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THE PUNJAB LAND REVENUE ACT

THE

PUNJAB LAND REVENUE ACT

(ACT XVII OF 1887)

AS MODIFIED UP TO DATE

WITH

AN INTRODUCTION, COMMENTARY, RULES, REGULATIONS, NOTIFICATIONS, OFFICIAL ORDERS AND INSTRUCTIONS, SEVERAL USEFUL APPENDICES, INDEX, ETC., ETC.

BY

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M.A., P.C.S.

Extra Assistant Commissioner

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PREFACE TO THE SECOND EDITION

THE first edition of this book was published in 1936 and was warmly received by both the legal profession, the Courts and the Revenue Officers who have to administer the Punjab Land Revenue Act. A revised edition was long overdue but pressing official duties did not permit me to take up this work earlier. While thanking them all for their past patronage and encouragement, I feel I owe them an apology for this delay.

The members of the legal profession sometimes feel handicapped for want of first-hand knowledge of the revenue records and of the method in which those records are prepared. Likewise, most of the Revenue Officers have not got enough time to study the law on the subject in sufficient detail. A reference book of the kind now being presented will meet the requirements of all. The chapter on 'records-of-rights' has been almost rewritten with special reference to the *jamabandi*, *the khasra girdawri*, the field maps, and the mutations. Many other portions of the book also have been rewritten or amplified. The rules, notifications and official instructions have all been brought up to date, and the case-law quoted is complete up to December, 1942. The marginal sub-headings have been added for facility of reference. It is hoped that the book in the present form will prove even more useful than the previous edition.

I shall be certainly failing in my duty if I do not thank the publishers for the fine printing and nice get-up of the book, in spite of the difficulties in getting paper.

Any suggestions for improvement of this book will be most thankfully received and gratefully acknowledged.

New Delhi. OM PRAKASH

PREFACE TO THE FIRST EDITION

THE chief object of this book is to explain the law and practice with respect to the making and maintenance of records-of-rights in land, the assessment and collection of land-revenue and other matters relating to land and the liabilities incident thereto, that fall within the scope of the Punjab Land Revenue Act, 1887. As a Revenue Officer I got the opportunity of having practical experience of the working of this Act in a district well-known for complicated nature of revenue work, and what is contained in the following pages is in fact based primarily, though not exclusively, on my notes which I prepared from time to time while studying the subject for my own use.

One main special feature of the book is the treatment of the subject logically and systematically. It has always been my aim to lay down every principle in a clear and concise language and to explain it by illustrations, wherever necessary. Case-law quoted is complete up to April, 1936. To explain certain points some unpublished Rulings have also been cited. The instructions contained in the relevant Standing Orders and Manuals have been quoted in *extenso* in their proper places. Most of the Standing Orders relating to records-of-rights have been superseded by the Land Records Manual, recently issued under the authority of the Financial Commissioners. There is a complete reference to that Manual in this book, a feature of unique importance. The three important subjects—Zaildari and Lambardari cases; Records-of-rights (including mutations), and Partitions—have been specially treated at considerable length. Nine useful appendices have also been specially prepared for this book to provide easy reference in certain important matters. Those on "Jagirs and Muafis" "Land Tenures in the Punjab," and "Consolidation

of Holdings " deserve special mention. I have always tried to be clear and concise on every point though I have shirked from sacrificing accuracy at the cost of brevity.

An appendix on " the Act as applicable to the North-West Frontier Province and the Province of Delhi " has also been added for the use of the legal public of these two Provinces.

In the compilation of this book I have derived much inspiration and guidance from the illustrious works of Thompson, Cust, Barkley, Baden-Powell, Douie and other masterly authorities on this subject, and to them I owe a deep debt of gratitude.

I must also express my warm thanks to the Courts, Officers and the legal profession for receiving my commentary on the Punjab Tenancy Act so kindly, and in fact the success of that book has encouraged me to write this companion volume.

Any suggestions for improvement shall be thankfully received.

Hoshiarpur,
June 1st, 1936.

OM PRAKASH

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INTRODUCTION

The well being of the agricultural community in India constituting as it does so overwhelming a proportion of the entire population of this country and contributing so large a quota to the Indian revenues, cannot fail to be to all a matter of the most intimate concern ; nor can it be denied that upon the incidence of the land revenue collections must the prosperity of those classes in a great measure depend. The question of land revenue may be recognised, therefore, as one of the highest importance and worth consideration from every point of view.

Land revenue system of India.

The land-revenue of modern India is a form of public income derived from the immemorial custom of the country. From very ancient times the State in India has claimed a share of the produce of the soil from its cultivators. By the ancient law of the country—to quote the opening words of Regulation XIX of 1793, by which the Permanent Settlement was created in Bengal—the ruling power is entitled to a certain proportion of the annual produce of every *bigha* of land, excepting in cases in which that power shall have made a temporary or permanent alienation of its rights, to such proportion of the produce, or shall have agreed to receive, instead of that proportion, a specific sum annually, or for a term of years or in perpetuity (*See also Preamble to Regulation XXXI of* 1803).

As long as the limit to this demand on the part of the State was the power of the Government to enforce payment and the ability of the people to pay, there was little in the form of valuable property in land and people did not much care about their respective rights in it, much less to make any improvements. The first step, therefore, towards the creation of a private proprietary right in land in the real sense was to place such a limit on the demand of the Government as would leave to the proprietor a profit which would constitute a valuable property in that land. When valuable property is so created it is further necessary in the interest of settled Government to determine the persons to whom these benefits belong which arise out of the limitation of demand on the land. To perform these operations is to make a settlement. What is technically called a Settlement of the land revenue thus consists of the determination of (*i*) the share of the produce or the rental to which the State is entitled ; (*ii*) the person or persons liable to pay it and (*iii*) the record of all the private rights and interests in the land.

General features of the Indian land revenue administration.

It will be found convenient to note the general features of the Indian land revenue administration under three heads which represent the processes actually followed ; namely, (1) the preparation of the cadastral record, (2) the assessment of the revenue, and (3) the collection of the revenue so assessed.

The original custom of native Government throughout the greater part of India was to take as land revenue a share of the produce in kind.

The grave inconveniences of such a system of revenue collection, troublesome storage of grain, and the openings for speculation, harassment, and oppression can, however, be easily understood. The system was, therefore, under native rule gradually subjected to various modifications. Sometimes the presence of a Government official on the threshing floor was dispensed with by having the out-turn of the standing crop and Government share estimated before hand. Sometimes the grain was not actually removed by the Government, but was compulsorily sold to the land holder and the value realized by the Government in cash. And sometimes, especially when the produce was not easy to be divided into shares the standing crop was assessed at cash rates per *bigha*. The great reforms of Akbar's time carried the process a step further—a calculation of the average cash value of the State's share of each crop for a series of years was worked out per *bigha* and the land-holders were given an opportunity of paying their revenue in cash at *bigha* rates which were fixed for a definite period, without fear of enhancement. A great deal of the revenue, especially in the outlying provinces, was still realized in kind, but the accounts were all kept in cash equivalents; and as time went on, it became customary, while maintaining cash *bigha* rates as a standard, to leave the collection for villages and other larger areas to middlemen who paid to the State fixed lump sums per annum. The rates in which these lump assessments were based were, however, gradually lost sight of or manipulated for the benefit of the contractors, and the contract assessments themselves were gradually forced up as the necessities of the Government increased. After the advent of British rule the principle of a contract assessment in cash was maintained and the revenue was assessed in this form either on the individual fields, as in the South, or on the larger estates or villages as in Nothern India. The general principle of assessment now is that the revenue should be realized in the form of a fixed annual payment in cash, the amount of which should be subject to no alteration during a prescribed term of years.

Government share of the produce.

The next point is to note the consideration affecting the incidence of the demand thus imposed. Under native rule assessments were usually represented either directly or indirectly as a certain fraction of the gross-produce. As regards the specific amount of the Government share the opinions of the Smritis are at variance, for while some are in favour of a uniform rate of 1/6, others mention varying rates of 1/6, 1/8 and 1/10 or 1/12 depending obviously upon the differences of soil and crops. In the popular tradition the rate of 1/6 was accepted as the recognised standard of land revenue assessment. A uniform rate is also indicated in few recorded historical instances, the demand being fixed at 1/4 of the produce in the Mauraya Empire and at 1/6 in the time of Huien Tsang and under Pala rule in Bengal. Allauddin claimed half the produce; and it is possible that this was a somewhat larger share than had been claimed in the 13th century, because his object was to deprive the chiefs and headmen of a portion of the income which they had previously enjoyed. The next established fact is Sher Shah's claim to one-third. It seems to be probable that this figure was of old standing, and not an innovation; and, in the absence of records, the guess is perhaps admissible that the reduction made after Allauddin's

death was from one-half to one-third and that this figure continued to be the standard, until, sometime in the first-half of the 17th century, the maximum claim was raised to one-half.

At present the revenue throughout India, except in Bombay where the assessment is not fixed in terms of the produce at all, is assessed so as to represent a share not of the gross but of the net produce. By " net produce " is generally meant the estimated average annual surplus produce of an estate or group of estates remaining after deduction of the ordinary expenses of cultivation as ascertained or estimated. This share of the net produce as representing land-revenue has been varying from time to time and for the Punjab it has been lowered from one half of the net assets to one fourth. Calculated in terms of the gross produce we find that the Indian Government now takes a very much lower share of the gross produce than was customary in pre-British days.

The Cadastral Record.

One of the special features of land revenue administration in India is a complete record-of-rights in land. Necessity for record-of-rights has already been referred to. Any sound system of assessment and collection of land revenue is impossible without the existence of an accurate record-of-rights in the land which is sought to be assessed. In their absence it would not be an easy matter to determine who is liable for the payment of revenue over any particular land and it would be difficult to settle disputes between the various claimants to that land. These records now are sufficiently detailed to disclose not only who the land-owner of a particular holding is but also to show who is his tenant, what is the rent payable, what are land revenue and cesses assessed on it, the nature of the soil, method of irrigation and area of every holding etc.

The Punjab.

The territories now included in the Punjab were, with a few exceptions, absorbed in British Empire by stages between 1803 and 1849. The history of the revenue system during the forty years of Maharaja Ranjit Singh's Government reveals an interesting evolution. In the beginning of the reign the simple method of *batai* was mostly prevalent throughout the kingdom but towards the close we find that the practice of levying cash rates was introduced in certain parts of his territory. The state's share of the gross produce was not rigidly fixed at any one uniform rate, but rather varied with the quality of the soil and other facilities for cultivation. From the lands of peculiar fertility with great facility for natural irrigation 50 per cent. of the gross produce was taken and in the case of less fertile tracts 2/5ths and 1/3rd. The collection of revenue formed the principal part of the duties of a *kardar*, but the work of actual realization from the *assamis* was done by the agency of *muqaddams* and *chaudharis*, who where selected from amongst men of local influence.

Early land revenue legislation in the Punjab under the British.

The territories now included in the Punjab were, with a few exceptions, absorbed in the British Empire between the year 1803 and 1849. On the 30th of March, 1849, the proclamation annexing the Punjab was read at Lahore. The province was not attached to any presidency, but simply annexed to the British dominion; hence the " Regulations " did not apply. A despatch (dated 31st March, 1849) from the Governor-General

gave directions as to the form and method of administration, and appointed a Board of Administration consisting of three members. A single Chief Commissioner was substituted in 1853. The Chief Commissioner was assisted by a Financial Commissioner and a Judicial Commissioner as the Chief revenue and Judicial authorities under Government. Lastly, by notification No. 1, dated 1st January, 1859 (under the 16 and 17 Vict., Cap. 95) the Governor-General proclaimed that 'a separate Lieutenant Governorship for the territories on the exterme Northern Frontier of Her Majesty's Indian Empire shall be established and that the Punjab and the tracts commonly called the trans-Sutlej States, the cis-Sutlej States and the Delhi territory shall be the jurisdiction of the Lieutenant-Governor.'

In para. 12 of the Despatch constituting the Board of Administration for the affairs of the Punjab, the Governor-Gerneral referred to the "Four circulars" of the Sadar Board of Revenue, North-Western Provinces (now the Uuited Provinces of Agra and Oudh) and "the pamphlets published under the orders of the Lieutenant-Governor" as forming "an admirable body of instructions adopted to any province where the village system obtains," and directed that they should be largely circulated amongst the officers under the Board. While the Revenue Regulations applicable to the North-Western Provinces were, with a few exceptions, never in express terms extended to the Punjab, the "Directions for Settlement Officers and Collectors" founded upon them were thus prescribed as a guide to officers employed in this province. Regulation VII of 1822 and Regulation IX of 1833 laid the foundations of the existing system of land revenue settlement in the North-Western Provinces and so also in the Punjab. This is the law under which the Punjab Settlements before the passing of the first Land Revenue Act, XXXIII of 1871, purported to be made. It was found necessary, however, from time to time to supplement the instructions contained in it, as to introduce modifications, by means of circulars issued by the Financial Commissioner. The Indian Councils Act of 1861 gave these instructions legal basis.

The Punjab Land Revenue Act, 1871.

The Punjab Land Revenue Act, 1871 (XXXIII of 1871), was the first attempt to express within a reasonable compass, and in clear language, the various rules and orders by which the proceedings of revenue and Settlement Officers in the Punjab had up to that time been regulated, and which had acquired the force of law under section 35 of the Indian Councils Act, 1861. The task of the framers of that Act was to explore this mass of instructions, to pick out from it such provisions as could properly and conveniently be given the force of law, to express them in Legislative language and to embody them in an Act. They selected for enactment only the more important provisions of the law, and left a great quantity of subsidiary matter to be regulated by rules under the Act. As the preamble shows that Act was 'to consolidate and define the law relating to the settlement and collection of land revenue in the Punjab and for other purposes.'

The Punjab Land Revenue Act, 1887.

Notwithstanding all the skill and care expanded on it, this first attempt to condense and put into legal form a mass of rules and instructions governing one of the most intricate branches of the administration, when subject to the test of practical

working, was found to be incomplete in some respects, and to require amendment in others. The result was the enactment of the present Act 'to amend and declare the law in force in the Punjab with respect to the making and maintenance of records-of-rights in land, the assessment and collection of land revenue and other matters relating to land and the liabilities incident thereto.' On comparing this Act with the Act of 1871 it strikes two chief differences—one of addition and the other of omission. Many of the rules framed under the old Act have been codified as a part of the Act while some element which had become obsolete in due course of time has been omitted.

The Punjab Land Revenue (Amendment) Act, III of 1928.

The latest development of far-reaching consequence in the land revenue law of this province has been brought by the Punjab Land Revenue (Amendment) Act, III of 1928, which came into force on 22nd February, 1929. Before its enactment the law contained nothing about the principles of assessment beyond establishing the fact that all land is liable to the payment of land revenue to Government and directing that a general re-assessment of the land-revenue of the district or tahsil shall not be undertaken without the previous sanction of the Local Government. All the principles of assessment were embodied in a series of instructions which were issued from time to time either from the Government of India or from the Local Government or the Financial Commissioner. The intention of the new legislation was—

(*i*) to embody the more important of these rules and instructions in the statue law of the province, and

(*ii*) to provide machinery for the making of rules and instructions in future so as to ensure that no change shall take place in the more important of these rules and instructions without the special cognizance of the elected representatives of the Province in the Legislative Council.

The changes made by this Amending Act have been referred to at appropriate places in the Act.

THE PUNJAB LAND REVENUE ACT, 1887.

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[1]THE PUNJAB LAND REVENUE ACT
(ACT NO. XVII OF 1887)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor-General on the 23rd September, 1887)

AS AMENDED BY

ACT XII OF 1891, ACT XVII OF 1896, PUNJAB ACT I OF 1899, PUNJAB ACT II OF 1905, ACT IV OF 1907, PUNJAB ACT II OF 1912, PUNJAB ACT V OF 1912, ACT IV OF 1914, ACT XXVIII OF 1920, [2]PUNJAB ACT III OF 1928, PUNJAB ACT VII OF 1929, PUNJAB ACT VI OF 1934, & THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937.

AN ACT TO AMEND AND DECLARE THE LAND REVENUE LAW OF THE PUNJAB.

Whereas it is expedient to amend and declare the law in force in the Punjab with respect to the making and maintenance of records-of-right in land, the assessment and collection of land revenue and other matters relating to land and the liabilities incident thereto ; It is hereby enacted as follows :—

The Punjab a Non-Regulation province—law applicable.

Land-Revenue Legislation in the Punjab before the enactment of the Punjab Land Revenue Act, 1887.—The territories not included in the Punjab were, with a few exceptions, absorbed in the British Empire between 1803 and 1849. On the 30th of March 1849, the proclamation annexing the Punjab was read at Lahore. The province was not attached to any presidency, but was simply annexed to the British dominion ; hence the Regulations did not apply. A despatch (dated 31st March, 1849) from the Governor-General, gave directions as to the form and method of administration, and appointed a Board of Administration consisting of three members. By the Government of India, Notification No. 660, dated 4th February, 1853, a single Chief Commissioner was substituted. The Chief Commissioner was assisted by a Financial Commissioner and a Judicial Commissioner as the Chief Revenue and Judicial authorities under Government. Lastly, by Notification No. 1, dated 1st January, 1859 (under the 16 and 17 Vict., Cap.

1. For Statement of Objects and Reasons, *see* "Gazette of India," 1887, Pt. V, p. 128 ; for Report of the Select Committee, *see ibid*, 1887. Pt. IV, p. 119 ; for Proceedings in Council, *see ibid*, 1886, supplement, p. 1015 : *ibid*, 1887, Pt. VI. pp. 60 and 90.

2. For Statement of Objects and Reasons *see* Punjab Gazette, 1927, Part V, page 14 ; for Report of the Select Committee *see ibid*, 1927, Part V, pages 17–28 ; for Proceedings in Council *see* Punjab Legislative Council Debates, volume X, pages 712–714, 1268—1272, 1461—710 Volume XI, pages 894, 895—931, 949—81, 1007—1044, 1106—1139, 1161—91, 1195—97.

95) the Governor-General 'proclaimed that a separate Lieutenant-Governorship for the territories on the extreme northern frontier of Her Majesty's Indian Empire shall be established, and that the Punjab and the tracts commonly called the trans-Sutlej States, the cis-Sutlej States, and the Delhi territory, shall be the jurisdiction of the Lieutenant-Governor.'

The Punjab a Non-Regulation Province.

What we understand by "Regulation" and "non-Regulation Provinces" has already been explained in the *Introduction* to this book. The Punjab was also a "Non-Regulation" province. Up to 1833, no provision existed by which anything in the nature of a legislative power existed for such places, as were not attached to any Presidency. By section 43 of the Government of India Act, 1833 (3 and 4 Will-IV, Cap. 85) 'the Governor-General in Council was to make Laws and Regulations for all persons, for all Courts of Justice, and for all places and things within British territory and regarding servants of the Company in allied Native States. But this also afforded only a partial remedy. It gave, it is true, power to legislate for all British territory, so that provinces which were already British territory at the time were provided for; but nothing was said about the application of such Acts, if general in their character, to provinces not at the time British provinces but added afterwards. The result was that in the newer provinces a number of matters were provided for by local rules, circular orders and official instructions, which emanated from the executive, but not from any legislative authority. Business could not have been carried on without such rules, yet there was no legal basis for them, only the sanction of practice.

The Indian Councils Act, 1861.

The Indian Councils Act of 1861 (24 and 25 Vict., c. 67) removed the difficulty, for section 25 of that Act provided—'Whereas doubts have been entertained whether the Governor-General of India, or the Governor-General of India in Council had the power of making rules, laws and regulations for the territories known from time to time as "Non-Regulation Provinces" except at meetings for making laws and regulations in conformity with the provisions of the Government of India Act, 1833, and of the Government of India Act, 1853, and whether the Governor, or Governor in Council, or Lieutenant-Governor of any presidency or part of India, had such power in respect of any such territories :

Be it enacted, that no rule, law or regulation, which prior to the passing of this Act shall have been made by the Governor-General, or Governor-General in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act or Parliament respecting the constitution and powers of the Council of India or of the Governor-General, or respecting the powers of such Governors, or Governors in Council, or Lieutenant-Governor as aforesaid.'

Law applicable before the enactment of the Punjab Land Revenue Act, 1887.

Land Revenue Law applicable in the Punjab before the Punjab Land Revenue Act, 1871.—In para. 12 of the Despatch constituting the Board of Administration for the affairs of the Punjab, the Governor-General referred to the "Four Circulars" of the Sadr Board of Revenue, North-Western Provinces (now the United Provinces of Agra and Oudh) and the pamphlets published under the orders

of the Lieutenant-Governor as forming "an admirable body of instructions adopted to any province where the village system obtains," and directed that they should be largely circulated amongst the officers under the Board. The pamphlets referred to were Thomason's "Directions for Settlement Officers and Collectors", which appeared in three parts between 1844 and 1848. The "Four Circulars" of the Sadr Board of Revenue were.—

No.	I	on Settlement.
No.	II	on the realization of Revenue and Rent.
No.	III	on Records and Registration.
No.	IV	on Miscellaneous subjects.

While the Revenue Regulations applicable to the North Western Provinces were, with a few exceptions, never in express terms extended to the Punjab, the "Directions for Settlement Officers and Collectors" founded upon them were thus prescribed as a guide to officers employed in this province. Regulation VII of 1822 and Regulation IX of 1833 laid the foundations of the existing system of land revenue settlement in the North-Western Provinces and consequently in the Punjab. This is the law under which the Punjab settlements, before the passing of the first Land Revenue Act, XXXIII of 1871, purported to be made. But quite as important as these written instructions was the fact that the revenue policy of the Punjab was moulded by officers who had administered districts and made settlements in the North-Western Provinces. Altogether nineteen of the best of Thomason's officers were sent to the Punjab, and they brought with them some of their native subordinates to form the nucleus of the new establishments. It was found necessary, however, from time to time to supplement the instructions contained in these directions or to introduce modifications, by means of circulars issued by the Financial Commissioner. The Indian Councils Act of 1861 gave these instructions legal basis.

The Punjab Land Revenue Act, 1871.

The Punjab Land Revenue Act, 1871.—The Punjab Land Revenue Act, 1871 (Act XXXIII of 1871), was the first attempt to express within a reasonable compass, and in clear language, the various rules and orders by which the proceedings of Revenue and Settlement Officers in the Punjab had up to that time been regulated, and which had acquired the force of law under section 25 of the Indian Councils Act, 1861. The task of the framers of that Act was to explore this mass of instructions, to pick out from it such provisions as could properly and conveniently be given the force of laws, to express them in Legislative language, and to embody them in an Act. They selected for enactment only the more important provisions of the law, and left a great quantity of subsidiary matter to be regulated by rules made under the Act. As the preamble shows, that Act was 'to consolidate and define the law relating to the settlement and collection of land-revenue in the Punjab and for other purposes.'

The Punjab Land Revenue Act, 1887.

The Punjab Land Revenue Act, 1887.—Notwithstanding all the skill and care expended on the Act of 1871, this first attempt to condense and put into legal form a mass of rules and instructions governing one of the most intricate branches of the administration, when subjected to the test of practical working, was found to be incomplete in some respects, and to require amendment in others. On comparing this Act with the Act of 1871, it strikes two chief differences—one of addition and the other of omission. Many of the rules framed under the old Act have been codified as a part of the Act while some element which had become

obsolete in "due course of time has been omitted. The present Act is, therefore, 'to amend and declare the law in force in the Punjab with respect to the making and maintenance of records-of-rights in land, the assessment and collection of land revenue and other matter relating to land and the liabilities incident thereto."

This Act defines more or less the rights of and relations between State and land-owners whereas the Tenancy Act defines the relations between landlords and tenants.

CHAPTER I

Preliminary

Title, extent and commencement.

1. (1) This Act may be called the Punjab Land-Revenue Act, 1887.

(2) It extends to the territories * * * administered by the [1]Lieutenant-Governor of the Punjab, including the *Pargana* of Spiti ; but not so as to affect, otherwise than as expressly provided by this Act any Regulation in force under the provisions of the Statute 33, Victoria, Chapter 3, section 1, in any portion of these territories ; and

(3) It shall come into force on such day as, the Provincial Government, with the previous sanction of the Governor-General in Council, may by notification appoint in this behalf.

(4) *Repealed by Act XII of 1891.*

Formation of the North-West Frontier and Delhi Provinces.—In November 1901 the districts of Hazara, Peshawar, and Kohat, the Bannu and Marwat tahsils of Bannu, and the Trans-Indus part of Dera Ismail Khan, with the exception of the Vehoa *ilaka*, were separated from the Punjab and formed into the North-West Frontier Province. On the 1st October 1912, when the capital of India was removed to Delhi, the Delhi tahsil and the Mehrauli *thana* of Ballabgarh were separated from the Punjab and formed into the Delhi Province.[2]

Note.—This Act is also applicable to the North-West Frontier Province with certain modifications and to the Delhi Province.[3]

Regulations in force under the provisions of the Statute 33, Victoria, Chapter 3, Section 1.—Statute 33, Victoria, Chapter III, section 1, is to the following effect :—

"Every Governor of a Presidency in Council, Lieutenant-Governor or Chief Commissioner, whether the Governorship or Lieutenant-Governorship or Chief Commissionership be now in existence or may hereafter be established, shall have power to propose to the Governor-General in Council drafts of any regulations, together with the reasons for proposing the same, for the peace and Government of any part or parts of the territories under his Government or administration to which the Secretary of State for India shall from time to time by resolution in Council declare the provisions of this section to be applicable from any date to be fixed in such resolution.

***The words "for the time being" have been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

1. To be construed now as "Governor" *see* Section 31 of the General Clauses Act, 1897 (X of 1897).

2. Settlement Manual, para. 14-A.

3. [See North-West Frontier Province Law and Justice Regualtion, 1901 (VII of 1901) and the Delhi Laws Act, 1912 (Act XIII of 1912) and the Delhi Laws Act, 1915 (Act VII of 1915)—Appendix I].

And the Governor-General in Council shall take such drafts and reasons into consideration ; and when any such draft shall have been approved of by the Governor-General in Council, and shall have received the Governor General's assent, it shall be published in the 'Gazette of India' and in the local Gazette, and shall thereupon have like force and be subject to the like disallowances as if it had been made by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any Governor, Lieutenant-Governor, or Chief Commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit."

This was enacted to provide an elastic and adaptable method of making rules which have legal validity for provinces in an elementary stage of progress. The districts so declared (if not already under Act XIV of 1874) become "Scheduled" whenever such declaration is made, so that there is in fact a power of creating new scheduled districts in addition to those in that Act. (*See* the Frontier Murderous Outrages Regulation, 1901).

Sub-section 3.—The Act came into force on 1st November, 1887. (*Notification No. 727, dated 1st November* 1887).

Repeal.

2. (1) The enactments mentioned in the Schedule are repealed to the extent specified in the third coloumn thereof.

(2) But all rules, appointments, assessments and transfers made, notifications and proclamations issued, authorities and powers conferred, forms and leases granted, records-of-rights and other records framed, revised, or confirmed, rights acquired, liabilities incurred, times and places appointed, and other things done, under any of the repealed enactments shall, so far as may be, deemed to have been respectively made, issued, conferred, granted, framed, revised, confirmed, acquired, incurred, appointed and done under this Act.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed as referring to this Act.

Definitions.

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

(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 Provincial Government may, by general rule or special order, declare to be an estate;

Estate.—Mr. Thomason defined 'estate' "as any parcel or parcels of land which may be separately assessed with the public revenue, the whole property of the persons settled with in the estate being held hypothecated to Government for the sum assessed upon it".[1] Estate

According to section 1 of the Punjab Land Revenue Act, 1871,[2] "estate" meant 'a village or other local area with which a separate settlement is made'. According to the definition laid down in the present Act, estates means an area for which either a separate record-of-rights has been prepared or which has been treated as a separate unit for purposes of assessment, or which the Provincial Government has by general rule or special order declared to be an estate.

The joint responsibility of all the landowners of an estate for its revenue is provided for in section 61 of the Act. Thus estate is a legal expression defined by the Act and forms the unit of revenue assessment and administration in the Punjab. The fundamental element in this definition is the separate assessment, and, where more than one person own the same estate, their joint responsibility for the payment of its revenue. A separate unit of assessment, must as a matter of course have a separate record-of-rights.

Clause (b).—Sub-section (1) of section 48 of the Act provides that 'all land, to whatever purpose applied and wherever situate, is liable to the payment of land-revenue to the Government, except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force and such land as is included in the village site.'

Revenue released.—Means revenue remitted to the owner himself (*e.g. muafi*) or assigned to a third person (*e.g. Jagir*).

Revenue compounded for.—Means Revenue for which a fixed *nazrana* has been accepted by Government for the land revenue demand to which it is entitled.

Revenue redeemed.—Means revenue given up. In the year 1861, it had been proposed to grant revenue free land with the purpose of encouraging the settlement of European farmers in India. The following rules were framed.[3]

Land Revenue Redemption Rules.

1. In supersession of the rules for the redemption of land revenue which were issued with Notification No. 556, dated 15th July 1862, published in the Punjab Government Gazettee of the 19th idem, the attention of all officers connected with the Revenue Administration of this Province is hereby called to the restrictions prescribed by para. 26 of the Secretary of State's Despatch No. 14, dated 9th July 1862, and para. 13 of letter of the Supreme Government to the Government of Bengal, No. 4206, dated 15th August 1862, which accompanied it.

2. By the orders conveyed in these documents the only assessed lands, of which the revenue will, in future, be redeemable, are those

1. Barkley's Directions for Settlement Officers in the Punjab, page 2.
2. Act No. XXXIII of 1871.
3. P. G. Notification No. 317, dated 1st March, 1869.

"required for dwelling-houses, factories, gardens, plantations and other similar purposes". It does not appear that there are at present any purposes for which lands are likely to be required by private individuals or associations in the Punjab of such a nature as to render redemption admissible which are not included in the foregoing enumeration—at least none such have been as yet suggested. But it will rest with District Officers to submit for sanction all applications which may appear to fall within the intention of the orders in question.

3. The land required for houses or factories must be held to include such area in excess of that actually occupied by the main buildings as may be reasonably required for out-buildings and grounds. By the word "plantations" is to be understood groves, orchards, shrubberies, etc., planted for ornament, shade or domestic use, not those intended as commercial speculations; and for such plantations, or for gardens, such extent of land will be allowed as may appear to be reasonable, and to be intended *bonafide* exclusively for the purposes stated.

4. Redemption of the revenue is not to be effected in any case until the sanction of Government shall have been given thereto on report. The exact boundaries of the land desired in each case must be determined, demarcated and mapped, before it is submitted for order—a copy of map always accompanying the report; and after sanction to the redemption shall have been obtained, boundary marks of a substantial character must be erected at the cost of the party redeeming.

5. The proprietor or proprietors of the land alone will be allowed to redeem. The price to be paid will be determined according to the value of 4 per cent. stock of the Government of India, so that the amount paid may yield interest equivalent to the land revenue bought out. The tenure obtained will be that of an heritable and transferable property held in perpetuity free of all demand on account of land revenue, but such tenure will not carry with it immunity from any legal claims to which the land may be subject, or from the cesses or taxes, other than land revenue, imposed on *malguzari* land.

6. On sanction being obtained for effecting the redemption, the amount due on account of it is to be realised in full, and disposed of, or carried to account in such mode as may from time to time be prescribed by the Department of Accounts, a *sanad*, in the subjoined form, signed by the District Officer, being given to the party entitled thereto. A register of all such lands is to be kept up in every district, having the heading and columns indicated below, and the serial number entered in this register shall be prefixed also to the sanad :—

Register of plots of land of which the revenue has been redeemed in the district of. —

Serial No.	Name of village.	Area of land in acres.	Yearly assessment.	Amount of redemption money.	Name of parties redeeming.	Date of redemption.	Remarks.
							In this column the purpose to which the land is to be applied must be stated, with any further explanations or observations that may appear called for.

Form of Sanad.

No.

Know all men by these presents that the British Government of India have received from
son of resident of Mouza Pargana
District the sum of Rupees (Rs.) being the
amount of years purchase of the land revenue assessed
on an area of in Mouza Pargana
District of [and bounded as follows :—

North .
South .
East .
West .]

in lieu of demand for ever on account of Government Land Revenue due from the said son of his heirs and assigns, in respect of the above named land.

The said son of his heirs and assigns, will however continue to pay such cesses as would be demandable from the land if the redemption had not been effected, other than land revenue.

He will also be liable to pay his share of *malba* or village expenses, and of police or conservancy expenditure, according to the rules for the time being in force.

Cases of redemption rare.—The cases of redemption were, however, rare since the power of sanctioning redemption of land revenue has since long been withdrawn by the Government of India *vide* Resolution No. 12/73—17, dated 7th September 1897, which provided as follows :—

"The instructions contained in the Circular letter of the 10th August, 1872, read in the preamble were provisionally issued pending the revision in the several provinces of the existing rules for the disposal of waste lands and final settlement of conditions on which such lands might be alienated. The revision has been generally completed, and the present question for decision is whether there is any necessity for retaining a rule which authorises Local Governments and Administrations to sanction the redemption by private persons of the land revenue assessment of small plots of land required for dwelling houses, factories, gardens, plantation and other similar purposes. The inquiry now made shows that the authority has been very seldom exercised and that it may be withdrawn without inconvenience. The Government of India are accordingly pleased to direct in modification of the Circular Orders of the 10th August 1872 that in future no redemption of land revenue for the purposes specified above shall be permitted without the previous sanction of the Government of India.

2. These orders will not affect any powers already conferred on Local Governments and Administrations to grant exemption from or reduction of land revenue in respect of lands acquired by or made over to local authorities for roads and other public purposes, or of lands made over conditionally for educational, charitable or other quasi-public purposes to societies or individuals. Nor will they affect the provisions of any rules in force locally in any province which permit the redemption of land revenue assessed on small nazul plots, where the trouble and expense of collecting the assessment are disproportionate to the amount. Nor will they affect any rules already sanctioned for any province by

the Government of India, authorising for the same reason the sale free-of-revenue of small Government properties which it may be necessary to sell." (*See also Settlement Manual, para.* 494).

Clause (c).—All demarcated areas of uncultivated and forest land owned by Government are declared to be estates within the meaning of the Punjab Land Revenue Act, 1887. (*P. G. Notification No.* 8, *dated 9th January,* 1889).

Parade ground.—Plaintiff alleged in his plaint that he held a lease under Government of the grazing rights over a certain parade-ground. It was held that the parade-ground, of which plaintiff held a lease, was not an estate as defined above.[1]

"Estate" distinguished from "village".

"Estate" and "village" distinguished.—We invariably come across two vernacular terms *mauza* and *mahal* in revenue administration, and it seems necessary to distinguish between the two. *Mauza* is usually translated "village" and the English equivalent of *mahal* is "estate".

"Village" is not defined in the Punjab Land Revenue Act. It connotes in a popular sense what we call *mauza, gaon* or *pind* in the Punjab. According to Mr. Thomason's definition, a village is "a parcel or parcels of lands having a separate name in the Revenue records and known limits."[2]

In fact, in the beginning on selecting a *Parganah* or *Tahsil* for settlement, the first step was to draw out a list of *mauzas,* which were to be separately marked off and surveyed. In this connection it became necessary to decide in what cases separate properties in the same *mauza* should be separately surveyed and formed into distinct *mauzas,* and in what cases *mauzas* constituting the same property might be surveyed together into one *mauza.* When several *mauzas,* the property of the same persons, and held on the same title, lay together, it was considered better not to separate them, but to mark them off and survey them as one, giving to the whole circuit the name of the several constituent *mauzas.* The list was to include every village, whether paying revenue to Government (*khalisah*), or assigned (*jagir*). The number having been thus fixed, the boundaries of the villages were decided and marked off according to the list. Each village was allotted a separate number (known as *Hadbast* number).

The principles on which the boundaries were to be laid down were the maintenance of possession where it was clear and undoubted, the determination of it where it was questioned, and the conferment of it where it was unascertainable. There was little difficulty with respect to cultivated land as possession thereof could never be unknown. The possession of uncultivated land was sometimes marked by the right to wells or houses, or the enjoyment of the fruits of the trees or spontaneous products, of the earth, but these indications were often obscure. Wherever there was any dispute, attempt was made to settle it by referring it to arbitration. Boundaries thus established by the Settlement Officer were sufficient to define the limits of the estates for Revenue purposes: but the proprietors could establish their title to any land beyond such boundary by a Civil suit. The task for defining the boundaries of villages by the early Settlement Officers was, indeed, huge but it was done accurately so that there are hardly any modifications necessary now.

1. Khuda Baksh *v.* Dana=13 P. R. 1895.
2. Barkley's Directions for Settlement Officers in the Punjab, page 2.

A village, as a rule, consists of a single block of land. But occasionally the whole of its land does not lie in a ring fence, and some outlying fields are found mixed up with the lands of another village. Such fields form *chak kharij* for one and *chak dakhil* for the other village.

As has already been observed, the fundamental element in the definition of 'estate' is the separate assessment and the joint responsibility of the owners for the payment of its revenue. In the Punjab, commonly a village constitutes a distinct estate, which is assessed at a certain sum, but this is not necessarily the case. An estate, constituting all the land contracted for in one engagement or lease, may consist of two or more villages, or parts of villages or may be only a portion of one village.

A village may be divided into two estates or two estates may be combined into one only with the sanction of the Financial Commissioner (*Financial Commissioner's Notification No.* 6486, *dated 27th October* 1904).

With respect to uninhabited estates the rule has been that, if belonging to one man or family, and not shared in by the other proproprietors of the village in which the owners reside, should be separately marked off; but if the property of the proprietors of an adjacent inhabited village or of a subdivision of such village, they should be included in the boundary of such village.[1]

'Landowner'.

(2) "landowner" does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate;

Meanig and scope of the term.—"By the ancient law of the country the ruling power is entitled to a certain proportion of the annual produce of every *bigha* of land, excepting in cases in which that power shall have made a temporary or permanent alienation of its right, to such proportion of the produce, or shall have agreed to receive, instead of that proportion, a specific sum annually, or for a term of years, or in perpetuity." The land revenue of India rests upon this principle according to the declared policy of the British Government (see Preamble to Regulation XXXI of 1803). In ordinary circumstances the persons to give the State its share of the produce are evidently those who are found to be in possession of an exclusive right to till the soil and reap the harvest themselves, or to make it over to others for tillage. The definition of "landowner" as above described seems to follow this line and obviously includes all persons who are to pay the land revenue to the State for the time being. One of the difficult tasks before the Settlement Officers at the time of early settlements was the determination of the right of persons to engage for the payment

1. See Barkley's Directions for Settlement Officers in the Punjab; pages 2 to 5, and Settlement Manual paras. 123, 124 and 524.

of the revenue and the settling of the question with whom the engagement should be made. It was, in fact, a matter of great practical importance. Actual cultivating possession of the community concerned was given great weight. Whenever the engager and the right holder have been different persons, the tendency has been for the former to encroach upon the privileges of the latter and finally to destroy them altogether. The subject will be discussed in more details under the heading 'Land Tenures in the Punjab.'

It will be noticed that the definition of landowner is not exhaustive. When in an interpetation clause it is stated that certain term *includes* so and so the meaning is that the term retains its ordinary meaning and the clause enlarges the meaning of the term and makes it include matters which the ordinary meaning will not include.[1]

Profits of an estate.—This expression is some what vague as it is not clear what is exactly meant by 'profits.' It might be construed as that portion of the yield of an estate which is in excess of the amount required to meet the cost of cultivation, including in this the remuneration of the cultivator's labour and capital. In other words, the profits form the economic rent, part of which is ordinarily received by the Government in the shape of land revenue. Thus the Government may also be said to be in enjoyment of part of the profits of an estate.

The plaintiff was the proprietor of 100 *bighas* of waste land in the village. It appeared that the land might be unfit for cultivation and was not assessed with revenue. It was held that it constituted him a landowner as defined in this sub-section, and invested him with all the rights and lay upon him all the liabilities of a landowner.[2]

A tenant with a right of occupancy cultivating the land on a specified rent is in enjoyment of part of the profits of an estate. But a tenant has been definitely excluded from the definition of landowner.[3] Similar is the case of an assignee of land revenue.

Superior and inferior proprietors.

Superior (*ala*) and inferior (*adna*) proprietors.—Where the proprietary right is divided the superior owner is known in settlement literature as *ala malik* or *talakdar*, and the inferier owner as *adna malik*. The local names given to these tenures are not uniform. Thus in the Cis-Sutlej tract the superior owner is called *biswadar*, and the inferior *zamindar*. In the South-Western Punjab the latter title is appropriated by the superior owner, and the inferior proprietor is commonly described as *chakdar*. In the Punjab, following the precedent of the United Provinces, the question with whom settlement should be made was, where the proprietary right was thus divided, almost invariably decided in favour of the inferior proprietor, the claim of the superior owner to a share of the crop being commuted into a moderate sum levied as a surcharge upon the revenue and calculated at a small percentage on its amount (S.M. paras. 143, 144). Where settlement has been made with the *adna maliks* aud they alone are the *khewatdars* responsible to Government for the revenue and having the fullest control over the management of the village, and the superior proprietors are mere *talukdars* whose sole interest in the village is the

1. Official Assignee, Bombay *v.* Firm of Chandu Lal Chiman Lal=76 I.C.657.
2. Jasmir Singh *v.* Rahmatulla and others=7 P.R. 1896.
3. See Bhan Singh *v.* Jagat Singh=55 P.R. 1919=A.I.R. 1919 Lah. 131=51 I.C. 645.

percentage on the revenue fixed in the Settlement Record as their due, it cannot be held that the *ala maliks* are in the enjoyment of any part of the profits of the village, and are, therefore, not landowners.[1]

Mortgagees.—A mortgagee with possession is a 'landowner' within the meaning of the Punjab Land Revenue Act, 1887, but not mortgagees without possession who are not in the enjoyment of any parts of the profits of an estate.[2] Mortgagee.

Widow.—A widow succeeding to her husband's estate or share in an estate on a life tenure is a 'landowner' within the meaning of this sub-section.[3] Widow.

Distinction between 'owner of land' and 'landowner'.—Distinction between these two terms has been admirably drawn by Chatterjee J. in *Buta* v. *Mst. Jiwani* reported as 82 P.R. 1898 [F.B.] and it seems nothing better than to quote from that judgment. 'Landowner' distinguished from owner of and'.

" 'Landowner' as above defined has a very wide signification and includes many persons whose interests in land are of a limited or ephemeral character, *e.g.*, a farmer or transferee for revenue purposes or one, not expressly mentioned in sub-section (2) above, who is in possession of an estate or any part thereof or in the enjoyment of any part of the profits of an estate.

The word 'owner' has not been defined in the Act, and according to the accepted canons of interpretation we must, unless the context negatives such a construction, take it to have been used in its ordinary sense. Now the connotations of the term are some what indefinite, and it is commonly applied to persons whose rights in property are unlimited as well as those whose rights are more or less restricted. In its widest signification to use the language of Austin ownership means a "right over a determinate thing indefinite in point of time, unrestricted in point of disposition and unlimited in point of duration." The component rights of ownership fall under three heads—possession, enjoyment and disposition (*per Sir M. Plowden' C. J. in No.* 107, *Punjab Record*, 1887, *page* 246).

In actual life we do not always find the rights of ownership uncontrolled under all the three heads. The obligation to respect the right of others and the restrictions imposed by law frequently limit the power of the owner to deal with his property. The right is widest in respect of movable and acquired immovable property but in the Punjab among agriculturists custom does not allow the male owner in possession an unrestricted right of alienation of ancestral land to the prejudice of his male heirs. But though thus possessing a limited power of transfer for legal necessity he is all the same termed as owner in common parlance. As respects acquired land as well as ancestral land he is equally described as owner. The same remark applies to a widow succeeding to her husband's estate on a customary tenure. She is not strictly a life tenant, but her rights of alienation are restricted like that of the male holder as regards ancestral land, and the conditions constituting legal necessity are more stringent in her case. But she is also called an owner in the revenue records and in the language of

1. Seth Lakhmi Chand *v.* Nawab Hafiz Muhammad Abdullah Khan and another=72 P.R. 1897.

2. Ram Chand *v.* Uttam Chand=106 P.R. 1890 ; Hira Singh *v.* Devi Ditta =4 P.R. 1903 (Rev.) ; Ch. Thakar Dass *v.* Sultan Bakhsh=2 P.R. 1918 (Rev.) =1921 L.L.T. 22=45 I.C. 405.

3. Dan Singh *v.* Mst. Sukhan=11 P.R. 1895 (Rev.) ; Ghulami *v.* Mst. Bannou and other=6 P.R. 1896 (Rev.) ; Abdul Qadir and another *v.* Mst. Rabia= 4 P. R. 1917 (Rev.)=41 I.C. 473=1 P.W.R. 1917 (Rev.).

common life. The word "owner" is thus ordinarily applied indiscriminately to persons having rights in property which are in some cases plenary and in others restricted.

The 'landowner' being thus a wider term than the owner of land, every owner of land is a 'landowner' but every 'landowner' is not the owner of land. Mortgagees with possession of the land are certainly landowners within this definition but they are not owners of the land.

(*See also commentary under section III of the Act.*)

"Holding" (3) " holding " means a share or portion of an estate held by one landowner or jointly by two or more landowners :

The vernacular equivalent is *khewat*. Sometimes the word *khata* is loosely applied to an owner's holding as well as the tenant's holding which is technically called 'tenancy' under the Punjab Tenancy Act, 1887. Tenant's holding is also denoted by the word *khatauni*.

Field.—A field is a parcel of land to which a separate number is assigned in the map. The fixing of the limits of fields for survey purposes is a question to be decided on grounds of convenience, the chief matter for consideration being the use to be made of the maps in the half-yearly crop-inspections. Usually any parcel of land lying in one spot in the occupation of one person or of several persons jointly, and held under one title, should be treated as a single field (S. M. para. 242). The plots of ground surrounded by a ridge of earth (*mend*) is not necessarily a field. Some of these ridges are more permanent than others and serve to divide the land into fields, having separate names. The boundaries of fields are well known to the people and are sometimes distinguished by peculiar marks, such as the growth of certain grasses, stones, etc.[1]

Kilabandi.—On new canals in the west of the Punjab each survey square in crown lands has been divided into 25 small squares, known as *kilas*, each occupying a fraction over an acre. Each *kila* forms a field or survey number. *Kilabandi* has been introduced to large extent even in privately owned estates on the Lower Chenab and Lower Jhelum Canals. On the newest canals the squares have been replaced by rectangles containing exactly 25 acres, so that the *kila* is the equivalent of an acre (S. M. para. 242). On old canals too attempt is being made to induce landowners to accept *kilabandi*. Its advantages are obvious.

(4) " rent," "tenant," " landlord " and " tenancy " have the meanings, respectively assigned to those words in the Punjab Tenancy Act, 1887 :[2]

1. Barkley's Directions for Settlement Officers, page 10.

2. " 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.

"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 –

(5) "pay," with its grammatical variations and cognate expressions, includes when used with reference to rent, "deliver" and "render," with their grammatical variations and cognate expressions :

(6) "land revenue" includes assigned land-revenue and any sum payable in respect of land by way of quit-rent or of commutation for service to the [1][Crown] or to a person to whom the [1][Crown] has assigned the right to receive the payment :

Meaning and scope of the term.—It has already been stated before that 'by the ancient law of the country the ruling power is entitled to a certain proportion of the annual produce of every *bigha* of land, excepting in cases in which that power shall have made a temporary or permanent alienation of its right, to such portion of the produce, or shall have agreed to receive, instead of that proportion, a specific sum annually, or for a term of years, or in perpetuity.' (See page 11). This certain proportion of the annual produce of the land to which the State is entitled is the Land Revenue. **"Land revenue".**

It may be in cash as now under the British Government or in kind as under the native Government which preceded it.

Assigned land revenue—jagirs and muafis.—The Governments which preceded the British Government found it convenient to secure the swords of brave and the prayers of pious men, to pacify deposed chiefs and to reward powerful servants, by assigning to them the ruler's share (*hakimi hissa*) of the produce of the land in particular villages or tracts. This was an easier mode of payment for the State than the regular disbursement of salaries or cash pensions and it was much more gratifying to the recipients. The amount which a *jagirdar* could take as the ruler's share was only limited by his own judgment of the capacity of the cultivators to withstand oppression by force or to escape from it by desertion, and he enjoyed in practice most of the rights which we now regard as special evidences of ownership. Large assignees of land revenue also exercised within their own estates the power over life and limb, which is some times regarded as the peculiar mark of sovereignty (*Land Administration Manual, para.* 80). **Jagirs and Muafis.**

(*a*) an inferior land-owner, or

(*b*) a mortgagee of the rights of a landowner, or

(*c*) a person to whom a holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land revenue or 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 sub-letting it.

"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.

"Tenancy" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions.

1. Substituted for "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

The system referred to above was too deep-rooted for the new administration to destroy. Prudence dictated its continuance, but demanded the limitation of the drain on the resources of the State which it involved, and the removal of the encroachments which the *jagirdars* had made on the prerogatives of Government on the one hand and on what was conceived to be the rights of landholders on the other (*ibid*).

Under Maharaja Ranjit Singh a part even of the regular troops was paid by assignments of land revenue, and he found it convenient to remunerate in the same way the great officers of the State and to make similar grants for the support of the ladies and the servants of the household. As an Indian ruler, it behoved him also to be liberal in grants to holy men and religious institutions. It was worth while to conciliate the leading men in many estates, the *maliks*, or *mukaddims* or *Chaudhries* as they were called, by giving them a part of their own lands revenue free, or even a considerable share of the village collections. These petty grants were known as inams and where they consisted of a definite share of the revenue of an estate, as *Chaharams* (*Land Administration Manual, para.* 82).

Under Sikh Government assignees were entitled to the State's share of the produce and took it, as the State usually did, in kind, that is, by actual division of crop or by appraisement. Where the grants consisted of whole villages the grantee exercised the rights of extending cultivation by bringing in tenants to break up the waste. He sunk wells and planted gardens, and, if he was strong enough, turned out existing cultivators who fell under his displeasure (*Land Administration Manual, para.* 84).

Distinction between jagirs and muafis.—The difference between a *muafi* and a *jagir* is that the former is a remission of land revenue to the owner, whereas the latter is an assignment of land revenue which is collected and paid to the *jagirdar*. The *jagirdar* may subsequently acquire the property, and if he does the grant technically becomes a *muafi* though it always continues to be shown as a *jagir*. For some peculiar reason where small amounts are granted, more especially to a religious institution the word *muafi* is wrongly used to cover not only the cases where the institution owns the property but also the cases where it does not and merely enjoys the revenue assigned[1].

For practical purposes grants of land revenue by the State to private individuals are often compendiously described as "*jagirs*" and "*muafis*", the former term being usually appropriated to the larger grants and especially to those given for services of a military or official character, and the latter to assignments of less value and importance. The subject is one of much interest in the Punjab, where such alienations form a larger proportion of the total land revenue than in any other province in India. In 1928 this proportion was 1-13th (*Land Administration Manual, para.* 79).

For detailed account of "*jagirs*" and "*muafiis*" see Appendix II.

Quit rent.

Quit-rent.—It is really an annual *nazrana* of a fixed amount which an assignee for life or perpetuity of the right to receive the revenue of a tract of land has to pay to the Government. This is an incident of

1. Shiromani Gurdwara Prabandhak Committee *v.* Karam Singh=A.I.R. 1930 Lah 46=123 I.C. 835.

istamrar grant. An *istamrar* is simply an assignment for life or perpetuity of the right to receive the revenue of a tract of land, subject to the obligation to pay to Government a lump sum of money year by year. This sum is sometimes loosely described as a quit-rent. It is really a *nazrana* of fixed amount. The *istamrardar* may also be sole proprietor or may have the right of a superior owner or *talukdar* in the assigned tract. But, whatever may have been the real origin of any such rights which he may possess, they are under this revenue system viewed as something entirely apart from the *istamrar*. Except as regards cesses imposed in addition to the land revenue, Government neither gains nor loses by the reassessment of estates held on an *istamrar* tenure, and any losses due to remissions fall on the *istamrardar* (*Land Administration Manual, para.* 134.)

An example is the large *mandal* grant in the Karnal district.

Commutation for service.

Commutation for service.—Before the annexation of the Punjab the Cis-Sutlej Chiefs were required to supply a number of soldiers. But owing to their disloyalty during the Sikh wars, sovereign powers were taken away from them and they were sunk to the position of *jagirdars*, but as such retained a right to the revenue assigned to them in perpetuity and as the Government did not require their aid, the services of soldiers were commuted into money. It is recoverable as revenue and is deducted from the amount of their respective *jagirs*. This amount is called "commutation for service."

For furhrer detailed account see under "Land Tenures in the Punjab' (Appendix III).

Also see section 147 of the Act for the converse, that is, substitution of service for payment of land revenue.

'Arrear of land revenue'.

(7) "arrear of land-revenue" means land revenue which remains unpaid after the date on which it becomes payable :

Date on which it becomes payable—Instalments for payment of land revenue.—Section 63 of the Land Revenue Act lays down—

"(1) Notwithstanding anything in any record-of-rights, the Financial Commissioner may fix the number and amount of the instalments, and the times, places, manner by, at and in which land revenue is to be paid.

(2) Until the Financial Commissioner otherwise directs, land revenue shall be payable by instalments, at the times and places and in the manner by, at and in which it is payable at the commencement of this Act."

It seemed at one time natural to enforce the Government lien on the produce by making the instalments of land revenue fall due before the crops, from which they were to be liquidated, were cut. This plan, in practice, led to great abuses, and was given up eight or nine years before the annexation of the Punjab. Instalments are now arranged so as to become payable shortly after the garnering of the crops. The number, dates and amount of the instalments are fixed at settlement with the approval of the Financial Commissioner, and are often identical for all the estates in a tahsil. If experience shows clearly that the arrangements originally made are unsuitable for any estate, or group of estates, the Deputy Commissioner should not hesitate to ask to have them changed (*Land Administration Manual, para.* 502).

Dates of instalments—instructions.—The dates fixed for payment in each case should be late enough to give the owners full opportunity in an ordinary year of disposing of enough of their grain to pay the revenue with its proceeds by the time it falls due, but not so late as to offer any temptation to them to squander the fruits of the harvest or hand them all over to the village money-lender. Crops can be roughly divided into those which a farmer keeps or would like to keep for the good of his family and his catttle and those which he grows for sale. It is the time at which the latter are garnered that must be chiefly considered (*Settlement Manual, para.* 557.)

The best occasion for discussing the question of instalments with the people is the time the method of distributing the new assessment over holdings is being determined. It is a matter in which they are inclined to be intensely conservative, and a patient endeavour should be made to find out what they really fear in connection with any suggested change. They may know that, with reference to the actual conditions under which the money is raised for payment into the treasury, it is easier to get an equal amount at different seasons than unequal amounts, which seem much better adopted to the actual out-turn of the two harvests. In all matters connected with instalments great weight should be given to their wishes, but occasions may occur when a mere dislike to change makes them blind to their own advantage and when therefore their objections may properly be overruled (*Settlement Manual para.* 558).

"Defaulter". (8) "defaulter" means a person liable for an arrear of land-revenue, and includes a person who is responsible as surety for the payment of the arrear :

The definition has a wider scope than might at first sight appear. Reading it with section 61 of the Act, it is clear that all the landowners in an estate are defaulters if an arrear accrues in respect of any particular holding (*see Land Administration Manual, para.* 516.)

"Rates and cesses". (9) "rates and cesses" means rates and cesses which are primarily payable by land-owners, and includes —

(*a*) *Repealed by Act XII of 1891* ;

(*b*) the local rate, 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 land under Section 59 of the Northern India Canal and Drainage Act, 1873 ;

(*d*) the zaildari and village officers cesses ; and

(*e*) sums payable on account of village expenses :

Classes of cesses—primarily payable by land owners.— Cesses may be arranged under three heads :—

(*i*) **Cesses imposed on landowners by authority of Government.**

(*ii*) The *malba* cess imposed by landowners on themselves in order to meet common village expenses.

(*iii*) Cesses paid to the landowners by other residents in a village.

The first two classes are included in the above definition of "rates and cesses," and are broadly distinguished from the third class by being "primarily payable by landowners," though they often form part of the rent taken from occupancy tenants. The third class denotes "village cesses" and is defined in the next sub-section.

No cess, not distinctly authorised by law, can be levied, even with the concurrence of the people from whom it is proposed to realize it without the previous consent of the Government of India. (*Government of India No.* 5—794, *dated 22nd August* 1872).

"Local rate".

Sub-clause (b)—Local rate payable under the District Boards Act.—Section 5 of the Punjab District Boards Act, (XX of 1883) lays down—

"(1) All land shall be subject to the payment of a rate, to be called the local rate, not exceeding twelve and not less than ten pies for every rupee of its annual value.

(2) The proportion which the local rate shall bear to the annual value of land shall, except as provided in sub-section (3), be fixed for each district by the Provincial Government by notification.

(3) The Provincial Government may, by notification, delegate to the district board, subject to such restrictions or conditions as it thinks fit, its powers under sub-section (2), and may, by notification, cancel or vary any such notification."

'Land' here means land assessed to the land revenue, and includes land whereof the land revenue has been wholly, or in part, released, compounded for, redeemed or assigned, and

'annual value' means—

(*a*) double the land-revenue for the time being assessed on any land, whether the assessment is leviable or not; or

(*b*) where the land-revenue has been permanently assessed or has been wholly or in part compounded for or redeemed, double the amount which, but for such permanent assessment, composition or redemption, would have been leviable; or

(*c*) where no land-revenue has been assessed, double the amount which would have been assessed if the average village rate had been applied:

Provided that, in any tract in which, under the settlement for the time being in force, the improvement of the land due to canal irrigation has been excluded from account in assessing the land-revenue and a rate has been imposed in respect of such improvement, the rate shall be added to the land-revenue for the purpose of computing the annual value.

Note.—(1) Under clause (3) of section 5 of the District Boards Act, 1883, the Provincial Government has delegated to all the district Boards in the Punjab, the powers of the Provincial Government under section 5 (2) of this Act, to fix the proportion with the local rate shall bear to the annual value of land (*Punjab Government Notification No.* 21148, *dated the 7th October* 1919.)

(2) All district boards have now raised the rate to the maximum. The local rate has grown from small beginnings. It was usual in early settlements to levy a road cess at one per cent. on the land revenue, and subsequently education and postal or *dak* cesses amounting to surcharges of one per cent. and one half per cent. respectively, were added. The levy of an additional cess, not exceeding six pies in the rupee of the annual value of the land, was authorized by Act XX of 1871. 'Annual value' was defined as "double the land revenue for the time being assessed on any land, whether such assessment be leviable or not." The local rate, therefore, amounted to a surcharge of 6¼ per cent. on the land revenue. When the District Boards Act (XX of 1883) was passed, the road, education and postal cesses were merged in the local rate and the legal limit of the latter was raised to 6¼ per cent. on the annual value. In 1922 the rate was fixed at a maximum of twelve pies and a minimum of ten pies per rupee of the value (*Settlement Manual, paras.* 90 *and* 91).

(3) As to the persons liable to pay the 'local rate' *see* sections (7) and (8) of the Punjab District Boards Act, 1883. These sections are reproduced in the foot note below.*

Clauses (j) and (i) of section 20 of the District Boards Act, 1883.—Clauses (*i*) and (*j*) of section 20 of the District Boards Act run as follows :—

The provincial Government may direct that any of the following matters shall, subject to such exceptions and conditions as it may make and impose, be under the control and administration of a district board within the area subject to its authority. .....

(*i*) the construction and repair of embankments, and the supply, storage and control of water for agricultural purposes ;

(*j*) the preservation and reclamation of soil, and the drainage and reclamation of swamps.

And section 33 of the same Act lays down—

"With the previous sanction of the Provincial Government, or of such officer as the Provincial Government may authorize in this behalf a district board may fix and levy school-fees and fees for the use of, or benefits derived from, any of the works specified in section 20, clauses (*c*), (*e*), (*h*), (*i*) and (*j*)....."

But little use has in practice been made by the District Boards of these powers to construct and repairs works.

*7. The land-holder shall be liable for the local rate subject to the following provisos, namely :

(1) where the land-holder pays the land revenue in kind to any assignee of revenue or any village headman, the assignee of revenue or village headman shall be liable for the payment of the local rate instead of the land holder, and no demand shall be made by any such assignee or village headman or the land-holder in respect of the payment of the rate ; and

(2) where the Government has, under any lease current at the time when this Act comes into force, paid the local rate on *tirni*, it shall continue to pay the rate during the currency of the lease.

8. When a local rate is payable by a land-holder in respect of lands held by a tenant with a right of occupancy holding at a favourable rent, the landholder may realize from the tenant a share of the rate, bearing the same proportion to the whole rate as the excess of the annual value over the rent paid by the tenant bears to half the annual value.

Sub-clause (c).—Section 59 of the Northern India Canal and Drainage Act* empowers the Provincial Government to impose an annual rate to meet the cost of drainage operations by which the land is improved. Little use, however, has so far been made of the power given by this section to meet the whole or part of the cost of drainage projects by imposing a cess on the land-owners, who are benefitted by their execution.

Sub-clause (d).—Section 28 (2) of the Punjab Land Revenue Act, authorises the Provincial Government to levy a zaildari cess. But levying of this cess is not resorted to at present, the zaildars and inamdars being paid out of the land revenue collected. The cost is met by setting aside for the purpose a portion of the land revenue, which as a rule, is fixed at one per cent.

The village officer's cess included the *patwari* cess, the *lambardar's pachotra*, and the surcharge of one per cent. on the revenue levied in the few cases in which the appointment of chief headman or *ala lambardar* has not yet been abolished. By section 29 of the Land Revenue Act the highest amount that can be levied as village officer's cess is 6¼ per cent. on the "annual value" of the land as defined in Act XX of 1883. This was equivalent to 12½ per cent. on the land revenue. But the *patwari* cess was entirely remitted in 1906, the village officer's cess being reduced to 2½ per cent. on the 'annual value,' where only the *pachotra* of ordinary village headman has to be provided, and 3 per cent. where there are also chief headman (Punjab Government Revenue and Agriculture Department Notification No. 10⁴, dated 2nd April 1905) except in the case of all estates in the Kulu and Saraj Tahsil of the Kangra District (exclusive of Lahul and Spiti where the rate is 3½ per cent.), where the village officer's cess is 3½ per cent.[1]

Sub-clause (e)—the malba cess.—Sums payable on account of village expenses consist of such items as the costs, preparation of survey marks, expenditure incurred by the headman in going to the Tahsil to pay the revenue of the village, fees due for warrants for payment of arrears and entertainments of passing strangers who put up in the village rest house. They are met out of the fund into which "Malba" cess.

*(1) Section 59 of the Northern India Canal and Drainage Act runs as follows :—

An annual rate in respect of such scheme, may be charged, according to rules to be made by the Local Government, on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Such rate shall be fixed as nearly as possible so as not to exceed either of the following limits :—

(1) Six per cent. per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works excluding the said rate.

(2) In the case of agricultural land, the sum which under the rules then in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage work.

Such rate may be raised from time to time within such maximum, by the Local Government.

So far as any defect to be remedied is due to any canal, water course, road or other work or obstruction, constructed or caused by the Local Government or by any person a proportionate share of the cost of the drainage works, required for the remedy of the said defect shall be borne by such Government or such person, as the case may be.

1. Settlement Manual, para. 89, Land Administration Manual para. 281, P.G. (R. & A.) Nots. No. 268 and 269, dated 22nd November 1906.

the common income of the village community from all sources is paid, and is commonly designated as *malba*. The necessary amount is sometimes raised by distributing the exact sum required periodically over the landowners (*kacha malba*), in other cases a fixed percentage on the revenue is charged (*pakka malba*).

Thus the *malba* cess is in its nature wholly different from the other "rates and cesses" described above. Its amount and its expenditure are matters with which the Government has no direct concern. It is a "village cess" according to the definition of that term as laid down in this Act, but it was classed among "rates and cesses," because occupancy tenants, who hold at rents fixed in terms of the land revenue and cesses, usually contribute to the *malba*. At one time it was considered part of the duty of the *patwari* to keep the *malba* accounts, but the people should be left to make whatever arrangements they think proper. The receipts and disbursements are usually entered in the books of a village shopkeeper and the expenditure managed by the headmen, but the right of any landowner to demand an account is generally recorded in the village administration paper. Certain orders on the subject of the *malba* were issued by the Financial Commissioner in 1860 (Book Circular IV of 1860), but they should not be regarded as of strict application for it is now thought best to interfere as little as possible in a matter of this kind (*Settlement Manual, para* 93).

The Settlement Officer should record in the *wajib-ul-arz* existing usages relating to the *malba*, or, if these cause dissatisfaction, and there is a general desire to alter them, he may properly assist the people to make better arrangements for the future. But this interference should be confined within the narrowest possible limits, and should be exercised by way of friendly counsel, and not of authoritative direction (*ibid*).

