

THE ASSAM LAND AND REVENUE REGULATION, 1886

REGULATION 1 OF 1886

[As amended]

CHAPTER – I

PRELIMINARY

Short title commencement and local extension

1. (1) This Regulation may be called the Assam Land and Revenue Regulation, 1886; and

(2) It shall come into force on such dates and in such territories under the administration of the [(Substituted for the word "Provincial" by the Adaptation of laws order, 1950) State] Government of Assam as the [(Substituted for the word "Provincial" by the Adaptation of laws order, 1950) State] Government (The words "with the previous sanction of the Governor General in Council" where omitted by section 2 of the Devolution Act XXXVIII of 1920) may direct by notification in the official Gazette:

Provided that —

(a) Any such notification may declare that any portion of this Regulation shall not be in force in any territory to which the Regulation may be extended; and

(b) The [(Substituted for the word "Provincial" by the Adaptation of laws order, 1950) State] Government may direct by notification in the official Gazette that any portion of this Regulation shall cease to be in force in any territory to which the Regulation may have been extended.

(3) (Added by Act V of 1897) The [(Substituted for the word "Provincial" by the Adaptation of laws order, 1950) State] Government may, in like manner, amend, vary or rescind any notification issued under sub-section (2).

Notes – (1) The Regulation has been brought into force in Cachar, Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur with effect from the 1st July, 1886 Certain lands are exempted from the operation of Chapter II, vide section 4.

(2) The Regulation with the exception of sections 3-68, 69A-93, 95-144 and 145-159 has been brought into force in the North Cachar Hills with effect from the 28th April, 1930.

(3) The Regulation with the exception of sections 3-68, 69A-93, 95-144 and 115.159 has been brought into force in the Garo Hills District with effect from the 4th October, 1928 and in the Khasi and Jaintia Hills, Naga Hills and Lushai Hills districts with effect from the 16th March, 1929. (Inserted by Government Notification No. RSS 139/62, dated 9th June, 1962) Sub-sections (2) and (3) of section. 12 of the Regulation has been brought into force in the Khasi and Jaintia Hills district with from the 9th June, 1962.

(4) The Regulation has been brought into force in the tract transferred from the Mokokchung sub-division of the Naga Hills district to the Sibsagar district as defined in Notification No. 1436P., dated the 11th April, 1901, with effect from the 11th April, 1901.

(5) The Regulation was brought into force in the tracts described below:—

(i) The tract transferred from Naga Hills district to the district of Sibsagar by Notification No.5646R, dated the 9th December, 1898 as amended by Notification Nos. 988R, dated the 24th February, 1903 and 219R, dated the 29th January, 1923, with effect from the 25th November, 1924.

(ii) The tract transferred from the Naga Hills district to the district of Nowgong by Notification No.5646R, dated the 9th December, 1898, as amended by Notification Nos. 988R, dated the 24th February 1893 and 219R, dated the 29th January, 1923 and 1119R, dated the 30th April, 1923.

(iii) The tracts transferred from the Balipara Frontier Tract to the district of Darrang as specified to Notification No. RSS135/51/4, dated 25th April, 1951 and (b) from the Abor Hills and Mishimi Hills districts (Sadiya Frontier Tract) and the Tirap Frontier Tract to the district of Lakhimpur as specified in Notification No. RSS135/51/5, dated 25th April, 1951 with effect from 1st October, 1951.

(6) Regulation II of 1889 came into force on the 21st September, 1889.

(7) Regulation II of 1905 came into force on the 1st July 1905.

(8) Assam Act XV of 1947 came into force on the 22nd October, 1947.

(9) Assam Act XXII of 1962 came into force on the 15th February, 1963.

Repeal

2. On and from the date on which this Regulation comes into force in any territory, the enactments mentioned in the schedule hereto annexed, in so far as they apply to, or are in force in that territory, and all regulations and rules (if any) in force there relating to any of the matters provided for by this Regulation, shall be repealed:

Provided that —

(a) This repeal shall not revive any enactment repealed or affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced, before this Regulation comes in force; and

(b) All rules prescribed, appointments and settlements made, powers conferred and notifications published under any enactment hereby repealed, and all other rules (if any) in force on the date on which this Regulation comes into force relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this Regulation and could be prescribed, made, conferred or published thereunder) be deemed to have been respectively prescribed, made conferred and published thereunder.

Definitions

3. In this Regulation, unless there is something repugnant in the subject or context, —

(a) "The commencement" of this Regulation, used with reference to any local area, means the date on which it comes into force in that local area;

(b) "Estate" includes —

(1) Any land subject, either immediately or prospectively, to the payment of land revenue, for the discharge of which a separate engagement has been entered into;

(2) Any land subject to the payment of, or assessed with a separate amount as land revenue, although no engagement has been entered into with the [(Substituted for the word "Grown" by the Adaptation of Laws Order, 1950) Government] for that amount;

(3) Any local area for the appropriation of the produce or products whereof a license or farm has been granted under rules made by the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950)] Government under section 155, clause (e) or Clause (f);.

(4) Any char or island thrown up in a navigable river which under the laws in force is at the disposal of the [(Substituted for the word "Grown" by the Adaptation of Laws Order, 1950) Government]

(5) Any land which is for the time being entered in the Deputy Commissioner's register of revenue free estates as a separate holding;

(6) Any land being the exclusive property of the [(Substituted for the word "Grown" by the Adaptation of Laws Order, 1950) Government] of which the [Substituted for the word "Provincial" by the Adaptation of Laws order, 1950)] Government has directed the separate entry in the registers of revenue-paying and revenue-free estates mentioned in Chapter IV;

Explanation – Any land gained by alluvion or by dereliction of a river to any estate as here defined, which under the laws in force is considered an increment to tenure to which the land has accreted, shall be deemed to be part of that estate;

(c) "Permanently-settled estate" means any estate in the districts of [(Substituted for the word "Sylhet" by the Adaption Laws (Third Amendment) Order, 1951) Cachar and Goalpara included in the decennial settlement of the Lower Provinces of Bengal or permanently settled at any subsequent date under any law for the time being in force:

(d) "Temporarily-settled estate" means any estate not being a revenue-free or permanently-settled estate;

(e) "Land revenue" means any revenue assessed by the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government on an estate and include any tax assessed in lieu of land revenue.

(f) "Proprietor" means the owner of any estate permanently settled or entered on the Deputy Commissioner's register of revenue free estates;

(g) "Land-holder" means any person deemed to have acquired the status of a land holder under section 8;

(h) "Settlement-holder" means any person, other than a proprietor, who has entered into an engagement with the [(Substituted for the word "Grown" by the Adaptation of Laws Order, 1950) Government] to pay land revenue and includes a land-holder;

(i) "Recorded proprietor", "recorded land holder" "recorded sharer" and "recorded possession" mean any proprietor, land holder, sharer or possession, as the case may be, registered in the general registers prescribed in Chapter IV:

(j) "Agricultural year" means the year commencing on the 1st April, or on such other date as the [(Substituted for the word "Provincial" by the Adaptation of Law Order 1950) State] Government may, in the case of any specified local area, by notification, appoint:

(k) "Notification" means a notification published in the official Gazette; and

(l) "Prescribed" means prescribed by rules made under this Regulation;

(m) (Inserted by Assam Act XV of 1959) "Deputy Commissioner" includes and shall be deemed always to have included the Additional Deputy Commissioner.

(n) "Board" means the Assam Board of Revenue constituted under the Assam Board of Revenue Act 1959 or under any statutory re-enactment or modification thereof.

CHAPTER – II
RIGHTS OVER LAND

Land exempted from the operation of this Chapter

4. This Chapter shall apply to all and except the following:—
- (a) Land included in any forest constituted a reserved forest under the law for the time being in force:
- (b) (Clauses (b) and (c) of section 4 have been omitted and the original Clause (d) renumbered as Clause (b), vide Assam Act III of 1943 RR. 119 of 1942) Any land which the [(Substituted for the word “Provincial” by the Adaptation of Law Order 1950) State] Government may, by notification exempt from the operation of this Chapter.

Power to define boundaries of exempted land

5. (1) When the boundaries of any land exempted under section 4 from operation of this Chapter need definition for the purposes of that section, and no other mode of defining them is provided by law, the [(Substituted for the word “Provincial” by the Adaptation of Law Order 1950) State] Government shall cause them to be defined by the Deputy Commissioner.
- (2) If, before the boundaries are defined, any question arises as to whether any land is included within them, it shall be decided by the Deputy Commissioner.
- (3) The order by which a Deputy Commissioner defines any boundaries, or decides any question under this section shall, subject to the provisions of section 151 of this Regulation, be final.

Right which may be acquired over land

6. No right of any description shall be deemed to have been, or shall be, acquired by any person over any land to which this Chapter applies, except the following:—
- (a) Rights of proprietors, land holders and settlement-holders other than landholders, as defined in this Regulation, and other rights acquired in manner provided by this Regulation;
- (b) Rights legally derived from any right mentioned in Clause (a);
- (c) Rights acquired under section 26 and 27 of the Indian Limitation Act. 1877 (New Act IX of 1908)
- (d) Rights acquired by any person as tenant under the Rent Law for the time being in force:

Provided that nothing in this section shall be held to derogate from the terms of any lease granted by or on behalf of the [(Substituted for the word Crown” by the Adaptation of Laws Order, 1950) Government].

Rights of proprietor

7. Proprietors shall, subject to the provisions of this Regulation, have the same rights and enjoy the same privileges in respect of lands included in their estates as they have at the commencement of this Regulation.

Note – Section 3 of the Assam assessment of Revenue Free Waste Land Grant Act, 1948 has made a Revenue Free Waste Land Grant liable to assessment to, and the payment of revenue.

Status of land-holders how acquired

8. (1) (a) Any person who has, before the commencement of this Regulation, held immediately under the [(Substituted for the word "Crown" by the Adaptation of Laws Order, 1950) Government] for ten years continuously any land not included either in a permanently settled estate, or in a revenue-free estate, and who has during that period paid to the [(Substituted for the word "Crown" by the Adaptation of Laws Order, 1950) Government] the revenue due thereon, or held the same under an express exemption from revenue, and

(b) Except as provided by section 15, any person who has, whether before or after the commencement of this Regulation, acquired any such land under a lease granted by or on behalf of the [(Substituted for the word "Crown" by the Adaptation of Laws Order, 1950) Government], the term of which is not less than ten years,

shall be deemed to have acquired the status of a landholder in respect of the land.

(2) When any land held by one person has come immediately by transfer or succession to be held by another, the holding shall, for the purposes of sub-section (1), clause (a), be deemed to have been continuous and the latter person may, in reckoning the length of his holding add the holding of the former to his own.

(3) When any revenue has been paid in respect of land by any person holding the land under another, that revenue shall for the purposes of the said clause, be deemed to have been paid by the latter person.

Ruling – Clause (1) (b) of Section 8 of Regulation 1 of 1886 applies to a case in which person has acquired land not merely because it has been directly settled with him by the Government, but also because he has obtained it from the original grantee by transfer, succession or otherwise. It includes a case in which a person before the commencement of the Regulation acquired the land by inheritance from a person with whom it had been settled by the Government under a lease for a term not less than ten years.

Upon the death of the person with whom the settlement for ten years was made in 1884 and in spite of the hostile possession of a third person after his death, his heirs became the owners of the interest originally vested in him and as soon as the Regulation came into force on the 1st July 1880, the heirs became land holders within the meaning of clause (1) (b) of section 8 of the Regulation. Hence upon the expiry of the term of ten years fixed in the lease of 1884, the interest of the heirs did not completely terminate. They are entitled to claim settlement from the Government and their rights were not affected by settlement with a third person. Hedlot Khasia versus Karan Khasiani – 15 C L J 241 (July 1911)]

Rights of landholders

9. A land-holder shall have a permanent, heritable and transferable right of use and occupancy in his land, subject to —

(a) The payment of all revenue, taxes, cesses and rates from time to time legally assessed or imposed in respect of land;

(b) The reservation in favour of the [(Substituted for the word "Crown" by the Adaptation of Law Orders, 1950) Government] of all quarries and of all mines minerals and mineral oils, and of all buried treasure, with full liberty to search for and work the same, paying to the land-holder only compensation for the surface damage as estimated by the Deputy Commissioner; and

(c) The special conditions of any engagement into which the land-holder may have entered with the Government,

(Inserted by Correction Slip No. 41 to the Fifth Edition to this Manual) **Note** – For restriction on the right of transfer see Executive Instruction 6 in Part X Chapter II.

Forfeiture of landholders rights on relinquishment

10. Any land-holder who, after the commencement of this Regulation, voluntarily relinquishes any land and ceases to pay the revenue assessed thereon shall at once forfeit his status of land-holder in respect of that land.

Rights of settlement holders

11. A settlement-holder who is not a land-holder, shall have no rights in the land held by him beyond such as are expressed in his settlement lease.

Power to make rules for the disposal of Government lands and ejectment there from of unauthorised occupiers

12. (New section substituted by Regulation II of 1905) In the case of any land over which no person has the rights of a proprietor, land-holder or settlement-holder under this regulation, the [(Substituted for the word "Provincial" by the Adaptation of Law' Order, 1950) State] Government may make rules to provide for —

- (1) The disposal by way of grant, lease or otherwise of such land,
- (2) the ejectment of any person who has entered into unauthorised occupation of such land, and
- (3) The disposal of any crop raised, or any building or other construction erected without otherity on such land.

Note – For the rules framed under this section see Part II, Chapter I, SECTIONS I, II, and IV.

Rulings – (1) Whether a rule made under this section directs that if settlement is not made with the first applicant the reasons should be stated in writing, it does not follow that if the reasons are not recorded the first applicant is entitled to a settlement. Nor has he any claim under section ⁶(a) of the Regulation. [Ananda Kisore Sen versus Secretary of State for India in Council and another. – 14 C.W.N. 990 (June 1910)]

(2) Where a rule under this section directs that re settlement should ordinarily be made with the previous settlement-holder, the Civil Court has jurisdiction to see whether the officer making the settlement took the rule into consideration; but it has no jurisdiction to question the correctness or sufficiency of his seasons for excluding the previous settlement-holder in a particular case. [Joy Govinda Hajan versus Musst. Hazira Bibi – 24 C.W.N. 149 (March 1919)].

Power to make rules for allotment of grazing grounds.

13. The [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may make rules for the allotment from the land referred to in section 12 of grazing grounds to the inhabitants of any village in the neighbourhood whom they consider to stand in need of such allotment, and for regulating and controlling the enjoyment of those grazing grounds by persons permitted to resort thereto.

Note – For the rules framed under this section, see Part II, Chapter II and Part VII, Appendices II and III.

Power to make rules for allotment of lands for tribes practising jhum or migratory cultivation

14. The [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may make rules for the allotment from the land referred to in section 12, for the use of tribes or families practising (Jhum or migratory cultivation, or areas suitable for such cultivations, of sufficient extent, and situated localities reasonably convenient, for the purposes of the persons to whom they are allotted, and for regulating and controlling the enjoyment of lands so allotted by persons permitted to resort to the same.

Note – No rules have hitherto been framed by the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government under this section.

Bar to acquisition of rights over land disposed of under sections 12, 13 and 14

15. No person shall acquire, by length of possession or otherwise, any right over lands disposed of or allotted under section 12, section 13, or section 14 beyond that which is given by the rules made under the section.

Rights in fishery

16. The Deputy Commissioner, with the previous sanction of the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government, may, by proclamation published in the prescribed manner, declare any collection of water, running or still, to be a fishery; and no right in any fishery so declared shall be deemed to have been acquired by the public or any person, either before or after the commencement of this Regulation, except as provided in the rules made under section 155:

Provided that nothing in this section shall effect any express grant of a right to fish made by or on behalf of the [(Substituted for the word “Crown” by the Adaptation of Laws Orders, 1950) Government] or on any fishery rights acquired by a proprietor before the commencement of this Regulation, or the acquisition by a proprietor of such rights in any fishery forming after the commencement of this Regulation in his estate.

CHAPTER – III

SETTLEMENT AND RESUMPTION

PART A – GENERAL

Settlement operations defined

17. Settlement operations may consist of one or more of the following:—
- (a) Survey and demarcation;
 - (b) Assessment of land revenue of land;
 - (c) Records of rights.

