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**THE
PUNJAB
ALIENATION OF LAND ACT.**

No. XIII of 1900.

*(As amended by Punjab Act, 1 of 1907 and by Schedule 1
of Devolution Act, 38 of 1920.)*

WITH

Case law, rules and orders of the Chief Court, Government
Notifications and rules, Financial Commissioners' standing
orders No. 1, 23 and 64, rules and extracts from
the Punjab Registration and Land Adminis-
tration Manuals, Statement of Objects
and Reasons etc., etc.

Supplemented by

The Punjab Redemption of Mortgages Act, 1913, The Land
Conditional Sales Regulation, (Bengal), 1798, and
The Land Redemption and Foreclosure
Regulation (Bengal), 1806 with notes
of decided cases.

BY

**NIHAL CHAND ANAND, B.A.,
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TO

THE HON'BLE

SIR SHADI LAL, KT., M. A., B. C. L.,

CHIEF JUSTICE,

OF

The High Court of Judicature, Lahore.

THIS BOOK

IS

BY HIS LORDSHIP'S PERMISSION,

RESPECTFULLY DEDICATED.

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PREFACE.



An apology is hardly needed for writing a commentary on the Punjab Alienation of Land Act as apart from the intrinsic importance of the subject the best known book on the subject that of Sir Shadi Lal's has been long out of print, its last edition having been published in 1907. Many changes have taken place since then. A number of rules, notifications have been promulgated by the Executive Government as well as the Financial Commissioners and it is no easy task for the busy lawyer or the student of law to find the rules bearing on the subject. The Highest Courts of the Province have also been busy interpreting the various provisions of the Act and a fair amount of case law bearing on the subject has found its way into the law reports. It has been my endeavour to collect all this material and to present it in an accessible form to the busy lawyer and the student of law. It is hoped that the book will be found useful by members of the Judiciary as well as Revenue Officers.

In the various Appendices to the book I have collected the relevant rules and notifications etc. bearing on the subject.

The Supplement contains the Punjab Redemption of Mortgages Act, 1913, Land Conditional Sales Regulation, (Bengal), 1798, and the Land Redemption and Foreclosure Regulation (Bengal), 1806, with case law thereon upto the end of December 1923.

No pains have been spared to make the book exhaustive.

In the end I cannot omit to express a sense of gratitude to Lala Jagan Nath, Aggarwal, M. A. Vakil High Court, Lahore for the valuable suggestions made by him.

JULLUNDUR CITY, }
15th January, 1924. }

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ADDENDA.



Note.—Decisions referred to in the addenda are noted in the Table of Cases.

Page 5 after line 15 from the top add.—But the Act does apply to a case where service of notice of foreclosure is effected within one year before the Act came into force. The proceedings for the enforcement of foreclosure of mortgage comprising a stipulation of conditional sale remain pending until the year of grace has expired. *Bajrang Das v. Ghani Ram*, All India Reporter, 1923 (Lah.) 299.

Page 5 Applicability. North-West Frontier Province.—The Punjab Alienation of Land Act was with certain modifications made applicable to the Frontier Province by Regulation 1 of 1904, which came into force on the 11th June 1904 and which runs as follows:—

Regulation No. 1 of 1904.

A Regulation to provide for certain modifications in the Punjab Alienation of Land Act, 1900, in so far as it extends to the North-West Frontier Province; It is hereby enacted as follows:—

1. The said Act shall, in so far as it extends to the said Province, be modified as follows, namely:—

(i) Section 2, clause (1), section 3, sub-section (1), clause (b), and the proviso to section 3, sub-section (1) shall be omitted, and

(ii) in section 2, clause (3), after sub-clause (a), the following sub-clause shall be added, namely:—

"(aa) any rights of occupancy acquired under the Punjab Tenancy Act, 1887, the Hazara Tenancy Regulation, 1887, or the Agror Valley Regulation, 1891, as the case may be."

Page 13, line 7 from bottom, add—(b) land used for manufacture of salt petre. *Seth Karori Mal v. Wasawa*, All India Reporter, 1923 (Lah.) 462.

Page 13. Agricultural land.—Though a plot of land is assessed to land revenue it does not become an agricultural land unless the plot is proved as occupied or let for agricultural purpose or purposes sub-servient to agriculture. *Mohammad Said v. Shuk Nawaz*, 60 I. C. 580 (Lah.).

Page 45. Effect of notification not retrospective. A mortgage effected by a member of a *kureshi* tribe prior to the date when the *kureshis* were notified as agriculturists under the Punjab

Alienation of Land Act can be given effect to in a suit filed subsequent to the said notification (No. 44, dated 4th March 1911) by which the *kuroshis* were included in the list of agricultural tribes. *Miran Babsh v. Milkhi Ram*, All India Reporter, 1923, (Lah.) 673.

Page 57. Right of the Official Receiver to redeem.—There was a mortgage in the form permitted by section 6 (1) (a) of the Alienation of Land Act. The mortgagor became insolvent and the official receiver applied for redemption of the land under section 7 (3) of the Act. *Held*, by the Financial Commissioner that the official receiver is in the position of the mortgagor and is clearly the representative of the mortgagor. So far as the mortgagor's rights vest in the official receiver, the official receiver is competent to enforce them, and his application to redeem the land is quite valid. *Lala Deoki Nandan v. Buch Ram*, 2 Lahore Law Times 15.

Page 288. Post diem Interest.—(1) When the mortgage deed contains no express stipulation for the payment of interest after the due date, the correct rule is that the law raises no presumption either in favor of or against an implied intention to pay interest after the due date. If the Court reaches the conclusion that there is neither an express nor an implied covenant for payment of interest after due date, then the mortgagee cannot recover interest, as such, after that date. The mortgagee is however entitled to damages on account of the failure of the debtor to pay the debt at the stipulated time. The measure of damages would *prima facie* be the same as the rate of interest agreed upon, but the Court has discretion to reduce the rate, if it is found to be unusual. As regards the period for which interest by way of damages can be recovered, if the mortgagee invokes the assistance of the Court in the capacity of plaintiff he can recover damages only for the period prescribed by the law of limitation for a suit for compensation for the breach of the contract. If on the other hand he happens to be a defendant, he is entitled to recover damages for the entire period during which the principal sum has remained unpaid. *Motan Mal v. Muhammad Balhsh*, I. L. R. 3 Lahore 200, (F. B.) (2) In the case of mortgages comprising a stipulation of conditional sale, a covenant to pay *post diem* interest up to the date of redemption must be implied unless there are very strong reasons to the contrary. *Ram Sarn Das v. Mula*, I. L. R. 4 Lah. 346.

Page 377. Section 12, Dismissal of application for redemption-Limitation for a regular suit.—An application by a mortgagor for redemption of a mortgage under the provisions of the Punjab Redemption of Mortgages Act having been dismissed by the Collector under Section 9 of the Act, on the ground that the claim was barred by limitation, the mortgagor brought a regular suit in the Civil Court for redemption of the mortgage. *Held*, that the suit was practically one under section 12 of the Act to set aside the order of the Collector and fell within the purview of article 14 of schedule 1 to the Indian Limitation Act and having been brought after one year from the date of the Collector's order, was barred by time. *Ram Chand v. Kaura*, 75 I. C. 885.



CORRIGENDA.

ACT

- Page 12, last line *read* record *for* record,
 „ 25, line 14 from bottom *read* welfare *for* welfare.
 „ 31, last name of tribe *read* Pathan *for* Patn.
 „ 35, Foot note, *add* † before last line.
 „ 40, line 5 from top, *read* alienations *for* abenations.
 „ 45, line 15 from top, *read* mortgagor *for* mortgager.
 „ „ „ 17 from bottom, *read* mortgagor *for* mortgagee.
 „ „ „ 3 „ „ „ plaintiffs' *for* plaintiff's.
 „ 66, „ 6 „ „ „ section *for* seetion.
 „ 70, „ 10 „ „ „ refused *for* renfused.
 „ 72, „ 15 from top „ agrees *for* agree.
 „ 77, „ 10 „ „ „ original *for* origira.
 „ 102, „ 7 from bottom, „ Commissioner's *for* Commssioner's.
 „ 105, „ 4 from top „ Chief Court *for* Court.
 „ 108, „ 14 from bottom, „ Phunan *for* Phnman.
 „ 112, „ 18 from top „ disposed of *for* disposed.

APPENDICES.

- Page 120, line 16 from top after the words stamp duty add as is not
 in excess of the Stamp duty.
 „ 124, „ 9 from top *read* alienation *for* alientation.
 „ 131, „ 8 from bottom *read* equitable *for* equitale.
 „ 133, „ 6 from top delete act.
 „ 134, „ 12 from bottom *read* 1900 *for* 1910.
 „ 138, „ 7 „ „ „ register *for* rigister.
 „ 140, „ 19 „ „ „ separate *for* separte.
 „ 140, „ 3 from top „ alienation *for* abenation.
 „ 144, „ 17 „ „ „ tribes *for* tibes.
 „ 148, Shahpur column 2 „ Abir above Arain.
 „ 151, line 17 from top „ Sheikhs *for* Seikhs.
 „ 151, „ 17 „ „ „ tribe *for* trible.
 „ 153, „ 11 „ „ „ thereof *for* therof.

„ 157, line 15 from top *read* or *for* of.
 „ 159, „ 12 „ „ „ *in* *for* *la*.
 „ 169, „ 17 „ „ „ *requires* *for* *require*.
 „ 192, „ 6 „ „ „ *see* *for* *see*.
 „ 231, „ 7 „ „ „ 23rd *for* 23th.

SUPPLEMENT.

Page 273, line 9 from bottom *read* in deposit *for* eposit.
 „ 276, „ 19 from top „ *were* *for* *was*.
 „ 282, margin *read* Reg. 1 of 1798 *for* Reg. 2 of 1806.
 „ 283 to 288 margin *read* Reg. 17 *for* Reg. 2.
 „ 293, line 11 from top *read* *was* *for* *wos*
 „ 296, „ 12 from bottom „ *or* *for* *on*.
 „ 308, „ 11 „ „ „ XVII *for* XVI.
 „ 309, „ 5 „ „ „ *the* *for* *he*.

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The PUNJAB ALIENATION OF LAND ACT, 1900.

As modified up to date.

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ACT No. XIII OF 1900.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 19th
October, 1900.*

An Act to amend the law relating to agricultural land in the Punjab.

[As modified up to date]

WHEREAS it is expedient to amend the law relating to agricultural land in the Punjab ; It is hereby enacted as follows :—

1.--Preliminary.

1. (1) This Act may be called the Punjab Alienation of Land Act, 1900.

(2) It extends to all the territories for the time being administered by the Lieutenant-Governor of the Punjab ; and

Short title,
extent and
commence-
ment.

(3) It shall come into force on such day as the Governor-General in Council may, by notification in the Gazette of India, direct.

NOTES.

Date of enforcement of the Act.—The Act No. XIII of 1900 was first brought into force by Punjab Government notification No. 20 S. dated 22nd May 1901, from 1st June 1901. By a subsequent notification of the Governor-General in Council, No. 1243†, dated 8th June 1901, the date of its coming into force was declared to be 8th June 1901, and by

*But see Government of India Act, 1919 (9 & 10 Geo. 5, Ch. 101.), section 3 by which the province of Punjab shall be governed by a governor.

†See Appendix II of this book.

Sec. 1. Punjab Government notification No. 178 S., dated 11th June 1901, the first named notification of that Government was cancelled. The date of enforcement of the Act is thus the 8th June 1901. *Jagan Nath v. Fazla*, P. R. 26 of 1902, p. 103.

Object of the Act. (1) As explained by the Financial Commissioner in *Sukhbashi Ram vs. Akbar Shah*, P. R. No. 6 of 1903 (Rev.), though the Act is restrictive and by design in conflict with the usual principle that alienations are economically for the good of both parties and tend to bring lands into the hands which can make best use of them but the objects of the Act are to encourage thrift and prevent the extravagance which excessive credit suggests and facilitates and also to protect the ignorant zamindars against the wiles of the money-lender. (2) *Held*, in *Jahan Khan v. Dalla Ram*, P. R. 142 of 1907, that the object of the Act is not to prevent money-lenders from recovering sums jointly due to them by any legal means in their powers, and if they can induce an agriculturist to pay off a debt due to them and to take a mortgage from their debtor as security for himself there is nothing in the Act to prevent such a course. A Civil Court has no power to decline to enforce a contract which is legal and binding in every respect on the face of it as between the parties on a mere assumption that in reality it is intended for the benefit of a third person against whom a statutory prohibition to enter into such contract exists. See to the same effect, *Muzaffar Khan v. Waisakhi Ram*, P. L. R. 4 of 1916, *Haidar v. Fateh Khan*, P. L. R. 119 of 1916, and *Ladha Singh v. Ahmed Yar*, 60 I. C. 468.

Policy of the Act. The position was at last accepted that the root of the evil was to be found in the inflation of the peasant-owner's credit, and that the only hope of checking it lay in lessening his powers of borrowing by imposing legal restrictions on the sale and mortgage of land. This policy was embodied in the Punjab Alienation of Land Act. *The Punjab Land Administration Manual para 14.*

Scope of the Act. The Act came into force on the 8th of June 1901. It extends to the whole of the Punjab but power is given to exempt by notification any area, person or

class of persons wholly or partially from its operation. The only exempted district is Simla, but all Municipal and Cantonment areas in other districts have been excluded from the operation of the provisions restricting freedom of transfer. The Act has been held to apply to the rights of occupancy tenants as well as to those of land owners. It classifies alienations as "permanent" and "temporary". The former includes sales, exchanges, gifts, and wills; the latter mortgages and leases. *The Punjab Land Administration Manual para 25.*

Sec. 1.

Limitations of the Act.—It is only in the case of permanent alienations that a reference is required by Act XIII of 1900 and the rules thereunder, to be made to the Deputy Commissioner. Except as regards conditions intended to operate by way of conditional sale (section 9 (2) and (3)) and sale, in execution of decree, of land belonging to members of agricultural tribes (section 16 (1)), the Act is not retrospective in its effect. If the permanent alienation was completed before June 8th, 1901, there is no need to refer the case to the Deputy Commissioner at all. If, however, a reference is made, the Deputy Commissioner should deal with it on the principle that no objection is to be raised to the mutation on any ground arising out of Act XIII of 1900, inasmuch as that Act does not apply to the case. *Financial Commissioner's standing order No. 1 para 23.*

Change effected by the Act.—The causes which led to the passing of the Punjab Alienation of Land Act (No. XIII of 1900) have already* been explained. The direct restraints which it has imposed on freedom of transfer have no parallel in the previous revenue history of the Punjab, or indeed of any other Indian province. It must be regarded as a bold experiment demanded by the emergence of a grave social evil. The change which it has effected in the tenure of land in the Punjab is far reaching. *The Punjab Land Administration Manual para 24.*

*See paragraphs 4 to 15 of Punjab Land Administration Manual.

Sko. 1. Applicability of the Act.—The Act does not apply to:—(1)—*Suit for possession by a mortgagee on breach of a condition to surrender possession in default to pay certain instalments, by abandoning two other clauses intended to operate by way of conditional sale.* The plaintiff sued for possession as mortgagee on a mortgage deed dated 27th June 1897 which provided *inter alia* that if certain instalments were not paid the mortgagee could take possession. The deed contained also two other clauses intended to operate by way of conditional sale. *Held*, that in cases in which the plaintiff not only did not sue on the clause regarding conditional sale but surrenders that condition altogether and agrees of his own motion to have it struck out, the mortgage would cease to be one including such a clause. *Narain Singh v. Hayat*, P. R. 20 of 1903.

(2) *Suit for possession on allegation of an already completed foreclosure and vested proprietary rights.* *Held*, that when in the case of a mortgage containing a clause operating by way of conditional sale, a suit for possession is brought on the allegation that proceedings under Regulation XVII of 1806 have been validly concluded and the proprietary title of the conditional vendee has vested in the plaintiff before the Alienation of Land Act came into force, it is the duty of Civil Court to try the case and to pass a decree decreeing or dismissing the claim in whole or part as may be necessary. *Ram Nath v. Kerori Mal*, P. R. 38 of 1904, *Attar Singh v. Rattu Ram*, P. R. 103 of 1901, (F. B.), *Narain Singh v. Hayat*, P. R. 20 of 1903 cited and followed. *Bodh Raj v. Faiz Bakhsh*, P. R. 91 of 1903, disapproved. *Melu Ram v. Kiman*, P. R. 38 of 1906.

(3) *Suit on a mortgage by way of conditional sale effected by a person other than a member of an agricultural tribe.* *Held*, that the Punjab Alienation of Land Act does not apply to proceedings instituted after the Act came into force, for the enforcement of a mortgage by way of conditional sale executed by a person who is not a member of an agricultural tribe. *Kalu v. Moma Mal*, P. R. 64 of 1906.

(4) *Agreements to sell land, executed before the Act.* *Held*, that a suit for specific performance of a contract

of sale of land entered into per an agreement dated the 17th January 1901, filed after the enforcement of the Punjab Alienation of land Act is maintainable and possession of the land can be allowed to the plaintiff without regard to the provisions of the Act which has not retrospective effect *Hari Chand v. Bura Mal*, P. L. R. 27 of 1906. Sec. I.

(5) *Suit for possession of land purchased before the Act.* *Held*, that the provisions of the Punjab Alienation of land Act do not apply to a suit of a vendee for possession of land, where the property was conveyed by the defendant to him (vendee) and the right to claim possession had accrued long before that Act came into operation. *Ram Nath v. Kerori Mal*, 38 P. R. of 1904 and *Nathu Lal v. Jafar*, 20 P. R. of 1905 referred to. *Sunder Lal v. Ram Singh*, P. R. 10 of 1907.

Effect of the Act upon :--(1) *Sale of land in execution of decree, not confirmed under Section 316 Civil Procedure Code, before the Act.* *Held*, that where a sale of land belonging to a member of an agricultural tribe, in execution of a decree was not confirmed under the provisions of Section 316, Civil Procedure Code, Act XIV of 1882, before the Punjab Alienation of Land Act came into force, the sale was barred by Section 16 of that Act. *Ghulam Qadir Khan v. Bawa Gurbakhsh Singh*, P. R. 45 of 1902.*

(2) *Rights of pre-emption under the Punjab Laws Act (Act IV of 1872).* A member of an agricultural tribe sold his share in a joint khata to a non-proprietor in the village but who belonged to the same agricultural group as the vendor and one of the co-sharers in the khata comprising the land sold who was not a member of an agricultural tribe, brought a suit for pre-emption. *Held*, that the plaintiff's right of pre-emption which he possessed

*But see the subsequent change introduced by Section 65 of the Civil Procedure Code, Act V of 1908, by which the property sold shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Sec. 1. under the Punjab Laws Act has been abrogated by the provisions of the Punjab Alienation of Land Act by reason of his being neither an agriculturist in the village nor a member of an agricultural tribe and that he was not entitled to maintain his suit. *Held further*, that the Punjab Alienation of Land Act being a special law must be treated as repealing the previous general statute *pro tanto* by implication. *Parma Nand v. (Hulam) Fatima*, P. R. 15 of 1905.

(3) *The personal liability of the representatives of a deceased agriculturist.* *Held*, that the mere fact that the property of the deceased which came into the hands of his representatives was not liable to be seized under the Punjab Alienation of Land Act does not entitle a decree-holder to execute his decree against the private property of the legal representatives. *Ram Gopal v. Harjias*, P. R. 123 of 1906.

(4) *Covenant to convey land in future on the happening of a certain contingency.* A covenant by a vendor that he would convey an equal area of land in case the vendee was dispossessed of the plots actually conveyed, is not an alienation in *presenti* but an agreement to convey in future and is affected by Section 3. *Fakirul Mul v. Nabhu*, P. L. R. 166 of 1915.

(5) *The exempted area transferred from one district to another.* On 1st November 1901 the Attock Tahsil was transferred from Hazara district which was exempted from the operation of the Punjab Land Alienation Act, to Rawalpindi district. On 20th January 1902, village Kot Sundke (Attock Tahsil) was sold by the Assistant Collector, Attock, at a public auction to one of the decree-holders in execution of certain decrees, held by them against the judgment-debtor, a *Khattar*. The executing court declined to confirm the sale on the ground that as the Act was in force in the Attock Tahsil and applicable to the judgment-debtor, the land could not be sold under Section 16 of the Act. *Held*, that as an area transferred from one district to another, does not, by mere act of transfer become subject to all the laws current in the district to which it is transferred,

but, in the absence of any lawful authority imposing a new law, remains under the law of the district from which it is transferred, the transfer of the Attock Tahsil from Hazara to Rawalpindi on 1st November, *ipso facto*, neither made the Act applicable to it nor had the effect of declaring that the *Khattars* of that Tahsil were an agricultural tribe. *Sardar Dost Mohammad Khan v. Mussammatal Ilahi Khanam*, 1 P. W. R. p. 117.

Sec. 2

(b) Documents executed before but registered after the enforcement of the Act. In the case of documents compulsorily registrable under section 17 of Act XVI of 1908 (Indian Registration Act) the transactions to which they relate cannot be deemed to be complete unless and until such documents are duly registered. If, however, such a document is subsequently registered, it will operate from the date of its execution, and not from the date of its registration (section 47 of Act XVI of 1908), and, consequently, if executed before the 8th June 1900, will not be affected by the provisions of Act XIII of 1900. *Financial Commissioner's Standing order No. 1, Para 7.*

(i) The procedure of Civil Courts. See Financial Commissioner's Standing order No 1 paras 45 to 40.

2. In this Act, unless there is any thing repugnant in the subject or context,—

Definitions

(1) [*Repealed by Punjab Act I of 1907, section 2 (1)*]:

(2) all expressions which are defined by section 4 of the Punjab Tenancy Act, 1887, or by section 3 of the Punjab Land Revenue Act, 1887, shall, subject to the provisions of this Act, have the meanings assigned to them in the said sections respectively; and the expressions "record-of-rights" and "annual record" shall have the meanings assigned to them respectively in Chapter IV of the said last-mentioned Act:

XVI of 1887.

XVII of 1887.

Sec. 2

(3) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes--

- (a) the sites of buildings and other structures on such land ;
- (b) a share in the profits of an estate or holding ;
- (c) any dues or any fixed percentage of the land-revenue payable by an inferior land-owner to a superior land-owner ;
- (d) a right to receive rent ; and
- (e) any right to water enjoyed by the owner or occupier of land as such ;
- (f) any right of occupancy ;

(4) the expression 'permanent alienation' includes sales, exchanges, gifts, wills and grants of occupancy rights :

(5) the expression "usufructuary mortgage" means a mortgage by which the mortgagor delivers possession of the mortgaged land to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits of the land and to appropriate them in lieu of interest or in payment of the mortgage-money or partly in lieu of interest and partly in payment of the mortgage-money : and

(6) the expression "conditional sale" includes any agreement whereby in default of payment of the mortgage-money or interest at a certain time the land will be absolutely transferred to the mortgagee.

NOTES.

SEC. 2.

Sub-section 1. (1) Legal Change. This sub-section was repealed by the Punjab Alienation of Land Amendment Act, (No. 1 of 1907) Section 2 (1). The provisions of this sub-section as originally passed, were—

(1) the expression “agriculturist” means a person holding agricultural land who either in his own name or in the name of his ancestor in the male line was recorded as the owner of land or as an hereditary tenant or as an occupancy tenant in any estate at the first regular settlement, or, if the first regular settlement was made in or since the year 1870, then at the first regular settlement or at such previous settlement as the Local Government may, by order in writing, determine :

Provided that, if since the making of any such settlement a Civil Court or other competent authority has before the commencement of this Act decided that any person was wrongly included in or omitted from the record thereof or that any right recorded in the record is erroneously stated, this definition shall be construed with due regard to such decision :

Provided also that the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, extend or restrict this definition so as to include any persons or classes of persons in any part of the territories to which this Act extends :

(2) Registration of deeds in favour of “agriculturist.” As the statutory agriculturist has now been abolished, any deed, which has hitherto been legal only on the ground that it was in favour of a man who came within the definition of “agriculturist” in Act XIII of 1900, should not in future be accepted for registration, but should be returned to the presenter in accordance with Appendix VII* of the Punjab Registration Manual, 1910. *Financial Commissioner's Standing Order No. 1 para 16.*

* See appendix IV of this book.

SEC. 2. **Sub-section 2**—Definitions of words and phrases used in the Act, as given in the Punjab Tenancy and Land Revenue Acts.

The Punjab Tenancy Act, Section 4.

(1) "**rent**" means whatever is payable to a landlord in money, kind, or service by a tenant on account of the use or occupation of land held by him.

(2) "**tenant**" means a person who holds land under another person, and is, or but for a special contract, would be, liable to pay rent for that land to that other person; but it does not include—

(a) an inferior land-owner, or

(b) a mortgagee of the rights of a land-owner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land-revenue, or of a sum recoverable as such an arrear, or

(d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it:

(3) "**landlord**" means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land:

(4) "**land-revenue**" means land revenue assessed under any law for the time being in force or assessable under the Punjab Land Revenue Act, 1887, and includes—

(a) any rate imposed in respect of the increased value of land due to irrigation, and

(b) any sum payable in respect of land, by way of quit rent or of commutation for services, to the Government or to any person to whom the Government has assigned the right to receive the payment:

(5) "**rates**" and "**cesses**" means rates and cesses which are primarily payable by the landowners, and includes—

(a) Repealed by Act XII of 1891.

SEC. 2.

(b) the local rates, if any, payable under the Punjab District Boards Act, 1883, and any fee leviable under section 33 of that Act from landowners for the use of, or benefits derived from, such works as are referred to in section 20, clauses (i) and (j) of that Act;

(c) any annual rate chargeable on owners of lands under section 59 of the Northern India Canal and Drainage Act, 1873;

(d) the zaildari and village officer's cesses; and

(e) sums payable on account of village expenses:

(6) "revenue officer" or "revenue court," in any provision of this Act, means a revenue officer or revenue court having authority under this Act to discharge the functions of a revenue officer or revenue court, as the case may be, under that provision:

(7) "legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879, except a mukhtar:

(8) "agricultural year" means the year commencing on the 16th day of June, or on such other date as the Local Government may, by notification, appoint for any local area.

(9) "notification," means a notification published by authority of the Local Government in the official Gazette.

The Punjab Land Revenue Act, Section 3.

(1) "Estate" means any area—

(a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land-revenue had not been released, compounded for, or redeemed; or

(c) which the Local Government may, by general rule or special order, declare to be an estate,

Sec. 2. (2) "**Holding**" means a share or portion of an estate held by one landowner or jointly by one or more land owners.

(3) "**Record-of-Rights.**" The record-of-rights for an estate shall include the following documents, namely :—

(a) statements showing, so far as may be practicable,—

(i) the persons who are landowners, tenants, or assignees of land-revenue in the estate, or who are entitled to receive any of the rents, profits, or produce of the estate, or to occupy land therein ;

(ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto, and

(iii) the rent, land-revenue, rates, cesses, or other payments due from and to each of those persons and to the Government ;

(b) a statement of customs respecting rights and liabilities in the estate ;

(c) a map of the estate ; and

(d) such other documents as the Financial Commissioner may with the previous sanction of the Local Government, prescribe. (*Punjab Land Revenue Act, Section 31 (2)*).

(4) "**Annual Record.**" (1) The collector shall cause to be prepared by the *patwari* of each estate, yearly, or at such other intervals as the Financial Commissioner may prescribe, an edition of the record-of-rights amended in accordance with the provisions of this chapter (Chapter IV).

(2) This edition of the record-of-rights shall be called the annual record for the estate, and shall comprise the statements mentioned in sub-section (2), clause (a), of section 31, and such other documents, if any, as the Financial Commissioner may, with the previous sanction of the local Government, prescribe.

(3) For the purposes of the preparation of the annual record, the collector shall cause to be kept up by the

patwari of each estate a register of mutation and such other registers as the Financial Commissioner may prescribe. (*The Punjab Land Revenue Act, Section 33*).

Sec. 2.

Sub-section (3) Land.—No immoveable property is effected by the Act, except land as defined in section 2, the definition being an amplification of that contained in section 4 (1) of the Tenancy Act. *Financial Commissioner's standing order No. 1 para 4*.

The word "land" includes (1) Land occupied as fruit gardens unless it be the courtyard or compound of a house *Jhanda Khan v. Fateh Din*, P. R. 111 of 1890. (2) Wells and lands attached to wells where used for the purpose of irrigating agricultural land. *Dhani Khan v. Mahlab Khan*, P. R. 40 of 1893. (3) The rights of a usufructuary mortgagee of land. *Sukh Bashi Ram v. Akbar Shah*, P. R. 6 of 1903 (Rev). (4) *Mukarraridari* tenure. *Gaukara v. Harbhaj*, P. R. 16 of 1905. (5) *Ghair-mumkin* land outside the abadi and attached to a well upon which *khurlis* are built and *bhusa* is stacked. *Gandu Singh v. Natha Singh*, P. R. 12 of 1907. (6) The mortgagee rights i.e., right to recover possession and profits of land. *Asa Singh v. Buta*, P. R. 12 of 1911. (7) Tea fields. *Kaju Mal v. Salig Ram*, P. R. 91 of 1919.

But it does not include (1) Canal water. *Sultan Ali Shah v. Kadir Bakhsh*, P. R. 1 of 1892. (2) Land reserved as village grave yard. *Ilahi Bakhsh v. Futta*, P. R. 20 of 1892 (3) Reversionary rights in land. *Haider Khan v. Ali Akbar Khan*, P. R. 18 of 1897. (4) Water tank used for watering cattle and excavating earth to make bricks. *Tej Ram v. Talsi*, P. R. 48 of 1898. (5) Site of a water mill. *Musan Ali v. Suran*, P. R. 41 of 1892, *Farmam Ali Shah v. Imam Din*, P. R. 77 of 1904, and *Devta Jambhu v. Hari Das*, P. L. R. 39 of 1912.

Clause (a). (1) The word "site" means not only the land actually under a building but also the courtyard or the compound thereof. *Jhanda Khan v. Fateh Din*, P. R. 111 of 1890. (2) The words "other structures" include the structure of a well on the land. *Imam Din v. Mahla*, P. R. 92 of 1891.

SEC. 2. **Clause (b).** (1) **Standing Crops.** *Held*, that a proprietor's share of standing crops is not land. *Nur Muhammad v. Tiloka Mal*, P. R. 14 of 1905.

(2) **Trees.** *Held*, that trees standing on the land, though not expressly mentioned, are included in the definition of "land" given in Section 2 (3) of the Punjab Alienation of Land Act and are consequently not liable to attachment and sale in execution of a decree against the owner, a member of an agricultural tribe. *Mus-sammat Nihal Kaur v. Hari Singh*, P. L. R. 32 of 1908 and *Wali Muhammad v. Mariam Bi*, P. R. 52 of 1906, referred to. *Dewa v. Hira Singh*, P. R. 119 of 1890, *Dhani Das v. Aya Ram*, P. R. 15 of 1892 (F. B.), *Yarn v. Adil*, P. R. 46 of 1893, and *Nur Muhammad v. Tiloka Mal*, P. R. 14 of 1905, distinguished. *Amir Khan v. Lahori Mal* P. R. 108 of 1919. See also *Rubia Ram v. Sultan Khan*, 54. I. C. 38 (Lah).

Contra. *Held*, that Clause (b) of Sub-Section 3 of Section 2 of the Punjab Alienation of Land Act refers not to things material but to incorporeal rights. Standing trees are therefore, not protected and are liable to be attached and sold in execution of a decree. *Nur Muhammad v. Tiloka Mal*, P. R. 14 of 1905 followed. *Ahmad Khan v. Jhanda Ram*, P. L. R. 68 of 1919.*

(3) The words "a share in the profits of the holding" do not cover the right of a temporary lessee to plant trees and take their produce (*Sardarakhtil*). *Muhammad Ismail v. Shamas-ud-Din*, I. L. R. 1 Lah. 567.

Clause (c). This clause seems to reproduce the ruling P. R. 61 of 1876, *Ganga Ram v. Nagib Khan*, in which it was held that a *haq biswadari* (an allowance payable at a fixed percentage upon the assessed revenue of village land) is immovable property, being a benefit arising out of the land.

Clause (d). A right to receive rent in the case of a usufructuary mortgage is "land." *Sulkhbashi Ram v. Akbar*

*NOTE.—In view of the above conflict of opinions, the question whether "trees" are included in the definition of "land", has recently been referred to a Division Bench of the High Court by the Hon'ble Sir William Cheema, J., in Civil Appeal No. 1287 of 1921. *Achhru Mal v. Maula Baksh*,

Shah, P. R. 6 of 1903 (Rev.), but a right to receive arrears of rent from the tenants is not "a right to receive rent" within the meaning of this clause. *Shankar Lal v. Dattu*, P. R. 13 of 1915. Sec. 2.

Clause (e).—It was held in *Sultun Ali Shah v. Kadir Bakhsh*, P. R. 1 of 1892 (F. B.) that a right to the use of water of a canal for watering land is not "land", but in *Alam Shah v. Ram Chand*, P. R. 11 of 1898 it was held, that a right to use water of a perennial stream is immovable property as being benefit arising out of land. This clause reproduces the latter ruling.

Clause (f). Legal Change.—This clause was added by Act 1 of 1907, Section 2 (2) and was evidently enacted to bring the provisions of the Act in conformity with the Chief Court Ruling published in *Gahna v. Sohan Lal*, P. R. 11 of 1904 in which it was held that the word "land" as defined in Section 2 (3) of the Act includes occupancy rights in land.

Sub-section 4, Legal Change.—This sub-section has been substituted by the Amending Act 1 of 1907, Section 2 (3) for the original sub-section according to which the definition of permanent alienation included "Sales, exchanges, gifts and wills" but did not include "any gift for a religious or charitable purpose whether made *inter vivos* or by will." The definition now includes gifts for religious or charitable purposes which under Section 3, Sub-Section 2, Clause (b) if made *bona fide*, do not require the sanction of the Collector. Moreover the other change effected is the inclusion of the "grant of occupancy rights" which is a necessary consequence of the amendment which brought the occupancy rights within the definition of land.

Definitions.—(1) "Sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.—(section 54 of the Transfer of Property Act).

(2) "Exchange." When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange"—(section 118 of the Transfer of Property Act).

Sec. 2-A. (3) "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee — (section 122 of the Transfer of Property Act).

(4) "Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death. (The Probate and Administration Act, No. V of 1881, section 3).

Sub-section 5.—This definition is taken, word by word, from the Transfer of Property Act, section 58 (d) with the only difference that "land" is substituted for "property."

Sub-section 6.—The definition of mortgage by conditional sale as given in the Transfer of Property Act, section 58 (e) is as follows :—

Where the mortgagor ostensibly sells the mortgage property—on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute; or on condition that on such payment being made, the sale shall become void; or on condition that on such payment being made the buyer shall transfer the property to the seller: the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

Application of
Act to sec-
tions 53 and
54, Act XVI
of 1887.

2-A. Notwithstanding anything contained in sections 53 and 54, of the Punjab Tenancy Act, 1887, when a landlord makes a claim to exercise the rights thereby conferred upon him the provisions of this Act shall apply thereto.

NOTES.

Legal Change.—This section was added by Punjab Act I of 1907, section 3.

Object.—The right of pre-emption given to a landlord in the case of a transfer by his occupancy tenant was expressly saved in the Punjab Pre-emption Act, 1905. Th

provisions of sections 53 and 54 of the Punjab Tenancy Act, 1887, are not expressly saved or repealed in the Punjab Alienation of Land Act, 1900, with the result that the right given to the landlord in express terms by the statute is not taken away and is not, it is thought, even limited by the necessity of obtaining sanction. It is not thought necessary at present to take away the right, but it is thought necessary that the Deputy Commissioner should be kept informed of such alienations in order to check evasions of the Act. By the section it is proposed to insert as Section 2-A, it is therefore provided that the provisions of the Act shall apply to these alienations notwithstanding the provisions of sections 53 and 54 of the Tenancy Act, but in the new proviso to section 3 (2), it is provided that sanction shall always be given. (*Statement of Objects and Reasons.*)*

Sec. 3.

II.—Permanent Alienation of Land.

3. (1) A person who desires to make a permanent alienation of his land shall be at liberty to make such alienation where—

Sanction of Deputy Commissioner required to certain permanent alienation.

(a) the alienor is not a member of an agricultural tribe ; or

(b) [*Repealed by Punjab Act I of 1907, section 4 (1)*] ;

(c) the alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group :

(*Proviso to this sub-section repealed by Punjab Act I of 1907, section 4 (1).*)

(2) Except in the cases provided for in sub-section (1), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by a Deputy Commissioner :

Provided that—

(1) sanction may be given after the act of alienation is otherwise completed, and

* See Appendix VIII, A, of this book.

Sec. 3. (2) sanction shall not be necessary in the case of—

(a) a sale of a right of occupancy by a tenant to his landlord, or

(b) a gift made in good faith for a religious or charitable purpose, whether *inter vivos* or by will.

(3) The Deputy Commissioner shall enquire into the circumstances of the alienation and shall have discretion to grant or refuse the sanction required by sub-section (2).

NOTES.

Sub-section 1. Permanent alienation.—(1) *Creation of Mukarridari rights.* *Held*, following *Maya Das v. Malik Aulia Khan*, 10 P. R. of 1896 (Rev.), that the creation of *Mukarridari* rights amounts to a permanent alienation, *Mussammat Begum Jan v. Qadar Khan*, P. R. 85 of 1910.

(2) *Consent decree.* In 1879, an agriculturist by a sale deed sold his land to a non-agriculturist (Brahman) but in the Revenue Records the transaction was described somehow as a mortgage. In 1910 the vendee who had all along been in possession sued for a declaration that he was the owner of the land by virtue of the sale of 1879 and not a mortgagee as shown in the Revenue Records. The parties having compromised the suit, the court in the terms of the compromise, passed a declaratory decree whereby $\frac{3}{4}$ th of the land was treated as permanently alienated to the vendee while the remaining $\frac{1}{4}$ th was released absolutely to the vendor. *Held*, that all that the compromise decree did was to construe the sale deed of 1879 in accordance with the wishes of the parties and that the compromise and the decree based thereon did not amount to an alienation by an agriculturist to a non-agriculturist in opposition to the provisions of the Alienation of Land Act. *Milki v. Bishan Das*, P. R. 8 of 1913.

(3) *Covenant to convey in future.* *Held*, that a covenant by a vendor that he would convey an equal extent of land in case the vendee was dispossessed of the plots actually conveyed, is not an alienation *in præsenti* but an agreement to convey in future and is effected by section 3. *Fakira Mal v. Nabhu*, P. L. R. 186 of 1915.

SEC. 3.

Clause (b) Legal change.—This clause was repealed by Punjab Act I of 1907, section 4 (1). It stood originally as follows.—

(b) the alienor is a member of an agricultural tribe and the alienee holds lands as an agriculturist in the village where the land alienated is situated.

The abolition of the "agriculturist."—The introduction of the statutory agriculturist was done deliberately in order to put money-lenders and others who had been landowners for a long time, in a somewhat better position than more recent purchasers; but their introduction at the same time imported complications into the working of the Act; and it was recognised that the concession undoubtedly involved inequality in the amount of protection afforded in different estates in the same neighbourhood for the classes for whose benefit legislation was undertaken. It was apprehended that in some tracts the inclusion of the statutory agriculturist would in a large measure defeat the object with which the Act was passed.

An amending Act (Punjab Act I of 1907) received the assent of the Viceroy on the 28th of March 1907, by which the statutory agriculturist was abolished and the provisions in regard to permanent alienations were restricted to liberty to alienate in the cases where the alienor is not a member of an agricultural tribe or where the alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group. *The Punjab Land Administration Manual para 3½* as amended by Financial Commissioner's correction slip No. 75 L. A. M., dated Lahore, 14th August 1911.

Clause (c). Permanent alienation of land to a money-lender.—*Held*, that a permanent alienation of land to a money-lender who is a member of an agricultural and of

Sec. 3. (2) sanction shall not be necessary in the case of—

(a) a sale of a right of occupancy by a tenant to his landlord, or

(b) a gift made in good faith for a religious or charitable purpose, whether *inter vivos* or by will.

(3) The Deputy Commissioner shall enquire into the circumstances of the alienation and shall have discretion to grant or refuse the sanction required by sub-section (2).

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(3) *Covenant to convey in future.* Held, that a covenant by a vendor that he would convey an equal extent of land in case the vendee was dispossessed of the plots actually conveyed, is not an alienation *in præsenti* but an agreement to convey in future and is effected by section 3. *Fakira Mal v. Nabhu*, P. L. R. 166 of 1915.

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An amending Act (Punjab Act I of 1907) received the assent of the Viceroy on the 28th of March 1907, by which the statutory agriculturist was abolished and the provisions in regard to permanent alienations were restricted to liberty to alienate in the cases where the alienor is not a member of an agricultural tribe or where the alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group. *The Punjab Land Administration Manual para 34* as amended by Financial Commissioner's correction slip No. 75 L. A. M., dated Lahore, 14th August 1911.

as such land in the village where the land alienated is situate, does not require the sanction of the Deputy Commissioner. Financial Commissioner's Circular Letter No. 3441 dated 5th June 1901, explained. *Wasanda Ram v. Rustam*, P. R. 5 of 1904 (Rev.).

Proviso. Legal Change.—Proviso to this sub-section was repealed by Punjab Act 1 of 1907, section 4 (1). The proviso as originally passed was as follows:—

Provided that, if an agriculturist desires to make a permanent alienation of land acquired under clause (b), he shall not be at liberty to make such permanent alienation under this sub-section unless the alienee is a member of an agricultural tribe or person holding land as an agriculturist in the village.

Sub-Section (2). Decree in contravention of the Act.—*Held*, that a decree passed in violation of the terms of section 3 clause (2) of the Punjab Alienation of Land Act is not a nullity unless set aside in Revision or appeal. Section 9 of the Punjab Act No. 1 of 1907, amending the Punjab Alienation of Land Act, 1900, provides for such a case. *Darya Ditta v. Mana Singh*, P. R. 60 of 1909.

Proviso, clause (1). Application for sanction, when to be made.—*Held*, that there is no provision in the Act that an application for sanction must be made before an alienation takes place. Sanction can be given even after the alienation has been otherwise completed. The Deputy Commissioner must enquire into the circumstances but has discretion to grant or refuse sanction *Maula Dad v. Muhammad*, 63 I. C. 700 (Lah.).

Stamps on applications.—The report, which is deemed to be an application under Notification No. 221, dated 10th September 1912, does not require any stamp, the mutation fee being considered sufficient. But any one

*The statutory agriculturist was subsequently abolished by Act 1 of 1907.

after the transaction, for the sanction of the Deputy Commissioner to a permanent alienation requiring the same under section 3. The procedure is in the alternative. If the case is taken up by the officials and reported, no separate application need be made. But a separate application may be made in any case if the parties or any of them so desire; and it may be presented to an Assistant Collector, though only the Deputy Commissioner has power to decide the case. *Financial Commissioner's Standing Order No. 1 para. 22.*

Deputy Commissioner's orders amounting to Sanction.—(1) A mortgage made before the commencement of the Act by an agriculturist of his land in which there was a condition intended to operate by way of conditional sale and still current was brought by the District Judge, who was moved to issue a notice of foreclosure under Regulation XVII of 1806 after the Act had come into force, to the notice of the Deputy Commissioner. The mortgagee accepted the new mortgage as proposed by the Deputy Commissioner in lieu of the original one but the mortgagor refused. The Deputy Commissioner thereupon decided that nothing further could be done and returned the reference to the District Judge. *Held*, following Civil Revision No. 1426 of 1905 in which it was ruled *inter alia* that, when the Deputy Commissioner, acting under section 9 (2) of the Act, declines to interfere, he thereby sanctions the permanent alienation, that it is no forced interpretation of the Deputy Commissioner's action in the present case to hold that by implication he said—Let it so pass. *Bichha Lal v. Gumanji*, P. R. 93 of 1907. (2) The mortgagee applied to the Collector and prayed that in lieu of the mortgage by way of conditional sale, a mortgage of the kind recognized by section 6 (1) (a) of the Act, be granted to him for a period of 20 years. The Collector thereupon summoned the

*But see the Court-fee (Punjab Amendment) Act, 1922, Act No. VII of 1922, section 8 (2) by which the Court-fee on an application or petition presented to a Revenue Court, or to a Collector or any Revenue Officer having jurisdiction equal to or subordinate to a Collector, and not otherwise provided for by the Act has been increased from eight annas to one rupee.

Sec. 3. mortgagor and on his objecting to the change, recorded the fact of mortgagor's refusal and left matters in *status quo*. *Held*, that this action on the part of the Collector was equivalent to his giving his sanction to the retention of the conditional sale clause. (*Topal Das v. Hari Singh*, P. R. 88 of 1909. (3) The mortgagee applied under section 6 of the Act, to the Deputy Commissioner to be granted a mortgage of the land in lieu of his mortgage by way of conditional sale. The Deputy Commissioner ordered the mortgagor to execute a mortgage for 20 years, and on the latter failing to do so, decided to take no further action and to relegate the parties to their former rights. *Held*, that the Deputy Commissioner had a discretionary power under section 9 (2) either of putting the mortgagee to his election (as therein provided) or of sanctioning the retention of the conditional sale clause and that his order must be construed to amount to such a sanction. *Bhero Das v. Mona*, P. R. 31 of 1912.

Effect of Sanction.—(1) *Held*, that a sale of land subject to the sanction of the Deputy Commissioner under the Act, if eventually sanctioned by that officer becomes effective from its original date. Consequently a suit for pre-emption on the ground of the vendee not being an owner in the sub-division in which the land sold is situate fails if before the date of sale of the land under pre-emption, the vendee becomes owner therein by exchange, although it was sanctioned during the pendency of the pre-emption suit. *Said Khan v. Matwala*, P. R. 82 of 1912, overruled. *Sagar v. Nur Chand* P. R. 79 of 1913 and *Abbo v. Rahman*, C. A. No 647 of 1910 followed. *Maulvi Mohammad Bahsh v. Ohhanga*, P. L. R. 143 of 1914. (2) Defendant a Jat of the Lyallpur district, agreed to sell land situate in Lyallpur district to the plaintiff a Jat of the Hoshiarpore district by an agreement dated the 5th January 1914 containing *inter alia*, the stipulations that the sale deed would be executed and registered by the 21st February 1914 that the party committing breach of the contract would pay 1,000 Rs. as damages to the other and that if there was any legal obstacle to the execution and registration of the sale deed neither party would be entitled

to any damages. Defendant having failed to execute the said sale by the prescribed date, the plaintiff on 24th February 1914 brought the suit for specific performance of contract and for possession of land. During the pendency of the suit the plaintiff applied on the 8th April 1914 to the Deputy Commissioner for sanction and obtained it the next day. *Held*, that plaintiff not being a member of an agricultural tribe *quæ* the Lyallpur district, was not entitled to purchase the land without the sanction of the Deputy Commissioner and as no sanction was forthcoming on the 21st February 1914 and in fact no application for sanction had upto that date been made there was a legal obstacle and the defendant was under the agreement entitled to put an end to the contract and the fact that defendant subsequently obtained sanction afforded no justification for reviving the *vinculum juris*. *Pal Singh v. Thakar Singh*, P. R. 120 of 1916.

Clause 2. Legal Change—Proviso, Clause 2, was added by Punjab Act No. 1 of 1907, section 4 (2)

Clause 2 (b). Gifts for religious and Charitable purposes.—By proviso 2 (b) of section 3 (2) the Act does not place any restriction on gifts for religious or charitable purposes. The working of this exemption must be watched, as it must not be allowed to become a cloak for evasions of the law. *Financial Commissioner's standing order No. 1 para 4.*

Death-bed gifts to Brahmans.—All that has been said of sales applies equally to exchanges, gifts and wills. Death-bed gifts to Brahmans, often known as *dohli*, are not subject to the provisions of the Act. But the amount which can be alienated in this way is limited by custom, and, if it is exceeded, the donor's heir can sue to have the area reduced to what is permissible by tribal law. *The Punjab Land Administration manual, para 38.*

Good faith of alleged gifts—When under the special mutation procedure (paragraph 16 of Standing Order No. 23) or otherwise any case of alleged gift is brought the notice of the Deputy Commissioner he should, af

Sec. 3. mortgagor and on his objecting to the change, recorded the fact of mortgagor's refusal and left matters in *status quo*. *Held*, that this action on the part of the Collector was equivalent to his giving his sanction to the retention of the conditional sale clause. *Gopal Das v. Hari Singh*, P. R. 88 of 1909. (3) The mortgagee applied under section 6 of the Act, to the Deputy Commissioner to be granted a mortgage of the land in lieu of his mortgage by way of conditional sale. The Deputy Commissioner ordered the mortgagor to execute a mortgage for 20 years, and on the latter failing to do so, decided to take no further action and to relegate the parties to their former rights. *Held*, that the Deputy Commissioner had a discretionary power under section 9 (2) either of putting the mortgagee to his election (as therein provided) or of sanctioning the retention of the conditional sale clause and that his order must be construed to amount to such a sanction. *Bhero Das v. Mona*, P. R. 31 of 1912.

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to any damages. Defendant having failed to execute the said sale by the proscribed date, the plaintiff on 24th February 1914 brought the suit for specific performance of contract and for possession of land. During the pendency of the suit the plaintiff applied on the 8th April 1914 to the Deputy Commissioner for sanction and obtained it the next day. *Held*, that plaintiff not being a member of an agricultural tribe *guz* the Lyallpur district, was not entitled to purchase the land without the sanction of the Deputy Commissioner and as no sanction was forthcoming on the 21st February 1914 and in fact no application for sanction had upto that date been made there was a legal obstacle and the defendant was under the agreement entitled to put an end to the contract and the fact that defendant subsequently obtained sanction afforded no justification for reviving the *vinculum juris*. *Pal Singh v. Thakar Singh*, P. R. 120 of 1916.

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Good faith of alleged gifts—When under the special mutation procedure (paragraph 16 of Standing Order No. 23) or otherwise any case of alleged gift is brought to the notice of the Deputy Commissioner he should, after

Sec. 3. enquiry, record a decision, whether the transaction is really a gift and not a disguised sale and whether the purpose really is religious or charitable. If he holds that the transaction is not a gift, or not made for the purposes permissible, he should treat it like any other transaction to which the Act applies. *Financial Commissioner's Standing Order No. 1 para 30.*

Sub-section (3). Discretion to grant or refuse sanction.—(1) *Gift by father in favor of daughter married in another district, sanction not to be withheld.* Held, that a member of an agricultural tribe should not be deprived of the privilege of gifting his land to his daughter merely because she has married in another district. Sanction should not in such cases be withheld. *Ghausia v. Nathu*, P. R. 82 of 1900, referred to. *Mussamat Sairan v. Gahna*, P. W. R. 8 of 1908 (Rev.)

(2) *Exchange—sanction when to be given*—Held, that the exchange, if not detrimental to the alienor, should be sanctioned by the Deputy Commissioner. *Sardar Singh v. Lal Khan*, 2 Lah. Law Times, 8.

(3) *Grounds for giving or withholding sanction* The considerations which should guide Deputy Commissioners in giving or withholding sanction are stated in paragraph 87 of the Land Administration Manual. The previous restriction by which Deputy Commissioners were prohibited from sanctioning alienation to money-lenders without confirmation of the Commissioners has been removed. The number of cases in which such sanction has been given and the area involved should be stated in the quarterly business statements. *Financial Commissioner's Standing Order No 1, para 25.*

Punjab Land Administration Manual.

Instructions as to giving or withholding sanction to sales—The following instructions have been issued by the Financial Commissioners* with the approval of Government as to the considerations which

*Vide Financial Commissioner's correction slip No. 112 L. A. M., dated Lahore, 16th September 1917.

should influence a Deputy Commissioner in giving or withholding sanction. He need not concern himself with the possible rights of reversioners or pre-emptors :—

Sec. :

- (i) Sanction should not be given unless the Deputy Commissioner is satisfied that the transfer is really advantageous to the vendor and his family. If a *Zamindar* depends entirely or mainly on his land, no alienation should ordinarily be allowed which will reduce the land he retains to less than is required for the support of himself and his family.

NOTE.—The distinction between self-acquired and hereditary property has to be borne in mind. If there is no reason to suppose that the alienee is a mere intermediary intending to re-transfer the land to a money-lender, then, other things being equal, there should be less reluctance to sanction the alienation of self-acquired than of hereditary land.

- (ii) Sanction should be given if the Deputy Commissioner is satisfied that there is no intention of evading the Act when the object of the purchase is to obtain :—

(a) a site for a workshop or factory, for buildings for the accommodation or welfare of persons to be employed in them, for a power installation for working industrial plant, for the offices and out-houses required for the same, or for any other object essential to the conduct of an industrial enterprise the health of persons engaged as labourers or otherwise in connection with such ;

(b) a building site close to a town or village site.

- (iii) Sanction may be given to an alienation of land :—

(a) by wealthy *Zamindars* owning much land, for commercial reasons or to improve or consolidate their properties ;

Sno. 3.

- (b) by indebted *Zamindars* owning mortgaged land and desiring to sell a part of their land in order to raise money to redeem the whole or part of the rest ;
- (c) proposed or effected in favour of *Zamindars* who, by reason of their insignificant numbers, have not been classed in the particular district as members of agricultural tribes ;
- (d) to *bona fide* artisans, who are not professional money lenders. It is desirable to encourage thrifty members of the artisan class to become owners of small plots of land when the alienation is not disadvantageous to the vendor and his family ;
- (e) by a member of an agricultural tribe in one Punjab district to a member of the same tribe or group of tribes in another Punjab district. In such a case sanction should usually be given as a matter of course, unless the alienation is clearly contrary to the intention of the Act. These instructions also apply in the case of persons holding land in districts of the other provinces adjoining Punjab districts who, if they had held land in the Punjab districts, would have been deemed to belong to agricultural tribes. To applications for sanction in favour of subjects of Native States adjoining Punjab districts somewhat different considerations apply ; and such applications should be dealt with on their merits ;

Provided that in cases (a) and (b) no member of an agricultural tribe included in the same group as the vendor has offered or is ready to offer a fair price for the land. *The Punjab Land Administration Manual, para 37.*

(4) *Mazhbi and Ramdasia Sikhs*.—Sanction may be accorded by Deputy Commissioners to all alienations to Mazhbi and Ramdasia Sikhs, who have served in the army and are recommended by their Commanding Officers, sanc-

tion to which is applied for under section 3 (2) of the Act. *Financial Commissioner's Standing Order No. 1, para. 25.*

Sec. 3.

(5) *Occupancy rights.*—The provisions of section 2 (2) and (3) of the Punjab Alienation of Land Amendment Act, 1907, have expressly defined 'any right of occupancy' as 'land' and 'grants of occupancy rights' as 'a permanent alienation'. There is no reason why the Deputy Commissioner should not sanction such alienations where the object is to promote agricultural development by giving favourable terms to new settlers and the like. Where these conditions are fulfilled and no evasion of the Act is contemplated, such alienations may be freely sanctioned. *Financial Commissioner's Standing Order No. 1, para. 26.*

Benami transaction.—(a) Where a Revenue Officer has reason to suspect that an alienation, permanent or temporary, is contrary to the intention of the Act by reason of the nominal alienee being, although a member of an agricultural tribe, merely the agent of the real alienee who is not a member of such a tribe, mutation in the first instance should always be refused.

(b) Such transactions should be carefully watched and any marked tendency to resort to them should be reported to the Financial Commissioner.

(c) If, however, the nominal alienee produces the decree of a competent Civil Court authorising him to take possession of any land, effect should be given to the decree in the revenue records without hesitation, provided that the Deputy Commissioner in the discretion vested in him by section 3 (3) of the Act is satisfied that the nominal alienee is a member of an agricultural tribe.

(d) Action should not be taken under clause (a) unless there is reason to suspect bad faith. Where, for instance, one agriculturist genuinely assumes responsibility for a debt due by a second agriculturist to a third person who is not a member of an agricultural tribe, the first agriculturist may obtain a mortgage of the second agriculturist's land

Sec. 4. by way of security. To such a transaction there is not necessarily any objection, and mutation should not in such cases be refused. *Financial Commissioner's Standing Order No. 1, para. 11.*

Tahsildar's notice under section 3 of the Act, not a notice of a Court under section 16 of the Pre-emption Act.—One A applied on 18th February 1907, under section 3 of the Punjab Alienation of Land Act, to the Deputy Commissioner for permission to sell his land to the vendees who were not members of an agricultural tribe. The Deputy Commissioner called for a report and the Naib-Tahsildar issued a notice to all the land-owners of the village informing them of the intended sale. The notice was served on the plaintiff pre-emptor and he made an application to the Deputy Commissioner stating that he had a right of pre-emption and was desirous of purchasing the land but at a fair price, the price, mentioned by the vendor being much in excess of the market value and not fixed in good faith. The Deputy Commissioner, however, sanctioned the sale to the vendee. *Held*, that the notice given by the Naib-Tahsildar was not a notice through a "court" and did not therefore satisfy the terms of section 16 of the Punjab Pre-emption Act. *Karam Chand v. Ghulam Hassan*, P. R. 74 of 1915.

Appeal.—*Held*, that an order of a Deputy Commissioner granting or refusing sanction to a permanent alienation under section 3 (3) of the Punjab Alienation of Land Act is open to appeal and revision as provided by Chapter II of the Punjab Land Revenue Act, 1889. *Ram Saran Das v. Sardara*, P. R. 4 of 1908, (Rev.).

Agricultural
tribes.

4. The Local Government shall by notification in the local official Gazette, * * * determine what bodies of persons in any district or group of districts are to be deemed to be agricultural tribes or groups of agricultural tribes for the purposes of this Act.

NOTES.

Sec. 4.

Legal Change.—The words “published with the previous sanction of the Governor-General in Council” have been repealed by Punjab Act I of 1907, section 5.

Government Notification.—The notification issued by the Punjab Government is as follows :—

GAZETTE NOTIFICATION.

The 18th April 1904.

No. 63 —Notification.—In exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900 (XIII of 1900), and in supersession of Punjab Government Notifications Nos. 21 S. dated the 22nd May 1901, 114, dated the 16th July 1902, and 34, dated the 6th April 1903, the Lieutenant-Governor of the Punjab, with the previous sanction of the Governor-General in Council, is pleased to determine that for the purpose of the said Act :—

- (1) In each district of the Punjab mentioned in column 1 of the schedule annexed to this notification, all persons either holding land or ordinarily residing in such district and belonging to any one of the tribes mentioned opposite the name of such district, in column 2, shall be deemed to be an “agricultural tribe” within that district.
- (2) All the “agricultural tribes” within any one district shall be deemed to be a group of agricultural tribes.



FINANCIAL COMMISSIONERS' STANDING ORDER No. 1

APPENDIX

Notified Agricultural Tribes.

A.—District Groups.

SCHEDULE.

1	2	1	2
District.	Tribe.	District.	Tribe.
HISSAR ...	Ahir	GURGAON ...	Meo
	Arain		Moghal
	Bishnoi		Pathan
	Dogar		Rajput
	Gujar		Syad
	Jat		Taga
	Mali		
	Moghal		Abbasi
	Pathan		Ahir
	Rajput		Ansari
ROHTAK ...	Syad	KARNAL ...	Arain
	Ahir		Dogar
	Arain		Gadi
	Biloch		Gujar
	Chauhan		Jat
	Gujar		Kamboh
	Jat		Koreshi
	Mali		Mali
	Moghal		Meo
	Pathan		Moghal
GURGAON ...	Rajput	AMBALA ...	Pathan
	Ror		Rajput
	Saini		Ror
	Syad		Saini
	Taga		Syad
	Ahir		Taga
	Biloch		Usmani
	Gujar		Abbasi
	Jat		Ahir
	Khanzada		Ansari
	Koreshi		Arain
	Mali		Biloch
			Gara

1	2	1	2
District	Tribe.	District.	Tribe.
AMBALA ...	Gujar Jat Kamboh Kanet Koreshi Labana Magh Mali Moghal Pathan Rajput Ror Saini Syad Taga	HOSHIAHPUR	Arain Awan Bahti Chhang Dogar Girath Gujar Jat Kanet Koreshi Labana Mahtam Moghal Pathan Rajput Saini Syad
KANGRA { Dera, ... Hamirpur, ... Palampur, ... Kangra, ... and Nurpur ... Tahsils, ...	Arain* Bhati Chhang Dagi Gadi Ghirath Gujar Jat Kanet Koli Rajput Rathi Saini Thakur	JULLUNDUR	Arain Awan Dogar Gujar Jat Kamboh Koreshi Labana Mahton Pathan Rajput Saini Syad
(Kulu and Suraj Tahsils).	Arain* Brahman (in- digenous to Saraj) Dagi Kanet Koli Rajput Thakur	LUDHIANA...	Arain Awan Dogar Gujar Jat Kamboh Labana Patn

* Vide Financial Commission's correction slip No. 399 S O. (new series) dated 13-5-1919.

1	2	1	2
District.	Tribe.	District.	Tribe.
LUDHIANA ...	Rajput Saini Syad	JHANG ...	Koreshi Nekokara Rajput Syad Turk
FEROZEPUR	Arain Biloch* Bodla Dogar Gujar Kamboh Labana Mahtam Moghal Mussalman Jat Other Jat Pathan Rajput Saini Syad	MONTGOMERY	Arain Bhatti Biloch Bolla Jat Kamboh Khagga Kharral Koreshi Mahtam Pathan Rajput Syad
MULTAN ...	Ahir Arain Awan Biloch Gujar Jat Kamboh Kharral Khokhar Koreshi Mahtam Moghal Od Pathan Rajput, exclud- ing Rhatia. Syad	LAHORE ...	Arain Awan Biloch Bodla Dogar Jat Kamboh Kharral Koreshi Labana Mahtam Moghal Pathan Rajput Syad
JHANG ...	Arain Biloch Jat Kokara	AMRITSAR ...	Arain Awan Dogar Gujar Jat

*Vide Financial Commissioner's correction slip No. 133 B.O. (new series), dated 8th January 1915.

1	2	1	2
District.	Tribe.	District.	Tribe.
AMRITSAR ...	Kamboh Labana Moghal Pathan Rajput Syad	GUJRAT ...	Jat Koreshi Labana Moghal Pathan Rajput Syad
GURDASPUR	Arain Chhang Dogar Gujar Jat Kamboh Labana Moghal Pathan Rajput Saini Syad	GUJRANWALA	Arain Awan Biloch Dogar Gakhar Gujar Jat Kamboh Kharral Koreshi Labana Moghal Pathan Rajput Syad
SIALKOT ...	Arain Awan Baghban Dogar Gakhar Gujar Jat Kamboh Koreshi Labana Moghal Pathan Rajput Saini Syad	SHEIKHU- PURA *	Arain Awan Biloch Bodla Dogar Gakhar Gujar Jat Kamboh Kharral Koreshi Labana Mahtam Pathan Rajput Sayad Saini
GUJRAT ...	Arain Awan Bahrupia Biloch Gujar		† Mogh

Note.—The Labana tribe does not include the Banjar tribe.

* Vide F. C.'s correction slip No. 512, S. O. (new series), dated 6th February 1922.

† Vide F. C.'s correction slip No. 609 S. O. (new series) dated 18th April 1923.

