

ASSAM ACT III OF 1935

THE ASSAM (TEMPORARILY-SETTLED DISTRICTS) TENANCY
ACT, 1935*

[As Modified up to 13th September, 1963]

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*For Statement of Objects and Reasons, see *Assam Gazette*, 1934, Part V, page 48; for Proceedings in Council, see *Assam Gazette*, 1934, Part VI, pages 937, 1193-1198, *Assam Gazette*, 1935, Part VI, pages 604, 717-740, 1023-1047, 1071-1105, 1130-1166, 1189-1206; for Reports of Select Committee, see *Assam Gazette*, 1935, Part V, pages 52-112, pages 138-139, 158.

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THE ASSAM (TEMPORARILY-SETTLED DISTRICTS) TENANCY ACT, 1935

An Act to regulate the relations of Landlord and Tenant in the temporarily-settled districts of the Province of Assam

Whereas it is expedient to regulate by law the rights and liabilities of agricultural tenants and their landlords in certain lands in the province of Assam not included in any permanently-settled estate ;

Preamble.

5 and 6
Geo. 5 Ch.
61 ; 6 and 7
Geo. 5. Ch. section 80A of the Government of India Act to the
37 ; and 10
Geo. 5, Ch.,
101. And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Assam (Temporarily settled Districts) Tenancy Act, 1935. Short title

(2) It shall come into force on such date as the [State Government]¹ may, by notification, appoint in this behalf. Commencement.

2. (1) The Act does not apply to—

(a) lands included in any Reserved Forest constituted under the law for the time being in force ; Local extent

(b) lands acquired under the Land Acquisition Act, 1894, for [any Government]² or any Local Authority or for a Railway or other Company, when and for so long as such lands are utilised for the purposes for which they were acquired or for purposes incidental or ancillary thereto ;

I of 1894.

1. Substituted by the A.O. 1950 for "Provincial Government".

2. Substituted by the A.O. 1937 for "the Government".

- (c) land owned by [the Government]¹ or by any Local Authority which is used for any public work, such as road, canal, drain or embankment or is set aside for the repair or maintenance of the same ;
- (d) lands expressly reserved from settlement, by [any Government]² or by officers of [the Government]¹, duly empowered in that behalf, for military purposes or for professional graziers or for a public purpose, such as grazing grounds, recreation grounds, burial or cremation grounds ;
- (e) lands included in a civil station ;
- (f) lands—other than agricultural lands—situated within any area outside civil stations ;
- (g) lands comprised within estates settled for special cultivation when, and for so long as, such lands are used for the purposes of special cultivation or for purposes ancillary thereto ;

Explanation.—This sub-clause includes lands settled for the cultivation of tea under the rules in force from time to time such as fee simple grants, revenue redeemed grants, 30 years' grants under the New Lease Rules [though now assessed with full revenue]³ and lease for special cultivation under settlement rules framed from time to time under the Assam Land and Revenue Regulation.

1 of 1886.

- (h) lands settled for ordinary cultivation but utilised for special cultivation or for purposes ancillary thereto, when, and for so long as, they are so utilised ;
- (i) lands settled on annual leases.

1. Substituted by the A.O. 1950 for "the Crown".

2. Substituted by the A.O. 1937 for "the Government".

3. Inserted by the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953 (Assam Act XXVII of 1953.)

(2) Subject to the above mentioned exceptions, the Act extends to :—

(a) The districts of Kamrup.—
Nowgong. * * *

Sibsagar.

Darrang.

Lakhimpur.

(b) The Sadr and Hailakandi subdivisions of the district of Cachar.

(3) The [State Government]² may, by notification, extend the whole or any part of the Act to any [other]³ temporarily-settled area in other districts :
* * *

Provided that no such notification shall be issued unless—

*⁴ a notice, intimating the proposed extension of the Act or part thereof, has been previously published in the area concerned or part thereof in the prescribed manner.
* * *

3. In this Act, unless there is anything repugnant Definitions. in the subject or context,

1 of 1886,
(1) The words "estate," "civil station," "temporarily-settled estate," "land revenue," "proprietor," "landholder" and "settlement-holder" have the meanings assigned to them in the Assam Land and Revenue Regulation, 1886; the expressions "annual lease," "periodic lease," "special cultivation" and "ordinary cultivation" shall have the same meaning as is assigned to them in the rules framed under the aforesaid Regulation. "Revenue Officer," "Settlement Officer" and "Assistant Settlement Officer" connote the officers described as such in, or appointed under, the Assam Land and Revenue Regulation;

(2) "Revenue Court" means the Court of the Deputy Commissioner, Settlement Officer, or of such other officer as the [State Government]² may invest with the powers of Revenue Court for the purposes of this Act;

1. Omitted by the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Act. 1953 (Assam Act XXVII of 1953).

2. Substituted by the AO 1950 for "Provincial Government."

3. Inserted by Assam Act, XXVII of 1953.

4. Number (i) and item (ii) deleted by Assam Act, XXVII of 1953.

(3) "tenant" means a person who holds land under another person, and is, or but for a special contract—express or implied—would be, liable to pay rent for that land to that other person:

Provided that a person who holds land immediately under the [Government]¹ is not a tenant within the meaning of this definition;

Explanation :—A person who holds land on condition of service to a temple or religious institution shall be deemed to be the tenant of the manager of such temple or religious institution.

(4) "landlord" means a person immediately under whom a tenant holds but does not include [any Government]².

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

(6) "Khog" means articles of food required by custom to be offered to a deity;

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

(8) "holding" means a parcel or parcels of land or an undivided share thereof, held by a tenant and forming the subject of a separate tenancy;

(9) "Agriculture" includes horticulture;

(10) "agricultural land" means land used for agricultural purposes;

NOTE.—Land under homesteads occupied for residential purposes in connection with an agricultural holding is included in "agricultural land."

(11) The term "settled" used with reference to a land or an estate means leased by, or on behalf of, the [Government].³

1. Substituted by the A. O. 1950 for "Crown".

2. Substituted by the A. O. 1937 for "the Government".

(12) "agricultural year" means the year beginning on the first day of *Bysakh* and ending with the last day of *Chaitra*.

(13) (a) "revenue rate" means in respect of every parcel of land in an estate settled temporarily at full rates, the rate at which revenue is for the year actually payable to Government upon that parcel of land;

(b) In the case of land in an estate settled otherwise than at full rates, it means the rate at which revenue would for the year be actually payable to Government on land of similar quality and advantages in an estate temporarily settled at full rates under the rules for the time being in force;

(14) "Notification" means a notification published in the [Official Gazette]¹.

(15) "Village" means the area surveyed as a village at the last resettlement of the district or the part thereof in which the area lies;

(16) "Prescribed" means prescribed by rules framed under this Act;

[(17) 'Maximum rent or rate of rent' of agricultural holdings or part thereof, held on cash rent means a sum representing three times the revenue rate. Where agricultural holdings or part thereof are held on produce rent, "maximum rent" means one-fourth of the actual produce thereof]².

CHAPTER II

CLASSES OF TENANTS

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely):—

Classes of tenants.

- (1) *Raiyats*, that is to say, tenants holding immediately under a proprietor, land-holder or settlement-holder, and
- (2) Under-*raiyats*, that is to say, tenants holding under *raiyats*;

1. Substituted by the A. O. 1937 for "Assam Gazette."

2. Substituted by Assam Act XXVII of 1953.

and the following classes of *raiayats* (namely) :—

- (a) Privileged *raiayats*, that is to say, *raiayats* entitled to hold at rates of rent not exceeding the revenue rates,
- (b) Occupancy *raiayats*, that is to say, *raiayats* having a right of occupancy in the land held by them, and
- (c) Non occupancy *raiayats*, that is to say, *raiayats* not having such a right of occupancy.

CHAPTER III

PRIVILEGED *Raiyats*

Raiyats entit
titled to ho-
ld at a rate
of rent not
exceeding
the revenue
rate.
5. (1) Subject to the provision of sub-section (2), a *raiyat* who has held land for a continuous period of not less than [12]¹ years—

- (i) on a rate of rent never exceeding the revenue rate, or
- (ii) at half the revenue rate in addition to service to be rendered by him, or
- (iii) on payment of “*bhog*”

shall be deemed to be *raiyat* entitled to hold that land at a rate of rent never exceeding the revenue rate.

(2) Notwithstanding the provisions of sub-section (1), no person holding land under a concern engaged in special cultivation shall acquire, or be deemed to have acquired, the status of a privileged *raiyat* in respect of such land, if it was first leased to him or to his predecessors in interest at a time when he or they formed part of the labour force of the concern in question.

