by him rent in kind by division of the produce, the landlord under whom he holds that land shall not be entitled to recover rent from the under raiyat exceeding seven-twentieths of the produce of such land:

Provided that the landlord shall not be entitled to any share in the straw or bhoosa as rent out of the produce of such land.

Explanation.--The word "straw" in this section includes jute sticks after the jute has been extracted therefrom, and arhar and maize sticks when the produces are jute, arhar and maize respectively.

48B. Restriction on payment of certain kinds of rent by an under-raiyat :-

Nothing in any contract, express or implied, between an under-raiyat and his landlord, made before or after the date of the commencement of the Bihar Tenancy (Second Amendment) Act, 1955, shall entitle the landlord to rent; according to any system, such as danabandi, manhunda, mankhop or chauraha, under which fixed rent in kind is payable, and where an under-raiyat was before the said date liable to pay to his landlord rent according to any such system, he shall from and after the said date be liable to pay to his landlord rent in kind by division of the produce.]

48C. Acquisition of right of occupancy by under-raiyats :-

Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), has continuously held land as an under-raiyat in any village, whether under a lease or

otherwise, shall be deemed to have acquired, on the expiration of that period a right of occupancy in the land which he has so held for the said period:

¹[Provided that an under-raiyat shall not, irrespective of the duration of his holding any land as an under-raiyat acquire any right of occupancy--

(i) in such area of the land to be selected and declared by his landlord in the prescribed manner as together with the area of land already held by the landlord under his cultivation does not exceed the following limits, namely:--

(a) five acres of land irrigated by flow irrigation work, lift irrigation work or tube well owned, constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law or by tube well owned or maintained by the landlord or;

(b) ten acres of other land; or

(ii) in the land within the ceiling area fixed by law of a landlord who is a widow or a person suffering from blindness, leprosy or paralysis or is a person of unsound mind or a person on the service of the Army, Navy or Air Force of the Union of India during the period the landlord remain a widow or suffers from blindness, leprosy or paralysis or remains of unsound mind or remain in the service of the Army, Navy or Air Force of the Union of India.

Explanation 1.--A land shall be deemed to be irrigated by such flow irrigation work, lift irrigation work or tube well if it is ordinarily capable of being irrigated from such source notwithstanding that such irrigation is not enjoyed owing to any action or inaction on the part of the landlord of such land.

Explanation 2.--For the purpose of this section one acre of land mentioned in clause (i) (a) shall be deemed to be equivalent to two acres of land mentioned in clause (i) (b).

Explanation 3.--If there are more than one under-raiyat under a landlord, the area of land to be selected and declared by the landlord in the prescribed manner shall be in preparation to the area of land held by different under-raiyats.

Explanation 4.--A member of an undivided Hindu family having or being entitled to a share in land shall be deemed to be a landlord for the purpose of this section as if there has been partition in the family.]

1. Substituted by Act 8 of 1970.

48D. Acquisition of raiyati right by occupancy under-raiyat :-

¹[(1) An occupancy under-raiyat shall if he makes an application in this behalf in the prescribed manner, be entitled to acquire the right of a

raiyat subject to the payment to be made as may be prescribed by the State Government and the right of the land-holder in such land shall extinguish:

Provided that the land on which he acquires such right along with other land held by him anywhere in the State does not exceed the area he may hold under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962).

(2) The remaining area, if any, in which the under-raiyat does not acquire the right of a raiyat shall continue to be held by the raiyat under whom the under-raiyat held the land.

(3) The land owner in respect of whose land the under-raiyat acquires the right of a raiyat under sub-section (1) shall be paid as compensation an amount equivalent to twenty four times the rent of the holding in the manner prescribed in this behalf.

1. Substituted by Act 8 of 1987.

48E. Prevention of threatened ejectment of under raiyat and restoration to possession of under-raiyat unlawfully ejected :-

(1) if an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land crop or produce thereof either on the ground of non-existence of relationship of landlord and tenant between them or otherwise or if an under-raiyat is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceeding under this section in contravention of the provisions of section 89 the Collector may, of his own motion or on application made in this behalf by the under-raiyat, initiate a proceeding for preventing the landlord from ejecting the under-raiyat or for settlement of the said dispute or for restoration of possession to under-raiyat unlawfully ejected from his tenancy or portion thereof.

1[Explanation.--If in the midst of the proceeding it is found that the landlord has during or before the initiation of the proceeding transferred the land to any other person who is not a party to the proceeding initiated under sub-section (1), the Collector shall make such transferee a party to the proceeding.]

(2) The Collector may, after hearing the parties, about which due notice shall have been given to them or ex-parte, in cases of emergency by an order in writing prevent the landlord from ejecting the under-raiyat until disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject-matter of dispute in the proceeding under this section is liable to-speedy and natural decay, he may., if the situation so warrants and

in similar manner as aforesaid direct the proper custody or harvesting or sale, as the case may be, of such crop or produce or the sale proceeds thereof.

(3) When a proceeding is initiated under sub-section (1) the Collector may refer the matter (hereinafter referred to as "dispute") to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord.

(4) A Board to be appointed by the Collector in the prescribed manner under sub-section (3) shall consist of a Chairman; who shall be unconnected with the dispute referred to such Board or with any party directly affected by such dispute and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party:

Provided that if any party does not nominate any person to represent him in the Board or nominates a person who is not available within such time as the Collector considers reasonable, the Collector may appoint such person as he thinks fit to represent that party.

(5) If at any time before the Board has completed its work, the service of the Chairman or any member of the Board ceases to be available, or any member of the Board fails to attend the meeting of the Board on two successive dates without showing cause to the satisfaction of the Chairman, the Collector may appoint any suitable person in the prescribed manner to take his place and the proceeding shall be continued before such Board as so reconstituted.

(6) The Chairman of the Board to which a dispute is referred shall give written notice to the under-raiyat and his landlord in the prescribed manner and the Board shall make endeavours to bring about an amicable settlement of the dispute and when an amicable settlement of the dispute is brought about, the Board shall forthwith submit a report containing the terms on which settlement had been brought about, to the Collector, who may dispose of the proceeding in accordance with the terms of the report:

Provided that failure on the part of any member of the Board to sign the report shall not effect the validity of the same.

(7) Where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same, receive such evidence as it considers, necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings:

Provided that failure on the part of any member of the Board to sign the finding shall not affect the validity of that finding:

Provided further that if any member does not want to sign the findings

of the Board he will submit his disagreement on the findings in writing failing which the Chairman will submit his notes on the subject.

(8) In case of disagreement with the report or the findings of the Board, the Collector shall, after recording his reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, make such enquiry, if any, as he thinks necessary and on being satisfied that--

(i) the person threatened with ejectment is an under-raiyat the Collector shall declare the threatened ejectment illegal and direct that the landlord shall not interfere with the possession of the under-raiyat in his tenancy or any portion thereof;

(ii) the land under dispute is in the tenancy of the under-raiyat the Collector shall declare possession of the under-raiyat and order the crop or produce or the sale-proceeds thereof, as the case may be, to be divided between the under-raiyat and his landlord in accordance with the provisions of sections 69 to 71 of the Act;

(iii) the person alleged to have been ejected was an under-raiyat of the disputed land on the date of ejectment and was ejected within twelve years before the commencement of proceeding under this section in contravention of section 89, the Collector shall order that the land-lord, or, where any other person, is in possession of the land comprised in the under-raiyat tenancy or portion thereof under any claim derived from the landlord, such person shall restore the under-raiyat to possession of the tenancy or portion from which he was so ejected.

(9) The order of the Collector under sub-sections (6), (7) or (8) shall be in writing and shall state the grounds on which it is made and specify the period which shall not exceed six month from the date of the order within which his order shall be carried out.

(10) If the Board fails to record its findings or transmit the records as required under sub-section (7) within a period of six month [which shall be reckoned from the date of its appointment under sub-section (3)] the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section.

¹[(11) If the person against whom an order has been made under sub-sections (6), (7) or (8) fails to carry out the orders of the Collector within such reasonable time as may be specified in the order or the order passed to appeal under section 48F the Collector shall take or cause to be taken such steps or use or cause to be used such force as in his opinion may be necessary for securing compliances with the order or for preventing such threatened ejectment of under-raiyat or for restoring possession to under-raiyat unlawfully ejected.]

(12) The Board shall have the same power regarding the summoning and attendance of witnesses and compelling the production of

documents as a Civil Court has under the Code of Civil Procedure, 1908 (V of 1908) and the Collector shall have general control and superintendence over the Board.

(13) Save as expressly provided in this Act, no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under sub-section (1) by the Collector:

Provided that nothing in this sub-section shall be deemed to affect the power of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.

1. Substituted by Act 8 of 1987

48F. Appeals :-

¹[(1) An appeal shall lie from an order referred to in [sub-section (7) and sub-section (8) of section 48E.--

(i) if such order is passed by an officer other than the Collector of a district, to the Collector of the district or to any officer specially empowered by the State Government by notification to hear such appeals; and

(ii) if such order is passed by the Collector of a district, to the prescribed authority.

(2) The Collector of the district may, at any time, transfer any appeal filed before him to any officer specially empowered under clause (i) of sub-section (1) to hear such appeals or withdraw any appeal pending before any officer so empowered, and either hear such appeal himself or transfer it for disposal to any other officer so empowered.

(3) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.

(4) An order duly made under section 48-E or on appeal under this section shall be final and shall not be called in question in any Civil Courts.

(5) If a suit is Instituted challenging an order made under section 48-E or on appeal under this section, the Civil Court shall have no power, during the tendency of the suit, to stay the enforcement of such order.]

1. Inserted by Act 24 of 1955.

49. Grounds on which under-raiyats, without occupancy right may be ejected :-

An under-raiyat may be ejected by his landlord from land in which he has not already acquired a right of occupancy in accordance with the

provision of section 48-C]¹ on one or more of the following grounds and not otherwise, namely:--

(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 consistent with this Act and on breach of which he is under the terms of a contract between himself and his landlord, liable to be ejected;

(c) where he has been admitted to occupation of the land under a written lease on the ground that the term of the lease has expired.

²[(d) where he holds the land of any person mentioned in clause (ii) of the proviso to sub-section (i) of section 48 C, on the ground that the status of the raiyat mentioned in the said clause has changed and the raiyat intends to cultivate the land personally.]

1. Inserted by Act 24 of 1955.

2. Inserted by Act 8 of 1987.

49A. Omitted :-

¹[xxx]

1. Omitted by Act 8 of 1987

CHAPTER 7 RESTRICTIONS ON ALIENATION OF "LAND BY PROTECTED TENANTS

49AA. Definition :-

¹[PROTECTED TENANTS]

In this chapter "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 mortgage.

1. Substituted by Act 19 of 1955.

49B. Application of Chapter :-

¹[Application of Chapter]

This Chapter shall apply to tenants who are members of the Scheduled castes. Scheduled tribes and Backward classes (hereinafter referred to as protected tenants).

Explanations.--

(1) "Scheduled castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are specified in Part II of the Schedule to the Constitution (Scheduled Castes) Order, 1950.

(2) "Scheduled tribes" means such tribes or tribal, communities or parts of or groups within such tribes or tribal communities as are specified in Part II of the Schedule to the Constitution (Scheduled Tribes) Order, 1950.

(3) "Backward classes" means such classes of citizens as may be declared by the State Government by notification in the Official Gazette, to be socially and educationally backward.

1. Substituted by Act 19 of 1955.

49C. Restriction on transfer of tenants rights :-

No transfer by, ¹[a protected tenant] of his right in his tenure, holding or tenancy, or in any portion thereof by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

1. Omitted by Act 8 of 1987.

49D. Lease by tenure holder :-

¹[A tenure-holder, who is a member of the Scheduled tribes, Scheduled castes or Backward classes] may grant a lease to ¹[another person who is a member of the Scheduled tribes, Scheduled castes or, as the case may be, Backward classes,] to hold the land as a tenure-holder, or to cultivate it as a raiyat, in accordance with the provisions of this Act.

1. Substituted by Act 19 of 1955.

49E. Sub-letting by raiyat :-

(1) Subject to the provisions of sub-section (1) of section 85, ¹[a raiyat, who is a member of the Scheduled tribes, Scheduled castes or Backward classes,] may sublet his holding to ¹[another person who is a member of the Scheduled tribes, Scheduled castes, or as the case may be, Backward classes] to cultivate it as an under-raiyat.

(2) A sub-lease by ¹[a raiyat, who is a member of the Scheduled tribes, Scheduled castes or Backward classes,] shall not be admitted to registration if it purports to create a term exceeding five years.

1. Substituted by Act 19 of 1955.

49F. Usufructuary mortgage by tenure-holders, raiyat or under-raiyat :-

(1) ¹[A tenure-holder, raiyat, who is a member of the Scheduled tribes, Scheduled castes or Backward classes] may, enter with ¹[another person, who is a member of the Scheduled tribes, Scheduled castes or, as the case may be, Backward classes,] into a complete usufructuary mortgage in respect of any land for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed seven years, or the period of his own right whichever is less:

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908 (16 of 1908).

(2) ¹[The power of a tenant, who is a member of the Scheduled tribes, Scheduled castes or Backward classes,] to mortgage his land shall be registered to only one form of mortgage, namely, a complete usufructuary mortgage:

²[Provided that a tenant may enter into a simple mortgage in respect of any tenure, holding or tenancy or portion thereof with a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1938 (Bihar and Orissa Act VI of 1935) or with the State Bank of India or a Bank specified in column 2 of the First Schedule to the Banking and Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or with a company or a corporation owned by, or in which not less than fifty one percent of share capital is held by the State Government, and which has been set up with a view to provide agricultural credit to cultivators.]

1. Substituted by Act 19 of 1955.

2. Inserted by Act 10 of 1976.

49G. Application to Collector for transfer in certain cases :-

¹[(1) If in any case.--

(a) a protected tenant is unable to lease his land as provided in section 49-D or to sublet his holding as provided in Section 49- E or to mortgage his land as provided in sub-section (1) of Section 49-F, or

(b) a protected tenant desires to transfer his land, or any portion thereof, by private sale, gift or will to any person.

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not a member of the Scheduled tribes, Scheduled castes, or Backward classes, or in case (b), transfer the same by private sale, gift or will to any person, and the Collector may pass such order on the application as he thinks fit.]

(2) Every such transfer shall be made by registered deed, and before

the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) The Collector shall not give his written consent under sub section (2) to a transfer by 1[raiyat, who is a member of the Scheduled tribes, Scheduled castes, or the Backward classes] of an occupancy holding or portion thereof until the transferee has deposited with the Collector the landlords transfer fee payable under the provisions of this Act.

(4) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable if this section had not been enacted.