1	2	1	2
District.	Tribe.	District.	Tribe.
SHEMPUR ...	Ahir	RAWALPINDI	Awan
	Arain		Biloch
	Awan		Danial
	Biloch		Dhund
	Gujar		Gakhar
	Jat		Gujar
	Kamboh		Jat
	Khokhar		Jodhra
	Koreshi		Khetlwal
	Maliar		Khattar
	Moghal		Koreshi
	Pathan		Maliar
	Rajput		Moghal
	Syad		Pathan
			Rajput
			Satti
JHELMUM ...	Akra	ATTOCK ...	Syad
	Awan		Awan
	Bhati		Bati Sheikh
	Biloch		Bhatti
	Chauhan		Biloch
	Chib		Gakhar
	Gakhar		Gujar
	Gujar		Jat
	Jalap		Janjua
	Janjua		Jodhra
	Jat		Jodh
	Jodh		Kahut
	Kahut		Kassar
	Kasar		Khattar
	Khandoya		Koreshi
	Khokhar		Mair & Manhas
	Koreshi		Maliar
	Lilla		Moghal
	Mair & Manhas		Pathan
	Maliar		Rajput
	Moghal & Kok		Sadiqi Sheikh
	Panwar		Syad
	Pathan		
	Phaphra		
	Rajput		
	Sial	MIANWALI...	Ahir
	Sohlan		Arain
	Syad		Awan
			Baghban

1	2	1	2
District.	Tribe	District.	Tribe.
MIANWALI ...	Biloch Gujar Jat Kharral Khokhar Koreshi Pathan Rajput Syad	D. G. KHAN	Moghal Mujawar Pathan Rajput Syad
	Arain Bhatti Biloch Gujar Jat Kamboh Khagga Kharral Kokara Koreshi Pathan Rajput Saini Syad		Arain Awan Biloch Jat Koreshi Pathan Rajput Syad
LYALLPUR ...	Arain Biloch Jat Khetran Koreshi Machi	MUZAFFAR- GARH.	Badi Bohara † Brahman Christian Kanet Koli Kumhar Lohar Mochhi All Pujaris in- digenous to the Kotgarh ilaqa. Rajput Rehar Sunar
D. G. KHAN		SIMLA—KOTGARH ILAQA OF THE KOTGARH TAHSIL *	

* Vide F. C.'s correction Slip No. 408, S. O. (New Series) dated 5th August 1919.

Vide F. C.'s correction Slip No. 193, S. O. (New Series) dated 12th May 1921.

B.—Separate Group.

(1) Gaur Brahmans (excluding Bohras) in Rohtak, Karnal and Gurgaon Districts, and Hissar, Hansi, Fatehabad and Bhiwani Tahsils of Hissar District.

(2) Brahmans in Una *Tahsil* of Hoshiarpur District.

(3) Brahmans in Rawalpindi District.

(4) Muhial Brahmans in Jhelum District.

(5) Kakezais in Jhelum District.

(6) Gadhiok Kanungos in Jhelum District.

(7) Brahmans (excluding Bujru, Acharaj, Bhat, Samasi, Gujrati, Bhojki Brahmans) in the Dera, Hamirpur, Palampur, Kangra and Nurpur *Tahsils* of the Kangra District.

(8) Mazhbi Sikhs and Indian Christians, Sheikhupura District.

Explanation:—Indian Christian means a Native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion.*

(9) Mazhbi Sikhs, Lyallpur District.

(10) Tarnaich Brahmans in Pathankot *Tahsil* of the Gurdaspur District.

(11) Barsotra Brahmans in Shakargarh *Tahsil* of the Gurdaspur District.

(12) Dat Brahmans in Gurdaspur District and Rayn *Tahsil* of Sialkot District.

(13) Native Christians in the Gujranwala and Lyallpur Districts, and "Estate 500, in the Shorkot *Tahsil* of Jhang"†

(14) Bagri Kunhars, Bagri Khatris and Suthars, Fazilka *Tahsil* of the Ferozepore District.

(15) Muhial Brahmans in Attock District.‡

Member of an agricultural tribe.—The expression "member of an agricultural tribe" is not defined

*Vide F. C.'s correction slip No. 513, S. O. (new series), dated 6th February 1922.

†Vide F. C.'s correction slip No. 201, S. O. (new series), dated 11th December 1913.

‡Vide F. C.'s correction slip No. 232, S. O. (new series), dated 10th May 1916.

by the Act, but the notification (No. 63 dated the 18th April 1904) of the Local Government dealing with the subject prescribes that a person claiming that status in a particular district must fulfil two conditions :—

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- (1) He must either hold land or ordinarily reside in that district.
- (2) He must belong to any one of the tribes notified as agricultural tribes for that district.

In other words the above notification makes ordinary residence or the holding of land in the district a *sine qua non* to the acquisition of the status of a member of an agricultural tribe in the district. *Pal Singh v. Thakur Singh*, P. R. 120 of 1916. See also Punjab Land Administration Manual paras 27 and 28 *

Holding Land.—This term has not been defined in the act. Its etymological meaning is owning or possessing land, but in view of the use of this term in the definition of "agriculturist" in section (2) (1) of Act XIII of 1900, which has been abolished by Punjab Act 1 of 1907, section 2 (1), it seems probable that the Legislature meant to apply it to persons having some permanent connection with the land. It does not include a tenancy at will, as was observed by their Lordships the Judges of the High Court in *Fatah Singh v. Sant Singh*, P. R. 43 of 1915, "It has been urged on behalf of the appellant that he was a tenant-at-will of the land in dispute, but we doubt very much whether a person who occupies land as such can be said to hold within the meaning of the notification. It seems to us that the definition given therein contemplates that a person must have some permanent connection with the district in which he wants to acquire land as pre-emptor and that connection can be established either by proving ordinary residence in it or by showing that he held land therein. The interest of a tenant-at-will which is liable to be determined at the instance of the landlord is of too transient nature to secure the object which the framers of the definition had in view"

*See Appendix V of this book

SEC. 4. Ordinarily resides.—The words dwelling or residence are synonymous with domicile or home and mean that place where a person has his fixed permanent home, to which, whenever he is absent, he has the intention of returning. *Fatima Begum v. Sakina*, L. All, 51. Temporary absence from a dwelling house with nothing to show an intention of not returning, is consistent with "dwelling" there. *Gunda Mal v. Muku Mal*, P. R., 17 of 1871, *Narainjan Das v. Pandit Ram Kishan*, P. R. 33 of 1879 (Cr). The residence in the Lyallpur district where the land sold is situate, for a few years before the sale, of a *Jat*, a member of an agricultural tribe whose original home was in the Sialkote district is not such residence as is contemplated by the notification. *Fateh Singh v. Sant Singh*, P. R. 43 of 1915.

Persons held to be members of an agricultural tribe.—*Hanjra Jats* (Mullian District), possibly formerly Mochies, are members of an agricultural tribe. *Karimulul Khan v. Mussammat Amir Bibi*, P. W. R. No. 26 of 1909.

Persons held not to be members of an agricultural tribe.—(1) *Bairagis* (Karnal District), *Jibis v. Neki* P. W. R. 51 of 1900, (2) *Kharals* (Hissar District), *Munau Ram v. Ghulam Muhammad* P. R. 117 of 1908, (3) *Madaris* (Ludhiana District), *Bhola v. Razaq Shah*, P. R. 7 of 1911, (4) *Mahtons* (Muzaaffargarh District), *Sonun v. Rupan Bai*, P. R. 24 of 1908, (5) *Mohal Khayyat* (Ludhiana District). *The Secretary of State for India in Council v. Gulam Rasool Khan*, 4 L. L. J. 79.

Member of the same tribe.—The words "members of the same tribe" in section 3(1) (c) of the Punjab Alienation of Land Act (XIII of 1900) should be held to be equivalent to "member of the same agricultural tribe in the same district." It follows therefore that the permanent alienation of land by a member of an agricultural tribe to a member of the same tribe in another district, even though the tribe may also have been notified as an agricultural tribe in the latter district, requires the sanction of the Deputy Commissioner of the district in which the

land is situated. *A fortiori* a permanent alienation of land in a British district by a member of an agricultural tribe to a member of the same tribe residing in a Native State requires the sanction of the Deputy Commissioner of the district. In such cases the instructions contained in paragraph 25 of this Standing Order as to the giving or withholding of sanction should be followed. Suo. 4.

The same words recurring in section 6 (1) of the Act relating to temporary alienations of land should be similarly interpreted, and accordingly mortgages by a member of an agricultural tribe to a member of the same tribe in another district or in a Native State are invalid unless they are in one of the approved forms given in the section referred to. *Financial Commissioner's standing order No. 1 para 5.*

Member of an agricultural tribe qua a particular district, agreement to sell land.—A *Jat* of the Lyallpur district agreed to sell his land situate in the Lyallpur district to a *Jat* of the Hoshiarpur district and on 5th January 1914 executed an agreement containing *inter alia* the stipulation that the sale deed would be executed and registered by a particular date and that the party committing breach of the contract would pay damages and that if there was any legal obstacle to the execution and registration of the sale deed neither party would be entitled to any damages. *Held*, that as plaintiff neither held land nor resided in the Lyallpur district he was not a member of an agricultural tribe qua that district and was not entitled to purchase the land without the sanction of the collector. Local Government notification No. 63 dated the 18th April 1904 under section 4 of the Act referred to. *Pal Singh v. Thakar Singh*, P. R. 120 of 1916.

Member of a tribe in the same group.—Two sets of notifications have been issued by Government one declaring certain tribes within the limits of individual districts to be agricultural tribes under "district group" and the other declaring particular tribes residing in particular districts to be agricultural tribes under

Sec. 4. "separate group," excluding the latter from the former group.

In each district all the tribes in the same group (see Appendix) form, to all intents and purposes, one society between the members of which alienations are not restricted by the Act. A member of a separate group is debarred from giving land to, or receiving land from, a member of another group of agricultural tribes except as provided in the act. *Financial Commissioner's standing order No. 1 para 8.* See also Punjab Land Administration Manual para 32.*

An agriculturist gazetted in the special limited group has no power to pre-empt land sold by a member of the district group; he can only pre-empt land sold by a member of his own special limited group if the sale be by an agriculturist. So, too, and this is probably a quite unintentional provision for which there is no political justification, a member of the district group of agricultural tribes cannot pre-empt the sale of agricultural land by a member of the special limited group in that district. The result therefore of this extraordinary provision, and I think that it is purely unintentional, is that a sale by an agriculturist of the special group cannot be pre-empted by an agriculturist of the district group in preference to a non-agriculturist. "*The Law of pre-emption in the Punjab*" by Mr Ellis, *fourth Edition*, p. 249.

Record of tribal designation.—Attempts are frequently made by persons who are not zemindars to get themselves recorded as members of agricultural tribes and it is desirable to take steps to check such attempts. The most simple case that can occur is where a person applies to have his tribal designation as shown in the village papers altered, apart from any proceedings under the Alienation of Land Act, from that of a non-agricultural to an agricultural tribe. If a mutation of this kind is wrongly sanctioned, it may afterwards be used to support what would otherwise be an illegal transaction under the Alienation of Land Act. In such

*See appendix V of this book.

cases, therefore, the Revenue Officer, to whom the register of mutations is submitted, should either (a) refuse sanction and leave the applicant to appeal or (b) if he thinks that there has been a mistake in fact, and that the claim should be admitted, report the case to the Collector for orders

SEC. 4.

33. (i) The second class of cases to be noticed is of a more complicated nature, and arises out of proceedings directly connected with the working of the Alienation of Land Act.

(ii) Sub-sections (1) and (2) of paragraph 16 of Standing Order No. 23 provide for the procedure of patwaris and revenue officers in the case of permanent and temporary alienations of land made otherwise than in accordance with the provisions of the Alienation of Land Act. But the question whether an alienation is or is not in accordance with the provisions of the Act may depend on whether the alienee is or is not a member of an agricultural tribe.

(iii) If in such a case the claim of the alienee to be a member of an agricultural tribe does not depend on any entry in the record-of-rights (e.g., when the alienee is recorded neither as a landlord nor as a tenant), it might happen that in the absence of such documentary evidence the alienee would be accepted, on the basis of verbal and inaccurate statements, as a member of an agricultural tribe. Then, if the alienation is otherwise in accordance with the provisions of the Act, the procedure laid down in sub-section (2) above referred to would not be followed.

(iv) In order to obviate this risk, the revenue officer ; to whom the register of mutations is submitted for orders, shall in all cases in which the alienee is unable to support his claim to be a member of an agricultural tribe from an entry in a record-of rights :—

(a) in the case of a permanent alienation, follow the procedure laid down in Standing Order No. 23, paragraph 16, sub-section 2 (a), and

(b) in the case of a temporary alienation, refer it for the orders of the Deputy Commissioner if he thinks the claim is substantiated. Otherwise he should

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refuse to sanction mutation as in Standing Order No. 23, paragraph 16, sub-section (2) (b).

34. (i) A more difficult class of cases is where the alienee, though shown in a record-of-rights, is described by a class name which is not one of the well-recognized subdivisions of the notified tribe to which he claims to belong, e.g., where a Harni claims that the Harnis are Rajputs.

(ii) Here there is a general question for decision, viz., whether the contention is correct that the class concerned does in fact belong to one of the notified tribes; and the decision would be of importance because all future applications by members of the class would, in the district concerned, be dealt with in accordance with it.

(iii) Whenever a case of this kind arises, the Revenue Officer shall report it to the Deputy Commissioner, who will himself make an inquiry, and, unless he rejects the application, report the result to the Commissioner for orders. If the Commissioner considers the case clear, he should dispose of it himself, but doubtful cases should be reported to the Financial Commissioner. It is most desirable that in dealing with cases of this class there should be uniformity of treatment throughout the Province. *Financial Commissioner's Standing order No 1.*

Status of a member of an agricultural tribe not changed by: (1) *Change of Religion*.—Nau-Muslims. Action may be required in the case of members of agricultural tribes, who, on conversion to Muhammadanism, have been shown in the records under another name. For example, in the Delhi District, Mussalman Tagas were shown as Sheikhs, a tribe not notified as agricultural in that District. Nau-Muslim Sheikhs belonging to a tribe notified as agricultural do not lose their agricultural status simply by their change of religion, and the Muhammadan part of such an agricultural tribe should be entered in the records as Taga (Mussalman)—to take the same example—in every case and treated as members of a notified agricultural tribe. The necessary alteration of the records should be made by a mutation order, which should be

sanctioned by the Deputy Commissioner himself and which, Sec. 4.
if convenient, should be one for each village concerned.
Financial Commissioner's standing order No. 23, para. 12.

(2) *Entering into a religious order.* *Held*, that a member of an agricultural tribe is not, by his becoming a *faqir* or entering into a religious order, exempted from the restrictions on his power of alienation imposed by the Punjab Alienation of Land Act. *Sant Ram v. Sarup Das*, P. R. 5 of 1905, (Rev.).

(3) *Adoption of a profession.* *Held*, that members of an agricultural tribe do not cease to hold that status if they adopt or if their ancestors adopted, prostitution as a profession, nor can such adoption vary their custom in respect of inheritance. The adoption of a profession can not change a man's status for the purposes of the Punjab Alienation of Land Act. *Obiter*. In the case of a Muhammadan belonging to an agricultural tribe marrying a woman not a member of such a tribe, his wife does not attain the status of belonging to his agricultural tribe. *Mussammatt Umrao Bibi v. Muhammad Balhsh*, 55 I. C. 236.

Status of a non-agriculturist not altered by change of religion. -The plaintiff was born of a Sikh father and was himself a Sikh upto the time of his conversion to Islam. It was on his conversion that he received the usual title of Sheikh which is universally applied in India to all converts to Islam. He lodged a pre-emption suit for a certain agricultural land situated in the Kohat district on the ground that he being a Sheikh was a member of the notified agricultural tribe of Sheikhs in the district. *Held*, that the Local Government of the N. W. F. Province in notifying the Sheikhs as members of an agricultural tribe intended, by the term "Sheikhs" to designate certain tribes who had been settled in those districts under conditions similar to those of other tribes and who owned land and followed the profession of agriculture; that it did not intend to include non-agriculturists who became "Sheikhs" merely by the fact of conversion. *Held also*, that when a

10. i. person claiming the privileges of an agricultural tribe of the Kohat district is not even a member of any tribe of Sheikh; but has merely received the appellation of " Sheikh " by reason of conversion, it is inconceivable that he can thereby assume membership of the notified agricultural tribe. His title of Sheikh however universally conceded, is nothing more than an honorific appellation. It can no more alter the legal status of the recipient than another appellation which is conferred upon him for some reason by popular opinion. He does not become a member of an agricultural tribe and cannot, without fulfilling the conditions laid down in the proviso to section 11 of Act II of 1905, sue for pre-emption in respect of agricultural land. *Muhammad Sher, v. Sheikh Fazal Rahman*, 71 I. C 312.

Effect of inclusion of a tribe in the list of agricultural tribes.—*Held*, that the inclusion of a tribe among the list of the agricultural tribes of a district under Section 4 of the Punjab Alienation of Land Act, 1900, should not be regarded as a conclusive proof that the tribe has adopted the general rules of customary law observed by the agricultural tribes in that district. *Jowahir Singh v. Yaqub Shah*, P. R. 5 of 1906. See also *Nathu v. Rafiq Muhammad*, P. L. R. 270 of 1913.

Effect of omission to include a tribe in the notification under the act.—*Held*, that the fact that a tribe is not notified as an agricultural tribe for the purposes of the Punjab Alienation of Land Act is not conclusive in itself to prove that such tribe is not bound by the restrictive rules ordinarily observed by the agricultural tribes of the Province. *Faqir Muhammad v. Fazal Muhammad*, P. R. 16 of 1906. See also *Bhola v. Razzaq Shah*, P. R. 7 of 1911, p. 12.

Effect of notification not retrospective.—(1) K. D. sold the land in suit to M. B. Separate suits for pre-emption were brought by K. B. and A. B. on 22nd October 1902 and summons were served on 24th October for 7th November. On 29th October M. K. filed a pre-emption suit and on 7th November obtained from M. B. vendee a sale deed of the

land for the full price mentioned in the previous sale deed. M. K. then allowed his own suit to go by default and was made defendant in the other two suits. *Held*, that, inasmuch as K. B. belonged to the Kureshi tribe which was not notified as an agricultural tribe under Act XIII of 1900, until 1904, he had no right of pre-emption at all at time of suit and therefore his suit must fail. Section 4 of Act XIII of 1900, lends no colour to the argument that a tribe can be held "agricultural" for the purposes of the Act before actual Notification in the Gazette takes place or that such a Notification has retrospective effect. *Muhammad Khan v. Sardar*. P. R. 7 of 1910. See also *Uda v. Mul Chand*, P. R. 4 of 1907, p. 27, and *Amir Shah v. Jetha*, P. R. 26 of 1914. (2) On 23rd July, 1909, a notice of foreclosure was issued under Regulation (XVII of 1806) to a mortgagor who was not then a member of an agricultural tribe under the Land Alienation Act. The notice was served on 17th August 1909, and the year of grace began to run against the mortgagor. On 26th May, 1910, the mortgagor's tribe was declared to be an agricultural tribe. After the expiry of the year of grace the mortgagee sued the mortgagor for possession of the mortgaged land as proprietor thereof: *Held*, that the fact that the mortgagee became a member of an agricultural tribe before the expiry of the year of grace could not stop the year of grace from running with the effect of vesting in the mortgagee the proprietary rights in the land at its expiration. *Bulanda v. Diwanu*, P. W. R. 109 of 1912.

Sec. 4.

Suit for a declaration that plaintiff belonged to a particular tribe, maintainable.—(1) The defendants stated before the revenue authorities that the plaintiffs were Shoikhs and as such not entitled to various rights in the village to which Rajputs alone were entitled. The plaintiffs thereupon brought a suit for a declaration that they were Rajputs of the Tanewar got and not Sheikhs. *Held*, that the suit was maintainable. *Chaudhri Tasaddug Husain Khan v. Chaudhri Wazir Ali Khan*, P. L. R. 9 of 1906. (2) *Held*, that the plaintiff's claim for a declaration that they belonged to the Mughal and not to the Miama tribe, was maintainable. *Muhammad Azim v. The*

- J. 4. *Secretary of State for India in Council*, P. L. R. 89 of 1910.

Burden of Proof. *Held*, that the onus of proving that a person is of a particular tribe, is on the person asserting *Chaudhri Khushi Ram v. Asu Ram*, P. R. 87 of 1910.

Agriculturist-decision of a Revenue authority-if binding on Civil Court.--*Held*, that the decision of Revenue officer as to whether a person is a member of an agricultural tribe is not binding on the Civil Courts which are free to form their opinion on the point. *Ladhu Ram v. Ali Shah*, 3 Lahore Law Journal, 489.

Section not affected by the Punjab Government notification exempting from the operation of certain provisions of the Act, certain areas.--*Held*, that the plaintiffs members of an agricultural tribe and owners of land in the village of Mozaug, a suburb of Lahore, were entitled to exercise their right of pre-emption under the Punjab Preemption Act (Act No. II of 1905) and the fact that the agricultural land was purchased for building purposes and was situated within municipal limits of Lahore did not affect their right. *Held* also, that Sec. 21 of the Punjab Preemption Act (No. II of 1905) was not applicable to the case, the sale in question not being in contravention of the Punjab Alienation of Land Act. Punjab Government Notification No. 84* dated the 14th May 1902 which was issued before the passing of the Punjab Pre-emption Act (Act No. II of 1905), under section 24 of the Punjab Alienation of Land Act exempted the land from the operation of the main provisions of the Act but not from section 4 which deals with agricultural tribes. *Kanti Narain Agnihotri, v. Sayal Sardar Shah*, P. L. R. 7 of 1909. See also *Lachman Singh v. Sunder Das*, 3. Lahore Law Journal, 430 in which it was held that a non-agriculturist cannot pre-empt

* This notification No. 84, dated the 14th May 1902, has been superseded by notification No. 10176, dated the 21st June 1919 for which see appendix II of this book.

a sale of agricultural land by an agriculturist to a non-agriculturist though the land may be situated within the limits of a Municipality.

SEC. 5.

5. When a Deputy Commissioner sanctions a permanent alienation of land, his order shall not be taken to decide or affect any question of title, or any question relating to any reversionary right or right of pre-emption.

Saving for rights in land alienated.

NOTES.

Repeal by implication of this section as regards rights of pre-emption, by sec. 9 of the Punjab Pre-emption Act (No. 1 of 1913).—*Held*, that section 9 of the Punjab Pre-emption Act, 1913, must be held to repeal by implication so much of section 5 of the Punjab Alienation of Land Act, 1900, as conflicts with itself and consequently no right of pre-emption exists in respect of any sale sanctioned by the Deputy Commissioner under section 3 (2) of the latter Act. *Ganga Ram v. Raju Ram*. P. R. 124 of 1916.

Rights of Pre-emption under the Punjab Laws Act (act IV of 1872).—A member of an agricultural tribe sold his share in a joint *khata* of land to a non-proprietor in the village but who belonged to the same agricultural group as the vendor, and one of the co-sharers in the *khata* comprising the land sold, who was not a member of an agricultural tribe, instituted a suit for pre-emption. *Held*, that the plaintiff's right of pre-emption which he had possessed under the Punjab Laws Act has been abrogated by the provisions of the Punjab Alienation of Land Act by reason of his being neither an agriculturist in the village nor a member of an agricultural tribe, and that he was not entitled to maintain his suit. *Held further*, that the Punjab Alienation of Land Act being a special law must be treated as repealing the previous general statute *pro-tanto* by implication. *Parma Nund v. Ghulam Futima*, P. R. 15 of 1905.

5. Gift by an Arain in favour of his daughter married in another district—Effect of sanction.—A sonless Arain of Hoshiarpur district made a gift of his land in favour of his daughter married to a man of Jullundur district. The sanction was refused by the Deputy Commissioner and the order was upheld by the Commissioner. *Held*, by the Financial Commissioner that amongst Arains of the Hoshiarpur district a gift by a sonless proprietor of his ancestral land being valid by custom a man should not be deprived of that privilege merely because his daughter has married in another district and that in such cases sanction should not have been withheld. *Held* also, that the giving of the sanction merely means that Government has no objection to the alienation. It leaves untouched questions relating to the reversionary rights in the land. *Mussummat Sairan v. Gahna*, P. W. R. 8 of 1908, (Rev.).

Exchange—Effect of order of sanction.—The Respondent Lal Khan made an agreement of exchange of his land with the petitioner Sardar Singh but subsequently he (Lal Khan) backed out of the transaction and made a denial of it before the Deputy Commissioner who disallowed exchange. On revision the Financial Commissioner sanctioned the exchange of land and observed:—"It does not appear that the exchange is at all detrimental to Lal Khan and except for Lal Khan's denial the exchange would undoubtedly have been sanctioned. I do not think that Lal Khan should be allowed to repudiate his transactions in this way. I shall, therefore, accept this application and cancelling the order of the Deputy Commissioner I shall sanction this exchange of land. I note here that the effect of this order will not be to make any transfer of land or in any way to alter the position of the parties *inter se*. The only effect of this order will be to enable the petitioner to take legal proceedings to enforce the agreement, which has been arrived at between him and Lal Khan." *Sardar Singh v. Lal Khan*, 2 Lab. Law Times, 8.

Enquiry into title unnecessary. Deputy Commissioners will see from section 5 of the Act that in dealing

with applications for sanction under section 3 they need not go into any question of title or any question relating to any reversionary right or right of pre-emption. *Financial Commissioner's Standing order No. 1 para 24* see to the same effect Punjab Land Administration Manual para 35* SEC. 6.

III.—Temporary Alienation of Land

6. (I) If a member of an agricultural tribe mortgages his land and the mortgagee is not a member of the same tribe, or of a tribe in the same group, the mortgage shall be made in one of the following forms :—

Forms of mortgage permitted in certain cases.

- (a) in the form of a usufructuary mortgage, by which the mortgagor delivers possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on, or if the term agreed on exceeds twenty years), after the expiry of twenty years, the land shall be re-delivered to the mortgagor ; or
- (b) in the form of a mortgage without possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Deputy Commissioner to place him in possession for such term, not exceeding twenty years, as the Deputy Commissioner may consider to be equitable, the mortgage to be treated as a

*See appendix V of this book.

. 6.

usufructuary mortgage for the term of the mortgagees' possession and for such sum as may be due to the mortgagee on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate and for such period as the Deputy Commissioner thinks reasonable ; or

(c) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land-revenue in addition to the amount of the land-revenue of the tenancy and the rates and cesses chargeable thereon and for such term as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy and the mortgagee having no right to eject the mortgagor unless on the grounds mentioned in section 89 of the Punjab Tenancy Act, 1887 ; or

(d) in any form which the Local Government may, by general or special order, permit to be used.

(2) If in the case of a mortgage in form (a) the mortgagor is ejected or relinquishes or abandons cultivating occupancy of the land, the mortgage shall take effect as a usufructuary mortgage in form (a) for such term not exceeding twenty years from the date of ejection, relinquishment or abandonment,

and for such sum of money as the Deputy Commissioner considers to be reasonable. Sec. 6.

(8) The Deputy Commissioner, if he accepts the application of a mortgagee under sub-section (1) (b), shall have power to eject the mortgagor, and as against the mortgagor to place the mortgagee in possession.

NOTES.

Mortgages under the Act, excluded from the operation of the Punjab Redemption of Mortgages Act, (No. II of 1913).—In 1909, a member of an agricultural tribe made a usufructuary mortgage under section 6 of this Act, in favor of a *Mahajan*. In 1913, the mortgagor effected a second mortgage of the same land in favor of a Jat, a member of an agricultural tribe and expressly conveyed to him the right of redeeming the first mortgage. The second mortgagee made an application under section 7 (3) and (5) of the Act to have the first mortgage redeemed. *Held*, that as the proviso to section 1 of the Punjab Redemption of Mortgages Act, (II of 1913),* excludes from its operation mortgages made under section 6 of the Alienation of Land Act, the former Act was not applicable to the case. *Held also*, that a second mortgage made under section 6 of the Alienation of Land Act, can not give the mortgagee power to redeem a prior mortgage. *Held further*, that as both parties to the second mortgage were members of agricultural tribes, the terms and scope of their contract were in no way restricted by the provisions of the Alienation of Land Act and the second mortgagee was consequently entitled to redeem or pay off the first mortgage both under the express terms of the contract and, apart from that, as an ordinary incident of the general law of mortgage, *vide* section 74 of the Transfer of Property Act. *Sarupa vs. Kundan Lal*, P. R. 7 of 1917, (Rev.).

Sub-section (1) Scope of restrictions.—The provisions regarding mortgages apply only to those made

Sec. 6. by members of agricultural tribes in favour of persons who are not members of the same tribe or of a tribe in the same group, or in other words, as matters at present stand, in the same district. When hypothecating his land to such persons a member of an agricultural tribe must choose between three kinds of mortgages. Two of these are usufructuary mortgages, the mortgagee acquiring for the time being the rights of landlord. *Punjab Land Administration Manual, para. 39.*

Clause (a). Usufructuary Mortgage for limited period, usufruct extinguishing principal and interest.—This is a mortgage for a limited period not exceeding twenty years, all the rights of the mortgagor being suspended, and the rents and profits enjoyed by the mortgagee being taken as extinguishing by the end of the term his claim for both principal and interest. This form of mortgage was not unknown in the Panjab before the Act was passed, but it was rare.¹ *Punjab Land Administration Manual, para 40.*

Clause (b). Collateral mortgage.—This form of mortgage is a collateral one, in which the mortgagor retains all rights of ownership and cultivation, subject, however, to the condition that, if he fails to pay principal and interest in accordance with the terms of the contract, the mortgagee may apply to the Deputy Commissioner to put him in possession of the land. The mortgage then becomes converted into a usufructuary one of the first form for such a term not exceeding twenty years as the Deputy Commissioner thinks reasonable. It is also his duty to determine what the principal of the debt in the case of the new mortgage shall be. This will consist of whatever amount he finds to be due on account of the balance of principal and interest outstanding on the old mortgage. In making up the account the Deputy Commissioner need not accept the rate of interest contracted for, but may award whatever amount of simple interest he thinks reasonable. *Punjab Land Administration Manual, para 42.*

¹ In Ambala a mortgage of this description was known as "chinkota rahu."

Procedure on application to the Deputy Commissioner under section 6 (1) (b) to place the mortgagee in possession.—The procedure will be regulated by notification No. 24-S,* dated 22nd May 1901. It will be observed that, in addition to applications from the parties, Deputy Commissioners will have references made to them by Civil Courts under section 9 (3) with a view to their exercising the powers conferred upon them by section 9 of the Act. Their procedure will then be regulated by notification No. 25 S.,* dated 22nd May 1901, which is in substance the same as rule 5 of notification No. 24 S., dated 22nd May 1901. *Financial Commissioner's Standing Order No. 1, para 40.*

Clause (c). Usufructuary mortgage for unlimited period with reservation of right of occupancy.—In this form of usufructuary mortgage the term is subject to no statutory limitation, the mortgagor reserves the rights of an occupancy tenant at such cash rent as may be agreed upon, consisting of:

- (a) the land revenue, plus
- (b) the rates and cesses, plus
- (c) an additional sum not exceeding (a), and this rent is taken as equivalent to interest. The mortgagor tenant cannot alienate his right of cultivation, and he can only be ejected on some ground which would under section 39 of the Tenancy Act justify the ejection of an occupancy tenant. Should he abandon the land or be ejected from it, the mortgage takes effect as one in the first form for such term not exceeding twenty years from the date on which his possession came to an end, and for such a sum of money as the Deputy Commissioner may think reasonable. *Punjab Land Administration Manual, para 41.*

Section 39 of the Punjab Tenancy Act (XVI of 1887) runs as follows :—

A tenant having a right of occupancy shall be liable to be ejected from his tenancy on any of the following grounds, namely :—

6. (a) That he has used the land comprised in the tenancy in a manner which renders it unfit for the purpose for which he held it ;
- (b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate ;
- (c) that a decree for an arrear of rent in respect of the tenancy has been passed against him and remains unsatisfied.

Clause (d). Question whether statutory mortgages will come into use.—Experience alone will prove whether any of these statutory forms of mortgage will come into common use. The Local Government has power to permit any other form of mortgage to be used by members of agricultural tribes and to the conditions admissible in the forms permitted by the Act. *Punjab Land Administration Manual, para 47.*

Sub-section 2. Procedure on application to the Deputy Commissioner under sec. 6 (2) to fix the term and mortgage-money of the usufructuary mortgage.—Here an order of the Deputy Commissioner is necessary, whether an application is made by any party or not. If the mortgagor is ejected, the Revenue Officer ordering the ejection under section 45 of the Tenancy Act must report the case to the Deputy Commissioner, so that he may exercise the powers conferred upon him. If the mortgagor relinquishes or abandons his cultivating occupancy of land, the necessary report to the Deputy Commissioner should be made by the patwari, the field kanungo and the tahsildar. The usufructuary mortgage resulting from the proceedings should be entered in the record-of-rights. *Financial Commissioner's Standing order No. 1, para 41.*

Sub-section (3). Legal change.—This sub-section was added by Act No. 1 of 1907, Section 6.

7. In the case of mortgages made under section 6— Sec. 7.

Rules applying to permitted mortgages.

- (1) no interest shall accrue during the period for which the mortgagee is in possession of the land or in receipt of rent ;
- (2) if the mortgage is in form (a) or form (b), then at the end of such period of possession the mortgage-debt shall be extinguished ;
- (3) the mortgagor may redeem his land at any time during the currency of the mortgage, on payment of the mortgage-debt or, in the case of a mortgage in form (a) or form (b), of such proportion of the mortgage-debt as the Deputy Commissioner determines to be equitable ; and
- (4) in the case of a usufructuary mortgage the mortgagor shall not be deemed to bind himself personally to repay the mortgage-money ;
- (5) if a mortgagor who has applied to the Deputy Commissioner under sub-section (3) proves to the satisfaction of the Deputy Commissioner that he has paid the mortgage-debt or such proportion of the mortgage-debt as the Deputy Commissioner has determined to be equitable, or deposits with the Deputy Commissioner the amount of such mortgage-debt or of such proportion thereof, the redemption of the land shall be deemed to have taken place, and the Deputy Commissioner shall have power to eject the mortgagee, if in possession, and as

no. 7.

against the mortgagee to place the mortgagor in possession.

NOTES.

Sub-section 1. Mortgagor's right of redemption unrestricted.—The execution of a mortgage in one of the statutory forms in no way interferes with the mortgagor's right to redeem his land at any time on payment of the mortgage debt, or, in the case of a mortgage in form (a) or (b), of such proportion of the mortgage debt as the Deputy Commissioner determines to be still due. *The Punjab Land Administration Manual, para. 46.*

Redemption before expiry of term-power of Deputy Commissioner to fix amount of mortgage-debt.—*Held*, that the words "such proportion of the mortgage debt as the Deputy Commissioner determines to be equitable" used in section 7 (3) are wide and confer upon him a correspondingly wide equitable power, and that it is not only open to him to enquire into and to consider the extent to which the principal sum together with reasonable interest thereon has been realized by the mortgagee from the rents and profits of the land held under mortgage but that he is in fact required to do so, and that if he finds that the whole of the mortgage money and reasonable interest thereon or more has been recovered by the mortgagee out of such rents and profits he may declare that nothing more is payable by the mortgagor. *Sultan v. Lakh Ram*, P. R. 2 of 1917 (Rev.).

Redemption of usufructuary mortgage during its currency-method of computing amount due in case of produce rent.—*Held*, that in fixing the amount due on an usufructuary mortgage, when the rent is payable in kind, although an exact account of the mortgagee's receipts is not practicable, the estimate of such receipts should be made only after proper and adequate enquiry. *Held also*, that notwithstanding sub-section (1) of section 7 of the Act, the Deputy Commissioner in fixing the amount due on the mortgage under sub-section (3) should include current interest at a reasonable rate on the balances of the principal outstanding from

time to time at the successive harvests during which the mortgagee has been in possession. P. R. 2 of 1917 (Rev.) referred to. *Baga Singh v. Shahab Din*, P. R. 1 of 1921. SEC. 8.

Right of second mortgagee to redeem the first mortgage.—See *Sarupa v. Kundan Lal*, P. R. 7 of 1917, (Rev.) noted under section 6.

Reference by court to Deputy Commissioner.—When a suit to which the provisions of section 7 (3) of the Punjab Alienation of Land Act, XIII of 1900, apply, is brought before a Civil Court, the Court should, on the application of either of the parties, refer to the Deputy Commissioner to determine the proportion of the mortgage debt that is equitable, and keep the case pending until such determination has been made. *Financial Commissioner's Standing order No. 1, para 45.*

Procedure on application to the Deputy Commissioner under section 7 (3) to fix the proportion of the mortgage debt to be deemed equitable.—If the mortgagor brings a suit for redemption, the case may be referred to the Deputy Commissioner by the Civil Court for determination of the proportion of the mortgage debt which is to be regarded as due. The procedure of the Deputy Commissioner will then be regulated by notification No 25 S., * dated 22nd May 1901. *Financial Commissioner's Standing order No. 1, para 41.*

Sub-section (5) Legal Change:—This sub-section was added by Act 1 of 1907, section 7.

8. (1) In a mortgage made under section 6, the following conditions may be added by agreement between the parties :—

Conditions in permitted mortgages,

- (a) a condition fixing the time of the agricultural year at which a mortgagor redeeming his land may resume possession thereof ;

* See appendix II of this book.

Sec. 9.

- (b) conditions limiting the right of a mortgagor or mortgagee in possession to cut, sell or mortgage trees or to do any act affecting the permanent value of the land; and
- (c) any condition which the Local Government by general or special order may declare to be admissible.

(c) In mortgages made under section 6 any condition not permitted by or under this Act shall be null and void.

NOTES.

Conditions which may be inserted in statutory mortgages.—In these statutory mortgages conditions may be inserted limiting the right of a mortgagor or mortgagee in possession to cut, sell, or mortgage trees, or to do any act affecting the permanent value of the land. The time in the agricultural year at which a mortgagor who redeems his land may resume possession of it may also be fixed. Any conditions not permitted by the Act which are inserted in these mortgages are null and void. *The Punjab Land Administration, Manual, para 43.*

9. (1) If a member of an agricultural tribe makes a mortgage of his land in any manner or form not permitted by or under this Act, the Deputy Commissioner shall have authority to revise and alter the terms of the mortgage so as to bring it into accordance with such form of mortgage permitted by or under this Act as the mortgagee appears to him to be equitably entitled to claim.

power to
revise
mortgage
made in
manner not
permitted.

(2) If a member of an agricultural tribe has before the commencement of this Act made a mortgage of his land in which there is a condition intended to operate by way of conditional sale, the Deputy Commissioner shall be empowered at

any time during the currency of the mortgage to **Sec. 9.**
 put the mortgagee to his election, whether he will agree to the said condition being struck out, or to accept in lieu of the said mortgage a mortgage which may at the mortgagee's option be either in form (a) or in form (b) as permitted by section 6 and which shall be made for such period not exceeding the period permitted by the said section and for such sum of money as the Deputy Commissioner considers to be reasonable.

d) If proceedings for the enforcement of a condition intended to operate by way of conditional sale are instituted or are pending at the commencement of this Act in any Civil Court or if a suit is instituted in any Civil Court on a mortgage to which sub-section (1) or sub-section (2) applies, the Court shall refer the case to the Deputy Commissioner with a view to the exercise of the power conferred by the sub-section applying thereto.

(4) When a mortgagee put to his election under sub-section (2) agrees to accept in lieu of his mortgage a mortgage in form (a) or in form (b) as permitted by section 6 for the period and for sum of money considered by the Deputy Commissioner to be reasonable, and the mortgagor cannot be found, or fails to appear when duly served with notice to do so, or refuses or neglects to execute such mortgage, the Deputy Commissioner shall have authority to execute such mortgage on such terms as to costs as he may fix and the mortgage so executed shall have effect as if it had been executed by the mortgagor. The Deputy Commissioner may for any reason which he deems sufficient set aside any *ex parte* proceedings taken under this sub-section.

Construction of mortgage --whether new alienation. (1) *Mortgage by way of conditional sale --Exchange of possession not a fresh mortgage.*—In March 1899, a member of an agricultural tribe mortgaged his land to a Khatri. The mortgage was a collateral one and contained provisions intended to operate by way of conditional sale and enforceable if the principal of the debt was not repaid within two years. On default being made, no steps were taken to enforce the conditional sale, but the parties agreed that the alienee should take over possession as mortgagee allowing the alienor to cultivate the land as his tenant subject to payment of rent. In consequence of this transfer of possession the parties applied for mutation of names, but the Deputy Commissioner holding that the exchange of possession amounted to a fresh mortgage not permitted by the Punjab Alienation of Land Act, refused to give his sanction to mutation being effected. *Held*, that there was no fresh mortgage. *Harjas v. Harditis*, P. R. 7 of 1903 (Rev.)

(2) *Sale by an agriculturist to a non-agriculturist, entered as a mortgage in Revenue papers—decree based on compromise whether new alienation.* Certain land was sold by an agriculturist to a non-agriculturist by registered deed dated 21st June 1879, the transaction being however subsequently shown in the Revenue papers as a mortgage. On the 29th March 1910, the grandsons of the vendee brought a civil suit which was decided by a decree on a compromise under which the vendee was declared owner of three-fourths only of the land sold. On 21st June 1911 the Deputy Commissioner on an application being made sent the case to the Chief Court for the exercise of its revisional powers under section 21-A (2). *Held*, that the original transaction of 1879 was really one of sale and not of a mortgage and all that was effected by the decree, passed on the compromise, was that the vendor got back $\frac{1}{4}$ th of the area sold, the decree did not contravene any of the provisions of the Act and there was no new alienation. *Milki v. Bishen Das*, P. R. 8 of 1913.

(3) *Conditional sale—suit for possession as owner after expiry of year of grace—compromise embodying a new contract of mortgage with clause of conditional sale in default of payment of instalments.* In 1906, the mortgagee under a mortgage of 1898, by way of conditional sale, took the usual foreclosure proceedings under Regulation XVII of 1806 and after expiry of year of grace sued his mortgagor for possession of the land as owner. The defendant contested the regularity of the foreclosure proceedings and the parties eventually entered into a compromise under which the defendant was to be entitled to redeem the mortgage on payment of 400/- Rs. by annual instalments of Rs. 80/- and in the event of default in payment of three consecutive instalments the land was to be considered sold to the plaintiff. The court was requested to pass a decree in terms of the compromise which was done. The instalments were not, however, paid according to the compromise, and the mortgagee applied for possession of the land in execution of the decree and possession was delivered to him. A year later the mortgagor brought the present suit for redemption of the land on payment of Rs. 400. *Held*, that the deed of compromise embodied a new contract of mortgage which superseded the original contract of 1898. *Bishen Das v. Massu*, P. R. 82 of 1909 referred to. *Debi Sahai v. Ramji Lal*, P. R. 56 of 1918. But see *Karori Mal v. Ramji Lal*, I. L. R. II Lah. 53 (F. B.) in which this ruling P. R. 56 of 1918 was disapproved. Sec. 9.

(4) *Compromise decree for possession subject to judgment-debtor being allowed to redeem the mortgage within one year—whether creates a new mortgage.* Where after expiry of the year of grace in foreclosure proceedings the mortgagee sues for possession as owner of the mortgaged property and under a compromise between the parties the Court passes a decree for such possession with the proviso that the defendant-mortgagor can redeem the whole or one-half of the mortgage within one year and avoid either wholly or in part the execution of the decree. *Held*, that such a decree does not create a fresh mortgage. *Debi Sahai v. Ramji Lal*, P. R. 56

Sec. 9. of 1918, disapproved *Karori Mal v. Ramji Lal*, I. L. R. 2 Lah. 53 (F. B.).

(5) *New charge on old security—whether a new mortgage.* *Held*, that where a mortgage has been effected before the 8th June 1901, and a further advance is made after that date on the old security, the further advance is not a new mortgage provided that no changes are made in the terms of the original transaction. *Remal Das v. Mst. Jannat*, I. L. R. 2 Lah. 202.

(6) *Increase of mortgage money.* In the case of mortgages executed before the passing of the Act, a subsequent increase in the mortgage debt should not ordinarily be treated as causing a new mortgage to which sections 6 to 9 of the Act would apply, even though a new deed is executed. If, however, the new deed expressly declares that the old mortgage is cancelled, or if it contains conditions substantially different from those contained in the old mortgage-deed or raises the aggregate mortgage money to a figure in excess of the value of the land, and the Deputy Commissioner thinks it equitable to use the power conferred on him by section 9 (1) of the Act, he is at liberty to do so; but unless the old deed has been cancelled, the Deputy Commissioner has no power to touch it, and can only revise the new mortgage. *Financial Commissioner's Standing order No. 1, para 29.*

(7) *Deed creating charge not only on land already mortgaged but on other land also.* Plaintiff brought the present suit under section 77 of the Registration Act to enforce registration of a deed of mortgage, the Registrar having refused to register it on the ground of its contravening the provisions of act XIII of 1900. It was found as a fact that although the deed in question purported to create a further charge on the lands already mortgaged it actually created a charge upon other lands also which had not previously been mortgaged. *Held*, that the mortgage deed in dispute is not merely an additional charge on land already mortgaged but is an entirely new deed and as it is in contravention of the provisions of the Punjab Alienation of Land Act, the Registrar's order refusing to register it

was perfectly correct. *Narain Das v. Sahib Bano*, I.L.L.J. SEC. 9. 212.

Mortgage by an agriculturist to pay off a debt due to a non-agriculturist.—If a third person takes the land of an agriculturist on mortgage and undertakes to pay off in exchange, the debts of the mortgagor due to a non-agriculturist, the agreement is not illegal or opposed to public policy. *Ladha Singh v. Ahmed Yar* 60 I. O. 463. (Lah). See to the same effect *Muzaffar Khan v. Waisakha Ram*, I. L. R., 4 of 1916, *Haidar v. Fateh Khan*, P. L. R., 119 of 1916 and *Jahan Khan v. Dalla Ram*, P. R. 142 of 1907.

Sub-section (1) Procedure on application to the Deputy Commissioner under section 9 (1) to revise and alter the terms of the mortgage.—See *Financial Commissioner's Standing Order No. 1*, paragraph 40.

Sub-section (2).—Applicability to mortgage of land by an agriculturist by way of conditional sale.—*Held*, that section 9 (2) of the Punjab Alienation of Land Act applies to any mortgage made by an agriculturist of his land in which there is a condition intended to operate by way of conditional sale even where the alienee is also an agriculturist. *Nand Singh v. Bishen Singh*, P. R. 5 of 1905.

Effect upon: suit for possession by a mortgagee on breach of condition to surrender possession in default to pay certain instalments by abandoning two other clauses intended to operate by way of conditional sale.—The plaintiff sued for possession as mortgagee on a mortgage deed dated 27th June 1897, which provided *inter alia* that if certain instalments were not paid the mortgagee could take possession. The deed contained also two other clauses intended to operate by way of conditional sale, but these were given up by the plaintiff. *Held*, that in cases in which the plaintiff not only did not sue on the clause regarding conditional sale, but surrenders that condition altogether and agrees of his own motion to have it struck out, the mortgagee

Sec. 9. would cease to be one including such a clause. *Martin Singh v. Hayat*, P. R. 20 of 1903. See *Contra* *Both Raj v. Faiz Bakhsh*, P. R. 91 of 1903, (a judgment of a Single Judge) which was disapproved in *Mela Ram v. Kisan*, P. R. 38 of 1905, (a Division Bench judgment.)

Mortgage by way of conditional sale—period of mortgage made before the Act came into force and subsisting, not to be altered if the sale condition is surrendered.—The parties to a mortgage by way of conditional sale entered into before the Punjab Alienation of Land Act came into force, agreed that possession should remain with the mortgagees (who were not agriculturists) and the mortgagors should occupy the land as tenants. They applied for mutations of names. *Held*, that since the case was such that the position of the parties was not in accordance with the policy of the Punjab Alienation of Land Act, mutation of names should not be sanctioned. But in such a case effect may be given to the transfer when the mortgagees agree that the conditions intended to operate by way of conditional sale be struck out of the deed. The period of a mortgage by way of conditional sale made before the act came into force and still subsisting is not to be altered if the mortgagee agrees that the sale condition shall be excised. *Harjas v. Harditta*, P. R. 7 of 1903, (Rev.).

Mortgage by conditional sale—remedy of mortgagee since passing of the Act.—*Held*, that in the case of a mortgage by way of conditional sale, if under the terms of the deed the sole remedy given to the mortgagee for the enforcement of his rights is to proceed, in case of the mortgagor's default, under Regulation XVII of 1906, but he has not been able to take successful proceedings under it before the coming into force of the Punjab Alienation of Land Act (XIII of 1900), then the only remedy left to him is the one prescribed by s.c. 9 (2) of the Act and if he fails to avail of the relief granted to him thereunder by the Deputy Commissioner with which whether adequate or not, the Civil Courts have no authority to deal, he is neither entitled to get possession of the land as mortgagee or owner and

nor even to a simple money decree. *Dula Singh v. Dial Singh*, P. R. 22 of 1910. See also *Nanak Chand v. Mehr Jawaya* P. W. R. 137 of 1910. Sec. 9

Proceedings by the Deputy Commissioner under section 9 (2) of the Act, judicial.—In proceedings under section 9 (2) of the Act, the mortgagee having produced before the Deputy Commissioner a copy of a mortgage-deed, that officer referred it to the Tahsildar for investigation and report. The Tahsildar did not make any report. Before the Naib-Tahsildar, the mortgagee stated that no payments were made by the mortgagor to him. On enquiry it was found that payments had been made which were endorsed on the back of the original mortgage-deed which was withheld for that reason. The Deputy Commissioner sanctioned prosecution of the mortgagee. *Held*, that the proceedings of the Revenue Officer to whom a case is referred are governed by Chapter II of the Land Revenue Act, and the Revenue Officer may summon any person and the person attending in obedience to the summons is bound to state the truth upon any matter respecting which he is examined or makes statements. Therefore a person making a false statement before a Revenue officer in such a case, being legally bound by an express provision of law to state the truth, gives false evidence, vide Section 191, Indian Penal Code and is punishable under Section 193, Indian Penal Code. *Kalyan Singh v. The Crown*, P. L. R. 80 of 1910.

Stamp duty on new mortgage deeds:—Government of India, Finance Department, Notification No. 3616 Exc., dated 16th July 1909, remits in the case of a mortgage-deed executed afresh in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of section 9, sub-section (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900), so much of the stamp duty as is not in excess of the duty already paid in respect of the previous mortgage-deed. *Punjab Land Administration Acts, Vol II, Rules*, page 33 (edition 1916,)*

Instructions as to the working of section 9, sub-section (2) and (4).—The following instructions are

* See appendix II of this book.

Sec. 9. issued as to the working of section 9, sub-sections (2) and (4), of Act XIII of 1900 (Punjab Alienation of Land Act), as amended by Punjab Act I of 1907, in regard to mortgages by way of conditional sale made before the commencement of the Act and still current :—

(1) If the condition intended to operate by way of conditional sale is to the effect that, in default of payment of the mortgage money or interest at a certain time, the land will be absolutely transferred to the mortgagee, and if the mortgagee agrees to the said condition being struck out, no new mortgage deed need be drawn up, and it will be sufficient for the Deputy Commissioner to strike out such condition and attest the alteration so made.

(2) If, however, the mortgagee elects to "accept in lieu of the said mortgage" a mortgage which may at his option be either in form (a) or form (b) as permitted by section 6 of the Act, a new deed of mortgage will have to be executed, as in such a case there is no mere alteration of a subsisting mortgage, but the substitution of a mortgage of one kind for another mortgage of a different kind. In this case, by Government of India notification No. 6167 S. R., dated 6th December 1901, so much of the stamp duty on a new mortgage deed drawn up as referred to above, as is not in excess of the duty already paid in respect of the previous mortgage, has been remitted. Under the ordinary rule of law the mortgagor will have to meet any excess stamp duty payable and also other expenses incidental to the new mortgage.

(3) If, upon the mortgagee electing to accept an approved form of mortgage in lieu of the original mortgage, the mortgagor cannot be found, fails to appear or refuses or neglects to execute the new mortgage, the Deputy Commissioner is empowered by section 9 (4) of the Act as amended in 1907 to execute the mortgage himself on such terms as to costs as he may think fit.

(4) If however, the mortgagee when put to his election by the Deputy Commissioner refuses to agree to either of the alternatives offered him, the Deputy Commissioner

should explain to him that he is not at liberty thus to attempt to defeat the law, that he must choose one of the two courses provided for him by the section of the Act, and that the only practical result of his refusal to elect is that he leaves it to the Deputy Commissioner to make the election for him. If, in the face of such an explanation, the mortgagee still refuses to act, the Deputy Commissioner should then act for him and define what the mortgage is to be in accordance with the power conferred upon him by section 9 (2). In such a case ordinarily the best course will be to strike out the condition intended to operate by way of conditional sale, because this avoids the further complication that if a new mortgage is ordered, the mortgagor may decline to execute it. One of the objects of the Act was to cancel conditional sales with retrospective effect, subject, to an arrangement by which the mortgagee should not lose his security. When he would have adequate security with the sale clause struck out there need be no hesitation in compelling him to accept that arrangement if he will not do so voluntarily. It is only when the mortgage deed with the sale condition excised would not afford adequate security and when the mortgagee refuses to exercise the option allowed to him by law, that the Deputy Commissioner need of his own motion order a new mortgage. It must be remembered however that, if the Deputy Commissioner of his own motion orders a new mortgage and the mortgagor thereupon declines to execute it, the Deputy Commissioner is not empowered to execute the mortgage under section 9 (4) of the amended Act, because one of the conditions of the exercise of that power is the agreement by the mortgagee to accept a new mortgage.

Sec. 9.

Applicants to be carefully examined.—Unnecessary trouble is often caused by the failure of Deputy Commissioners to examine applicants carefully as to the nature of their application and to specify clearly in sending the application to a subordinate revenue officer for enquiry and report the exact point or points which require elucidation. Tahsildars have been known to send in long reports in cases where all that was required was a verification of the state-

Suo. 9. ment in the application that the land in question was within municipal limits. So also it is not uncommon for applications to be made to Deputy Commissioners for permission to mortgage land to persons not members of agricultural tribes in forms other than those approved in section 8 of the Act. Such permission cannot be granted in any case, and it is unnecessary to send such applications for report. All applications for permission to mortgage should be disposed of at once by the Deputy Commissioner, for in the case of the alienee being a member of an agricultural tribe there is no need of permission, and if he is not a member, permission cannot be given. *Financial Commissioner's Standing Order No. 1, paras 42 and 43.*

Sub-section .—Applicability. This sub-section (3) does not apply to:—

(1) *Appeals pending at the time the Act came into force.* Held, that sub-section (3) of section 9 of the Punjab Land Alienation Act, 1900, does not apply to appeals in suits for foreclosure of mortgages, filed in the Chief Court before the Act came into force, as at the time when the Act came into force, there was no subsisting mortgage but only a decree for possession. *Maya Mal v. Jaimal*, P. R. 47 of 1902. See to the same effect, *Harbhagwan Das v. Shamun*, P. R. 94 of 1901, and *Badhawa Mal v. Mehram*, P. L. R. 150 of 1901.

(2) *Suits for possession after foreclosure of mortgage.* Held, that section 9 (3) of the Punjab Alienation of Land Act does not apply to a suit for possession after foreclosure of a mortgage by conditional sale where the year of grace allowed for redemption under Regulation XVII of 1806 has expired before that Act came into force. At the expiry of the year of grace such mortgage ceases to exist and the proprietary right in the property mortgaged rests *ipso facto* in the mortgagee who becomes owner without it being necessary for him to bring any further suit. *Jagan Nath v. Fazla*, P. R. 26 of 1902, *Maya Mal v. Jaimal*, P. R. 47 of 1902, *Ram Nath v. Kerori Mal*, P. R. 38 of 1904, and *Attar Sing v. Balla Ram*, P. R. 103 of 1901, cited and followed. *Nathu Lal v. Jafar*, P. R. 20 of 1905.

(3) *Mortgage by way of conditional sale effected by a person other than a member of an agricultural tribe.* *Held*, that section 9 (3) of the Punjab Land Alienation Act does not apply to proceedings instituted after the Act came into force, for the enforcement of a mortgage by way of conditional sale executed by a person who is not a member of an agricultural tribe. *Kalu v. Mona Mal*, P. R. 64 of 1906. Sec. 9.

“Proceedings”—The question has been raised whether the words “Proceedings for the enforcement of a condition intended to operate by way of conditional sale” mean proceedings taken under section 8 of Regulation XVII of 1806 only, or whether they include proceedings in suits, appeals or execution of decree as well. The Chief Court has held that the words above-quoted mean proceedings under section 8 of Regulation XVII of 1806 only, *vide* Punjab Record No. 26 of 1902. (Civil). *Financial Commissioner's Standing Order No. 1, para 48.*

“Proceedings Pending.”—In February 1909, plaintiff sued for possession as owner of certain land, mortgaged to him by way of conditional sale. Foreclosure proceedings had been taken and notice was issued in October 1900 and in December 1900 the District Judge made an order consigning the record to the Record-room. The year of grace expired in October 1901, and previous to that, on 8th June 1901, the Punjab Land Alienation Act had come into force. The Lower Courts found that the proceedings for foreclosure had been validly completed. *Held*, that on these findings, no reference to the Deputy Commissioner under section 9 (3), of the Act was called for, as there were no proceedings for the enforcement of the conditional sale clause “pending” before the District Judge after the order in December 1900 consigning the record to the Record-room. *Mussammat Bakhtawari v. Shibban Lal*, P. R. 59 of 1912.

“For the enforcement of a condition intended to operate by way of conditional sale.”—A mortgagee had, on the basis of a mortgage by way

Sec. 9. of conditional sale, notice under Regulation No. XVII of 1806 issued on the mortgagor and the year of grace expired on 5th June 1901. In 1905 the mortgagee brought a suit to obtain possession of the land. His claim was contested by the mortgagor but a compromise was arrived at, and it was agreed between the parties that the land should remain in the possession of the mortgagee and that if the mortgagor failed to redeem the land within two years, on payment of the mortgage debt and costs, the mortgagee should on the expiration of that period, be deemed to be the absolute owner of the land. The Court accepted this compromise and passed a decree, on the 3rd March 1905, in accordance therewith. The mortgagor having failed to redeem the mortgage within the stipulated period, plaintiff, the brother of the mortgagor brought a suit for pre-emption in respect of the said "sale". *Held*, that though the transaction was clearly one in contravention of the provisions of the Act, the present proceedings not being for the purpose of enforcing the condition intended to operate by way of conditional sale, the Chief Court has no power to act under section 9 (3) of the Act and cannot therefore take action under that clause and refer the case to the Deputy Commissioner. All that the Chief Court can decide is, that the plaintiff's claim for pre-emption must fail. *Bishen Das v. Massu*, P. R. 82 of 1909.

"If a suit is instituted in any Civil Court on a mortgage to which sub-section (1) or sub-section (2) applies". Plaintiff brought the present suit under section 77 of the Indian Registration Act to enforce registration of a mortgage deed, the registrar having refused to register on the ground that the deed contravened the provisions of the Act XIII of 1900. It was found as a fact that in addition to creating a further charge on the lands already mortgaged, the deed actually created a charge upon other lands which had not previously been mortgaged. *Held*, that sub-section (3) of section 9 of the Act did not apply in as much as the expression in that sub-section "that if a suit is instituted in any Civil Court on a mortgage to which sub-section 1 or sub-section (2) applies," means a suit

instituted to enforce some of the terms of a mortgage where-
as the present suit has been instituted merely to enforce
registration of a mortgage deed. *Narain Das v. Mt. Sahib*
Bano, 1 Lahore Law Journal, 212. Sec. 9.

Reference to Deputy Commissioner.—(1) *Proce-
dure in suits to enforce unauthorised mortgages.*—If a suit is
instituted in a Civil Court on a mortgage by way of con-
ditional sale or in a form unauthorised by the Act executed
by a member of an agricultural tribe, the Court is bound to
make a reference to the Deputy Commissioner so that he may
exercise the powers referred to in the last two paragraphs.
The Punjab Land Administration Manual, para 45.

(2) *Procedure of the Appellant Court in making
reference.* Held, that according to the provisions of section
582 Civil Procedure Code (=section 107 (2) of the
present, Civil Procedure Code, Act V of 1908), the Ap-
pellate Court should proceed in the same manner as a
Court of first instance would proceed to decide the prelimi-
nary points noted therein, and thereafter if a reference to
the Deputy Commissioner is still necessary under Section 9,
it should be made either direct or through the lower Court,
and in those cases where the exercise of his powers under
the Alienation of Land Act by the Deputy Commissioner
would not dispose of the case, the Civil Court making the
reference should dispose of it after the Deputy Commissioner
has discharged his duties in connection therewith. *Narain
Singh v Hayat*, P. R. 20 of 1903.

(3) *Ultra vires, if the mortgagee had obtained decree
for possession by foreclosure before the enforcement of Act.*
The plaintiff sued and obtained decree for possession of
certain land by foreclosure of mortgage on the 11th March
1901. The defendants appealed to the Divisional Judge,
who, on 26th June 1901 referred the case to the Deputy
Commissioner under section 9 (3) of the Act, which had
come into force on 8th of June 1901. On 25th September the
Deputy Commissioner struck out the condition operating as
a conditional sale, and on 12th October the Divisional Judge

- G. 9. dismissed the suit in consequence of the Deputy Commissioner's action. *Held*, following *Jagan Nath v. Fazla*, P. R. 26 of 1902, that it was *ultra vires* both for the Divisional Judge to refer the case to the Deputy Commissioner and for the latter to deal with the case under Section 9 (2), as the plaintiff held a decree for possession of the land at the time the Punjab Alienation of Land Act came into force, there being no subsisting mortgage at the time. *Maya Mal v. Jaimal*, P. R. 47 of 1902.

(4) *Unnecessary, if the mortgagee abandons the clause operating by way of conditional sale and sues as mortgagee under the other clause entitling him to take possession. Held*, that in cases in which the plaintiff not only did not sue on the clause regarding conditional sale, but surrenders that condition altogether and agree of his own motion to have it struck out, the mortgage would cease to be one including such a clause and the reference to the Deputy Commissioner would be no longer necessary, as there would be no mortgage before the court coming within the purview of section 9 (2). *Narain Singh v. Hayat*, P. R. 20 of 1903. *Contra* *Bodh Raj v. Faiz Bakhsh*, P. R. 91 of 1903. (disapproved in P. R. 38 of 1905.)

(5) *Unnecessary, if the Deputy Commissioner has refused to take action after the non-acceptance of his proposal by the mortgagor.* A mortgage made before the commencement of the Act by an agriculturist of his land in which there was a condition intended to operate by way of conditional sale and still current, was brought by the District Judge, who was moved to issue a notice of foreclosure after the Act has come into force, to the notice of the Deputy Commissioner. The mortgagee accepted the new mortgage as proposed by the Deputy Commissioner in lieu of the original one but the mortgagor refused. The Deputy Commissioner thereupon decided that nothing further could be done and returned the reference to the District Judge. Notice of foreclosure was then issued and after expiration of the year of grace the mortgagee instituted

a suit for possession as owner. *Held*, that it was not necessary for the Civil Court upon the institution of the possessory suit to refer the matter again to the Deputy Commissioner under Section 9 (3). *Bichha Lal v. Gumani*, P. R. 93 of 1907. See to the same effect *Gopal Das v. Hari Singh*, P. R. 88 of 1909, *Bulanda v. Diwanu*, P. W. R. 109 of 1912 and *Bhero Das v. Mona*, P. R. 31 of 1912.

