

THE BENGAL RENT ACT, 1859

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Proviso.
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119. Distrainer may apply for aid to the Collector upon occasion of resistance made or apprehend.
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THE BENGAL RENT ACT, 1859

ACT NO. X OF 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA

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

An Act to amend the law relating to the recovery of Rent in the Presidency of Fort Willian in Bengal.

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

I. Law repealed and modified.—The following Regulations and Acts and portions of Regulations and Acts are hereby repealed, except in far as they repeal any other Regulation or Act, and except as to proceedings commenced before the date of this Act coming into force, namely, Regulation XVII. 1793 (*to empower landholders to distrain and sell the personal property of ryots &c.*), So much of Regulation IV. 1794 (*to determine disputes regarding the grant of pottahs to ryots &c.*) as is still in force, Regulation XXXV. 1795 (*for better enabling individuals to recover arrears of rent or revenue due to them*), Regulation XLV. 1795 (*to empower landholders in the Province of Benares to distain &c.*), Section IX and X regulation LI. 1795 (*respecting ryotty pottahs in the Province of Benares*), Section I to XX Regulation VII. 1799 (*to enable landholders to realize their rents with greater punctuality &c.*), Section I to XX Regulation V. 1800 (*to enable landholders in the Province of Benares to realize their rents with greater punctuality &c.*), Regulation XXVIII. 1803 (*to empower landholder in the Ceded Provinces distrain &c.*), Sections IX and X Regulation XXX. 1803 (*prescribing rules for the grant in the Ceded Provinces of pottahs to ryots, &c.*), Section IV Regulation II. 1805 (*to provide a limitation of time for certain suits &c.*), Section XIX Regulation VIII. 1805 (*for extending certain regulation to the Ceded and Conquered Provinces &c.*), Section V to XXIII Regulation V. 1812 (*for amending some of the rules at present in force for the collection of the Land Revenue*), Section XV and XVI Regulation XIX. 1817 (*for amending certain Regulations in force relative to process for recovery of arrears of rent &c.*), Section XXVII Regulation XX. 1817 (*relating to resistance to distraint for arrears of rent &c.*), Sections XVIII and XIX Regulation VIII. 1819 (*relating to Putnee Talooks and the system established for the collection of rents generally &c.*), Sections IV Regulation II. 1821 (*relating to the duties of City and Zillah Judges &c.*), Sections XXII, and so much of section XX and the following Sections of Regulation VII. 1822 (*relating to the settlement of the Land Revenue in the Ceded Province and Cuttack, &c.*) as apply to suits for rent, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of pottahs or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their undertenants respecting the rent and occupancy of land, Regulation XIV, 1824 (*for modifying the rules in force for referring to the Collectors' summary suits in cases of arrear or exaction of rent*), Regulation VIII, 1831 (*for amending the existing provisions relative to the trial of summary suits and claims for arrears or exactions of rent*), Act I of 1839 (*relating to the appointment of persons to sell property distrained for the recovery of arrears to rent*), Act X of 1846 (*for regulating the proceedings in certain cases of distraint for arrears of rent*)—and Act VIII of 1848 (*to modify the provisions of Sections IX, X, XI and XIII of Regulation V. 1812 of the Bengal Code.*) Sections XIV and XV Regulation IX. 1833 (*for the more speedy decision of certain suits, and for enforcing the production of village account, &c.*), so far as the same are applicable to the territories under the Government of the Lieutenant-Governor of Bengal, are also repealed.

Such parts of Regulation VIII. 1793 (*prescribing rules for the decennial settlement of the public Revenue in Bengal, Behar and Orissa, &c.*), and Regulation XXX. 1803, as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent and for the exaction of any sums

as abwab or in excess of the amount specified in any engagements for the payment of rent, and such parts of Section XXVI Act I of 1845 (*to amend Act No. XII of 1841, entitled "an Act for amending the Bengal Code in regard to sales of land for arrears of Revenue"*), as relate to the enhancement of rents and the ejection of tenants by the purchaser of an estate sold for arrears of Government Revenue, are declared subject to the following modifications.