Cesses on State lands.

Cesses on State lands.—Cesses may be levied on State lands, which being under the control of district officers, are leased to private individuals or contractors ; but no cesses may be levied on State lands administered in the Revenue or Military Department which are actually in possession of Government Officers or used *bona fide* for Government purposes, or on lands reserved and placed under the control of the Forest or of the Irrigation Department, whether held under direct management by those Departments or leased to private individuals or contractors (*Settlement Manual, para* 92).

"Village cess".

(10) "village cess" includes any cess, contribution or due which is customarily leviable within an estate and is neither a payment for the use of private property or for personal service, nor imposed by or under any enactment for the time being in force :

All the cesses noticed above are charges for which land-owners are liable. But there is another class of cesses which the land-owners sometimes realize from the other residents in the village or from particular classes of residents, and these are known as 'village cesses.' These are really in their origin seigniorial dues, such as are found in primitive societies in which certain persons or classes are dependent on other persons or classes for protection. In their essence, therefore, they are property, just as much as the income directly derived from the land (*Settlement Manual, para.* 94).

Their special features are :—

(1) They are customarily leviable and are not imposed by any enactment.

(2) They are not a payment for the use of private property which is called rent.

(3) They are not a payment for personal services.

Thus a suit by the village water-carrier to recover a fixed payment from the defendants *Biswadars* of the village on the ground of title under the terms of the *wajib-ul-arz* to certain specified dues in return for personal services was held to amount to a suit to recover a contribution or due as payment for personal service and did not relate to a village cess within the meaning of this sub-section.[1]

Determination and levying of cesses.

Section 145 of the Act—determination and levying of cesses.— Under section 145 (4) of the Punjab Land Revenue Act, 1887, the Provincial Government may declare whether any cess, contribution or due levied in an estate is or is not a village cess, and sub-section (5) of that very section lays down that a 'declaration of the Provincial Government under the last foregoing sub-section, shall be conclusive and shall not be liable to be questioned in any Court.'

No such declaration, however, seems to have made so far.

Chief examples of village cesses.

Kinds of cesses —The chief examples of "village cesses" are the following :—

Marriage dues or fees.—The marriage dues or fees are a "village cess" paid by non-proprietors and *kamins* on marriage occasions in recognition of the right of the village proprietors as owners of the village site except where the right to the land occupied by them had been specifically sold.[2] In Pind Dadan Khan Tahsil this cess is called *Haq Bakri* and is levied for every daughter's marriage from all the non-proprietors of the village whether Hindus or Mohammadans.[3] In Ambala city such a cess was leviable from all the owners of the houses who were to present a lump of *gur*, and on the marriage of a son or daughter to present one rupee to the owners of the sites of the house, in recognition of their proprietary rights in land. This cess was called *Haq Rayatana* or *Rayatgiri*.[4] This marriage due is also known as *Thana Patti*.[5]

Kamins or artizans cess.—This cess is a customary cess levied annually by the village proprietors from the *kamins* or artizans, generally weavers, residing and carrying on their trade in the village. This is known by different names of *Kamiana, Atrafi* and *Muhtarafa*.[6]

1. Azim *v.* Gopi=74 P.R. 1917=40 I.C. 487=44 P.W.R. 1917.
2. Kada *v.* Ch. Fateh Ali=20 P R 1884; see also Phiraya *v.* Shahbaz Khan=30 P.R. 1888; Madat Khan *v.* Malla Singh=136 P.R. 1879; Arur Singh *v.* Dal Singh =40 P.R. 1879; and Abdul Henan Khan *v.* Mohd. Akram Khan=140 P.R. 1883.
3. 30 P. R. 1888. It is also called *puchbakri, see* 42 P.R. 1893 ; 55 P.R. 1893.
4. Ahmad Husain v. Mohammada and others=14 P.R. 1879.
5. 40 P.R. 1879.
6. See 49 P.R. 1891; 36 P.R 1876; 65 P.R. 1873; 118 P.R. 1879; 146 P.R. 1882; 4 P.R. 1888 (Rev.) for *Kamiana;* 108 P.R. 1887; 81 P.R. 1886; 49 P.R. 1879; 75 P.R. 1879, and 126 P.R. 1882; 1926 P.C.L. 44 (Rev.); 1932 L.L.T. 163 for *Atrafi and Muhtarafa.*

From non-proprietary residents.—Such a due paid by the non-proprietary residents of the village, such as shopkeepers, has also been called *Kuri Kamini*.[1]

Customary due leviable from the non-proprietor residents in a village by the proprietary body is sometimes called *Haq Buha*, or *Pooch Bakri* and is a village cess.[2] This is also called *Khudi Kamini*.[3] In *Natha* v. *Jairam* it was held that it was not a customary due but a ground rent, payable in respect of the occupation of any definite plot of land situate in the *abadi* of a village.[4] This is also called *Haq Tora* in certain places and is payable on specified occasions of uncertain occurrence and not periodically and not in respect of the occupation of any definite holding or plot of land.[5]

Tirni—dues for grazing cattle.[6]

Not village cesses.

Not village cesses.—*Dharat*—A claim for weighment fee on sale of grain is not a village cess.[7]

Arhat—too is not a village cess.[8]

Proof of the existence of village cess.

Proof of the existence of village cess—records of rights—effect of non-record in settlement papers.—Village cess is legally leviable only when sanctioned by custom which is usually recorded in the Settlement records and *wajib-ul-arz*. It is not considered oppressive being the result of an agreement entered into by the proprietors at Settlement.[9] It was held that a levy of *Atrafi* dues from persons liable to pay the same to the village proprietary body was not opposed to public policy.[10]

It was under the Civil Code formerly held that where the cess was not recorded in the Settlement records, its levy was illegal,[11] even when there were instances of its collection,[12] and even if there were an entry in the *wajib-ul-arz* authorizing the levy, evidence must be given of its actual recovery before a decree could be passed.[13] But subsequently it has been held that irrespective of an entry in the Settlement records, custom could be proved entitling the proprietors to recover the cess.[14]

Effect of non-collection of cess.—The *lambardar's* right to recover at the rates fixed in Settlement accrues year by year, and is, in absence of evidence of abandonment, not extinguished by the failure to collect for 12 years. Only 3 years' arrears are, however, recoverable.[15] Mere failure to exact dues will not amount to extinguishment and limitation only runs from the date on which there is a refusal to pay.[16]

1. 74 P.R. 1879.
2. 11 P.R. 1890 (Rev.); 33 P.R. 1908; 74 P.R. 1917.
3. 95 P.R. 1907=120 P.L.R. 1908=141 P.W.R. 1907.
4. 21 P.R. 1888.
5. 33 P.R. 1887.
6. 142 P.R. 1879; see also *paras.* 769 to 776 of the Land Administration Manual.
7. 28 P.R. 1894; see also 120 P.R. 1912.
8. 204 P.R. 1889.
9. 140 P.R. 1883, distinguishing 40 P.R. 1879.
10. 18 P.R. 1892 (Rev.)
11. See 12 P.R. 1868; 65 P.R. 1873; 107 P.R. 1876.
12. 28 P.R. 1877; 40 P.R. 1879.
13. 61 P. P. 1875; 40 P. R. 1879.
14. 118 P. R. 1879; 136 P. R. 1879.
15. 75 P. R 1887.
16. 146 P. R. 1882.

Who is entitled to the cess.—The right to collect dues does not belong generally to the *lambardar* solely by virtue of his office,-but to all the land-owners of the land held by the payer of the cess.[1] Who is entitled to the cess.

The conversion of a village into a town will not deprive landlords of the right to continue to levy the cess on new settlers.[2]

(11) "village-officer" means a chief-headman, headman or patwari : Village officer.

(12) "revenue-officer" in any provision of this Act, means a Revenue Officer having authority under this Act to discharge the functions of a Revenue Officer under that provision : Revenue Officer.

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

According to section 3 of the Legal Practitioners Act, 1879, "legal practitioner" means an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtar, or Revenue Agent.

Mukhtar has been definitely excluded from this definition for the purposes of this Act.

(14) "agricultural year" means the year commencing on the sixteenth June, or on such other date as the Provincial Government may by notification appoint for any local area : Agricultural Year.

Note.—The 'agricultural year' which is thus defined is fixed for the convenience of date in enhancing rents and putting an end to tenancies just as climate renders convenient. It is not used as a date or era.

All general assessments are made for, and all revenue accounts are kept by, the agricultural year opening with the *kharif* and closing with the *rabi*, and for the purpose of collection and balance statements this year is considered to begin on the 1st of October (*L. A. M. para.* 585).

All payments of rent and revenue up to the 15th *Bhadon*, which corresponds roughly to the end of August, should be embodied in the *jamabandi* (*L. A. M. para.* 378).

Accerding to para. 3.64 of chapter 3 of the Land Records Manual the agricultural year begins with the 1st September (16th *Bhadon*) for the patwari's diary.

'Fasli' year.—When Akbar began his reign, he desired to adopt an universal official year, which should correspond to the harvest seasons better than the Hijri year (with its changing lunar months) or the Hindu Sambat era. He began with the 10th September 1555 (A.D.), and arbitrarily called it 'Fasli 963,' 'being the Hijri year of his ascending the throne. This era (which can be found by deducting 592, or 593 according to the month, from the year A.D.) was used for all Revenue accounts. The 'Fasli' in use in the Deccan was begun by Shah Jahan in A.D. 1636, and is somewhat different.[3]

1. 50 P. R. 1869 ; 28 P. R. 1877.
2. 40 P. R. 1879.
3. *See* Baden Powell's Land-Systems of British India (1892) Vol. I, p. 15.

Notification.

(15) "notification" means a notification published by authority of the Provincial Government in the Official Gazette :

Incumbrance.

(16) "incumbrance" means a charge upon or claim against land arising out of a private grant or contract :

The definition of 'incumbrance' was not provided for in the Punjab Land Revenue Act, 1871. Under rule 28 of the rules relating to recovery of arrears issued under section 66 of that Act "incumbrances" were understood only burdens or charges upon the lands which had derived their origin from the defaulter or his predecessors or representatives in interest, and not rights in it which sprang from a source independent of his title, such as the right to the land revenue, or the right of a tenant with right of occupancy. In the absence of a definition, the rights possessed by a tenant with a right of occupancy might be said to be an incumbrance on the estate of the proprietor. The above definition excludes that possibility now as 'incumbrance' here means a charge upon or claim against land arising out of a *private grant* or *contract*. The words in italics are important.

Survey mark.

(17) "survey-mark" includes boundary-mark ; and

Net assets.

[1](18) "net assets" of an estate or group of estates means the estimated average annual surplus produce of such estate or group of estates remaining after deduction of the ordinary expenses of cultivation as ascertained or estimated.

Explanation.—Ordinary expenses of cultivation include payments, if any, which the land-owner customarily bears whether in kind or in cash either in whole or in part in respect of—

(1) water rates,

(2) maintenance of means of irrigation,

(3) maintenance of embankments,

(4) supply of seed,

(5) supply of manure,

(6) improved implements of husbandry,

(7) concessions with regard to fodder,

(8) special abatements made for fallows or bad harvests,

(9) cost of collection of rent,

(10) allowance for shortage in collection of rent,

(11) interest charges, payable in respect of advances made in cash, free of interest, to tenants for the purposes of cultivation,

1. Inserted by Punjab Act, III of 1928, section 2.

(12) wages or customary dues paid to artisans or menials whose products or labour are utilised for the purposes of cultivation and harvesting,

and the share that would be retainable by a tenant if the land were let to a non-occupancy tenant paying rent, whether in cash or in kind, at the normal rate actually prevalent in the estate or group of estates.

Meaning of " net assets."—The preamble to the first Punjab Land Revenue Act, XXXIII of 1871, declared that "the Government of India is by law entitled to a proportion of the produce of land of the Punjab to be from time to time fixed by itself." As it has already been noticed before, the British Government inherited this claim, which is really founded on immemorial custom, from the native rulers whom it replaced. The principle being admitted, the question at once arises how this proportion is to be fixed. Obviously it would be unfair to take in all cases the same fraction of the gross produce. Two plots of land of equal size may yield exactly the same amount of wheat, but in one case the crop, favoured by a fertile soil and an abundant rainfall, may be raised at the cost of little labour and money, while in the other it may be the result of laborious tillage and the expenditure of capital on deep wells and the costly cattle required to work them. Native rulers met the difficulty in a rough and ready fashion by varying the share of the produce demanded according to the character of the soil and rainfall, and sometimes by allowing special exceptions in the case of wells. The same result is reached by making the standard of assessment a fixed proportion, not of the gross produce or gross assets, but of the " net produce " or " ner assets " (*Settlement Manual, para.* 308).

The term " net assets " was previously defined in the settlement instructions as follows :—

" The net assets of an estate mean the average surplus which the estate may yield after deduction of the expenses of cultivation. A full fair rent by a tenant-at-will, though sometimes falling short of the net assets, may, generally, in practice and for purposes sf assessment, be taken as a sufficiently near approximation to them on the land for which it is paid " (*See rule* 6 *of the Instructions of* 1893, *revised in* 1914, *reproduced in Appendix I of the Settlement Manual*).
reproduced in Appendix I of the Settlement Manual).

The definition of " net assets " as laid down in the above sub-section has been inserted by the Punjab Act III of 1928, section 2, and has thus now been placed on a legal basis. It is almost identical with the definition as laid down in the *instructions* referred to above except that it is more exhaustive. To put briefly, " net assets " mean what the landlord actually gains after all expenses of cultivation (including water-rates) have been paid, but before payment of land revenue and cesses. The *Explanation* to this sub-section further makes it clear what is generally included in ' ordinary expenses of cultivation.' The net assets also include any income which the proprietors derive from the spontaneous products of their waste and cultivated lands, and strictly speaking, any dues of whatever sort which they get in their capacity of land owners (*Settlement Manual, para.* 308; *Rule* 11 *of Land Revenue Assessment Rules*).

(See Chapter V for the method of calculating "net assets.")

Assessment circle.

[1](19) "assessment circle" means a group of estates which, in the opinion of the Financial Commissioner, to be recorded in an order in writing, are sufficiently homogeneous to admit of a common set of rates being used as a general guide in calculating the land revenue to be assessed upon them.

Meaning of the term.—There are very few tracts in the Punjab so uniform that a single set of rates could be applied intelligently to all the constituent estates: almost always there are distinctions of hill and plain, upland and river-valley, well-belt and canal-belt, tracts of soils in which on the one hand sand and on the other clay predominates and these correspond to a marked diversity of agricultural conditions. The tract to be assessed is, therefore, divided into "assessment circles" which are more or less homogeneous blocks made up of estates showing sufficient general likeness to enable them to be compared with a single scale of standard rates.

According to the above definition an "assessment circle" then is a group of estates sufficiently homogeneous to admit of a common set of rates being used as a general guide in calculating the demands which can fairly be imposed upon them. The division of the tract under settlement into assessment circles is one of the matters on which the Settlement Officer must obtain the orders of the Financial Commissioner at an early stage of his proceedings.

Exclusion of certain land from operation of Act.

4. (1) Except so far as may be necessary for the record, recovery and administration of village-cesses, nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land-revenue.

(2) A Revenue Officer may define, for the purposes of this Act, the limits of any such land.

Land not defined.—'Land' is not defined by the Punjab Land Revenue Act. There appears to be no ruling of the Chief Court, or of the High Court or of the Financial Commissioners either bearing or this point. Hence "land" has to be taken in its ordinary meaning throughout the Act. [Land—the solid or fixed part of the surface of the globe, in distinction from the sea or other waters, which constitute the fluid or moveable part—*Concise English Dictionary*; solid part of earth's surface (opp. sea, water);—*Concise Oxford Dictionary*].

Under the Punjab Tenancy Act, 1887, "land" means any land occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land. No such limitation has been placed on 'land' within the meaning of the Punjab Land Revenue Act, 1887, so that we should use the term in its ordinary literal sense.

Meaning and scope of sub-section (1) of section 4—land which is occupied as the site of a town or village and is not assessed to land revenue.—Sub-section (1) above lays down that 'except so far as may be necessary for the record, recovery and administration of village

1. Inserted by Punjab Act, III of 1928, section 2.

cesses, nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land revenue.' Sub-section (1) of section 48 of the Act lays down that all land, to whatever purpose applied and wherever situate, is liable to the payment of land revenue to the Government, except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force *and such land as is included in the village site*.

Thus, to exclude certain land from the operation of this Act except so far as may be necessary for the record, recovery and administration of village cesses, two conditions have been laid down, *viz*., (1) it is occupied as the site of a town or a village, and (2) it is not assessed to land revenue. Both the conditions must be fulfilled at one and the same time.

It is usual to measure the village site in one number, together with the small plots attached in which cattle are penned, manure is stored, and straw is stacked, and other waste attached to the village site. The entry in the column of ownership and occupancy is simply *abadi deh*. In the *shajras* this number is inked in red so that in common parlance *abadi deh* is known as the area within the *lal lakir*.

Land included within Municipal limits.—It must not be assumed that merely because a definite area of land which is not assessed with land revenue happens to have been included, for jurisdictional purposes within the limits of a Municipal Committee, *ipso facto* becomes the site of a town, and the act of including it within Municipal limits makes it the site of a town or village within the meaning of section 4 of the Land Revenue Act, so as to oust the jurisdiction of the Revenue Officer over such land. Every case must be decided on its merits.[1]

Application of Chapter IV of the Land Revenue Act, 1887, to certain village site—section 9 of the Colonization of Government Lands (Punjab) Act, 1912.—Section 9 of the Colonization of Government Lands (Punjab) Act, 1912, provides as follows :—

"Notwithstanding anything in section 4 of the Punjab Land Revenue Act, 1887, the provisions of Chapter IV of that Act shall apply to all village sites in a colony."

Power to vary limits and alter number of tahsils, districts and divisions.

*5. The Provincial Government may, by notification, vary the limits and alter the number of the tahsils, districts and divisions into which the Province is divided.

Scheme of Revenue Administration in the Punjab—Revenue Divisions, Districts and Tahsils.—For the purposes of revenue management, the Punjab is divided into 29 districts, each in charge of a Deputy Commissioner or Collector. These districts are grouped into five divisions, each under a Commissioner. The Commissioner exercises control over all the Revenue Officers and Courts in his division, and is himself subject to the general superintendence and control of the Financial Commissioner, who, under the Revenue Member of Government, is the head of the revenue administration. At the headquarters of a district there are, in addition to a large ministerial staff, several officers appointed by the Local Government who exercise executive and judicial functions under the orders of the

1. Jiwa *v.* Karam Baksh=1925 L. L. T. 3=1925 P. C. L. 1 (Rev.).

*Substituted for the original by the Government of India (Adaptation of Indian Laws) Order, 1937.

Deputy Commissioner. They are known as Assistant Commissioners if they are members of the Indian Civil Service, and as Extra Assistant Commissioners if they belong to the Punjab Civil Service. One of these Assistant or Extra Assistant Commissioners, chosen for his special aptitude for revenue work, and called the Revenue Assistant, devotes almost the whole of his time to business connected with land administration. A district is divided into several tahsils, to each of which a Tahsildar and Naib-Tahsildar are appointed. The position of the Naib-Tahsildar with reference to the Tahsildar is like that of an Assistant Commissioner with reference to the head of the district. Tahsildars and Naib-Tahsildars exercise administrative and judicial functions within the limits of their own tahsils. In a few there are two Naib-Tahsildars. In such cases the one who possesses the larger experience sometimes has a definite part of the tahsil assigned to him as a sub-tahsil within the limits of which he resides. In the same way in some districts one or more tahsils are formed into an outpost or sub-division, and put in special charge of a resident Assistant or Extra Assistant Commissioner. Within his own sub-division such an officer performs all the duties usually entrusted to a Revenue Assistant (*Land Administration Manual, para.* 203).

Changes in limits and number of tahsils, districts and divisions.—Previously the Local Government could, by notification, vary the limits of the tahsils, districts and divisions into which the Province was divided and alter the number of tahsils and districts *and with the previous sanction of the Governor-General in Council* could increase the number of division into which it was divided. The previous sanction of the Governor-General in Council is not required now for increase in the number of divisions, under the Government of India (Adaptation of Indian Laws) Order, 1937.

Such changes are generally unpopular with the people, and can hardly fail to produce some confusion in administration. They make the comparison of past and present statistics difficult, and are apt to be embarrassing when the time for a general re-assessment comes round. They should therefore only be proposed when they are essentially necessary for the proper management of the estate or tract concerned (*Land Administration Manual para.* 834).

Executive Orders.

[1](*Chapter V of the Punjab Land Records Manual*).

5·1. All cases of transfer of territory from one district to another, or from one tahsil to another, are to be submitted to Government through the Financial Commissioners for the sanction of the Governor in Council and for the publication of the revised limits of the district under section 5 of the Land Revenue Act (Act XVII of 1887).

....

Changes in *territorial* jurisdiction to be reported.

5·3. Whenever any alterations in the boundaries of the Province, Indian States, Districts or Tahsils take place, whether as the result of river action or for administrative convenience, the fact should be reported by Collectors through Commissioners to the Financial Com-

1. Replaces Standing order No. 25, original issue, dated the 7th June 1909, and reprint, dated 30th May 1912. In connection with this Chapter paragraphs 409—437 and 834 of the Land Administration Manual should be consulted. These will be found at relevant places in this book.

missioners with full details, the report being accompanied by a map of the area transferred.

Contents of report and map.

5·4. The report should state the reasons for the change and the approximate area in acres transferred and the number of occupied houses and the population, male and female, contained at the time of the last preceding decennial census, in each village comprised in it; and the prescribed map should be drawn on tracing paper on a scale (ordinarily) of 2 miles to an inch, unless for special reasons a large scale should be necessary. The names should be entered on the map in English, and a table of references should in all cases be added sufficient to render the map intelligible in itself.

Report to the Surveyor-General.

5·5. The Financial Commissioners will report to the Surveyor-General to enable him to arrange for the correction of the Survey Maps. Changes in the boundaries of territorial units of less importance than those noted above, such as thanas, zails or villages, need not be reported and in all cases a copy of the map and report should be furnished to the Director of Land Records to enable him to correct the skeleton maps and village lists. The Director will keep the reports in a file arranged by districts so that the statistics of houses and population transferred may be readily available at the time of the next decennial census.

Determination of boundary disputes in which Indian States are concerned.

5·6. The rules for the determination of boundary dispute in which Indian States are concerned are given in Punjab Government Consolidated Circular No. 23.

See Appendix IV.

Surveyed or demarcated boundary lines between British and Indian States Territory to be inspected annually by magistrates.

5·7. Attention is drawn to the following extract from Resolution No 1758 of 21st August, 1871, of the Government of India in the Foreign Department, regarding the annual inspection by Magistrates of surveyed or demarcated boundary lines between British and Indian States territory. The Government of the State should be informed when the District Officer makes his inspection, in order that a representative from that State may be sent at the same time.

The subject must be specially noted in the Revenue Administration Report under the heading "Surveys and Boundary Demarcation" in all districts where the boundary of an Indian State marches with that of the district.

Extract from Resolution No. 1758, dated 21st August, 1871, of the Government of India in the Foreign Department.

Paragraph 4.—His Excellency in Council considers that it should be made part of the duty of every Magistrate between whose district and Indian State territory there is a surveyed or demarcated boundry line, to inspect it, or cause it to be inspected, once a year, and in his Annual Administration Report to specially notice the state of the boundary pillars. The necessary commmunication will be made to the several Governments and Administrations in view to this procedure being adopted in future.

Fixing of boundary between riverain estates.—See Chapter VIII of the Act and commentary thereunder.

CHAPTER II.

Revenue Officers.

Classes and Powers

Classes of Revenue Officers.

6. (1) There shall be the following classes of Revenue Officers namely :—

(*a*) The Financial Commissioner ;

(*b*) The Commissioner ;

(*c*) The Collector ;

(*d*) The Assistant Collector of the first grade ; and

(*e*) The Assistant Collector of the second grade.

(2) The Deputy Commissioner of a district shall be the Collector thereof.

(3) The Provincial Government may appoint any Assistant Commissioner, Extra Assistant Commissioner or Tahisldar to be an Assistant Collector of the first or of the second grade, as it thinks fit, and any Naib-Tahsildar to be an Assistant Collector of the second grade.

(4) Appointment under sub-section (3) shall be by notification and may be of a person specially by name or by virtue of his office or of more person than one by any description sufficient for their identification.

(5) Subject to the provisions of this Act, the jurisdiction of the Financial Commissioner extends to the whole of the territories * * * administered by the [1]Lieutenant-Governor of the Punjab, and of Commissioners and of Collectors and Assistant Collectors to the divisions and districts, respectively in which they are * * * employed.

Sub-section (2).—Under this sub-section the Deputy Commissioner of a district is the Collector thereof by virtue of his office for the purposes of this Act and so it is not necessary to gazette him such powers. The Provincial Government may also confer all or any of the powers of a Collector on any other Revenue Officer in the district. When a general re-assessment is in progress, it is usual to give to the Settlement Officer all the powers of a Collector under this Act, except those which relate to the collection of revenue. Extra Assistant Settlement Officers are usually invested with the powers of an Assistant Collector 1st grade.

1. To be construed now as 'Governor,' *see* S. 31 of the General Clauses Act, 1897 (X of 1897).

*** The words "for the time being" have been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sub-sections (3) and (4).—(*i*) *Vide Punjab Government Notification No. 731, dated 1st November, 1887,* all Assistant Commissioners and Extra Assistant Commissioners who have not been invested with the powers of the Assistant Collector of the first grade have been appointed Assistant Collector of the second grade.

(*ii*) *Vide Punjab Government Notification No. 730, dated 1st November, 1887,* all Tahsildars and Naib-Tahsildars have been appointed Assistant Collectors of the second grade.

(*iii*) *Notification No 2000, dated the 17th January, 1931.*—In exercise of the powers conferred by sub-sections (3) and (4) of section 6 of the Punjab Land Revenue Act 1887, the Governor-in-Council is pleased to appoint, and hereby appoints all persons for the time being holding the office of Assistant Commissioner or Extra Assistant Commissioner, who have been invested with the powers of a Magistrate of the 1st or 2nd class, under the Code of Criminal Procedure, 1898, to be Assistant Collectors of the 1st grade.

(P. G. Not. No. 684, dated the 18th September, 1893, cancelled).

It will be seen from sub-section (3) that whereas a Tahsildar may be appointed an Assistant Collector of the first grade, a Naib-Tahsildar cannot in any case be invested under this section with the powers of an Assistant Collector of the first grade.

Sub-section (5).—It is clear from sub-section (5) read with sub-section (2) that the Deputy Commissioner of a district is the Collector for that district alone and not for any other district unless specially empowered.

According to this sub-section the jurisdiction of the Assistant Collector, however, extends to the whole of their respective district, though in practice Tahsildars and Naib-Tahsildars exercise administrative and judicial functions within the limits of their own tahsils.

Importance of the Deputy Commissioner as Collector in revenue administration.—Sub-section (14) of section 2 of the Punjab General Clauses Act, 1898 (Act I of 1898) defines the Deputy Commissioner as 'the Chief Officer in charge of the general administration of a district.' As such he occupies a most responsible position and performs a very large number of functions with which he has been entrusted in different capacities. Some of these may be noted as follows:— Collector.

(1) As a Collector of the land revenue;

(2) As a promoter of the stability and improvement of landed property;

(3) As a custodian of State property;

(4) As a judge between landlords and tenants;

(5) As a recorder of agricultural statistics;

(6) As a guardian and registrar of the rights in the soil enjoyed by private persons;

(7) As a District Magistrate.

Mr. Thomason's remarks on the many-sided character of a Deputy Commissioner's work are worth quoting—

"Nothing can pass in the district of which it is not the duty of the Collector to keep himself informed and to watch the operation. The vicissitudes of trade, the administration of civil justice, the progress of public works, must all affect materially the interests of the classes of whom he is the constituted guardian. Officious interference in matters beyond his immediate control must be avoided, but temperate and intelligent remonstrance against anything which he sees to be wrong is one of his most important duties."[1]

The Collector in the Punjab is not the head of the district as he is in some other provinces of India. In the Punjab he is a Revenue Officer exercising certain powers under the Land Revenue and Tenancy Acts, and the head of the district is the Deputy Commissioner.[2]

Collector, a land steward.—The officer entrusted with the duty of realizing the land revenue is not a mere rent Collector, especially in province like the Punjab, where the demand is fixed for a period only, and the State continues to have a direct and immediate interest in the improvement of the land. His position is rather that of the steward of a great landowner. As such, he is bound to respect, and preserve from encroachment by others every private right in the soil which has been created or confirmed by the State. Where the revenue has been fixed for a term only he has not only to collect it, but also to look forward to a time when it will be revised, and to collect and record in a systematic manner statistical information which will facilitate its equitable re-assessment. He must initiate and assist measures to prevent so far as may be, the loss of crops from causes which are in any degree controllable by man, and must prepare in ordinary times for those graver calamities which produce intense and widespread scarcity of food. He must encourage and assist every effort made by right-holders for the development of their estates. In many parts of the province, such as the colony districts, the State is not only supreme landowner of the soil generally, but also sole landowner of a considerable part of it, and it is the duty of its local representative to administer this property so that it may be profitable to the State as representing the people as a whole, and, at the same time, beneficial to the colonists, whose prosperity is the first care of a progressive Government (*Land Administration Manual, para.* 2).

Revenue Assistant.

Revenne Assistant.—An Assistant or Extra Assistant Commissioner is posted to every district, except Simla, as Revenue Assistant. An officer in charge of an outpost is the Revenue Assistant for his own sub-division, and during a general re-assessment the Extra Assistant Settlement Officer is generally considered to be Revenue Assistant of the district. The Revenue Assistant disposes of whatever share of magisterial work the District Magistrate thinks fit to allot to him. (At present the revenue Assistant is hardly called upon to do any magisterial work). But the bulk of his time must be given to the revenue business of the district, that is to say, speaking broadly, to the classes of work described in this book. He is not available for the duties of treasury officer or subordinate judge, and should never be given any share of civil judicial work (*Land Administration Manual, paras.* 224 *and* 225).

1. Thomason's " Directions for Collectors," edition of 1850, paragraph 27.
2. I.L.R. 9 Lah. page 669.

Duties of Tahsildar.—The duties of the Tahsildar within his tahsil are almost as manifold as those of the Deputy Commissioner within his district. He is not expected to hear any civil suits, but his magisterial work is important. In all matters of administration he must be, within his own charge, the Deputy Commissioner's principal agent, and his power for good or evil is very great. His revenue duties are so important that there has occasionally been a tendency to make them all in all. But it must be admitted that his efficiency, more than that of any other officer in the district, except the Revenue Assistant, depends on capacity for revenue work. No degree of excellence in other respects can alone for failure properly to direct and control the patwari and kanungo agency, to collect the revenue punctually where the people are able to pay, to point out promptly to the Collector any failure of crops or calamity of season, which renders suspensions or remissions necessary, and to carry out, within his own sphere, the other duties connected with land administration which are described in this book (*Land Administration Manual, para.* 241). Tahsildar and Naib Tahsildar.

Extra Naib-Tahsildars for mutation work.—In the cold weather extra Naib-Tahsildars are sometimes posted to districts where mutation work is very heavy. These men should not be employed as general assistants to the Tahsildar, but should be required to devote the whole of their time to the attestation of mutations. At the same time, the Tahsildar and the Naib-Tahsildar should not be relieved of all their mutation work. The best plan is to transfer the whole mutation work of certain zails or kanungo's circles to the extra Naib-Tahsildar (*Land Administration Manual, para.* 243).

Girdawar Kanungo not a Revenue Officer.—A girdawar kanungo is not a Revenue Officer within the meaning of this section[1]. Girdawar Kanungo.

The Director of Land Records.—To aid Deputy Commissioners and Commissioners in the maintenance of records of rights and revenue registers, and to advise the Financial Commissioner and Government on these matters and on measures for the promotion of agricultural efficiency, an officer, known as the Director of Land Records, is appointed. He has no administrative functions; his business is to inspect, advise, record and report. His appointment, therefore, is in no way intended to set aside or lessen the powers and reponsibilities belonging to Deputy Commissioners and Commissioners and to the Financial Commissioners in connection with every branch of revenue administration (*Land Administration Manual, para.* 206).[2] Director of Land Records.

A Director of Land Records was first appointed in 1885 (Land Administration Manual,para. 275).

(For duties of the Director of Land Records, see Chapter I of the Punjab Land Records Manual).

7. (1) There shall be one or more Financial Commissioners, who shall be appointed, *** by the Provincial Government. Financial Commissioner.

(2) Where more Financial Commissioners than one have been appointed, the Provincial Government may

1. Suba *v.* Mohd. Ali=57 I.C. 721.
2. Paragraph 207 of Land Administration Manual, Financial Commissioners' No. 3420, dated 10th May 1916, to the Director of Land Records.

*** The words "and may be removed" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

make rules as to the distribution among them of business under this or any other Act, and by those rules require any case or class or classes of cases to be considered and disposed of by the Financial Commissioners collectively.

(3) When there is a difference of opinion among the Financial Commissioners as to any decree or order to be made in a case which they are required by rules under the last foregoing sub-section to consider, and dispose of collectively, the following rules shall apply, namely :—

(*a*) where the case is an appeal or a case on review or revision, it shall be decided in accordance with the opinion of the majority of the Financial Commissioners, or, if there is no such majority which concurs in a decision modifying or reversing the decree or order shall be affirmed ; and

(*b*) where the case is not an appeal or a case on review or revision, the matter respecting which there is the difference of opinion shall be referred to the Provincial Government for decision, and the decision of that Government with respect thereto shall be final.

(4) The expression "Financial Commissioner" in this or any other Act shall, when there are more Financial Commissioners than one, be construed as meaning one or more of the Financial Commissioners as the rules for the time being in force under sub-section (2) may require.

(5) The second Financial Commissioner appointed under section 52 of the Punjab Courts Act, 1884, shall be deemed to have had jurisdiction on and after the first day of November, 1884, to make any decree or order or dispose of any other business which might have been made or disposed of by the other Financial Commissioner.

Financial Commissioners.—At present there are two Financial Commissioners in the Punjab, one called the Financial Commissioner (Revenue) and the other the Financial Commissioner (Development). In 1910 it was decided to revert to the system in force from 1886 to 1897 of having two Financial Commissioners instead of one Financial Commissioner and a Settlement Commissioner.

Appointment of Commissioners and of Deputy, Assistant and Extra Assistant Commissioners.

8. Commissioners, Deputy Commissioners, Assistant Commissioners and Extra Assistant Commissioners shall be appointed*** by the Provincial Government.

***The words "and may be removed" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Appointment of Tahsildars and Naib Tahsildars.

9. The Provincial Government shall fix the number of Tahsildars and Naib-Tahsildars to be appointed****

Powers of Revenue Officers.

10. Except where the class of the Revenue Officer by whom any function is to be discharged is specified in this Act, the Provincial Government may by notification, determine the functions to be discharged under this Act by any class of Revenue Officers.

Powers of Revenue Officers.

Notification No. 81, dated the 1st March, 1888.

In supersession of Notification No. 736 of 1st November 1877, the Honourable the Lieutenant-Governor, in exercise of the powers vested in him by section 10 of the Punjab Land Revenue Act, 1887, is pleased to direct, and hereby directs—

(1) † that the functions arising under the chapters and sections of that Act other than section 66 which are specified in Schedule 'A' hereto annexed shall be discharged only by Collectors or officers of a higher class and that the functions arising under section 66 shall either be discharged by the aforesaid officers or by Assistant Collectors of the first or second grade ;

(2) that the functions arising under the sections and chapters of that Act which are specified in Schedule B hereto annexed shall be discharged only by Assistant Collectors, 1st grade, and officers of a higher class ;

[1](3) that the functions arising under the sections and chapters of the Act which are specified in Schedule C hereto annexed shall be discharged only by such Assistant Collectors, 2nd grade, as have also been notified as Tahsildars and by officers of a higher class ;

(4) that in any case in which a rule made or hereafter to be made under the Act specifies the class of Revenue Officer by whom a function is to be discharged, that function shall be discharged by an officer of that class only ;

(5) that all functions arising under that Act in respect of which the class of Revenue Officers by whom the function is to be discharged is not specified in the Act, nor in any rule made under the Act, nor in this notification, may be discharged by any class of Revenue Officers.[2]

****The words "and the Financial Commissioner may make rules for their appointment and removal" were omitted by the Government of India (Adaptation of Indian, Laws) Order, 1937.

†As substituted by Not. No. 814-R, dated 4th April, 1942.

1. Added by Punjab Government Notification No. 1487—R., dated 4th April, 1934.

2. As amendment by P.G. Not. No., 203 (R. & A.—Rev.), dated 3rd November 1908.

Section or Chapter.	Subject.
	Schedule A.
Chapter III	*The appointment, punishment, suspention or removal of kanungos, zaildars, inamdars or village-officers except the punishment of patwaris by fine not exceeding [1][two rupees] on each occasion and except the appointment of the nearest eligible heir according to the rule of primogeniture of a deceased headman when undisputed.
Chapter V ...	[2]Assessment except that made under the alluvion and diluvion rules sanctioned for the district.
Section 66 ...	Certification of statement of account of arrears of land revenue.
Section 145 ...	Preparation of list of village cesses.
	Schedule B.
Chapter III ...	†(*i*) The appointment of the nearest eligible heir according to the rule of primogeniture of a deceased headman when undisputed ;
	(*ii*) The appointment of substitute headman when undisputed ; and
	(*iii*) The punishment of patwaris by fine not exceeding two rupees on each occasion.
Section 36 (2) ...	Placing persons in possession of disputed property.
Chapter V ...	[2]Alluvion and diluvion assessments made under the alluvion and diluvion rules sanctioned for the district when the alteration in the demand exceed Rs. 100 for the year in the village concerned.
Section 70 (1) ...	Distraint and sale of moveables and crops arrear of land revenue.
Section 97-*cum*-70 (1)	Ditto on application of a village-officer.

*As amended by P.G. Not. No. 29562 (Rev.—Genl.) dated the 23rd December 1920, and Not. No. 802 –R, dated the 14th March 1941.

1. Substituted for "one rupee" by Not. No. 847-R, dated 17th April, 1937.

2. As amended by P. G Not. No. 29652 (Rev.—Genl.), dated 23rd December 1920.

†As substituted by Not. No. 802—R, dated the 14th March, 1941.

Section or Chapter.	Subject.
	Schedule A—concld.
Sections 101 and 103	[1]Defining the limits of an estate or of any holding, field or any portion of an estate when they coincide with the limits of an estate, and requiring or causing the erection of survey marks.
Section 150 ...	Prevention of encroachments.
	Schedule C.
Chapter III ...	[2]The punishment of patwaris by fine not exceeding one rupee on each occasion.

Powers of the Financial Commissioner.

There are many matters on which the Financial Commissioner is empowered by the Land Revenue and Tenancy Acts to make rules, but these do not take effect till they have been sanctioned by the Provincial Government [Section 155 (3) of the Act]. There are also a number of executive proceedings regarding which his special orders are required. For example, he fixes the amounts and dates of the instalments by which land revenue is paid (Section 63 of the Act), and if, to recover an arrear, the extreme step of annulling the assessment of an estate or holding, or of selling it outright has to be taken, his sanction must first be obtained (*Land Administration Manual, para.* 249).

Powers of Commissioners.

While the Land Revenue and Tenancy Acts confer ample powers of general control on Commissioners there is practically no particular matter which they can legally deal with on their own initiative, or for the carrying out of which their sanction is required by these enactments. One of the very few exceptions is that sales of immovable property for the recovory of arrears are not complete till they have received their confirmation (Section 92 of the Act). The other two exceptions also relate to sales—see sections 89 and 91 of the Act [*Land Administration Manual, para.* 250].

Powers of the Collector and Assistant Collectors.

The Land Revenue Act declares that certain things must be done, and certain orders must be passed by the Collector, and that other things may be done and other orders may be passed, by "a Revenue Officer." There are but two cases in which any difference between the powers of the two grades of Assistant Collectors is mentioned in the Act. Section 126 provides that proceedings relating to the partition of land must be taken by an Assistant Collector of the 1st grade, and they possess the right, which Assistant Collectors of the 2nd grade do not, of compelling parties before them to submit certain matters to arbitration [Section 127 (2) of the Act]. But by section 10 the Provincial Government has power, where the Act does not say expressly by what class of Revenue Officers any function is to be discharged, to determine the matter by notification, and this was done soon after the enactment came into force (*Land Administration Manual, para.* 251).

1. As amended by P. G. Not. No. 5636 (R. & A.—Rev.) dated 16th March 1917.
2. Added by P. G. Not. No. 1487—R, dated 4th April 1934.

Administrative control.

Superintendence and control of Revenue Officers.

11. (1) The Financial Commissioner shall be subject to the control of the Provincial Government.

(2) The general superintendence and control over all other Revenue Officers shall be vested in, and all such officers shall be subordinate to, the Financial Commissioner.

(3) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue Officers in his division.

(4) Subject as aforesaid and to the control of the Commissioner, a Collector shall control all other Revenue Officers in his district.

Administrative Control.—Administrative control is exercised over all the Revenue Officers in a district by its Collector, in a division by its Commissioner, and in the whole province by the Financial Commissioner. If any of the powers of a Collector under the Land Revenue Act are conferred on an Assistant Collector, he exercises them subject to the control of the Deputy Commissioner, unless Government otherwise directs [Section 27 (3)]. (Notification investing Settlement Officers with the powers of a Collector exempt them from the control of the Deputy Commissioner). Every controlling officer has authority to withdraw a case from any of his subordinates, and either hear it himself or refer it for disposal to some other Revenue Officer under his control [*section* 12 (2)].

Administrative control—scope—Provincial Government's control over judicial functions of Financial Commissioner.—Section 11 of the Punjab Land Revenue Act deals with the administrative control over the Financial Commissioner by the Provincial Government and this control does not extend to the judicial functions of the Financial Commisioner in respect of which he is the final authority. The Provincial Government, therefore, cannot interfere in the exercise by the Financial Commissioner of his powers in appeal, review or revision.[1] On the matter being referred by the Government for the opinion of the Legal Remembrancer the following opinion was given :—

"Section 11, as the Land Revenue Act shows, deals with the *administrative* control over the Financial Commissioner by the Local Government. In my view this control does not extend to the judicial functions of the Financial Commissioner.

Sections 13 to 16 provide for appeal, review and revision, and clearly contemplate the Financial Commissioner as the final judicial authority. No mention is made in these sections of any residuary jurisdiction as vesting in the Local Government and none can be assumed. Confirmation of this view is to be found in section 7 of the Act. Sub-section (3) of section 7 provides for a reference to the Local Government for decision in any case of difference of opinion, which is not an appeal or a case on review or revision. This clearly implies that the Local Government cannot intefere in the exercise by the Financial Commissioner of his powers in appeal, review or revision."

The Punjab Government concurred in this view (*Ibid.*)

1. **Charan Singh** *v.* **Fazil=1933 L.L.T. 63.**

Financial Commissioner's rulings as precedents—practice.—In *Ram Chand and others* v. *Kishan Chand and others*,[1] a case under the Punjab Tenancy Act, 1887, the Financial Commissioner observed as follows :—

"It is always open to the subordinate Revenue Courts to consider previous decisions of the highest Revenue Court which appear to be relevant to the decision of a case pending before them ; and it is desirable that they should follow such decision, even when unpublished where it is perfectly certain that the facts are in all respects similar and the issue is the same. But there are obvious reasons for treating unpublished rulings with more caution than published rulings. As is very natural in an unpublished ruling, they are not set forth with that fullness which can alone enable a Court to satisfy itself that it has before it a ruling applicable to the facts of the case which it is considering. It may be taken for granted that a Court whose decisions are binding upon subordinate Courts will when declaring a ruling upon a question of law upon which previous authoritative decisions are lacking, take steps to publish its decision. In such a case the facts will be set forth in full detail, so that subordinate Courts may find the guidance which they require."

In an another case reported as *Babu and another* v. *Shib Nath and others*,[2] the Financial Commissioner remarked—"A resort to judgments outside the province in revenue cases is generally to be deprecated as, if they are not specifically based on another local law, they are inheritably coloured by the local law. It is not necessary for Revenue Courts in the Punjab dealing with revenue cases to seek guidance outside the rulings of the High Court of Lahore and the Financial Commissioners."

Similarly, it has been held that it is unusual for a subordinate revenue anthority to prefer an earlier to a later ruling by the Financial Commissioner on the same subject and the practice is not to be defended 1935 L.L.T. 19).

These remarks equally apply to the proceedings under the Land Revenue Act.

A Court has not the power to prefer an earlier ruling of the Financial Commissioner to one that categorically overrules it.[3]

Standing Orders and the Punjab Land Records Manual of the Financial Commissioner—their value.—The Standing Orders of the Financial Commissioner no doubt lay down a procedure which Revenue Officers ought to follow. But these orders are only executive instructions and have not the force of law.[4]

When there is a conflict between a ruling and executive instructions, the ruling must prevail in revenue Courts.[5]

In a case relating to the punishment of a *patwari*, the Financial Commissioner held—"Under section 28 (1) of the Act the Financial Commissioner may make rules for the punishment of village officers, but has, as a matter of fact, not done so as regards *patwaris*. He has issued a Standing Order in this behalf, namely, Standing Order 15, paras. 26 to 31, which in the absence of rules must be regarded as having the effect of rules."[6]

1. 2 P.R. 1919 (Rev.).
2. 1934 L.L.T. 25.
3. Lok Noth *v.* Trust Rai Fateh Chand and others=1934 P.L.R. 395.
4. Bahadur Chand and others *v.* Jhanda and others=1932 L.L.T. 79.
5. Babu *v.* Shera=(1942) 21 L.L.T. 4.
6. Karnail Singh *v.* The Crown=1932 L.L T. 25.

just the same. Original orders passed by Assistant Collectors are appealable to the Collector, and original orders of the Collector to the Commissioner. An order confirmed on first appeal is final, and under no circumstances can there be more than a second appeal. The only cases which come up before the Financial Commissioner on appeal are those in which Commissioners have modified or reversed original orders passed by Collectors. Commissioners hardly pass any original order.

When an original order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal is final and no appeal lies to the Financial Commissioner. The fact that the party appealing to the Financial Commissioner was not a party to the first order does not make the Collector's appellate order an original order. The Naib-Tahsildar (Assistant Collector, 2nd grade) ordered mutation in favour of S, adopted son of R, of land which R had gifted to his wife Mst. M. R appealed and the Collector ordered mutation in favour of Mst. P, daughter of Mr. M. R appealed again and the Commissioner ordered mutation in his name. Mst. P appealed to the Financial Commissioner. It was held that appeal did not lie and the fact that Mst. P was not a party to the first order did not make the Collector's appellate order an original order.[1]

Second appeal when competent.

Variation of order in favour of the appellant—second appeal whether competent.—Where the first appellate Revenue Officer modifies the order of the trial Revenue Officer in favour of the appellant, the appellant cannot prefer a further appeal from the order of the first appellate Officer because the petitioner as a result of his appeal is better off in consequence of the order of the first appellate officer and even if the first appellate Officer had merely confirmed the order of the lower officers, no second appeal was competent. The person who can prefer a second appeal is the person against whom the lower appellate officer's order on appeal operates. Where the Commissioner confirmed the finding of the Collector that water-rate was due, but he reduced the amount of water-rate to be paid, it was held that appeal to the Financial Commissioner was not competent.[2] Appellant having had his land confiscated claimed compensation under section 25 of the Colonization of Government Lands Act, 1912, for improvements. The Collector awarded Rs. 8,872 and the Commissioner on appeal increased this to Rs. 12,524. It was held that further appeal to the Financial Commissioner did not lie.[3]

An appellate order by the Commissioner re-instating a zaildar dismissed by the Collector is not open to appeal by a rival candidate.[4] It was observed in this case : "The question at issue was whether a particular zaildar should be dismissed. The Collector dismissed him : the Commissioner has re-instated him. Had he been dismissed then the question of confirming the appointment of the would be appellant would arise for he was the nominee of the Collector to succeed the zaildar whom the Collector desired to dismiss, but the dismissal having been set aside *Subedar* Sultan Singh is not competent to appeal."

1. Mst. Parmeshri *v.* Ram Dass and another=1932 L. L. T. 68=1932 P.C.L. 85 (Rev.).
2. Rai Faiz Mohammad Khan *v.* The Crown=1927 L. L. T. 37=1927 P.C.L. 44 (Rev.).
3. Kamal Din *v.* The Crown=1930 L.L.T. 22=1929 P.C.L. 42 (Rev.).
See also Abdulla *v.* Hardyal=1931 L.L.T. 12=1931 P.C.L. 3 (Rev.) under section 80 of the Punjab Tenancy Act to the same effect.
4. Subedar Sultan Singh *v.* Narsingh Das=(1940) 19 L.L.T. 17.

Orders from which appeal lies—instances.—(1) A certain land in dispute was attached by a Magistrate under section 146, Criminal Procedure Code, and possession was made over to a Receiver. Sometime after the appointment of the Receiver the revenue authorities decided the mutation dispute in favour of one party and the Revenue Officer acting under section 36 of the Act directed that party to be put in possession. The other party filed an application to the Chief Court for revision of the order of Revenue Officer on the ground that the Magistrate having attached the land and put in a Receiver was responsible for return of land. *Held*, that Chief Court as a Criminal Court could not interfere with the order of the Revenue Officer and that the order was appealable to revenue authorities.[1] Appeal lies.

(2) Where an order is passed regulating the mode of succession to a *jagir* and entries are made in the revenue records as a necessary consequence of the order, such order is appealable under section 13.[2]

(3) An appeal is competent under this section from an order made by a Revenue Officer under section 36 (1) of this Act, determining the entry to be made in a record of rights at its making or revision.[3]

(4) 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, 1900, is open to appeal and revision as provided by Chapter II of the Punjab Land Revenue Act, 1887.[4]

(5) An appeal lies from a review, that is, from an order passed on review provided that it is not an order confirming on review a previous order [*vide* section 15 (3)].[5]

Orders from which no appeal lies—instances.—(1) Where the Civil Court attached the land of a judgment-debtor and sent the file to the Collector, who declined to interfere, *held*, that no appeal lay against the order of the Collector.[6] No appeal lies.

But where the Collector informs the Civil Court that he desires to intervene and the Civil Court decides to authorise him to do so, then any order passed subsequently by the Collector in exercise of authority conferred by the Civil Court will be subject to appeal (*ibid*).

(2) A sanction to review given under section 15 (1) (*a*) of the Act is not an "order" as defined in section 2 of the Civil Procedure Code and is, therefore, not appealable, though there is an appeal from the review, that is, from the order passed in review unless it confirms the previous order.[7]

(3) A *patwari* is a village officer within the meaning of the Land Revenue Act and is not governed by the Subordinate Service Punishment and Appeal Rules. Under section 28 (1) of the Act the Financial Commissioner may make rules for the punishment of village officers, but has, as a matter of fact, not done so as regards *patwaris*. He has issued a standing order in this behalf namely standing order, 15

1. Emperor *v.* Abdul Aziz=44 I. C. 117=46 P. W. R. 1917 Cr =19 Cr. L. J. 216.
2. Pahar Singh *v.* Partap Singh=12 P.R. 1891 (Rev.).
3. Bhagwan Das *v.* Secretary of State for India=4 P.R. 1893 (Rev.).
4. Ram Saran Das *v.* Sardara=4 P. R. 1908 (Rev.)=32 P. L. R. 1908 Supp.
5. Ahmad *v.* Ahmad=3 P.R. 1912 (Rev.)=15 I.C. 937=52 P.L.R. 1912.
6. Raja Ram *v.* Durga Datt=5 P.R. 1910 (Rev.)=4 P.L R. 1910 Supp.
7. Ahmad *v.* Ahmad=3 P.R. 1912 (Rev.)=15 I.C. 937=52 P.L.R. 1912 Azizullah *v.* Ghulama=(1941) 20 L.L.T. 54.

paras. 26 to 31 [see now Land Records Manual, Chapter 3, paras. 3'25 to 3'28] which in the absence of rules must be regarded as having the effect of rules. These orders make no provision for appeal, but provide for petitions of objections, and lay down that Commissioners should, as a rule, deal summarily with petitions of objections from *patwari* candidates on account of non-appointment to the vacancy of a post of *patwari*.[1]

(4) No appeal lies from a Commissioner's refusal to entertain an application to exercise his discretionary power to make an increase in the number of lambardars in a revenue estate as such a refusal cannot be interpreted as an order within the legal definition of that word.[2]

(5) No appeal lies against the decision of a Collector refusing to make a recommendation to the Commissioner that the latter should exercise his discretionary powers to permit an increase in the number of lambardars of a particular estate.[3]

Appeal—zaildari or sufedposhi case—appellant not a lambardar and not an approved candidate—Commissioner's discretion to entertain appeal.—It is discretionary with the Commissioner to entertain an appeal by a *non-lambardar* claimant in a *zaildari* or *sufedposhi* case not approved as a candidate by the Commissioner. Otherwise claimants of this class who happened not to have been recommended by the Collector as candidates, would be left without means of redress.[4]

Order appointing lambardar on probation.

Interlocutory orders—whether appeal lies.—It was originally held that where the Commissioner on appeal appointed the appellant *lambardar* subject to his satisfying the Collector as to his property, the order was one of an interlocutory nature and hence not open to appeal. But where such a person was appointed *lambardar* by the Collector the aggrieved party could appeal to the Commissioner on the whole case.[5] This, however, has been over-ruled by *Gurdit Singh* v. *Kirpal Singh*,[6] in which it has been held that an order appointing an individual as lambardar on probation is appealable. The Financial Commissioner observed in this case : "Whether the word 'interlocutory' has been defined or not, its ordinary meaning is sufficiently clear. Such an order would be an order passed on a point of procedure in the course of judicial proceedings, *e.g.*, an order summoning witnesses or an order admitting a document in evidence. Such orders are merely subsidiary to a final decision. An order appointing a lambardar, on the other hand, even conditionally, is obviously not of this character, as it has been arrived at after the claims of the candidates have been weighed and adjudicated, the condition being only a qualifying clause after the actual choice has been made. There has been a decision on a question of right, which decision no longer remains in issue, as the Collector would probably not allow the question of title to be agitated afresh at the end of the probationary period. What remains in suspense is merely a matter of administrative detail, namely that the capacities of the person chosen need to be tested. In civil law, the decision appointing a lambar-

1. Karnail Singh *v.* The Crown=1932 L.L.T. 25.
2. Khush Dial *v.* The Crown=(1940) 19 L.L.T. 7.
3. Alawal *v.* The Crown=(1942) 21 L.L.T. 22.
4. S. Kartar Singh *v.* Lachman Singh=(1938) 17 L.L.T. 12.
5. Hari Singh *v.* Chatar Singh=1934 L.L.T. 39.
6. (1938) 17 L. L. T. 15 ; Rang Ali *v.* Barkat Ali=(1933) 12 L. L. T. 33 referred to.

dar on probation would be in the nature of a preliminary decree, which is appealable as such (Civil Procedure Code, section 97).

Case returned for a fresh report.

An order refusing to appoint a candidate as *lambardar* and returning the case for a fresh report is only an interlocutory order from which no appeal is competent. Such a candidate is not by such an order debarred from appealing against the final order appointing another person as a *lambardar* nor can he be held by acquiescence in such an order to have waived his right of appeal. Again, it is not necessary for the Collector or his successor to review his order if after all he wishes to appoint the said candidate.[1]

Appeals in partition cases.

Appeals in partition cases.—As will be noticed in Chapter IX of the Act, in partition cases the Revenue Officer is to pass three kinds of orders so far as the question of jurisdiction is concerned, namely (*a*) as a Revenue Officer deciding such questions as absolute disallowance of partition, the area which is to be kept joint and excluded from partition and the questions about the property to be divided and the mode of partition; (*b*) deciding as a Civil Court questions of title within the cognizance of Civil Courts, and (*c*) deciding as a Revenue Court questions of title within the cognizance of Revenue Courts alone. All these cases are to be distinguished for the purpose of appeal, review and revision.

The provisions of section 13 of the Land Revenue Act will apply to orders passed under class (*a*). If the Revenue Officer making the order was Assistant Collector 1st grade, as is generally the case, the appeal will lie to the Collector and so on.[2] An order allowing partition of a part and refusing for the rest is likewise appealable.[3]

With regard to cases falling under class (*b*), clause (*c*) of section 117 of the Act lays down that an appeal shall lie from the decree of the Revenue Officer deciding a question of title as a Civil Court as though that were a decree of a Subordinate Judge in an original suit. And clause (*e*) of the same section further provides that from the appellate decree of a District Court upon such an appeal, a further appeal shall lie to the High Court if such further appeal is allowed by the law for the time being in force. The value of the subject-matter determines whether an appeal from a decree passed by a Revenue Officer acting under section 117 (*2*) lies to the District Judge or to the High Court.[4] Section 80 of the Tenancy Act applies to cases falling under class (*c*) and those provisions are practically the same as laid down in this section of the Land Revenue Act.

Provisions of C. P. C. do not apply.

Procedure in appeal—notice to the parties whether necessary.— An appellate Court should fix a date for the hearing of an appeal and give notice of the date to the appellant. It cannot set aside the clear provisions of law by disposing of it on the merits on a day of which notice has not been given to the appellant even though the appellant on the date of filing it may have expressed an intention not to appear at the preliminary hearing.[5]

In *Khan Mohammad* v. *Gurdit Singh*,[6] however, it has been held that the Civil Procedure Code does not apply to procedure under the

1. Surat Singh *v.* The Crown=1934 L.L.T. 6.
2. Ganda Singh and others *v.* Jhanda Singh and others=14 P.R. 1890 (Rev.)
3. Malang *v.* Mst. Namiti=4 P. R. 1898 (Rev.).
4. Mst. Bhagwani *v.* Net Ram=A. I. R. 1925 Lah. 136=82 I. C. 243.
See also 81 P. R. 1918 and 85 P. R. 1901.
5. Khushala *v.* Khushwant Rai=7 P. R. 1888 (Rev.).
6. 1932 L. L. T. 108=1932 P. C. L. 112 (Rev.).

Land Revenue Act and there is no rule passed under that Act which prevents an appellate Court throwing out an appeal *in limine*. It is not an irregularity on the part of an appellate Court to dispose of an appeal without hearing appellant as it is not legally incumbent on it to hear him. Under the Land Revenue Act there is no obligation to give a notice to the appellant before rejecting an appeal.[1]

In *Jhanda* v. *Bahawal*,[2] the Financial Commissioner passed an order without giving the respondent an opportunity of stating his case. He applied for review of that order on this ground. The application was accepted and the Financial Commissioner proceeded to consider the case *de novo*.

Section 96 (3) of the Civil Procedure Code does not apply to appeals for mutation proceedings.[3]

It has been held in *Rirku* v. *Jaswant Singh*,[4] that it is not open to an appellate Court to accept an appeal simply because the respondent has failed to appear before it. Before a Court can accept appeal it is necessary for it to examine and be convinced by the grounds of appeal put forward by the appellant.

New matter must not be introduced.—The introduction of new matter in the appellate Court is objectionable. It is the duty of a party to a case to state the whole of his case at the first possible occasion. There is a regrettable tendency in *Zaildari* and *Lambardari* cases for applicants to hold up a part of their case for the appellate Court and it should not be encouraged.[5]

Similarly, a request by a party that the other questions arising in the case should be disposed of by the Financial Commissioner, thus shortening litigation and avoiding delay, instead of remanding the case to the Commissioner, could not be heard.[6]

Appeal in lambardari cases—appeal by two persons—Commissioner's power to strike out name of one and accept appeal of the other.—When in a *lambardari* case a single appeal is filed by two persons it is open to the Commissioner to strike out the name of one of them and accept the appeal as valid on behalf of the other.

Section 151 of the Civil Procedure Code gives wide powers to Courts to make such orders as may be necessary to meet the ends of justice, and to prevent abuse of the process of the Court, and this power includes power to consolidate appeals, to add a party or to transpose parties. Further, under Order I, Rule 10 of the same Code the Court may at any stage of the proceedings, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out. Powers under both these provisions are exercisable by revenue authorities in *lambardari* cases.[7]

Limitation for appeals.

14. Save as otherwise provided by the Act, the period of limitation for an appeal under the last forgoing section

1. Hakim and another *v.* Mst. Fatima Bibi=1934 P. L. R. 231.
2. 1929 L. L T. 41.
3. Lok Nath *v.* Trust Rai Fateh Chand=1934 P. L. R. 395.
4. (1941) 20 L. L. T. 65.
5. Partap Singh *v.* Mangal Singh=1928 L. L. T. 18.
6. Bhagwan Dass and Dhanpat Rai *v.* The Secretary of State for India in Council=4 P. R. 1893 (Rev.) ; 12 P. R. 1891.
7. Lal Din *v.* Rahmat Ali, (1938) 17 L. L. T. 13.

shall run from the date of the order appealed against, and shall be as follows, that is to say :—

(*a*) when the appeal lies to the Collector—thirty days;

(*b*) when the appeal lies to the Commissioner—sixty days;

(*c*) when the appeal lies to the Financial Commissioner—ninety days.

Computation of period of limitation

Computation of period of limitation—The Indian Limitation Act applicable.—Section 153 of the Act provides that in the computation of the period for an appeal from, or an application for the review of, an order under this Act the limitation therefor shall be governed by the Indian Limitation Act, 1908.

Limitation for appeal under section 14 of the Act starts from the day on which the order appealed against was pronounced and not from the day on which the appellant came to know of it even though it was pronounced in his absence and he had no notice of it.[1]

Section 5 of the Limitation Act whether applicable.

Extension for the time of appeal.—Sub-section (2) of section 29 of the Indian Limitation Act, 1908, runs as follows :—

" Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(*a*) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply in so far as and to the extent to which, they are not expressly excluded by such special or local law; and

(*b*) the remaining provisions of this Act shall not apply."

It will thus be observed that section 5 of the Indian Limitation Act, 1908, under which delay can be excused, is not one of the provisions the application of which is extended by the Act to proceedings under a special or local law. Can section 5 of the Indian Limitation Act, 1908, therefore, apply to appeals under the Land Revenue Act ?

In *Nawab and others* v. *Ganda Mal and others*,[2] the Financial Commissioner has held that the principles of Limitation Act including section 5 apply to proceedings before Revenue Officers and it is competent to a Revenue Officer to extend time under section 5 of that Act in a mutation appeal.

In *Narindar Singh* v. *Mst. Shib Devi*,[3] it has been held that in computing the period of limitation for filing appeal time spent in prosecuting review application should be allowed to be deducted.

In *Lal Din* v. *Rahmat Ali*,[4] it has been held that in computing the period of limitation in a *lambardari* appeal, the appellant is entitled

1. Taj Mohammad *v.* Mukh Ram=(1941) 20 L. L. T. 115.
2. 1932 L. L T. 35.
3. 1932 L. L. T. 37.
4. (1938) 17 L. L. T. 18.

to deduct the time spent in obtaining a copy of the order appealed against.

The point, however, is not free from difficulty in view of section 29 of the Indian Limitation Act, 1908, quoted above. The equitable view may be that the period should be allowed to be extended under section 5 of the Act and this has been generally accepted by the Financial Commissioner in practice.

It has, however, been laid down that in order to take advantage of section 5, Limitation Act, it is the duty of the appellant to explain the delay for every day that elapses beyond the period allowed by the Limitation Act.[1]

Bona fide mistake.

Where the petition of appeal to the Financial Commissioner was stamped with court-fees under the old law and the deficiency under the new law was made good after the expiry of the period of limitation for appealing, it was held that it was a *bona fide* mistake and the appeal ought to be heard on merits.[2]

Appeals barred by time.

Appeals barred by time to be dismissed.—Appeals barred by time are to be dismissed. In *Farida* v. *Sham Singh*,[3] apparently a case under the Tenancy Act, the Financial Commissioner revised and set aside the order of the Commissioner who knowing that the appeal was barred by limitation had heard it on the merits and thus committed material irregularity in exercising jurisdiction as an appellate Court. The cases reported as *Sundar Singh* v. *Daru Shankar* (20 All. 78), *Ram Gopal Jhoonjhoonwala* v. *Joharmal Khemka* (39 Cal. 473), *and Jhotu Lal* v. *Ganauri Sahu* (3 Pat. Law Journal 376) were distinguished on the ground that in all of them the question whether a suit or proceeding was or was not barred by limitation was before the Judge and in each case he decided that the case was not barred by the limitation, while in the case before the Commissioner there was no question as to limitation but the fact that the appeal was barred by limitation was patent and the Commissioner recognised so and yet proceeded to decide it on merits.

The same principle applies equally under the Land Revenue Act also.