(3) For the purposes of this section the period of [12]¹ years may be wholly or partly before or after the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953]².

1. Substituted by Assam Act XXVII of 1953 for “20”.

2. Substituted by *ibid* for “this Act”.

(4) For the purposes of this section a person shall be deemed to have held as a *raiyat* any land held as a *raiyat* at a rate of rent never exceeding the revenue rate by a person whose heir or successor in interest he is.

6. (1) A privileged *raiyat* holding land on payment of "bhog" or rendering service in addition to paying cash rent at half the revenue rate or, if the *raiyat* has habitually defaulted in the payment of his customary rent or the rendering of customary service, the land lord of such *raiyat*, may apply to the Revenue Court to have the payment of "bhog" or the combined cash rent and service commuted to rent at the revenue rate. The Court shall, on receipt of such application, issue notice on the landlord or the *raiyat* (as the case may be) and, on hearing what he has to say, pass orders allowing or rejecting the application.

(2) Before allowing or rejecting such applications the Court shall have regard to—

- (i) the purpose for which the tenancy was originally granted,
- (ii) the extent to which that purpose has been achieved under existing conditions,
- (iii) the period for which the tenancy has been in existence,
- (iv) the extent to which the proposed commutation will interfere with the purpose for which the tenancy was created,
- (v) whether in respect of any land in the estate concerned the landlord has accepted commutation of rent in the past and if so under what circumstances, and
- (vi) any other circumstance which, in the opinion of the Court, is calculated to affect adversely or favourably the interests of the landlord or of the tenant in respect of such land.

7. (1) A privileged *raiyat* may use the land in his holding in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

(2) Subject to the provisions of sub-section (1), a privileged *raiyat* shall be entitled—

- (i) to plant,

- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and
- (iv) to utilise and dispose of the timber of, any tree on such land; provided that in doing so he does not contravene the provisions of any law:

Provided further that he shall not be entitled without the landlord's consent in writing to fell, utilise or dispose of the timber of any tree which stood on the holding before the creation of the tenancy. When the tenancy is over 20 years old, all trees standing on the land shall be presumed, until the contrary is proved, to have been planted or to have begun to grow during the tenancy.

Obligation to pay rent. 8. A privileged *raiyat* shall pay rent for his holding at the customary rate and if the service, if any, to be rendered by him or payment of "bhog" to be made by him, be commuted, then at the revenue rate.

Protection from eviction. 9. A privileged *raiyat* shall not be ejected by his landlord from his holding except in execution of a decree for ejection passed on the ground that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy.

Devolution on death. 10. If a privileged *raiyat* dies intestate in respect of his holding, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property:

Provided that in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the [Government]¹, his right in the holding shall be extinguished.

Right of transfer. 11. A privileged *raiyat* shall have an unrestricted right of transfer in respect of his holding, but no transfer shall be binding on the landlord until a written notice thereof has been given to the landlord:

Provided that the right of a privileged *raiyat* holding under a religious institution such as a temple, Satra or mosque shall be restricted to transfer to persons belonging to the same religion as the institution in which the ownership of the land is vested.]²

Right of subletting. 12. A privileged *raiyat* shall have a right of subletting his holding or any part of it to persons to whom he could validly transfer it under section 11.

1. Substituted by A. O. 1950 for "Crown".

2. Substituted by Assam Act XXVII of 1953.

CHAPTER IV

OCCUPANCY *Raiyats*

13. (1) A person, who—

[* * *]¹

Acquisition
of occupancy
rights

(b) for a period of 12 years [* * *]¹ has continuously held land as a *raiyat*, shall have a right of occupancy in that land.

(2) The period of [* * *]¹ 12 years [* * *]¹ referred to in sub-section (1) may be wholly or partly before or after the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953]².

(3) A person shall be deemed, for the purposes of this section, to have continuously held land under a landlord notwithstanding that the particular landlords under whom he held the land were different at different times provided the land held by him was the same.

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

(5) If a *raiyat* recovers possession of his holding under the provisions of section 35 or of any other law in force, any period during which he may have been out of possession shall count towards the periods specified in sub-section (1).

(6) For the purposes of this section, a person who, under the system generally known as “*adhi*”, “*barga*” and “*bhag*,” cultivates the land of another person, on condition of delivering a proportion of the crop to that person, is not a *raiyat*:

Provided that the holding of the land under such a system shall not be deemed to break the continuity of the period for which the said cultivator, or his heir or the person whose heir the cultivator is, holds or held the land otherwise than under such a system.

[Illustration.—When a person holds land as a *raiyat*, say, for seven years, then under the system mentioned in this sub clause for four years, and thereafter again for a further term as a *raiyat*, occupancy right shall not accrue unless such further term extends to a period of not less than five years.]³.

1. Omitted by Assam Act XXVII of 1953.

2. Substituted by *ibid* for “this Act”.

3. Substituted by Assam Act, XXVII of 1953.

INCIDENTS OF OCCUPANCY RIGHT

Rights in respect of use of land. 14. When a *raiyat* has a right of occupancy in respect of any land he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

Right in trees. 15. Subject to the provisions of section 14, when a *raiyat* has a right of occupancy in respect of any land he shall be entitled—

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and
- (iv) to utilise and dispose of the timber of, any tree on such land:

Provided that in doing so he does not contravene the provisions of any law:

Provided further that he shall not be entitled without the landlord's consent in writing to fell, utilise or dispose of the timber of any tree which stood on the holding before the creation of the tenancy. When the tenancy is over 20 years old all trees standing on the land shall be presumed until the contrary is proved, to have been planted or to have begun to grow during the tenancy.

Obligation to pay rent. 16. An occupancy *raiyat* shall pay rent for his holding at fair and equitable rates:

Provided that in case of dispute the rate previously paid by a *raiyat* shall be deemed to be fair and equitable unless the contrary be shown in a Court of Law.

Protection from eviction. 17. An occupancy *raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground:—

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

Provided that no occupancy *raiyat* shall be liable to ejection under sub-clause (b) if the contract has been entered into after the passing of this Act, and has not been registered.

18. If a *raiyat* dies intestate in respect of a right of occupancy it shall, subject to any custom to the contrary, descend in the same manner as other immovable property:

Provided that in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the [Government]¹, his right of occupancy shall be extinguished.

[19. An occupancy *raiyat* shall have unrestricted right of transfer in respect of his holding but no transfer shall be binding on the landlord until a written notice thereof has been given to the landlord:

Right of transfer.

Provided that the right of an occupancy *raiyat* holding under a religious institution such as temple, Satra or mosque shall be restricted to transfer to persons belonging to the same religion as the institution in which the ownership of the land is vested.

20. An occupancy *raiyat* shall have right of subletting his holding or any part of it to persons to whom he could validly transfer it under section 19.]²

Right of subletting.

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

Restriction on enhancement of rent.

22. The money rent of an occupancy *raiyat* may be enhanced by contract subject to the following conditions:—

Enhancement by contract.

- (a) the contract must be in writing and registered,
- (b) the rent must not be enhanced so as to exceed by more than [three annas]³ in the rupee the rent previously payable by the *raiyat*, and
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of 15 years from the date of the contract

provided as follows:—

(i) Nothing in clause (a) shall prevent a landlord from recovering rent at a rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

1. Substituted by A. O. 1950 for "Crown".

2. Substituted by Assam Act, XXVII of 1953.

3. Substituted by *ibid* for "four annas".

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

**Enhance-
ment by
application
to Court.** 23. The landlord of a holding held at a money rent by an occupancy *raiyat* may, subject to the provisions of this Act, apply to the Revenue Court for the enhancement of the rent on one or more of the following grounds, namely :—

- (a) that the rate of rent paid by the *raiyat* is much below the maximum rate of rent for the lands comprised in the holding and that there is no sufficient reason for his holding at so low a rate ;
- (b) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by or at the expense of the landlord during the currency of the present rent ;
- (c) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

**Rules as to
enhancement**

24. When an enhancement is claimed on the ground mentioned in section 23(a), in determining whether there is sufficient reason for the *raiyat* holding at the existing low rate of rent the Court shall have regard to the general level of rents paid by occupancy *raiyats* for lands of similar description and with similar advantages in the neighbourhood and all the circumstances of the case such as the origin of the tenancy, the amount of land held under the landlord on produce rent, the incidental benefits or advantages, if any, derived from the *raiyat* by the landlord and any special circumstance to which the existing low rate of rent may be due. The Court shall not decree an enhancement unless there is substantial difference between the rate paid by the *raiyat* and the maximum rate of rent.