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

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

The amount of annual rent.

The instalments in which the same is to be paid.

And any special conditions of the lease. If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

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

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

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

VI. Right of occupancy of ryot cultivating or holding land for 12 years.—Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khomar, neejote, or seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this Section.

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

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

IX. Person granting pottah entitled to a counterpart engagement.—Every person who grants a pottah is entitled receive from the person to whom the pottah is granted a kuboooliyat or counterpart engagement in conformity with the terms of the pottah. The tender to any ryot of a pottah such as the ryot is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a kuboooliyat from such ryot.

X. Exactions in excess of rent or receipt withheld.—Every under (from whom any stun is exacted in excess Exactions in excess of the rent specified in his pottah, or payable under the rent or receipt withheld. provisions of this Act, whether as abwab any other pretext., and every under-tenant, ryot, or

cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid.

Form of receipt.—Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal, to make such specification shall be held to be withholding of a receipt.

XI. Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.—The power heretofore vested in Zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is with drawn, and all such persons are prohibited from adopting any means of compulsion for enforcing.

Payment of rent to be enforced only under this Act.—payment of the rents due to them other than are authorized by the provisions of this Act.

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

XIII. Enhancement of rent of ryot holding without, or after expiry &c., of written engagement.—No under-tenant or ryot, who holds or cultivates land without a written engagement on under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent of revenue of the tenure or estate in which the land held or cultivated by him is situated, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Chief, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed, Such notice shall be served by order of the Collector on the application (which may be on plain paper) of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If for any reason the notice not be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence, or if he have no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mal cutcherry of such land or other conspicuous place thereon, or at the village Chowree or Chowpal or at some other conspicuous place in the village in which the land is situate.

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

XV. Dependent talookdar, &c., holding land at fixed rent without change since permanent settlement not liable to enhancement of rent.—No dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryots, who, in the Provinces of Bengal, Behar, Orissa, and Benares, holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been charged from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section LI Regulation VIII. 1793, or in any other law, to the contrary notwithstanding.

XVI. Rent of talookdar, &c., not charged for twenty years to be *prima facie* evidence of occupancy at that rent since permanent settlement.—Whenever, in any suit under this Act, it shall be proved that the rent at which a talook or other tenure is held in the said Province has not been charged for a period of twenty years before the commencement of the suit, it shall be presumed

that such talook or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

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

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

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

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

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

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

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

XXI. Liability of ryot to be ejected for arrear due.— When an arrear of rent remains due from any ryot at the end of the Bengal year, or at the end of the month of Jeth of the Fusly or Willayutee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due.

Proviso.— Provided that no ryot, having a right of occupancy or holding under a pottah the term of which has not expired shall be ejected otherwise than execution of a decree or order under the provisions of this Act.

XXII. Liability of farmer to have his lease cancelled for arrear adjudged due.— Then an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be rejected;

Proviso.— Provided that no such lease shall be cancelled, nor the lease holder ejected otherwise, than in execution of a decree or order under the provision of this Act.

XXIII. Cognizance of suits under this Act.—1. All suits for the delivery of pottahs or kubooyets, or for the determination of the rates of rent at which such pottahs or kubooyets are to be delivered ;

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

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

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

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

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

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

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

XXIV. Suits by Zemindars against their agents for money or accounts.—Suits by Zemindars and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by sue agents in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

XXV. Ejectment of cultivators, farmer, &c., by Zemindars.—If any Zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act.

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

XXVI. Measurement of lands.—When rent is payable by an under-tenant or ryot at a certain rate or rates according to the quantity of land held or cultivated by him, or when any written engagement conditioned for the payment of a certain amount of rent on account of land held or cultivated by an under-tenant or ryot has expired or become cancelled by the sale for arrears of revenue or rent of the estate or tenure in which the land is situate, the person to whom the rent is payable has a right to measure such land for the purpose of ascertaining the quantity of land actually held or cultivated by such under-tenant or ryot, and every proprietor of an estate or tenure has a right of making a general surveyor measurement of the lands comprised in such estate or tenure unless restrained from doing so by express engagement with the occupants of the lands. If any person intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land, or if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, such person may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and shall pass an order either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or

ryot after the issue of an order enjoining his attendance neglects to attend, it shall not be competent to him to contest the correctness of the measurement made in his absence.