Exception to the general rule—Section 118 of the Land Revenue Act.—Sub-section (2) of section 118 of the Act provides that an appeal from an order under sub-section (1) may be preferred within fifteen days from the date thereof. This is an exception to the general rule embodied in section 14 above.

But the limitation for an appeal to the Commissioner against an appellate order of the Collector under section 118 (2) of the Act, determining the mode of partition is the usual period of 60 days under section 14 of the Act.[4]

Review by Revenue Officers.

15. (1) A Revenue Officer may, either of his own motion or on the application of any party interested, review and on so reviewing modify, reverse or confirm, any order passed by himself or by any of his predecessors in office:

1. Taj Mohammad *v.* Mukh Ram, (1941) 20 L. L. T. 115.
2. Shiv Lal *v.* Lalu=1923 L. L. T. 20.
3. 1924 L. L. T 26.
4. Mohammad Shafi *v.* Wasti Ram, (1941) 20 L. L. T. 110.

Provided as follows:—

(*a*) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of a class below that of Collector proposes to review any order, whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject ;

(*b*) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period ;

(*c*) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order ;

(*d*) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section, the Collector shall be deemed to be the successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor in office.

(3) An appeal shall not lie from an order refusing to review or confirming on review a previous order.

Review by Revenue Officers.

Review of orders—scope.—Revenue Officers of all grades possess large powers of reviewing their own orders and those of their predecessors, provided no appeal against them has been lodged. In the case of Assistant Collectors, however, the exercise of this power is in every case subject to the previous sanction of the Collector. If the latter wishes to review any order passed by the predecessor of himself or of any former revenue officer of a lower class, who has left no successor in office, he must obtain the Commissioner's permission. The Commissioner may, like the Collector, review his own order but without the leave of the Financial Commissioner he cannot reconsider an order passed by a former Commissioner. The power of the Financial Commissioner to review an order of any of his predecessors is not subject to any such restriction. Applications for review can only be entertained when they are presented within ninety days of the date of the order to which exception is taken, but apparently there is no legal limitation of the time within which a Revenue Officer may review an order of his own motion. Of course, persons who will be affected by the modification or reversal of an order must be given an opportunity of being heard in its support. There is no appeal from an order refusing to

review, or confirming on review, a previous order (*Land Administration Manual, para.* 260).

Financial Commissioner can review his predecessor's order suo moto-repeated applications for review.

It is clear that a Financial Commissioner can review his predecessor's order *suo moto* and at any time in the interest of justice.[1] In *Khan Bahadur* v. *Fateh Mohammad and others*[2] the plaintiff sued for recovery of Rs. 85-8-0 on account of remission of a protective lease and the claim was decreed and the decree was reversed on appeal by the Commissioner and revision was rejected by the Financial Commissioner. His successor granted application for review and ordered that 'the decree passed by the Assistant Collector should be enforced and the *bachh* of this well revised so as to give the benefit of the protective lease to Khan Bahadur, the sole-owner of the well.' He passed an order as to costs. Subsequently application for review in regard to costs was rejected. The plaintiff applied for review for the third time. The Financial Commissioner granted the application and awarded costs in the Revenue Courts throughout to the petitioner.

Where an order passed by the Commissioner has been confirmed by the Financial Commissioner, it is irregular on the part of the Financial Commissioner to grant sanction to the successor in office of the Commissioner who had passed the order, to review and on the part of such successor in office of the Commissioner to reverse on reveiw the order of his predecessor as it would defeat an order of a Financial Commissioner. If, however, such a step has been taken, it is competent to the Financial Commissioner to call for the record and pass such orders as are fitting.[3]

An order cannot be reviewed by a subordinate.

An order can be reviewed by the Officer who made the order sought to be reviewed and it is not competent to such officer to send the case to a subordinate for the purpose. Where a Revenue Assistant having obtained permission to review his own order as to a partition instead of passing the order of review himself merely sent the case to a Tahsildar and approving of his recommendations passed an order without summoning the parties concerned, he had committed two serious irregularities and his order was illegal.[4]

Ground of review must be something which existed at the date of the order.

When should the review be allowed ?—The corresponding provisions under the Civil Procedure Code are laid down in Section 114 and Order 47 of Schedule I. In keeping with the spirit of the law there it is submitted that review should be allowed when the applicant requesting for review contends that there was certain new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed, or that there is some mistake or error apparent on the face of the record, or on any other sufficient ground, for instance, that the notice of appearing before the Revenue Officer on the appointed date was not served upon him and therefore he could not be present. It must not, however, be understood that these are the only grounds on which review can be granted. The powers are indeed very wide. But the ground of review must be something which existed at the date of the order sought to be reviewed

1. 3 P.W.R. 1908.
2. 1926 L.L.T. 7.
3. Malik Sardar Khan *v.* The Crown=(1940) 19 L.L.T. 5.
4. Qabul *v.* Khairan and others=1930 L.L.T. 15.

and a review will not be granted on the ground of the happening of some subsequent event.[1]

Review as substitute for appeal or revision.—It is not the intention of the Land Revenue Act that the procedure for review should be used as an alternative to appeal or revision.[2]

Partition proceedings—*ex-parte* order—procedure for setting aside—review.—Nothing is laid down whereby a Revenue Officer is bound or entitled to adopt the procedure of the Civil Procedure Code in setting aside *ex parte* orders, although they are to be guided as far as the nature of the case required or permitted in dismissing application on default by those rules. In the existing state of the law it is not admissible for a Revenue Officer to set aside an *ex parte* order, except by means of a review.[3]

Correction of an entry in a record-of-rights is not review.—In taking cognizance of an error in a record-of-rights when discovered and dealing with it by the method of a new mutation entry a Revenue Officer is not reviewing or revising any order of a predecessor or other Revenue Officer.[4]

Mutation orders.—It has been repeatedly held that when a mutation entry has been incorporated in a *jamabandi* it should not be altered except on the basis of an obvious clerical error or patent fact. Thus where a mutation was effected several years ago and was incorporated in subsequent *jamabandis*, it should not be reversed on review on the ground that it was effected as a result of fraud in collusion with the subordinate revenue staff.[5]

Collector under Land Revenue Act cannot review an order passed by him as Deputy Commissioner under Alienation of Land Act.—There is a distinction between the functions of a Collector under the Punjab Land Revenue Act and those of Deputy Commissioner under the Punjab Alienation of Land Act. Therefore an order by the Collector reviewing his order passed as Deputy Commissioner is without jurisdiction and unsustainable.[6]

Sub-section (1), proviso (a)—previous sanction when necessary.—A Collector is not competent to review an order not passed by himself in the absence of previous sanction.[7]

Similarly, a Commissioner if he thinks it necessary to review any order which he has not himself passed, must first obtain the sanction of the Financial Commissioner. A Revenue Officer of a class below that of Collector must likewise obtain the sanction of the Collector if he proposes to review any order, whether passed by himself or by any of his predecessors in office. Sanction is not necessary when a Financial Commissioner proceeds to review his own order or of his predecessor in office, or when a Commissioner or a Collector proposes to review any order passed by himself.

1. Shera *v.* Ghulam Hussain=(1939) 18 L.L.T. 38.
2. Tek Ram and others *v.* Khushi Ram=1930 L.L.T. 17.
3. Hukam Chand and others *v.* Malak Ram and others=1932 L.L.T. 42.
4. Teja *v.* Karam Ali=4 P.R. 1918 (Rev.)=19 I.C. 302.
5. Azizullah *v.* Ghulaman=(1941) 20 L.L.T. 54; Harnam Singh *v.* Ishar Singh =(1934) 18 L.L.T. 2 followed.
6. Mandir Shiri Baba Nanga Arjan *v.* Lokhu=1932 L.L.T. 97.
7. Tek Ram and others *v.* Khushi Ram=1930 L.L.T. 17.

But where a mutation is corrected by way of review without previous sanction of the higher authority the defect may be cured by *ex post facto* approval.[1]

An order granting sanction should be so worded that it may not be taken as prejudging the case.[2]

Sanction to review not appealable.

A sanction to review given under this sub-section is not an "order" and is, therefore, not appealable.[3]

Sub-section (1) proviso (b)—limitation—Sub-clause (*b*) of the proviso provides a period of ninety days for an application for review. But there is no time limit whithin which a Revenue Officer may review an order of his own motion. Thus the Financial Commissioner can *suo moto* review even his predecessor's order at any time.[4]

According to section 153 of the Act, in computing the period prescribed by this section for review, the provisions of the Indian Limitation Act will apply.

Sufficient cause for delay.—Under this clause, however, if the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period, the application can be entertained after ninety days also. An offer to purchase certain agricultural land forming part of an estate under the management of the Court of Wards was made by A, a non-agriculturist. The Deputy Commissioner wrote to the Revenue Commissioner (N.-W.F.P.) recommending the proposed sale and asking for his sanction in his capacity of Court of Wards. The Revenue Commissioner wrote to the Deputy Commissioner on 7th January 1929, sanctioning the sale. On 14th January 1929, the latter made an order sanctioning the sale by registered sale deed and the sale deed was executed and registered. M who alleged that he had a right of pre-emption in respect of the lands appealed against the orders of 7th January and 14th January on the ground of insufficient notice but the Revenue Commissioner dismissed the appeal on 2nd May 1929. On 25th July 1929, M applied for review of the Revenue Commissioner's orders dated 7th January and 2nd May. The Revenue Commissioner reviewed the order and cancelled the sale on 23rd February 1930. In a suit M contended that the order of 23rd February 1930 of the Revenue Commissioner was not competent on the ground that the order of 2nd May 1929, was a review of the Revenue Commissioner's order of 7th January 1929, and that any further review was incompetent. *Held*, that the contention proceeded on an erroneous view of the orders of 7th January 1929, and 2nd May 1929, and that the right of appeal or review under the Land Revenue Act only affected the order made by the Deputy Commissioner on 14th January 1929. M's application for review dated 25th July 1929 and the order made thereon, dated 23rd February 1930 were perfectly competent and that although the application was made more than ninety days after the date of the order of which review was sought, it must be assumed that the Revenue Commissioner, before entertaining it, was satisfied that there was sufficient cause for the delay.[5]

1. Kishen Singh *v.* Roda Singh and others=1932 L.L.T. 33.
2. 34 P.L.R. 631.
3. Ahmad *v.* Ahmad=3 P.R. 1912 (Rev.)=6 P.W.R. 1912 (Rev.)=15 I.C. 937=52 P.L.R. 1912 Supp. ; Azizullah *v.* Ghulaman=(1941) 20 L.L.T. 54
4. 3 P.W.R. 1908=114 P.L.R. 1908 Supp.
5. Mohammad Akbar Khan *v* Court of Wards and others=I.L.R. 15 Lah. 216 P.C.=A.I.R. 1934 P.C. 93=147 I.C. 906=36 P.L.R. 433.

Each case, of course, will be judged on its own merits.

Sub-section (1) proviso (c)—notice for review.—As required under this clause, where a Revenue Officer proceeds to review his order, he must give opportunity to the person affected to appear. Where he omits to do so, the procedure is not proper.[1] Where a Revenue Assistant having obtained permission to review his own order as to a partition passed an order without summoning the parties concerned, it was held that he had committed a serious irregularity and his order was illegal.[2] Procedure for review.

It is improper on the part of a Revenue Officer to review his own mutation order without notice to the party concerned. Where such an impropriety has been committed the Financial Commissioner may in revision quash all proceedings and order the hearing of the case by another competent officer.[3]

Sub-section (1) proviso (*d*).—Clause (*d*) of the proviso to sub-section (1) lays down that an order against which an appeal has been preferred shall not be reviewed. But if the appeal is withdrawn, it is as though no appeal had been preferred and hence it seems open to the party to apply for review.

Where an application for review has been presented by a party to the order, and an appeal is afterwards preferred from the same order, the officer to whom the application for review is made does not seem thereby deprived of jurisdiction to entertain the application. But that power exists so long as the appeal is not heard because once the appeal is heard, the order on appeal is the final order in the case and the application for review of the order of the officer of the first instance can no longer be proceeded with. On the other hand, if the application for review is granted and a new order is passed, the order appealed from is superseded by the new order and the hearing of appeal will be meaningless. This is also in spirit of the law laid down in section 114 and Order 47 of Schedule I of the Code of Civil Procedure.

Sub-section (2).—According to sub-section (2) the Collector shall be deemed to be the successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor in office. Thus for a Naib-Tahsildar who is deputed for mutation work only and not attached to a Tahsil as Tahsildar or Naib-Tahsildar, his successor after he leaves the district is the Collector, and therefore, his orders can be reviewed only with the Commissioner's sanction. The same is the case of the officers under training who exercise the powers of an Assistant Collector.

Sub-section (3).—Sub-section (3) above is analogous to Order XLVII, Rule 7 of the Civil Procedure Code. No appeal shall lie from an order refusing to review or confirming on review a previous order. It should also be kept in mind that though no appeal lies from an order rejecting an application for review, it does not preclude a second application for review on grounds *different* from those taken in the first application. There is an appeal from a review, that is, from an order passed on review provided it is not an order confirming on review a previous order.[4]

1. Mahla Singh *v.* Crown=1931 L.L.T. 20.
2. Qabul *v.* Khairan=1930 L.L.T. 15.
3. Mst. Daropati Devi *v.* Sahnji Mal=(1941) 20 L.L.T. 13.
4. Ahmad *v.* Ahmad=3 P.R. 1912 (Rev.)=15 I.C. 987.

Extension for the time of appeal on review.—It is clear from section 5 of the Indian Limitation Act that the time for appeal is not extended, as of right, by the mere pendency of a review application, but under the provisions of that section. If an application for review is rejected the appeal is preferred against the original order of which review was sought and the time for appeal runs from the date of the original order. On the other hand, if the review has been granted, fresh order would be passed on the rehearing, even though the original order is merely repeated at the rehearing, and accordingly time for appeal would reckon from the date of such fresh order. When review is filed with promptitude and prosecuted with diligence and there is reasonable prospect that the applicant will obtain all by the review that he could obtain by appealing it is a sufficient ground for delay in appealing, and so time for appeal can be extended in such a case.

[*See Commentary under section 5 of Rustomji's and Mitra's Commentaries on the Indian Limitation Act*].

Note.—In view of what has been stated under section 13 of the Act, it must be clearly noted that the above remarks will apply only if it is held that section 5 of the Indian Limitation Act is applicable to appeals under the Punjab Land Revenue Act.

Power to call for, examine and revise proceedings of Revenue Officers.

16. (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer, subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.

(3) If in any case in which a Commissioner or Collector has called for a record he is of opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may in any case called for by himself under sub-section (1) or reported to him under sub-section (3) pass such order as he thinks fit:

Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.

Power of revision of order.

Revision.—The only officer who can revise an order not passed by himself, or by one of his predecessors in office, is the Financial Commissoner. But any controlling officer may call for the file of a case pending before, or disposed of by, any of his subordinates in order to satisfy himself of the correctness of any final or intermediate order which has been passed. If the Commissioner or the Collector thinks such an order ought to be altered, he can submit the file to Financial

Commissioner with a statement of its opinion. No proceeding or order should be modified or reversed in such a way as to affect any question of right between private persons without giving them an opportunity of being heard (*Land Administration Manual, para.* 261).

No restriction on power of revision.

Grounds on which Financial Commissioner may interfere on revision—Distinction from the powers of revision under the Tenancy Act.—It is necessary to distinguish between the revisional powers of the Financial Commissioner under this Act and those under the Punjab Tenancy Act. Under section 84 of the Tenancy Act his powers of revision are subject to the same limitation and restrictions as those of the High Court under section 44 of the Punjab Courts Act, 1918, and section 115 of the Civil Procedure Code. According to those provisions the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and revise the order if such subordidate Court appears—

(*a*) to have exercised jurisdiction not vested in it by law, or
(*b*) to have failed to exercise a jurisdiction so vested, or
(*c*) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

The High Court has no power to inferfere in revision except in the three cases mentioned above.

Under the Land Revenue Act, however, the power of the Financial Commissioner to interfere in revision is unfettered by any such restrictions, and he may interfere on the revision side at any time *in any case pending before or disposed of by any subordinate officer.* It is not necessary that the case should be a *decided* one as under section 115 of the Civil Procedure Code. In *Mirza Khan* v. *the Crown*[1] the Financial Commissioner observed—"The classes of cases dealt with under the Land Revenue Act vary so widely that no general principles governing the use of revisional powers can be laid down which are applicable to all, and that is no doubt the reason why the legislature has refrained from imposing any restrictions on them. *As regards the dismissal of village officers* the Financial Commissioner would in my opinion properly interfere if there had been such a denial of natural justice as would be involved in dismissing a man without hearing him or if the offence for which he had been dismissed was not one of those which under the Land Revenue Rules justify dismissal. But where there is no such material irregularity or manifest illegality, the Financial Commissioner should in my opinion be very reluctant to upset a concurrent finding of fact, and where the facts are proved or admitted and the only question is one of the severity of the sentence, it would normally be difficult to override a concurrent opinion that the man's delinquence makes him unfit to remain a village officer."

Where the Appellate Court writes an extremely brief judgment and does not apply its mind to the real problem before it, there is a failure to exercise jurisdiction vested in it by law and there is no question of a wrong decision on facts or law by an officer or Court of competent jurisdiction and a revision petition is competent.[2]

In cases of a judicial nature between parties the Financial Commissioner will not normally interfere on revision except in circumstances which would justify interference under the Punjab Tenancy

1. 1982 L. L. T. 19.
2. *Haq Nawaz* v. *Warayam Khan*=(1939) 18 L. L. T. 56.

Act. But where the Commissioner has treated a case of succession to a deceased tenant (under the Punjab Colonization of Government Lands Act, 1912) as though it were a case of succession to an entirely different tenant long since deceased, he has clearly fallen into a material irregularity in the exercise of his jurisdiction which necessitates interference in revision.[1]

Practice.

The revisional power to be exercised only where failure of justice has taken place.—From what has been stated above, it is clear that in cases falling under the Land Revenue Act, the Financial Commissioner is not bound, as he is in cases under the Tenancy Act, to observe the provisions of section 115 of the Code of Civil Procedure. It has, however, been ruled that although section 16 of the Act gives the Financial Commissioner unfettered discretion to revise the orders of the subordinate Revenue Officers, still this power of revision should not be exercised in cases where there has been no failure of justice or the failure of justice has been so small as not to cause any appreciable harm.[2]

The Financial Commissioner will freely exercise his powers under section 16 of the Punjab Land Revenue Act on the analogy of section 115 of the C. P. C., but questions should be referred to him only if they involve the interpretation of law or general instructions and then only if the Revenue Officer making the reference feels reasonable doubt on them. It is not, however, the function of the Financial Commissioner to assist the Revenue Officers below in making up their minds on questions of fact.[3]

When making references the Revenue Officer should send up through the ordinary channel the specific points on which doubt is entertained together with their own opinion and a concise statement of the relevant facts (*ibid*).

In Mst. Hayat Bibi v. *Jalal Din*[4], the Financial Commissioner remarked—" In these circumstances no great injustice will be done by my refusing to interfere. The result of interference would only be to vary the entry without altering the facts as to possession, and I am by no means sure that such interference would be just. For these reasons, inspite of the fact that I think that the Commissioner's order is probably wrong, I refuse to interfere.

In another ruling reported as *Mst. Sarasti Devi* v. *Mst. Lakhmi*[5] it has been held that the Financial Commissioner will not exercise his powers of revision where the aggrieved party has another remedy open to him either in a Civil or a Revenue Court.

Thus the powers of revision though wide are exercised only when there is real danger of a serious failure of justice. When the case is essentially of a judicial nature between the parties, *e.g.*, question of succession under custom, the Financial Commissioner would adhere very closely to the provisions of section 115 of the Code of Civil Procedure.[6] It is absurd that in disputes which only deal with presumptions greater latitude should be given than in disputes governing right.[7] The Finan-

1. Mst. Alam Khatun *v.* Mehr Wali Mohammad=(1941) 20 L. L. T. 130.
2. Allah Dad *v.* Khushi Mohammad=1924 L. L. T. 1; Munshi Lal *v.* Kanwar Rup Singh=1930 L. L. T. 19.
3. The Crown *v.* Ghazi Mohammad=1936 L. L. T. 1.
4. 1924 L. L. T. 11.
5. 1932 L. L. T. 152.
6. Fateh Khan and others *v.* Mst. Hayat Bibi=1931 L. L. T. 44.
7. Chandar Parkash *v.* Lakshmi Narain=1932 L. L. T. 15.

cial Commissioner observed in *Hukam Chand and others* v. *Malak Ram and others* :[1]—" I have ruled that in Revenue Officer's cases of a judicial nature between parties although my power of interference is unrestricted I will not normally exercise it unless circumstances are such as would justify revision in Revenue Court's cases." The same view was endorsed in *Mst. Parmeshri* v. *Ram Das and another.*[2]

Mutation proceedings.

The Financial Commissioner, however, ought to interefere in revision to put right an obvious disregard of rules relating to mutation procedure.[3] The rule that where another remedy is open the Financial Commissioner should not interfere in revision does not apply to mutation proceedings.[4]

In *Ali Mohammad* v. *Fazal Dad*,[5] it has been held that the Financial Commissioner will not interfere where the petitioner has deliberately refrained from having recourse to the proper remedy or there is another remedy open to him.

It is established law that in mutation proceedings in cases of a judicial nature between the parties, such as the question of a disputed succession the Financial Commissioner should only exercise his powers of revision in cases where such interference would be justified under section 115 C.P.C. Thus where the Commissioner in a mutation case is satisfied that the will was in order and that its registration after the death of the testator was also in order and that the testator whether he was governed by his pesonal law or the customary law, was not precluded from leaving his property by will to the legatee and arrives at this conclusion in a perfectly regular manner after giving due consideration to all aspects of the case, there is no ground justifying interference in revision.[6]

Where revision competent.

Order appealable but not appealed against—whether revision competent.—It is to be noticed that the High Court cannot act under section 115 of the Civil Procedure Code in any case in which an appeal lies to that Court. The word "appeal" is not confined to first appeal, it includes second appeal also. There is no such restriction under the Land Revenue Act. Under section 16 of this Act therefore the Financial Commissioner may revise an order even though the order is appealable but has not been appealed against.[7] In *Chanan Singh and others* v. *Bishen Singh and others*[8] the Financial Commissioner interfered in revision to rectify gross miscarriage of justice in an appealable case even though no appeal had been preferred. In *Abdul Haq* v. *Umar Din*[9] it has been held that a revision from a mutation order is competent if the ends of justice so require even where no appeal has been filed from the said order.

Where no appeal was preferred against the defective mode of partition it was held that revision lay.[10] The following remarks of the Financial Commissioner in *Subhan Ali* v. *Jahan Khan and others*,[11]

1. 1932 L. L. T. 42.
2. 1932 L. L. T. 68.
3. Khushal Das and other *v.* Kesar Singh=1932 L. L. T. 18.
4. Ch. Boston Khan *v.* Ch. Karam Khan=1934 L. L. T. 37.
5. (1941) 20 L. L. T. 150.
6. Gobind Singh v. Vishambar Parshad Singh=(1941) 20 L. L. T. 39.
7. Azad Khan *v.* Mohammad Khan=1935 L. L. T. 9.
8. 1931 L. L. T. 18.
9. 1925 L. L. T. 4.
10. 13 I. C. 815=1 P. W. R. 1912 (Rev.)=89 P. L. R. 1912 Supp.
11. 1933 L. L. T. 59=1933 P. C. L. 68 (Rev.).

are however, worth perusal—"The Financial Commissioner's power of revision under the Land Revenue Act is unlimited, but the question is when he should use it. I will not deny the general proposition that the Financial Commissioner may interfere when no appeal has been presented on the ground that the original order was bad on the merits, but I affirm that it is a dangerous course to adopt. The words "a grave miscarriage of justice" are in themselves dangerous words. Every order wrong on the merits is a miscarriage of justice, and gravity is only question of degree and opinion. The law has prescribed a period of limitation and once admit that it is the duty of the revising authority to go into the merits of an order against which no appeal has been preferred in order to ascertain first whether it is bad on its merits and then how bad it is, then the intention of the Legislature is defeated. In my opinion every case in which the Financial Commissioner's power of revision are invoked when the period of limitation for an appeal has expired should be most rigorously scrutinized in the light of the precedent which would be set up if the application were admitted." Both the judgments reported as 1925 L. L. T. 4 and 1931 L. L. T. 18 were duly considered in this case.

It has been held in *Aziz Ullah* v. *Ghulaman*[1] that though normally the Financial Commissioner will not entertain in the guise of revision what is to all intents and purposes an appeal in a case where no appeal lies, yet the wide powers of revision are clearly intended to be used in exceptional cases when failure to interfere at a preliminary stage would result in prolonged proceedings which must be infructuous in the long run, *e.g.*, an order sanctioning review of a mutation order effected several years ago and incorporated in *jamabandi*.

Concurrent finding whether to be interfered with—In *Mirza Khan* v. *The Crown*[2] there was an application for revision from the appellate order of the Commissioner rejecting the appeal of a Zaildar from an order of dismissal. The Financial Commissioner declined to interfere remarking—"Where an order is declared by the Act to be final it would he opposed to the spirit of the Act to treat the power of the revision as creating a second appeal, and any idea that the Financial Commissioner used his power of revision for such a purpose could not fail to undermine the sense of responsibility of officers whose duty it is to pass final orders."

In revenue appeal the Financial Commissioner will not interfere with a concurrent finding of fact by both the authorities below when such finding is supported by evidence even though there is evidence against also.[3]

In a case under section 150 of the Land Revenue Act the Financial Commissioner held—"In this case I am loth to confirm an order which will have the effect of compelling the appellant to dismantle a house which he had built at a considerable expense ; but after very careful consideration of all the facts, I have come to the conclusion that it would be wrong for me to interfere with the orders of the two Lower Courts. It is plain that the petitioner acted in complete disregard of the original order directing his ejectment from the encroachment. It is plain further that though warned by this order he proceeded in erecting the building. It is clear therefore, that he is entirely to

1. (1941) 20 L. L. T. 54.
2. 1932 L. L. T. 19.
3. Ch. Rahmat Khan *v.* Nur Alam,=1938 L. L. T. 11.

blame for any loss he may suffer.[1]"

In a *zaildari* case where the Collector and the Commissioner have arrived at concurrent findings interference on the revisional side should be very rare. But where the Commissioner's order is exiguous and there is on his part a marked failure to discuss even in the most general terms all the grounds of appeal, interference in revision is more justified than in ordinary cases.[2]

If the Commissioner differs from a concurrent finding of Assistant Collector and Collector, the proper course for him is to send the case to the Financial Commissioner to exercise his revisional powers.[3]

It has been held in *Amir Ali* v. *Akhtar Abbas*[4] that it is true that the Land Revenue Act gives the Financial Commissioner powers of revision which are not confined by the provisions of section 84 of the Punjab Tenancy Act. Nevertheless in deciding whether a case in revision should be entertained or not the principle of law underlying that section should not be disregarded. Therefore, where in a mutation case the two Lower Courts having full jurisdiction have applied their minds and have come to a concurrent finding on the question who should be entered in the records, and that finding whether ultimately correct or not is not unreasonable the Financial Commissioner will refuse to interfere in revision.

Where the Collector's findings of fact have been accepted on appeal by the Commissioner, it is not normally open to a revising authority to interfere.[5]

Whether interference on revision competent.

Appeal barred by limitation.—In a partition between two brothers, A and B, A agreed to the partition being effected by horizontal division and to leave the southern portion. Accordingly the partition was sanctioned and A was in possession of the southern portion and spent money on it. B afterwards appealed against the mode of partition on the ground that the two portions were of unequal value. *Held*, that even though the appeal is time-barred, the ends of justice require that the partition should be modified as regards the line actually drawn so as to equalise the value of the shares assigned to the parties.[6] It is a gross irregularity on the part of a Revenue Officer to sanction the mode of partition where it is disputed in the absence of one of the parties concerned. An order made with complete irregularity cannot be allowed to stand if a remedy has been prosecuted with reasonable diligence (*ibid*).

Where the decision of the Commissioner was based on wrong rule the Financial Commissioner refused to entertain objection as to the appeal being time-barred as he had power to revise the order at any time.[7]

In *Subha* v. *Dasaundha Singh*[8] it has been held that failure to consider question of limitation and entertain a time-barred appeal without considering the application of section 5, Limitation Act, is a material irregularity justifying interference in revision.

1. Sheo Baksh *v.* Mahipat=1925 L. L. T. 7 (1).
2. Ch. Qasim Khan *v.* Ch. Dial Singh=1930 L. L. T. 33.
3. 1932 P. C. L. 82 (Rev.).
4. (1940) 19 L. L. T. 23.
5. M. Ram Sarup *v.* The Crown=(1941) 20 L. L. T. 140; See also Kartar Singh *v.* Prof. Faiz Mohd (1941) 20 L. L. T. 191.
6. Lachhmi Narain *v.* Dhanna Ram and others=1932 P. C. L. 40 (Rev.)= 1932 L. L. T. 45; *See* also 1931 L. L. T. 18.
7. Raja *v.* Sarang=1932 L. L. T. 153.
8. 1930 L. L. T. 32.

Refusal to entertain an appeal on its merits on the erroneous ground of its being barred by time amounts to refusal to exercise jurisdiction and justifies interference in revision.[1]

Order not in compliance with law.

Order of Revenue Officer not in compliance with requirement of law—interference on revision.—Failure to discuss a ground of appeal is a serious irregularity justifying interference on revision.[2] An order of Collector which is exiguous and does not comply with the requirements of law inasmuch as it does not discuss each of the grounds of appeal, is liable to be set aside.[3] Where the Commissioner failed to discuss, even in the most general terms, all the grounds of appeal, interference on revision was held more justifiable than in an ordinary case.[4] Where the judgment of the appellate Court was a perfunctory one and did not discuss any of grounds of appeal, the order of the appellate Court was interfered with on revision and the case was remanded to the appellate Court to rehear the case and to write a full judgment.[5]

The petitioner applied to the Collector to set aside the *ex-parte* order passed against him or to review his order. The Collector refused to do either. Petitioner appealed to Commissioner who rejected the appeal on the ground that no good cause was shown for not being present on the date the *ex-parte* order was passed. *Held*, in revision remanding the case to another Commissioner that the former Commissioner had grievously erred in not deciding the appeal on the merits.[6]

Partition cases.

Partition cases—revision.—In a partition proceeding large number of shareholders were not consulted either as to method, effect and sanction, possession of many was disturbed against their wishes and certain other procedural irregularities were committed. No appeal against the method of partition was filed, but the Commissioner referred the proceedings for revision. *Held*, that the proceedings could be set aside in revision.[7]

Where in the course of partition proceedings, an *ex-parte* order was made sanctioning the mode of partition, and the same was set aside, without review, by Collector's permission, *held*, that partition was a Revenue Officer's case who is to follow the provisions of Civil Procedure Code only in certain cases, and that it was not admissible for a Revenue Officer to set aside an *ex-parte* order except by means of a review but that an irregularity of the kind was not a material one calling for interference in revision.[8]

It is a material irregularity not to deal with a plea raising a question of title in a manner prescribed by law and will furnish a ground for interference in revision[9]. Failure on the part of the officer conducting the partition to decide the question of title in the manner required by section

1. Mohammad Shafi *v.* Wasti Ram=(1941) 20 L. L. T. 110.
2. Nainu Ram *v* Rahim Khan=1930 L. L. T. 7
3. Mst. Dillo *v.* Kapura=1931 L. L. T. 7.
4. Qasim Khan *v.* Dial Singh=1930 L. L. T. 7.
5. Dhani Ram and others *v.* Goshaun=1930 L. L T. 31 ; Lahna and others *v.* The Crown=1929 L. L. T. 38.
6. Hari Ram *v.* Rama Nand=1928 L. L. T. 29.
7. Bahawal *v.* Nur Khan=13 I. C. 815=1 P. W. R. 1912 (Rev.)=89 P. L. R. 1912 Sup.
8. Hukam Chand and others *v.* Malak Ram and others =1932 L. L. T. 42= 1932 P. C. L. 51 (Rev.).
9. Malik Mohammad Hussain *v.* Malik Karam Baksh=1932 L. L. T. 61.

117 of the Land Revenue Act is a material irregularity justifying interference in revision.[1]

Where a Commissioner is appointed in partition proceedings for ascertaining value of certain property, the officer concerned should give a reasonable opportunity to the parties to file objections against the report of the Commissioner. Failure to do so is a material irregularity justifying interference in revision (1933 L.L.T. 13)

Mutations—revision.—The rule that where another remedy is open, the Financial Commissioner should not interfere in revision does not apply to mutation proceedings. The Financial Commissioner will exercise his powers of revision to put right an obvious disregard of rules relating to mutation procedure.[2] Thus the Financial Commissioner interfered in revision in mutation of a transfer which was refused simply because the landlord refused his consent or because the provisions of sections 53 and 56 of the Punjab Tenancy Act had not been complied with.[3] Mutations.

An order sanctioning mutation of a transfer contrary to the statutory provisions of law must be set aside on revision.[4] The order passed in contravention of section 37 being *ultra vires* the Financial Commissioner set it aside on revision.[5]

It is irregular to sanction a mutation behind the back of parties concerned and such order in mutation is liable to be set aside in revision.[6]

Where the order of the Commissioner passed on further appeal in mutation proceedings is not perverse, the Financial Commissioner will not interfere with it in revision.[7]

In *Mst. Hayat Bibi* v. *Jalal Din and others*[8] it has been held that where an appellate Court's order directing expunging of name of a female is illegal, no interference is necessary on revision as mutation orders do not finally settle rights. Mutation cases should be stopped at the earliest possible moment.

In matters of mutation the Financial Commissioner on revision will interfere if there has been not only material irregularity but also material injustice. Therefore, when the order passed is such as would not have been passed by the Financial Commissioner as a Court of first instance or as a Court of appeal, he will not interfere with it as a Court of revision if substantial justice has been done.[9]

Where in a mutation case the passing of actual possession is doubtful and where the parties have a clear course of action in some other Court, it is not advisable for the Financial Commissioner to interfere in revision. Even in proceedings under the Land Revenue Act when

1. Kirpa Ram and another *v.* Mst. Kirpo=1932 L. L. T. 43.
2. Ch. Bostan Khan *v.* Ch. Karam Khan=1934 L. L. T. 37 ; 1932 L. L. T. 18 was followed and 1932 L L. T. 152 distinguished in this case.
3. Khushal Dass and others *v.* Kesar Singh and others=1932 L. L. T. 18.
4. Mst. Khanum Nur *v.* Hayat Khan=6 P. R. 1913 (Rev.)=120 P. L. R. 1914=9 P. W. R. 1913 (Rev.)=22 I. C. 660.
5. Khair Din *v.* Jamu=1924 L. L. T. 9.
6. Shaukat Ali *v.* Rala Ram=(1941) 20 L. L. T. 14.
7. Mst. Parmeshri v. Ram Dass and others=1932 L. L. T. 68.
8. 1924 L.L.T. 11.
9. Guru Harnam Singh *v.* Guru Dalip Singh=(1940) 19 L.L.T. 46.

the dispute between the parties is of a judicial nature, the Financial Commissioner does not interfere in revision except in cases where such a course is justified by the provisions contained in section 115 of the C.P.C. Where the finding as to matter of fact is erroneous that in itself is no ground for interference in revision.[1]

Disregard of of decrees of Civil Court.

A revenue Officer should not in mutation proceedings question the propriety of a decree or order of a Civil Court which is binding on the parties. Where a mutation has been rejected by ignoring the decree or order of a Civil Court, the Financial Commissioner will interfere with such rejection in revision even though no appeal has been filed from such rejection.[2] It is a well known principle that the Financial Commissioner will interefere on revision in order that a mutation may be effected in accordance with the decree of the Civil Court. But where the only order of the Civil Court is that of refusing to give a party exclusive possession, there is no decree or order by which it becomes necessary to order mutation.[3]

Jamabandi entries.

An entry once incorporated in a *jamabandi* should not be altered except upon the basis of an obvious clerical error or patent fact especially after the lapse of years and in the absence of any appeal against the alleged wrong entry.

When, however, the name of an occupancy tenant has been removed by a Revenue Officer in summary proceedings, and the name of the landlord substituted, on the ground of abandonment of the tenancy, without the tenant's consent, a different set of circumstances arises, because

(*i*) the Revenue Officer exceeds his jurisdiction, such action being only legal by order of a Civil or Revenue Court;

(*ii*) it is not a matter of correcting an entry which already exists but of eliminating an entry which should never have made.

The wrongful injury done to the occupancy tenant in this manner is, therefore, not only a patent fact, even though he instituted no appeal and inspite of objection by the landlord to any change but amounted also to a gross irregularity justifying interference in revision, because the proceedings were illegal throughout and resulted in a serious miscarriage of justice.[4]

Even though the Commissioner has in revision agreed with the decisions of the officers below in mutation proceedings and has placed the same interpretation on the judgment of the High Court relating to the dispute between the parties, the Financial Commissioner can on revision to him examine the case further and come to his own decision. The reason is that it is he who is ultimately responsible for the correctness of the Revenue Records and when there has been an adjudication on the claims of the parties by the highest Court in the land he has a particular

1. Sh. Sushi Devi *v.* Sh. Parbati=(1936) 15 L.L.T. 10.
2. Bhagwant Dass and others *v.* Partap Singh and others=1934 L. L. T. 10.
3. Hari Singh and another *v.* Attar Singh and another=1932 L.L.T. 121= 1932 P.C.L. 115 (Rev.).
See also 1928 L.L.T. 14; 4 P.R. 1913 (Rev.).
4. Lal Khan *v.* Malik Fateh Khan=(1938) 17 L.L.T. 25.

responsibility to satisfy himself that the Revenue Records are brought into conformity with the decision of the High Court.[1]

Revenue Officers' cases—revision.—As regards the dismissal of village officers, the Financial Commissioner would properly interefere if there had been such denial of natural justice as would be involved in dismissing a man without hearing him or if the offence for which he had been dismissed was not one of those which under the Land Revenue Rules justify dismissal. But where there is no such material irregularity or manifest illegality, the Financial Commissioner should be very reluctant to upset a concurrent finding of fact and where the facts are proved or admitted and the only question is one of the severity of the sentence it would normally be difficult to override a concurrent opinion that the man's delinquence makes him unfit to remain a village officer.[2]

The Financial Commissioner is averse from interfering in a choice made by a Collector between two candidates for a lambardari. But where there has been misconception of fact and of policy, the Financial Commissioner may interfere.[3]

Commissioner set aside the appointment of an adopted son to the office of *lambardari*. The adoptee was a sister's son of the deceased and belonged to a different *got*. The Financial Commissioner declined interference with the order of the Commissioner [11 P.R. 1892 (Rev.)].

Where the Commissioner refused to appoint a *lambardar* the adopted son of deceased *lambardar*, who was his daughter's son and belonged to a different *got*, the Financial Commissioner declined to interfere [10 P.R. 1892 (Rev.)].

When the name of a *patwari* candidate has been struck off for reasons of inefficiency, the Financial Commissioners will not interfere with the order in revision. But when the only ground for removal of name is that the candidate has not passed the requisite examination, they might interfere to relax their own rule.[4]

The Financial Commissioner will not interfere in revision with the discretion of the Commissioner refusing to permit an increase in the number of lambardars of a particular estate.[5]

An order of retirement of a patwari for physical incapacity is not appealable under the rules in Appendix F to Chapter III of the Land Records Manual since such retirement is not technically a penalty. But as it is the duty of superior officers to see that the rules are properly administered and as an order of retirement not technically justified under the rules would amount to removal it is in practice customary for commissioners to entertain appeals against such orders.[6]

Correction by mutation does not amount to revision.—The corrcetion of a mistaken entry in a record-of-rights is not a revision when made by the method of new mutation.[7]

1. Ibrahim *v.* Madho Singh=(1941) 20 L. L. T. 57.
2. Mirza Khan *v.* The Crown=1932 L.L.T. 19.
3. S. Buta Singh *v.* S. Surindar Singh=(1940) 19 L L.T. 21.
4. Bharat Singh *v.* The Crown=1928 L.L.T. 25.
5. Alawal *v.* The Crown=(1942) 21 L.L.T. 22.
6. M. Ram Sarup *v.* The Crown=(1941) 20 L.L.T. 140.
7. 4 P.R. 1913 (Rev.)=19 I.C. 302=4 P.W.R. 1913 (Rev.)=201 P.L.R. 1913.

See also 9 P.R. 1892 (Rev.).

Appeal entertained or heard by mistake may be treated as revision.—The Commissioner is not competent to entertain an appeal against the order of a Collector confirming on appeal that of an Assistant Collector. But where the Commissioner by mistake or oversight entertained and decided such an appeal his order was reated by the Financial Commissioner as one made on revision.[1]

Procedure.—Where an appeal against a mutation order by an Assistant Collector has been rejected by the Additional Collector, the revision lies in the first instance to the Commissioner and it is after rejection by him that a revision petition can be presented to the Financial Commissioner.[2]

Limitation for revision.—No limitation is fixed for the exercise by the Financial Commissioner of his power of revision. It has, however, been ruled in *Chandra Prakash* v. *Lakshmi Narain*,[3] that though no period of limitation is prescribed for a revision petition, the Financial Commissioner will refuse to interfere when it is made after the period assigned for an appeal, unless for reasons which would justify extending the period of limitation. It is to be expected that the applicant will use due diligence and unless a special cause is shown this Court will not admit an application for revision after the period of 90 days fixed for an appeal.[4]

The period generally allowed for revision is 90 days. If an application for revision is presented to the Commissioner within 90 days from the date of the order sought to be revised it should be held to be within time on the principle that the Commissioner is a receiving authority for the Financial Commissioner.[5]

In *Fakeer* v. *Baba Naraingir*[6] the Financial Commissioner was held competent to exercise his powers of revision after the lapse of such a long interval as three years and some months.

In *Sajjad Hussain Khan* v. *Zargham Hussain*[7] it has been held that where a revision is filed more than 90 days after the Lower Court's order it may be dismissed in *limine* though it is open to the Financial Commissioner to admit the petition presented after such delay.

A person who desires the exceptional powers of revision to be exercised in his favour must show due deligence in prosecuting his case and it is impossible to entertain a revision petition submitted after inordinate delay.[8]

See also remarks of the Financial Commissioner in *Subhan Ali* v. *Jahan Khan and others*[9]

Procedure

Power to make rules as to procedure.

17. (1) The Provincial Government may make rules consistent with this Act for regulating the procedure of

1. Khair Din *v.* Jamu=1924 L.L.T. 9.
2. Ibrahim *v.* Madho Singh=(1941) 20 L.L.T. 57.
3. 1932 L.L.T. 15.
4. Jagir Chand and others *v.* Gulab and others=1932 L.L.T. 16.
5. Sh. Sushila Devi *v.* Sh. Parbati=1936 L.L.T. 10.
6. 2 P.R. 1889 (Rev.).
7. 1931 L.L.T. 37.
8. M. Ram Sarup *v.* The Crown=(1941) 20 L.L.T. 140.
9. 1933 L.L.T. 59.

Revenue Officers under this Act in cases in which a procedure is not prescribed by this Act.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejectment from, and delivery of possession of immoveable property, and rules providing for those matters may confer on a Revenue Officer all or any of the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has adjudged ejectment from, or delivery of possession of, such property.

(3) Subject to the rules under this section a Revenue Officer may refer any case which he is empowered to dispose of under this Act to another Revenue Officer for investigation and report, and may decide the case upon the report.

*LAND REVENUE RULES.

Procedure of Revenue Officers.

Statements and pleadings to be brief.

35. (*i*) The statements and pleadings made by or on behalf of parties to a revenue proceeding, whether oral or written, shall be as brief as the nature of the case admits; and shall not be argumentative, but shall be confined as much as possible to a simple and concise narrative of the facts which the party by whom or on whose behalf the statement or pleading is made believes to be material to the case and which he either admits or believes that he will be able to prove.

Verification of applications.

(*ii*) Every written application or statement filed by a party to a revenue proceeding shall be drawn up and verified in the manner provided by the Civil Procedure Code for written statements in suits.

Proceeding not to abate on death or marriage of party.

35. The death of one of the parties to a revenue proceeding, or, in a proceeding to which a female is a party, her marriage, shall not cause the proceeding to abate. And the Revenue Officer before whom the proceeding is held shall have power to make the successor in interest of the deceased person or of the married female a party thereto.

In fixing dates, etc., Revenue Officer to follow procedure of Revenue Court.

36. In fixing dates for the hearing of parties and their witnesses, in adjourning proceedings, and in dismissing applications on default or for other sufficient reason, a Revenue Officer will, so far as the nature of the case may require or permit, be guided generally by the principles of the procedure for the time being in force in Revenue Courts.

Commissions, Act V of 1908.

[1]37. The provisions of sections 75—78 of the Civil Procedure Code and of Schedule I, Order XXVI, annexed to the said Code in respect of commissions shall apply in the case of proceedings before a Revenue Officer.

Expenses of witnesses.

38. (*i*) A Revenue Officer may at his discretion award to a witness attending on summons a sum on account of his expenses not exceeding

*Punjab *Gazette* notification No. 75; dated 1st March 1888 (Land Administration Acts) Volume II, page 1.

1. As amended by Financial Commissioner's Notification No. 961-R., dated 28th February, 1933.

the sum to which the witness would have been entitled for a like attendance in a Civil Court.

(*ii*) The sum so awarded shall be costs in the proceedings.

Record of other proceedings under section 34 (4) of Land Revenue Act (mutations.)

39. In proceedings under section 34, sub-section (4) of the Land Revenue Act, no detailed record of the statements of parties and witnesses shall be made, but the order of the Revenue Officer shall state briefly the persons examined by him, the facts to which they deposed, and the grounds of the order.

Record of other proceedings under Land Revenue Act and under Tenancy Act.

40. In other proceedings under the Land Revenue Act, not being proceedings under section 117, and in proceedings before a Revenue Officer under the Punjab Tenancy Act, a Reveune Officer shall make with his own hand a brief memorandum of the statements of parties and witnesses at the time when each statement is made.

Contents of orders.

41. In every proceeding in which an order is passed on the merits after inquiry, the Revenue Officer making the order shall also record a brief statement of the reasons on which it is founded.

Appointment and recovery of costs.

42. (*i*) In proceedings in which costs have been incurred, the final order shall apportion the costs between the parties to the proceeding.

(*ii*) Costs thus apportioned shall be recoverable by the Revenue Officer by attachment and sale of the movable property of the person liable for the same in the manner prescribed in section 70 of the Land Revenue Act.

Execution of orders of ejectment, etc.

43. (*i*) Orders of ejectment from, and delivery of possession of, immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a Civil Court has adjudged ejectment from, or delivery of possession of, such property.

(*ii*) And in the enforcing of these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree of the description mentioned in sub-section (*i*).

Enquiries by Subordinate Officers.—It would be absolutely impossible for superior Revenue Officers, and especially for the Deputy Commissioner, to dispose of the numerous matters on which their orders are required, if the proceedings from first to last had to be held before themselves. Provision has therefore been made that "a Revenue Officer may refer any case which he is empowered to dispose of.. ..... to another Revenue Officer for investigation and report, and may decide the case upon the report." This useful power must be exercised with discretion. In matters of any importance the parties who will be directly affected by an order should be present when it is passed, and should be heard as far as is necessary. However unpalatable a decision may be to a man, it loses half its sting if he feels that his case has been fully understood and carefully considered (*Land Administration Manual, para.* 252).

The power described above is "subject to the rules" made under this section, but there seems to be nothing in the rules in any way restraining it.

Provisions of Civil Procedure Code as applicable to procedure of Revenue Officers.

How far the provisions of the Code of Civil Procedure apply to procedure of Revenue Officers.—From what has been stated above, it is sufficiently clear that the provisions of the Code of Civil Procedure apply to the procedure of Revenue Officers only so far as indicated in the above rules or under the provisions of the Act itself. Under section 88 of the Tenancy Act, the Code of Civil Procedure shall, subject to the provisions of that Act, so far as it is applicable, apply to all proceedings in Revenue Courts whether before or after decree. There is no similar provision under the Land Revenue Act.

Similarly, Financial Commissioner's Standing Order No. 3, para. 1, requiring adherence to provisions of the Civil Procedure Code apply to Revenue Courts and not to Revenue Officers. Revenue Officer only follow the provisions of the Civil Procedure Code in certain particular cases mentioned in the above Land Revenue Rules and in particular Rule 36. Thus nothing is laid down whereby a Revenue Officer is bound or entitled to adopt the procedure of the Civil Procedure Code in setting aside *ex-parte* orders although they are to be guided as far as the nature of the case requires or permits in dismissing applications for default by those rules [1]

Section 96 (3) of the Civil Procedure Code does not apply to appeals from mutation proceedings.[2]

The provisions of Order XX, rule 1, Civil Procedure Code, which require a judgment to be pronounced in open Court, either at the conclusion of the last hearing or on some future date of which due notice has been given to the parties, do not apply to orders of Revenue Officers.[3]

A Revenue Officer in regard to various matters including dismissing an application in default is governed by the Code of Civil Procedure. Therefore a dismissal in default of an appeal from an order in partition proceedings must be deemed to be one under Order XLI, rule 17, Civil Procedure Code, and the proper remedy for the appellant is application for re-admission of the appeal under Order XLI, rule 19, and not revision from the order of dismissal.[4]

Distraint and sale of movable property and uncut or ungathered crops of the defaulter.—Sub-section (2) of section 70 of the Land Revenue Act provides that the distress and sale of the immovable property and uncut or ungathered crops of the defaulter shall be conducted, as nearly as may be, in accordance with the law for the time being in force for attachment and sale of movable property under the decree of a Revenue Court constituted under the Punjab Tenancy Act, 1887, subject to certain proviso.

Abatement.—According to Land Revenue Rule 35 the death of one of the parties to a revenue proceeding, or in a proceeding to which a female is a party, her marriage shall not cause the proceeding to abate. And the Revenue Officer before whom the proceeding is held shall have power to make the successor in interest of the deceased person or of the married female a party thereto.

Where the petitioner died during the pendency of revision petition leaving behind a minor son and no one was willing to be appointed his

1. Hukam Chand and others *v.* Malak Ram and others=1932 L. L. T. 42.
2. Lok Nath *v* Trust Rai Fateh Chand and others=1934 P. L. R. 395.
3. Taj Mohammad *v.* Mukh Ram=(1941) 20 L. L T. 115.
4. Ali Mohd. *v* Fazal Dad=(1941) 20 L. L. T. 150.

guardian, *held*, that the action did not abate. As the petitioner had a real grievance it would be unjust to dismiss it in default.[1]

Cases taken on tour.—It is essential that Revenue Courts should give notice to the parties of the date and place of trial of cases. The Revenue Officer should be careful to see that the record shows that due notice of date and place is given. If the record does not show this, it will be presumed that due notice has not been given. Officers on tour when unable to make a programme of dates of cases should postpone their hearing till their return to the *sadr*.[2] A case should not be decided on tour without giving notice to the parties of the place of hearing. Where no notice of time and place of hearing of an appeal was given and the appeal was dismissed for default, *held* on revision, that in matter of fixing dates and places for hearing suits and appeals Revenue Courts are bound to the same extent as Civil Courts, and the appeal be remanded to the Collector to rehear the appeal after fixing the date and place and duly warning the parties.[3]

Rulings of Financial Commissioner.—It is expedient that the rulings of the Financial Commissioner more especially on the technical points of law should be in accordance with the rulings of the Chief Court (now High Court of Judicature at Lahore) of the Punjab.[4]

Fixing of the date of hearing.—Where a petition of appeal was deposited in the box kept for the purpose but taken out some days after and dismissed for default, *held*, that the proceedings were irregular as a date must be fixed for the hearing of an appeal and appellant warned to appear on that date.[5]

The appellant must give satisfactory reasons for his default in appearing on the date fixed for hearing otherwise the opposite party is entitled to its benefit. It is the duty of the appellate Court to dismiss the appeal where a default is made by the appellant on the due date of hearing.[6]

Exparte orders.

Where an unchallenged *ex-parte* order has been passed in certain proceedings against a party, that order remains in force until the whole proceedings are exhausted and it is not necessary that at each separate stage of the proceedings he should be served afresh.[7]

Persons by whom appearances and applications may be made before and to Revenue Officers.

18. (1) Appearances before a Revenue Officer, and applications to and acts to be done before him, under this Act may be made or done—

(*a*) by the parties themselves, or

(*b*) by their recognized agents or a legal practitioner :

Provided that the employment of a recognized agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which

1. Kirpa Ram and others *v.* Mst. Kirpo and others=1932 L. L. T. 43.
2. Tage *v.* Mst. Persenun=8 P. R. 1902 (Rev.)=12 P. L. R. 1903.
3. Bhela *v* Mamraj and others=7 P. R. 1892 (Rev.).
See also 48 P. R. 1875 ; 8 P. R. 1902=103 P. L. R. 1901.
4. Mahr Rana *v.* Thaker Das=8 P. R. 1903 (Rev.)=33 P. L. R. 1904.
5. 19 P. R. 1892 (Rev.).
6. 4 P. R. 1892 (Rev.).
7. Mst. Balwant Devi *v.* Parmodh Chand=(1940) 19 L. L. T. 16.

personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1) recognised agents shall be such persons as the Provincial Government may by notification declare in this behalf.

(3) The fees of a legal practitioner shall not be allowed as costs in any proceeding before a Revenue Officer under this Act unless that officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.

Recognized Agents.

Notification No. 729, dated the 1st November, 1887.

Who are Recognized agents.

In exercise of the powers conferred by section 18 (2) of the Punjab Land Revenue Act, 1887, the Honourable the Lieutenant Governor is pleased to declare and hereby declares that the following persons shall be recognized agents for the purposes of section 18 (1) of the same Act, *viz.*—

(*a*) Persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

(*b*) Mukhtars duly certified under any law for the time being in force and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtars.

(*c*) Persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

(*d*) Persons specially authorized by parties to appear and act on their behalf in any particular suit: Provided such persons are agents authorized for the occasion only, and are not practitioners acting in evasion of the law regulating the admission and enrolment of pleaders and mukhtars: Provided also that it shall be in the discretion of the Court to refuse to permit any such persons to appear or act.

Pleaders and Mukhtars.

Pleaders & Mukhtars.

Appearances of Pleaders and Mukhtars in proceedings before the Financial Commissioner.—Whereas by Schedule 1, Order III, Clause 4 (1), annexed to the Code of Civil Procedure every pleader is required to be appointed by an instrument in writing, and by Punjab Government Notifications Nos. 728 and 729, dated 1st November, 1887, every certified Mukhtar is required to hold a special power-of-attorney and no such Pleader or Mukhtar can be recognized, in the absence of a written authority as aforesaid, as empowered to appear, plead, or act for any person in any proceeding governed by the Punjab Tenancy Act,

XVI of 1887, and Land Revenue Act XVII of 1887, and it is expedient to provide for ascertaining that every such Pleader or Mukhtar is duly authorised to appear, plead, or act in any such proceeding before the Financial Commissioner ; the following rules are made by the Financial Commissioner :—

Contents of appointments.

(*a*) Every appointment of a Pleader and every power-of-attorney to a certificated Mukhtar presented to the Court shall contain in full the names of the person and of the Pleader or Mukhtar appointed to appear or act on his behalf and shall be executed by every such person.

Proof of agent's power to act on behalf of his principal

(*b*) When such appointment or power is not executed by the principal himself, but by some person claiming to appoint or give authority on his behalf, the Pleader or Mukhtar will not be recognised by the Court without proof that such person was duly authorized by the principal to execute such appiontment or power (*Tenancy rule No.* 16, *Punjab Land Administration Acts, Vol. II, page* 4)[1].

See also Financial Commissioner's Standing Order No. 4—*Revenue Agents* (*Appendix V*).

Appearance by legal practitioners

Legal Practitioners.—Legal practitioners may appear in proceedings before Revenue Officers, and may present applications on behalf of their clients. Though a person chooses to be represented by a pleader his own attendance may also be required, and no formal pleadings will be heard except in *lambardari, zaildari, muafi,* mutation and partition cases. A revenue agent cannot, without the permission of the presiding officer, take any part in the examination of witnesses or address to him any argument on behalf of his client. The fees of a legal practitioner are not allowed as costs in any proceedings without an express order of the Revenue Officer passed for reasons which he is bound to record. Legal practitioners cannot appear in proceedings under the Punjab Alienation of Land Act (XIII of 1900) (*Land Administration Manual, para.* 258).

Powers of Revenue Officer to summon persons.

19. (1) A Revenue Officer may summon any person whose attendance he considers necessary for the purpose of any business before him as a Revenue Officer.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons in person or, if the summons so allows, by his recognized agent or a legal practitioner.

(3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as the Revenue Officer may require.

Mode of service of summons.

20. (1) A summons issued by a Revenue Officer shall, if practicable, be served (*a*) personally on the person to whom it is addressed or failing him (*b*) his recognized agent

1. Financial Commissioner's Notification No. 145, dated 13th November 1909.

or (*c*) an adult male member of his family usually residing with him.

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy of the person to whom it is addressed, or, if that person does not reside in the district in which the Revenue Officer is employed and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue Officer so directs, be served by delivery of a copy thereof to such of those persons as the Revenue Officer nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue Officer so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the India Post Office Act, 1866.[1]

(5) When a summons is so forwarded in a letter, and it is proved that the letter was properly addressed and duly posted and registered, the Revenue Officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

Service by post.

Sub-section (4)—service by post—letter properly addressed, posted and registered—presumption.—The course prescribed in section 20, Punjab Land Revenue Act, for service by registered post stands precisely on the same footing as any other form of service, and a Revenue Officer may presume that the summons was served if it is proved that the letter was properly addressed and duly posted and registered. It is not necessary to prove that the letter was actually placed in the hands of the person served. Whether in any case the presumption should be made depends on the particular circumstances of the case. But to make it or not to make it is to exercise discretion and where there is no irregularity in the exercise of discretion it will not be interfered with in revision.[2]

The Financial Commissioner observed in this case—"My attention has been drawn to the Rules and Orders of the High Court at Lahore, Chapter 23, which says that summons may be effected in the first instance by registered post, and to various rulings of the High Courts

1. See now Act VI of 1898.
2. Lok Nath *v.* Kalyan Das and others=1934 L. L. T. 9.

in India, which state that service by registered post is to be regarded with suspicion. All these rulings are irrelevant in proceedings under the Land Revenue Act which are governed by section 20 of the Act."

Section 25 of the Punjab General Clauses Act, 1898.—It has been laid down in section 25 of the Punjab General Clauses Act (Act I of 1898) that "where any Punjab Act authorises or requires any document to be served by post where the expression 'served' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Land Revenue Rule 77—Charges for service of process through post.—In all cases in which processes are issued by post, the parties concerned shall be required to pay *talbana* at the rate of five annas per head with a minimum of eight annas.[1]

Mode of service of notice, order or proclamation, or copy thereof.

21. A notice, order or proclamation or copy of any such document, issued by a Revenue Officer for service on any person shall be served in the manner provided in the last foregoing section for the service of a summons.

Mode of making proclamation.

22. When a proclamation relating to any land is issued by a Revenue Officer, it shall, in addition to any other mode of publication which may be prescribed in any provision of this Act, be made by beat of drum or other customary method, and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates.

Supplemental Provisions.

Place of sitting.

23. (1) An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed.

(2) Any other Revenue Officer may only exercise his powers under this Act within the local limits of his jurisdiction.

Revenue work to be dealt with in villages to which it relates.—In order to avoid taking agriculturists away from their homes, all revenue work, especially disputed partition, *lambardari* and *muafi* cases should, as far as possible, be dealt with at the village to which they relate. By this means the attendance of all the parties will be secured, and the facts of each case will be easily ascertained. In the case of estates for which a detailed *jamabandi* is to be drawn up during the agricultural year, mutation work must be disposed of in the village itself. In other cases, the *Naib-Tahsildar* or *Tahsildar*, if he cannot conveniently visit the estate,

1. Financial Commissioner's Notification No. 343—R, dated 2nd February 1931, as amended by Notifications No. 756—R, dated 23rd March, 1932 and 1812—R, dated 26th July, 1932.

may pass orders on its mutations at any other place within the *patwari's* circle (*Land Administration Manual, para.* 247).

Mutation proceedings—to be conducted where land is situate.— Mutation proceedings, as far as possible, should be conducted in the village where the land, with reference to which the mutation is to effected, is situate. Disregard of this rule is censurable.[1]

According to the instructions of the Financial Commissioner revenue appeal cases tried by Collectors must be heard either at the Headquarters of the district or at the spot where the land, which is the subject of the appeal, is situated, or at some place which is nearer to the spot than district Headquarters. These instructions apply also to the trial of original cases by Revenue Officers.

These, however, do not affect appeals in the Courts of Commissioners.

Holidays.

24. (1) The Financial Commissioner, with the approval of the Provincial Government, shall publish in the local official Gazette before the commencement of calendar year a list of days to be observed in that year as holidays by all or any Revenue Officers.

(2) A proceeding had before a Revenue Officer on a day specified in the list as a day to be observed by him as a holiday shall not be invalid by reason only of its having been had on that day.

Discharge of duties of Collector dying or being disabled.

25. When a Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to chief executive administration of the district under any orders which may be generally or specially issued by the Provincial Government in this behalf shall be deemed to be a Collector under this Act.

Retention of powers by Revenue Officers on transfer.

26. When a Revenue Officer of any class who has been invested under the foregoing provisions of this Act with any powers to be exercised in any local area is transferred from that local area to another as a Revenue Officer of the same or a higher class, he shall continue to exercise those powers in that other local area unless the Provincial Government otherwise directs or has otherwise directed.

Thus a Revenue Officer who is transferred from one district to another retains the powers with which he was invested in the former district unless the Provincial Government otherwise directs or has otherwise directed.

Conferment of powers of Revenue Officer.

27. (1) The Provincial Government may by notification confer on any person—

(*a*) all or any of the powers of a Financial Commissioner, Commissioner or Collector under this Act, or

1. Sewa Ram *v.* The Crown=1926 L. L. T. 17.

(*b*) all or any of the powers with which an Assistant Collector may be invested thereunder, and may by notification withdraw any powers so conferred.

(2) A person on whom powers are conferred under sub-section (1) shall exercise those powers within such local limits and in such classes of cases as the Provincial Government may direct, and, except as otherwise directed by the Provincial Government, shall for all purposes connected with the exercise thereof be deemed to be a Financial Commissioner, Commissioner, Collector or Assistant Collector, as the case may be.

(3) If any of the powers of a Collector under this Act are conferred on an Assistant Collector they shall, unless the Provincial Government by special order otherwise directs, be exercised by him subject to the control of the Collector.

Conferment of powers of Revenue Officer.—*Notification No. 8013, dated the 16th March, 1922.*—In exercise of the powers conferred by section 27 (1) (*a*) and section 27 (2) of the Punjab Land Revenue Act, 1887, the Governor in Council is pleased to confer on all Superintending Engineers of the Irrigation Branch of the Public Works Department and on all officers in charge of Irrigation Divisions in the Punjab, for the areas of which they respectively hold charge from time to time, all the powers of a Collector under Chapter V of the Act, so far as these are necessary for the assessment of fluctuating land revenue under section 50 (3) of the said Act on canal-irrigated land.

CHAPTER III

Kanungos, Zaildars, Inamdars and Village Officers.

Rules respecting kanungos, zaildars, inamdars and village-officers.

28. (1) The [1][Provincial Government] may make rules to regulate the appointment, duties, emoluments, punishment, suspension and removal of kanungos, zaildars, inamdars and village officers.

(2) When the Provincial Government undertakes to pay the zaildars and inamdars in any district, tahsil or other local area from the land revenue realized in that local area a rule under sub-section (1) may direct that from every person to whom the land revenue of any land in that local area has been released or assigned, or who has redeemed or compounded for the same, there shall be levied as a contribution towards the payment of such zaildars and inamdars a rate not exeeeding one-and-a-half percent. on the land revenue which has been, or, but for such release, assignment, redemption or composition, would have been assessed on such land ; and, in any case in which land-revenue is collected on account of such land by any Revenue Officer for any such person, such officer may deduct that percentage from the amount payable by him to that person.

PART I—KANUNGOS

The Punjab Kanungo Service Rules, 1935.

(See Financial Commissioner's Notification No. 420-E, dated the 29th January, 1935).

Special Kanungo.

[1]**Utilization of the services of the Special Kanungo.**—(1) For the purpose of making the information contained in the revenue records accessible to the litigating public and to the Courts, a Special Kanungo or Patwari Moharrir has been appointed in all the districts of the Punjab, except Simla. The procedure to be followed in such cases is that the Court in which the suit is pending issues a summons to the Special Kanungo or Patwari Moharrir who, after preparing his excerpt, goes to the Court on the date fixed, taking with him the revenue records from which the excerpt has been compiled. He is then placed in the witness box. Counsel thus have the opportunity of comparing the excerpt with the originals, and of examining him on any points they choose.