25. (1) Where an enhancement is claimed on the Rules as to ground of a landlord's improvement—

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;
- (b) in determining the amount of enhancement the Court shall have regard to—
 - (i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
 - (ii) the cost of the improvement,
 - (iii) the cost of the cultivation required for utilising the improvement, and
 - (iv) the existing rent and the ability of the land to bear a higher rent.

(2) The Court may enhance the rate of rent but not so as to exceed the maximum rate of rent calculated on the revenue rate assessable on the land had the improvement taken place before the last resettlement of the village and affected its classification for the purpose of assessment.

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

26. Where an enhancement is claimed on the Rules as to ground of an increase in productive powers due to fluvial action—

- (a) the Court shall not take into account any increase which is merely temporary or casual ;
- (b) the Court may enhance the rate of rent but not so as to exceed the maximum rate of rent calculated on the revenue rate assessable on the land had the improvement due to fluvial action taken place before the last resettlement of the village.

27. Notwithstanding anything in sections 24—26 the Court shall not in any case order any enhancement which is, under the circumstances of the case, unfair or inequitable.

Enhancement to be fair and equitable

Power to order progressive enhancement. 28. If the Court ordering an enhancement considers that the immediate enforcement of the order to its full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall take effect gradually at such times and by such instalments over a period not exceeding 10 years as the Court may fix in this behalf.

For the purposes of section 29, however, the full rent shall be deemed to have come into force from the date of the order.

Limitation of right to file successive enhancement applications. 29. An application filed for the enhancement of the rent of a holding on the ground that the rent paid is below the maximum rate of rent shall not be entertained if, within the fifteen years next preceding the filing of the application, the rent of the holding has been enhanced by a contract made after the year 1934 or an order has been passed under this Act enhancing the rent on the ground aforesaid, or on any ground corresponding thereto or dismissing the application on the merits.

CHAPTER V

NON OCCUPANCY RAIYATS

Application of chapter. 30. This Chapter applies to *raiyats* who have not acquired the rights either of a privileged *raiyat* or of an occupancy *raiyat* and who are in this Act referred to as non-occupancy *raiyats*.¹

Initial rent. 31. When a non-occupancy *raiyat* is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Condition of enhancement of rent. 32. The rent of a non-occupancy *raiyat* shall not be enhanced except by a written agreement.

Grounds on which a non-occupancy *raiyat* may be ejected. 33. A non-occupancy *raiyat* shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, *raiyat* may namely:—

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

1. Substituted by Assam Act XXVII of 1953.

- (b) on the ground that he has failed to pay an arrear of rent;
- (c) on the ground that he refuses to agree to a fair and equitable enhancement of rent;
- (d) when he holds the land under a written lease on the ground that the term of the lease has expired;
- (e) when he holds the land otherwise than under a written lease, on the ground that the tenancy has been terminated by his landlord by six months notice in writing expiring at the end of the agricultural year:

Provided that a non-occupancy *raiyat* who has at the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953]¹ held the land continuously for not less than [five years]² shall not be liable to ejectment on the ground specified in clause (e) unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers.

34. (1) In a suit for ejectment on the ground of refusal to agree to enhanced rent, the Court may, if it considers that the immediate enforcement of the enhancement proposed by the landlord will be attended with hardship to the non-occupancy *raiyat*, direct that the enhancement shall take effect gradually at such times and by such instalments as the Court may fix in this behalf.

(2) If the plaintiff does not agree to the mode of enhancement as directed by the Court the suit shall be dismissed. If on the other hand he agrees to it, he shall within a week tender in the prescribed manner to the *raiyat* a draft of an agreement to pay the enhanced rent as determined by the Court. If the *raiyat* fails to execute the agreement as tendered and file it in the Court within one month from the date of its tender, the Court shall grant a decree for ejectment.

35. Where a non-occupancy *raiyat* has been ejected in the circumstances mentioned in proviso to section 33, he may apply to the Court by which the order for

ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within [two years]³ of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after enquiry that the landlord did not use the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

¹ Substituted by Assam Act XXVII of 1953 for "this Act"

² Substituted by ibid for "ten years"

³ Substituted by ibid for "three years"

Incidents of holding. 36. A non-occupancy holding shall descend in the same manner as other immovable property but shall not be transferable without the consent in writing of the landlord.

Subletting. 37. In the absence of a lease conferring on him the right of subletting, a non-occupancy *raiyat* shall have no right to sublet without the consent in writing of the landlord.

CHAPTER VI

UNDER-RAIYATS

Liability to pay rent. 38. Subject to the provisions of this Act an under-*raiyat* is liable to pay such rent as may be agreed on from time to time between himself and his landlord [but it shall not exceed, in any case, the rent paid by his immediate landlord to the latter's landlord by more than 50 p-r cent.]¹

Grounds on which under of this Act, be liable to ejectment on one or more of *raiyat* may be the following grounds and not otherwise, namely:— ejected.

- (a) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;
- (b) on the ground that he has failed to pay an arrear of rent;
- (c) on the ground that he refuses to agree to a fair and equitable enhancement of rent;
- (d) on the ground, when he holds the land under a written lease, that the term of his lease has expired;

¹ Inserted by Assam Act XXVII of 1953

(e) on the ground, when he holds the land otherwise than under a written lease, that the tenancy has been terminated by his landlord by six months' notice expiring at the end of the agricultural year:

Provided that an under-*raiyat*, who at the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953]¹ held land [* *]² continuously for not less than [five years]³, shall not be liable to ejectment on the ground specified in clause (e) unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers.

40. In a suit for ejectment on the ground of refusal to agree to enhancement, the Court may, if it considers that the immediate enforcement of the enhancement proposed by the landlord in its full extent will be attended with hardship to the under-*raiyat*, dismiss the suit unless the plaintiff agrees to such progressive enhancement as the Court may consider equitable.

41. Where an under-*raiyat* has been ejected in the circumstances mentioned in the proviso to section 39, he may apply to the Court by which the order for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within three years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after enquiry that the landlord did not use the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

1 Substituted by Assam Act XXVII of 1955 for "this Act".

2 The words "under a privileged raiyat" omitted by ibid.

3 Substituted by ibid for "ten years".

Incidents of holding. 42. The holding of an under-*raiyat* shall descend in the same manner as other immovable property but shall not be transferable:

Provided that the holding of an under-*raiyat* [***]¹ shall be transferable to a co-sharer in the holding or to a person who, if he survived the under-*raiyat*, would inherit his right.

Subletting. 43. An under-*raiyat* has no right of subletting.

CHAPTER VII

GENERAL PROVISIONS AS TO RENT

Limitation of rent. 44. Except as provided for in sections 25 and 26 no rent agreed on between landlord and tenant or enhanced by Court shall exceed the maximum rent in respect of the land; nor shall any such amount which is in excess of the maximum rent be lawfully payable.

Presumption as to amount of rent and conditions of holding. 45. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same condition as in the last preceding agricultural year.

Alteration of rent on first time made payable in respect of the land covered by a holding or (b) the revenue rates payable in respect of the land covered by a holding are diminished or increased whether by remission or by alteration of previous rates, the tenant's rent shall be liable to be altered fairly and equitably with reference to such rates.

Notwithstanding anything in the contract between the parties, a Revenue Court acting on the application of the landlord or the tenant filed before the end of the agricultural year in the course of which revenue rates become for the first time payable or are altered and the Court of the Deputy Commissioner or Settlement Officer acting of its own motion, may order remission for the period for which the landlord receives the benefit of remission or alter the rates of rent (as the case may be) accordingly.

1 The words "held under a privileged *raiyat*" omitted by Assam Act XXVII of 1953.

47. (1) Any tenant holding land in a temporarily-settled estate to which this Act applies may apply to the Court of the Deputy Commissioner for the reduction of his rent, on the ground—

Reduction
of rent of
holdings in
temporarily
settled
estates.

- (i) that the soil of the holding has, during the tenancy on the present rent, become permanently deteriorated without the fault of the tenant, and
- (ii) that his landlord has obtained, or is entitled to obtain, on that account a reduction in the revenue payable in respect of the land covered by the holding.

(2) On receipt of such an application, the Court shall, in the manner prescribed, make a local enquiry or have a local enquiry made by the Sub-Deputy Collector in charge of the area, wherein the land in question lies, to determine whether the tenant is entitled to a reduction.

(3) When, after such enquiry, the Court holds that the tenant is entitled to a reduction of his rent, the Court may—notwithstanding anything in any contract between the parties—direct such reduction of rent as it thinks fair and equitable.

48. (1) Any tenant holding land in an estate other than a temporarily-settled estate may apply to the Court of the Deputy Commissioner for reduction of his rent on the ground—

Reduction
of rent of
holdings in
estates other
than tempo-
rarily-settled.