Sec. 9.

Enquiry by Court before reference.—1) Although it is the duty of a court to refer a mortgage of land by way of conditional sale to the Deputy Commissioner under Section 9 of the Act if it was made by a member of an agricultural tribe, but it is for the party desiring to obtain benefit of that enactment to allege and prove that he is a member of an agricultural tribe. The mere assertion by a party that he is so, is insufficient. *Uda v. Mul Chand*, P. R. 4 of 1907.

(2) (a) In "proceedings," i.e., in proceedings under section 8 of Regulation XVII of 1806, the action of the District Judge is purely ministerial, and the only enquiry he should make is to ascertain, before he refers the proceedings to the Deputy Commissioner, whether the mortgagor is a member of an agricultural tribe, if the point is in dispute. If the Deputy Commissioner, on a reference being made, returns the proceedings without striking out the clause as to conditional sale, the District Judge should proceed to serve the notice on the mortgagor, as required by Regulation XVII of 1806.

(b) If a Civil suit is instituted on a mortgage to which section 9 of the Act applies, the Civil Court shall not make a reference to the Deputy Commissioner under sub-section (3) of section 9 until it has disposed of any objections brought by the mortgagor against the validity of the mortgage or of any plea raised by him on the point of limitation. *Financial Commissioner's Standing Order No. 1, para 49.*

Jurisdiction of Appellate court to refer if the foreclosure notice is valid.—*Held*, that an Appellate court has no jurisdiction to make a reference under

Sec. 9. section 9 (3) of the Act and the Deputy Commissioner has no power to proceed under its sub-section (2), if the foreclosure notice is effectual, but if it is not, the Appellate Court is bound to act upon the said section and to dismiss the suit, if the mortgagee being put to his election by the Deputy Commissioner refuses to accept a mortgage in one of the authorised forms. *Jiwan Ram v. Bhani Ram*, P. W. R., 51 of 1910.

Jurisdiction of Civil Court after its reference to the Deputy Commissioner.—*Held*, that after a Civil Court has made a reference in regard to a mortgage by conditional sale under section 9 (3) of the Act and the Deputy Commissioner has made an offer to the mortgagees which they rejected, the Civil Court is *functus officio*. *Mussanmat Bahhtawari v. Shabban Lal*, P. R. 55 of 1916.

Power of Civil Court to convert a mortgage by way of conditional sale into a mortgage under section 6 (1) (a) of the Act.—The mortgagee applied to the Collector that in lieu of the mortgage by way of conditional sale in his favour, a mortgage of the kind recognized by section 6 (1) (a) of the Act be granted to him for a period of 20 years. The mortgagor being summoned objected to the change. The Collector merely recorded the fact of his refusal and left matters in *status quo*. Subsequently the mortgagee applied to the District Judge for issue of a notice of foreclosure which was issued and served upon the mortgagor who took no objection to the notice nor attempted to redeem the land. On expiry of the year of grace, the mortgagee brought a suit for possession. The Courts below held that the plaintiff was not entitled to a decree for possession as full owner as no reference under section 9 (3) was made to the Collector and passed a decree for possession of the land as mortgagee for 20 years under section 6 (1) (a) of the Act. *Held*, that the Civil Courts have no power at all to convert a mortgage by way of conditional sale into a mortgage prescribed by section 6 (1) of the Act, this being a

matter left entirely to the Revenue authorities. *Gopal Das* Sec. 9.
v. Hari Singh, P. R. 88 of 1909.

Rule.

The 22nd May 1901.

No. 25-S.-Notification.—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant-Governor of the Punjab is pleased to make the following rule as to the exercise by a Deputy Commissioner of the powers conferred on him by that enactment in cases referred to him under the said Act by a Civil Court:—

XIII of 1900

RULE.

When a Civil Court makes a reference to a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, the Deputy Commissioner may exercise any power applicable to the case, which is conferred upon him by that Act, either upon the reference or after any further inquiry which he considers necessary, or after sending the reference to any Revenue Officer subordinate to him for investigation and report and upon consideration of the report so required.

XIII of 1900.

Sub-section (4).—Legal Change.—This sub-section was added by Punjab Act 1 of 1907, section 8.

Mortgage by conditional sale, duty of Deputy Commissioner where mortgagor denies execution of the mortgage or pleads payment.—*Held*, that where a mortgage by way of conditional sale is referred to the Deputy Commissioner by a Civil Court, or where a mortgagee applies direct, under section 9 (2) of the Land Alienation Act, and the mortgagor before the Deputy Commissioner denies execution of the mortgage or pleads payment of the mortgage debt, the latter must decline to exercise the power conferred on him by the section and has no jurisdiction to decide the objection. *Lakshmi Das v Hayat*, P. R. 2 of 1915. (Rev.).

Sec. 10.

Future
mortgage
by way of
conditional
sale not
permitted.

10. In any mortgage of land made after the commencement of this Act any condition which is intended to operate by way of conditional sale shall be null and void

NOTES.

Mortgages by way of conditional sale abolished.—The only restraint on mortgage, which the Act makes generally applicable is contained in its 10th section, which abolishes the form of mortgage by way of conditional sale. *The Punjab Land Administration Manual, para 38.*

Section 10 of universal application and not confined to agriculturists.—A Sheikh of the Hissar district, on 6th July 1901, made a mortgage of his land in favor of a Kunjra of the same district. The deed of mortgage provided that the principal money together with interest was to be paid within a year and that on default the transaction was to be deemed to be a sale. *Held*, that the stipulation as to conditional sale was null and void under the provisions of section 10 of the Act and it was immaterial whether the mortgagor was or was not a member of an agricultural tribe. *Allah Din v. Fatah Din*, P. R. 31 of 1918. See to the same effect *Galna v. Sohan Lal*, P. R. 11 of 1904, p. 47 and *Nand Singh v. Bishen Singh*, P. R. 5 of 1905, p. 32.

Decree based upon a compromise embodying a new contract of mortgage with clause of conditional sale in default of payment of instalments is null and void.—In 1906 the mortgagee under a mortgage of 1898, by way of conditional sale, took the usual foreclosure proceedings under Regulation XVII of 1806 and after expiry of the year of grace sued his mortgagor for possession of the mortgaged land as owner. The defendant contested the regularity of the foreclosure proceedings and the parties eventually entered into a compromise under which the defendant was to be entitled to redeem the mortgage on payment of Rs. 400 by annual instalments of Rs. 80 and in the event of default in payment of three consecutive

instalments the land was to be considered sold to the plaintiff. The Court was requested to pass a decree in terms of the compromise which was done. The instalments were not, however, paid according to the compromise, and the mortgagee applied for possession of the land in execution of the decree and possession was delivered to him. A year later the mortgagor brought the present suit for redemption of the land on payment of Rs. 400. *Held*, that the deed of compromise embodied a new contract of mortgage which superseded the original contract of 1898. *Held* also, that as the compromise was made in 1908 i.e., after the Punjab Alienation of Land Act had come into force and the decree which was passed by the Court was wholly based upon the agreement of the parties, the condition intended to operate by way of conditional sale was null and void under the operation of section 10 of the Act and the mortgagor's suit for redemption was competent. *Bishen Das v. Massu*, P. R. No. 82 of 1909, referred to. *Dobi Sahai v. Ramji Lal*, P. R. 56 of 1918. *

SEC. 11.

Registration of a mortgage-deed of land containing a condition intended to operate by way of conditional sale.—When a mortgage-deed is presented it is necessary to ascertain who the alienor is. If he is not a member of an agricultural tribe, the deed can be registered without question, even although it contains a condition intended to operate by way of conditional sale, for although such condition would be void under section 10 of the Act, the deed in other respects would not be necessarily invalid. *Financial Commissioner's Standing Order No. 1, para 11.*

11. Any member of an agricultural tribe may make a lease or farm of his land for any term not exceeding twenty years, and any lease or farm made by a member of an agricultural tribe for a longer term than twenty years shall, if the lessee or farmer is not a member of the same tribe or of a tribe in the

Leases and farm.

* But see *Karori Mal v. Ranji Lal*, I. L. R. 2 Lah. 53. (F. B.) noted under section 9, in which this ruling P. R. 56 of 1918 was disapproved.

Sec. 11. same group, be deemed to be a lease or farm for the term permitted by this section.

Object.—It would be easy to evade the provisions regarding mortgages which have just been described by making transfers for long periods in the form of leases. Accordingly the term of leases made by members of agricultural tribes in favour of persons who are not members of the same tribe or a tribe in the same group has been limited to twenty years at the outside. *The Punjab Land Administration Manual, para 43.*

Registration of a lease for more than 20 years.—An instrument of lease or farm by a member of an agricultural tribe should not be refused admission to registration merely because the term of years prescribed in section 11 of the Act is exceeded in the conditions of the instrument, as the instrument in other respects would not be necessarily invalid. *Financial Commissioner's standing order No. 1, para 13.*

Lease and Mortgage.—17. In several districts, especially in the west of the Province, there is considerable laxity in the classification of many deeds presented for registration which might be treated either as deeds of lease or deeds of mortgage for a limited period. More often than not the Sub-Registrar adopts the classification preferred by the deed-writer, and treats the deed as a lease if the writer has in it used the words *patta*, *theka*, *mustajri-nama*, and so on, even though the terms of the deed show clearly enough that it is really a deed of mortgage, not of lease.

18. The most suitable definitions of "lease" and "mortgage" for the present purpose are those contained in Section 2 of the Stamp Act. It is true that the definitions are not mutually exclusive, and deeds which transfer the possession of land in exchange for the payment of a premium, with or without a further annual payment, might be classified either as lease, or as mortgage. As a practical rule, however, it may be held that if the land is transferred in order to secure the repayment of a lump

sum of money advanced to or due from the owner of land, the deed is usually a mortgage deed, whereas in the case of a lease the land is transferred on account of a future recurring annual payment. SEC. 12.

19. Registering officers should decide, as best they can, as to the nature of each so called lease presented to them for registration. If they hold that the deed is a deed of mortgage, they will treat it as such for the assessment of stamp duty and registration fees, and if it is under-stamped, will impound it. The real nature of the deed as decided by the registration officer, should, of course, be shown in column 2 of the register.

20. In some cases the decision that a deed drafted as a lease is really a mortgage deed will involve the decision of the further question whether, viewed as a mortgage, it contravenes the provisions of Act XIII of 1900 or not. The procedure in deciding the question will be that laid down in Appendix VII* of the Punjab Registration Manual, 1910, and paragraphs 8 to 16 above. *Financial Commissioner's Standing Order No. 1.*

12. (1) During the currency of a mortgage made under section 6 in form (a) or form (b) or of a lease or farm under this Act, the owner shall be at liberty to make a further temporary alienation of the same land for such term as together with the term of the current mortgage, lease or farm will make up a term not exceeding the full term of twenty years.

Restriction on power to make further temporary alienation.

(2) Any such further temporary alienation, if made for a longer term than is permitted by this section, shall be deemed to be a temporary alienation for the term permitted by this section.

NOTES.

Restriction on extensions of mortgages and leases.—The object of the Act would also be defeated if, during the currency of a mortgage or lease for a term

*See Appendix IV of this book,

Sec. 13. limited by law to twenty years, the mortgagor or lessor were free to extend the period by executing a fresh transfer. If the alienation already effected is for twenty years, no further transfer by way either of mortgage or of lease is permitted; if it is for less, a further mortgage or lease is allowed for such a number of years as will bring the whole period of transfer up to twenty years. *The Punjab Land Administration Manual, para 49.*

Ejection of
mortgagee,
lessee or
farmer
remaining
in possession
after term.

13. If a mortgagee, lessee or farmer holding possession under a mortgage made under section 6 or under a lease or farm made under section 11 or under a mortgage, lease or farm made under section 12 remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm, the Deputy Commissioner may, of his own motion or on the application of the person entitled to possession, eject such mortgagee, lessee or farmer and place the person so entitled in possession.

NOTES.

Procedure on application to the Deputy Commissioner under section 13 to eject a mortgagee, lessee or farmer and place the person entitled in possession—See Financial Commissioner's Standing Order No. 23 on the Record-of-Rights, para 25, given below :—

Financial
Commis-
sioner's
Circular No. 1
dated 9th
September
1903.

Notes in the remarks column with regard to those transfers to which conditions are attached by the Punjab Alienation of Land Act.—25. The following instructions are intended to enable a Deputy Commissioner to determine the case in which he can exercise the authority given him by Section 13 of the Alienation of Land Act of his own motion, to eject a mortgagee, lessee, or farmer in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm under Section 6, 11, or 12 of the Act :—

- (a) In the case of a mortgage, lease, or farm effected **Sec. 14.**
with possession after June 8th, 1901, by a member
of an agricultural tribe, to a person who is not a
member of an agricultural tribe, the patwari
shall enter in the remarks column of the *jamabandi*
a note stating the date of the commencement and,
except in case of a mortgage under Section 6 (c),
the date of expiry of the term of possession.
- (b) These remarks also will be carried from one *jama-*
bandi to another during the currency of the
mortgage, lease, or farm.

14.—Any permanent alienation which under
section 3 is not to take effect as such until the sanc-
tion of a Deputy Commissioner is given thereto shall,
until such sanction is given or if such sanction has
been refused, take effect as a usufructuary mortgage
in form (a) permitted by section 6 for such term not
exceeding twenty years and on such conditions as
the Deputy Commissioner considers to be reasonable.

Effect of
permanent
alienation
made
without
sanction.

NOTES.

Necessity of using section 14.—27. When the
permanent alienation is merely proposed to be made and is
disallowed it is only necessary to communicate the order to
the parties or to the revenue officer dealing with the muta-
tion case. But if the permanent alienation has already
been made and the Deputy Commissioner refuses sanction,
he must pass an order under section 14 of the Act, declaring
that the transaction will take effect as a usufructuary
mortgage in form (a) permitted by section 6, and fixing the
term and the conditions which he considers reasonable.

28. *Conditions.*—As regards the conditions, little lati-
tude is allowed because those prescribed in section 6 (1) (a)
and in section 7 would be applicable. Conditions may
however, be added in accordance with section 8. *Financial*
Commissioner's standing order No. 1.

Sale of usufructuary Mortgage—on refusal
to sanction, the Deputy Commissioner should

Sec. 15. fix conditions. In case of sale of his rights in a usufructuary mortgage of land by the mortgagor, a member of an agricultural tribe in favour of a person who is not a member of an agricultural tribe, after the Act came into force, the Deputy Commissioner ought not to proceed under section 9 to revise and alter the mortgage but to proceed under section 3 (2) to sanction or to refuse to sanction the sale. When the Deputy Commissioner refuses to sanction the sale he should fix terms and conditions under section 14. *Sukhbashi Ram v. Akbar Shah, P. R. C of 1903 (Rev.)*

Sanction
of Deputy
Commissioner
required to
certain
alienations
of, or charges
on produce
of land.

15. Every agreement whereby a member of an agricultural tribe purports to alienate or charge the produce of his land or any part of, or share in, such produce for more than one year shall not take effect for more than one year from the date of the agreement unless the sanction of a Deputy Commissioner is given thereto, and shall, until such sanction is given or if such sanction is refused, take effect as if it had been made for one year.

Explanation.—The produce of land means—

- (a) crops and other products of the earth standing or ungathered on the holding ;
- (b) crops and other products of the earth which have been grown on the land during the past year and have been reaped or gathered.

NOTES.

Object.—The object of section 15 of the Act is to prevent the evasion of its provisions by the substantial mortgage of the land under colour of the alienation of, or of a charge upon, its produce. It is not intended to prevent zamindars from borrowing on the security of the crops of the two next following harvests, nor to interfere with *bona fide* contracts for the disposal of produce to large firms engaged, for example, in the wheat export trade. When a

case under this section comes before a Deputy Commissioner SEC. 16.
 the main point for his consideration is whether the transaction for which his sanction is sought will amount to an evasion of the Act. If not, restraint of trade being obviously objectionable, sanction should be freely given. When, however, the contract is made for more than one year by a zamindar in favour of a money-lender, it is most probable that an evasion of the Act is intended. *Financial Commissioner's Standing order No. 1, para 41. See to same effect Punjab Land Administration Manual, para 50.*

Deputy Commissioner's sanction to leases of fruit gardens for more than one year necessary :—Where the fruit of gardens is sold for more than one year in advance, the case should be treated as one in which the Deputy Commissioner's sanction is necessary. *Financial Commissioner's Standing Order No. 1, para 37.*

Registration of instruments, alienating or charging produce of land.—When an instrument purporting to alienate or charge produce of land is presented, it is necessary to ascertain who the alienor is. If he is a member of an agricultural tribe, then if the deed purports to alienate or charge the produce for more than one year, the Deputy Commissioner's sanction to the alienation is required, and if no copy of such order of sanction is produced, the deed should be returned under rule 1 with instructions that a copy of the Deputy Commissioner's order of sanction is required before it can be admitted to registration under Rule 2. *Financial Commissioner's Standing Order No. 1, para 12.*

16. (1) No land belonging to a member of an agricultural tribe shall be sold in execution of any decree or order of any Civil or Revenue Court, whether made before or after the commencement of this Act.

*Execution
 sale of land
 forbidden*

(2) Nothing in the section shall effect the right of Government to recover arrears of land-revenue, or

Sec. 16. any dues which are recoverable as arrears of land-revenue, in any manner now permitted by law.

NOTES.

Attachment and temporary Alienation.—*Attachment of land belonging to an agriculturist not prohibited.* Held, that section 16 of the Punjab Alienation of Land Act does not prohibit the attachment in execution of a decree of the land belonging to members of an agricultural tribe and that a decree-holder is entitled to claim a declaration that certain land is liable to attachment and to be thereafter dealt with as provided in Section 326 of Civil Procedure Code, Act XIV of 1882 (=section 72 of Civil Procedure Code, Act V of 1908). *Badar Din v. Bura Mal*, P. R. 4 of 1903. See also *Salih Muhammad v. Mehar Singh*, P. R. 1 of 1919 (Rev.), *Sardarni Dattar Kaur v. Ram Kattan*, I. L. R. 1 Lah. 192, Financial Commissioner's standing order No. 1, para 47 and Chief Court Rules and orders, Vol. I, section XXI, para 56.

Rules.—For rules as to attachment of agricultural land and produce and the temporary alienation, or management thereof see Financial Commissioner's Standing Order No. 64.*

Reference to Collector under section 72 of the Code of Civil Procedure (Act V of 1908).—Power of executing Court to accept or to reject proposals made by the Revenue authorities.—(1) Where a District Judge, executing a decree for sale of mortgaged land orders its sale, he is not bound to accept the recommendations of a Sub-Divisional Officer to the Collector to arrange to have the decree satisfied by a temporary alienation. *Guran Ditta Mal v. J. Rustamji*, P. L. R. 9 of 1915. (2) On an application for execution of a decree the case was under section 72 of the Civil Procedure Code, referred to the Collector who proposed satisfaction of the decree by twelve years' lease of half of a garden belonging to the judgment debtors, not members of an agricultural tribe. The Subordinate Judge, however, being of the opinion that the lease

*See appendix III D. of this book.

would not be sufficient to satisfy the decree, ordered the sale of the garden. On appeal, the District Judge refused to allow the sale mainly on the ground that the Revenue authorities had refused to sanction it. *Held*, that the sanction of the Revenue authorities is not necessary for the sale of revenue paying land belonging to judgment-debtors not being members of an agricultural tribe and that the Court was not bound to accept the Collector's proposals. *Barakat Ali v. Misri Khan*, P. L. R. 69 of 1918. (3) The applicant, a member of an agricultural tribe, was the judgment-debtor under a decree of a Civil Court and his land was attached in execution. The executing Court asked the Collector to intervene with a proposal for temporary alienation under section 72 of the Code of Civil Procedure. The Collector proposed a temporary alienation for twelve years of part of the land under attachment. *Held*, that the Collector had, under section 72 of the Code of Civil Procedure, jurisdiction to make the proposal for temporary alienation notwithstanding the provision of section 16 (1) of the Punjab Land alienation Act. *Held also*, that the position of a Revenue Officer executing a decree of a Civil Court by attachment of land or temporary alienation or otherwise is that of a Ministerial Officer of the Civil Court taking his orders from such Court, and he has no power to order a temporary alienation. *Salih Muhammad v. Mehar Singh*, P. R. 1 of 1919 (Rev.) *Contra*. *Ahmad Khan v. Parmanand*, P. R. 8 of 1917 (Rev.) overruled by the above ruling P. R. 1 of 1919 (Rev.) (vide *Surjan Singh v. Basant Singh*, P. R. 5 of 1921.) (4) *Held*, that a Civil Court can in execution of a decree order a temporary alienation of the land of a judgment-debtor who is a member of an agricultural tribe, and that section 16 of the Punjab Alienation of Land Act prohibits only a sale and not a temporary alienation of such land. *Held also*, that the Collector when acting under section 72 of the Code of Civil Procedure, does not perform any judicial function; if he makes any representation under the section he does so as an officer of the Court; and it is within the discretion of the court to accept or decline to accept such representation. *Huro Prosad Ray v. Kali Prosad Ray*, Sro. 16.

SNR. 16. 1 L. R. 9 Cal. 200 (F. R.) and *Darya Singh v. Mahlab*, P. R. 25 of 1894, followed. *Sardarna Datar Kaur v. Ram Radhan*, I. L. R. 1 Lah. 192* (5) *Held*, that an Insolvency Court is competent to proceed against the land of an insolvent, who is a member of an agricultural tribe and effect a temporary alienation, and it is not necessary that the receiver or the Court should proceed through the Collector. *Held also*, that a Court or receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree, *vide* section 21 (2) of the Provincial Insolvency Act, and that consequently a farm or mortgage made of the insolvent's land should not be for a term exceeding 20 years and should be automatically redeemed by the profits, the debt being in either case extinguished. *Manji v. Girdhari Lal*, I. L. R. 2 Lah. 78.

Ludlow Law
Report for
April 1920,
Volume I,
Part IV.

Rules and Orders.—15. The sale of land belonging to a member of an agricultural tribe is prohibited by section 16 of the Land Alienation Act. This section however does not prevent the temporary alienation of such land in satisfaction of a money decree in some manner to be determined by the Court whether after or without previous reference to the Collector.

The Ruling
of the Financial
Commissioner
in
No. 1, Punjab
Record (Rev.),
of 1919.

In this connection The Hon'ble Judges of the High Court have issued the following instruction :—

- (a) Subordinate Courts should not ordinarily exercise the power recognised by the marginally-noted ruling of 1919, without first obtaining the Collector's opinion as to what would be a suitable period for a temporary alienation;
- (b) Subordinate Courts should in no case make any attempt to pre-judge in any particular the issue on which a Collector is expected to report; and

*But see the instructions subsequently issued by the High Court regarding value of and weight to be attached to the Collector's opinion, as contained in the Financial Commissioner's Standing order No. 64, para 15 as amended by F. C. correction slip No. 581 S. O. (New Series) dated 6th October 1922.

- (c) Subordinate Courts should as far as possible abide by the Collector's opinion, unless that opinion can be shown to be erroneous. Sec. 16.

Financial Commissioner's Standing order No. 64, para 15 as amended by F. C.'s correction slip No. 581 S. O. (new series) dated 6th October 1922.

16. Under section 72 of the Civil Procedure Code, the Collector is given certain powers of intervention. It is true that under section 68 of the Civil Procedure Code, the local Government has the powers to declare that the execution of the decrees in which the Court has ordered the sale of immovable property shall be transferred to the Collector for execution, but in this province no such notification has issued, and it is only under section 72 that the Collector has power to intervene. When making representations under that section, the Collector does not act as a ministerial officer of the Court, but in any other proceeding under the rules and especially in providing for the satisfaction of the decree after the Court has authorised him to do so in the manner recommended by him under that section, he merely acts as a ministerial officer of the Court executing the decree and takes the place of an ordinary ministerial officer charged with the duty of executing decrees.

Subject to the instructions contained in paragraph 15 (c) above, it is perfectly within the discretion of the Court to accept or to decline to accept any representation made by the Collector. In the event of the Court declining to accept a representation against a sale, it would be the Collector's duty to sell the land, assuming that there is no special law such as section 16 of the Land Alienation Act, prohibiting such a sale. *Financial Commissioner's Standing order No. 64, para 16 as amended by F. C.'s correction slip No. 582 S. O. (new series) dated 6th October, 1922.*

Appeal from Collector's order—Held, that where in execution of a decree after attaching agricultural land, a Civil Court sends the record to the Collector it amounts to an order enquiring from the Collector whether he wishes to intervene under section 72, Civil Procedure

Sec. 16. Code, Act V of 1908, and that no appeal lies against the order of the Collector if he refuses to intervene. *Raja Ram v, Durgu Dut*, P. R. 5 of 1910. (Rev.)

Rules—For rules as to appeals from Collector's orders see Financial Commissioner's Standing order No 64, para 24.*

Sale in execution of decree (1) The sale of agricultural land in execution of decree has always been subject to severe restrictions in the Punjab. At first the sanction of Commissioners was sufficient. In 1879 that of the Judicial Commissioner was required, when the property was ancestral and not acquired. Afterwards the Financial Commissioner became the authority to whom sale proposals had to be submitted. The direct result of these rules was that sales in execution were almost unknown; the indirect, that loans without the security of a mortgage on the debtor's land were discouraged. The same Act which has put restrictions on mortgages has forbidden the sale in execution of decree, of land belonging to a member of an agricultural tribe. The provisions of Section 326 of the Civil Procedure Code have therefore ceased to be of much practical importance so far as the Punjab is concerned. Orders issued by any court for the attachment, sale, or delivery of land or interest in land or for the attachment or sale of produce, must be executed by the Collector or some revenue officer appointed by him. The rules on the subject will be found in Appendix I. *The Punjab Land Administration Manual*, para 51.

(2) Land, which is defined in section 2 (3) of the Act and includes land applied to agriculture or pastoral purposes, is not saleable in execution of any decree or order of any Civil or Revenue Court when it belongs to a member of an agricultural tribe. Accordingly no proposal for the sale in execution of decree of land belonging to a member of an agricultural tribe can now be made except by mistake. *Financial Commissioners' Standing order No. 1, para 46* See to the same effect, Chief Court Rules and orders, Vol. I, Section XXI, para 56.

* See Appendix III. D. of this book.

Sale of land in execution of decree, not confirmed before the coming into force of the act, barred by this section.—See *Gulam Qadir Khan v. Bawa Gurbakhsh Singh*, P. R. 45 of 1902 noted on p. 5 under section I. See also *Sardar Dost Mohammad Khan v. Mussammat Ilahi Khanam*, P. W. R. for 1906, p. 117. Sec. 16.

Decree in redemption suit declaring land of the plaintiff mortgagor to be sold in default of payment of decretal amount within 6 months, illegal.—The mortgagor, a member of an agricultural tribe brought a suit for redemption of his land mortgaged in 1894. His right to redeem was decreed by the Court conditionally upon his paying the sum found due within six months. The decree was drawn up in accordance with the provisions of rule 7 (d) of Order XXXIV of the Civil Procedure Code and it further declared that in default of such payment, the property was to be sold. *Held*, that in view of the specific provisions of section 16 (1) of the Punjab Alienation of Land Act, the Court had no power to direct the sale of land of the plaintiff who is a member of an agricultural tribe. *Nihal Chand v. Ghulam Muhammad*, P. L. R. 235 of 1913.

Sale of mortgagee rights in land forbidden.—*Held*, following *Asa Singh v. Buta*, P. R. 12 of 1911, that the mortgagee rights in land being "land" could not be sold in execution of the decree vide section 2 (3) and 16 of the Punjab Alienation of Land Act. *Karam Ilahi v. Gulab Rai*, P. R. 39 of 1916.

Sale of mortgage-debt apart from the security, in execution of decree, forbidden.—The decree-holder applied in execution of his decree, for sale of a mortgage debt due to his judgment-debtor, a member of an agricultural tribe, separating the debt from the security. *Held*, that the sale of the debt would carry with it the security and as the provisions of section 16 of the Punjab Alienation of Land Act prevent the sale of the mortgagee's rights in the land, the sale of the debt was equally inadmissible. *Lal Chand v. Allah Dad*, P. R. 16 of 1913.

Sec. 16.

Commissioner's sanction to sale of agricultural land not required.—(1) *Held*, that inasmuch as in the Civil Procedure Code of 1908, section 67 re-enacts only the first paragraph of section 327 of the old Code, and has omitted the second paragraph of that section under which the special rule authorising the Commissioner to sanction sales of agricultural land in execution of the decree of a Civil Court had been framed, the special rule in question became inoperative from the date on which the new Code came into force, and that the sanction of the Commissioner of the Division is no longer required as a condition precedent to the sale of agricultural land in execution of a decree for money. *Girdhari Ram v. Mehr Khan*, P. R. 4 of 1910 (Rev.) referred to. *Kishore Chand v. Ishar Singh*, P. R. 89 of 1913. (2) *Held*, that the sanction of Commissioner to sale of land by Receiver of insolvent's agricultural land is not required. *Faqir Muhammad v. Amir Chand*, 3 L. L. J. 5.

Rules and Orders.—(64) Punjab Government notification No. 1297 S., dated 10th September 1885 which was issued under the authority of the second clause of section 327 of the Code of Civil Procedure, 1882, has been withdrawn, as there is no provision in the new Code which would authorise the republication of this notification or keep it in force.

Punjab Government Notification No. 1297 S., dated 10th September 1885.

"In exercise of the power conferred by Section 327 of the Code of Civil Procedure, Act XIV. of 1882, and with the previous sanction of the Governor-General in Council, the Hon'ble the Lieutenant-Governor is pleased to make the following modifications of the Rules which were continued in force by the Notification of the Punjab Government, No. 3859, dated the 3rd of October 1877, issued under the corresponding provisions of Act X of 1877 :—

"1. No land which is applied to agriculture or pastoral purposes, and no interest in such land, shall be sold in execution of a decree of a Civil Court, without the previous sanction of the Commissioner of the Division; and where the land, or interest in land proposed to be sold is hereditary or joint-acquired property without the previous sanction of the Financial Commissioner."

"2. Sales of such land, or of any interest in such land, in satisfaction of a decree of a Court of Civil Judicature, shall be made by the Deputy Commissioner upon the requisition of the Court executing the decree.

65. Land belonging to all who are not members of agricultural tribes, therefore, is liable to sale in execution of money decrees without the previous sanction of the Commis-

sioner. *Chief Court Rules and Orders, Vol. I, Chapter II, Section XXI.* SEC. 17.

17. Notwithstanding anything in the Indian Registration Act, 1877 or in any rules made under section 69 of that Act,—

III of 1877.
Registration.

(1) an instrument which contravenes any provision of this Act shall not be admitted to registration ;

(2) an instrument which records or gives effect to any transaction which requires the sanction of a Deputy Commissioner shall not be admitted to registration until a certified copy of the order giving such sanction is produced to the officer empowered to register such instrument.

NOTES.

Sub-section 1. Registration of a lease for more than twenty years.—An instrument of lease or farm made by a member of an agricultural tribe should not be refused admission to registration merely because the term of years prescribed in section 11 of the Act is exceeded in the conditions of the instrument, as the instrument in other respects would not be necessarily invalid. *Financial Commissioner's Standing Order No. 1, para 13.*

Sub-section 2. Agreement to sell subject to there being no obstacle, unenforceable for want of Deputy Commissioner's sanction.—A Jat of the Lyallpur district, promised to sell his land situate in that district to a Jat of the Hoshiarpur district and on 5th January 1914 executed an agreement containing *inter alia* the stipulations that the sale deed would be executed and registered by the 21st February 1914, that the party committing breach of the contract would pay Rs. 1,000 as damages to the other party and that if there was any legal

Sec 17. obstacle to the execution and registration of the sale deed neither party would be entitled to any damages. Defendant refused to execute the sale deed by the prescribed date and consequently on 24th February 1914 plaintiff instituted his suit for specific performance of the contract and possession of land, sanction of the Deputy Commissioner to the sale was not obtained till after the institution of the suit. *Held*, that as plaintiff neither held land nor resided in the Lyallpur district he was not a member of an agricultural tribe *qua* that district and was not competent to purchase the land without the sanction of the Deputy Commissioner. *Held also*, that as under sub-section 2 of section 17 of the Act, the deed of sale could not have been admitted to registration until a certified copy of the order granting such sanction was produced to the officer empowered to register the instrument and as no such sanction was forthcoming on the 21st February 1914, there was a legal obstacle and the defendant was justified in putting an end to the contract. *Pal Singh v. Thakar Singh*, P. R. 120 of 1916.

Suit for the registration of a document, whether Court can enter into the question of the registration being precluded by section 17 of the Act.—*Held*, that in a suit for the registration of a document under section 77 of the Registration Act, the Court is not entitled to enquire into anything more than whether the ostensible executant signed and delivered to the other party the document which he produced for registration, and it can not enter into any question regarding its validity. *Remal Das v. Mat. Jannat*, I. L. R. 2, Lah. 202.

Rules.

HOME DEPARTMENT.

The 8th November 1901.

No. 44 Notification.—In exercise of the powers conferred on him by section 25 of Act XIII of 1900 (Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab is pleased to make the following rules for giving effect to the provisions of section 17 of the said Act :—

1. (a) When an instrument, which records or gives effect to a permanent alienation of land, requiring, under section 3 of the Act, the sanction of the Deputy Commissioner, is presented to a registering officer, unaccompanied by a certified copy of an order giving such sanction; or

(b) When an instrument of agreement purporting to charge or alienate the produce of land, which, under section 15 of the Act, requires the sanction of the Deputy Commissioner, is presented unaccompanied by a certified copy of an order giving such sanction; or

(c) When an instrument of mortgage, which is required to be made in one of the forms prescribed in section 6 of the Act, is presented not made in any such prescribed form; the registering officer in refusing to admit the instrument to registration shall proceed in the following manner:—

He shall (d) record no endorsement upon the document itself, nor shall he make any entry of reasons for refusal to register in Register Book II;

but (e) he shall enter his reasons for not admitting the instrument to registration in a separate book (to be prescribed and provided by the Inspector-General of Registration), and shall give to the presenter of the instrument a copy of such entry, and shall at the same time return the instrument unendorsed to the presenter.

2 An instrument of the kinds mentioned in the foregoing rule, which has been returned thereunder, may be presented again for registration, and may then be admitted to registration if accompanied by the certified copy of the order which was required, or if amended by the parties themselves, or by the Deputy Commissioner acting under section 9 of the Act, so as to make it conform to the prescribed form.

3. (a) In registering an instrument of the kinds mentioned in clause (a) and (b) of Rule I, the registering officer shall regard the accompanying order of the Deputy Commissioner giving the necessary sanction as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book; and

Sec. 17. (b) In registering an instrument of the kind mentioned in clause (c) of Rule I, when the same has been revised or altered by the Deputy Commissioner acting under section 9 of the Act, the registering officer shall regard such order of revision or alteration as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book.

4. An appeal may be lodged to the Registrar against any return of an instrument made by a Sub-Registrar under clause (e) of Rule 1, and, if the Registrar directs that the instrument shall be registered in the form in which it was originally presented, the Sub-Registrar shall register it accordingly. If the Registrar directs that the instrument shall be registered only after specified amendment or addition, then the provisions of Rule 2 as to admission to registration shall apply.

HOME DEPARTMENT.

The 20th June 1906.

No 54. Notification.—In exercise of the powers conferred on him by section 25 of Act XIII of 1900 (Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab and its Dependencies is pleased to make the following rules, in continuation of those published in Punjab Government Notification No. 44, dated 8th November 1901, for giving effect to the provisions of section 17 of the said Act:—

Rule 5.—When a mortgage-deed is cancelled by the Deputy Commissioner under section 9 (2) of the Act and a new deed is drawn up in lieu thereof, the Deputy Commissioner shall send to the office in which the cancelled deed was registered a copy of his order of cancellation, and the registering officer shall make a note of the cancellation, in red ink in the column of remarks opposite the copy of the document cancelled.

Rule 6—In cases in which a registered mortgage-deed is revised or altered by the Deputy Commissioner under section 9 (1) or where under section 9 (2) of the Act a condition intended to operate by way of conditional sale is struck out, the Deputy Commissioner shall, when re-

turning the document to the parties after revision, alteration or striking out, send a copy of his order to the office where the document was originally registered, and the registering officer concerned shall make a note of the correction, revision or striking out together with a reference to the Deputy Commissioner's order in the column of remarks against the copy of the document concerned. SEC. 18.

DEPARTMENT OF REVENUE AND AGRICULTURE.

The 6th November 1914.

No. 310 A.—Notification.—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900 (Act XIII of 1900), and by section 91 of the Indian Registration Act, 1908 (XVI of 1908), the Lieutenant-Governor of the Punjab is pleased to make the following rule:—

RULE.

Rule 7.—When any permanent alienation, which under Section 3 of the Punjab Alienation of Land Act (Act XIII of 1900) is not to take effect as such until the sanction of a Deputy Commissioner is given thereto, has been reduced to writing and the deed of transfer has in the absence of such sanction been registered, contrary to the provisions of Section 17 (2) of the said Act, the Deputy Commissioner shall, on such registration coming to his notice, intimate to the Registering Officer, in whose office the deed was registered, that the sanction of the Deputy Commissioner to the transaction had not been obtained, and the Registering Officer shall thereupon make a note to that effect in red ink in the column of remarks against the copy of the document, and shall add that registration was in contravention of the provisions of section 17 (2) of the said Act. A copy of the said remarks shall be endorsed on every copy of the deed supplied thereafter by the Registering Officer under section 91 of the Indian Registration Act, 1908. *

18. (1) Where, by reason of any transaction which under this Act requires the sanction of a Deputy Commissioner, a person claims to have

Record-of-
rights and
annual record,
XVII of 1887.

* For further explanatory notes and additional instructions of the Inspector-General of Registration Punjab see appendix IV of this book.

Szo. 18. acquired a right the acquisition whereof he is bound to report under section 34 of the Punjab Land Revenue Act, 1887, such person shall, in making his report, state whether the sanction required has been obtained or not, and his right so acquired shall not be entered in the record of rights or in any annual record until he produces such evidence of the order by which such sanction is given as may be required by any rules made under this Act.

(2) No right claimed by reason of any transaction or condition which is declared by this Act to be null and void shall be entered in the record-of-rights or in any annual record.

NOTES.

Section 34 of the Punjab Land Revenue Act, No. XVII of 1887, runs as follows:—

34. (1) Any person acquiring, by inheritance, purchase, mortgage, gift, or otherwise, any right in an estate as a land owner, assignee of land-revenue, or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.

(2) If the person acquiring the right is a minor, or otherwise disqualified, his guardian, or other person having charge of his property, shall make the report to the patwari.

(3) the patwari shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2) and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and, of which a report should have been made to him under one or other of those sub-sections and has not been so made.

(4) A revenue officer shall from time to time inquire into the correctness of all entries in the register of mutations, and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the patwari and entry made

in that register, and shall in each case make such order as he thinks fit with respect to the entry in the annual record of the right acquired. Sec. 18.

(5) Such an entry shall be made by the insertion in that record of a description of the right acquired, and by the omission from that record of any entry in any record previously prepared which by reason of the acquisition has ceased to be correct.

Mutations.—The special mutation procedure prescribed for dealing with cases of alienation which contravene provisions of the Alienation of Land Act is for convenience sake given in the Standing Order No. 23 on the Record-of-Rights, and will be found in paragraph 15 of that Standing Order. *Financial Commissioner's Standing Order No. 1, para 6.*

Standing Order No. 23.

The Record of Rights.

Rules regarding the treatment of mutations of alienations which contravene the provisions of the Punjab Alienation of Land Act.—16(1) If any alienation of land is made otherwise than in accordance with the provisions of the Punjab Alienation of Land Act, 1900, or involves any condition contrary to those provisions, the patwari shall nevertheless enter the same, when it comes to his knowledge, in his register of mutations for the village where it occurred.

Punjab
Government
Notification
No. 221,
dated 10th
September
1912.

(2) Any entry made under the preceding rule shall be dealt with like other entries in the register of mutations except that the revenue officer to whom the register is submitted for orders shall, after hearing the parties and recording a note of their representations:—

(a) in the case of any permanent alienation, transmit the mutation proceeding with his recommendation, as to whether sanction should be granted or refused, to the Deputy Commissioner for his orders under section 3 (2) and (3) of the Punjab Alienation of Land Act; or

(b) in the case of any temporary alienation, refuse to sanction mutation of names and refer the parties

Sec. 18.

to the provisions of the Punjab Alienation of Land Act which they have contravened, except in the case of a mortgage which purports to be in form (a) described in section 6 (1) of the Act, where the only contravention of the Act is as to the term of the mortgage. In this case mutation should be allowed subject to the condition attached to the mortgage by law, namely, that its term shall be for 20 years.

(3) The Deputy Commissioner, on receipt of any mutation proceeding transmitted to him under Rule (2) (a), shall after such further enquiry, if any, as he may consider necessary, grant or refuse the sanction required by subsection (2) of Section 3 of the Punjab Alienation of Land Act. For the purposes of any further enquiry under this Rule the Deputy Commissioner may refer the case to any revenue officer subordinate to him for investigation and report, and may decide the case upon the report.

(4) When the Deputy Commissioner has decided any case dealt with under Rule (3) he shall record his order upon the mutation proceeding and direct the same to be returned to the revenue officer whose duty it is to dispose of mutation cases arising in the village where the land alienated is situated.

(5) If the Deputy Commissioner sanctions the alienation, the records of his sanction made upon the mutation proceeding shall be deemed to be sufficient evidence of the order of sanction for the purposes of Section 18 of the Punjab Alienation of Land Act, and the revenue officer, whose duty it is to dispose of the mutation case, shall dispose of the same and shall not refuse mutation on the ground of any objection arising out of the said Act.

(6) If the Deputy Commissioner refuses to sanction the alienation, the revenue officer disposing of the mutation case shall pass such order in the case as may be in accordance with the order of the Deputy Commissioner refusing sanction.

(7) When a mutation proceeding has been transmitted to the Deputy Commissioner under Rule (2) (a), the transmission thereof shall be deemed to be an application to the Deputy Commissioner to exercise the powers conferred upon him by Section 3 of the Punjab Alienation of Land Act. Such application need not be stamped nor is any separate application necessary for the exercise of those powers in the same case. SEC. 18.

(8) Nothing in these rules shall be so construed as to disallow applications to the Deputy Commissioner for the exercise of any power conferred upon him by the Punjab Alienation of Land Act, 1900, which are made in any other manner authorised by law or by rules having the force of law.

Instructions regarding those transfers which are permitted on certain conditions by the Punjab Alienation of land Act.—17. The following instructions have been issued in connection with those temporary transfers which are permitted on certain conditions by the Punjab Alienation of Land Act:—

Director of
Land Re-
cord's Cir-
lar No. 9,
dated 20th
November
1903.

Patwari's duties in the matter of temporary alienations, including mortgages, farms and leases—

(1) In the matter of a temporary alienation, where the alienor is a member of an agricultural tribe, and the alienee is not, it is necessary that the Revenue Officer should know what the terms of the contract are. Accordingly, where there is a written deed, and where the alienor is a member of an agricultural tribe and the alienee is not, the patwari must note briefly the terms of the deed as to possession, period, rent, interest, redemption, etc, and that attesting officer must satisfy himself of the correctness of these entries. These notes are in addition to those required by the footnote 4 to the register form.

(2) Where there is no written deed, the patwari should note the terms agreed to by the parties or, when they do not agree, he should record the terms alleged by each. The attesting officer will then proceed to pass suitable orders on

Sec. 19. the mutation. If the provisions of the Act are not contravened by the terms of the contract, he will direct mutation. Otherwise he will refuse mutation.

26. If mutation has been refused under paragraph 16 (6) because a transfer contravenes the provisions of the Punjab Alienation of Land Act, the name of the transferee must not appear in any column of the *jamabandi* unless he himself cultivates the land, when his name will appear as a tenant-at-will in the cultivation column and the rent column will be left blank. If the transferor cultivates, and makes at each harvest a payment in cash or kind to the transferee, this payment must not be shown as rent in column 9 of the *jamabandi*, and the entry in column 6 will be *khudkash*.

Application
of certain
provisions
of the
Punjab
Land
Revenue
Act, 1887,
XVII of
1887.

19. Subject to the provisions of this Act, the provisions of Chapter II of the Punjab Land Revenue Act, 1887, shall, in so far as they are applicable, apply to the proceedings of Revenue officers under this Act.

NOTES.

Applicability of Punjab Revenue Act.—Except as specially directed by this Order and by notifications Nos 24 S. and 25 S., dated 22nd May 1901 (see page 136 Land Administration Acts), and 221, dated 10th September 1912 (see paragraph 16 of Standing Order 23), proceedings under the Punjab Alienation of Land Act are to be regulated by Chapter II of the Punjab Land Revenue Act: this provides for appeal, review, and revision. *Financial Commissioner's Standing Order No. 1, para 1.*

Chapter II of the Land Revenue Act.—This Chapter relates to the Revenue Officers, their classes and, powers, administrative control, appeal, review and revision, procedure and supplemental provisions.

Order of a Deputy Commissioner granting or refusing sanction is open to appeal and revision.—*Held*, that an order of a Deputy Commissioner granting or refusing sanction to a permanent alienation under section 3

(3) of the Punjab Land Alienation Act, is open to appeal and revision as provided by the provisions of Chapter II of the Punjab Land Revenue Act, 1887. *Ram Saran Das v. Sardara*, P. R. 4 of 1908 (Rev.).

Sac. 20.

Proceedings by the Deputy Commissioner under section 9 (2) of the Act, judicial.—In proceedings under section 9 (2) of the Act, the mortgagee having produced before the Deputy Commissioner, a copy of the mortgage-deed, that officer referred it to the Tahsildar for investigation and report. The Tahsildar did not make any enquiry. Before the Naib-Tahsildar, the mortgagee stated that no payments were made by the mortgagor to him. On enquiry it was found that payments had been made which were endorsed on the back of the original mortgage-deed which was withheld for that reason. The Deputy Commissioner sanctioned prosecution of the mortgagee. *Held*, that the proceedings, before the Deputy Commissioner or before a Revenue Officer to whom a case is referred by the Deputy Commissioner under rule 5 of the rules made by the Local Government in exercise of the powers conferred upon it by section 25 of the Land Alienation Act and published in Government Notification No. 24 dated 22nd May 1901, are governed by Chapter II of the Land Revenue Act *vide* section 19 of the Alienation of Land Act and a person making a false statement before a Revenue Officer in such a case, being legally bound by an express provision of law to state the truth gives false evidence, *vide* section 191 Indian Penal Code and is punishable under section 193 Indian Penal Code. *Kalyan Singh v. The Crown*, P. L. R. 80 of 1910.

20. No legal practitioner shall appear on behalf of any party interested in any proceeding before a Revenue-officer under this Act.

Appearance
of legal
practition-
ers for-
bidden.

Explanation—The term “legal practitioner” includes a mukhtar.

Sec. 21.

NOTES.

“ Legal practitioner ” means an Advocate, Vakil, or Attorney of any High Court, a Pleader, Mukhtar, or Revenue Agent.—section 3, Act XVIII of 1879.

Object. The object of the Act is to confer discretionary powers upon Revenue Officers for the protection of a certain class of landowners, and we think that the reasons for and against the exercise of such powers may be adequately stated by the parties without the assistance of professional lawyers. *Report of the Select committee on the Bill to amend the Law relating to Agricultural Land in the Punjab.* *

Jurisdiction
of Civil
Courts
excluded

21. (1) A Civil Court shall not have jurisdiction in any matter which the Local Government or a Revenue-officer is empowered by this Act to dispose of.

(2) No Civil Court shall take cognisance of the manner in which the Local Government or any Revenue-officer exercises any power vested in it or in him by or under this Act.

NOTES.

Sub-section 1. Exclusion of jurisdiction of Civil Court.—As a consequence of section 21 (1) of the Act a Civil Court has no jurisdiction to interfere with the order of a Deputy Commissioner under the Alienation of Land Act deciding for the purpose of that Act that any particular transaction is or is not a *bona fide* gift for one of the prescribed purposes. *Financial Commissioner's Standing order No. 1, para 35.*

Power of Civil Court, to convert a mortgage by way of conditional sale into a mortgage under section 6 (1) (a) of the Act.—*Held*, that the Civil Courts have no power at all to convert a mortgage by way of conditional sale into a mortgage prescribed by section 6 (1)

*See appendix VII, C of this book.

of the Act, this being a matter left entirely to the Revenue authorities. *Gopal Das v. Hari Singh*, P. R. 88 of 1909.

SEC. 21.

Conditional clause wrongly struck out by Deputy Commissioner—suit for declaration in Civil Court. In the case of a mortgage by way of conditional sale dated the 26th May 1900, executed by a person not a member of an agricultural tribe, the conditional clause was wrongly struck out of the mortgage deed by the Deputy Commissioner. In a suit for possession, the conditional vendee was granted a declaratory decree to the effect that the cancellation of the conditional sale clause was *ultra vires* and that the clause was to be deemed to be part of the mortgage transaction. *Salig Ram v. Ohajju*, P. R. 46 of 1917.

Sub-Section 2. Pre-emption in respect of sale sanctioned by Deputy Commissioner, jurisdiction of Civil Court to inquire into manner in which Deputy Commissioner exercises his powers.—*Held*, that a Civil Court is debarred from taking cognizance of the manner in which the Deputy Commissioner exercises his powers under the Alienation of Land Act *vide* section 21 (2) of the Act. *Ganga Ram v. Raja Ram*, P. R. 124 of 1916.

Agriculturist-decision of a Revenue authority if binding on Civil Court. *Held*, that the decision of Revenue officer as to whether a person is a member of an agricultural tribe is not binding on the Civil Courts which are free to form their opinion on the point. *Ladha Ram v. Ali Shah*, 8. Lah : Law Journal 489.

21-A. (1) Notwithstanding anything contained in the Code of Civil Procedure or in any other Act for the time being in force, every Civil Court which passes a decree or order involving (1) the permanent alienation of his land by a member of an agricultural tribe, or (2) the mortgage by a member of an agricultural tribe of his land when the mortgagee is not a member of the same tribe or of a tribe in the same group, shall

India Act
XIV of 1932.

Civil Court
to send copy
of decree or
order to De-
puty Com-
missioner.

Sec. 21. send to the Deputy Commissioner a copy of such decree or order

Act on to
be taken by
Deputy
Commissioner
when
decree or
order passed
contrary to
Act

(2) When it appears to the Deputy Commissioner that any Civil Court, has, either before or after the date when this section comes into operation, passed a decree or order contrary to any of the provisions of this Act, the Deputy Commissioner may apply for the revision of such decree or order to the Court, if any, to which an appeal would lie from such decree or order or in which an appeal could have been instituted at the time when the decree or order was passed, or in any other case to the High Court. And when the Court finds that such decree or order is contrary to any of the provisions of this Act it shall alter it so as to make it consistent with this Act. Such application shall be made within two months of the date upon which the Deputy Commissioner is informed of such decree or order.

(3) When any such appellate Court passes an order rejecting such application the Deputy Commissioner may, within two months after the date upon which he is informed of such order, apply to the High Court for revision thereof.

(4) Every Civil Court which passes an order on any application made under this section shall forthwith send a copy thereof to the Deputy Commissioner.

(5) No stamp shall be required upon such applications, and the provisions of the Code of Civil Procedure as regards appeals shall apply so far as may be to the procedure of the Court on receipt of such application.

Provided that no appearance by or on behalf of the Deputy Commissioner shall be deemed necessary for the disposal of the application.

Continued from page 104

Page 102, line 4 read Order Court for Court.

Object—(1) A new section has been added after section 21. It follows section 27 of the Punjab Pre-emption Act and enables a Deputy Commissioner to take action in respect of a decree or order of a Civil Court which appears to him to be contrary to the provisions of the Punjab Alienation of Land Act. It will enable a check to be placed on attempts, collusive or otherwise, to evade the Act and provides a remedy against mistakes of Subordinate courts. *Statement of Objects and Reasons.** (2) *Held*, in *Feroz Din v. Mussammatt Basvi*, P. R. 52 of 1916 (F. B.), that the object of section 21-A, is to enable correction of decrees which on the face of the record infringe the provisions of the Act, as e. g., if a court has granted a decree for possession of land against a *Jat* and a *Sikh* to a person described in the plaint as a *bania* of Lahore City and would not apply to a case where there is a genuine dispute between the parties as to legitimacy.

Retrospective nature.—*Held*, that section 21-A of the Act is retrospective and a Deputy Commissioner can apply for revision of a decree passed before or after the section came into force but he must do so within two months of notice of the decree or order. *Bhola Ram v. Muhammad*, P. W. R. 235 of 1912.

Sub-section (2).—Decree (1) *Decree in contravention of the Act, not a nullity.* *Held*, that a decree passed in violation of the terms of section 3 clause (2) of the Act is not a nullity unless set aside in appeal or revision. Section 9 of the Punjab Act, (No. 1 of 1907) amending the Punjab Land Alienation Act, 1909, provides for such a case. *Darya Ditta v. Mana Singh*, P. R. 60 of 1909.

* See appendix VIII, B. of this book.

Sno. 21. (2) *Applicability of Section 21 A (2) to decree under Section 9, Specific Relief Act.*—*Held*, that it is extremely doubtful whether section 21, A (2) of the Act, applies to a decree under section 9, Specific Relief Act, where no question of title is decided. *Phuman Shah v. Ohhanga*, P. R. 7 of 1914.

(3) *Declaratory decrees conferring a legal title whether can be contrary to Act.* On the death of a Rajput of the Hoshiarpur District, his land was mutated by mutual consent, half in the name of his widow *Mussammat Basri*, and half in the names of his three sons by *Mussammat Basri*, a *natni* by caste and not a member of an agricultural tribe. On appeal by certain reversioners of the deceased, the Settlement Collector found the three sons to be illegitimate and ordered mutation in the name of *Mussammat Basri* alone. Thereupon the three sons instituted a suit against *Mussammat Basri* alone for a declaration that they are the sons and heirs of the deceased, and entitled to half his estate. The reversioners applied to be made parties to the suit which was refused and on confession, of judgment by *Mussammat Basri* plaintiffs obtained a decree. The Deputy Commissioner of Hoshiarpur then filed a revision to the Chief Court under section 21-A (2) of the Act, on the ground that the decree was contrary to the provisions of that Act and prayed that the declaration in favour of the three sons be modified so as to have effect only during the lifetime of *Mussammat Basri*. *Held*, that a decree even though it be only declaratory, which has the effect of conferring a legal title, when no such title would otherwise exist, may well be contrary to the provisions of the Act. *Held, however*, that even if the decree in this case was contrary to the provisions of the Act, the relief prayed for by the Deputy Commissioner would not make it more consistent with it. *Feroz Din v. Mussammat Basri*, P. R. 52 of 1916 (F. B.)

(4) *Decree not explained to be contravening the provisions of the Act.*—The widow of a Gaur Brahman had sold her occupancy rights in land to some Rors, and after her death her reversioners sued for possession of the land. The court resulted in a compromise and the decree of

the Civil Court was passed in 1919. The Deputy Commissioner applied in revision on 12th April 1922. *Held*, that the application is time barred. Moreover it fails on the merits, as even if the alienation by the widow contravened the provisions of the Land Alienation Act, it is not explained in what way they are contravened by the subsequent decree of Court. *Ram Kala v. Hira*, All India Reporter, (1923) Lah. 218. Sec. 21.

Proper forum to apply to—*Held*, that in the case of a decree passed on a compromise, the proper court to apply to is the Chief Court as the decree passed on the compromise is not appealable. *Kartara v. Arjan Singh*, P.L.R. 200 of 1911, referred to. *Milki v. Bishen Das*, P. R. 8 of 1213.

Sale by Court of mortgagee rights in agricultural land—reference by Deputy Commissioner jurisdiction of Divisional Judge to cancel on second application by the Deputy Commissioner—High Court's power of revision not taken away by section 21.—*Held*, that no appeal lies, as of right, to the Chief Court from an order passed by the Divisional Judge upon an application made by the Deputy Commissioner under Section 21 A (2) of the Act for revision of the order of an executing Court sanctioning the sale of the judgment debtor's mortgagee rights in agricultural land to the decree-holder, but *held*, that the provisions of section 21 do not take away the right which a party to a suit or an execution proceeding has of applying to the Chief Court under the general provisions of section 70 of the Punjab Courts Act, for revision of such an order. *Held also*, that when a Divisional Judge refrained from passing a definite order on an application for revision made by the Deputy Commissioner under section 21 A (2) of the Act, he has full jurisdiction to pass such an order upon a second application made by the Deputy Commissioner. *Held further*, that when a sale of land belonging to a member of an agricultural tribe is made under order of a Civil Court in execution of a decree, the provisions of Section 16 of the Act are contravened and Section 21 A of the Act applies. *Asa Singh v.*

Sec. 21. Sale of mortgagee-rights in land-recognition by Deputy Commissioner, whether successor can interfere.—*Held*, that a sale under Section 21 A (2) once recognised by a Deputy Commissioner cannot be interfered with by his successors in office except on proof that the former had not full knowledge of the facts or was misled. A knowledge of such sale by one Deputy Commissioner is knowledge of his successor in office. *Suryan Mal v. Collector of Jullundur*, P. L. R. 215 of 1911.

Procedure of the Court where decree contravenes Act.—Probably the best course for the Court to pursue would be to bring the decree in question to the notice of the Deputy Commissioner and await, for the prescribed two months, any action taken by him under section 21-A of the Act. If he takes action, the course of the suit will be determined by any alteration made in the decree. If he takes no action, the suit must be disposed of on the understanding that the decree in question is a valid decree. *Darya Ditta v. Mana Singh*, P. R. 60 of 1909.

Limitation.—(1) *Limitation can not be extended by the Chief Court.* *Held*, that the period of two months within which an application should be made by a Deputy Commissioner under Section 21 A (2) of the Act, can not be extended by the Court to which the application is made. *Phnman Shah v. Ohhanga*, P. R. 7 of 1914.*

(2) *Limitation for application under section 21 A—time spent in prosecuting application in wrong Court not allowed—Section 14 of the Indian Limitation Act not applicable.*—*Held*, that the period of limitation for an application under Section 21 A by a Deputy Commissioner against a decree in contravention of the Act (No. XIII of 1900) is two months from the date when the Deputy Commissioner is informed of such a decree. Section 21 A provides only for applications to a Court competent to interfere with the first Court's decree in appeal or revision and time spent in prosecuting such an application in a wrong court can not therefore be excluded. *Held also*, that the period of two months prescribed by Section 21 A, is an

* See Note on next page.

unconditional period and not subject to the provisions of **Sec. 22 23.** Sections 4 to 25 of the Limitation Act. *Kartara v. Bhai Arjan Singh*, P. L. R. 200 of 1911.*

Sub-section 5. Chief Court's power of remand.—*Held*, that having regard to sub-section 5 of Section 21 A, the Chief Court has power to order a remand when necessary. *Feros Din v. Mussammal Buxi*, P. R. 52 of 1916. (F. B.).

22. In sub-section (3) of section 77 of the Punjab Tenancy Act, 1887, the following words shall be added to clause (c) of the First Group of suits therein mentioned, namely :—

Addition to section 77. Act XVI, 1887.

“ and suits relating to the rent to be paid under a mortgage made in accordance with form (c) as prescribed by section 6 of the Punjab Alienation of Land Act, 1900. ”

23. The powers conferred by this Act upon a Deputy Commissioner may be exercised by a Revenue-officer of higher rank, or by any officer authorised by the Local Government in this behalf.

Exercise of powers of Deputy Commissioner.

NOTES.

Powers.—2. No officer of lower rank than a Deputy Commissioner has been invested with the powers of a Deputy Commissioner under the Act. Commissioners already possess these powers under the provisions of section 23.

Powers and duties of Settlement Officers.—3. Settlement Officers have usually no powers under the Punjab Alienation of Land Act.

It may, however, be necessary, where *killabandi* proceedings are in progress, to invest the Settlement Officer with the powers of a Deputy Commissioner under the Act

*But see now the Indian Limitation (Amendment) Act, No. X of 1922, Section 3, which provides that for the purpose of determining any period of limitation prescribed for any suit, appeal or application, by any special or local law, the provisions contained in section 4 sections 9 to 18 and section 22 of the Indian Limitation Act, shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

Sec. 21. for the limited purpose of sanctioning exchanges of small plots, which are often essential in order to make the boundaries of holdings coincide with those of *kittas*. The power can be conferred by the Local Government under section 23, whenever occasion arises. The duties of Settlement Officers as regards mutations which contravene the provisions of the Act are stated in paragraph 16 of Standing Order No. 23—The Record-of-Rights.

Scrutiny by Commissioner.—44. Commissioners should carefully scrutinise the quarterly business returns of cases disposed of under the Alienation of Land Act, and should from time to time call for a few specimen cases in order to satisfy themselves that the principles of the Act are being duly observed. If in connection with any cases so called for points of doubt or difficulty arise, a reference may be made for the orders of the Financial Commissioner. *Financial Commissioner's Standing Order No. 1.*

Power of the Financial Commissioner to revise mortgage made in form not permitted by the Act.—In 1899 a member of an agricultural tribe made a mortgage of his land in favour of a khatri. The mortgage was collateral one and contained provisions intended to operate by way of conditional sale on default of repayment of the loan within two years. On default being made, no steps were taken to enforce the conditional sale but the parties agreed that the alienee should take possession as mortgagee allowing the mortgagor to cultivate the land as his tenant subject to payment of rent. The parties then applied for mutation of names but the Deputy Commissioner refused to give his sanction. *Held*, on an application for revision to the Financial Commissioner, that sections 9, 19 and 23 of the Alienation of Land Act give the Financial Commissioner all powers necessary to deal with the case, to revise the mortgage made in form not permitted by the Act and to put the mortgagee, to his election under section 9 (2), to have the conditions intended to operate by way of conditional sale struck out of the mortgage-deed. *Harjas v. Harditta*, P. R. 7 of 1903 (Rev.).

24. The Local Government, * * * * * SEC. 25.
 * * * * * may, by notification in the local official Gazette, exempt any district or part of a district or any person or class of persons from the operation of this Act or of any of the provisions thereof. Exemption

Legal Change.—“The words “with the previous sanction of the Governor-General in Council” have been repealed by the Devolution Act, No. XXXVIII of 1920, Schedule I.*

NOTES.

Government Notification. The notification issued by the Punjab Government is as follows:—

REVENUE AND AGRICULTURAL DEPARTMENT.

AGRICULTURE.

The 21st June 1919.