1. Inserted by Act 19 of 1955.

49H. Power of Collector to eject mortgagee for wilful neglect to pay rents of mortgaged land :-

(1) If the mortgagee of any land mortgaged under this Chapter is legally liable to pay the rent of such land to the landlord and fails to do so, the mortgagor may deposit with the Collector the arrears of rent together with the costs necessary for the transmission of the same to the landlord, and may apply to the Collector for the ejectment of the mortgagee and the restoration of the mortgaged land to the mortgagor.

(2) On receipt of such an application the Collector, after making such enquiry as he thinks fit, may, if he is of the opinion that the mortgagee has wilfully neglected to pay the amount of rent in arrear, eject the mortgagee and restore the mortgaged land to the mortgagor and the mortgage shall thereupon be deemed to have terminated.

(3) The Collector shall cause to be transmitted to the landlord any sum deposited under sub-section (1).

Section 49J - Courts not to register, or recognize as valid transfers in contravention of this Chapter

No transfer by ¹[a protected tenant] in contravention of the provisions of this Chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction

1. Inserted by Act 19 of 1955.

49K. Power to Collector to set aside improper transfers by tenure holder, raiyat or under raiyat :-

(1) If a transfer of a tenure, holding or tenancy, or any portion thereof,

is made by ¹[a protected tenant] in contravention of the provisions of section 49C, or if a transferee has continued or is in possession in contravention of the provisions of sub-section (1) of section 49F or section 49G, as the case may be, the Collector may, of his own motion or on application made in that behalf, after recording an order in writing, eject the transferee from such tenure holding, tenancy or portion:

Provided that.--

(a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and
(b) he is given an opportunity of showing cause against the order of ejection.

(2) (a) When the Collector has passed an order under sub-section (1), he shall pass a further order restoring the transferred land to the ¹[protected tenant] or to his heir or legal representative.

(b) If such ²[tenant] or his heir or legal representative cannot be found within six months from the date of the order of restoration passed under clause (a), or is unwilling to take possession of the land, the Collector may declare that the right of settlement is vested in the landlord subject to the provisions of section 49L:

Provided that if the right of settlement is not exercised within one year, the Collector may on the expiry of the period, settle the land on behalf of the landlord on such terms as he deems fit with ¹[a member of the Scheduled tribes, Scheduled castes or backward classes] and if the Collector is unable to make such settlement within a period of six months an unrestricted right of settlement shall vest in the landlord.

1. Inserted by Act 19 of 1955.

2. Substituted by Act 19 of 1955.

49KK. Prevention of ejection of settlees and lessees of Government land and lessees of Government land :-

¹[(1) If any settlee or lessee of Government land is threatened with unlawful ejection from the land settled or leased to him or any part thereof by any other person, the Collector may of his own motion or on application, made in this behalf by such settlee or lessee or his representative initiate a proceeding for preventing such person from ejecting the settlee or the lessee and may by orders in writing prevent such person from ejecting the settlee or the lessee.

(2) If any settlee or lessee has been unlawfully ejected by any other person from the land settled or leased out to him or any part thereof, the Collector may on receipt of an application from the settlee or the

lessee or his representative for restoration of possession of the land or on his own motion make such enquiry as may be necessary and order that the settlee or lessee shall be put in possession of the land or part thereof from which he has been so ejected.

(3) If the person against whom an order has been made under sub-section (2) fails to carry out the orders of the Collector within such time, as may be specified in the order, the Collector shall proceed to put the settlee or lessee in possession of the land or a portion thereof as the case may be, after ejecting such person and may for that purpose use such force as may be necessary.]

1. Inserted by Act 8 of 1987.

49L. Resettlement of certain tenancies :-

(1) Whenever.--

(a) the right of settlement of any tenancy, or any portion thereof is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49K, or

(b) ²[a protected tenant] surrenders his tenancy, or a portion thereof, or abandons his residence and ceases to hold his tenancy, the landlord may, subject to the provisions of sections 86 and 87.--

(i) settle the tenancy, or a portion thereof, with ²[a member of the Scheduled tribes, Scheduled castes or Backward classes,] or

(ii) with the approval of the Collector in writing, settle the same with a person who is not ²[a member of the scheduled tribes, scheduled castes or backward classes] or retain it in his own possession:

Provided that the Collector shall not withhold his approval if he is satisfied that the landlord is unable to settle the land with ¹[another person, who is a member of the scheduled tribes, scheduled castes or backward classes and that the surrender or abandonment referred to in this sub-section was not made with the object of evading the provisions of sections 49C, 49F, or 49G.

(2) If any landlord resettles or otherwise deals with any tenancy in contravention of the provisions of sub-section (1), the Collector may, subject to the proviso to sub-section (1), 49K, eject any person with whom settlement has been made or who is in possession of the land in contravention of the provisions of subsection (1), and may settle the land with ²[a member of the scheduled tribes, scheduled castes or backward classes,] or, if he is unable to settle the land with ²[a member of the scheduled tribes, scheduled castes or backward classes,] shall restore the land to the landlord.

1. Inserted by Act 8 of 1987.

2. Substituted by Act 19 of 1955.

49M. Restrictions on sale of tenants rights under order of Court :-

¹[Notwithstanding anything contained in this Act,--

(a) no decree or order shall be passed by any court for the sale of the right of tenure-holder or under-raiyat who is a member of the Scheduled Tribes, Scheduled Castes or Backward Classes in this tenure or tenancy, or in any portion thereof, nor shall any such right be sold in execution of any decree or order, except a decree for an arrear of rent which has accrued in respect of the tenure or tenancy or a decree for dues based on a simple mortgage in respect of a tenure or tenancy or a portion thereof as mentioned in the proviso to sub-section (2) of section 49-F;

(b) no decree or order shall be passed by any court for the sale of the right of a riyat, who is a member of the Scheduled Tribes, Scheduled Castes or Backward Classes in his holding or in any portion thereof, nor shall such right be sold in execution of any decree except as provided in sub-section (2) or a decree for dues based on a simple mortgage in respect of a holding or a portion thereof as mentioned in the proviso to sub-section (2) of Section 49F:

Provided that where such tenure, tenancy or holding or portion thereof belongs to a member of the Scheduled Tribes or Scheduled Casts and it is being sold in execution of a decree for dues on simple mortgage as mentioned in the proviso to sub-section (2) of section 49-F, it shall not be sold to a person who is not a member of the Scheduled Tribes or, as the case may be the Scheduled Castes:]

²[Provided further that the member of a Scheduled Tribe shall be competent notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority or in the Code of Civil Procedure, 1908 (Act V of 1908) or in any other law for the time being in force to move any court, vested with appellate or revisional jurisdiction to set aside the sale of his holding in execution of a decree if the sale is in favour of a person not belonging to scheduled tribe and such court shall proceed to consider the transfer even if the prayer had not been made before the court that passed the decree.]

(2) (a) When a decree for an arrear of rent which has accrued in respect of the holding of ³[a riyat who is a member of the scheduled tribes, scheduled castes or backward classes,] has been passed, the Court shall send the case to the Collector for execution of the said decree and the Collector in execution of the said decree, may, in his discretion, sell the holding or a portion thereof or eject the said riyat

and settle the holding or a portion thereof with another raiyat on payment of the decretal amount or a place the landlord in possession of the said holding or a portion thereof for a period not exceeding seven years. If the Collector places the landlord in possession for any period, the decree shall, at the end of such period, be deemed to have been satisfied in full, and the Collector may then restore the holding or portion to the said raiyat or his heirs, or may settle it with ³[another person, who is a member of the scheduled tribes, scheduled castes or backward classes.]

(b) Before restoring or settling the holding under clause (a) of this subsection, the Collector may, if he is satisfied that the rent of the holding has been illegally enhanced or is substantially in excess of the rent payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, pass an order altering the amount of the rent of the holding to an amount which he considers to be fair.

³[(3) Nothing in this section shall affect any right to execute a decree for the sale of any tenure, holding or tenancy of a protected tenant, on the terms or conditions of any contract relating thereto, if such decree was passed, or such contract registered.--

(a) in the case of Santals, in those portion of the districts of Monghyr, Bhagalpur and Saharsa which lie south of the Ganges, before the first of January, 1934;

(b) in the case of the Santals in the district of Purnea and in any portion of the districts of Monghyr, Bhagalpur and Saharsa which lie north of the Ganges and Koras, Bhueas, Kols, Mal Paharias (including Navas and Pujaharsa, Sauria Paharias, Mundas and Oraons, in the whole or any part of the districts of Monghyr, Bhagalpur, Purnea and Saharsa, and Tharus and Oraons in the whole or any part of the district of Champaran and Kharwars in the whole or any part of the district of Monghyr, Bhagalpur, Purnea and Shahabad, before the date of the publication by the State Government of declaration of its intention to issue a notification with respect to these castes or tribes under subsection (2) of section 49-B, before the commencement of the Bihar Tenancy (Amendment) Act, 1955; or

(c) in the case of other protected tenants, before the commencement of the Bihar Tenancy (Amendment) Act, 1955.]

(4) Nothing in this section shall affect any right for the sale of any such tenure, holding or tenancy for the recovery of any dues which are recoverable as public demands.

1. Substituted by Act 10 of 1976.

2. Inserted by Act 8 of 1987.

3. Substituted by Act 19 of 1955.

49N. Stay or execution of decrees :-

If an application for the sale of a tenure or tenancy, or any portion thereof, is made in execution of a decree against ¹[a protected tenant,] in respect of the rent of such tenure, tenancy or portion thereof the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due, and if an application is made to the Collector under sub-section (1) of section 49 H before execution of the decree, the Collector shall inform the Court that such application has been made and the decree shall not be executed until Collector has disposed of the application.

1. Substituted by act 19 of 1955.

49O. Appeal and revision :-

(1) An appeal if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under sections 49G, 49H, 49K, 49L, or 49M by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final:

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall lie to such officer as the State Government may appoint in this behalf and the order of such officer on appeal shall be final:

Provided that in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the State Government may appoint to deal therewith.

(3) An appeal as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

49P. Bar to suits :-

Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by any officer in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

49Q. Saving of certain transfers :-

¹[Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure holder, raiyat or under-raiyat of his tenure, holding or tenancy, or any portion thereof made:--

(a) in the case of the Santals in those portions of the districts of Monghyr, Bhagalpur and Saharsa, which lie south of the Ganges, before the first January, 1934;

(b) in the case of Santals in the district of Purnea and in any portion of the districts of Monghyr, Bhagalpur and Saharsa which lie north of the Ganges, and Koras, Bhuias, Kols, Mal Paharias (including Nawas and Pajahars), Sauria, Paharias Mundas and Oraons, in the whole or any part of the districts of Monghyr, Bhagalpur Purnea and Saharsa and Tharus and Oraons in the whole or any part of the district of Champaran and Kharwars in the whole or any part of the district of Monghyr, Bhagalpur, Purnea and Shahabad, before the date of the publication by the State Government of a declaration of its intention to issue a notification with respect to these castes or tribes under sub-section (2) of section 49-B before the commencement of the Bihar Tenancy (Amendment) Act 1955; or

(c) in the case of other protected tenants, before the commencement of the Bihar Tenancy (Amendment) Act, 1955.

1. Substituted by Act 19 of 1955.

CHAPTER 7B SETTLEMENT OF WASTE LANDS

49R. Settlement of waste lands to be made by patta :-

Settlement of waste lands, belonging to the State Government shall be made by a patta or amalnama in the prescribed form. The patta or amalnama shall be prepared in duplicate of which one copy shall be given to the raiyat concerned and one copy shall be sent to the Collector of the district.

1. Inserted by *ibid*.

49S. Settlement liable to be set aside :-

In the event of any land settled as aforesaid not being brought under cultivation within a period of five years from the date of the settlement or the land being alienated in contravention of the provisions of Chapter VII-A by the classes of tenants to whom the Chapter applies, it shall be open to the Collector of the district to set aside the settlement of such land in accordance with the provisions of section 49R.]

CHAPTER 8 GENERAL PROVISIONS AS TO RENT

50. Rules and presumptions as to fixity of rent :-

(1) Where a tenureholder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held 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 shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any class of tenancies, at fixed rents or rates shall be registered as such on or before, a date specified by or under the enactment the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years determinable at the will of the landlord.

51. Presumption as to amount of rent and conditions of holding :-

If a question arises as to the amount of a tenants rent or the conditions under which he holds in any agricultural year he shall be presumed, until the contrary is shown, to hold at the same rent and under the same condition as in the last preceding agricultural year.

Alteration of rent on alteration of area

52. Alteration of rent in respect of alteration in area :-

(1) Every tenant shall -

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid him; unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made; and

(b) be entitled to a deduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit have regard to.--

(a) the origin and conditions of the tenancy, for Instance whether the rent was a consolidated rent for the entire tenure or holding;

(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(c) the length of time during which the tenancy has lasted without disputes as to rent or area; and

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the Institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

(6) When in a suit under this section the landlord or tenant proves that at the time the measurement on which the claim is based was made, there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any patta or kabuliyat or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in

any rent roll relating to it, has been entered in such patta, kabuliyat or rent-roll after measurement.

52A. Abatement of rent on account of diluvion and re-entry into lands which reform on the old site :-

(1) If the land of a holding or a portion thereof is lost by diluvion, the rent of the holding shall abate by an amount which bears to the rent of the entire holding the same proportion as the area lost bears to the area of the entire holding.

(2) (a) Notwithstanding anything to the contrary contained in this Act or in any other law or in any contract, the right, title and interest of the raiyat shall subsist in such land or portion during the period of loss by diluvion and the raiyat shall have the right to immediate possession on the reformation of such land or portion on its old site.

(b) The amount to be added to the rent of the holding on account of lands which have reformed shall, until modified in accordance with the provisions of this Act, be in the same proportion as the area of the lands reformed bears to the total area of the holding.

52B. Tenant not liable to pay rent of holding for the period of dispossession :-

Where a landlord dispossesses a tenant from his holding or part thereof, the landlord shall not be entitled to any rent in respect of the holding or part thereof for the period of such dispossession.

Payment of rent.]¹

1. The word "rent" in ss. 53 to 55, includes also money recoverable under any enactment for the time being in force as if was rent-see s. 3 (5) ante.

53. Installments of rent :-

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

54. Time and place for payment of rent :-

Every tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure shall pay each Installment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant or the mortgagee of his holding or tenure or of a portion of holding or tenure is allowed under this Act to deposit his rent, be made at the landlords

village-office, or at such other convenient place as may be appointed in that behalf by the landlord or by postal money-order:

Provided that if payment of rent or a portion of rent by postal money-order is accepted an entry in the postal money-order shall not be evidence of the area of the holding, the amount of rent payable or of the existence of the relationship of landlord and tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure between the persons who are described as such in the postal money-order form.

(3) Where rent or portion of rent is sent by postal money-order, the postal acknowledgment in the case of acceptance and the money-order coupon in the case of refusal duly sealed by the post office shall be admissible in evidence without formal proof and shall be presumed to be a correct-record of acceptance or refusal, as the case may be, by the payee unless the contrary is proved.