- (i) that the soil of that land has during the tenancy on the present rent become permanently deteriorated without the fault of the tenant, and
- (ii) that the tenant would have been entitled to relief under section 47 had the estate in which his holding lies been a temporarily-settled estate.

(2) On receipt of such application the Court shall proceed as if an application under section 47 had been received and the Court shall make a local enquiry or have a local enquiry made by the Sub-Deputy Collector in charge of the local area wherein the land in question lies in order to determine whether the tenant is entitled to a reduction of rent.

(3) When after such an enquiry the Court holds that the tenant is entitled to a reduction of rent, it may, notwithstanding anything in the contract between the parties, direct such reduction of rent as it thinks fair and equitable.

Alteration
of rent on
alteration of
area.

49. (1) Every tenant shall—

- (a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him ; and
- (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his holding as compared with the area for which rent has been previously paid by him.

(2) Where a landlord or tenant is able to indicate any particular land as being in excess or in deficit, the rent to be added or abated (as the case may be) may be calculated with reference to the rates payable by a tenant of the same class for lands of a similar description and with similar advantages in the vicinity. Where on the other hand, a landlord or tenant is unable to indicate any particular land as being in excess or in deficit, the rent to be added or abated (as the case may be) may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

Instalments
of rent.

50. (1) Subject to agreement or established usage money rent shall be payable in instalments similar to those prescribed or ordered from time to time for the payment of revenue of the parent estate except that an instalment of rent shall be payable a fortnight earlier than the corresponding instalment payable by his landlord :

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) An instalment or part of an instalment of rent not duly paid when it falls due shall be deemed to be an arrear.

✓ 51. (1) Every tenant who makes a payment on Rent account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt signed by the landlord or his authorised agent.

(2) The [State Government]¹ may, by notification, prescribe the form of the receipt to be given and require a landlord or any particular class of landlords to prepare and retain a counterfoil of the receipt.

(3) In the absence of a notification under the last preceding clause, it will be sufficient for the receipt to show:—

- (a) the tenant's name ;
- (b) the annual rent of the holding ;
- (c) the amount paid ;
- (d) the year or years on account of which payment made ;
- (e) the name of the persons making the payment and the date of payment ;
- (f) a description of the holding sufficient for its identification.

(4) If the receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

52. (1) A landlord who, without reasonable cause, refuses or neglects to grant a receipt for the amount of rent paid by his tenant may, on the application of the tenant to the Revenue Court within three months of the date of such payment, be ordered by the Court to pay as compensation to the tenant such sum not exceeding double the amount or value of the rent paid as the Court thinks fit.

1. Substituted by the A.O., 1950 for "Provincial Government".

(2) If, in the course of the enquiry, it appears to the Court that the tenant has made an application under this section frivolously or without reasonable cause, the Court may award to the landlord by way of damages such sum not exceeding double the amount or value of the rent paid or alleged to have been paid as the Court thinks fit.

(3) Any sum awarded as compensation or damages under this section shall be recoverable as an arrear of land revenue.

53. Where rent is due to the proprietor, landholder, manager or mortgagee of an estate, the registered receipt of the person whose name has been registered proprietor, in the general registers maintained under Chapter IV landholder, of the Assam Land and Revenue Regulation as proprietor, landholder, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent due to such proprietor, landholder, manager or mortgagee, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person; but nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, landholder, manager or mortgagee.

I of 1886.

DEPOSIT OF RENT

Application
to deposit of
rent in court

54. In any of the following cases, namely—

(a) When the landlord refuses to accept any instalment of rent payable in cash when tendered to him by a tenant, or

when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent payable in cash,

the tenant may apply, in the manner prescribed, to the Revenue Court for permission to deposit in the Court a sum not less than the amount then due and the Court shall receive the deposit if it appears after examining the applicant that the application is made in good faith and on reasonable grounds and if the applicant pays in case (a)—the prescribed cost of transmission of the money deposited to the landlord and in case (b)—the fee chargeable for the issue of the notice referred to in section 56 in addition to the prescribed cost of transmission of the rent deposited.

55. The Court receiving the deposit shall give a receipt for it under its seal. The receipt so given shall be granted by the Court for operate as an acquittance of the amount of rent payable by the tenant and deposited as aforesaid in the same manner and to the same extent as if that amount of rent had been received by his landlord.

56. (1) The Court receiving the deposit shall in case (a) of section 54 forthwith forward the same by postal money order to the address of the landlord; in case (b) of that section it shall forthwith cause to be affixed in a conspicuous place at the court house a notification of the receipt thereof and shall cause notice to be served on every person who, the Court has reason to believe, claims or is entitled to the deposit; the Court may pay the amount deposited as rent to any person appearing to the Court to be so entitled or may retain it pending the decision of the Civil Court or to the person so entitled.

(2) If no payment is made under sub-section (1) before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of the Civil Court to the contrary, be repaid to the depositor upon his application, and on his returning the receipt given by the Court when the rent was deposited.

(3) No suit or other proceeding shall be instituted against the [Government] or against any officer of the [Government]¹ in respect of anything done by a court receiving a deposit under section 54, but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

ARREARS OF RENT

57. When a tenant is a privileged *raiyat* or an occupant *raiyat*, he shall not be liable to ejectment for arrears of rent, but his holding shall be liable to sale in execution of a decree for the rent thereof and the rent shall be the first charge thereon.

Liability to sale for arrears of privileged *raiyat's* or occupant *raiyat's* holding.

1. Substituted by the A.O. 1950 for "Crown".

Ejectment for arrears in other cases. 58. (1) When an arrear of rent remains due from a tenant not being a privileged *raiyat* or an occupancy *raiyat*, at the end of the agricultural year the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear or rent, a decree passed in favour of the plaintiff shall specify the amount of the arrears and of the interest (if any) due thereon ; and the decree shall not be executed if that amount and the cost of the suit are paid into Court within thirty days from the date of the decree or, if the Court is closed on the thirtieth day, on the day on which the Court reopens.

The Court may for special reasons extend the period of thirty days mentioned in this section.

Interest on arrears. 59. An arrear of rent shall bear simple interest at the rate of 9 $\frac{1}{2}$ per cent per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit for the recovery of the arrear, whichever date is earlier.

Power to award damages. 60. (1) If in any suit brought for the recovery of rent with held without reasonable cause, or to the amount decreed for the rent and costs, such defendant damages not exceeding 25 per cent of the amount of rent decreed as it thinks fit :

Provided that interest shall not be decreed when damages are awarded under this section and provided also that where damages are awarded—

- (i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and
- (ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrear of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum not exceeding 25 per cent on the whole amount claimed by the plaintiff as it thinks fit.

LIABILITY FOR RENT ON CHANGE OF LANDLORDS OR
AFTER TRANSFER OF HOLDING

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

Tenant no triable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

(2) When a privileged *raiyat* or an occupancy *raiyat* validly transfers his holding, the transferor and the transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer.

MERGER

62. When the landlord of an occupancy or privileged *raiyat*'s holding is a proprietor, landholder or settlement-holder and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a *raiyat* but shall hold it as a proprietor, landholder or settlement-holder, as the case may be; but nothing in this sub-section shall prejudicially affect the rights of any third person.

Effect of acquisition of privileged *raiyat*'s or occupancy *raiyat*'s rights by landlord

IRREGULAR TRANSFERS OF HOLDINGS

63. If any holding or part of a holding be transferred in contravention of the provisions of this Act, such transfer shall be voidable at the option of the Transfer in contravention of the provisions of the Act to be

Voidable and landlord and the offending tenant's entire interests in forfeiture of the holding shall be liable to be forfeited; and the tenant's in landlord may within 3 years of the transfer bring a suit for recovery of possession of the entire interests of such tenant in the holding and shall be entitled to a decree for ejectment of such tenant or his transferee and any person claiming under either of them:

Provided that when the Court is satisfied that the transfer [* * *]¹ was made in good faith, the Court may, in lieu of ejectment, grant such other relief as may with due regard to the landlord's interests to it seem suitable.

ILLEGAL CESSES, ETC.

Penalty for 64. Every tenant from whom, except under any exaction of special enactment for the time being in force, any sum in excess of the rent lawfully payable. Every tenant whose holding is assessed at maximum rates of rent and from whom service is exacted by or on behalf of his landlord in excess of the rent or interest lawfully payable may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty, as the Court thinks fit, not exceeding Rs. 100.

CHAPTER VIII

Miscellaneous provisions as to landlords and tenants

EJECTMENT

Ejectment in execution 65. No tenant shall be ejected from his holding except in execution of a decree.