No. 16176.—In exercise of the power conferred by section 24 of the Punjab Alienation of Land Act, 1900, as amended by sections 2 and 5 of the Punjab Alienation of Land Amendment Act, 1907, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of the Punjab is pleased, in supersession of the Punjab Government, Revenue and Agricultural Department Notification No. 84, dated the 14th May 1902, to exempt:—

- (1) from the operation of the provisions of the said Act, other than those of section 10, the district of Simla, except the ilaqa of Kotgarh in the Kotkhai Tahsil; and
- (2) from the operation of the provisions of the said Act, other than those of section 1, section 2, clauses (2), (3) and (6), section 4, 10 and 16, section 17, sub-section (1), section 18, sub-section (2), section 21, sub-section (2) and section 24, every area included within the limits of any cantonment or municipality in any part of the Punjab, other than the district of Simla.

* See Appendix IX of this book.

Sec. 25. Section 4 of the Act, not effected by the Punjab Government Notification No. 84 of 14th May 1902.—*Held*, that the Punjab Government Notification No. 84 of 14th May 1902 (now superseded by Notification No. 16176 dated the 21st June 1919), under section 24 of the Alienation of Land Act does in no way effect the provisions of section 4 of the Act. *Kanti Narain Agnihotri v. Sayad Sardar Shah*. P. L. R. 7 of 1909. See also, *Lachhman Singh v. Sundar Das*, 3 Lah. L. J. 430, noted under section 4 on p. 46.

Power to
make rule

25. (1) The Local Government may make rules for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Local Government may make rules prescribing the Revenue-officers to whom applications may be made, and the manner and form in which such application shall be made and disposed of.

NOTES.

Sub-Section I.—For rules made by the Punjab Government for giving effect to the provisions of section 17 and 18 of the Act, see Government notification No. 44, dated the 8th November 1901, No. 54, dated the 20th June 1906, and No. 310 A. dated the 6th November 1914, given in appendix II of this book.

Sub-Section II PUNJAB GOVERNMENT

DEPARTMENT OF REVENUE AND AGRICULTURE,

The 22nd May 1901.

XIII of 1900.

No: 24. S., Notification.—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant Governor of the Punjab is pleased to prescribe the following rules as to the Revenue officers to whom applications may be made for the exercise by a Deputy Commissioner of the powers conferred on him by the Punjab Alienation of Land Act, 1900, and as to the man-

ner and form in which such applications shall be made and disposed of:— Sec. 25.

Rule.

1. An application to a Deputy Commissioner for the exercise of any power conferred on him by the Punjab Alienation of Land Act shall be in writing and signed and verified by or on behalf of the person making it, and shall be accompanied by an extract from the annual record or record-of-rights sufficiently describing the land which is the subject of the application. The application shall bear a stamp of the value of eight* annas; and the extract from the revenue records shall also be duly stamped in accordance with section 6 and Schedule I, No. 9, of the Court Fees Act. XIII of 1900.

2, Such application may be received by the Deputy Commissioner or by any Assistant Collector of the 1st or 2nd grade.

VII of 1870.

3. If the Assistant Collector receiving such an application is dealing with mutation cases and the application is made to him in connection with any such case, he shall proceed as directed in the addendum to the rules in Chapter V under the Punjab Land Revenue Act, published in Notification No: 23-S, dated the 22nd May 1901 †, and shall forward the application to the Deputy Commissioner with the mutation proceeding therein mentioned.

XVII of 1887.

4. If the application is made to an Assistant Collector, but is not made in connection with a mutation case, the Assistant Collector shall, if generally or specially empowered in this behalf by an order in writing made by the Deputy Commissioner, inquire into the case and transmit the application with a report of the results of his inquiry to the Deputy Commissioner for orders. The Assistant Collector, if not so empowered, shall transmit the application to the Deputy Commissioner for orders without remark.

*But see the Court Fees (Punjab Amendment) Act, 1922, section 8 (2).

† Now see Punjab Government Notification No: 221 R and A. A., dated 10th September 1912, in paragraph 16 of Standing Order No. 23.

Sec. 25. 5. The Deputy Commissioner on receipt of an application made under these rules, may decide the case upon the application or may himself make any inquiry which he considers necessary, or may refer the case to any Revenue Officer subordinate to him for investigation and report and may decide the case upon the report or upon the results of his own inquiry, as the case may be.

The 22nd May 1901.

XIII of 1900, No. 25-S.—Notification.—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant-Governor of the Punjab is pleased to make the following rule as to the exercise by a Deputy Commissioner of the powers conferred on him by that enactment in cases referred to him under the said Act by a Civil Court:—

Rule.

When a Civil Court makes a reference to a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, the Deputy Commissioner may exercise any power applicable to the case, which is conferred upon him by that Act, either upon the reference or after any further inquiry which he considers necessary, or after sending the reference to any Revenue Officer subordinate to him for investigation and report and upon consideration of the report so required.

Delegation of powers by a Collector to Tahsildar-reference by Tahsildar to Naib-Tahsildar unauthorised.—*Held*, that the power of delegation conferred by rule 5 of the rules made by Local Government in exercise of the powers conferred upon it by section 25 of the Alienation of Land Act and published in Government notification No. 34 dated 22nd May 1901, is one conferred solely on the Deputy Commissioner. The Deputy Commissioner having referred the case to the Tahsildar, that officer and that officer alone, was competent to make the investigation and report and the proceedings of the Naib-Tahsildar to whom reference was made by the Tahsildar were entirely *ultra vires*. *Kalyan Singh v. The Crown*, P. L. R. 80 of 1910.

Applications.—*Applications when mutation is refused.* 38. If the temporary alienation is a mortgage which ought to have been made in accordance with section 6, 7 and 8, and has actually been made otherwise, then mutation of names is in consequence refused, and the parties will have two opportunities of applying to the Deputy Commissioner to revise and alter the terms of the mortgage so as to bring them into accordance with the Act. The parties can either do this directly mutation of names is refused, or they can do it later if their case comes into Court and the Court refuses to enforce the irregular mortgage. If, however, they choose to file a separate and duly stamped application in the course of the mutation case, the application may be forwarded to the Deputy Commissioner under rule 3 of Notification No. 24 S., dated 22nd May 1901, and he can dispose of it under rule 5. SEC. 25.

Other applications. 39. Other applications which may be made to the Deputy Commissioner are the following :—

- (1) Under section 6 (1) (b) to place the mortgagees in possession :
- (2) Under section 6 (2) to fix the term and mortgage-money of the usufructuary mortgage :
- (3) Under section 7 (3) to fix the proportion of the mortgage debt to be deemed equitable :
- (4) Under section 9 (1) to revise and alter the terms of the mortgage :
- (5) Under section 9 (2) to put the mortgagee to his election as therein proscribed :
- (6) Under section 13 to eject a mortgagee, lessee or farmer and place the person entitled in possession :
- (7) Under section 15 to sanction an alienation of or charge upon the produce of land for more than one year.

Financial Commissioner's Standing Order
No. 1.

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Section XXI, Paras.

56. Under the provisions of the Punjab Alienation of Land Act, XIII of 1900, land as defined in Section 2 (3) of that Act, which belongs to a member of an agricultural tribe cannot now be sold in execution of any decree of a Civil Court and a proposal to sell such land can now only be made by mistake. If a proposal is made, the Deputy Commissioner must reject it as not being in accordance with law. The Act does not prohibit the attachment of land belonging to members of an agricultural tribe, and action under section 72, Civil Procedure Code, may be taken in regard to such land.

Sale of land belonging to a member of an agricultural tribe not permitted in execution of Civil Court decrees.

63. Under section 16 of the Alienation of Land Act land belonging to a member of an agricultural tribe cannot be sold in execution of a decree.

64. Punjab Government Notification No. 1297-S., dated 10th September 1885 which was issued under the authority of the second clause of section 327 of the Code of Civil Procedure 1882 has been withdrawn as there is no provision in the new Code which would authorise the republication of this Notification or keep it in force.

65. Land belonging to all who are not members of agricultural tribes therefore is liable to sale in execution of money decrees without the previous sanction of the Commissioner.

Sanction of Commissioner not required to sale of land belonging to persons other than members of agricultural tribes.

66. When the Court executing a decree makes an order under Order XXI, Rule 64, Schedule I of the Code of Civil Procedure 1908, for the sale of land which is applied to agricultural or pastoral purposes or any interest in such land, it shall forward the file of execution proceedings to the Deputy Commissioner with a requisition to carry out the sale.

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APPENDIX II.
NOTIFICATIONS UNDER THE PUNJAB
ALIENATION OF LAND ACT, 1900.

GOVERNMENT OF INDIA,
DEPARTMENT OF REVENUE AND AGRICULTURE,

The 8th June 1901.

No. 1248—*Notification*.—In exercise of the powers conferred by section I, sub-section (3), of the Punjab Alienation of Land Act, 1900 (XIII of 1900), the Governor-General in Council is pleased to direct that the said Act shall come into force from the 8th June 1901.

NOTE. Government of India, Finance Department, Notification No. 3616 Exc., dated 16th July 1909, relates in the case of a mortgage-deed executed afresh in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of section 9, sub-section (3), of the Punjab Alienation of Land Act, 1900 (XIII of 1900), so much of the stamp duty already paid in respect of the previous mortgage-deed.

PUNJAB GOVERNMENT,
DEPARTMENT OF REVENUE AND AGRICULTURE.

(*Notification No. 23—S, dated 22nd May 1901, has been superseded by Punjab Government Notification No. 221-R. & A.—A., dated 10th September 1912,—vide S. O. No. 28:—Record-of-rights.*)

The 22nd May 1901.

No. 24—*S.—Notification*.—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant-Governor of the Punjab is pleased to prescribe the following rules as to the Revenue officers to whom applications may be made for the exercise by a Deputy Commissioner of the powers conferred on him by the Punjab Alienation of Land Act, 1900, and as to the manner and form in which such applications shall be made and disposed of:—

Rules.

1. An application to a Deputy Commissioner for the exercise of any power conferred on him by the Punjab Alienation

of Land Act shall be in writing and signed and verified by or on behalf of the person making it, and shall be accompanied by an extract from the annual record or record-of-rights sufficiently describing the land which is the subject of the application. The application shall bear a stamp of the value of eight annas; and the extract from the revenue records shall also be duly stamped in accordance with section 6 and Schedule I, No. 9, of the Court Fees Act.

APP. II.

VII of 1870

2. Such application may be received by the Deputy Commissioner or by any Assistant Collector of the 1st or 2nd grade.

3. If the Assistant Collector receiving such an application is dealing with mutation cases and the application is made to him in connection with any such case, he shall proceed as directed in the addendum to the rules in Chapter V under the Punjab Land Revenue Act, published in Notification No. 23-S. dated the 22nd May 1901, * and shall forward the application to the Deputy Commissioner with the mutation proceeding therein mentioned. XVII of 1887

4. If the application is made to an Assistant Collector, but is not made in connection with a mutation case, the Assistant Collector shall, if generally or specially empowered in this behalf by an order in writing made by the Deputy Commissioner, inquire into the case and transmit the application with a report of the results of his inquiry to the Deputy Commissioner for orders. The Assistant Collector, if not so empowered, shall transmit the application to the Deputy Commissioner for orders without remark.

5. The Deputy Commissioner, on receipt of an application made under these rules, may decide the case upon the application, or may himself make any inquiry which he considers necessary, or may refer the case to any Revenue Officer subordinate to him for investigation and report and may decide the case upon the report or upon the results of his own inquiry, as the case may be.

*Now see Punjab Government Notification No. 221 R, and A.-A., dated 10th September 1912, in paragraph 16 of Standing Order No. 23.

APP. II.

The 22nd May 1901

XIII of 1900.

No. 25-S.—Notification. In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant-Governor of the Punjab is pleased to make the following rule as to the exercise by a Deputy Commissioner of the powers conferred on him by that enactment in cases referred to him under the said Act by a Civil Court :—

RULE.

XIII of 1900

When a Civil Court makes a reference to a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, the Deputy Commissioner may exercise any power applicable to the case, which is conferred upon him by that Act, either upon the reference or after any further inquiry which he considers necessary, or after sending the reference to any Revenue Officer subordinate to him for investigation and report and upon consideration of the report so required.

HOME DEPARTMENT.

The 8th November 1901.

No. 44.—Notification.—In exercise of the powers conferred on him by section 25 of Act XIII of 1900 (Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab is pleased to make the following rules for giving effect to the provisions of sections 17 of the said Act :—

1. (a) When an instrument, which records or gives effect to a permanent alienation of land, requiring, under section 3 of the Act, the sanction of the Deputy Commissioner, is presented to a registering officer, unaccompanied by a certified copy of an order giving such sanction ; or

(b) when an instrument of agreement purporting to charge or alienate the produce of land, which, under section 15 of the Act, requires the sanction of the Deputy Commissioner, is presented unaccompanied by a certified copy of an order giving such sanction ; or

(c) when an instrument of mortgage which is required to be made in one of the forms prescribed in section 6 of the Act, is presented not made in any such prescribed form ; the

registering officer in refusing to admit the instrument to registration shall proceed in the following manner :—

He shall (d) record no endorsement upon the document itself, nor shall he make any entry of reasons for refusal to register in Register Book II ;

but (e) he shall enter his reasons for not admitting the instrument to registration in a separate book (to be prescribed and provided by the Inspector-General of Registration), and shall give to the presenter of the instrument a copy of such entry, and shall at the same time return the instrument unendorsed to the presenter.

2. An instrument of the kinds mentioned in the foregoing rule, which has been returned thereunder, may be presented again for registration, and may then be admitted to registration if accompanied by the certified copy of the order which was required, or if amended by the parties themselves, or by the Deputy Commissioner acting under section 9 of the Act, so as to make it conform to the prescribed form—

3. (a) In registering an instrument of the kinds mentioned in clauses (a) and (b) of Rule 1, the registering officer shall regard the accompanying order of the Deputy Commissioner giving the necessary sanction as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book; and

(b) In registering an instrument of the kind mentioned in clause c) of Rule 1, when the same has been revised or altered by the Deputy Commissioner acting under section 9 of the Act, the registering officer shall regard such order of revision or alteration as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book.

4. An appeal may be lodged to the Registrar against any return of an instrument made by a Sub-Registrar under clause (e) of Rule 1, and if the Registrar directs that the instrument shall be registered in the form in which it was originally presented, the Sub-Registrar shall register it accordingly. If the Registrar directs that the instrument

APP. II. shall be registered only after specified amendment or addition, then the provisions of Rule 2 as to admission to registration shall apply.

REVENUE AND AGRICULTURAL DEPARTMENT

AGRICULTURE.

The 21st June 1919.

No. 16176.—In exercise of the power conferred by section 24 of the Punjab Alienation of Land Act, 1900, as amended by sections 2 and 5 of the Punjab Alienation of Land Amendment Act, 1907, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of the Punjab is pleased, in supersession of Punjab Government Revenue and Agricultural Department notification No. 84, dated the 14th May 1902, to exempt:—

- (1) from the operation of the provisions of the said Act, other than those of section 10, the district of Simla, except the ilaqa of Kotgarh in the Kotkhai Tahsil, and
- (2) from the operation of the provisions of the said Act, other than those of section 1, section 2, clauses (2), (3) and (6), sections 4, 10 and 16, sections 17, sub-section (1), section 18 sub-section (2), section 21, sub-section (2) and section 24, every area included within the limits of any cantonment or municipality in any part of the Punjab, other than the district of Simla.

HOME DEPARTMENT.

The 20th June 1906.

No. 54 —Notification.—In exercise of the powers conferred on him by section 25 of Act XIII of 1900 (Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab and its Dependencies is pleased to make the following rules, in continuation of those published in Punjab Government Notification No. 44, dated 8th November 1901, for giving effect to the provisions of section 17 of the said Act:—

Rule 5.—When a mortgage-deed is cancelled by the Deputy Commissioner under section 9 (2) of the Act and a

new deed is drawn up in lieu thereof, the Deputy Commissioner shall send to the office in which the cancelled deed was registered a copy of his order of cancellation, and the registering officer shall make a note of the cancellation in red ink in the column of remarks opposite the copy of the document cancelled. APP. II.

Rule 6.—In cases in which a registered mortgage-deed is revised or altered by the Deputy Commissioner under section 9 (1) or where under section 9 (2) of the Act a condition intended to operate by way of conditional sale is struck out, the Deputy Commissioner shall, when returning the document to the parties after revision, alteration or striking out, send a copy of his orders to the office where the document was originally registered, and the registering officer concerned shall make a note of the correction, revision or striking out together with a reference to the Deputy Commissioner's order in the column of remarks against the copy of the document concerned.

DEPARTMENT OF REVENUE AND AGRICULTURE.

The 6th November 1914.

No. 310 A.—*Notification*—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900 (Act XIII of 1900), and by section 91 of the Indian Registration Act, 1908 (XVI of 1908), the Lieutenant-Governor of the Punjab is pleased to make the following rule:—

Rule.

Rule 7.—When any permanent alienation, which under section 3 of the Punjab Alienation of Land Act (Act XIII of 1900) is not to take effect as such until the sanction of a Deputy Commissioner is given thereto, has been reduced to writing and the deed of transfer has in the absence of such sanction been registered, contrary to the provisions of section 17 (2) of the said Act, the Deputy Commissioner shall, on such registration coming to his notice, intimate to the Registering Officer, in whose office the deed was registered, that the sanction of the Deputy Commissioner to the transaction had not been obtained, and the Registering

APP. III A. Officer shall thereupon make a note to that effect in red ink in the column of remarks against the copy of the document, and shall add that registration was in contravention of the provisions of section 17 (2) of the said Act. A copy of the said remarks shall be endorsed on every copy of the deed supplied thereafter by the Registering Officer under section 91 of the Indian Registration Act, 1908.

(For the list of agricultural tribes, see Appendix to Standing Order No. 1—*Alienation of Land*).

APPENDIX III A. FINANCIAL COMMISSIONER'S CIRCULAR LETTER No. 4.

CIRCULAR LETTER No. 4.

To

ALL COMMISSIONERS AND DEPUTY COMMISSIONERS,
SETTLEMENT COMMISSIONER AND SETTLEMENT
OFFICERS IN THE PUNJAB.

Dated 23rd March 1910.

I AM directed to invite your attention to Financial Commissioner's notifications Nos. 61 and 62, dated 18th March 1910, the effect of which is to abolish the present rules under the Land Revenue and Tenancy Acts with effect from April 1st, 1910, from which date the Revised Revenue Circulars also, with the exception of No. 55—Taccavi, are hereby cancelled.

2. The Revenue Circulars have been recompiled and the new compilation will be known as "Standing Orders" of the Financial Commissioner.

3. Of the present Land Revenue and Tenancy Rules such as were notified as rules of the Local Government have not been cancelled: of the rest, those which it is thought necessary should have the force of law have been gazetted under Financial Commissioner's notifications Nos. 142, dated 9th November 1909, and 145, dated 13th November 1909. The complete new rules are included in a volume of Land Administration Acts, which contains all the Acts, with rules under the same, which are generally required for reference

by Revenue Officers. Such of the present rules as need not App. III A. have the force of law have been included either in the Standing Orders or in the Settlement and Land Administration Manuals.

4. The second edition of the Settlement Manual and the Land Administration Manual have already been distributed. The Land Administration Acts and the Standing Orders are now under issue. It has been found impossible to have Standing Orders Nos. 5, 32 and 56 ready in time, but they will be issued shortly.

. During the process of re-arrangement alterations have been incorporated in certain cases both in the new rules and in the Standing Orders. Intimation of the alteration has usually been afforded by circular letter, but some cases may have escaped notice. To reduce as far as possible the inconvenience which will be felt at first in consequence of the changes now made, reference tables have been prepared and will be found in the volume of the Land Administration Acts and also in the Standing Orders.

6. I am accordingly to direct that with effect from April 1st references to the present Land Revenue and Tenancy Rules and to the Revised Revenue Circulars may be discontinued and references to the Settlement Manual (2nd edition), the Land Administration Manual, the Land Administration Acts, and the Standing Orders substituted.

7. One English copy of the Land Administration Manual, the Land Administration Acts and the Standing Orders will be supplied for each tahsil. For the use of the subordinate revenue establishment and tahsildars and naib tahsildars unacquainted with English selections from the rules and orders will be translated and supplied as soon as possible.

APPENDIX III B.

STANDING ORDER No. 1.

ALIENATION OF LAND.

2nd reprint, 2nd September 1914.

In connection with this Standing Order Chapter II of the Land Administration Manual, more especially paragraphs 24 to 51 and the notifications appended to Act No. XIII of 1900 in the Punjab Land Administration Acts, should be consulted. The provisions of the Act have made it necessary to issue special instructions as to mutations and certain entries in the *jamabandi*. These will be found in paragraphs 16, 17, 25 and 26 of Standing Order No. 23 (The Record-of-Rights).

A.—Powers.

Applicability
of Punjab
Revenue Act.

Except as specially directed by this Order and by notifications No. 24 S. and 25 S., dated 22nd May 1901 (see page 136 Land Administration Acts), and 221, dated 10th September 1912 (see paragraph 16 of Standing Order 23), proceedings under the Punjab Alienation of Land Act are to be regulated by Chapter II of the Punjab Land Revenue Act: this provides for appeal, review, and revision.

Powers.

2. No officer of lower rank than a Deputy Commissioner has been invested with the powers of a Deputy Commissioner under the Act. Commissioners already possess these powers under the provisions of section 23.

Powers and
duties of
Settlement
Officers.

3. Settlement Officers have usually no powers under the Punjab Alienation of Land Act.

It, may, however, be necessary, where *killabandi* proceedings are in progress, to invest the Settlement Officer with the powers of a Deputy Commissioner under the Act for the limited purpose of sanctioning exchanges of small plots, which are often essential in order to make the boundaries of holdings coincide with those of *killas*. The power can be conferred by the Local Government under section 23, whenever occasion arises. The duties of Settlement Officers as regards mutations which contravene the provisions of the

B.—Definitions.

APP. III B.

4. No immovable property is affected by the Act, except land as defined in section 2, the definition being an amplification of that contained in section 4 (1) of the Tenancy Act. By proviso 2 (b) of section 3 (2) the Act does not place any restriction on gifts for religious or charitable purposes. The working of this exemption must be watched, as it must not be allowed to become a cloak for evasions of the law.

Land.

5. The words "members of the same tribe" in section 3 (1) (c) of the Punjab Alienation of Land Act (XIII of 1900) should be held to be equivalent to "member of the same agricultural tribe in the same district." It follows therefore that the permanent alienation of land by a member of an agricultural tribe to a member of the same tribe in another district, even though the tribe may also have been notified as an agricultural tribe in the latter district, requires the sanction of the Deputy Commissioner of the district in which the land is situated. *A fortiori* a permanent alienation of land in a British district by a member of an agricultural tribe to a member of the same tribe residing in a Native State requires the sanction of the Deputy Commissioner of the district. In such cases the instructions contained in paragraph 25 of this Standing Order as to the giving or withholding of sanction should be followed.

Member of
the same
tribe.

The same words recurring in section 6 (1) of the Act relating to temporary alienations of land should be similarly interpreted, and accordingly mortgages by a member of an agricultural tribe to a member of the same tribe in another district or in a Native State are invalid unless they are in one of the approved forms given in the section referred to.

C.—Mutations.

6. The special mutation procedure prescribed for dealing with cases of alienation which contravene provisions of the Alienation of Land Act is for convenience sake given in the Standing Order No. 23 on the Record-of-Rights, and will be found in paragraph 16 of that Standing Order.

D.—Procedure with reference to registrations.

7. In the case of documents compulsorily registrable under section 17 of Act XVI of 1908 (Indian Registration

Date of
execution.

APP. III B. Act) the transactions to which they relate cannot be deemed to be complete unless and until such documents are duly registered. If, however, such a document is subsequently registered, it will operate from the *date of its execution*, and not from the date of its registration (section 47 of Act XVI of 1908), and, consequently, if executed before the 8th June 1900, will not be affected by the provisions of Act XIII of 1900.

Duties of Registration Officers.

8. To apply properly the rules in Punjab Government notification No. 44, dated 8th November 1901 (see Punjab Land Administration Acts), registering officers must acquaint themselves with the meaning of the term "agricultural tribe" as used in the Act (see paragraph 5).

In each district all the tribes in the same group (see Appendix) form, to all intents and purposes, one society between the members of which alienations are not restricted by the Act. A member of a separate group is debarred from giving land to, or receiving land from, a member of another group of agricultural tribes, except as provided in the Act.

Alienation by persons who are not members of agricultural tribes are not restricted by the Act.

9. Therefore, when a deed of permanent alienation of land is presented to a registering officer, his first business is to consider who the alienor is,

If the alienee is a member of one of the agricultural tribes in the same group in the same district as the alienor, the instrument may be registered without question.

10. When an instrument of permanent alienation of land is presented, if the alienor is a member of an agricultural tribe, then the registering officer should ascertain who the alienee is.

If the alienee is not such a person, the Deputy Commissioner's sanction to the transfer is required, and, if no copy of such order is produced, the document should be returned unendorsed under rule 1, with instructions that a copy of the Deputy Commissioner's order of sanction is required, and that the instrument can only be admitted to registration when this defect has been supplied, and it has been presented again under rule 2.

11. When a mortgage-deed is presented it is necessary APP. III B. to ascertain who the alienor is. If he is not a member of an agricultural tribe, the deed can be registered without question, even although it contains a condition intended to operate by way of conditional sale, for although such condition would be void under section 10 of the Act, the deed in other respects would not be necessarily invalid.

If the alienor is a member of an agricultural tribe, then, if the alienee is also a member of one of the agricultural tribes in the same group in the same district as the alienor, the deed may be registered without question.

But if the alienor is a member and the alienee is not a member of an agricultural tribe in the same group, then the deed should be returned under rule 1, unless it is drawn up in one or other of the following forms :—

- (a) in the form of a usufructuary mortgage by which the mortgagor delivers possession of the land to the mortgagee, and authorises him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on or if the term agreed on exceeds twenty years) after the expiry of twenty years, the land shall be re-delivered to the mortgagor ; or
- (b) in the form of a mortgage without possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Deputy Commissioner to place him in possession for such term, not exceeding twenty years, as the Deputy Commissioner may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession, and for such sum as may be due to the mortgagee on account of the balance of principal due, and of interest due not exceeding the amount claimable at simple interest at such rate, and for such period as the Deputy Commissioner thinks reasonable ; or

App. III B.

- (a) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant, subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land revenue in addition to the amount of the land revenue of the tenancy, and the rates and cesses chargeable thereon, and for such terms as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy, and the mortgagee having no right to eject the mortgagor unless on the grounds mentioned in section 39 of the Punjab Tenancy Act, 1887.

When a mortgage-deed is returned owing to its not being drawn up in one or other of the above forms, it may be accepted for registration if presented again in amended form under Rule 2.

12. When an instrument purporting to alienate or charge produce of land is presented, it is necessary to ascertain who the alienor is. If he is a member of an agricultural tribe, then if the deed purports to alienate or charge the produce for more than one year, the Deputy Commissioner's sanction to the alienation is required, and if no copy of such order of sanction is produced, the deed should be returned under rule 1 with instructions that a copy of the Deputy Commissioner's order of sanction is required before it can be admitted to registration under Rule 2.

13. An instrument of lease or farm made by a member of an agricultural tribe should not be refused admission to registration merely because the term of years prescribed in section 11 of the Act is exceeded in the conditions of the instrument, as the instrument in other respects would not be necessarily invalid.

tration under Rule 2 just as if it were the original document App. III B. amended.

15. (a) Delay in registering a document occasioned by the necessity of obtaining any order of a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, should in the absence of any reason to the contrary act, be held by the registering officer to be a delay due to urgent necessity within the meaning, and for the purposes of sections 25 and 34 of Act XVI of 1908, and in such cases Sub-Registrars should take the orders of the Registrar accordingly.

(b) If any delay occasioned by the necessity of obtaining an order of a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, is not due to any default, on the part of the person desiring registration, the Registrar, in directing the registration of the document, should, whether he is acting under section 25 or section 34 of Act XVI of 1908, require payment of only a nominal fine. It is obvious that the fine or additional fine should be as nominal as possible, and an order for the payment of an amount of even only one anna in excess of the proper registration fee would satisfy the rule as to fines or additional fines, made under section 69 of Act XVI of 1908, to meet cases of this kind.

16. As the statutory agriculturist has now been abolished, any deed, which has hitherto been legal only on the ground that it was in favour of a man who came within the definition of "agriculturist" in Act XIII of 1900, should not in future be accepted for registration, but should be returned to the presenter in accordance with Appendix VII of the Punjab Registration Manual, 1910.

17. In several districts, especially in the west of the Province, there is considerable laxity in the classification of many deeds presented for registration which might be treated either as deeds of lease or as deeds of mortgage for a limited period. More often than not the Sub-registrar adopts the classification preferred by the deed-writer, and

Arr. III B. the terms of the deed show clearly enough that it is really a deed of mortgage, not of lease.

18. The most suitable definitions of "lease" and "mortgage" for the present purpose are those contained in Section 2 of the Stamp Act. It is true that the definitions are not mutually exclusive, and deeds which transfer the possession of land in exchange for the payment of a premium, with or without a further annual payment, might be classified either as leases or as mortgages. As a practical rule, however, it may be held that if the land is transferred in order to secure the repayment of a lump sum of money advanced to or due from the owner of land, the deed is usually a mortgage deed, whereas in the case of a lease the land is transferred on account of a future recurring annual payment.

19. Registering officers should decide, as best they can, as to the nature of each so called lease presented to them for registration. If they hold that the deed is a deed of mortgage, they will treat it as such for the assessment of stamp duty and registration fees, and if it is understamped, will impound it. The real nature of the deed as decided by the registration officer should, of course, be shown in column 2 of the register.

20. In some cases the decision that a deed drafted as a lease is really a mortgage deed will involve the decision of the further question whether, viewed as a mortgage, it contravenes the provisions of Act XIII of 1910 or not. The procedure in deciding the question will be that laid down in Appendix VII of the Punjab Registration Manual, 1910, and paragraphs 8 to 16 above.

E.—Procedure and policy to be followed in dealing with cases arising under the Act.

21. Notification No 24 S., dated 22nd May 1901, has been so framed as to regulate all applications made in a separate form for the exercise of any of the powers conferred on Deputy Commissioners by the Act.

not require any stamp, the mutation fee being considered sufficient. But any one may apply on eight-anna stamp paper either, before or after the transaction, for the sanction of the Deputy Commissioner to a permanent alienation requiring the same under section 3. The procedure is in the alternative. If the case is taken up by the officials and reported, no separate application need be made. But a separate application may be made in any case if the parties or any of them so desire; and it may be presented to an Assistant Collector, though only the Deputy Commissioner has power to decide the case.

23. It is only in the case of permanent alienations that a reference is required by Act XIII of 1900 and the rules thereunder to be made to the Deputy Commissioner. Except as regards conditions intended to operate by way of conditional sale (section 9 (2) and (3)) and sale, in execution of decree, of land belonging to members of agricultural tribes (section 16 (1)), the Act is not retrospective in its effect. If the permanent alienation was completed before June 8th, 1901, there is no need to refer the case to the Deputy Commissioner at all. If, however, a reference is made, the Deputy Commissioner should deal with it on the principle that no objection is to be raised to the mutation on any ground arising out of Act XIII of 1900, in as much as that Act does not apply to the case.

Limitations of the Act.

24. Deputy Commissioners will see from section 5 of the Act that in dealing with applications for sanction under section 3 they need not go into any question of title or any question relating to any reversionary right or right of pre-emption.

Enquiry into title unnecessary.

25. The considerations which should guide Deputy Commissioners in giving or withholding sanction are stated in paragraph 37 of the Land Administration Manual.

Grounds for giving or withholding sanction.

The previous restriction by which Deputy Commissioners were prohibited from sanctioning alienation to money-lenders without the confirmation of the Commissioner has been removed. The number of cases in which such sanction has

App. III B. the terms of the deed show clearly enough that it is really a deed of mortgage, not of lease.

18. The most suitable definitions of "lease" and "mortgage" for the present purpose are those contained in Section 2 of the Stamp Act. It is true that the definitions are not mutually exclusive, and deeds which transfer the possession of land in exchange for the payment of a premium, with or without a further annual payment, might be classified either as leases or as mortgages. As a practical rule, however, it may be held that if the land is transferred in order to secure the repayment of a lump sum of money advanced to or due from the owner of land, the deed is usually a mortgage deed, whereas in the case of a lease the land is transferred on account of a future recurring annual payment.

19. Registering officers should decide, as best they can, as to the nature of each so called lease presented to them for registration. If they hold that the deed is a deed of mortgage, they will treat it as such for the assessment of stamp duty and registration fees, and if it is understamped, will impound it. The real nature of the deed as decided by the registration officer should, of course, be shown in column 2 of the register.

20. In some cases the decision that a deed drafted as a lease is really a mortgage deed will involve the decision of the further question whether, viewed as a mortgage, it contravenes the provisions of Act XIII of 1910 or not. The procedure in deciding the question will be that laid down in Appendix VII of the Punjab Registration Manual, 1910, and paragraphs 8 to 16 above.

E,—Procedure and policy to be followed in dealing with cases arising under the Act.

21. Notification No 24 S., dated 22nd May 1901, has been so framed as to regulate all applications made in a separate form for the exercise of any of the powers conferred on Deputy Commissioners by the Act.

22. The report, which is deemed to be an application under Notification No. 221, dated 10th September 1912, does

not require any stamp, the mutation fee being considered sufficient. But any one may apply on eight-anna stamp paper either, before or after the transaction, for the sanction of the Deputy Commissioner to a permanent alienation requiring the same under section 3. The procedure is in the alternative. If the case is taken up by the officials and reported, no separate application need be made. But a separate application may be made in any case if the parties or any of them so desire; and it may be presented to an Assistant Collector, though only the Deputy Commissioner has power to decide the case. App. III B.

23. It is only in the case of permanent alienations that a reference is required by Act XIII of 1900 and the rules thereunder to be made to the Deputy Commissioner. Except as regards conditions intended to operate by way of conditional sale (section 9 (2) and (3)) and sale, in execution of decree, of land belonging to members of agricultural tribes (section 16 (1)), the Act is not retrospective in its effect. If the permanent alienation was completed before June 8th, 1901, there is no need to refer the case to the Deputy Commissioner at all. If, however, a reference is made, the Deputy Commissioner should deal with it on the principle that no objection is to be raised to the mutation on any ground arising out of Act XIII of 1900, in as much as that Act does not apply to the case. Limitations of the Act.

24. Deputy Commissioners will see from section 5 of the Act that in dealing with applications for sanction under section 3 they need not go into any question of title or any question relating to any reversionary right or right of pre-emption. Enquiry into title unnecessary.

25. The considerations which should guide Deputy Commissioners in giving or withholding sanction are stated in paragraph 37 of the Land Administration Manual. Grounds for giving or withholding sanction.

The previous restriction by which Deputy Commissioners were prohibited from sanctioning alienation to money-lenders without the confirmation of the Commissioner has been removed. The number of cases in which such sanction has

APP. III B. been given and the area involved should be stated in the quarterly business statements.

Mazhi and
Ramdasian
Sikhs.

26. Sanction may be accorded by Deputy Commissioners to all alienations to Mazhi and Ramdasian Sikhs, who have served in the army and are recommended by their commanding officers, sanction to which is applied for under section 3 (2) of the Act.

Necessity
of using
section 14.

27. When the permanent alienation is merely proposed to be made and is disallowed it is only necessary to communicate the order to the parties or to the revenue officer dealing with the mutation case. But if the permanent alienation has already been made and the Deputy Commissioner refuses sanction, he must pass an order under section 14 of the Act, declaring that the transaction will take effect as a usufructuary mortgage in form (a) permitted by section 6, and fixing the term and the conditions which he considers reasonable.

Conditions.

28. As regards the conditions, little latitude is allowed because those prescribed in section 6 (1) (a) and in section 7 would be applicable. Conditions may, however, be added in accordance with section 8.

Increase of
mortgage
money.

29. In the case of mortgages executed before the passing of the Act, a subsequent increase in the mortgage debt should not ordinarily be treated as causing a new mortgage to which sections 6 to 9 of the Act would apply, even though a new deed is executed. If, however, the new deed expressly declares that the old mortgage is cancelled or if it contains conditions substantially different from those contained in the old mortgage deed or raises the aggregate mortgage money to a figure in excess of the value of the land, and the Deputy Commissioner thinks it equitable to use the power conferred on him by section 9 (1) of the Act, he is at liberty to do so; but unless the old deed has been cancelled, the Deputy Commissioner has no power to touch it, and can only revise the new mortgage.

Good faith of
alleged gift.

30. When under the special mutation procedure (paragraph 16 of Standing Order No. 23) or otherwise any case of alleged gift is brought to the notice of the Deputy Com-

missioner he should, after enquiry, record a decision whether the transaction is really a gift and not a disguised sale and whether the purpose really is religious or charitable. If he holds that the transaction is not a gift, or not made for the purposes permissible, he should treat it like any other transaction to which the Act applies.

APP. III B.

31. (a) Where a Revenue Officer has reason to suspect that an alienation, permanent or temporary, is contrary to the intention of the Act by reason of the nominal alienee being, although a member of an agricultural tribe, merely the agent of the real alienee who is not a member of such a tribe, mutation in the first instance should always be refused.

Benami transactions.

(b) Such transactions should be carefully watched and any marked tendency to resort to them should be reported to the Financial Commissioner

(c) If, however, the nominal alienee produces the decree of a competent Civil Court authorising him to take possession of any land, effect should be given to the decree in the revenue records without hesitation, provided that the Deputy Commissioner in the discretion vested in him by section 3 (3) of the Act is satisfied that the nominal alienee is a member of an agricultural tribe.

(d) Action should not be taken under clause (a) unless there is reason to suspect bad faith. Where, for instance, one agriculturist genuinely assumes responsibility for a debt due by a second agriculturist to a third person who is not a member of an agricultural tribe, the first agriculturist may obtain a mortgage of the second agriculturist's land by way of security. To such a transaction there is not necessarily any objection, and mutation should not in such cases be refused.

32. Attempts are frequently made by persons who are not zamindars to get themselves recorded as members of agricultural tribes and it is desirable to take steps to check such attempts. The most simple case that can occur is where a person applies to have his tribal designation as shown in the village papers altered, apart from any proceedings under the Alienation of Land Act, from that of a non-agricultural

Record of tribal designation.

APP. III B to an agricultural tribe. If a mutation of this kind is wrongly sanctioned, it may afterwards be used to support what would otherwise be an illegal transaction under the Alienation of Land Act. In such cases, therefore, the Revenue Officer, to whom the register of mutations is submitted, should either (a) refuse sanction and leave the applicant to appeal or (b) if he thinks that there has been a mistake in fact, and that the claim should be admitted, report the case to the Collector for orders.

The same. 33. (i) The second class of cases to be noticed is of a more complicated nature, and arises out of proceedings directly connected with the working of the Alienation of Land Act.

(ii) Sub-sections (1) and (2) of paragraph 16 of Standing Order No. 23 provide for the procedure of patwaris and revenue officers in the case of permanent and temporary alienations of land made otherwise than in accordance with the provisions of the Alienation of Land Act. But the question whether an alienation is or is not in accordance with the provisions of the Act may depend on whether the alienee is or is not a member of an agricultural tribe.

(iii) If in such a case the claim of the alienee to be a member of an agricultural tribe does not depend on any entry in the record-of-rights (e.g., when the alienee is recorded neither as a landlord nor as a tenant), it might happen that in the absence of such documentary evidence the alienee would be accepted, on the basis of verbal and inaccurate statements, as a member of an agricultural tribe. Then, if the alienation is otherwise in accordance with the provisions of the Act, the procedure laid down in sub-section (2) above referred to would not be followed.

(iv) In order to obviate this risk, the revenue officer, to whom the register of mutations is submitted for orders, shall in all cases in which the alienee is unable to support his claim to be a member of an agricultural tribe from an entry in a record-of-rights,—

(a) in the case of a permanent alienation, follow the procedure laid down in Standing Order No. 23, paragraph 16, sub-section 2 (a), and

- (b) in the case of a temporary alienation, refer it for the order of the Deputy Commissioner if he thinks the claim is substantiated. Otherwise he should refuse to sanction mutation as in Standing Order No. 23, paragraph 16, sub-section (2) (b). APP. III B.

34. A more difficult class of cases is where the alienee, though shown in a record-of-rights, is described by a class name which is not one of the well-recognized sub-divisions of the notified tribe to which he claims to belong, *e.g.*, where a Harni claims that the Harnis are Rajputs. The same.

(ii) Here there is a general question for decision, *viz.*, whether the contention is correct that the class concerned does in fact belong to one of the notified tribes; and the decision would be of importance because all future applications by members of the class would, in the district concerned, be dealt with in accordance with it.

(iii) Whenever a case of this kind arises, the Revenue Officer shall report it to the Deputy Commissioner, who will himself make an inquiry, and, unless he rejects the application, report the result to the Commissioner for orders. If the Commissioner considers the case clear, he should dispose of it himself, but doubtful cases should be reported to the Financial Commissioner. It is most desirable that in dealing with cases of this class there should be uniformity of treatment throughout the Province.

35. As a consequence of section 21 (1) of the Act a Civil Court has no jurisdiction to interfere with the order of a Deputy Commissioner under the Alienation of Land Act deciding for the purpose of that Act that any particular transaction is or is not a *bona fide* gift for one of the prescribed purposes. Exclusion of jurisdiction of Civil Court.

36. The provisions of section 2 (2) and (3) of the Punjab Alienation of Land Amendment Act, 1907, have expressly defined 'any right of occupancy' as 'land' and 'grants of occupancy rights' as 'a permanent alienation.' There is no reason why the Deputy Commissioner should not sanction such alienation where the object is to promote agricul- Occupancy rights.

App. III B. tural development by giving favourable terms to new settlers and the like. Where these conditions are fulfilled and no evasion of the Act is contemplated, such alienation may be freely sanctioned.

Deputy Commissioner's sanction to leases of fruit gardens for more than one year necessary.

37. *Working of section 15.*—Where the fruit of gardens is sold for more than one year in advance, the case should be treated as one in which the Deputy Commissioner's sanction is necessary.

Applications when mutation is refused

38. If the temporary alienation is a mortgage which ought to have been made in accordance with sections 6, 7 and 8, and has actually been made otherwise, then mutation of names is in consequence refused, and the parties will have two opportunities of applying to the Deputy Commissioner to revise and alter the terms of the mortgage so as to bring them into accordance with the Act. The parties can either do this directly mutation of names is refused, or they can do it later if their case comes into Court and the Court refuses to enforce the irregular mortgage. If, however, they choose to file a separate and duly stamped application in the course of the mutation case, the application may be forwarded to the Deputy Commissioner under rule 3 of notification No. 24 S., dated 22nd May 1901, and he can dispose of it under rule 5.

Other applications,

39. Other applications which may be made to the Deputy Commissioner are the following :—

- (1) Under section 6 (1) (b) to place the mortgagees in possession.
- (2) Under section 6 (2) to fix the term and mortgage-money of the usufructuary mortgage.
- (3) Under section 7 (3) to fix the proportion of the mortgage debt to be deemed equitable :
- (4) Under section 9 (1) to revise and alter the terms of the mortgage.
- (5) Under section 9 (2) to put the mortgagee to his election as therein prescribed.
- (6) Under section 13 to eject a mortgagee, lessee or farmer and place the person entitled in possession:

- (7) Under section 15 to sanction an alienation of or charge upon the produce of land for more than one year. App. III B.

40. In all these cases the procedure will be regulated by notification No. 24 S., dated 22nd May 1901. It will be observed that, in addition to applications from the parties, Deputy Commissioners will have references made to them by Civil Courts under section 9 (3) with a view to their exercising the powers conferred upon them by section 9 of the Act. Their procedure will then be regulated by notification No. 25 S., dated 22nd May 1901, which is in substance the same as rule 5 of notification No. 24 S., dated 22nd May 1901. The same.

41. Some of the cases above enumerated, as those in which applications may be made to Deputy Commissioners, call for further remark. The same.

Application No. (2).—Here an order of the Deputy Commissioner is necessary, whether an application is made by any party or not. If the mortgagor is ejected, the Revenue Officer ordering the ejectment under section 45 of the Tenancy Act must report the case to the Deputy Commissioner, so that he may exercise the powers conferred upon him. If the mortgagor relinquishes or abandons his cultivating occupancy of the land, the necessary report to the Deputy Commissioner should be made by the patwari, the field kanungo and the tahsildar. The usufructuary mortgage resulting from the proceedings should be entered in the record-of-rights.

Application No. (3).—If the mortgagor brings a suit for redemption, the case may be referred to the Deputy-Commissioner by the Civil Court for determination of the proportion of the mortgage debt which is to be regarded as due. The procedure of the Deputy Commissioner will then be regulated by notification No. 25 S., dated 22nd May 1901.

Application No. (5).—See paragraph 42.

Application No. (6).—See paragraph 25 of the Standing Order on the Record-of-Rights.

Application No. (7).—The object of section 15 of the Act is to prevent the evasion of its provisions by the substantial

App. III B mortgage of the land under colour of the alienation of, or of a charge upon, its produce. It is not intended to prevent zamindars from borrowing on the security of the crops of the two next following harvests, nor to interfere with *bona fide* contracts for the disposal of produce to large firms engaged, for example, in the wheat export trade. When a case under this section comes before a Deputy Commissioner the main point for his consideration is whether the transaction for which his sanction is sought will amount to an evasion of the Act. If not, restraint of trade being obviously objectionable, sanction should be freely given. When, however, the contract is made for more than one year by a zamindar in favour of a money-lender, it is most probable that an evasion of the Act is intended.

42. The following instructions are issued as to the working of section 9, sub-sections (2) and (4), of Act XIII of 1900 (Punjab Alienation of Land Act), as amended by Punjab Act I of 1907, in regard to mortgages by way of conditional sale made before the commencement of the Act and still current :—

(1) If the condition intended to operate by way of conditional sale is to the effect that, in default of payment of the mortgage money or interest at a certain time, the land will be absolutely transferred to the mortgagee, and if the mortgagee agrees to the said condition being struck out, no new mortgage deed need be drawn up, and it will be sufficient for the Deputy Commissioner to strike out such condition and attest the alteration so made.

(2) If, however, the mortgagee elects to "accept in lieu of the said mortgage" a mortgage which may at his option be either in form (a) or form (b) as permitted by section 6 of the Act, a new deed of mortgage will have to be executed, as in such a case there is no mere alteration of a subsisting mortgage, but the substitution of a mortgage of one kind for another mortgage of a different kind. In this case, by Government of India notification No. 6167 S. R., dated 6th December 1901, so much of the stamp duty on a new mortgage-deed drawn up as referred to above, as is not in excess of the duty already paid in respect of the previous mortgage,

has been remitted. Under the ordinary rule of law the mortgagee will have to meet any excess stamp duty payable and also other expenses incidental to the new mortgage. App. III B.

(3) If upon the mortgagee electing to accept an approved form of mortgage in lieu of the original mortgage, the mortgagor cannot be found, fails to appear or refuses or neglects to execute the new mortgage, the Deputy Commissioner is empowered by section 9 (4) of the Act as amended in 1907 to execute the mortgage himself on such terms as to costs as he may think fit.

(4) If, however, the mortgagee when put to his election by the Deputy Commissioner refuses to agree to either of the alternatives offered him, the Deputy Commissioner should explain to him that he is not at liberty thus to attempt to defeat the law, that he must choose one of the two courses provided for him by the section of the Act, and that the only practical result of his refusal to elect is that he leaves it to the Deputy Commissioner to make the election for him. If, in the face of such an explanation, the mortgagee still refuses to act, the Deputy Commissioner should then act for him and define what the mortgage is to be in accordance with the power conferred upon him by section 9 (2). In such a case ordinarily the best course will be to strike out the condition intended to operate by way of conditional sale, because this avoids the further complication that if a new mortgage is ordered the mortgagor may decline to execute it. One of the objects of the Act was to cancel conditional sales with retrospective effect, subject to an arrangement by which the mortgagee should not lose his security. When he would have adequate security with the sale clause struck out there need be no hesitation in compelling him to accept that arrangement if he will not do so voluntarily. It is only when the mortgagee, with the sale condition excised would not afford adequate security and when the mortgagee refuses to

App. III B. mortgagor thereupon declines to execute it, the Deputy Commissioner is not empowered to execute the mortgage under section 9 (4) of the amended Act, because one of the conditions of the exercise of that power is the agreement by the mortgagee to accept a new mortgage.

Applicants to be carefully examined.

43. Unnecessary trouble is often caused by the failure of Deputy Commissioners to examine applicants carefully as to the nature of their application and to specify clearly in sending the application to a subordinate revenue officer for enquiry and report the exact point or points which require elucidation. Tahsildars have been known to send in long reports in cases where all that was required was a verification of the statement in the application that the land in question was within municipal limits. So also it is not uncommon for applications to be made to Deputy Commissioner for permission to mortgage land to persons not members of agricultural tribes in forms other than those approved in section 6 of the Act. Such permission cannot be granted in any case, and it is unnecessary to send such applications for report. All applications for permission to mortgage should be disposed of at once by the Deputy Commissioner, for in the case of the alienor being a member of an agricultural tribe there is no need of permission, and if he is not a member, permission cannot be given.

Scrutiny by Commissioner

44. Commissioners should carefully scrutinise the quarterly business returns of cases disposed of under the Alienation of Land Act, and should from time to time call for a few specimen cases in order to satisfy themselves that the principles of the Act are being duly observed. If in connection with any cases so called for points of doubt or difficulty arise, a reference may be made for the orders of the Financial Commissioner.

F.—Effect of the Act on the procedure of Civil Courts.

Reference by Court to Deputy Commissioner.

45. When a suit to which the provisions of section 7 (3) of the Punjab Alienation of Land Act, XIII of 1900, apply, is brought before a Civil Court, the Court should, on the application of either of the parties, refer to the Deputy Commissioner to determine the proportion of the mortgage

debt that is equitable, and keep the case pending until such determination has been made. APP. III B.

46. Land, which is defined in section 2 (3) of the Act and includes land applied to agriculture or pastoral purposes, is not saleable in execution of any decree or order of any Civil or Revenue Court when it belongs to a member of an agricultural tribe. Accordingly no proposal for the sale in execution of decree of land belonging to a member of an agricultural tribe can now be made except by mistake. Sale in execution of decrees.

47. Section 16 (1) of the Act, however, does not prohibit the *attachment* in execution of decree of the land of members of agricultural tribes. Attachment.

Land which does not belong to a member of an agricultural tribe remains unaffected by the provisions of the Act.

48. The question has been raised whether the words "Proceedings for the enforcement of a condition intended to operate by way of conditional sale" mean proceedings taken under section 8 of Regulation XVII of 1806 only, or whether they include proceedings in suits, appeals or execution of decree as well. Conditional sale.

The Chief Court has held that the words above-quoted mean proceedings under section 8 of Regulation XVII of 1806 only, *vide* Punjab Record No. 28 of 1902 (Civil).

49. (a) In "proceedings," *i. e.*, in proceedings under section 8 of Regulation XVII of 1806, the action of the District Judge is purely ministerial, and the only enquiry he should make is to ascertain, before he refers the proceedings to the Deputy Commissioner, whether the mortgagor is a member of an agricultural tribe, if the point is in dispute. If the Deputy Commissioner, on a reference being made, returns the proceedings without striking out the clause as to conditional sale, the District Judge should proceed to serve the notice on the mortgagor, as required by Regulation XVII of 1806. The same.

(b) If a civil suit is instituted on a mortgage to which section 9 of the Act applies, the Civil Court shall not make a reference to the Deputy Commissioner under sub-section (3) of section 9 until it has disposed of any objections brought by the mortgagor against the validity of the mortgage or of any plea raised by him on the point of limitation.

1	2	1	2	1	2
DISTRICT.	Tribe	DISTRICT.	Tribe.	DISTRICT.	Tribe.
JULLUNDUR	Arañ. Awan. Dogar. Gujar. Jat. Kamboh. Koreshi. Labana. Mahlan. Pathan. Rajput. Sahil. Syad.	MULTAN— <i>etd.</i>	Moghal. Odi. Pathan. Rajput. (excluding Bhatia). Syad.	AMRITSAR <i>etd.</i>	Lahana. Moghal. Pathan. Rajput. Syad.
LUDHIANA...	Arañ. Awan. Dogar. Gujar. Jat. Kamboh. Labana. Pathan. Rajput. Sahil. Syad.	JHANG ...	Arañ. Biloch. Jat. Kokara. Koreshi. Nekokara. Rajput. Syad. Turk.	GURDASPUR	Arañ. Chitang. Dogar. Gujar. Jat. Kamboh. Labana. Moghal. Pathan. Rajput. Sahil. Syad.
FEROZPORE	Arañ. Biloch. Bodla. Dogar. Gujar. Kamboh. Labana. Mahlan. Moghal. Mussalman. Jat. Other Jat. Pathan. Rajput. Sahil. Syad.	MONTGOMERY	Arañ. Bhatti. Biloch. Bodla. Jat. Kamboh. Klingga. Kharral. Koreshi. Mahlan. Pathan. Rajput. Syad.	SIALKOT. ...	Arañ. Awan. Baghban. Dogar. Gakhar. Gujar. Jat. Kamboh. Koreshi. Labana. Moghal. Pathan. Rajput. Sahil. Syad.
MULTAN ...	Arañ. Awan. Biloch. Gujar. Jat. Kamboh. Kharral. Koreshi. Mahlan.	LAHORE ...	Arañ. Awan. Biloch. Bodla. Dogar. Jat. Kamboh. Kharral. Koreshi. Labana. Mahlan. Moghal. Pathan. Rajput. Syad.	GUJRAT ...	Arañ. Awan. Bahrupia. Biloch. Gujar. Jat. Koreshi. Labana. Moghal. Pathan. Rajput. Syad.
MULTAN ...	Arañ. Awan. Biloch. Gujar. Jat. Kamboh. Kharral. Koreshi. Mahlan.	AMRITSAR ...	Arañ. Awan. Dogar. Gujar. Jat. Kamboh.	GUJRANWALA	Arañ. Awan. Biloch. Dogar. Gakhar. Gujar.

* Vide F. C's. Correction Slip No. 133-S. O. (New Series), dated Lahore 8th January 1916.

1	2	1	2	1	2
District	Tribes	District	Tribes	District	Tribes
GOHRAWALA — <i>old</i>	Jat, Kamboh Khatti Korchi Labana, Moghal Pathan Rajput, Synd	JULIUM— <i>old</i>	Janjua Jat Jodh Kahut Kasi Khandoya Khokhar Korchi Lalli Mair and Munhas	ATTOCK— <i>old</i>	Korchi Mair and Munhas Mair, Moghal, Pathan Rajput Sardari Sheikh Syad.
	Ajmer, Awan, Biloch, Bodla Doga, Gakhai, Gujar, Jat, Kamboh Khatti, Korchi, Labana Moghal Pathan, Rajput Synd Sami.		Moghal and Kok Punwan Pathan, Pungha Rajput, Synd Sohlan Synd		Ajmer Awan Bughban, Biloch Gujar, Jat Khatti Khokhar Korchi Pathan, Rajput Synd.
SIRSIK HU- PUNA.*				MIANWALI...	
Ahli	Ajmer, Awan, Biloch, Gujar, Jat, Kamboh, Khokhar, Korchi, Mahar Moghal, Pathan, Rajput Synd.	RAWALPINDI	Awan, Biloch Dugai, Dhund Gakhai Gujar Jat, Jodhna Khattiwal, Khatti, Korchi Mahar Moghal Pathan Rajput, Satti Synd.	LYALLPUR ...	Ajmer, Bhatti Biloch Gujar Jat Kamboh Khagga Khattiwal Kokara Korchi, Pathan Rajput Sami, Synd.
SIRSIKPUR ...					
JHELUM ...	Akka Awan, Bhatti, Biloch, Chakhan, Chib, Gakhai, Gujar, Jalap,	ATTOCK ...	Awan Bati Sheikh, Bhatti, Biloch Gakhai, Gujar, Jat Janjua Jodhna, Jodh, Kahut Khattar,	DERA GHAZI KHAN,	Ajmer Biloch, Jat Khetran Korchi, Mach, Moghal Mujawar, Pathan Rajput, Synd.

NOTE.—The Labana tribe does not include the Banjara tribe.

* F. O's Correction Slip No. 542-S. O. (New series), dated 6th February 1922.

† F. O's Correction Slip No. 609-S. O. (New Series), dated 18th April 1923.

District,	Tribes,
MUZAFFARGABH 	Arain, Awan, Biloch, Jat, Koreshti, Pathan, Rajput, Syad,
SIMLA—Kotgarh ilaqe of the Kotkhai Tahsil,*	Badli, Bohara,** Brahman, Christian, Kanet, Koli, Kumhar, Lohar, Mochhi, All <i>Pujaris</i> indigenous to the Kotgarh ilaqe, Rajput, Rehar, Sunar,

*Vide P. C. S. Correction Slip No. 468 S. O. (New Series), dated 5th August 1919.

**Vide P. C. S. Correction Slip No. 493-S. O. (New Series), dated Lahore, 12th May 1921.

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B.—Separate Groups.

- (1) Gaur Brahmans (excluding Bohras) in Rohtak, Karnal and Gurgaon Districts, and Hissar, Hansi, Fatehabad and Bhiwani Tahsils of Hissar District.
- (2) Brahmans in Una Tahsil of Hoshiarpur District.
- (3) Brahmans in Rawalpindi District.
- (4) Muhial Brahmans in Jhelum District.
- (5) Kakeznis in Jhelum District.
- (6) Gadhiok Kanungos in Jhelum District.
- (7) Brahmans (excluding Bujru, Acharaj, Bhat, Saniasi, Gujrati, Bhojki Brahmans) in the Dera, Hamirpur, Palampur, Kangra and Nurpur Tahsils of the Kangra District.
- (8) *Mazhabi Sikhs and Indian Christians—Sheikhpura District.

Explanation—Indian Christian means a Native of India who is, or in good faith claims to be, of unmixed Asiatic descent, and who professes any form of the Christian religion.

- (9) Mazhabi Sikhs—Lyallpur District.
- (10) Tarnaich Brahmans—in Pathankot Tahsil of the Gurdaspur District.
- (11) Barsotra Brahmans—in Shakargarh Tahsil of the Gurdaspur District.
- (12) Dal Brahmans—in Gurdaspur District and Raya Tahsil of Sialkot District.
- (13) Native Christians in the Gujranwala and Lyallpur Districts. † Estate 500, in the Shorkot tahsil of Jhang.
- (14) Bagri Kumhars
Bagri Khatris and Suthars } Fazilka tahsil of the
Ferozepore District.
- (15) † Muhial Brahmans in Attock District.

* Vide F. C's. Correction Slip No. 543 S. O. (New Series), Dated 6th February 1922.

† Vide F. C's. Correction Slip No. 204 S. O. (New Series), Dated Lahore 11th December 1915.

‡ Vide F. C's. Correction Slip No. 232 S. O. (New Series), Dated Lahore 10th May 1916.

APPENDIX III C.

EXTRACTS FROM STANDING ORDER No. 23.

THE RECORD OF RIGHTS.

3rd Reprint, dated 3rd March 1921,

Note.—Chapter XIV and Appendices VII and VIII of the Settlement Manual and Chapter X of the Land Administration Manual should be read in connection with this Standing Order.

A—Record of Mutations

Paragraphs 372 to 386 of Chapter X of the Land Administration Manual and paragraphs 279 to 282 of the Settlement Manual relate to the record of mutations.

12. Action may be required in the case of members of agricultural tribes, who, on conversion to Muhammadanism, have been shown in the records under another name. For example, in the Delhi District Mussalman Tagas were shown as Sheikhs, a tribe not notified as agricultural in that District. Non-Muslim Seikh, belonging to a tribe notified as agricultural do not lose their agricultural status simply by their change of religion, and the Muhammadan part of such an agricultural tribe should be entered in the records as Taga (Mussalman)—to take the same example—in every case and treated as members of a notified agricultural tribe. The necessary alteration of the records should be made by a mutation order, which should be sanctioned by the Deputy Commissioner himself and which, if convenient, should be one for each village concerned.

Nati-Muslims

16. (1) If any alienation of land is made otherwise than in accordance with the provisions of the Punjab Alienation of Land Act, 1900, or involves any condition contrary to those provisions, the patwari shall nevertheless enter the same, when it comes to his knowledge, in his register of mutations for the village where it occurred

Rules regarding the treatment of mutations of alienations which contravene the provisions of the Punjab Alienation of Land Act.

(2) Any entry made under the preceding rule shall be dealt with like other entries in the register of mutations except that the revenue officer to whom the register is

APP. III C. submitted for orders shall, after hearing the parties and recording a note of their representations,—

(a) in the case of any permanent alienation, transmit the mutation proceedings with his recommendation, as to whether sanction should be granted or refused to the Deputy Commissioner for his orders under Section 3 (2) and (3) of the Punjab Alienation of Land Act; or

(b) in the case of any temporary alienation, refuse to sanction mutation of names and refer the parties to the provisions of the Punjab Alienation of Land Act which they have contravened, except in the case of a mortgage which purports to be in form (a) described in Section 6 (1) of the Act, where the only contravention of the Act is as to the term of the mortgage. In this case mutation should be allowed subject to the condition attached to the mortgage by law, namely, that its term shall be for 20 years.

(3) The Deputy Commissioner, on receipt of any mutation proceeding transmitted to him under Rule (2) (a), shall after such further enquiry, if any, as he may consider necessary, grant or refuse the sanction required by Sub-section (2) of Section 3 of the Punjab Alienation of Land Act. For the purposes of any further enquiry under this Rule the Deputy Commissioner may refer the case to any revenue officer subordinate to him for investigation and report, and may decide case upon the report.

(4) When the Deputy Commissioner has decided any case dealt with under Rule (3) he shall record his order upon the mutation proceeding and direct the same to be returned to the revenue officer whose duty it is to dispose of mutation cases arising in the village where the land alienated is situated.

5. If the Deputy Commissioner sanctions the alienation, the record of his sanction made upon the mutation proceeding shall be deemed to be sufficient evidence of the order of sanction for the purpose of Section 18 of the Punjab Aliena-

tion of Land Act, and the revenue officer whose duty it is to dispose of the mutation case, shall dispose of the same and shall not refuse mutation on the ground of any objection arising out of the said Act

APP. III C.

(6) If the Deputy Commissioner refuses to sanction the alienation, the Revenue Officer disposing of the mutation case shall pass such order in the case as may be in accordance with the order of the Deputy Commissioner refusing sanction.

(7) When a mutation proceeding has been transmitted to the Deputy Commissioner under Rule (2) (a) the transmission thereof shall be deemed to be an application to the Deputy Commissioner to exercise the powers conferred upon him by Section 3 of the Punjab Alienation of Land Act. Such application need not be stamped nor is any separate application necessary for the exercise of those powers in the same case.

(8) Nothing in these rules shall be so construed as to disallow applications to the Deputy Commissioner for the exercise of any power conferred upon him by the Punjab Alienation of Land Act, 1900, which are made in any other manner authorised by law or by rules having the force of law.

17. The following instructions have been issued in connection with those temporary transfers which are permitted on certain conditions by the Punjab Alienation of Land Act :—

Instructions regarding those transfers which are permitted on certain conditions by the Punjab Alienation of Land Act.