(2) Parties who desire to summon the Special Kanungo or Patwari Moharrir as a witness with his records must be required to state succinctly and in writing the point on which information is

1. Substituted for "Financial Commissioner" by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Rules and Orders of the High Court of Judicature at Lahore, Vol I, Chapter 9.

required, and the application must be sent along with the summons to the Special Kanungo or Patwari Moharrir. The Court must see that the application is in a readily intelligible form before they issue it, and the practice, where it occurs, of sending for the Special Kanungo or Patwari Moharrir to tell him what is required must be discontinued, though Courts may also issue written instructions, or supplement or correct the application.

(3) Courts must be on their guard against using the Kanungo or Patwari Moharrir for purposes for which he is not intended, *e.g.*, he is not to be required to give opinions, he is not to be used as a local commissioner, or to be asked to provide instances in support of or to refuse an alleged custom. Courts must also see that, if the Special Kanungo or Patwari Moharrir is required, he is summoned for the first hearing after issues are framed, and not, as sometimes happens at present, at the end of the case. They must also never fail to ask him on oath whether the excerpt is in accordance with the revenue records.

(4) The excerpt prepared by the Special Kanungo or Patwari Moharrir is not evidence unless proved and cannot be used as such. He cannot be allowed to go to outlying Courts because he cannot take the revenue records with him, and without them there would be no check over his excerpt. It is, however, very desirable that outlying Courts should be able to utilize the Special Kanungo or Patwari Moharrir, and, as the best practicable method of securing that object, Presiding Officers of outlying Courts may issue either interrogatories for the Special Kanungo or Patwari Moharrir or an open Commission to a senior official at head-quarters ordinarily and unless there is some special reason to the contrary, the Senior Subordinate Judge. This official, who will have other duties and is described in the instructions appended as the officer-in-charge, will then comply with the directions given, summon the Special Kanungo or Patwari Moharrir, record his statement on oath and make the return to the Court. In this connection attention is drawn to Order XXVI, Rule 18 (1), of the Code of Civil Procedure. The issue of a commission should not become a source of unnecessary delay, and the officer-in charge should in the absence of very strong reasons proceed in absence of parties if they do not appear. Parties should be informed that their appearance at head-quarters is optional if interrogatories are issued.

(5) The following instructions have been issued for the guidance of the Courts and of the Special Kanungo or Patwari Moharrir, and it will be the immediate duty of the officer-in-charge to see that these instructions are followed :—

Instructions regarding the utilization of the services of the Special Kanungo or Patwari Moharrir.

(*i*) Applications for the services of the Special Kanungo or Patwari Moharrir must be made to the Court and may not be made direct to the Special Kanungo or Patwari Moharrir.

(*ii*) Such application must state clearly the point on which information is required, and if this condition is not fulfilled, they will be liable to be returned for amendment. They may, however, be supplemented or corrected by the Court.

(*iii*) Whenever an application is sent to the Special Kanungo or Patwari Moharrir, he must, at the same time, be summoned as a

witness, and the applicant must at once deposit into Court the fee for evidence which is Rs. 3, and the excerpt fee, which is also Rs. 3.

Note.—"If the Special Kanungo or Patwari Moharrir is only required to produce a revenue record or if he is only summoned with the original revenue record in order to verify whether a copy is correct, an evidence fee of Rs. 3 only will suffice."

This deposit shall be credited at once into the treasury under this head "XVII-Administration of Justice—General Fees, Fines and Forfeitures" and particulars of the credit noted on the application and the summons issued to the Special Kanungo. No summons shall be issued until the amount is paid by the party concerned and credited into the treasury.

(*iv*) Courts to which applications are made must see that they are made promptly (usually not later than the date on which issues are framed), so that the Special Kanungo or Patwari Moharrir may be ready with this excerpt and to give evidence on the next date fixed.

(*v*) Courts must remember that unless proved the excerpt of the Special Kanungo or Patwari Moharrir is not evidence and must not be treated as such The Special Kanungo or Patwari Moharrir must, when he goes to Court, always bring with him the original records from which his excerpt has been compiled, so that they may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpt must be a correct copy of such portions of the revenue records as are relevant and not merely a summary or paraphrase.

(*vi*) The Court should, as a rule, compare with the original records some of the entries in the abstract and initial and date those thus compared.

(*vii*) The fee for the preparation of excerpt will be a consolidated one of Rs. 3 which will cover the cost of search and preparation of the excerpt. Any extra fee fixed would be recovered at the hearing.

(*viii*) A register in form "A" annexed is prescribed for the Special Kanungo, or Patwari Moharrir.

(*ix*) A very simple form of register in form "B" is prescribed for Courts using the special Kanungo or Patwari Moharrir. The main objects of it are to facilitate inspection and to provide, if necessary, means of checking that of the Special Kanungo or Patwari Moharrir, and to verify the amounts credited into the Treasury.

Each entry in the Register shall be attested by the Presiding Officer of the Court, in the columns provided for the purpose, in token that the amount has been credited to Government as required by rule (*iii*).

(*x*) If the application is made to a Court, which is not situated at the district head quarters, the Court will forward the application to the officer-in-charge, together with a certificate that the fee of Rs. 6 has been recovered and credited to Government as in rule (*iii*) and will either issue an open Commission to him or will send interrogatories.

(*xi*) The officer-in-charge will then transmit the application to the Special Kanungo or Patwari Moharrir together with the interrogatories, if any, and will call upon him to prepare the excerpt required and to attend to give evidence. When he attends, his evidence, whether in the form of answers to interrogatories or otherwise, must be recorded on oath. The officer-in-charge must see that the Special Kanungo or Patwari Moharrir

complies with rule (*v*) above, and his attention is particularly drawn to the provisions of Order XXVI, rule 18. The examination of the Special Kanungo must not be postponed for the absence of parties. The outlying Court must inform parties that their presence at Sadr is necessary if interrogatories have been issued.

(*xii*) When the evidence has been recorded, the officer-in-charge will fix the excerpt fee and the application will be returned with the evidence and the report, if any, together with an intimation of the amount of the excerpt fee to the Court of issue. Any additional excerpt fee payable will be recovered from the party concerned at the next hearing before the Special Kanungo's or Patwari Moharrir's evidence is admitted to the record, and will be credited to Government in the Treasury by the Court in the manner prescribed in the rule (*iii*) above.

(*xiii*) The officer-in-charge and the Court must understand that the Special Kanungo is to be used only for the purpose of obtaining information which is not readily available. Thus he must not be asked to prepare copies of pedigree-tables or of histories of villages, which can be obtained from the Copying Agency. Nor must he be required to search for instances in support of or against an alleged custom, or be used as a local commissioner.

(*xiv*) The Special Kanungo or Patwari Moharrir should report at once to the officer-in-charge any case in which he considers that rule (*xiii*) is being infringed.

(*xv*) It is the duty of the officer-in-charge to control generally the work of the Special Kanungo or Patwari Moharrir and the use made of him by the Courts and to report any irregularities to the District Judge.

(*xvi*) An inspection book in form C for recording notes on inspections of Courts will be maintained and kept in the office of the District Judge. But it may be used either by him or by the officer-in-charge.

(*xvii*) The District Judge is expected to watch the system carefully and to record his inspection notes in this inspection book.

Note.—The Special Kanungo or Patwari Moharrir at Dera Ghazi Khan is allowed, as a special case, to prepare excerpts in land rent cases.

(For forms of registers prescribed *see* Chapter 9 of the Rules and Orders of the High Court of Judicature at Lahore Vol I, pages 5 and 6).

Function of Special Kanungo

"Under the law as stated in section 65 of the Evidence Act evidence may be given as to the general result of documents when they consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection by a person who has examined them and who is skilled in the examination of such documents. One of the functions of the Special Kanungos who have recently been entertained to assist the Courts of Law in the examination of the Revenue Records is to give evidence under the clause above quoted when the circumstances are such to justify it. Another of their functions is to put the Records before the Courts in order that the Courts may examine them for themselves; and, when directed to do so, to draw attention to those parts of the Records which the Courts ought to examine. But it is a complete abuse of the functions of the Special Kanungos to reqiure them to give oral evidence of the contents of a document such as the record of a *muafi* enquiry

which ought to be examined in original by the Court itself."—per Maynard, Financial Commissioner in *Gilani Shah and another* v. *Mst. Hassan and others.*[1]

PART II—ZAILDARS, INAMDARS (SUFEDPOSHES) and LAMBARDARS

Village agency in the Punjab.

Among the phenomena which India presents to the student of social institutions none are more interesting and important than its village communities. The constitution and form of these have not been exempt from the general laws of progress and decay, but the characteristic features of Indian village life have been handed down with extraordinary pertinacity from a distant past. The origin and characteristic features of the ordinary Indian village divide them into two main classes *viz.* :—

(1) The 'severalty' or *ryotwari* village, which is the prevalent form outside Northern India, and

(2) the joint or landlord village, the type prevalent in the United Provinces, the Punjab, and the Frontier Province.

The characteristic differences between these two classes of villages, will be found explained in the appendix on 'Land Tenures in the Punjab.' It is sufficient to mention here that in the second class of villages the co-proprietors are in general a local oligarchy with the bulk of the village population as tenants or labourers under them. Their position is, as a rule due to descent, with the equal rights afforded by the Hindu joint family system, (*a*) from an original superior proprietor who obtained that position by grant from a native rular, or in later times as a revenue farmer or by purchase, or (*b*) from a body of men connected by ties of blood or association who originally colonized the village or superimposed themselves on the earlier inhabitants.

In the landlord village the *headman* as such, did not exist. The proprietary families were too jealous of their equal rights to allow of any great degree of authority residing in one head. Their system was to manage village affairs by a council of the heads of families called 'panchayat'. In later times one or more headmen have been added to the organization to represent the village in its dealings with the local authorities. It is obviously convenient for the State to deal with bodies like village communities through headmen. Those informal councils or *panchayats* have fallen into decay, and in any case their constitution was found too loose for them to serve as intermediaries between the rulers and the landowners.

The Sikh Government too found it useful to have such intermediaries. The *chaudhries* and *mukaddims* through whom it dealt with the people corresponded with our *zaildars* and *lambardars*. They held their head above their neighbours but they also did so rather in virtue of official position than of ancestral right, though the position was usually conceded to them on account of local influence founded on old descent and hereditary connection with the land. They assisted the Government in the process of collecting the dues from the cultivators, and in return were granted certain favours in the form of *inams* or exemptions from assessment. Where cash assessments were made, the leading men or *maliks* in the different communities, who were already recognised as *mukaddims*, naturally took up engagements.

1. 1922 L.L.T. 12.

At present also as links between the higher officers and the communities for whose welfare they are responsible, the representatives of the land-owners in the shape of village headmen, *inamdars* and *zaildars* form an important class. These are obviously appointments of the State, and for administrative purposes only.[1]

Villages and zails.

The unit of revenue administration in the Punjab is the estate or *mahal*, which is usually identical with the village or *mauza*. Of these estates, large and small, a *tahsil*, as a rule, contains from two to four hundred. Each of them is separately assessed to land revenue which it is the business of the Deputy Commissioner to collect, and has a separate record of rights and register of fiscal and agricultural statistics, which it is his duty to maintain. All its proprietors are by law jointly responsible for the payment of its land revenue, and in their dealings with Government they are represented by one or more headmen or *lambardars*. The bond which unites the proprietary body may be a strong and natural, or a weak and artificial, one. At the one end of the scale are the campact village communities of Rohtak and Karnal, whose landowners are held together by real or assumed ties of kinship; at the other, the estates of the south-western Punjab, which are often mere collections of independent well holdings, while in the new colonies there is little bond beyond such similarities of tribe, religion and home of the original colonists as the Colonization Officer may have been able to secure. No Deputy Commissioner can rightly perform his duties without a full knowledge of the land tenures of his district. A careful perusal of the Gazetter, and the reports of past settlements, will supply the foundation, but the superstructure must be built up by personal observation and enquiry, and by the examination of village note-books and records-of-rights. The village system of north-western India, properly organized and wisely marked, forms a powerful engine of administration. To make it still more effective, clusters of villages, which are united by the bond of tribal or historical association, or of common interests, are usually formed into circles or *zails* over each of which is appointed a *zaildar* chosen by the Deputy Commissioner from among the leading village headmen. The *zaildars* receive their emoluments from Government by a deduction from the land revenue, the headmen are paid by the communities which they represent by a surcharge of five per cent. on the revenue. Together they form a valuable unofficial agency, through which the Deputy Commissioner and the Tahsildar convey the wishes of Government to the people and secure the carrying out of their own orders (*Land Administration Manual, para.* 204).

We shall study now about this agency in detail.

ZAILDARS

As already remarked, *zaildars* represent the *chaudhris* of former times. The existence and value of *chaudhris* was recognized at the time of the annexation of the Punjab, but the measures taken to maintain the influence of men of this class were not sufficiently definite and practical, and the position of *chaudhri* fell into decay. The credit of reviving it and of making it under another name a regular part of the administrative system belongs mainly to Mr. Prinsep. Almost everywhere in the Punjab, and even in so democratic a tribe as the Jats,

1. *See* Land Administration Manual, paras. 305, 306; Settlement Manual paras. 115, 117 and 120; Imperial Gazetteer of India, Vol. IV, Chapter IX; Land System of British India by Baden-Powell, pages 94 to 154.

there are men who stand head and shoulders above the ordinary headmen, and whose influence extends not to one, but to a number of villages. If the proper men are found and the higher officials of the district know them well and use them wisely, the work of administration is greatly assisted. In his *zaildars* the Deputy Commissioner has a ready means of getting into touch with his people, of understanding them and getting them to understand him. He will find many pieces of revenue and administrative work in which he can utilize the services of the *zaildars*, and, above all, he has in them a powerful engine for the prevention and detection of crime (*Land Administration Manual, para.* 334).

Preliminary report as to appointment of zaildars and inamdars.

Office of zaildar and inamdar and limits of zails.

[1]**Land Revenue Rule 1.**—(*i*) The office of the zaildar or inamdar shall not be established in any local area except with the previous sanction of the Local Government.

(*ii*) When that sanction has been obtained the limits of the zail of each zaildar shall be fixed by the Collector with the sanction of the Commissioner; and the first appointments to the office shall be made as hereinafter provided.

(*iii*) The limits of a zail may be altered with the sanction of the Commissioner, provided that the number of zails is not changed.

Revision of zaildari and inamdari arrangements.

[1]**Land Revenue Rule 2.**—No increase in the existing total percentage of revenue assigned for the emoluments of zaildars or inamdars in any district shall be made without the sanction of the Local Government: subject to this condition the Financial Commissioner is authorized to sanction and to revise from time to time—but not usually otherwise than at resettlement—the zaildari and inamdari arrangements of a district, to vary the number of zails and inams and to revise the grading or amount of allowances.

Thus the office of *zaildar* can only be established in any local area with the previous sanction of the Local Government. Hence the introduction of the *zaildari* agency into any district must be approved by the Local Government. Any subsequent increase or decrease in the number of *zaildars* can be made under the orders of the Financial Commissioner, provided the percentage of the land revenue assigned for their emoluments is not exceeded. If the appointment of *zaildars* has not already been considered and negatived, a Settlement Officer, as soon as he feels that he has a sufficient acquaintance with the circumstances of his district, should draw up a preliminary report on the whole subject. In it he should explain why no such agency has yet been appointed, and submit rough proposals for its organization. No

1. Financial Commissioner's Notification No. 142, dated 9th November, 1909 (Land Administration Acts, Vol. II, page 28, framed under section 28 of the Act.

attempt should be made to fix the limits of *zails*, but the tribal organization and other important features of the tract should be explained in such detail as is necessary to enable Government to judge whether the agency should be introduced Any proposals to appoint *inamdars* may be made in the same report. The opinions both of the Settlement Officer and of the Deputy Commissioner should be given. The report should be submitted to Government through the Commissioner and the Financial Commissioner, each of whom should record his views on the proposal made in it (*Settlement Manual, para.* 578).

Constitution of zails.

If the Local Government approves of the introduction of the *zaildari* agency, the Settlement Officer should, in consultation with the Deputy Commissioner, divide each tahsil into *zails*. In doing this, care should be taken to include in one circle, as far as possible people of one tribe or villages which have some connection or affinity, so that discordant elements may be excluded as far as possible. It is not practicable to lay down any standard size for a *zail*. Usually it is made up of from four to eight *patwari* circles. It may be convenient sometimes to have larger *zails*: but the question of size is of less importance than the consideration whether the *zails* are so arranged, as, on the one hand, to give a convenient representation of the leading tribes of the tract, and, on the other hand, not to give a *zaildar* more work or responsibility than he can successfully perform or bear. In cases in which a small strong tribe inhabits a compact cluster of villages, such villages may be formed into a separate *zail*, even though the result should be a *zail* of specially small size. It is desirable that *zail* should not be divided between two *thanas* or a *thana* between two *zails*, and that a patwari's circle should all be included in a single *zail*. The latter, however, is of much less importance than the former. But while the boundaries of *zails* and *thanas* should ordinarily not overlap, it is well freely to allow exceptions to this rule, rather than to break the ties of old tribal or historical connections or of common interests (*Settlement Manual, para.* 579).

APPOINTMENT OF ZAILDARS.

What person are eligible for zaildarships and inams.—[1]Land Revenue Rule 4.—No person is eligible for appointment as a zaildar or inamdar unless he is a headman in the zail in which he is to be appointed, or to which the inam is attached, or unless he is a landowner or a tenant holding from Government in the zail who has been approved by the Commissioner as a suitable candidate for the office. Where inams have not been attached to particular zails the above qualifications must be held in the tahsil to which the inam belongs.

Non-lambardar candidates.—In choosing a *zaildar*, the field of selection is usually confined to the headman. Occasionally the most able and influential man in a *zail* may be a landowner or Government tenant, perhaps a *jagirdar* or pensioned Indian Officer, who is not a *lambardar*. On a vacancy occurring, such a man may be appointed if the Commissioner of the division has previously accepted him as a suit-

1. Land Administration Acts, Vol. II, page 28, framed under section 28 of the Act; Financial Commissioner's notification No. 142, dated 9th November 1909.

able candidate. Care must be taken in putting forward names that a pushing newcomer is not taken at his own valuation and allowed to thrust aside deserving men of the old *Chaudhri* class (*Land Administration Manual, para.* 342).

A *lambardar* candidate is entitled to the office of *zaildar* in preference to a *non-lambardar* candidate even if the latter belongs to the predominant tribe in the *zail*.[1]

It has been ruled by the Financial Commissioner in *Amir Haidar* v. *Dost Mohammad*[2] that "if a suitable *lambardar* candidate for a *zaildari* is available it is not desirable, save for exceptional reasons, to extend the field of selection beyond the *lambardars* of the *zail*. Occasionally the most able and influential man in a *zail* may be a landowner or a Government tenant, perhaps a *jagirdar* or a pensioned Indian Officer who is not a *lambardar*. But before according sanction the Commissioner should satisfy himself, firstly, that none of the *lambardar* candidates are really suitable, and secondly, that the candidate for whom sanction is sought, is the best outsider available."

The matter has been examined by a Full Bench in *Gopal Singh* v. *Khurshaid Alam*,[3] and the practice of the Financial Commissioner has been very clearly stated. It is now settled law that in choosing a *zaildar* or *sufedposh* the field of selection should not be widened by the inclusion of *non-lambardars* without good reason, and that the Commissioner should not accord approval as a matter of course but only after satisfying himself that none of the *lambardar* candidates are really suitable *i.e.*, likely to attain to the general standard of the good *zaildars* and *inamdars* of the district, and secondly, that the candidate for whom approval is sought is the best outsider available. Even if there is a one suitable *lambardar* candidate there is no justification for widening the field of selection.[4]

This, however, does not debar the Collector when he considers it advisable to widen the field of selection by including some one who is not a *lambardar* and from asking this and the Commissioner granting approval to the candidature of more than one likely competitor if the special circumstances of the case justify this. Nor does the approval by the Commissioner contemplate any final decision upon rival claims at this early stage. The Commissioner is not, therefore, debarred on appeal from the Collector's order, to interfere with the Collector's choice of a non-lambardar candidate whose candidature he himself had approved.[3]

Land Revenue Rule 4 does not authorise a Commissioner to give a conditional sanction to the candidature of a person to the post of *zaildari* or *sufedposhi*. The sanction given must be absolute. If the Commissioner is doubtful in the matter he should refuse the sanction.[5]

Once a candidature has been sanctioned by a Commissioner, the claims of all candidates, whether *lambardars* or not, should be considered alike.[6] The candidate who is not a *lambardar* but whose candidature

1. Bogha *v.* Ratan Singh=(1942) 21 L. L. T. 19.
2. 1935 L. L. T. 17.
3. (1937) 16 L. L. T. 22.
4. Nasrullah Khan *v.* Mohd. Nawaz Khan=(1941) 20 L. L. T. 41.
5. Ghulam Mustafa *v.* Basant Singh=1929 L. L. T. 15.
6. Ibid.

has been sanctioned by the Commissioner is on exactly the same footing as if he were a *lambardar*,[1] although the Commissioner's approval gives no preference to the *non-lambardar* candidate over the *lambardar* candidates.[2] Once a candidate has been approved by the Commissioner as a suitable candidate for the office under this rule the Collector is not competent to find that he is not suitable.[3] Such a candidate should not be passed over as unsuitable while that approval stands.[4] But there is nothing in the law to prevent a Commissioner from withdrawing approval when he finds that it was based on an incomplete knowledge of facts.[5]

Right of appeal to Commissioner—Commissioner's power to grant sanction.

In the case of the appointment of a *zaildar* a person who is not a *lambardar* and whose candidature has not been approved by the Commissioner has no *locus standi* to appeal to the Commissioner against the order of a Collector appointing as *zaildar* a candidate who is either a *lambardar* or whose candidature has been duly approved by the Commissioner under Land Revenue Rule 4. Such a candidate has no *locus standi* to appear even before the Collector as a candidate for the appointment and his hearing by the Collector is a concession only. It is only in exceptional circumstances that a Commissioner may if he deems it advisable give a hearing to a candidate who is not technically qualified and that hearing may accord the necessary technical qualification if the circumstances call for such an action.[6] It was observed in this case :

" In view of the principle laid down in the Full Bench ruling in the case of *Gopal Singh* v. *Khurshaid Alam*[7] that the Commissioner's approval should not be given as a matter of course but only after carefully weighing all the circumstances of the case, it is convenient that the Collector should defer his decision on the point whether a reference should be made to the Commissioner recommending that approval should be accorded to the candidature of any *non-lambardar* aspirant to the post until he has heard the various candidates and aspirants, and this is the practice commonly adopted by Collectors. It is at this stage only that the Collector is in a position to say whether there is such a dearth of suitable *lambardar* candidates as to make it advisable to widen the field of selection. But it must be remembered that if the Collector does accord a hearing that hearing is an exceptional concession only, and does not invest the *non-lambardar* with any *locus standi* to appeal against the Collector's decision if the Collector finds as in the present case, that there is a suitable *lambardar* available for appointment and sees no reason to make any recommendation to the Commissioner to accord approval to the candidature of a *non-lambardar*."

Sanction given subsequently.—For appointment as *zaildar* of a person who is not *lambardar* it is necessary that the previous sanction of the Commissioner should be obtained. Where, however, a suitable appointment has been made but without such sanction the defect may be rectified by the Commissioner or the Financial Commissioner by giving subsequent sanction.[8]

1. Akhtar Ali *v.* Laik Ram=1923 L. L. T. 12 ; Gopal Singh *v.* Khurshaid Alam,=1937 L. L. T. 22.
2. 1937 L. L. T. 22.
3. Faqir Mohd *v.* Subedar Dalip Singh=1932 L. L. T. 124.
4. Malkiat Singh *v.* Waryam Singh=1933 L. L. T. 61.
5. Ibid.
6. Pandit Hanmant Das *v.* Hari Singh=(1942) 21 L. L. T. 8.
7. (1937) 16 L. L. T. 22.
8. Ch. Rur Singh *v.* S. Gurbaksh Singh=1938 L. L. T. 1.

In strict law the Commissioner's approval is necessary to enable a *non-lambardar sufedposh* to be a candidate for the post of *zaildar*, but where such approval has not been given it is open to the Financial Commissioner in the exercise of his powers under section 16 of the Act to rectify the omission in appeal or revision,[1]

Appointment of purdah nashin lady as zaildar.—The appointment of a woman as *zaildar* is not excluded by law or rules, but the requirements of the office are of a character to bar such appointments, and especially the appointment of *purdah nashin* lady in practice *cf.* in particular, Rule relating to the assistance of the *zaildar* in police investigations, in arresting criminals, in camp inspections and in attendance on officers. Moreover, although all these duties can be performed by a substitute, Rule 7 only contemplates the appointment of a substitute of a permanent measure, when the sole suitable candidate is a minor. The importance of these considerations is enhanced, when, as in the present case, the Zail in question is in a remote locality, inhabited by a turbulant population.[2]

Eligibility of colony grantees for the appointment of zaildar, inamdar or lambardar in their home districts.—No person holding a colony grant subject to the condition of his residence in the colony is eligible for a *zaildari*, *inamdari* or *lambardari* outside the colony. If any such person becomes a candidate for such an appointment, intimation of the fact should at once be sent to the Colonization Officer concerned, and a candidate, who wishes to maintain his candidature, must either resign his grant or get it transferred to a relative or other suitable person to be approved by the Colonization Officer. Should the candidate become aware of this necessity only when his case is heard by a Revenue Officer, such officer may adjourn the case for a sufficient period, not exceeding six months, in order to give the applicant time to apply for sanction to a transfer. A copy of the order granting such adjournment should be forwarded to the Colonization Officer for information.[3]

Qualifications of candidates.—[4]Land Revenue Rule 5.

Appointment of zaildars.

In the appointment of zaildars regard shall not be had to any alleged hereditary claim, but regard shall be had among other matters to—

(*a*) the extent of property in the zail possessed by the candidate ;

(*b*) services rendered to the State by himself or by his family ;

(*c*) his personal influence, character, ability, and freedom from indebtedness ;

(*d*) the degree in which the candidate is by race or otherwise fitted to represent the majority of the agriculturists who reside in the zail.

1. Ghulam Sarwar *v.* Fateh Ali=1937 L. L. T. 31.
2. Khan Mohammad Khan *v.* Mst. Sardar Bibi=1939 L. L. T 19 ; 1932 L. L. T. 43 referred to
3. Financial Commissioner's Standing Order No. 21, para. 17 ; *see* also page 291 of the Colony Manual, revised edition.
4. Land Administration Acts, Vol. II, p. 28.

Resort to special arrangements in order to remove disqualifications or acquire qualifications is unobjectionable[1].

Hereditary claim not to be considered.

" In the appointment of zaildars regard shall not be had to any alleged hereditary claim "—meaning and scope.—It has been held in *Surain Singh* v. *Jagat Singh*[2] that the words " regards shall not be had to any alleged hereditary claim " are not to be construed so as to prevent in evenly balanced cases considerable weight being attached to the circumstance that one of the claimants is the son of the deceased office-holder. The object of these words is to secure to the local officers great and very necessary freedom in making appointment of *zaildar* or *inamdar*. The words mean that there is absolutely no obligation to appoint a relative. They do not mean that if there is so near a relative as a son among the claimants the fact of such relationship should count for nothing at all. It is one point, and not a conclusive point in favour of a candidate, but it may turn the balance in a doubtful case.

In *Chaudhri Qasim Khan* v. *Chaudhri Dial Singh*[3] the Financial Commissioner, however, on revision reversed the choice of the Collector upheld by the Commissioner to a claim of the son of the deceased *zaildar*, and remarked—" The Collector appears to me to have to a great extent, disregarded the provisions of Land Revenue Rule 5, which distinctly lays down that in the appointment of *zaildars* regard shall not be had to any alleged hereditary claim, even read with the judgment of Sir Lewis Tupper, Financial Commissioner, found in *Surain Singh* v. *Jagat Singh*.[4] He lays far too much stress on the undesirability of transferring the *zaildari*, to a family other than that of respondent, in which it had been, as I have already shown for two generations. As regards the other matters laid down in Land Revenue Rule 5 to which attention should be paid in the appointment of *zaildars* the applicant is to my mind in a much stronger position than is the respondent."

In *Sayyed Riaz Hussain Shah* v. *Chaudhri Ahmed Yar Khan*[5] the Collector's order was as follows :—

" There are quite good candidates among the *Kheras*, and it would not be an easy task to make a selection. I shall not attempt it as I condsider that the post of *zaildar* though not hereditary should nevertheless devolve on the son of the deceased unless it can be shown that he is unfit."

The Financial Commissioner held that this principle was absolutely unsound and opposed to the direct provisions of Land Revenue Rule 5, in which it was strictly stated that in the appointment of a *zaildar* regard should not be had to any hereditary claim.

Thus the post of a *zaildar* is a personal appointment in which hereditary claims count for nothing.[6]

It is no doubt true that no right to the office of *zaildar* arises from the fact that the claimant is related to the former holder of the office, but such relationship is no disqualification.[7] If among the claimants it

1. Atar Singh *v.* Ganga Singh=1 P. R. 1913 (Rev.)
2. 5 P. R. 1902 (Rev.)=71 P. L. R. 1903.
3. 1930 L. L. T. 33.
4. 5 P. R. 1902 (Rev.)=71 P. L. R. 1903.
5. 1932 L L. T. 93.
6. Subedar Major Harnam Singh *v.* Jaswant Singh=1931 L. L. T. 85.
7. Ralia Ram *v.* Amir Bakhsh=1 P. R. 1900 (Rev.)=1 P. L. R. 1900.

were found that the man who was selected as having the strongest claim on the recognized grounds, was also son to the late holder of the office, a Collector may fairly feel confirmed and supported in his choice.[1]

It is true that it is a settled rule that "in the appointment of *zaildars* regard shall not be had to any alleged hereditary claim." But, as two of the chief matters to be considered are "the candidate's personal influence and the degree in which he is by race or otherwise fitted to represent the majority of the agriculturists who reside in the *zail*," and the "services rendered to the State by (the candidate) himself or by his family," it is obvious that question of descent cannot be wholly excluded. Influence is very commonly hereditary in certain families and a man who has done nothing to forfeit the respect in which his ancestors have been held in the countryside may assuredly be allowed to urge in his own behalf the services they have rendered in the past as *chaudhris* and *zaildars* (*Land Administration Manual, para.* 343).

Extent of property in the zail.

(*a*) **Extent of property in the zail possessed by the candidate—how far this factor to be taken into account in appointing zaildars.**—It is undesirable that a man whose ancestral home and claims as a *zaildar* are in one *zail* should be qualified for the *zaildari* of another *zail* on the ground of an acquisition of land made for the purpose which is in itself of somewhat doubtful validity. Such an appointment cuts at the root of the principle underlying the rules that the *zaildar* should be representative of the hereditary owners of the *zail* by virtue (among other things) of being one of them. When possession of landed property is a qualification for such a post as that of *lambardar* regard is not paid to the manner in which it is acquired, but the possession of land by a *lambardar* is required for a different purpose, namely security for land-revenue; by a *zaildar* it is required as a proof of status in the zail. It is therefore permissible to consider how it was acquired and whether any such deduction can be drawn from the possession.[2]

Where the claims of the two candidates were almost equal the Commissioner was held justified in interfering in the favour of the candidate who held considerable property in the *zail* as against the other who had very little land in the *zail*.[3]

See also remarks on page 88.

Services rendered to the State.

(*b*) **Services rendered to the State by himself or by his family—personal character and ability.**—As already observed, influence is very commonly hereditary in certain families, and a man who has done nothing to forfeit the respect in which his ancestors have been held in the countryside may assuredly be allowed to urge in his own behalf the services they have rendered in the past as *chaudhris* and *zaildars* (*See para.* 343 *of the Land Administration Manual*).

In *Subedar-Major Harnam Singh* v. *Jaswant Singh*,[4] however, the respondent had excellent property qualifications and the services of his family were undoubted. The Financial Commissioner accepted the appeal against his appointment holding—"He (the respondent) has no personal influence to speak of, being a youth still under Court of Wards. He is no more fitted to represent the agricuitural community

1. Atar Singh *v.* Baghel Singh=8 P. R. 1892 (Rev.).
2. Randhir Singh *v.* Jalal Din=1932 L. L. T. 38.
3. Risaldar Parduman Singh *v.* Mit Singh=1928 L. L. T. 28.
4. 1931 L. L. T. 35.

than petitioner No. 1 since both are respectable Jat Sikhs.....The Collector seems to have somewhat disregarded the fact that the post of a *zaildar* is a personal appointment, in which hereditary claims count for nothing. Rule 9 details the duties of a *zaildar*, and it is clear that they can only be discharged by an active and competent man. The Collector was also greatly influenced by the family services of the respondent. I might almost say unduly influenced, because none of these services can confer upon him the personal influence and experience which by reason of youth he could not possibly possess."

With respect to the factor of 'service in the Army' the Financial Commissioner observed in *Faquir Mohd.* v. *Subedar Dalip Singh*.[1]— "The Collector has observed that Subedar Dalip Singh is an unknown quantity in the zail as he has spent the major portion of his life in the Army. I take this opportunity of expressing my strong dissent from the proposition that service in the Army is to be regarded as a disqualification."

When considering the appointments of *zaildars* or *sufedposhes*, or in the case of new *lambardaris*, or in *lambardaris* where the hereditary principle is not strictly observed, the Deputy Commissioners should give appropriate weight to any record of work done for the departments of Public Health, Agriculture, Co-operation, Education and Veterinary Services, which candidates are in a position to produce.

Certificates.

Certificates.—It has been held that certificates are not always very reliable evidence as some people adopt all sorts of means to acquire them while others are content to do their duty not attaching any importance to certificates.[2] But still these c rtificates form a good background for the indication of the services of the candidate. Of course, every case must be judged on its own merits.

A murder committed in the family is a fact, which like other facts, has to be weighed (1931 L. L. T. 39).

Confidential Police records.

Confidential Police records.—The introduction into *zaildari* cases of matters contained in confidential police records which can only be known to the candidates by illicit means is undesirable and it is equally undesirable that the confidential reports of individual subordinate Officers of the Police Force should be discussed in open Court. The Collector in his capacity as District Magistrate is the head of the Police Force in his district and this fact by itself is a sufficient guarantee that an undesirable police record is not overlooked.[3]

Residence in the zail.

(*c*) **Residence in the zail.**—According to Rule 6 (*ii*) of the Land Revenue Rules a *zaildar* may be dismissed for any reason which would justify the dismissal of a headman of an estate. A *lambardar* may be dismissed if owing to absence from the estate, he is unable to discharge the duties of his office. Thus the general rule is that a candidate for zaildarship must be a resident of the zail. This rule, however, may be relaxed in exceptional cases.[4]

In *Risaldar Parduman Singh* v. *Mit Singh*[5] the Financial Commissioner observed.—"The fact that Parduman Singh is managing a

1. 1932 L. L. T. 124.
2. 3 P. W. R. 1907 (Rev.).
3. Nasrullah Khan *v.* Mohammad Nawaz Khan=(1941) 20 L. L. T. 41; Nazir Ahmad *v.* Chiragh Shah=(1939) 18 L. L. T. 39 affirmed.
4. See Gajjan Singh *v.* The Crown=1931 L. L. T, 6 (2).
5. 1923 L. L. T. 28.

restaurant at Ludhiana must detract from his influence in his own zail. Restaurant keepers are not likely to make good *zaildars*."

In *Captain Kabul Singh Bahadur* v. *Risaldar Nur Khan*[1] the fact of one candidate residing in the zail and of the other not living in the zail but going frequently to another place to attend to public duties was given weight.

The consequences of the acceptance by a zaildar, inamdar or lambardar of a colony grant subject to the condition of residence.—When a *zaildar*, *inamdar*, or *lambardar* accepts a colony grant subject to the condition of his residence in the colony, the Deputy Commissioner may—

(1) require him to vacate his office immediately, or

(2) under Land Revenue Rule 27 permit him to be absent from his circle or village for a period not exceeding one year and appoint a substitute to discharge his duties.

The second course should ordinarily be taken if it is considered expedient to keep the substitute, who probably be the successor, on trial. It must be distinctly understood that a residence condition, which has not been waived at the time of making the grant, must be fulfilled. The rural office-holder, who becomes a colonist subject to such a condition, has no right to retain his office. If he is permitted to do so for a time, this should ordinarily be done only for some reason connected with the convenience of the administration. He must vacate his office at the latest at the end of the year.[2]

(*d*) **Freedom from indebtedness.**—In *Faquir Mohammad* v. *Subedar Dalip Singh*[3] one of the candidates was admittedly indebted to the extent of Rs. 4,000 and he was passed over by the Collector and the Commissioner. The Financial Commissioner did not interfere with their concurrent finding. Freedom from indebtedness

(*e*) **Tribal representation.**—Meritorious efforts in recruitment for the Army and the fact of the candidate belonging to the predominant community are very important considerations in the appointment of a *zaildar*.[4] The *zaildar* appointed should be a *persona grata* to the people of the zail.[5] Tribal representation

One of the objects in appointing *zaildars* is to secure tribal representation of the chief agricultural classes in the zail.[6] Where two claimants to *zaildarship* are equally qualified and the question is of balancing the respective merits of both to the *zaildari*, the candidate who belongs to the tribe prevailing in the zail should be preferred.[7] Where a claimant represented the Jats in a zail and the Jats formed two-thirds of the agricultural population, *held*, that another claimant (an Awan) should not be preferred merely on the ground that every class of the community should have a fair chance or a turn of occupying this rural office.[8]

1. 1927 L. L. T. 35.
2. Financial Commissioner's Standing Order No. 21, para. 16, see also page 291 of the Colony Manual, Revised Edition.
3. 1932 L. L. T. 124.
4. Ch. Qasim Khan *v.* Ch. Dial Singh=1930 L. L. T. 33.
5. Ch. Ata Ilahi *v.* Ch. Fateh Dad Khan=1929 L. L. T. 13.
6. 13 P. R 1886 (Rev.).
7. Jafar Khan *v.* Raja Azimullah Khan=43 P. L. R. 1908 ; 2 P. W. R. 1907 (Rev.).
8. 1 P. R. 1900 (Rev.).

But a *lambardar* candidate is entitled to the office of *zaildar* in preference to a *non-lambardar* candidate even if the latter belongs to the predominant tribe in the zail. It is not an inflexible rule that the *zaildar* must necessarily belong to the largest and most predominant tribe in the zail. This is one of several matters only which have to be taken into account in making an appointment of *zaildar*.[1]

It has, however, been held in *Maqbul Ahmad* v. *Mirza Khan*[2] that the extent to which a candidate is by race or otherwise fitted to represent the majority of agriculturists in the zail is only one of the four items specified in Land Revenue Rule 5, as matters which have among others to be considered and it cannot be said that it is the most important of them all.

Religion.

Consideration of religion.—Religion is not one of the considerations for the appointment of a *zaildar* mentioned in Land Revenue Rule No. 5 (*d*).[3] There is nothing in the rules justifying one candidate over another on religious as distinct from tribal ground. In the appointment of a *zaildar* it is inadvisable to take into consideration the communal question or rather to give the communal question an undue weight. The following remarks of the Financial Commissioner in *Kalyan Singh* v. *Haider*[4] are worth perusal :—

"Tribal influence.—The rival is a Hindu *Taga* and the *sufedposh* a Mohammadan *Taga*, and there are 12 villages of Hindu *Tagas* and 5 of Mohammadan and past Collectors have said that the *zaildar* should, if possible, be a Hindu *Taga*. But as the Commissioner points out 5 villages represent a strong minority. And there is another point not generally noticed. The rule says nothing about religion, but mentions tribe only. That is why I am inclined to doubt Sir John Maynard's ruling in case 33 of 1918-19 quoted above as imparting a *ratio decidendi* not in the rule. And *qua Taga*, the Mohammadan is as representative as the Hindu. I do not regard this as a regrettable omission in the rule. On the contrary I believe that there is between members of the same tribe, whether Hindu or Mohammadan, when they are let alone by outside propagandists, a definite solidarity which the rule rightly recognises, and which we should beware of weakening by importing religious distinctions."

It has been held in *Niaz Mohammad Khah* v. *Barisal Singh*[5] that undue weight should not be given to the communal question even if religious, as distinguished from tribal considerations, are deemed to be included "among other matters" left unspecified in the Land Revenue Rule 5.

Note.—In case 33 of 1918-19 the Financial Commissioner found that qualifications under Rule 5 (*a*) and 5 (*b*) were equal and decided the case on the ground that the apointment of a Hindu in a predominantly Mohammadan *zail* was a course to be avoided if possible.[6]

Age.

(*f*) **Age.**—It has been held that it is certainly not wise, save in very exceptional circumstances, to appoint for the first time an *inamkhor* or *zaildar* whose age is 60 or more.[7]

1. Bogha *v.* Ratan Singh=(1942) 21 L. L. T. 19.
2. (1941) 20 L. L. T. 49.
3. Khan Mohd. *v.* Gurdit Singh=1932 L. L. T. 108.
4. 1928 L. L. T. 33.
5. 1937 L. L. T. 21.
6. Quoted in 1928 L. L. T. 33
7. Lt. Malik Abbas Khan *v.* Ghulam Haider=(1940) 19 L. L. T. 25.

Only factors relating to the zail to be considered.—It is to be carefully noted that only the factors relating to the zail in question are to be considered with respect to matters pointed out above. Thus the Financial Commissioner remarked in *Ch. Amir Singh* v. *Pandit Rishi Parkash.*[1]—"I think that it is irrelevant to bring into account the fact that Gaur Brahmins have not been appointed *zaildars* in other zails of the district or the fact that some rewards are due to Gaur Brahmins for their loyal services during the war. We have to consider the question of this zail alone in this case and not the whole district."

APPOINTMENT OF MINOR.

Appointment of minor.

[2]**Land Revenue Rule 7.**—When the office of a zaildar has been vacated, a successor shall be appointed in accordance with rule 5, provided that if the only suitable candidate for the appointment is a minor, the Collector may leave the appointment vacant until the said candidate comes of age, or may appoint the said minor to the vacant office with a substitute to discharge the duties attached to it. Appointment of a substitute under this rule shall be subject to the provisions of rules 27 to 30 inclusive.

It sometimes happens that the only suitable candidate is a minor. It may be found, especially in the hills, that to take the *zaildar* from any family but one involves a breaking up of old ties and a weakening of the means Government has of influencing the people. In such a case, if the representative of the family is a minor, one of two courses may be followed. The minor may be made *zaildar*, and a substitute may be appointed to discharge during his nonage the duties of the office, or, if it is thought expedient, the post may be left unfilled for a time (*Land Administration Manual, para.* 344).

Under the old Act it was held that the office of *zaildar* was not hereditary and the holder of the post should always be able to perform the duties of the office in person and not by deputy, and that a minor was not eligible for the post as he could not perform the duties in person.[3] But Rule 7 quoted above now provides for the appointment of a minor as *zaildar* provided he is the only suitable candidate for the post. The expression "the only suitable candidate," however, is not equivalent to "the most suitable candidate."[4]

Under rule 7 above a minor can only be appointed *zaildar* if he is the only suitable candidate. Where, however, there is a rival candidate who has been approved as suitable by an adjudication of the Commissioner under rule 4, appointment of a minor is against the rule.[5]

For purposes of Land Revenue Rule 7 the word "candidate" means a person who has offered himself for the appointment and is before the Collector at the time of passing of his order. This rule means

1. 1927 L. L. T. 39.
2. Land Administration Acts, Vol. II, page 29 ; Financial Commissioner's Notification No. 142, dated 9th November 1909, under section 28 of the Act.
3. 1 P. R. 1886 (Rev) : See also 2 P. W. R. 1907 (Rev).
4. Allah Baksh *v.* Hakam Khan=1928 L L. T. 23. See also Karam Shah *v.* Shahamad=1933 P C. L. 60 (Rev).
5. Faqir Mohd *v.* Subedar Dalip Singh=1932 L. L. T. 124.

that if of the adult candidates for *zaildarship* before the Collector none is suitable, the Collector may appoint a minor. The rule does not mean that if of the adult candidates before the Collector none is suitable the Collector should before appointing a minor, search for a suitable adult who will put himself forward. Thus the position amounts to this. When of the candidates before the Collector none is suitable the case must necessarily be re-opened. But when any candidate is suitable and it is not found that the candidature of any person was improperly obstructed or withheld from want of advertisement or other cause the appointment must be made from the candidates before the Collector, and when the only suitable candidate is a minor, the Collector has only two alternatives namely to appoint the minor or to keep the post vacant till the minor comes of age.[1]

Where the Financial Commissioner came to the conclusion that the minor was the only suitable candidate he appointed him as *zaildar* in preference to other candidates.[2]

Pleader.

Appointment of Pleader as zaidar.—In *Ghulam Niaz Khan* v. *Achal Singh*[3] the Financial Commissioner laid down the principle that "the duties of these two honourable offices, Zaildar and Pleader, cannot properly be discharged simultaneously by one person". This judgment has been considered in *Harbans Singh* v. *Sardar Gajjan Singh*[4] and held that whether a pleader is or is not suitable to be appointed a *zaildar* is a question to be dealt with according to the circumstances of each case. In that case a Pleader was appointed *zaildar* in preference to another candidate on the ground that he by his exceptional services during the war had given a convincing demonstration that he was not unable to discharge such duties.

Honorary Magistrate.

Honorary Magistrate as zaildar.—Where a candidate is otherwise fit for being appointed as a *zaildar*, the fact of his being Honorary Magistrate cannot be regarded as a disqualification. Every case must be decided on its merits.[5]

Sufedposh.

Right of sufedposh to be appointed zaildar.—With respect to the claim of a *sufedposh* to be appointed a *zaildar*, the Financial Commissioner observed in *Kot Daffadar Ahmad Khan* v. *Nawab Khan*[6] as follows:—

"It often happens that a man is appointed to be a *sufedposh* and has to work hard in that appointment, and because he has grown old in Government service, he is subsequently deprived of the more highly prized appointment of *zaildar* which becomes vacant subsequently. In order to avoid this state of things it has always been my custom to insist, as far as possible, on the promotion of existing *sufedposhes* and, unless there is anything in the character of a *sufedposh* which would preclude his appointment, would undoubtedly promote a man rather than bring in one from outside."

Similarly, it has been held in *Ch. Amir Singh* v. *Pandit Rishi Parkash*[7] that whenever an opportunity arises for promoting a *sufedposh*

1. Malkiat Singh *v.* Waryam Singh=1933 L.L.T. 61.
2. Ch. Ata Ilahi *v.* Ch. Fateh Dad Khan=1929 L.L.T. 13.
3. 3 P.R. 1887 (Rev.).
4. 1922 L.L.T. 1 ; see also Kala Singh *v.* Ch. Mohd. Amin=appeal No. 376 of 1325-26 in which Pleader was appointed.
5. Mian Rajinder Singh *v.* Pandit Narain Chand=1931 L.L.T. 4.
6. 1923 L.L.T 19=1923 P.C. L. 7 (Rev.).
7. 1927 L L.T. 39 ; See also Badlu Ram *v.* Dani Ram=1927 L.L.T. 15.

to be a *zaildar* it is well that that opportunity should be taken. In *Ghulam Rasul* v. *Khushal Chand*[1] the Deputy Commissioner appointed a person a *zaildar* who was not a *lambardar* as among *lambardars* there was no suitable candidate. The Commissioner cancelled the appointment and re-elected a *sufedposh*. The Financial Commissioner confirmed the order, although the report of the police official had depicted the *sufedposh* in very lurid colours but it appeared that he had many enemies and description of his character appeared to be exaggerated. All the previous decisions on this point were considered in *Kalyan Singh* v. *Haidar*[2] and the following principles laid down—

" I, therefore, cannot find in the position of a *sufedposh* anything on which to base a principle opposed to that which deprecates reversing the Collector's decision. All that appears is that good service as a *sufedposh* is to be given weight in considering personal services and that the *sufedposh* should be appointed when other things are equal or nearly equal, and this is a principle subject to the general rule that the Collector's decision ought not to be upset. That is to say, the Collector's decision passing over a *sufedposh* will not be upset unless there is such an approach to equality between the rivals in other matters as makes it clear that he has failed to give proper weight to this very important consideration." In *Khan Mohammad* v. *Gurdit Singh*[3] it was observed that when the claims of the *sufedposh* and *sarbrah* conflict, the *sarbrah* should not be regarded as having a superior claim so as to justify departing from the Collector's choice. In *Narain Singh* v. *Abdul Majid*,[4] again, it was ruled that where in appointment of a *zaildar* the Collector has preferred a *sarbrah zaildar* to a *sufedposh* and that decision has been upheld in appeal by the Commissioner, the Financial Commissioner would not interfere with it in revision as there was no general superiority attaching to a *sufedposh* over a *sarbrah* which would justify such interference.

In *zaildari* cases there is always a strong leaning towards the claims of *sufedposhes*.[5]

It is entirely in accordance with the practice of the Financial Commissioner's Court that a *sufedposh* who has rendered meritorious services in the minor office should receive promotion to the post of *zaildar*.[6]

Weight of the Collector's choice.—The principles governing the appointment of a *zaildar* are stated clearly in the judgment reported as *Kalyan Singh* v. *Haidar*.[7] The main principle is that an appointment to the post of *zaildar* or *sufedposh* by Collectors should, as far as possible, be upheld on appeal both because the local officer is presumed to have a better knowledge of the merits of the respective candidates for the appointment and also because it is most undesirable to encourage appeals against orders in this class of cases. In that judgment a

1. 1925 L.L.T. 10.
2. 1928 L.L.T. 33.
3. 1932 L.L.T. 108.
4. 1933 L.L.T. 61.
5. Subedar Major Harnam Singh *v.* Jaswant Singh=1931 L. L. T. 35.
6. Maqbul Ahmad *v.* Mirza Khan=(1941) 20 L. L. T. 49.
7. 1928 L. L. T. 33 ; See also *1933 L L. T. 19 ; 1923 L. L. T. 19 ;* Ram Chand *v.* Chhangan Singh=1933 P. C. L. 15 (Rev.) ; Maqbul Ahmad *v.* Mirza Khan=(1941) 20 L. L. T. 49.

large number of cases were referred to in which this principle had been upheld and a detailed examination of the practice of the Court of the Financial Commissioner was made to ascertain the extent to which these principles had been departed from. The conclusion arrived at was that apart from any question of positive disqualification attaching to the candidate chosen by the Collector or legal defect in his order there was no recent authority for reversing his decision.

Normally the Collector's choice in appointing a *zaildar* or a *sufedposh* should not be interfered with even though the appellant authority thinks that his choice is not the best.[1] The practice of the Financial Commissioners which has existed for many years is that the Collector's order in *zaildari* cases should be maintained unless there has been something flagrantly perverse in his estimation of the merits of rival candidates arrived at after all facts have been weighed.[2] Similarly, it has been held in *Badlu Ram* v. *Dani Ram*[3] that even though the Financial Commissioner and the Commissioner are of a different opinion from that of the Collector ordinarily they will not interfere with the discretion of the Collector in the appointment of *zaildars*.

The practice of the Financial Commissioners is that normally the Collector's choice in appointing a *zaildar* or *sufedposh* should not be interfered with even though the appellate authority thinks that his choice is not the best, and that apart from any question of positive disqualification attaching to the candidate chosen by the Collector, or legal defect in the Collector's order, there is no recent authority for reversing the Collector's decision except on the ground that a rival has shown approved service as acting in the appointment to be filled or, if the appointment is *zaildari*, as *inamdar* or *sufedposh*. The bare fact that there are some unfavourable and unsubstantiated references in the *zimnis* of cases under investigation by the police and there was an adverse remark against him by the previous Collector in an enquiry against his father does not amount to a positive disqualification within the meaning of this rule.[4]

Where the Financial Commissioner has upheld the decision of a Commissioner reversing on appeal the decision of Collector on the ground that the Collector was seriously in error, it must be assumed that the serious error made by the Collector was an error in interpreting the practice of the Financial Commissioner stated above (*ibid*).

Where the Collector has failed to exercise his duty of making a choice in the appointment of a *zaildar*, the duty naturally devolves on the Commissioner and where the latter has made a choice, it should not be interfered with by the Financial Commissioner for the same reasons as prevent the Commissioner from interfering with the Collector's choice.[5] Thus where the Collector does not make any selection but only appoints a person on hereditary grounds, the Commissioner in setting aside the Collector's order does not override his choice but simply makes good his failure to make a choice.[6]

1. Kalyan Singh *v.* Haidar=1928 L. L. T. 33; see also Mehar Dass *v.* Sucheta=1933 P. C. L. 38 (Rev.).
2. Mehr Singh *v.* Fateh Chand=1931 L. L. T. 39.
3. 1927 L. L. T. 15.
4. Nazir Ahmad *v.* Chiragh Shah=1939 L. L. T. 39; 1928 L. L. T. 33 and 1935 L. L. T. 29 referred to.
5. Sayyed Riaz Hussain Shah *v.* Ch. Ahmad Yar Khan=1932 L. L. T. 93.
6. *Ibid.*

Following the above principles, it has been held that when other things are equal or nearly equal the Collector's choice should not be upset unless the rival candidate has done good service either as a *sufedposh* or as acting *zaildar*. When the claims of the *sufedposh* and *sarbrah zaildar* conflict, the *sarbrah* should not be regarded as having a superior claim so as to justify departing from the Collector's choice.[1] Similarly, where in the appointment of a *zaildar* the Collector has preferred a *sarbrah zaildar* to a *sufedposh* and that decision has been upheld in appeal by the Commissioner, the Financial Commissioner will not interfere with it in revision.[2]

It is thus admitted law that in *sufedposhi* and *zaildari* cases Collector's orders should, as far as possible, be maintained. This does not of course imply that where they have made obvious mistakes their orders should be upheld.[3] The rule of preference to Collector's choice applies only to cases in which only the personal qualifications of the candidates for the duties of the post are to be considered. Where, however, the appointment of the Collector cuts at the root of the principle underlying the rules, namely, that the *zaildar* should be a representative of the hereditary owner of the zail by virtue (among other things) of being one of them, it cannot be allowed to stand.[4]

Similarly, where the Collector does not in fact exercise an unrestricted choice between individual candidates and select one of them on his merits but his choice is based on the conclusion that no candidate who does not belong to the predominating tribe in the zail can be considered, his choice is liable to interference by higher authorities.[5]

The two main principles laid down by the Financial Commissioners governing the appointment of *zaildars* are—

(*i*) that normally the choice of the Collector should not be interfered with, and

(*ii*) that other things being equal the first claim to the office of *zaildar* is that of a person already holding the office of *sufedposh* in the zail.

Where the Commissioner finds that the Collector is not justified in passing over a *sufedposh* with a good record, interference with the choice of the Collector is justifiable.[6]

Improper behaviour before the Deputy Commissioner not amounting to an offence was held to afford a good ground for setting aside in appeal an otherwise reasonable and proper appointment.[7] **Misconduct.**

Appeals in *zaildari* cases should not be encouraged and the Deputy Commissioner's decision in all cases, as far as possible, be upheld,[8] both because the local officer is presumed to have better knowledge of the merits of the respective condidates for the appointment and also

1. Kalyan Singh *v.* Haidar=1928 L. L. T. 33.
2. Narain Singh v. Abdul Majid=1933 L. L. T. 19; see also 1932 L. L. T. 38.
3. Jamna Ram *v.* Sulaiman Khan=1930 L. L. T. 5 (1).
4. Randhir Singh *v.* Jalal Din=1932 L. L. T. 38.
5. Maqbul Ahmed *v.* Mirza Khan=(1941) 20 L. L. T. 49.
6. Didar Singh *v.* Balwant Singh=(1941) 20 L. L. T. 148.
7. 5 P. R. 1890 (Rev.).
8. Atar Singh *v.* Ganga Singh=1 P R. 1913 (Rev.)=146 P. L. R. 1913; 8 P. R. 1892 (Rev.); 5 P. R. 1890 (Rev.); 6 P. R. 1887 (Rev.); 84 P. L. R. 1908; 1923 L. L. T. 19; 1923 L. L. T. 10; 1927 L. L. T. 15.

because it is most undesirable to encourage appeals against orders in this class of cases.[1] It has been held that the duty of the Financial Commissioner in deciding appeals in *zaildari* cases is that the decision made by the Commissioner should be upheld unless the person he has chosen is either unfit or for some good reason ineligible or is manifestly very inferior to his rival.[2] Similarly, it has been held that the Commissioner should not ordinarily upset appointments to the post of *zaildar* made by the Deputy Commissioner unless very good reason for interference has been established.[3] It would need very strong reasons for the Financial Commissioner to set aside the appointment of a *zaildar* made by the Collector or the Commissioner.[4]

Where in a case of *zaildari* the Collector approved of one candidate and the Commissioner appointed another objecting to Collector's choice on merely technical grounds and neither of the two candidates seemed to be entirely satisfactory, *held*, that the best solution was to remand the case and to reconsider the claims of all the candidates.[5]

When the Collector has chosen a man for the appointment of *zaildar*, his decision should not be upset except on strong grounds. In cases of this kind it is inadvisable to take into consideration the communal question or rather to give the communal question undue weight.[6]

Taking of votes for appointments.

Election system.—(*i*) For the better determinatoin of the merits of contending candidates for a *zaildarship* in respect of the matters detailed in clauses (*c*) and (*d*) of Land Revenue Rule 5, the Collector may, if he considers that this course can be usefully resorted to, direct that the votes of the headmen of the circle be taken in respect of these candidates.

(*ii*) If the Collector directs that votes be taken, he shall take them himself at a place appointed by him for this purpose in the *zail* to which this enquiry relates. And when the result of the voting has been ascertained, it shall be taken into consideration along with the finding at which the Collector may himself arrive in respect of the matters specified in Land Revenue Rule 3.

(*iii*) In appointing *inamdars*, the votes of the headmen of the *zail*, ilaqa or other circle to which the inam is allotted, shall not he taken for the purpose of determining the merits of contending candidates, but this rule shall not prevent the Collector from ascertaining by show of hands which of two candidates has the greater local influence, if he thinks this course desirable.[7]

This course, though not suited for general application, may be usefully and appropriately adopted where there are two or more candidates of nearly equal merit. It may also be followed in other cases of a special nature the circumstances of which appear to demand it. Such cases will probably increase in number with the lapse of time. Care, however, should be taken that the special procedure for taking votes is not so

1. Rulia Singh *v.* Dharam Singh=1928 L. L. T. 30; Bagh Din *v.* Karam Dad=1928 L. L. T. 10.
2. 1 P. W. R. 1908 (Rev.)=84 P. L. R. 1908.
3. Parduman Singh *v.* Mit Singh=1928 L. L. T. 28.
4. Baj Singh *v.* Mushtaq Ahmad=1931 L. L. T. 34; see also 1931 L.L.T. 35; 1935 L. L. T. 24 over-ruling and 1931 L. L. T. 39 and approving 1928 L. L. T. 33.
5. Pir Baksh *v.* Yar Mohammad=1926 L. L. T. 8.
6. Kabul Singh Bahadur *v.* Risaldar Nur Khan=1927 L. L. T. 35.
7. Financial Commissioner's Standing Order No. 21, para. 3.

used as to encourage the idea that the post of *zaildar* is one dependent merely on popular favour, and not rather a distinction received from the representative of Government and in this connection it should be noted that the Deputy Commissioner is not bound to appoint the candidate who secures most votes (*Land Administration Manual, para.* 345).

The rule[1] for the appointment of *zaildar* before the present Act was as follows :—

"The selection of *zaildars* will be determined by (1) the votes of the headmen of the villages in their circle (zail) ; (2) personal fitness ; (3) services rendered to the State."

It was held under that rule that the results of the election alone could not, in any case, determine the appointment of the *zaildar*, and the combined result of the votes of the headmen of the circle, the personal fitness of the candidate, and the services rendered by him to the State, must be taken into account.[2] The rules as to appointment of *zaildar* do not imply that the election system would be followed with any precision. It is within the Deputy Commissioner's discretion to disregard the majority of votes, if personal fitness or services to the State more than counterbalance the greater popularity or influence evidenced by a majority in votes.[3] Votes should not be taken by the Tahsildar, but by the Deputy Commissioner or by one of his assistants specially deputed for the purpose, as far as possible in the *zail* itself and should only be taken once. The plan of calling for alternate votes is quite unnecessary and should not be resorted to.[4]

Majority of votes is not the sole determining factor in the appointment of a *zaildar*. It is one of the points which may be taken into consideration. *Prima facie* the man who obtains the largest number of votes is the man who has the greatest influence in the circle. Personal fitness consists of intelligence, good character and the possession of considerable stake in the circle.[5] In appointing *zaildars* every care should be taken to exclude men who by character and influence are not fitted to discharge properly the duties of the post and also those who are believed to have obtained votes in an improper manner.[6] Where votes are nearly equal and in all other respects the rival candidates stand to one another on a *par* the heir of the deceased *zaildar* is to be given preference.[7]

DISMISSAL OF ZAILDARS.

[8]**Land Revenue Rule 6.**—(*i*) A zaildar shall be dismissed when—

(*a*) he is sentenced to imprisonment for one year or upwards or to any heavier punishment ;

(*b*) he ceases to be a landowner in his zail ;

1. Barkley's Directions for Settlement Officers, Appendix IV, page 113.
2. Ali Mohammad *v.* Bura Mal=13 P. R. 1885 (Rev.).
3. Karam Singh *v.* Jawala Singh=8 P. R. 1880 (Rev.).
4. Narain Singh *v.* Hira Singh=6 P. R. 1885 (Rev.).
5. 4 P.R. 1886 (Rev.).
6. 15 P.R. 1886 (Rev.).
7. See 13 P.R. 1886 (Rev.) ; 5 P.R. 1902 (Rev.) ; 1.P.R. 1900 (Rev.).
8. Land Administration Acts, Vol. II, page 29, made under section 28 of the Act.

(*c*) his holding has been transferred, or the assessment thereof has been annulled, for an arrear of land revenue;

(*d*) he has mortgaged his holding and has delivered possession thereof to the mortgagee.

(*ii*) A zaildar may be dismissed for any reason which would justify the dismissal of a headman of an estate.

Sub-rule (*i*) corresponds with sub-rule (*i*) of Rule 16. The reasons which would justify the dismissal of a headman are mentioned in Rule 16 and may be referred to under the heading "dismissal of headmen." It is clear that the orders regulating the punishment and dismissal of *zaildars* are practically identical with the corresponding orders in the case of headmen (*Land Administration Manual, para.* 347).

Where a *zaildar* who was informed of a communal riot did not report them to the Deputy Commissioner when he met him, *held*, that the offence is rightly punishable under Land Revenue Rule 6 (*ii*) read with 16 (*ii*) (*d*).[1]

Old age.

Old age.—A *zaildar* when once appointed should only be removed from office for misconduct or neglect in his duties. Removal on account of old age or for disability caused by accident is a very harsh measure. In such cases he may be allowed to perform his duties through a *sarbrah* or deputy.[2] A *sufedposh* or a *zaildar* can be dismissed when owing to age he is unable to discharge the duties of his office under Land Revenue Rules 6 (*ii*) and 16 (*ii*) (c). In the same circumstances a substitute can be appointed to discharge his duties under Land Revenue Rule 27. It is not possible to lay down general principles as to the circumstances in which the adoption of one of these courses rather than the other is justified. The same principles apply in this matter as apply to the choice of a *zaildar*, namely, that the matter is one primarily for the decision of the Collector. The law plainly gives an option in the matter and from the fact that no hereditary claim is to be considered in making appointments of a *zaildar* or a *sufedposh* it is obvious that no *zaildar* or *sufedposh* is entitled to claim that his son or relative be appointed as *sarbrah*.[3]

In *Mohammad Ilahi* v. *Fazal Ilahi*[4] it has been held that when a *zaildar* is too old to perform personally the duties of his office the usual and proper course is for a substitute to be appointed. In *Sudh Singh* v. *The Crown*[5] it was found that the *zaildar* was old and incompetent and thoroughly lazy so much so that his *zaildari* book did not contain any entry for a number of years. It was held that it was not good to suspend him but the proper remedy was dismissal. In case No. 108 of 1925-26[6] the *zaildar* was dismissed because he was too old and incompetent to do the work: the Commissioner

1. Mirza Khan *v.* the Crown=1932 L.L.T. 19.
2. 13 P.R. 1886; 4 L.L.J. 416=1921 L. 336.
3. Jawala Singh *v.* the Crown=1932 L.L.T. 105.
4. 1922 L.L.T. 10.
5. 1927 L.L.T. 21.
6. See 1932 L.L.T. 105; See also case No. 31 of 1921-22 quoted in the same judgment.

thought that it was not a case far *sarbrah* and the Financial Commissioner rejected the revision application. In case No. 31 of 1921-22, the Commissioner accepted an appeal from the order dismissing the *zaildar* and restored the previous order appointing a substitute. The Financial Commissioner declined to consider an application for revision from a third party.