General notification of settlement

18. (1) When any local area or class of estates is to be settled the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may (Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) notification shall —
- (a) Define the local area or class of estates to be settled, and
 - (b) Specify the settlement operations to be carried out.
- (2) The [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may (the word; “with the previous sanction of the Governor General in Council” were omitted by section 2 of the Devolution Act XXXVII of 1920) amend or alter any such notification.

Power of State Government to exclude any local area, etc. from the operation of any portion of this chapter

20. The [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may, by rule, direct that this Chapter or any one or more selection or portions of sections thereof shall not apply to any local area or to the settlement of any particular class of estates.

Note – It has been declared by Settlement rule 96A —

(1) That the following portion of the following sections of the Regulation shall not apply to the settlement of any area or estate in the Assam Valley or in the district of Cachar excluding Karimganj Subdivision. Viz. —

(i) Sub-section 2 of Section 33.

(ii) Sub-section 3 of section 33 so far as it relates to delivery of an acceptance.

(iii) Proviso (b) to section 34, and

(2) That in addition, section 18 and 19 shall not apply to any area or estate to the Assam Valley or in the district of Cachar excluding Karimganj Sub-division, which is not included in a village which has been traversed, surveyed, mapped and classed.

PART B – SURVEY AND DEMARCATIGN OF LAND

Power to call for information and assistance

21. Every proprietor and settlement-holder of any land and every person entitled to receive rent in respect of any land or occupying any land as a tenant, shall on the written requisition of a Survey officer, furnish, personally or otherwise, as the Survey officer directs, such information or assistance as may be required by that officer for the purposes of the survey of the land.

Power to require erection and maintenance of boundary marks

22. (1) Every proprietor and land-holder of any land, and every person entitled to receive rent in respect of any land, shall, on the written requisition of a Survey-officer, erect and repair such boundary marks on the land as the Survey-officer directs.
- (2) If any person on whom a requisition has been made under sub-section (1) fails to erect or repair any boundary-mark mentioned in the requisition, the Survey-officer may erect or repair it.

Procedure in case of boundary disputes

23. (1) Whenever in the course of survey it comes to knowledge of the Survey-officer that any boundary dispute exists, he shall notify the same to the Settlement-officer, who shall proceed as follows:—
- (a) If the dispute is between the proprietors of different estates, the Settlement-officer shall decide it on the basis of actual possession; or if he is unable to satisfy himself as to which party is in possession, he may determine by summary inquiry who is the person best entitled to possession, and may put him in possession; or he may refer the dispute to arbitration for decision on the merits, as provided in section 143;
- (b) If the dispute is between the settlement-holders of different estates, the Settlement-officer shall, after due inquiry, determine the proper boundaries of those estates.
- (c) If the dispute is between the [(Substituted for the word “Crowd” by the Adaptation of Laws Order, 1950) Government] and any settlement-holder as to whether any land is comprised in the settlement, the Settlement-officer shall, after due inquiry determine the dispute.
- (2) The order by which a settlement-officer determines any boundaries or any dispute under clause (b) or clause (c) of this section shall, subject to the provisions of section 151 of this Regulation, be final.

Note – (1) As no appeal lies to a superior revenue authority and the jurisdiction of the Civil Court is barred in cases under section 23 clause (b) and (c), the Settlement Officer must be very careful in deciding boundary disputes. The report of a mauzdar or any other local official may be a useful addition

to the evidence in the case, but independent evidence must also be taken if either of the parties does not agree to the report and offers to produce other evidence.

(2) When there is no special Settlement-Officer determines any boundaries or any dispute under clause (b) or clause (c) of this section shall, subject to the provisions of section 151 of this Regulation, be final.

Note – (1) As no appeal lies to a superior revenue authority and the jurisdiction of the Civil Court is barred in cases under section 23 clause (b) and (c), the Settlement Officer must be every careful in deciding boundary disputes, The report of a mauzdar or any other local official may be a useful addition to the evidence in the case, but independent evidence must also be taken if either of the parties does not agree to the report and offers to produce other evidence.

(2) When there is no special Settlement Officer, the powers of the Settlement Officer devolve under section 138(2) upon the Deputy Commissioner or Subdivisional Officer.

Power of Survey officer in certain cases to cause marks to be erected

24. Whenever the Settlement-officer has determined a dispute under section 23, and the order has become final or has been altered by a decree or order of any competent Court or authority, which has become final

and whenever it comes to the notice of the Survey-officer that any boundary has been determined by a competent Court or authority,

the Survey officer may cause such marks as he may think fit to be erected in order to secure the boundary permanently.

Note – In the course of the original cadastral survey of the plains portions of Assam, conducted between the years 1883 and 1897 by a professional party of the Government of India, Survey Department, the boundaries of the permanently-settled and revenue free estates and also or waste land grants, as then existing, were surveyed and as far as possible, demarcated. In their letter No. 2709-23R., dated the 22nd July, 1895. Government have declared that they will not in further recognise any boundary in these estates other than those laid down by the cadastral survey.

Penalty for removing boundary-marks

25. Any person wilfully destroying, removing or damaging any boundary-mark (not being a landmark fixed by the authority of a public servant within the meaning of section 434 of the Indian Penal Code) which has been lawfully erected shall be punished with fine which may extend to two hundred rupees for each mark so destroyed, removed or damaged, in addition to such sum as may be necessary to defray the expense of restoring the boundary-mark so destroyed, removed, or damaged.

Note (Added by Dr. L. Revenue/46 of 1938) – Action shall usually be taken in accordance with this section when any boundary-mark erected under section 22 and 24 and Statutory Rule 100 of the Regulation is destroyed, removed or damaged. Action may be taken under the provisions of section 434 of the Indian Penal Code also, when the section applies and the offence is of a grave nature.

Obligation to give notice of injury to boundary-marks

26. If any permanent boundary-mark lawfully erected on any land, or on the boundary thereof, is injured, destroyed or removed, or requires repairs, the proprietor or settlement-holder of the land, and every person entitled to receive rent in respect of the same or occupying it as a tenant, shall be bound to give immediate notice of the fact to the prescribed Revenue officer; and every person who omits, to give notice as required by this section shall be liable to a fine, not exceeding one hundred rupees, to be imposed by order of the Deputy Commissioner.

Power of [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government to make rules

27. The [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may make rule prescribing the mode in which any survey conducted under the provisions of this Part shall be effected, and the manner in which all the cost of such a survey, compensation due on account of anything done under the orders of a Survey-officer, and all expenses incurred under this Part in erecting and repairing boundary-marks, shall be apportioned among and levied from proprietors and land-holders and persons entitled to receive rent in respect of land.

Note – The rules which have been framed by the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government under sections 27 and 152 for the recovery of the cost of survey and boundary marks will be found in Part II, Chapter III.

PART C – ASSESSMENT OF LAND

Land liable to assessment

28. All land shall be deemed liable to be assessed to revenue, except —

(a) Land for the time being exempt from assessment under the express terms of any grant made or confirmed by, or on behalf of, the [(Substituted for the word “Crown” by the Adaptation of Laws Order, 1950) Government].

(b) Land in respect of which a tax is for the time being imposed under section 47:

Provided that nothing in this section shall —

(1) Affect the provisions of any settlement, grant or lease for the time being in force;

(2) Authorise the assessment of any land included in the limits of a permanently-settled estate, unless it is shown that it was not included in the permanent settlement;

(3) Affect any title to hold land revenue free if the title existed immediately before the commencement of this Regulation and was valid under the law then in force; or

(4) Authorise the assessment of any land which has been held revenue-free for sixty years continuously unless it is shown that the right so to hold in has ceased to exist.

Note – (1) When revenue-free baksha lands in Cachar are alienated, they should be assessed at full rates. The heritable nature of these lands when first bestowed is open to doubt, but it has been decided not to raise this question now.

Note – (2) The Nisf-khiraj lands held by the family of the Darrang Rajas were granted as a personal dignity, and are liable to assessment at full rates on alienation. An exception has been made, however, in favour of lands alienated prior to 1858.

Note – (3) Bona fide places of public worship which are not already regarded as Government land should, on the application of the settlement-holder and with the consent of the worshipers concerned, be recorded, as a matter of grace, as Government land, and should be exempted from the payment of land revenue for as long as they continue to be used for public worship.

Note – (4) When the settlement-holder is unwilling to relinquish to Government a piece of land which is used for bona fide public worship, but which is now included within his lease, the existing state of affairs should be maintained, that is, if the settlement-holder has hitherto been paying revenue for the land which is used for public worship he should continue to pay it; but if he has hitherto been paying no revenue for the land, he should not be called upon to do so without special orders from the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government.

Note – (5) Under section 3 of the Assam Assessment of Revenue free Waste Land Grants Act, 1948 the Revenue free waste land grants as specified in section 2(1) of the Act have been made liable to assessment of revenue on and from 1st April, 1948.

Ruling – The effect of proviso 4 to section 28 of the Assam Regulation (1 of 1886) which is based on section 2 of the Bengal Regulation (II of 1805), is to exempt land from assessment if the owner can prove 60 years possession of it without payment of any revenue during that period and thus to introduce the rule of 60 years limitation. It is not necessary that the 60 years should be subsequent to the passing of the Assam Regulation. Proviso 2 to section 28 of that Regulation merely authorises assessment of lands excepted from the Permanent Settlement if they do not fall under any of the saving clauses. [Ananda Kumar Bhattacharjee versus Secretary of State for India – I.L. R, 43 Cal 973 (January 1915)]

Settlement rules

29. The [(Substituted for the word “Provincial” by the Adaptation of laws Order, 1950) State] Government may make rules prescribing the principles on which the land revenue is to be assessed, the term for which, and the conditions on which, settlements are to be made, and the manner in which the Settlement officer is to report for sanction his rates and method of assessment.

Note – (1) The term “settlement” in Assam has two distinct meanings, firstly, the allotment of unoccupied land at a revenue assessment Calculated at fixed rates, and secondly, the modification of the rates at which occupied land has been assessed, and at which unoccupied and will be assessed. The later process is distinctively known as “re-settlement”.

Note – (2) For the rules framed under this section see Part II, Chapter I.

Framing and submission of general proposals of assessment

30. The Settlement-officer shall, in accordance with the rules issued under section 29, frame general proposals of assessment for any local area or class of estates to be assessed, and submit those proposals to the [(Substituted for the word “Provincial” by the Adaptation of laws Order, 1950) State] Government.

Assessment and de ration thereof persons concerned

31. After the receipt of the orders of the [(Substituted for the word “Provincial” by the Adaptation of laws Order, 1950) State] Government thereon, and subject to such orders, the Settlement-officer shall ascertain, and make an order, determining the amount of the assessment proper for each estate, and shall, on a date and at place to be notified by proclamation in the prescribed manner, offer a settlement based thereon to the person with whom the settlement of the estate is to be made.

To whom settlement is to be offered

32. (1) The Settlement-officer shall offer the settlement to such persons (if any) as he finds be in possession of the estate and to have a permanent heritable and transferable right of use and occupancy in the same or to be in possession as mortgages of persons having such a right.
- (2) If the Settlement-officer finds no person in possession as aforesaid, it shall be in his discretion, subject to such rules as the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may make under section 12, to offer the settlement to any person he thinks fit.

Acceptance or refusal of settlement

33. (1) It shall be in the option of the person to whom a settlement is offered to accept or refuse the same.
- (2) If he is willing to accept it, he shall deliver to the Settlement-officer an acceptance in writing under his hand, in the prescribed form,

Note – Vide rule 63 in Part II, Chapter I, Section III and Form No. 13.

(3) If a person to whom a settlement has been offered does not, within the prescribed time, deliver such an acceptance or inform the Settlement officer in the prescribed manner that he refuse the proposed settlement, he shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted the settlement.

Effect of acceptance of settlement

34. When a settlement has been accepted, the revenue fixed hereby and no more shall be payable from such date and for such term, as the [(Substituted for the word “Provincial” by the Adaptation of Laws Order 1950) State] Government may fix in this behalf:

Provided that —

(Interested by Assam Act XV of 1959) (a) The revenue shall be liable to revision according to the law for the time being in force.

(b) A settlement shall not be final as against the [(Substituted for the word “Crown” by the Adaptation of Law Order, 1960) Government] until it has been sanctioned by the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government;

(c) In the case of gain by alluvion, or by dereliction of a river, or loss by deluvion, during the currency of the settlement, increment shall be assessed and reductions granted by the Deputy Commissioner according to such limitations as to the extent of gain or loss and such other conditions as may be prescribed; and

(d) In any local area to which the [(Substituted for the word “Provincial” by the Adaptation of Loans Order, 1950) State] Government may, by notification, apply this clause, a settlement-holder may, after giving notice at the time and in the manner prescribed relinquish the estate of which he has accepted a settlement or any part thereof on which a separate part of the revenue has been apportioned and shall thereupon be released from all future obligation to pay the revenue of the estate, or the part thereof so apportioned, as the case may be,

Note – Clause (d) of section 34 has been applied to all the districts within which the Regulation is in force.

Effect of refusal of settlement

35. If the person to whom a settlement is offered refuses to accept it, it shall be in the discretion of the Settlement-officer, subject to such rules, as the [(Substituted for the word “Provincial” by the Adaptation of Loans Order, 1950) State] Government may make under Section 12, to exclude him for the term of the settlement from possession of the estate, and to offer the settlement thereof to any other person he thinks fit,

Procedure when some of those to whom the settlement is offered refuse

36. In the case of an estate held by several persons jointly entitled to an offer of a settlement, if some of those persons refuse to accept the offer, it shall be in the discretion of the Settlement-officer to exclude them from possession for the term of settlement and to offer the whole estate to the others.

Settlement officer when to apportion assessment over land

37. (1) When the whole or part of the land comprised in an estate is held in severalty, the Settlement-officer shall, on the application of any one or more of the settlement-holders, makes an order apportioning to several holdings the revenue assessed on the estate.

(2) Except as provided by sub-section (1), a Settlement-officer shall not apportion the revenue of an estate over the lands comprised therein unless he is required so to do by rules made by the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government in this behalf.

(3) No apportionment of the revenue by the Settlement-officer shall affect the joint and Several liability for the revenue imposed by section 63.

Representation of incompetent persons and of bodies of persons

38. (1) A lunatic, minor or other person incapable of making a contract, shall be deemed to be duly represented for all the purposes of this Part by his manager.

(2) A body of persons for whom representatives have been appointed in this behalf under rules made under Section 155, clause (d), shall be deemed to be duly represented for all the purposes of this Part by those representatives.

Effect of decision of Settlement-officer as to Settlement

39. Subject to the provisions of section 151 of this Regulation the order of Settlement-officer as to the person to whom a settlement should be offered, the amount of revenue to be assessed, and the nature and term of the settlement to be offered, shall be final and a settlement concluded with that person shall be binding on all persons from time to time interested in the estate; but, except as provided by Section 35 and 36, no person shall, merely on the ground that a settlement has been made with him or with some person through whom he claims, be deemed to have acquired any right to or over any estate, as against any other person claiming rights to or over that estate.

Ruling – Where the defendants were wrongly granted settlement and kept the plaintiffs out of possession, it was competent to the Civil Court not only to declare the title of the plaintiffs but also to put them in possession by ejectment of the defendants [Askar Main and others versus Sabad Ali Bora Bhuiya and others – C.W.N.; 32 540 (July 1889)].

(Reviews and dissents from the rulings in 1 L.R. 17 Cal., 819 and 24 Cal., 239)

PART D RECORD – OF RIGHTS

Record-of-rights

40. The settlement officer shall frame for each estate a record-of-rights in the prescribed manner.

Note – The record-of-rights is the jamabandi based on the chitha and the field map.

Entries in record and their effect

41. (1) Entries in the record made under section 40 shall be founded on the basis of actual possession and all disputes regarding such entries, whether taken up by the Settlement-officer of his own motion or on the application of a party concerned shall be investigated and decided by him on that basis and all persons not in possession, but claiming the right to be so, shall be referred by him to the proper Court.

(2) Every entry in the record-of-rights made under this section shall, until the contrary is proved, be presumed to be correct.

Determination of class of tenants and the rent payable by them

42. Notwithstanding any thing contained in section 41, in the case of any dispute respecting the class of any tenant under the Rent Law for the time being in force, or the amount of rent payable by such tenant, the Settlement-officer shall decide the dispute, or, where the rent is open to alteration, fix the rent according to the principles laid down in the said Rent Law, and, subject to the provisions of section 151 of this Regulation, his order shall be final.