Director of Land Records
Circular No. 9
dated 20th
November
1903

(1) In the matter of a temporary alienation, where the alienor is a member of an agricultural tribe, and the alienee is not, it is necessary that the Revenue Officer should know what the terms of the contract are. Accordingly, where there is a written deed, and where the alienor is a member of an agricultural tribe and the alienee is not, the patwari must note briefly the terms of the deed as to possession, period, rent, interest, redemption, etc., and the attesting officer must satisfy himself of the correctness of those entries. These notes are in addition to those required by the footnote 4 to the register form.

Patwari's duties in the matter of temporary alienations, including mortgages, farms and leases.

APP. III C. (2) Where there is no written deed, the patwari should note the terms agreed to by the parties or, when they do not agree, he should record the terms alleged by each. The attesting officer will then proceed to pass suitable orders on the mutation. If the provisions of the Act are not contravened by the terms of the contract, he will direct mutation. Otherwise he will refuse mutation.

Financial Commissioner's
Circular No.
4 dated 9th
September
1903

25. The following instructions are intended to enable a Deputy Commissioner to determine the cases in which he can exercise the authority given him by Section 13 of the Alienation of Land Act of his own motion, to eject a mortgagee, lessee or farmer in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm under Sections 8, 11, or 12 of the Act:—

Notes in the remarks column with regard to those transfers to which conditions are attached by the Punjab Alienation of Land Act.

- (a) In the case of a mortgage, lease, or farm effected with possession after June 8th, 1901, by a member of an agricultural tribe, to a person who is not a member of an agricultural tribe, the patwari shall enter in the remarks column of the *jamabandi* a note stating the date of the commencement and, except in case of a mortgage under Section 6 (c), the date of expiry of the term of possession.
- (b) These remarks also will be carried from one *jamabandi* to another during the currency of the mortgage, lease, or farm.

26. If mutation has been refused under paragraph 16 (3) because a transfer contravenes the provisions of the Punjab Alienation of Land Act, the name of the transferee must not appear in any column of the *jamabandi* unless he himself cultivates the land, when his name will appear as a tenant-at-will in the cultivation column and the rent column will be left blank. If the transferer cultivates, and makes at each harvest a payment in cash or kind to the transferee, this payment must not be shown as rent in column 9 of the *jamabandi*, and the entry in column 6 will be *khudkash*.

APPENDIX III D.

STANDING ORDER No. 64.

THE ATTACHMENT AND SALE OF AGRICULTURAL PRODUCE AND OF LAND.

Reprint, dated 25th August 1921.

PRELIMINARY.

1. The law dealing with the attachment and sale of agricultural produce and of land will be found in the Code of Civil Procedure (V of 1908), in the Punjab Land Revenue Act (XVII of 1887), in the Punjab Tenancy Act XVI of 1887) and in the Alienation of Land Act (XIII of 1900). The Code of Civil Procedure is a general Act and its provisions will be binding on all Civil Courts except in so far as they are saved by the provisions of local or special Acts. This is laid down in section 4 of the Code. The special Acts, whose provisions have to be considered, are the Land Revenue, Tenancy and Alienation of Land Acts above cited, and it will be necessary to explain how far the general law is modified by them. The main sections to which reference will be made are the following :—

Civil Procedure Code, sections 60, 61, 68, 69, 70, 71 and 72 ; the third schedule, and the relevant rules of Order 21 ;

Punjab Tenancy Act, section 88 ;

Punjab Land Revenue Act, sections 70 and 141 ;

Alienation of Land Act, sections 2 (3) and 16.

AGRICULTURAL PRODUCE.

2. All agricultural produce including growing crops now comes under the definition of moveable property.

3. All orders for its attachment when made by a Civil Court, must be sent under section 141 of the Land Revenue Act, to the Collector or such Revenue Officer as the Collector may appoint in this behalf.

4. Agricultural produce is subject to certain exemptions from attachment, and these exemptions depend partly on the Civil Court issuing the order of attachment and partly on the Revenue Officer carrying it out. Under section 60 (1) (b), Civil Procedure Code, the Civil Court is bound to exempt

APP. III D. from attachment, where the judgment-debtor is an agriculturist his implements of husbandry, and such cattle and seed grain as may *in the opinion of the Court* be necessary to enable him to earn his livelihood as such, and also any produce exempted by any notification under section 61. As, however, no notification has been issued under this section, this further exemption does not exist. Also where the judgment-debtor is a person liable for the payment of land revenue, the Civil Court is bound under section 60 (1) (a) of the Code to exempt any moveable property which *under any law for the time being* is exempt from sale for the recovery of an arrear of such revenue. The moveable property exempt from sale for the recovery of an arrear of land revenue is set out in section 70 of the Punjab Land Revenue Act ; it includes, in addition to the particulars exempted under the Civil Procedure Code, so much of the produce of the land of the judgment debtor as *the Collector* thinks necessary for seed-grain and for the subsistence, until the harvest next following, of the judgment-debtor *and his family* and of any cattle exempted under the Civil Code. It would appear, therefore, that, when a Civil Court addresses an order of attachment of agricultural produce to a Collector, it should instruct the Collector to leave unattached so much of the produce of the land as the Collector, in accordance with the above law, deems necessary, but if the Court omits to do so, it would still seem to be the duty of the Collector or other Revenue Officer to make the necessary exemption, for the Collector equally with the Court is bound to carry out the provisions of the law and is not excused from so doing by a failure on the part of the Court.

5. In carrying out the attachment, the Collector or other Revenue Officer will be guided by the provisions of Rules 44 and 45 of Order 21 of the Civil Procedure Code, for no rules under section 88 of the Tenancy Act have been framed.

6. All orders of a Civil Court for the sale of agricultural produce will be addressed to the Collector, who will act in accordance with the provisions of the rules relating to

" sale generally " and to the " sale of moveable, " in Order APP. III D. 21, Civil Procedure Code, and with the following rules under the Punjab Land Revenue Act—

47. When the produce of any land has been attached in pursuance of an order for its attachment and sale addressed to the Collector by a Civil or Criminal Court, the Collector shall direct that an appraisalment of the attached produce be made by a Revenue Officer or by the Kanungo of the circle in which the land is situated. The produce shall not be sold until the appraisalment has been approved by the Collector, or by a Revenue Officer appointed in that behalf by the Collector.

48. Sales of the produce of land shall be made by a Revenue Officer or by the Field Kanungo of the circle in which the land is situated. When the sale is made by the Kanungo it shall be carried out in presence of a sardar, inamdar, or village headman appointed in that behalf by a Revenue Officer.

The Field Kanungo shall be entitled to a commission of 5 per cent. on the sale-proceeds.

49. When produce sold by a Kanungo consists of moveable property, the purchase money shall not be received, nor shall the sale become absolute until the sale has been confirmed by the Collector or by a Revenue Officer named by the Collector.

7. After execution of orders of attachment and sale the Collector shall forthwith report to the Court the action taken by him.

8. The investigation and decision of claims and objections to the attachment of sale of agricultural produce is the duty of the Civil Court and not of the Collector.

LAND.

9. No Court, whether Civil or Revenue, is competent to order the sale of land belonging to a member of an agricultural tribe in execution of any decree or order of a Court. This is laid down in section 18 of the Alienation of Land Act. There is, however, no law prohibiting the attachment of such land (*Badar Din v. Bura Mal*, Punjab Record 4 of 1908).

APP. III D, In the above rule the word "land" has the more extended meaning given to it by section 2 (3) of the Alienation of Land Act.

10. Under section 60 (1) (c), Civil Procedure Code, the houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him are exempt from attachment and sale. The agriculturist need not necessarily be a member of an agricultural tribe.

11. Under section 141, Punjab Land Revenue Act, orders issued by any Civil Court for the attachment, sale or delivery of any *land* or interest in land shall be addressed to the Collector or to any Revenue Officer he may appoint in this behalf. "Land" here has the limited meaning given to it in section 4 of the Punjab Land Revenue Act and does not include land which is occupied as the site of a town or village and is not assessed to land revenue.

12. On receipt of such orders the Collector is bound to execute them in accordance with the law applicable to the Court issuing them, i. e., in accordance with the Code of Civil Procedure, and also in accordance with any rules consistent with the Code made by the Financial Commissioner under the powers conferred by section 141, Punjab Land Revenue Act.

ATTACHMENT.

13. The method of attachment is given in Rule 54 of Order 21 of the Civil Procedure Code. After execution the Collector returns the warrant to the Court.

14. It is the duty of the Court to investigate and decide any claims and objections to the attachment; this is not the function of the Collector.

15. Cancelled.

16. Cancelled.

INTERVENTION.

17. Under section 72, where the property attached consists of land or a share of land and the Collector repre-

sents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share. APP. IIID.

It is to be noticed that section 72 does not apply to the sale of land or a share of land sold under a decree which directs the sale in pursuance of a contract of sale or other contract specifically affecting the same (vide *Bhagwan Prasad v. Sheo Sahai*, 2 All., 856).

18. In the Rules and Orders of the High Court, Vol. I, pages 133 to 138, will be found instructions issued to Civil Courts which ensure that Collectors shall have an opportunity of intervening in cases where land has been attached. These instructions, however, only relate to land assessed to revenue, whether payable or remitted, and not to all land. The provisions of section 72 are not so limited, and if the Collector wishes to intervene in the case of other land, he must take action independently and not wait for the file to be sent by the Court. Such cases will, of necessity, be few.

19. On receipt of the file and the vernacular proceedings as laid down in the Rules and Orders above quoted, the Collector shall, with as little delay as possible, proceed to consider the question whether there are *prima facie* grounds for his intervention. In order to satisfy himself on this point, the Collector shall make such inquiries as may be necessary to ascertain whether the sale of the land can be avoided. On the completion of such inquiry, the Collector shall, within sixty days from the date of receiving the file, return the same, and either make the representation contemplated by section 72 of the Code, or intimate that he will not intervene.

20. If after the file has been received by the Collector any claim to the attached property or any objection to the attachment be preferred to the Court executing the decree, the Court will dispose of the same, and may, if it appears

APP. III D. necessary for this purpose, recall the file of the execution proceedings and proceed itself to dispose of the claim or objection. When such claim or objection has been disposed of, if the order of attachment is upheld, the file will be re-transmitted to the Deputy Commissioner. If such claim or objection be preferred to the Deputy Commissioner, the claimant or objector shall be referred to the Court executing the decree.

21. In deciding whether to intervene, the period for which and the terms on which temporary alienations in satisfaction of money decrees should be made, Collectors should be guided by the following instructions :—

- (1) Collectors should clearly understand that their action is intended to be for the benefit of the judgment debtor.
- (2) Intervention may be resorted to where the decree can be liquidated within a reasonable period by a temporary alienation (or farm) of the land.
- (3) Collectors must be careful not to make any such alienation arrangement as amounts practically to depriving a judgment-debtor of his ordinary means of support. Therefore only such land should be temporarily alienated as may be in excess of what a judgment-debtor, who depends entirely or mainly on his land, requires for the reasonable support of himself and those immediately dependent on him.
- (4) The fact that the decree-holder declines to take the land in farm is not sufficient reason for declining to intervene.
- (5) In deciding what is a reasonable period, special weight may be given to the nature of the original debt and the amount of interest in the decree, and to such circumstances as that the land owner is a minor or a widow and the debt was incurred by a predecessor in interest.
- (6) Excess land thus suitable for temporary alienation should not be alienated for longer period than

fifteen years, or unless the decree-holder agrees App. IIID.
to accept the arrangement made by the Collector
in full satisfaction of his decree, including all
interest claimable thereon.

22. (i) If the Collector decides to intervene and represents under section 72 of the Code of Civil Procedure that a public sale of property is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the property, the Civil Court shall file the representation with the record, and, after hearing the parties will determine whether the Deputy Commissioner should be authorised to intervene. If the Court decide affirmatively, it will record an order to that effect and send the Collector a vernacular proceeding authorising him to provide for satisfaction of the decree in the manner recommended by him.

(ii) With this proceeding the Court shall send—

- (1) a statement showing the extent, if any, to which the decree has been already executed, and clearly setting forth what portion of the decree still remains to be satisfied;
- (2) a copy of the decree under execution and of the application for execution on which the property has been attached;
- (3) a statement showing, as clearly as possible, the rights and interests of the judgment-debtor in the attached property, so far as they are known to the Court;
- (4) any other papers which may be considered necessary to enable the Collector to ascertain exactly the nature of the decree, the property under attachment, and the rights and interests therein of the judgment-debtor.

(iii) These documents shall be prepared by the Court's establishment, and transmitted to the Collector free of all cost to the parties. Statements (1) and (8) shall be in the following form :—

(1) *Statement showing satisfaction had under the decree to date
viz, up to the* 192 .

1	Court submitting application and number of case in Court's Register of execution of decrees.	
2	Decree holders, with description.	
3	Judgment-debtors, with description.	
4	Date and particulars of decree (principal, interest, and costs).	
5	Particulars of previous steps taken to realise amount of decree	
6	Amount now remaining due (principal, interest, and costs).	

(2) *Property attached.*

1	Tahsil and village in which situate.	
2	Number of holding in village papers.	
3	Total area of holding with details of cultivation, &c.	
4	Wells, water-courses or shares thereof, attached to the holding.	
5	Nature of judgment-debtor's interest, viz., ownership or other right whether the land is hereditary or jointly acquired or not.	
6	Whether judgment-debtor owns entire holding or undivided share thereof.	
7	Estimated annual profits of judgment-debtor's interest and rent, or revenue payable by him.	
8	Particulars of existing encumbrances.	
9	What means of support will remain to the judgment-debtor if the land be sold.	

[REMARKS].

Below and on succeeding pages will follow the Court's order to the Collector to intervene, and subsequent orders of the Collector.

(iv) If the property has been attached in more than one decree, a copy of each decree and application for execution shall be transmitted, and a statement in the form above prescribed showing the extent to which each decree has been satisfied.

23. (i) The Collector should notify to the Court the receipt of the above mentioned documents, and should register the decree in a book to be kept for the purpose in the following form :—

1	2	3	4	5	6	7	8	9	10	11	12
Serial No.	Number of decree.	Date of decree.	Names of decree-holder and judgment-debtor.	Date of transmission of decree by Civil Court.	Date of receipt of decree by Collector.	Amount for which execution is ordered.	Property attached.	Nature of decree.	How executed.	Date of re-transmission of decree to Civil Court.	REMARKS.

(ii) The Collector's acknowledgment will, on receipt be placed with the Court's execution proceedings, which will thereupon be consigned to the record room.

24. The rules to provide for appeals from the orders passed by a Collector or by a gazetted subordinate of a Collector or by a gazetted subordinate of a Collector, when a Civil Court, acting under section 72 of the Code of Civil Procedure, has authorized the Collector to provide for the satisfaction of a decree by a temporary alienation or management of land or a share in land, are given below. Only one appeal is allowed to the Collector himself or to the Commissioner, as the case may be. But orders passed by the Collector or by the Commissioner on appeal in these cases are open to revision by the Financial Commissioner :—

P. G. Notification I. D. of 1st January 1909.

Rules.

1. If under section 72 (1) of the Code of Civil Procedure, Act V of 1908, the Court has authorised the Collector to provide for the satisfaction of a decree by a temporary alienation or management of land or of a share in land then any order passed by a gazetted subordinate of the Collector in exercise of the authority conferred by the Court under section 72 (1) or by any rule, under section 70 of the Code of Civil Procedure, shall be appealable to the Collector, and any order passed by the Collector in exercise of such authority as aforesaid shall be appealable to the Commissioner, as if the order were one appealable under section 13 of the Punjab Land Revenue Act, 1887. No further appeal shall lie from any order passed in appeal under the provisions of this rule. The provisions of section 14, clauses (a) and (b), of the Punjab Land Revenue Act, 1887, shall apply to appeals to the Collector and to the Commissioner, respectively, under this rule, and the provisions of section 15 of the Punjab Land Revenue Act, 1887, shall also apply to orders passed under this rule.

2. In regard to any order passed in appeal under the preceding rule, the Financial Commissioner shall have the same powers of revision as are vested in the Chief Court by section 115 of the Code of Civil Procedure in respect of cases in which no appeal lies to the Chief Court.

No appeal, however, can be instituted from the order of the Collector passed before the Civil Court has actually authorised him to arrange for the satisfaction of the decree. If the proposals for the alienation or management of the land put forward by the Collector before such authorisation do not appear likely to provide for the satisfaction of the decree within a reasonable period the Civil Court is instructed to ask him to submit an amended proposal in accordance with section 72 of the Civil Procedure Code, and if no such proposal is made within a reasonable time, to issue order for the sale of the land in accordance with law.

25. Cancelled.*

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26. Cancelled.

27. Cancelled.

SALE.

28. If the Collector decides not to intervene or the Court refuses to authorise his intervention, the Court will ordinarily proceed to the sale of the land. Where the land is land to which the Land Revenue Act applies, the warrant for its sale should under section 141 of that Act, be addressed to the Collector and be executed by him. No previous sanction of the Commissioner is now necessary as was previously the case, because Punjab Government notification No. 1297-S., dated 10th September 1885 which issued under the authority of the second clause of section 327 of the Code of Civil Procedure, 1882, has been withdrawn because there is no provision in the new Code which would authorise the republication of this notification or keep it in force.

29. When sending such a warrant to the Collector, the Court will forward also the file of execution proceedings to the Collector with a requisition to carry out the sale.

In executing a warrant of sale the Collector will follow the provisions of the Civil Procedure Code, Order 21 of Schedule 1, dealing with "sale generally" and "sale of immoveable property."

30. (i), Deductions at the following rates shall be made from the proceeds of sale, viz. :—

at the rate of one rupee out of every one hundred rupees, for the first two hundred rupees ;

at the rate of eight annas out of every one hundred rupees of the proceeds in excess of two hundred rupees, and up to one thousand rupees ;

at the rate of one rupee out of every five hundred rupees of the proceeds in excess of one thousand rupees.

* Vide F. O's. Correction Slip No. 586 S. O. (New Series) dated 8th October 1922.

APP. III D. (ii) All expenses incurred in the conduct of sale shall be paid out of such deductions, and the balance credited to Government as Miscellaneous land revenue under "other items."

(iii) No commission on the proceeds of sales conducted under these rules shall be paid to any officer of the Court. But of. rule 48 under paragraph 6 above

31. On receiving intimation from the Court, before he has effected a sale, that the order for sale has been cancelled, the Collector shall forego the sale, and retransmit the decree and the other papers received from the Court to the Court which ordered the sale.

32. (i) When any sale has been confirmed, the Collector shall report his proceeding to the Court from which the decree was received for execution, intimate the sum realised and held at the disposal of such Court and retransmit the decree with all the papers received from that Court, which will grant the Collector a receipt for them.

(ii) All subsequent proceedings in connection with the decree and the delivery of possession to the purchaser will be taken under the orders of the Court.

DELIVERY OF POSSESSION.

33. The procedure for the delivery of possession shall be in accordance with Rules 95 and 96, Order 21 of the Civil Procedure Code.

34. The following special rule under section 141 of the Land Revenue Act is also binding on Revenue Officers.

50. When an order of a Civil Court is sent to the Collector for the execution of a decree for the possession of land, the Collector shall give possession to the decree-holder on the date specified in the decree or in the directions issued by the Civil Court executing the decree. If no date is specified in the decree or by the Civil Court and the land, of which possession is to be given, is in the cultivating possession of the judgment-debtor the Collector shall at once refer to the Civil Court for instructions as to whether or not he is to delay execution until any crop, which may have been sown by the judgment-debtor and is standing on the land, has been removed.

35. The following are the instructions issued for the guidance of Revenue Officers in proceeding under the above Rule:—

(I). Orders or warrants for the delivery of possession App. IIID
of land—

- (a) will specify whether delivery should take place at once or after some later specified date;
- (b) when necessary, provide for the maintenance of the cultivating possession of any tenant or sub-tenant whose occupation of the land is not affected by the decree or order under execution.

(II). When possession has to be delivered in execution of an *ex-parte* decree the Tahsildar should depute the Field Kanungo to deliver possession. In any other case the Tahsildar may direct that possession shall be delivered by the Patwari.

(III). The Patwari or Field Kanungo shall take such steps as are practicable for procuring the attendance of the judgment-debtor and of the persons (if any) other than the parties to the case, recorded as having rights in the land, or of some near relation of the judgment-debtor or of such other persons.

(IV). Delivery of possession should be made in the presence of one or more *lambardars* and of the owners or occupancy tenants of at least two holdings adjacent to the land of which possession is delivered and when practicable of other witnesses.

(V). (i) Delivery of possession should, except in the case referred to in rule VII below, ordinarily be made by the decree-holder or other person to be put in possession walking round the boundry of the land in the presence of the witnesses mentioned in rule IV above.

(ii) When the decree-holder or such other person is to be put in cultivating possession of the land he should put in his plough, unless a crop is standing on the land or for some other reason this cannot be done. If, however, the land is in the occupancy of a tenant or other person entitled to occupy it notwithstanding the decree, a notice in writing containing the substance of the decree should be served on the occupant by the Patwari or Field Kanungo.

APP. III. (VI). When at the time of delivery of possession the judgment-debtor to be ejected is absent, or any other person considered by the official delivering possession to be interested in the case is absent and not represented by a near relative the delivery should also be proclaimed by beat of drum in the village and on the land.

(VII) The instructions contained in rules (IV), (V), (VI) above can of course only be applied to those cases in which physical possession is to be given. If, as in the case of a decree for the possession of a share of undivided property, only symbolical possession is to be given, the procedure indicated in the rule 36, Order 21 of the Civil Procedure Code, should be followed, even if this is not specified in the decree or order, *viz.* :—

- (a) A copy of the warrant or order should be affixed in some conspicuous place on the property.
- (b) A notice in writing containing the substance of the decree should be served on such of the co-sharers as are present.
- (c) If none are present the delivery should also be proclaimed on the land by beat of drum.

(VIII). The Patwari or Field Kanungo should report the delivery to his official superior, noting—

- (1) the action taken to procure the attendance of the judgment-debtor to be ejected and others ;
- (2) the persons present at the time of delivery ;
- (3) the mode of delivery.

(IX) The report so made should be signed or thumb-marked by the parties present, by other persons interested (if any) or their near relatives and by the witnesses.

APPENDIX IV.

RULES FROM THE PUNJAB REGISTRATION MANUAL, 1919.

RULES MADE UNDER THE PUNJAB ALIENATION OF LAND ACT XIII OF 1900 (SECTION 25, REGARDING THE DUTIES OF REGISTERING OFFICERS IN REFUSING OR ADMITTING REGISTRATION OF INSTRUMENTS ALIENATING RIGHTS IN LAND (*vide footnote to paragraph 141*))

1 (a) When an instrument which records or gives effect to a permanent alienation of land, requiring, under section 3 of the Act, the sanction of the Deputy Commissioner, is presented to a registering officer unaccompanied by a certified copy of an order giving such sanction; or

(b) when an instrument of agreement purporting to charge or alienate the produce of land, which, under section 15 of the Act, require the sanction of the Deputy Commissioner, is presented unaccompanied by a certified copy of an order giving such sanction, or

(c) When an instrument of mortgage, which is required to be made in one of the forms prescribed in section 6 of the Act, is presented not made in any such prescribed form, the registering officer in refusing to admit the instrument to registration, shall proceed in the following manner: he shall

(d) record no endorsement upon the document itself, nor shall he make any entry of reasons for refusal to register in book II, but

(e) he shall enter his reasons for not admitting the instrument to registration in a separate book* (to be prescribed and provided by the Inspector General of registration); and shall give to the presenter of the instrument a copy of such entry, and shall, at the same time, return the instrument unendorsed to the presenter.

*NOTE.—Books with lithographed headings have been prepared and forwarded to all registering officers in which reasons for refusing documents under the provisions of the Alienation of Land Act should be recorded. These books are entirely distinct from book II in which reasons for ordinary refusal are recorded, and the object of issuing the present book is that the two classes of refusal should be kept entirely distinct.

APP. IV. 2. An instrument of the kinds mentioned in the foregoing rule which has been returned thereunder may be presented again for registration, and may then be admitted to registration if accompanied by the certified copy of the order which was required, or if amended by the parties themselves, or by the Deputy Commissioner acting under section 9 of the Act, so as to make it conform to the prescribed form

3. (a) In registering an instrument of the kinds mentioned in clauses (a) and (b) of rule I the registering officer shall regard the accompanying order of the Deputy Commissioner giving the necessary sanction as a part of the instrument, and shall cause a copy of such order to be entered, along with the copy of the instrument, in the appropriate book ; and

(b) in registering an instrument of the kind mentioned in clause (c) of rule I, when the same has been revised or altered by the Deputy Commissioner acting under section 9 of the Act, the registering officer shall regard such order of revision or alteration as a part of the instrument, and shall cause a copy of such order to be entered along with a copy of the instrument in the appropriate book.

4. An appeal may be lodged to the Registrar against any return of an instrument made by a Sub-registrar under clause (c) of rule I, and if the registrar directs that the instrument shall be registered in the form in which it was originally presented, the Sub-registrar shall register it accordingly. If the registrar directs that the instrument shall be registered only after specified amendment or addition, then the provisions of Rule 2 as to admission to registration shall apply.

5. When a mortgage deed is cancelled by the Deputy Commissioner under section 9 (2) of the Punjab Alienation of Land Act (XIII of 1900), and a new deed is drawn up in lieu thereof, the Deputy Commissioner shall send to the office, in which the cancelled deed was registered, a copy of his order of cancellation and the registering officer shall make a note of the cancellation in red ink in the column of remarks opposite the copy of the document cancelled.

6. In cases in which a registered mortgage deed is revised or altered by the Deputy Commissioner under section 9 (1), or where under section 9 (2) of the Punjab Alienation of Land Act (XIII of 1900), a condition intended to operate by way of conditional sale is struck out, the Deputy Commissioner shall when returning the document to the parties after revision, alteration or striking out, send a copy of his orders to the office where the document was originally registered, and the registering officer concerned shall make a note of the correction, revision or striking out together with a reference to the Deputy Commissioner's order in the column of remarks against the copy of the document concerned

7. When any permanent alienation, which under section 3 of the Punjab Alienation of Land Act (XIII of 1900) is not to take effect as such until the sanction of a Deputy Commissioner is given thereto, has been reduced to writing and the deed of transfer has in the absence of such sanction been registered, contrary to the provisions of section 17 (2) of the said Act, the Deputy Commissioner shall, on such registration coming to his notice, intimate to the registering officer, in whose office the deed was registered, that the sanction of the Deputy Commissioner to the transaction had not been obtained, and the registering officer shall therefore make a note to that effect in red ink in the column of remarks against the copy of the document, and shall add that registration was in contravention of the provisions of section 17 (2) of the said Act. A copy of the said remarks shall be endorsed on every copy of the deed supplied thereafter by the registering officer under section 91 of the Indian Registration Act, 1908.

EXPLANATORY NOTE WITH ADDITIONAL INSTRUCTIONS.

1. The above rules were required because section 17 of the Punjab Alienation of Land Act, 1900, enjoins that when an instrument is presented for registration, which—

(1) contravenes any provision of the Act, or

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- (2) record, or gives effect to any transaction which requires the sanction of the Deputy Commissioner under the Act, and the instrument is not accompanied by a certified copy of the order, giving such sanction ;

the instrument shall not be registered.

2. To apply the rules properly, registering officers must acquaint themselves with the meaning of the term 'agricultural tribe', as used in the Act. The Punjab Government has by notification decided what persons are members of agricultural tribes and how those tribes are grouped in each district. In each district all the tribes in the same group form, to all intents and purposes, one society between the members of which alienations are not restricted by the Act. A member of a separate group is debarred from giving land to, or receiving land from, a member of another group of agricultural tribes, except as provided in the Act.

Nor are alienations by persons who are not members of agricultural tribes restricted by the Act (except in one instance mentioned below).

3 Therefore when a deed of permanent alienation of land is presented to a registering officer his first business is to consider who the alienor is

If the alienor is not a member of an agricultural tribe the deed may be registered without attention to the question of who the alienee is.

4. When an instrument of permanent alienation of land is presented, if the alienor is a member of an agricultural tribe, then the registering officer should ascertain who the alienee is.

If the alienee is a member of one of the agricultural tribes in the same group in the same district as the alienor, the instrument may be registered without question.

If the alienee is not such a person, the Deputy Commissioner's sanction to the transfer is required, and if no copy of such order is produced, the document should be returned unendorsed under rule 1, with instructions that a copy of

the Deputy Commissioner's order of sanction is required and that the instrument can only be admitted to registration when this defect has been supplied and it has been presented again under rule 2.

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5. When a mortgage deed is presented it is necessary to ascertain who the alienor is. If he is not a member of an agricultural tribe the deed can be registered without question, even although it contains a condition intended to operate by way of conditional sale, for, although such condition would be void under section 10 of the Act, the deed in other respects would not be necessarily invalid.

If the alienor is a member of an agricultural tribe, then, if the alienee is also a member of one of the agricultural tribes in the same group in the same district as the alienor, the deed may be registered without question.

But if the alienor is a member and the alienee is not a member of an agricultural tribe in the same group then the deed should be returned under rule I, unless it is drawn up in one or other of the following forms:--

- (a) in the form of a usufructuary mortgage, by which the mortgagor delivers possession of the land to the mortgagee, and authorises him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on, or if the term agreed on exceeds twenty years) after the expiry of twenty years, the land shall be re-delivered to the mortgagor; or
- (b) in the form of a mortgage without possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Deputy Commissioner to place him in possession for such term, not exceeding twenty years, as the Deputy Commissioner may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and for such sum as may be due to the

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mortgage on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate and for such period as the Deputy Commissioner thinks reasonable ; or

- (c) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant, subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land-revenue in addition to the amount of the land-revenue of the tenancy, and the rates and cesses chargeable thereon, and for such term as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy, and the mortgagee having no right to eject the mortgagor unless on the grounds mentioned in section 39 of the Punjab Tenancy Act, 1887.

When a mortgage deed is returned owing to its not being drawn up in one or other of the above forms, it may be accepted for registration if presented again in amended form under rule 2.

5-A. In accepting or refusing documents purporting merely to enhance the mortgage debt, registering officers should be guided by the following rule issued by the Financial Commissioners in paragraph 29 of Standing Order 1.

In the case of mortgages executed before the passing of the Act, a subsequent increase in the mortgage debt should not ordinarily be treated as causing a new mortgage to which sections 6-9 of the Act (XIII of 1900) would apply, even though a new deed is executed. If, however, the new deed expressly declares that the old mortgage is cancelled or if it contains conditions substantially different from those contained in the old mortgage deed or raises the aggregate mortgage money to a figure in excess of the value of the land, and the Deputy Commissioner thinks it equitable to

use the power conferred on him by section 9 (1) of the Act (XIII of 1900) he is at liberty to do so, but unless the old deed has been cancelled, the Deputy Commissioner has no power to touch it and can only revise the new mortgage. App. IV.

6. When an instrument purporting to alienate or charge produce of land is presented it is necessary to ascertain who the alienor is. If he is a member of an agricultural tribe, then, if the deed purports to alienate or charge the produce for more than one year, the Deputy Commissioner's sanction to the alienation is required, and if no copy of such order of sanction is produced, the deed should be returned under rule 1 with instructions that a copy of the Deputy Commissioner's order of sanction is required before it can be admitted to registration under rule 2.

7. An instrument of lease or farm made by a member of an agricultural tribe should not be refused admission to registration merely because the term of years prescribed in section II of the Act is exceeded in the conditions of the instrument, as the instrument in other respects would not be necessarily invalid.

8. If when an instrument is returned for amendment under rule 1 it is entirely re-written and re-executed so as to form a fresh document which conforms to the form prescribed by the Act, such fresh document may, of course, be admitted to registration under rule 2, just as if it were the original document amended.

9. (a) Delay in registering a document occasioned by the necessity of obtaining any order of a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, should, in the absence of any reason to the contrary, be held by the registering officer to be a delay due to urgent necessity within the meaning, and for the purposes of, sections 25 and 34 of Act XVI of 1908, and in such cases sub-registrars should take the orders of registrars accordingly.

(b) If any delay occasioned by the necessity of obtaining an order of a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, is not due to any default on the part of the person desiring registration, the registrar, in

APP. IV. directing the registration of the document, should, whether he is acting under section 25 or section 34 of Act XVI of 1908, require payment of only a nominal fine. It is obvious that the fine or additional fine should be as nominal as possible, and an order for the payment of an amount of even only one anna in excess of the proper registration fee would satisfy the rule as to fines or additional fines, made under section 60 of Act XVI of 1908 to meet cases of this kind.

10. (a) It is necessary to add that, "permanent alienations" mean sales, exchanges, gifts, wills and grants of occupancy rights.

(b) Also that 'land' means land which is not occupied as the site of any building in a town or village, and is occupied or let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

- (a) the sites of buildings and other structures on such land ;
- (b) a share in the profits of an estate or holding ;
- (c) any dues or any fixed percentage of the land revenue payable by an inferior land-owner to a superior land owner ;
- (d) a right to receive rent ;
- (e) any right to water enjoyed by the owner or occupier of land as such ;
- (f) any occupancy right.



APPENDIX V.

EXTRACTS FROM THE PUNJAB LAND ADMINISTRATION MANUAL

14. The position was at last accepted that the root of the evil was to be found in the inflation of the peasant owner's credit, and that the only hope of checking it lay in lessening his powers of borrowing by imposing legal restrictions on the sale and mortgage of land. This policy was embodied in the Panjab Alienation of Land Act, XIII of 1900, the provisions of which will be noticed presently.

Necessity of restricting credit the basis of Punjab Alienation of Land Act

24 The causes which led to the passing of the Punjab Alienation of Land Act, XIII of 1900, have already been explained. The direct restraints which it has imposed on freedom of transfer have no parallel in the previous revenue history of the Punjab, or indeed of any other Indian province. It must be regarded as a bold experiment demanded by the emergence of a grave social evil. The change which it has effected in the tenure of land in the Panjab is so far reaching that it is expedient to give here a full account of its provisions.

In reaching change effected by Punjab Alienation Act

25. The Act came into force on the 8th of June 1901. It extends to the whole of the Punjab,* but power is given to exempt by notification any area, person, or class of persons wholly or partially from its operation † The only exempted district is Simla, but all municipal and cantonment areas in other districts have been excluded from the operation of the provisions restricting freedom of transfer.‡ The Act has been held to apply to the rights of occupancy tenants as well as to those of landowners§ It classifies alienations as "permanent" and "temporary" The former includes sales, exchanges, gifts, and wills, | the latter mortgages and leases

Scope of the Act

*Section 1 (2)

†Section 24

‡Panjab Government Notification No 111 dated 17th October 1901. The provisions forbidding mortgages by way of conditional sale (Section 10) and sale in execution of decree of land belonging to a member of an agricultural tribe (Section 16) apply to municipal and cantonment areas.

§See Civil Judgment No 11 Panjab Record of February 1904 As to transfers by occupancy tenants see also Chapter V of the Punjab Tenancy Act XVI of 1867

||Section 2 (4) Gifts for a religious or charitable purpose whether made *inter vivos* or by will are not permanent alienations for the purpose of the Act

APP. V.

Usufructuary
and collateral
mortgages.

26. Mortgages are broadly divided into usufructuary and collateral mortgages. In the former the mortgagee takes possession of the mortgaged land, enjoying the rents and profits and paying the land revenue, the difference between the rent and the revenue being regarded as equivalent to the interest on the mortgage debt.* In a collateral mortgage a mortgagor retains possession of the land so long as he pays interest and instalments of principal according to the terms of the mortgage-deed. If he makes default the mortgagee can claim to be put in possession.

"Members of
Agricultural
Tribes," and
"Agricultur-
ists."

27. The provisions of the Act which deal with temporary alienations only recognize two classes of persons—

- (a) those who are, and } members of agricultural
(b) those who are not } tribes.

But those relating to permanent transfer originally introduced a third class described as—

(c) agriculturists.

"Members of
Agricultural
Tribes" —
meaning of
term.

28. The first class consists of persons belonging to the tribes notified as "agricultural" under the powers conferred by Section 4 of the Act, and the second obviously includes all other persons. Subject to the exceptions noted below, the lists of agricultural tribes which have been gazetted† comprise every tribe dependent on the land for support, which owns any considerable area of land in the district under which its name is shown. Sheikhs and Brahmans with certain exception have been excluded for the present even from the list of those districts in which they own much land and cultivate with their own hands, because in many parts of the province they are largely engaged in money-lending and other non-agricultural pursuits.

This was the almost universal form of usufructuary mortgage in the Punjab before the passing of Act XIII of 1900. "Possession" means, of course, possession of the rights of a landlord. The mortgagor was often retained in cultivating possession as tenant-at-will under the mortgagee. For the legal definition of "usufructuary mortgage" see Section 2 (5). It embraces cases in which the rents and profits are appropriated, not only in lieu of interest, but also "in payment of the mortgage money or partly in lieu of interest and partly in payment of the mortgage money."

† Punjab Government Notification No. 63, dated 18th April 1901,

29. The first two groups are in the main natural ones, but the third, or that of "agriculturists," is purely artificial. It embraces most, but not all, members of the first, and some members of the second, group. The term "agriculturist" was defined* as "a person holding agricultural land, who either in his own name or in the name of his ancestor in the male line was recorded as the owner of land or as an occupancy tenant in any estate at the first regular settlement or, if the first regular settlement was made in or since the year 1870, then at the first regular settlement or at such previous settlement as the Local Government may by order in writing determine." It follows that a money-lender who acquired rights in land before the first regular settlement, and was recorded as a landowner or an occupancy tenant in the settlement record then made, was an "agriculturist" for the purposes of the Act.

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"Agriculturists"—members of term.

30. With a few exceptions the first regular settlements of the districts now included in the Punjab were finished between 1840 and 1860. Only three of the districts to which the Act applies were regularly settled after 1870. In the case of Muzaffargarh and Mianwali, advantage has been taken of the permission given in the definition to substitute for the record of the first regular settlement that of an earlier summary settlement as that in which a man's name or that of his ancestor must appear to enable him to claim the status of an "agriculturist."†

In case of Muzaffargarh and Mianwali status determined by entries in records of summary settlements.

31. A person who is not a member of an agricultural tribe can sell his land to whom he pleases, but he cannot purchase land belonging to a member of an agricultural tribe without the sanction of the Deputy Commissioner.‡ Sanction may be given either before or after a deed of sale has been drawn up and possession given. If sanction is refused the sale takes effect as a usufructuary mortgage in the first

Restrictions on sales.

* Section 2 (1).

† Punjab Government Notifications Nos. 98 and 99, dated 23rd August 1901, and No. 157, dated 1st October 1902.

‡ Section 3 (1) and (2).

APP. V. of the three forms described below * for such term not exceeding twenty years and on such conditions as the Deputy Commissioner thinks reasonable. †

A member of an agricultural tribe could under the original provisions of the Act sell his land to—

- (a) any member of his own tribe or of a tribe included in the same group and the same district, or
- (b) to any other person who holds land as an "agriculturist" in the village in which the land is situated. ‡

His powers of purchase are, of course, unrestricted.

All agricultural tribes in each district form a single group.

32. For the present all the agricultural tribes in each district with a few exceptions noted below have been notified as forming a single group. § Members of agricultural tribes have therefore with these exceptions full powers of selling and buying *inter se* within the limits of the district in which they own land. Should this broad system of grouping lead anywhere to the rapid disappropriation of one tribe by another the formation of smaller groups of tribes may become necessary. "By notifications issued on 1st October 1909, Gaur Brahmans in some districts of the Delhi Division, Muhial Brahmans in Jhelum, Brahmans in Rawalpindi and in the Una tahsil of Hoshiarpur district and the Gadhiok Kanungos in Jhelum, have been declared separate groups of agricultural tribes within their respective districts." ||

Powers of "agriculturists" as regards purchase and sale.

33. Under the former provisions of the Act an "agriculturist" who is not a member of an agricultural tribe can sell without restriction any land which he owned before the Act came in force. But if he buys more land from a member of an agricultural tribe, as he is entitled to

* See paragraph 12.

† Section 14.

‡ Section 3 (1).

§ Punjab Government Notifications No. 21 S., dated 22nd May 1901, and No. 114, dated 16th July 1902.

|| Added by F. C's correction slip No. 32-L, A. M., dated Lahore, the 3rd November 1909.

do, in the village in which he already holds land as an " agriculturist " and wishes to re-sell it, he can only do so without the sanction of the Deputy Commissioner when the vendee is either a member of an agricultural tribe or some other person who is an agriculturist in the same village.**

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" 34. The introduction of the statutory agriculturist was done deliberately in order to put money-lenders and others who had been landowners for a long time, in a somewhat better position than more recent purchasers; but their introduction at the same time imported complications into the working of the Act; and it was recognised that the concession undoubtedly involved inequality in the amount of protection afforded in different estates in the same neighbourhood for the classes for whose benefit legislation was undertaken. It was apprehended that in some tracts the inclusion of the statutory agriculturist would in a large measure defeat the object with which the Act was passed.

An amending Act (Punjab Act I of 1907) received the assent of the Viceroy on the 28th of March 1907, by which the statutory agriculturist was abolished and the provisions in regard to permanent alienations were restricted to liberty to alienate in the cases where the alienor is not a member of an agricultural tribe, or where the alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group."

35. The executive order by which a Deputy Commissioner sanctions a sale in no way affects any right which reversioners or others have to contest the validity of the transfer by legal proceedings or to claim pre-emption.†

Order sanctioning sale does not affect rights of reversioners.

36. All that has been said above of sales applies equally to exchanges, gifts, and wills. Death-bed gifts to Brahmans, often known as *dohli*, are not subject to the provisions of the Act. But the amount which can be alienated

Exchanges, gifts, and wills.

** proviso to Section 3 (1) (r).

† Section 5.

APP. V. in this way is limited by custom, and, if it is exceeded, the donor's heir can sue to have the area reduced to what is permissible by tribal law.

37. The following instructions have been issued by the Financial Commissioners with the approval of Government as to the consideration, which should influence a Deputy Commissioner in giving or withholding sanction. He need not concern himself with the possible rights of reversioners or pre-emptors :—

Instructions as to giving or withholding sanction to sales.

- (i) Sanction should not be given unless the Deputy Commissioner is satisfied that the transfer is really advantageous to the vendor and his family. If a zamindar depends entirely or mainly on his land, no alienation should ordinarily be allowed which will reduce the land he retains to less than is required for the support of himself and his family.

NOTE.—The distinction between self-acquired and hereditary property has to be borne in mind. If there is no reason to suppose that the alienee is a mere intermediary intending to re-transfer the land to a money-lender, then, other things being equal, there should be less reluctance to sanction the alienation of self-acquired than of hereditary land.

- (ii) Sanction should be given if the Deputy Commissioner is satisfied that there is no intention of evading the Act when the object of the purchase is to obtain—

- (a) a site for a workshop or factory, for buildings for the accommodation or welfare of persons to be employed in them, for a power installation for working industrial plant, for the offices and out-houses required for the same, or for any other object essential to the conduct of an industrial enterprise the health of persons engaged as labourers or otherwise in connection with such ;

- (b) a building site close to a town or village site.

- (iii) Sanction may be given to an alienation of land—

- (a) by wealthy zamindars owning much land, for commercial reasons or to improve or consolidate their properties; App. V.
- (b) by indebted zamindars owning mortgaged land and desiring to sell a part of their land in order to raise money to redeem the whole or part of the rest;
- (c) proposed or effected in favour of zamindars who, by reason of their insignificant numbers, have not been classed in the particular district as members of agricultural tribes;
- (d) to *bonâ fide* artisans, who are not professional money-lenders. It is desirable to encourage thrifty members of the artisan class to become owners of small plots of land when the alienation is not disadvantageous to the vendor and his family;
- (e) by a member of an agricultural tribe in one Punjab district to a member of the same tribe or group of tribes in another Punjab district. In such a case sanction should usually be given as a matter of course, unless the alienation is clearly contrary to the intention of the Act. These instructions also apply in the case of persons holding land in districts of the other provinces adjoining Punjab districts who, if they had held land in the Punjab districts, would have been deemed to belong to agricultural tribes. To applications for sanction in favour of subjects of Native States adjoining Punjab districts somewhat different considerations apply; and such applications should be dealt with on their merits:

APP. V. Provided that in cases (a) and (b) no member of an agricultural tribe included in the same group as the vendor has offered or is ready to offer a fair price for the land.

Mortgages by way of conditional sale abolished.

38. The only restraint on mortgage which the Act makes generally applicable is contained in its 10th section, which abolishes the form of mortgage by way of conditional sale.

Scope of other restrictions.

39. The other provisions regarding mortgages apply only to those made by members of agricultural tribes in favour of persons who are *not* members of the same tribe or of a tribe in the same group, or in other words, as matters at present stand, in the same district.* When hypothecating his land to such persons a member of an agricultural tribe must choose between three kinds of mortgages. Two of these are usufructuary mortgages, the mortgagee acquiring for the time being the rights of landlord.

Usufructuary mortgage for limited period, usufruct extinguishing principal and interest.

40. The first is a mortgage for a limited period not exceeding twenty years, all the rights of the mortgagor being suspended, and the rents and profits enjoyed by the mortgagee being taken as extinguishing by the end of the term his claim for both principal and interest.† This form of mortgage was not unknown in the Punjab before the Act was passed, but it was rare.‡

Usufructuary mortgage for unlimited period with reservation of right of occupancy.

41. In the second form of usufructuary mortgage the term is subject to no statutory limitation, the mortgagor reserves the rights of an occupancy tenant at such cash rent as may be agreed upon, consisting of—

- (a) the land revenue, plus
- (b) the rates and cesses, plus
- (c) an additional sum not exceeding (a)

and this rent is taken as equivalent to interest. The mortgagor tenant cannot alienate his right of cultivation, and he

* Section 6 (1). No distinction is made between mortgagees who are, and those who are not, "agriculturists."

† Section 6 (1) (a).

‡ In Ambala a mortgage of this description was known as "chakota rahn."

can only be ejected on some ground which would under App. V, Section 39 of the Tenancy Act justify the ejection of an occupancy tenant.* Should he abandon the land or be ejected from it, the mortgage takes effect as one in the first form for such term not exceeding twenty years from the date on which his possession came to an end, and for such a sum of money as the Deputy Commissioner may think reasonable †

42. The third form of mortgage is a collateral one, in which the mortgagor retains all rights of ownership and cultivation, subject, however, to the condition that, if he fails to pay principal and interest in accordance with the terms of the contract, the mortgagee may apply to the Deputy Commissioner to put him in possession of the land. The mortgage then becomes converted into a usufructuary one of the first form for such a term not exceeding twenty years as the Deputy Commissioner thinks reasonable. It is also his duty to determine what the principal of the debt in the case of the new mortgage shall be. This will consist of whatever amount he finds to be due on account of the balance of principal and interest outstanding on the old mortgage. In making up the account the Deputy Commissioner need not accept the rate of interest contracted for, but may award whatever amount of *simple* interest he thinks reasonable.‡

Collateral mortgage.

43. In these statutory mortgages conditions may be inserted limiting the right of a mortgagor or mortgagee in possession to cut, sell, or mortgage trees, or to do any act affecting the permanent value of the land.§ The time in the agricultural year at which a mortgagor who redeems his land may resume possession of it may also be fixed.|| Any conditions not permitted by the Act which are inserted in these mortgages are null and void.¶

Conditions which may be inserted in statutory mortgages.

44. If a member of an agricultural tribe mortgages his land in any unpermitted form, the Deputy Commissioner is authorised to revise the terms so as to bring the transaction

Revision of terms of unauthorized mortgages.

* Section 6 (1) (e).

† Section 6 (2).

‡ Section 6 (1) (b).

§ Section 8 (1) (b).

|| Section 8 (1) (a).

¶ Section 8 (2) See also paragraph 47.

APP. V. into conformity with whichever of the statutory forms the mortgagee appears equitably entitled to claim.* In the case of mortgages by way of conditional sale executed by members of agricultural tribes before the commencement of the Act, the Deputy Commissioner may call on the mortgagee to choose whether he will retain the existing mortgage with the sale condition struck out, or accept in lieu of it a mortgage in the first or third of the forms described above.†

Procedure in suits to enforce unauthorized mortgages.

45. If a suit is instituted in a Civil Court on a mortgage by way of conditional sale or in a form unauthorized by the Act executed by a member of an agricultural tribe, the Court is bound to make a reference to the Deputy Commissioner so that he may exercise the powers referred to in the last two paragraphs.‡

Mortgagor's right of redemption unrestricted.

46. The execution of a mortgage in one of the statutory forms in no way interferes with the mortgagor's right to redeem his land at any time on payment of the mortgage debt, or, in the case of a mortgage in the first or third form, of such porportion of the mortgage debt as the Deputy Commissioner determines to be still due.§

Question whether statutory mortgages will come into use.

47. Experience alone will prove whether any of these statutory forms of mortgage will come into common use. The Local Government has power to permit any other form of mortgage to be used by members of agricultural tribes, and to the conditions admissible in the forms permitted by the Act.||

Leases.

48. It would be easy to evade the provisions regarding mortgages which have just been described by making transfers for long periods in the form of leases. Accordingly the term of leases made by members of agricultural tribes in favour of persons who are not members of the same tribe or a tribe in the same group has been limited to twenty years at the outside.¶

* Section 9 (1).

† Section 9 (2).

‡ Section 9 (3).

§ Section 7 (3).

|| Sections 6 (1) (d) and 8 (1) (c).

¶ Section 11.

49. The object of the Act would also be defeated if, during the currency of a mortgage or lease for a term limited by law to twenty years, the mortgagor or lessor were free to extend the period by executing a fresh transfer. If the alienation already effected is for twenty years, no further transfer by way either of mortgage or of lease is permitted; if it is for less, a further mortgage or lease is allowed for such a number of years as will bring the whole period of transfer up to twenty years.*

APP. V.
Restriction
on extensions
of mortgages
and leases.

50. Another device for evading the Act had also to be guarded against. There is little difference in effect between a mortgage of land and a mortgage of its produce. Members of agricultural tribes are therefore forbidden to alienate or charge the produce or any part of the produce of their land for a period exceeding a year without the sanction of the Deputy Commissioner.† There is no interference with borrowing on the security of the next two harvests. The period of one year will as a rule cover contracts made by landowners with the agents of large firms engaged in the wheat and oil-seed export trade. Such dealings have been of great benefit to the *zamindars* in many parts of the country, and, if engagements of the sort for a period exceeding one year come before a Deputy Commissioner, he need feel no hesitation about sanctioning them‡

Restriction on
hypothecation
of crops.

51. The sale of agricultural land in execution of decree has always been subject to severe restrictions in the Punjab. At first the sanction of Commissioners was sufficient. In 1859 that of the Judicial Commissioner was required when the property was ancestral and not acquired. Afterwards the Financial Commissioner became the authority to whom sale proposals had to be submitted.§ The direct result of

sale in execu-
tion of decree.

* Section 12 (1).

† Section 15. For definition of "product" see the explanation appended to the section.

‡ See paragraph 25 of Financial Commissioner's Circular letter No. 3441, dated 5th June 1901. For procedure connected with the Alienation of Land Act see paragraph 30 of that letter and the three notifications there referred to.

§ See rules under Section 327 of the Civil Procedure Code issued with Punjab Government Notification No. 1297 S, dated 10th September 1885 Appendix (I). These rules apply to all land "applied to agricultural or pastoral purposes," and are still in force notwithstanding the provisions of Section 16 of Act XIII of 1900, referred to below.

APP. V. these rules was that sales in execution were almost unknown; the indirect, that loans without the security of a mortgage on the debtor's land were discouraged. The same Act which has put restrictions on mortgages has forbidden the sale in execution of decree of land belonging to a member of an agricultural tribe.* The provisions of Section 326 of the Civil Procedure Code have therefore ceased to be of much practical importance so far as the Punjab is concerned.† Orders issued by any court for the attachment, sale, or delivery of land or interest in land, or for the attachment or sale of produce, must be executed by the Collector or some revenue officer appointed by him.‡ The rules on the subject will be found in Appendix I.

* Section 16.

† As to Section 326 of the Civil Procedure Code see "Instructions to Judicial Officers," Section XXI, paragraphs 12—14, and "Rules and Orders," V. G. For appeals from orders passed by revenue officers in exercise of the authority conferred by the Civil Court under Section 326 see Punjab Government Notification No. 186, dated 23rd September 1895 (Appendix 1).

‡ Section 141 of Act XVII of 1887.



APPENDIX VI.

EXTRACTS FROM THE PUNJAB PRE-EMPTION ACT, No. 1 OF 1913.

THE PUNJAB PRE-EMPTION ACT OF 1913, ACT No. 1 OF 1913.

An act to amend the law relating to pre-emption in the Punjab.

(Received the assent of the Governor-General in Council on March 1st, 1913, and first published in the Punjab Government Gazette on March 14th, 1913).

Whereas it is expedient to amend the law relating to pre-emption in the Punjab;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Punjab Pre-emption Act, 1913.

(2) It extends to the Punjab.

9 Notwithstanding anything in this Act, a right of pre-emption shall not exist in respect of any sale made by or to the Government or by or to any local authority or to any company under the provisions of Part VII of the Land Acquisition Act, 1894, or in respect of any sale sanctioned by the Deputy Commissioner under section 3 (2) of the Punjab Alienation of Land Act, 1900.

14. No person other than a person who was at the date of sale a member of an agricultural tribe in the same group of agricultural tribes as the vendor shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe.

23. No decree shall be granted in a suit for pre-emption in respect of the sale of agricultural land until the plaintiff has satisfied the Court.—

(a) that the sale, in respect of which pre-emption is claimed, is not in contravention of the Punjab Alienation of Land Act, 1900 ; and

APP. VI.

(b) that he is not debarred by the provisions of section 14 of this Act from exercising the right of pre-emption.

24. In a suit for pre-emption in respect of a sale of agricultural land, if the Court finds that the sale is in contravention of the Punjab Alienation of Land Act, 1900, the Court shall dismiss the suit.

29. (1) The Court shall send to the Deputy Commissioner a copy of every original decree granting pre-emption, other than a decree granting pre-emption in respect of a building or site of a building in a town or sub-division of a town, and the Deputy Commissioner may, within two months from the date of the receipt of such copy, apply to the Court to which the appeal in the pre-emption suit would lie, or, if no appeal lies, to the Divisional Court, for revision of the decree on the ground that the decision of the Court of first instance is contrary to the provisions of the Punjab Alienation of Land Act, 1900.

(2) No stamp shall be required upon such application, and the provisions of the Code of Civil Procedure as regards appeals shall apply, as far as may be, to the procedure of the Appellate Court on receipt of such application.

(3) No appearance by, or on behalf of, the Deputy Commissioner shall be deemed necessary for the disposal of the application.

APPENDIX VII A.

Statement of Objects and Reasons.

The object of this measure is to place restrictions on the transfer of agricultural land in the Punjab with a view to checking its alienation from the agricultural to the non-agricultural classes.

The expropriation of the hereditary agriculturist in many parts of the Province through the machinery of unrestricted sale and mortgage has been regarded for years past as a serious political danger. It is recognized that the danger is accompanied with bad economic results, that it is increasing and that, if not arrested, it will grow to formidable dimensions. It is also recognized that the idea of a free transferable interest in land, which is at the root of the trouble, is of comparatively modern origin and is contrary both to the existing practice in most Native States and to the traditions and sentiment—if no longer to the practice—of the people of the Punjab. After the most careful consideration of the subject in communication with the Local Government and Her Majesty's Secretary of State, the Government of India have come to the conclusion that direct remedial measures must be undertaken.

The Bill extends to the whole Province, but power is taken—see clause 15—to exempt any district or part of a district or any person or class of persons from the operation of any or all of its provisions.

To every permanent alienation of agricultural land the sanction of a Revenue Officer is made necessary by clause 3, read with clause 10, of the Bill. Such sanction is to be given as a matter of right where the alienor is not a member of an agricultural tribe, or where a member of an agricultural tribe alienates to an agriculturist in the same village, or to another member of his own tribe residing in the district. In any other case inquiry is to be made by a Revenue Officer not lower in rank than a Deputy Commissioner, into the circumstances of the proposed alienation, and sanction will be given or refused by the officer at his discretion, guided, however, by rules made by the Local Government under

APP. VII A clause 16, and a single appeal is, under clause 14, to lie from his decision. The Local Government, with the previous sanction of the Governor-General in Council, will, under clause 4, define for each district its " agricultural tribe " and may in this connection give to the term " district " an enlarged or restricted significance—see clause 2 (2).

Clause 6 of the Bill is intended to reduce temporary alienations of agricultural land to two forms of mortgage; (1) a usufructuary mortgage for not more than fifteen years, after which the mortgage is to be extinguished and the land is to revert to owner; (2) a mortgage without possession, convertible into a usufructuary mortgage for a period not exceeding fifteen years. During the currency of a mortgage or lease, the debtor is, under clause 8, to be barred from entering into a further mortgage or lease, and under clause 9, he may, on the expiry of the term of the mortgage or lease, be put into possession of his land by the Revenue Officer. Clause 12 will prohibit the sale of agricultural land in execution of an existing or future decree of the Civil Courts.

Mortgages by way of conditional sale (*bai bil wafa*), whether made before or after the commencement of the Act are to be void—see clause 6 (2). It is considered that the claims of a creditor will be sufficiently met by power being given to the Revenue Officer to convert such a mortgage, on the application of the mortgagor or mortgagee, into a usufructuary one.

Lastly, the practice of hypothecating the produce, or any part of the produce, of agricultural land by an agriculturist will be forbidden by clause 11.

The 26th September 1899.

C. M. RIVAZ

J. M. MACPHERSON,
Secretary to the Government of India.

APPENDIX VII B.

Speech by the Hon'ble Mr. Rivaz introducing
the Bill.

The Hon'ble Mr. Rivaz moved for leave to introduce a Bill to amend the law relating to agricultural land in the Punjab. He said :—" Before asking leave to introduce the Bill for amending the law relating to agricultural land in the Punjab, I am afraid that I must tax the patience of the Council by giving, at some little length, a historical retrospect of the case before us. I will endeavour, however, to be as brief as possible.

" The question of the indebtedness of the agricultural classes in different parts of India has attracted the notice of Government from the early times of British rule, and various schemes have been proposed, from time to time, with the object of protecting land-holders from the effects of debt and the consequent loss of their lands. But, so far as I have been able to ascertain, Mr. Justice West, of the Bombay High Court, was the first, in a pamphlet entitled *the Land and the Law in India*, which he published in 1872, to formulate a plan for imposing some definite limitations on the power to alienate land. The theory he propounded was that, although the British Government had, for the most part, divested itself of that exclusive ownership in land which had been recognized as existing under native rule, still it had retained a right of protective ownership; and that, as experience had proved that the principle of free trade in land, which had been allowed to spring up, was not adapted to the present condition of the agricultural population of India, the Government ought, in the exercise of its protective right, to impose limitations on the further application of this principle, and to pronounce all land to be inalienable except with its assent. His proposed scheme, broadly, was that the power of assent should be delegated to Collectors of districts or other local officers, and that only excess land, above what was necessary for the comfortable maintenance of an agriculturist and his family, should be allowed to be alienated, or be liable to attachment and sale in execution of decrees.

APP. VII B " In 1875, in consequence of agrarian riots in the Bombay Deccan, a Commission was appointed to enquire into the condition of the agricultural population of that part of India. The result of these enquiries was the passing of the Deccan Agriculturists' Relief Act in 1879, by which the ordinary civil law in four of the Bombay Deccan districts was, in many respects, amended in favour of agricultural debtors.

" In 1881, legislation was undertaken for the relief of large land-holders in Sindh and in the Broach and Kaira Districts of the Bombay Presidency, and in 1882, for the relief of encumbered estates in the Jhansi Division of the North-Western Provinces. A main feature of all these enactments was that, while the estate remained under Government management, the indebted owner was debarred from alienating any portion of it.

" The question of agricultural indebtedness was included by the Famine Commission of 1878 in the scope of their enquiries, and in their report they expressed their views on the desirability of protecting agricultural debtors, among other means of relief, by imposing restrictions on land transfers.

" In 1886, Mr. Thorburn, now Financial Commissioner of the Punjab, then a District Officer in that Province, wrote a book on the indebtedness of the Muhammadan land-holders of the Western Punjab, entitled *Mussalmans and Money-lenders in the Punjab*, which attracted the notice of the Secretary of State for India, and on which he asked for the views of the Government of India. In this book, Mr. Thorburn recommended, among other measures of relief, that it should be made illegal in the west of the Punjab for any person deriving profits from a shop or from money-lending to acquire any interest in land, except (1) in arable or pasture land in the immediate vicinity of a town or large village, or (2) in manured and irrigated land elsewhere. The then Lieutenant-Governor of the Punjab, Sir James Lyall, in expressing his views on Mr. Thorburn's proposals, said, as regards the particular recommendation which I have just mentioned, that he was disposed to

think that it would probably be necessary to take steps to check the alienation of lands to money-lending classes in the Punjab, but that the remedy suggested by Mr. Thorburn, namely, to make it illegal for the moneyed classes to acquire lands, other than those of two highly artificial descriptions, seemed to him to be impracticable.

"In 1891 a Commission was appointed to report on the working of the Deccan Agriculturists' Relief Act of 1879, and on the desirability of extending a similar measure to other Provinces. The Government of India, in forwarding this Commission's Report to the Secretary of State in 1894, together with a draft Bill to provide for the relief of the agricultural classes, in which certain changes proposed by the Commission in the Deccan Act had been incorporated, remarked that such legislation would however, only partially meet the difficulties connected with the general problem of agricultural indebtedness; that remedies of an entirely different kind, including measures for further restricting the right of land transfer seemed indispensable; and that this part of the subject would be separately and carefully considered.

"Accordingly a Circular was addressed to Local Governments in October, 1895 in which it was said that the Government of India were distinctly of opinion that some action in the direction of restriction upon the alienability of land was generally advisable, and even necessary, though the manner and degrees of the restriction must vary from Province to Province. Each Local Government and Administration was requested to take the subject into its most careful consideration, and to communicate its matured views and definite proposals for action in the direction indicated. Two Notes accompanied the Circular, in which the whole subject of Agricultural Indebtedness in India and the various possible remedies for checking transfers of land were exhaustively explained and discussed.

"On receipt of the replies to this Circular, it was decided to deal first with the Punjab, as being the Province where the question of agricultural indebtedness was of

APP. VII B special importance in its political aspect, and where it was probably possible to go further than elsewhere in respect of imposing direct restrictions on land transfers. The reply from the Punjab had been to the following effect:—'The Lieutenant-Governor, Sir Denni. Fitzpatrick, recognized that a point might be reached at which the amount of land alienated, and the number of proprietors reduced to the condition of tenants or labourers, would constitute a political danger of formidable dimensions, and that where this danger point was reached, the only remedy was to attack the evil at the root by imposing direct restrictions on alienation—for instance, by prohibiting land-owners of specified castes or tribes from alienating their ancestral lands, without official sanction, beyond their life-time or for a fixed period, to any person not belonging to those castes or tribes.' While this case was under consideration a special enquiry, the results of which were highly interesting and instructive, had been made by Mr Thorburn, the Commissioner of the Rawalpindi Division, regarding the indebtedness of the agricultural classes and the amount of land alienations in four assessment circles of that portion of the Punjab; and Sir Dennis Fitzpatrick came to the conclusion that in one at least of these circles a case for legislation had been made out. He was, however, strongly opposed to a law of general application to the whole Province and did not propose to go further than to take power by law to apply restrictions on transfer to any particular tract in which a full enquiry might show that they were required.