It may be noted that mere old age is not sufficient for dismissal of a *zaildar* or *sufedposh*; it must be accompanied by incompetency or neglect of duty.

Procedure for dismissal.

Procedure to be followed in dismissing zaildars and sufed-poshes.—Before a *zaildar* is dismissed a separate enquiry should be instituted, such evidence as may be necessary may be taken and full opportunity should be allowed to the person accused to clear his character and to show cause why he should not be punished executively.[1] The same principle applies to the dismissal of *sufedposhes*.[2] The Collector is not competent to dispense with the procedure simply because he thinks that *prima facie* the case is a strong one.[3] Similarly, it has been held in *Ujagar Singh* v. *the Crown*,[4] that before dismissing a *sufedposh* it is necessary that he should be given an opportunity to defend himself. Failure to do so is a material irregularity justifying interference in revision. A *zaildar* should not be dismissed for a fault of which no charge has been framed against him.[5] In a judgment of a Sessions Court, the Sessions Judge recorded his opinion that a *zaildar* and a *lambardar* were unfitted for their offices. The Sessions Judge had neither of the men before him either as an accused person, or witness, or otherwise. The Collector on a perusal of the judgment of the Sessions Court, dismissed the two men from their respective offices; and the Commissionor upheld the order on appeal. It was held by the Financial Commissioner that the *obiter dictum* of the Sessions Judge did not exonerate the Collector from making a separate inquiry and giving opportunity to the officials in question to defend their conduct.[6]

As regards the dismissal of village officers it has been ruled that the Financial Commissioner would properly interfere if there had been such a denial of natural justice as would be involved in dismissing a man without hearing him or if the offence for which he had been dismissed was not one of those which under the Land Revenue Rules justify dismissal. But where there is no such material irregularity or manifest illegality, the Financial Commissioner should be very reluctant to upset a concurrent finding of fact, but where the facts are proved or admitted and the only question is one of the severity of the sentence, it would normally be difficult to override a concurrent opinion that the man's delinquence makes him unfit to remain a village officer.[7]

In an appeal from an order suspending a *zaildar* for setting aside of such suspension it is competent to the Financial Commissioner to dismiss the *zaildar* out-right (1927 L.L.T. 21).

1. 11 P.R. 1891 (Rev.).
2. Jawahar Singh *v.* the Crown=1932 L.L.T. 100 following 11 P.R. 1891 (Rev.).
3. Ibid.
4. 1931 L. L. T. 50 ; See also Surta *v.* Amin-ud-Din=2 P. R. 1891 (Rev.).
5. Malik Ahmad Yar Khan *v.* the Crown=1929 L.L.T. 84.
6. 11 P.R. 1891 (Rev).
7. Mirza Khan *v.* the Crown=1932 L.L.T. 19.

Resignation by zaildars.—The Land Revenue Rules do not apparently contemplate, at all events they do not expressly mention, resignation of his office by a *zaildar*, but there is nothing to preclude an unconditional resignation, though a resignation conditional on the succession of a particular person designated by the resigning *zaildar* is obviously opposed to the spirit of the rules, regulating the succesion to *zaildars*.[1] Under such circumstances it is better to refuse resignation and to allow the son to continue *sarbrah* during the father's life.[2]

Appointment of successors and substitutes.—See Land Revenue Rule 7 and Land Revenue Rules 27 to 30 *infra*.

Appeal—dismissal of zaildar by Collector—re-instatement on appeal by Commissioner—second appeal by rival candidate—competency of.—An appellate order by Commissioner re-instating a *zaildar* dismissed by the Collector is not open to appeal by a rival candidate.[3]

DUTIES OF ZAILDARS.

[4]Land Revenue Rule 9.—

The duties of zaildars are—

(*i*) to report heinous crime to the police and magistrate, to bring to their notice the presence in his *zail* of persons of notoriously bad livelihood, and to assist in the investigation and prevention of offences and in arresting criminals ;

(*ii*) to see that the headmen, chief headmen and patwaris of the zail perform their duties properly: provided that the zaildar must not personally interfere in the performance of their duties by these officials except under directions from a competent officer ;

(*iii*) to render such assistance in the work of survey, crop inspection, preparation of records and assessments, or other branches of revenue administration within the zail as the Collector may require ;

(*iv*) to report any repairs necessary to Government buildings, roads or boundary marks within the zail ;

(*v*) to notify in the estates of the zail all orders of Government communicated to him for that purpose, and to obey all orders, which required personal obedience from himself ;

1. Mohammad Ilahi *v.* Fazal Ilahi=1922 L.L.T. 10.
2. Ibid.
3. Subedar Sultan Singh *v.* Narsingh Das,=(1940) 19 L.L.T. 17.
4. Land Administration Acts, Vol. II, page 29, made under section 28 of the Act.

(*vi*) to exert his influence to secure within the zail prompt obedience to all orders of Government, and to abstain from interference with cases pending in the law Courts except under orders from the proper authority ;

(*vii*) to assist Government officers in the execution of their duties, to supply them to the best of his ability with any information they may require, and to attend on them when they visit the zail.

(*viii*) *Absence from his circle shall be no defence to a charge of neglect of duty against a *zaildar*, if the absence extended over a period of 14 days and if previous sanction in writing to it had not been obtained from the Tahsildar.

The duties of the *zaildars* are set forth in the *sanads* which they receive on appointment. Their functions with regard to crime are within their larger spheres similar to those of headmen within their villages. They are of very great importance, but this is not the place to describe them. Like *lambardars* they are bound to aid in all sorts of revenue work, and to report when Government buildings, roads or boundary works are out of repair. When called on to do so they notify throughout their *zail* all Government orders and use their personal influence to secure prompt compliance with them. While abstaining from personal interference with the work of *lambardars* and *patwaris*, it is their duty to see that they perform it properly, and to inform the authorities of any failure to do so. Forbidden to intermeddle of their own motion with cases pending in the law Courts, they can sometimes be employed with advantage as conciliators, or in making preliminary enquiries into criminal complaints, which appear to be probably the exaggerated reflections of petty village or family quarrels. It is incumbent on *zaildars* "to see that the headmen.....of the *zail* perform their duties properly," including of course the duty of paying in land revenue promptly. But a discreet use should be made of the rule, and *zaildars* ought not to be employed as if they were peons. More especially they should neither be ordered themselves to collect any sums due to Government nor permitted to take land revenue collected by the *lambardars* to the tahsil (*Land Administration Manual, para.* 336).

Duty of attendance on officers visiting their zails.

They must attend on Government officers who pass through their *zails*. This is a duty which is usually cheerfully performed, and which should always be enforced. A Deputy Commissioner should try to see all his *zaildars*, at least once a year in or their near *zails*, and should encourage them to visit him from time to time at headquarters. If they find that the district officer talks freely to them on matters of local interest, and encourages a frank expression of their views, they are sure to value these opportunities of meeting him (*Land Administration Manual, para.* 337).

*Financial Commissioner's Notification No. 394—R, dated 9th February 1931.

PUNISHMENT FOR NEGLECT OF DUTIES.

[1]**Land Revenue Rule 25.**—(*i*) Where a *zaildar*, *inamdar*, headman or chief headman commits a breach of or neglects the duties imposed on him by these rules or by any other law for the time being in force, the Collector may by order direct—

(*a*) that the emoluments of this office be withheld and forfeited to Government for a term not exceeding one year; or

(*b*) that he be suspended from office for a term not exceeding one year.

(*ii*) In a case of suspension, a substitute shall or shall not be appointed, as in the circumstances of the case the Collector shall deem necessary.

Inamdars or Sufedposhes.

In many districts it has been thought expedient to supplement the *zaildari* agency by setting up a class of *inamdars* or *sufedposhes*. The services required of an *inamdar* are within his own sphere of the same type as those rendered by a *zaildar*, but he receives a much smaller *inam*, and has no defined group of estates put under his charge. He should clearly understand that he is bound to assist in every possible way the *zaildar* in whose *zail* he resides. Occasionally services of a special kind are required by the condition on which the *inam* was originally granted. The orders regarding appointment, loss of office and succession are the same for *inamdars* and *zaildars*, subject, in the case of former, to any special conditions imposed by Government when the *inam* was first granted. In some districts, *e.g.*, Jhelum and Shahpur, there are no *zaildars*. The *inamdars*, called some times *ilaqadars* or *halkadars*, perform all the duties of *zaildars* (*Land Administration Manual*, *para*. 346).

APPOINTMENT AND DISMISSAL OF INAMDARS.

[2]**Land Revenue Rule 8.**—Subject to any conditions and limitations expressly made by Government when granting an inam, appointments to the office of inamdar shall be made, the office shall be vacated, and successions to vacancies shall be filled up as nearly as may be in the manner provided in the rules relating to *zaildars*.

Thus the same principles apply to the appointing of a *sufedposh* as apply to the appointment of a *zaildar*. It is most unsuitable to appoint as *sufedposh* a person who is not even a resident of the district and who does not represent the majority of the landowners of the zail.[3] The

1. Land Administration Acts, Vol. II, page 37; made under section 28 of the Act.

2. Land Administration Acts, Vol. II, page 29; made under section 28 of the Act.

3. Ch. Bhagwan Singh *v.* Jam Ghulam Rasul=1928 L. L. T. (1).

general rule that a candidate for *sufedposh* must be a resident of the zail may, however, be relaxed in exceptional cases.[1]

It is undesirable to appoint as *sufedposh* a Government servant with 15 or 20 years service still to run since he cannot consequently in any circumstances take office for that period, and the fact that a competent substitute is available does not affect the case in principle.[2]

A candidate who is not a *lambardar* but whose candidature for the appointment of *sufedposh* has been sanctioned by the Commissioner is exactly on the same footing as if he were a *lambardar*,[3] and if he is not a landowner in the zail, can cure the defect by acquiring land before the order appointing him *sufedposh* is made.[4]

A person whose financial position is not satisfactory is not fit for the post of a *sufedposh*.[5] Similarly, the appointment as *sufedposh* of the brother of the *zaildar* in the same zail is generally speaking most undesirable.[6]

The candidate's father's services may be taken into consideration where they have been considerable but it is not to be regarded as a ruling fact in making the appointment.[7] All the circumstances in favour of rival candidates have to be considered.[8]

Dismissal of sufedposh.

It has been held in *Amarjit Singh* v. *Indar Singh*[9] that a Deputy Commissioner should not dismiss a *sufedposh* with effect from three years previously. Where, however, no appeal is preferred from such order the dismissal becomes final, but not from 3 years previously but from the date of the order. Nor can it be permitted that Jagirdars who are consulted in appointments as a matter of courtsey usurp the power of appointment and dismissal.

Ilaqadar—dismissal on account of conviction—hereditary claimant under influence of dismissed ilaqadar passed over.— Where an *ilaqadar* has been dismissed on account of his conviction for criminal offence, *e.g.*, cheating, the claims of the person entitled to the appointment on hereditary grounds may be passed over if it is found that he is under the influence of the dismissed *ilaqadar* even though there is nothing personally against his character.[10]

Interference with collector's choice.

Collector's choice should not ordinarily be interfered with.— Just as in the case of appointment of *zaildars* Collector's choice should not ordinarily be interfered with on appeal or revision Where there is a question as to the qualifications of two candidates for an appointment such as *sufedposh* or *zaildar*, the opinion of the local officer and the grounds he has given for selecting one particular candidate should receive full attention and his decision should not be reversed without strong cause.[11] In this case it was held that the opinion of the Commissioner that a particular candidate was too young to perform efficiently the duties which fall to him as *sufedposh* or

1. Gajjan Singh *v.* The Crown=1931 L. L. T. 6 (2).
2. Ghulam Qadir *v.* Ch. Lakhi Singh=1938 L. L. T. 21.
3. Akhtar Ali *v.* Laik Ram=1928 L. L. T. 12.
4. *Ibid.*
5. Abadan Khan *v.* Kahla Singh=1932 L.L.T. 160=1920 P. C. L. 11 (Rev.).
6. Subedar Ch. Ahmad Khan *v.* Raja Khan and another=1931 L. L. T. 11.
7. Nanak Singh *v.* Bhola Singh=1924 L. L. T. 13.
8. *Ibid.*
9. (1941) 20 L. L. T. 8.
10. Ch. Rahmat Khan *v.* Nur Alam=1938 L. L. T. 11.
11. Allah Bakhsh *v.* Jahan Khan=1927 L. L. T. 6.

zaildar was entitled to at least the same weight as, if not greater weight than, the opinion of the local officer. Where the Deputy Commissioner had appointed B as *sufedposh* of the *zail* while the Commissioner reversed this order and appointed G in his place, it was held that the Commissioner was not justified in reversing the well-considered order of the Deputy Commissioner on the mere grounds of the latter being the son of the deceased *sufedposh* and of his father having done good recruiting service.[1] Similarly, it has been held that it would be unfair to disqualify a candidate from the post of *sufedposh* merely on suspicion when he has been acquitted in a murder case [1933 P. C. L. 49 (Rev.)].

Thus appointment made to the post of *sufedposh* by Collector should as far as possible be upheld on appeal[2] though it does not imply that where they have made obvious mistakes their orders should be upheld.[3]

It has been held in *Lt. Malik Abbas Khan* v. *Ghulam Haider*[4] that it is not a correct statement of law that in *Inamkhori* cases the Commissioner should not interfere with the choice of Collector. While it is a fact that great weight attaches to the choice of the Collector, it does not mean that if he is wrong in his facts then a Commissioner cannot interfere. Thus where the Collector is wrong as to the age and influence of the candidate appointed by him, the Commissioner will be justified in interfering with his choice.

DUTIES OF INAMDARS

[5]**Land Revenue Rule 10.**—An inamdar shall perform such duties and render such assistance in the district administration as are required by the orders of Government under which the inam was first granted; and the Collector may also require him to perform any of the duties of a zaildar.

Appointment of substitutes.—*See Land Revenue Rules 27 to 30 infra.*

Punishment.—*See Land Revenue Rule 25, and 1920 P. C. L. 14 (Rev.).*

REMUNERATION OF ZAILDARS AND INAMDARS.

[6]**Land Revenue Rule 3.**—Ordinarily, save when other assignments exist for the remuneration of officers of these classes, the amount of the remuneration of the zaildars of a district (or any sub-division of the district to which the pro-

1. Balwant Singh *v.* Ganpat Rai=1928 L. L. T. 27.
2. Bagh Din *v.* Karam Dad=1928 L. L. T. 10.
3. Jamna Ram *v.* Sulaiman Khan=1930 L. L. T. 5 (1).
4. (1940) 19 L. L. T. 25.
5. Land Administration Acts, Vol II, page 30; made under section 28 of the Act.
6. *Ibid*, page 28.

posals may be confined) may amount to, but shall not exceed 1 per cent. of the land revenue of the district (or sub-division of the district) and similarly the amount of the remuneration of the inamdars may amount to, but shall not exceed ¼ per cent. of the land revenue.

CONTRIBUTION OF ASSIGNEES TO THE REMUNERATION OF ZAILDARS AND INAMDARS.

[1]**Land Revenue Rule 11.**—Every person to whom the land revenue of any land has been released or assigned, or who has redeemed or compounded for the same, shall, unless the Local Government directs otherwise in any particular case, be required to pay, as a contribution towards the remuneration of zaildars and inamdars appointed under these rules, a rate, at the same percentage, as near as may be, as that appropriated from the land revenue of the local area for the payment of zaildars and inamdars, but subject to a maximum of 1½ percent. on the land revenue which has been or, but for such release, assignment, redemption, or composition, would have been assessed on such land; and in any case in which land revenue is collected on account of such land by any Revenue Officer for any such person, such officer may deduct that percentage from the amount payable by him to that person.

Remuneration of zaildars and inamdars.

For the remuneration of *zaildars* a sum is set aside out of the land revenue amounting usually to 1 per cent. If *inamdars* as well as *zaildars* are appointed, an additional ¼ per cent. is allowed. This deduction is made from assigned, as well as from *khalsa* revenue. In the case of assigned revenue, the highest contribution that can legally be taken is 1½ per cent. But the usual rate is 1¼ per cent. as noted above, and more than ¼ per cent. should not be devoted to the remuneration of *inamdars* (*Land Administration Manual, para.* 338).

Methods of remuneration.—There are two ways of treating the sum devoted to the payment of *zaildars*. Each *zaildar* may receive 1 per cent. of the land revenue of his own circle in the form of an *inam* paid out of the *jama* of some particular estate, generally that in which he himself is headman. Thus if the zail is assessed at Rs. 24,900 the *inam* will be Rs. 249, and the *zaildar* will keep back that sum when the revenue of his village is paid to Government. A better plan is to have *inams* arranged in different grades, the total being equal to 1 per cent. of the land revenue of the *tahsil* or district (*Land Administration Manual, para.* 339).

GRADE SYSTEM

[1]**Land Revenue Rule 12.**—The following rules apply only in cases where the inams of zaildars or inamdars are graded—

Promotion and reduction of zaildars and inamdars where inams are graded.

1. Land Administration Acts, Vol. II, page 30.

(*i*) In any such case the Collector may—

(1) in filling up a vacancy give grade to grade promotion so far as places are available, and appoint a new nominee to the vacancy thus caused in the lowest grade ;

(2) reduce a zaildar or inamdar at any time to any lower grade for neglect of the duties imposed in him by these rules or by any other law for the time being in force, and if the reduction is permanent, give any grade to grade promotions in consequence of the vacancy thus caused.

(*ii*) Promotions shall not be made to fill places left temporarily vacant by temporary degradations.

(*iii*) No zaildar or inamdar shall ordinarily be promoted until he has served for a year in his grade.

(*iv*) A person appointed to fill a temporary vacancy shall ordinarily receive the emoluments of the zaildar or inamdar whose place he fills.

Grade system.

Advantages of grade system.—The grade system gives the officer who fixes the limits of *zails* a much freer hand. It secures a fairer distribution when *zaildars* are first appointed for it by no means follows that the *zail* which yields the biggest revenue is either the largest in area or the most troublesome to manage. Above all, it enables the Deputy Commissioner to recognize good work by promoting deserving men on the occurrence of vacancies, and now and then to punish slackness by reducing a *Zaildar* to an inferior grade. In order to make the system effective, a *Zaildar* appointed to fill a vacancy should always be put in the lowest grade. Even where the plan of graded *inams* is in force, the *Zaildar* gets his pay in the shape of an *inam* out of the revenue of some village. The reason is that to Indian mind this seems a more honourable form of payment than the receipt of money from the *tahsil* treasury (*Land Administration Manual, para.* 340).

Inam first charge on revenue of village from which payable.—The *zaildar's inam* is a first charge on the revenue of the estate from which it is paid. Partial suspensions or remissions therefore do not affect the *zaildar* so long as the balance is large enough to cover his *inam.* If it is not, the deficiency should be made up to the *zaildar* from the revenue of some other village (*Land Administration Manual, para.* 341).

ORDERS WHICH RECEIVE CONFIRMATION BY THE COMMISSIONER.

[1]**Land Revenue Rule 13.**—(*i*) No order of a Collector—

(1) placing a zaildar or inamdar on first appointment in any but the lowest grade, or

1. Land Administration Acts, Vol. II, page 31, made under section 28 of the Act.

(2) promoting any zaildar or inamdar to any grade higher than the grade next above that in which he is placed when it is decided to promote him, or

(3) promoting a zaildar or inamdar before he has served for a year in his grade, or

(4) giving a substitute for a zaildar or inamdar emoluments other than those of the zaildar or inamdar whose place he fills,

shall take effect unless it is confirmed by the Commissioner.

(*ii*) When an application for confirmation of an order is made to a Commissioner under this rule he shall keep it pending until the period of limitation fixed for an appeal from the order has expired; and, if he confirms the order, he may direct that it shall take effect from the date on which it was made.

STANDING ORDER NO. 21.

Zaildars and Inamdars.

Official instructions.

1. Paragraphs 578 to 582 of the Settlement Manual give instructions as to the appointment of zaildars, the constitution of zails and the preparation of zail books.

Paragraphs 334 to 348 of the Land Administration Manual may also be consulted.

2. Directions as to the appointment, dismissal and duties of zaildars and inamdars are contained in Rules 1 to 30 under the Land Revenue Act.

*2. (*a*) In the event of a vacancy in the office of the zaildar or inamdar the Collector shall, unless he has any reason for reduction of the post fix a date by which applications with copies of certificates shall be made to the Tahsildar. The date shall be announced by being posted on the Tahsil notice board.

Note.—In *Bagh Din* v. *Karam Dad* (1928 L. L. T. 10), it has been held that a person who being properly qualified appears before the Collector and is admitted by him as a candidate may be appointed by him even though such person has not applied within the date appointed.

*2. (*b*) On the expiration of the period fixed the Tahsildar shall submit to the Revenue Assistant a statement in the Form Z (1) attached. He shall also submit separately a report on the respective merits of the candidates with respect to each of the four matters referred to in Land Revenue Rule 5 (*a*) to (*d*).

*2. (*c*) The Revenue Assistant shall forward the statement to the Collector adding his report on the respecitve merits of the candidates.

*2. (*d*) The Collector, on the receipt of the above report shall fix a date for the hearing of the case, the notice of which shall be served in the usual manner on all candidates. He shall, on the date fixed, after giving

*C. S. No. 918-S. O. Dated 12th September 1928.

an opportunity to all candidates to be heard, pass a self-contained order giving his reasons for the appointment of a candidate selected.

*2. (e) A copy may be granted of the tabular statement above referred to and of the Collector's order but no copies may be granted of other documents on it. The file, however, shall be open to inspection except in respect to police reports which shall be kept strictly confidential.

FORM Z (1)

In the case of a vacancy in the office of zaildars inamdars.

Name of the late Zaildar.....(son of).....
(caste).....(resident of).....(age).....
amount of..... fee Rs.....(reasons for the vacancy; death, dismissal, etc..... .....(date of vacancy).....

1	2	3	4	5	6	7	8	9	10
Serial No.	Description of candidates.				Whether lambardar or not; whether inamdar or whether he has worked as zaildar or inamdar.	Landed property of the candidate with Government Revenue— (a) in the zail. (b) outside the zail.	Whether literate.	Abstract of certificates.	Remarks as to tribal composition of zail showing number of villages and owners, land revenue paid and area owned by the principal tribes and sub-tribes.
	Name and father's name, Relationship if any with late or existing zaildar or inamdar.	Tribe and sub-tribe.	Residence.	Age.					

3. *Taking of votes for appointments* } *See page supra.*

Remuneration of zaildars.

4. When zaildars have been appointed in any district, tahsil or other local area, their remuneration shall be regulated in the following manner :—

(i) One per cent. of the land revenue, or such other percentage as the Local Government may fix, shall be appropriated for such remuneration.

*C. S. No. 913-S. O, dated 12th September 1928.

(*ii*) When a graded system of zaildars is in force in any district, tahsil or other local area, the zaildari fund shall be treated as one fund for the whole of such district, tahsil or local area, as the Local Government may direct in each case.

(*iii*) When the graded system is not in force the zaildar shall receive the proceeds of the percentage fixed under sub-section (*i*) in respect of all land revenue assessed in the actual circle of which he is zaildar.

(*iv*) The percentage or graded inam which a zaildar receives as remuneration shall be paid to him in the form of an assignment out of the land revenue of any estate in his zail which the Collector may appoint in this behalf; but when the whole of the revenue of the estate is suspended or remitted, or the total realizations are insufficient to remunerate the zaildar to the full extent of his inam, the balance due to him may be assigned from the revenue of any other estate in the district which may be appointed for the purpose by the Collector.

Method of payment of inam.

5. The assignment referred to in the preceding paragraph should be realized by the zaildar direct from the lambardar of the estate selected. The most convenient arrangement is to assign the inam in the village in which the zaildar is himself the lambardar, so that he may simply deduct his inam from the amount payable by him to Government.

Contribution of assignees to the pay of zaildars.

6. As regards exemption of revenue assignees from liability to contribute towards the emoluments of zaildars and inamdars every Settlement Officer should, in the course of his settlement, submit a report showing the extent to which exemptions should, in his opinion, be allowed, and the orders of Government will be taken on the report.

Under rule 11 of the Land Revenue Rules every assignee of land revenue is required to pay a contribution towards the remuneration of zaildars and inamdars, but Indian Military Officers who are awarded for distinguished services cash assignments of land revenue under the authority of the Government of India, Military Department, Resolution No. 867-B., dated the 27th February 1893, have been exempted from the payment of such contributions with effect from *rabi* 1920 [*vide* letter No. 9154 (Rev. and Agri.-Genl.), dated 23rd March 1920, from the Revenue Secretary to Government to the Senior Secretary to the Financial Commissioner].[1]

Amount of inam to be fixed.

7. When the land revenue of a zail in a district in which the zaildar is entitled to a percentage of the land revenue and by which inams are not graded, is wholly or partially fluctuating, the amount of the inam shall be the amount which the percentage might be expected to yield in an average year.

8. *Cancelled.*

Treatment of zaildar's remuneration during vacancy of the post.

9. When the post of zaildar is temporarily vacant the zaildar's remuneration should be placed in revenue deposit, whence the Tahsildar should on his own authority, either pay it out to the zaildar when appointed or credit it to Fines and Forfeitures, under 1-Land Revenue, as the case may be.

In no case are personal ledger accounts required for recording transactions connected with the remuneration of zaildars.

1. C.S. No. 1890-O., dated the 20th November, 1933.

Remuneration of inamdars.

10. The remuneration of an inamdar shall be paid to him out of the land revenue of any estate appointed by the Collector in this behalf in the zail or *ilaka* in which the inamdar holds office. When land revenue is suspended the same procedure for the payment of the inamdar's inam should be followed as has been laid down in the case of these zaildars.

Zail book.

11. When zaildars have been arranged a separate zail book should be prepared for each tahsil. At the beginning of each book a small map of the tahsil should be given showing village boundaries, limits of patwari circles, main tribes (by colours) and proposed zails. The book should be divided into as many sections as there are zails. Each section should begin with the necessary title followed by a map of the zail showing the same features as the map last described, but on a larger scale. To this should be added a statistical table in the form shown below. Thereafter sufficient blank space should be left for the memoranda required in the following paragraph. Separate blank pages must always be included for the entry of notes as to the zaildar's conduct or any other matters connected with the zail which the Deputy Commissioner thinks fit from time to time to record.

I-FORM OF STATISTICAL TABLE FOR EACH SECTION OF THE ZAIL BOOK.

Statistics of zail No.....Tahsil....., District.....

1	2	3	4	5	6	7	8	9	10	11	12	13
	Village.		Area in acres.				Detail of owners.					
Patwari circle.	Serial No.	Name.	Total.	Cultivated.	Of which irrigated.	Number of wells.	Tribe.	No. of owners.	No. of lambardars.	Approximate revenue paid by each tribe.	If tenants are an important class, note to what tribes they chiefly belong.	General remarks.
												(*e.g.*, prosperity of village; ease of revenue collection; absence or prevalence of crime; control and general good feeling.

Note.—The figures in columns 4 to 7 and 9 to 11 should be totalled for each column separately.

Memorandum regarding appointment.

12. When the first *zaildar* is appointed in a zail there shall be recorded, by the officer making the appointment, in the appropriate section of the zail books, a memorandum stating—

(*i*) the persons whose claims to the post were considered ;

(*ii*) the reasons for rejecting unsuccessful candidates ;

(*iii*) the name of the successful candidate and the reasons for preferring him.

Zail books ordered whenever there are zaildars.

13. If *zaildars* exist in any tract for which no zail book has been prepared, the Collector should prepare a zail book in accordance with the instructions given above.

Entries of changes in zaildars.

14. When a *zaildar* is appointed in succession to a previous incumbent, a memorardum must be made in the zail book by the officer making the appointment similar to that prescribed in the case of first appointments.

Sanad.

15. Every newly-appointed *zaildar* should receive a well-printed sanad of appointment in vernacular in the form below. The sanad should, when possible, be presented by the Commissioner in District or Divisional Darbar.

II.—Sanad of appointment for *Zaildar*

WHEREAS upon the { death / or removal / or retirement / or dsimissal } of son of , zaildar of circle , you son of , have been appointed zaildar of the aforesaid circle in succession to the aforesaid , son of : Now this sanad of appointment is given to you that you may keep it for future use and reference as occasion may require—

The duties of a zaildar are :—

(Here follows in the sanad a complete list as given in Land Revenue Rule 9 of the duties of a Zaildar).

16. *Procedure regarding Zaildars and Zamindars who receive colony grants.* } *See supra.*

17. }

18. *Zaildars* in common with *lambardars* and patwaris are recognised for the purpose of paragraph 354 of the Indian Posts and Telegraph Guide as Government officials and the bearing postage payable on official postal articles sent by them is the prepaid rate [*vide* letter No. 7931-C., dated 26th January 1902, from the Postmaster-General, Punjab, to the Revenue Secretary to Government, Punjab].

Zail books.

*19. Detailed instructions with regard to zail books kept by *zaildars* and *inamdars* will be found in paragraph 348 of the Land Administration Manual (*See below*).

20. It is important that unnecessary delays should not be allowed to occur in filling vacancies. The principles to be followed are the same as those prescribed for village headmen in paragraph 323-A of

*C. S. No. 1210-S. O, dated the 6th February 1932.

the Land Administration Manual. All cases should reach the Collector complete and ready for decision within one month of the date of the occurrence of the vacancy.

Zail books.—Wherever the *zaildari* agency exists, zail books should be maintained. One volume should ordinarily be kept for each tahsil, and should contain in a packet a map of the *tahsil* showing the zails concerned. The book should be of foolscape size, and a map of each zail should be bound into the packet in the proper place, together with statistical tables showing the information prescribed in the Financial Commissioner's Standing Order No. 21. Whenever a new *zaildar* is appointed, an abstract of the order passed by the Collector should be copied into the zail book, giving briefly the names of all the candidates, and the reasons why the Collector has selected or rejected them. The results of appeals should similarly be shown. Zail books.

Zail books should be treated as strictly confidential, and kept in the personal custody of the Collector. Copies of entries in the book should on no account be given either to the persons concerned or to anyone else. It will thus be possible for the Collector to record remarks in these books, expressing frankly his own opinion about the *zaildar* and various matters connected with the zail. These remarks will be of the greatest use to his successors. Ordinarily, the Collector should arrange to record a note once a year about each *zaildar* and *inamdar* so that the record may be kept up to date.

The books which are kept by the *zaildars* and *inamdars* are also official books, and should be provided at Government expense. They are not the property of the persons to whom they are given, and should be surrendered when these persons cease to hold the appointment for which the book has been granted to them. The book should contain a map of the zail and the statistical information required by Financial Commissioner's Standing Order No. 21. Where an *inamdar* has been made specially responsible for a portion of the zail, this should be noted in his book. An abstract of the order of appointment of the *zaildar* or *inamdar* should be copied into the book. The Collector should insist on seeing all such books at least once a year, and should make a point of recording an entry at least once a year in each book and of seeing that the Superintendent of Police has had a similar opportunity of recording his remarks. No entry should be made in the book by any officer below gazetted rank but Revenue Assistants, Excise Officers, Deputy Superintendents of Police, Assistant Registrars of Co-operative Societies and Deputy Directors of Agriculture, and, in horse breeding circles, District Remount Officers should be encouraged to make entries in these books.

Since the book is not the property of the *zaildar* or *inamdar*, it should be clearly explained to him that he should not paste into it any *sanads* or certificates, and that, if he wishes to preserve remarks recorded about him by officials for his own use, he should have copies of these made since at any time he may have to surrender the official book to the Collector (*Land Administration Manual, para.* 348).

See also para. 580 *of the Settlement Manual.*

Report to the Financial Commissioner.—The zail books, with a brief report on the nature of the arrangements made, (at the time of the constitution of zails) must be sent to the Commissioner, whose sanction to the limits proposed for each zail is required [Land Revenue Rule 1

(*ii*)]. It should also be reported for the orders of the Financial Commissioner how it is proposed to pay the *zaildar*, whether by giving to each man 1 per cent. of the revenue of his own zail or by a system of grade *inam*, amounting in the aggregate to a deduction of 1 per cent. from the revenue of the whole district (*Settlement Manual, para.* 581).

INAMS IN THE JHELUM DISTRICT

***Land Revenue Rule 30-C.**— In the case of the inams in the Jhelum District the foregoing rules (Rules 1 to 30 of the Land Revenue Rules) shall be read subject to the following modifications :—

1. The Jhelum inams are of three descriptions : —

(*a*) The inams sanctioned at the first Regular Settlement (Mr. Brandreth's) Register A.

(*b*) New inams sanctioned at the 3rd Regular Settlement (1895—1901) for *ilaqadars;* Register B.

(*c*) New inams sanctioned at the 3rd Regular Settlement for non-*ilaqadars;* Register C.

Register A Inams.

2. Register A inams are hereditary grants from Government conditional on the performance of all the duties of an inamdar under rule 10.

3. When a register A inam has been vacated, the appointment thereto shall, as far as possible, be made in the manner prescribed for lambardars by rule 17 (*ii*). If no suitable heir is thus forthcoming the appointment shall be made in the manner prescribed for zaildars under rules 4 and 5.

4. A register A inam may be confiscated or suspended under the provisions of rule 25, but it is not allowable to confiscate or suspend one inam to give its holder another of less value. No inam exceeding Rs. 100 in amount shall be confiscated without the previous sanction of the Commissioner.

5. When an inamdar dies the Collector has discretion to reduce the inam, but this should not be done, except for special reasons to be recorded in writing, when the eldest son succeeds, nor except in special cases when owing to the unfitness of the eldest son a younger son or grandson of the last holder succeeds. The power of reduction may be exercised more freely when the inam is given to a person who is not in the direct line of descent.

***Financial Commissioner's Notification No. 850-R, dated 27th February 1934 under section 28 of the Act.**

6. Savings and lapsed and forfeited inams are to be utilized for additions to register A inams anywhere in the district with a view to the ultimate introduction of a graded system. When inams are increased or reduced, the amount of the inam so altered should, as far as possible, amount to either Rs. 150, Rs. 125, Rs. 100 or Rs. 75. Such reductions and increases of inams are subject to confirmation by the Commissioner.

Register B Inams.

7. These correspond to zaildari allowances and have been sanctioned for ilaqadars who do not enjoy register A inams, and are graded at Rs. 150, Rs. 100, and Rs. 75. The numbers given at settlement in each grade may be increased for savings from register C inams, but not from register A inams. The amount sanctioned for register B at settlement was Rs. 3,275 of which Rs. 675 was for the Tallagang tahsil since transferred to the Attock district.

8. Register B inams are governed by the ordinary rules under the Land Revenue Act including (as they are graded) rules 12 and 13 and have been sanctioned for the term of settlement, but increases given from register C are for life only if this term is shorter (see rule 9 *infra*).

Register C Inams.

9. These correspond to sufedposhi inams ; they have been sanctioned for non-ilaqadars not enjoying register A inams, for life or for the period of settlement, whichever is shorter, to a deserving ilaqadar, whose inam appears to be too small, or to any other person of influence who is not an ilaqadar. The sanction of the Commissioner is not necessary when the proposed successor is the son of the deceased inamdar or a village headman in the same ilaqa.

10. These sufedposhi inams aggregated Rs. 815 which included Rs. 80 of the Tallagang tahsil, since transferred to the Attock district, and are graded Rs. 50, Rs. 40 and Rs. 30. Except for the special conditions given in rule 9 above, the Land Revenue Rules apply to them."

*30—D. At last settlement Government sanctioned in the Tallagang tahsil nine hereditary posts of zaildars and seven hereditary posts of inamdars. To these hereditary posts the foregoing general rules apply subject to the following modifications :—

(*i*) These hereditary inams are grants from Government conditional on the performance of all the

*Added by P. G. Not. No. 2110-R, dated the 3rd August, 1938.

duties of a zaildar or inamdar, under rule 9 or 10 respectively.

(*ii*) The inams being hereditary, rule 12 about promotion and reduction of zaildars shall apply subject to the limitation that no hereditary inam shall be paid less than the amount shown in the special register maintained by the Collector, Attock, in which the names of the special inamdar and the amounts of their fixed inams are shown.

(*iii*) When any such inam becomes vacant due to death, resignation or dismissal, a successor to that vacant inam shall be appointed as far as possible, in the manner prescribed for lambardars by rule 17 (*ii*).

(*iv*) If none of the heirs of the last incumbent who succeeded to his property is considered fit for succession to the hereditary inamdari the collector shall apply to the Commissioner for sanction to strike off that inam from the register of special inams. If the Commissioner accords this sanction, the Collector shall make an appointment in accordance with Rules 4, 5, 7 and 8. If the Commissioner does not agree to the proposal, the Collector shall proceed to appoint the senior most incumbent according to the rule of primogeniture whom he considers fit to be appointed.

VILLAGE HEADMEN

The institution of village headmen has already been described on page *supra*. They form a powerful non-official agency in revenue administration and the hereditary claim to the office, as we shall presently study, makes this office all the more important.

NUMBER AND APPOINTMENT OF HEADMEN.

[1]**Land Revenue Rule 14.** – (*i*) A sufficient number of headmen shall be appointed to every estate, and this number when once fixed shall not be increased except by the order of the Commissioner, nor be reduced except by the order of the Financial Commissioner.

(*ii*) If an estate or a considerable portion thereof is owned by Government, the headman may be appointed from among the tenants. In other estates he shall be appointed from among the landowners.

1. Land Administration Acts, Vol. II, page 31 ; made under section 28 of the Act.

(*iii*) The lessee of the revenue or produce of an uncultivated or forest estate owned by Government shall be during the currency of his lease the headman thereof.

(*iv*) In the Kangra district for the purposes of this rule the estate shall mean the *mauza, tappa, kothi* or other officially recognised revenue unit as the Collector, subject to the orders of the Commissioner, shall determine.

Rule A. I. under section 66 of the old Punjab Land Revenue Act, 1871 (XXXIII of 1871) provided —" When a summary or first Regular Settlement is to be made of an estate owned by several persons, one or more village headmen shall be appointed by the officer-in-charge of the Settlement as representatives of the proprietary body. The number should be as small as is compatible with the efficient performance of their duties and the representation of the various interests concerned, and no increase in the number sanctioned at Settlement should subsequently be allowed except under the special sanction of the Financial Commissioner. Where the proprietary body is numerous, a representative should, if possible, be appointed for each principal well-known sub-division of the estate. "

The existing *lambardari* arrangements in most villages were thus made when they were first brought under a regular settlement. It was often found that considerable number of the owners had in fact received a share of the *pachotra*, and that there were many claimants for the office of headman. The original arrangements can be recast and the number of headmen reduced with the sanction of the Financial Commissioner. When a re-adjustment of the *pachotra* is advisable for any reason, the Collector can take action under Land Revenue Rule 21 (*iv*) (*Land Administration Manual, para.* 311).

New appointments of headmen.

New appointments of headmen.—New appointments are now-a-days exceptional, save in the case of estates carved out of the Government waste. Where such an estate is leased to a single lessee, he becomes *ipso facto* headman for the period of his lease. In the villages which have recently been planted in hundreds on State lands brought under cultivation by means of the Upper and Lower Chenab, the Upper and Lower Jhelum, the Lower Bari Doab and the Sutlej Valley Canals, the *lambardari* arrangements are governed by the constitution of the groups of colonists who have occupied the new settlements. In an ordinary district new appointments are only necessary when the family in which the post is hereditary becomes extinct, when a headman resigns or is dismissed, or in the rare cases in which an increase in the number of headmen is sanctioned by the Commissioner (*Land Administration Manual, para.* 313).

Where a large section of the village desired that a second *lambardar* should be appointed to represent them as the one already in office was obnoxious to them, *held*, that the land revenue and *abiana* being quite sufficient to support *lambardars* there was no reason why an extra *lambardar* should not be appointed.[1]

The estate of Manawala Jodh Singh in the district of Sheikhupura comprised of 160 squares out of which one-half were owned by M. S. The Settlement Officer recommended the appointment of a second

1. Amar Singh *v.* Harnam Singh=1922 L. L. T. 6

lambardar for the estate. *Held,* that as N. S. who has hitherto been the sole *lambardar* only owns 2½ squares in the estate and and is also *lambardar* or three other villages which keep him fully occupied whereas M. S. owns half of the village and has a separate *abadi* for his tenants, the estate being thus practically divided into two *pattis,* there is sufficient justification for appointing a second *lambardar* in the estate, and the post should be given to M. S.[1] The chief object of having more than one *lambardar* in a horse-breeding chak is to avoid the necessity of making special arrangements on the death, suspension or absence on leave of the sole *lambardar.* To be of the same tribe as the previous *lambardar* or to be related to him is not an absolute disqualification.[2]

But where the younger brother enlisted in the army on a promise by his father that he would succeed to *lambardari* instead of his elder brother and the Commissioner sanctioned the division of the *patti* into two and created an additional *lambardari* it was held that there was no administrative ground for the creation of a new post, neither was it the proper way for rewarding the patriotic action of the younger brother enlisting in the army.[3] In a small *chak* of little over 1000 acres it was not considered desirable to appoint three *lambardars.*[4]

Refusal to create extra lambardari order not resjudicata.

A refusal on the part of the Commissioner to exercise his discretion to increase a *lambardari,* not being an order, does not constitute *res judicata* and it is at all times open to the Commissioner to exercise his discretion and create an extra *lambardari* at any time he considers fit.[5]

Reduction of headmen.

Reduction of headmen.—Reference has already been made to the inconvenience caused by the needless multiplication of headmen's posts at the first regular settlements. Substantial men as heads of villages are among the most necessary instruments of a vigorous revenue and criminal administration. The framing of a general scheme of reduction requires a large amount of local knowledge, and a patient enquiry into the history of past appointments in every estate affected. The files relating to the arrangements made at the first regular settlement and those dealing with subsequent appointments must be scrutinized, and the enquirer must obtain a clear idea of the constitution of each estate and must trace the origin of its sub-divisions by examining the village administration paper (*wajib-ul-arz*) and genealogical tree (*shajra-nasab*). The time for making such an enquiry is hard to find in the throng of daily duties which besets a Deputy Commissioner. Of course much of the information which he requires can be collected and put into shape for him by his officers, but, even so, the task is a heavy one (*Land Administration Manual, para.* 329).

Reductions when to take place.

General schemes of reduction.—(1) When a district is brought under resettlement, and the Settlement Officer finds that a reduction in the existing number of headmen is required in the interests of good administration in a considerable number of villages throughout the district or in any particular tahsils, he should, in consultation with the

1. Nau Nihal Singh *v.* Mangal Singh=1926 L. L. T. 39
2. Phalangar Khan *v.* Khan=1931 L. L. T. 21
3. Sarain Singh *v.* Mengh Singh=1929 L. L. T. 4 (2).
4. Rai Sahib Ganga Ram *v.* Mohammad Baksh=1929 L. L. T. 43.
5. Khush Dial *v.* The Crown=(1940) 19 L. L. T. 7.

Deputy Commissioner, prepare a scheme for effecting the necessary reduction gradually as vacancies occur.

(2) The main positive ground for reduction of a *lambardari* in an estate is that the existing number of *lambardars* is excessive for the purposes of administrative efficiency, while the existence and degree of this excess will generally appear from the fact that the *pachotra* of the post which it is proposed to reduce is insignificant as a remuneration for the duties to be discharged. It is difficult to lay down a standard figure for the whole province as much must depend on local conditions, but any individual *pachotra* less than Rs. 20 per annum may, as a Rule, and in the absence of special circumstances, such as the existence of a ferry, encamping-ground, &c., be regarded as insignificant. The Commissioner should prescribe a suitable general standard for each district in his division, and in some cases it may be advisable to fix such standards for particular tahsils. It is not, however, by any means intended that every *lambardari* of which the *pachotra* is below the prescribed amount, should necessarily be proposed for reduction apart from the other modifying considerations, of which some are noticed below. On the other hand, where the *pachotra* is more than such amount, reduction may, in special cases, be desirable nevertheless. In calculating the *pachotra*, the amount received in respect of canal occupier's rates (paragraph 308) should not be neglected.

(3) In determining what appointments should be retained and what abolished, special attention should be paid to the composition of the village proprietary body, to the circumstances under which existing appointments became vested in certain families and to the present position and influence of these families. No proposal for reduction can be fully satisfactory unless it takes sufficient account of the origin and history of the *lambardari* which is proposed for reduction. For instance, it is generally desirable to reduce the *lambardari* held by the junior branch of a family, rather than that held by the senior, and, in order to secure this, it may be advisable to forego an otherwise suitable occasion for reduction and defer the latter step until the occurrence of a more appropriate vacancy.

(4) In estates homogeneous as regards caste and tribes, reductions may properly be made more freely than in those where there is considerable diversity in these respects.

(5) Reduction is not generally advisable where its effect will be to place any considerable number of proprietors of one religion, tribe or caste under a *lambardar* of another *patti* or sub-division of a different religion, etc.

(6) As a rule, it is better if the conditions permit to reduce the post of second *lambardar* of one *taraf*, *patti* or other sub-division of an estate, rather than that of the sole *lambardar* of another *taraf*, etc.

(7) The proposals of the Settlement Officer and the Deputy Commissioner should be embodied in a register in the form prescribed in paragraph 6 of Standing Order No. 20, Village Headmen. They should not be announced to the villagers, nor will they be submitted to higher authority for sanction. But, if there is any difference of opinion between the Settlement Officer and the Deputy Commissioner, the register, together with any connected papers relating to any *lambardari* about which there is such disagreement, shall be forwarded to the

Commissioner, who will decide whether such *lambardari* shall or shall not be retained in the register. The register will then be made over to the Deputy Commissioner, with whom it will remain.

(8) Whenever a vacancy occurs in a *lambardari* which has been recommended for reduction in the register prepared at Settlement, the Deputy Commissioner will, subject to what is said in the next sentence, send up the case to the Commissioner, with an extract from the register and other papers required by Standing Order No. 20 in the case of casual proposals, whether he agrees with the recommendation made in the register or not. But he should not, save in very exceptional cases, send up cases in which the Settlement Officer's proposal would result in either the total number of *lambardars* in village being reduced to one, or in the passing over of an heir in the direct line, especially a minor. In the above contingencies the Financial Commissioner will not generally sanction a reduction. In other cases if the Deputy Commissioner thinks that effect should not be given to a reduction proposed in the scheme, in the special circumstances of the vacancy which has occurred, he should submit a note of his reasons If the Commissioner considers that the occasion is not appropriate for reduction, the case may be disposed of by his order, but in cases in which he considers that reduction should be made a reference should be made to the Financial Commissioner and the procedure prescribed in paragraph 332 (3), (4) and (6) below will be applicable to them.

(9) A similar scheme may, at any time, for sufficient reason, be prepared by the Deputy Commissioner of a district not under settlement with the Financial Commissioner's previous approval.

(10) To ensure that the recommendations made in a scheme prepared by a Settlement Officer or Deputy Commissioner are not overlooked, Deputy Commissioners of districts in which a register has been prepared should require the *ahlmad* in charge of *lambardari* cases to note on all files of appointment to a vacant *lambardari* whether the vacant post has been recommended for reduction or not (*Land Administration Manual, para.* 330).

Casual proposals for reduction.—(1) Casual proposals for a reduction in the number of headmen in an estate should be made by transmission of the files in original through the vernacular office, together with an English abstract in the tabular form given in paragraph 6 of Financial Commissioner's Standing Order No. 20 and a skeleton abstract of the *shajra-nasab*, showing the origin of each of the *pattis* or *tarafs* of the village, the revenue paid and the number of revenue-payers in each, and the relationship of the sub-division of the village the *lambardari* of which it is proposed to reduce, to the sub-division in which it is to be absorbed as regards *lambardari* arrangements.

(2) The mere absence of a properly qualified hereditary successor to a vacant *lambardari*, though it may help to render the vacancy a suitable occasion for a reduction desirable on other grounds, is not alone and of itself an adequate ground for reduction. Much less should reduction be proposed solely as a penalty for delinquencies of the last incumbent or of his family. For such a case other appropriate measures are available. The principles laid down in paragraph 330 should also be followed in making casual proposals for reduction.

(3) When a Collector decides to propose a casual reduction, he shall intimate the fact to all the parties interested, *viz.*, those whose names

are entered in columns 5 and 6 of the form, and shall give them sufficient opportunity to bring to his notice any objections any of them may think fit to urge against the proposed reduction. He shall cause his proceedings in this connection to be recorded in the vernacular files in detail, and shall also cause a detailed record to be made of such objections as are made to him. Where the Collector is not himself the Deputy Commissioner of the district, he shall forward the file to the Deputy Commissioner, who shall return it with his opinion.

(4) The Collector, after completing his proceedings, shall, in a case in which he considers reduction desirable, forward the papers prescribed above to the Commissioner for orders.

(5) If the Commissioner is of opinion that a reduction is not appropriate, he shall record his order on the papers and return them to the Collector.

(6) In other cases the Commissioner shall ordinarily retain the papers on his file till the expiry of two months from the date of the Collector's proposals, and, if any person has objected to the proposals, he shall give the objector or objectors an opportunity of being heard, and shall record the objections urged by them. He shall then complete the papers by recording an opinion in which he shall deal with the objections made to the proposal and shall forward the papers to the Financial Commissioner for orders (*Land Administration Manual, para.* 332).

APPOINTMENTS IN CANAL COLONIES

In the colonies it has been the practice from the foundation of each estate to restrict the number of *lambardars* to one or two. Where service conditions exist, as, for instance, in the horse-breeding chaks of the Lower Jhelum Canal Colony it is usually considered preferable to have only one *lambardar*. These posts are so much coveted that the ordinary objection against having too few *lambardars* does not hold good. Hereditary claims need not be regarded since the landholders are not proprietors, and therefore the Collector is free to select the most suitable landholder. In the newer colonies, where service conditions do not exist, two *lambardars* are ordinarily appointed.

In making such appointments care should be taken to ensure that the *lambardar* appointed resides, or will reside personally in the *chak*. It must be remembered that the post of *lambardar* has been created in order to ensure the performance of services necessary for the efficiency of the administration of the province and the district. These posts are not created to add to the prestige and affluence of influential and wealthy landowners, who have no intention of fulfilling the obligations of the post. An additional objection to the appointment of such people as *lambardars* is that in many *chaks* the result of their appointment would be that the work of the *lambardar*, to all intents and purposes, would be perfomed by a servant, and that landholders of considerable social standing, such as retired commissioned military officers, would occupy a position of subordination to the *sarbarah lambardar*—a state of affairs to which they naturally have a strong objection. The land revenue rules with regard to the appointment of substitutes should therefore be most carefully observed. The only concession which can properly be made to influential and wealthy non-resident landholders is that they should be appointed *lambardars* for the land which they hold themselves. In such cases they should not be permitted to have any hand

in the management of the land allotted to the menials of the village (*Land Administration Manual, para.* 315-A).

Competition for lambardaris keen in canal colonies.—In view of the initial remissions of land-revenue and other charges granted to colonists no occasion arises to make arrangements for the collection of Government dues until a year or two after the allotment of land in any particular village. The process of selection of *lambardars* must, however, necessarily take time and endeavours should be made to complete arrangements before the first harvest in which such dues are to be realized. It is permissible and advisable, pending permanent appointments, to make a temporary appointment of one *lambardar* in each chak, on the strict understanding that such appointments carry no right to permanency when the final choice is made. The *lambardar's pachotra* in a colony village is no mean sum, and when the post carries with it also an extra grant of land it is bound to be eagerly sought after for the sake of the pecuniary profit involved even more than for the dignity attaching to the office. Applications for the appointment of *lambardar* are therefore certain to come in very shortly after allotments have been made, and when sufficient time has been allowed to let the people settle in, a date should be fixed for hearing what the rival candidates have to say. The hearing should be fixed so far as possible in or near the village in which the appointment is to be fixed so that the views of all who are interested may be ascertained, for home truths which might not be uttered in the office at headquarters have a way of finding expression in the informal darbar that usually accompanies the appointment of *lambardars* in camp (*Colony Manual, para.* 616).

Number of lambardars.

The number of lambardars required in a village.—The first question which the officer making these appointments has to decide is the number of *lambardars* required for the particular village concerned. Except in a very small village it is desirable to have at least two *lambardars* : for in a village when there is only one *lambardar* his death, suspension or absence on leave necessitates the making of special arrangements which would not be required if there were a second *lambardar* who could carry on in his place. In large villages more than two *lambardars* will be needed though in the Lower Jhelum Colony 60 squares were regarded as a usual *patti*. In the Lower Chenab Colony one *lambardar* for every 20 squares was considered a fair average and this precedent has been followed in the later colonies and may well be adhered to as a general standard, though consideration must always be had to the special circumstances of individual villages. A village of 45 rectangles, for instance, may be composed entirely of colonists of one tribe coming from a single tahsil of one district and in such a case there would be no occasion for more than two *lambardars*. But if there are colonists from three different districts in fairly equal proportions or from two different districts in the proportion of two to one, the appointment of three *lambardars* would obviously recommend itself. Where the post of *lambardar* carries with it an extra grant of land motives of economy will suggest keeping down the number of *lambardars* as low as possible, but such considerations will have no weight in villages that have been sold by auction or have been allotted to classes like the *nazrana* paying grantees of the Lower Chenab Colony or the hereditary landed gentry of the Lower Bari Doab Colony, where the *lambardar* receives nothing extra in virtue of his office. But even here the general standard should be adhered to so far as possible and the position or services of original

grantees should not be allowed to outweigh the interests of good administration. In villages where practically the whole of the culturable area has already been allotted it may be possible to appoint straightaway the full number of *lambardars* that will eventually be required, but if only a portion of the total area has been allotted it is inadvisable to appoint the full number of *lambardars* at once as there can be no certainty as to the class of colonists who will subsequently enter the village, and better candidates may be forthcoming from among the later immigrants than are immediately available. In the Lower Bari Doab Colony a greater number of candidates than would eventually be needed was usually selected with the idea of appointing permanently those who proved themselves most competent to perform the duties of the post; but though much may be said for this device where the best of an inferior or bad lot have to be chosen, it cannot be denied that a great deal of avoidable heart-burning and discontent is occasioned when the time comes for placing the matter on a permanent footing and bringing one or more of the temporary incumbents of the post under reduction. It is in any case desirable that all *lambardars* should in the first instance be afforded a probation for a year or so, and if during the period a man proves himself obviously unfit for the position and his services have to be dispensed with, no great harm is done and another man can be tried in his place, whereas if all the probationers show themselves to be equally satisfactory, the appointing officer will have to make up his mind with reference to considerations which might originally have guided him while the man dispensed with will justly complain that he is being dismissed for no fault of his own and will probably prove a nuisance in the village ever afterwards (*Colony Manual, para.* 617).

Qualifications.

Qualifications to be sought in lambardars.—In the ordinary peasant village the ideal *lambardar* will be a man of good character, unburdened by debt, who is literate, has brought with him from his old home influence over a considerable number of his fellow colonists and has been energetic in fulfilling the conditions of his tenancy and in assisting the colonization and irrigation officers to the utmost of his power. The Colonization Officer is in a position to demand a high standard in appointing the first *lambardars* in a village and he should make full use of his opportunity. In making subsequent appointments, the practice has been to give due weight to hereditary claims if the first incumbent has rendered satisfactory service, but as long as the colonists or a majority of them are in the position of Government tenants, Land Revenue Rule 17 (1) continues to apply. This point has been emphasized in recent rulings by the Financial Commissioners, in which they have laid down that the hereditary principle affords a simple guide where comparative merits are aproximately equal or unimportant; but until proprietary rights are acquired the Collector has a clear discretion and should select the best man from amongst the colonists in the village whenever he considered that the hereditary principle is not suitable to the case (Financial Commissioner's R.O.A. No. 75 and 17 of 1929-30) (*Colony Manual, para.* 618).

Dismissal.

Dismissal of lambardars.—Though arrangements regarding *lambardars* are, like everything else in a new colony, not regarded as final, still a *lambardar* once confirmed can only be dismissed for the same causes that would earn him that punishment in an ordinary district. It is probably as well that this should be so, though it often happens that a man turns out unfit for the post although he is not legally

liable to dismissal. The statement of conditions, however, under which he holds land, contains a clause enabling the Collector to punish neglect of a *lambardar's* duties by a fine which may extend to Rs. 10 per acre of his holding for four successive crops (*Colony Manual, para.* 619).

Number of lambardars in a village liable to alteration.—It should be noted that no appeal against a *lambardari* appointment is valid merely because it varies the existing number of appointments in the village. It has been ruled, though not formally, that the number of headmen should not be taken " fixed " within the meaning of Land Revenue Rule No. 14 (1) so long as the appointment of Colonization Officer exists (*Colony Manual, para.* 620).

WHO CAN BE APPOINTED AS HEADMEN.

Rule 14 (*ii*) above lays down that in proprietary estates the *lambardar* shall be appointed from among the landowners. This rule is imperative and there is no escape from it. Where, however, none of the landowners is resident in the village, the correct procedure would be to appoint one of them *lambardar* and appoint some one of the occupancy tenants as his agent.[1]

If an estate or a considerable portion thereof is owned by Government, the headman may be appointed from among the tenants. The lessee of the revenue produce of an uncultivated or forest estate owned by Government *ipso facto* becomes the headman thereof during the currency of his lease according to rule 14 (*iii*).

The qualification of holding land in the *patti* or *taraf* for which the *lambardar* is appointed, is absolute and a *lambardar* cannot be appointed without it. But it is always open to the Collector to constitute *pattis* in accordance with the provisions of Rule 21 (*iv*) of the Land Revenue Rules.[2]

MATTERS TO BE CONSIDERED IN FIRST APPOINTMENTS OF LAMBARDARS

[3]**Land Revenue Rule 15.**—In all first appointments of headmen, regard shall be had *among other matters* to—

(*a*) his hereditary claims ;

(*b*) extent of property in the estate possessed by the candidate ;

(*c*) services rendered to the State by himself or by his family ;

(*d*) his personal influence, character, ability and freedom from indebtedness.

Rule not exhaustive.

The words "among other matters " clearly show that the rule is not exhaustive and the four matters specified in the rules are not the only matters to be taken into account. An officer making an appointment is at liberty to consider all matters which may reasonably be

1. Sodhi Harcharan Singh *v.* Allah Ditta=1933 L. L. T. 43 (1).
2. Miraj Din *v.* Shah Din=1935 L. L. T. 31 ; Jagan Nath *v.* Dewa Singh= 1934 L. L. T. 47.
3. Land Administration Acts, Vol. II, page 31 ; made under section 28 of the Act.

regarded as relevant to the suitability of an appointment, and he is expected to decide between rival candidates according to the general balance of their respective claims and of the administrative advantages, or disadvantages, of appointing each respectively.[1]

The principles laid down in Rule 15 above should be observed in making first appointments of *lambardars*.[2]

Non-resident claimants.

Performance of duty primary consideration for appointment of lambardar, especially in colonies—non-resident claimants.—When appointing *lambardars* the first consideration is to secure a man who will perform the duties. In order to enable him the better to perform such duties it is desirable that he should be representative of some large class of landholders; but as the *lambardar* is an important village official, it is of prime importance that he should be able to perform the duties of the office. In many cases especially where hereditary claims are not paramount, there is an element of reward for past services, but even here the basic idea is that one who has rendered good service in the past may be expected to render good service in the future.[3]

In Colony villages the first consideration in the appointment of a *lambardar* is to secure a man who will reside in the village of which he is a *lambardar* and perform the duties himself. A candidate who does not fulfil this condition cannot be considered for the appointment.[4]

In appointing a *lambardar* in a grantee chak, parental services of the candidate are not the only consideration. Once a chak has been established original residents are entitled to some degree of preference over newcomers. Secondly, particularly in these days when Government is paying so much attention to rural reconstruction, it is essential that the *lambardar* should, if possible, be the leader of his patti or chak in all the many details of rural developments, and such leadership cannot be accomplished efficiently by an absentee landlord.[5]

An absentee cannot perform the duties of a *lambardar*, and in cases where the hereditary principle does not apply, great caution should be exercised in appointing one who has no intention whatsoever of performing the duties for which he is appointed.[6]

The reason why the residence of a *lambardar* in the village is insisted upon is that he has multifarious duties to perform from day to day and his duty does not consist solely of ensuring that the revenue is duly collected and paid into the treasury.[7]

The duties must be the first consideration; the representation of different classes of landholders is secondary and indeed is subsidiary to the former inasmuch as representation is chiefly important as enabling the official to perform his duties with satisfaction to all concerned. *In Colony tracts the prime consideration should be the appointment of a man who will perform the duties well and only for the very*

1. Mashir Ali *v.* Malik Chiragh Khan=1 P. R. 1918 (Rev.)=2 P. W. R. 1918 (Rev.)=131 P. L. R. 1918=45 I. C. 87=1921 L. L. T. 5; see also 10 P. R. 1931 and 1933 P. C. L. 52 (Rev.).
2. Rai Sahib Lala Ganga Ram *v.* Mohammad Baksh=1929 L. L. T. 48.
3. Kanya Singh *v.* Ram Chandar=1931 L. L. T. 16.
4. Mehta Dina Nath *v.* Lahrasab Khan=(1940) 19 L. L. T. 48.
5. S. Buta Singh *v.* S. Surindar Singh=(1940) 19 L. L. T. 21.
6. Kanya Singh *v.* Ram Chandar=1931 L. L. T. 16.
7. Pir Baksh *v.* Ram Narain=(1941) 20 L. L. T. 85.

strongest reasons should any one be appointed who has not the slightest intention of residing in the chak or performing the duties.[1]

As already stated, the first consideration is to secure as *lambardar* a man who will perform the duties. An official who must perforce be non-resident is not a suitable person as a non-resident official can hardly be said to exercise influence in the village.[2] Similarly, it has been laid down in *Rang Ali* v. *Barkat Ali*[3] that no one should be appointed *lambardar* unless he intends to reside permanently in the *chak* as an absentee cannot perform the duties of the office and the performance of the duties is the primary consideration in appointing a candidate. In a case where the contest was between a Retired Military Officer and an officer in Active Service it was held that the office of *lambardar* should go to a candidate who was resident in the village in preference to another candidate who though senior in military rank and service was still serving with a regiment and could not therefore reside in the village.[4] The office of *lambardari* should not be used as an inducement to retire from service (*ibid*). In *Waryam Singh* v. *Sundar Singh*[5] also it has been held that a Collector should not appoint any person as a *lambardar* when there is little prospect of his permanently taking his abode in the village concerned. An absentee must not be appointed *lambardar* when a suitable resident candidate is available.[6]

One of the conditions of a horse breeding grant is that the tenant must settle permanently in the estate to which the grant belongs and this condition cannot be said to have been satisfied by obtaining permission from the Remount Officer to appoint a *sarbrah* for his horse breeding grant.[7]

A candidate for lambardarship of a *chak* in a canal colony shall be permanent resident of the chak with which the *lambardar* in question is concerned and a candidate cannot be said to be a permanent resident of such *chak* if by the colony rule he is required to reside permanently in another *chak* where he holds a horse breeding grant (*ibid*).

If the Collector has good reason for believing that the appointment of a substitute should be refused he may legitimately regard absence as a reason for passing over an heir.[8] But if under rule 27 the Collector has permitted the appointment of a substitute the fact of residence will not count.[9]

Hereditary claim

Clause (a)—hereditary claim for first appointment.—Hereditary claim for first appointment is to be distinguished from hereditary claim as successor to the office of an already appointed *lambardar* which is provided for by rule 17. It is desirable that in making first appointment regard should be paid to the claim of a person who asserts that his fore-fathers had been holding the same position before also, as *lambardars* also are in fact the representatives of old *chaudhri* class.

1. 1931 L.L.T. 16.
2. Said Mohammad Khan *v.* Mirza Mohd. Ihsan Ullah Khan=1933 L. L. T. 34.
3. 1933 L L.T. 33.
4. Subedar Major Harchand Singh *v.* Jamadar Bur Singh=1928 L. L. T. 42.
5. 1924 L.L.T. 30.
6. K.B. Abdul Hakim Khan *v.* Subedar Mohd. Khan=(1941) 20 L. L. T 153.
7. Nur Muhammad *v.* Qazi Abdul Majid=*(1940)*. 19 L. L. T. 91.
8. Bhagwan Singh *v.* Salamat Rai=1932 L.L.T. 74 ; 1924 L.L.T. 24 and 1924 L.L.T. 30 referred to.
9. See ibid ; see also 9 P.R. 1903 (Rev.)=98 P.L.R. 1903.

When an estate is held by a homogeneous body, *e.g.*, by descendants of a *jagirdar*, it is desirable that the *lambardari* should be retained by that body as far as possible. This must, however, be subject to Collector's decision as to conditions under which the administration is to be carried out.[1]

Clause (b)—property considerations.—As a general rule, it is not desirable to appoint a person as a *lambardar* whose property is not of sufficient value to serve as security for the revenue for which he would be responsible if appointed as *lambardar*.[2] A person who not only holds the largest share in *mauza*, but is the only person in it with a proprietary status is the fittest to be appointed a *lambardar*.[3] Property considerations.