(3a) Where rent or a portion of rent is remitted by postal money-order, an entry in the postal money-order form as to the amount of rent remitted shall operate as an acquittance for the amount of the rent so remitted in the same manner and to the same extent as if the amount of rent had been received by the landlord.

(4) Any Installment or part of an Installment of rent not duly paid at or before the time when it falls due shall be deemed as an arrear:

Provided that, where rent is payable to the State Government any Installment or part of an Installment not duly paid at or before the time when it falls due shall be deemed to be an arrear only at the end of the agricultural year.

55. Appropriation of payments :-

When a tenant of the mortgagee of his holding or tenure makes a payment on account of rent, he may declare the year and Installment to which he wishes the payment to be credited.

(2) Notwithstanding any declaration mentioned in sub-section (1), if there is any arrear of rent due by the tenant, the recovery of which is not barred by the law for the time being in force as to limitation of suit for arrears of rent, the payment may, at the option of the landlord, be applied first to such arrear.

¹[Receipts and accounts.

1. The word "rent" in ss. 56 to 60, includes also money recoverable under any enactment for the time being in force as if it was rent-see s. 3 (b) ante.

56. Tenant making payment to his landlord entitled to a receipt :-

(1) Every tenant ¹[or the mortgagee of his holding or tenure or of a portion of his holding or tenure who makes a 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.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Board of Revenue may, from time to time, prescribe or sanction a modified form ²[either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section 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.

1. For orders made under sec. 56 (3), see the Bihar and Orissa Local Statutory Rotes and Orders. Vol. I. Part IV.

57. Tenant entitled to full discharge of statement of account at close of year :-

(1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant or the mortgagee of his holding or tenure of a portion of his holding or tenure shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant or the mortgagee of his holding or tenure of his holding or tenure shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such form as may from time to time be prescribed by the Board of Revenue either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts :-

(1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant or the mortgagee of his holding or tenure or of a portion of

his holding or tenure a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant or the mortgagee of his holding or tenure or a portion of his holding or tenure, the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure may, within three months from the date of payment, Institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant or the mortgagee of the holding or tenure or of a portion of his holding or tenure demanding the same either the receipt in full discharge or if the mortgagee of his holding or tenure or of a portion of his holding or tenure is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure may, within the next ensuing agricultural year Institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said section such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3) either on his own motion or on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon report of a Civil Court.

(5) Where, in any case Instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant or the mortgagee of his holding or tenure of a portion of his holding or tenure or which the proceedings were Instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant, or tenure to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(6) An appeal shall lie to the prescribed authority against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5), and the order passed by such authority in such appeal shall be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law¹ for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of witness and compel the production of documents in the same manner as is provided in the cases of a Court under the Code of Civil Procedure 2[(14 of 1882)].

1. See the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), ss. 4 and 5.

2. See Code of Civil Procedure, 1903 (5 of 1998).

59. State Government to prepare forms of receipt and account

:-

(1) The State Government shall cause to be prepared and kept for sale to landlord at all divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms shall be sold in books with the leaves consecutively numbered and no landlord shall use any forms other than the forms aforesaid for granting receipts to tenants:

Provided that where such forms are not available for sale at any subdivisional office, a landlord may use forms printed by him after such forms have been consecutively numbered and stamped with the seal of the Collector in the prescribed manner.

(3) Every landlord shall submit returns in the prescribed form to the Collector at the end of the agricultural year showing the numbers of volumes and the serial number of receipts in each volume used in granting receipts for payment of rent in respect of each village during that agricultural year.

(4) If any landlord contravenes the provisions of sub-section (3) or furnishes any false particulars regarding any matter in respect of which he is required under the aforesaid sub-section to furnish returns, he shall be liable to a fine not exceeding five hundred rupees to be imposed, after summary inquiry, by the Collector.

(5) Any landlord aggrieved by any order of the Collector under sub-section (4) may appeal to the prescribed authority within such period as may be prescribed.

(6) If any person who is not a tenant or who is not, under any law for the time being in force, entitled to pay the rent of any holding remits rent to the landlord, such rent shall not be refundable to such person and may at the option of the landlord be appropriated by him.

60. Effect of receipt by registered proprietor, manager or mortgagee :-

Where rent is due to the proprietor, manager or mortgagee of an estate the receipt of the person registered under the Land Registration Act, 1876 (Ben. Act 7 of 1876) as proprietor, manager or mortgagee of that estate, or of his agent authorized 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.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent]¹

1. The word "rent" in ss. 61 to 64, includes also money recoverable under any enactment for the time being in force as if it was rent.-- see s. 3(5) ante.

61. Application to deposit rent in Court :-

(1) In any of the following cases, namely:--

(a) when a tenant or the mortgagee of his holding or of a portion of his holding or tenure tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant or the mortgagee of this holding or tenure or of a portion of his holding or tenure 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; or

(d) when the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure entertains a doubt as to who is entitled to receive the rent;

the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due or which will be come due at the end of the agricultural year in which the deposit is made.]

(2) The application shall contain a statement of the grounds on which it is made; shall state.--

in case (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant or the mortgagee or his holding or tenure or of a portion of his holding or tenure may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure ¹[14 of 1882], by the tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure] or where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the State Government, from time to time, by rule², directs.

1. See the Code of Civil Procedure, 1908 (V of 1908) R. 15 O. VI.

2. For rules made under s. 61 (2), see Bihar and Orissa Local Statutory Rules and Orders, Vol I, Part IV.

62. Receipt granted by Court for rent deposited to be a valid acquittance :-

(1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) 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 of rent had been received.--

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due: and

in case (d) of that section by the person entitled to the rent.

63. Notification of receipt of deposit :-

(1) The Court receiving the deposit 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 material particulars.

(2) If the amount of the deposit is not paid away under the next

following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith.-- in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlords village office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person whom it has reason to believe claims or is entitled to the deposit.

64. Payment of refund of deposit :-

(1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the State Government so direct, be made by postal money-order.

(3) 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 deposited may, in the absence of any order of a Civil Court, to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be Instituted against the Government or against any officer of the Government, in respect of any thing done by a Court receiving a deposit under the foregoing sections; 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 in whom it has been paid under the section.

Arrears of Rent]¹

1. The word "rent" in ss. 65-68 includes also money recoverable under any enactment for the time being in force as if it was not rent.-- see s. 3 (5) ante.

65. Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding :-

Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejection for arrears of rent, but his tenure or holding or part of his holding, shall be

liable to sale in execution of a decree for the rent of the tenure or holding, and the rent shall be a first charge on the tenure or holding.

66. Ejectment for arrears in other cases :-

(1) When an arrear of rent remains due from a tenant not being a permanent tenure holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year]¹ where that year prevails, or at the end of the month of jeth]² where the Fasli or Amli year prevails; the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree or rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The court may for special reasons extend the period of fifteen days mentioned in this section.

1. i.e., the month of Chaitra, which corresponds, to the last part of March and the first part of April.

2. The month of Jeth corresponds to the last part of May and the first part of June.

67. Interest on arrear :-

(1) An arrear of rent shall bear simple interest at the rate of six and a quarter per centum per annum.

(2) Such interest shall be payable, in the case of a money rent from the expiry of that quarter of the agricultural year in which the instalment falls due, and, in the case of a rent payable in any of the ways mentioned in sub-section (1) of section 40, from the end of the agricultural year in which the payment falls due and shall in either case be payable up to the date of payment or of the institution of suit, whichever date is earlier.

68. Power to award damages on rent without reasonable cause, or to defendant improperly used for rent :-

Rep. by the Bihar Tenancy (Amendment) Act, 1937 (Bihar Act 8 of 1937).

Produce rents.

69. Order for dividing produce :-

(1) Where rent is taken by division of the produce.--

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division; or

(b) if there is a dispute about the division of the produce, the Collector may on the application of either the landlord, if made within such period as may be prescribed, or the tenant, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Subdivisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the division has been effected; but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenants crops.

(4) Every officer appointed by the Collector under sub-section (1) to divide the produce shall for the purposes of the Indian Penal Code (45 of 1860), be deemed to be a public servant.

70. Procedure where officer appointed :-

(1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the division; and the officer shall conform to the instruction so given.

(2) The officer shall, before making a division, give notice to the landlord and tenant of the time and place at which the division will be made; but if either the landlord or, the tenant fails to attend either personally or by agent, he may proceed ex-parte.

(3) When the officer has made the division he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just,

(5) (a) If the Collector is satisfied that an application made under section 69 by either party was rendered necessary by the negligence,

delay, obstruction, or other unlawful conduct of the other party, he may make an order directing that the amount deposited for expenses under sub-section (1) of the said section, shall be returned to the applicant and shall be paid by the other party, and may, in addition, require the other party to pay to the applicant such compensation as he thinks fit.

(b) If the Collector is satisfied that an application made by either party under section 69 was made without adequate and sufficient reasons, he may make an order directing that the applicant shall pay to the other party such compensation as he thinks fit.

(6) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or tenant, be enforceable as a decree.

71. Rights and liabilities as to possession of crop :-

(1) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to cut and harvest the produce in due course of husbandary without any interference on the part of the landlord.

(3) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due division thereof at the proper time, the produce may at the discretion of the Collector be presumed to have been as full as the fullest crop of the same description divided in the neighbourhood on similar land for that harvest.

¹[Liability for rent on change of landlord or after transfer of tenure or holding.

1. The word " rent" in ss. 72, 73, 74 and 75 includes also Money recoverable under any enactment for the time being in force as if it was rent-see s. 3 (5), ante.

72. Tenant not liable to transferee of landlords interest for rent paid to former landlord without notice of the transfer :-

(1) A tenant shall not, when his landlords interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. Liability for arrear of rent on transfer of whole or part of holding :-

(1) When an occupancy holding has been transferred in whole or in part, whether before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), by sale, exchange or gift, or by sale in execution of a decree or of a certificate filed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) other than a decree for a certificate for arrears of rent due in respect of the holding--

(a) all arrears of rent due in respect of the holding before the date of the transfer shall be a first charge on the holding;

(b) the transferor shall be liable for all arrears due before the date of the transfer; and

(c) the transferor and the transferee shall be jointly and severally liable for all arrears falling due between the date of the transfer and the date of the distribution of the rent.

(2) In this section the expression " date of the transfer" means,--

(a) in the case of transfer by sale, exchange or gift--the date of the execution of the instrument of transfer on the date on which the transaction was completed, as the case may be; and

(b) in the case of a sale in execution of a decree or certificate filed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914)--the date of the sale.]

74. Abwab, etc., illegal :-

All impositions upon tenants under the denomination of abwab, mathat other like appellations in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

75. Penalty for illegal exactions by landlord or agent of landlord :-

(a) If a landlord or his agent levies, except under any special enactment for the time being in force, from a tenant of such landlord any sum of money or anything in kind in excess of the rent or local cess lawfully payable by such tenant and the interest payable on an arrear of such rent or cess, such landlord or agent, as the case may be,

shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(b) An offence under sub-section (a) shall be bailable, and shall be compoundable with the consent of the person against whom the offence was committed.

(c) Any order of conviction passed under this section shall be appealable to the Court to which appeal ordinarily lies under the Code of Criminal Procedure, 1898 ¹[(5 of 1898)

1. See the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER 9 MISCELLANEOUS PROVISIONS TO LANDLORD AND TENANTS

76. Definition of "improvement" :-

(1) For the purposes of this Act, the terms "improvement", used with reference to raiyat s holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:--

(a) the construction of wells, tanks, water-channels and other work for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damages by water, of land used for agricultural purposes, or waste land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto; and

(f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlords property.

77. Right to make improvements in cases of holding at fixed rates and occupancy-holding :-

(1) Where a raiyat holds at fixed rates or has an occupancy-right in his

holding, neither the raiyat 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.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

78. Collector to decide question as to right to make improvements, etc :-

If a question arises between the raiyat and his landlord--

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. Right to make improvements in case of non-occupancy holding :-

(1) A non-occupancy raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling house for himself and his family, with all necessary out offices; but shall not, except as aforesaid and as next hereinafter provided, he is entitled to make any other improvement in respect of his holding without his landlords permission.

(2) A non-occupancy raiyat who would, but for the want of his landlords permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

80. Registration of landlords improvements :-

(1) A landlord may, by application to such Revenue officer as the Board of Revenue may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the State Government, from time to time, by rule directs.

(3) The officer receiving the application may reject it 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.

81. Application to record evidence as to improvement :-

(1) If, any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall there upon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under enquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any person claiming under them.

82. Compensation for raiyat improvements :-

(1) Every raiyat 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 raiyat it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the second day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The State Government may, from time to time, by notification in the Official Gazette, make rules requiring the court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the State Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

83. Principle on which compensation is to be estimated :-

In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had--

- (a) to the amount by which the 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 effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat 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 time during which the raiyat has had the benefit of the improvement at an enhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

84. Acquisition of land for building and other purposes :-

A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground or for any religious, educational or charitable purpose;

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient;

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

85. Restrictions on sub-letting :-

(1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid, against his landlord unless made with the landlords consent.

(2) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

86. 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.

(2) But, notwithstanding the surrender, the raiyat 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 the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:--

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside to the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument or when there is an under raiyat on the holding or part thereof the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer or the under-raiyat or both, as the case may be.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

87. Abandonment :-

(1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due and ceases to cultivate his holding either by himself or by some other person, 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.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collectors office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and

the Collector shall cause a notice to be published in such manner as the State Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months from the date of the publication of the notice; and thereupon the 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 to the Court may seem just.

(4) Where the whole or part of a holding has been sublet by a registered instrument the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat, who has ceased to cultivate the holding, and on condition of the sub lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

(5) If an under-raiyat has a right of occupancy in a holding or a portion thereof the landlord shall before entering on the holding under this section, offer the whole holding to the under-raiyat at the rent paid by raiyat and on condition of the under-raiyat paying up all arrears due from the raiyat. If the under-raiyat refuses or neglects within a reasonable time to accept the offer, the landlord may enter on the holding and let it to another tenant or cultivate it himself, as provided in sub-sections (1) and (2).

88. Division of tenancy not binding on landlord without his consent :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

88A. Division of tenure or holding and distribution of rent :-

(1) When a portion of a tenure or holding of a tenure-holder or occupancy-raiyat or a raiyat holding at fixed rate is transferred by sale (including a sale in execution of a decree other than a decree for arrears of rent), exchange or gift, the transferor and the transferee may, in the case of a transfer made after the date of the commencement of the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947), at the time of the transfer or at any time thereafter,

and in the case of a transfer made before the date of the commencement of the said Act, at any time after such date, divide the tenure or holding or distribute the rent payable in respect thereof by agreement.