XXVII. Registry of transfers of talooks, &c.—All dependent talookdars and other persons possessing a permanent transferable interest in land intermediate between the Zemindar and the cultivator are required to register, in the Sherishte of the Zemindar or superior tenant to whom the rents of their talooks or tenures are payable transfers of such talooks or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every Zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good fund, and all such successions and divisions. If any Zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession.

Proviso.— Provided that no Zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the Zemindar or superior tenant.

XXVIII. Applications to dispossess grantees of land exempt from revenue.— So much of Section X Regulation XIX. 1793, Section X Regulation XLI. 1795, Section VI Regulation XXXI. 1803, Section XXI Regulation VIII. 1805, and Section XXIV Regulation XII. 1805, as authorizes and requires proprietors and farmers of estates and dependent talooks, in cases in which grant holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Sections, of their own authority to collect the terms of such land, and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or talook in which it may be situated, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse, or within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

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

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

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

XXXII. Time for the commencement of suits for arrears of rent.— Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year or from the last day of the month of Jeth of the Fusly or Willayuttee year in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, suit shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suit in the Civil Court, whichever may first expire.

Proviso.—Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section XIII, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeth of the Fusly or Willayuttee year, on account of which such enhanced rent is claimed.

XXXIII. Time for the commencement of suits against agents for money, papers, or accounts.—Suits for the recovery of money in the hands of an agent or for the delivery of accounts or paper by an agent, may be brought at any time during the agency or within one year after the determination of the agency of such agent, or in the case of claims now existing within one year after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court whichever may first expire.

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

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

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

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

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

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

XXXVII. Statement of claim to be written on stamped paper.— In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other Suits the statement shall be written on paper bearing a stamp of the value of eight annas.

No stamp duty to be required for filing documents, &c.— No stamp shall be required respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act.

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

XXXIX. If plaintiff require production of document from defendant.— If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, delivery to the Collector a description of the document in order that the

defendant may be required to produce the same.

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

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

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

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

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

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

XLVI. Endorsement by Nazir if summons has been personally served or not.— If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how it has been served.

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

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

XLIX. Warrant of arrest in what cases to be issued.--If in any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instated, he shall present with his statement of claim an application for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his agent, on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *prima facie* grounds for believing the claim to be well-founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. The Collector shall fix a reasonable time for the return of the warrant which shall be in the form (B) contained in the Schedule to this Act or to the like effect, and the Officer entrusted with the service of the warrant shall at the time of arresting the defendant deliver to him a notice addressed to the defendant (which shall be in form (C) in the Schedule or to the like effect) containing the particulars of in the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence, But no warrant shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

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

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

Form of security bond.— The security bond shall be in the form (D) contained in the Schedule to this Act or to the like effect.

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

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

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

LV. If defendant only appear to dispute the demand, Collector shall pass judgment by default; but if defendant admit the claim, Collector shall decree upon such admission.—If on any such day the defendant only appear, the Collector shall pass judgment against. the plaintiff by default unless the

defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs;

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

LVI. If plaintiff only appear, Collector may proceed *ex parte*.—If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

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

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

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

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

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

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

LXIII. After examination, Collector may make his decree if no further evidence is required.—If after the examination required by section LIX and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

LXIV. Consequence of inability of agent to answer.—If on such examination as aforesaid the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other orders as he may deem proper in the circumstances of the case.

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

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

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

LXIII. Consequence of parties not appearing on the day fixed for the trial of any issue.—If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in section LIV. If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

LXIX. Consequence of parties not appearing on the day fixed for the trial of any issues.—When suits under this Act are instituted or defendant by Naibs, Gomastahs, or other persons employed in the collections of rent, or management or land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomastahs, or other persons ; and anything which by this Act is required or permitted to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual for all purpose in relation to the suit as if the same had been served on the landholders in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

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

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

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

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

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

LXXIV. Defendant may pay money into Court in satisfaction of the demand.—The defendant in any action under this Act may pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sum shall be paid to the plaintiff.