Note – The Rent Law in force in the Karimganj Sub-division in the former Sylhet district is the Sylhet Tenancy Act (Assam Act XI of 1936), in the permanently settled portions of the Goalpara district it is the Goalpara Tenancy Act (Assam Act 1 of 1929), in the temporarily settled portions of the Goalpara district and in the districts on Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur and Cachar excluding Karimganj subdivision it is the Assam, (temporarily-settled District) Tenancy Act (Assam Act III of 1935).

PART E, RESUMPTION

Inquiry by Deputy Commissioners regarding land liable to resumption

43. Whenever a Deputy Commissioner has reason to believe that any land within his jurisdiction is being held wholly or partially free of assessment and is liable to be assessed under section 28, he may institute an inquiry, and the person claiming the land shall be bound to prove his title to hold the same wholly or partially free of assessment, as the case may be.

Report to [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government of result of inquiry

44. The result of every inquiry instituted by the Deputy Commissioner under section 43 shall be reported to the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government for orders the prescribed manner.

Order of [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government on Deputy Commissioner’s report.

45. (1) In any case reported to the State Government under section 44, if the State Government declare the land not liable to assessment, their order shall be final except on proof of fraud or collusion on the part of or on behalf of the person interested.

(2) If the State Government declare the land liable to assessment, the Deputy Commissioner shall inform the person interested of the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government’s decision, and shall proceed to assess the land in accordance with the rules made under section 29 and to settle it with the person in possession.

Suit in Civil Court to set aside [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government’s order directing resumption

46. Any person whose lands are assessed by order of the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government passed under section 45 may at any time within one year from the date his being informed of the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government’s order institute a suit in the Civil Court to have the order set aside failing which the order shall be final.

PART F. – HOE-TAX OR HOUSE-TAX

Hoe-tax or House-Tax

47. (1) The [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may direct that in lieu of the revenue assessable on any land there shall be collected an annual tax on each male person who has completed the age of eighteen years taking part in the cultivation of the land at any time during the year of assessment, or on each family or house of persons taking part as aforesaid.

(2) The rates of the tax, the class of person upon whom, and the localities and mode in which it may be assessed, shall be determined by the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government.

CHAPTER – IV

REGISTRATION

PART A. – THE PREPARATION AND MAINTENANCE OF REGISTERS

Registers to be kept

48. (1) The Deputy Commissioner of every district shall prepare and keep the following registers:—
- (a) A general register of revenue-paying estates;
 - (b) A general register of revenue-free estates; and
 - (c) Such other registers as the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may direct.
- (2) The registers shall be written in the prescribed form and language, and shall be prepared, arranged, kept and maintained in the prescribed manner.

Note – For the general registers prescribed under this section, see the rules in Part II, Chapter IV.

Existing Registers

49. Until registers are prepared for any tract under section 48, the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may direct that any registers kept by or under the control of the Deputy Commissioner at the commencement of this Regulation shall be deemed to be registers prepared under that section.

Note – (1) The form of general register prescribed in the rules under Chapter IV of the Regulation in accordance with section 48, have been written up for waste land grants and revenue-free estates throughout the State and for permanently-settled estates in Goalpara.

(2) They have not been written up for permanently-settled estates in Karimganj Subdivision of Cachar District. It has been decided that it would be a waste of time and labour to attempt the preparation of a general register of permanently settled estates in the absence of a cadastral survey of the subdivision. It has also been found impossible to substitute any register for the general register by a notification under section 49.

PART B – REGISTRATION

Liability of persons succeeding to estates to give information of succession

50. After the commencement of this Regulation —
- (a) Every proprietor or land-holder succeeding to any estate, or share in an estate, whether by transfer or inheritance, obtaining possession of the same;
 - (b) Every joint proprietor or joint land-holder, of any estate assuming charge of the estate or of any share therein on behalf of the other proprietors or land-holders thereof;
 - (c) Every person assuming charge of any estate of a proprietor or land-holder, or of any share therein as manager; and
 - (d) Every mortgage obtaining possession of any estate of a proprietor or land-holder, or of any share therein;

shall, within six months from the date of taking possession or assumption of charge, apply to the Deputy Commissioner of the district on the general registers of which the estate is borne for registration of his name as such proprietor, land-holder, manager or mortgage, and of the nature and extent of the interest in respect of which the application is made.

Note – (1) District Officer are responsible that the registers (jamabandis in the case of ordinary raiyatwai lands) are maintained to date by the entry of all changes in proprietary possession.

(2) They should get information from the Registering Officer regarding all deeds affecting rights in land which are produced before them for registration, a clerk being deputed once a week, if necessary, to extract the required information from the Sub-Register's books, Where separate registration clerk is entertained, the required information should be furnished monthly by the Sub-Registrar in the following form:—

- (i) Name of sub-registry officer
- (ii) Name and address of transferor
- (iii) Name and address of transferee
- (iv) Name and number of estate; its pargana and mauza
- (v) Specification of share transferred
- (vi) Date and description of deed
- (vii) Date of registration
- (viii) Remarks.

(3) It is the duty of the mandal or patwari to bring to notice all changes which he discovers in the course of his annual tours. The procedure to be followed in registering these changes after local investigation instead to by inquiry in Court is described in the Land Records Manual. The obligation of the mandal or patwari to report changes does not absolve private persons from liability under section 50 and 51.

Existing proprietor, etc., may apply for registration

51. Every person who, at the commencement of this Regulation, is in the possession of an estate or any share in an estate as proprietor or land-holder or as manager of the estate of a proprietor or land-holder, or as mortgagee, may apply to the Deputy Commissioner of the district on the general register of which the estate is borne for registration of his name as such proprietor, land-holder, manager or mortgagee and of the nature and extent of the interest in respect of which the application is made.

Procedure on application for registration

52. (1) On receiving an application under Section 50 or section 51, the Deputy Commissioner shall if he considers there are sufficient grounds for proceeding with the application, publish a notice requiring persons who object to the registration of the name of applicant, or who dispute the nature or extent interest in respect of which registration is applied have in a written statement of their objections, appear on a day to be specified in the notice not being less than one month from the date thereof.

(2) If the application alleges that the applicant has acquired possession of the estate, or share in an estate in respect of which he applies to be registered by transfer from any person, a copy of the notice shall be served on the alleged transfer or, if he is dead, upon his heirs.

Inquiry by Deputy Commissioner

53. On the day fixed in the notice issued under section 52, or as soon thereafter as possible the Deputy Commissioner shall consider any objections which may be advanced, and, after such further inquiry (if any) as appears necessary to ascertain the truth of the succession, assumption of charge or possession alleged in the application shall, if it appears to him that the succession accompanied by possession has taken place or that charge has been assumed or that the applicant is in possession, as the case may be, make an order directing registration.

Note – In uncontested casts evidence need not be recorded unless the registering office considers inquiry by the examination of witnesses necessary as to the feet of possession.

Power to Deputy Commissioner to direct registration on information received otherwise than through application

53.A (1) Notwithstanding anything contained in sections 50 to 53, where the Deputy Commissioner has received information, otherwise than through an application, of any such taking of possession or assumption of charge as is referred to in section 50; he may make an order directing the registration of the name of the person so taking possession or assuming charge.

Provided that —

(a) The information has been verified by local inquiry made by an officer not below the rank of an Assistant Settlement-officer, or

(b) Notice has been published and inquiry has been held in the manner prescribed by sections 52 and 53 as if an application for registration had been received, from the person to whom the information relates.

(2) Where any person is aggrieved by an order directing registration under this section which has been made after verification of the information received by local inquiry only, he may (within a period of 3 years of the date of such order) apply to the Deputy Commissioner to have such order set aside and on receipt of such application the Deputy Commissioner shall cancel the registration and then proceed to published the notice and hold the inquiry prescribed by section 52 and 53 as if an application for registration had been received from the person whose name had been registered.

Note – (1) For the procedure to be followed in dealing with mutation cases, by local investigation see the instructions in the Assam Land Records Manual. A case which has been disposed of by local investigation may be reopened on application, and should then be dealt with formally by inquiry in Court, Cases which cannot be disposed of by local investigation – including generally, all cases in which a dispute exists, must be made the subject of formal inquiry in court, after the Registration Rules (Chapter IV of Part II).

Note – (2) Petition of objection applications for mutation must be stamped

(3) Partition cases must be kept entirely distinct from mutation proceeding and an order granting separate pattas must never be issued in connection with an application for registration of names. Should any person desire, to have his share of a holding partitioned off to him, he must apply separately for partition under Chapter VI of the Regulation;

(4) The payment of land revenue in respect of the interest to be registered should not be made a condition precedent to registration.

Power to put one party in possession in case of dispute

54. If in the course of an inquiry made under section 53, a dispute regarding the fact of possession arises and the Deputy Commissioner is unable to satisfy himself as to who is in possession, he shall ascertain by summary inquiry who is the party best entitled to possession, and shall put him in possession and make the necessary entry in the proper register accordingly.

Note – (1) Orders should not be passed under this section on the summary local inquiry of Sub-Deputy Collector.

(2) Officers conducting summary registration inquiries under sections 53 and 54 should not let them drift into full and regular inquiries such as would have to be held in order to dispose of the matter finally in the Civil Court. It is necessary also to avoid going to the opposite extreme. The question of how deeply Revenue Officers should go into the matter is one of degree and can only be determined by plain commonsense.

(3) An officer should not leave it to the parties, as in a civil suit, to raise what issue they please, and adduce what evidence they please but should, on the dispute first developing itself before him, take the matter into his own hands and make up his mind as to limits to which he will push the inquiry.

(4) Deputy Commissioners should, when these cases come before them on appeal, give hints to their subordinate on particular points which will gradually guide them to the proper medium in such matters.

(5) The nature and extent of the interest must be recorded in a registration cases, even where the determination on this point is one of great difficulty.

Registration of tenures in permanently settled estate

55. After the commencement of this Regulation any person who holds a talukdari or other similar tenure which has been created since the time of the Permanent Settlement, and is held immediately from the proprietor of a permanently settled estate may apply to the Deputy Commissioner to have the tenure registered.

Proceduoren application for registration under section 55

56. (1) On receiving an application under section 55 the Deputy Commissioner shall serve a notice on the recorded proprietors of the estate in which the tenure is situated, and shall also published a general notice requiring the proprietors or any person interested, who object to the applications, to file within thirty days from the date of the notice a written statement of their objections.

(2) If within the time specified no objection is made, they Deputy Commissioner shall register the tenure.

(3) If within the time specified an objection is made by any recorded proprietor, the Deputy Commissioner shall examine the person so objecting and, if it appears that he has probable ground of objection, shall suspend proceedings and refer the parties to the Civil Court

(4) Provided that no tenure shall be registered under this section unless the Deputy Commissioner is satisfied that it has been created in good faith and at a rent not less than the full amount of the revenue fairly payable in respect of the lands comprised in it.

Note – Persons cannot obtain registration for a share in a revenue paying estate regarding which they have arranged with the registered proprietors to pay no revenue, or if any only a nominal. sum

CHAPTER IV – REGISTRATION

Registration

57. On any registry under this Chapter, fees may be levied from the person in whose favour the registration is made at the prescribed rates.

Note – For the rates prescribed, see rule 126 of the rules framed under this Chapter in part II, Chapter IV.

Penalty for non-registration

58. (1) If any person, being required by section 50 to apply for registration, voluntarily or negligently-omit to do so within the time specified in that section he shall be liable to a fine, to be imposed by the Deputy Commissioner which may extend to five time the amount of fee which would be payable under Section 57 for registration, and to such further daily fine as the Deputy Commissioner may think fit to impose, not exceeding one rupee for each day during which the person omits to apply for registration after a date to be fixed by the Deputy Commissioner in a notice requiring him to apply for registration; and

(2) A person required by Section 50 to apply for registration shall not acquire, or be deemed to have acquired, as against the Government any interest in land as proprietor, land-holder, manager or mortgagee, or be entitled to prefer any claim against the Government in respect of such interest, as long

as he omits to pay for registration but shall be subject to all the liabilities of a proprietor, land holder, manager or mortgagee so far as regards the payment of revenue and all other obligations to the (Government).

No person bound to pay rent of unregistered proprietor, etc.

59. (1) No person shall be bound to pay rent to any person claiming it as proprietor, land-holder, managers or mortgagee in possession of an estate, unless the name of the claimant has been registered under this Chapter.

(2) No person, being liable to pay rent to two or more such proprietors, land-holders, managers or mortgages, shall be bound to pay one such proprietor, land-holders, manager or mortgagee more than the amount which bears the same proportion to the whole of the rent as the extent of the share in respect of which the proprietor, land-holder, manager or mortgagee is registered bears to the entire estate.

Note – (1) It is immaterial whether the estate-holder was registered before the Assam Land and Revenue Regulation came into force or not. He must apply again for Registration under the Regulation if he wishes to establish a legal claim to rent.

Note – (2) The permanently-settled portion of Karimganj Subdivision was withdrawn along with other such areas of former Sylhet district from the operation of this section by Notification No. 27R, dated 26th July 1989.

Ruling – The Section applies to rents accruing due after the Regulation came into force or not to rents already due on the date on which it came into force. [(Braja Nath Choudhury and others versus Birmani Singh Manipuri – ILR. Cal. 227 (December 1887)].

PART C – MISCELLANEOUS

Public entitled to inspect and to apply for extracts from registers

60. Subject to the prescribed conditions and to payment of the prescribed fees, all registers kept under this Chapter shall be open to public inspection and subject as aforesaid, the Deputy Commissioner shall supply an extract from any such register to any person who may apply for the same.

Note – For the fees, etc. prescribed under this Section see Rule 129 of Part II, Chapter IV.

Power of Deputy Commissioner to pay recorded proprietors etc., money due to them in accordance with their registered interests

61. Whether any sum of money is payable (otherwise than under the Land Acquisition Act, 1894) by the Deputy Commissioner to two or more proprietors, land-holders, managers or mortgage, in possession of an estate, the Deputy Commissioner may pay to any one or more recorded proprietors, land-holders, managers or mortgages thereof, respectively, such portions of the said sum as may be proportionate to the extent of the mortgagee is registered, and the receipt of each such proprietor, land-holder, manager or mortgagee shall afford full indemnity to the Deputy Commissioner in respect of any sum so paid.

Saving clause

62. Nothing contained in this Chapter and nothing done in accordance therewith shall be deemed to —

(a) Preclude any person from bringing a suit in the Civil Court for possession of, or for declaration of his right to any immovable property to which he may deem himself entitled.

(b) Render the entry of any land in any register under this Chapter as revenue-free an admission on the part of the [(Substituted for the word “Crown” by the Adaptation of law, Order, 1950) Government] of the right of the person in whose name the land may be entered, or an admission of the validity of the title under which the said land is held revenue free.

CHAPTER – V

ARREARS AND MODE OF RECOVERING THEM

LIABILITY FOR REVENUE AND DEFAULT

Liability for land-revenue, etc.

63. Land-revenue payable in respect of any estate shall be due jointly and severally from all persons who had been in possession of the estate or any part of it during any portion of the agricultural year in respect of which that revenue is payable.

Liability for house tax of families of cultivators

64. When tax is imposed on a family or house in respect of the cultivation of any land, the amount due for any year of assessment from the family or house shall be jointly and severally from all males of the family or house who, at any time during the year, being then above the age of eighteen years, took any part in the cultivation of the land.

Procedure when coproprietor of permanently settled estate desires to pay separately

65. (1) When there are several recorded proprietors of a permanently-settled estate, any one of them whether he is entitled to a share of the estate or to particular lands comprised therein, may, if he desires to pay his share or portion, of the revenue separately, submit a written application to that effect to the Deputy Commissioner specifying his share of the estate or the particular lands therein to which he is entitled and when he claims particular lands the portion of the revenue for which, as between him and his coproprietors, he is liable.

(2) The Deputy Commissioner shall then publish a notice requiring all persons who object to the application to appear within six weeks from the date of the notice and give in a written statement of their objections.

(3) If within the period specified in the notice no objection is made by any recorded co-proprietor of the estate, the Deputy Commissioner shall open separate accounts for the applicant's share or lands and for the aggregate of the other proprietors, and shall credit separately in those accounts all payments made by him and them respectively.