"Both the Financial Commissioners of the Punjab, on the other hand, expressed a decided opinion in favour of restrictive measures of general application, and suggested that all permanent transfers of ancestral land ought to be prohibited unless sanctioned by the Revenue-Officer, while temporary transfers ought to be limited to 15 years, the land reverting to the alienor at the end of this period free of all encumbrances. A majority of the Judges of the Chief Court were also in favour of imposing direct restrictions on alienations. My Hon'ble friend Mr. Justice Chatterjee, after discussing the question in an able paper and pointing out

that the customary law of the Punjab enables heirs to set aside many alienations, went on to say that he considered that the great recommendation of a measure directly restricting alienations would be that it would exactly define the limits of the land-holders' power of alienation, and would thus have a beneficial effect in checking litigation. He thought that the restriction to life or to 15 years of a land-owner's power of alienating his ancestral land would be regarded by the bulk of the land-holding class as consistent with the traditions of the Province, and would be agreeable to them. It is not clear, however, whether the Judges advocated a general enactment on these lines, or merely an enabling one, as recommended by Sir Dennis Fitzpatrick.

"The Government of India, in communicating to the Punjab Government, the opinion which they had formed on the evidence and recommendations contained in Sir Dennis Fitzpatrick's minutes and in the reports of Judicial and Revenue Officers of the Punjab, expressed their belief that partial legislation would fail in its object and would produce more difficulty and jealousy than legislation of a general character. It was said that a strong case seemed to have been made out for prohibiting all permanent alienations of agricultural land, except with the sanction of some duly empowered Revenue-Officer, and for restricting temporary alienations to the term of the alienor's life, or with the consent of his heirs to a maximum period of 15 years. In inviting the Punjab Government to consider these proposals, it was suggested that the quickest and easiest way of dealing with them would be to have them discussed by a Committee of selected officers.

"Accordingly the Lieutenant-Governor, Sir Mackworth Young, circulated, to selected officials and non-officials, a series of questions framed on the proposals of the Government of India, and followed this up by convening a strong Committee of Revenue Officers, over which His Honour himself presided. The recommendations made by this Committee were that any permanent alienation of agricultural land to a non-agriculturist, if made without the sanction of the Deputy Commissioner of the district, should be

APR VII B void, but that otherwise there should be no restriction on sales or other permanent transfers; that the definition of an 'agriculturist' should be 'any person who either in his own name, or in the name of an agnate ancestor, was recorded as an owner of land or as a hereditary tenant in any estate at the first regular settlement' and that of 'land' as in the Punjab Tenancy Act, that is, all agricultural and pastoral land, whether ancestral or self-acquired; that the only forms of temporary alienations to be allowed in future should be (1) usufructuary mortgage, with delivery of possession to the mortgagee, for a maximum period of 20 years and on condition that at the end of the period of mortgage the mortgaged land shall revert to the mortgagor or his successor in interest with the mortgage debt extinguished; (2) simple mortgage which, in certain circumstances, may be converted into a usufructuary mortgage of the nature I have just mentioned; and (3) leases for 20 years, or for the life of the lessor, whichever is less; that the form of mortgage which is conditional sale be declared illegal with retrospective effect; and that the hypothecation of a share of the produce of land should be prohibited for any term exceeding a year. The Committee proposed to make their suggested restrictions on alienations general throughout the Punjab, but to give power to the Local Government to exempt any district or part of a district or any person or class of persons from the operation of the restrictions in whole or in part. They also proposed to amend the existing law of pre-emption in the Punjab, to revise the present order of priority of pre-emption which is laid down in section 12 of the Punjab Laws Act so as to exclude strangers who have bought into the village, and to transfer the hearing of pre-emption cases, both as regards the fixation of the pre-emption prices and questions of title, from the Civil Courts to Revenue Officers.

" These proposals of the Punjab Committee constitute the foundation of the scheme which is embodied in the Bill which I am introducing. They have, as I shall explain, been modified in some particulars, but such modifications have been made with the sole object of securing more effect-

ually the intentions of the Committee, and do not affect any question of principle. I turn first to the restrictions to be imposed on sales and other permanent transfers. It appeared to us that the proposal made by the Punjab Committee, that alienations between 'agriculturists' should continue to be free from all restrictions was open to objection. In the first place, the definition of 'agriculturist' which has been framed by the Committee, or indeed any other practicable definition of the term, must necessarily include numerous classes of persons who, although land-holders since the early years of British rule or even prior thereto, are in reality primarily traders and money-lenders by nature and profession, and not true agriculturists in any proper sense of the term. Moreover, since even the *bona fide* agriculturist is not infrequently also a money-lender, we think it desirable to retain power to prevent such men from buying up land in a village where they would come in as outsiders and constitute a foreign element in the village community. We recognize, however, that we must guard against unduly narrowing the market for free sales, and we propose to attain this object by the following means. On the analogy of section 45 of the Central Provinces Tenancy Act of last year, we are providing that all permanent transfers must receive the previous sanction of a Revenue-Officer, but that sanction shall be given, as a matter of right, in cases in which the Revenue Officer is satisfied that the intending transferor is a person who is not a member of an agricultural tribe, or, in cases where the transferor is a member of an agricultural tribe, that the transfer is either to an agriculturist (as defined by the Punjab Committee) holding land as a proprietor or occupancy tenant in the village in which the land sold or otherwise permanently alienated is situated, or to another member of the same agricultural tribe residing in the same district. Our scheme is thus based in this respect on the feeling in favour of the prior rights of the village community and on the recognition of the principle of tribal organization which are well-known powerful factors in the social economy of the agricultural classes of the Punjab. To prevent difficulties or inequalities in the application of this portion of

APP. VII B our scheme, power is being given to the Local Government to specify by notification what are the agricultural tribes in each district, and to extend the definition of 'district' in any particular case beyond the ordinary limits of the revenue district.

" Next as regards temporary alienations, while we accept the conclusions of the Punjab Committee that only the two forms of mortgage proposed shall in future be allowed ; that existing mortgages by way of conditional sale shall be void ; and that leases shall be limited to a fixed term, we have reduced the maximum period of temporary alienation from 20 years, as proposed by the Punjab Committee to 15 years. We are providing that any person who has made a permissible mortgage or lease shall be debarred from making any further alienation of his land during the currency of such mortgage or lease, but, after careful consideration, we have decided not to impose any further restriction on temporary transfers, whether by proscribing an interval between two successive mortgages or leases, or by making the alienor retain a right of cultivation in the alienated land, his rent being fixed by authority, or by prohibiting the mortgage or lease of more than a certain portion of a holding. We are also providing that any permanent alienation made without the required sanction shall take effect as a usufructuary mortgage on the conditions prescribed for such mortgages, and that existing conditional sales and future unauthorized mortgages shall be treated in like manner.

" We have accepted the proposal of the Punjab Committee in regard to prohibiting hypothecations of produce.

" We are supplementing our proposed restrictions on voluntary alienations by abolishing the sale of all agricultural or pastoral land in execution of any decree or order. Under the present practice sale of such land in the Punjab in execution of a decree requires, in the case of ancestral land, the sanction of the Financial Commissioner, and, in the case of other land, the sanction of the Commissioner of the Division. Such sanction is very seldom given : still, as the allowance or disallowance of sales depends on the individual judgment of the Financial Commissioner, or the Divisional

Commissioner, as the case may be, an undesirable element of uncertainty is thus introduced which it is advisable to remove. Moreover, under our proposed restrictions on mortgages, land could in future only be sold in execution of decrees for unsecured debts, and not for debts secured by a usufructuary mortgage. We, therefore, considered that sales of agricultural or pastoral land in execution of decree of the Civil Courts should in future be absolutely prohibited in the Punjab.

"As regards amending the law of pre-emption in the Punjab, we agree with the Punjab Committee that an amendment of the present law on the lines they mention is desirable, and will be a useful adjunct to our scheme for restricting land alienations. We propose to deal with this matter separately—after further consulting the Punjab Government—either by revising the present pre-emption sections of the Punjab Law Act, or by cancelling those sections and framing a new enactment.

"On the all-important question, whether the proposed Act shall be an enabling Act or a measure of general application, the Government of India adhere most decidedly to the opinion which they expressed, as I have mentioned in addressing the Punjab Government in favour of an enactment of general application. It seems to us self-evident that, if any restrictive scheme is to be worked in the partial manner which was so strongly advocated by Sir Dennis Fitzpatrick, it is inevitably doomed to failure. In the first place, the remedy would not be tried till the disease was very largely beyond cure; and in the second place, if the restrictive measures were confined to scattered tracts throughout the Province, the agricultural population in those tracts would be placed at a very serious disadvantage. Their credit would be injuriously impaired, for the money-lenders, while able to look to the land for their security everywhere outside these special areas, would naturally avoid lending to men who were prohibited from giving such security. The agriculturists in these areas would thus stand apart as a proscribed class and would naturally resent their position. If, on the other hand, the restrictive scheme be

APP. VII B made of general application, there is no reason to suppose that the credit of the general agricultural community will be materially impaired—not more so, at any rate, than is desirable in their own interests. Take, for instance the case of the occupancy tenants of Upper India. Alike in the Punjab, the North Western Province, Oudh and the Central Provinces, the occupancy tenant is very materially restricted in his powers of alienation, still it is a well-known fact that this class of agriculturists, as a body, is prosperous, and can obtain accommodation from money-lenders on much the same terms as small proprietors. The fact is that the money-lender must continue to exercise his profession, and the agricultural community must, under the rural conditions of this country, continue to constitute his principal clientele. The money lender plays a most useful, and even necessary, part in the social economy of village life and no one wishes to eliminate him or to place unreasonable restrictions upon his transactions. If our proposed scheme is made of general application, he will have to adapt himself to the new conditions, and will be easily able to do so. If, on the other hand, the scheme is applied only to selected and scattered areas, the money-lender will clearly be master of the situation as regards such localities.

“Such is the plan which the Government of India put forward with the object of checking the transfer of land from the agricultural classes in the Punjab. It certainly goes further in imposing direct restrictions on alienations than has hitherto been attempted in other parts of India, but the circumstances of the Province with which we are dealing are quite special, and I trust I have shown, although I fear at tedious length, that our scheme is the outcome of very careful investigation and deliberation.

“After all, it must be borne in mind that we are aiming at reverting to some extent to a state of things which prevailed in the Punjab before it came under British rule. It is an arguable question whether the right of free transfer of land was recognized under Native rule, or whether it is what has been called the ‘fatal gift’ of the British Government, but, in any case, the question is, for

practical purposes one of mere academic interest; for it is an undisputed fact that in former times the exercise of the right of transfer, at all events, in favour of money-lenders and other outsiders, even allowing that such right did exist in theory, was, for several reasons, exceedingly rare, and we know that even in these days in most Native States alienations of land are either absolutely prohibited or largely restricted. We know, too, that in the Punjab the custom of transferring land did not gain a footing for several years after the annexation of the Province, but that, as land has increased in value and become more attractive as a profitable investment, the number of transfers has increased correspondingly and is still increasing. In a letter addressed by the Punjab Government to the Government of India in 1888, during the Lieutenant Governorship of Sir James Lyall, it was said that 'after allowing for the greater accuracy of the statistics of latter years, Sir James Lyall considers that the statements of sales and mortgages from 1866 to 1886 show a large gradual increase in the area sold and mortgaged in the Punjab,' and that 'in both the east and west of the Province there are districts where the transfers to money-lenders are serious and appear to be increasing, and where the fact requires Government to consider if a remedy cannot be found and applied'. In the following year His Honour the present Lieutenant-Governor, then Financial Commissioner, recorded his opinion that 'the only safe conclusion is that there is year by year a gradually increasing amount of land being sold and mortgaged.' These opinions have been confirmed as districts have come under settlement during the past ten years, and the question of transfers has been specially investigated by the Settlement Officers, while the enquiries made by Mr. Thorburn in 1895, to which I have already alluded, showed that in one out of the four circles with which he dealt, the amount of the cultivated area which had been purchased or was held in usufructuary mortgage by money-lenders was as much as 28 per cent., while in another circle it was 20 per cent. These facts speak for them-

APP. VII B selves. The Punjab is pre-eminently a land of yeoman and peasant proprietors, and the expropriation by the money-lending classes of these sturdy land-holders—men who furnish the flower of the Native Army of India, and who look forward, amid all the hardships and glories of a military career, to spend their declining years on their ancestral acres—has, under the influence of conditions which have sprung up under British rule, been progressing, as I have shown, in different degrees of rapidity in all parts of the Province. The sole and entire object of the measure which I have been explaining is, while affording ample facilities and a sufficient market for unobjectionable transfers, to arrest the further progress of this mischief and to check, by remedial action, an ever-increasing political danger; and I venture to express a confident hope that our scheme will be received in this spirit by those in whose interests it has been devised."



APPENDIX VII. C.

Report of the Select Committee on the Bill to amend the Law relating to Agricultural Land in the Punjab.

WE, the undersigned Members of the Select Committee to which the Bill to amend the law relating to agricultural land in the Punjab was referred, have considered the Bill and have now the honour to submit this our Preliminary Report with the Bill as amended by us annexed thereto.

2 *Clause 1.*—We have provided that the Act is to come into force on such day as the Governor-General in Council may, by notification in the Gazette of India, direct.

3. *Clause 2.*—We have expanded the definition of "agriculturist" by empowering the Local Government to determine the question of status by reference to an earlier settlement when the first Regular Settlement has been made in or since the year 1870. We have also provided that where a Civil Court or other competent authority has given a decision which involves a rectification of the settlement, the definition is to be construed with due regard to such decision. We have also empowered the Local Government to restrict, as well as to extend this definition. Our hon'ble colleague, Sir Harnam Singh, for reasons which are stated in his separate minute, proposed to widen this definition, but we were unable to accept his opinion on the point.

We have provided that all expressions which are defined in the Punjab Tenancy Act, 1887, or in the Punjab Land-Revenue Act, 1887, shall, subject to the provisions of this Act, have the meanings assigned to them in these Acts, respectively.

We have expanded the definition of "land" so as to include a share in the profits of an estate or holding, any dues or percentage of land-revenue payable by an inferior landowner to a superior landowner, a right to receive rent and any right to water enjoyed by the owner or occupier of land as such. We have also thought it expedient to define the expressions "permanent alienation" and "usufructuary mortgage." Our definition of a usufructuary mortgage is

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App. VII C substantially identical with the definition in section 58 of the Transfer of Property Act 1882.

4. *Clause 3.*—In this clause we have amended sub-clause (a) by providing that a person purchasing land as an agriculturist must actually hold land as such in the village, and we have added a proviso which will restrain a person acquiring land under the same clause from alienating without sanction, unless the alienee is a member of an agricultural tribe or an agriculturist holding land in the village. We have further amended sub-clause (1) of this clause by dispensing with the sanction of the Revenue Officer in the cases where it was proposed that such sanction should be given as a matter of course.

In sub-clause (2) of the same clause we propose to enact that a permanent alienation of land shall not take effect as such until the required sanction is given, and we propose to add words which make it clear that the sanction may be given after the act of alienation is otherwise completed.

5. *Clause 4.*—In this clause we have widened the power which it is proposed to confer on the Local Government by enabling it to group districts and tribes for the purposes of the Act.

6. *Clause 5.*—In this clause we think it desirable to extend the saving for rights of pre-emption to reversionary rights and to questions of title generally.

7. *Clause 8.*—In this clause, which provides for the forms of mortgage to be used by members of agricultural tribes raising money on the security of their land, we have recast the opening sentence and we have also redrafted form (b) and have added a new form (c) by which the mortgagor may recognise the mortgagee as a landlord within the meaning of the Tenancy Act, while himself remaining in cultivating occupancy. We think it possible that it may be found necessary to provide additional forms of mortgage, and we have, therefore, added a new clause (d) which enables the Local Government by general or special order to authorize the making of such forms not expressly set forth in the Act.

8. *Clauses 7 and 8.*—It is in our opinion expedient APP. VIII that the rules which apply to mortgages under clause 6 and the conditions which may be inserted in such mortgages should be prescribed in the Act. We have, therefore, inserted a new clause, numbered 7, which provides (1) that while the mortgagee remains in possession no interest shall accrue on the mortgage-debt; (2) that in the case of mortgages in form (a) or form (b) the mortgage-debt shall be extinguished at the end of the term for which possession is given; (3) that the mortgagor may redeem his land at any time; and (4) that in the case of an usufructuary mortgage the mortgagor shall not be deemed to bind himself personally to repay the mortgage-money. The effect of the last-mentioned rule will be that the creditor will have no security for principal or interest beyond the rent or profits of the land for the term of possession permitted by the Act. The new clause, numbered 8, provides for the conditions which may be inserted in mortgages by agreement between the parties. It is not easy to include all the conditions which parties may legitimately desire to insert in any general description. We, therefore, propose to enact that, in addition to the specific conditions mentioned in the clause, any condition may be inserted which the Local Government, by general or special order, may declare to be admissible.

9. *Clause 9.*—This new clause empowers the Deputy Commissioner to revise and alter the terms of a mortgage which is not in accordance with the provisions of the Act. In one case we propose that this power shall be retrospective. When a member of an agricultural tribe has mortgaged his land by way of conditional sale, we are of opinion that the condition is mischievous in itself and at variance with the policy of the existing law of the Punjab. We propose that in such a case the Deputy Commissioner shall have power to put the mortgagee to his election, whether he will retain his mortgage in form (a) or in form (b), with the condition struck out or accept in lieu thereof a mortgage as permitted by clause 6.

If a suit is instituted in a Civil Court on any mortgage to which this clause applies, we propose to direct the Court

APP. VII C to refer the case to the Deputy Commissioner with a view to the exercise of his power of revision.

10. *Clause 10.*—This clause provides that in future mortgages of agricultural land, whether made by members of agricultural tribes or others, any condition which is intended to operate by way of conditional sale shall be void.

11. *Clause 11.*—In clause 11 (being clause 7 of the Bill as referred) we have amended the restrictions on leases by limiting them to cases in which a member of an agricultural tribe is making a lease to a person not a member of the same tribe or of a tribe in the same group. We have, in deference to the opinion of the local officers consulted, struck out the words “if the lessor shall so long live.” We have also added the words “or farm” in order to make it clear that the clause extends to arrangements, which are, we believe, common in parts of the Punjab, by which a person is placed in management of the land of another on an undertaking to hand over the rent or fixed portion of the rent to the owner.

12. *Clause 12.*—In clause 12 (formerly clause 8) we propose to enact that a person who has made a mortgage or lease as permitted by the Act may make a further temporary alienation of his land, provided that he does not exceed the full term of twenty years as permitted by the foregoing clauses.

13. *Clauses 13.*—We have altered the language of the clause (formerly clause 9) so as to give effect to the alterations which we propose to make in previous clauses.

14. *Clause 14.*—We have re-drafted this clause (formerly clause 10) but have made no substantial change in its provisions.

15. *Clause 15.*—By clause 11 of the Bill as referred it was proposed to enact that any agreement by which an agriculturist hypothecates the produce of his land should be void. We think the proposed enactment went further than was necessary, and we have altered the clause (now numbered 15) so as to provide that such an agreement shall not

take effect for more than one year unless it is sanctioned by a Deputy Commissioner. App. VII C

16. *Clause 16.*—We have retained the substance of clause 12 in this clause, restricting its operation to land which belongs to a member of an agricultural tribe. We have added a new sub-clause which preserves the right of Government to recover arrears of land revenue and dues which are recoverable as such arrears in any manner now permitted by law.

17. *Clause 17.*—We have in this clause retained the substance of clause 13, but we have somewhat amplified the language of its provisions.

18. *Clauses 18 and 19.*—We propose to insert a new clause 18 providing that transactions which require the sanction of a Revenue Officer shall not be entered in the record-of-rights or in the annual record under the provisions of the Punjab Land Revenue Act, 1887, until proof of such sanction is produced, and that no right claimed by reason of a transaction or condition declared by the Act to be null and void shall be entered in the record-of-rights or the annual record. By clause 19, which is also new, we propose to apply the provisions of Chapter II of that Act to the proceedings of Revenue Officers under this Act. The chapter in question provides among other matters for appeals, and clause 14 of the Bill as referred may therefore be dispensed with. We have omitted it accordingly.

19. *Clause 20.*—By this new clause we propose to direct that no legal practitioner shall appear on behalf of parties interested in proceedings under the Act. The object of the Act is to confer discretionary powers upon Revenue Officers for the protection of a certain class of land-owners, and we think that the reasons for and against the exercise of such powers may be adequately stated by the parties without the assistance of professional lawyers.

20. *Clause 21.*—This new clause is modelled on section 158 of the Punjab Land Revenue Act, 1887, and provides

Art. VIII that the Civil Courts shall not exercise jurisdiction in matters which the Local Government or a Revenue Officer is empowered by the Act to dispose of.

21. *Clause 22.*—This new clause provides that suits to determine the rent to be paid under a mortgage made in form (a) as permitted by clause 6 shall be tried in the same manner as the suits mentioned in the first group of section 77 of the Punjab Tenancy Act, 1887.

22. *Clause 23.*—This clause which is new, indicates the Revenue Officers by whom the powers given by the Act may be exercised.

23. *Clause 24 and 25.*—These clauses (formerly numbered 15 and 16) have not been materially altered by us.

24.—The publication ordered by the Council has been made as follows:—

IN ENGLISH.		
<i>Gazette.</i>		<i>Date.</i>
Gazette of India		30th September, 1899.
Punjab Government Gazette ...		5th October, 1899.

IN THE VERNACULAR.		
<i>Province.</i>	<i>Language</i>	<i>Date.</i>
Punjab	Urdu	14th December, 1899.

25. We consider that the Bill has been so altered as to require republication, and we accordingly recommend that it be republished.

C. M. RIVAZ.

A. C. TREVOR

T. RALEIGH.

E. F. G. LAW.

HARNAM SINGH, ALLUWALIA. *

C. L. TUPPER,

H. C. FANSHAWE.

M. D. HAYAT KHAN.

The 6th August 1900.

MINUTE OF DISSENT.

The modifications suggested by the Select Committee have not, in my opinion, materially improved the Bill.

* I sign this Report subject to my Minute of Dissent.

Its arbitrary character remains unchanged and it may fail to give general satisfaction. APP. VII C

2. *Section (2) (1).*—To begin with the definition of “agriculturist.” The definition is not complete. It does not exhaust the full meaning of the word. It excludes from its scope persons who ought to be included, and who have every right to be designated by the term agriculturists.

3. A limit of period has been fixed after which persons, even if their (or their agnate ancestors’) names were recorded at any Regular Settlement, would not be recognised as agriculturists within the meaning of this Act. The year 1870 seems to be an arbitrary limit. The majority of those persons belonging to the artisan and the menial classes who combine an interest in land with other occupations (and their number comes to several hundred thousand) have become land-owners, or have become otherwise connected with land within the last thirty years. All these persons would be excluded if this limit be adhered to.

4. This limit has been taken, I understand, with a view to fix a standard of agricultural tribes determined as such immediately after the annexation of the Province. It should be remembered, in the first place, that a considerable number of persons belonging to non-agricultural tribes were recognised as agriculturists at the first Regular Settlement, and they will not now be excluded. In the next place, it should be borne in mind that all agriculturists do not belong exclusively to recognised agricultural tribes, but to various other tribes which probably were not connected with agriculture at their origin, but a considerable proportion of the members of which are now engaged in agriculture. It would be an arbitrary act of the Legislature if these persons be now all cast out from the purview of the Act.

APP. VIII

5. It is true that the Bill empowers the Local

Authority given to the
Local Government to le-
gislate by notifications.

Government to determine another limit. This limit is to be fixed, at its discretion, either at or before or after 1870. The reason for giving such extensive legislative powers to the Local Government is not quite clear. The Select Committee could have easily determined this limit in consultation with the Local Government. I think that any difficulty that might have been felt could have been obviated if it had been declared that a person whose (or whose agnate ancestor's) name is recorded at any Regular Settlement would be deemed an agriculturist. Had this been done, there would have been no necessity for fixing any arbitrary period of limitation. The object of legislation becomes defeated when a Local Government is authorised, in its executive capacity, to exercise legislative powers by rules, orders, and notifications, without granting to the public and to those who are vitally interested in the question an ample opportunity to discuss and consider its action in all its bearings. The Legislature, I venture to say, abrogates its function when it delegates to a Local Government its legitimate work. Any rules that the Local Government would propose to make in this connection should, I think, be embodied, with the approval of the Select Committee, in the Act itself. These remarks apply with equal force to section 4, in which the Local Government is empowered to make and notify rules about groups of agricultural tribes and groups of agricultural districts.

6. I have to point out that the definition of agricul-

The definition of agricul-
turi-t not exhaus-tive.

turist as it stands will exclude persons who have come to possess land by exchange, purchase or gift, who have inherited land from their cognate ancestors or collateral relatives, whose names were recorded at the first regular Settlement; as also those who were only cultivators (tenants-at-will at the first Regular Settlement) but subse-

7. It will thus be seen that the definition noticed is APP VII C neither clear nor exhaustive, and that therefore as a definition it is defective.

8. *Section 3*—It would appear from the wording of the proviso to section 3 that, if an agriculturist belonging to a non-agricultural tribe desires to make a permanent alienation of land acquired under clause (b) he would not be at liberty to make such permanent alienation unless he should make it to "a member of an agricultural tribe or an agriculturist holding land in the village." The effect of such a proviso would be that, if the member of a non-agricultural tribe should sell his land to another member of a non-agricultural tribe, the second purchaser would not be allowed to alienate to any person other than an agriculturist. Such an interference with the proprietary rights of a non-agriculturist cannot be justified.

9. *Section 4*.—I am given to understand that the Local Government, in determining what bodies of persons in any district or group of districts are to be deemed agricultural tribes, propose to separate Hindus from Muhammadans, and to place them in separate groups, even though they belong to the same agricultural tribe. The apparent reason for such a distinction is grounded on the apprehension that, if Hindu and Muhammadan agriculturists were^d allowed to be indiscriminately mixed up in the same group, the former who, as a rule, are richer than the latter, would be enabled to buy up their impoverished Muhammadan brethren. But it should be borne in mind that the result of such a distinction would be a still greater reduction of the value of the agricultural lands in the possession of the Muhammadans, and they might find it difficult to realise by the sale the full value of the land they alienate to their Muhammadan brethren.

10. *Sections 6 to 10*.—It will inevitably follow from the operation of the proposed measure that agricultural lands in the Province will be tied to, what may be

Restriction of right of second purchase.

Separation of Hindus from Muhammadans in the same agricultural group.

Perpetual mortgages from an economical point of view.

APP. VII C

called, perpetual mortgages. Those who require money to meet urgent domestic and agricultural demands will raise it even at the sacrifice of their property. There will be nothing to prevent a mortgage upon mortgage after the expiry of the term fixed for the first mortgage. It is vain to suppose that the successors of a mortgagor with no increased resources to fall back upon, but with all the ancestral and domestic obligations and agricultural responsibilities intact would either be able to repudiate the mortgagee's rights or be freed from the crushing weight of debt. The mortgaged property, when it is heavily encumbered, will have no chance of being redeemed, and will only be like a dead weight upon the mortgagor and his successors. The period permitted by law will only serve to accumulate interest and render the burden every year more heavy to bear. As a rule, those who own property feel naturally disinclined to part with it. They prefer resort to temporary alienations and hope to redeem the property some time or other. But their hopes are often frustrated and the property which they wish to save brings them to utter ruin. From an economical point of view, therefore, it is a mistaken policy to prolong their distress and allow their property to be encumbered for an indefinite period by forced legislation. Concession of a right of free disposal is in the long run far better than restriction of such a right.

11. The lands under usufructuary mortgages will, no

Re-mortgage on statutory extinction of first mortgage debt inevitable.

doubt, be freed from all encumbrances after twenty years, and the mortgage-debt extinguished. But few, very

few, among the mortgagors would, in their impoverished condition, be prevented from running into debt again, and the consequence will be that the very same lands will be re-mortgaged in order to provide for absolute necessities. Practically, therefore, agricultural lands will be, as I said before, under continuous mortgages.

12. From a political point of view, the consequences App. VIIC

of perpetual mortgages would be
Effect of continuous mortgages from a political point of view. disastrous. Persons goaded on with

debt and under the constant apprehension of losing their property are apt to ascribe all their miseries to the hard, unyielding character of the laws of the country, and to what they would call the capricious decisions of the administrators of these laws. It is not difficult to conceive what serious results may follow from such mistaken beliefs. I venture to think that the Legislature should not afford ground for such vain imaginings.

13. *Section 7 (3).*—Under this provision the mortgagor may redeem his land at any time during the currency of the mortgage. I am afraid that the feeling of uncertainty, which this provision would be calculated to produce, as to the period when the mortgage might be redeemed, would affect the assurance of the money-lender with regard to the security of his investment, and it cannot be denied that this would be to the disadvantage of the mortgagor.

14. *Sections 10-11.*—His Honour the Lieutenant-Governor expressed it as his opinion that there should be a provision in the Bill in regard to improvements on mortgaged land. His Honour said:—

Improvements on mortgaged lands. “I draw attention to the suggestions of Mr. Fanshawe Mr. Wilson, Mr. Field and Mr. Meredith regarding permission to improve land in the hands of a mortgagee and compensation for such improvements, on the analogy of section 64 of the Punjab Tenancy Act. It seems very desirable that some such provision should be made. I would insert between sections 6 and 7 of the (original) Bill the following:—

6-A. (1) No improvements of a permanent nature shall be effected during the currency of a usufructuary mortgage except with the sanction of a Revenue Officer previously obtained.

(2) At the conclusion of a usufructuary mortgage the value of any improvements effected to the land shall be duly assessed by the Revenue Officer, who shall make such order as to the payment of compensation as he considers equitable.

APP. VIIC

His Honour's recommendation has not been accepted by the Select Committee.

15. I am of opinion that, unless improvements, as suggested by His Honour, be permitted on the mortgaged land, the property may be liable to deterioration, or it may be greatly damaged and may consequently be materially depreciated in value. It is unjustifiable, I believe, not to allow improvements to be made by the mortgagee even with the assent of the mortgagor, or even with the permission of a Revenue Officer.

16. *Section 9 (2)*—The Select Committee has not seen its way to modify the provision relating to mortgages of land by way of conditional sale made before the commencement of this Act.

Repudiation of mortgage by way of conditional sale made before the commencement of this Act.

the commencement of the proposed law. The result of the provision will be the repudiation of all existing deeds of conditional sale. I have the highest authority for stating that this total upsetting of a number of past contracts cannot be defended.

17. Some of the eminent officers of the Punjab Commission, who were consulted, even went so far as to state that people will be justified in considering such a wholesale repudiation of past contracts as a flagrant act of bad faith. To give such a retrospective effect is against principles of justice and is not consistent with the well-recognised spirit of Indian legislation.

18. When people come to realise the fact that all past contracts have been cancelled by the Legislature and that the assurances of the existing laws have been set at naught, their implicit confidence in the principles of action adopted by the British Government will be greatly shaken, and this from a political point of view is certainly to be deeply regretted. It cannot be too often repeated that the security of British rule should be based on the palladium of British justice.

19. Such repudiation will be viewed in the same light as the repudiation of British loans, or putting aside the *sanads* granted

Political necessity.

to chiefs or large land-holders in the British territories. APP. VII (1)
 Those who urge what is called political necessity in vindication of such an act cannot but admit that political necessity in its strongest form also demands that British faith should be kept intact and that the ordinances of existing British law should never be allowed to be lightly dealt with.

20. There are people who are apt to accept the necessity for such measure (as well as for repudiation of pledges regarding proprietary rights solemnly guaranteed by the British Government half a century ago, and upon which the agricultural classes have hitherto firmly relied) on the strength of opinion expressed by a numerical majority. I venture to say that in the decision of a question of this kind, in which the immutable principles of British justice are involved, the views which may be expressed by a selected body of officers who, when consulted, were not requested to discuss the principles of the Bill, should not, for obvious reasons, be allowed to have a preponderating value. The question of British justice and British principles of governance should be considered on higher grounds and due weight ought to be given to the policy of maintaining British faith.

21. *Section 9 (2).*—The sub-section 9 (2) as it has been framed will not only apply to the agricultural tribes, but will also affect with equal force the interests of the non-agricultural tribes, and the latter will not have the power, any more than their brethren of the favoured tribe, to make in future mortgages of their lands by way of conditional sale. This does not seem to me to be reasonable.

22. *Section 16.*—Following the Dekkan Agriculturists' Relief Act, the Bill provides that no land shall be sold in execution of any decree or order, whether passed before or after the commencement of this Act. Such a

APP. VIII provision, in my opinion, is not necessary in the Punjab. Here no such sale is permitted without the sanction of the Financial Commissioner, and it is well known that this permission is never given without careful consideration. His Honor the Lieutenant-Governor, concurring with the Financial Commissioner's views on the subject, and adhering to the recommendation of the Simla Committee, is of opinion that this section should be omitted. When two such high and competent authorities are in favour of the omission of this provision, I do not think it shall be retained in contravention of recognised principles of justice and equity. In the words of an eminent officer, "a far-reaching measure of this sort is less likely to fail if it does injustice to nobody."

23. *Section 20.*—Section 20 prohibits legal practitioners from appearing before a Revenue Officer on behalf of agriculturists. It does not seem reasonable to make such a prohibition. There are agriculturists and agriculturists. There are persons among them who are incapable of putting the facts of their cases clearly before a Revenue Officer. In such circumstances, especially when their opponents are intelligent, shrewd men of business, it is necessary to employ qualified advocates to represent their cases. It may be said that no hardship need be felt when the Revenue Officer would have the power of exercising his executive discretion, and when recognised agents among the relatives of the agriculturists would be allowed to appear on behalf of their kinsmen. I see no reason why the appearance of lawyers should be prohibited when no objection would be made to the appearance of such recognised agents.

24. The effect of the measure will be to restrict the alienation of self-acquired property. Persons who have acquired property, otherwise than from an ancestral source, naturally wish to exercise full proprietary rights over such property. Coparceners can not claim it and tribesmen have not the slightest interest in it. Right of free

disposal is an inalienable incident of it, and the law of the country ought not to interfere with it. Those who acquire property have to pay full market-price, and it is not proper to restrict their right of free disposal in such a way as to compel them to part with it at a reduced value. Self-acquired property, it should be remembered, remains as such only during the lifetime of the acquirer and becomes ancestral after his death, so that no great mischief is likely to be done if the owner be permitted to exercise his proprietary rights during the term of his life. I could quote the opinions of eminent officers in support of my view, but I do not think it necessary to do so here. I strongly incline to the belief that interference with the right of free transfer of self-acquired property will be a source of intense dissatisfaction.

25. If we take into account the immense interests at stake, and the drastic and revolutionary character of the changes proposed, it would be a question worthy of serious consideration, before the present scheme becomes law, whether it is likely to prove of any real benefit to those for whose advantage it has been devised. I consider that the measure is not calculated to serve the purpose for which it is intended. It will be powerless to effectively remove the cause of agricultural indebtedness; but on the contrary it will increase the burden of the agricultural classes, curtail their credit, reduce the value of their lands, and make them liable to sink deeper into debt from which it will not be possible for them to extricate themselves. It will, no doubt, put a stop to permanent alienations from the agricultural to the non-agricultural tribes, but it will enormously increase mortgages of agricultural lands. Those temporary alienations, will, as I have said before, take the form of perpetual mortgages, which will prevent landowners from having any control over their property. What good then, may I be permitted to ask, would the proposed measure do to the agricultural community? It should never be forgotten that the irresistible result of the measure will be the creation of a large number of money-lending agricul-

Effect of the proposed measure on the condition of the agricultural classes.

APP. VII () turists who would be enabled by the power of law to appropriate the holdings of their more indigent brethren at a greatly reduced price. I am led to apprehend that when the measure will be in full operation there will be monster fishes in the agricultural community, who will be encouraged by law to swallow smaller fishes. The Punjab hitherto has gloried in a revenue-settlement which created, on a large scale, a body of flourishing peasant-proprietors. The existing laws strengthened their status and protected their rights and privileges to the incalculable benefit of the Province. The necessity for having agriculturist middlemen, the middlemen was sedulously avoided and their interference was rigidly excluded. Under the proposed arrangements, however, the old policy will be reversed, and the rule of middlemen will be established and strengthened.

26. I fear that the majority of peasant-proprietors in the Province will be reduced to the state of serfs of a worse character than that of serfs during the middle ages in Europe. They will be entirely under the power and mercy of their richer brethren. The advocates of the measure suppose that, if the law were to give to the impoverished agriculturists one final chance to redeem their properties and bring them back to their own families, they might be enabled to save themselves from ruin. From my own experience of the agricultural conditions of the Province, and from the knowledge I have of the habits and ideas of the landowners, I feel no hesitation in stating that the proposed measure will not be able to attain the object in view. Under the operation of the proposed law the impoverishment and wretchedness of the landowners will be increased and their condition made worse than it is under the existing arrangements.

27. I can conceive of only one remedy by which the agriculturists may be saved from their own improvidence and utter ruin. If Government sees its way to starting agricultural banks or inducing the existing banks

to advance money on valuable security to the agriculturists at a low rate of interest, real help may be rendered to the impoverished landowners, and they may be enabled by careful management to save their properties. But the proposal to leave them at the mercy of their own exacting brethren of the same tribes will accentuate their distress, and render their condition even more deserving of commiseration than it is at present. APP. VII C

28. I cannot ignore the fact that the present legislation has been undertaken to relieve agricultural distress in the Province, and I fully appreciate the benevolent intentions of those by whom the scheme under consideration has been framed. A good deal might be said in favour of the measure, but the main question at issue is whether the proposed measure is calculated to ameliorate the condition of the agricultural classes. For reasons I have given before, my opinion is that the condition of the agriculturists would be no better. Nevertheless, no person would be happier than I should be if I prove to be a false prophet.

29. Strictly speaking, I have perhaps in the last portion of my note transgressed the limits of a minute of dissent from the Report of Select Committee, and if I have done so the importance and far reaching effects of the measure under consideration must plead my excuse.

HARNAM SINGH AHLUWALIA.

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HARNAM SINGH AHJWALIA.

APPENDIX VII D.

Speech by the Hon'ble Mr. Rivaz.

The Hon'ble Mr. Rivaz presented the Report of the Select Committee on the Bill to amend the law relating to agricultural land in the Punjab. He said :—“ I think it will be convenient if, in presenting the Report of the Select Committee on the Punjab Alienation of Land Bill, I explain somewhat fully the alterations which we propose to make in its main provisions.

“ The Bill which I introduced in this Council last September imposed restrictions on permanent and temporary alienations of land in the following manner. In the first place, as regards permanent alienations, that is, by sale, gift or exchange, the proposal in this respect of the Committee of Punjab Revenue Officers which was convened by His Honour the Lieutenant Governor in July, 1898, was that any permanent alienation of agricultural or pastoral land, as defined in the Punjab Tenancy Act, to a non-agriculturist, if made without the sanction of the Deputy Commissioner of the district, should be void, but that otherwise there should be no restriction on sales or other permanent transfers. I explained, when introducing the Bill that the Government of India were unable to accept this proposal in its entirety, because it seemed to them that to allow permanent alienations, free from all restrictions between so-called agriculturists was open to objection on two grounds. Firstly, because the definition of ‘ agriculturist ’ as framed by the Punjab Committee, that is, any person who either in his own name or in the name of his agnate ancestor was recorded as an owner of land or as a hereditary tenant in any estate at the first Regular Settlement, or any other practicable definition of the term, must necessarily include numerous classes of persons who although landholders since the early years of British rule or even prior thereto, are primarily traders and money-lenders by nature and profession, and not true agriculturists in any proper sense of the term; and, secondly, because even the *bond fide* agriculturist is frequently also a money-

lender, and it was desirable to retain power to prevent such men from buying up land in a village where they would come in as outsiders and constitute a foreign element in the village-community. In modification, therefore, of the proposal of the scheme under consideration, the Bill, as introduced last September, provided that all permanent transfers must receive the previous sanction of a Revenue Officer, but that sanction should be given, as a matter of right, in which the Revenue Officer was satisfied that the intending transferor was a person who was not a member of an agricultural tribe, or, in cases where the intending transferor was a member of an agricultural tribe, that the transfer was either to an agriculturist (as defined by the Punjab Committee) holding land as a proprietor or occupancy tenant in the village in which the land sold or otherwise permanently alienated was situated, or to another member of the same agricultural tribe residing in the same district. APP. VII D

"Of these provisions we propose the following modifications. In the first place, in deference to a strong body of opinion on this point, we think that the sanction of a Revenue Officer need not be obtained in cases where such sanction must be given as a matter of right. This was only intended as a precautionary measure, and we agree, on the whole, with those who think that the advantage to be gained in this respect would be outweighed by the inconvenience which would be caused to those with whose free right of permanent alienation there is no necessity for interfering. In one respect, however, we propose to restrict the free right of alienation by members of non-agricultural tribes, namely, when a member of such a tribe acquires land hereafter as an 'agriculturist' from a member of an agricultural tribe. We think it obviously necessary that a member of a non-agricultural tribe should not have the power to sell or otherwise permanently alienate without sanction any land acquired under such conditions except to another agriculturist in the same village, or to a member of an agricultural tribe, and we propose to make provision accordingly. Then, as regards permanent alienations

APR. VIII by members of agricultural tribes, we have been unable to accept a suggestion which has been put forward that no restriction should be placed on such transfers between members of any agricultural tribe, because we think that the widening of the market of free transfer to this extent would be open to the second objection which I have mentioned as applying to unrestricted transfer between agriculturists, namely, that the door would thus be opened to the money-lender who belongs to an agricultural tribe buying up land in a village where he would come in as an outsider. At the same time, we recognize the force of the objection which has been taken that if free transfers are limited too strictly to within the same tribe, the market, in the case of some small tribes, will be undesirably narrowed. We propose therefore to meet this objection by empowering the Local Government with the sanction of the Government of India, to group together, when thought advisable, small and what may be called cognate tribes in the same district or in a group of districts and to allow permanent alienation without restriction within such groups.

"As regards permanent alienations, therefore, the scheme of the Bill, amended by the Select Committee, now stands thus :

"Any member of a non-agricultural tribe may, without sanction, make a permanent alienation of land to any person, except in respect of any land which he acquires hereafter as an 'agriculturist' from a member of an agricultural tribe. In this one case he will only be able to alienate, except with the sanction of the Revenue Officer, to another 'agriculturist' in the same village or to a member of some agricultural tribe.

"A member of an agricultural tribe may, without sanction, make a permanent alienation of land to a member of the same agricultural tribe, or, in certain cases, to a member of any other agricultural tribe included in the same group as his own tribe in the same district, or, if so notified in a group of districts. In all other cases, every permanent alienation of land by a member of an agricultural tribe will require the sanction of the Revenue Officer.

" We have revised the definition of ' agriculturist ' so as to enable the Local Government, in cases where the first Regular Settlement has been made within the past thirty years, to go back to the record of some previous settlement, we have amplified the definition of ' land ' ; we have included ' exchanges ' in, but excluded gifts or bequests for religious or charitable purposes from, the definition of ' permanent alienation ' ; we have made clear that the right of unrestricted purchase allowed to an ' agriculturist ' as such can only be exercised in the actual village or villages in which he has acquired such status ; and we have also made clear that the action of a Revenue Officer, when granting or refusing sanction to a permanent alienation, is purely executive, and that any such order, sanctioning an alienation is no bar to a suit on any question of title, or to any question relating to any reversionary right, or right of pre-emption in a Civil Court.

APP. VII D

" And lastly I may mention under this head that the Punjab Government has at present under consideration a Bill to amend the present law of pre-emption as contained in the Punjab Laws Act, and I hope that the Bill in question will shortly be introduced in the local Legislative Council.

" I come now to temporary alienations of land, that is alienations by means of mortgage, lease or farm. The Bill as introduced allowed for the future only two forms of mortgage, namely, either a usufructuary mortgage, with delivery of possession to the mortgagee, for a maximum period of fifteen years, and on the condition that at the end of the period of mortgage the mortgaged land would revert to the mortgagor or his successor in interest with the mortgage-debt extinguished, or a collateral mortgage which, in certain circumstances, might be converted in usufructuary mortgage of the nature just mentioned. These provisions were in accordance with the recommendations of the Punjab Committee, except that the maximum period of mortgage was reduced from twenty to fifteen years. Existing mortgages were not interfered with except when any such mortgage was by way of conditional

APP. VII D *also.* In these cases, the mortgage was to be null and void, but the Revenue Officer was empowered, on the application of either party, to order the mortgagor to execute a fresh mortgage of the usufructuary nature just mentioned, for a period of fifteen years, or for such less term as the Revenue Officer might consider equitable. We now propose the following modifications of these provisions

"In the first place, we think that, except as regards conditional sales, which ought, in our opinion, to be absolutely prohibited, there is no reason to impose any restrictions, whether as to form or period, on mortgages made by any member of a non-agricultural tribe to any person, or by a member of an agricultural tribe to a member of the same tribe or of a tribe in the same group. Then, in deference to the opinion expressed by a large number of the officers consulted on the Bill, we have extended the maximum term of usufructuary mortgage to twenty years, as was originally recommended by the Punjab Committee. We also propose in adoption of a valuable suggestion made by Mr. Douie, the present Chief Secretary to the Punjab Government, and supported by the Lieutenant-Governor, to allow a third form of mortgage, whereby the mortgagor will retain an inalienable right of cultivating occupancy of the mortgaged land as the mortgagee's tenant on payment of a fair rent which will be determined, in case of dispute, by a Revenue Court under the provisions of the Punjab Tenancy Act. A mortgage in this form may be made for any such term as may be agreed on, but the mortgagor will only be liable to ejectment from his cultivating occupancy if he uses the land in an improper manner, or, if his rent is payable in kind, if he wilfully fails to cultivate the land, or if a decree for an arrear of rent has been passed against him and remains unsatisfied; but even if so ejected from his cultivating occupancy as a tenant, the mortgagor will retain the equity of redemption of his proprietary right on payment at any time of the original mortgage-debt. We also propose to give power to the Local Government to allow other forms of mortgage, at its discretion, in addition to the three forms just specified, so as to permit the use of any existing local

kinds of mortgage which are of an unobjectionable nature. APP. VII D
 As regards conditional sales, we propose, as I have already mentioned, to absolutely prohibit the future use of this kind of mortgage in respect of land owned by any class of persons and, as regards existing mortgages of this kind which have been made by any member of an agricultural tribe, we propose, in modification of the provision in this respect of the Bill as introduced, to allow the mortgagee to elect either to keep his present mortgage with this particular condition struck out, or to apply to the Revenue Officer to give him instead a usufructuary or collateral mortgage in one of the forms to be hereafter allowed by the Bill, on such conditions as to the amount of mortgage-debt and period of mortgage as the Revenue Officer may consider reasonable. Except in the cases which I have just specified, no existing mortgages will be interfered with in any respect.

"As regards mortgages, therefore, the scheme embodied in the Bill, as amended by the Select Committee, stands thus :

"Any member of a non-agricultural tribe may mortgage his land in any form and on conditions he pleases except by way of conditional sale. So may a member of an agricultural tribe when the mortgage is to a member of the same tribe, or of a tribe in the same group. But in all other cases a mortgage by a member of an agricultural tribe will have to be in one of the three forms which I have explained or in some other form permitted by the Local Government.

"Existing mortgages will not be interfered with in any way, except when any mortgage which has been made by a member of an agricultural tribe contains a condition which is intended to operate by way of conditional sale. In this one class of cases the mortgage will be revised or altered in the manner I have described.

"The conditions which will apply to all mortgages made under our proposed enactment, and those which may be inserted by agreement between the parties, are specified in clauses 7 and 8 of the Bill. Some of these conditions [

APP. VII D) sale. In those cases, the mortgage was to be null and void, but the Revenue Officer was empowered, on the application of either party, to order the mortgagor to execute a fresh mortgage of the usufructuary nature just mentioned, for a period of fifteen years, or for such less term as the Revenue Officer might consider equitable. We now propose the following modifications of these provisions:

"In the first place, we think that, except as regards conditional sales, which ought, in our opinion, to be absolutely prohibited, there is no reason to impose any restrictions, whether as to form or period, on mortgages made by any member of a non-agricultural tribe to any person, or by a member of an agricultural tribe to a member of the same tribe or of a tribe in the same group. Then, in deference to the opinion expressed by a large number of the officers consulted on the Bill, we have extended the maximum term of usufructuary mortgage to twenty years, as was originally recommended by the Punjab Committee. We also propose in adoption of a valuable suggestion made by Mr. Douie, the present Chief Secretary to the Punjab Government, and supported by the Lieutenant-Governor, to allow a third form of mortgage, whereby the mortgagor will retain an inalienable right of cultivating occupancy of the mortgaged land as the mortgagee's tenant on payment of a fair rent which will be determined, in case of dispute, by a Revenue Court under the provisions of the Punjab Tenancy Act. A mortgage in this form may be made for any such term as may be agreed on, but the mortgagor will only be liable to ejectment from his cultivating occupancy if he uses the land in an improper manner, or, if his rent is payable in kind, if he wilfully fails to cultivate the land, or if a decree for an arrear of rent has been passed against him and remains unsatisfied; but even if so ejected from his cultivating occupancy as a tenant, the mortgagor will retain the equity of redemption of his proprietary right on payment at any time of the original mortgage-debt. We also propose to give power to the Local Government to allow other forms of mortgage, at its discretion, in addition to the three forms just specified, so as to permit the use of any existing local

kinds of mortgage which are of an unobjectionable nature. APP. VII D
 As regards conditional sales, we propose, as I have already mentioned, to absolutely prohibit the future use of this kind of mortgage in respect of land owned by any class of persons and, as regards existing mortgages of this kind which have been made by any member of an agricultural tribe, we propose, in modification of the provision in this respect of the Bill as introduced, to allow the mortgagee to elect either to keep his present mortgage with this particular condition struck out, or to apply to the Revenue Officer to give him instead a usufructuary or collateral mortgage in one of the forms to be hereafter allowed by the Bill, on such conditions as to the amount of mortgage-debt and period of mortgage as the Revenue Officer may consider reasonable. Except in the cases which I have just specified, no existing mortgages will be interfered with in any respect.

" As regards mortgages, therefore, the scheme embodied in the Bill, as amended by the Select Committee, stands thus :

" Any member of a non-agricultural tribe may mortgage his land in any form and on conditions he pleases except by way of conditional sale. So may a member of an agricultural tribe when the mortgage is to a member of the same tribe, or of a tribe in the same group. But in all other cases a mortgage by a member of an agricultural tribe will have to be in one of the three forms which I have explained or in some other form permitted by the Local Government.

" Existing mortgages will not be interfered with in any way, except when any mortgage which has been made by a member of an agricultural tribe contains a condition which is intended to operate by way of conditional sale. In this one class of cases the mortgage will be revised or altered in the manner I have described.

" The conditions which will apply to all mortgages made under our proposed enactment, and those which may be inserted by agreement between the parties, are specified in clauses 7 and 8 of the Bill. Some of these conditions I

APP. VII D have already mentioned in explaining the forms of mortgage which will be permitted, and I need only say further under this head that in the case of term-limited usufructuary mortgages, the mortgagor will be able to redeem his land at any time during the currency of the mortgage on payment of the mortgage debt, or of such proportion of it as the Revenue Officer may consider to be equitable, and that in no case will the mortgagor be deemed to bind himself personally to repay the mortgage-money.

"As regards leases, we have amended the provisions under this head of the Bill as introduced by (1) including temporary alienations of the nature of a farm in the proposed restrictions; (2) extending the maximum period of a lease or farm to twenty years, and excising the condition that, if the alienor dies within this period, the lease or farm will terminate; (3) limiting the restrictions to cases where the lease or farm is by a member of an agricultural tribe to a person who is not a member of the same tribe or of a tribe in the same group. Thus the restrictions on leases and farms are brought into harmony with those on mortgages.

"We have made provision for allowing a person who has made a temporary alienation by mortgage, lease or farm, for less than twenty years, to make a further temporary alienation of the same land during the currency of the first transaction for a term not exceeding twenty years in all but have retained the provision of the Bill as introduced which bars a further alienation of the same land during the currency of a mortgage, lease or farm, when the first temporary alienation has been made for the full term permitted.

"We have retained the provision which enables the Revenue Officer, either of his own motion or on the application of the person entitled to possession, to eject a mortgagee, lessee or farmer who remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm.

"We have also retained the provision of the Bill as introduced that a permanent alienation which requires sanction, but which is made without sanction, shall be treated

as a usufructuary mortgage made in the first form prescribed by the Bill, and we have further provided that any mortgage made by a member of an agricultural tribe in any manner or form not permitted by the Bill shall be revised and altered by the Revenue Officer so as to bring it into accordance with such form of mortgage permitted by the Bill as the mortgagee may appear to be equitably entitled to claim, and that any lease or farm made by a member of an agricultural tribe to a person other than a member of the same tribe or of a tribe in the same group for a longer term than twenty years shall be deemed to have been made for only twenty years.

" As regards the restrictions on hypothecations of agricultural produce by members of agricultural tribes which were included in the Bill as introduced we have, in modification of the absolute prohibition of such transactions proposed to allow alienations or charges of this description to be made for a period not exceeding one year, or in special cases for a longer period with the sanction of the Revenue Officer.

" We have retained the provision which forbids the sale of land in execution of decree or order, but have so far modified such provision as to make it applicable only to land belonging to a member of an agricultural tribe, and we have also made clear that the prohibition only applies to a decree or order of a Civil or Revenue Court. The prohibition as to sale will not of course extend to temporary alienations of land for satisfying a decree which are made by the Collector when so authorized by the Civil Court, under Section 326 of the Code of Civil Procedure.

" We have retained but amplified the clause which prohibits the registration of any instrument contravening the provisions of the Bill; we propose to prescribe that transactions which require the sanction of a Revenue Officer shall not be entered in the record-of-rights or in the annual record under the Punjab Land Revenue Act until proof of such sanction is produced; and we have provided for the proceedings of Revenue Officers under the Bill being regulated by the procedure of the Punjab Land Revenue Act.

APP. VII D We have also made clear that matter which the Local Government or Revenue Officers are empowered to dispose of under the Bill shall be excluded from the jurisdiction of the Civil Court, and, in order that all proceedings before Revenue Officers under the Bill may be dealt with promptly and inexpensively, we propose to exclude legal practitioners from appearing in such cases.

" The last point which I need mention is that we propose no alteration in respect of the general application of the scheme embodied in the Bill, subject to any territorial or personal exemption which the Government of India may from time to time make on the recommendation of the Local Government.

" I trust, my Lord, that I have succeeded in showing that, while the Select Committee have not altered the Bill which I introduced last September on any important point of principle, their proposed modifications of, and additions to some of its provisions will have the effect of placing the scheme under consideration on a broader and more elastic basis. As regards the main object of the Bill, namely, the restriction of permanent and temporary alienations of land by the agricultural classes, the scheme, as it now stands, will, as regards sales and other permanent transfers, while adhering to the principle of limiting the market of unrestricted transfer to within the same village community or agricultural tribe, enable the Local Government to meet the case of any tribes which are too small to provide any real market of sale within the tribe, by grouping them with other cognate tribes within the same district or group of districts; and as regards temporary alienations, the maximum period for which self-redeeming usufructuary mortgages and leases may be made has been extended from fifteen to twenty years, while another form of usufructuary mortgage is proposed under which the mortgagor may mortgage for any period he pleases, but on condition of retaining a cultivating right of occupancy in the mortgage land on payment of a fair rent, and preserving his right to redeem the proprietary right whenever he may be able to do so.

* * * *

APPENDIX VIII A.

PUNJAB ACT NO. 1 OF 1907.

PASSED BY THE LIEUTENANT-GOVERNOR OF THE PUNJAB
IN COUNCIL.

*(Received the assent of His Honour the Lieutenant-Governor
on the 28th February 1907, and that of His Excellency
the Viceroy and Governor General on the 23th March
1907; the Governor-General's assent was first published
in the "Punjab Gazette" of the 9th May 1907.)*

THE PUNJAB ALIENATION OF LAND AMENDMENT ACT, 1907.

An Act to amend the Punjab Alienation of Land Act, 1900.

WHEREAS it is expedient to amend
the Punjab Alienation of Land Act,
1900;

It is hereby enacted as follows:—

1. (1) This Act may be called
Short title and com- the Punjab Alienation of Land Amend-
mentment ment Act, 1907; and

(2) It shall come into force at once.

2. (1) Sub-section (1) of section 2
Partial repeal and of the said Act and the provisos there-
amendment of section 2, to are hereby repealed.
Act XIII of 1900.

(2) To sub-section (3) of section 2, the following shall
be added namely:—

“(f) any right of occupancy”:

(3) For sub-section (4) of section 2, the following shall
be substituted, namely:—

“(4) the expression ‘permanent alienation’ includes
sales, exchanges, gifts, wills and grants of
occupancy rights”:

3. After section 2 of the said Act,
Addition of new section the following is inserted, namely:—
to Act XIII of 1900.

“2-A. Notwithstanding anything contained in sec-
tions 53 and 54 of the Punjab
Application of Act to Tenancy Act, 1887, when a land-
sections 53 and 54, Act lord makes a claim to exercise
XVI, 1887.

the rights thereby conferred upon him, the provi-
sions of this Act shall apply thereto.”

*Indian
Act XVI
of 1887*

App. VIII A

Partial repeal and amendment of section 3 Act XIII of 1900.

4. (1) Clause (b) and the proviso to section 3, sub-section (1), of the said Act are hereby repealed.

(2) For the proviso to section 3, sub-section (2), the following shall be substituted, namely :—

“ Provided that—

- (1) sanction may be given after the act of alienation is otherwise completed, and
- (2) sanction shall not be necessary in the case of—
 - (a) a sale of a right of occupancy by a tenant to his landlord, or
 - (b) a gift made in good faith for a religious or charitable purpose, whether *inter vivos* or by will ”

5. The words “ published with the previous sanction of the Governor-General in Council”,
 Repeal. in section 4 of the said Act, are hereby repealed.

6. After sub-section (2) to section 6 of the said Act, the following sub-section shall be inserted, namely :—
 Addition to section 6.
 Act XIII of 1900.

“(3) The Deputy Commissioner, if he accepts the application of a mortgagee under sub-section (1) (b), shall have power to eject the mortgagor, and as against the mortgagor to place the mortgagee in possession.”

7. After sub-section (4) to section 7 of the said Act, the following sub-section shall be inserted, namely :—
 Addition to section 7.
 Act XIII of 1900.

“(5) if a mortgagor who has applied to the Deputy Commissioner under sub-section (3) proves to the satisfaction of the Deputy Commissioner that he has paid the mortgage-debt, or such proportion of the mortgage-debt as the Deputy Commissioner has determined to be equitable, or deposits with the Deputy Commissioner the amount of such mortgage-debt or of such proportion thereof, the

redemption of the land shall be deemed to have taken place, and the Deputy Commissioner shall have power to eject the mortgagee, if in possession, and, as against the mortgagee, to place the mortgagor in possession."

App. VIII A

Addition to section 9.
Act XIII of 1900.

8. After sub-section (3) to section 9 of the said Act, the following sub-section shall be inserted, namely :—

"(4) When a mortgagee put to his election under sub-section (2) agrees to accept in lieu of his mortgage a mortgage in form (a) or in form (b) as permitted by section 6 for the period and for the sum of money considered by the Deputy Commissioner to be reasonable, and the mortgagor cannot be found, or fails to appear when duly served with notice to do so, or refuses or neglects to execute such mortgage, the Deputy Commissioner shall have authority to execute such mortgage on such terms as to costs as he may fix, and the mortgage so executed shall have effect as if it had been executed by the mortgagor. The Deputy Commissioner may for any reason which he deems sufficient set aside any *ex-parte* proceedings taken under this sub-section."

9. After section 21 of the said Act, the following sections shall be added, namely :—

India
Act XLV
of 1882.

"21-A. (1) Notwithstanding anything contained in the

Civil Court to send copy of decree or order to Deputy Commissioner.

Code of Civil Procedure or in any other Act for the time being in force, every Civil Court which passes a decree or order involving (1) the permanent alienation of his land by a member of an agricultural tribe, or (2) the mortgage by a member of an agricultural tribe of his land when the mortgagee is not a member of the same tribe or of a tribe in the same group, shall send to the Deputy Commissioner a copy of such decree or order.

App. VIII A

Partial repeal and
amendment of section 3
Act XIII of 1900.

4. (1) Clause (b) and the proviso
to section 3, sub-section (1), of the said
Act are hereby repealed.

(2) For the proviso to section 3, sub-section (2), the
following shall be substituted, namely :—

“ Provided that—

(1) sanction may be given after the act of alienation
is otherwise completed; and

(2) sanction shall not be necessary in the case of—

(a) a sale of a right of occupancy by a tenant to
his landlord, or

(b) a gift made in good faith for a religious or
charitable purpose, whether *inter vivos* or by
will ”

5. The words “ published with the previous sanction
of the Governor-General in Council”,
in section 4 of the said Act, are hereby
repealed.

Addition to sect
Act XIII of 1900.

6. After sub-section (2) to sec-
tion 6 of the said Act, the following
sub-section shall be inserted, namely :—

“(3) The Deputy Commissioner, if he accepts the
application of a mortgagor under sub-section (1)
(b), shall have power to eject the mortgagor, and
as against the mortgagor to place the mortgagee
in possession.”

Addition to section 7,
Act XIII of 1900.

7. After sub-section (4) to sec-
tion 7 of the said Act, the following
sub-section shall be inserted, namely :—

“(5) if a mortgagor who has applied to the Deputy
Commissioner under sub-section (3) proves to
the satisfaction of the Deputy Commissioner that
he has paid the mortgage-debt, or such proportion
of the mortgage-debt as the Deputy Commissioner
has determined to be equitable, or deposits with
the Deputy Commissioner the amount of such
mortgage-debt or of such proportion thereof, the

redemption of the land shall be deemed to have taken place, and the Deputy Commissioner shall have power to eject the mortgagee, if in possession, and, as against the mortgagee, to place the mortgagor in possession."

8. After sub-section (3) to section 9 of the said Act, the following sub-section shall be inserted, namely : —

Addition to section 9,
Act XIII of 1900.

"(4) When a mortgagee put to his election under sub-section (2) agrees to accept in lieu of his mortgage a mortgage in form (a) or in form (b) as permitted by section 6 for the period and for the sum of money considered by the Deputy Commissioner to be reasonable, and the mortgagor cannot be found, or fails to appear when duly served with notice to do so, or refuses or neglects to execute such mortgage, the Deputy Commissioner shall have authority to execute such mortgage on such terms as to costs as he may fix, and the mortgage so executed shall have effect as if it had been executed by the mortgagor. The Deputy Commissioner may for any reason which he deems sufficient set aside any *ex-parte* proceedings taken under this sub-section."

9. After section 21 of the said Act, the following sections shall be added, namely :—

Addition of sections after
section 21, Act XIII of 1900.

India
Act XIV
of 1882.