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

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

LXXVI. If on trial of suit for delivery of pottah, Parties do not agree as to the time for which the pottah is granted, Collector to fix the time.—If on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper.

Proviso.— Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

LXXVII. If in actions for rent a third person appear as claimant, he is to be made a party to the suit.—When in any suit between a landholder and a ryot or undertenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or undertenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into, and the suit shall be decided according to the result of such enquiry.

Proviso.—Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

LXXVIII. Suits for ejectment or cancelment of lease.—Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear,

and if such amount together with interest and costs of suit be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

LXXIX. Judgment how to be pronounced.—The Collector shall pronounce judgment in open Court. The judgment shall be written in the Vernacular language of the Collector and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced.

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

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

LXXXII. Mode of executing decree for ejectment or re-instatement of ryot.—If the decree be for the ejectment of any ryot from land occupied by him, or for the re-instatement of any ryot in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy.

Punishment for obstructing execution.—If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made the Magistrate, on the application of the Collector, shall give effect to the same.

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

LXXXIV. In what case a judgment-debtor may be detained or imprisoned without issue of process of execution.—If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security bond given under section LI, the Collector may order that he be detained in or committed to the Civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

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

LXXXVI. Issue of process of execution.—Process of execution may be issued against either the person or the property of a judgment debtor; but process shall not be issued simultaneously against both person and property. Process of execution against the person or moveable property of a debtor shall be in the form (E) or (F) contained in the Schedule to this Act, or to the like effect.

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

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

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

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

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

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

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

XCIII. Warrant against the person.—If a warrant issue for taking in execution the body of any person, the Officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the Civil jail there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree.

Limit of imprisonment.—Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six calendar months when such amount does not exceed five hundred rupees, or two years in any other case.

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

XCIV. No person to be imprisoned a second time under same judgment.—Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree. In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

XCV. Diet-money to be deposited at the time of issue of warrant.—Any person applying for a warrant of arrest under section XLIX or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

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

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

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

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

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

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

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

CIII. No appeal from order of Collector under the two last preceding sections.— No appeal shall lie from any order passed by the Collector under the two last preceding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order;

Proviso.—Provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

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

CV. Sale of transferable tenures in execution of decrees for arrears of rent.—If the decree be for an arrear of rent due in respect of an under tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. But no such application shall be received when a warrant of execution has been previously

issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immovable, belonging to the debtor, and any such immovable property may be brought to sale in the manner provided in section CX of this Act.

CVI. If third party claim to be the lawful possessor of such under-tenure, Collector to stay the sale and to enquire into and adjudicate upon the claim.—If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and allege that such third party and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in section C for the examination of third parties, and if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree or give sufficient security and for the same, the Collector shall stay the sale and proceed to enquire into and adjudicate upon the claim.

Proviso.—Provided that no transfer of an under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the Sherishteh of the Zemindar or superior tenant shall be recognized unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

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

CVIII. Execution of decrees given in favor of sharers in undivided estates or tenures.—If a decree is given in favor of a sharer in a joint undivided estate, dependent talook, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or talook or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the District in which the suit was instituted and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in section CV, may be brought to sale in execution of the decree in the same manner as any other immovable property may be sold in execution of a decree for money under the provisions of the two next following sections.

CIX. In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immovable property.— In the execution of any decree for the payment of money under this Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the District in which the suit was instituted, the judgment-creditor may apply for execution against any moveable property belonging to such debtor.

CX. Mode of executing process if immovable property be a house or other building.—If the immovable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of sections XCVIII and XCIX shall be applicable to the execution of such process.

If it be a saleable under-tenure.—If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.

If it be an estate or a share of an estate.— If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.

CXI. Consequence of objection being offered before the sale of any immovable property.— If, before the day fixed for the sale of any immovable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being

liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in section C for the examination of third parties, and if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in section CVII.