(4) If any recorded co-proprietor of the estate objects that the applicant has, no right to the share or lands claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application is in respect of particular lands that the amount of revenue stated by the applicant to be payable on account of those lands is not the amount which is recognised among the co-proprietors as the revenue thereof, the Deputy Commissioner shall refer the parties to the Civil Court, and shall suspend proceedings until the objection is withdrawn or the question at issue is judicially determined.

(5) The opening of separate accounts under this section shall not affect the joint and several liability imposed by section 6 except in so far as is, by this Regulation, expressly provided.

Note – (1) If a person owns a particular lands in an estate, a person owning a share of the residue would not own a share of the estate but of particular lands, and he could therefore only open a separate account for the actual plots held by him and not for his share in the residue, the Regulation makes no provision for opening a separate account for share of particular lands.

Note – (2) In a case in which a halabadi and dassana estate, settled with the same owners were intermingled in such a way that while it was possible to define the boundaries of the aggregate of the two, it was impossible to determine which land within those boundaries belonged to each, it was ruled that no separate account could be opened for lands within those boundaries, inasmuch as it clear from section 65 that in order that a separate account may be opened in respect of particular lands they must be ascertained to be in some particular estates.

Note – (3) Separate account cases must not be postponed until arrears of revenue are paid.

Note – (4) If in any case in Karimganj Subdivision in which a person having opened separate accounts allows one portion of his estate to be brought to sale, the auction-purchaser complains that the opening of a separate account was secured by collusion and fraud, and that the apportionment of the jama is wrong, the Deputy Commissioner should call on the owners of the unsold portion of the estate to show cause against the order for a separate account being set aside and if they are unable to shown cause he should report the matter to the Commissioner for the order of Government.

Revenue when due, and where and to whom payable

66. Every sum payable under this Regulation on account of land-revenue, shall fall due on such date and shall be payable in such manner, in such instalments at such place and to such person, as may be prescribed.

Note – The instalment of land revenue and the dates on which they are due, in force in several districts will be found in Part II, Chapter V, Section I and V.

'Arrear' and 'defaulter' defined

67. Land-revenue not paid on the date when it falls due shall be deemed to be an arrear, and every person liable for it shall be deemed to be a defaulter.

NOTICE OF DEMAND

Penalty leviable on arrears and notice of demand

68. (1) When an arrear has accrued, an additional charge by way of penalty not exceeding one rupee may be levied.

(2) If the arrear is not in respect of a permanently settled estate, the prescribed officer may in his discretion, before employing any of the processes for enforcing payment prescribed by this Chapter, issue a notice of demand, calling on the defaulter to pay the amount within a time specified:

Provided that, in such classes of cases, not being cases in which an arrear has accrued in respect of a permanently-settled estate, as the [(Substituted for the word "Provincial" by the Adaptation of laws Order, 1950) State] Government may direct in this behalf, the prescribed officer shall not employ any such process for enforcing payment as aforesaid, until he has issued a notice of demand and the defaulter has failed to pay the arrear within the time specified in such notice.

Note – (1) For the "prescribed officer" referred to in this section, see rule 133 in Part II, Chapter V, Section I.

Note – (2) This section, it will be observed, empowers a Deputy Commissioner to issue in this discretion a notice of demand as an alternative to a warrant, and the issue of notice should precede the issue of warrant in the case of land holders of position who are ordinarily regular prayers.

Note – (3) In the case of temporarily-settled areas in Cachar the practice of issuing a notice of demand has been discontinued.

Notice – (4) In the case of temporarily-settled estates in Assam Valley, the notice of demand has been dispensed with, mauzadars are required to send warning notices by Post or messenger before proceeding to attach a raiyat's property.

SALE OF MOVEABLES

Attachment and sale of moveables

69. (1) The Deputy Commissioner may, for the recovery of an arrear, order the attachment and sale of so much of a defaulter's moveable property as will as nearly as may be defray the arrear.

(2) Every such attachment and sale shall be conducted according to the law for the time being in force for the attachment and sale of moveable property under a decree of a Civil Court, {(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) Subject to such modifications thereof as may be prescribed by rules framed by the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government for proceedings under the Assam Land Revenue Regulation}

(3) Nothing in this section shall authorise the attachment and sale of necessary wearing apparel, implement of husbandry, tools of artisans, materials of houses and other buildings belonging to and occupied by agriculturists, or of such cattle or seed-grain as may be necessary to enable the defaulter to earn his livelihood as an agriculturist.

Note – When the Deputy Commissioner intends to proceed against a defaulter's moveable property lying in a district, other than the district in which the arrear accrued, the provisions of section 3 of the Revenue Recovery Act (Act I of 1890) should be followed.

ATTACHMENT OF DEFAULTING ESTATE

Attachment of estate, application of profits and duration of attachment

69A. (New Section inserted by Regulation II, 1943) (1) When an arrear has accrued in respect of a temporarily-settled estate, the Deputy Commissioner, with the previous sanction of the Commissioner, may attach the estate, and may take it under his own management or let it in farm.

(2) During the continuance of such attachment, the settlement-holder shall be excluded from possession of the land attached, and the Deputy Commissioner or the person to whom it is let in farm by the Deputy Commissioner shall have all the rights of the settlement holder to manage the estate, and to realise the rents and profits arising therefrom.

(3) The surplus profits of the estate, after defraying the costs of attachment and of collection, shall be applied, first, to the payment of any revenue becoming due in respect of such estate during the attachment, and, next, to discharging the arrear for the recovery of which the attachment was made.

(4) The attachment shall continue until the arrear is paid or realised from the profits of the estate attached, or the Deputy Commissioner reinstates the settlement-holder in possession:

Provided that, without the sanction of the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government, no attachment shall continue for a longer period than five years.

S69B. (1) When an arrear has accrued in respect of any estate pertaining to a religious institution, the Deputy Commissioner after consultation with the Managing Committee of the religious institution, if there be any, may with the previous sanction of the Commissioner, attach such estate and may take it under his own management or may let it out in farm.

(2) Whenever the Deputy Commissioner attaches under sub-section (1) an estate pertaining to a religious institution to which another estate or other estates in the same district pertain, the Deputy Commissioner, may with the previous sanction of [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government, also attach such other estate or some or all or such other estates and take it or them under his own management or let it or them out in farm.

(3) During the continuance of an attachment under sub-section (1) or (2), the settlement-holder or when an estate is lakheraj or revenue-free, the lakherajdar or proprietor, as the case may be, shall, be,

excluded from possession of the land attached; and the Deputy Commissioner or the person to whom it is let in farm by the Deputy Commissioner shall have all the rights of the settlement holder, lakherajdar or proprietor, as the case may be, to manage the estate or estates and to realise the rents and profits arising therefrom.

(4) (i) The income of every estate attached under sub-section (1) or (2) shall be applied as follows:—

Firstly, to the defraying of the cost of attachment, management and collection in respect of all the states so attached;

Secondly, to the payment of all sums lawfully due to the Government on account of revenue of otherwise in respect of any of the estates under attachment; and

Thirdly, to the discharge of the arrear for the recovery of which the attachment was made.

(ii) Should any surplus remain after the appropriations as aforesaid, it shall be paid to the person conducting the daily worship or prayer at the institution concerned on his furnishing such security as the Deputy Commissioner may require.

(5) (i) Save as provided in clauses (ii) and (iii) of this sub-section, every attachment under sub-section (1) or (2) shall continue until the arrears in respect of all the estates so attached are fully realised or paid.

(ii) When an estate is released from attachment, the Deputy Commissioner shall forthwith-reinstate the settlement-holder, lakherajdar or proprietor, as the case may be, in possession:

Provided that if the Deputy Commissioner is not satisfied that the further management of any such estate or estates would be such as would adequately ensure the punctual payment of future dues to Government in respect of such estate or estates, he may, with the previous sanction of the [(Substituted for the word "Provincial" by the Adaptation of Laws order, 1950) State] Government maintain the attachment of such estate or estates in force until he is so satisfied.

(iii) No attachment shall continue for a period longer than two years without the previous sanction of the [(Substituted for the word "Provincial" by the Adaptation of Laws order, 1950) State] Government.

SALE OF DEFAULTING ESTATE

When estate may be sold

70. When an arrear has accrued in respect of a permanently-settled estate or of an estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the Deputy Commissioner may sell the estate by auction:

Provided that —

(1) {(Inserted by Regulation II of 1889) Except when the [(Substituted for the word "Provincial" by the Adaptation of Laws order, 1950) State] Government by general order applicable to any local area or any class of cases, or by special order, otherwise direct}, an estate which is not permanently-settled shall not be sold unless the Deputy Commissioner is of opinion that the process provided for in section 69 is not sufficient for the recovery of the arrear;

(2) If the arrear has accrued on a separate account opened under Section 65, only the shares or lands comprised in that account shall in the first place be put up to sale; and, if the highest bid does not cover the arrear, the Deputy Commissioner shall stop the sale, and direct that the entire estate shall be put up for sale at a future date, to be specified by him; and the entire estate shall be put up accordingly and sold;

(3) No property shall be sold under this section —

(a) For any arrear which may have become due in respect thereof while it was under the management of the Court of Wards, or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the law for the time being in force; or

(b) For any arrear, which may have become due while it was under attachment by order of a revenue authority.

Note – (1) In the temporarily-settled estates (the words “in the temporarily settled estates, in Note (1) to Section 70 were substituted for the words “Temporarily-settled estates in the Jaintia Parganas elsewhere,” vide memorandum No. L.R. 1167/403-R, dated the 3rd February, 19399), sale must not be resorted to as a general measure without the previous sanction of the [(Substituted the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government which can only be given when it is clearly shown that the realisation of the arrears by the ordinary process is likely to be more than usually difficult.

Note (Inserted by Government Letter No. R.S. 4/46, dated the 18th May, 1946) – (2) Officer, holding revenue sales of temporarily-settled Estates are required to ignore the bids of those who are not bonafide cultivators such as Marwaris and others.

Note – (3) Ministerial or menial officers are not allowed to have to have anything to do with the sale or purchase of defaulting estates otherwise than to the extent necessary for the performance of their duties as officers of Government.

Note – (4) No mauzadar shall, without the permission of the Deputy Commissioner or Subdivisional Officer bid for or purchase land sold at his instance for arrears of revenue in his mauza.

Rulings – (1) A person who had no interest in as estate was in adverse possession of lands really included in the estate which was sold under Section 70 of the Assam Land and Revenue Regulation; he claimed those lands as situated within a neighbouring estate owned by him; his adverse possession had not, at the time of sale, continued for the statutory period so as to ripen into ownership:

Held, that he was not a defaulting proprietor at the date of the sale and as he was a stranger to the proceedings for delivery of possession, the symbolical delivery could not avail against him [Jitendra Kumar Pal Choudhury versus Mohendra Chandra Sarma and others, - 24 C.L.J. 62 (July 1914)]

(2) On a sale held under Section 70 of the Assam Land and Revenue Regulation on account of an arrear, a person who has acquired a good title by adverse possession against the original proprietor at the time of sale, is a defaulter and cannot assert a good title as against the purchaser, an unrecorded proprietor of the estate.

What is sold is the estate and the purchaser is entitled to take that estate as against the defaulting proprietors. [After Ali and others versus Brojendra Kishore Roy Choudhury, - 24 C.L.J. 60 (February 1915)].

(3) Where persons had acquired, by adverse possession, the proprietary interest in a part of an estate and had allowed the revenue to fall into arrear for which it had to be sold under the Assam Land and Revenue Regulation they were defaulters by reason of section 67 read with section 63 and not mere incumbrances. The fact that they claimed to possess the land as part of a different estate was immaterial, [Muhim Chandra Choudhury versus Pyari Lal Das, - I.L.R. 44, Cal, 412 (May 1916)].

(Seem to dissent from, without mentioning, the ruling in I.L.R. 43, Cal. 779)

(4) A purchaser at a sale for arrears of revenue under section 70 of the Assam Land and Revenue Regulation is entitled to sue the defaulting proprietors for recovery of possession within twelve years from the date of delivery of symbolical possession to him.

Such a purchaser may be one of the defaulting proprietors and he will have the same rights; except, however, in a possible case when the default and the sale are found to have been fraudulently procured by him whereby his very right of suing to recover possession from his previous co-owners is affected.

The article of the Limitation Act applying to such suits is not Art. 121 but 142 or 144. [Baikuntha Nath Das versus Sheik Azidulla and others, = C.W.N. 778 (February 1928)].

Estate to be sold free of incumbrances

71. Property sold under Section 70 shall be sold free of all incumbrances previously created thereon by any other person than the purchaser:

Provided that —

First, nothing in section shall apply —

(a) In a permanently-settled estate,

(1) To tenures which have been held from the time of the Permanent Settlement; or

(2) To tenures held immediately of the proprietors which have been created since the Permanent Settlement and which have been registered under Chapter IV:

(b) In any estate, to tenures created banafide and at (1) a rent not less than the full amount of the revenue fairly payable in respect of the land;

Secondly, nothing in this section shall entitle a purchaser to reject any tenant having a right time being in force, or to enhance the rent of any such tenant otherwise than is the manner prescribed by that law;

Thirdly, nothing in this section shall apply when the purchaser is a recorded or unrecorded proprietor or settlement-holder of the estate.

Fourthly, nothing in this section shall apply to encumbrances created in favour of State Government in any estate.

Ruling – A purchaser of a part of a permanently-settled estate is entitled to the benefit of section 71 of the Assam Land and Revenue Regulation, inasmuch as in Section 71 the words used are “property sold under Section 70”, and the property to which reference is made in section 70 includes both an estate as well as a share in respect o [(Mahamed Nasim versus Kasi Nath Gho e and another – I.L.Rs 26, Cal 194 (August 1898,)]

(1) In paragraph (b) of the first proviso to section 71 the word “at” after the words “bonafide and” was inserted by Revenue Department memorandum No. L.R. 2812-3919 R., dated the 7th November 1938.

Notice of sale

72. (New section substituted by Regulation II of 1889) (1) If the Deputy Commissioner proceeds to sell any property under Section 70, he shall prepare a statement in manner prescribed, specifying the property which will be sold, the time and place of sale, the revenue assessed on the property and any other particulars which he may think necessary.

(2) A list of all estates for which a statement has been prepared under sub-section (1) shall be published in manner prescribed, and the copy of the statement relating to every such estate shall to open to inspection by the pubic free of charge in manner prescribed.

(3) If the revenue of any estate for which a statement has been prepared under sub-section (1) exceeds five hundred rupees, a copy of the statement shall be published in the official Gazette.

Note – Sales for arrears need not be published in the Gazette unless the revenue of the share to be sold for arrears exceeds Rs 500; the total revenue paid by the estate is humaterial.

When the arrear has accrued on an estate, not being a permanently-settled estate in the district of [(Substituted for the word “Syllhet” by the Adaptation of Laws (Third Amendment) Order, 1951) Cachar] a copy of the statement prepared under sub-section (1) shall be served on the defaulter, or, if he cannot be found, pasted on the estate in manner prescribed.

(5) When the arrear has accrued on a permanently-settled estate in the district of [(Substituted for the word “Sylhet” by the Adaptation of Laws (Third Amendment) Order, 1951) Cachar] a copy of the statement shall be pasted on, or in the vicinity of, the estate in manner prescribed and, if any proprietor of the estate has registered his name and address in the manner prescribed, a copy of the notice shall be despatched to him, by post in a registered cover to that address.

(6) In making rules prescribing the manner of registering names and addresses for the purpose of sub-section (5), the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government may impose a fee for such registration and may fix a period after which such registration will, unless renewed, become void.

Note – For details of procedure to be followed, the rules in Part – II, Chapter – V should be referred to.

Proclamation to tenants of defaulter

73. When any property is notified for sale under section 72, the Deputy Commissioner may publish a proclamation forbidding the tenants of the defaulter to pay the delaulter any rent which has fallen due since the arrear accrued, on pan of not being entitled to credit in their accounts with the purchaser for any sum so paid.

Sale by whom and when to be made

74. (1) Every sale under this Chapter shall be made either by the Deputy Commissioner in person or by an officer specially empowered by the [(Substituted for the word “Provincial” by the Adaptation of Laws, 1950) State] Government in this behalf.

(2) No such sale shall take place on a Sunday or other authorised holiday, or until after the expiration of at least thirty days from the date on which the list of estates (The words “list of estates” were substituted for the words “Proclamation of sale” by section 5 of Regulation II of 1889) has been published under section 72.

