

THE BENGAL LAND REVENUE SALES ACT, 1859

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SECTIONS.

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THE BENGAL LAND REVENUE SALES ACT, 1859

ACT NO. XI OF 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 4th May 1859.)

An Act to improve the law relating to sales of Land for arrears of Revenue in the Lower Provinces under the Bengal Presidency.

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the province of Cuttack: and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured: and whereas it is expedient to afford sharers in estates, who duly pay their shares of the Sudder jumma of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers: and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents: and whereas it is expedient to provide for the voluntary registration of dependent talooks existing at the time of settlement: and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale: and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue : and it is therefore proper for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Behar and Orissa: It is enacted as follows :—

I. Laws repealed.—Regulation X. 1818 (*relating to collection of the public revenue from proprietors and farmers of land in the District of Cuttack, &c*) is hereby repealed; and from the date of the passing of this law, Act I of 1845 (*regarding sales of land for arrears of revenue*), except in so far as it repeals other laws, and except in regard to sales made or advertised, to arrears and other demands realizable, and to suits commenced and acts done, under authority thereof—shall cease to have effect in the Lower Provinces of Bengal.

II. What is an arrear of revenue.—If the whole or a portion of a kist or instalment of any month of the era according to which the settlement and kistbundee of any mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

III. Latest day of payment.—Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates ill arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate, (or Joint Magistrate, as the case may be,) and Moonsiffs, and at every Thannah station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

IV. In Sylhet, personal property of defaulters may in the first instance be distrained and sold.—Provided that in the district of Sylhet, the Collector may be authorized by the Board of Revenue to proceed in the first instance by the distress and sale of the personal property of defaulters, instead of by the sale of their estates.

V. Proviso in the case of certain descriptions of arrears.—Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the district specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to Section III of this Act, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and Police thannah of the division in which the estate or share of an estate to which the notification relates is situated; or is the estate or share of an estate be situated within the jurisdiction of more than one Moonsiff's Court or Police Thannah, in some one or more of such Courts or Thannas ; and also at the cutcherry of the malgoozar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First. Arrears other than those of the current year, or of the year immediately preceding.

Secondly. Arrears due on account of estates other than that to be sold.

Thirdly. Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly. Arrears due on account of tuccavee, poolbundee, or other demands not being land revenue, but recoverable by the same process as arrears of land revenue.

VI. Notifications of sale to be issued, and no tender after latest day of payment to stop the sale.—The Collector or other Officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section III of this Act, issue notifications in the language of the district, to be affixed in his own Office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the Office of the Collector or other Officer as aforesaid. And if the Government revenue of any estate or share: of an estate to be sold, exceed the sum of five hundred Rupees, a notification of the sale of such estate or share of an estate shall be published in the official Gazette. Except as hereinafter provided, all estates or shares of estates so specific shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other Officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

VII. Notice to ryots, &c.—Whenever an estate or share of an estate is notified for sale as provided by Section VI of this Act, the Collector or other Officer as aforesaid shall affix a proclamation in the language of the district, in his own Office, and as soon thereafter as may be in the Moonsiffs' Courts and Police Thannahs within which the estate or share of an estate, or any part of it, is situated, and also at the cutcherry of the malgoozar or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, forbidding the ryots and under tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

VIII. Claims against Government held by a defaulter not to invalidate a sale.—No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in Section XV of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

IX. Deposits receivable from persons not proprietors.—The Collector or other Officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to Section III of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share or part thereof, subject to the rules in force for taking security in the cases of parties in Civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

X. Separation of shares held in common, by the opening of a separate account.—When a recorded sharer of a joint estate, held in common tenancy, desires to pay his shares of the government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own Office, in the Court of the Judge, Magistrate (or Join Magistrate, as the case may be,) and Moonsiffs, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the collector his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

XI. Separation of shares consisting of specific portions of land, by the opening of a separate account.—When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sudder jumma heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction

to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

XII. If objection be made, parties to be referred to the Civil Court.—If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of sudder jumma stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the jumma thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

XIII. Sale of separate shares.— Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other Officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in Section VI of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

XIV. Entire estate may be sold under certain conditions.—If in any case of sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale the Collector or other Officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrear of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in Sections XXVIII and XXIX of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as if proscribed in Section VI of this Act.