"21-A. (1) Notwithstanding anything contained in the Code of Civil Procedure or in any other Act for the time being in force, every Civil Court which passes a decree or order involving (1) the permanent alienation of his land by a member of an agricultural tribe, or (2) the mortgage by a member of an agricultural tribe of his land when the mortgagee is not a member of the same tribe or of a tribe in the same group, shall send to the Deputy Commissioner a copy of such decree or order.

Civil Court to send copy
of decree or order to Deputy
Commissioner.

App. VIII A “(2) When it appears to the Deputy Commissioner that

Action to be taken by
Deputy Commissioner when
decree or order passed con-
trary to Act.

any Civil Court has, either before or after the date when this section comes into operation, passed a decree or order contrary to any of the provisions of this Act, the Deputy Commissioner may apply for the revision of such decree or order to the Court, if any, to which an appeal would lie from such decree or order or in which an appeal could have been instituted at the time when the decree or order was passed, or in any other case to the Chief Court. And when the Court finds that such decree or order is contrary to any of the provisions of this Act, it shall alter it so as to make it consistent with this Act. Such application shall be made within two months of the date upon which the Deputy Commissioner is informed of such decree or order.

“(3) When any such appellate Court passes an order rejecting such application, the Deputy Commissioner may, within two months after the date upon which he is informed of such order, apply to the Chief Court for revision thereof.

“(4) Every Civil Court which passes an order on any application, made under this section shall forthwith send a copy thereof to the Deputy Commissioner.

“(5) No stamp shall be required upon such applications, and the provisions of the Code of Civil Procedure as regards appeals shall apply so far as may be to the procedure of the Court on receipt of such application :

“Provided that no appearance by or on behalf of the Deputy Commissioner shall be deemed necessary for disposal of the application.”



APPENDIX VIII B.

Statement of objects and reasons.

The first and most important amendment contemplated by the present Bill is the abolition of the statutory agriculturist. This is effected by the repeal of section 2 (1) and of section 3 (1) (b) and the proviso thereto.

The experience gained of the working of the Act has shown that there are grave objections to his existence. The fundamental objection is that the so-called agriculturist is in many cases not an agriculturist at all, and that when he is not a member of a notified agricultural tribe he frequently belongs to the *bania* class whose acquisition of the lands of agricultural tribesmen it is the primary and avowed object of the Act to prevent. In every village where there are agriculturists who are not members of an agricultural tribe, there is a standing menace to the successful working of the Act. If a *bania* has held land for 30 or 40 years in a village, he does not cease to be a *bania*; and if he is a land-owner it does not follow that he is not also a money-lender. There is nothing in the structure of rural society in the Punjab to separate *banias* who have held lands since the first Regular Settlement from others. At present such a *bania* is in a position of great advantage, because the door closed upon the mass of the money-lending classes is left wide open to certain members of those classes who in the absence of competition of their class have better opportunities now of permanently acquiring the lands of zamindars than they had before the Act was passed.

Agriculturists who are not members of notified agricultural tribes will be found to belong to one or other of the following groups, namely,—I *banias*, that is village shopkeepers, grain-dealers and money-lenders, whatever their caste or tribe; II Hindu settlers who are not money-lenders III village menials; and IV tribes practising agriculture, but usually having also various other avocations, such as trade, money-lending, military or other service, and the like. The cases of individuals falling under group I, II and III could, it is considered, be quite adequately met by the power to sanction permanent alienations conferred on Deputy Com-

App VIII B missioners by section 3 (2) of the Act. As regards groups of persons falling under group IV, there is the power to notify them under section 4 of the Act. They frequently petition to be notified, and the facts are examined from time to time, and if it is possible, consistently with the objects of the Act they are notified accordingly.

The inclusion of the statutory agriculturist has led to great difficulties in the working of the Act. The status is a highly technical one, and the people and many Revenue Officers have had great difficulty in comprehending the exact position which he occupies under the Act. In some districts the records of the first Regular Settlement, or of the Settlement fixed for the purpose of determining who are agriculturists, do not contain the names of the proprietors or occupancy tenants which renders it difficult to determine whether persons claiming the status actually possess it. A further difficulty has been caused by the necessity of providing the Revenue Records shall show details of land purchased by agriculturists from members of agricultural tribes for the purpose of checking subsequent sales of the same land,—*vide* the proviso to section 3 (1) (b) of the Act. These difficulties are not of great moment: the real objections have been stated above. The statutory agriculturist appears to have been the mere creature of the fears with which the working of the Act was regarded by those who had no real faith in its principles. The experience now gained shows that those fears were not justified. His abolition is proposed not because the working of the Act shows that he is already absorbing the lands of zamindars but because the Act gives him the opportunity to do so and because it is a flaw in principle to exclude the *banias* in a great mass of cases and admit him in a comparatively few on the basis of an accidental circumstance unconnected with the structure of rural society in the Punjab, *viz*, the date of the first Regular Settlement.

It is to be noted also that he finds no place in the Act as modified in its application to the North-West Frontier Province by Regulation I of 1904, and the same omissions as are now contemplated have been made in the Bundelkhand Alienation of Land Act (II of 1903).

In connection with this amendment it is intended to repeal the provision in section 4, requiring the previous sanction of the Governor-General in Council before a tribe is notified as an agricultural tribe. The Act is no longer an experiment and the Local Government may now be well left to decide what tribes shall be notified. The question has become a purely local one full of local detail and it is thought that the Local Government may be left to freely exercise the power of admitting tribes to the protection of the Act. Such admissions are now the more necessary in consequence of the abolition of the statutory agriculturists.

It has been decided to include definitely any right of occupancy in the expression 'land' as defined in section 2 (3) of the Act. This is in accordance with the judgment of the Chief Court, No 11, P. R., 1904, and also assimilates the present definition to that which has been adopted in the Punjab Pre-emption Act, 1905, with the exception that the restrictive words therein are omitted, as instances of occupancy rights may possibly be met with which have been acquired otherwise than under an Act of the Legislature.

The definition of permanent alienation has also been amended so as to include grants of occupancy rights and gifts for religious or charitable purposes. The former amendment is consistent with the decision that 'land' shall include occupancy rights, while the latter is proposed in order to avoid a possible evasion of the Act. In the case of *bona fide* gifts for religious or charitable purposes the amended proviso to section 3 (2) provides that sanction thereto shall always be given. The policy of treating these gifts in a liberal spirit and in a manner which is likely to be approved by popular sentiment is thus maintained.

The right of pre-emption given to a landlord in the case of a transfer by his occupancy tenant was expressly saved in the Punjab Pre-emption Act, 1905. The provisions of sections 53 and 54 of the Punjab Tenancy Act, 1887, are not expressly saved or repealed in the Punjab

App. VIII B Alienation of Land Act, 1900, with the result that the right given to the landlord in express terms by Statute is not taken away and is not, it is thought, even limited by the necessity of obtaining sanction. It is not thought necessary at present to take away the right, but it is thought necessary that the Deputy Commissioner should be kept informed of such alienations in order to check evasions of the Act. By the section it is proposed to insert as section 2-A, it is therefore provided that the provisions of the Act shall apply to these alienations notwithstanding the provisions of sections 53 and 54 of the Tenancy Act, but in the new proviso to section 3 (2) it is provided that sanction shall always be given.

In the cases specified in section 13 of the Act the Deputy Commissioner is expressly empowered to eject the person wrongfully in possession and to place in possession the person entitled to it. No such express provision is made in respect of a mortgagee without possession who may become entitled to an usufructuary mortgage under section 6 (1) (b), nor in respect of a mortgagor who under section 7 (2) may redeem his land. It has been thought expedient to make it clear that a Deputy Commissioner may complete the case without compelling the parties to go to another tribunal before those entitled to possession can enjoy it.

The power of a Deputy Commissioner should, however, be so limited as not to affect the claims of persons other than the parties before him who may have obtained possession. Sections 6 and 7 have been amended accordingly.

Section 9 has also been amended to provide for a case which has not been infrequent in practice. A mortgagee put to his election asks for a fresh mortgage which the mortgagor refuses to execute. Matters are then at a deadlock. The mortgagor, it is true, if he refuses the help offered, might be left to his fate and the mortgage might be foreclosed against him precisely as if section 9 (2) did not exist. But the refusal is generally due to ignorance and suspicion, and to leave him to his fate would be entirely to the advantage of the mortgagee. It is an object of the legislation to protect

the ignorant mortgagor and to protect his heirs, and to prevent the land going from the family. Power has therefore been given to the Deputy Commissioner to execute the mortgage on his behalf. The case only arises where there is a condition intended to operate by way of conditional sale in a mortgage made before the commencement of the Act, but these will continue to be dealt with for a good many years to come, and the amendment is therefore considered advisable. App. VIII B

A new section has been added after section 21. It follows section 27 of the Punjab Pre-emption Act and enables a Deputy Commissioner to take action in respect of a decree or order of a Civil Court which appears to him to be contrary to the provisions of the Punjab Alienation of Land Act. It will enable a check to be placed on attempts, collusive or otherwise, to evade the Act, and provides a remedy against mistakes of subordinate Courts.

S. M. ROBINSON,

T. GORDON WALKER,

Secretary, Legislative Council, Punjab,

Member.



App. VIII B

Alienation of Land Act, 1900, with the result that the right given to the landlord in express terms by Statute is not taken away and is not, it is thought, even limited by the necessity of obtaining sanction. It is not thought necessary at present to take away the right, but it is thought necessary that the Deputy Commissioner should be kept informed of such alienations in order to check evasions of the Act. By the section it is proposed to insert as section 2-A, it is therefore provided that the provisions of the Act shall apply to these alienations notwithstanding the provisions of sections 53 and 54 of the Tenancy Act, but in the new proviso to section 3 (2) it is provided that sanction shall always be given.

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The power of a Deputy Commissioner should, however, be so limited as not to affect the claims of persons other than the parties before him who may have obtained possession. Sections 6 and 7 have been amended accordingly.

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the ignorant mortgagor and to protect his heirs, and to prevent the land going from the family. Power has therefore been given to the Deputy Commissioner to execute the mortgage on his behalf. The case only arises where there is a condition intended to operate by way of conditional sale in a mortgage made before the commencement of the Act, but these will continue to be dealt with for a good many years to come, and the amendment is therefore considered advisable. App. VIII B

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S. M. ROBINSON,

T. GORDON WALKER,

Secretary, Legislative Council, Punjab,

Member.



APPENDIX VIII C.

SPEECH BY THE HON'BLE MR. WALKER INTRODUC-
ING THE BILL.

The Hon'ble Mr. Gordon Walker moved for leave to introduce a Bill to amend the Punjab Alienation of Land Act, 1900. He said :—" The Punjab Land Alienation Act which has been in force since 1900 was the outcome of long years of discussion. Although it had come to be clearly recognised that something must be done to arrest the process of transfer of land from the agricultural population, there was still plenty of room for difference of opinion as to the way in which this object was to be attained. Even the keenest supporters of the present Act and those who were responsible for it might well be inclined to entertain doubts as to the precise effects of what was fully recognised to be a legislative experiment of a rather revolutionary character. There was nothing which could give any certain indication of what those effects were likely to be.

" Looking back on six years of practical working of the Act, I think we may safely say that it has been a success beyond the expectations of its most ardent supporters. The point on which perhaps the most serious apprehension was felt was that the Act, instead of conferring a benefit on the class for whose protection it was meant, would cause serious inconvenience to them by the contraction of credit. It was feared that the money-lending class would not continue under the altered conditions to make the necessary advances to the zamindars, and that the latter would not be able to get along without the assistance of this nature on which they had so long depended. We now know that this apprehension has not been justified in practical experience. Unlimited credit has undoubtedly been contracted, the village money-lender is not perhaps now so keen on pressing a loan on the reluctant zamindar, and the latter may find it more difficult to obtain the necessary funds for reckless expenditure, but there is

nothing whatever to show that, as a result of the Act, the zamindar has been hampered in his business and in his daily life by the difficulty of getting ready money when he requires it. Looking at the working of the Act in this direction, it may be said that it has had a tendency to enforce thrift without causing any general inconvenience.

App. VIII C

"It was inevitable, considering that the present act was in the nature of an experiment, that some defects would come to light in its working. That so very few defects have been discovered appears to me to demonstrate the wisdom and foresight of those who were responsible for framing the measure. The objects of the Bill which I will presently ask leave to introduce, are to effect one alteration which may perhaps be regarded as radical, and to remove certain defects in detail which have made themselves apparent.

"One very striking feature of the Act is that, while the non-agricultural classes are excluded generally from the power of acquiring land belonging to the agricultural class, this exclusion was relaxed in the case of a small portion of the former. The relaxation was undoubtedly due to the apprehension I have already alluded to. The genesis of the *statutory agriculturist* may be said to have been the result of the fear that undue economic inconvenience might result from the exclusion *uno iotus* of the entire money-lending class.

"Except to the initiated the term *agriculturist* would certainly convey an erroneous impression of what it was intended to cover. The word had come to be used in connection with the revenue statistics of the Province to denote a person whose hereditary occupation was not agriculture, but who had acquired property in agricultural land. We had come to make a distinction for statistical purposes between those who had recently become land owners and those who had been land-owners for some time. The latter were known as *old agriculturists*, and it was this class in whose favour it was decided to relax the exclusion from the power of acquisition. It was necessary to draw some artificial line

App. VIII C of distinction between the two classes of non-agricultural land-owners which we were creating, i.e., those on whom it was considered desirable to confer the power of acquisition because of the fact of their having held land for a long time, and those who had acquired land more recently and were therefore held not to be entitled to the privilege. This was effected by defining in the Act an *agriculturist* to mean any person who in his own name or in that of his ancestor in the male line was recorded as an owner or as an occupancy tenant at the first regular settlement of his district. But the framers of the Act did not go so far as to extend the advantages which the privileged position involved to all who came within the definition, and section 3 (1) (b) permits permanent alienation of land by a member of an agricultural tribe only to a person who 'holds land as an agriculturist in the village where the land alienated is situated.' Thus the privileged *agriculturist* owed his position to two circumstances which might be purely accidental, the point of departure in respect of the original acquisition being taken to be the first regular settlement, while the second accident was that of the acquisition having been made in the particular village.

" It was not to be expected that a distinction of such a highly artificial nature would be at once understood even by those directly affected. The ordinary zamindar at once grasped the fact that he could not in future make a permanent alienation of his land except to one of his own class; but the privileged *agriculturist* was beyond not only his comprehension but also as a rule that of the agriculturist himself, and it may be added, of the ordinary run of subordinate officials who had to deal with the details of the working of the Act. Owing to this and other reasons it has come about that comparatively little use has been made of the permission to make permanent alienations to statutory agriculturists, while we have the broad fact that, notwithstanding this result, the Act has hitherto worked with all the success that could be desired, and without any of the anticipated economic difficulties in view of which the statutory agriculturist was created.

It has thus been proved in practice that the statutory agriculturist is not a necessity for the working of the Act. It has also been proved that the maintenance of this artificial class is highly inconvenient. The arbitrary line drawn by the Act as to the time before which the qualifying acquisition must have been made works most irregularly. First regular settlements were effected in the Punjab between the years 1837 and 1870, or even later. Each claim to be an agriculturist requires special inquiry, and there are many troubles and uncertainties involved in the determination of the question. Moreover, further permanent alienations by an *agriculturist* alienee are subject to special restrictions, and this involves ear-marking the areas concerned, while there are other numerous complications which need not be detailed. These reasons fully justify the conclusion that 'the confusion and trouble caused by the introduction into the Act of the *statutory agriculturist* are such as would only be justified by a very much stronger demonstration of the necessity and utility of the provisions (to this effect) than has so far been brought to notice.'

"There is the further consideration of the mischievous effects which are likely to ensue unless the *statutory agriculturist* is eliminated. The agriculturist of the Act belongs in the great majority of cases to the money-lending class from whose encroachments we specially desire to protect the Punjabi peasant, and there are indications which clearly point to the necessity of protecting the latter against the statutory agriculturist. There appears to be every probability that unless we interfere, considerable quantities of land would before long pass from the agricultural to the privileged portion of the money-lending class. There is the further real danger of the privileged *agriculturist* taking over the debts and mortgages of other money-lenders who have not the favoured status and then proceeding to acquire the lands of the indebted peasants.

"I should add that when the Punjab Act was extended to the North-West Frontier Province in 1904, the provisions relating to the statutory agriculturist were cut out. Again, in the Bundelkhand Act (1903), there is nothing to

App. VIII C correspond to the *agriculturist* of our Act, while in framing the Punjab Pre-emption Act, 1905, we studiously avoided the insertion of any provisions based on the presumption that the statutory *agriculturist* was a permanent feature in our legislation.

"For the reasons which I have detailed, not, I hope, at too great length in view of the importance of the matter the general conclusion has been accepted 'that the introduction of the *agriculturist* into the legislation of 1900 was unfortunate and the artificial provisions then inserted may now be abrogated as being unnecessary, inconvenient and mischievous.' The main object of the present Bill is to give effect to that conclusion

"The opportunity has at the same time been taken to provide for certain minor alterations in the Act which the experience of the last six years has shown to be required. These alterations fall under six heads, concerning—

- (i) the effect of the Act on occupancy rights;
- (ii) the treatment of gifts for religious or charitable purposes;
- (iii) the authority for notifying agricultural tribes;
- (iv) the enforcement of the provisions of the Act regarding temporary alienations;
- (v) the completion of the existing provisions regarding the conversion of conditional sales into temporary alienations;
- (vi) the relation of the Civil Courts towards the executive in the administration of the Act.

"I will now deal with each of these heads in the order given.

"(i) First as regards the question of *occupancy rights*. It was the intention of the framers of the Act that provisions of the Act should not apply to occupancy rights, probably because it was thought that the Punjab Tenancy Act did all that was required in the direction of restricting the alienation of such rights. In 1904, however, the Chief Court ruled that the definition of *land* in the Act did

include such rights, and that decision has been since acted on. It has now been decided to remove all further room for doubt and to confirm the present practice by expressly including occupancy rights in the definition of *land* which the Act contains. App. VIII C

"An obvious device for evading for provisions of the Act was for a member of the agricultural class to confer rights of occupancy on a person in whose favour he could not effect an alienation of proprietary rights. It has, therefore, been thought advisable to include the grant of occupancy rights in the definition of permanent alienation given in section 2 (4) of the Act, so that under section 3 such grants may, if necessary, be prevented where the alienee is not a member of an agricultural tribe. I should explain, however, that there is no intention to prevent the Deputy Commissioner sanctioning such alienations where the object is to promote agricultural development by giving favourable terms to new settlers and the like.

"Another point in connection with occupancy rights is that under sections 53 and 54 of the Punjab Tenancy Act a landlord can claim pre-emption in the case of a sale of, or foreclosure of a mortgage on, a right of occupancy. These sections afford a possible means of evading the provisions of the Land Alienation Act; and, while it is not intended to place restrictions on the *bona fide* exercise of the right of pre-emption by landlords who do not belong to the agricultural class, it is considered advisable that such transfers should be subjected to the review of the Deputy Commissioner. While, therefore, on the one hand such transfers are made subject to the provisions of the Act, it is at the same time provided that the Deputy Commissioner shall sanction transfers of this nature made *bona fide* by a tenant to his landlord (clauses 3 and 4 (2) of the Bill).

"(ii) *Gifts for religious or charitable purposes.* Gifts of this nature are expressly excluded from the definition of 'permanent alienation' in the Act as it now stands, and here again there is an opening for evading the restric-

App. VIII C tions imposed by the Act. In the Bill this matter is dealt with on similar lines to those applied to the purchase by a landlord of occupancy rights, *i.e.*, the sanction of the Deputy Commissioner will be necessary, but it is provided that sanction must be given to all *bona fide* gifts of this character.

"(iii) The permission of the Government of India has been obtained to a change in respect of the authority for notifying agricultural tribes. Section 4 of the Act requires the sanction of the Governor-General in Council before a tribe can be notified as an agricultural tribe. The work of notifying tribes has been practically completed, and the general principles on which they are selected for notification have been determined, so that there is no further object in requiring previous sanction. Clause 5 of the Bill provides for the deletion of the words which make such sanction necessary.

"(iv) The fourth point to be noticed is one of some considerable importance in the practical working of the Act. One of the main features of the Act was the limitation of the period of years for which land could be temporarily alienated by members of agricultural tribes to outsiders, and power was given to the Deputy Commissioner to oust a mortgagee or lessee who remained in possession after the expiry of the prescribed period. But two defects or omissions have come to light of which I will notice the more important first. Where a mortgagee under either of the first two forms of mortgage permitted by section 6 is in possession of the land, section 7 (3) permits the mortgagor to redeem the land on payment of the mortgage debt or the proportionate amount of it which the Deputy Commissioner determines to be due. But if the mortgagee declined to receive the amount due when tendered by the mortgagor or to give up possession, the mortgagor would have to face the troubles and expense involved in civil litigation. It is a very common cause of complaint that a mortgagor may be quite ready and willing to make the payment necessary for redemption, or may even have made it, but finds himself prevented from getting back his land owing

to the passive resistance of the mortgagee. It is now proposed (clause 7) to give the Deputy Commissioner power to eject the mortgagee where either (1) it is proved to his satisfaction that the mortgagor has paid the mortgage debt or such proportion of it as the Deputy Commissioner finds to be equitably due, or (2) the mortgagor tenders the amount due. App. VIII C

"The other defect is of less importance. Where a mortgage is without possession and the mortgagor fails to fulfil the terms of the mortgage, the mortgagee may apply to the Deputy Commissioner to be put in possession, and the Deputy Commissioner may thereon determine that the mortgagee should be put in possession for a period. But the Deputy Commissioner was not at the same time given the power of enforcing his decision by putting the mortgagee in possession. Clause 6 has been framed to remedy this omission.

"(v) The fifth of these minor points in respect of which it is proposed to remedy the defects brought to light in the working of the Act concerns the matter of mortgages with condition of sale. The Act declares null and void a condition of sale in a mortgage made after the commencement of the Act. In the case of a mortgage with condition of sale executed before the commencement of the Act the Deputy Commissioner is empowered to put the mortgagee to his election whether he will agree to the condition of sale being struck out, or will accept a fresh mortgage in one of the authorized forms. It has been found in a good many cases that where the mortgagee accepts the latter alternative further progress is stayed owing to the refusal or neglect of the mortgagor to execute a fresh deed. The refusal might be due to one of several causes; and in particular it would obviously be to the advantage of the mortgagee that the mortgagor should refuse, if the result was to leave the condition of sale effective. It has been considered advisable, in the interests of the mortgagor, to insure that he should not suffer the consequences of his refusal or inaction, and it is accordingly provided in clause 8 that, in such circumstances, the Deputy Commissioner should have the power to execute the deed on behalf of the mortgagor.

App VIII C

"(vi) The last point to be noticed concerns the action of the Civil Courts in relation to the working of the Act. It has been found that in a large number of cases subordinate Civil Courts have passed decrees (usually with the consent of the parties), involving transfers of land in contravention of the provisions of the Act. This is a very insidious form of evasion, because the Civil Appellate Court is seldom moved to interfere, and there is no other means of putting the matter right. Either such cases may escape the notice of the Deputy Commissioner, or if they do come to his notice, he finds himself helpless to intervene. It is now proposed to provide means by which (1) the Deputy Commissioner shall be kept informed by the Civil Courts of all decrees which they pass involving transfers of land from members of agricultural tribes to money-lenders, and (2) he shall be in a position apart from the wishes of either party, to move the superior Civil Courts to interfere. Clause 9 of the Bill has been framed with this object. It follows the analogy of section 27 of the Punjab Pre-emption Act, and provides a procedure by which the Deputy Commissioner will be able to bring before the superior Civil Courts, with a view to revision, any decree of a Civil Court which appears to him to be contrary to the provisions of the Act.

"In these remarks I have endeavoured to explain, as briefly as was possible in view of the importance, the amendments which it is proposed to introduce into the Act."

This motion was put and agreed to, and the Hon'ble Mr. Gordon Walker introduced the Bill.

The Hon'ble Mr. Gordon Walker moved—

- (1) that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Douie, the Hon'ble M. Shah Din, the Hon'ble Sardar Partab Singh, the Hon'ble Malik Umar Hayat Khan, Tiwana, and the mover, with instructions to report by the 10th February 1907;
- (2) that the Bill be circulated for the purpose of eliciting opinions thereon.

The motions were put and agreed to.

APPENDIX VIII D.

*Report of the Select Committee on the Bill to amend
the Punjab Alienation of Land Act, 1900.*

The following Report of the Select Committee on the Bill to amend the Punjab Alienation of Land Act, 1900, was presented to the Council of the Lieutenant-Governor of the Punjab for the purpose of making Laws and Regulations, on the 21st February 1907 :—

We, the undersigned Members of the Select Committee, to which the Bill to amend the Punjab Alienation of Land Act, 1900, was referred, have considered the provisions of the Bill and the opinions on it; and have now the honour to submit our report, with a copy of the Bill as amended by us annexed thereto.

The Bill was introduced at a meeting of the Legislative Council held at Lahore on the 25th October 1906, when the motions were put and agreed to—

- (1) That the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Douie, the Hon'ble Mr. Shah Din, the Hon'ble Sardar Partab Singh, the Hon'ble Malik Umar Hayat Khan, Tiwana, and the mover (the Hon'ble Mr. Gordon Walker).
- (2) That the Bill be circulated for the purpose of eliciting opinions thereon.

The Hon'ble Mr. Shah Din has ceased to be a Member of the Council, and the Hon'ble Malik Umar Hayat Khan has been unable to attend the meeting of the Select Committee.

We have considered the opinions expressed on the measure, and find that the proposed abolition of the statutory agriculturist, which is the main feature of the Bill, has been generally approved by the authorities consulted. In the following remarks we will deal with the other provisions which seem to us to require special notice.

App. VIII D *Clause 2 (2).*—We have considered the question whether the words "any right of occupancy" which it is proposed to introduce as (f) in section 2 (3) of the Act are sufficiently wide to cover occupancy rights which may be acquired otherwise than under the Punjab Tenancy Act. As an instance of such rights may be mentioned the rights of *Mularravidars* in the Rawalpindi division. We are of opinion that it is unnecessary to add to the language used for the purpose of making it clear that it is intended to cover such rights.

Clause 4 (2)—We have made an important alteration in proviso (2) to sub-clause (2) of clause 4. This proviso as drafted made it necessary that every (a) sale of right of occupancy by a tenant to his landlord and (b) gift made for a religious or charitable purpose should be reported to the Deputy Commissioner, but that the Deputy Commissioner's sanction must be given if he was satisfied that the transaction was in fact what it purported to be. This provision has been subjected to a good deal of criticism. Its object was to insure against evasions of the Act by transactions which professed to be of one or other of these characters, but were not so in fact. We are of opinion that the danger of evasions under (a) is so slight that it is quite unnecessary to resort to the rather cumbrous expedient proposed for the purpose of detecting them. As regards (b), it has been suggested to the Committee by the Hon'ble Sardar Partab Singh that the provisions requiring the sanction of the Deputy Commissioner to gifts for religious purposes, though accompanied by the condition that sanction will be given where he is satisfied that there is no attempt to evade the provisions of the Act, have aroused some apprehension as to possible interference with *dharmanarth* and other donations of a like character. It has also been represented that in parts of the country the custom of making small death-bed gifts for religious purposes is very common, and that it would be vexatious to require such transactions to be reported for sanction. We do not believe that the danger is really great that the law will be evaded to any

extent worth mentioning by fictitious gifts for religious purposes which are in reality sales. Under these circumstances we have come to the conclusion that the proviso goes further than is really necessary, and that it is likely to give rise to avoidable inconvenience and misapprehension. The proviso as altered by us dispenses with the necessity of the Deputy Commissioner's sanction to *bona fide* alienations of classes (a) and (b). App. VIII D

Clause 9.—Exception has been taken to the provisions (clause 9) requiring Civil Courts to send copies of their decrees to Deputy Commissioners and permitting the Deputy Commissioner to intervene by applying to the Appellate Court to revise the decree or order of the original Court so as to bring it into conformity with the provisions of the Act. We are of opinion that ample justification for these exceptional provisions is to be found in the circumstances with which we have to deal. The Act which is now under amendment was admittedly a piece of exceptional legislation designed to cure a great public evil. It is an undoubted fact that in certain parts of the province the objects of the Act have been defeated in a large number of cases by collusive proceedings in which the parties asked the Civil Court to give effect to a compromise which contravened the terms of the Act, and the Civil Court did give effect to such a compromise, because it either failed to detect or acquiesced in a violation of the law. It is, in our opinion, right that there should be a legal method of calling the attention of the superior Courts to such violations of the law, and that the superior Courts should have powers to remedy such illegalities apart from the wishes of the parties who, *ex hypothesi*, have consented to the passing of decrees contravening the law. We may further point out that similar powers have already been taken in section 27 of Punjab Act II of 1905. It has been suggested that the powers and procedure proposed are possibly contrary to the provisions of existing Acts governing the powers and procedure of the Civil Courts, and we have accordingly introduced words to meet this objection.

App. VIII D The Bill was published in English and Urdu in the
Punjab Gazette of the 25th October 1906.

The alterations necessary to give effect to our recommendations are indicated by italics in the Bill as reprinted. The amendments proposed do not in our opinion so alter the Bill as to require the republication.

LAHORE :	}	T. GORDON WALKER.
		J. M. DOUIE.
<i>The 11th February 1907.</i>		PARTAP SINGH.



APPENDIX VIII E.

SPEECH BY THE HON'BLE MR. WALKER.

The Hon'ble Mr. Gordon Walker presented the report of the Select Committee on the Bill to amend the Punjab Alienation of Land Act, 1900. He said:—"This Bill was introduced at a meeting of the Council held on 25th October 1906 and was referred to a Select Committee. It was at the same time published and circulated for the purpose of eliciting opinions.

"In asking leave to introduce the Bill I explained that its main object was the abolition of the *statutory agriculturist*, while the opportunity had also been taken to provide for certain minor alterations in the Act which experience of the working had shown to be required.

"Dealing with the former of these matters, which is the main feature of the Bill, I explained in detail and at considerable length the reasons which had forced Government to the conclusion that, in the formation of this artificial class, and the extension to them of privileges in respect of the acquisition of land, a mistake had been made which it was necessary to remedy. I will not trouble the Council with a repetition of the arguments advanced for the purpose of establishing the conclusion then stated, that 'the introduction of the agriculturist into the legislation of 1900 was unfortunate, and that the artificial provisions then inserted may now be abrogated as being *unnecessary, inconvenient and mischievous*.'

"I am not here concerned to defend the principles on which the legislation of 1900 was founded. It is fully recognized that there has throughout been a not inconsiderable body of public opinion which is opposed to the Act. That must be accepted as a necessary incident where class legislation such as we are here concerned with is undertaken; but the question involved in the present Bill is a much narrower and more limited one. There are members and even sections of the community who belong neither to any of the tribes notified as agricultural, nor to the class whose profession is money-

App. VIII E lending, but who desire to acquire land. These may or may not already be owners of land. As a body, they are excluded by the Act of 1900 from the privilege of being able to acquire land from members of the agricultural class without sanction, and the present Bill does not concern them *as a body*. The exception which the Act of 1900 created, and which it is now proposed to abolish, was confined to the limited class of those who fulfilled *all these* conditions of (*firstly*) already owning land, (*secondly*) coming within the narrow terms of the definition of 'agriculturist' given in the Act, and (*thirdly*) holding land as agriculturists *in the village* where the land to be alienated is situated. I have given this explanation because there would appear to be a good deal of misapprehension as to the scope of the present Bill, and some confusion *between what it is proposed to provide for in the Bill and the general effects of the Act of 1900*. Except in so far as it bears directly on the interests of the limited class described above we are not now concerned with the policy of the Act of 1900.

"It seems only necessary to add that so far as this the main feature of the Bill is concerned, there is practical unanimity of opinion amongst the judicial and executive authorities consulted in favour of the abolition of the statutory agriculturist.

"In my remarks at the time of introducing the Bill I grouped the other and minor alterations in the Act of 1900, which the Bill was intended to effect under six heads. It will be observed that the Select Committee have introduced a somewhat important change with reference to (a) sales of a right of occupancy by a tenant to his landlord, and (b) gifts for religious or charitable purposes. The Bill as introduced provided that for all transactions of those descriptions the sanction of the Deputy Commissioner should be necessary; but that sanction should be given as a matter of course where the Deputy Commissioner was satisfied that the transactions were in fact what they professed to be. The reasons for the change introduced by the Select Committee are fully stated in their report; and I do not propose to

trouble the Council with a repetition of them. I may note that definition of 'permanent alienation' in the Act excludes gifts for a religious or charitable purpose. The Select Committee have thought it preferable not to revert to that method of dealing with the matter, partly because the proposed treatment is preferable as a matter of drafting, and partly in order to make it more clear that the exemption from the necessity for sanction extends only to alienations of this nature made *bona fide* and not to sales in disguise.

App. VIII E

"As regards clauses 6 and 7 of the Bill I may perhaps be allowed to quote the opinion of the Hon'ble Chief Judge that 'they are the corollaries of the sections to which they refer,' and that there is 'no objection to the corollaries, the substantive sections being passed law.' The object of these clauses is to complete the sections by supplying an omission due to an oversight in framing the Act. Clause 6 is intended to benefit the mortgagee; and 7, the mortgagor. The powers which they give to the Deputy Commissioner are obviously necessary; and it is only the result of an oversight that they were not given in the Act.

"Clause 9 of the Bill has been subjected to a good deal of criticism, which is met in the report of the Select Committee. In view of the weight of authority behind that criticism it seems advisable that I should supplement in some detail the reasons given by the Committee for the retention of the clause.

"In introducing the Bill I referred to the circumstances which were considered sufficient to justify the intervention of the Deputy Commissioner even when he might be acting in apparent opposition to the wishes of those who were parties to the transaction. I have had brought to my notice and have had to go into many cases of the class for which it is proposed to provide. A member of the agricultural class who is deeply involved with his money-lender will often *under pressure* agree to any terms that the latter may dictate. He is not really a free agent in the transactions. Owing

App. VIII E to the pressure to which he is subjected he will agree before the Civil Court to a compromise involving the permanent alienation of his land, and the strength of the pressure and dread of the consequences are so great that he dare not himself apply to the Appellate Court for relief. I have myself had to deal with a large number of cases in which a Civil Court has, without making the reference to the Deputy Commissioner required by the law, given effect by decree to a compromise embodying an agreement which admittedly contravened the provisions of the Act. In many of these cases the alienor (judgment-debtor) has subsequently petitioned the Deputy Commissioner to interfere on the ground that he never accepted the compromise, that he did not understand the terms, or that he was not acting voluntarily in accepting it. It is for cases of this class that we have to provide, and I have no hesitation in saying that the intervention of the Deputy Commissioner (who is the authority responsible for the proper administration of the Act) in the interest of the alienor is fully justified by the entirely exceptional circumstances.

"An original Civil Court which passes an illegal decree may under warning refrain from doing so again, but that does not help the person who has suffered by the decree. It may be strictly logical to say that a person who has acted so foolishly as the alienors in such cases have done must take the consequences. But if the principles of the legislation of 1900 are right, a point on which I think few of those who have studied the problem with any sense of responsibility, or with a true appreciation of the issues at stake, entertain any doubts, there is surely ample justification for the executive intervening in cases where the provisions of the Act have been contravened by the Civil Courts, and with a view to preventing evasions due to the collusion of the parties or the neglect of the Civil Courts of original jurisdiction. Apart from this general purpose the immediate object of the intervention would be to protect the alienor and his successors in interest from

the results of his folly or helplessness; and the form that the intervention takes is, I may remark, not of interference with the order of the Civil Court, but of application to superior Civil Court to interfere. APP. VIII.E

"In conclusion I would desire to notice the special objections which have been raised to this provision on the grounds that it introduces an entirely new principle, that it is at variance with the ordinary methods of judicial inquiry in that it allows the intervention of a third party who has no interest in the litigation, and that it may place the Court in the position of having itself to set up a case for one party. It is also objected that it is derogatory to the Civil Court to have to submit their decrees to the Deputy Commissioner for correction. These objections are advanced with authority and deserve careful consideration. With regard to the last I venture to think that it is perhaps a sufficient answer to repeat that the only power it is proposed to give the Deputy Commissioner is that of moving the Appellate Courts to correct decrees of Courts of first instance. The necessity for keeping the Deputy Commissioner *informed* of all such decrees will scarcely be denied. As to the other objections mentioned I have already explained in detail the exceptional circumstances which have been held to justify the departure from the ordinary methods of judicial inquiry. It will be seen that, save in the matter of drafting, the clause differs from section 27 of the Punjab Pre-emption Act (II of 1905), as regards the power conferred on the Deputy Commissioner and the procedure, only in this respect that it permits the Deputy Commissioner to apply to the Chief Court for the revision of an Appellate Court's order rejecting his application. Except in this detail the principles and procedure are the same. I have looked through the whole literature relating to the passing of the Pre-emption Act; but can find in it no traces of an objection of principle having been taken to section 27 by the judicial authorities consulted. On the other hand, I find that in his speech on the introduction of the Bill at a meeting of the Council held on 19th November 1904

App. VIII E the late Mr. Alex. Anderson made the following observations:—

‘But to prevent mistakes relating to the Alienation of Land Act arising from the inadvertence of the Lower Courts or the collusion of the parties it has been considered necessary to insert in the Bill three precautionary provisions—

- (a) The Courts are required to enquire into and decide certain issues of *their own motion*, whether the facts involved therein be admitted or not; and to dismiss the suit if the original sale was made in contravention of the Alienation Act, or if the pre-emptor's claim is barred under the provisions of the Pre-emption Act owing to his not being a member of an agricultural tribe, nor of the same tribe as the vendor, and therefore not entitled to claim pre-emption under clause 11;
- (b) if the pre-emptor, though a member of an agricultural tribe, may not purchase without the sanction of the Deputy Commissioner, he will not be given possession of the land until such sanction has been granted; and
- (c) the Court is required to send to the Deputy Commissioner a copy of every decree granting pre-emption, and the Deputy Commissioner is authorised to apply to the Appellate Court for revision in any case when he considers the requirements of the Alienation Act have been contravened.

‘These provisions will, it is believed, ensure strict compliance with the Alienation Act; while at the same time they avoid all references from the Civil to the Revenue Courts during the hearing of the case, and they will also prevent all conflicts as to jurisdiction.’

“That was the view with regard to the question of principle to which full prominence was given in 1904. It was accepted without demur alike by the Judicial and

Revenue authorities and was given effect to in the Pre-emption Act. " App. VIII E

The Hon'ble Mr. Gordon Walker moved that the report be taken into consideration.

The motion was put and agreed to.

The Hon'ble Mr. Gordon Walker moved that the Bill as amended by the Select Committee be passed.

The Hon'ble Malak Umar Hayat Khan said:—" I am emphatically of opinion that no Act has done or is calculated to do more good to the agricultural community of the Punjab than the Land Alienation Act. It was at the outset feared by a few that the Act would not work successfully and that it would end in nothing but the inconvenient contraction of zamindars' credit. But time has shown that these were imaginary fears only. The object of the Act was to avert the seriously large transfers of land from the classes who were hereditary owners to the money-lenders, and that object has been splendidly attained without contracting the zamindars' credit too much. The Act, however, omitted to provide for the shutting out of those who did not really belong to any agricultural class, but had their names in the record-of-rights of first regular settlement. A provision is now being made to remedy the defect and it is really imperative to remove the flaw to fully realise the object of the Act which is now, I believe, universally considered as a real boon to the zamindars. I am quite in accord with the Select Committee's report. Although I have been unavoidably away from the sitting of the Select Committee, yet I have been from the very start in favour of the Bill, and I would gladly give my opinion for the Bill to be passed as amended."

The Hon'ble Thakur Mahan Chand said:—" I agree to all other amendments and additions made in the Punjab Land Alienation Act by the Bill as reported by the Select Committee, but as to the proposal of abolishing statutory agriculturists and repealing sub-section (1) of section 2 and clause (b) and the proviso to section 3, sub-

App VIII B section (1), I cannot agree with the view of my colleague the Hon'ble Mr. Walker that the statutory agriculturists were allowed the privilege of acquiring lands from the agricultural tribes within their own villages simply because there was 'fear that undue economic inconvenience might result from the exclusion *uno totu* of the entire money-lending class.' On the contrary, I think the privilege was granted to the agriculturists for the reasons of their having a status somewhat equal to the members of an agricultural tribe. The right was given only to those who held agricultural land for some long periods.

"Supposing that the measure has been simply adopted for the benefit of agricultural tribes, it is not reasonable why the interests and rights of the other communities should be overlooked. In the first place the Punjab Land Alienation Act with all its beneficial effects and success is still an interference with the sole proprietary rights of the zamindars. Secondly, it puts an undesirable restriction which is without a precedent on the rights of the people in general who are debarred from acquiring agricultural land if they desire to lead a life of a zamindar and invest their money in agricultural operations.

"From the speech of 25th October and from the Statement of Objects and Reasons made by my Hon'ble friend it is clear that the abolishing of the agriculturists is proposed mainly for the reasons of certain difficulties which were caused by the new law in preparing some of the Revenue Records. At the same time it is admitted that in the case of these agriculturists 'comparatively little use has been made of the permission to make permanent alienations to statutory agriculturists.' It is also mentioned that while the 'non-agricultural classes were excluded generally from the power of acquiring land belonging to the agricultural classes this exclusion was relaxed in the case of a small portion of the former,' that is, non-agriculturists. Now from the above quotations it is evident that only small portion of the non-agricultural classes were given the privilege of acquiring land from the members of agricultural

tribes and that right was properly granted on the grounds that those who have been holding land in the same village since long years are entitled to the rights of acquiring it from their fellow-villagers. At the same time it is proved that very few permanent alienations have been effected during the time in favour of these statutory agriculturists. All this shows that there has been no abuse of the privilege up to now in the course of the last six years. Therefore there is no likelihood of any mischievous results if agriculturists are allowed to be maintained in the Act. All men of the non-agricultural classes cannot be deemed to be money-lenders, and as regards the money-lenders themselves it is admitted that 'the village money-lender is not perhaps now so keen on pressing a loan on the reluctant zamindar.' Under these circumstances there appears no necessity at all to feel so much anxiety about the maintenance of statutory agriculturists. It will, no doubt, be rather hard for the members of a non-agricultural class who are somewhat in equal position to zamindars in the villages if they are deprived of the privilege which was so justly and reasonably granted to them at the time of passing the original Act."

The Hon'ble Mr. Gordon Walker said:—"I note with satisfaction that the Hon'ble Thakur Mahan Chand agrees to all the amendments and additions which it is proposed to make except that for the abolition of the statutory agriculturists, and that he recognizes the 'beneficial effects and success' of the Act of 1900, although he qualifies his approval perhaps unintentionally by stating that it 'puts an undesirable restriction which is without precedent on the rights of the people in general etc.'

"In stating as I did in my remarks on the introduction of the present Bill that the genesis of the statutory agriculturist was the result of the 'fear that undue economic inconvenience might result from the exclusion *uno iotu* of the entire money-lending class' I was not giving expression merely to my own opinion. At the time of the passing of the Act apprehensions were felt

App. VIII E that such inconvenience might result, and it was mainly to meet this that recourse was had to the compromise. The question is as to what the reasons influencing those responsible for the measure of 1900 really were and not as to what the opinion of the Hon'ble Member or my opinion as to those reasons may be; and I think it is clear that the reason given rather than any special consideration for the *agriculturist* was what influenced the decision.

"If the Hon'ble Member really gained the impression from my speech of 25th October 1906 and from the Statement of Objects and Reasons that 'the abolishing of the agriculturists is proposed mainly for the reasons of certain difficulties which were caused by the new law in preparing some of the Revenue Records,' I can only say that I must have signally failed to express my meaning clearly. What I endeavoured to establish in my remarks on the introduction of this measure was that the creation of the statutory agriculturist was *necessary, inconvenient and mischievous*. Under the second of these heads I referred to the difficulty of determining in accordance with the definition of agriculturist given in the Act, which refers to entries in the settlement records, who came within the terms of the definition. I also referred to the difficulties involved in our having to follow areas which have been alienated to an agriculturist for the purpose of insuring that subsequent alienations were made only to members of agricultural tribes or to other agriculturists. All this, however, has nothing whatever to do with "difficulties in preparing the Revenue Records."

"The Hon'ble Member further observes that 'there has been no abuse of the privilege up to now in the course of the last six years. Therefore there is no likelihood of any mischievous results if agriculturists are allowed to be maintained in the Act.' In my remarks on the previous occasion, however, I endeavoured to explain why it had come about that so little use had been made of the permission to alienate to statutory agriculturists. The result has really been due to the failure of both parties to realize what the Act permitted, and, therefore, no conclusion can be

drawn from what had occurred in the past to what the future results might be. As to the mischief anticipated if the statutory agriculturist remained in the Act I stated the conclusion, which I should explain is not a matter of my own opinion but of that of those responsible for the working of the Act that there appears to be every probability that, unless we interfere, considerable quantities of land would before long pass from the agricultural to the privileged portion of the money-lending class.

"It is quite true as observed by the Hon'ble Member that all men of the non-agricultural class cannot be deemed to be money-lenders. That is a point which I have endeavoured to bring out in the remarks which I have already made to-day. But it would be impossible in the circumstances to give effect to any such distinction even if it were desirable to make it, while above all it is to be remembered that the object to be attained by the Legislation is to prevent the alienation of land by the members of the real agricultural tribes, which of necessity involves prohibition of acquisition by any other class.

"The speech of the Hon'ble Malik Umar Hayat Khan is a valuable contribution to the discussion, I do not think that there is any one whose opinion as to the effects of the Bill is better entitled to consideration. I regret that the Hon'ble Sardar Partap Singh has been prevented from attending to-day. We are grateful for the assistance which he has given us in Select Committee."

His Honour the President said — "I wish before putting the question for passing this Bill, to make a few remarks on the working of the Punjab Land Alienation Act, as this is the last opportunity that I shall have of doing so, and the Act is one in the framing and passing of which I took some share and whose operations I have always watched with special attention and interest. The Land Alienation Act has been in force now for really six years, and I have no hesitation in saying—and I base this opinion not only on the periodical official reports on the working of the Act but also on my own personal enquiries in all parts of this province during the past five years—

App. VIII E that the objects which it was intended to effect have been attained, so far as all events, with a remarkable degree of success. The opponents of the measure, when it was under discussion, raised two main objections to it,—firstly, that the agricultural classes would resent the restrictions which it was contemplated to impose on their rights of free transfer; and secondly, that the credit of the agricultural classes would be so seriously impaired that they would be unable to raise money in time of need for their legitimate requirements. Experience has shown that neither of these forebodings has been realized. There can not be a shadow of a doubt that agricultural classes throughout the Punjab regard the Act with full appreciation as a measure which was solely devised for their protection and benefit and which is fulfilling its intention, and as regards the contraction of credit, the effect of the Act has been the very desirable one of placing a wholesome check on reckless and extravagant expenditure, but there are no indications that the agricultural classes experience difficulty in obtaining reasonable loans for necessary purposes; at the same time, the value of land which, as was of course anticipated, was depreciated for a time, has recovered. Also, the apprehensions which were entertained by some critics that the working of the Act would impose an unduly heavy burden on the district officer and his revenue staff have proved unfounded. The two main points which require careful and constant attention are, firstly, whether the smaller and weaker agricultural tribes are being expropriated under the provisions of the Act, as they stand at present, by the larger and more enterprising tribes; and secondly, that tribes which are not truly agricultural and which desire to be notified under the Act, not for self-protection but in order to obtain additional facilities for acquiring land, are not admitted to the agricultural status. The necessity for the alterations made by the Bill now under our consideration in the original Act has been fully explained by the Hon'ble Member in charge, and I have every hope that the Act will work as successfully in the future as it has hitherto."

On the motion being put the Hon'ble Thakur Mahan Ohand voted against the passing of the Bill.

The Council divided :—

APP. IX.

<i>Ayes</i> —5	<i>Noes</i> —1
The Hon'ble Malik Umar Hayat Khan.	The Hon'ble Thakur Mahan Chand.
The Hon'ble Mr. Finney.	
The Hon'ble Sir David Masson.	
The Hon'ble Mr. Douie.	
The Hon'ble Mr. Gordon Walker.	

So the motion was agreed to.

APPENDIX IX.

EXTRACT FROM THE DEVOLUTION ACT, 1920.

(ACT No. XXXVIII OF 1920)

(Received the assent of the Governor General on the 14th September, 1920)

An act to relax the control in certain respects of the Governor General in Council over Local Governments and to transfer to such Governments certain powers now exercisable by the Governor General in Council.

Whereas powers of control are vested in the Governor General in Council in virtue of certain enactments and it is expedient to relax those powers and to transfer to Local Governments powers under certain enactments now exercisable by the Governor General in Council ; it is hereby enacted as follows :—

(1) This act may be called the Devolution Act,
Short title. 1920.

(2) The enactments specified in the First Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

Amendments of certain enactments.

App VIII E

that the object which it was intended to attain, so far as it does not with a remarkable success. The opposition of the measure, which is the opposition of the measure, who disapprove, and who are not in opposition to the agricultural classes would resent the fact it was contemplated to impose on their transfer, and secondly, that the credit of classes would be so seriously impaired that unable to raise money in time of need for requirements. Experience has shown that forebodings has been realized. There can be no doubt that agricultural classes Punjab regard the Act with full appreciation which was solely devised for their protection and which is fulfilling its intention, and contraction of credit, the effect of the Act desirable one of placing a wholesome check on extravagant expenditure but there are the agricultural classes experience difficulty reasonable loans for necessary purposes, the value of land which, as was of course depreciated for a time, has recovered. The serious which were entertained by the working of the Act would impose an onerous burden on the district officer and his revenue unfounded. The two main points of consideration and constant attention are, firstly, whether weaker agricultural tribes are being the provisions of the Act, as they stand larger and more enterprising tribes and tribes which are not truly agricultural be notified under the Act, not for the order to obtain additional facilities for not admitted to the agricultural status the alterations made by the Bill now in the original Act has been fully explained by the Member in charge, and I have every confidence that it will work as successfully in the future.

On the motion being put the House voted against the passing of the

SUPPLEMENT.

APP. IX.

(3) The enactments specified in the second Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

(4) Any appointment, notification, order, scheme, rule, form or bye-law made or issued, before the commencement of this Act, by an authority for the making or issuing of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been made or issued by such new authority unless and until superseded by an appointment, notification, order, scheme, rule, form or bye law made or issued by such new authority.

THE FIRST SCHEDULE

(See Section 2)

Year.	No.	Short title or subject.	Amendments.
1900	XIII	The Punjab Alienation of Land Act, 1900.	In section 24, the words "with the previous sanction of the Governor General in Council" shall be omitted.

SUPPLEMENT.

CONTENTS.

(1) The Redemption of Mortgages (Punjab) Act, 1913.

(ACT NO. 2 OF 1913).

(2) The Land (Conditional Sales) Regulation, (Bengal).
1798.

(REGULATION 1 OF 1798).

(3) The Land Redemption and Foreclosure Regulation,
(Bengal), 1806

(REGULATION XVII OF 1806).

PUNJAB ACT No II OF 1913.

The Redemption of Mortgages Act.

(Received the assent of His Honour the Lieutenant-Governor of the Punjab on the 8th February 1913 and that of His Excellency the Viceroy and Governor-General on the 4th March 1913.)

Whereas it is expedient to provide a summary procedure for the redemption of certain mortgages of land in the Punjab;

Preamble.

It is hereby enacted as follows :—

Title. 1. (1) This Act may be called
The Redemption of Mortgages (Punjab)
Act, 1913.

Extent. (2) It extends to the Punjab.

Limitation of scope of
Act to certain mortgages. (3) It shall apply only to
mortgages of land—

(a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village or of a subdivision of the village appertaining thereto and mortgaged therewith, does not exceed in area 30 acres ; or

(b) in which, whatever the area, the principal money secured under the mortgage does not exceed 1,000 rupees ;

Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900.

NOTES.

Mortgages under the Punjab Alienation of Land Act are excluded from the operation of the Punjab Redemption of Mortgage Act.—In 1909 F. and R., *Gujars* and members of an agricultural tribe made a usufructuary mortgage under section 6 of the Alienation

Act 2 of 1913. of Land Act in favor of a *Muhajir*. In 1913 the mortgagors effected a second mortgage of the same property in favor of the applicants, Jats, belonging to an agricultural tribe in the same group as the mortgagors, the mortgage-deed expressly conferring on them a power of redeeming the first mortgage. The second mortgagees applied under section 7 (3) and (5) of the Punjab Alienation of Land Act to redeem the first mortgage. *Held*, that as the proviso to section 1 of the Redemption of Mortgages Act, (No. II of 1913) excludes from its operation mortgages made under section 6 of the Alienation of Land Act, (Act XIII of 1900), the former Act was not applicable to the case. *Held* further, that as both parties to the second mortgage were members of agricultural tribes the terms and scope of their contract were in no way restricted by the provisions of the Alienation of Land Act and the second mortgagees were consequently entitled to redeem or pay off the first mortgage both under the express terms of the contract and, apart from that, as an ordinary incident of the general law of mortgage, *vide* section 74 of the Transfer of Property Act. *Sarupa v. Kundan Lal*, P. R. 7 of 1917. (Rev.).

2. In this Act, unless there is something repugnant in the subject or context,—

(1) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, and includes—

- (a) the sites of buildings and other structures on such land ;
- (b) a share in the profits of an estate or holding ;
- (c) any dues or any fixed percentage of the land revenue payable by an inferior landowner to a superior landowner ;
- (d) a right to receive rent ;

(e) any right to water enjoyed by the owner or the occupier of land as such ; and Act 2 of 1913

(f) any right of occupancy ;

(2) the expression "Collector" shall mean the Collector of the district in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the first grade :

(3) "prescribed" shall mean prescribed by rules made under this Act.

(3) Subject to the provisions of this Act and the rules thereunder, the provisions of sections 79, 85, 86, 87, 89, 90, 91, 92 and 101 of the Punjab Tenancy Act, 1887, shall, so far as may be, apply to all proceedings of a Collector under this Act.

4. The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed and where the mortgage is with possession that he be put in possession of the mortgaged property. The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector.

The petitioner shall state in his petition such particulars and file therewith such documents as may be prescribed.

Act 2 of 1913,

5. When the petition has been duly presented and the deposit has been made, the Collector shall issue to the mortgagee a summons to appear on a date to be therein specified. Every summons shall be accompanied by a copy of the petition, with the date of deposit endorsed thereon.

6. Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, make an order that the petition be dismissed, unless the mortgagee admits the claim, in which case the Collector shall make an order—

Procedure when petitioner is absent and mortgagee present.

- (a) that the mortgage be redeemed ;
- (b) that where the mortgage is with possession the mortgagor be put in possession of the mortgaged property as against the mortgagee ;
- (c) that the mortgagee deposit with the Collector the mortgage-deed, if any, if then in his possession or power, and that it be delivered to the petitioner ;
- (d) that subject to the mortgage deed, if any, being so deposited by the mortgagee the sum in deposit be paid to him ;

Provided that no such order shall be made inconsistent with any condition of the mortgage whereby a season or period of the year is fixed for redemption or for surrendering possession.

7. When the petitioner appears, but the mortgagee does not appear, when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, enquire in a summary manner (a) whether the petitioner is entitled to redeem the mortgaged property,

Procedure when petitioner is present and mortgagee absent.

and (b) whether the sum deposited by the petitioner is the sum rightly due under the mortgage. Act 2 of 1913.

If the Collector is not satisfied that the petitioner is entitled to redeem, he shall dismiss the petition.

If the Collector is satisfied that the petitioner is entitled to redeem, and that the sum deposited is the sum rightly due under the mortgage, he shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the Collector is satisfied that the petitioner is entitled to redeem, but is of opinion that a sum larger than that in deposit is due under the mortgage, he shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order in manner aforesaid.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

8. Where both parties appear when the petition is called on for hearing, the Collector shall enquire from the mortgagee whether he admits that the petitioner is entitled to redeem, whether he is willing to accept the sum in deposit in full discharge of the mortgage debt and where the mortgage is with possession whether he is willing to surrender possession of the mortgaged property.

Procedure when both parties are in attendance : order for redemption.

If the mortgagee replies in the affirmative, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the mortgagee admits the petitioner's title to redeem, but demands payment of a sum larger than that in deposit, the Collector shall enquire from the petitioner whether he

A 12 of 1911

is willing to pay such larger sum, and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) above.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

9. If the mortgagee raises objection on any ground other than the amount of the deposit, Procedure in contentious cases. or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary enquiry regarding the objection raised by the mortgagee or regarding the sum due.

10. If on enquiry regarding any objection so raised by the mortgagee the Collector is of Enquiry into objection raised by mortgagee. opinion that it bars redemption or is a sufficient cause for not proceeding further with the petition, he shall dismiss the petition; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11, make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

11. If on enquiry regarding the sum due the Collector is of opinion that the sum deposited Enquiry regarding sum due. is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in section 6 (a), (b), (c), and (d) of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the petitioner, he shall, unless he dismisses

the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act. Act II of 1913.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

12. Any party aggrieved by an order made under section 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive.

Notwithstanding anything in this section a mortgagee against whom an *ex-parte* order under section 7 has been made or a petitioner whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit ; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party.

NOTES.

Declaratory suit by dispossessed mortgagee that he is entitled to a further sum from the mortgagor and to have it charged on the mortgaged property—whether competent.—*Held*, that a mortgagee dispossessed under the provisions of Punjab Act II of 1913 is entitled under section 12 of the Act to bring a suit to obtain a declaration that in addition to the sum found by the Collector to be rightly due to him under the mortgage he was entitled to receive from the mortgagor a further

Act 2 of 1913 is willing to pay such larger sum, and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) above.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

9. If the mortgagee raises objection on any ground Procedure in contentious cases, other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary enquiry regarding the objection raised by the mortgagee or regarding the sum due.

10. If on enquiry regarding any objection so raised by the mortgagee the Collector is of opinion that it bars redemption or is a Enquiry into objection raised by mortgagee. sufficient cause for not proceeding further with the petition, he shall dismiss the petition; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11, make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

11. If on enquiry regarding the sum due the Collector Enquiry regarding sum due. is of opinion that the sum deposited is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in section 6 (a), (b), (c), and (d) of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the petitioner, he shall, unless he dismisses

the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act. Act II of 1911.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

12. Any party aggrieved by an order made under section 6, 7, 8, 9, 10 or 11 of this ^{Saving of suits to established rights.} Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive.

Notwithstanding anything in this section a mortgagee ^{Setting aside ex-parte orders or orders of dismissal.} against whom an *ex-parte* order under section 7 has been made or a petitioner whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party.

NOTES.

Declaratory suit by dispossessed mortgagee that he is entitled to a further sum from the mortgagor and to have it charged on the mortgaged property—whether competent.—*Held*, that a mortgagee dispossessed under the provisions of Punjab Act II of 1913 is entitled under section 12 of the Act to bring a suit to obtain a declaration that in addition to the sum found by the Collector to be rightly due to him under the mortgage he was entitled to receive from the mortgagor a further

4. 1. 1913 sum as part of the mortgage-money and to have it charged on the mortgaged property, and he is under no obligation to sue for the consequential relief. *Balwant Rai v. Gheru*, P. R. 85 of 1917. *Niranjan Singh v. Dewan Charan Das*, I. L. R. 8 Lah. 239. See also *Khota Ram v. Nawaz*, I. L. R. 4 Lah. 76.

Mortgage redeemed on payment of amount fixed by Collector and possession given to mortgagor—suit by mortgagee for restoration of possession on account of larger amount due under the mortgage—whether competent.—The defendant-mortgagors applied, under Punjab Act II of 1913, to the Collector for redemption of their land, and an order was passed in their favour that possession should be given on payment of Rs. 1,063-0-6. Possession passed accordingly. The plaintiff-mortgagees thereupon instituted the present suit for restoration of possession on the ground that a far larger sum was due under the mortgage. The first Court found that Rs. 1,987-6-6 was due to plaintiffs and that they were entitled to retain possession until they were given the full amount. The decision was upheld by the lower Appellate Court. The defendants appealed to the High Court. *Held* that the provisions of section 12 of the Redemption of Mortgages (Punjab) Act are sufficiently wide to allow a Civil Court to right any wrong done by the Collector in the summary proceedings and if necessary to restore possession of the land and that the decision of the Lower Courts was consequently correct. *Balwant Rai v. Gheru*, P. R. 85 of 1917, distinguished. *Contra Lok Chand v. Hazar Khan*, P. R. 93 of 1917, not followed. *Nizam Din v. Daulat Ram*, I. L. R. 2 Lah. 234.

Muhammadan Law-mortgage of minor's property by defacto guardian-principle of restitution by minor plaintiff whether applicable when the minor is the defendant, having gained possession under the summary procedure for redemption of mortgages.—*Held*, that the principle that a Muhammadan minor if he comes into court to challenge an alienation

made by a *de facto* but not a *de jure*, guardian must before re-entry restore to the alienee all the benefits, that he personally has derived from the alienation is applicable to a suit brought under section 12 of the Redemption of Mortgages Act, by the mortgagees against a minor who has obtained possession under the summary procedure of that Act. *Sardara v. Kaura Ram*, P. R. 86 of 1918. Act 2 of 1913.

13. The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage.

14. If the Collector dismisses a petition under this Act, he shall order that the sum deposited by the petitioner be returned to him.

15. No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.

NOTES.

Attachment of money deposited by a mortgagor in redemption of a mortgage in favour of judgment-debtor—whether competent.—A mortgagor by depositing the mortgage money in the Court of the Revenue Assistant under the provisions of Punjab Act, II of 1918, had his mortgage redeemed and had been given possession of the mortgaged land. A decree-holder in execution of his money decree against the mortgagee got a portion of this money attached. The judgment-debtor's objection to the effect that in view of the provisions of Section 15 of Act II of 1918, the money was not attachable was allowed by the Courts below. *Held*, that the provisions of Section 15 of Act II of 1918 are primarily for the protection of the person depositing the money. The depositor, the mortgagor having been given possession of the land, the money became the property of the judgment-debtor and was therefore attachable in execution of a decree against him. *Mohna Mal v. Tulsi Ram*, I. L. R. 3 Lah. 144.

Act 2 of 1913.

16. When the petitioner has deposited with the Collector the sum declared by him to be due on the mortgage, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit ;

Where the collector finds that a further sum is due and the petitioner deposits such further sum, interest shall cease from the date of such further deposit :

Provided that nothing in this section shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money :

Provided also that where a suit is instituted under section 12, the court may pass such order as to interest as it deems fit.

17. The Local Government shall have power to make rules, consistent with this Act, for carrying out the purposes of this Act.

Power to make rules.

THE BENGAL LAND (CONDITIONAL SALES) REGULATION, 1798.

REGULATION 1 OF 1798.