Note – The date of sale should be so fixed that the day preceding the sale is an open day and not a gazetted holiday.

(3) The Deputy Commissioner may, from time to time, postpone the sale, and every postponement of sale of a permanently-settled estate shall be reported to the Commissioner or (where there is no Commissioner) to the [(Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950) State] Government.

When sale may be stayed

75. If the defaulter pays the arrear of revenue in respect of which the property is to be sold, and the fee (if any) prescribed in this behalf, at any time before the day fixed for the sale, the sale shall be stayed.

Note – (1) For the fee prescribed under this section (1) see rules 165 and 169 in Part II, Chapter V, Sections III, and IV.

(2) The Deputy Commissioner of Cachar should have a notice stuck up outside his own and Karimganj subdivisional at cutcheries warning the public that tender of payment of arrears in respect of Karimganj Subdivision on the day of sale will not be accepted except for very special reasons.

Right of coproprietors to purchase share or land sold on separate account

76. Where the arrear has accrued on a separate account opened under Section 65, and a sale of the entire estate has been directed under Section 70, proviso (2), any proprietor of the estate who is not comprised in the separate account may, within ten days from the time at which the direction is given, purchase the share or lands comprised in the separate account by paying the amount of the arrear, and the provision of Section 71 shall, notwithstanding the third proviso thereto, apply to such a purchase.

Note – In a case when a separate account has been opened for a portion of an estate and the estate was sold for arrears accruing on the remaining portion, it was held by the State Government that under section 95(3) there must necessarily be a separate account for the remaining portion, and therefore a proprietor having any share in that portion is not entitled to purchase the estate under the section.

Deposit by purchaser

77. The person declared to be the purchaser at an auction-sale under the foregoing sections shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Payment of balance of purchase-money and consequences of default

78. (1) The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from date on which the auction-sale took place or, if that day is a Sunday or other authorised holiday then on the next following office day.

(2) In default of payment within that period the deposit, after defraying thereout the expenses of the sale, shall be forfeited to the Government, the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold:

Provided that no re-sale under this section shall be made unless and until a fresh notice has been issued in the manner prescribed for the original sale.

(3) If the proceeds of the sale which is eventually made are less than the price bid by the defaulting purchaser, the deference shall be leviable from him under the provisions of this Chapter as if it were an arrear.

[Introduced by the Assam Land and Revenue (Amendment) Act, 1936 (III of 1936)] [Provided that the provisions of this section shall not apply to any case in which the sale has been set aside under Section 78A before the full amount of purchase-money falls due under sub-section(1) of this section.]

Application to set aside sale on depositing percentage of purchase money

- 78A. (Introduced by the Assam Land and Revenue (Amendment) Act, 1936 (III of 1936) (1) Where an estate has been sold under Section 70 or 76 any person may apply [(Substituted by the Assam Land and Revenue (Amendment) Act, 1946 (Assam Act XI of 1946) at or before noon on the sixtieth day from the date of sale, reckoning the said day of sale as the first of the said sixty] to have the sale set aside on depositing in the Deputy Commissioner's Court —

(a) For disposal as directed in sub-section (2) a sum equal to five per cent of the purchase-money up to Rs 1,000 and to three per cent on the excess over Rs 1,000 provided that such sum shall not be less than one rupee; and

(b) For payment of [Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) State] Government, the amount specified in the proclamation of sale as that for recovery of which the sale was ordered together with the expenses of the sale.

(2) If deposit and application be made as afore said, the Deputy Commissioner shall set aside the sale and shall cause to be repaid to the purchaser the purchase-money so far as it has been deposited

together with the deposit made under sub-section (1) (a), unless the former has been forfeited to the Government under sub-section (2) of Section 78, in which case the latter sum shall also be forfeited to the Government.

(Added by Assam Land and Revenue (Amendment) Act, 1946, Assam Act XI of 1946) (3) Nothing in this sanction shall be deemed to create in favour of the person making such deposit any title or right to such estate or part of estate merely by virtue of the fact that he has made such deposit or that the sale has been set aside at his instance.

Explanation – The word ‘estate’ in this section includes a separate account opened under section 65.

Application to set aside sale on ground of mistake or irregularity

79. At anytime within sixty days from the date of the sale, application in writing may be made to the Deputy Commissioner, to set aside the sale on the ground of some material irregularity of mistake in publishing or conducting it:

Provided that no sale shall be set aside on this ground unless the applicant proves to the satisfaction of the (Substituted by Assam Act XI of 1946) Deputy Commissioner, that he has sustained substantial injury by reason of the irregularity or mistake complained of:

(The Second proviso was added by section 7 of Regulation II of 1889) Provided also that the non-delivery or misdelivery of a registered cover despatched under section 72, sub-section (5), shall not, for the purposes of this section, be deemed an irregularity or mistake in publishing or conducting the sale.

Note (1) – Before any application is entertained under Section 79 or any recommendation is made under Section 81 of the Regulation for annulment of the sale or an estate for arrears of revenue, a deposit should be required of a sum of money sufficient to cover the arrears of revenue for which the estate is sold, the cost of sale, the claim for interest at the rate of 6 per cent per annum on the purchase-money, as also all intermediate payments of Government dues which may have been made by the auction purchaser. In case in which no recommendation for annulment of sale is made but the sale is set aside by the Board on appeal, the payment of interest on purchase-money at 6 per cent, per annum is always made one of the conditions of the order passed, and if that condition is not complied with, the order becomes null and void or, in other words, the sale become final. It is for the Deputy Commissioner concerned to insist upon compliance within a reasonable time, with the conditions which may be imposed by the orders passed by the Board and for this purpose a period of 15 days from the date on which the orders are communicated to the appellant may be considered a reasonable interval to allow.

(Inserted by C.S. No. 48 to the fifth edition of this Manuals) (3) The following procedure is recommended for the recovery of interest charges when the mauzadar or revenue office is at fault in sale cases —

(i) Where the mauzadar after accepting payment of revenue does not takes proper steps to stop the sale, he shall bear the interest on the purchase-money;

(ii) Where the mauzadar proves that a report for stay of the sale was duly submitted, the fault should be presumed to be with the dealing clerk in the office who should therefore bear the interest charges;

(iii) And finally where the mauzadar alleges but cannot prove that a report for stay of the sale was duly submitted, the interest charges should be distributed by the Deputy Commissioner between the mouzadar and the dealing clerk on the basis of the evidence available.

(4) Deputy Commissioner should insist on the grounds of appeal being clearly and unequivocally stated before they receive or forward to higher authority a petition of appeal.

(5) A Deputy Commissioner is not bound to hear a pleader when a report on a petition for setting aside a sale comes before him.

Sale when final

80. (1) A sale on which the purchase-money has been paid as directed in section 78, and against which no application under section [(Inserted by C.S. No. 62 to the fifth edition of this Manual. 78A or] 79 has been preferred, shall subject to the provision of sections 81 and 82, be final at non or the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixth days.

(2) A sale against which such an application has been preferred and has been dismissed by the [(Substituted by Assam Act XXII of 1962) Deputy Commissioner] shall, subject as aforesaid, be final from the date of the dismissal, if more than sixth days from day of sale, or if less, then at noon of the sixtieth day as above provided.

Ruling – What is stated in the sale certificate as the date of confirmation of sale cannot operate in law as the date when the sale become final under section 80 of the Assam Land and Revenue Regulation. (Jitendra Kumar Pal Choudhury versus Mohendra Chandra Sarma and other, C.L. & 62 (July, 1914).

Obiter – A sale certificate is not conclusive as to the date on which a sale under section 70 of the Assam Land and Revenue Regulation becomes final (Baikuntha Nath Das versus Sheik Azdulla and other, - C.W.N, 778 (February 1928).

See Notes under Section 79.

Annulment of sale by Civil Court

82. (1) A sale for arrears of revenue shall not be annulled by a Civil Court, except on the ground of its having been made contrary to the provisions of this Regulation, and on proof that the plaintiff has sustained substantial injury by reason of the neglect of those provisions.

(2) A suit to annul such a sale shall not be entertained upon any ground, unless that ground has been specified in an application made to the 1 Deputy Commissioner under section 70, or unless it is instituted within one year from the date of sale becoming final under section 80.

(3) No person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money.

Saving of right to sue for damages

83. Nothing in the foregoing sections shall be construed to debar any person, considering himself wronged by any act or omission connected within a sale under this Regulation from his remedy in a suit for damages against the person by whose act or omission he considers himself to have been wronged.

Re-payment of purchase money when sale is set aside

84. Whenever the sale of any estate is set aside [Inserted by C.S. No. 63 to the fifth edition of this Manual ½ substituted by Assam Act XXI of 1962) except under Section 78A] the purchaser shall be entitled to receive back from the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government his purchase-money, except the surplus thereof (if any) paid away under the last clause of section 87, with or without interest, at such rate not exceeding six per centum per annum, as the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government think fit.

On sale becoming final purchaser to be put in possession

85. (1) After a sale has become final, the Deputy Commissioner shall put the purchaser into possession of the property sold, and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers.

(2) The certificate shall bear the date on which the sale became final under Section 80, and the title to the property sold shall vest in the purchaser from the date of the certificate and not before.

(3) A certificate granted to a purchaser under this section shall be conclusive evidence in his favour, and in favour of any person claiming under him that every publication serving, posting or despatch of any statement, list, notice or letter required by this Regulation, or the rules made under it, to be published, served, posted or despatched has been duly effected; and the title of any person who has obtained any such certificate or of any person claiming under him, shall not be impeached or affected under Section 82 or otherwise by reason of any omission, informality or irregularity as regards the publication, serving, posting or despatching of any statement, list, notice or letter in the proceedings under which the sale was held at which the property was purchased:

Provided that nothing in this sub-section shall effect the power conferred on the Board by section 81.

Ruling – A suit for recovery of possession brought within 12 years from the date on which the Collector gave symbolical possession to the purchasers, is within time. [Mohim Chandra Chudhury Versus Pyari Lal ILR. 44, Cal, 412, May 1916]

Application of proceeds of sale

86. The name of the purchaser to be entered in the certificate shall be that of the person declared at the time of sale to be the actual purchaser, and any suit brought in a Civil Court against the certified purchaser on the ground that purchase was made on behalf of another person not the certified purchaser, though by agreement the name of certified purchaser was used, shall be dismissed with costs.

Bar of unit against certified purchaser

87. When a sale has become final under Section 80, the proceeds, of the sale shall be applied—

First, to defraying the expenses of the sale;

Secondly, to the payment of the arrear due;

Thirdly, to the payment of any other arrear due by the same defaulter;

And the surplus, if any, shall be paid to the person whose property has been sold, and shall not, except under an order of a Civil Court, be payable to any creditor of that person.

Note – (1) Payment before suit, if made to a wrong person, may subject Government to a second claim from the rightful owner, but after a Civil Court has given a decree in favour of any person and Government has in compliance therewith paid him, it does not seem probable that any second claim against Government could stand good. Nonetheless, as Government has a residuary right to all unclaimed deposits, this interest alone will justify Government in meeting all such suits with resistance until a good title as proprietor has been made out by the claimant. When therefore a suit is brought, so far should Government contest it as shall secure that a bonafide good title is shown before a decree is passed.

(2) The claims of proprietors on account of the surplus sale proceeds or their estate should never be rejected on the ground of limitation.

Liability of purchaser for revenue

88. The person named in the certificate of title as purchaser shall be liable for all instalments of land revenue becoming due in respect of the property purchased subsequently to the accrual of the arrear for the recovery of which the property was sold.

Right of pre-emption

89. When an estate held by settlement-holders situate in any local area to which the [(Substituted for the word "Provincial" by the adaptation of Laws Order, 1950) State] Government may, by notification, apply this section, is sold under section 70, any recorded settlement-holders of the estate, not being himself in arrear with regard to the revenue which, as between him and the other settlement-holders, is payable by him, may, if the lot has been knocked down to a stranger, claim to take the property at the sum last bid;

Provided that the claim is made on the day of sale, and before the officer conducting the sale has left the office for the day, and that the claimant fulfils all the other conditions of the sale.

Note – The provisions of this section have been extended to all the plains districts.

ANNULMENT OF SETTLEMENT

Annulment of settlement

90. (1) Where the estate in respect of which the arrear has accrued is not a permanently-settled estate, and is situate in any local area to which the [(Substituted for the word "Provincial" by the adaptation of Laws Order, 1959) State] Government may, by notification, apply this Section, if the process provided for in section 69 is not sufficient for the recovery of the arrear the Deputy Commissioner may, by proclamation publish in the prescribed manner, annul, the existing settlement of the estate and relinquish the claim of the Government to the arrear:

Provided that —

(a) If the arrear is in respect of an estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the Deputy Commissioner shall not unless the [(Substituted for the word "Provincial" by the adaptation of Laws Order, 1950) State] Government otherwise, by rule direct, annul the settlement without the sanction of the [(Substituted for the word "Provincial" by the adaptation of Laws Order, 1950) State] Government,

(b) This sanction shall not apply to the recovery of any arrear which may have accrued on an estate —

(1) While it was under the management of the Court of Wards or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the law for the time being in force, or

(2) While it was under attachment by order of a revenue authority.

(2) Upon the publication of a proclamation under this section, all encumbrances, other than the tenures mentioned in section 71, proviso first clause (b) affecting the estate, or any portion thereof shall become void, and the Deputy Commissioner (may eject the settlement-holder from possession and) may enter upon and manage the estate and receive all rents and profits accruing therefrom, or may dispose of the estate, in accordance with rules issued by the [(Substituted for the word "Provincial" by the adaptation of Laws Order, 1950) State] Government under section 12.

Note – (1) The provisions of section 90 have been extended to all the districts in which the Regulation generally is in force.

(2) Deputy Commissioners have power to annul for arrears the settlement of estates in which the settlement-holder have not a permanent, heritable and transferable right of use and occupancy. The annulment of settlement of an estate carries with it the remission of the arrear due thereon, and it is not necessary to apply for separate sanction to the remission

(3) Deputy Commissioner are empowered to remit process fees in all cases in which the original demand is remitted or the process has been issued by mistake.

(4) An order formally annulling settlement should invariably be recorded when arrears due on annual pattas other than in fault ferar cases are remitted by Deputy Commissioners. Deputy Commissioners should submit to the Commissioner a quarterly return in Form No. 10, showing the number of annual estates in each subdivision the settlement of which has been annulled during the quarter under section 90 of the Regulation and the amount of revenue remitted thereon.

(5) When under this section possession of an estate has been taken on behalf of Government, the Deputy Commissioner may, if immediate eviction would cause undue hardship, allow the former tenants or members of his family to continue to reside in the homestead free of rent, or subject to such rent as he may think fit, for the period of one year and may, for special reasons extent the terms for such residence from year to year. Details of all cases, of this nature shall be entered in a register to be kept in the Deputy Commissioners office.

(6) See also rule 150 in Part II Chapter V. To provide for the treatment of contumacious defaulters the following executive instructions were issued —

(i) No land, the settlement of which has been annulled on account of arrears will be resettled with the defaulter or with any member of a joint family to which the defaulter belongs, without the special sanction of the Deputy Commissioner or Subdivisional Officer. Such sanction will not be given unless and until the arrears on account of which the settlement has been annulled have been first paid with all costs of proceedings taken for their realisation.

(ii) Every mandal will visit at least once a year every field in his circle the settlement of which has been annulled under section 90 and will submit a special report to the mauzadar in every case in which he finds that a defaulter has reoccupied land from which he has been ejected without paying the arrears and obtaining settlement. It will also be the duty of the goonburas to report to the mauzadar any such cases which may come to their notice, and the mouzadar will report them to the Deputy Commissioner or Subdivisional Officer for order.

(iii) In resettling lands, the settlement of which has been annulled on account of arrears, preference will be given to an applicant who tenders payment of the arrears and costs. Such land will not, during the agricultural year in which settlement is annulled, be settled with any person without payment of the arrears cost otherwise than on annual lease.