1. The words "of a privileged raiyat's right" omitted by Assam Act XXVII of 1953.

IMPROVEMENTS

66. (1) For the purposes of this Act, the term ^{Definition} "improvement" used with reference to a holding, of "improve-
ment". shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after the execution, made directly beneficial to it.

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

(a) The construction of wells, tanks, water channels or other works for the storage, supply or distribution of water for the purpose of agriculture or for drinking or for the use of men and cattle employed in agriculture.

Explanation.—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of tenancy.

(b) The drainage, reclamation from rivers or other waters or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes or waste land which is culturable.

(c) The erection of a dwelling house for the tenant and his family together with all necessary out offices.

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

67. (1) Neither the tenant nor his landlord shall, Right to as such, be entitled to prevent the other from making improvements. an improvement in respect of the holding except on the ground that he is willing to make it himself.

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

Registration of landlord's improvements. 68. (1) A landlord may, by application to such revenue officer as the [State Government]¹ may appoint for a particular area, register any improvement which he has lawfully made or which has been lawfully made at his expense.

(2) The application shall be in such form, shall contain such information and shall be verified in such manner as the [State Government]¹ from time to time prescribes.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act from the commencement of this Act,

(b) in the case of improvements made after the commencement of this Act from the date of the completion of the work.

(4) If the application is not rejected under the foregoing clause the officer shall issue notice on the tenant concerned, take such evidence as may be adduced by the landlord and the tenant, and make a local inquiry.

(5) Improvements effected before the commencement of this Act shall be deemed to be improvements made in accordance with this Act and such of them as pertain to holdings lying in estates settled for ordinary or special cultivation otherwise than at full rates of revenue shall, until the contrary is proved, be presumed to have been made by tenants.

(6) The officer shall refuse to register the improvement unless it is proved that the improvement was effected by, or at the expense of the landlord.

Compensation for tenant's improvements. 69. (1) Every tenant who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessors in interest, and for which compensation has not already been paid.

¹Substituted by the A.O. 1950 for "Provincial Government".

(2) Whenever a Court makes a decree or order for the ejectment of a tenant it shall determine the amount of compensation (if any) due under this section to the tenant for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the tenant.

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

70. (1) In estimating the compensation to be awarded under section 69 for an improvement, regard shall be had—

Principle on
which com-
pensation is
to be estima-
ted.

- (a) to the amount by which the value, or the produce, of the holding or the value of that produce is increased by the improvement;
- (b) to the condition of the improvement and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement; and
- (e) in the case of a reclamation or of conversion of unirrigated into irrigated land, to the length of time during which the tenant has had the benefit of the improvement at an unenhanced rent.

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

ACQUISITION OF HOLDING BY LANDLORD

Acquisition of land by landlord. 71. (1) The Court of a Deputy Commissioner may on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, or for any religious, educational or charitable purpose, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court including full compensation to the tenant.

(2) An appeal shall lie to the District Judge against any order passed by the Deputy Commissioner under this section.

SURRENDER AND ABANDONMENT

Surrender. 72. (1) A *raiyat* not bound by a lease or other agreement for a fixed period may, at the end of the agricultural year, surrender his entire holding.

(2) But notwithstanding the surrender, the *raiyat* shall be liable to indemnify the landlord against any loss of the rent of holding for the agricultural year next following the date of the surrender unless he gives to his landlord at least three months before his surrender, notice of his intention to surrender.

(3) The *raiyat* may, if he thinks fit, cause the notice to be served through the Revenue Court.

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

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

(6) Save as provided in sub-section (5) nothing in this section shall affect any arrangement by which a *raiyat* and his landlord may arrange for the surrender of the whole or a part of the holding.

73. (1) If a *raiyat* or under-*raiyat* voluntarily abandons his usual residence in the village or the neighbourhood without notice to his landlord and, without arranging for payment of his rent as it falls due, ceases to cultivate his holding, either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the *raiyat* or under-*raiyat* so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself. Abandon-
ment.

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

DIVISION

74. A division of a holding or distribution of the rent payable in respect thereof, shall not be binding on the co-sharer tenants unless it is made with their consent or on the landlord unless it is made with his express consent in writing. Division of tenancy not binding on co-sharer tenants or on landlord without consent.

MEASUREMENTS

75. Every tenant shall be bound to attend and point out the boundaries of all lands held by him under his landlord and the landlord may subject to the provisions of this section and any contract, personally or by agent, enter on and measure all such lands. Landlord's right to measure land.

Provided that such measurements shall not, without a written order of the Revenue Court, take place oftener than once in five years except in the following cases, namely:—

(a) Where the landlord is a purchaser otherwise than by a voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase, or

(b) where the area of the tenancy is liable by reason of alluvion, diluvion or any other cause, to vary from year to year.

(2) The five years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act

Power of Revenue Court to order tenant to attend and point out boundaries.

76. (1) When a landlord decides to measure any land which he is entitled to measure under section 75 he may, if he finds that any person occupying the land obstructs him in so doing or any tenant bound to attend and point out the boundaries refuses or neglects to do so, apply to the Revenue Court to make an order directing such person to permit the measurement, or such tenant to attend and point out the boundaries, as the case may be.

(2) The Court may cause a notice to be served on such person or tenant requiring him to show cause why the order applied for should not be made and if the person or tenant (as the case may be) fails to show cause or if the cause shown is in the opinion of the Court, unsatisfactory, the Court may make the order.

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

77. A tenant may apply to the Revenue Court for the correct measurement of such portion of his holding as does not form entire cadastral plots in the village map and land records prepared and maintained under the authority of the [State Government]¹. Tenant's right to have the land measured in certain circumstances.

The Court on the deposits of prescribed fees and after notice to the landlord, shall arrange for the correct measurement of the area by a Revenue Officer not below the rank of a Sub-Deputy Collector.

The correct measurement shall thereupon be entered in the *raiyat's* record-of-rights (if any) maintained.

78. Every measurement of land made under the provisions of this Act shall be made by the standard ^{Standard} *bigha* adopted by the Government in the cadastral survey of the [State]².

CHAPTER IX

PREPARATION (WHERE A SETTLEMENT OF LAND REVENUE IS NOT BEING MADE) AND MAINTENANCE OF RECORD OF RIGHTS OF [TENANTS]³

79. (1) The [State Government]¹ may, where a settlement of land revenue is not being made, at any time make an order in the case of any local area, estates or part thereof directing that a record-of-rights —with or without Survey—for [all or any class or classes of tenants]³ be prepared by a Revenue Officer.

(2) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record of rights prepared in accordance with rules made in this behalf by the [State Government]¹.

80. Where an order is made under section 79, the particulars to be recorded shall be specified in the order and may include either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant]⁴.
- (b) the class to which the [tenant]⁵ belongs;
- (c) the area and situation of the land held by the [tenants]⁵;

1. Substituted by the A. O. 1950 for "Provincial Government".

2. Substituted by A. O. 1950 for "Province".

3. Substituted by Assam Act I of 1943 for "Privileged Raiyats and Occupancy Raiyats".

4. Substituted by *ibid* for original clause (a).

5. Substituted by *ibid*.

- (d) the name of each [tenant's]¹ landlord ;
- (e) the rent payable at the time the record-of-rights is being prepared ;
- (f) the mode in which that rent has been fixed whether by contract, by order of a court, or otherwise ;
- (g) if the rent is a gradually increasing rent the time at which and the steps by which it increases ;
- (h) the special conditions and incidents, if any, of the tenancy ;
- (i) any right-of-way or other easement attaching to the land for which the record-of-rights is being prepared :

Provided that, if lands are not used for purposes connected with agriculture, it shall be sufficient to record that fact together with such particulars as may be prescribed.

Preliminary publication 81. (1) Where a draft record-of-rights has been prepared the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) Where such objections have been considered and disposed of according to such rules as the [State Government]² may make, the Revenue Officer shall finally frame the record and shall cause it to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Certificate of final publication 82. (1) Where a record-of-rights has been finally published under section 81, the Revenue Officer shall, within such time as the [State Government]² may by general or special order, require, make a certificate and pre-stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

(2) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Deputy Commissioner of a district in which the estate, or part thereof to which the record-of-rights relates is situate, stating that a record-of-rights has been finally published on a specified date shall be conclusive proof of such publication and of the date thereof.

1. Substituted by Assam Act I of 1943 for "Raiyat's".

2. Substituted by A.O. 1950 for "Provincial Government".

(3) The [State Government]¹ may, by notification, declare, with regard to any estate, that a record-of rights has been finally published in the village in which the estate is situate and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this chapter or a duly certified copy thereof, or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.

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

83. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie to the Deputy Commissioner from every order passed by a Revenue Officer prior to the final publication of the record-of-rights on any objection made. The orders of the Deputy Commissioner shall, subject to the following sub-section, be final.