(*Passed on the 9th January, 1798.*)

A Regulation to prevent fraud and injustice in conditional sales of land under deeds of Bai-bil-wafa or other deeds of the same nature :

1. It has been long a prevalent practice in the Province of Behar to borrow money on the mortgage and conditional sale of landed property, under a stipulation that, if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale shall become absolute. This species of transfer has, in the above province, been usually denominated *bai-bil-wafa*; and the same transaction is common in Bengal, under an instrument termed *kutoubaleh*. It doubtless exists, also, under deeds of the above or similar denominations, in Orissa and Benares: and since the promulgation of the rules respecting interest contained in Regulation XV, 1793, it has become more prevalent; particularly in the Province of Behar, wherein instances have occurred in which persons lending money on *bai-bil-wafa*, in order to render the sale absolute, and thereby possess themselves of the landed property of the borrower, have denied the tender, or evaded receiving payment of the money due to them within the period limited for the discharge of it. In such cases, the proof of the tender falls on the borrower; and if he fail in the proof of it for want of legal evidence, he is liable to lose his estate. It is necessary, therefore, for the security of the borrower, in such transactions, that he should have the means of establishing before a Court of Judicature his having tendered, or being ready to pay, within the stipulated period, the amount due from him to the lender; who, if he mean to act fairly, will

Preamble

Reg. 1 of 1798 also derive a benefit from a clear rule being laid down, whereby it may be readily ascertained whether the borrower was willing to redeem his property by the payment of the money lent upon it within the period agreed upon between the parties, or whether, from his having omitted to perform the conditions of such redemption, the sale is become absolute, and the property included therein finally transferred to the lender. For the above purpose, and for the prevention of other abuses in the transactions referred to, the Governor-General in Council has passed the following rules, to be considered in force in the Provinces of Bengal, Behar, Orissa, and Benares, from the date of the receipt of this Regulation by the several Courts respectively.

11. In all instances of the loan of money on *bai-bil* *wafā*, or on the conditional sale of landed property, as explained in the preamble of this Regulation, however denominated, the borrower, who may

Procedure for borrower of money on conditional sale of land who desires to redeem it by paying money lent.

be desirous to redeem his land by the payment of the money lent upon it, with any interest due thereon, within the stipulated period, is at liberty, on or before the date stipulated, either to tender and pay to the lender the amount due to him, taking such precautions as he may think necessary to establish such tender and payment, if evaded or denied, or without any tender to the lender, to deposit the amount due to him, on or before the stipulated date, in the Diwani Adalat of the City or Zilla in which the land may be situated; and the Judge receiving the same shall furnish the party with a written receipt for the amount, specifying on what date, and for what purpose such deposit may have been made. He shall also, at the same time, cause a written notice of such deposit to be delivered to the lender; and on the application of the latter, and his surrender of the conditional bill of sale, or showing satisfactory cause why it cannot be surrendered, shall pay him the amount deposited,

and take his acknowledgment, to remain among the records of the Court. That there may be no doubt to what amount the deposit in question is to be made, it is required to be as follows: When the lender has not obtained possession of the lands, the deposit is to be the principal sum lent, with the stipulated interest thereon, not exceeding the legal rate of twelve per cent. per annum; or if interest be payable and no rate has been stipulated, with interest at the established rate of twelve per cent; but if the lender has held possession of the land, the principal sum borrowed only need be deposited, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements during the period he has been in possession. In either case, a deposit, made as above required, shall be considered to preserve to the borrower his full right of redemption; and if the land be in the possession of the lender, shall entitle him to demand the immediate recovery thereof, subject to the adjustment of accounts specified in the following section. Provided, however, that if the borrower in any case shall deposit a less sum than above required, alleging that the sum so deposited is the total amount due to the lender for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received, and notice given to the lender as above directed; and if the amount so deposited be admitted by the lender, or be established, on investigation, to be the total amount due to him, the right of redemption shall be considered to have been fully preserved to the borrower, who will not, however, in such cases, be entitled to the recovery of his lands, until it be admitted or established that he has paid the full amount due from him.

III. In all instances wherein the lender on a *bye-bil-wafa*, or similar conditional sale, may

When lender has possessed land and, adjustment of accounts is necessary, he is to account for proceeds of estate.

have been put in possession of the land, and an adjustment of accounts may consequently become necessary be-

Reg. 2 of 1906 tween him and the borrower, the lender, is to account to the borrower for the proceeds of the estate whilst in his possession, on the principles prescribed with regard to mortgages and interest in Regulation XV, 1793, as far as the same may be applicable to the nature of the case. But such part of Section X of the above Regulation as directs that the mortgages therein referred to are to be considered as cancelled and redeemed, whenever the principal sum, with simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this Regulation, it is hereby declared not to apply thereto.

IV. A leap for the repayment of money lent on the conditional sales referred to in this Regulation shall not be considered a legal tender, unless accepted as such by the lender; the proof of which acceptance shall be the lender's giving up the bill of sale, or giving a written acknowledgment that he has received back the money lent by him.

V. Nothing in this Regulation being intended to alter the terms of contract settled between the parties in the transactions to which it refers (illegal interest excepted), the several provisions in it are to be construed accordingly; and any question of right between the parties is to be regularly brought before and determined by the Courts of Civil Justice.

Teens not to be considered legal tender unless accepted by lender.

Regulation not to alter the terms of contract between parties.

THE BENGAL LAND REDEMPTION AND FORECLOSURE REGULATION, 1806.

Reg. 2 of 1806

REGULATION, XVII OF 1806.

(Section 7 and 8)

(Passed on the 11th September, 1806.)

A Regulation for extending to the Province of Benares the rate of interest on future loans, and provisions relating thereto, contained in Regulation, XV, 1793; also for a general extension of the period fixed by Regulation I, 1798, and XXXIV, 1803, for the redemption of mortgages and conditional sales of land, under deeds of bai-bil wafa, Kathabala, or other similar designation.

VII. In addition to the provisions made in the Provinces of Bengal, Behar, Orissa and Benares, by Regulation I, 1798 and in the ceded and conquered provinces by Regulation XXXIV, 1803 for the redemption of mortgages and conditional sales of land under deeds of *bye-bil-wafa*, *kutoabaleh*, or any similar designation, it is hereby provided that, when the mortgagee may have obtained possession of the land on execution of the mortgage-deed, or at any time before a final foreclosure of the mortgage, the payment or established tender of the sum lent under any such deed of mortgage and conditional sale, or of the balance due, if any part of the principal amount shall have been discharged, or when the mortgagee may not have been put in possession of the mortgaged property, the payment or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgagor and owner of such property, or his legal representative, to the redemption of his property, before the mortgage is finally foreclosed in the manner provided for by the following section; that is to say, at any time within one year (Bengal, Fasli, or Wallaiti according to the era current where the mortgage may take place) from and after the application of the mortgagee to the

What shall entitle mortgagor or his representative to redeem before final foreclosure, after application by mortgagee for foreclosure.

Reg. 2 of 1806 Zillah or City Court of Diwani Adawlat for foreclosing the mortgage and rendering the sale conclusive, in conformity with Section VIII of this Regulation : Provided that such payment or tender be clearly proved to have been made to the lender and mortgagee or his legal representative ; or that the amount due be deposited, within the time above specified, in the Diwani Adawlat of the Zillah or City in which the mortgaged property may be situated, as allowed for the security of the borrower and mortgagor, in such cases by Section II, Regulation I, 1798, and Section XII, Regulation XXXIV, 1803, the whole of the provisions contained in which sections, as applied therein to the stipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this Regulation.

VIII. Whenever the receiver or holder of a deed of mortgage and conditional sale, such as is described in the preamble and preceding sections of this Regulation, may be desirous of foreclosing the mortgage and rendering the sale conclusive on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower or his representative) apply for that purpose by a written petition, to be presented by himself, or by one of the authorized Vakils of the Court, to the Judge of the Zillah or City in which the mortgaged land or other property may be situated. The Judge, on receiving such written application, shall cause the mortgagor or his legal representative to be furnished, as soon as possible, with a copy of it ; and shall at the same time notify to him, by a parwana under his seal and official signature, that if he shall not redeem the property mortgaged in the manner provided for by the foregoing section, within one year from the date of the notification, the mortgage will be finally foreclosed and the conditional sale will become conclusive.

Procedure for mortgagee or conditional vendor desirous to foreclose mortgage or render conditional sale absolute.

Date of enforcement of the Regulations in the Punjab.—The whole, except such parts as relate to interest, of Reg. 1 of 1798 and sections seven and eight of Reg. XVII of 1806 have been declared to be in force in the Punjab by section 3 of The Punjab Laws Act, No. IV of 1872, which came into force on the 1st day of June 1872 *Ganpat v. Fattah Singh*, P. R. 171 of 1882.

Foreclosure procedure in the Punjab prior to enforcement of the Regulations.—Under the rules which applied to the cases of mortgages by conditional sale in the Punjab prior to the passing of Act IV of 1872, the conditional sale did not become absolute owing merely to the expiration of the stipulated period. *Gurmukh Singh v. Mulla*, P. R. 1 of 1881, or on the failure of the mortgagor to pay interest for two years from the date of the mortgage as stipulated in the deed. *Bulaki Mal v. Duni Chand*, P. R. 94 of 1914, but in the cases of mortgages like *Bai-bil-wafa*, the mortgagee, before converting his mortgage into a completed sale, was obliged either to bring a suit for foreclosure, or make some sort of reference to the Civil Court with a view to issue notice to the mortgagor. *Sarni Mal v. Murli Dhar*, P. L. R. 90 of 1914. Before the passing of Act IV of 1872, which declared section 8 of Regulation XVII of 1806 in force in the Punjab, the procedure in force was that contained in the Punjab Civil Code, Part II, section 6, paras 6 and 7, and there was then nothing in the law of the Punjab to require a foreclosure suit to be instituted in a particular Court or to make necessary a preliminary application to the Judge of the district and that the order of the Tahsildar declaring mortgage to be foreclosed was legal one. *Ganpat v. Fattah Singh*, P. R. 171 of 1882. An application to the Settlement Court by the mortgagee to be recorded as absolute owner held to be proper reference in the year 1865. *Sain Das v. Jehangeer*, P. R. 21 of 1870.

Applicability.—The Reg. XVII of 1806 does not apply to.—(1) Parol conditional mortgage. *Gobardhan Das v. Gokal Das*, I. L. R. 2 All. 633. (2) The case of a mort-

Reg. 2 of 1905

gage in which there is no stipulated period of redemption but there is a condition that the mortgage debt is to be repaid in annual instalments and that on default the land should be deemed to have been sold for the balance due at the time of default. *Margopal v. Bhugwan Sahai*, P. R. 70 of 1907. (3) A mortgage wherein there is mentioned no stipulated period for redemption but there is a condition that on the mortgagor's failure for six years to pay the interest due on the mortgage, the mortgagee would be entitled to foreclose and the mortgage would become a sale for the amount of principal and the unpaid interest. *Bhag Singh v. Basawa Singh*, P. R. 50 of 1906, *Bulaki Mal v. Duni Chand*, P. R. 94 of 1914. *Kishori Mohan Roy v. Ganga Bahu Debi*, I. L. R. 23 Cal. 228 (P. C.). *Contra*.—*Bura Mal v. Jowaya*, P. L. R. 62 of 1905. (4) Mortgages of land effected after the Punjab Alienation of Land Act came into force i.e., the 8th June 1901. *Allah Din v. Futeh Din*, P. R. 31 of 1918, but it applies to mortgages created by decrees of court. *Akmal Khan v. Mahla Khan*, P. R. 132 of 1882, whether the decree for possession has been executed or not. *Satrinwan Diklut v. Dharam Nath Tewari*, 3 B. L. R., 141.

Conditional Sale.—*Held*, that an agreement by which certain co-sharers promised to pay to the other co-sharer on a certain date, principal and interest by way of their contribution to the land revenue for the joint holding, paid by the latter and also further agreed that, if they failed to pay on the specified day, their share in the land should thenceforward become his absolute property, amounted to a conditional sale. *Ghoses Lal v. Guind Lal*, 3 Agra 184. A mortgage bond by which land was mortgaged without possession to secure a principal sum of 2000 Rs. without interest and which provided that if the mortgagor should die within the fixed period then after him the whole share of Zamindari hypothecated should be considered as a complete sale, was held to be in substance a mortgage by way of conditional sale. *Hub Ali v. Wazin-un-Nissa*, I. L. R. 28 All. 496. A sale-deed was executed subject to the terms of a contemporaneous deed of agreement, whereby the vendee

promised to reconvey the property on payment of the purchase-money within a fixed time; *Held*, that both the documents must be read together as constituting a mortgage by way of conditional sale. *Wajid Ali Khan v. Shafkat Husain*, I. L. R. 33 All. 122: Reg. 2 of 1806

Landed Property.—The words 'land' and 'landed property' are used in a very general way throughout the Regulations and include house property. *Ranjit v. Tirkha*, P. R. 117 of 1885. and shops. *Sarni Mal v. Murli Dhar*, P. L. R. 90 of 1914, but do not include incorporeal rights connected with or involving interests in land (e. g. mortgagee rights), *Mela Mal v. Mela Mal*, P. R. 88 of 1888, or a share in the income of shrine including rent of land and of house property. *Nazar Muhammad v. Ahsan-ul-Haq*, P. L. R. 307 of 1913.

Amount due.—The words 'amount due' used in the proviso to section 7 refer to the earlier portion of the section and denote the "sum lent" under the mortgage deed plus interest due thereon if the mortgage is without possession but do not include costs of improvements chargeable under the deed, nor any money due as rents, though that money was chargeable on the estate under the deed. If the mortgage was with possession as in this case the amount required to be deposited was the sum lent under the mortgage; *Fazl-ud-Din v. Kharak Singh*, P. R. 83 of 1915.

Under section 8 of Reg. XVII of 1806, a mis-statement in the notice of the amount due on the mortgage does not invalidate the notice even where the amount is stated to be larger than the amount actually due. The Regulation gives the mortgagor a right of preserving the property and if for reasons of his own, he does not choose to avail himself of the procedure prescribed by law for that purpose, he is not entitled, after the year of grace has elapsed, to urge that the sum demanded of him was larger than the sum which was really due at the time. *Barhat Rai v. Ali*, P. R. 91 of 1913 but see P. L. R. 189 of 1914, *Bishen Singh v. Indar Singh*, in which it was *held* that a notice is defective if it does not state correctly the amount due.

Interest. Interest.—When an interest is due to the mortgagee, the notice must make mention of it.

Reg. 2 of 1806 *Mahoro v. Saja*, P. R. 84 of 1882, *Fubira v. Piyare Lal*, P. R. 21 of 1901. *Bulanda v. Futeh Din*, P. R. 57 of 1914, but it need not specify the amount thereof especially where a gross amount due is stated in addition to the expression "or the balance due." *Bhagirath v. Nath Mal*, P. R. 105 of 1907. A demand of interest more than the amount due does not render the notice invalid. *Bawa Dalip Singh v. Bawa Jaimal Singh*, P. L. R. 134 of 1910.

Post Diem Interest.—Under the terms of a mortgage deed the mortgagee obtained possession, and very onerous conditions as to interest were laid down. The profits amounting to Rs 100 were to be set off against the interest on Rs 200 only and the remaining Rs. 400 of the mortgage amount was to carry interest at 18 per cent. Further if the mortgage money was not paid within three years the land would thereafter be considered as sold. *Held*, that no interest should be allowed to the mortgagee except for the three years after which the land was to be considered as sold, there being no independent covenant as to interest after that period. *Held*, further, that under the circumstances of the case *post diem* damages, being discretionary with the Court, must be refused. *Bulanda v. Futeh Din*, P. R. 57 of 1914. See also *Sarni Mal v. Murli Dhar*, P. L. R. 90 of 1914 in which it was held that in cases of mortgage, *post diem* interest can be allowed as a matter of contract apart from equity. But where the interest is not made a charge on the property mortgaged, it is not recoverable for more than six years. *Post diem* interest can be given at contract rate until date of payment. *Bulaki Mal v. Duni Chand*, P. R. 94 of 1914.

Compound Interest.—Compound interest on sums spent by the mortgagee to protect the subject of the security or simple interest on money spent in improvements, will not be allowed. *Kishori Mohan Roy v. Ganga Bahu Debi*, I. L. R. 23 Cal. 228.

Application for foreclosure.—A mortgagee's "application" for foreclosure, as the term is used in section. 7 of Regulation XVII of 1806, means the whole transaction contemplated in S. 8. ending with the notification to the

(400)

mortgagor: *Suroop Ohandra Nag v. Bonomalee Pandit*, Reg 17 of 1806
9. W. R. 116.

Judge of Zillah Dewani Adalat.—The officer in the Punjab who corresponds to the "Judge of the Zillah Diwani Adalat" mentioned in Regulation XVII of 1806, is the Deputy Commissioner of the District. Where in a suit for foreclosure it appeared that the proceedings under the above Regulation were taken in the Court of the Judicial Assistant Commissioner, whose powers were by the Notification which conferred them expressed to be the powers of a Deputy Commissioner as defined in section 82 clause (a) and section 87 of Act XVII of 1877, *held*, that as a proceeding under section 8 of Regulation XVII of 1806 was not in the nature of a civil suit and as the Judicial Assistant Commissioner in question had not been invested generally with the powers of a Deputy Commissioner, his Court could not be regarded as that of the "Judge of the Zilla Court" for the purposes of the Regulation. *Partab Singh v. Sirdar Harsa Singh*, P. R. 55 of 1883.

Stipulated Period.—The term "stipulated period" in section 8 of the Regulation means stipulated period for redemption *i.e.*, the full term, on the expiry of which the mortgage money is payable, although the mortgagee may, on a default being made, sue to foreclose at an earlier period under the terms of the deed. *Har Gopal v. Bhagwan Sahai*, P. R. 70 of 1907, *Bulaki Mal v. Duni Ohand*, P. R. 94 of 1914, *Kishori Mohun Roy v. Ganga Bahu Debi*, I. L. R. 23 Cal. 228. (P. C.). *Kubra Bibi v. Wajid Khan*, I. L. R. 16 All. 59. A mortgagee can not acquire the status of an owner with respect to property mortgaged to him merely on the breach of the terms of the contract binding the borrower to repay at short notice, if there is no stipulated term of redemption. *Bhag Singh v. Basawa Singh*, P. R. 50 of 1906.

Demand.—Section 8 of Regulation XVII of 1806 contemplates a previous demand of payment of the mortgage-money before the mortgagee has the right of applying for foreclosure, and the omission to make such a demand vitiates the foreclosure proceedings altogether, the provisions of the said section being not merely directory but imperative, and

Reg 17 of 1806 prescribing conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor, which procedure must be strictly followed. *Premian v. Surbandi*, P. R. 114 of 1885. *Kirpa Ram v. Bhagwana*, P. R. 106 of 1889. *Wasawa Singh v. Kura*, P. R. 24 of 1895. *Malla v. Rallia Ram*, P. R. 71 of 1903. *Ganesh Chunder Pal v. Shodamund Surmu*, I. L. R. 12 Cal. 138. *Karan Singh v. Mohan Lal*, I. L. R. 5 All. 9. It is not necessary that the fact that a demand for payment was made before the petition for foreclosure was presented should appear on the face of the proceedings; it is sufficient if the plaintiff in his suit for possession shows that the demand was so made. *Kubra Bibi v. Wajid Khan*, I. L. R. 16 All. 59.

The demand need not be for any specific amount. *Wali Muhammad v. Ramji Lal*, P. R. 5 of 1901, but it must be effected after the period stipulated in the proviso for redemption has expired. *Sant Singh v. Jivan Mal*, P. R. 119 of 1906. It need not immediately precede the application for foreclosure. *Gordhan Das v. Mussammal Rukman*, I. L. R. 1 Lah. 292. *Contra*. *Chaudhri Hazara Singh v. Mohammad Khan*, P. L. R. 134 of 1901 distinguished and dissented from.

In a suit where there were several mortgagors and the transaction indivisible, and it was proved that registered letters demanding payment were despatched to the address of the mortgagors by post, *held*, that the presumption that the letters reached their destinations having been duly posted and not returned through the Dead Letter Office though neither obligatory nor conclusive, being un rebutted, established sufficient demand within the requirements of the Regulation. *Fazal Ilahi v. Hazari Singh*, P. R. 48 of 1902.

Application for foreclosure by Agent. *Held*, that the presentation of a written petition under section 8, Regulation XVI of 1801, by a person acting under a general power of attorney from the holder of a deed of mortgage, was a valid one. *Lal Singh v. Gopal Das* P. R. 94 of 1892.

Foreclosure of property situate in two districts or provinces.—According to section 8 of Regulation XVII of 1806, where mortgage property is situate in two districts,

an order of foreclosure relating to the whole property may be obtained in the Court of either district. *Rasmones Deba v. Prankishen Das*, 7 W. R., P. C. 66. Where a mortgage of land situated partly in the district of Shahjahanpore in the North-Western Provinces and partly in the district of Kheri in the province of Oudh was made by conditional sale, and the mortgagee applied to the District Court of Shahjahanpore to foreclose the mortgage and render the conditional sale conclusive in respect of the whole property, and that Court granted such application.--*Held* with reference to the ruling of the Privy Council in *Ras Muni Dibiah v. Pran Kishen Das*, 4 Moore's I. A. 392, that, where mortgaged property is situated in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district, that the circumstances that Oudh was in some respects a distinct province from the North-Western Provinces did not take the case out of the operation of that ruling, inasmuch as Regulation XVII of 1806 was in force in Oudh as well as in the North-Western Provinces at the same time of the foreclosure proceedings. *Surjan Singh v. Jagan Nath Singh*, I. L. R. 2 All. 318.

Form of Notification.—In order to obtain a decree for foreclosure against a mortgagor, the purwannah to be issued by the Judge under section 8 of Regulation XVII of 1806 must distinctly notify to the mortgagor that if he shall not redeem the property mortgaged in the manner provided for by Section 7 of the Regulation XVII of 1806 within one year from the date of the notice being served, the mortgage will be finally foreclosed and the conditional sale will become conclusive. *Achhar Mal v. Hukman*, P. R. 28 of 1897. *Ram Chand v. Sandal Khan*, P. R. 21 of 1903. *Balwant Singh v. Ram Das*, P. R. 28 of 1903. *Bulanda v. Fatah Din*, P. R. 57 of 1914, but see *Wasawa Singh v. Rura*, P. R. 24 of 1895, *Mul Raj v. Harsa Singh*, P. R. 123 of 1894 in which the words "in the manner provided for in the foregoing section" were held sufficient. See also the form of the notice as contained in the sanctioned "Book of Civil Forms, Punjab, 1915" and given on the next page :—

No. 165

IN THE COURT OF _____ DISTRICT JUDGE

_____ at _____

Notice under section VIII of Regulation XVII of 1806,

_____ son of _____ caste _____
resident of _____ taluk _____ Petitioner

Versus

_____ son of _____ caste _____
resident _____, taluk _____

DEFENDANT,

PETITION FOR FORECLOSURE OF MORTGAGE LAND

To _____, son of _____
caste _____, District _____

MORTGAGOR.

Whereas the abovementioned _____ is the
receiver or holder of a deed of mortgage and conditional sale of land
viz, __________ situated in the village of _____
executed on the _____ by you (or by _____
of whom you are legal representative), in favour of _____and whereas the said _____ has applied to this court
under section VIII of Regulation XVII of 1806, for foreclosure of
the mortgage and for rendering the sale conclusive, a copy of his
petition is herewith furnished to you, and you are hereby informed that unless
within one year from the date of receipt of this notification you pay or tender to
the said _____ or to his legal
representative the sum lent under the said deed, viz, Rs _____
or the balance of the sum remaining undischarged, together with such interest
as may be due thereon, or unless you pay the said sum into this Court within the
above period, the mortgage will be foreclosed and the conditional sale will become
conclusive.Given under my hand and the seal of the Court this _____
day of _____ 19 _____

Seal

Judge.

Date of Notification.—The date of notification Reg 17 of 1806 means the date on which the notice is served upon the mortgagor and does not refer to the date of the parwana. *Gopal Chand v. Muhammad Munir Khan*, P. R. 46 of 1904. *Thakur Das v. Muhammad Bakhs*, P. L. R. 74 of 1906. *Mul Raj v. Harsa Singh*, P. R. 123 of 1894. *Wasawa Singh v. Rura*, P. R. 24 of 1895, p. 99. *Narender Narain Singh v. Dwarka Lal Numder*, I. L. R. 3 Cal. 397 but see contra *Suroop Obunder Nag v. Bonomalee Pundit*, 9 W. R. 116, *Jewan Mal v. Ram Singh*, P. R. 86 of 1893, p. 187 in which it was held that the "date of notification" means not the date on which the purwannah or document of notification is signed and sealed, but the date of its issue by the Court. The purwannah is first issued when it is handed to the peon for delivery.

Description of property.—It is not essential to the validity of a notice that it should contain the khasra and khewat numbers of the land. *Bhagirath Lal v. Nath Mal*, P. R. 105 of 1907, or any specification of the property in respect of which foreclosure is sought, the words "the property mortgaged" being a sufficient description, but when the property mortgaged consisted of 4 ghumaons 3 kanals 19 marlas together with shamilat land in proportion to that area which extended to nearly 12 ghumaons and the notice which had been served on the mortgagor only described the property as the area above mentioned and made no specific mention of the shamilat, the notice was defective, inasmuch as it must have led the mortgagors to think that they were in danger of only losing 4 ghumaons and not 16 ghumaons by non-compliance with its terms. *Wazir Chand v. Mukham* P. R. 109 of 1901, *Karam Ilahi v. Bindra Bam*, P. R. 17 of 1918. The notice of foreclosure given by the mortgagee under the provisions of sections 7 and 8 of Reg. XVII of 1806 described the property as the whole while only one half was mortgaged and contained the words *Mabligh Kata hojawegi*. Held, that the notice was invalid. *Shambu Ram v. Jamita*, P. L. R. 43 of 1914. An omission of words describing the property mortgaged in the foreclosure notice, is not fatal when the property

Reg 17 of 1806 mortgaged is fully described in the petition. *Raghu Nath v. Rukna*, P. L. R. 80 of 1918.

Official Designation and Seal.—(a) In the following cases the notices were held to be defective :—Notice which did not bear the seal of the District Judge, *Musammam Bakhtawari v. Shibban Lal*, P. R. 59 of 1912. Notice which did not contain the signature of the presiding officer, *Dharma v. Mudar Singh*, 12 I. C. 345. *Hanuman Saran Singh v. Bhairon Singh* I. L. R. 12 All. 189. Notice which was signed by the District Judge with his initials only. *Musammam Lachmi v. Tota*, P. R. 16 of 1888. *Mahoro v. Suja*, P. R. 84 of 1882. Notice which bore merely the seal of the District Judge and not his signature. *Sham Singh v. Karm*, P. R. 185 of 1889 (F. B.). *Basdeo Singh v. Mata Din Singh*, I. L. R. 4 All. 276. Notice which bore the signature of the Judge unaccompanied with his official designation, *Ram Chand v. Ghulam Muhammad*, P. R. 84 of 1890. Notice bearing the seal of the Court, but signed only by a Moonserim, *Seth Hur Lal v. Manikpal*, 3 N. W. R. 176. Notice signed by the *serishtedar* of the Judge's Court and bearing the seal of the Court, but not the signature of the Judge *Doma Sahu v. Nathai Khan*, I. L. R. 13 Cal. 50. Notice signed not by the District Judge but by the Subordinate Judge in charge of the current duties of the office of the District Judge. *Pirbhu Lal v. Ganpat*, A. W. N. 1894, 53.

(b) In the following cases the notices were held sufficient :—Notice which bore the seal of the Court and the initials of the Judge of the Court from which it was issued *Chagwat Kuri v. Baldeo Rai*, I. L. R. 29 All. 145. Notice in which the official designation of the District Judge is not written but is impressed by a seal. *Fakira v. Piyare Lal*, P. R. 21 of 1901. *Bhagirath v. Nath Mal*, P. R. 105 of 1907. Notice which contained a wrong heading *i. e. notice ba illat dafa 8, Regulation Satarah, 1880*. *Wali Muhammad v. Ramji Lal*, P. R. 5 of 1901. Notice which contained the words 'District Judge' under the signature of the officer signing it, impressed by a seal upside down. *Mul Raj v. Harsa Singh*, P. R. 123 of 1894. Notice in which the official designation

of the Judge signing is not in his handwriting. *Wali Muhammad v. Ramji Lal*, P. L. R. 1900 p. 465. A signature, however illegible to ordinary people, on a foreclosure notice, on which is also the seal of the Court of the officer signing, is a sufficient signature if it is meant to be a full signature and can be recognised by those acquainted with the particular officer's method of signing documents. *Tara Chand v. Ohiman*, P. L. R. 3 of 1912. The mere fact that parts of the seal of the District Judge are not legible is not a fatal defect in a notice of foreclosure. Nor is an ambiguity in the specification of the date of the mortgage deed fatal, where it is such that it could not have led to any misconception on the part of the mortgagor. *Raghu Nath v. Buhna*, P. L. R. 80 of 1918. The notice of foreclosure, dated 6th January 1889, was headed. "In the Court of Mr. J. C. Brown, District Judge and Deputy Commissioner"; bore the seal, "the Court of the District Judge"; contained all the particulars required by the regulation, but was signed "J. C. Brown, Deputy Commissioner." The Divisional Judge held that the notice was defective on the ground that the designation "Deputy Commissioner" instead of "District Judge," followed the signature of the officer issuing the notice. *Held*, that, as the notice itself showed that the officer issuing it was both Deputy Commissioner and District Judge, the addition of the words "Deputy Commissioner" after the said officer's signature could not possibly lead to the supposition that the notice was not issued by the District Judge and was a mere surplusage which did not affect the validity of the notice. *Hira Nand v. Chattru*, P. R. 133 of 1894.

Notice defective.—In the following cases notices were held defective and invalid:—Notice which does not correctly and sufficiently describe the various courses open to a mortgagor under section 7 of Reg. XVII of 1806. *Tara Chand v. Ohiman*, P. L. R. 3 of 1912. Notice which does not state that the mortgage debt is to be repaid within one year from the date of the notification. *Jewan Mal v. Ram Singh*, P. R. 36 of 1893. *Wasawa Singh v. Rura*, P. R. 24 of 1895. *Gokal Chand v. Muhammad Munir*

Reg 17 of 1806 *Khan*, P. R. 46 of 1904. Notice which merely states that the mortgagor must redeem the property mortgaged within one year. *Mul Raj v Harsa Singh*, P. R. 123 of 1894. Notice which does not specify section 7 of the Regulation but merely notifies "that if you shall not redeem the said property in the manner provided for in the foregoing section of the said Regulation" *Achhar Mal v. Hukman*, P. R. 28 of 1897. *Ram Chand v. Sandal Khan*, P. R. 21 of 1903. *Balwant Singh v. Ram Das*, P. R. 28 of 1908, *Bulanda v. Fatah Din* P. R. 57 of 1914. Notice which is issued in respect of two mortgage-deeds only one of which is in the form of a conditional sale, *Jiwan Ram v. Bhanu Ram*, P. W. R. 51 of 1910. Notice which merely warned the mortgagor that if the money was not paid within one year and the land redeemed in the manner provided by section 7 of the Regulation, but provided neither for tender or deposit in Court. *Zora v Chandu* 68, I C. 883.

Notice sufficient.—*Notices held to be sufficient*:—Two persons jointly held a mortgage, each having an equal share in it. The equity of redemption subsequently became vested solely in one of these persons. *Held*, that under the circumstances, a notice of foreclosure confined to a one-half share only of the mortgage (issued by the mortgagee, who had no interest in the equity of redemption) was sufficient. *Hunoomanpershad Sahoo v. Kaleepershad Sahoo*. W. R. 1864, 285. In a case where the foreclosure proceedings are otherwise correct and regular, mere clerical slips or misprints in a notice under Section 8 of Regulation XVII of 1806, such as "Act" and "Resolution" or "Zarlution" for "Regulation" when the rest of it was properly worded in all particulars cannot be held to render it void. *Jiwan Ram v. Amir Beg*. P. R. 38 of 1901. Notice issued under the Regulation is not defective merely because it was issued by one of the mortgagees, nor does the demand of more than due interest render the notice invalid. *Dalip Singh v. Jaimal Singh*, P. L. R. 184 of 1910. Where mortgaged property is situate in two districts, an order made by the Judge of one district for foreclosure of the whole of the mortgaged property is a sufficient

compliance with Bengal Regulation XVII of 1806, S. 8. *Rasmonae Deben v. Prinn Kishan Dass*, 7 W. R. 66 (P. C.). Notice, the heading of which was wrong and incorrectly described the Regulation under which it was issued, was held sufficient as the heading was immaterial and surplusage. *Wali Muhammad v. Ramji Lal*, P. R. 5 of 1901. It is not necessary that the actual wording of S. 8 of Reg. XVII of 1806 be reproduced in the notice word for word and that the use of words 'pay off' instead of 'redeem' did not invalidate the notice. *Mussammat Sardari v. Chiranjil Lal*, 28 P. R. 1901. In the case of two deeds of mortgage the second of which was of further charge, one notice only was held sufficient. *Diwan Abdul Hakim v. Hari Lal*, P. W. R. 62 of 1908.

Fresh Notice.—Where the notice of foreclosure was duly served on the mortgagor, no subsequent transfer of the property, whether voluntary or involuntary could affect the validity of the notice, or impose on the mortgagee any new obligation in the way of causing a fresh notice to be served on the purchaser *Zamin Ali v. Hossein Ali*, 2 Agra L. R. 11, 187. *Muhunt Jyram Gir, v. Raja Krishen Kishore Chand*, 3 Agra, 307. A mortgagee, having issued notice of foreclosure on the mortgagor, allowed him six months' time in which to redeem, shortly before the expiry of the year of grace. The mortgagor died, and the mortgagee sued to recover the property. *Held*, that fresh notice of foreclosure on the legal representative of the mortgagor was not necessary, the requirements of the law in the issue of the notice and the expiry of the year of grace having been complied with *Bazloor Rahim v. Abdullah*, 10 W. R. 359. Where a mortgage becomes foreclosed and the mortgagee abstains from enforcing his right and allows the mortgagor an extension of time, it is not necessary that a fresh notice should be served. *Brijo Mohun Sutputty v. Rudha Mohan Dev.* 20 W. R. 179. Defendant mortgaged certain land to plaintiff by a deed of conditional sale, dated 21st February 1870, securing payment of a loan of Rs. 200 in four years. On 15th June 1874, plaintiff applied to the Deputy Commissioner

Reg. 17 of 1806 for notice to issue to defendant, under section 8 of Regulation XVII of 1806. On 15th July 1874 an acknowledgement of service of notice and copy of plaintiff's application, purporting to be signed by the defendant, was filed with the proceedings. On 4th October 1875 plaintiff filed a suit for possession before the Assistant Commissioner. On 11th October 1875, the Deputy Commissioner, on the defendant's petitioning him, granted six months' further grace for payment of the money. This order was passed ex-parte. On 26th November 1875 the Assistant Commissioner, with reference to the Deputy Commissioner's order, dismissed the plaintiff's suit as premature. On 31st May 1876 plaintiff applied to have his case restored to the file, as the further time allowed by the Deputy Commissioner had expired. This was done and he obtained a decree. *Held*, that the issue of a second notice under Regulation XVII of 1806 was not necessary, the order of the Deputy Commissioner dated 11th October 1875 granting extension of time having been passed without any legal authority. *Fattah v. Sain Ditta*, P. R. 76 of 1877.

Copy of the Application.—A mortgagee failing to fulfil one of the two conditions prescribed by Regulation XVII of 1806, S. 8, *v.e.*, furnishing the mortgagor or his legal representative with a copy of his application to foreclose, can not be said to be in a position to foreclose. *Santee Ram Jana v. Modoo Mytee* 20 W. R. 353. *Fattah v. Sain Ditta*, P. R. 76 of 1877. *Gugan v. Rup Ram*, P. R. 139 of 1882. *Pohla Mal v. Kulena*, P. R. 32 of 1883. *Madho Pershad v. Gajadhar*, I. L. R. 11 Cal. 111. but see *Saligram Tewares v. Beharee Misser*, W. R. 1864, 36 in which the omission of the court to send with a notice of foreclosure a copy of the mortgagee's petition as required by section 8 Regulation XVII of 1806, was held to be not such an irregularity as made void the foreclosure in a case where, subsequent to the issue of the notice, the mortgagor continued to live in the neighbourhood of the property, and the mortgagee erected buildings on it and used it as his own, without objection or claim on the part of the mortgagor.

Service. (1) Proof of service—Where in a suit by a conditional vendee for possession after foreclosure, service of notice is denied by the mortgagor or his representative, it is incumbent on the former to prove such service independently of the copy of the foreclosure proceedings. *Sookhlunmun v. Ohooramun*, 1 Agra. 172. The service of the notice should be evidenced by the clearest proof, and should be in all cases, if not personal, at least such as to leave no doubt in the mind of the Court that the notice itself must have reached the hands or come to the knowledge of the mortgagors. *Syud Eusuf Ali v. Mussti. Azumtoonissa*. W. R 1864, 49. Where the evidence fell short of proof that a copy of such application was served with the purwannah of the Judge, *held*, that such failure of proof was fatal to the plaintiff's suit to recover possession of the mortgaged premises after the expiration of the year of grace. *The Bank of Hindustan, China and Japan v. Shoreshi bala Debee*. I. L. R. 2 Cal. 311. It is for the mortgagee to prove that the foreclosure notice was duly served upon the mortgagor. From the fact that the record of the foreclosure proceedings is burnt or that *nathi* B. including the foreclosure notice had been destroyed and from the documents in *nathi* A, it appeared that a notice had been ordered to be issued to the mortgagor and that the latter had attended the District Court when Judge passed the order "Parties present, defendant had been thoroughly warned that within one year he should have the land redeemed, thereafter no excuse will be listened to," it can not be presumed that the notice issued to the mortgagor had been served upon him or that it complied with all the requirements of procedure as laid down in section 8 of the Regulation. *Sochet Singh v. Dial Singh*, P. R. 46 of 1907, *Parmu Nand v. Thikku*, P. W. R. 121 of 1915. *Munshi Ram v. Nauranga*, 72 I. C. 575. The finding of the District Judge in the foreclosure proceedings that notice has been duly given to the mortgagor is not even *prima facie* evidence of the provisions of the Regulation having been complied with, the service of the petition for foreclosure and the notice in the form prescribed by

Reg. XVII of 1806 the Regulation must be strictly proved. *Razul Ilahi v. Hazari Singh*, 1 P. R. 48 of 1902. The mere fact that the order passed in the foreclosure proceedings stated "as the service has been duly effected, let the application be consigned to the records" was no proof that the prescribed procedure had been followed. *Dharmu v. Mudar Singh*, 12 I. C. 345. A copy of the report of the Nazir of the Civil Court, copies of the depositions of witnesses not taken in the presence of the parties to the suit, and a copy of the final foreclosure proceeding, are not legal evidence to prove the service of a notice of foreclosure. *Madho Singh v. Mahtab Singh*, 3 N. W. R., 325. Where the defendant denied having received notice of foreclosure, and the witnesses called to prove service denied all knowledge of the matter, *Held* that the report of the peon in the formal proceedings before another Court was inadmissible as evidence in the case, and the acquiescence of one mortgagor was not binding on the other. *Tuzun Bheo v. Shih Jhunder Dhur*, 19 W. R. 170. The mere return of the nazir on the back of the Judge's parwana to the effect that the mortgagor had been duly served is not legal evidence of service. *Narander Narain Singh v. Dwarka Lal Mundar*, I. L. R. 3 Cal. 397.

(2) *Mode of Service*.—The only person on whom effectual service of notice of foreclosure can be made is the person really interested in protecting the estate. *Kalee Koomar Dutt v. Pran Kishores Chowdhraim*, 22 W. R. 168. To establish a sufficient compliance with the provisions of Regulation XVII of 1806, it is necessary that, if there be more than one mortgagor, each mortgagor should be served with a copy of the mortgagee's petition to foreclose, service upon one of the mortgagors alone being inadequate. *Maya Shah v. Feroz Din*, P. R. 51 of 1892. Where there are several mortgagors, and it is not sought to foreclose the individual shares of each as against each but to foreclose the whole estate as upon one mortgage, one debt and one entire right against all, service of the notice upon some only of the mortgagors is insufficient to warrant the fore-

closure of the whole estate or of any part of it. *Narender Narain Singh v. Dwarkalal Mundar* I. L. R. 3 Cal. 397. Where a mortgage was made by the lambardar for himself and as agent for other sharers, it was held necessary to issue notice of foreclosure both to the lambardar and his co-sharers. *Punchum Singh v. Mungle Singh*, 2 Agra. 407. A notice of foreclosure under section 8, Regulation XVII of 1806, is not duly served in accordance with the Regulation by delivery of a copy of the application to the representative of the mortgagor, where the parwana under the seal and official signature of the Judge is not delivered, though its purport may be communicated by the process-server to the said representative. *Pohlu Mal v. Rukna*, P. R. 32 of 1883.

(3) *Sufficiency of service.* Regulation XVII of 1806 giving no special direction as to the person on whom notice of foreclosure is to be served, when the person for the time being entitled to the equity of redemption is a minor and no guardian of such minor has been appointed under Act XL of 1858, service of such notice of foreclosure upon the minor and his mother will be deemed sufficient service. *Dabee Pershad v. Man Khan*. 2. N. W. P. Reps, 444. The service on the widow of the deceased mortgagor who had a life-interest, and also was the guardian of the minor adopted son and legal representative of the deceased, was held to be sufficient. *Rosmones Debia v. Pran Kishen Das*. 7 W. R. (P. C.) 66. The copy of the application and parwana referred to in section 8 were sufficiently served on a minor mortgagee, for whom no guardian had been appointed under the Act, by service on his brother with whom he lived. *Lal Singh v. Gopal Das*, P. R. 94. of 1892. Where a mortgagor is a minor, a notice under Regulation XVII of 1806 delivered to the defacto guardian of the minor is sufficient, whether the person is described as de facto guardian in the notice or not. *Jowala Singh v. Tulsa Ram*, P. R. 78 of 1915. The service of notice on minor's relation with whom he lived and who happened to be the mortgagor is sufficient especially if the minor and the relation were

Reg 17 of 1806 members of joint Hindu family. *Gurtham Das v. Mussammat Rukmani*, 1. L. R. 1 Lah 292.

(4) *Substituted Service*.—The regulation as to service of a notice of foreclosure does not provide for any mode of service in substitution for personal service, though in some cases it has been held that personal service is not absolutely necessary; but to justify resort to any other mode of service it must be shown that in spite of efforts made for the purpose the notice cannot for some reason be personally served. *Madho Singh v. Mahtab Singh*, 3 N. W. R., 325. It is not essential that service of notice under the Regulation should be personal. The provisions of the Civil Procedure Code as to service of process, so far as they are not contrary to the Regulation, are applicable by force of section 647 of the Code, to the service of notices issued under the Regulation. Though substituted service is not confined to cases in which it is established that the mortgagor is keeping out of the way yet the stringent requirements of the Regulation would not, in the absence of strict proof of evasion of service, be complied with by substituted service of notice. Substituted service on one of the mortgagors who was a female not being considered sufficient, and the allegation not having been established that she made an admission of having been duly served with notice the foreclosure proceedings were held as infructuous. *Sheikh Fazul Ilahi v. Hazari Singh*, P. R. 48 of 1902, but see *Soorjoo Kant Bannerjee v. Kristo Kishore Poddar*, 14 W. R. 423, in which it was held that, where notice of foreclosure issues, and the serving officer finds that the mortgagor is not at home, it is sufficient if he affixes the notice on the door of the mortgagor's house, personal service on the mortgagor not being essential.

Legal Representative.—The words "legal representative" in Regulation XVII of 1806 are not used in the sense of a universal legal representative, such an heir; but include any person who is interested in protecting the estate and it is immaterial whether the interest is created by the operation of law or by a contract between the

parties. *Fazal-ud-Din v. Kharak Singh*, P. R. 83 of 1915. The words include (1) A purchaser of mortgaged property whether of the whole or of a distinct and definite portion only. *Mul Raj v. Sobha Ram*, P. R. 31 of 1883, *Ganga Gobind Mandal v. Banee Madhab Ghose*, 11. W. R. 548 and *Bhanoomutty Chowdhraim v. Prem Chand Neogee*, 23. W. R. 96. (2) A purchaser of equity of redemption before the institution of the application for foreclosure. *Jyram Gir v. Krishan Kishore Chand*, 3 Agra 307. *Achumbit Misser v. Lalla Nand Ram*, 11. W. R. 544, *Fazal-ud-Din v. Kharak Singh*, P. R. 83 of 1915 (3) A purchaser from mortgagee. *Bhanoomutty Chowdhraim v. Prem Chand Neogee*, 23 W. R. 96. (4) A transferee in possession. *Tazun Bibee v. Shib Chunder Dhur*, 19. W. R. 170. (5) Second mortgagee. *Dirgaj Singh v. Debi Singh*, I. L. R. I. All 490. (6) Subsequent mortgagee, if there is complete assignment. *Gowardhan Das v. Rulemani*, I.L.R. 1 Lah 292. (7) A purchaser at sale in execution of a money decree, of the right, title and interest of the mortgagor. *Rameswar Nath Singh v. Mewar Jugjeet-Singh*, I. L. R. 11 Cal, 341. (8) The donee under Muhammadan law of the equity of redemption. *Harnam Singh v. Sajawal*, P. R. 86 of 1910, but do not include (1) The holder of a decree for money merely because he has attached land belonging to his judgment debtor while it is subject to a conditional mortgage, or the holder of a prior lien on the land which is conditionally mortgaged. *Radhey Tewari v. Bujha Misr*. I. L. R. 3 All. 413. (2) The holder of a Maurusi Mokurari pattah under the mortgagor. *Sripoti Churn Dey v. Mohip Narain Singh*, I. L. R. 9 Cal. 648.

Tender under protest.—A deposit of the mortgage-money, though made before the expiry of the year of grace after notice of foreclosure has been issued, if accompanied by a denial of the mortgagee's right to receive it and with a threat of legal proceedings if he took it from the Court, is not an unconditional tender, and is vitiated by the conditions under which it is made, and could not, therefore prevent a foreclosure. *Mukhan Kuar v. Jasoda*

to 17 of 1806 *Kuar*, I. L. R. 6 All 399. See also *Pakira v. Piyare Lal*, P. R. 21 of 1901. Mere words in the form of a protest which may accompany a tender will not defeat it when they can reasonably be regarded as idle words. But the payment into Court of the mortgage money accompanied by a petition disputing the mortgagee's title to foreclose, and expressing an intention amounting to a notice to sue the mortgagee to recover back the very money tendered, is not a valid tender *Pran Nath Chowdhry v. Ram Rattan Roy*, 4 W. R., 37 (P. C.).

Year of Grace.—Where a mortgage was by way of conditional sale, and the mortgagor obtained an order of Court that the mortgagor should redeem in one year upon payment of a certain sum or be foreclosed, which order was modified on appeal by reduction of the amount to be paid: *Held*, that the mortgagor's year of grace runs from the date of the order of the first Court and not from that of the Appellate Court. *Jehangoor v. Saindava*, P. R. 42 of 1870. A mortgagee, under a conditional sale, caused notice of foreclosure to be issued, and subsequently by an agreement securing certain advantages to him he extended the term of grace. The terms of that agreement not having been complied with, the mortgagee was *held* to be entitled to revert to the foreclosure proceedings before instituted *Lall Dhur Rao v. Gumpat Rao*, 1 N. W. R., Par 2, 22. *Dhondha Rai v. Meghu Rai*, I. L. R. 4 All. 332. The year of grace allowed by S. 8, Regulation XVII of 1806, is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely *Baij Nath Pershad Narain Singh v. Moheswari Pershad Narain Singh*, I. L. R. 14 Cal. 451. The year of grace allowed for redemption is to be reckoned from the date of service of the notice, and not from the date of the parwana which orders the mortgagor to be noticed. *Mulraj v. Harsa Singh*, P. R. 123 of 1894; and *Gokal Chand v. Mohammad Munir Khan* P. R. 46 of 1904.

Procedure.—(1) *Prescribed procedure imperative.* Reg 1 of 1906

Suits* for foreclosure of mortgages are unknown in the Punjab where foreclosure takes place as a ministerial and not a judicial proceeding under the Regulation of 1806. *Telu Mal v Lal Singh*, P. R. 20 of 1893. Where a mortgagee sues for possession in pursuance of the conditional clause in the mortgage he must prove that all the provisions contained in sections 7 and 8 of Regulation have been observed (i.e.) he must show that the foreclosure is valid, that the year of grace had expired and that provisions regarding foreclosure have been observed. A mortgagee who fails to observe these things is not entitled to sue for possession. The provisions of Reg: XVII of 1806 are mandatory and not merely directory and are intended to protect poor men from fraud and oppression of money lenders. *Bakhtawari v. Shibban Lal*, P. R. 59 of 1912, *Mussammatt Lachmi v. Tota*, P. R. 16 of 1888, *Premam v. Sarbandi*, P. R. 114 of 1885. Where, therefore, the mortgagee produced a copy of the proceedings, which directed him to bring a suit, *held*, that there was not sufficient compliance with the Reg. XVII of 1806 and the mortgagor did not lose his right to redeem. *Badal Ram v. Tajali*, A. W. N. 1907, 266.

(2) *Agreement—Effect of, on the procedure*—A conditional sale may, by agreement and acts of the parties, become absolute without formal foreclosure proceedings being taken under Regulation XVII of 1806. *Goordyal v. Musett, Humskoonwer*. 2 Agra, 176. *Rugbonath Dass v. Ram Gopal*. 5 N. W. 29. It is within the power of parties to a mortgage to bargain as they choose in the way of enlargement of time in cases under Reg. XVII of 1806; such extension of time is not fatal to the whole proceeding. The year of grace allowed by Section 8 is a matter of procedure. *Bajjnath Pershad Narain Singh v. Moheewari Pershad Narain Singh*. 1 L. R. 14 Cal. 451. The terms of a mortgage by conditional sale were altered by consent of both parties. *Held*, that the sale clause in the original contract could not be enforced. *Bishen Singh v.*

* See Civil Procedure Code, Act V of 1908, order XXXIV.

Reg 17 of 1808 *Indar Singh*, P. L. R. 189 of 1914. A mortgage-debt not having been paid off at due date, notice of foreclosure was issued and served. During the currency of the year of grace the parties came to an arrangement and filed petitions in Court in the foreclosure proceedings, setting forth that part payment had been accepted and that the rest of the debt would be paid with interest on the date of the expiry of the year of grace, failing which the sale should become absolute. *Held*, that it was not the intention of the parties to substitute a new contract for the one under which the notice of foreclosure was issued or that the proceedings should be allowed to drop. *Goonomones Dossia v. Parbutty Dossia*, 10 W. R. 328. Where a party, originally a mortgagee out of possession has been put into possession by the act and permission of the mortgagors, he has really (inasmuch as a parol contract is sufficient in this country to pass immoveable property) obtained a new title altogether different from that which he possessed before, and having its foundation in the act of the parties themselves when they put him into possession. *Runjeel Narain Singh v. Musst. Shureefoonisaa*, 10. W. R. 478.

Waiver—Waiver. *Held*, that the omission to demand payment from the mortgagor prior to application under section 8, and the omission to serve a copy of the application, were irregularities capable of waiver and not fatal defects in the procedure and that the defendant in the first Court and in the lower Appellate Court not having taken exception to the foreclosure proceedings had waived any defence open to him on these grounds, and was not entitled on special appeal to insist on a re-opening of the case. *Fattah v. Sainditta* P. R. 76 of 1877. Where a defendant, in a suit for possession of immoveable property, on a deed of conditional sale alleged to have been foreclosed under the Regulation, had practically admitted the validity of a notice issued under the Regulation, it is doubtful whether the defendant is entitled on appeal to raise, for the first time objections to the validity of the notice, *Bhagirath v. Nath Mal*, P. R. 105 of 1907. In the case of a conditional sale the mortgagee got the foreclosure notice issued and

after the expiry of the year of grace without redemption, the mortgagor executed a lease mentioning the foreclosure proceedings and saying that he took the house on lease and handed over the rest of the property. In a suit for possession by the vendee *held* that the mortgagor or his representative could not deny the plaintiff's title, nor question the validity of the foreclosure proceedings. *Khaira v. Jaggu Shah*, P. L. R. 186 of 1915.

No waiver.—In a suit for possession after foreclosure of a mortgage by conditional sale under Regulation XVII of 1806, it appeared that there was no mention in his plaint by the plaintiff, nor any proof on the record that he had made a demand for payment before issue of the notice, but in the application for the issue of notice itself, it had been stated that several demands had been made. The defendant having taken no objection in the lower Courts, no issue was framed on the point. On the claim being decreed by the lower Courts, the defendant applied for revision under section 70 (b) of the Punjab Courts Act, and objected to the decree on other grounds. The objection as to demand was not entered in the written application, but taken before the Judge in Chambers who permitted it to be raised. *Held*, that as a demand prior to notice was essential to its validity, and required to be clearly established, the defendant was competent to rely upon it, even at that stage, but that the failure of the plaintiff to prove demand was excusable, and under the special circumstances it would not be just to decide that the notice was invalid on that ground without giving plaintiff an opportunity to rectify his omission. *Malla v. Rallia Ram*, P. R. 71 of 1903. See also *Musammam Lachmi v. Tota*, P. R. 16 of 1888. *Held*, that a mortgagor's offer to pay on receipt of an otherwise defective notice of foreclosure issued under the provisions of Regulation XVII of 1806, does not amount to waiver of right to take advantage of its legal defects in a subsequent suit for the redemption of the mortgage or estop him from questioning its validity. *Balwant Singh v. Ram Das*, P. R. 28 of 1908. *Held*, that, although the mort-

Reg 17 of 1806 gagor at the hearing of the foreclosure suit in the Court of first instance had not insisted on the insufficiency of the notification of the mortgagee's application to foreclose, but had relied on another defence, this could not be construed as a binding admission that notice had been duly given; that service of the copy of petition for foreclosure, and of the purwannah signed by the Judge, was essential; and that the mortgagor was not precluded from questioning the regularity of the proceedings in his subsequent appeal. *Madhopershad v. Gajadhar*, I. L. R. 11 Cal. III (P. O.)

Burden of Proof. A mortgagee suing for possession of the mortgaged property on the ground that he has become owner thereof under the terms of the conditional sale clause, must prove affirmatively that all the conditions prescribed by section 7 and 8 of Regulation XVII of 1806 have been duly fulfilled. *Bakhtawari v. Shibban Lal*, P. R. 59 of 1912. See also *Gugan v. Rup Ram*, P. R. 139 of 1882, *Chandhri Hazara Singh v. Muhammad Khan*, P. L. R. 134 of 1901, *Sochet Singh v. Dial Singh*, P. R. 46 of 1907, *Parma Nand v. Thikhu*, P. W. R. 121 of 1905, *Munshi Ram v. Naurang*, 72 I. C. 575 (Lah). *Sitla Baksh v. Latta Prashad*, I. L. R. 8 All. 388, *Narendur Narain Singh v. Dwarka Lal Mundur* I. L. R. 3 Cal. 397, *Madho Pershad v. Gajadhar*, I. L. R. 11 Cal. 111. Whether the irregularities are pleaded by the defendant or not. *Mussammatt Lachmi v. Tota*, P. R. 16 of 1883, see also *Jamita v. Shada*, P. R. 91 of 1880. Where certain mortgagees had, during the widow's life time, obtained a decree of foreclosure against her under Regulation XVI of 1806, *held*, that as against the reversioners, who sued for recovery of the land after the death of the widow, the onus of proving that the said foreclosure proceedings were in due form, and that the right of redemption was extinct, was on the mortgagees, there being no presumption in favour of the regularity and propriety of such proceedings. *Hira Singh v. Sher Singh*, P. R. 29 of 1898.

Title of Purchaser, regular suit whether necessary.—On the expiration of the year of grace, provided that anything remains to be paid under the mortgage and

the proceedings under the Regulation were regular, the title of the conditional vendee becomes that of an absolute vendee and the sale becomes an absolute sale on that date, even though no suit is brought to declare that fact or for possession. *Atar Singh v. Rulla Ram*, P. R. 103 of 1901, (F. B.), *Ali Abbas v. Kalka Prasad*, I. L. R. 14 All. 405 (F. B.) and the idea which prevailed to some extent previously to the Full Bench Ruling P. R. 103 of 1901, to the effect that a suit for possession or declaration of title, was necessary to complete foreclosure was erroneous. *Mela Ram v. Kiman*, P. R. 38 of 1905. The conditional vendee is entitled to claim mesne profits from the date of expiry of the year of grace, without bringing a suit for possession. *Jeorakhun Singh v. Hokeem Singh*, 8 Agra 358, but see contra *Raisud Din Chowdhry v. Khoda Nawaz Chowdhry*, 12 C.L.R. 479, and *Rupa Bai v. Radha*, 72 I.C. 121 in which it was held that the title of a mortgagee is not complete upon the expiry of the year of grace allowed by the Regulation, but it is necessary for him to bring a regular suit and obtain a decree in order to confirm his title. In the case of a mortgage by conditional sale if the mortgagee in possession does not sue for a declaration of his absolute title after the lapse of the year of grace, and the mortgagor can prove that the mortgage-debt was liquidated before the year expired, the right of redemption still exists; and the mortgagor may sue to recover the land. It is no longer open to him to ask to be allowed to redeem by making a further payment and if it is found that the mortgage debt was not in fact paid off within the year of grace, the suit must be dismissed, but if it has been satisfied within the year of grace, the plaintiff will be entitled to a decree. *Mana Singh v. Kahan Singh*, P. R. 75 of 1883. A mortgagee by conditional sale cannot, by obtaining a decree in an illegal foreclosure proceeding or by asserting himself to be the proprietor and thereby obtaining mutation to that effect in his favor, alter the character of his original title, nor can he rely on a possession adverse to the mortgagor to deprive him of his right to redeem the property. *Indar v. Asa Singh*, P. R. 65 of 1908.

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Effect of foreclosure proceedings.—The mortgagor's right to redeem is lost if he does not tender or deposit the principal and the amount of interest due within the year of grace, and his filing a suit to get determination of the amount due to the mortgagee has not the effect of extending the period of one year allowed by the Regulation. *Fakira v. Piyare Lal*, P. R. 21 of 1901, *Atar Singh v. Ralla Singh*, P. R. 103 of 1901. It is however open to a mortgagor to prove that the mortgage debt was in fact liquidated before the expiry of the year of grace; if he proves this the right of redemption still subsists and he may recover the land. It is no longer open to him to ask to be allowed to redeem on making a further payment. *Mana Singh v. Kahan Singh*, P. R. 75 of 1883. A mortgagor is not bound to take any notice of foreclosure proceedings which he knows to be defective or to wait till the mortgagee sues to complete his title, to plead irregularity in the said proceedings. In such a case he may sue for redemption even after the expiry of the year of grace. *Gurditta Mal v. Sandhi Khan*, P. R. 27 of 1900. See also *Sulakhan v. Nanak Singh*, P. L. R., 1900 p. 167. A mortgagee by conditional sale cannot, by obtaining a decree in an illegal foreclosure proceeding or by asserting himself to be the proprietor and thereby obtaining mutation to that effect in his favour, alter the character of his original title, nor can he rely on a possession adverse to the mortgagor to deprive him of his right to redeem the property. *Indar v. Asa Singh*, P. R. 65 of 1908. The plaintiff applied for foreclosure of mortgage in his favor, reciting that Rs. 10,000 were due thereon as principal and further sum as interest calculated upto the date of the application. The notice was served upon the mortgagor on the 9th November 1889 and the year of grace expired without payment of the amount due by the mortgagor, and again on 22nd January 1891 the plaintiff filed a suit for recovery of the interest due under the mortgage from the date of the mortgage, alleging that the interest which was recoverable from the separate property of the mortgagor had by mistake been included in the application

for foreclosure. *Held*, that the effect of the foreclosure proceedings under the Regulation was to discharge the whole debt secured by the mortgage, principal and interest, and that the second suit for interest was not maintainable *Harnam Das v. Kanwar Singh*, P. R. 103 of 1893. Where certain mortgagees had, during the widow's life time obtained a decree of foreclosure against her under Regulation XVII of 1806, *held*, that as against the reversioners, who sued for recovery of the land after the death of the widow, it was for the mortgagees to prove that the said foreclosure proceedings were in due form, and that the right of redemption was extinct, *Hira Singh v. Sher Singh*, P. R. 29 of 1898, but see *Duni Chand v. Thunia*, P. W. R. 82 of 1918, in which a decree for possession as full owner in the case of a mortgage by conditional sale against the widow of the mortgagor who was in possession of the property on her husband's death and on whom foreclosure notice was served was *held* binding on the reversioners on the ground that the widow had properly defended the suit although she had not raised the plea of no demand.

Res-judicata.—*Held*, that inasmuch as foreclosure proceedings are merely ministerial and carry no final judicial sanction it is open to a mortgagor to bring a suit for redemption after the expiry of the year of grace, and that such mortgagor would be entitled to a decree if he proved his claim on the merits, and that the foreclosure proceedings were for any reason not good or conclusive as against him or for other sufficient cause. *Gurditta Mal v. Sandhi Khan*, 27 P. R. 1900.

Revision.—The District Judge refused to issue a notice under Regulation XVII of 1806 holding that the mortgage-deed propounded was not a mortgage by conditional sale and therefore not within the scope of the Regulation. The plaintiff applied for revision *Held*, overruling the District Judge as to the nature and construction of the document, that his order was under the circumstances open to revision. *Gulab Singh v. Karam*, P. R. 119 of 1892, *Hazari Lal v. Kheru Rai*, I. L. R. 3 All. 576.

Reg 17 of 1806

Limitation.—(1) *Effect of proceedings under Regulation on limitation* Proceedings under Regulation XVII of 1806 are purely ministerial proceedings devised to give warning to the mortgagor of the impending disappearance of his right to redeem the mortgage and avoid a conditional sale, and can not in themselves confer any new period of limitation on a claim which otherwise would be barred by time. In the case of a mortgage by way of conditional sale where under the terms of the mortgage-deed, the mortgagee is entitled to possession of the mortgaged property without first taking out foreclosure proceedings, the right to possession of the mortgagor determines on the date of default; but where under the deed, the mortgagee as such has no right to possession, the right to possession of the mortgagor does not determine and his possession does not become adverse until the foreclosure proceedings have been perfected and the year of grace has expired. *Ratan Das v. Mussammat Guran*, P. R. 79 of 1918.

(2) *Limitation for an application under the Regulation.* There is no time limit for an application to be made under the foreclosure Regulation. Such an application is not a suit and therefore article 120 would not apply, nor article 144. Article 125 on the face of it has no application to such proceedings, and a mortgagee in possession is entitled to take out such proceedings at any time during the subsistence of his mortgage. *Tek Singh v. Sahel Singh*, P. R. 65 of 1906, p. 238, *Nagar v. Saudagar*, P. R. 57 of 1908.

3) *Limitation for suit for possession or declaration by mortgagee who has foreclosed.* see *Hardwari Mal v. Gamdin*, P. R. 75 of 1874, *Bhandari v. Mussammat Jasodhan*, P. R. 90 of 1895 (F. B.), *Tek Chand v. Sahel Singh*, P. R. 65 of 1906, *Nagar v. Saudagar*, P. R. 57 of 1908, *Ratan Das v. Mussammat Guran*, P. R. 79 of 1918. but see *Moman v. Ishari Pershad*, P. R. 35 of 1899, *Nand Lal v. Goojar*, P. R. 94 of 1912, *Shyam Ohunder Singh v. Baldeo*, 17 I. C. 467, *Beli Ram v. Thakar*, 39 I. C. 242 (Lah.).

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