SALE OF IMMOVEABLE PROPERTY OTHER THAN THE DLFAULTING ESTATE

Power to proceed against defaulter's other immoveable property

[91. (1) If an arrear of an estate in which the settlement-holder has not a permanent, heritable and transferable right of use and occupancy, cannot be recovered by the process mentioned in Section 69, and an arrear in respect of any other estate, cannot be recovered by any of the processes mentioned in this chapter;

And the defaulter is in possession of any immoveable property, other than the estate in respect of which the arrear has accrued, the Deputy Commissioner may proceed against any of that other property situated within his district according to the law for the time being in force for the attachment and sale of immoveable property under the decree of a civil court".] (Substituted vide Assam Act XXVIII of 1971)

(2) If there is no such other property in his district the Deputy Commissioner may make under his hand a certificate in the prescribed form, of the amount of the arrear remaining unpaid, and may forward the same to the Deputy Commissioner of any other district in which this Regulation is in force, and within the limits of which defaulter is possessed of any such property, and that Deputy Commissioner shall there upon proceed to realise the arrear as if it were an arrear accruing in his own district.

(1) Note 1 – This section must be carefully distinguished from section 70. When an estate is sold for own arrears, section 70 applies; when an estate is sold for arrears not, its own section 91 applies. The sale procedure and the legal effects of the sale are different in the two cases.

When a mauzadar defaults and the estate pledged by his surety is sold in consequence under the Regulation, the sale, being of an estate for arrears other than its own, is governed by the provisions of the section 91. Accordingly the safe rules in Order 21 of the Civil Procedure Code must be observed. In particular, as laid down in rule 73 of the aforesaid Order, no officer or other person having any duty to perform in connection with the sale should, either directly or indirectly, bid for the property. The officer conducting the sale should not therefore, attempt to buy in the property for Government even in the absence of bids from others. Some persons not coming within the prohibition contained in the rule cited may however, with the permission of the officer conducting the sale, bid for and purchase the property on behalf of Government in any case where such a course is considered necessary or desirable.

(2) Note 2 – The expression in sub-clause (1) ‘the law for the time being in force for the attachment and sale of immoveable property under the decree of a Civil Court’, includes the procedure laid down in the Civil Procedure Code not only for the determination of claims and objections arising out of such sales and for setting them aside. In other words this section confers jurisdiction on the Deputy Commissioner to hear and determine claims and objection arising out of sale of immoveable property held under this section and applications to set aside such sale, in accordance with Order XXI of the Code of Civil Procedure.

SUPPLEMENTAL

Recovery cost

92. The costs of serving any notice, proclamation or other process under this Chapter shall be recoverable as part of the arrear in respect of which such process was issued.

Recovery of existing arrears

93. Arrears of land-revenue due at the commencement of this Regulation shall be recoverable as nearly as may be according to the provisions of this Chapter.

Recovery of other money

94. The provision of this chapter shall, so far as may be, apply to the recovery of any sum of money realisable under any enactment for the time being in force as if it were an arrear of land-revenue.

Power of [(Substituted for the word “Provincial” by the adaptation of Laws Order, 1950) State] Government to make rules

95. The [(Substituted for the word “Provincial” by the adaptation of Laws Order, 1950) State] Government may, from time to time make rules, not inconsistent with this regulation, to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Chapter.

Note – For the rules framed under this Chapter, see Part II, Chapter V.

CHAPTER VI

PARTITION AND UNION OF REVENUE PAYING ESTATES

“Perfect partition” and “imperfect partition” defined

96. Partition is either perfect or imperfect, “Perfect partition” means the division of a revenue paying estate into two or more such estates, each separately liable for the revenue assessed thereon. “Imperfect partition” means the division of a revenue paying estate into two or more portions jointly liable for the revenue assessed on the entire estate.

Persons entitled to partition

97. (1) Every recorded proprietor of a permanently-settled estate and every recorded land holder of a temporarily-settled estate may, if he is in actual possession of the interest, in respect of which he desires partition, claim perfect or imperfect partition of the estate:

Provided that —

(a) No person shall be entitled to apply for perfect partition if the result of such partition would be to form a separate estate, liable for an annual amount of revenue less than five rupees;

(b) No person shall be entitled to apply for imperfect partition of an estate unless with the consent of recorded co-sharers holding in the aggregate more than one half of the estate;

(c) A person may claim partition only in so far as the partition can be effected in accordance with the provisions of this Chapter.

(2) When two or more proprietors or landholders would be entitled under sub-section (1) to partition in respect of their respective interests in the estate, they may jointly claim partition in respect of the aggregate of their interests.

Note – Applications for partitions must not be granted if included in an application for mutation of names.

Ruling – (1) An estate does not cease to be an entire estate within the meaning of the Assam Land and Revenue Regulation (1 of 1886) because a few plots of land are common to it and some other estate, or because they are brahmotter or debutter, or because they are held in some undefined way jointly with other persons, *Sarat Chandra Purkayastha versus Prakash Chandra Das Chowdhury and others* I.L.R. 24. Cal. 751 (May 1897.)

(2) The revenue authorities have jurisdiction to partition a mauza appertaining to several estates as a step towards partitioning one of the estates (*Brojendra Kishore Ray Charudhury versus Kali Kumar Chaudhury* – I L R 46, Cal 236 (May 1918).

(3) The revenue authorities have jurisdiction to partition an estate even when the lands of that estate in whole or in part, are joint with the land, of other estates. (*Yasin Ali* I.L.R. 47, Cal: 354, 26 C.W.N. 381 (August 1919).

Application for perfect partition

98. Every application for perfect partition shall be in writing, shall be presented to the Deputy Commissioner, and shall specify the area of the estate, the applicant's interest therein, and the names of the other proprietors or land-holders.

Notification of application

99. (1) The Deputy Commissioner, shall, if the application is in order and not open to objection on the face of it, publish a proclamation at his office, and at some conspicuous place on the estate to which the application relates; and shall serve a notice on all such of the recorded proprietors or land holders of the estate as have not joined in the application, requiring any of them in possession who may object to the partition to appear before him and state their objections, on a day to be specified in the proclamation and notice, not being less than thirty or more than sixty days from the date on which the proclamation is issued.

(2) Where from any cause, notice cannot be personally served on any proprietor or land-holder, the proclamation shall be deemed sufficient notice under this section.

Objection on question of title

100.(1) If an objection preferred as required under section 99 raises any question of title which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner shall stay his proceedings for such time as, in his opinion, is sufficient to admit of a suit being instituted in the Civil Court to try the objection.

(2) A Deputy Commissioner staying his proceedings under this section shall make an order requiring the objector, or, if for any reason he deems it more equitable, the applicant, to institute such a suit within the time fixed, and, in the event of such a suit not being instituted within that time, may in his discretion, disallow the objection, or dismiss the application, as the case may be.

(3) On a suit being instituted to try any objection under this section, the Deputy Commissioner shall with reference to the objection, be guided by the orders passed by the Civil Court in the suit.

Other objections how dealt with

101. If any objection, other than an objection of the nature referred to in section 100, is preferred as aforesaid to the partition, the Deputy Commissioner shall dispose of it himself; unless for any reason he thinks fit to require that it be submitted to a Civil Court for adjudication, in which event the provisions of section 100 shall apply to the objection.

Proceedings of Deputy Commissioner after objections have been disposed of

102. When the period specified under section 99 has expired, and the objections (if any made have been disposed of by the Deputy Commissioner or by the Civil Court as the case may be, the Deputy Commissioner shall, if no such objection has been allowed, proceed to make the partition:

Provided that the Deputy Commissioner may, in his discretion, in order to admit of the institution of an appeal from any decision regarding an objection, or for any other reason he deems sufficient, further postpone his proceedings.

Mode of partition

103. The Deputy Commissioner may give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he may make, the partition himself.

Power to enter on land for purpose of partition

104. In making partitions the Deputy Commissioner and any person appointed by him, shall have the same powers for entry on the land under partition, for making out the boundaries surveying and other purposes, as have been conferred on Survey-officers by or under this Regulation.

Partition of lands hold only in severalty

105. Where there are no lands held in common, the lands held in severalty by the applicant for partition shall be declared a separate estate, and shall be separately assessed to the Government revenue.

Partition of lands some of which are held in common

106.(1) Where some of the lands are held in common, the Deputy Commissioner shall allot to the applicant for partition his share of those lands in accordance with village-custom if any such exists. If no such custom exists, Deputy Commissioner shall make such division as may secure to the applicant his fair portion of the common lands.

(2) The portion of the common lands falling by the partition to the share of the applicant shall be added to the land held by him in severalty, and the aggregate thus formed shall be declared a separate estate, and shall be separately assessed to the Government revenue.

Portion where all lands are held in common

107.(1) Where some of the lands are held in common, the Deputy Commissioner shall allot to the applicant for partition his share of those lands in accordance with village-custom if any such exists. If no such custom exists, Deputy Commissioner shall make such division as may secure to the applicant his fair portion of the common lands.

(2) The portion of the common lands falling by the partition to the share of the applicant shall be added to the land held by him in severalty, and the aggregate thus formed shall be declared a separate estate, and shall be separately assessed to the Government revenue.

Portion where all lands are held in common

107. Where all the lands are held in common, the Deputy Commissioner shall make such a partition as may secure to the applicant his fair share of the estate, and the land allotted to him shall be declared a separate estates, and shall be separately assessed to the Government revenue.

Transfers to be effected in making partition

108. In making the partition under section 105 or section 106, the Deputy Commissioner shall give effect of any transfer of lands held in severalty, forming part of the estate, agreed to by the parties and made before the declaration of the partition.

Estates to be compact

109. In all cases, each estate shall be made as compact as possible:

Provided that, except with the sanction of the Commissioner or, where there is no Commissioner, with the sanction of the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government, no partition shall be disallowed solely on the ground of incompactness.

Rule when building of one sharer is included in estate assigned to another

110.(1) If, in making a partition, it is necessary to include in the estate assigned to one sharer the land occupied by a dwelling house or other building in the possession of another co-sharer, that other co-sharer shall be allowed to retain it with any buildings thereon, on condition of his raying a reasonable ground-rent for it to the sharer into whose portion it may fall.

(2) The limits of the land, and the rent to be paid for it, shall be fixed by the Deputy Commissioner.

Rule as to tanks, wells after-courses and enbandments

111.(1) Tanks wells, water-courses and embankments shall be considered as attached to the land for the benefit of which they were originally made.

(2) Where from the extent situation or construction of any such work, it is found necessary that it should continue as the joint property of the proprietors or land-holders of two or more of the estates into which the estates is divided' the Deputy Commissioner shall determine the extent to which the proprietors or land-holder of each estate may make use of the work, and the proportion of the charges for repairs to be borne by them respectively, and the manner in which the profits, if any, derived from the works, are to be divided.

Rule as to places of worship and burial grounds

112.(1) Places of worship and burial grounds held in common previous to the partition of an estates, shall continue to be so held, unless the parties otherwise agree among themselves.

(2) In such cases they shall state in writing the agreement into which they have entered, and their statement shall be filed with the record.

Determination of revenue payable by each portion of divided estate

113.(1) The amount of revenue to be paid by each portion of the divided estate shall be determined by the Deputy Commissioner:

Provided that the aggregate revenue of the new estates shall not exceed the revenue assessed on the estate immediately before partition.

(2) The proprietors or land-holders of each of the new estates shall be jointly and severally liable for the portion of the revenue assessed on their estate, whether new acceptances are taken from them or not.

Costs

114.(1) The [(Substituted for the word "Provincial" by the Adaptation of Law Order, 1950) State] Government shall make rules for determining the costs of partition under this Act, the mode in which those cost are to be apportioned, and the parties by whom, and the stage of the proceedings at which, they are to be paid:

Provided that the cost of surveying an estate, when a survey is necessary for the purpose of partition, shall be paid rateably, by all the proprietors or land holders of the estate, according to their interests therein.

Note – For the rules framed under this section, see Part II, Chapter VI.

(2) If the costs to be paid by the applicant for partition are not paid within a time to by fixed by the Deputy Commissioner subject to the rules made under this section, the case may by struck off the file.

Power to stay partition

115.If at any stage of the proceedings there appears to be any reason for stopping the partition, the Deputy Commissioner may, of his own motion, stay the partition and order the proceedings to be quashed.

Proclamation of partition

116.On completion of a partition the Deputy Commissioner shall publish a proclamation of the fact at his office and at some conspicuous place on each of the new estates or in the estate of which they originally formed part, and the partition shall take effect from the beginning of the agricultural year next after the date of the proclamation.

Procedure to be followed by Deputy Commissioners in giving effect to the protition

116A. (New section inserted by Regulation II of 1960) As soon as may be after the date on which the partition takes effect under the last proceeding section, the Deputy Commissioner shall deliver to the several sharers possession of the separate lands allotted to them, and for this purpose may, if necessary, summarily eject any proprietor or land-holder who may refuse to vacate the same.

Appeal from decision of Deputy Commissioner

117.An appeal against the decision of the Deputy Commissioner making a partition shall lie to the 2 (Board) within one year from the date on which the partition takes effect.

Power to order new allotment of revenue on proof of fraud or error in the first distribution

118. Where the revenue is fraudulently or erroneously distributed at the time of partition, the [(Substituted for the word "Provincial" by the Adaptation of Law Order, 1950) State] Government may, within twelve years from the time of discovery of the fraud or error, order a new allotment of the revenue upon the several estates into which the estate has been divided, on an estimate of the assets of each estate at the time of the partition to be made conformably to the best evidence and information procurable respecting the same.

Making of imperfect partition

119. Imperfect partition shall be carried on according to the provisions of the preceding section so far as they are applicable.

Persons entitled to union

120. If a recorded proprietor or land-holder is in possession of two or more revenue-paying estates, he may, subject to the rules framed under section (2), claim to have those estates united, and to hold them as a single estate.

Power to make rule

121. The [(Substituted for the word "Provincial" by the Adaptation of Law Order, 1950) State] Government may make rules, not being inconsistent with this Regulation, as to the procedure and principles to be observed in dealing with applications for, and in carrying out, the partition and union of estates, and in assessing the land revenue on estates divided.

CHAPTER VII

POWERS OF OFFICERS

State Government

122. The [(Substituted for the word "Provincial" by the Adaptation of Law Order, 1950) State] government shall (The words "subject to the control of the Governor General in Council" committed by section 2 of the Devolution Act, XXX of 1920)

Ex-officio Revenue officer

123. Every Commissioner of a Division, Deputy Commissioner, Assistant Commissioner and Extra Assistant Commissioner shall be a Revenue-officer for the purposes of this Regulation.

Appointed of other Revenue Officer

124. (1) The words "subject to the control of the Governor General in Council" committed by Section 2 of the Devolution Act, XXX of 1920) *** The [State Government may for the purposes of this Regulation —

(a) Appoint to each district, in addition to the officers mentioned in section 123, as many other Revenue-officers as they think fit, and

(b) Suspend or remove any officer appointed under this section.

Note – The following officers have been appointed to be Revenue-officers in addition to the officers mentioned in section 123:—

(1) Tahsildar including Naib Tahsildars

(2) Sub-Deputy Collectors;

(3) Mouzadar in the Assam Valley

(4) Revenue Nazirs including Naib Nazirs,

(5) All officers who are authorised to receive payment of land revenue or other money realisable under the Regulation or rules issued thereunder, and who have given, or are required to give, security for the due performance of their duties.

Subdivision Officer

125.(1) The [(Substituted for the word "Provincial" by the Adaptation of Law Order, 1950) State] Government may, for the purposes of this Regulation —

(a) Divide any district into subdivisions, or make any portion of a district a sub-division, and may alter the limits of a sub-division, and

(b) Place any Assistant Commissioner or Extra Assistant Commissioner in charge of one or more subdivisions of a district, and at any time remove him therefrom.

(2) An Assistant Commissioner or Extra Assistant Commissioner in charge of a subdivision shall be called the Subdivisional Officer.

Powers of Subdivisional Officers

126.(1) Subdivisional Officer shall, in addition to any other powers conferred on him by or under this Regulation, have the following powers of a Deputy Commissioner, namely:—

(a) Power to dispose of cases of gain by alluvion or by dereliction of a river, and loss by diluvion under section 34.

(b) Power to inquire into and report on revenue-free holdings and to assess revenue on resumed lands under Chapter III, Part E,

(c) The powers conferred by sections 50 to 58 (both inclusive) in respect of registration,

(d) Power to attach and sell moveable property belonging to defaulters under Chapter V, and

(e) Subject to the confirmation of the Deputy Commissioner, power to receive applications and to do all that is necessary for effecting partition and union of estates under Chapter VI.

(2) The [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may confer on any Subdivisional Officer all or any of other powers of a Deputy Commissioner under the Regulation.