Where a gift of land is made in favour of a person in order to keep the *lambardari* in the family, the mere fact that the gift is likely to be challenged by reversioners is no ground for not appointing such person as *lambardar*, for if the gift is challenged, and such person's property falls below the necessary value, then he can be dismissed from the *lambardari*.[4] "An insignificant fellow" having a small holding should not be preferred to others owning large areas.[5]

Clause (c)—family services.—With regard to the consideration of family services for first appointment, the same principles as govern the appointments of *zaildar* and *sufedposh*, seem to be applicable. In *Nanak Singh* v. *Bhola Singh*[6] it has been ruled with reference to the appointment of a *sufedposh* that where a candidate's father's services have been very considerable the fact of these services may be taken into consideration, but it is not to be regarded as a ruling fact in making the appointment. This principle seems to be true for making first appointments of *lambardars* also. Family services.

Clause (d)—personal influence, character, ability and freedom from indebtedness. Personal qualifications.

Character.—When it comes to deciding whether a candidate is, on his merits, a fit person to be appointed, if he is really a member of notorious criminal family, there need be no hesitation to pass him over.[7] Similarly, it has been held that the offence of murder is one which affects the eligibility of the heir and where a *lambardar* is convicted of the offence of murder, his heir may be passed over on that account.[8]

Indebtedness.—A Commissioner should not interfere with the discretion of a Collector in *lambardari* cases except for clear and strong reasons. But serious embarrassment by debt of the person appointed by the Collector is a sufficient reason for interference with the discretion of the Collector.[9]

1. Bhagwan Singh *v.* Salamat Rai=(1932) 11 L.L.T. 74.
2. 25 P.L.R. 1905.
3. Najat Shah *v.* Dewan Bahadur Dewan Daulat Rai=1927 L.L.T. 10.
4. Sadhu Singh *v.* Dyal Singh=1928 L.L.T. 23.
5. Rai Sahib Lala Ganga Ram v. Mohammad Baksh=1929 L.L.T. 43.
6. 1924 L.L.T. 13.
7. Raja *v.* Sardara=1932 L.L.T. 21.
8. Yusaf *v.* Mohammad Aslam=1931 L.L.T. 41.
9. Hussain Baksh *v.* Ghulam Rasul and another=1932 L.L.T. 67.

Residence in the village.—The matter has already been dealt with under the sub-heading 'non-resident claimants', and may be referred to.

Seniority in military rank.—It is not possible to subscribe to the view that seniority in military rank must be the predominant factor in making appointments in military *chaks* in colonies. The principle is no doubt an excellent one to apply where other considerations are approximately equal, and especially when colony officers have to select *lambardars* from among a newly settled *chak* of military grantees, but in old established *chaks* other considerations must be taken into account.[1]

DISMISSAL OF HEADMEN

[2]**Land Revenue Rule 16.** – (*i*) A headman *shall* be dismissed when—

(*a*) he is sentenced to imprisonment for one year or upwards, or to any heavier sentence ; or

(*b*) in an estate owned altogether or chiefly by Government he ceases to possess the interest which led to his appointment ; or

(*c*) in any other estate he ceases to be a landowner in the estate or sub-division of the estate in respect of which he holds office ; or

(*d*) he has mortgaged his holding and has delivered possession to the mortgagee ; but in special cases the Collector may, with the Commissioner's sanction, retain him in his office under such circumstances, if he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties ; or

(*e*) his holding has been transferred under section 71 of the Land Revenue Act, or the assessment thereof has been annulled under section 73 of the same Act.

(*ii*) A headman *may* be dismissed when—

(*a*) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office ; or

(*b*) he is seriously embarrassed by debt, or if his unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibilities attached to the office of headman ; or

1. K.B. Abdul Hakim Khan *v.* Subedar Muhammad Khan=(1941) 20 L.L.T. 153.

2. Land Administration Acts, Vol. II, page 32, made under section 28 of the Act.

(*c*) owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office ; or

(*d*) *there is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of cocaine, opium or *charas* ; or

(*e*) *he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order ; or

(*f*) he neglects to discharge his duties, or is otherwise shown to be incompetent ; or

(*g*) the estate or sub-division thereof, in respect of which he holds office, or his own holding is attached either for an arrear of land revenue or by order of any Court.

Grounds for dismissal.

Thus, the chief grounds on which a headman may properly be dismissed are—

(1) loss of the status of landowner in the estate,
(2) poverty,
(3) persistent neglect of duty,
(4) crime,
(5) taking part in any unconstitutional agitation against the Government or failing to give his active support to the Government in the maintenance of law and order.

Sub-rule 16 (*l*) (*c*).—The first calls for no remarks. Dismissal in such a case is imperative.[1] The qualification of holding land in the *patti* or *taraf* for which the *lambardar* is appointed is absolute. But it is always open to the Collector to reconstitute *pattis* in accordance with the provisions of Rule 21 (*iv*) of the Land Revenue Rules.[2]

When a *lambardar* is dismissed under Rule 16 (*i*) (*c*), it is not because of any consideration of fiscal interest of Government. The fact that he may have ample and sufficient land elsewhere to protect those interests does not save him. The reason in this case is that he has ceased to be representative of the estate or sub-division. But when a *lambardar* is dismissed for a disqualification of this nature involving no moral defect he has a strong claim to be reappointed if he has cured it by the time the order is passed.[3] Thus a person who has been removed from the office of *lambardari* under this rule for ceasing to be a landowner in the *patti* may be reappointed a *lambardar* if he prior to fresh appointment acquired land and even though physical possession has not yet been acquired.[4]

***Financial Commissioner's Notification No. 3096-R, dated the 21st December 1932.**

1. See Jagan Nath *v.* Dewa Singh=1934 L.L.T. 47 and Land Administration Manual, para. 319.
2. Miraj Din *v* Shah Din=1935 L L.T. 31.
3. Charan Singh *v.* Fazal=1932 L. L. T. 125
4. Ibid.

Sub-rule 16 (*i*) (*d*).—Under rule A (*i*) (12) of the rules framed under section 66 of the old Punjab Land Revenue Act (XXXIII of 1871) it has been held that before a *lambardar* is dismissed because he has mortgaged his estate, he should have some warning and a period of grace within which to redeem, and it does not follow that the mere fact of such a mortgage really makes a *lambardar* unfit to perform his duties. If the mortgage is usufructuary or *likha mukhi*, and the mortgagor retains the cultivation, he may be as solvent and trustworthy as most of his neighbours whose land is not mortgaged or only mortgaged in part.[1] The mere fact that a *lambardar* has mortgaged his land does not always render him unfit to perform his duties.

Thus in these cases adequate security for the payment of the revenue the *lambardar* has to collect and for the due discharge of his duties, at the discretion of the Collector, with the Commissioner's sanction may be taken as sufficient and the object thus fulfilled. But it is to be clearly understood that it is entirely at the discretion of the Collector and Commissioner's sanction is necessary.[2]

Commission of criminal offence.

Commission of criminal offence as ground of dismissal—Rules 16 (*i*) (*a*) **and 16** (*ii*) (*a*).—Considering that one of the chief duties of a headman is to aid in the prevention and detection of crime he ought to be removed from office if convicted of any serious offence. If he is sent to jail for a year or more, the Deputy Commissioner has no choice ; he must dismiss him [rule 16 (*i*) (*a*)]; otherwise he has a discretion [rule 16 (*ii*) (*a*)]. Every petty breach of the criminal law need not be magnified into a ground for dismissal. The conditions of life in a Punjab village are such that a man is very liable to be hauled before a magistrate for acts, or alleged acts, which are offences under the Indian Penal Code, but which it is an abuse of language to qualify as crimes. The only rule that can be laid down is that, if the facts proved against a headman indicate that he is unfit to be entrusted with the duties of his post, he should cease to hold it. If he is shown to be dishonest, or to consort with bad characters, obviously he should be dismissed. A connection of theft or cheating proves him unfit to have charge of public money ; an order to give security to be of good behaviour or trustworthy evidence of connivance with illicit distilling makes it clear that the offender cannot be relied on for help in suppressing crime or in enforcing the excise laws (*Land Administration Manual, para.* 322).

The offence of committing grievous hurt in an affray is one which justifies dismissal under Land Revenue Rule 16 (*ii*) (*a*).[3]

Where a *lambardar* had been ordered to give security under S. 110 of the Criminal Procedure Code and had failed to get the order set aside, the *lambardar* is *prima facie* liable to be dismissed.[4] Similarly, *lambardar* from whom security has been taken twice for bad livelihood is also no longer fitted to exercise the police and fiscal duties which devolve upon a *lambardar* and should be dismissed.[5] In cases of this kind, however, the Collector should not dismiss a *lambardar* from office immediately after rejection of his appeal from an order demanding security, but should suspend the *lambardar* and postpone the decision

1. Nanak *v.* Said Lutf Ali Shah=3 P. R. 1881 (Rev.) ; Jagat Singh *v.* Bahadur Singh=5 P. R. 1885 (Rev.).
2. 3 P. R. 1887 (Rev.).
3. Dewan Singh *v.* Ujagar Singh=1932 L. L. T. 27
4. Lehna Singh *a.* The Crown=8 P. R. 1892 (Rev.).
5. Sawan Singh *v.* The Crown=6 P. R. 1886 (Rev.).

of his case until lapse of a reasonable time, during which he would be able to take such steps as are necessary to obtain reversal or modification of the magistrate's orders.[1]

But where a *lambardar* and his two sons were sent up for trial as bad characters under S. 118 of the Criminal Procedure Code and the sons were held to be bad characters and security taken from them and the *lambardar* was dismissed from his office on that account, it was held that there was no good case against the *lambardar* and the mere fact that his sons were required to furnish security for good behaviour was not sufficient reason for dismissing him from his post, as a *lambardar* may be a good character himself and yet unable to control his sons, who may be bad characters. Nothing short of actual misbehaviour or systematic neglect of his duties on part of the *lambardar* will warrant his dismissal.[2]

The fact of a *lambardar* becoming surety for the good behaviour of a reputed bad character should not be allowed to weigh against him. It indicates that the *lambardar* is a strong man, who feels that he will be able to exercise influence in restraining a doubtful character from committing offences.[3]

Where a *lambardar* was sentenced to 18 months' rigorous imprisonment on a charge of causing grievous hurt in an affray and on his release from jail resumed his duties and carried them on for more than a year without blame, it was held that he should not have been removed on the ground of his conviction a year after he had reverted to his post.[4] But this ruling has been definitely dissented from in *Dewan Singh* v. *Ujagar Singh*.[5]

A headman cannot be dismissed because he is a relation of bad character.[6]

Poverty as ground of dismissal—sub-rule 16 (*ii*) (*b*).—The collection of the dues of the State cannot safely be entrusted to a man who is himself insolvent. If a headman has mortgaged his own holding, and has ceased to be the person from whom its revenue is due to Government, he ought to be dismissed unless he can make arrangements to pay off within a short time the whole mortgage-debt or so much of it as will suffice to release so much of the holding as will be sufficient security for the Government revenue which passes through his hands. In such a case the headman may be allowed a reasonable period within which to recover himself if meanwhile he can furnish security for the payment of the revenue and the discharge of his other duties. But makeshift arrangements of this kind should not be continued for any length of time. A headman, who is a defaulter in respect of his own holding, ought not to be kept in office. The mere fact, however, that one or other of the minor processes referred to in paragraphs 520 and 521 of the Land Administration Manual (see section 78 of the Act) has been employed against him need not necessarily entail dismissal. If the estate or sub-division of the estate which the headman represents has had to be attached on account of arrears, the Deputy Commissioner may dismiss the *lambardar*, and the same course may be followed if the

Poverty.

1. 8 P. R. 1892 (Rev.).
2. Baz Khan *v.* The Crown=2 P. R. 1885 (Rev.).
3. 10 P. R. 1890 (Rev.).
4. Sandhi *v.* Amir Singh=5 P. R. 1886 (Rev.).
5. 1932 L. L. T. 27.
6. Raja *v.* Sardara=1932 L. L. T. 21.

attachment is made by an order of any court of law. Proof that a headman is heavily in debt, or that the amount of unencumbered land remaining in his possession is very small, at once raises the question of his fitness to retain office. In these cases much depends on the cause of the man's difficulties and the likelihood of his being able to surmount them. If the revenue is paid in punctually, no readiness should be shown to harass a headman and gratify his rivals by fishing enquiries into his private affairs. The practice which has prevailed in some places of encouraging *patwaris* to report cases of indebtedness is very objectionable. No Tahsildar who exercises proper control over the land revenue collection, and who moves freely among the people, has any need of such written reports, and the acceptance of them puts the *patwari* in a position with reference to headmen which he has no right to occupy (*Land Administration Manual, para.* 320).

It has recently been ruled by the Financial Commissioner in *Abdul Ghani* v. *The Crown*[1] that a *lambardar* should not ordinarily be dismissed merely on account of indebtedness unless he fails to give security for the collection of the dues for which he is responsible and there is reason to fear that he will be guilty of breach of trust in regard to these dues. In this connection it is useful to refer to the following remarks made by Sir Lewis Tupper, Financial Commissioner, in the judgment reported in *Faqira* v. *Munga*[2] :—

" .....It is unexpedient to change the *lambardars* if a change can be avoided. If for whatever cause there is sufficient security for the recovery of the revenue for which the *lambardar* is responsible, the *lambardar* should not be dismissed for indebtedness. We are not concerned with his commercial morality but with the fiscal interests of Government.. ..... "

A headman may be dismissed if he is seriously embarrassed by debt, and when a man is committed to civil jail for debt he must be deemed to be seriously embarrassed.[3] Thus indebtedness is no doubt a perfectly sound reason for dismissing a *lambradar*, but in all cases of indebtedness the essential point is security for the payment of land revenue and if gifts, made with a view to keep the *lambardari* in the family, operate to give that security, the motive is immaterial and even enjoyment remaining as before is of no consequence. If the *lambardar* removes the cause of his disqualification before another man is appointed in his place, there is no reason why he should not be reappointed.[4]

Where a *lambardar* on mortgaging almost all of his land was dismissed by the Deputy Commissioner, and thereupon he redeemed his land by writing bonds for his creditors, he was held unfit for the post on account of debt.[5]

In a recent case reported as *Jaspat Ram* v. *The Crown*[6] it has been held that where a *lambardar's* financial difficulties come in the way of the proper discharge of the duties imposed on him by any of the departments of the Government, he must be dismissed. While distinguishing *Abdul Ghani* v. *Crown* (1935 L. L. T. 6) the learned Financial

1. 1935 L. L. T. 6
2. 3 P. R. 1903 (Rev.).=99 P. L. R. 1903.
3. Hussain Baksh *v.* Ghulam Rasul and another=1932 L. L. T. 67
4. Charan Singh *v.* Fazil=1932 L. L T 125 ; Fakira *v.* Munga=3 P. R. 1903 (Rev.)=99 P. L. R. 1903.
5. Ghasita *v.* Mohammad Baksh=2 P. R. 1881 (Rev.).
6. 1937 L. L. T. 14.

Commissioner observed—" It is true that in 1935 L. L. T. 6, I ruled that a *lambardar* should ordinarily not be dismissed merely on account of indebtedness unless he fails to give security for the collection of the dues for which he is responsible and there is reason to fear that he will be guilty of breach of trust in regard to those dues. This does not mean, of course, that a *lambardar* is never to be dismissed on the ground of serious embarrassment by debt, my object was to protect those *lambardars* who inspite of being embarrassed by debt, are able to fulfil all their responsibilities—responsibilities that are not limited to the collection of the Government demand. If, as is the case here, a *lambardar's* financial difficulties come in the way of the proper discharge of the duties imposed on him by any of the departments of Government, he must be dismissed."

See also *remarks under sub-rule* 16 *(i) (d) on page* 132 *in case the lambardar mortgages his land.*

Dismissal on account of inability to discharge the duties of the office—sub-rule 16 *(ii) (c).*—This rule provides that a headman may be dismissed when owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office. But this rule should be read together with rules 26 and 27, and the step of dismissal on these grounds should be taken under exceptional circumstances only. Ordinarily where, by reason of old age, physical infirmity, or absence from his circle or village with the permission of the Collector, a headman is unable to perform the duties of his office in person, a substitute may be appointed to discharge those duties (See Rule 27 and *Bhagwan Singh* v. *Salamat Rai*=1932 L. L. T. 74).

Constant absence as ground of dismissal.

Constant absence as a ground for dismissal.—It was held in *Karam Ilahi* v. *Chanan Singh*[1] that it is an undoubted fact that if a *lambardar* is habitually absent from his village and makes no arrangement for a substitute or for the performance of his duties during his absence, he would be liable to dismissal and might rightly be dismissed by the Collector, but it must not be assumed that because a man is absent therefore he will neglect his duties or neglect to appoint a substitute to perform his duties. Every man must be given some sort of chance. Absence is not a punishable offence. Absence combined with negligence would be a punishable offence. Commenting on this, the learned Financial Commissioner observed in *Bhagwan Singh* v. *Salamat Rai* :[2] "The view taken by Mr. King was that absence was not a punishable offence, though absence combined with negligence would be a punishable offence. This is arguably true so far as Land Revenue Rule 16 *(ii) (c)* goes, "owing to the absence from the estate he is unable to discharge the duties of his office". But with this has to be read Land Revenue Rule 27 in which the appointment of a substitute by reason of absence is conditional on permission of the Collector ; if the Collector refuses that permission the *lambardar* cannot obviously discharge the duties of his office and becomes liable to dismissal. Therefore, I so far dissent from the above ruling that I hold that if the Collector has good reason for believing that the appointment of a substitute should be refused he may legitimately regard absence as a reason for passing over an heir."

Constant absence from the village is not formally a ground for dismissal though it may involve neglect to discharge his duties

1. 1924 L. L. T 24.
2. (1932) 11 L. L. T. 74.

which is a ground for dismissal.[1] Thus absence from the estate is a disqualification only if it prevents the *lambardar* from discharging the duties of his office Where, for example, the two villages are only a short distance apart it should not be a disqualification.[2]

See also remarks on pages 127 & 128.

Note.—The practice of requiring *lambardars* to apply for, and obtain, the permission of the Deputy Commissioner or Tahsildar before absenting themselves from their village is wholly unwarranted and must be discontinued wherever heretofore adopted.[3]

Connivance at illicit distillation.

Penalty for connivance at illict distillation, etc.—Sub-rule 16 (*ii*) (*d*).—According to this rule a headman may be dismissed if there is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of cocaine, opium or *charas*. By section 52 of the Excise Act a headman is under a legal obligation to give prompt information of illicit distillation and other excise offences, and neglect to do so is punishable under section 68. A *lambardar* who joins in or conceals illicit distillation, and the smuggling of manufactured drugs, opium or *charas* should be punished by dismissal.[4]

Maintenance of law and order.

Sub-rule 16 (*ii*) (*e*).—This rule is important. It is the primary duty of the headman to give his active support to the Government in the maintenance of law and order. Failure to do so may result in his dismissal. Similarly, if he takes part in any unconstitutional agitation against the Government he is liable to be dismissed.

Neglect of duty.

Dismissal on the ground of neglect of duty—Sub-rule 16 (*ii*) (*f*).—Duties of headmen are enumerated in Land Revenue Rule 20. Neglect of duty which is either gross or persistent, should be followed by removal from office. Minor breaches of rules, or acts of negligence may be punished—

(*a*) by the forfeiture of the whole or part of the *pachotra*, or

(*b*) by suspension from office for a term not exceeding a year.

Orders attaching the *pachotra* usually only relate to that due at the next harvest, and in no case should the *pachotra* of more than two harvests be declared forfeit. A substitute may be appointed to do the work of a headman under suspension.[5]

A *lambardar* is liable to be dismissed if he falls to discharge his police or fiscal duties.[6]

It is a very important part of the duties of a *lambardar* to give certificates on which Government places serious reliance, and giving a certificate on which Government relied to ensure itself against loss is an offence which would justify the dismissal of a *lambardar*.[7] In this particular case the *lambardar* was ordered to report on a claim for relief from the Soldier's Board and he verified the statement of one *Mussammat* M. N. that one of her three daughters was unmarried whereas, as a matter of fact, she had no unmarried daughter.

1. Budh Singh *v.* The Crown=1932 L. L. T. 88.
2. 2 P. R. 1903 (Rev.)=98 P. L. R. 1903.
3. Financial Commissioner's Standing Order No. 20, para. 3.
4. See para. 2·53 of Punjab Excise Manual, Vol. III.
5. Land Administration Manual, para. 321 ; Land Revenue Rule 25.
6. Maya Sukh *v.* The Crown=2 P. R. 1888 (Rev.) ; see also 6 P. R. 1886 (Rev.).
7. Nazar Hussain *v.* Khan Mohammad=1932 L. L. T. 29.

A *lambardar*, who makes two contradictory statements in the Police and before the Magistrate regarding an offence, is liable to be dismissed.[1] But the discrepancy to the statements of a person made before the Police under section 161, Criminal Procedure Code. and that made by him as a witness before a Magistrate is not sufficient to deprive him of his post as a *lambardar* where his statement in Court has been believed to be true by the Magistrate and it is not clear that he was aware of the record made of his statement to the Police by the officer concerned.[2]

In *Muhammad Ghafoor* v. *Babu*[3] the dismissal of a *lambardar* on the ground that he neglected to report an outbreak of small-pox of which he must have been aware, because it happened in his own family, was approved. As a result of this neglect there was a considerable spread of the disease.

Lambardar spoiling to some extent otherwise perfect crown case.

Lambardari is a cherished right and descends from father to son. If a *lambardari* is transferred to another line the rights of the children of the original *lambardar* are extinguished. Therefore, though there may be justification for the irritation of the local authorities at having a criminal case which appeared perfect spoiled to some extent in Court on account of the *lambardar* not giving evidence in the manner promised, it would be unduly severe to deprive a line of its *lambardari* for all time. Under the circumstances a warning to the defaulting *lambardar* and a promise from him to be very much more careful in the future may meet the ends of justice.[4]

Temporary appointment on dismissal of headman.

Dismissal of lambardar—temporary appointment of new hand—proper order—re-instatement of dismissed lambardar—revision by temporary appointee.—Where a *lambardar* is dismissed and another person is appointed temporarily, the Collector in his order of appointment should state that the appointment is temporary subject to the result of any appeal or revision proceedings taken on the order of dismissal. Failure to do so, however, does not give the person so appointed a right to file a revision against the order of re-instatement of the dismissed *lambardar*. Once the *lambardar* is re-instated the temporary appointee has no *locus standi* to apply.[5]

MATTERS TO BE CONSIDERED IN APPOINTMENT OF SUCCESSOR TO HEADMEN

Land Revenue Rule 17.—*(*i*) In an estate, or sub-division thereof, owned chiefly or altogether by Government, a successor to the office of headman shall be selected with due regard to all the considerations, other than hereditary claims, stated in Rule 15 :

Provided that in such an estate, or sub-division thereof notified for the purpose by the Financial Commis-

1. Bahawal *v.* Jhunda=1929 L. L. T. 4 (1).
2. Jhanda *v.* Bahawal=1929 L. L. T. 41 ; order on review of the case Bahawal *v.* Jhanda=1929 L. L. T. 4 (1).
3. 1926 L. L. T. 22.
4. Mit Singh *v.* The Crown=(1940) 19 L. L. T. 39.
5. Harbans Singh *v* Ujagar Singh=(1940) 19 L. L. T. 8.
6. Land Administration Acts, Vol. II, page 33, made under section 28 of the Act.
7. Financial Commissioner's Notification No. 3096-R, dated 21st December, 1932.

*As substituted by Financial Commissioner's Notification No. 2105-R, dated 19th October, 1937.

sioner, the selection shall, as far as possible, be made in the manner prescribed by sub-rule (*ii*) if a suitable heir is forthcoming.

(*ii*) In other estates the nearest eligible heir according to the rule of primogeniture shall be appointed unless some special custom of succession to the office be distinctly proved but subject in every case to the following provisions :—

(*a*) The claim of a collateral relation of the last incumbent to succeed shall not be admitted solely on the ground of inheritance, unless the claimant is a descendant in the male line of paternal great-grand-father of the last incumbent.

(*b*) Where a headman has been dismissed in accordance with the provisions of rule 16 the Collector may refuse to appoint any of his heirs : —

(1) if the circumstances of the offence, dereliction of duty, or disqualification, for which the headman was dismissed, make it probable that he would be unsuitable as a headman ;

(2) if there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed ;

(3) if any disqualification for which the headman has been dismissed attaches to him ;

(4) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

Note.—If a dismissed headman's heir is considered fit to succeed, regard shall be had to the property which he will inherit, in like manner as if he had already inherited it.

(*c*) The Collector may also refuse to appoint a person claiming as an heir on any ground which would necessitate or justify the dismissal of that person from the office of headman.

(*d*) A female is not ordinarily eligible for the office, but may be appointed when she is the sole owner of the estate for which the appointment has to be made, or, for special reasons, in other cases.

(*iii*) Failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the considerations, described in rule 15.

(*iv*) Election shall not in any case be resorted to as an aid in making appointments under this rule and rule 14.

Government estates.

Successor for an estate or sub-division of an estate owned chiefly or altogether by Government—clause (*i*).—According to sub-rule 17 (*i*) as previously existing, in an estate or sub-division of an estate owned chiefly or altogether by Government, a successor to the office of headman shall be selected without regard to hereditary claims but regard shall be had to the other considerations stated in rule 15.

Where a vacancy occurred in the office of *lambardar* and the Collector appointed younger son of the late *lambardar* as being more intelligent, possessed of better physique and of a better record than his elder brother it was held that it was a definite act of selection and that the Collector was not in any away bound to respect hereditary claims and he exercised his discretion and based his decision on the merits of the two brothers.[1] In the appointment of a *lambardar* in a *chak* belonging to the crown hereditary claims need not be considered.[2]

This rule has, however, been recently amended so as to provide that in an estate or sub-division thereof, owned chiefly or altogether by Government, a successor to the office of headman shall be selected with due regard to all the considerations other than hereditary claims stated in Rule 15, provided that in such an estate, or sub-division thereof, the selection shall, as far as possible, be made in the manner prescribed by sub-rule (*ii*) if a suitable heir is forthcoming.

Colony villages.

Hereditary claim to lambardari in colony villages.—With respect to the important point as to the stage at which and the decree in which the hereditary principle should be introduced into the succession to *lambardaris* in colonies, the Financial Commissioners observed under the old sub-rule (*i*) in *Said Khan* v. *Lal Khan*[3] as follows :—

"Ordinarily a colony village begins with the land wholly owned by Government, and the colonists being first tenants-at-will, and later occupancy tenants, only begin to become proprietors as they acquire these rights by purchase. There is thus a transition from the stage governed by sub-clause (*i*) to that dealt with in (*ii*), and in this transitional stage the hereditable character of the succession to post of *lambardar* is a question of some difficulty.....The first appointments to posts of headmen in colony villages must be somewhat speculative, and where the first holder or his direct descendant proves unsuitable, the post may suitably be taken from the family and given to other colonists in the village. The colony village is apt to lack homogeneity, and it is important to ensure early consolidation of interests amongst the residents ; in an old settled village the heirs to any landholder are usually to be found within the estate, and the hereditary principle in the succession to such posts results in the appointment of one old resident in place of another. In the canal colonies the result of following hereditary claims, as in the present case, may be different, and the process of consolidation of interests will be retarded by introducing a perfect stranger to the village.. .....In cases of dismissal it has been frequently held that where the fault is sufficiently serious to justify dismissal, the family may be deprived of the post ; in the colonies, there need not be less hesitation in passing over

1. Raja *v.* Sarang=1932 L.L.T. 153.
2. Hussain Bakhsh *v.* Ghulam Rasul and another=1932 L. L. T. 67.
3. 1930 L.L.T. 26.

the claims of the family where the post is not an old one and where the family has failed to produce a satisfactory successor."

"We are of opinion that mere relationship should not provide a reason for introducing into a colony village as *lambardar* a stranger from another tract altogether, specially when that stranger, except for a gift (privately arranged for the purpose) is to be selected from amongst the landlords in the estate, and although cases may occur where the heir to a deceased *lambardar* may succeed to the *lambardari*, even although he has not previously lived in the estate, mere relationship should not afford basis for a claim when the claimant has not inherited the property of the late *lambardar*."

In *Subedar-Major Sewa Singh* v. *Chanan Singh*[1] seven years' service after first appointment ending with dismissal was not considered sufficient to establish hereditary claims.

The Collector has a free hand in selecting *lambardars* for *chaks* which continue to be largely the property of the Government. The hereditary principle affords simple guide where comparative merits are approximately equal or unimportant, but until proprietary rights are acquired it must not be allowed to deprive the Collector of a clear discretion.[2]

But see now the amended sub-rule (i) as to the extent of acceptance of hereditary principles in such appointments.

Mule breeding lambardari square.—Where a *lambardar* holding a mule breeding square dies the mule-breeding square must be regarded as definitely attached to the particular post of *lambardar* which has fallen vacant, so that on the death of the deceased *lambardar* it must automatically be conferred on his successor.[3]

If a *non-lambardar* holding a mule breeding square is subsequently appointed a *lambardar*, the mule-breeding square in his possession automatically passes into the class of *lambardari* squares (*Ibid*).

If a Collector who has to make a nomination of a successor to a *lambardar* holding a mule-breeding square under section 20 (*d*) of the Colony Act chooses to summon before him all the persons mentioned in clause (*d*) as persons from among whom a successor may be chosen and calls upon them to represent their respective claims before him and then makes his decision in a *quasi* judicial order, any one of such persons who was not selected would be a party to the proceedings and entitled to present an appeal to the Commissioner (*Ibid*).

Other estates.

Hereditary claim in other estates—sub-rule 17 (*ii*).—Sub-rule 17 (*ii*) provides that in estates other than those chiefly or altogether owned by Government, the nearest eligible heir according to the rule of primogeniture shall be appointed *unless some special custom of succession to the office be distinctly proved*, and subject to the proviso laid down therein in that sub-rule. Thus in these cases the appointment should be made according to the rule of heredity unless it is found either (*a*) that the circumstances exist as described in Land Revenue Rule 17 (*ii*) (*b*), namely, that his eligibility is affected by the offence or that he is under the influence of the

1. 1930 L.L.T. 25.
2. Ajit Singh *v.* Teja Singh=1930 L.L.T. 36.
3. Inder Singh *v.* Lachman Singh=(1941) 20 L.L.T. 188.

dismissed *lambardar*, or (*b*) that he has a personal disqualification or disability.[1] In *lambardari* appointments, the hereditary principle should be given due importance and should not be departed from as far as possible.[2] The claim of a person who is entitled by rule 17 (*ii*) to succeed the deceased *lambardar* can only be set aside if it is proved that for some inherent defect in him he is unfit for the appointment. There can be no departing from this rule in the case of an hereditary office like that of a *lambardar*, and the claims of the last *lambardar's* collectors, and agnate (if any) must be shifted even if no claimant has made an application (1936 L.L.T. 9). The mere fact that he did not apply at the beginning itself does not prejudice his case.[3] Where contrary to the rules the claim of the nearest heir of the last *lambardar*, who was not disqualified in any way, was ignored by the Collector and the Commissioner, the mistake was corrected on revision.[4]

Under Land Revenue Rule 17 (*ii*) the heirs of the deceased *lambardar* in order of primogeniture have a definite hereditary rights to succeed to the office unless there are circumstances which justify the Collector in passing over the heirs under proviso (*c*) to the sub-rule in question.[5]

There is hardly any special custom of succession to the office of *lambardari* existing, but if such special custom may be distinctly proved it should be resorted to as prescribed by the above rule. Under the old Act it was held that as a *wajib-ul-arz* should only deal with matters connected with the internal economy of the village and the appointment of *lambardars* is not among such matters, no effect should be given to any provision in a *wajib-ul-arz* with regard to it [4 P.R. 1883 (Rev.)].

The heir of a deceased *lambardar* is not ineligible merely because he has inherited only a small extent of property in the village if he has other sufficient property which can be proceeded against in case of default.[6] In the very peculiar circumstances which attend the supersession of the hereditary claimant to a *lambardari* solely on grounds of insufficient landed property the Commissioner may and indeed should consider any improvement made in the hereditary claimant's position before he passes orders in appeal, and if he finds reason to believe that such improvements have been made should return the case to the Collector. But when the Commissioner passes his order which by law is final, the Financial Commissioner will not interfere in revision on the ground of facts alleged to have taken place after the Commissioner's order.[7] When a person is dismissed from his *lambardari* and another person is appointed in his place and the post becomes hereditary in his family, then on the death of the last incumbent the office devolves on a candidate belonging to the family of the latter and not of the former.[8]

Where on the death of a *lambardar* his elder son surrenders his claims to the appointment in favour of his younger brother on an

Elder brother surrendering appointment in favour of younger brother—succession on the death of younger brother.

1. Raj Mal *v* Gurbachan Singh=1932 L.L.T. 47=1931 P.C.L. 20 (Rev.).
2. Allah Dad Shah *v.* Mohammad=1931 L.L.T. 14 (1).
3. Ahmad Khan *v.* Nota Khan=1925 L.L.T. 7 (2) ; see also 1936 L.L.T. 9.
4. Mohammad Din *v.* Jalal-ud-din=1924 L.L.T. 19.
5. Pir Bakhsh *v.* Ram Narain=(1941) 20 L.L.T. 35.
6. Chapat *v.* Murad Ali=2 P. R 1903 (Rev.)=98 P. L. R. 1903.
7. Hayat *v.* Nawab=1933 L. L. T. 65 ; 1933 L. L. T. 28.
8. Kura *v.* Man Singh=1932 L. L. T. 137 ; 3 P. R. 1884 held irrelevant under the existing rules.

understanding that on the latter's death the post should go to the family of the former, the appointment must be regarded as having passed entirely into the family of the younger brother, and his heirs and not those of the elder brother will succeed on his death.[1]

Eldest son blind and unmarried.

On the death of a *lambardar* his eldest son should succeed to the office though he is both blind and unmarried, for once a *lambardari* passes from the direct line, it becomes hereditary in the line into which it is transferred. The fact that the candidate is unmarried does not necessarily mean that he will not marry and will have no issue.[2]

Blindness and age of candidate.

It is very necessary that the hereditary principle in regard to *lambardaris* should be maintained as far as possible, and the mere blindness or old age of a candidate is no ground for passing him over especially as it is open to the Collector to appoint a suitable *sarbrah*.[3]

Poverty.

Hereditary rights in *lambardaris* are to be guarded jealously, and the line of succession may be broken on financial grounds only when the safety of the collection of the land revenue cannot be secured.[4]

Grandson where father is unfit preferred to uncle.

In *lambardari* cases law of primogeniture prevails and the heir has an inherent right not only to be considered but to succeed unless the positive defect of good moral turpitude in the father has over-shadowed him, he being under the inescapable influence of the father. A grandson whose father has proved inefficient *sarbrah lambardar* and therefore cannot be appointed as *lambardar* has a right to succeed in preference to his uncle who is younger than his father according to the rule of primogeniture.[5]

Issue of legitimacy in lambardari proceedings.

If the question of legitimacy is raised in a *lambardari* case, Revenue Officers should not attempt to decide issues which involve intricate questions of law and fact, but accept, if available, the findings of Revenue Officers and Civil Courts dealing with succession to the land of the deceased person. So long as a mutation order stands it is not proper for the Revenue Officers to question it in another Revenue Officer's case, *e.g.*, *lambardari* case.[6]

Nearest eligible heir according to the rule of primogeniture.

The nearest eligible heir according to the rule of primogeniture has the right to succeed—meaning and scope.—Rule 17 of the Land Revenue Rules lays down that 'except in an estate or sub-division of an estate owned chiefly or altogether by Government, the nearest eligible heir according to the rule of primogeniture shall be appointed as *lambardar* unless some special custom of succession to the office be distinctly proved,' provided however that 'the claim of a collateral shall not be admitted solely on the ground of inheritance unless the claimant is a descendant in the male line of the paternal great-grand-father of the last incumbent.' In case a headman has been dismissed, his heir may be passed over under the circumstances laid down in clause (*b*) of rule 17 (*ii*) mentioned above.

The word '*heir*' in rule 17 (*ii*) merely means the person entitled to succeed and is not used in the technical sense in which it is used in the English law meaning the person entitled to succeed to immovable property of the late owner.[7] *The rule of primogeniture* relating to the

1. Ahmad Din *v.* Mohammad Din,=(1941) 20 L. L. T. 186.
2. Gurbaksh Singh *v.* Buta Singh,=(1940) 19 L. L. T. 27.
3. Siraj *v.* Umar Din,=1936 L. L. T. 34.
4. Lal Din *v.* Rahmat Ali=1938 L. L. T. 13.
5. Jai Singh *v.* Ranjit Singh=1939 L. L. T. 34.
6. Mohammad Sarwar *v.* Mohammad Nazir=1936 L L. T. 37.
7. Kesar Singh *v.* Thakar Singh=1933 L. L. T. 29.

office of a *lambardar* has been clearly defined in *Yakub Khan* v. *Alaf Khan*,[1] namely, that an heir is the eldest male in the eldest branch in direct descent from the common ancestor. Thus the nephew succeeds before the brother, where he is the son of an elder brother.[2] A person who is descended from the father of the deceased *lambardar* has a better claim to succeed on the ground of heredity as against a person descended from the grandfather unless there are reasons which would justify his dismissal from the office of *lambardarship*.[3]

In considering the question of appointment of a *lambardar*, the disqualifications or demerits of the candidate alone must be considered if he is entitled to succeed by the rule of primogeniture. The mere fact that there is another candidate in the field with superior qualifications will not justify a Collector in appointing that man if that man is not eligible by the rule of primogeniture.[4] In a case where both the claimant were descendants in the male line of the paternal grandfather of the last incumbent, the claimant who belongs to the senior branch of the family and one degree nearer to the deceased must be appointed a *lambardar* although none of the common ancestors have held the office.[5]

Succession to the post of *lambardar* is governed by the law of primogeniture. Therefore where the branch of a family in which the post was held becomes extinct, the post will go to the next elder branch of the family.[6]

Heir passed over.

Heir passed over—subsequent vacancy—rule of succession—no reversion to the original line.—Under the old Land Revenue Act (XXXIII of 1871) minors could not be appointed as *lambardars*. In *Waryam Singh* v. *Tharaj Singh*,[7] therefore, the Financial Commissioner held that under rule A. I. 4 of the rules under the Punjab Land Revenue Act, 1871, in cases where in the appointment of a successor to a deceased *lambardar*, the nearest heir is passed over on the ground of youth, the absence of a note by the Revenue Officer to the effect that the claims of such heir are to be considered when the post falls vacant again is very material, but that in a case where the claim of the nearest heir has been overlooked by mistake, and the claimant comes forward at the earliest opportunity to seek his remedy by appeal, or, when there was sufficient excuse for his not appealing, when the succession next opened out, his claims should be taken into consideration. In *Ahmad Din* v. *Mohammad Ali*[8] also it had been held that in the case of a person who had been legally declared under the earlier rules to have a claim to be appointed on the next vacancy, the claim of such person must be taken into consideration together with the claim of the nearest heir on the appointment falling vacant, even though such vacancy occurred during the later rules. But Land Revenue Rule 17 (*ii*) of the present rules must be interpreted strictly, though in exceptional cases, such as those referred by the Financial Commissioner in *Waryam Singh* v. *Tharaj Singh*[9] facts may exist which justify departure from it. Thus, where under the old Punjab Land Revenue Act 1871, in the appointment of a successor to the deceased *lambardar*, the nearest heir is passed over and

1. 5 P. R. 1894 (Rev.).
2. Raja *v.* Sardara=1932 L. L. T. 21.
3. Nazar Hussain *v.* Khan Mohammad= 1932 L. L. T. 29
4. Karam Ilahi *v.* Chanan Singh=1924 L. L. T. 24.
5. Yedu *v.* Dani=5 P. R. 1901 (Rev.)=108 P. L. R. 1901.
6. Ralla Singh *v.* Rattan Singh=(1941) 20 L L. T. 26.
7. 7 P. R. 1896 (Rev.).
8. 3 P. R. 1894 (Rev.).
9. 7 P. R. 1896 (Rev.).

the Revenue Officer does not make any note to the effect that the claims of such heir would be considered when the post falls vacant and the *lambardarship* passes to the junior branch of the minor's family, there will be no reversion to the senior branch and the office will devolve on the death of the *lambardar* according to the law of primogeniture to the nearest heir of the deceased *lambardar*.[1] Under the present rules, when an heir whether minor or not, has been passed over, so, far from there being a possibility of any presumption that this is for immaterial reasons he has been passed over for good, and there is no alternative but to make the appointment under the rule of primogeniture deriving from the last incumbent of the post.[2] Where a person is dismissed from his *lambardari* and another person is appointed in this place and the post becomes hereditary in his family, then on the death of the last incumbent the office devolves on a candidate belonging to the family of the latter and not of the former.[3]

Minors.

Claims of minors.—*Minority of the candidate is no bar to his* appointment as a *lambardar* if he is otherwise qualified. Thus a son though a minor is entitled to succeed to the office of *lambardar* held by the deceased father and during his minority a suitable substitute or agent should be appointed to perform the duties of the office.[4] Where a hereditary *lambardar* resigns his post the vacancy must be filled up by the next eligible person according to the rule of primogeniture and it is not open to the revenue authority to appoint any candidate they might choose to select from the family. If the person entitled to the post is a minor a *sarbrah* should be appointed for him.[5]

Adopted son.

Right of adopted son to succeed to lambardari.—Two cases are to be distinguished under this heading *viz.*, (1) the right of the adopted son to succeed to his adoptive father, and (2) the right of the adopted son to succeed in his natural family.

Under the rules in force before 1887 the person who, subject to certain considerations which for the present purpose are irrelevant, was to be appointed *lambardar* was "the heir who, according to the custom of the village, may have the first claim to succeed." Under the rule which is now in force "the nearest eligible heir according to the rule of primogeniture shall be appointed unless some special custom of succession to the office be distinctly proved." In a series of rulings which are published as 9 P. R. 1892 (Rev.); 10 P. R. 1892 (Rev.); 11 P. R. 1892 (Rev.); 12 P. R. 1892 (Rev.); 13 P. R. 1892 (Rev.); it has been laid down that while an adopted son who is of a different *got* from his adoptive father is not entitled to succeed his adoptive father in the office of village headman, an adopted son who, being an agnate, is of the same *got* is, in accordance with the ruling *Maula Dad* v. *Hayat* [14 P. R. 1886 (Rev.)], entitled to succeed.

In none of these rulings of 1892 is there any reference to the fact that since the date of the ruling 14 P. R. 1886 (Rev.), the law of succession to the office of *lambardar* had been altered. These rulings are, therefore, not applicable now.[6]

1. Bahadur *v.* Sharaf Ali=1930 L. L. T. 11
2. Nabi Baksh *v.* Faiz Rasul=1932 L. L. T. 131.
3. Kura *v.* Man Singh=1932 L. L. T. 137.
4. Brij Lall *v.* Gharib=16 P. R. 1890 (Rev.); Kura *v.* Bhoja=1 P. R. 1889 (Rev.); Mohammad Ghafoor *v.* Babu=1926 L. L. T. 22; See also 3 P. R. 1882 (Rev.); 10 P. R. 1885 (Rev.); under the old Act.
5. Haq Nawaz *v.* Waryam Khan=1939 L. L. T. 56.
6. See Bhag Singh *v.* Jaura Singh=2 P. R. 1912 (Rev.)=15 I. C. 925=50 P. L. R. 1912 suppl.

It is now settled law that an adopted son is not entitled to succeed to the *lambardari* held by his adoptive father in the presence of an heir entitled to succeed under the ordinary rule. An adopted son cannot succeed to or through his father under any rule of primogeniture, as according to the etymology of the word "primogeniture" the adoptive tie is not connoted. The nearest natural heir according to the rule of primogeniture succeeds to the office of *lambardar* in preference to a more distant natural heir who had been adopted by the deceased *lambardar*.[1] From the point of view of expediency also there are good grounds for refusing to treat adoption as giving a claim to the office of headman, as a *lambardar*, for instance should not be able to gratify private spite by imposing a *lambardar* on the village whom the villagers must dislike.[2]

But an adopted son or the son of an adopted son does not by the fact of his adoption, lose his right to succeed collaterally to the post of *lambardar* held by his natural family. The rule of primogeniture laid down in rule 17 (*ii*) is to be construed in the literal sense; that is to say, the first born whether adopted or not is entitled, other things being equal, to succeed to a *lambardari* held in his natural family before a younger brother.[3]

In *Nura* v. *Nasir Din*[4] among the Muhammadan Rajputs of the Chuhan *got*, an adopted son, being a near agnate of a deceased *lambardar* and of the same *got* with him was held entitled to succeed in the presence of near collaterals, if his succession was not opposed to custom or to the general feeling in the village on the matter. But this ruling was also based on the previous rulings in 1892 referred to above, and was dissented from in *Ralla Singh* v. *Wazir Singh*.[5]

Brothers.—It had been held under the old Act that for purposes of succession to a *lambardari* a full brother had no preference over a half-brother.[6] Thus in the case of succession to the office of *lambardar* in which the dispute was between the cousin of the whole blood and uncle of the half blood of a deceased *lambardar*, it was held that, as between sons of the same father by different wives, a full brother had not by custom or feeling of the country any better right than a half brother to an office like that of *lambardar*, and that on the contrary, the feeling would be in favour of the brothers succeeding to the post in order of age without any distinction of full or half blood.[7] But in *Kapur Singh* v. *Kanha*[8] P was a half brother to the deceased and succeeded to his property. R the uncle of the deceased had acted as *lambardar* and was considered the best man to be appointed. It was held that R had better claim though the half brother was nearer of kin than the uncle. **Brothers.**

The substantive rule under the old Act was as follows:—

"The heir, who, *according to the custom of the village, may have the first claim to succeed,* shall be appointed, unless, with reference to

1. Mehar Singh *v.* Lachhman Singh=(1942) 21 L. L. T. 1.
2. 2 P. R. 1912 (Rev); Ralla Singh *v.* Wazir Singh=1929 L. L. T. 47.
3. Kesar Singh *v.* Thakar Singh=1933 L. L. T. 29; 2 P. R. 1912 (Rev,) and 1929 L. L. T. 47 followed; Ralla Singh *v.* Rattan Singh=(1941) 20 L. L. T. 26.
4. 1 P. R. 1912 (Rev.)=27 P. L. R. 1912; See also 9 P. R. 1886 (Rev.); 14 P. R. 1880 (Rev.); 2 P. R. 1899 (Rev.); which are no longer good law now for the same reason.
5. 1929 L. L.. T. 4.
6. 3 P. R. 1883 (Rev.).
7. 8 P. R. 1886 (Rev.).
8. 5 P. R. 1876 (Rev.).

any of the considerations specified in Rule 2, he is considered unfit for the office, in which case the next heir shall be appointed, subject to the same qualification." (Rule A-1-4 of the Rules under section 66 of the Punjab Land Revenue Act, 1871).

The words in italics are important and their significance as compared with the present Rules has already been noted on pages 144 and 145. It is in this light that all the rulings under the old Act and those under the present Act based on those rulings are to be interpreted.

Where the estate ceased to be a Government estate, the ordinary rules regarding appointment of *lambardars* apply and the elder brother of the deceased *lambardar* should be appointed in succession to him.[1]

Son and grandson.

Son and grandson.—According to the rule of primogeniture a brother of full age has no preferential right over a minor grandson, the son of a predeceased son.[2] It has also been held that on death of a *lambardar*, his son is entitled to succeed by hereditary right, and if qualified, he should succeed, even though his qualification is some what postponed, and if he was really unjustly deprived of his land by a mutation thereof in favour of his step mother, he should not be deprived of his *lambardari*. It was also held, on the facts of the case, that final order should be postponed till the determination of rights by Civil Court and the collateral contesting be given an opportunity to state his case.[3]

Collaterals.

Right of collaterals to succeed.—Proviso (*a*) to sub-rule 17 (*ii*) above prescribes that the claim of a collateral relation of the last incumbent to succeed shall not be admitted solely on the ground of inheritance, unless the claimant is a descendant in the male line of the paternal great grandfather of the last incumbent. In considering heredity in the appointment of a *lambardar* the degree prescribed by this rule must be borne in mind.[4]

There is no sanction for the view that the rule of primogeniture outside the prescribed degrees gives a *pima facie* claim which has to be rebutted. The correct statement of law is that outside the prescribed degrees primogeniture is a factor which should be taken into consideration with all other factors in the case. The amount of weight given to it in relation to all other factors in the case can only be decided on the merits of each individual case.[5]

Sub-rule 17 (*iii*) provides that failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the considerations, described in rule 15.

EFFECT OF THE DISQUALIFICATION AND DISMISSAL OF THE PREDECESSOR

Proviso (*b*) to sub-rule 17 (*ii*) provides that—

Where a headman has been dismissed in accordance with the provisions of rule 16, the Collector may refuse to appoint any of his heirs :—

1. Lajja Ram *v.* Ghansham=1929 L. L. T. 12.
2. 5 P. R. 1894 (Rev.).
3. Ghulam Mustafa *v.* Amir Ali=1932 P. C. L. 31 (Rev.).
4. Hardial Singh *v.* Jhanda Singh=1931 L. L. T. 43.
5. Jagat Singh *v* Bhagat Singh=1932 L. L. T. 1

(1) if the circumstances of the offence, dereliction of duty, or disqualification, for which the headman was dismissed, make it probable that he would be unsuitable as a headman;

(2) if there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed;

(3) if any disqualification for which the headman has been dismissed attaches to him;

(4) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

We shall examine now the meaning and scope of these provisions more carefully under separate headings.

Participation in violent crimes.

Participation in and conviction for violent crimes.—Participation in violent crime entirely destroys the family claims to headmanship. The reason for passing over the heir in such a case is that the eligibility of the heir is affected by the offence itself. The principle of exclusion is that the heir is excluded, neither because he is under his father's influence nor because his father merely committed serious crime, but because the nature of the crime, namely aggression in the pursuance of a family or tribal feud necessarily involves the eligibility of the heir.[1] Where a *lambardar* was sentenced to 5 years' imprisonment for taking part in an attempt to murder, his son was passed over for appointment as *lambardar*.[2] Similarly, the offence of murder is one which affects the eligibility of the heir, and, therefore, where a *lambardar* is convicted of the offence of murder his heir may be passed over on that account.[3]

But the fact that the candidate's uncle absconded or that his father was tried for an offence and acquitted is not sufficient to defeat his claim where he is entitled to the post on the ground of heredity.[4] A certain *lambardar* was dismissed for having committed an offence of which he was convicted by the trial Magistrate. He was, however, acquitted on appeal. The Commissioner refused to appoint his son holding that the son would be under his father's influence. The son came up in revision before the Financial Commissioner. It was argued for the other side that the fact that the accused had received the benefit of doubt from the Sessions Judge did not show that he was innocent and, therefore, the Financial Commissioner should not interfere in revision. *Held*, that the suspicion which may exist against the father even after his acquittal was not sufficient to debar the son from being appointed *lambardar* in place of his father.[5] Where the last holder was convicted of bad livelihood while the heir himself was of good character, it was held that he should not be passed over.[6]

1. Dewan Singh *v.* Ugagar Singh=1932 L.L.T. 27; 5 P.R. 1886 (Rev) dissented from; 1923 L.L.T. 20 not followed; 1926 L.L.T. 20 referred to; 1929 L.L.T. 46 followed.
2. Chain Singh *v.* Inder Singh=1929 L.L.T. 46.
3. Yusaf *v.* Mohd. Aslam=1931 L.L.T. 41.
4. Nazir Ahmad *v.* Jalal=1929 L.L.T. 17.
5. Sahib Singh *v.* Sardul Singh=1930 L.L.T. 5 (2).
6. Narain Singh *v.* Jaimal Singh=2 P.R. 1894 (Rev.); see also 4 P.R. 1890 (Rev.).

Conviction of a *lambardar* under section 193 of the Indian Penal Code is not in itself sufficient to debar other members of the family from their right to succeed to the *lambardari*. Registration of suspicion against an individual is not sufficient in itself to destroy a hereditary claim to succession.[1]

Under the old Act also it has been held that in the case of a serious crime as highway robbery, it is doubtful if the claim of the son of a man convicted of the offence can be considered. In the case of serious crimes against property showing criminal tendencies in a family, it is generally right to exclude the son as well as the father.[2]

Moral turpitude.

Conviction involving moral turpitude.—It was held in *Rulia Singh* v. *Dharam Singh*[3] that where a *lambardar* has been dismissed for embezzling a large sum of land revenue, it would be wrong to appoint any of his relatives to succeed him as *lambardar* as their eligibility is affected by his offence. But this has been over-ruled in *Jamadar Ram Ratan* v. *Joge Ram*[4] in which it has been held that where a *lambardar* has been dismissed on account of his conviction for misappropriation of *tacavi* dues such conviction does not necessarily render ineligible under Land Revenue Rule 17 (*ii*) (*b*) (1) a candidate who is related to the dismissed *lambardar* by virtue of being directly descended from his paternal great grandfather.

Helping bad characters.

Helping bad characters.—The appointment as *lambardar* of an infant son of a dismissed *lambardar* for helping bad character offends against the Land Revenue Rule 17 (*ii*) (*b*).[5]

Indebtedness.

Indebtedness.—A *lambardar* was dismissed on account of insolvency and in order to secure *lambardari* for his grandson gifted to him 57 *bighas* of land. The Collector refused to appoint the grandson *lambardar* partly because the land gifted had been attached, partly because he doubted whether its nature was sufficient to secure the land revenue and partly on the general ground that it was unsuitable to appoint a bankrupt's grandson when it is not certain whether he will be left in possession of what little property he has. The Commissioner reversed the decision merely with reference to the second ground finding that the value of the land was sufficient to cover the land revenue. It was held that if the grandfather was embarrassed by debt, his grandson also would share the fortune of the family and was not a suitable person to be appointed *lambardar*.[6]

But obviously if the heir has undisputed sufficient security for the amount of the land revenue entrusted to him, he should not be passed over on this score.

Absence.

Absence.—A son cannot be passed over for the post of *lambardar* where his old father was merely negligent or absent from his post.[7]

Neglect of duty.

Neglect of duty.—Where a *lambardar* verified a statement without taking steps to assure him of its correctness which resulted in loss

1. Issa *v.* Fateh Mohammad=1938 L.L.T. 10.
2. Jai Ram *v.* Ranjeet=16 P.R. 1881 (Rev.).
3. 1928 L.L.T. 30.
4. 1936 L.L.T. 39.
5. Hardial Singh *v.* Jhanda Singh=1931 L.L.T. 43.
6. Sobha Ram *v.* Girdhari Lal=1928 L.L.T. 3.
7. 10 P.R. 1891 (Rev.).

to Government, it was held that the giving of such a certificate would justify his dismissal and provide a good cause for passing over an heir.[1]

Failure to produce a witness in a case under section 498, Indian Penal Code, for whom the applicant's father had given security was not held sufficient warrant for his non-appointment as *lambardar* in succession to his father.[2]

A *lambardar* was dismissed for failure to assist in recruiting. It was held that "the failure of a particular individual to assist in recruiting (unless he is a member of a tribe or family, which for specific reasons, *e.g.*, the lack of connection with the classes from whom recruits are likely to be obtainable, is permanently unlikely to be successful in this respect), is not a matter which should exclude the claims of the family. It depends mainly upon personal character and energy, and in a case such as the present it is not fair to assume that the son will lack the required qualities.[3]

Being under the influence of dismissed lambardar.

Being under the influence of dismissed lambardar—scope.— Under Land Revenue Rule 17 (*ii*) (*b*) the Collector may refuse to appoint any of the heirs whose eligibility is affected by such offence or disqualification or who may reasonably be supposed to be under the influence of the dismissed headman.[4] For the application of this rule it is necessary that the last incumbent of the office should have been dismissed. Thus if the last incumbent was not dismissed a disqualification justifying passing him over cannot attach in the second degree to any one who may come under his influence.[5] There is a presumption that the disqualification of being under the influence of the dismissed headman (the headman was dismissed in this case under the Excise Act) exists in the case of his sons and less strongly in the case of his brothers and that in the case of more distant relations the question is one for proof on the merits in each case.[6]

But it should not be inferred that a son in no circumstances can be appointed.[7] Where after his dismissal and even before it, the conduct of the father of the appellant was such as to please the local authorities and on the facts on record it did not seem that the father was likely to exercise an evil influence over his son, it was held that the appellant should not be excluded from his hereditary right of succeding as *lambardar*.[8]

It is true that hereditary principle and recognition of tribal sentiment are at the root of the *lambardari* system, but when the dismissed *lambardar* has been guilty of great moral turpitude (theft from the house of another person in collusion with a previous convict in this case) the authorities may refuse to appoint his heir as a *lambardar* where such heir is under his influence.[9] But where a *lambardar* has

1. Nazar Hussain *v.* Khan Mohammad=1932 L.L.T. 29=1932 P.C.L. 18 (Rev.).
2. Surain Singh *v.* The Crown=1931 L.L.T. 5.
3. Haidar *v.* Crown=4 P. R. 1919 (Rev.)=54 I.C. 861=1922 L.L.T. 2
4. Raja *v.* Sardara=1932 L.L.T 21.
5. Ibid.
6. Kharak Singh *v.* Bulanda=1928 L.L.T. 40.
7. Lachman Singh *v* Mohan Singh=1932 L.L.T. 122.
8. Shiv Lal *v.* Lalu=1923 L.L.T. 20=1923 P C.L 12 (Rev.).
9. Pir Ghazanfar Hussain *v.* Mohammad Yasin=1929 L.L.T. 58 ; see also 1929 L.L.T. 46.

been dismissed for an offence which does not involve a moral turpitude (neglect to report an outbreak of small-pox of which he must have been aware in the case), the claims of his son to be appointed *lambardar* cannot be passed over on the ground that he is under the influence of his father to an undesirable extent.[1]

It has been held in *Sardar Khan* v. *Gul Mohammad*[2] that where the record of the candidate's father is very bad the Collector should not appoint his son a *lambardar*, for the father obviously must have a great influence over the son where there is nothing to show that the son has in any way been disassociated from the father in his evil doings.

Where the minor son of a dismissed *lambardar* is appointed as *lambardar*, but a person who is not under the influence of the dismissed *lambardar* is appointed *sarbrah lambardar* it cannot be said that the order amounts to a practical re-appointment of the dismissed *lambardar*.[3]

Illicit distillation.

Illicit distillation, etc.—"A *lambardar* who joins in, or conceals illicit distillation, and the smuggling of manufactured drugs, opium or charas should be punished by dismissal. When a *lambardar* has been dismissed for any of the above offences, all adult members of the same family descended from the same common father as the dismissed *lambardar* and residing in the same village, should ordinarily be excluded from succession to the *lambardari*. As regards exclusion of more distant relations, the test should be, whether their eligibility is affected by their dismissed *lambardar's* offence, or whether they may reasonably be supposed to be under the influence of the dismissed *lambardar* to an undesirable extent [*Punjab Excise Manual, Vol. III, para.* 253].[4]

Change in religion.

Change in religion.—No disability attaches to a son for the appointment as *lambardar* by reason of his father having been dismissed for incompetence; nor can change of religion by such son be a ground to detract from any hereditary right; but where there is no hereditary claim, the question of change of religion can be brought forward in considering whether one man is as a matter of fact, fitter than another.[5]

Executive instructions.—Except in estates chiefly or wholly owned by Government, much weight is attached to hereditary claims. The eldest fit son of the late *lambardar* should ordinarily be appointed, and, when there is no son, the nearest collateral relation, according to the rule of primogeniture. Where there are no near collaterals, the necessity of regarding hereditary claims disappears. The nearest heir may of course be set aside for any reason which would justify his removal from office if he were already headman. Whether the claims of sons should be considered where a headman has been dismissed depends on circumstances. If the ground of dismissal has been insolvency, the son will be subject to the same disqualification; if serious misconduct,

1. Mohd. Ghafoor *v.* Balu=1926 L.L.T. 22.
2. 1924 L.L.T. 15.
3. Mohd. Bakhsh *v.* Mohd. Iqbal=1930 L.L.T. 2.
4. See the ruling 1928 L.L.T. 40 referred to above as to the value of these instructions and the principle involved.
5. Buta *v.* Jai Chand=1929 L. L. T. 50=1928 P. C. L. 36 (Rev.).

it can rarely be wise to let a son succeed. Even when he is innocent of any share in his father's misdeeds, he will generally be under his influence. If the other reasons for excluding him seem insufficient, the mere fact that he owns no land during his father's lifetime does not bar his appointment. The property which he will inherit on his father's death may be taken into account as if it was already his own (*Land Administration Manual, para.* 324).

How far Collector's decision regarding the appointment and dismissal of lambardar is upheld.—Where an officer in appointing *lambardar* exercises his discretion in a reasonable manner neither ignoring any portion of those matters which he ought to consider, nor perversely running counter to the general sense of the rule, his decision ought to be allowed to stand; and the mere fact that an appellate or revising officer takes a different view of personal claims is not a good reason for upsetting or modifying that decision.[1] In *lambardari* cases ordinarily the Collector's discretionary power of appointment should not be interfered with.[2] A departure from this rule cannot be justified on the sole ground that the candidate selected by the Collector is sole representative of his tribe in the village.[3] Thus the principle laid down is that the Deputy Commissioner's selection is not to be interfered with except for convincing reasons. It is intended by these words that the appointment made by a Collector is not to be upset by a Commissioner merely because he himself for good reasons, whatever they may be, would have chosen some other man. At the same time if a Collector has taken such an extreme view of certain factors as to make him come to a wrong decision as to the person who should be appointed to fill such a vacancy it is open to the Commissioner to correct that mistake.[4] In this case the Collector had attached undue weight to the fact that the candidate had his son enlisted in the army.

It has again been repeated in *Imam Din* v. *Faqir Mohammad*,[5] that if in the appointment of a *lambardar* the Collector exercised his discretion in a reasonable manner, neither ignoring any portion of those matters which he ought to consider nor perversely running counter to the general sense of the rule, his discretion ought to be allowed to stand and the mere fact that an appellate or revising officer takes a different view of personal claims is not a good reason for upsetting or modifying that decision. The Collector cannot be said to have acted perversely simply because he did not accept the recommendations of his subordinates, since he would be failing in his duty if he did not exercise his own judgment. Nor is it sufficient ground for not accepting the choice of the Collector that the rival candidate is a much older resident of the village and is likely to be much more influential.

In *lambardari* cases the decision of the Collector shall be supported. But this does not apply to a case where the Collector has not taken the trouble to express his own reasoned view but merely says he agrees

1. Mashir Ali *v.* Malik Chiragh Khan=1 P. R. 1918 (Rev.)=45 I. C. 87=1921 L. L. T. 5=1918 P. C. L. 9 (Rev.).
2. Jagat Singh *v.* Bhagat Singh=1932 L. L. T. 1; 1 P. R. 1918 (Rev.) followed.
3. Said Mohd. Khan *v.* Mirza Mohd. Ihsan Ullah Khan=1933 L. L. T. 34; 1 P. R. 1918 (Rev.) followed.
4. Nanak Chand *v*, Bhola Singh=1924 L. L. T. 13.
5. (16) 1937 L. L. 11; 1930 L. L. T. 26 distinguished.

with the Revenue Assistant and does not himself weigh the agruments.[1] Where the Collector passed over a person belonging to the predominant *got* in the village and who had a hereditary right to be appointed on the ground that he was old, it was held that it was a serious matter to take away the *lambardari* from the predominant *got* on such flimsy ground.

As regards the dismissal of village officers, the Financial Commissioner would properly interfere if there had been such denial of natural justice as would be involved in dismissing a man without hearing him or if the offence for which he had been dismissed was not one of those which under the Land Revenue Rules justify dismissal. But where there is no such material irregularity or manifest illegality, the Financial Commissioner should be very reluctant to upset a concurrent finding of fact, and where the facts are proved or admitted and the only question is one of the severity of the sentence, it would normally be difficult to override a concurrent opinion that the man's delinquence makes him unfit to remain a village officer.[2]

It has been held in *S. Buta Singh* v. *S. Surindar Singh*,[3] that the Financial Commissioner will be averse from interfering in a choice made by a Collector between two candidates for a *lambardari*. But where there has been misconception of fact and of policy, the Financial Commissioner may interfere.