(2) Any division of the tenure or holding or distribution of the rent payable in respect thereof made under sub-section (1) shall be binding on the landlord if the transferee sends to the landlord by registered post a notice of such division or distribution and containing the prescribed particulars:

Provided that such division or distribution shall be binding on the landlord with effect from the date of the service of the notice on him or his agent under this sub-section:

Provided further that the landlord may if he objects to the distribution of the rent payable in respect of such tenure or holding make an application to the Collector for a fair and equitable distribution within a period of three months from the date of the service of the notice.

(3) (a) If the parties to the transfer are unable to divide the tenure or holding or distribute the rent payable in respect thereof by agreement, any of them may apply to the Collector for the division of the tenure or holding or distribution of the rent payable in respect thereof.

(b) On receipt of an application under the second proviso to sub-section (2) or under clause (a), the Collector shall in the prescribed manner serve on the parties including the landlord but excluding the applicant a notice of the date on which he intends to hear the application and after hearing the parties and holding such enquiry as he thinks proper, the Collector shall divide the tenure or holding or distribute the rent payable in respect thereof in such manner as he deems fair and equitable and his decision shall be final.

(c) The order of the Collector under clause (b) shall take effect from such date as may be specified in the order.

(d) The Collector may award any sum by way of costs to any party to the proceedings and any sum so awarded as costs shall be recoverable from the party by whom it is payable as a public demand.

(4) If the landlord does not file an application under the second proviso to sub-section (2) or if the landlord has made any entry in his rent-roll showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have agreed to such division or distribution, as the case may be.

(5) In the case of a transfer of a portion of a tenure or holding made before the 1st day of January, 1934 the landlord shall be deemed to have accepted the division of the tenure or holding or distribution of the rent payable in respect thereof as stated in the instrument of transfer or, if there is no such instrument, as settled between the

transferor and the transferee.

88B. Effect of acceptance of rent distribution fee by landlord or his agent :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947)

88C. Procedure when landlord or his agent does not accept rent distribution fee :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

88D. Collector to serve notice upon landlord or landlords :-

Rep by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947)

88E. Application for payment of deposit :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947.)

88F. Procedure to be followed by Collector on receipt of application :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947.)

88G. Procedure to be followed by Collector when no application made :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947.)

88H. Summary rejection of application if made after payment of rent distribution fee by Collector :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

88I. Sums recoverable as public demands :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947.)

89. No ejectment except in execution of decree :-

No tenant shall be ejected from his ¹[tenancy or any portion thereof] except in execution of a decree.

1. Substituted by Act 24 of 1955.

90. Landlords right to measure land :-

(1) Subject to the provisions of this section and any contract a landlord may by himself or by any person authorised by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):--

(a) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the 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.

(3) The ten years shall be computed From the date of the last measurement, whether made before or after the commencement of this Act.

91. Power for Court to order tenant to attend and point out boundaries :-

(1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

92. Standard of measurement :-

(1) Every measurement of land made by order of a Civil Court, or of a Revenue officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue officer directs that it may be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The State Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

93. Power to call upon co-owners to show cause, why they should not appoint a common manager :-

¹[When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue.--

(a) inconvenience to the public, or

(b) injury to private rights.

the District Judge may, on the application in case (a) of the Collector, and in case (b) of anyone having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure 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 his interest are registered under the Land Registration Act, 1876 (Ben. Act 7 of 1876).

1. For notes to s. 93 see the Bihar and Orissa Wards Manual, 1941, pp 350-351.

94. Power to order them to appoint a manager, if cause is not shown :-

If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, 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.

95. Power to appoint manager, if order is not obeyed :-

If the co-owner do not, within such period, not being less than one month after the making of an order under the last foregoing section., 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 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 case appoint a manager.

96. Power to nominate person to act in all cases under clause (b) of last section :-

The State Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of the last foregoing section; 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 the Judge thinks fit to appoint one of the co-owners themselves as manager.

97. The Court of Wards Act, 1879, applicable to management by Court of Wards :-

In any case in which the Court of Wards undertake under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879 (Ben. Act 9 of 1879) as relates to the management of immovable property shall apply to the management.

98. Provisions applicable to manager :-

(1) A manager appointed under section 95 may, if the District-Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge, from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes 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.

(6) He shall pass his accounts at such period in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make

under section 103.

(8) He shall be removable by the order of the District Judge and not otherwise.

99. Power to restore management to co-owners :-

¹[When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, 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 injury to private rights.

1. For a note to s. 99, see the Bihar Wards Manual, 1941, p. 353.

100. Power to make rules :-

¹[The High Court may, from time to time make rules defining the powers and the duties of managers under the foregoing sections.

1. For rules made under s. 100, see the Bihar and Orissa Local Statutory Rules and Orders, Vol I, Part IV.

CHAPTER 10 RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS

101. Power to order survey and preparation of record-of-rights :-

¹[(1) The State Government may, in any case if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue Officer, in respect of the lands in any local area, estate or tenure or part thereof.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make such an order in the following cases, namely:

(a) Where--

(i) the landlord or tenants; or

(ii) a proportion of not less than one-half of the total number of landlords; or

(iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interest, respectively, in the land of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein; or

(iv) proportion of not less than one-fourth of the total number of tenants; applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses as the State Government directs;

(b) Where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlord generally;

(c) where the local area, estate or tenure or the part thereof belongs to, or is managed by, or on behalf, of the Government or managed by the Court of Wards or a manager appointed by the District Judge under section 95;

(d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.--The term "settlement of land-revenue" as used in clause (d) includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.--A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure holder.

(3) A Notification in the Official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record of-rights prepared in accordance with rules made in this behalf by the State Government.

1. Every Deputy Collector making a petition under the Estates Partition Act, 1897 (Ben. Act 5 of 1897), has as regards the estate under partition, all the powers exercisable by a Revenue-Officer employed in preparing a record-of-rights under Chapter X of the present Act see 44 of the former Act.

102. Particulars to be recorded :-

Where an order is made under section 101; 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 tenant or occupant;

(b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, raiyat, holding at fixed rates, settled raiyat occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure;

(c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;

(d) the name of each tenants landlord;

(dd) the name of each proprietor in the local area or estate;

(e) the rent payable at the time the record-of-rights is being prepared;

(f) the mode in which that rent has been fixed-whether by contract, by

order of a Court, or otherwise;

(g) if the rent is a gradually increasing rent, the time at which and the steps by which, it increases;

(gg) the rights and obligations of each tenant and landlord in respect of--

(i) the use by tenants of water for agricultural purposes, whether obtained from a river, jhill, 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;

(h) the special conditions and incident, if any, of the tenancy;

(i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

(j) if the land is claimed to be held rent-free-whether or not rent is actually paid, and, if not paid, whether, or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

102A. Power to order survey and preparation of record-of-rights as to water :-

The State Government may, for the purpose of settling or averting dispute existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water, make an order directing that a survey be made, and a record of rights be prepared by a Revenue Officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of--

(a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well, or any other source of supply; and

(b) 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.

103. Power for Revenue-Officer to record particulars on application of proprietor, tenure holders, or large proportion of raiyat

:-

On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the raiyat, of an estate or tenure, and on the applicant or applicants depositing or giving security for the required

amount for expenses, a Revenue Officer may, subject to and in accordance with, rules made in this behalf by the State Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

103A. Preliminary publication, amendment and final publication of record-of-rights :-

(1) When a draft records of-right 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 to any entry therein, or to any omission therefrom during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as State Government may prescribe, and (if a settlement of land revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under Sec. 104 F, Sub-sec. (3), 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.

¹[(3) Revenue Officer specially empowered by the State Government in this behalf, may, on application made to him within three months of any order or decision on any objection made under sub-section (1) or on his own motion, after giving reasonable notice to the parties concerned to appear and be heard in the matter, revise, at any time before the final publication of the record-of-rights, any such order or decision whether made by himself or by any other Revenue Officer,]

(4) ²[* * * * *]

1. Substituted, by Act 1 of 1967.

2. Omitted by Act 10 of 1976.

103B. Presumption as to final publication and correctness of record-of-rights :-

(1) 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, and a certificate signed by the Revenue officer, or by the Collector of any district in which the local area, estate or tenure or part thereof to which the records-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published under this

Chapter, shall be conclusive evidence of such publication.

(2) The State Government may, by notification]¹ 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 evidence of such application.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

1. For a list of notifications under s. 103B (2), see the Bihar and Orissa Local Statutory Rules and Orders Vol. I, Part IV.

104. Settlement of rents and preparation of Settlement Rent-roll when to be undertaken by Revenue-officer :-

In every case in which a settlement of land revenue is being or is about to be made, the Revenue officer shall after publication of the draft of the record-of-rights under section 103A, sub-section(1),--

(a) settle fair and equitable rent for tenants of every class,

(b) notwithstanding anything contained in section 102, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (J) of section 102, that the occupant is not entitled to hold it without payment of rent, and

(c) prepare a Settlement Rent-roll:

Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the State Government to be expedient that he should do so]¹.

1. For an order made under the proviso to S. 104, see the Bihar and Orissa Local Statutory Rules and Orders. Vol. I Part IV.

104A. Procedure for settlement of rents and preparation of Settlement Rent-roll under this Part :-

(1) For the purposes of settling rents under this Part and preparing a Settlement Rent-roll, the Revenue officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say,--

(a) if in any case the landlord and tenant agree between themselves as to the amount of rent fairly and equitably payable, the Revenue officer shall satisfy himself that the rent so agreed upon is fair and if he is so satisfied but not otherwise, it may be settled and recorded as the fair and equitable rent;

(b) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted

either orally or in writing by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent,;

(c) if the circumstances are, in the opinion of the Revenue-officer such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;

(d) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of rights as published under section 103A, sub-section (1), or by enhancing or reducing such rentals;

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive) 30, 43, 50 to 52 (both inclusive) clauses (b), (c) and (d) of sub-section (1) of section 112A, 180 and 191.

(2) The Settlement Rent-roll shall show the name of each landlord and of each sub-tenant whose rent has been settled, and the amount of each such tenants rent payable for the area shown against his name.

104B. Contents of Table of Rates :-

(1) If a Table of Rates is prepared, it shall specify--

(a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent; and

(b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

(2) Local Publication of Table.--

When the Revenue officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates in the vernacular language prevailing in the district, and in the prescribed manner.

(3) Revenue-officer to deal with objections.--

Any person objecting to any entry in the Table of Rates may present a petition to the Revenue officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

(4) Table to be submitted to superior Revenue authority.--

If no objection is made within the said period of one month or, where

objections are made, after they have been disposed of, the Revenue officer shall submit his proceedings to the Revenue authority empowered by rule made by the State Government to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

(5) Proceedings of confirming authority.--

The confirming authority may confirm a Table submitted under subsection (4) or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made or may return the case for further inquiry.

(6) Effects of Table.--

When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

104C. Application of Table of Rates :-

When a Table of Rates has been confirmed under section 104B, subsection(5) the Revenue-officer may settle all or any of the rents and prepare the settlement Rent-roll on the basis of the rates shown in the table by calculating the rental of each tenure or each holding of a raiyat or under raiyat on the area of such tenure or holding at the said rates:

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. Rules and principles to be followed in framing Table of Rates and setting rents in accordance therewith :-

In framing a Table of Rates under section 104B, and in setting rents under section 104C, the Revenue-officer shall be guided by such rules as the State Government may make in this behalf, and shall so far as may be; and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

104E. Preliminary publication and amendment of Settlement

rent-roll :-

(1) When a Settlement Rent-roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the State Government may prescribe.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, any rent entered therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104F. Final revision of settlement Rent-roll-incorporation of the same in record-of-rights :-

(1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority, with a full statement of the ground of his proposals and summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision:

Provided that no entry shall be amended, or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority the Revenue-officer shall finally by frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

104G. Appeal to and revision by, superior Revenue authorities :-

(1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3) or section 104E, and such appeal shall lie to such superior Revenue authority as the State Government may by rule prescribe.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights at any time within two years

from the date of the certificate of final publication; [***]¹

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.

1. The words "but not so as affect any order passed by a Civil Court under section 104H" omitted by Act 2 of 1965.

104H. Section 104H :-

Rep. by sec. 3 of the Bihar Tenancy (Amdt.) Act, 1964 (Bihar Act 3 of 1965).

104J. Presumptions to rates settled under sections 104A to 104G :-

¹[All rents settled] under sections 104A to 104F and entered in a record-of-rights finally published under section 103A to be settled under section 104G, shall be deemed to have correctly settled and to be fair and equitable rents within the meaning of this Act.

1. Substituted by *ibid*.

105. Settlement of rents by Revenue-officer in cases where a settlement of land revenue is not being or not about to be made :-

(1) When in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103 A, sub-section (2); for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

¹[Explanation.--A landlord may file a single application for settlement of rent of more than one holding in a village, whether of one or more tenants.]

(2) When, in any case in which a settlement of land revenue is not being made or is not about to be made, the revenue-officer has recorded, in pursuance of clause (1) of section 102, that the occupant of any land claimed to be held rent free is not entitled to hold it without payment of rent, and either the Landlord or the occupant applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2) for a settlement of rent, the Revenue officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (2) shall notwithstanding

anything contained in the Court-fee Act, 1870 (1 of 1870), bear such stamps as the State Government may from time to time prescribe by notification]² in the Official Gazette.

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act, for the guidance of the Civil Court in increasing or reducing rents as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable, and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue officer shall satisfy himself that the amount agreed upon is fair and equitable, and if so satisfied but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

1. Substituted by Act 1 of 1967.

2. For notification issued under S. 105 (3), see the Bihar and Orissa Local Statutory Rules and Orders. Vol. I. Part IV.

105A. Decision of question arising during the course of settlement of rents under this Part :-

Where in any proceedings for the settlement of rents under this Part, any of the following issues arise:--

- (a) whether the land is or is not, liable to the payment of rents;
- (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 lands of an estate or tenancy;
- (e) whether the tenants 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 rights of way or other easement attaching to the land have not, or has not been recorded or have, or has been wrongly recorded;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 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, 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 106.

106. Institution of suit before a Revenue-officer :-

In proceedings under this Part, a suit may be instituted before a Revenue officer at any time within three months from the date of the certificate of the final publication of the record-of-right under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from the record, whether such dispute be between landlord and tenant, or between landlord of the same or of neighbouring estates, or between tenant, and tenants, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent free is properly so held, or as to any other matter; and the Revenue-officer shall hear and decide the dispute:

¹[* * * * *]

Provided ¹[* *] that in any suit under this section the Revenue-officer shall not try any issue 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, in proceedings for the settlement of rent under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

1. Omitted by Act 2 of 1965.

107. Procedure to be adopted by Revenue-officer :-

(1) ¹[In all proceedings under section 105, section 105A and section 106, the Revenue-officer shall subject to rules made by the State Government under this Act, adopt the procedure laid down in the Code of Civil Procedure (14 of 1882)]¹ for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 109A, shall be final.