CXII. Produce of the land to be held hypothecated for the rent.—The produce of the land is held to be hypothecated for the rent payable in respect thereof;

Arrears of rent may be recovered by distraint under the following rules.—and when an arrear of rent as defined in section XX of this Act, is due from any cultivator of land, the zemindar, lakherajdar, farmer, dependent talookdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules.

Cultivators who have given security to be exempt from distraint.— Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to distraint.

Proviso.—Provided also that no sharer in a joint estate, dependent talook, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same.

Proviso.—Provided further that, in Putteedaree estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces, distraint shall be made only through a Lumberdar.

CXIII. No distraint in certain cases.—Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

CXIV. Power of distraint to be exercised by managers under the Court of wards, &c.—The power of distraint vested by section CXII in Zemindars and other persons entitled to received rent from cultivators of land, may be exercised by managers under the Court of Wards, Surburakars, and Tuhseeldars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the Naibs, Gomashtahs, and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power of attorney in that behalf.

Proviso.—Provided that, if any illegal act is committed by any such Naib, Gomashtah, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

CXV. Standing crops and crops gathered but not stored liable to distraint.—Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a home-stead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

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

CXVII. Distress to be proportionate to the arrear if not paid or tendered.—Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress;

List of property to be distrained, to be served on owner.—and shall prepare a list or description of the said property, and deliver a copy the same to the owner, or if he be absent affix it at his usual place of residence.

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

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

CXX. Persons empowered to distrain may give written authority to their servants to do so.—When any person, empowered to distrain property under section CXII or section CXIV, shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

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

CXXII. Application for sale.—Within five days from the time of the storing of any distrained crops or products, or if crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court Ameen, or other Officer Authorized to sell property in satisfaction of decree of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the local Government shall appoint for the purpose.

CXXIII. Form of application.—The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited.

Cost of notice upon defaulter to be deposited by distrainer.—Together with the application, the distrainer shall deliver to the Civil Court Ameen or other Officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

CXXIV. Procedure by Civil Court Ameen &c., on receipt of application.—Immediately on receipt of the application the Civil Court Ameen or other Officer shall transmit a copy of it to the Collector; and shall serve a notice (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within period of fifteen days from the receipt of the notice. He shall at the same time send to the Collector for the purpose of being put up in his office, and if in the North-Western Provinces, in the cutcherry of the Tuhseeldar, a

proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which is to be sold, and the place where the sale is to be held.

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

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

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

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

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

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

CXXXI. Payment of purchase money.— The price of every lot shall be paid for in ready money at the time of sale or as soon after as the Officer holding the sale shall think necessary; and in default of such payment the property shall be put up again and sold. When the purchase money has been paid in full, the Officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

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

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

CXXXIV. All irregularities to be reported to the Collector.—Civil Court Ameen and other Officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under color of this Act; and if in any case, on proceeding to hold a sale of property,

Officer not to proceed to sale; if he find that defaulter has not received due notice.—the Civil Court Ameen or other Officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section CXXIV or pass such other order as he may think proper.

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

CXXXVI. Proceedings of Civil Court Ameens &c., subject to revision and orders of Collectors.—All proceedings under the Act of the Civil Court Ameens and other officers as aforesaid shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Ameens and other Officers as may be thought necessary.

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

CXXXVIII. Procedure after institution of suit to contest distrainer's demand.— In all suits instituted to contest the demand of distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favor of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding Section if the distress has not been withdrawn, and if any balance remain due after such sale by

execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If on the other hand the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff as the circumstances of the case shall seem to require.

CXXXIX. Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.—If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner, and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted the property may be released upon security being given for the value of the same. If the claim is dismissed the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require.

Proviso.— Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

CXL. Procedure if distrainer's right to distraint be disputed.— If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distraint for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

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

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

CXLIII. Unlawful distraint.—If any person not empowered to distraint property under Section CXII and CXIV of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distraint or sell or cause to be sold any property under color of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and

shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

CXLIV. Time for commencing suits for damages.—Provided always that any suit which may be instituted under any of the last three Sections shall be commenced within three months from the due date of the occurrence of the cause of action.