Clauses (c) of the proviso to sub-rule (*ii*)—scope.—Rule 17 (*ii*) (*c*) applies only to persons claiming as heirs. In *Jagan Nath* v. *Dewa Singh*,[4] the Financial Commissioner observed as follows :—

"The question before me, before I consider the merits of appellant is whether it is in any circumstances permissible to appoint a person whose dismissal is necessitated. I observe the curious wording of rule 17 (*ii*) (c) which suggests that in the case of a person claiming as an heir the Collector may appoint him even if his dismissal would be necessitated ; but I observe that there are circumstances like a sentence of imprisonment which would necessitate immediate dismissal, but did not disqualify for appointment if those were of very old date. Hence the permissive wording of this clause.

But the qualification of holding land in the *patti* or *taraf* for which the *lambardar* is appointed is absolute. If a *lambardar* must be dismissed for not having it, he cannot be appointed without it, because he would have to be dismissed immediately. "

The fact that a man is a *patwari* is no bar to his being appointed as *lambardar*. His dismissal is justified only if he has shown himself to be unable to provide an efficient substitute.[5] Where a *lambardar* dies leaving behind him a son and a grandson, if the son is guilty of misconduct he may be passed over and the grandson may be appointed *lambardar* in his stead.[6]

1. Raj Mal *v.* Gurbachan Singh=1931 L. L. T. 47.
2. Mirza Khan *v.* the Crown=1932 L. L. T. 19.
3. (1940) 19 L. L. T. 21.
4. Jagan Nath *v.* Dewa Singh=1934 L. L. T. 47.
5. Khalas Khan *v.* Karam Dad=1927 L. L. T. 7.
6. Sher Ahmad *v.* the Crown=1927 L. L. T. 32 ; See also 1932 L. L. T. 21.

Under Land Revenue Rule 17 (*ii*) the heirs of the deceased *lambardar* in order of primogeniture have a definite hereditary right to succeed to the office unless there are circumstances which justify the Collector in passing over the heirs under proviso (*c*) to the sub-rule in question. Where, however, there is little prospect of the heir residing in the village and the case is one in which the appointment of a substitute would not be appropriate, the Collector would be justified in passing over his claim.[1]

Appointment of females as lambardars.

Circumstances relating to the appointment of females as lambardars—sub-clause (*d*).—Under rule 17 (*ii*) (*d*) a female is not ordinarily eligible for the office, but may be appointed when she is the sole owner of the estate for which the appointment has to be made, or, for special reasons, in other cases.

Thus neither sole ownership, nor any other feature in the position of the individual concerned, gives to a woman a right to the appointment of headman. But there are features among which sole ownership is one, which may justify an appointing officer in selecting a woman inspite of her sex, if there are no sufficient countervailing considerations of another order. It is plainly because of a presumed physical or social incapacity in a woman as such, that the law requires that her appointment to the office of headman shall be justified by a special reason. It follows that there ia a second class of special reason which may justify a departure from the ordinary canon, namely, facts which indicate, in a particular case, that the difficulties arising from the presumed physical or social incapacity, are less than ordinary. The comparative lightness of the task of a headman in a particular estate may be a reason of this character.[2]

Where the woman was the sole surviving representative of the family of the founder of the village, and the village being unusually compact, with a small number of proprietary holdings and a small number of resident owners, her appointment as *lambardar* was held justified.[3] Where the rival candidates compared with the widow of the deceased had very little land and were in some way implicated in the murder of or attempt to murder the deceased *lambardar*, the widow was justifiably appointed in preference to her reversioners.[4] Where the deceased *lambardar* owned 574 acres out of 990 acres held in proprietary right in the village and a substantial amount of the remaining acres was held by *Brahmins* who were in favour of the appointment of the mother of the late *lambardar* and widow of the deceased *lambardar* who had rendered distinguished services, the features were held sufficient for appointing the mother *lambardar* in place of her deceased son.[5]

The right of the female to be appointed as *lambardar* was not defined under the old Land Revenue Act, and hence the rulings reported as 7 P. R. 1880 (Rev.); 6 P. R. 1884 (Rev.) are no longer good law. In *Mst. Suhagan* v. *Amirullah*[6] it has been held that the appointment of a female *lambardar* is always objectionable on the ground of personal

1. Pir Baksh *v.* Ram Narain=(1941) 20 L. L. T. 35; Bhagwan Singh *v.* Salamat Rai=(1932) 11 L. L. T. 74 and Waryam Singh *v.* Sundar Singh=(1924) 3 L. L. T. 30 followed; Karam Elahi *v.* Chaman Singh=(1924) 3 L. L. T. 24 dissented from.
2. Mst. Jiwani *v.* Ganga Ram=1922 L. L. T. 14=4 P. R. 1920 (Rev).
3. Ibid; 6 P. R. 1894 (Rev.) distinguished.
4. Khan Zaman *v* Mst. Sardar Bibi=1924 L. L. T. 16.
5. Santa Singh *v.* Sardarni Mahtab Kaur=1926 L. L. T. 3.
6. 6 P. R. 1894 (Rev.); 4 P. R. 1920 (Rev.).

unfitness and that a woman can only be appointed under such circumstances as would also justify the appointment of an unfit man, *e. g.*, where a woman is the sole owner of an estate. But this ruling was given before the time the present rules were enacted and was distinguished and not followed in *Mst. Jiwani* v. *Ganga Ram*[1] on this ground.

When there is no heir.

Sub-rule 17 (*iii*)—case when there is no heir.—Sub-rule 17 (*iii*) provides that failing the appointment of an heir, successor to the office shall be appointed in the manner, and with regard to considerations described in rule 15. In that case an officer making an appointment is at liberty to consider all matters which may reasonably be regarded as relevant to the suitability of an appointment, and he is expected to decide between rival candidates according to the general balance of their respective advantages or disadvantages, of appointing each respectively.[2]

It may be noted that if there is no heir the post should not be reduced but action taken under this sub-section.[3]

Election.

Election—sub-rule 17 (*iv*).—Rule A. I. 4 of the rules under section 66 of the Punjab Land Revenue Act, 1871, provided that in making such appointments, election shall not be resorted to save for very special reasons, any rule in the administration paper to the contrary notwithstanding." Rule 17 (*iv*) above now prescribes that election shall not in any case be resorted to as an aid in making appointments under rule 17 and rule 14. Thus rulings reported as 10 P. R. 1881 (Rev.); 3 P. R. 1882 (Rev.); 2 P. R. 1882 (Rev.); 12 P. R. 1881 (Rev.); 9 P. R. 1881 (Rev.) are no longer law.

Even where hereditary claims have to be set aside, the votes of the landowners must not be taken as a means of deciding between rival candidates (*Land Administration Manual, para.* 325).

Resignation of headmen.

Resignation of headmen.—When a headman resigns, he generally asks for the appointment of his son to succeed him and, in order to give him the landowner's qualifications, offers to transfer a share of his holding to him by gift. Arrangements of this sort being apt to lead to quarrels over the division of the family holding after the father's death, should be discouraged. Where the *lambardar* has done nothing to merit dismissal, it is better to retain him as nominal headman and to appoint his son to be his substitute (*Land Administration Manual, para.* 318).

DUTIES OF HEADMEN.

[4]**Land Revenue Rule 20.**—In addition to the duties imposed upon headmen by law for any purpose, a headman shall—

(*i*) [5]collect by due date all land revenue and all sums recoverable as land revenue from the

1. 1922 L. L. T. 14.
2. See Mashir Ali *v.* Malik Chiragh Khan=1921 L. L. T. 5=1 P. R. 1918 (Rev.)=1918 P. C. L. 9 (Rev.).
3. See Maulu *v.* the Crown=14 P. R. 1885 (Rev.); 6 P. R. 1888 (Rev.).
4. Land Administration Acts, Vol. II, page 34.
5. As amended by Financial Commissioner's notification No. 721-523-B,—13, dated 8th August 1919.

estate, or sub-division of an estate in which he holds office, and pay the same personally or by revenue money-order or by remittance of currency notes through the post at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it.

Selected lambardars, approved by the Collector, may pay land revenue and all sums recoverable as land revenue from the estate or sub-division of an estate in which they hold office, by cheques on the Imperial Bank of India ; provided that there is a branch of the Imperial Bank at the headquarters of the district in which the said estate is included ;

(*ii*) collect the rents and other income of the common land, and account for them to the persons entitled thereto ;

(*iii*) acknowledge every payment received by him in the books of the landowners and tenants ;

(*iv*) defray joint expenses of the estate and render accounts thereof, as may be duly required of him ;

(*v*) *report to the tahsildar the death of any assignee of land revenue or Government pensioner residing in the estate, or the marriage or re-marriage of a female drawing a family pension and residing in the estate, or the absence of any such person for more than a year ;

(*vi*) †report to the tahsildar all encroachments on roads (including village roads) or on Government waste lands and injuries to, or appropriation of, nazul property situated within the boundaries of the estate ;

(*vii*) report any injury to Government buildings made over to his charge ;

(*viii*) carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information, or to assist in providing on payment supplies or means of transport

*As amended by Notification No. 605, dated 24th February, 1926.
†As amended by Financial Commissioner's Notification No. 4622-E, dated 14th November, 1932.

for troops or for officers of Government on duty;

(*ix*) assist in such manner as the Collector may from time to time direct at all crop inspections, recording of mutations, surveys, preparation of records-of-right, or other revenue business carried on within the limits of the estate;

(*x*) attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties; supply, to the best of his ability, any local information which those officers may require, and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with Government;

(*xi*) report to the patwari any outbreak of disease among animals;

(*xii*) report to the patwari the deaths of any right-holders in their estates.

Duties of headmen.

The headmen of a village act on behalf of the landowners, tenants and other residents in their relations with the State. They are bound to attend when summoned by officers of Government, and to aid them in the execution of their public duties. Their important functions as regards the prevention and detection of crime do not fall within the scope of this work. Their chief duties are set forth in some detail in a vernacular memorandum which is given to each headman on his appointment. Those connected with land administration may be summarized as follows:—

A. Duties to Government—

1. To collect and pay into the treasury the land revenue and all sums recoverable as land revenue.

2. To report to the Tahsildar—

(*a*) the deaths of assignees and pensioners, and their absence for over a year;

(*b*) encroachments on, or injury to, Government property.

3. To aid—

(*a*) in carrying out harvest inspections, surveys, the record of mutations and other revenue business;

(*b*) in providing, on payment, supplies or means of transport for troops and officers of Government.

B. Duties to landowners and tenants of estate—

1. To acknowledge every payment received from them in their *parcha* books.

2. To collect and manage the common village fund (*malba*) and account to the shareholders for all receipts and expenditure, (To this may be added the important duty of reporting to the Tahsildar all encroachments on village roads situated within the boundaries of the estate) (*Land Administration Manual, para.* 307).

Duties of headmen as regards the collection of revenue.—It is the duty of the village headman to collect the revenue from the land-owners and pay it into the *tahsil* treasury. But, if he can show that he has done his best and failed, his responsibility for an arrear is no greater than that of the other members of the brotherhood, and he should not be made the scapegoat (*Land Administration Manual, para.* 505).

Meaning of " pay the same " in sub-clause (1) of rule 20.—The word ' same ' in the expression ' pay the same ' in sub-clause (1) of Rule 20 of the Rules means all the land revenue and not merely the land revenue which has been collected by the *lambardar*.[1]

The failure of a *lambardar* to deposit land revenue collected by him does not constitute an offence under section 409. As *lambardar* is bound to pay on due date all the land revenue recoverable from an estate irrespective of the fact whether he realizes it from the tax-payers or not, he does not stand in the position of a trustee but that of a *quasi* lessee. The dispute between the Government and the *lambardar* over the question of recovery of land revenue is consequently one of a civil nature (*Ibid*).

Duties as regards the village malba.—See paragraphs 93 and 94 of the Settlement Manual, and remarks on page 22.

Duties as regards the transport and supplies for troops.—See Financial Commissioner's Standing Order No. 58.

Punishment for neglect of duty—Land Revenue Rule 25.

Neglect of duty which is either gross or persistent, should be followed by removal from office. Minor breaches of rules or acts of negligence may be punished—

(*a*) by the forfeiture of the whole or part of the *pachotra*, or

(*b*) by suspension from office for a term not exceeding a year.

Orders attaching the *pachotra* usually only relate to that due at the next harvest, and in no case should the *pachotra* of more than two harvests be declared forfeit. A substitute may be appointed to do the work of a headman under suspension (*Land Administration Manual, para.* 321).

REMUNERATION OF HEADMEN.

[2]**Land Revenue Rule 21.**—(*i*) The remuneration of a headman in an estate or sub-division of an estate, owned chiefly or altogether by Government shall be such a portion of the village officer's cess or of the income accruing to

1. **Advocate General N.W.F.P. *v.* Mirajan Shah Mir Azam=1936 Pesh. 25.**
2. **Land Administration Acts, Vol. II, page 86.**

Government from the estate, as may be sanctioned by the Financial Commissioner.

(ii) In other estates the remuneration of a headman shall be the remuneration appointed when the land revenue of the estate was last assessed.

**(iii)* In any case not provided for by sub-sections *(i)* and *(ii)* a headman shall receive a portion of the village officer's cess equal to five per cent. of the land revenue for the time being assessed on the estate or portion of the estate in which he holds office whether the assessment is leviable or not.

†*(iv)* The Collector may at any time revise and alter the existing arrangements in an estate regarding the collection of the land revenue by the different headmen and the division of the remuneration between them.

By section 29 of the Act the highest amount that can be levied as village officers' cess is $6\frac{1}{4}$ per cent. on the "annual value" of the land as defined in Act XX of 1883, which is equivalent to $12\frac{1}{2}$ per cent. on the land revenue, including canal owner's rate. The headman retains a surcharge of 5 per cent. on the land revenue and owner's rate which he collects, and 1 per cent. is payable to the chief headman, if there is one. In the case of all estates in the Kulu and Saraj tahsils of the Kangra district (exclusive of Lahul and Spiti), the surcharge amounts to 7 per cent. on the land revenue, as there the village officer's cess consists of :—

(*i*) *Negi's* fee, Rs. 2 per cent.
(*ii*) *Lambardar's* fee, Re. 1 per cent.
(*iii*) *Rakhas's* fee, Re. 0-8-0 per cent.

} on the annual value which is double the land revenue.

(*Land Administrtion Manual, para.* 211).

See also Section 29 of the Act and remarks on page 21.

The surcharge of 5 per cent. or *pachotra* as it is called, on the land revenue to which headmen are entitled is calculated not on the demand, but on the amount collected. A suspension or remission of the land revenue therefore involves the suspension or remission of a corresponding share of the *pachotra*. As headmen collect their own *pachotra*, it may be doubted whether this rule is always carried out, but in case of dispute, it must be enforced. Headmen usually receive an allowance of 3 per cent. on account of collections of canal occupier's rate (*Land Administration Manual, para.* 308).

Rule 21 (iv).—This rule has been amended by Financial Commissioner's Notification No. 1224-R., dated 4th May 1932. Previously Collector's order under this rule was not to take effect until it had been

*As amended by Financial Commissioner's Notification No. 441-202-8944 dated 25th October, 1922.

†As amended by Financial Commissioner's Notification No. 1224-R, dated 4th May 1932.

confirmed by the Commissioner. This restriction has been removed now Under the old rule it has been held in *Bhai Khan* v. *Hasta*[1] that where the Collector does not think fit to alter the existing arrangement regarding the collection of revenue in estate, it is not competent to the Commissioner to impose on the Collector a revision of the arrangement of the estate contrary to his opinion.

SPECIAL RULES FOR KANGRA JAGIR VILLAGES.

[1]**Land Revenue Rule 18.**—In the case of Headmen of villages situated within the jagirs of Dada Siba, Goler, Nadaun and Lambagraon in the Kangra district, rules 14, 15, 16 and 17 shall be subject to the following additions and alterations :—

Add to rule 14—

For the purposes of this rule an " estate " shall mean a " tappa " or such other area as the Collector, subject to the orders of the Commissioner, shall determine.

For clause (*a*) *of rule* 15 substitute--

(*a*) The recommendations of the jagirdars.

To clause (*ii*) *of rule* 16 add—

(*f*) he is obnoxious to the jagirdars.

For clauses (*ii*) *and* (*iii*) *of rule* 17 substitute—

A successor to the office of headman shall be selected with regard to the considerations stated in rule 15 as modified by this rule.

APPOINTMENT OF REVENUE FARMERS AND MORTGAGEES AS HEADMEN

[2]**Land Revenue Rule 19.**—(*i*) Where an office becomes vacant in consequence of any proceedings taken for the recovery of an arrear of land revenue under sections 71, 72 or 73 of the Land Revenue Act, the transferee, agent, or farmer who under those proceedings obtains possession of the land on which the arrears were due may, in the discretion of the Collector, be appointed to the vacant office.

(*ii*) Where a headman, who as landowner is individually responsible for more than half the land revenue of

1. 1932 L. L. T. 94.
2. Land Administration Acts, Vol. II, page 84.

an estate or of the sub-division thereof in respect of which he holds office, has mortgaged his holding and has delivered possession thereof to the mortgagee, and the office of headman has become vacant in consequence thereof, the mortgagee may, at the discretion of the Collector, be appointed to the vacant office.

(*iii*) On the termination of any such transfer, farm or attachment as is referred to in sub-section (*i*), or on the release of any such mortgage as is referred to in sub-section (*ii*), a headman appointed under this rule shall cease to hold office, and a new headman shall be appointed with reference to the considerations stated in rule 15.

Where a headman is removed because his own holding or the whole estate or sub-division of the estate for whose revenue he is responsible has, on account of arrears, been transferred to a solvent co-sharer, put under direct management, or leased to a farmer, the transferee, manager or farmer may, if the Deputy Commissioner thinks fit, be appointed *lambardar*. Where a headman loses office because he has mortgaged his holding, the mortgagee has usually no claim whatever to succeed him. But he may, at the Deputy Commissioner's discretion, be allowed to do so where the revenue of the transferred holding is more than half of the whole revenue for the payment of which the late headman was, as such, responsible. The appointments referred to in this paragraph are not in their nature permanent. When the temporary alienations from which they spring come to an end, the transferee, manager, farmer or mortgagee must lay down his office. A fresh selection is then made by the Deputy Commissioner, having regard to the grounds stated in paragraph 312 (*Land Administration Manual, para.* 328).

STANDING ORDER NO. 20.

Village Headmen.

[In addition to the Land Revenue Rules (14-30) on the subject, paragraphs 305-333 of the Land Administration Manual should be consulted].

1. Where the office of headman becomes vacant it is the duty of the Tahsildar to report without delay regarding the appointment of a successor. It is convenient to use a tabular form for such reports, as information on certain points is required in every case, and any special features of a particular case can be noted in the brief remarks explaining the recommendation of the Tahsildar. The le of the case shall be opened to inspection except in respect to police eports which shall be kept strictly confidential but no copy of any document on it, except the tabular form and the Collector's final orders, shall be granted.[1]

1. Inserted by C.S. No. 914-S. O. dated the 12th September 1928.

SANADS.

A vernacular *sanad* in the following form should be presented to a *lambardar* on his appointment.

WHEREAS upon the { death, / or removal, / or retirement, / or dismissal } of

, son of

lambardar of village , you

, son of

have been appointed *lambardar* of the aforesaid village in succession to the aforesaid : Now this *sanad* of appointment is presented, to you , son of in the name of Government by the Collector (or Assistant Collector, 1st grade) that you may keep it for future use and reference as occasion may require

Beneath is given a short list of the duties and responsibilities which, as *lambardar* you are hereby required to discharge.

In addition to the duties imposed upon village headmen by law for the preservation of the peace, the report, prevention and detection of crime, and the surrender of offenders, and any other purpose, a village headman shall

(Here follows in the sanad a complete list of the duties as given in the Land Revenue Rule 20)

2. **Minor lambardars.**—Collectors should bear in mind the importance of the training of minor *lambardars* with a view to the satisfactory discharge of their future duties, and should endeavour to prevent any obstacle being put in the way of the proper bringing up of such minors.

3. **Temporary absence of lambardars.**—The practice of requiring *lambardars* to apply for, and obtain, the permission of the Deputy Commissioner or Tahsildar before absenting themselves from their villages is wholly unwarranted and must be discontinued wherever heretofore adopted.

4. **Rules relating to village postmen.**—The following rules relate to supervision of village postmen by the headmen of the different

villages in their circles. The rules should be widely published among village headmen with such instructions to ensure their being understood as may be considered necessary. Letter boxes are established in the more remote villages, and postmen are required to visit them most punctually :—

(1) The letter boxes will, as a rule, be placed in charge of the village headmen, that is to say, the boxes will be secured in front of their houses in a position accessible to all. The village headmen will not, however, be required to open them, or dispose of their contents. This will be done by the village postmen, who will have the custody of the keys of the letter boxes.

(2) Village headmen will take care that the village postmen are punctual and regular in their visits to villages, and that the letter boxes are cleared on the days of the week notified thereon, and report if this is not done to the Inspector of Post Offices, or to the Sub-Post-Master of the office to which the village postmen in fault may be attached, by letter, or by noting briefly in the visit book the nature of the irregularity complained of. The postmen will be supplied with visit books for the purpose, in which each village headman will sign his name and note the date and the day of the week of visit in the appropriate column so far as possible. Should any irregularities be noticed, such as the non-attendance of village postman on the prescribed date, his failure to present his visit book, or the like, the

headman should at once bring the same to the notice of the officers mentioned above. Communications to postal authorities on postal matters may be sent post free with the words "Postal Service" superscribed on the cover, and the signature of the village headman appended in the lower left-hand corner.

[1]5. **Preparation of a general scheme for the reduction of lambardars.**—The orders regarding the preparation of general schemes for the reduction of headmen's posts where these are too numerous, are contained in paragraphs 330-331 of the Land Administration Manual (See page *infra*). The Settlement Officer's proposals should be embodied in register in the following form :—

1	2	3	4	5	6	7
Name of tahsil.	Name of villages.	Name of the various *pattis* or *tarafs*.	Name of each existing headman, with his tribe or caste, amount of land owned and revenue paid thereon.	Amount for the collection of which he is responsible.		Proposals of Settlement Officer, and the Deputy Commissioner with reasons therefor.
				Revenue.	Occupier's rate.	

[1]6. **Casual proposals for the reduction of lambardars.**—Instructions for the making of proposals for casual reductions of

1. As amended by C. S. No. 783-S. O., dated 20th May, 1926.

headmen's posts will be found in paragraph 332 of the Land Administration Manual (*see page infra*). The form to be used is given below :—

Form for reporting proposal for reduction in the number of Headmen.....District.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Name of Tahsil.	Number of village.	Name of village.	Name with caste or tribe of lambardar whose demise or vacation of office occasions the proposal.	Names of relations of the same within the degree mentioned in Rule 17 (*ii*) (*a*), Rules under the Land Revenue Act.	Names with caste or tribe of claimants of the vacant posts.	Debts of claimants.	Mortgaged.	Unmortgaged.	Names of the various *pattis* or *tarafs* of the village numbered consecutively.	Name of each lambardar in the village to be shown opposite the name of the *pattis* or *tarafs* (column 10) in their charge.	Revenue of each *patti* or *taraf*, and total revenue of the village.	Average occupier's rate of each *patti* or *taraf* and total for the village.	Prevailing caste or tribe of proprietors in each *patti* or *taraf*.	Remarks by investigating officer, explaining the grounds on which reduction is proposed, with pedigree table of claimant.	Opinion of Commissioner.

Note.—Where the Collector is not himself the Deputy Commissioner of the District, the opinion of the Deputy Commissioner as well as that of the Collector shall be recorded in column 5.

7. **Embezzlement of land revenue.**—The following instructions in regard to the case of a *lambardar* who (1) embezzles land revenue paid to him by the other land-owners of the estate, and (2) fails to pay the land revenue due on his own holding, have been issued :—

(1) As regards (2), the land of the *lambardar* may be sold under section 75, Land Revenue Act, if it is considered advisable to apply that section, but probably it will usually be best to deal with the whole case under section 77.

(2) Section 77 may be applied in relation to (1), because, under a ruling of the Financial Commissioner, it has been held that in section 3 (7) of the Act " unpaid " means not paid to Government. The sums embezzled are therefore arrears of land revenue, and the guilty *lambardar* is a " defaulter " [section 3 (8)] in respect of them.

(3) Enough of the defaulter's land may be sold to cover the land revenue due under both heads (1) and (2) above, and also other embezzled items (if any), such as *zaildar's* salary, chaukidar's pay, etc.

8. *Lambardars*, in common with *zaildars* and patwaris, are recognized for the purposes of paragraph 354 of the Post and Telegraph Guide as Government Officials and the bearing postage payable on official postal articles sent by them is the prepaid rate (*vide* letter No. 7931-C., dated 26th January 1902, from the Post-master-General, Punjab, to the Revenue Secretary to Government, Punjab).

9. To enable Tahsildars to maintain a check on the payment of the pay of chaukidars by village headmen (rule 41 under section 39, Act IV of 1872) a register of chaukidars' pay receipts shall be kept up by the Siah Navis or, in the case of the Sadr Tahsil, by the *Wasil* Baki Navis in the following form :—

1	2	3	4	5										6
Serial No.	Village.	Name of chaukidar.	Name of lambardar by whom paid.	Date of presenting receipt and signature of Siah Navis.										Remarks.
				19 .		19 .		19 .		19 .		19 .		
				Kharif.	Rabi.	Kharif.	Rabi.	Kharif.	Rabi.	Kharif.	Rabi.	Kharif.	Rabi.	

The *lambardar* shall present the receipt of the chaukidar at the time of paying in the Government revenue each harvest. If the revenue is paid in personally he shall himself hand in the receipt,, if the revenue is paid by money-order he shall furnish the receipt on the money-order form or send it in a half-anna stamped envelope to the Tahsildar, charging the cost thereof to the village *malba*.

If it appears from the register that any receipt has not been received within 15 days after the revenue has become due, notice shall be sent to the *lambardar* concerned to send the receipt within one week of date of notice, otherwise the amount due will be recoverd as an arrear of land revenue and paid to the chaukidar.

In the case of villages where there are two or more *lambardars* or where there are more than one village in a chaukidar's beat the Tahsildar shall decide as to the responsibility for producing the receipt.

[1]10. Rule 16 (1) (*d*) of the Land Revenue Rules requires the Collector to dismiss a *lambardar* who has mortgaged his holding and has delivered possession to the mortgagee ; but in special cases he may, with the Commissioner's sanction, retain him in his office under such circumstances, if he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties. When such security has been given Commissioners can properly make use of the discretion given them by the rule to permit the retention of a *lambardar* who has mortgaged his land to a co-operative bank. If it is considered necessary to give this permission, the Collector should be instructed to give notice to the co-operative banks concerned that in case of default, section 76 (2) (*c*) of the Land Revenue Act will not be applied till the arrears have been liquidated.

[2]11. **Appointment in canal colonies.**—With regard to appointments in canal colonies, the instructions contained in paragraph 315-A of the Land Administration Manual should be carefully observed (*See page infra*).

12. It is important that unnecessary delays should not be allowed to occur in filling vacancies. In this connection paragraph 323-A of the Land Administration Manual should be consulted. All cases should reach the Collector complete and ready for decision within one month of the date of the occurrence of the vacancy.

Filling up of vacant posts.—Where the office of headman becomes vacant, it is the duty of the Tahsildar to report without delay regarding the appointment of a successor. It is convenient to use a tabular form for such reports as information on certain points is required in every case, and any special features of a particular case can be noted in the brief remarks explaining the recommendation of the Tahsildar (*Land Administration Manual, para.* 323).

Appointment to vacant posts should not be delayed.—In view of the importance of the duties performed by village headmen, it is imperative that when a post falls vacant, it should be filled as quickly as possible. In cases where the deceased is to be succeeded by his heir, under Land Revenue Rule 17 (*ii*) and no other candidate is forthcoming, no reference need be made to the Collector as the appointment is

1. Added by C.S. No. 1176-S. O. dated the 8th December, 1931.
2. Added by C.S. No. 1209-S. O. dated the 6th February, 1932

sanctioned by the Assistant Collector 1st grade. It is advisable, however, that the *sanad* of appointment should be signed by the Collector himself as this emphasizes the importance of the post, and enhances the value of the *sanad*.

In cases of disputed succession, the appointment is made by the Collector, and subordinate officials have no direct responsibility with regard to the appointment other than the provision of such accurate information as will enable the Collector to come to a correct decision. In colony areas, where the estates are chiefly or wholly owned by Government and hereditary claims carry but little weight, the emoluments of *lambardars* are very considerable because of the large sums of land revenue and water-rates to be collected. The value of these posts is still further enhanced in peasant chaks by the allotment of a *lambardari* square or half square. It is, therefore, all the more desirable that such cases should not be delayed before they reach the Collector. *In no circumstances should a greater delay than of one month be permitted to occur between the occurrence of the vacancy and the placing of all the papers before the Collector for his decision.* The practice of subordinate officials sending repeatedly for all candidates, to examine them with regard to their claims and qualifications opens the door to opportunities for extortion. As soon as the vacancy occurs, a report should be made by the *patwari* to the Tahsildar. An early date should then be fixed by the Tahsildar or Naib-Tahsildar on which he will consider and investigate all the applications for the vacant post. He should, if possible, arrange to hold the investigation in or near the estate concerned. The claimants should be given an opportunity of making any objections which they wish to make against the other claimants. A report should be called for from the local police station as to whether there are any written complaints against any of the candidates. In no circumstances should the candidates be called upon to attend the police-station for the investigation of their claims or their objections to other claimants. The papers should then be forwarded to the Assistant Collecror, 1st grade, who should record his opinion on the file from his own personal knowledge and from the material already collected. He should not delay the case by sending for the claimants. The papers should then be laid before the Collector within one month from the date of the occurrence of the vacancy. The Collector should fix a date for the decision of the case, notify all the claimants and have the date proclaimed in the estate concerned. Meanwhile he should forward the papers to the Superintendent of Police for an expression of that officer's opinion. That opinion should be given by the Superintendent of Police from the material already collected on the file, and from his personal knowledge of the claimants (This practice in not generally followed) [*Land Administration Manual, para.* 323-A].

CHIEF HEADMEN.

A device which was formally adopted in order to lessen the inconvenience caused by the excessive number of *lambardars* appointed at the first regular settlements was the institution of the office of chief headman (*ala lambardar*) in estates with several headmen. It is generally admitted that the office of chief headman has served no useful end, and, later a large number of *ala lambardari* posts were reduced. In 1909 the gradual abolition of the *ala lambardari* system in the districts in which it still obtains was ordered. In future, vacancies will not be filled up, and the *ala lambardari* of any man who is dismissed or is

granted a *zaildari* or other *inam* will be resumed. All existing *ala lambardars* will enjoy their present emoluments for life unless they become resumable as above. In addition to this ordinary *pachotra* on the revenue of the sub-division which he represents as headman, *ala lambardar* receives one per cent. on the revenue of the whole estate (Land Revenue Rule 24). Orders to be carried out by a headman may, if thought desirable, be addressed to the chief headman, and the latter is responsible that any orders issued are properly executed, and should carry them out himself if the headman responsible fails to do so (*Land Revenue Rule* 23) [*Land Administration Manual, para.* 333].

DETERMINATION OF OFFICE OF CHIEF HEADMEN.

***Land Revenue Rule 22.**—In an estate in which the appointment of a chief headman has been sanctioned by Government, the office shall be vacated as nearly as may be in the manner provided in the rules relating to headmen.

Chief headmen.

Considerations regarding appointment of chief headmen.—As has already been stated above, in future vacancies in the post of *ala lambardari* will not be filled up, and the *ala lambardari* of any man who is dismissed or is granted a *zaildari* or other *inam* will be resumed. The rule quoted above is therefore of not much practical importance. It, however, lays down that in an estate in which the appointment of a chief headman has been sanctioned by Government, the office shall be vacated as nearly as may be in the manner provided in the rules relating to headmen.

It was held under the old rules that it was not necessary that the older *lambardar* should be appointed as the *ala lambardar*.[1] A *lambardar*, who is the son of a deceased head *lambardar* is entitled to be considered with the rest, provided that no stress is placed on hereditary claim.[2] It is essential that the duties of chief *lambardar* should be discharged in person, and not by deputy. Hence, a minor should not ordinarily be appointed,[3] and Rule 27 does not contemplate for the appointment of a substitute for a minor chief headman.[4] An absentee should also not be appointed as a chief headman.[5]

Under the old Act, where on the death of a chief headman, there were three candidates for the office, one of them being the eldest son of the deceased, and the Deputy Commissioner appointed one of them getting the highest number of votes in the election, it was held that although the office of headman was not hereditary, yet it was advisable to appoint the eldest son when he was not inferior to other candidates.[6] In cases of succession to the office of chief *lambardar*, when the votes are nearly equal, the preference should be given to the son of the deceased chief *lambardar*, provided he is otherwise fit for the post.[7] In weighing the votes obtained by rival candidates for a chief *lambardarship* regard should always be had to the stake the voters

*Land Administration Acts, Vol. II. page 36.
1. Labh Singh *v.* Jawala Singh=10 P.R. 1890 (Rev.).
2. Ladha *v* Prem Singh=10 P.R. 1890 (Rev.); Note 9.
3. Mehr *v.* Channu=7 P.R. 1891 (Rev.); 1 P.R. 1886 (Rev).
4. Ibid.
5. Mit Singh *v.* Baisakha Singh=2 P.R. 1896 (Rev.).
6. Miran Bakhsh *v.* Hayat Bakhsh=5 P.R. 1873 (Rev.).
7. 10 P.R. 1889 (Rev.); 4 P.R. 1884 (Rev.); 6 P.R. 1880 (Rev.).

have in the village, and due allowance be made for this.[1] A person getting the highest number of votes should otherwise be appointed.[2]

A conviction under section 186 of the Penal Code is not sufficient to disqualify a *lambardar* for appointment as a chief *lambardar*.[3]

Certain land was granted to a certain person in perpetuity as *ala lambardar* and to whomsoever as his successor occupied that post. His son, who was appointed *ala lambardar* after his death in 1879, having died in 1892, the land was divided in equal shares among his two sons A and B and the widow of a third son. Mutations to this effect took place on 13th May, 1892. *Ala lambardari* was granted to A who died a little later. A's son was a minor at that time. He was granted *ala lambardari* on 12th December 1892. He then brought a suit against B for the possession of a half share in the land on the 9th October 1914, on attaining majority. *Held*, that the possession of B was adverse from the date of mutation to any *ala lambardar in esse* or *in posse* and continued up to the date of the suit and the minority on the plaintiff at the time of being appointed as *ala lambardar* did not help him in any way and the limitation could not be extended.[4]

Where a chief headman was allowed to cultivate free of rent a portion of the village common land by the village proprietary body by way of providing some extra emoluments for the office without there being any special agreement between the parties, *held*, under the circumstances the position of the chief headman with regard to the land was only that of tenant-at-will at all events on the expiry of the current settlement.[5]

DUTIES OF CHIEF HEADMEN.

[6]**Land Revenue Rule 23.**—(*i*) In estates in which a chief headman has been appointed, an order may, at the option of the officer by whom it is issued, be addressed either to the chief headman or to any headman who is by his office responsible for the execution thereof. And if the order is addressed to the chief headman, he may either execute it himself or refer to the responsible headman.

(*ii*) In addition to his own duties as a headman, the chief headmen shall be responsible for the due execution of their duties by other headmen in the same estate.

(*iii*) Nothing in sub-sections (*i*) and (*ii*) shall be deemed to apply to the matters defined in clauses (*i*) to (*iv*) of rule 20.

Punishment for neglect of duty.—See Land Revenue Rule 25.

1. 8 P.R. 1885 (Rev.).
2. 8 P.R. 1888 (Rev.).
3. Amira *v.* Wazira=3 P. R. 1875 (Rev.).
4. Ghulam Mohd. *v.* Ahmad Khan=55 I. C. 335.
5. Jhanda Singh *v.* Dhana Singh=1 P. R. 1896 (Rev.); see also 105 P. R. 1879; 44 P. R. 1915.
6. Land Administration Acts, Vol. II, page 36.

REMUNERATION OF CHIEF HEADMAN.

[1]**Land Revenue Rule 24.**—The remuneration of the chief headman of an estate shall be—

(*i*) the remuneration appointed in respeet of his office when the land revenue of the estate was last assessed ;

(*ii*) or failing any such special provision, a portion of the village officer's cess equal to one per cent. of the land revenue collected from the estate ;

(*iii*) this remuneration shall be collected by the village headmen, and be paid by them to the chief headman.

See section 29 of the Act and notes thereunder.

"NEGIS" OF "KOTHIS" AND LAMBARDARS OF "PHATIS" IN THE KULU SUB-DIVISION OF THE KANGRA DISTRICT.

[1]**Land Revenue Rule 30-A.**—In the case of *negis* of "*kothis*" and lambardars of "*phatis*" in the Kulu sub-division of the Kangra district, the foregoing rules shall be read subject to the following modifications :—

(*i*) The appointment and dismissal of *negis* of "*kothis*" shall be governed by rules 5, 6 and 7, a "*kothi*" being for those purposes considered to be a zail.

(*ii*) The duties of *negis* of "*kothis*" shall be those prescribed for zaildars by rule 9 and also those prescribed for lambardars by rule 20, clauses (*i*) to (*iv*) inclusive.

(*iii*) In all appointments of lambardars of "*phatis*" the considerations shall be those prescribed in clauses (*b*), (*c*) and (*d*) of rule 15 and in the case of "*phatis*" in Waziri Rupi the recommendation of the jagirdars shall be considered.

Rule 17 shall not apply to such appointments.

(*iv*) A lambardar of a "*phati*" in Waziri Rupi may be dismissed when he is obnoxious to the jagirdar.

1. Land Administration Acts, Vol. II, page 37 .
2. Punjab Government letter No 36-Rev., dated 18th March 1913 ; Land Administration Acts, Vol. II, page 38.

(*v*) The duties of lambardars of " phatis " shall be those prescribed in rule 20, clauses (*v*) to (*xi*) inclusive.

***Land Revenue Rule 30-B.**—The remuneration of *gatpo chenmos* in the *kothis* of Waziri Spiti of the Kulu tahsil is fixed at 20 *khals nethal* in kind and Rs. 20 in cash assigned from the land revenue of their respective *kothis*.

Appointment and succession to the office of " negi."—The only difference between the appointment of a *zaildar* and the appointment of a negi is that in the latter case as rule 30-A does not mention rule 4, it is not necessary that the candidate should be a *lambardar*. It follows that a minor can be appointed if he is the only suitable candidate. But where the Collector has found that there is in point of fact another suitable candidate there is no reason to interfere with his choice in revision. Rule 30-A (*i*) lays down that succession to the office of " *negi* " is governed by rules 5 and 7. It is true that Rule 14 (*iv*) says that a *kothi* is an estate for the purpose of appointment of headmen, and this certainly implies that rules 15, 17 and 18 should apply ; but the plain wording of Rule 30-A must prevail.[1]

In *Narain Dass* v. *Bhimi Ram*[2] which has been dissented from in the above ruling it was held that the negi of a " *kothi* " is a headman and not a *zaildar* and succession is governed by Land Revenue Rules 15 and 17 unless the *kothi* falls within certain *jagirs*.

APPOINTMENT OF SUBSTITUTES FOR HEADMEN, CHIEF HEADMEN, ZAILDARS AND INAMDARS.

For Non-resident Headmen.

[3]**Land Revenue Rule 26.**—(*i*) Where an estate is owned by a non-resident landowner, he may nominate for the Collector's approval, a substitute to discharge the duties of headman from among the residents in the estate. If the non-resident owner fails to nominate a fit person, the Collector may appoint a substitute from among the resident tenants.

(*ii*) Where, in an estate owned by more landowners than one, a non-resident headman is liable, either individually or as representative of other non-resident landowners, for more than half the land revenue of the estate, a substitute for such headman may be appointed from among either the resident landowners or tenants. In making such

*Financial Commissioner's Notification No. 131-1763-4, dated 23rd April 1917 ; Land Administration Acts, Vol. II, page 37.

1. Bhawani Singh v. Hari Singh=1932 L. L. T. 106 ; 1928 L. L. T. 13 dissented from.
2. 1928 L. L. T. 13.
3. Land Administration Acts, Vol. II, page 37.

appointment the Collector shall consult the wishes of the non-resident headman.

APPOINTMENT OF OTHER SUBSTITUTES AND THEIR POSITION.

[1]**Land Revenue Rule 27.**—Where, by reason of old age, physical infirmity, or absence from his circle or village with the permission of the Collector, a zaildar, inamdar,chief headman, or headman, or, by reason of minority or other good cause, a headman is unable to perform the duties of his office in person, a substitute may be appointed to discharge those duties. A substitute may also be appointed, in accordance with the provisions of rule 7, to discharge the duties of a zaildar, who is a minor, in the special circumstances therein specified. A substitute appointed under this or the preceding rule or under rule 7, shall be deemed to be, and shall be equally with the person in whose behalf he is appointed the zaildar, inamdar, or village officer (as the case may be) appointed to the office, and the Collector may in each such case direct, from time to time, whether the duties of the office shall be performed by the substitute or the substantive holder, or by both concurrently. [2][Substitutes for zaildars and inamdars may not be appointed for a period exceeding two years in the aggregate without the previous sanction of the Commissioner].

DETERMINATION OF OFFICE OF SUBSTITUTE.

[3]**Land Revenue Rule 28.**—(*i*) When the person on whose behalf the substitute was appointed vacates his office, the tenure of office by the substitute shall thereon abate.

(*ii*) Saving as provided in sub-section (*i*), an order appointing a substitute shall remain in force until it is revoked, or until the substitute dies or is dismissed or resigns the appointment.

RULES GOVERNING APPOINTMENT AND REMOVAL OF SUBSTITUTES

[3]**Land Revenue Rule 29.**—(*i*) In appointing a substitute for a minor headman, the Collector shall select any landowner resident in the village, or any resident tenant if the case falls under rule 14 (*ii*).

(*ii*) In making other substitute appointments under rule 27, the Collector shall consult the substantive holder of

1. Land Administration Acts, Vol. II, page 37.
2. Added by P. G. Notification No. 323-R, dated the 23rd January, 1940.
3. Land Administration Acts, Vol. II, page 38.

the office when he is capable of expressing his wishes in the matter. Any resident landowner in the estate or circle, as the case may be, or any resident tenant in cases falling under rule 14 (*ii*), shall be eligible for appointment as a substitute under this sub-section.

(*iii*) In judging the fitness of a person for appointment as a substitute under this rule, regard shall be had to the property which he will inherit from the person he is intended to represent, in like manner as if he had already inherited it.

(*iv*) A substitute may be removed at any time by the Collector either on his own motion, or, except in the case of a substitute for a minor headman, at the request of the person for whom the substitute is acting, for any reason which would justify the removal of the substantive holder of the office or for any other reason which the Collector thinks sufficient.

REMUNERATION OF SUBSTITUTE

[1]**Land Revenue Rule 30.**—(*i*) For special reason to be recorded in the order appointing a substitute, the person in whose stead a substitute is appointed may be permitted to enjoy a portion not exceeding a moiety of the remuneration of the office.

(*ii*) In the absence of any such order a substitute is entitled to the whole remuneration of the office.

Appointment of substitutes for headmen.—A headman once appointed holds office for life unless the Deputy Commissioner dismisses him or accepts his resignation. No man should ordinarily be retained in office who either does not, or cannot, carry out the duties efficiently. But in some cases where inability to do so is of a temporary nature, and in others where it springs from unavoidable circumstances, (as pointed out above), the *lambardar* is allowed to retain the title, and even in some cases a share of the emoluments, while a substitute is appointed to do the work.

The commonest instance of a temporary inability is that of a headman being too young to act. In that case the appointment of a substitute is imperative. Another instance is absence from the village with the Deputy Commissioner's consent for a period not-exceeding one year. Old age or physical infirmity is a disability which it might savour of harshness to treat as a ground of dismissal. A wide discretion is left to the Deputy Commissioner for he can allow a substitute or *sarbrah* not only in the circumstances mentioned above but in any case in which "good cause" can be shown for the *lambardar's* unfitness to do the work himself. An absentee landlord owning a whole estate may nominate for the approval of the Deputy Commissioner any of the residents to be his substitute. As a rule, he will have an agent

1. **Land Administration Acts, Vol. II, page 38.**

on the spot whom he will naturally put forward. Should he fail to nominate a fit person, the Deputy Commissioner chooses one of the resident tenants. Where in an estate owned by more than one person an absentee headman is responsible either individually or as representative of other absentees for more than half of the land revenue, the Deputy Commissioner may appoint any resident owner or tenant to be *sarbrah*. In this, and indeed in all cases in which substitutes are appointed for a *lambardar*, who is not a minor, the wishes of the substantive holder of the office should be put on record and fully considered. Other things being equal, the best plan, when the headman has become unfit to do his work, is to choose as his substitute the man who would naturally succeed him in the office in the event of his death. If this is his son, he will usually not be a "landowner," but this is no obstacle for "regard shall be had to the property which the candidate will inherit from the person he is intended to represent in like manner as if he has already inherited it." [Rule 29 (*iii*)]. In the case of minor *lambardars*, their mothers often ask for the appointment of a maternal uncle as *sarbrah*. Ordinarily he is ineligible because he owns no land in the village, and in any case it is generally much more in accordance with local sentiment to select a near relative of the boy's father (*Land Administration Manual*, *paras.* 314, 315).

Division of pachotra.—It is permissible to divide the *pachotra* between the headman and his substitute If it is intended to do so, the arrangement must be noted in the order of appointment, otherwise the substitute will receive the whole on the principle that the man who does the work should get the pay. In any case the substitute's share must not be fixed at less than one-half (*Land Administration Manual*, *para.* 316).

Removal of substitute.—The Deputy Commissioner may remove a substitute for any reason which would justify the removal of the headman himself or for any other sufficient reason [Land Revenue Rule 29 (*iv*)].

Zaildars and inamdars—old age.—There is no doubt that a *sufedposh* can be dismissed when owing to age he is unable to discharge the duties of his office. There is also no doubt that in the same circumstances a substitute can be appointed to discharge his duties.

It is not possible to lay down general principles as to the circumstances in which the adoption of one of these courses rather than the other is justified. The decision whether to appoint a substitute or to dismiss a *sufedposh* or *zaildar* for incapacity due to old age is one which should normally be left to the Collector.[1] A *zaildar* when once appointed should only be removed from office for misconduct or neglect in his duties. Removal on account of old age or for disability caused by accident is a very harsh measure. In such cases he may be allowed to perform his duties through a *sarbrah* or deputy.[2]

As no hereditary claim is to be considered in making appointment of a *zaildar* or a *sufedposh*, no *zaildar* or *sufedposh* is entitled to claim that his son or relative be appointed as *sarbrah*.[3]

1. Jawala Singh *v.* The Crown=1932 L. L. T. 105.
2. 18 P. R. 1886 (Rev.) ; 4 L. L. J. 416=1921 L. 336.
3. 1932 L. L. T. 105.

APPOINTMENT BY SETTLEMENT OFFICERS

Appointment and dismissal in districts under settlement.—When a district is under settlement, headmen are appointed by the Settlement Officer. When the question of dismissing a headman arises, the Settlement Officer deals with the matter if the malfeasance was connected with work under his control, otherwise the Deputy Commissioner is the final authority. The officer with whom the actual decision rests should consult his colleague before passing orders (*Land Administration Manual, para.* 309).

Powers as regards headmen and zaildars.—The appointment of village headmen rests with the Settlement Officer, otherwise he might not be able to get that ready assistance from them which is essential for the prosecution of his work. Their help is specially necessary to procure the attendance of right-holders, whose presence is required in connection with the attestation of mutations or with the making of new maps or records. As far as possible formal proceedings should be avoided in such cases, but in the event of recusancy the provisions of section 149 of the Land Revenue Act can be put in force. The Settlement Officer is empowered to dismiss headmen for neglect of duty or disobedience of orders when the duty or orders relate to business controlled by the Settlement Officer. Before dismissing head man he should consult the Deputy Commissioner, but he is not bound to follow his advice. Similarly, when the Deputy Commissioner proposes to dismiss a headman for misconduct unconnected with settlement work, he should consult the Settlement Officer before passing final orders. The Settlement Officer should be very careful to thwart any attempt on the part of headmen to plead occupation in settlement work as an excuse for neglecting their ordinary duties or for delay in obeying orders addressed to them by the district authorities. *Zaildars* are appointed and may be dismissed by the Deputy Commissioner, but he is bound to consult the Settlement Officer before filling up vacancies. He need not accept the Settlement Officer's recommendation, but when the merits of rival candidates are being weighed, it is right that the aid afforded by them in settlement operations should be considered It may also sometimes be convenient to defer the filling up of an appointment if a revision of existing *zaildari* arrangements will probably be made before the close of the settlement.

The strength of the additional staff required when a general re-assessment of a district is undertaken will depend on the amount of revision necessary to put the records of rights and the revenue registers in a satisfactory condition, and on the question whether remeasurement must be undertaken in a large number of estates. As far as possible, these questions should be settled before re-assessment operations are started. But, if experience proves to a Settlement Officer that the amount of work required was under-estimated and that the staff provided is insufficient, he should not hesitate to propose that it should be reinforced. It is the worst possible economy to attempt to struggle on with an establishment too weak for the duties it is expected to perform (*Settlement Manual, para.* 233).

PART IV—PATWARIS.

For rules relating to the appointment, duties, emoluments, punishment, suspension and removal and Provident fund of patwaris, *see* Chapter 3 of the Punjab Land Records Manual.

Village Officers' cess.

29. (1) The Provincial Government may by notification impose on all or any estates in the territories for the time being administered by it a cess, to be called the village officers' cess, at such rate or rates not exceeding (half anna)[1] for every rupee of the annual value as it may think fit, for remunerating (headmen and chief headmen)[2] in those territories and for defraying other expenditure directly connected with the supervision of those officers or with the performance of their duties.

(2) 'Annual value' in sub-section (1) has the meaning assigned to that expression in the Punjab District Boards Act, 1883 ; that is to say,—

(*a*) double the land revenue for the time being assessed on any land, whether the assessment is leviable or not ; or

(*b*) where the land revenue has been permanently assessed or has been wholly or in part compounded for or redeemed, double the amount which, but for such permanent assessment, composition or redemption, would have been leviable ; or

(*c*) where no land revenue has been assessed, double the amount which would have been assessed if the average village-rate had been applied :

Provided that, in any tract in which under the settlement for the time being in force, the improvement of the land due to canal irrigation has been excluded from account in assessing the land revenue, and a rate has been imposed in respect of such improvement, that rate shall be added to the land revenue for the purposes of computing the annual value.

(3) The Financial Commissioner may make rules for the collection, control and expenditure of the village officers' cess.

(4) All cesses now levied in any local area for the purposes mentioned in sub-section (1) shall be deemed to have been lawfully imposed and shall, until the village officers' cess imposed in that local area under that sub-section, be deemed to be lawfully leviable and, for the purposes of this section, to be that cess.

1. These words were substituted for the words " one anna " by the Repealing and Amending (Rates and Cesses) Act 1907 (IV of 1907).
2. These words were substituted for the words " village officers " by the Repealing and Amending (Rates and Cesses, Act, 1907 (IV of 1907).

Zaildari and Village Officers' cesses. - The existing position about the *zaildari* and village officers' cesses is as follows. It is not now usual in the Punjab to make the landowners pay for the *zaildari* agency by imposing a cess : the cost is met by setting aside for the purpose a portion usually one per cent., of the land revenue. The only village officers' cess now levied consists of the *lambardar's pachotra* and the surcharge of one per cent. on the revenue levied in the few cases in which the appointment of chief headman or *ala lambardar* has not yet been abolished. With a very few exceptions the headman's *pachotra*, as the name implies amounts to 5 per cent. on the revenue. These exceptions are the estates in the Kulu and Saraj Tahsils of the Kangra district (exclusive of Lahul and Spiti, where the rate is 5 per cent.), where the village officers' cess is 7 per cent.

A brief reference to the history of these cesses is added. Formerly the village officers' cess used to include the patwari cess also. In the earlier period of settlements a normul rate for the patwari cess was considered to be 6 pies per rupee of land revenue which is equivalent to a surcharge of $3\frac{1}{8}$ per cent., on additional quarter or half per cent. being taken on account of patwaris' stationery : later on it was found impossible to meet the expenditure which the new standards of revenue work demanded, with so light a cess and the rate was increased, $6\frac{1}{4}$ per cent. being commonly taken. By section 29 of the Punjab Land Revenue Act, 1887, the maximum rate of village officers' cess was legally fixed at $6\frac{1}{4}$ per cent. on the "annual village" of the land as defined in Act XX of 1883, equivalent to $12\frac{1}{2}$ per cent. on the land revenue and canal owner's rate. The patwari cess was entirely remitted in 1906, the village officers' cess being reduced to $2\frac{1}{2}$ per cent. on the annual value, where only the *pachotra* of ordinary village headmen has to be provided, and 3 per cent. where there are also chief headman except in the case of the estates in the Kulu and Saraj Tahsils. Subsequently by the Repealing and Amending (Rates and Cesses) Act 1907, the maximum rate for the village officers' cess was reduced to half an anna for every rupee of the annual value equivalent to $6\frac{1}{4}$ per cent. on the land revenue and canal owner's rate. It was also definitely laid down that the village officers' cess was to be used only for the remuneration of headmen and chief headmen and for defraying other expenditure directly connected with their supervision or the performance of their duties (*Settlement Manual, para.* 89 *as substituted by C. S. No.* 52, *of* 16*th February*, 1940).

Restriction on attachment or assignment of remuneration of kanungos, zaildars, inamdars and village officers.

30. (1) The emoluments of a kanungo, zaildar, inamdar or village officer shall not be liable to attachment in execution of a decree or order of any civil or revenue Court.

(2) An assignment of, or charge on or an agreement to assign or charge, any such emoluments shall be void unless it is authorized by rules made by the Financial Commissioner in this behalf.

CHAPTER IV

Records

Necessity for records-of-rights in land.

Records-of-rights in land in the Punjab.—In India the State has always claimed a share of the produce of the land from the persons in whom it recognized a permanent right to occupy and till it or arrange for its tillage. The opening words of the first clause of Regulation XXXI of 1803 ran: "By the ancient law of the country the ruling power is entitled to a certain proportion of the annual produce of every *bigha* of land."

This share of the State is termed as the 'land revenue.' So long as the limit to this demand on the part of the State was the power of the Government to enforce payment and the ability of the people to pay, there was little in the form of valuable property in land, and people did not much care about their respective rights in it, much less to make any improvements. The first step, therefore, towards the creation of a private proprietary right in land in the real sense was to place such a limit on the demand of the Government as would leave to the proprietors a profit after defraying the cost of cultivation, which would constitute a valuable property in that land. When valuable property in land was so created it further became necessary in the interest of settled Government to determine the persons to whom these benefits belonged, which arose out of the limitation of this demand on the part of the State on the land. Likewise, there arose the necessity to record who should be responsible for the payment of the land revenue to the Government. Hence the necessity for the records-of-rights in land.

It is thus clear that any sound system of assessment and collection of land revenue is impossible without the existence of any accurate record-of-rights in the land which is sought to be assessed. In their absence it would not be an easy matter to determine who is liable for the payment of revenue assessed over any particular land and it would be difficult to settle disputes between the various claimants to that land. Under the present Land Revenue Act presumption of truth is attached to the entries in the records-of-rights prepared under the provisions of this Chapter. These are sufficiently detailed to disclose not only who the landowners of the estate are for purposes of section 61, but also who the landowner of a particular holding is, who is his tenant, what is the rent payable, what are land revenue and cesses assessed on it, the nature of the soil, method of irrigation, and area of every holding, etc.

Early records-of-rights.

Framing of records-of-rights in the beginning—The task entrusted to Settlement Officers.—The experiment of leaving the question of determination as to who were in possession of permanent rights in the soil as to entitle them to engage, to the arbitrament of the Civil Courts was tried and failed. These Courts had not the knowledge requisite for the disentanglement of a confused web of rights in the soil which were often ill-defined and apparently contradictory, and they could derive small assistance from Codes of Hindu and Muhammadan law or from the legislation of the British Government. Moreover, they could only deal with cases as they arose, and what was

wanted was a determination once and for all, of the rights existing in every field in every village in the country.

Regulation VII of 1822 entrusted this task, in the first instance, to the officers engaged in the assessment of the land revenue. It was provided that the Settlement Officer's proceedings "shall be founded on the basis of actual possession," and a man who was dissatisfied with the decision, or who claimed a right of which he was admittedly not in possession could bring a suit in a Civil Court.

It soon became apparent that the tenure of land was sometimes very complex, and that the proprietary right was not enjoyed as a whole by a single individual or by a village community in common, but was split up among two or more individuals possessing titles, none of which could properly be regarded as full ownership. Three classes were early recognized, superior proprietors, inferior proprietors, and hereditary tenants. All these classes had permanent rights in the soil, the record of which was essential.

Powers given to Settlement Officers in the Punjab.

In the first regular settlements in the Punjab the framing of the record-of-rights was a more important matter than the assessment. The result of the one operation was permanent, and for all practical purposes final, the result of the record was temporary and remediable.

Shortly after annexation the Board of Administration forbade the Civil Courts in the districts west of the Bias to entertain any claims for land till a regular settlement had been effected and at the same time the district revenue Courts were directed to "confine their attention to the question of possession, and leave to the Settlement Officers hereafter the decision of disputed rights" (Board's Circular No. 122, dated 30th May, 1849). A little later the provision of Regulation VII of 1822, which allowed a disappointed claimant to contest the finding of a Settlement officer by bringing a civil suit in the District Court, was set aside with the sanction of the Governor-General, and the decision of Settlement Officers in all cases decided on their merits after full enquiry were made final "subject to the usual revenue appeal." Settlement Officers were vested with the full powers of Civil Courts as regards land suits. The period of limitation was fixed at 12 years, and this was sometimes interpreted as meaning 12 years counting back from the date of annexation or from the date on which the claim was first put forward in the district revenue Courts. When the first Punjab Courts Act, XIX of 1865, came into force, care was taken to maintain the jurisdiction of Settlement Officers as regards land suits. The 21st section of that Act provided that, when a district was under settlement, any special officer in it might be invested with the civil powers of a Commissioner, Deputy Commissioner, Assistant Commissioner or *tahsildar* for the purpose of deciding suits in respect to land, or the rent, revenue, or produce of land. Similar provisions were embodied in section 49 of the second Punjab Courts Act, XVII of 1877, and in Chapter VI of the third Punjab Courts Act, XVIII of 1884. Down to 1878 Settlement Officers were usually invested with the powers of a Deputy Commissioner to decide suits or appeals regarding land, or the rent, revenue, or produce of land. But in the districts of the old Delhi territory re-asessed between 1871 and 1878 it was determined to confine the jurisdiction of the settlement Courts to cases under the Tenancy Act of 1868, on the grouud that these

districts "were settled many years ago and the rights of all parties must have been determined either by length of possession or by decree of Courts." In 1878 it was proposed to follow the same course in all the districts then about to come under settlement, but ultimately the jurisdiction of the Settlement Courts was made to extend to suits—

(*a*) under the Tenancy Act ;

(*b*) to alter or cancel any entry in the register of names of proprietors of revenue-paying land ;

(*c*) under section 9 of the Specific Relief Act of 1877 ;

(*d*) for declaration of title in land, or the rent, revenue, or produce of land brought by parties in possession of the right claimed.

It was also intended that claims under head (*b*) should only be cognizable by Settlement Courts where the plaintiff was in possession. The description under head (*b*) was not considered sufficiently precise and was gradually expanded but the changes made were intended to define and not to restrict the powers hitherto possessed in cases between landlords and tenants. In 1886, a fresh form of notification was introduced giving Settlement Officers the powers of a Deputy Commissioner, under section 46 (1) of the Punjab Courts Act of 1884, for the trial of all classes of suits mentioned in section 45 of the same Act, with six exceptions. The effect was to withdraw from Settlement Officers' jurisdiction in suits under heads (*b*) and (*d*) above, but to enable them to decide suits for the determination of "disputes regarding boundaries of land which have been fixed by a Court or Revenue Officer." Chapter VI of XVIII of 1884 was repealed by the Land Revenue Act of 1887, but Chapter XI of the latter Act enables Government if it pleases, to make land cases in any local area solely cognizable by the officer making or specially rivising records-of-rights in that area. So far no use has been made of this Chapter and Settlement Officers are now invested only with the powers of a Collector under the Tenancy Act, XVI of 1887, and their exercise of these powers is confined within narrow limits by executive instructions.[1]

Investigation of claim to proprietory right by early Settlement Officers.

The task which the first Settlement Officers had to perform in connection with the determination of titles was no light one. Rights in the soil were found to be in a very confused and doubtful condition. A quotation from Temples report on the first regular settlement of Jullundur may be given to show exactly what Settlement Officers had to decide, and the spirit in which the task was undertaken :—

"The broad question at issue has been this—who has held the land and paid the revenue for twelve years previous to the present settlement ? Discrimination has been exercised not only in tracing the foundations of original right, but also in discovering the signs and tokens of *bona fide* possession.....We have been anxious that every claim and right, whether admitted and confirmed or not, should at least be understood. Ancient rights that have long been held in abeyance must sometimes be extinguished in deference to law and policy. But we have never non-suited claims by technicalities."

1. Settlement Manual, Appendix IV.

The principles followed in determination of rights in land will be found explained in the appendix on "Tenures of land in the Punjab."

Records-of-rights in early Punjab Settlements.—The contents of a record-of-rights according to Mr. Thomason's Directions, which were followed with more or less exactness by the earliest Settlement Officers in the Punjab were :—

(1) *Naksha thakbast* or sketch map of the boundary with a record showing how each boundary was laid down.

(2) *Shajra* or field map.

(3) *Khasra* or register of fields.

(4) *Khatauni* or *Muntakhib Asamiwar*.—A statement of proprietors and tenant's holdings with a detail of fields and a note of the rent paid by each tenant.

(5) *Tahrij Asamiwar*.—An abstract of the *khatauni* showing tenant's holdings with their areas and rents but without any detail of fields.

(6) *Darkhwast malguzari*, or engagement of landowners accepting the assessment.

(7) *Khewat* showing the area and revenue of each proprietor's holding. This was not a separate document, but formed part of the next paper No. (8).

(8) *Ikrarnama* or *wajib-ul-arz*, *i. e.*, the village administration paper, which Mr. Thomason regarded as "the most important of all the papers, for it is intended to show the whole of the constitution of the village."*

(9) The *jamabandi*.—A list of holdings cultivated by owners, occupancy tenants, and tenants-at-will with the fields contained in each and the sums payable either as rent or revenue. It was based largely on the *khatauni*, but was prepared at the close of settlement, and was intended to be the first of the patwari's annual *jamabandis*.

(10) The *rubakar-i-akhir*, or brief abstract of the settlement proceedings.

The preparation of a *shajra-nasb* or genealogical tree of the proprietors was not as a rule considered necessary.* (*Settlement Manual, para.* 270).

Imperfections of early records of rights.

It was inevitable that these first records should be in many respects imperfect. Mr. Prinsep, whose zeal for reform made him a severe critic of the past, traced their deficiencies mainly to the prominence given in the Directions, framed originally for a province in which Settlement Officers had no judicial powers, to possession as their rule of decision, and to the tendency of our officers and their establishments to think that "possession meant actual cultivation of the land." He classified the principal errors to be found in them as consisting of :—

(1) failure to understand and correctly record village tenures, very many estates being described as *bhaiachara* where the members of the community were of one ancestral stock, the land

*Directions for Settlement Officers, edition of 1850, paragraph 167.

divided in shares whether ancestral or customery, and the profit and loss regulated by such shares ;

(2) mistakes as to separate holdings the most common being—

(*a*) the omission of names of coparceners, and of widows, and absentee owners, because they were not in actual cultivating possession ;

(*b*) the description of common holdings as separate and of divided interest as common ;

(*c*) the clubbing together of two holdings, occupied on different tenures, as one ;

(3) the indiscriminate creation of occupancy tenant right (*Settlement Manual, para.* 271).

Measures taken to improve the record-of-rights.

Mr. Prinsep took great pains to remedy the defects indicated above and essayed to close the door against future litigation by making his records exceedingly minute. To ensure a correct account of village tenures he made very elaborate genealogical trees of the proprietors, tracing the existing owners back where possible to the first founder or founders of the estate. Notes were added at the foot of the *shajra-nasb* showing the measure of right followed in each sub-division of the estate, and describing its early history and the circumstances out of which its existing tenures sprung. To guard against the second class of errors, *parchas* showing the entries to be subsequently made in the *khewat khatauni* with a reference to each owner's holding were compiled in duplicate from the *khasra* as measurements proceeded, and one copy was given to the proprietor concerned, so that he might have an opportunity of satisfying himself that his rights had been fully recorded. These *parchas* and the *khataunis* based upon them showed not only fields, but the number of trees, and the ground for dung-heaps, sugar mills, &c., in the separate possession of each share-holder. The omission of these particulars in former records had in Mr. Prinsep's opinion been a fertile cause of litigation. Particular pains were also taken to make a complete record-of-rights of irrigation from wells and *chhambhs* (marshes) (*Settlement Manual, para.* 273).