(2) A note of all rents settled under section 105 and of all decisions of issue or disputes under section 105A or section 106, and of all rents commuted under Section 40 by a Revenue-officer appointed by the designation of Settlement Officer or Assistant Settlement Officer shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the

record.

1. See Code of Civil Procedure, 1908 (5 to 1908).

108. Revision by Revenue-officer :-

Any Revenue-officer especially empowered by the State Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under sec. 105, sec. 105A, sec. 106 or sec. 107, 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 109A:

Provided that no such order or decision shall be so revised in an appeal from it is pending under section 109A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹[Part IV-Supplemental Provisions.]

1. Inserted by Act 2 of 1965.

108A. Correction by Collector or Revenue-officer of mistakes in record of-rights :-

¹²[In case of discovery of bona fide or material error in record-of-rights within a period of five years from the date of the certificate of its final publication under sub-section (2) of section 103A, the Collector or any Revenue Officer specially empowered by the State Government in this behalf, may, on his own motion, or on an application made to him within the said period, after holding an enquiry in the prescribed manner, by order in writing, direct that such error shall be corrected in the manner specified in the order:

Provided that in respect of record-of-rights final publication of which took place in the year 1957 or 1958, the said period shall extend till the 31st March, 1965:

Provided further that no such correction shall be made--

(i) until reasonable notice has been given to the parties concerned to appear and be heard in the matter;

(ii) if a proceeding or suit under any of the sections 105 to 108 (both inclusive) or an appeal under section 109A, affecting such an entry is pending.]

1. Inserted by Act 2 of 1965.

2. Substituted by Act 1 of 1963.

109. Omitted :-

1[*****]

1. Section 109 was substituted by section 5 of the Bihar Tenancy (Second Amendment) Ordinance, 1973 (Bihar Ordinance no. 106 of 1973). This section has been partially declared ultra vires by the Patna High Court. Later on the said Ordinance was allowed to lapse with the result that at present there is no section as section 109.

109A. Appeals from decisions of Revenue-officers :-

(1) The State Government shall appoint]¹ one or more persons to be a Special Judge for purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive).

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections 105 to 108 A (both inclusive), and the provisions of the Code of Civil Procedure (14 of 1882)]² relating to appeals shall; as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII]³ of the Code of Civil Procedure (14 of 1882) an appeal shall lie to High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holding of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

4[* * * * *]

1. For a list of orders issued under S. 109A(1), see Bihar and Orissa Local Statutory Rules and Orders. Vol. I Part IV.

2. See Code of Civil Procedure, 1908 (5 of 1908).

3. See Secs. 100 to 103 and 108 & O. XLII of Code of Civil Procedure 1908 (5 of 1908).

4. Omitted by Act 27 of 1965.

109B. Power of Revenue-officer to give effect to agreement or compromise :-

(1) In framing a record-of-rights, and in deciding disputes, 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.

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent not allowed by section 29 in the case of a contract, record evidence as to rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue officer shall not give effect to such agreement or compromise, unless and until he is satisfied by evidence that the statement made by evidence that the statement made by the parties thereto are correct.

109C. Power to Revenue Officer to settle rent on agreement :-

(1) Notwithstanding anything contained in section 109B in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue officer specially empowered in this behalf by the State Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 109A on the ground that the rent settled by the Revenue officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of order, under sub-section (1), settling a rent as fair and equitable rent, direct the revision of the rent so 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.

109D. Note of decisions on record :-

A note of all rents settled and of all decisions of disputes, on revision or appeal under section 108, section 109A or sub-section (2) or sub-section (3) of section 109C, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall

be considered as part of the record.

110. Date from which settled rent takes effect :-

When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land revenue is about to be made) the date of final publication of the settlement Rent-roll:

Provided as follows:--

(a) if the land is comprised in the area, estate or tenure in respect of which a settlement of land revenue is being or is about to be made the rent settled shall, subject to the provisions of sections 191 and 192, take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;

(b) If the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a 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.

111. Section 111 :-

Rep. by s. 9 of the Bihar Tenancy (Amdt.) Act, 1964 (Bihar Act no. 11 of 1965).

111A. Section 111A :-

Rep. by s. 9 of the Bihar Tenancy (Amdt.) Act, 1964 (Bihar Act no. 11 of 1965).

111B. Section 111B :-

Rep. by s. 9 of the Bihar Tenancy (Amdt.) Act, 1964 (Bihar Act no. 11 of 1965).

112. Power to authorise special settlement in special cases :-

(1) The State Government may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public or of local welfare or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer with the following powers or either of them, namely:--

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if, in the opinion of officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104 J (both inclusive).

112A. Power to revise rents of certain holdings :-

(1) The Collector may on the application of an occupancy-raiyat or a landlord made in prescribed form, or if the Governor by notification directs that a settlement of the rents of the occupancy holdings situated in any area shall be made under this section, on an application made as aforesaid or on his own motion.

(a) & (b) ¹[*****]

(c) Order the partial or entire remission, for such period as he considers reasonable in the circumstances, of the rent of an occupancy holding--

(i) if the soil of a portion or the whole of such holding has without the fault of the raiyat become temporarily or permanently deteriorated by a deposit of sand, by submersion under-water or by any other specific cause, sudden or gradual;

(ii) if the landlord of such holding has failed to carry out the arrangements in respect of irrigation which he is bound to maintain:

Provided that the Collector may revise any order passed under sub-clause (i) at any time before the expiry of the period fixed for such order if he is satisfied that the soil of the holding has become fit for cultivation, and may at any time revise any order passed under sub-clause (ii) if he is satisfied that the landlord has restored the arrangements in respect of irrigation which he is bound to maintain.

(d) reduce the rent of any occupancy holding, if there has been a fall not due to a temporary cause in this average local prices of staple food crops during the currency of the present rent, to such an extent that the reduced rent shall bear to the previous rent the same proportion as the current prices bear to the prices prevailing--

(i) at that time when the previous rent first became payable, or

(ii) if the previous rent first became payable before the preparation of a record-of-rights under Chapter X and the landlord is unable to prove to the satisfaction of the Collector when the previous rent first became payable, at the time when a record-of-rights was first prepared in respect of the holding;

(e) settle fair rent in such cases, or class of cases as may be specified

in a notification issued for other sufficient reasons by the Governor in this behalf.

(3) If the Governor by notification directs that there shall be commutation of rents of the occupancy holdings or any class of occupancy holdings situated in any area, the rent of which is paid in kind or in any of the other ways mentioned in sub-section (1) of section 40, the Collector may, on the application of the raiyat or landlord of any such holding, or on his own motion, determine the sum to be paid as money rent for such holding, and may order that the raiyat shall in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) An order of the Collector under this section shall take effect from such date as may be specified in the order.

(5) The powers conferred on the Collector by this section shall be exercised in accordance with the prescribed procedure.]

1. Omitted by Act 23 of 1947.

112B. Appeal :-

(1) (a) An appeal shall lie from an order made under section 112A of any officer, other than the Collector of a district exercising powers of a Collector to the Collector of the District or to any officer specially empowered by the State Government by notification to hear such appeals and from an order of the Collector of the district to the prescribed authority, and the decision of the Collector of the district or of any officer so empowered, or of the prescribed authority, on any such appeal shall be final.

(b) The Collector of the district may, at any time, transfer any appeal already filed before him to any officer specially empowered under clause (a) to hear such appeals, or withdraw any appeal pending before any officer so empowered, and either hear such appeal himself or transfer it for disposal to any other officer so empowered.

(2) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.

113. Period for which rents settled are to remain unaltered :-

(1) When the rent of a tenure or holding is settled or reduced, under this Chapter, it shall not except on the ground of landlords improvement or of a subsequent alteration in the area of the tenure or holding be enhanced in the case of a tenure or an occupancy holding or the holding of an under-raiyat having occupancy rights for fifteen years and, in the case of a non occupancy holding of an under-raiyat not having occupancy rights, for five years; and no such rent shall be

reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on any of the grounds specified in sub-clauses (i) and (ii) of clause (c) of sub-section (1) of section 112A.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

114. Expenses of proceedings under Chapter :-

(1) When the preparation of record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof including expenses that may be incurred at any time, whether before or after the preparation of the 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 those expenses as the State Government may direct shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions and in such instalments (if any) as the State Government having regard to all the circumstances, may determine.

(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years of such part of such amount as the State Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(3) The portion of the aforesaid expenses 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 tenure or part]1.

(4) The cost of preparing copies of survey maps and 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.

Explanation--The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

1. For an alternative method of recovering expenses, see the Land Records Maintenance Act 1895 (Ben. Act 3 of 1895), ss. 28 to 32 and 36 (c).

115. Presumption as to fixity of rent not to apply where record-of-rights has been prepared :-

When the particulars mentioned in section 102, clause (b) have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

115A. Demarcation of village boundaries :-

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 is possible, and subject to the provisions of the Bengal Survey Act, 1875 (Ben. Act 5 of 1875); preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, if any; and, where village maps prepared at a previous revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

CHAPTER 11 NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND RECORD OF PROPRIETORS' PRIVATE LANDS

116. Saving as to certain lands :-

Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to Lands acquired under the Land Acquisition Act, 1894 (1 of 1894) for the Government or for any Local Authority or for a Railway Company or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government or of any Local Authority or Railway Company or to.

A proprietors private lands known in Bengal as khamar, nij or nijjot and in Bihar as zirrat, nij, or khamat, where any such land is held under a lease for a term of years or under a lease from year to year ¹[or to a land belonging to the Government or to any local authority, or to any Corporation constituted under any law for the time being in force, for the promotion of public health or the agricultural, industrial, economic or general well-being of the people in any area, which is used for any public work, such as a road, canal, embankment, dam or reservoir, or is required for the repair or maintenance of the same, while such land continues to be so used or required.

1. Inserted by Act 18 of 1958.

117. Power for Government to order survey and record of proprietors private lands :-

The State Government may, from time to time, 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 proprietors private lands within the meaning of the last foregoing section.

118. Power for Revenue :-

Officer to record private land on application of proprietor or tenant--In the case of any land alleged to be a proprietors private land on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the State Government, ascertain and record whether the land is or is not a proprietors private land.

119. Procedure for recording private land :-

When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 103 A, 103B, 106, 107, 108, 109 and 109A shall apply.

CHAPTER 12 SPECIAL PROCEDURE FOR REALISATION OF RENT IN CERTAIN CIRCUMSTANCES

120. Rules for determination of proprietors private land :-

(1) The Revenue-officer shall record as a proprietors private land--

(a) land which is proved to have been cultivated as khamar zirrat, sir, nij, nijjat or khamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village usage as proprietors khamar, zirrat, sir, nij, nijjot or khamat.

(2) In determining whether any other land, ought to be recorded as a proprietors private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883 specifically let as proprietors private land, and to any other evidence that may be produced; but shall presume that land is not a proprietors private land until the contrary is shown.

(2 a) Notwithstanding anything contained in any agreement or compromise, or in an decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietors private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(3) If any question arises in a Civil Court as to whether land is or is not a proprietors private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

121. Cases in which an application for distraint may be made :-

¹[Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

1. The word "rent" in Chapter XII includes also money recoverable under any enactment for the time being in force as if it was rent-see S. 8, 3 (5), ante.

122. Form of application :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

123. Procedure on receipt of application :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

124. Execution of order for distraint :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

125. Service of demand and account :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

126. Right to reap etc. produce :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

127. Sale proclamation to be issued unless demand is satisfied :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

128. Place of sale :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

129. When produce may be sold standing :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of

1947).

130. Manner of sale :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

131. Postponement of sale :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

132. Payment of purchase money :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

133. Certificate to be given to purchaser :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

134. Proceeds of sale how to be applied :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

135. Certain persons may not purchase :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

136. Procedure where demand is paid before sale :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

137. Amount paid by under-tenant for his lessor may be deducted from rent :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

138. Conflict between rights of superior and inferior landlords :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

139. Distraint of property which is under attachment :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

140. Suit for compensation for wrongful distraint :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

141. Power for State Government to make rules :-

Rep. by the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947).

142. Power of State Government to issue notification and prescribe procedure and authority for realisation of rent in certain circumstance :-

(1) If, at any time, the State Government are satisfied that, in any local area or in respect of any class of cases, circumstances exist which render it impracticable for a landlord to realise his rent, the State Government may, by notification direct that all rents in such local area or class of cases shall, after the publication of the notification, be realised by the application of the prescribed procedure.

(2) If, in the opinion of the State Government, circumstances so require they may further direct that such procedure shall be applied and the rents realised in the said local area or class of cases by the prescribed authority.

(3) The State Government may make rules to give effect to the provisions of this section.

CHAPTER 13 JUDICIAL PROCEDURE FOR THE RECOVERY OF RENT BY SUIT

143. Power to modify Civil Procedure Code in its application to landlord and tenant Suits :-

¹[(1) The High Court may, from time to time, with the approval of the State Government, make rules]² consistent with this Act, declaring that any portions of the Code of Civil Procedure, 1908 (5 of 1908), shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908 (5 of 1908),

shall apply to all such suits.

1. As to the application of ss. 143 to 153, sec s. 188A.
2. For rules made under S. 143 see the Bihar and Orissa Local Statutory Rules and Orders Vol. I, Part IV.

144. Jurisdiction in proceedings under the Act :-

(1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, 1908 (5 of 1908), be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(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 which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

145. Naibs or gumashtas to be recognized agents :-

Every naib or gumashta of a landlord empowered in this behalf by a written authority under the hand of the landlord or by any person authorised by the landlord in this behalf by writing under his hand, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, 1908 (5 of 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:

Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), every such naib or gumashta may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.

146. Special register of suits :-

The particulars mentioned in rule 1 of Order VII of the Code of Civil Procedure, 1908 (5 of 1908), shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by rule 2 of Order IV of the said Code be entered in a special register to be kept by each Civil Court, in such form]1 as the State Government may, from time to time prescribe in this behalf.

1. For an order made under Sec. 146 see the Bihar and Orissa Local

147. Successive rent-suits :-

Subject to the provisions of rule 1 of Order XXIII of the Code of Civil Procedure 1908 (5 of 1908), where a landlord has instituted a suit against a 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 one year from the date of the institution of the previous suit.

147A. Compromise of suits between landlord and tenant :-

(1) The provisions of rule 3 of Order XXIII of the Code of Civil Procedure. 1908 (5 of 1908), shall not apply to any suit between landlord and tenant as such.

(2) If any suit between landlord and tenant as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with agreement, compromise or satisfaction, so far as it relates to the suit: Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the right of the 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 the parties thereto are correct.

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to do so much of the subject matter of the suit as is dealt with by such agreement, compromise or satisfaction.

147B. Regard to be had by Civil Court 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 103A, a Civil Court, shall, in all suits between landlord and tenant 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 a decree at variance with such entries, it shall record its reasons for so doing.