Note – All Subdivisional Officers in the plains districts of Assam have been vested ex-officio with the following powers in addition to those conferred on them by the Regulation :—

(i) Power to find for omission to give notice of injury to boundary marks (section 26)

(ii) Power conferred by section 65 in respect of the opening of separate accounts.

(iii) Powers conferred by Section 70, 72, 73, 74, 75 and 85 in respect of the sale of defaulting estates.

(iv) Power to proceed against immoveable property for arrears of revenue [Section 91(1)]

(v) Power to proceed against defaulting Revenue-Officers and their sureties (Section 145 and 146).

(vi) All sub-divisional Officers in the plains districts of Assam have been voted with powers to received and dispose of applications under Section 78A.

Power to invest Assistant Commissioner, etc, not in charge of subdivision with special powers

127. The [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may confer upon Assistant Commissioners and Extra Assistant Commissioners not in-charge of subdivisions of districts all or any of the powers conferred by or under this regulation on Subdivisional Offices in such cases or classes of cases as the Deputy Commissioner of the district may, from time to time, refer to them for disposal.

Subordination of Revenue-Officers

128. (1) All Revenue-Officers in a district shall be subordinate to the Deputy Commissioner, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(2) Subject to the general control of the Deputy Commissioner, all Revenue-Officers, other than the Subdivisional Officer, in a Subdivision of a district shall, unless [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government otherwise direct, be subordinate to the Subdivisional Officer, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(3) Subject to the general control of the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government, all Revenue-Officers in a district which is included in a Commissioner's division shall be subordinate to the Commissioner, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(4) Subject to the general control of the State Government, all Revenue-Officers shall be subordinate to the Board and shall exercise all the powers conferred on them by or under this Regulation subject to its control.

Power to distribute work

129. (1) Subject to any rules which the [(Substituted for the word "Provincials" by the Adaptation of Laws Order, 1950) State] Government may make in this behalf, Deputy Commissioner or Subdivisional Officer may refer any case to any Revenue-Officer subordinate to him for investigation and report, or, if that officer has power to dispose of the case, for disposal.

(2) Subject as aforesaid, a Deputy Commissioner may direct that any Revenue-Officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on the case or class of cases or if he has power, dispose of it himself.

(3) A subordinate Revenue-Officer shall submit his report on any case referred to him under this section for report to the officer referring it, or otherwise as may be directed in the order of reference; and the officer receiving the report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer subordinating the report, or may hold the investigation himself.

Note – Rule 184 of the rules in Part – II, Chapter – VII framed under Section 129, 152 and 155(b) and (c), lays down that no case shall be referred for investigation or report or a Revenue-Officer of lower rank than a Tahsildar Mauzadar or Sub-Deputy Collector, and that no Revenue-Officer below that rank shall be directed to Deal with, and to investigate and report on any case or class of cases without reference. These orders, however, only prohibit revenue cases being referred to officers of inferior standing; there is nothing to prevent any officer being employed to hold a local inquiry and report on disputed facts in connection with a case, e.g., question of disputed possessions boundaries, etc.

Power of superior revenue authorities to withdraw and transfer cases

130. The Board or a Deputy Commissioner or Subdivisional Officer may withdraw any case pending before any Revenue Officer subordinate to, it of him and other dispose of it, itself or himself or refer it for disposal to any other Revenue Officer subordinate to it or him and having power to dispose of the same.

Powers of officers transferred to another district

131. Whenever any Revenue-Officer who has been invested with any powers under this Regulation in any district or subdivision is transferred to another district or subdivision, he shall, unless the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government otherwise direct, be held to be invested with the same powers in the district or subdivision to which he is so transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled

132. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may by Rule direct shall take executive charge of his district and shall be deemed to be a Deputy Commissioner under this Regulation, until, successor to the Deputy Commissioner so dying or disabled is appointed, and that successor takes charge of his office, or until the person so disabled resumes charge of his office.

Part B – Settlement and Survey-officers

Appointment of Settlement officers

133. (1) The [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may appoint a Settlement-officer to be in-charge of the settlement of any local area or class of estates, and as many Assistant Settlement-officers as they think fit; and all Assistant Settlement-officers so appointed shall be subordinate to the Settlement-officer.

Note – (1) All mauzadars in the Assam Valley, and in the case of Mauzadar who are minors, their Sarbarahkars, have been appointed ex-officio Assistant Settlement-officers.

(2) Mauzadars in Cachar Excluding Karimganj Subdivision have been appointed ex-officio Assistant Settlement Officers.

(2) The [(Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may suspend or remove any officer appointed under this section.

Appointment of Survey officer

134. The [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may appoint a Survey-officer to be in-charge of the survey of any local area or class of estates, and as many Assistant Survey-officers as they think fit; and all Assistant Survey-officers so appointed shall be subordinate to the Survey-officer.

(2) The [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may suspend or remove any officer appointed under this section.

Powers of Settlement-officers

135. A Settlement-officer shall, in addition to any other power conferred on him by or under this Regulation, have in the local area or class of estates under settlement —

(a) All the powers conferred by Chapter III, Part E, on a Deputy Commissioner; and

(b) When a survey does not form part of the Settlement all the powers conferred by Chapter III, Part B, on a Survey officer,

Power of Assistant Settlement-officers and Assistant Survey officers

136. An Assistant Settlement-officer and Assistant Survey officer shall have all the powers conferred by this Regulation on a Settlement-officer and Survey-officer respectively, subject to such restrictions as the Settlement-officer may from time to time, impose:

Provided that no Assistant Settlement-officer shall, unless specially empowered by the [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government, have power —

- (a) To frame proposals for assessment under section 30;
- (b) To exclude persons under sections 35 and 36 for refusal to accept settlement; or
- (c) To assess land which the [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government has under section 45, sub-section (2) declared liable to assessment.

Investing of Settlement officers with special powers

137. The [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may invest any Settlement-officer, Survey-officer, Assistant Settlement officer, or Assistant Survey officer with all or any of the powers of a Deputy Commissioner under this Regulation, within such limits, and with such restrictions, and for such period, or Survey officer as they think fit.

Note – All mauzadars in the Assam Valley Districts, and in the case of mauzadars who are minors, their Sabarahkars, having been appointed as Assistant Settlement Officers, have been invested with the powers —

- (a) To effect registration under section 53A in uncontested cases and
- (b) To dispose of under Chapter VI of the Regulation, all applications for partition of revenue paying estates in which no objection is preferred.

Exercise of powers of Settlement-officer Survey-officer by other officers

138. (1) At any time during the currency of settlement the [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may invest any officer with all or any of the powers of a Settlement officer or Survey-officer under this Regulation, within such limits, and with such restrictions, and for such period, as they think fit.

(2) If no Settlement-officer or Survey-officer is appointed, and no officer is invested with the powers of a Settlement-officer or Survey-officer under Sub-section (1), the Deputy Commissioner and Subdivisional officer (if any) shall have all the powers conferred by this Regulation on a Settlement-officer as the case may be.

PART C – MODE OF CONFERRING AND WITHDRAWING POWERS

Re-Conferring and withdrawing of powers

139. (1) In conferring powers under this Regulation the [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may (The words "Subject to such rules as the Governor-General in may make Council this behalf," were omitted by section 2 of the Devolution in of 1929 Act, XXXVIII) empower persons by name or classes of officials generally by their, official title and may vary or cancel any order conferring such powers.

(2) The [(Substituted for word "Provincial" by the Adaptation of Laws Order, 1950) State] Government may withdraw from any officer the powers conferred on him by this Regulation.

CHAPTER VIII

PROCEDURE

Place for holding Court

140. Subject to the orders of the [(Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) State] Government —

(a) The Board may hold Court at any place within the State of Assam'

(b) A Deputy Commissioner, and Assistant Commissioner, or Extra Assistant Commissioner, (whether-in-charge or not of a Subdivision of a district), a Settlement-officer, an Assistant Settlement-officer, a Survey-officer, and an Assistant Survey-officer may hold his Court at any place within the limits of the district or subdivision to which he is appointed.

Power to summon persons to give evidence, etc.

141. (1) The [(Substituted by Assam Act XXII of 1962) Board] and any officers mentioned in section 140 may summon any person whose attendance they consider necessary for the purposes of any investigation or other business before them conducted under this Regulation.

(2) (Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) All persons so summoned shall be bound to attend either in person or by authorised agent as the Board or such officer may direct;

And to state the truth upon any subject respecting which they are examined;

And to produce such documents and other things as may be required.

Power to fine person summoned for non-attendant etc

142. (Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) If any person fails to comply within the time fixed by a notice served on him with any requisition made upon him under section 141, the Board or the Officer as the case may be, making the requisition may impose upon him such daily fine as they or he thinks fit, not exceeding fifty rupees, until the requisition is complied with Provided that, whenever the amount levied under an order under this section passed by an Officer exceeds five hundred rupees the Deputy Commissioner shall report the case to the Board and no further levy in respect of the fine shall be made otherwise than by authority of the Board.

Power to refer disputes to arbitration

143. (1) The [(Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) State] Government, a Deputy Commissioner, a Sub-divisional Officer, a Settlement-officer or an Assistant Settlement-officer, a Survey-officer or an Assistant Survey-officer may with the consent of the parties, refer any dispute before them to arbitration.

(2) In all cases referred to arbitration the procedure laid down in the Code of Civil procedure in force for the time being shall be followed so far as applicable and the officer referring the case shall discharge the function of the Civil Court.

Recovery of fines and costs

144. All fees, rents, fines, costs, and other money payable under this Regulation, or under rules made by [(Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) State] Government under this Regulation shall be recoverable as an arrear or land revenue.

Recovery of rents, fees royalties and moneys of odve to the Government certain cases

144-A. (New section inserted by Regulation II of 1905) All rents, fees, and royalties due to the [(Substituted for the word "Crow" by the Adaptation of Laws Order, 1950) Government] for the use or occupation of land or water (whether the property of the [Government] or not) or on account of any products thereof and all moneys falling due to the [(Substituted for the word "Crow" by the Adaptation of Laws Order, 1959) Government] under any grant, lease security bond, or contract which provides that they shall be so recoverable, may be recovered under this Regulation in the same manner as an arrear of land-revenue.

Proceedings against defaulting Revenue-officers

145. If a Deputy Commissioner has reason to believe that a Revenue-Officer subordinate to him, who has collected any sum due under this Regulation, has absconded, or is about to abscond, with out accounting for such sum, he may issue a warrant for the apprehension of the officer, and proceed against him, or cause proceedings to be instituted against him, under Chapter V as if he were a defaulter in the amount so collected.

Proceeding against sureties of defaulter Revenue-officers

146. Any person who has become liable for any amount as surety for a defaulter or Revenue-officer may be proceeded against in the manner prescribed in Chapter V, as if he were a defaulter in such amount.

Authority to whom appeals lie

147. Appeals shall lie under this Regulation as follows:—

- (a) To the Board from orders, original or appellate passed by a Deputy Commissioner Settlement officer or Survey officer;
- (b) To the Deputy Commissioner, from orders passed by a Subdivisional Officer, an Assistant Commissioner or Extra Assistant Commissioner;
- (c) To the Settlement Officer, from orders passed by an Assistant Settlement Officer;
- (d) To a Survey Officer, from orders passed by an Assistant Survey Officer:

Provided that no appeal shall lie against the following orders:—

- (i) Orders of an Assistant Settlement Officer or Assistant Survey Officer under section 21 and 22;
- (ii) Orders of a Survey Officer or Settlement Officer;
 - (1) Under Section 21, 22, and 24;
 - (2) Apportioning the expense of erecting and repairing boundary-marks in accordance with rules made under section 27;
- (iii) Orders of a Survey Officer, Settlement Officer or Deputy Commissioner, original or appellate imposing or confirming a fine not exceeding fifty rupees;
- (iv) Orders of a Deputy Commissioner under section 79 setting aside or refusing to set aside the sale;
- (v) Any decision given in accordance with an award of arbitrators appointed under section 143, except in the case of fraud or collusion;
- (vi) Orders under section 148, admitting an appeal after the period of limitation has expired;
- (vii) Orders expressly declared by this Regulation to be final subject to the provision of section 151.

Limitation of appeal

148.(1) Unless otherwise specially provided in this Regulation, or in rules issued under this Regulation, —

(a) No appeal under section 147, clause (a) shall lie after the expiration of 2 months from the date of the order appealed against;

(b) No appeal under same section, clause (b), (c) and (d) shall lie after the expiration of thirty days 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 whom the appellant satisfies the [Board] or officer to whom he appeals that he had sufficient cause for not presenting the appeal within that period.

Note – In order to enable the appellate authority to calculate the time to be deducted under clause (2) of this section from the period allowed by law for an appeal, the Presiding Officer of the Court whose order is appealed against would certify on the back of the copy of the order appealed against, the date on which the copy was applied for and the rate on which it was granted.

Procedure of Appellate Court on appeal

149. The [Board] or officer to whom the appeal lies may reject the appeal without hearing the respondent (if any); if it or he, as the case may be, admits the appeal it or he may reverse, modify or confirm the order appealed against, it or he may direct such further investigation to be made or such additional evidence to be taken as is or he may think necessary, or it or he may itself or himself as the case may be, take such additional evidence.

(1) Note – In cases of appeals against orders under Chapter IV, the appellate authority should fill in the final order in the appropriate form (i.e., form No. 9 of the Assam Schedule XVII – Part I) when registration is allowed by it by reversing or modifying the orders appealed against,

Suspension of order appealed against

150. (Inserted by Assam Act XXII of 1962) In any case in which an appeal is admitted the Appellate Court may, if it thinks fit, pending the result of the appeal, direct the order appealed against to be suspended.

Power to call for proceedings of subordinate officers

151. The Board, a Deputy Commissioner, a Settlement Officer and a Survey Officer may call for the proceedings held by any officer subordinate to it or him, and pass such orders thereon as it or he thinks fit.

Note – An order once passed in any case cannot be revised either by the officer who passed it or by his successor in office. But this order does not apply to summary registration orders.

Power of make rules

152. The [(Substituted for the word “Provincial” by the Adaptation of Laws Order 1950) State] Government may make rules consistent with this Regulation, to regulate the procedure of officers in the discharge of any duty imposed on them by or under this Regulation, and may by such rule confer upon any officer any power exercised by a Civil Court in the trial of suits.

Note – For the rules framed under sections 129, 152 and 155 (b) and (c) see Part II. These rules, which have the force of law, have been supplemented by certain executive orders which will be found in Part X of this Manual.

CHAPTER IX
MISCELLANEOUS

Proceedings under this Regulation, un-affected by mistake midscription or irregularity

153.(1) No proceedings under this Regulation shall be affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate in respect of which he is rendered liable to pay, or by reason of any other informality: Provided that the provisions of this Regulation, and of the rules passed under this Regulation have been substantially complied with.

(2) No proceedings under this Regulation shall be affected by reason of any irregularity or omission in the publication or service of any notice or proclamation thereunder, unless it is proved that some material injury was caused by such irregularity or omission.

Boards Power to hear pending proceedings

153.A. (New section inserted by section 22 of Assam XXII of 1962) Any proceeding under the Regulation pending before the Commissioner immediately before the date of commencement of (this (Assam Act XXII of 1962, came into force with effect from 15th February, 1963 by Government Notification No. RSS.115/62/P/3, dated 8th February, 1963) Act) shall be deemed to have been instituted before the Board, and shall be decided as if it were duly instituted before the Board.

Matters exempted from cognisance of Civil Court

154.(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following:—

(a) Questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force;

(b) Questions as to the amount of revenue tax, cess, or rate to be assessed; and the mode, or principle of assessment;

(c) The formation of the record-of-rights, or the preparation, signing, or alteration of any document contained therein;

(d) Claims of persons to perfect partition;

(e) Claims of persons to imperfect partition except in cases in which a perfect partition could not be claimed from, and been refused by, the revenue authorities on the ground that the result of such partition would be to form a separate estate liable for an annual amount of revenue less than five rupees.