XV. Deposit for the protection of an estate from sale.—If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under III of this Act, the Collector shall apply to the payment of such arrear the said money or securities, as may be necessary ; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities, for any balance that may remain, And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue. All monies and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

XVI. Withdrawal of the deposit.—It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

XVII. Estates under Court of Wards or under attachment—No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the Court of Wards; and no estate the sole property of a minor or minors and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment or managed by a Revenue Officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

XVIII. Estates may be specially exempted from sale.—It shall be competent to the Collector or other Officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other Officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption.

Proviso.—Provided, however, and it is hereby enacted, that the Collector or other Officer as aforesaid or the Commissioner shall duly record in a proceeding the reasons for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other Officer as aforesaid of the order of exemption.

XIX. Sales where to be made.—Sales shall ordinarily be made by the Collector or other Officer as aforesaid in the land revenue Office at the Sudder Station of the District: provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such Office whenever they shall consider it beneficial to the parties concerned.

XX. Adjournment of sales.—In case the Collector or other Officer as aforesaid shall be unable from sickness, from occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it; he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

XXI. Order of selling.—On the day of sale fixed according to Section VI of this Act sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the Collector's Office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so in default of deposit, as provided in Section XXII of this Act.

XXII. Deposit of purchase money.—The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit or immediately or as soon after the conclusion of the sale of the estate at share as the Collector or other Officer as aforesaid may think necessary, either in cash Bank of Bengal Notes or Post Bills or Government Securities to be valued at the market rate of the day, duly endorsed, twenty percent on the

amount of his bid and in default of such deposit, the estate or share shall forthwith be put up again and sold.

XXIII. Full payment of purchase money.—The full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of all estate bought by him took place, reckoning that day as one of the thirty ; or if the thirtieth day be a Sunday Or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be resold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be considered to be a part of the purchase money and shall be dealt with in the manner hereinafter prescribe for the disposal thereof.

XXIV. Re-sale.—When default is made in the payment of purchase money a notification of the intended re-sale shall be published for the period and in the manner prescribed in Section VI of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred ; and if the Payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become : due shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that if default of payment of purchase money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

XXV. Appeals.—It shall be lawful for the Commissioner of Revenue to receive an appeal against may sale made under this Act, if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section XXIII, or if preferred to the Collector or other Officer as aforesaid for transmission to the Commissioner, on or before the tenth day from the day of sale, and not otherwise; and the Commissioner shall be competent in every case of appeal so preferred to annul any sale of an estate or share of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest, at the highest rate of the current Government Securities of its being retained in the Collector's Office ; and the order of the Commissioner shall in such cases be final.

XXVI. Annulment of sale in special cases.—It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale ; and the local Government in any such case may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

XXVII. Sales when final.—All sales of which the purchase money has been paid up as prescribed in Section XXIII of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which all appeal may have been preferred, and dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

XXVIII. Certificate of sales.—Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified ; and the Collector shall also notify such transfer by written proclamation in his own Officer and in the Courts of the Moonsiffs and Police Thannahs within whose jurisdiction any part of the estate or share sold shall be situated.

XXIX. Delivery of possession.—The Collector or other Officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the Mal cutchery or in some conspicuous place of the estate or share of an estate purchased.

XXX. Liability of purchaser.—The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

XXXI. Application of purchase money.—The Collector shall apply the purchase money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the District; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate share of an estate sold or their heirs or representatives to be paid to his or their receipt on demand in the manner following : to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

XXXII. Notification of annulment of sale.—The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other Officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section XXVIII of this Act; and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public Securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of Section XXV or Section XXVI of this Act.

XXXIII. Jurisdiction of Civil Courts in suits to annul sales.—No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section XXV of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section XXVII of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase money.