148. Procedure in rent suits :-

The following rules shall apply to suits for the recovery of rent:

(a) sections 68 to 72 (both inclusive), rules 1 to 13 (both inclusive) of Order XI, rules 22 and 83 of Order XXI, rule 2 of Order XLVII and Schedule III of the Code of Civil Procedure, 1908 (5 of 1908), shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in rules 1, 2, 4, 5, 6 and sub-rule (2) of rule 9 of Order VII of the Code of Civil Procedure, 1908 (5 of 1908) a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to go give the extent or boundaries, in lieu thereof a description sufficient for identification;

(b1) where the suit is for the rent of land situated within an area for which a record-of-rights has been prepared and finally published the plaint shall further contain a list of the survey plots comprised in the tenancy and a statement of the rental of the tenancy according to the record of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may require the Collector to apply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy;

(b2) where an alteration has been made in the area of the tenancy since the record-of-rights was prepared and finally published, the plaint 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:

(b3) the plaint shall further contain a statement of the value of the land held by the tenant, or, if the plaintiff desires any particular portion of such land to be sold in the event of his getting a decree, statement of the situation, designation, extent, boundary and value of that portion;

(c) the summons shall be for final disposal of the suit;

(d) the service of the summons may, if the High Court by rule either generally, or specially for 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 (6 of 1898):

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(d 1) notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any rules made thereunder, the plaintiff in such a suit shall not be required to supply any identifier for the purpose of serving summons or notice on the defendant or the judgment-debtor or on any witness, and the serving officer shall serve the summons or notice after due inquiry as to the identity of the person on whom, or the house or property where, the summons or notice is to be served. The serving officer shall serve the summons or notice in the presence of at least two persons and he shall, whenever possible require the signatures of those persons to be endorsed on the original summons or notice, and, where he is unable to serve the summons or notice he shall, whenever possible, require the signatures of two persons of the village, in which the person to be served with the summons or notice ordinarily resides, to be so endorsed;

(d2) if the natural guardian of a minor defendant is--

(a) his father, fathers father, or in the case of a married female, her husband; or

(b) his mothers father or mothers brother with whom the minor resides, and if upon notice being served upon such guardian under rule 3 of Order XXXII of the Code of Civil Procedure, 1908 (5 of 1908), he does not appear and object to his appointment as guardian for the suit for such defendant the Court may, notwithstanding anything to the contrary contained in the said Code, presume the consent of such guardian to his appointment as guardian for the suit for such defendant;

(e) 1[* * * * *]

(ee) notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908) whenever a Court adjourns the hearing of a suit, it shall record the reasons therefor;

(f) the rules for recording the evidence of witnesses prescribed by rule 13 of Order XVIII of the Code of Civil Procedure, 1908 (5 of 1908), shall apply, whether an appeal is allowed or not;

(f1) where the suit is a suit for the recovery of money-rent and the Court decides to proceed with the same ex-parte, it may dispense with

oral evidence and determine such suit upon the affidavit of the plaintiff or his agent, if such plaintiff or agent is able of his own knowledge to prove the facts stated in such affidavit:

Provided that the Court may call for oral evidence in case it considers such evidence necessary;

(f2) when any account books, rent rolls, collection-papers, measurement-paper or maps 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 authorized officer of such Court to be true copies or extracts, without the payment of any court-fee, and such copies or extracts may, with the permission of the Court, be 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;

(g) 1[* * * * *]

(h) notwithstanding anything contained in rule 16 of the Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlords interest in the land has become and is vested in him.

1. Omitted by Act 23 of 1947.

148A. Suits for arrears of rent by co-sharer landlords :-

where a co -- sharer landlord who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all remaining co-sharers parties defendants to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords had been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these point or on either of them, such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent; and a decree obtained by him in a suit so framed 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.]

148AA. When a raiyat may be held to be a habitual defaulter and consequences of such finding :-

(1) If a raiyat defaults in payment of the rent of his holding for a period of four consecutive years after the commencement of the Bihar Tenancy (Amendment) Act, 1937 (Bihar Act 8 of 1937), and in consequence of such default the landlord obtains one or more than one decree against such raiyat in respect of the arrears of such rent, and if in the year immediately following the said period of four years the raiyat again defaults in payment of the rent of the said holding for such year, the Court may, in a suit for the recovery of the arrears of rent for the whole of the said year, hold that the defendant is a habitual defaulter and that the entire holding, in respect of which the suit has been filed, is liable to be sold for the realisation of the amount payable under the decree in such suit:

Provided that the Court shall not hold as aforesaid unless, after giving the defendant a reasonable opportunity of being heard and after taking into consideration all the facts and circumstances of the case, it is satisfied that the defendant had no reason beyond his control for default.

(2) If in any suit for the recovery of arrears of rent of a holding it is proved that, previous to the institution of such suit, the landlord had obtained one or more than one decree for arrears of rent in respect of the said holding against the raiyat for four years, whether consecutive or not, after the commencement] ¹ of the Bihar Tenancy (Amendment) Act, 1937 (Bihar Act 8 of 1937), the Court may, notwithstanding anything to the contrary contained in sub-section (1), hold the raiyat to be a habitual defaulter if, after giving the raiyat a reasonable opportunity of being heard and considering all the facts and circumstances of the case, the Court is satisfied that the raiyat had wilfully defaulted without reasonable cause in paying the rent for the years in respect of which the aforesaid decree or decrees were obtained and that the payments, if any, made during the years which intervened between the years in respect of which the said decree been obtained were nominal payments made with the intention of defeating the provision of sub-section (1),

(3) Notwithstanding anything to the contrary contained in this Act, if the Court holds a defendant a habitual defaulter under this section, it shall, when passing the decree in the suit, direct that if the defendant fails to pay the decretal amount to the plaintiff or deposit the same into Court within such time not exceeding forty five days as the Court shall fix at the time of passing the decree the whole of his holding shall, if the decree holder so desires, be sold.

(4) Where a defendant has not appeared at any stage of the suit, a notice of the time fixed by the Court under sub-section (3) for payment of the decretal amount shall be given to the defendant in the

prescribed manner.

1. Act 8 of 1987 came into force on 10.3.1988 (Vide Notification No. 1328-R. dated 4.8.1938).

148B. Payment of decretal amount in instalments :-

The Court may, at any time, on application by a judgment debtor or his legal representative, as the case may be, and after notice to the decree holder, direct that the amount of any decree for arrears of rent of a tenure or holding passed before or after the commencement of the Bihar Tenancy (Amendment) Act, 1947 (Bihar Act 23 of 1947), shall be paid in such instalments and within such period, not exceeding three years, as the Court may direct:

Provided that the judgment-debtor or his legal representative, as the case may be, shall not be entitled to the benefit of the provision of this section unless he pays or has paid the arrear of rent accruing due between the date of the institution of the suit in which the decree has been passed and the date fixed for the payment of the first instalment of the decretal amount and continues to pay the subsequent instalments together with any rent accruing due between the date of the last instalment and the next:

Provided further that the provision of this section shall not apply if the judgment debtor is one who has been held by the court to be a habitual defaulter.

149. Payment in to Court of money admitted to be due to third person :-

(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 defendant pays into Court the amount so admitted to be due.

(2) Where such a 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 the right of any person to recover from the plaintiff money paid to him under sub-section (3).

150. 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 of a holding on cash rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

151. Provision as to payment of portion of money :-

When a defendant is liable to pay money into Court under either of the two last foregoing sections; if the Court thinks that 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.

152. Court to grant receipt :-

When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it has been given by the plaintiff or the third person, as the case may be.

153. Appeals in rent suits :-

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 where --

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the State Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees; unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, 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:

Provided that the District Judge may call for the record of any case in which a judicial officer as 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 in him by law, or has failed to exercise a jurisdiction so vested or as 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 as between parties having conflicting claims there at.]

153A. Deposit on application to set aside ex-parte decree :-

Every application for an order under rule 13 of Order IX of the Code of Civil Procedure, 1908 (5 of 1908), to set aside a decree passed ex-parte, or for a review of judgment, under section 114 and rule 1 of Order XLVII of the said Code, in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment:

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 him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

154. Date from which decree for enhancement takes effect :-

A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and if passed in a suit instituted in the last four months of the agricultural years]¹ shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent, the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

1. For definition of "agricultural years", see s. 3 (12) ante.

155. Relief against forfeitures :-

(1) A suit for the ejectment of a tenant, on the ground --

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord had 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 to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff and, where the misuse or breach is declared to be capable of remedy, to remedy, the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

156. Rights of ejected raiyats in respect of crops and land prepared for sowing :-

The following rules shall apply in the case of every raiyat ejected from a holding: --

(a) when the raiyat has, before the date of his ejection, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejection;

(b) when the raiyat has, before the date of his ejection, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejection, together with reasonable interest on that value;

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceeding by the landlord for his ejection, he has cultivated or prepared the land contrary to local usage; and

(d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejection may deem reasonable.

157. Power for Court to fix fair rent as alternative to ejectment

:-

Where a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as 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 the Court may grant such relief accordingly.

158. Application to determine incidents of tenancy :-

¹[(1) The Collector or any revenue officer specially empowered by the State Government in this behalf may, on application of either the landlord or the tenant of the land determine in the prescribed manner all or any of the following matters, namely: --

(a) the situation, area and boundaries of the land,

(b) the name and description of the tenant,

(c) the class to which the tenant belongs; that is to say, whether he is a raiyat holding at fixed rates, occupancy raiyat, non-occupancy raiyat or under-raiyat with or without occupancy rights;

(d) the rent payable for the land and other incidents of the tenancy; Provided that --

(a) when an order has been made under section 101 directing the preparation of a record-of-rights, no such application shall be entertained until five years after the final publication of the record-of-rights:

(b) In any proceeding under this section the Collector or the Revenue Officer shall not try any issue which has been or is directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, any suit, appeal, revision or other proceedings before any Court or before the Board of Revenue or the Collector or any Revenue Officer and has been heard and decided or is pending hearing or decision.

(2) From the final order passed by the Collector or the Revenue Officer on an application filed under sub-section (1), an appeal shall lie to the prescribed authority and the decision of the prescribed authority and subject only to such decision the order of the Collector or the Revenue Officer, as the case may be shall be final.]

1. Substituted by Act 2 of 1985

158AA. Execution of decrees for arrears of rent :-

(1) If within three months of the passing of the decree or, in a case where the Court has fixed a time under the provisions of sub-section

(3) of section 148AA for the payment of the decretal amount on the expiry of such time or where under the provisions of section 148B, a decree has been made payable in instalments on the falling due of such instalments the judgment-debtor fails to pay to the decree-holder or deposit into Court the decretal amount, or the amount of instalment, as the case may be, such amount may, upon an application made in this behalf by the decree-holder, be realised by the attachment and sale of the property of the judgment-debtor, both movable and immovable:

Provided that the movable property of the judgment-debtor shall not without his consent in writing be so attached or sold unless the decree cannot be satisfied by the attachment and sale of the holding for the arrears of the rent of which the decree was passed.

(2) The application referred to in sub-section (1) shall be in the prescribed form, shall contain the prescribed particulars and shall state the mode in which the assistance of the Court is required.

158B. Passing of tenure or holding sold in execution of decree

:-

(1) Where a tenure or holding or part of a holding is sold in execution of-- (a) a decree for arrears of rent due in respect of the tenure or holding; or (b) a decree for damages under section 186A; or (c) a certificate for arrears of rent signed under the Bihar and Orissa Public Demands Recovery Act, 1914, (B. & O. Act 4 of 1914), the tenure or holding or part of the holding shall subject to the provisions of section 28, pass to purchaser if such 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 to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit;

or

if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords;]

(a) When, the application mentioned in section 158AA is made and the decree-holder wants to proceed against the tenure or holding or portion of the tenure or holding in respect of which the decree was obtained, the Court executing the decree shall, before proceeding to sell the tenure or the holding or a part of the holding, give to the parties to the decree notice of the application and of the date on which the sale proclamation shall be drawn up, and may, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), simultaneously issue attachment.

159. General powers of purchaser as to avoidance of

incumbrances :-

(1) Where a tenure or holding or part of a holding is sold in execution of a decree for arrears due in respect of the tenure or holding the purchaser shall take subject to the interests defined in this Chapter as "protected interests".

When a tenure or holding or part of a holding is sold in execution of a decree for arrears due in respect of the tenure or holding, the purchaser shall have power to annul the 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 the manner by this Chapter directed.

160. Protected interests :-

The following shall be deemed to be protected interests within the meaning of this Chapter: --

(a) any under-tenure existing from the time of the Permanent Settlement;

(b) an under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(c) any lease of land whereon dwelling-houses, manufactories; or other permanent buildings have been erected or permanent gardens, plantations, tanks, canals, places of worship or bursting or burying grounds have been made;

(d) any right of occupancy;

(e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred;

(g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create; and

(h) the interest of a raiyat in the homesteads farming part of his holding.

161. Meaning of "incumbrance", "Registered and notified incumbrances" and "Arrears" and "Arrears of rent" :-

For the purpose of Chapter: --

(a) the term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(b) the term "registered and notified incumbrance" used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear 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 "arrears" and "arrears of rent" shall be deemed to include interest decreed under section 67.

162. Application for sale of tenure or holding :-

Rep. by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938).

162A. Sale of a portion of holding :-

When the decree-holder makes the application mentioned in section 158AA the Court executing the decree may order that the holding liable to sale or such portion thereof as may seem necessary to satisfy the decree shall be sold and that the proceeds of such sale or a sufficient portion thereof shall be paid to the party entitled under the decree to receive the same:

Provided that if the decree-holder desires that the portion of the holding mentioned in the plaint or any other portion thereof should be sold the Court shall order that such portion or so much of such portion as may seem to it necessary to satisfy the decree shall be sold and the proceeds paid as provided in this section:

Provided further that if there is any incumbrance on any portion of such holding created before the date of the institution of the suit in which the decree was passed, the Court shall not order such portion to be sold unless in the opinion of the Court the decree cannot be satisfied without the sale of such portion:

Provided again that nothing in this section shall be deemed to authorise the sale of a portion of a plot comprised in a holding.

163. Order of attachment and proclamation of sale to be issued simultaneously :-

(1) When a tenure or a holding or a part of a holding is ordered to be

sold in execution of a decree for the arrears of the rent of such tenure or holding the Court shall cause a proclamation of the intended sale to be made.

(2) Such proclamation shall state the time and place of sale and specify as fairly and as accurately as possible --

(a) the property to be sold;

(b) the value of the tenure or the holding or if the property to be sold is a portion of a holding the value of such portion as determined by the Court in the manner specified hereafter.

(c) the amount for the recovery of which the sale is ordered.

(3) The proclamation shall in addition to stating and specifying the particulars mentioned in sub-section (2) announce --

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates that the tenure or holding will first be put up to auction subject 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;

(b) in the case of an occupancy-holding that the holding will be sold with power to annul all incumbrances.]