Appeal to
and revi-
sion by,
superior
authoriti es.

(2) The [State Government]¹ may in any case, on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights:

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

1. Substituted by the A.O. 1950 for "Provincial Government".

Expenses
of proceed-
ings under
this chapter

84. (1) When the preparation of a record-of-rights has been undertaken under this chapter, the expenses incurred in carrying out the provisions of this chapter in any estate or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks or other survey marks erected for the purpose of carrying out the provisions of this chapter), or such part of those expenses as the [State Government]¹ may direct, shall be defrayed by landlords, [and tenants]² in that estate or part in such proportion and in such instalments (if any) as the [State Government]¹, having regard to all the circumstances, may determine.

(2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable as an arrear of land revenue.

(3) The cost of preparing copies of survey maps and record-of-rights under this chapter for distribution to landlords, [and tenants]² shall be deemed to be part of the expenses incurred in carrying out the provisions of this chapter.

Power to-
direct mains
tenance of
record-of-
rights.

85. The [State Government]¹ may make an order directing that the record-of-rights in any district, local area, estate or class of estates prepared under Chapter III, Part D, of the Assam Land and Revenue Regulation or under this chapter shall be maintained, so far as the interests of [tenants of any class or classes]² are concerned, by registering all changes in the ownership accompanied by possession of such interests.

Procedure
on applica-
tion for re-
gistration or
on informa-
tion receiv-
ed other-
wise.

86. When an order is made under section 85 the Deputy Commissioner or an officer invested with the powers of Deputy Commissioner under sections 50 to 54 of the Assam Land and Revenue Regulation who receives information through an application or otherwise of any change in the ownership and possession of any such interest as is referred to in the foregoing section may make an order directing the registration of the name of the person so entering into ownership and possession:

1. Substituted by the A. O. 1950 for "Provincial Government".

2. Substituted by Assam Act I of 1943 for "privileged raiyats and occupancy Raiyats".

3. Substituted by ibid for "privileged raiyats and occupancy raiyats".

Provided that—

(a) the information has been verified by local enquiry made by an officer having the powers of Deputy Commissioner under sections 50 to 54 of the Assam Land and Revenue Regulation ; or

(b) notice has been published and enquiry held in a manner similar to that prescribed by sections 52 and 53 of the Assam Land and Revenue Regulation.

87. Where any person is aggrieved by an order directing registration under section 86 which has been made after verification of the information received by local enquiry only he may apply to the officer passing the order or his successor in office to set aside the order and on receipt of such application the officer receiving it shall cancel the registration and then proceed to publish the notice and hold the enquiry as in clause (b) of the proviso to section 86.

CHAPTER X

JUDICIAL PROCEDURE

88. (1) Except where otherwise expressly provided in this Act or in rules issued thereunder, no Civil Court shall exercise jurisdiction in any of the following matters :—

Matters exempted from cognizance of Civil Court.

- (a) Claims to commutation of rent by privileged *raiyats*.
- (b) Claims to reduction, enhancement or alteration of rents of holdings.
- (c) Claims to compensation for withholding of proper receipt or damages to landlord under section 52.
- (d) Claims to deposit rent.
- (e) Claims to register improvements.
- (f) Applications for acquisition of holdings by landlords.
- (g) Applications for permission or order in regard to measurement of land or for correct measurement.

(h) Formation of record-of-rights under Chapter IX or the preparation, signing or alteration of any document contained therein.

(i) Maintenance of record-of-rights referred to in section 85.

(j) Application for enhancement of rent under Section 116.

(2) In all the above matters, jurisdiction shall, except as provided in sub-section (1), rest with the revenue authorities only.

Date from 89. An order of a Revenue Court fixing or altering which order fixing or the rent of a holding under this Act shall take effect altering rent from such date as the Court may fix as being takes effect equitable.

Jurisdiction 90. Except as provided in section 88, the Civil of Civil Court shall have jurisdiction in all suits between land- Court. lord and tenant as such.

Power to 91. (i) The [State Government]¹ may, from time modify Civil to time, * * * * = * * * * 2 make rules Procedure Code in its consistent with this Act declaring that any portion of application the Civil Procedure Code, 1908, shall not apply to to landlord suits between landlord and tenants as such or to any and tenant specified classes of such suits or apply to them subject suits. to modifications specified in the rules.

Act V of 1908.

(ii) Subject to any rules made under the foregoing section and to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits.

Procedure 92. In suits between landlord and tenant as such in rent suits. the plaintiff shall, in addition to matters mentioned in rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in the first Schedule to Code of Civil Procedure, 1908, specify the area of the land to which the suit relates and where fields are numbered in the village papers, the number and area of each fields and, in suits for arrears, the amount of the yearly rent and the instalments in which it is payable. Where the land to which the suit relates does not form one or more fields numbered in the village papers the plaintiff shall contain a sufficient description of the land and its boundaries.

Act V of 1908

1. Substituted by the A. O. 1950 for "Provincial Government".

2. The words "with the approval of the Governor-General in Council" omitted by the A. O. 1937.

93. No set-off shall be allowed in any suit for Set-off in
arrears of rent unless the amount claimed as a set-off suit for
has been determined by a decree or order of a competent Court. arrears of
rent.

94. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall refuse to take cognisance of the plea unless the defendant pays into Court the amount so admitted to be due. Payment in
to Court of
money ad-
mitted to
be due to
third per-
son.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

95. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognisance of the plea unless the defendant pays into Court the amount so admitted to be due. Payment in
to Court of
money ad-
mitted to be
due to land-
lord.

96. When a defendant is liable to pay money into Court under section 94 or 95, if the Court thinks that there are sufficient reasons for so ordering, it may take of portion cognisance of the defendant's plea on his paying into the Court such reasonable portion of the money as the Court directs. Provision as
to payment
of money.

97. When a defendant pays money into Court under either of the said sections, the Court shall give grant to the defendant a receipt and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Appeals.

98. In all proceedings under this Act before a Revenue Officer or in a Revenue Court except those under section 71 and those in connection with the formation of a record-of-rights under Chapter IX appeals shall lie as follows:—

- (a) To the Commissioner from orders, original or appellate, passed by a Deputy Commissioner or Settlement Officer.
- (b) To the Deputy Commissioner or Settlement Officer from orders passed by any Revenue Court or officer subordinate to him even when exercising the powers of a Deputy Commissioner or Settlement Officer:

Provided that no appeal shall lie against an appellate order of the Commissioner.

Limitation of appeal.

99. (1) Unless otherwise specially provided in the Act or in the rules issued thereunder no appeal shall lie, to the Deputy Commissioner or Settlement Officer after the expiration of thirty days from the date of the order appealed against and, to the Commissioner after the expiration of six weeks from the date of the order appealed against.

(2) In computing the period prescribed for an appeal by this section, the day on which the order appealed against was passed and the time requisite for obtaining a copy of such order shall be excluded.

(3) An appeal may be admitted after the period of limitation prescribed therefor by this section, if the appellant satisfies the Court to which he appeals that he had sufficient cause for not presenting the appeal within that period.

Procedure of Appellate Court on appeal.

100. The Court to which the appeal lies may either admit or summarily reject the appeal:

Provided that no appeal shall be summarily rejected unless the appellant or his pleader has been given an opportunity of being heard. If the Court admits the appeal, it may, after giving the parties or their pleaders an opportunity of being heard, reverse, modify or confirm the order appealed against, or it may direct such further investigation to be made, or such additional evidence to be taken, as it may think necessary, or the Court may itself take such additional evidence.

101. In any case in which an appeal against the Suspension orders of a Revenue Court is admitted, the appellate Court may, pending the result of the appeal, direct the order appealed against to be suspended.

102. The [State Government]¹, the Commissioner of the Division, the Deputy Commissioner of the District or the Settlement Officer may call for the proceedings held by any Court or officer subordinate to him and pass such orders thereon as he thinks fit.

103. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

- (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or
- (b) the decree or order is passed by any other judicial officer specially empowered by the [State Government]¹ to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed 50 rupees;

unless in either case the decree or order has decided a question relating to the title to land or to some interest in land as between parties having conflicting claims thereto:

Provided that the District Judge may call for the record of any case in which the judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

104. Every application for an order under rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, to set aside a decree passed *ex parte*, or for a review of judgment under section 114 read with rule 1 of Order XLVII in Schedule I to the said Code in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the

Act V of
1908.