(f) The distribution of the land or allotment of the revenue on partition;

(g) Claims connected with, or arising out of the collection of land revenue, or any process for the recovery of an arrear of land revenue or any other enactment for the time being in force, realisable as an arrear of land revenue;

(h) Claims to occupy or resort to lands under sections 13 and 14, and disputes as to the use and enjoyment of such lands between persons permitted to occupy or resort to the same;

(i) Claims to have an allotment made under section 13 or section 14, and objection to the making of such allotment;

(j) Claims to a remission or refund of any revenue, cess tax, rate fee, or fine payable or paid under this Regulation or liable under any enactment for the time being in force as an arrear of land revenue;

(k) Claims to set aside a decision passed in accordance with an award or arbitrators;

(l) Claims to any office connected with the revenue administration or to any emolument appertaining to such office, or in respect of any injury caused by exclusion, suspension or removal therefrom; and

(m) Any matter respecting which an order expressly declared by this Regulation to be final, subject to the provisions of section 151, has been passed.

(n) Any matter regarding ejectment of any person from a land over which no person has accrued the right of a proprietor, landholder or Settlementholder and the disposal of any crop raised, or any building or other construction erected without authority on such land.

(2) In all the above cases jurisdiction shall rest with the revenue authorities only.

(3) Notwithstanding anything in section 265 (Inserted as Section 154-A. by Assam Act XXIX of 1971) or section 396 of the code of Civil Procedure, a Civil Court may, in the case of claim for an imperfect partition with respect to which its jurisdiction is not barred by this section, exercise the same powers in making the partition of a revenue-paying estate as it is competent to exercise in making the partition of a revenue-free estate.

(4) When a Civil Court has made an imperfect partition of a revenue-paying estate the amount of revenue for which each portion of the divided estate is, as between that portion and the other portions to be liable shall be determined by the Deputy Commissioner in the same manner as if the partition had been carried out by himself under Chapter VI of this Regulation.

154A. [Now section 54 of the Code Civil Procedure, 1908 (Act V of 1908)] (1) Notwithstanding anything contained in any judgement decree or order of any court, any notice served or any action taken or any penalty imposed to any ejectment done under sub-rules (1), (2), (3a) and (3b), (4), (5) and (5a) of rule 18 of the Settlement Rules made under the Regulation shall be and always be deemed to have been validly done.

(2) No suit or other proceeding shall be maintained or continue in any court against the Government or any person or authority for any act done or purported to have been done under sub-rules (1), (2), (3a) and (3b), (4), (5) and (5a) of Rule 18 of the Settlement Rules made under the Regulation.

(3) No court shall enforce any decree or order against the Government or any other person for any action taken or purported to have been taken under sub-rules (1), (2), (3a) and (3b), (4), (5), and (5a) of Rule 18 of the Settlement Rules made under the Regulation.

Note (Note below section 154 has been substituted for the original one, vide correction Slip No.39 to the fifth edition of this Manual) — If a mauzadar lends money to a raiyat to enable him to pay an arrear of revenue and the arrear is then satisfied, the loan is a debt recoverable in the Civil Court, section 154 (g) being no bar to the suit; but if the mauzadar pays the demand without any authority from the raiyat he can only proceed against the raiyat by revenue process, section 154 (g) being a bar to a civil suit.

Ruling — (1) The Civil Court has no jurisdiction to entertain a suit a partition which in essence is an “imperfect partition” of each of four different estates. [Abdul Khaliq Ahmed and others versus Abdul Khaliq Choudhury and others, — I.L.R 23 Cal 514 (February) 1896.

(2) Section 154 of the Assam Land and Revenue Regulation which provides that no Civil Court shall exercise jurisdiction in the distribution of land or allotment of revenue on partition is no bar to any unrecorded co-sharer, who was not allowed to intervend in partition proceeding before the revenue authorities, instituting a suit for a declaration of his title to a share of the estate and for confirmation of possession, when the partition proceedings before the revenue authorities had not yet been completed. [Habiram Das and other versus Hema Naih Sarma and others, – 19 C.W.N. 1068 (May 1915)]

(3) The Civil Court has jurisdiction to partition any specific lands included in a revenue-paying estate provided that a partition of the entire estate is not involved (Rajandra Narain Choudhury versus Satis Choudhury, - I.L.R. 59 car 948 (February 1923)).

(4) Under section 154(i) (e) read with section 96 of the Assam Land and Revenue Regulation, actual partition, perfect or imperfect, of revenue paying properties must be made by the revenue authorities.

But the jurisdiction of the Civil Court to determine the rights of the parties in the property in dispute as well as the shares to which they are entitled has not been taken away by the Regulation in question, and the Civil Court must also decide whether the property is liable to partition or not. [Rnkrya Bibt versus Nazira Bann, I.E.R, 55 Gal, 448 (June 1928)]

Additional power to make rules

155. The [(Substituted for the word "Provincial" by the Adaptation of Laws Order 1950) State] Government may, in addition to the other matters for which they are empowered to the Regulation to make rules, make rules consistent with this Regulation relating to the following matters —

(a) The person by whom, and the time, place, and manner at or in which, anything is to be done for the doing of which provision is made in this Regulation or the rules made thereunder;

(b) The mode in which notices, proclamations, summonses, warrants and other processes issued under this Regulation shall be issued, published, and served, and the fees to be charged for the issue, publication and service of such proceedings;

(c) The costs of all proceedings under this Regulation;

(d) The manner in which representatives shall be appointed to act in matters relating to this Regulation on behalf of any body of settlement-holders or persons entitled to, or with whom it may be desirable to make, a settlement;

(e) The granting of licences to prepare or collect or the farming of the right of preparing or collecting, rubber, lac and other forest produce upon land over which no person has the rights of a proprietor, landholder, or settlement-holder;

(f) The granting of licences, or the farming of the right, to work mines, stones, and lime quarries, salt-wells and oil-well to fish in fisheries proclaimed under section 16, and to carry on goldwashing operations;

(g) The payments in consideration of which, and the conditions on which, such licences or firms may be granted; and

(h) Generally to carry out the provisions of this Regulations.

Penalty for breach of rules

156. (Substituted by Act XXV of 1960) The State Government may, in making any rule under this Regulation, provide that a breach of the rule, in addition to any other consequence which would ensue from such breach, be punishable with fine which may extend to two hundred rupees, or when such breach is a continuing breach, to fifty rupees for each day during which such breach continues, or, on conviction before a Magistrate, with imprisonment which may extend to six months or with fine upto one thousand rupees or with both.

Making and publication on of rules

157.(1) The [(Substituted for the word "Provincial" by the Adaptation a Law Order, 1950) State] Government shall, before making any rules under this Regulation, publish in such manner as may, in their opinion, be sufficient for giving information to persons interested, a draft of the proposed rules, with a notice specifying a date at or after which the draft will be taken into consideration; and shall, before making the

rules, receive and consider any objection or any suggestion which may be made by any person with respect to the draft before the date so specified.

(2) If, on such consideration of the draft, any modification is made, the [(Substituted for the word "Provincial" by the Adaptation a Law Order, 1950) State] Government shall determine whether it is necessary to republish the draft under this section.

(3) Subsection (3) – "In making rules under this Regulation the Chief Commissioner shall act subject to the control of the Governor General in Council" was omitted by section 2 of the Devolution Act XXXVIII of 1920.

(4) All rules made by the [(Substituted for the word "Provincial" by the Adaptation a Law Order, 1950) State] Government under the Regulation shall be published in the official Gazette, and shall thereunder have the force of law.

158. Deleted by Section 19 of Assam Act No. XXII of 1962

Powers exercisable from time to time

159. All powers conferred by this Regulation may be exercised from time to time as occasion requires.

CHAPTER X [Added by the Assam land and Revenue Regulation (Amendment) Act, 1947 (Assam Act XV of 1947)] (of ALRR 1886 as amended)

PROTECTION OF BACKWARD CLASSES

Protection of certain classes

160.(1) Notwithstanding anything hereinbefore contained, the [(Substituted for the word "Provincial" by Adaptation of Law Order, 1950) State] Government may adopt such measures as it deems fit for the protection of these classes who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance.

(2) The [(Substituted for the word "Provincial" by Adaptation of Law Order, 1950) State] Government may, by notification in the Official Gazette, specify the classes of people whom it considers entitled to protection by such measures as aforesaid.

Constitution of compact areas

161. The protective measures may include the constitution of compact areas, in regions predominantly peopled by the classes of people notified under the provisions of sub-section (2) of Section 160, into belts or blocks. The boundaries of the areas so constituted shall as far as possible coincide with mauza boundaries or be otherwise easily distinguishable.

Extension of Chapter X to such Areas

162.(1) The [(Substituted for the word "Provincial" by Adaptation of Law Order, 1950) State] Government may, by notification in the official Gazette, direct that the provisions of this Chapter shall apply to the areas, or any of the areas, constituted into belts or blocks under the provisions of Section 161. On such application, the disposal of land by lease for ordinary cultivation, the nature and extent for rights conveyed by annual or periodic lease, the termination or forfeiture of such rights, the ejection of persons in occupation who have no valid right in the land, the management or letting out in farm of land in certain circumstances by the Deputy Commissioner, and other allied or connected matters shall so far as possible, be Governed by the provisions of this Chapter and the rules made thereunder.

(2) Notwithstanding anything to the contrary in any law, usage, contract or agreement, no person shall acquire or possess by transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts or blocks in contravention of the provisions of Sub-section (1):

[Inserted vide the Assam Land & Revenue Regulation (Amendment) Act, 101 (President's Act No. 2 of 1981)] (Provided that nothing contained in this chapter or in the rules made thereunder, shall effect any transfer by way of a mortgage in favour of any nationalised bank, a co-operative Society Registered under the Assam Co-operative Society Act 1949 (Assam Act I of 1950) or such other financing institution as may be approved by the State Government)

(3) (Added by the Assam Land & Revenue Regulation (Amendment) Act, 1264) From and after the commencement of the Assam Land Revenue and Regulation (Amendment) Act, 1964, no document evidencing any transaction for acquisition or possession of any land by way of transfer, exchange, lease agreement or settlement shall be registered under the Indian Registration Act 1908, if it appears to the registering authority that the transaction has been effected in contravention of the provisions of Sub-Section (2).

(4) The [(Substituted for the word "Provincial" by the Adaptation of Law Order, 1920) State] Government may in the like manner, direct that provisions of this chapter shall cease to apply to any area or areas or portions of any area, or areas, to which they have been applied under the provisions of Sub-Section (1).

(5) The application of the provisions of this chapter to any area as aforesaid will not affect:

(a) Land settled for special cultivation or purposes ancillary to special cultivation (including grants made for tea cultivation).

(b) Lakheraj, nisfkherj or special estate settled with non-cultivators for their maintenance, which land or estate and the rights and interests therein shall continue to be governed by the provisions for the forgoing chapters of the Regulation and the rules made thereunder.

Disposal of land for the purposes of cultivation

163. (1) The disposal of land in areas to which the provisions of this chapter apply for this purpose of ordinary cultivation or purposes ancillary thereto, shall be in accordance with such policy and procedure as may be adopted and directed by the State Government,

[(2) In adopting and directing such policy or procedure, the State Government shall take into consideration:

(a) First, the bonafide needs of persons belonging to the classes notified under sub-section (2) of section 160 who are permanently residing in such area from before its constitution under section 161;

(b) Secondly, the bonafide needs of persons belonging to such classes who are temporarily residing in such area from before its constitution, but, who are settlement holders of land within the area, on the date of its constitution, and who are likely to undertake to become permanent residents therein within a reasonable time; and

(c) Thirdly, if the extent of cultivable land available for settlement in belt or block be large enough, the bonafide needs of,

(I) The persons belonging to the other classes of people residing in the belt or block from before the constitution of the belt or block;

(II) The persons belonging to the classes notified under sub-section (2) of section 160, who are living elsewhere in the State] (Substituted for sub-section (2) by the Assam Land and Revenue Regulation Amendment Act 1981 (President's Act No. 2 of 1981).

(3) (Inserted by the Presidents Act No. 2 of 1981) [The policy adopted and directed under sub-section (1) shall also provide that no settlement with the persons belonging to the classes of people mentioned in clause (c) of sub-section (2) shall be made except with the previous approval of the State Government.

Right of settlement holder and land holder

164.(1) A settlement-holder other than a land-holder shall have no right in the land held by him beyond such as are expressed in his settlement lease.

Bar of Acquisition in a belt or block

(2) A land-holder shall have a right of use and occupancy in the land-holder by him subject to any restrictions or modifications prescribed in rules made under this Chapter, and to the provisions of section 9.

(Inserted vide Assam land and Revenue Regulation Amendment Act 1981 (Presidents Act No. 2 of 1981) (Provided that no land-holder shall transfer his land in a belt or block to:—

(a) Any person not belonging to a class of people notified under section 160, or

(b) To any person who is not a permanent resident in that belt or block;

Provided further that no such land-holder shall transfer his land in a belt or block to any person who is a permanent resident in that belt or block who does not belong to a class of people notified under section 160 except with the previous permission of the Deputy Commissioner:

Provided also that in granting such permission the Deputy Commissioner shall have due regard to the interests of persons belonging to the classes notified under that section.)

[164. (A) Notwithstanding anything to the contrary contained in this Act or in any law relating to limitation, no person to whom any land is transferred in a belt or block in contravention of the provisions of this Chapter, shall acquire any right or title in that land by length of possession whether adverse or not] (Inserted vide President Act No. 2 of 1981)

Ejectment and eviction

165.(1) In the case of unsettled land any person, who without authority has encroached upon or occupied it shall be liable to ejectment forthwith.

(2) In the case of annually settled land, persons other than settlement-holders, members of their families and hired servants, if found in occupation there of, shall be liable to ejectment forthwith. The settlement with the settlement-holder shall, unless terminated earlier for infringement of the conditions of the lease, or for any action contrary to or in consistent with the rights conferred on him by the lease, automatically terminate at the end of the period covered by the lease.

(3) (a) In the case of periodically settled land, persons who have entered into occupation without valied authority from the landholder, or whose entry or occupation is or has come about in a manner, inconsistent with the provisions of this chapter, shall be liable to eviction.

(b) Such eviction shall be preceded by service of notice requiring the occupants to vacate the land and to remove all buildings and other constructions erected and crops raised, within a period not exceeding one month from the date of receipt of the notice.

(c) The Deputy Commissioner may after the persons have vacated or have been evicted from the land, take the land under his own management, or may let in farm, for such period as he thinks fit, but shall give the landholder a reasonable opportunity of undertaking in writing that he will do everything in his power to prevent unauthorised occupation by other persons infuture, and of agreeing in writing that on his failure to do so, he will forfeit his rights and status of a landholder in respect of the land. If satisfied with

an undertaking and agreement as aforesaid, the Deputy Commissioner shall accept them, and they shall be deemed to govern the landholders future,

rights and status in respect of the land, and the land shall then be restored to the landholder, If the landholder subsequently contravenes the under taking as aforesaid, or any of the provisions of section 9, he shall be liable to forfeiture of his rights and status in respect of the land, which will then be available for settlement afresh subject to any lawful encumbrances subsisting upon it,

Immunity

166.No suit shall lie against any public servant for anything done by him in good faith under this Chapter.

Ban on jurisdiction

167.No Civil Court shall exercise jurisdiction in any of the matters covered by this Chapter.

Investment of powers

168.The [(Substituted for the word "Provisional" by the Adaptation of Laws Order 1950) State] Government may, by notification in the official Gazette, invest any Revenue Officer with the powers of the Deputy Commissioner under all or any of the provisions of this Chapter within such limits, with such restrictions and for such period as may be specified, and may withdraw from any such officer any of the powers so conferred upon him.

Appeals

169.(1) An appeal shall lie under this Chapter:

(2) To the Deputy Commissioner, from any original order passed by any officer subordinate to him, and

(b) To the (Substituted for the word "Revenue Taibunal" by the Assam Act XXII of 1962) (Board) from any original order passed by a Deputy Commissioner.

(2) Except in regard to orders relating to periodically settled land and an order passed on appeal under subsection (1) clause (a) shall be final.

Revision

(3) In regard to orders relating to periodically settled land an appeal will lie to the (Substituted for the word "Revenue Taibunal" by the Assam Act XXII of 1962) Board from an appellate order of the Deputy Commissioner 170. The [(Substituted for the word "Revenue Taibunal" by the Assam Act XXII of 1962) Board] or the Deputy Commissioner may call for the proceedings held by any officer subordinate to it or him and pass such order thereon as it or he thinks fit.

Rules

171.The [(Substituted for the world "Provincial" by the Adaptation of Law Order, 1950) State] Government may, by notification in the official Gazette, make rules for purposes of carrying out the provisions of this Chapter.