(4) The proclamation shall, besides being made in the manner prescribed by rule 67 of Order XXI of the Code of Civil Procedure 1908 (5 of 1908) be published by fixing up a copy thereof in a conspicuous place of the land comprised in the tenure or holding ordered to be sold and shall also be published in such manner as the Board of Revenue may, from time to time, direct]¹ in this behalf.

(5) Before issuing the sale proclamation, the Court executing the decree shall hear the parties and estimate the value of the holding or of that portion of the holding the proceeds of the sale of which it considers will be sufficient to satisfy the decree.

(6) Any person aggrieved by an order passed under sub-section (5) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.

(7) Notwithstanding anything contained in rule 68 of Order XXI of the said Code, the sale shall not, without the consent in writing of the judgment-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 comprised in the tenure or holding ordered to be sold.

1. For an order made under S. 163 (3), now re-numbered S. 163(4), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I Part IV 5.

163A. Holding or portion not to be sold for price lower than that specified in proclamation of sale :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) a holding or portion of a holding advertised for sale shall not be sold for a price lower than that specified in the sale proclamation:

Provided that if the highest amount bid for such holding or portion of a holding is less than the price specified for the same in the sale proclamation, the Court may sell such holding or portion for such highest amount if the decree holder consents in writing to forego so much of the amount of the decree as is equal to the difference between the highest amount bid and the price specified for the holding or portion in the sale proclamation:

Provided further that nothing in this section shall apply to the sale of a holding in execution of a decree passed in a suit in which the defendant has been held to be a habitual defaulter under section 148AA.

163B. Distribution of rent of holding a portion of which is sold in execution of decree for arrears of rent :-

(1) Where a portion of an occupancy-holding has been sold in execution of a decree or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B & O. Act 4 of 1914), for arrears of rent due in respect of such holding, the division of the said holding consequent upon the sale shall be binding on the landlord, and any distribution of the rent of the holding made between the purchaser of the said portion and the tenant of such holding shall be binding on the landlord.

(2) If the landlord object to the distribution of the rent of the holding referred to in sub-section (1), he may apply to the Collector to distribute the rent of the holding.

(3) On receipt of such application the Collector shall serve on the other parties a notice of the date on which he intends to hear the application and after hearing the parties and holding such enquiry as he thinks fit, distribute the rent of the holding in such manner as he considers fair and equitable and his decision shall be final.

(4) The order of the Collector under sub-section (3) shall take effect from such date as he may specify in the order.

The Collector shall have power to award costs to any party to any proceeding under this section, and any sum ordered to be paid as costs shall be recoverable from the party by whom it is payable as a public demand under the Bihar and Orissa Public Demands Recovery Act,

1914 (B & O. Act 4 of 1914).

164. Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof :-

(1) When a tenure or a holding at fixed rates has been advertised for sale under section 163, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the 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 by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. Sale of tenure or holding with power to avoid all incumbrances and effect thereof :-

(1) If the bidding for a tenure or holding at fixed rates put up to auction under the last foregoing section 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 office or holding the sale shall adjourn the sale and make a fresh proclamation under rule 67 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) 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 this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. Sale of occupancy holding with power to avoid all incumbrances and effect thereof :-

(1) When an occupancy holding or portion of an occupancy has been advertised for sale under section 163, it shall be put up to auction and sold.

(2) An occupancy holding or portion of an occupancy holding shall be sold with power to avoid all incumbrances and the purchaser may, in the manner provided by section 167 and not otherwise, annul any incumbrance on the holding or portion of the holding.

167. Procedure for annulling incumbrances under the

foregoing sections :-

(1) A purchaser having power to annul an incumbrance under any of the foregoing sections or under the Bihar and Orissa Public Demands Recovery Act, 1914 (B & O. Act 4 of 1914) 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 Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, 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.

(4) When a tenure or holding or portion of a holding is sold in execution of a decree or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) for arrears due in respect of the tenure or holding and there is on the tenure or holding or portion of the holding a protected interest of the kind specified in section 160, clause (c), 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 time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been hold for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. Power to direct that occupancy-holding be dealt with under foregoing sections as tenures :-

(1) The State Government may, from time to time, by notification in the official Gazette, direct that occupancy holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of a decree for an arrear of rent due on them shall, before being put up with power to avoid all incumbrances, 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 occupancy-holdings, or as the case may be, occupancy-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 tenures.

169. Rules for disposal of the sale proceeds :-

(1) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by section 73 of the Code of Civil Procedure, 1908 (5 of 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 tenure or holding 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 may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application:

Provided that where a tenure or holding has been sold in execution of a decree obtained, by one or more co-sharer landlords in a suit framed under section 148A or sub-section (1) of section 158B,--

(i) 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

(ii) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the confirmation 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 their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.

(2) If the judgment-debtor disputes the decree holders right to receive any sum on account of rent under clause (c), the court shall determine the dispute, and the determination shall have the force of a decree.

170. Tenure or holding to be released from attachment only on payment into Court of amount of decree, with costs, or on confession of satisfaction by decree-holder :-

(1) Rules 58 to 63 (both inclusive) and 89 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to a tenure or holding or portion of a holding attached in execution of a decree for arrears due in respect of the tenure or holding.

(2) When an order for the sale of a tenure or holding or portion of a holding in execution of such a decree has been made, the tenure or holding or portion of the holding 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 order to the sale, is paid into court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of court.

(3) The judgment-debtor, or any person whose interests are affected by the sale, other than a transferee of a holding from whom the landlord is entitled to receive the landlords registration fee and who has neither paid the landlords registration fee to the landlord nor deposited the same with the Collector, may pay money into Court under this section.

171. Amount paid into Court to prevent sale to be in certain cases a mortgage debt on the tenure or holding :-

(1) When any person having in a tenure or holding advertised for sale under this chapter, or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) and interest which would be avoidable upon the sale, 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 per centum per annum and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

171A. The amount paid by mortgagor to prevent sale together with fifty per-centum to be deemed to be debt due from the mortgages :-

(1) Notwithstanding anything to the contrary contained in any law, when a tenure or holding or portion thereof, mortgaged by a tenant

has been advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914). for default of the mortgagee who was liable under the terms of the contract between him and the mortgagor for payment of the arrears of rent for which the decree or certificate was obtained, and the mortgagor tenant pays into Court the amount requisite to prevent the sale --

(a) the amount so paid by him together with fifty per centum of the said amount by way of compensation shall be deemed to be a debt due from the mortgagee; and

(b) the mortgagor shall, on application to the Court executing the decree, be entitled to be put in possession of the tenure or holding or portion thereof by ejecting the mortgagee and to retain possession of it until the debt has been discharged

(2) Nothing in this section shall affect any other remedy to which the mortgagor would be entitled.]

172. Inferior tenant paying into Court may deduct from rent :-

When a tenure or holding or a portion of a holding is advertised for sale --

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he 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 his immediate landlord, and so on until the defaulter is reached.

173. Decree-holder may bid at sale; judgment-debtor may not :-

(1) Notwithstanding anything contained in rule 72 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) the holder of a decree in execution of which a tenure or holding or portion of a holding is sold under this Chapter may, without the permission of the court, bid or purchase the tenure or holding or portion of the holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding or portion of a holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding or portion of a holding 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 re-sale, and all expenses attending it shall be paid by the judgment-debtor.

174. Application by judgment-debtor to set aside sale :-

(1) Where a tenure or holding or portion of a holding is sold for an arrear of rent due in respect of the tenure or holding, than, at any time within thirty days from the date of sale, the judgment-debtor or any person whose interest are affected by the sale, other than a transferee of a holding from whom the landlord is entitled to receive the landlords registration fee and who has neither paid the landlords registration fee to the landlord nor deposited the same with the Collector may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of rule 93 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), shall apply in the case of a sale so set aside;

Provided that if a judgment-debtor applies under rule 90 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section;

and if he applies under this section, he shall not be entitled to make an application under rule 90 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908).

(3) Rule 91 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), shall not apply to any sale under this Chapter.

174A. Application for delivery of possession :-

(1) Where a tenure or a holding or a portion of a holding has been sold in execution of a decree for arrears of rent in accordance with the provisions of this Chapter and a certificate in respect thereof has been granted under rule 94 of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), the purchaser may, subject to the provisions of this Act, make an application to the Court for an order for delivery to be

made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property.

(2) Application made under sub-section (1) shall be dealt with as if it were an application for delivery of possession under the Code of Civil Procedure, 1908 (5 of 1908).

175. Registration of certain instruments creating incumbrances :-

Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877¹ [(3 of 1877), an instrument creating incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

1. See the Indian Registration Act, 1908 (16 of 1908).

176. Notification of incumbrances to landlord :-

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

177. Power to create incumbrance 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 14 CONTRACT AND CUSTOM

177A. Exemption :-

Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908) a decree for arrears of rent obtained against a raiyat or an under-raiyat shall not be executed --

(a) by the detention in the civil prison of the judgment-debtor, or

(b) by the sale of houses and other buildings with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment belonging to the raiyat or under-raiyat

and occupied by him:

Provided that any such house or building and the materials and the sites thereof and the lauds immediately appurtenant thereto and necessary for their enjoyment may be sold in execution of a decree for arrears of rent due in respect of the site of such house or building.]

178. Restrictions on exclusions of Act by agreement :-

(1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act-

(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(b) shall take away, an occupancy-right in existence at the date of the contract, or

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall --

(a) prevent a raiyat or an under-raiyat from acquiring, in accordance with this Act, an occupancy-right in land;

(b) take away or limit the right of an occupancy-raiyat or an under-raiyat with a right of occupancy to use land as provided by section 23;

(bb) take away or limit any right conferred on an occupancy-raiyat or an under raiyat with a right of occupancy by section 23A;

(c) take away the right of a raiyat to surrender his holding in accordance with section 86;

(d) take away the right of a raiyat to transfer or bequeath, his holding in accordance with the provisions of this Act;

(e) take away the right of an occupancy-raiyat to sub-let subject to, and in accordance with, the provisions of the Act;

(f) take away the right of a raiyat to apply for a reduction of rent under section 112A or section 52;

(g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 or section 40B; or

(h) affect the provisions of section 67 relating to interest payable on arrears of rent;

Provided as follows: --

(i) nothing in this section shall affect the terms or conditions of a lease

granted bona fide for the reclamation of waste land except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall effect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation.--The expression "horticultural land" as used in proviso (iii) means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used bona fide for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

178A. Restriction on payment of certain kind of rent by agreement :-

(1) Nothing in any contract, express or implied, between a landlord and a raiyat made-before or after the commencement of the Bihar Tenancy (Amendment) Act, 1937 (Bihar Act 8 of 1937) shall entitle the landlord to rent on the estimated value of the whole or a portion of the crop or on the estimated produce of the whole or a portion of the holding of the raiyat according to the system commonly known as danabandi.

(2) Where a raiyat was, before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1937 (Bihar Act 8 of 1937), liable to pay for his holding rent on the estimated value of the whole or a portion of the crop or on the estimated produce of the whole or a portion of the holding, he shall from and after the said date be liable to pay to the landlord rent in kind by division of the produce of the holding.

178B. Restriction on share of produce rent payable to landlord by agreement :-

Nothing in any contract, express or implied, between a landlord and a raiyat made before or after the commencement of the ¹[Bihar Tenancy (Second Amendment) Act, 1955 (Bihar Act 24 of 1955)], shall entitle the landlord to more than [five-twentieths] of the produce after the

usual customary deductions on account of cost of harvesting of such produce as rent in respect of an occupancy holding if rent is payable in kind by division of the produce.

1. Substituted by Act 24 of 1955.

178C. Landlord not entitled to a share in straw or bhoosa in produce rents :-

¹[Where rent in respect of an occupancy holding is payable in kind by division of the produce, nothing in this Act or in any contract, express or implied, between a landlord and a raiyat made before or after the commencement of the Bihar Tenancy (Amendment) Act, 1946 (Bihar Act 13 of 1946) shall entitle the landlord to a share in the straw or bhoosa as rent out of the produce of the said holding.

²[Explanation.--The word "straw" in this section includes jute sticks after the jute has been extracted therefrom and arhar and maize sticks when the produces are jute, arhar and maize, respectively.]

1. The provisions of this section applied to all suits or appeals for the recovery of arrears of rent which were, pending on the date on which the Act came into force, viz., the 25th September, 1946.

2. Substituted by Act 24 of 1955.

179. Permanent mukarrari leases :-

Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

180. Utbandi, chur and diara land :-

Notwithstanding anything in this Act, a raiyat --

(a) who, in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as chur or diara, shall not acquire a right of occupancy, in case (a), In land ordinarily held under the custom of utbandi and for the time being held under that custom, or in case (b), in the chur or diara land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or diara land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

181. Saving as to service tenures :-

Nothing in this Act shall effect any incident of a ghatwali¹ or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

²[Explanation.--The expression "service tenure" includes the grant of land free of rent, by raiyat to any person to cultivate himself in lieu to wages or service]

1. As to ghatwali tenures, see the Bengal Ghatwali Lands Regulation, 1814 (29 to 1814), and the Bengal Ghatwali Lands Act, 1859 (3 of 1859).

2. Inserted by Act 24 of 1955.

182. Homesteads :-

When a raiyat holds his homestead otherwise than as part his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

183. Saving of custom :-

Nothing in this Act shall affect any custom, usage of customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions.

CHAPTER 15 LIMITATION

184. Limitation in suits, appeals and applications in Schedule III :-

(1) The suits, appeals, ¹[Proceedings] and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit, ²[appeal or proceeding] instituted, and application made, after the period of limitation so prescribed, 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.

1. Inserted by Act 27 of 1959.

2. Substituted by Act 27 of 1959

CHAPTER 16 SUPPLEMENTAL

185. Portions of the Indian Limitation Act not applicable to such suits etc :-

(1) Sections 7 and 9 of the Indian Limitation Act, 1877 (15 of 1877)]², shall not apply to the suits, ³[proceedings] and applications mentioned in the last foregoing section.

(2) Subject to the provision of this Chapter, the provisions of the Indian Limitation Act, 1877 (15 of 1877)]³ shall apply to all suits, appeals ¹[proceedings] and application mentioned in the last foregoing section.

1. Substituted by Act 27 of 1959

2. See. Indian Limitation Act, 1908 (9 of 1908).

3. Inserted by Act 27 of 1959.

186. Penalties for illegal interference with produce :-

(1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force --

(a) distrains or attempts to distrain the produce of a tenants holding, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely, removes any properly duly distrained under this Act, or

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding.

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code (45 of 1860).

(2) Any person who abets within the meaning of the Indian Penal Code (45 of 1860), the doing of any act mentioned in sub-section (1) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

186A. Damages for denial of landlords title :-

(1) When, in any suit between a landlord and tenant as such, the tenant donounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in 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 the damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlords charge for rent, be a first charge on the tenure or holding of the tenant: 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 158B, in any of the modes in which a decree for rent may be executed.

Agents and representative of landlords.