1. Substituted by the A.O. 1950 for "Provincial Government".

applicant by reason of the decree or judgment ; and no such application shall be admitted—

(a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct ; or

(b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

Relief against for fixtures. 105. (1) A suit for the ejectment of tenant on the ground—

- (a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition on the breach of which he is, under the term of the contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served in the prescribed manner a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and in any case, to pay a reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would be reasonably payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay the amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may from time to time for special reasons extend the period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under the section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

106. The following provisions shall apply in the case of every tenant ejected from a holding—

(a) when the tenant has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;

(b) when the tenant has, before the date of his ejectment, prepared for sowing any land comprised in his holding but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;

(c) but the tenant shall not be entitled to retain possession of any land or to receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land, contrary to local usage ;

(d) if the landlord elects under this section to allow a tenant to retain possession of the land, the tenant shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable ;

(e) in the case of a privileged *raiyat* or an occupant *raiyat* compensation shall also be payable for trees standing on the land which he is entitled to cut and appropriate :

Rights of
ejected te-
nants in
respect of
crops and
land prepa-
red for so-
wing.

Provided that no compensation under clause (e) shall be payable when the *raiyat* is being ejected on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy.

CHAPTER XI

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913

Recovery of 107. (1) Any landlord, in respect of whose estate arrears of a record-of-rights for [all or any class or classes of rent under tenants]¹ has been prepared may apply to the [State the certi- Government]², through the Deputy Commissioner of dure in cer- the district in which the estate is situate, for the tain areas, application of the procedure provided by the Bengal Public Demands Recovery Act, 1913, to the recovery of the arrears of rent which, he alleges, may accrue or are due to him from such [tenants].

(2) The [State Government]² shall specify the terms and conditions on which such applications may be allowed and shall allow any such application, when such terms and conditions are satisfied. Such terms and conditions may be added to or varied by the [State Government]² from time to time as may be necessary, and the [State Government]² may withdraw its allowance of the application if it appears that the terms and conditions are not being complied with.

1. Substituted by Assam Act I of 1943 for "privileged raiyats or occupancy raiyats".

2. Substituted by the A. O. 1950 for "Provincial Government".

3. Substituted by Assam Act I of 1943 for "raiyats".

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed to such Revenue officer as the [State Government]¹ may appoint, for the purpose of this section, to perform the functions of a Certificate officer under the Bengal Public Demands Recovery Act, 1913, for the recovery of any arrears of rent which he alleges are due to him from any such [tenants]².

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner provided by rule 1 in Schedule II of the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-Fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of such requisition, the said Revenue officer may, in accordance, with such rules as the [State Government]¹ may make in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office:

Provided that—

- (a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which an application has been made to a Revenue Court for the alteration of the rent payable by the tenant in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued; and
- (b) if, after the signing of a certificate, it is found that such an application was made in a Revenue Court before the certificate was signed, such certificate shall be cancelled.

1. Substituted by the A. O. 1950 for "Provincial Government".

2. Substituted by Assam Act I of 1943 for "raiyats".

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate holder for the amount mentioned in the certificate, and the persons against whom the certificate is signed shall be deemed to be the certificate debtor for the said amount ; and all proceedings taken by the Certificate officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise.

(7) The Bengal Public Demands Recovery Act, Bengal Act III of 1913, 1913, with such restrictions and modifications (if any) as may be prescribed shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3) ; and subject to the provisions of section 34 of the Bengal Public Demands Recovery Act, 1913, no [tenant of any class or classes]¹ shall, Bengal Act III of 1913, after the signing of any certificate against him under sub-section (5) of this section, apply to a Revenue Court for the alteration of the rent payable by him, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(9) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately ; and where a Revenue officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

Passing of holding sold in execution of certificate. 108. Where a holding is sold in execution of a certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913, the holding Bengal Act III of 1913, shall, subject to the provisions of section 62 of this Act, pass to the purchaser if such certificate was signed on the requisition of or in favour of a sole landlord or the entire body of landlords, and the provisions of Chapter XII shall, so far as may be, apply.

1. Substituted by Assam Act I of 1943 for "privileged raiyat or occupancy raiyat".

CHAPTER XII

SALE FOR ARREARS UNDER DECREE

109. (1) If a decree for an arrear of rent is passed against a tenant and remains unsatisfied, the Court having authority to execute the decree shall, or of an [* * *]¹ proceed on the application of the landlord to sell the judgment-debtor's right, title and interest in his holding by public auction:

[Provided that in the case of a holding in an estate pertaining to a religious institution, if the highest bid be that of a member of a different religion from the one to which the institution belongs the landlord shall have the option, to be declared in writing to the Court within 30 days of the sale, of purchasing the holding at the highest bid.

(2) Notwithstanding anything contained in sub-section (1) above, the Court may, on the application of the landlord, proceed to execute the decree against the person or any other property of the defaulter.]²

110. Where a holding is sold in execution of a decree for arrear due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests" but with powers to annul the interests defined in this Chapter as "incumbrances":

Provided that the power to annul shall be exercisable only in the manner by this Chapter directed.

111. The following shall be deemed to be protected interests within the meaning of this Chapter:—

Protected interests.

(a) Any lease in respect of land whereon, in accordance with the purpose of the lease granted by the tenant whose interest is being sold, permanent dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, or plantations, tanks or canals, public places of worship or public burning or burying grounds have been made:

1. Omitted by Assam Act XXVII of 1953.

2. Substituted by *ibid.*

Provided that such tenant was under the terms of his engagement with his landlord entitled to grant such lease;

(b) any right or interest, consistent with the provisions of this Act, which the landlord, at whose instance the tenancy is sold, or his predecessor in title, has expressly, and in writing given the tenant for the time being permission to create.

Meaning of "incum-
bra-
ce" and
"arrears"
and "arrear
of rent".

112. For the purposes of this Chapter:—

(1) The term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest lawfully created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in section 111.

(2) The terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 59 or damages awarded in lieu of interest under sub-section (1) of Section 60.

Application for sale of rent due for a holding and the decree-holder applies under rule 11(2) of Order XXI in Schedule I to the

Code of Civil Procedure, 1908, for the attachment and sale of the holding in execution of the decree he shall produce a statement showing the estate and the village in which the land comprised in the holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

•Ac V of
1908.

Combined order of attachment and proclamation of sale to be issued.

114. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 113 the Court shall, if it admits the application under rule 17 of Order XXI in Schedule I to the said Code, and orders execution of the decree as applied for, issue a combined order of attachment and proclamation in the prescribed form.

Act V of
1908.

[(2) Notwithstanding anything contained in sub-rule (2) of Rule 66 of Order XXI in Schedule I to the said Code it shall not be necessary for the Court to draw up the sale proclamation after notice to the judgment-debtor in the case of lands ordered to be sold for arrears of rent due in respect thereof.]¹

1. Inserted by Assam Act XXVII of 1953 and existing sub-sections (2) and (3) remembered as sub-sections (3) and (4) respectively.

(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 of Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner:—

- (a) By fixing up a copy thereof in a conspicuous place on the land comprised in the holding ordered to be sold, and
- (b) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing court [, and]¹
- [c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of issue of the order of attachment and proclamation.]²

(4) Notwithstanding anything contained in rule 68 of Order XXI in Schedule I to the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least 30 days calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the holding ordered to be sold.

115. (1) When a holding has been advertised for sale under section 114 it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may in the manner provided by section 116, and not otherwise, annul any incumbrance on the holding.

Bengal Act
III of 1913.

116. (1) A purchaser having power to annul an incumbrance under this Chapter or under the Public Demands Recovery Act, 1913, and desiring to annul the same, may within one year from the date of confirmation of the sale or the date on which he becomes aware of the incumbrance, whichever is later, present to the Court, which passed the decree for sale of the property, an application in writing, requesting it to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as may be prescribed in this behalf.

(3) When an application for service of notice is duly made under this section, the Court shall cause the notice to be served in compliance therewith and the incumbrance shall be deemed to be annulled from the date on which it is so served.

1. Substituted by Assam Act XXVII of 1953 for the full-stop.

2. Inserted by *ibid*.

(4) Where a holding is sold in execution of a decree for arrears due in respect thereof and there is on the holding a protected interest of the kind specified in section 111, clause (a), the purchaser may, if he has power under this Chapter to avoid all incumbrances, apply to the Revenue Court to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

Rules for disposal of the sale proceeds. 117. (1) In disposing of the proceeds of a sale under this Chapter the following rules instead of those contained in section 73 of the Code of Civil Procedure, [Act V of 1908, shall be observed that is to say:—

- (a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale ;
- (b) there shall in the next place be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the confirmation of the sale and the costs of the application for the purpose under this section ;
- (d) the balance (if any) remaining after the payment of the charges mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgement-debtor upon his application.