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

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

CXLVII. Resistance of process.—Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Court of Civil justice. When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, any issue a warrant for his apprehension. Orders passed by Collectors under this Section shall not be deemed to be order relating to the trail of suits or to the execution of decrees within the meaning of Section CLI.

CXLVIII. Collector competent to hold a Court in any part of his jurisdiction.— It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his District or local jurisdiction.

Proviso.—Provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

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

CL. Powers of Deputy Collectors.—All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference, by any Deputy Collector places in charge of any Sub-division of a district; and all applications and reports allowed or required by this Act to be made to the Collector may be made to any Deputy Collector having such local jurisdiction.

CLI. Collectors and Deputy Collectors to be subject to direction and control of the Commissioners and the Boards of Revenue.— In the performance of their duties under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the

Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.

No appeal from orders of Collectors and Deputy Collectors in certain cases.— All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgement of a Collector or Deputy Collector in any suit, and no orders of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

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

CLIII. No appeal from any decree of Collector for money below 100 Rs. Unless the decision involve some question of right to enhance rents or some question relating to a title to land.— In suits under Clauses 2, 4, and 7 of Section XXIII and under Section XXIV of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred Rupees, the judgment of the Collector shall be final, and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections CLX and CLXI of this Act.

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

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

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

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

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

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

CLX. In what suits appeal to lie to Zillah Judge.— In all suits other than those in which when tried and decided by a Collector the judgment of the Collector is declared to be final or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zillah Judge;

To Sudder Court.—unless the amount or value in dispute exceed five thousand Rupees, in which case the appeal shall lie to the Sudder Court.

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

CLXII. Suits to be preferred in the Revenue Office of the District or Sub-division on which the greater part of the lands is situate.—Suits under this Act shall be preferred in the Revenue Office of the District, or when a Sub-division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Sub-division in which the cause of action shall have arisen. Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector. If the lands comprised in any talook, farm, or other tenure, Or any lands held under one lease or engagement or at entire rent in respect of which arrears of rent may be due, are situated in more than one District or Sub-division, the District or Sub-division, in which the greater part of such lands is situate shall be held to be the District or Sub-division in which the cause of action has arisen; and if any question shall be raised respecting the District or Sub-division in which the greater part of the lands is situate, the Board of Revenue, or if all the lands be situate in one District the Collector of the District shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

CLXIII. Except as above, Collector not to exercise jurisdiction in respect to lands situate beyond his District.—Except as provided in the last preceding Section, no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the District to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the Treasury of the said District.

CLXIV. Deputy Collector entrusted with Police functions, not to exercise judicial powers under this Act.— No Deputy Collector appointed under Regulation IX. 1833 of the Bengal Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions.

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

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

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

CLXVIII. "Civil Jail".— The words " Civil Jail" as used in this Act shall include the Civil Jail of the Zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act.

"Nazir".—The word "Nazir" shall include any Officer of a Court authorized to serve or execute its process.

Number—Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number,

Gender.— and words importing the masculine gender shall include females.

SCHEDULE.

FORM A. (*See* Section 44.)

FORM OF SUMMONS TO DEFENDANT.

No.

(of suit) dated

In the Court of

A. B., Plaintiff.

[*Name, description, and address of plaintiff.*]

C. D., Defendant.

[*Name, description, and address of defendant.*]

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

FORM B. (*See* Section 49.)

FORM OF WARRANT OF ARREST

No.

(of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of—

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

Dated this

Day of

185.

FORM C. (See Section 49.)

FORM OR NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[Name, description, and address of plaintiff.]

C. D., Defendant.

[Name, description, and address of defendant.]

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

FORM D. (See Section 51.)

FORM OR SECURITY BOND FOR APPEARANCE OF DEFENDANT.

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

FORM E. (See Section 86.)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C.D., Defendant.

To the Nazir of the Court of the Collector of—

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

FORM F. (See Section 86.)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector—

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

FORM G. (See Section 124.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of

Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, Description, and address of the owner of the property.*]

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

Dated this _____ day of _____ 185.