Proviso.—Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

XXXIV. Effects of annulment by decree of Courts of sales under this Act.—If a sale made under this Act be annulled by a final decree of a Civil Court application for the execution of such decree shall be made within six months after the date thereof, otherwise the party in whose favor such decree was passed shall lose all benefit therefrom. And no order for restoring such decreeholder to possession shall be passed until any amount of surplus purchase money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government Securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

XXXV. If sale annulled, purchase money to be refunded.—In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

XXXVI. Suit brought to oust a purchaser on the ground that the purchase was made for another person, to be dismissed.—Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

XXXVII. Rights of a purchaser of a permanently settled estate sold for its own arrears.—The purchaser of an entire estate in the permanently settled Districts of Bengal, Behar, and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all undertenants, with the following exceptions:

First. Istemraree or mokurreree tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly. Tenures existing at the time of settlement, which have not been held at a fixed rent. Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly. Talookdaree and other similar tenures created since the time of settlement and held immediately of the proprietors of estates, and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly. Leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Proviso.—Provided always that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any ryot having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

XXXVIII. Registration of talook daree tenures created after settlement and held for terms of years.—The following rules for the registration of talookdaree and other similar tenure created since the time of settlement, and held immediately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

XXXIX. Common and special registry.—There shall be two sets of registers, one for common registry and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Government.

XL. Application for registry.—The holder of any talookdaree, other similar tenure, such as is described in Section XXXVIII of this Act, desirous of registering it, shall apply by petition to the Collector of the District to which the estate belongs. The application shall state when description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

1. The Pergunnah or pergunnahs in which the tenure is situated.
2. The nature of tenure.
3. The name or names of the billage or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a rent of years or in perpetuity, and the duties, if any, required to be performed on account of it.
6. The date of the deed constituting the tenure, or the date when the tenure was created.
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the tenure.
9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said Section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

XLI. Procedure on application for common registry.—When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his Office, and at the malcutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable, ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court: otherwise he shall grant the application. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

XLII. Procedure on application for special registry.—When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last proceeding Section. If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue, to be made ; and if he is satisfied that the Government revenue of the parent estate is sufficient secured so far as it may be affected by the tenure or farm in question, he shall report the case to the commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected. If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

XLIII. Registration of leases of certain lands.—Leases of lands of the description specified in the fourth exceptional class in Section XXXVII, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of Talookdaree and other similar tenures.

XLIV. Registration of old tenures.—Tenures of the first and second exceptional classes in Section XXXVII may be registered, at the option of the holders; and when so registered shall be entered only in the special register. Application for such registry shall contain the particulars specified in Section XL so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in Section XLI. If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfied him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected. If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting of his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favor of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Proviso.—Provided always that nothing contained in this Section shall be understood as rendering registration necessary for the protection of *bond fide* tenures of the description herein referred to.

XLV. Time for application for registry of tenures and farms.—Application for registry existing tenures and farms must be made within three years after the passing of this Act Application for the registry of tenures created after the passing of this Act must be made within three months from the date of the deed constituting the tenure.

XLVI. Expenses of measurement, survey, or local enquiry.—The actual expenses of any measurement, survey, or local enquiry made under Sections XLII and XLIV of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

XLVII. Civil Court not competent to order entry in the special register.—No Civil Court shall be competent to order the Revenue Authorities to enter any tenure or farm in the special register. Provided always that the refusal of the Revenue Authorities so to register any tenure or farm shall not affect the title of the holder whatever it may be.

XLVIII. Suit for the cancelment of the registry of a tenure or farm.— Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm, may file a suit for the cancelment of the same.

XLIX. Proceedings of Revenue Authorities in the registration of tenures.—In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue Authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue Authorities to whom they are subordinate, and from the local Government; and all orders passed under the Sections aforesaid shall be open to appeal in usual course. The order of a Commissioner for the special registry of a tenure under the provisions of this Act, shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the local Government, on the ground of the Government Revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be.