(2) If the judgement-debtor disputes the decree holder's right to receive any sum on account of rent, under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Holding to be released from attachment only on payment into court of amount of decree with costs, or on 118. (1) Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, Act V of 1908, shall not apply to a holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a holding in execution of such a decree has been made, the holding, of confession of satisfaction by decree holder, shall not be released from attachment unless the amount of the decree, including the costs decreed together with the costs incurred in bringing the tenancy to sale is paid into Court, or the decree-holder makes an application for the release of the holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person whose interests are affected by the sale, may pay money into Court under this section.

(4) The withdrawal of the amount deposited under this section or section 121 by the decree-holder landlord shall not operate as an admission of the transferability of the holding sold in execution of the decree

119. When a holding is advertised for sale—

Inferior tenant paying into Court may deduct from rent.

(a) under this Chapter in execution of a decree against a superior tenant defaulting, or

Bengal Act III of 1913.

(b) in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the holding from a superior tenant defaulting, or

when such sale is set aside under section 121, and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Act V 1908.

120. (1) Notwithstanding anything contained in rule 72 of the Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the holding.

(2) The judgment-debtor shall not bid for or purchase a holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

Application to set aside sale. 121. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor or any person whose interests are affected by the sale, may at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his disposing—

- (a) for payment to the decree-holder the amount recoverable under the decree up to the date when the deposit is made, with costs;
- (b) for payment to the auction purchaser, as penalty, a sum equal to five per cent of the purchase money but not less than one rupee.

(2) When a person makes an application under sub-section (3) for setting aside the sale of his holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(3) Where a holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor or any person whose interests are affected by the sale, may, at any time within [ninety days]¹ from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale:

Provided as follows:—

- (a) No sale shall be set aside on any such ground unless the Court is satisfied that applicant has sustained substantial injury by reason of such irregularity or fraud; and

^{1.} Substituted by Assam Act XXVII of 1953 for "six months".

(b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in the Schedule to the
Act V of Code of Civil Procedure, 1908, shall not apply to any
1908. sale under this Chapter.

(5) An appeal shall lie against an order setting-aside or refusing to set aside a sale.

122. (1) Where an application is made under section 121 or where such application is made and dis-allowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

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

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 121, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application with a copy thereof has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

CHAPTER XIII

CONTRACT AND CUSTOM

Restrictions on exclusion of Act by this Act — 123.(1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act —

- (a) shall prevent a *raiyat* from acquiring the status of a privileged *raiyat* in respect of land or acquiring an occupancy right in land in accordance with the provisions of this Act,
- (b) shall take away the status of a privileged *raiyat* or an occupancy right in existence at the date of the contract,
- (c) shall take away or limit the rights of privileged *raiyats* or occupancy *raiyats* in trees on their holdings as provided in section 7 or 15, or
- [(d) shall increase the rate of interest payable on arrears of rent as laid down in section 59,]¹
- (e) shall entitle the landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (f) shall take away or limit the right of a tenant as provided by this Act to make improvements and claim compensation for them, or
- (g) shall entitle a landlord, where the rent is payable in produce, to recover as rent, produce in excess of [one-fourth]² of the gross produce of the land for the year for which the rent is claimed.

(2) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall —

- (a) take away or limit the right of a privileged *raiyat* and an occupancy *raiyat* to use land as provided by sections 7 and 14 respectively,

1. Substituted by Assam Act XXVII of 1953 for clause (d).

2. Substituted by *ibid* for "half (or in the case of jute, one-third)"

(b) take away the right of *raiyat* to surrender his holding in accordance with section 72, or

(c) take away the right of a tenant to apply for reduction of rent under sections 47, 48 and 49.

124. Nothing in this Act shall affect any custom, usage or customary right, not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions. Saving of custom

CHAPTER XIV

LIMITATION

125.(1) The suits, appeals and the applications specified in Schedule I annexed to this Act shall be in suits, instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so provided shall be dismissed although limitation has not been pleaded. Limitation in Schedule I.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

IX of 1908. 126. Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act shall, apply to all suits, appeals and applications specified in Schedule I annexed to this Act. (2) Portions of the Indian Limitation Act not applicable to such suits, etc., mentioned in Schedule I.

CHAPTER XV

SUPPLEMENTAL

127.(1) If any person otherwise than in accordance with any enactment for the time being in force— Penalties for illegal interference with produce.

(a) distrains or attempts to distrain the produce of a tenant's holding, or

(b) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian ^{Act XLV of 1860.} Penal Code.

(2) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of a criminal trespass within the meaning of that Code.

^{Power to make rules.} 128. The [State Government]¹ may, from time to time, by notification in the official Gazette, make rules, consistent with this Act, to carry out the purposes of the Act, after previous publication.

^{Power to invest, invest officers generally or for special purposes, any Revenue Officer with special powers.} 129. The [State Government]¹ may invest, or Assistant Settlement Officer with all or any of the powers of Revenue Court, or of the Court of Deputy Commissioner or Settlement Officer for the purposes of, and under, this Act.

^{Revenue Court or Revenue Officer may transfer application or other proceeding for disposal to any Revenue Court or Officer subordinate to it or him.} 130.(1) On the application of any of the parties and after notice to the parties and after hearing such Officer may of them as desire to be heard, or of ^{its} _{his} own motion transfer application or without such notice, a Revenue ^{Court} Officer may at any other proceeding for stage—

(a) transfer any application or other proceeding pending before ^{it} _{him} for disposal to any Revenue ^{Court} Officer subordinate to ^{it} _{him} and competent to dispose of the same, or

(b) withdraw any application or other proceeding pending before ^{it} _{him} any Revenue ^{Court} Officer subordinate to ^{it} _{him} and

1. Substituted by the A. O. 1950 for "Provincial Government".

- (i) dispose of the same ; or
- (ii) transfer the same for disposal to any

Revenue ^{Court} Officer subordinate to it and com-

petent to dispose of the same ; or

- (iii) re-transfer the same for disposal to the

Court Officer from which it was withdrawn.

(2) Where any application or other proceeding

has been transferred or withdrawn under sub-section (1), the ^{Court} Officer ^{which} thereafter proceeds to dispose of it may, subject to any special directions in the case of an order of transfer, either re-hear it or proceed from the point at which it was transferred or withdrawn.

131. Nothing in this Act shall prevent a holding of a privileged or occupancy *raiyat* from being sold under orders of Revenue Court for the recovery of a loan granted under Land Improvement Loans Act, 1883, or Agriculturists' Loans Act, 1884, or otherwise by the [State Government]¹. The rent of the holding however shall be the first charge on the sale proceeds.

Sale of holding of privileged or occupancy *raiyat* for recovery of loan granted under Land Improvement Loans Act, 1883 etc.

XIX of 1883,
XII of 1884,

1. Substituted by the A.O. 1950 for "Provincial Government".

SCHEDULE I

PART I

Suits

Description of suits	Period of limitation	Time from which the period begins to run
1. To eject any <i>raiyat</i> on account of any breach of a condition in respect of which there is a contract expressly providing that the ejection shall be a penalty of such breach	One year	Date of the breach.
2. To eject a non-occupancy <i>raiyat</i> under section 33 (d) or (e) and an under- <i>raiyat</i> under section 39 (d) or (e).	Six months	Expiration of the term of the lease or of the notice as the case may be.
3. For the recovery of an arrear of rent—
(a) Where the arrear fell due before a deposit was made under section 54 on account of the rent of the same holding.	Six months	Date of the service of the notice of the deposit or presentation by the postal money order, as the case may be.
(b) In other cases 	Three years	Last day of the agricultural year in which the arrear fell due.
4. To recover possession of land claimed by the plaintiff as a <i>raiyat</i> or an under- <i>raiyat</i> otherwise than under sections 35 and 41 respectively.	Two years	Date of dispossesion.

PART II

Appeals

Description of appeals—

5. From any decree or order under this Act passed by the Civil Court to the Court of the District Judge.	Thirty days	Date of the decree or order appealed against.
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PART III

Applications

Description of suits	Period of limitation	Time from which the period begins to run
<p>Description of applications—</p> <p>6. For the execution of a decree or order made in a suit or proceedings between landlord and tenant to whom the provisions of this Act are applicable and not being a decree for a sum of money exceeding Rs. 200 exclusive of any interest which may have accrued after decree upon the sum decreed but inclusive of the costs of executing such decree ; except when a judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908 ; provided that where a sale in execution of arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.</p>	<p>Three years</p>	<p>(1) Date of the decree or order, or</p> <p>(2) where there has been an appeal, the date of the final decree or order of the appellate Court, or</p> <p>(3) where there has been a review of judgment, the date of the decision passed on the review.</p>