187. Power for landlord to act through agent :-

(1) Any appearance, application or act, in, before or to any Court or authority, required or authorized 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 or receive 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 authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

188. Joint landlord to act collectively or by common agent :-

Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them;

Provided that one or more co-sharer landlord, may file an application under sub-section (1) of section 88E or under sub-section (2) of section 121 making all the remaining co-sharer landlords parties defendant to the proceeding.

188A. Procedure in suits by joint-landlords :-

Notwithstanding anything contained in this Act, every suit between landlord and tenant as such instituted by--

- (a) a sole landlord,
- (b) the entire body of landlords, or
- (c) one or more co-sharer landlords,

shall be subject to the provisions of sections 143 to 153 (both inclusive) and to every decree referred to in section 158B, the provisions of Chapter XIII shall, so far as may be practicable, be applicable.

189. Power to make rules :-

(1) The State Government may, from time to time, by notification in the Bihar Gazette, make rules]¹ for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may, in like manner, make rules consistent with this Act--

(a) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may, by such rules confer upon any such officer--

(i) any power exercised by a Civil Court in the trial of suits;

(ii) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875 (Ben. Act 5 of 1875); and

(iii) power to cut and thresh the crops on any land and weigh the produce, with a view to the estimating the capabilities of the soil;

(b) to prescribe the forms, and the mode of service, of notices issued under this Act, where no form or mode is prescribed by this or any other Act;

(c) to prescribe the manner in which landlords registration fees or rent distribution fees shall be transmitted to the landlord;

(d) to prescribe the authority by whom the fees deposited under sections 12, 13, 15 and 17, clause (a) of section 18 and section 26A may be declared to be forfeited, and the mode in which such fees, when so forfeited shall be dealt with;

²[(d1) to prescribe the manner in which the proportionate rent under the second proviso to section 48 shall be calculated;]

(e) to prescribe the form of notice to be given under sub-section (1) of section 25A and the manner in which such notice shall be served; and

(f) to provide for all or any of the following matters, namely:--

(i) the process fee ⁴[and land lords registration fee mentioned in subsection (2) and 4[sub-section (3) of section 12;

(ii) the form of the notice referred to in section 26B and the particulars

to be entered therein:

(iii) the authority to whom appeal shall lie under sub-section (6) of section 40 and the procedure to be followed by the said authority in hearing and disposing of such appeal;

³[(iiia) the authority to whom appeals shall lie under sub-section (1) of section 48-F, and the procedure to be followed in hearing and disposing of appeals under the said section;

(iiib) the manner in which landlord or other persons in possession of the land of an under-raiyat shall be ejected under sub-section (10) of section 48-E;

(iv) the authority to whom appeals shall lie under sub-section (6) of section 58;

(iva) the manner in which forms of receipt printed by landlords, mentioned in the proviso to sub-section (2) of section 59, shall be consecutively numbered and stamped with the seal of the Collector;

(ivb) the form in which landlords shall submit returns to the Collector under sub-section (3) of section 59;

(ive) the authority to whom and the period within which an appeal shall lie under sub-section (5) of section 59;

(ivd) the period within which an application shall be made by the landlord to the Collector for division of the produce under sub-section (1) of section 69;

(v) the particulars to be contained in the notice referred to in sub-section (2) of section 88A;

(vi) to (xi) ⁵[* * * *];

(xii) the form of application under sub-section (1) of section 112A.

(xiii) the procedure to be followed by the Collector in the exercise of the power conferred on him by section 112A;

(xiv) the authority to whom appeals shall lie under sub-section (1) of section 112B, and the procedure to be followed by the said authority in hearing and disposing of such appeals;

(xv) the procedure to be applied for the realisation of rent in cases referred to in section 142, and the authority by whom such procedure may be applied and the rent may be realised;

(xa) the manner in which a notice of the time fixed for the payment of the decretal amount shall be given to the defendant under sub-section (4) of section 148AA; and

(xvi) the form of application under section 158AA and the particulars to be contained in such applications.

1. For rules made under 189 see the Bihar and Orissa Local Statutory Rules and Orders, Vol, 1, Part IV.

2. Inserted by Act 19 of 1955.

3. Inserted by Act 24 of 1955.
4. Inserted by Act 10 of 2004.
5. Omitted by Act 23 of 1947.

189A. Transfer of proceedings :-

(1) It shall be competent to the Board of Revenue to transfer, and with the previous sanction of the State Government to make rules authorizing revenue-officers to transfer, any suit or other proceeding, original or otherwise under any provision of this Act, from the file of any subordinate officer to the file of any other subordinate officer who is duly authorized to entertain or decide suits or other proceedings under such provision.

(2) Validation of certain transfers made prior to the commencement of this Act.-- No decision or order made by any revenue-officer under any provision of this Act shall, if such officer was duly authorized to act under such provision, be deemed to be invalid by reason only that the suit or other proceeding in which it was made came to his file prior to the commencement of the Bihar Tenancy (Amending and Validating) Act, 1920 (B. & O. Act 9 of 1920) without a due order of transfer.

190. Procedure for making publication and confirmation of rules :-

(1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the State Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft-before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.
Provisions as to temporarily-settled districts.

191. Saving as to land held in a district not permanently settled :-

Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognised in settlement proceedings by a Revenue authority empowered by the State Government to make definitely or confirm settlements.

192. Power to alter rent in case of new assessment of revenue :-

When a landlord grants a lease or makes any other contract, purporting to entitle the tenant of land not included in a area permanently settled to hold that land free of rent or at particular rent, and while the lease or contract is in force--

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-Officer may, notwithstanding anything in contract between the parties, by order, on the application of the landlord or of the tenant, or of his own motion shall fix a fair and equitable rent for the land in accordance with the provisions of this Act.

193. Right or pasturage, forest rights, etc :-

The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any right of pasturage, forest-rights, rights over fisheries and the like.

194. Tenant not enable by Act to violate conditions binding on landlord :-

Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition nothing in this Act shall entitle any person occupying land within the

estate or tenure to do any act which involves a violation of that rule or condition.

195. Savings for special enactments :-

Nothing in this Act shall affect --

- (a) the power and duties of Settlement Officer as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realization of rent in estates belonging to the Government, or under management of the Court of Wards or of the Revenue authorities;
- (c) any enactment relating to the avoidance of tenancies and encumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue paying estates;
- (e) any enactment relating to patni tenures, in so far as it relates to those tenures; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

196. Act to be read subject to Acts hereafter passed by Lieutenant Governor of Bengal in Council :-

This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

SCHEDULE 1
SCHEDULE

(See Section 2)
REPEAL OF ENACTMENTS.
Regulations of the Bengal Code.

Number and year	Subject of Regulations.	Extent of repeal.
1[8 of 1793	A Regulation for re-enacting with modifications and amendments the rule for the Decennial Settlement of the public revenue payable from the lands of the zamindars, independent Talukdars and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those provinces respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
2[12 of 1805	A Regulation for the Settlement and collection of the public revenue in the zila of Cuttack, including the	Section 7.

	parganas of Pataspur, Kamardchaor and Bhograï at present included in the zila of Midnapur.	
2[5 of 1812	A Regulation for amending some of the rules at present in force for the Collection of the land revenue.	Sections 2, 3, 4, 26 and 27
3[18 of 1812	A Regulation for explaining section 2, Regulation 5, 1812, and rescinding sections 3 and 4, Regulation 44, 1793, and sections 3 and 4, Regulation 50, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
4[11 of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4 from and including the words Nor if annexed to a subordinate tenure to the end of the clause.
5[6 of 1862	An Act to amend Act 10 of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
6[4 of 1867	An Act to explain and amend Act 6 of 1862 passed by the Lieutenant-Government of Bengal in Council, and to give validity to certain judgments.	The whole Act.
7[8 of 1869	An Act to amend the procedure in suits between landlords and tenant.	The whole Act.
8[8 of 1879	An Act to define and limit the powers of Settlement-officer.	The whole Act.
Act of the Governor-General in Council.		
9[10 of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act

1. The Bengal Decennial Settlement Regulation, 1793.
2. The Cuttack Land-revenue Regulation, 1805. Section 7 has since been repealed every where by the Amending Act, 1908 (1 of 1908).
3. The Bengal Lease and Land-revenue Regulation, 1812.
4. The Bengal Alluvion and Diluvion Regulation, 1825.
5. The Bengal Rent Act, 1862.
6. The Bengal Rent (Appeals) Act, 1867.
7. The Landlord and Tenant Procedure Act, 1869.
8. The Bengal Rent Settlement Act, 1879.
9. The Bengal Rent Act, 1859.

SCHEDULE 2

SCHEDULE

FORMS OF RECEIPT AND ACCOUNT
(See sections 56 and 57)

<p>FORM OF RECEIPT PARTICULARS OF THE HOLDING (LANDLORDS PORTION).</p> <ol style="list-style-type: none"> 1. Serial number of Receipt 2. Estate Village Thana 3. Tenants name son of 4. 1[Particulars of the Tenancy --] Nakdi, Big has; rent Rs. Bhaoli, Bighas; Maunds or Rs. Jalkar, Rs. Bankar, Rs. Falkar, Rs. Government Cesses Road Cess, Rs. Public Works Cess, Rs. 5. Singature of the landlord or his authorised Agent. 	<p>FORM OF RECEIPT PARTICULARS OF THE HOLDING (TENANTS PORTION).</p> <ol style="list-style-type: none"> 1. Serial number of Receipt 2. Estate Village Thana 3. Tenants name son of 4. 1[Particulars of the Tenancy --] Nakdi, Bighas; rent Rs. Bhaoli, Bighas; Maunds or Rs. Jalkar, Rs. Bankar, Rs. Falkar, Rs. Government Cesses Road Cess, Rs. Public Works Cess, Rs. 5. Signature of the landlord or his authorised Agent.
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FORM OF ACCOUNT.				
1.	Year			
2.	Tenants name			
3.	2[Particulars of tenancy] -- (area, rent, etc.)			
		Rs.	P.	
	Bighas	Rate		
	Nukdi			
Government Cesses				
Bighas				
	Maunds			
		Rs.	P.	
	Bhooli			
	Jalkar			
	Bankar			
	Phalkar	
	Maunds			
		Rs.	P.	
4.	Demand of the year			
5.	Balance of former years (Bakaya) ...			
		Rs.	P.	
6.	Total demand (current and arrear)			

7.	Paid each on account of		Current demand	
			Arrear demand	
			Maunds	
8.	Paid in kind		...	
			Rs.	P.
9.	Balance outstanding at the end of year.			
10.	Signature of the Landlord or his authorised Agent.			

FORM OF ACCOUNT.

1.	Year			
2.	Tenants name			
3.	2[Particulars of tenancy] -- (area, rent, etc.)			
			Rs.	P.
	Bighas		Rate	
	Nukdi			
Government Cesses				
Bighas				
	Maunds			
			Rs.	P.
	Bhooli			
	Jalkar			
	Bankar			
	Phalkar	
	Maunds			
			Rs.	P.
4.	Demand of the year			
5.	Balance of former years (Bakaya) ...			
			Rs.	P.
6.	Total demand (current and arrear)			
7.	Paid each on account of		Current demand	
			Arrear demand	
			Maunds	
8.	Paid in kind		...	
			Rs.	P.
9.	Balance outstanding at the end of year.			
10.	Signature of the Landlord or his authorised Agent.			

Date of payment and name of	Nakdi		Bhaoli		Jalkar etc.		Cesses		Signature of the land lord or his authorised agent.
	Current on account of kist.	Arrear on account of year kist.	Cor rent on account of crop.	Arr ear on account of year.	Current on account of kist.	Arr ear on account of year kist.	Cur rent on account of kist.	Arr ear on account of year kist.	

person through whom paid.				crop.					
-									

Date of payment and name of person through whom paid.	Nakdi		Bhaoli		Jalkar etc.		Cesses		Signature of the land lord or his ant hori sed agent.
	Current on account of kist.	Arr ear on account of year kist.	Current on account of crop.	Arr ear on account of year, crop.	Current on account of kist.	Arr ear on account of year kist.	Cur rent on account of kist,	Arr ear on account of year kist.	

1. Substituted by Act 24 of 1955.

Section 55 of the Bihar Tenancy Act, 1885. provides as follows: --

(1) When a tenant or the mortgagee of his holding or tenure or of a portion of his holding or tenure makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited there.

(2) Notwithstanding any declaration mentioned in sub-section (1) if there is any arrear of rent due by the tenant, the recovery of which is not barred by the law for the time being in force as to limitation of suits for arrears of rent, the payment may, at the option of the landlord, be applied first to such arrears.

2. Substituted by Act 24 of 1955.

SCHEDULE 3

LIMITATION

Description of suits.	Period of limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any 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 dage of the breach.
(a) To eject a non-occupancy-raiyat on the ground of the expiration of the term of his lease.	Six months	The expiration of the term.
(b) To eject an under-raiyat on the ground specified in clause (b) of section 49.	One year	The date of the breach.
(c) To eject an under-raiyat on the ground specified in clause (c) of section 49.	Six months	The expiration of the term.
2. For the recovery of an arrear of rent		

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 61 on account of the rent of the same holding;	Six months	The date of the service of notice of the deposit.
(b) in other cases -- (i) where the rent is paid in money,	Three years 2[or where the State Government is the landlord, ten years]	The last day of the agricultural year in which the arrear fell due.
(ii) Where the rent is paid in any of the ways specified in sub-section (1) of section 40.	One year	Ditto.
3. To recover possession of land claimed by the plaintiff as a landlord, 3[or a 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 Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days	The date of the order appealed against.
PART III. - APPLICATIONS 4[OR PROCEEDINGS.]		
6. For the execution of a decree or order made in a 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 the costs of executing such decree; except where the judgment 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, 1877 5[(5 of 1877)].	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 Where there has been a review of judgment, the (3) date of the decision passed on the review.
PART III. - APPLICATION [OF PROCEEDINGS]		

6[7. Proceeding for restoration of possession to an under-raiyat of his tenancy or any portion thereof under section 48E, whether proceeding is initiated by the Collector of his own motion or on application made by the under-raiyat:	Two years	The date of ejection.]
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Provided that, in the case of an ejection before the commencement of the Bihar Tenancy (Second Amendment) Act, 1955, an application may be made till the 31st December 1956 or within two years of the date of ejection, whichever is later.]

1. The word "rent" in Sch. III, includes also money recoverable under any enactment for the time being in force as if it was rent --see s. 3(4) ante.

2. Inserted by Act 19 of 1955. This ceased to have effect after 31.3.1975 and Sec. 8 of the Bihar & Orissa General Clauses Act, 1917 (1 of 1917) applies thereafter vide Act V of 1970.

3. Substituted by Act 24 of 1956.

4. Inserted by Act 27 of 1950.

5. See the Indian Limitation Act, 1908 (9 of 1908).

6. Substituted by Act 27 of 1959.