L. Effect of entry in the special register.—Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue. Provided that a tenure or farm in the hands of a *bond fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

LI. Protection of talookdaree tenures pending enquiry, in case of sale of parent estate for arrears of revenue.—Tenures and farms of the third exceptional class described in Section XXXVII of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in Section XLII, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue Authorities, upon such application, be in favor of the claimant.

LII. Rights of a purchaser of an estate not permanently settled sold for its own arrears.— The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, wherein mines have been sunk, which leases or engagements shall, so as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this Section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

LIII. Rights of a purchaser being a sharer in any estate.—Excepting sharers in estates under butwarrah who may have saved their shares from sale under Sections XXXIII and XXXIV Regulation XIX. 1814, and sharers with whom the Collector, under Sections X and XI of this Act, has opened

separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself; shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to under-tenants or ryots, with were not possessed by the previous proprietor at the time of the sale of the said estate.

LIV. Rights of purchasers of shares of estate.—When a share or shares of an estate may be sold under the provisions of Section XIII or Section XIV, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

LV. Recovery of arrears due to defaulters.—Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or ryots, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

LVI. Punishment for contempt.—Any Collector or other Officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine, to an extent not exceeding two hundred Rupees, commutable, if not paid, to imprisonment in the Civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other Officer as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

LVII. Default in making deposit to be considered a contempt.—A default to make good a bid by making the deposit required by Section XXII of this Act, shall be held to be a contempt.

LVIII. Government may purchase at a sale.—When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other Officer as aforesaid may purchase the estate on account of the Government for one Rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other Officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

LIX. Fees and charges demandable by Collector.—The Collector on the part of the Government shall be entitled to demand from applicants under Sections X and XI, Sections XV and XVI, and Sections XL, XLIII, and XLIV of this Act, fees not exceeding the rates specified in Schedule B to this Act annexed, which schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees are tendered therewith.

LX. Regulations VII. 1822 and IX. 1825 to be in force in certain estates.—The provisions of Regulation VII, 1822 and Regulation IX. 1825 shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

LXI. Interpretation.—In the construction of this Act the word “Collector” shall include a Deputy Collector or other Officer exercising by the authority of Government the powers of a Collector or deputy Collector.

LXII. Application of Act.—The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency.

SCHEDULE A.

I certify that A. B has purchased under Act No. XI of 1859 the mehal (or share of a mehal) specified below, standing in the towjee of the district of and that his purchase took effect on the day of (being the day after that fixed for last day of payment).

(Signed) D E

Collector

SPECIFICATION.

(if of an entire Mehal.)

Towjee number

Name of Mehal

Name of the former proprietor

Sudder jumma

(if of a Share of a Mehal.)

Towjee number of the entire Mehal

Name of the entire Mehal

Sudder Jumma of the entire Mehal

Description of the share sold

Subordinate Towjee number of the share sold

Name of the former proprietor of the share sold

Sudder Jumma for which the share sold is separately liable.

SCHEDULE B.

Fees.

For filling an application under Section X or Section XI for opening a separate account for a share of an entire estate.

If the annual jumma of the share do not exceed 250 Rupees,25 0 0

If the annual jumma of the share exceed 250 Rupees and do not exceed 1000 Rupees, at the rate of ten per cent upon the jumma.

If the annual jumma of the share exceed 1,000 Rupees, at the rate of ten per cent upon 1,000 Rupees, and two per cent upon all above that amount.

For filing an application for a deposit of money or Government Securities under Section XV, half percent. on the amount deposited.

For any interest on Government Securities so deposited, drawn by the Collector, half per cent. of the amount drawn.

For filling an application for withdrawal of a deposit under Section XVI, half per cent. of the amount withdrawn.

For filing an application under Section XL, XLIII, or XLIV for the registration of an under-tenure or farm.

If the annual rent of the under-tenure do not exceed 500 Rupees, 25 0 0

If the annual rent of the under-tenure exceed 500 Rupees and do not exceed 1,000 Rupees, at the rate of five per cent. upon the rent.

If the annual rent of the under-tenure exceed 1,000 Rupees, at the above rate up to 1,000 Rupees, and at one per cent. upon all above that amount.