Documents included in Mr. Prinsep's records-of-rights.

While he aimed at making his records minutely accurate, he sought to reduce their bulk by getting rid of all superfluous papers. He dropped the *tahrij* which some of his predecessors had also discarded ; and he combined the *khewat* and the *khatauni* into one form. While he made very full enquiries into village customs he got rid of the separate village administration papers (*wajib-ul-arz*) in which these had hitherto been recorded, substituting for them general records of custom drawn up for tribes or groups of villages. References to these codes and any special entries as to custom required by the circumstances of any particular village or holding were scattered through the other documents included in the record of rights. Thus customs relating to irrigation were noted on the well statement, and those concerning the rights of tenants in the *khewat khatauni*. Mr. Prinsep's settlement record consisted of (*a*) the general index, (*b*) *shajra kishtwar*, (*c*) *khasra*, (*d*) *shajra nasb*, (*e*) *khewat khatauni*, (*f*) *naksha chahat*, (*g*) *darkhwast malguzari*, (*h*) *robakar-i-akhir*. (*Settlement Manual, para.* 274).

[1]Records-of-rights under the Punjab Land Revenue Act, XXXIII of 1871.—The records of rights prescribed by the rules under

1. Section 15 of the Punjab Land Revenue Act, XXXIII of 1871 and Rules C-III of the rules under section 66 of that Act.

section 15 of Act XXXIII of 1871 consisted of the same documents with the addition of a list of revenue assignees and their holdings (*naksha lakhiraj*), and of a *wajib-ul-arz*. Mr. Prinsep's plan of distributing among the other parts of the records-of-rights entries which had hitherto been grouped under appropriate heads in the *wajib-ul-arz* was considered inconvenient (*Settlement Manual, para.* 275).

"Standing records."

Records-of-rights under the Punjab Land Revenue Act, XVII of 1887.—It is provided in the present Act that there shall be a record-of-rights for each estate [section 33 (1)] or in exceptional cases for a group of neighbouring estates [section 47 (1)]. Any records framed before the passing of the Act are, so far as may be, deemed to have been framed under the Act [section 2 (2)]. If the Provincial Government finds that there is no record-of-rights for an estate, or that an existing record requires special revision, it may by notification direct the making or special revision of such a record [section 32 (1)]. A notification of the sort may apply to all the estates in a district or other local area [section 32 (2)]. A specially revised record-of-rights supersedes the former record, but the entries in it do not affect any presumption in favour of Government which has already arisen from any previous record-of-rights [section 32 (3)].

Records-of-rights and Annual Records.

Record-of-rights and documents included therein.

31. (1) Save as otherwise provided by this Chapter, there shall be a record-of-rights for each estate.

(2) 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 land-owners, 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[1] [Provincial Government], prescribe.

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Other documents included in records-of-rights.

Notification No. 1647-*R*, *dated the* 11*th August*, 1937.—In supersession of Notification No. 1686-R., dated the 9th June, 1926, and in pursuance of the provisions of clause (*d*) of sub-section (2) of section 31 of the Punjab Land Revenue Act, 1887, the Financial Commissioner, with the previous sanction of the Governor of the Punjab is pleased to prescribe that the record-of-rights for every estate outside a municipality or cantonment and outside the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil, shall include a document recording the father's name, caste or tribe, *got* or sub-tribe, if any, and residence of all the persons described in paragraph (*i*) of clause (*a*) of the said sub-section other than (1) non-occupancy tenants, and (2) mortgagees or lessees for a period of 20 years or less, provided that if the father's name, caste or tribe, *got* or sub-tribe, if any, and residence are entered in any document prepared in accordance with clause (*a*) of the said sub-section, no separate document shall be necessary for the purpose.

Notification No. 1953-*R.*, *dated the 21st September*, 1937.—In pursuance of the provisions of clause (*d*) of sub-section (2) of section 31 of the Punjab Land Revenue Act, 1887, the Financial Commissioners, with the previous sanction of the Governor of the Punjab, are pleased to prescribe that the record-of-rights for an estate shall include a detailed plan of any property belonging to the Crown in the estate.

Standing records and annual records.—A record framed at a settlement made before Act XVII of 1887 was passed, or in pursuance of a notification issued under section 32 of the Act, is known as a "standing record" as a convenient way of distinguishing it from the "annual record" an amended edition of the record-of-rights prepared for each estate yearly or at such intervals as the Financial Commissioner may prescribe, in which all changes which have occurred since the standing record was framed are, or should be, incorporated [section 33] (*Settlement Manual, para.* 277).

Section 31 of the Act lays down that save as otherwise provided by Chapter IV of the Act, there shall be a record-of-rights for each estate. And it further states what documents shall be included in the record-of-rights.

Section 33 of the Act provides for the annual records. With reference to the policy of re-settlement procedure, it is a main object, not only to make a record which shall be correct for a given date, but keep it correct by continually entering the changes that take place. The law, therefore, requires—

(1) the due preparation of the *initial* record ; and

(2) the maintenance of an additional record, called the 'annual record' which is, in fact, only an 'edition' of the first, kept continually correct by alterations and additions.

In other words, we have a set of documents which give the starting-point an attested account of the facts as found at a certain date ; and then another set (in precisely the same form), which are continually being corrected, by noting all changes occurring since the date of the initial record. The former is provided for in section 32 of the Act and the latter in section 33 of the same.

Documents included in "standing records" and "annual records."

According to sections 31 and 33 of the Act, a standing record and an annual record must include—

(1) Statement 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 interest of those persons, and the conditions and liabilities attaching thereto ; and

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

(2) Such other documents as the Financial Commissioner may, with the previous sanction of the Provincial Government, prescribe.

A standing record must also comprise—

(3) A statement of customs respecting rights and liabilities in the estate.

(4) a map of the estate.

[sections 31 (2) and 33 (2)].

A " standing record " should contain the following documents :—

(1) A preliminary proceeding.

(2) A *shajra kishtawar* or field map.

(3) A *shajra nasab* or genealogical tree.

(4) A *jamabandi* or register of the holdings of owners and tenants showing the fields comprised in each, the revenue for which each owner is responsible, and the rent payable by each tenant. *It should also show particulars about the owner and tenant as given below :—

(*i*) In the case of the owner, the father's name, tribe or caste, *got* or sub-tribe, if any, and residence.

(*ii*) In the case of the tenant or the cultivator the father's name, tribe or caste, *got* or sub tribe, if any, residence, and status, (*e.g.*, *maurusi* or ghair *maurusi*).

(5) A list of revenue assignments and pensions.

(6) A statement of rights in wells.

(7) A statement of rights in irrigation, if any, from other sources.

(8) A *wajib-ul-arz* or statement of customs respecting rights or liabilities in the estate.

(9) The order of the Settlement Officer determining the assessment.

(10) The order of the Settlement Officer distributing the assessment over holdings (*Settlement Manual, para.* 285).

*Land Revenue Rule No. 72 ; added by C. S. No. 10-S. M. dated 2nd November 1932.

The "annual record" consists usually of (*a*) the *jamabandi* (*b*) a list of revenue assignments and pensions and (*c*) such maps as are required to show the changes in the map of the estate that have occurred since the previous record was prepared. *Jamabandi* includes amended copy of *shajra nash* also.

†**Land Revenue Rule 72—Form of jamabandi.**—The statements prescribed by clause (*a*) of sub-section (2) of section 31 of the Punjab Land Revenue Act shall be recorded in the form set forth below, to be known as the *jamabandi* with such additions as the Financial Commissioners may prescribe from time to time for each district :—

1	2	3	4	5	6	7	8	9	10	11	12
Khewat or jamabandi No.	Khatauni No.	Name of patti or taraf, with name of lambardar and revenue.	Owner, with description.	Cultivator, with description.	Well or other means of irrigation.	Field Nos.	Areas.	Rent paid by cultivator, rate and amount.	Share or measure of right and rule of bachch.	Demand, with detail of revenue and cesses.	Remarks.

Note —(1) In column,[4] the father's name, tribe or caste, *got* or sub-tribe, if any, and residence of the owner shall be entered.

The presumption of truth attaches to the entries so made only in respect of owners and of mortgages with possession for a period of more than 20 years in estates outside a municipality or cantonment and in the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil ; and it is only in regard to such persons that careful enquiry is necessary.

Note.—(2) In column 5, the father's name, tribe or caste, *got* or sub-tribe, if any, residence and status, (*e. g*, *maurusi*, *ghair maurusi*) of the cultivator, shall be entered.

The presumption of truth attaches to the entries so made only in respect of occupancy tenants, and of lessees for a period of more than 20 years in estates outside a municipality or cantonment and in the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil ; and it is only in regard to such persons that careful enquiry is necessary.

†Financial Commissioner's Notification No. 1946-R, dated 17th July 1926, as amended by Not. No. 2109-R, dated the 3rd August, 1938.

*The form may be altered with the sanction of the Financial Commissioner to meet the requirements of any particular district or tract. For canal colonies in particular a special form will generally be found necessary (see the form given in Appendix), and in other districts it may prove advisable to effect minor alterations. Thus if there are two classes of owners, superior and inferior, a column to show the superior owners can be inserted between columns 3 and 4. A column may, if necessary, be added for "date trees liable to assessment." In tracts under fluctuating assessment this form may be used or the alternative form given in Appendix, as may appeal more suitable. In the case of urban lands to which the Land Revenue Act applies, the ordinary form should be adopted, but it should be divided into two parts, namely, (*a*) for agricultural (*zaraʿi*) and (*b*) for urban (*sakni*) lands. Lands specially assessed as 'potential' building land, as in Lahore, should be classed in the former but distinguished from other agricultural land by the addition of the word '*qabil tamir*.'

For contents of the standing records and instructions relating to the preparation of these records, see Appendix.

Contents of a colony record-of-rights.—The record-of-rights of a colony village should contain, as nearly as possible, all the documents enumerated in paragraph 285 of the Settlement Manual (*see page infra*), although some of the papers, as explained below, will necessarily remain blank. The record-of-rights for a colony estate usually contains the following documents :—

(1) A preliminary proceeding (*robkar*).

(2) A field map (*shajra kishtawar*) with index map.

(3) Genealogical tree (*shajra nasb*).

(4) The *jamabandi*.

(5) A list of revenue assignments and pensions.

It will be noted that as peasant and most other grantees of colony land are in the position of tenants (of Government), paragraph 43 of Standing Order 23 (See now paragraph 7·66 of Chapter VII of the Land Records Manual) would not ordinarily require the preparation of a *shajra nasb* in their case. They are, however, governed by special rules of succession and their position is not analogous to that of tenants of private owners. It has, therefore, been decided that in such a case a genealogical tree should be prepared starting from the father of the first grantee. It should not, however, contain the names of brothers and their descendants of this first grantee who are not settled in the colony† (*Colony Manual, para.* 637).

Differences between colony and ordinary record-of-rights.

It will be seen that this standing record differs from that of all old districts in that it does not ordinarily contain—

(*a*) a statement of rights in well ;

(*b*) a statement of rights in irrigation ;

(*c*) a *wajib-ul-arz*, or statement of customs respecting rights or liabilities in the estate ;

(*d*) the order of the Settlement Officer distributing the assessment over holdings.

*Para. 7·40, Chapter VII, Punjab Land Records Manual.

†Financial Commissioner's letter No. 708-C, dated 22nd February, 1933.

The general omission of a statement of rights in wells is justified by the general absence of proprietary wells, except on the fringes of colonies. The leases of all leasehold wells in the area included in the colonies estates are usually cancelled ; and where fresh leases are given the grant of no ultimate proprietary rights is contemplated. This does not of course apply to non-perennial chaks in which wells are, whether by compulsion or voluntarily, sunk for rabi irrigation. Rights in irrigation there are none. The so-called "*haqq abpashi*," which represents the intended irrigation from the canal, is a misnomer, as explained in paragraph 564. It is merely the proportion of the area of each grant which the canal authorities, without binding themselves in any way, hope to irrigate. No *wajib-ul-arz*, or administration paper, is prepared as the conditions of the grant cover virtually all rights and liabilities of the grantees.* The assessment of Land Revenue being invariably a summary or allround fluctuating rate, no distribution over holdings is necessary (*Colony Manual, para.* 638).

Colony records-of-rights to be compiled on ordinary forms.

Ordinarily, colony records-of-rights should conform as closely as possible to the common practice of the country. Maps, however, will generally be made on specially prepared *masawi* forms on which the square and acre boundaries have already been filled in. As to the jamabandi, the common forms prescribed in Standing Order No. 23 (see now Land Records Manual) can usually by the excercise of a little ingenuity be made to meet the case. Thus, all Government tenants should be entered in the column for tenants, with *khatauni* numbers, there being one *khewat* number for State where the State is sole owner.† The same remark applies to the froms in Standing Order No. 24. It is possible to devise fresh forms to meet exactly each variation of tenure to be found in a colony, but as the ultimate aim of colonization is assimilation in a district, and the probable final status of every colonist that of an owner in proprietary right, it is obviously preferable to adhere from the beginning to forms which have been drawn up for a village in which the ordinary status is that of ownership. Variations introduced at the beginning only mean changes later on. Nevertheless, it will generally be found advisable to maintain for some years, side by side with these standard records, some of the original forms which were in use since the village was colonized. Thus, in addition to the standard *shajra kishtwar* village *khakas* of the colony pattern will be found useful both in the village and at *sadr* and these (though not under existing orders forming part of the ordinary standing records of the *patwari*) should be checked and attested along with the quadrennial *jamabandis*, one copy remaining at *sadr* and one being sent to the patwari. Similarly, though the *jamabandi*, must remain the only official record of holdings in the village, the original *fard taqsim* should be checked along with the *jamabandi* quadrennially and one copy should remain on record at *sadr* for use there. Detailed instructions for the preparation and attestation of *khakas* and *fard taqsims* are contained in the succeeding paragraph.‡ Similarly, though the *jamabandi* must remain the only official record of holdings in the village, the original *Fard Taqsim* may with advantage be checked along with the *jamabandis*, and remain on record at *sadr* for use there. A too abrupt transition from one set of recods to another may result in serious confusion, particularly as the general method of administration

*Punjab Government letter No. 338 of 17th August 1899.

†Financial Commissioner's letter No. 708-C dated 22nd Februar y, 1933.

‡Development Secretary to Financial Commissioner's letter No. 424-C, dated the 26th January, 1939.

of colony villages cannot change immediately records-of-rights are prepared (*Colony Manual, para.* 639).

Preparation and attestation of khakas and fard taksim.

Khakas of agricultural and *abadi* areas and *fards* taqsim indicate how Crown waste is allotted to colonists. With the help of these documents applications for the grant of occupancy or proprietary rights, additional *ahatas*, new village roads; exchanges from one chak to another and the renewal of horse-breeding leases, can be disposed of easily and promptly. It is, therefore. of the utmost importance that these records which are kept in duplicate—one set with the patwari and the other in the colony office—should be kept up-to-date. Wide divergencies often come to light between Sadr and the field records on account of their not being attested at regular intervals. To obviate this difficulty and to ensure prompt disposal of the applications mentioned above, the following instructions have been issued :

New fards taqsim and khakas should be prepared in duplicate along with the jamabandis of villages which come under quadrennial attestation. As in the case of jamabandis they should be properly attested by field kanungos and tahsil Revenue Officers. Patwaris should, when they come to the tahsil for filing jamabandis, bring with them fards taqsim and khakas, where they will be compared with the Sadr copies of these records. As the Sadr copies of fards taqsim and khakas will not be available at tahsils other than the headquarters tahsils of colony districts it will be the duty of the Colony Assistant or the Revenue Assistant, as the case may be, to arrange to send these records to tahsil headquarters for attestation and comparison with the patwaris' copies. As it would not be safe to leave the Sadr copies of fards taqsim in the hands of patwaris for any time, this attestation and comparison should be done under the supervision of the Colony Assistant and his Reader or the Revenue Assistant, his Reader and Ahlmad assisted by the Tahsildars and kanungos. For this purpose the Colony Assistant or Revenue Assistant will fix dates on which the two records will be compared at the different tahsil headquarters. It will be the duty of Colony or Revenue Assistant, as the case may be, to watch this work very closely. After the comparison has been made, one copy of the records will be kept at Sadr and the other returned to the patwari. In order to keep the Sadr copies of fard taqsim up to date during the four years in which they will be in use, information of all mutations of death, exchange, mortgages, etc., will be sent in the form of parcha intiqal (printed copies whereof will be supplied to patwaris) by all patwaris direct to Sadr Colony Office.

When no change has occurred since the last attestation of fards taqsim and khakas, fresh fards taqsim and khakas need not be prepared, but the old ones should be signed in token of their being correct and up-to-date.

Blank forms of fard taqsim and parcha intiqal and khakas can be obtained on indent from the Superintendent, Government Printing, Punjab.

(*Development Secretary to the Financial Commissioners' letter No. 424-C, dated the 26th January* 1939—*Colony Manual, para 639-A*).

Records for colony village sites.—Apart from the ordinary land records, a record-of-rights is prepared for every colony village site which is the property of Government. This usually comprises—

(1) preliminary proceeding;

(2) a map, or *shajra abadi*;

(3) a *jamabandi*;

(4) the *misl habub deh.*

The map of the village site is a copy of the standard plan approved for this village with the name of the tenant of each site filled in. The *jamabandi* form may vary, but should contain the following particulars: (1) *Khewat* number, (2) *Khatauni* number, *i.e.*, site within the grantees's compound under separate occupation by his tenants or dependents, (3) name of the owner of the compound, (4) name and description of the occupant, (5) *Khasra* number, (6) area (*Colony Manual, para.* 644).

Record of-rights in colony towns.—Records-of-rights will have to be prepared for colony towns. These should consist of preliminary proceeding, a *shajra* and a *jamabandi*. In the *jamabandi* the following columns will be required: (1) *khewat* number, (2) *khatauni* number, (3) name of lambardar and revenue demand, (4) name of owner, (5) name of tenant, (6) *khasra* number, (7) area, (8) description, (9) rent, (10) revenue demand per *marla*. The area built upon should be entered according to the ownership. Town sites unsold should be entered by blocks. Agricultural land, streets and other *ghairmumkin* and Government buildings should each be shown under separate *khewat* numbers (*Colony Manual, para.* 648).

Making or special revision of record-of-rights.

32. (1) When it appears to the Provincial Government that a record-of-rights for an estate does not exist, or that the existing record-of-rights for an estate requires special revision, the Provincial Government may by notification direct that a record-of-rights be made or that the record-of-rights be specially revised, as the case may be.

(2) The notification may direct that record-of-rights shall be made or specially revised for all or any estates in any local area.

(3) A record-of-rights made or specially revised for an estate under this section shall be deemed to be the record-of-rights for the estate, but shall not affect any presumption in favour of the [1][Crown] which has already arisen from any previous record-of-rights.

Advantage of issuing a notification under section 32 (1).—The chief difference between an annual record made after complete remeasurement and a standing record is that the former does not include the *wajib-ul-arz*. If no *wajib-ul-arz* exists, or if it is considered desirable to revise the entries in an existing *wajib-ul-arz*, a notification under section 32 (1) directing a special revision of the record-of-rights must be issued. It has become the rule to issue such a notification whenever a general re-assessment of a district is ordered. By doing so certain technical difficulties are got rid of, and the principle of assimilating settlement and ordinary district procedure in the matter of framing records is not infringed to any extent worth mentioning (*Settlement Manual, para.* 286).

1. Substituted for 'Government' by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sub-section (3).—According to sub-section (3) a specially revised record-of-rights supersedes the former record, but the entries in it do not affect any presumption in favour of the Crown which has already arisen from any previous record-of-rights. As will be noted subsequently under section 42 of the Act, this exception might possibly have important consequences.

Annual record.

33. (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.

(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 Provincial 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 mutations and such other registers as the Financial Commissioner may prescribe.

Contents of the annual records.—The annual record should consist usually of (*a*) the *jamabandi*, (*b*) a list of revenue assignments and pensions and (*c*) such maps as are required to show the changes in the map of the estate that have occurred since the previous record was prepared. *Jamabandi* includes amended copy of *shajra nasb* also.

"Annual records" a misnomer—quadrennial records.

The Act contemplates the framing of an annual record-of-rights for each estate, but at the same time it allows the Financial Commissioner to direct its preparation at longer or shorter intervals. For many years after the Act was passed an attempt was made to compile a *jamabandi* annually for every village, the entries being curtailed to some extent for three consecutive years and given at full length in the fourth. This plan of having abbreviated and detailed *jamabandis* caused useless trouble, and the present rule is to draw up a complete *jamabandi* for each estate or part of an estate once in four years (detailed *jamabandis* should be prepared for all estates in the year, preceding a general reassessment), so that the legal description of the record as the "annual record" has become a misnomer. Lists are made showing what record work the *patwaris* are to do in each year. If a *patwari* has four or more small villages in his circle, it is easy to distribute the work over the different years. If the estates are fewer in number, one or more of them may have to be split up into two or more part for this purpose. Each part should, as far as possible consist of one or more complete sub-divisions, (*pattis* or *tarafs*). In referring to the latest *jamabandi* of any particlular village, the year to which the entries relate must be noted. If this is not the last agricultural year, any changes which have occurred since the *jamabandi* was compiled can be ascertained by turning to the mutation register.

Attached to the *jamabandi* is a copy of all entries in the register of mutations attested by a Revenue Officer since the last *jamabandi* was filed. The annual record must also include an amended copy of the genealogical tree. Cartain statistical returns are filed with the *jamabandi* but they form no part of the annual record (*Settlement Manual, para.* 284; *Land Administration Manual, para.* 388).

Sub-section (3).—The register of mutations is one of the records maintained under Chapter IV of the Land Revenue Act, 1887.[1] The other register prescribed is the register of crop inspections (*khasra girdawri*).

Procdure for making Records.

Preliminary.—Sections 34 to 40 of the Act lay down the procedure for making the records. Section 34 relates to the making of that part of the annual (quadrennial) record which relates to land-owners, assignees of revenue and occupancy tenants, while section 35 prescribes for the making of that part of this record which relates to other persons. Disputes arising during the making, revision or preparation of any record or in the course of any enquiry under Chapter IV of the Act as to any matter of which an entry is to be made in a record or in a register of mutations, are to be decided in the manner laid down in section 36. Section 37 prescribes the restrictions laid on variations of entries in records. Penalty for neglect to report acquisition of any right referred to in section 34 is provided for in section 39 and under section 40 any person whose rights, interests or liabilities are required to be entered in any record under Chapter IV of the Act, is bound to furnish, on the requisition of any Revenue Officer or village-officer engaged in compiling the record, all information necessary for the correct compilation thereof.

Alteration in the record-of-rights before the Punjab Land Revenue Act, 1887.

As reference is frequently to be made to the records-of-rights framed before the enactment of the present Act, especially in disputed cases, it shall be of interest to note what the law and procedure relating to the revision of the records-of-rights was before the present Act.

Mr. Prinsep believed that at a revised settlement the record of a first rugular settlement could be corrected by a simple order of the Revenue Officer, and that a judicial decision in a regular suit was not required, and in the settlements under his supervision he acted on this belief. In fact, Financial Commissioner's Book Circular XLIII of 1858 and Book Circular XXXIII of 1860 provided as follows:—

"It has been impressed on Collectors, that none of their subordinates are to take up complaints, impugning the Settlement Record. If they become aware aluinde that there is *prima facie* reason to suppose a formal entry incorrect, the Collector should be informed, who will make full inquiry into the matter, and if this corroborates his doubts, the Commissioner should be informed; with his concurrence the correction may be made in an appropriate manner, reference being made to the order sanctioning it. No judicial decision was to be interfered with but on appeal, unless third parties had been injured, or some new material facts had come to light, in which case a review of judgment might be allowed. By formal entries are meant those which have not the force of an award of the Settlement Officer in a contentious suit. Whenever a party applies for the enforcement of a right which was not recorded, or when a recorded right is declared to be non-existent, the Collector will order a summary enquiry to be made as to the *prima*

1. Financial Commissioner's letter No. 4693-E. & S, dated 31st August, 1932.

facie probable correctness of the claim, and if it does appear to have foundation with the sanction of the Commissioner, a regular suit may be admitted before the Collector, in as much as suits with regard to land and product of land are still heard by the Collector. After all parties concerned have been properly impleaded, the case will be decided on its merits according to the strict procedure of the Punjab Civil Code."*

Some of the best Revenue Officers of the day, however, held that errors in a record-of-rights could not be corrected at a subsequent settlement except by agreement or in consequence of a decree of a Court, and their view was accepted as sound in policy and embodied in section 19 of Act XXXIII of 1871, which ran as follows :—

'When a record-of-rights made in any district or other local area at a regular settlement has been sanctioned, it shall not be revised until such district or local area is again put under settlement, nor shall it at such subsequent settlement be revised otherwise than by—

(*a*) making entries in accordance with facts which have occurred since the date of the abstract specified in clause six of section fourteen ;

(*b*) making such alterations of the record as are agreed to by all the parties interested therein, or are supported by a judicial decision ;

(*c*) making new maps, surveys or measurement when the Local Government so directs, and amending such of the documents of the record-of-rights as depend thereon, so as to accord with such new maps, surveys or measurement ; but not so as to alter any statement as to the share or holding or statuts of any person, except in the cases mentioned in clauses (*a*) and (*b*) of this section.'

Sections 39 and 40 of the same Act provided—

"39. When a record-of-rights has been handed to the Deputy Commissioner under the provisions of section seventeen, he shall from time to time record, or cause to be recorded, all facts affecting any matter stated in the record-of-rights which occur subsequent to the handing to him of the record-of-rights.

40. The Local Government shall make rules as to the facts to be so recorded and the manner in which, the persons by whom, and the occasions on which, such facts are to be recorded, and as to the fees which are to be paid in respect of recording them."†

Procedure at present.

Under section 33 (1) of the present Act, an edition of the record-of-rights amended in accordance with the provisions of Chapter IV of the Act, is prepared once in four years. The patwari keeps up a register of mutations in which he records all acquisition of rights of the kinds described in sections 34 and 35, reported to him or which "he has reason to believe to have taken place", except those relating to land revenue assignments and undisputed mutations of tenants-at-will. But a mere entry in the register cannot cause any alteration in the *jamabandi* without an order of a Revenue Officer. The Revenue Officer after hearing the

*See Cust's Revenue Manual, page 117.

†See also Settlement Manual, para. 272 and Barkley's Directions for Collectors, paras. 167 to 183.

parties concerned passes the necessary order, and then it is incorporated in the *jamabandi*. Undisputed entries relating to tenants-at-will are taken straight from the *khasra girdawri*. The *shajras* are also amended at the same time. Below is described the procedure for making these quadrennial records.

Making of that part of the annual record which relates to land owners, assignees of revenue and occupancy tenants.

34. (1) Any person acquiring, by inheritance, purchase, mortgage, gift or otherwise, any right in an estate as a landowner, 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 these 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.

(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.

Making of that part of the annual record which relates to other persons.

35. The acquisition of any interest in land other than a right referred to in sub-section (1) of the last fore-going section shall,—

(*a*) if it is undisputed, be recorded by the patwari in such manner as the Financial Commissioner may by rule in this behalf prescribe; and

(*b*) if it is disputed, be entered by the patwari in the register of mutations and dealt with in the manner prescribed in sub-sections (4) and (5) of the last foregoing section.

Determination of disputes.

36. (1) If during the making, revision or preparation of any record or in the course of any enquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion, or on the application of any party interested, but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.

(2) If in any such dispute the Revenue Officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that that person be put in possession thereof and that an entry in accordance with that order be made in the record or register.

(3) A direction of a Revenue Officer under sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.

Restrictions on variations of entries in records.

37. Entries in records-of-rights or in annual records, except entries made in annual records by patwaris under clause (*a*) of section 35 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by—

(*a*) making entries in accordance with facts proved or admitted to have occurred ;

(*b*) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties ;

(*c*) making new maps where it is necessary to make them.

Mutation fees.

38. (1) The Provincial Government may fix a scale of fees for all or any class of entries in any record or register under this Chapter and for copies of any such entries.

(2) A fee in respect of an entry shall be payable by the person in whose favour the entry is made.

Penalty for neglect to report acquisition of any right referred to in section 34.

39. Any person neglecting to make the report required by section 34 within three months from the date of his acquisition of a right referred to in that section shall be liable, at the discretion of the Collector to a fine not exceeding five times the amount of the fee which would have

been payable according to the scale fixed under the last foregoing section if the acquisition of the right had been reported immediately after its accrual.

Obligation to furnish information necessary for the preparation of records.

40. Any person whose rights, interest, or liabilities are required to be entered in any record under this Chapter shall be bound to furnish on the requisition of any Revenue Officer or village officer engaged in compiling the record, all information necessary for the correct compilation thereof.

SECTION I—GENERAL.

Classification of rights to be recorded.—The rights, of which the acquisition or loss gives rise to an alteration in the record of rights, may be classified as follows :—

A. Rights of persons responsible to Government for land revenue	1. Landowners. 2. Mortgagees with possession.
B. Rights of persons responsible to landowners for rent.	3. Occupancy tenants. 4. Leaseholders. 5. Tenants-at-will.

"Leaseholders" in this connection mean persons holding land as tenants for periods exceeding one year on written or oral leases.

Reports of acquisitions of right to patwari.—The first three classes are legally bound to report to the *patwari* the right which they have acquired [Section 34 (1)]. If they fail to do so within three months from the date of acquisition they render themselves liable to a small fine [Section 39]. Assignees of land revenue and mortgagees without possession are also bound to report, but their rights are not of a kind which must be recorded in the body of the *jamabandi*, though certain notes regarding them are made in the "remarks columns" of that document. Redemptions of mortgages must be reported by the landowners whose lands have been redeemed. For his knowledge of acquisition of title by leaseholders and tenants-at-will the *patwari* must rely mainly on his own observations and on the result of enquiries as to the cultivating occupancy of land made at the harvest inspection. Among the things which he has to enter in his diary are the deaths of tenants, owners, village officers, pensioners, and revenue assignees, the ejectment, absconding or settling of cultivators and right holders, the relinquishment, change, or renewal of any tenure and the execution of any lease or agreement for cultivation. Leaseholders and tenants-at-will are under no obligation to report to the *patwari*, but like all other persons whose rights are recorded in the *jamabandi* they are bound on demand to furnish him and any Revenue Officer engaged in revising it with accurate information [Section 40]. To aid in recording mutations is one of the duties set forth in the memorandum given to village headmen on appointment, and the *lambardar* of the *patti* in which a mutation takes place is expected to attest by his seal or signature the report made on it by the *patwari* for the orders of the Revenue Officer (*Land Administration Manual, paras.* 372, 373).

Before a mutation should be entered there should be an acquisition of a right and not merely a claim.[1]

1. *Mst.* Harnamo *v.* Deva Singh=1938 L.L.T. 45.

Reports of registered deeds.— Registrars and sub-registrars send monthly to *tahsildars* particulars of all registered deeds which purport to transfer agricultural land. The entries relating to each deed are made on a separate slip. The office *kanungo* forwards these slips to the field *kanungo* of the circle, who distributes them to the *patwaris* concerned [See para. 7 32 of the Land Records Manual].

Cases where no mutations are necessary.—Most of the alterations in the *jamabandi* which the patwari can make of his own authority are undisputed mutations of tenants-at-will. These are not entered in the register of mutations. Undisputed entries relating to tenants-at-will.

When the new *jamabandi* is being compiled they are taken straight from the *khasra girdawri*. Disputed changes of tenants-at-will are treated exactly like other mutations (Section 35).

See also para. 7'28 of the Land Records Manual for cases where no mutations are necessary.

There is no such thing as a mutation in respect of entries in the *khasra girdawri* as it does not form part of the record-of-rights and there is no obligation under sections 34 or 45 to correct it. Mutations of cultivation should not be entered up for individual harvest. They are meant to represent a *quasi* permanent status, and it is a sufficient reason for rejecting a mutation of cultivation on account of a single harvest if it is proved that by the time the mutation comes to be attested the alleged interest in land has ceased to exist[1] (Section 35). No mutation for entries in khasra girdawri.

Variations regarding rent of occupancy tenancies in *jamabandi* should not be made without mutations as Standing Order No. 23 (2) (*vi*). (*See* now para. 7'28, Chapter VII, Land Records Manual), exempts only undisputed entries relating to rents of tenants-at-will. But if any such entry is made without mutation it is not illegal or void since section 37 of the Land Revenue Act does not require that the procedure of attesting a mutation should be followed in altering the entry in the record-of-rights. Where an entry regarding rent made without a mutation has persisted in for a number of years, the tenant must be presumed to have acquiesced in the change and if he wants to have it changed and replaced by a previous entry the proper remedy is not an application for that purpose but a regular suit.[2] Entry relating to rent.

To alter an entry with regard to payment of rent is beyond the scope of mutation proceedings. The payment of rent in cash by the tenants may be simply a temporary and permissive arrangement in face of an entry empowering the landlords to realise rent in kind, and such arrangements do not affect the landlord's rights and are not facts " proved or admitted to have occurred."[3]

SECTION II—MUTATIONS.

India is by far an agricultural country deriving her wealth mainly from the bounties of nature. Land is a factor of utmost importance in the economic life of India, and its administration a matter of deep concern for any Government of this country. Alike under the Hindu, Muhammadan and Sikh rulers land revenue was the chief source of What is mutation.

1. Ch. Udha Mal *v.* Mewa Bibi=1932 L. L. T. 47, p. 50.
2. Bahadur Chand *v.* Jhanda=1932 L. L. T. 79.
3. 4 P. R. 1905 (Rev.).

income to Government and to day also this item stands supreme. It is necessary, therefore, that there should be a regular record of rights and liabilities of individuals in land. From the very beginning of the British rule in India steps have been taken to achieve this object, and what has been accomplished in this direction can be noticed by comparing the records of pre-British days with those existing at present. But world is not stationary. Rightholders die and others succeed them. Sometimes to meet their necessities of life they require money and have to mortgage or sell their rights. All these kinds of changes which are the result of the operations of time, necessity or caprice are to be incorporated in the records-of-rights, and this cannot be done in an haphazard way. Some definite procedure is to be adopted and this we know by the name of "mutations."

Thus mutation (lit, change, alteration) simply means alteration of an entry in the revenue records with the object of bringing the latter up-to-date, and making it represent the facts with regard to the respective rights and liabilities of persons as these at present are and not as they used to be. Mutation work is one of the most important branches of land revenue administration, and the presumption of truth that has been attached to the record-of-rights under section 44 of the Act makes the mutation preceedings still more solemn and important.

Below will be described the law and procedure relating to mutations in the Punjab.

PROCEDURE FOR MUTATIONS

(**The Punjab Land Records Manual, Chapter 7.*)

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.

Entry of mutation.

7·1. The mutation register is prescribed in sections 33 (3)and 34 of the Land Revenue Act for the entry of every acquisition of any right or interest in an estate as a landowner, assignee or occupancy tenant, and under section 35 for disputed acquisition of other rights. The mutation register is not a part of the record of rights and its entries do not share in the presumption of truth attached to that record.† All mutations of rights of ownership or occupancy, including voluntary partitions shall be entered by the patwari in the register when they are reported to him by the transferee as required by section 34 of the Land Revenue Act, and if not so reported, then so soon as they appear to have been acted upon. When he enters a mutation affecting the *shajra nasb* the patwari shall note in pencil the number of the mutation against the entry affected. If and when the mutation is sanctioned, he shall amend the *shajra nasb* in red ink in accordance with the mutation order.

Reference in jamabandi.

7·2. The patwari should, whenever a mutation case is entered in the register, note the serial number and nature of the transfer in pencil in the column of remarks of the *jamabandi* opposite the appropriate holding. If and when the mutation is sanctioned, he should make the above note in red ink. Serial numbers of *fard badar* entries should also be similarly noted and in order to distinguish them from the serial number

*As amended up-to-date.
†1934 L.L.T. 2.

of mutations the word " *badar* " should be added. *Fard badar* entries will thus be referred to as 1 *badar*, 2 *badar*, etc., etc.

7·3. **Register of mutations.**—The form of the register of mutations with instructions as to the entries to be made in it is given below :—

Register of Mutations of mauza.....

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Serial No. of entry.	Entry in last *jamabandi* which it is proposed to correct.						New entry which it is proposed to substitute.					Nature and date of transfer, with price in case of sale and amount of mortgage debt in case of mortgage or redemption.	Mutation fee due.	Report and orders.
	No. of holding in last *jamabandi*.	*Taraf* or well.	Owner, with description.	Cultivator, with description.	Detail of fields, areas and soils.	Revenue or rent.	No. of holding in new *jamabandi*.	Owner, with description.	Cultivator, with description.	Detail of fields, area and soils.	Revenue or rent.			

General instructions.

7'4. (*i*) The mutation register consists of a counterfoil and foil. The former is the patwari's copy of the register, the latter is removed after orders have been passed, and sent to the tahsil to be filed with the *jamabandi*. The patwari should make his entries in columns 1 to 13 of the counterfoil, but he should make no entry in column 15. Having thus filled up columns 1 to 13 in the counterfoil, the patwari will copy these entries in the foil. He will then write his report in column 15 of the foil. He will briefly state the facts explaining the change, the names of the persons on whose information the entry is based, and he will require the *lambardar* concerned to attest the entry by seal or signature. He is, however, strictly forbidden to take the thumb-mark or the signature of any of the parties to the transaction anywhere on the mutation sheet.

(*ii*) The field kanungo must attest by personal examination of the papers concerned every entry made by the patwari in the counterfoil and foil, noting briefly that he has done so with date below the report in the latter. He must sign the entries in both counterfoil and foil.

(*iii*) The Revenue Officer should carefully compare the entries in counterfoil and foil, and must write his order on the latter. He should see that all entries in the mutation sheets as well as his orders thereon are neatly and legibly written. The order should show whether the parties interested were all present; or if anyone was absent the way in which his evidence was obtained; or, if it was not obtained, what opportunity was given to him to be present; also who indentified the parties present, and the place at which, and date on which, it was written. In mutations of alienation of land the tribes of the parties should be named in the order. It is not sufficient to note that parties are *zaraat pesha* or *ghair zaraat pesha*. No detailed record of the statements of parties and witness need be made, but the order must state briefly the persons examinad by the Revenue Officer, the facts to which they deposed and the grounds of the order. Except in the case of *killabandi* mutations (paragraph 15 of Appendix XIV to Settlement Manual) no Revenue Officer any more than the kanungo or patwari should take the signatures or thumb-marks of parties or witnesses anywhere on the mutation proceedings. Except where the mutation order relates to an entire bolding and in cases of undisputed inheritance the Revenue Officer must enter with his own hand the numbers of the fields affected and their total area.

In the case of mutations relating to registered companies or firms, the attesting officer shall not pass final orders unless he has satisfied himself that the company or the firm has been duly registered and the party concerned has produced a certificate of registration by the Registrar, Joint Stock Companies. Mention to this effect shall be made in the attestation order.

(*iv*) He must write with his own hands in the counterfoil a very brief abstract of the operative part of his order giving the numbers of the fields affected and their total area, thus, "*dakhil kharij numberhai falan rakba falan manzur hai.*" No recital of the facts on which the order is based should be entered in the counterfoil.

(*v*) When mutation is refused the Revenue Officer must similarly pass his order to that effect on the foil and note the fact in the counterfoil. He must sign the entries in the counterfoil after comparing them with those on the foil.

(*vi*) For the action to be taken with reference to the share of *shamilat* attached to land transferred, see paragraph 7·19 *infra*. Regarding the procedure to be observed in connection with alienations which are affected by the Punjab Alienation of Land Act, see paragraphs 7·22 and 7·23 *infra*.

[1](*vii*) To save heavy stamp duty and registration fee on deeds relating to the alienation of immovable property, it has become the practice, especially in urban areas, to execute instead of a regular sale deed, two documents as follows :—

(*a*) a receipt for the payment of the property which is described as having been orally sold, together with

(*b*) an indemnity bond relating to such oral sale ;

and then get both these documents registered. Thereafter the sale is reported for mutation proceedings as "*zabani bazaria rasid registri shuda*" with the object of clothing what is essentially an oral transaction with something of the protection attaching to registration proceedings. In such cases, no mention of any receipt or indemnity bond should be made in the mutation proceedings either in the patwari or kanungo's report or in the order of the Revenue Officer, who should treat such transactions purely as "*zabani*" and not as "*zabani bazaria rasid registri shuda.*"

Any contravention of these instructions by the patwari and the other revenue staff, will be severely dealt with.

Mutations for the consolidation of holdings.

(*viii*) All Revenue Officers responsible for mutation work should give immediate attention to all mutations applied for to give effect to schemes of consolidation. It must be remembered that every member before joining admitted to a consolidation of holdings society has signed a statement that he—

(1) agrees to the principles of the re-arrangement of scattered holdings so as to secure more compact blocks of fields for each owner ;

(2) agrees to submit to any arrangements approved by two-thirds of the whole number of members in a general meeting or such other proportion as the by-laws of the society concerned may prescribe ;

(3) agrees to permit the re-arrangement of his lands in accordance with any such scheme and to give possession in accordance therewith for ever ;

(4) agrees to submit to arbitration in accordance with by-law No. 29, all disputes touching the business of the society (including disputes as to rights, boundaries, rents, responsibility for land revenue and cesses and possession of the lands affected by any such scheme) that may arise during the existence of this society ;

1. Director of Land Records' circular No. 66, dated 1st June 1934.

(5) agrees to submit to any arrangement approved by two-thirds of the whole number of members in a general meeting or such other proportion as the by-laws of the society concerned may prescribe in case of any future partition or rearrangement of the consolidated area in which he may be concerned.

In view of this and of the special revenue qualifications of the co-operative societies' staff engaged on consolidation work it will be sufficient for the patwari to accept the draft of the new entries prepared by the officer-in-charge of consolidation and to enter them in his records. The verification of the kanungo will then consist in satisfying himself that the copy is a true copy. On receipt of information that the entries are ready for attestation it is the duty of the tahsildar or naib-tahsildar concerned to proceed immediately to the spot to hear the case and to pass orders.

(*ix*) As regards mutations for the consolidation of holdings affected by a Co-operative Consolidation Society the Financial Commissioners have ruled as follows :—

(*a*) Revenue Officers are bound to hear all relevant objections to proposed mutations.

(*b*) Revenue Officers can refer to proceedings of the Consolidation of Holdings Society concerned in order to decide whether—

(*i*) the objection is or is not correct,

(*ii*) the objector is a member or a non member,

(*iii*) he offered the area objected to for consolidation, and

(*iv*) the area allotted to him has been allotted in accordance with a scheme approved by the prescribed majority of the society in accordance with its by-laws.

(*c*) When the objector is a member of the Consolidation Society, he has his remedy under rule 18 of the rules published with Punjab Government Notification No. 13819, dated the 23rd June 1917, and the decision of the Registrar, Co-operative Societies, or of the arbitrator, should be followed by the Revenue Officer.

(*d*) No general rule can be laid down with regard to the attestation of mutations of holdings of which the possession has not yet passed, or the exchange whereof has been reversed after one or two harvests. Possession is, however, very strong evidence of facts that have actually occurred.

It should be clearly understood that the duty of a Revenue Officer attesting a mutation is confined to ascertaining whether a fact does or does not exist. It is not his function to entertain an application and come to a finding upon it in the manner laid down in the rules under the Co-operative Societies Act. On the other hand, he should follow any decision given by the Registrar or arbitrator under those rules, or by the society in accordance with its by-laws. His only duty is to ascertain whether a fact does or does not exist.

Corrections previous to tatestation.

7·5. The entries in columns 9 to 12 should correspond in every case with the order passed upon the mutation in question. Where owing to a mistake or otherwise they do not do so they should be altered so as to bring them into correspondence with that order. Any alterations required for this purpose should be made as far as possible at the

time of passing the order but if not then made, they can be subsequently made at any time before the mutations in which they are to be made are incorporated in the *jamabandi*. No permission, nor proceedings in review under section 15 of the Punjab Land Revenue Act, will be necessary for the purpose of making such alterations, and any Revenue Officer before whom the mutations in which they are to be made or produced, will be at liberty to make them. All alterations made in accordance with this direction will be made in red ink and will be signed by the officer making them.

Corrections after attestation.

7·6. At any time before a mutation is incorporated in a *jamabandi*, any clerical or arithmetical mistake inadvertently made in the order passed upon it can be corrected without obtaining permission for reviewing that order. The correction of such mistakes can be made by the Revenue Officer who attested the mutations in which the mistakes have occurred or by his successor or by a superior officer. In making such corrections the original order should not be altered; but a separate note should be recorded briefly describing the corrections made. It will not be necessary to hear the parties concerned in connection with such corrections. The *fard badar* procedure described in paragraph 7·29 *infra* may be used for the purpose of avoiding the entry of a further mutation of inheritance in cases where in entering the original mutation some of the holdings of the deceased were inadvertently omitted. In such cases the patwari will merely state in his report in the *fard badar* that such and such holdings have been omitted from such and such mutation and the Revenue Officer's order upon this report will merely state that the order already passed upon the mutation in question should be considered applicable to these holdings.

Numbering of entries.

7·7. The numbering of the entries in the mutation register should be continuous for the term of settlement. A new register should be opened only when the old register has been used up. Both the counterfoil and foil sheets are numbered in the press. Only one sheet will not necessarily be used for each case. If the transfer involves lengthy entries, *e. g.*, in the case of more than one holding being affected, one or more additional sheets may be used, but the same number should be used for the counterfoil and foil. The foils should not be detached from the rigister until orders are finally passed by the Revenue Officer, who should take them off and make them over to the office kanungo, stitching the forms together with stout thread.

Transfer of portion of field.

7·8. If a part or a share of a field has been transferred and separate possession has been taken, draw on the back of the mutation sheet and its counterfoil a map of the whole field and show as a sub-number the part transferred. No partition proceedings are necessary. The field kanungo must attest the correctness of the map after personal examination of the field on the spot and satisfy himself as to the fact of possession. He must also see that the field as drawn on the back of the mutation sheet is an exact copy of the field as shown in the *shajra kishtwar*. Further details in regard to the preparation, check and use of these maps on mutation sheets are given in chapter 4 of this manual. The attesting officer must defer the passing of an order sanctioning a mutation if he finds that these instructions have not been carried out exactly.

In the case of transcation based on a registered deed the Revenue Officer should immediately on receipt of the registration memorandum from the Registration Office (paragraph 7·32), direct the *kanungo* and

the *patwari* to proceed to the spot and prepare a *tatima shajra*, if one is necessary, on the basis of the material given in the registration memorandum and that alone. One the completion of the *tatima shajra*, it shall be submitted by the *kanungo* to the Revenue Officer.

Partition.

7·9. Final orders in partition cases will be entered if partition is sanctioned and the order has been carried into effect. Such entries will be attested in the same way as other mutations.

Lambardari cases.

7·10. Lambardari cases will not be entered in the mutation register. Revenue assignments are entered after final orders have been passed, see paragraph 7·27 *infra*.

Land hypothecated to Government.

7·11. Mortgages of land hypothecated to Government for repayment of *takavi* or for other purposes will be entered in the mutation register.

7·11-A. *Treatment of mutations relating to land presented to Government for specific purposes.*

(*a*) Land is sometimes verbally leased by land-owners to Government for specific purposes, *e. g.*, construction of schools, hospitals, seepage drains, etc. In order to safeguard the interests of the lessor in the event of the relinquishment of the land by Government, on the one hand and to ensure the continued utility of the schemes, in furtherance of which the leases are made, on the other, it has been decided that effect should be given to them by the entry of a mutation in the form of a lease in each case. It is of the utmost importance that the terms of the lease in each case be properly recorded both in the *patwari's* report and the Revenue Officer's order on the mutation. Consequently, the *patwari's* report in column 15 of the mutation register should contain the terms of the lease and a full and correct description of the files regarding negotiation with land-owners for the use of the land. These details should also be given by the Revenue Officer in his order for the disposal of the mutation. Revenue Officers should be careful to have their orders on the statements of the parties or their accredited agents only, so that there may be no possibility of the lease being repudiated later.

(*b*) The relinquishment of the land by Government should be given effect to by entering a mutation in favour of the lessor or his representatives in interest.

Order of Court.

7·12. In entering orders of Court the patwari should note in red ink in column 15 of the foil and counterfoil the following particulars :—

(1) Name of Court ; (2) names of parties ;

(3) abstract of decree.

Consideration money.

7·13. When a sale, mortgage or lease embraces land in more than one estate and no specific portion of the sale or mortgage money or rent is ascribed to the land entered in the mutation, the portion of the consideration money to be entered in the mutation shall be in proportion to the share of the total area transferred that is dealt with in the mutation.

7·14. The instructions laid down in paragraph 7·41 *infra* as to entries in the *jamabandi* apply to the register of mutations subject to the following orders :— Special instructions.

(1) *Columns 2 and 8.*—In a case of transfer of ownership it will usually be enough to enter the *jamabandi* number. In a case of a transfer of tenant's holdings, enter both the *jamabandi* and the *khatauni* number thus :—

$$\frac{\text{J. 10}}{\text{kh. 23}}$$

(2) Reasonable abbreviations may be allowed in making entries in columns 4, 5, 9 and 10 in cases affecting a number of holdings more especially where there are a large number of co-sharers and only one or two of them transfer. The names of the co-sharers transferring and their shares should be entered in detail and the names of others may be omitted with a note :—"*Baki indraj jamabandi badastur.*" Similarly in cases of transfer of ownership where the tenancy of the holding is unaffected the only entry that need be made in columns 5 and 10 is *badastur*.

(3) *Columns 6 and 17.*—Except where to follow a different course may be unavoidable, the field number and area will in both columns be those shown in the last *jamabandi*. If the mutation relates to a whole holding this can be noted and the total area given without any detail of field numbers.

(4) *Column 8.*—This column will be filled up when the new *jamabandi* has been prepared.

(5) *Columns 9 and 10.*—If a sharer in a joint holding sells or mortgages the whole or a definite fraction of his share, the name of the transferee will be shown in column 9 : but if he sells or mortgages certain fields and gives possession to the transferee the latter's name must only be shown in column 10, a brief explanation of his occupancy being noted in column 15.

(6) *Column 14.*—After a mutation has been disposed of the mutation fee due should be entered in both foil and counterfoil by the Revenue Officer himself.

(7) *Columns 5 and 10.*—These columns use to show the tenant, but as the corresponding column of the *jamabandi* shows the cultivator they have been altered to correspond.

The scope of mutation.

7·15. The status of a landowner or tenant cannot be altered except—

(*a*) by agreement of all the parties interested, or
(*b*) in consequence of a decree or order which is binding upon them, or
(*c*) in accordance with facts proved or admitted to have occurred. (Section 37 of the Land Revenue Act, 1887).

In cases of inheritance a summary inquiry into title is necessary on the lines indicated in 5 P.R. of 1912. Where it is claimed that property devolves by reason of a will this should be treated as a case of succession by inheritance and the inquiry will include an inquiry into the validity of the will (1934 L.L.T. 1).

Transfers.

[1]7'16. In the case of transfers by gift, sale or mortgage, the *patwari* should ascertain whether a deed has been written. If so, he should inspect it and take a note of its nature, the names of the parties, the dates of execution and registration, if it has been registered, and any other necessary particulars. A brief note of these matters should be entered in column 15 of the counterfoil of the register. The patwari must not retain the deed in his possession, or take a copy of it. Attesting officers should satisfy themselves that the particulars as to deeds of transfer given in the patwari's mutation reports are correct.

Disallowment of transfers not yet carried into effect.

7'17. Except in cases of entries of collateral mortgages in column 12 of the *jamabandi*, the patwari should also ascertain whether possession has passed and mutation of transfer by gift, sale or mortgage should not be attested unless (*a*) possession is proved to have actually passed, or (*b*) the parties all agree before the attesting officer that possession has passed, or (*c*) the parties have all agreed in a registered document that possession has passed. A mutation should not be refused merely because it is claimed that the alienor has no right by custom or statute to make such an alienation. Such a transaction is a "fact" until it is set aside in due course of law.

In the case of a mutation in which it is a condition of the transfer that possession be given after certain harvests, if the alienor is prepared to give and the alienee to receive possession on the prescribed date, attestation should be postponed until such time, and mutation then allowed on evidence that possession has been taken. But, in the event of any dispute between the parties, the attesting officer should refuse the mutation on the ground that no possession has been given, leaving it to the patwari to make a fresh entry in the mutation register when the *khasra girdawari* shows that the change has taken place, or on the report of one of the parties to the effect.

Mortgage.

[2]7'18. (*i*) All mortgages and sub-mortgages, whether collateral or with possession, whether contracted for long or short periods, and whether by deed or by oral agreement, be entered in the mutation register. Redemptions of such mortgages should also be entered. Cases of increase of mortgage money on a previous mortgage between an agriculturist mortgagor and a non-agriculturist mortgagee, even though the other conditions of the mortgage are maintained unchanged, should be entered in the mutation register · in such cases if the Revenue Officer is of opinion that the change sought to be introduced would result in contravention or evasion of any of the provisions of the Land Alienation Act, such, for instance, as those described in paragraph 29 of Standing Order No. 1, he should forward the mutation, without passing orders on it, to the Deputy Commissioner for the exercise, in his discretion, of the powers vested in him under that Act. But other cases of mere increase of mortgage money on a previous mortgage which is otherwise maintained unchanged should not be entered in the mutation register. In order, however, to ascertain the correct account of mortgage and redemption money for purposes of statements 5 and 5-A of the village note book (paragraph 10'1), the patwari shall enter such cases in the village diary (*roznamcha*), noting therein the name of the village, parties and the amount of increased mortgage money. In cases of mutations of redemption of *mustajri* mortgages the patwari should note in column 13 of this register the amount of mortgage money

1. Financial Commissioners Circulars Nos. 74 of 1878 and 12 of 1881.
2. Punjab Government letter No. 29-Rev., dated 8th March, 1915.

discharged by referring to the original entry of the mutation of mortgage. If the register containing the original entry is not in his possession he should get the necessary information from the office or the Sadr kanungo. If for any reason such information cannot be secured without undue delay, the amount admitted by the parties or proved should be accepted. Care should be taken to ascertain how the mortgage land is cultivated, how the produce or rent is enjoyed, and by whom the revenue is paid. Other conditions of mortgage need not be particularly enquired into, but the amount of the mortgage debt as admitted by the mortgagor should be noted in column 13 of the mutation register. Collateral mortgages though entered in the register are only noted in the remarks column of the *jamabandi* Nor is the amount of the mortgage debt shown in the *jamabandi*. [1]Land which is already subject to mortgage is sometimes mortgaged by the mortgagor to a third person on the condition that the previous mortgage will be redeemed by the latter. This second mortgage should be treated as a collateral mortgage and subsequently a new mortgage with po session should be sanctioned when the land is redeemed by the second mortgagee. A sub-mortgage, accompanied by transfer of possession is treated as a mortgage with posseseion.

Second mortgage

[*Illustration.*—A mortgages his land in the first instance to B in whose favour a mutation of mortgage with possession is sanctioned. Then A remortgages the same land to C, and a mutation of collateral mortgage in favour of C, is the result. Subsequently, C redeems the land from B and consequently two mutations of redemption in favour A—one from B and the other from C followed by a mutation of mortgage with possession in favour of C are entered up, and sanctioned.]

(*ii*) Under paragraph 13 of standing order No. 32 a mutation should be entered up in respect of land hypothecated to Government by way of security for repayment of an advance. If a second loan is taken on the same security it is not necessary to enter up a new mutation.

*(*iii*) Transactions relating to mortgage of right of cultivation by owners, involve the acquisition of a right and as such mutation should be entered in such cases.

[**Note.**—This refers to a form of tenure distinguishable from an absolute mortgage by reason of the obligation on the part of the mortgagee to pay rent and from a lease in so far as it involves the re-imbursement by the motgagor of advance made by the mortgagee as a condition of redemption. Mutations should be entered in respect of such transactions or conceivably of transactions in which the re-payment of advance is provided on a usufructuary basis as they approximate more nearly to mortgage than to a lease and this involves the acquisition of right within the meaning of section 34 (1), Punjab Land Revenue Act, 1887.]

7'19. As regards transfers by sale, mortgage or exchange, it is necessary to show whether a share of the *shamilat* is transferred with the land and the following instructions should, therefore, be observed on this subject :—

Cases in which mutation order must show whether the transfer includes a share in the shamilat.

(1) In cases of sale, gift or mortgage, the mutation order should always state whether a share of the *shamilat* is included in

1. Director of Land Records' Circular No. 12, dated 16th November 1921 and Circular No. 6, dated the 13th February 1918.

*Director of Land Records' Circular No- 63, dated 25th June 1929.

the transfer. In cases of exchange the *shamilat* is seldom excluded from the transfer and nothing should therefore be said about it except where it is excluded when the fact that it is excluded should be mentioned in the mutation order.

(2) If a deed of transfer by sale, gift, mortgage or exchange does not specially mention that a share of *shamilat* is transferred with the land it should be presumed that the *shamilat** is not transferred.

(3) Where a mutation of inheritance, sale, gift or mortgage covers a share of the *shamilat*, the *shamilat khata* should be entered in the mutation so that the mutation of the co-sharers in the *shamilat* may be correctly entered in the *jamabandi*.

(4) When the mutation does not cover a share in the *shamilat*, then in column 9 of the mutation sheet and in the ownership column of the *jamabandi*, the new alienee shall be shown as *bila hissa shamilat* or *malik kabza* so as to secure that at partition he shall not simply by being a *khewatdar* receive a share of the *shamilat* to which he has no title. The name of the person to whom the *shamilat* appertaining to this new *khata* belongs shall also be recorded in the column of ownership under that of the new owner with the title *hissadar shamilat*, and the *khata* of the new holding shall always be incorporated in the *jamabandi* immediately below the *khata* of the holding from which it was taken.

In the case of owners (1) whose entire land in any estate has been acquired by Government without a share of the *shamilat*, and (2) whose land has been partially acquired, the Revenue Officer shall give a direction in his order to the effect that a note showing the name of the owner and the area transferred together with the number of the relevant mutation, shall be recorded in the remarks column of the *jamabandi* In the case of (1) this note will be recorded against the *khewat* of *shamilat*, and in the case of (2) against the *khewat* from which the land has been acquired. It should also be specifically stated in the note that the owner concerned will be entitled to a due share of the *shamilat* at the time of partition.

(5) When the mutation refers to a mortgage it is only necessary to show the mortgagee as *murtahin mae hissa shamilat* or *murtahin bila hissa shamilat*, as the case may be.

(6) Appendix A is an example of the kind of entry which should be made in the mutation register when a share of the *shamilat* is transferred. It is not intended that the whole of the *shamilat khata*, as it stands in the last *jamabandi*, should be copied, in the mutation register. The mutation of the share of *shamilat* should be dealt with as part of the same mutation proceeding as the transfer of the original holding, but it is a part in which any of the co-sharers of the *shamilat* have a right to be heard, and a distinct order should be

*Nos. (3) and (6) of these instructions do not apply to the Kangra District.

passed by the Revenue Officer whether the mutation of the *shamilat* is sanctioned or not.

Mutation of occupancy right.

7·20. In mutation proceedings relating to alienations of occupancy rights the landlord is undoubtedly an interested party, and he should be made a party to the proceedings. The Revenue Officer's order should note briefly whether the landlord has been examined by him, and, if so, whether the landlord consented to the alienation, and whether the provisions of sections 53 and 56 of the Tenancy Act have been followed or not. This procedure will do much to obviate the difficulty of deciding whether the landlord has acquiesced in the transfer within the meaning of L.L.T. 1933, page 1, but if, as a matter of fact, the transfer has taken place, the mutation must not be refused simply because the landlord refused his consent or because the provisions of sections 53 and 56 have not been complied with.

Mutation in connection with consolidation of holdings.

7·21. In respect of consolidation of holdings effected by Co-operative Consolidation of Holdings Societies two mutations should be entered, namely one of *ishtarak* showing the separate holdings affected by the consolidation as the joint property of the proprietors of those holdings and the other of partition showing the area allotted to each owner or group of owners. No fee shall be charged on the first mutation (*ishtarak*) nor on the second mutation (*taqsim*) relating to the entry of transfer of holdings between members of a society on the analogy of the orders contained in paragraph 7 of Appendix XIV to the Settlement Manual.

General.

7·22. I. The Punjab Alienation of Land Act, 1900, permits free transfers between members of the same notified agricultural tribe or of tribes in the same group in the same district. The provisions of the Act, therefore, come into operation, if—

(*a*) it is asserted or there is any other reason to believe that the alienor is a member of a notified agricultural tribe ; and

(*b*) it is asserted or there is any other reason to believe that the alienee is not a member of the same notified tribe or of a tribe in the same group and in the same district as the alienor.

The Act is not concerned with alienations by a person who is not a member of a notified agricultural tribe, the only exception being mortgages which contain a condition intended to operate by way of a conditional sale. Such mortgages are void under section 10 of the Act, even if the alienor is not a member of a notified agricultural tribe.

Duty of the patwari.

II. If the *patwari* making an entry in the Register of Mutations under sub-section (3) of section 34 of the Land Revenue Act has reason to believe that the transaction contravenes any of the provisions of the Alienation of Land Act, he shall make a note of all the relevant facts in the report column of the said register.

Section 18 (1) of the Act prescribes that, where by reason of any transaction that under this Act requires the sanction of a Deputy Commissioner, a person claims to have acquired a right which he is bound to report under section 34 of the Punjab Land Revenue Act, 1887, such person shall, when making his report, state whether the required sanction has been obtained or not. The *patwari* should in all doubtful cases warn accordingly the person making the report.

Duties of the Revenue Officer.

III. Every Revenue Officer conducting an enquiry under sub-section (4) of section 34 of the Land Revenue Act, shall examine every transaction into which he has to inquire under the provisions of that sub-section whether a note has been made by the *patwari* under the preceding paragraph or not, in order to make certain that no right which would be invalid under the provisions of the Act is entered in the *jamabandi*.

Treatment of mutations relating to the acquisition of a right claimed by reason of any transaction or condition which is declared by the Act to be null and void.

IV. In dealing with a mutation relating to the acquisition of a right claimed by reason of any transaction or condition which is declared by the Act to be null and void, the Revenue Officer should bear in mind the provisions of sub-section (2) of section 18 of the Alienation of Land Act, which prohibits the making of such entries in the *jamabandi*. Where, however, a particular condition in a mortgage deed contravenes any provision of the Act, it is the condition only and not the whole mortgage that can be treated as void (56 P. R. 1918 and I. L. R. 13 Lah. 508).

Treatment of mutations of alienations which contravene the provisions of the Act.

The Punjab Alienation of Land Rules 1937.

Doubtful cases to be transferred to an Assistant Collector of the first grade.

V. (1) No Revenue Officer of a rank lower than that of an Assistant Collector of the first grade shall make an order directing a fresh entry in the *jamabandi* relating to any transaction, *including a gift alleged to be for a religious or charitable purpose*, if the transaction purports (*a*) to create rights in land for a period of more than twenty years, or (*b*) to create rights in land already under lease, farm or mortgage when the total period of the alienations would amount to more than twenty years, or (*c*) to alienate or charge the produce of land for more than one year, if :—

(*a*) it is asserted or there is any other reason to believe that the alienor is a member of an agricultural tribe ; and

(*b*) it is asserted or there is any other reason to believe that the alienee is not a member of the same notified tribe or group of tribes as the alienor.

(2) In every such case, if the officer conducting the enquiry is not himself an Assistant Collector of the first grade, and if he considers that a fresh entry should be made in the *jamabandi*, he shall refer the case to an Assistant Collector of the first grade for disposal, together with the statements of the parties, a report of any facts that he may have been able to ascertain, and his recommendations thereon.

(3) If the Revenue Officer is himself an Assistant Collector of the first grade, or if the case is transferred to him under sub-rule (2), he shall proceed to dispose of it in the manner prescribed by the following rules.

Procedure where orders have already been passed by the Deputy Commissioner.

VI. (1) If the transaction is one in respect of which the Deputy Commissioner has passed a final order under sections 3, 9, 14 or 15 of the Act and if a certified copy of the order is produced, the Assistant Collector shall, to the extent necessary, enquire into the facts of the transaction and the rights of the parties, with due regard to the provisions of section 5 of the Act, which provides that 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.

(2) If the Assistant Collector decides that a fresh entry should be made in the *jamabandi*, he shall direct that it be made with due regard to the Deputy Commissioner's order, the conditions, if any, imposed by the Deputy Commissioner under section 14 of the Act being recorded in the column of remarks.

(3) If the transaction is one of temporary alienation, the fresh entry shall state the date on which the period of the alienation is to expire.

Procedure when orders of the Deputy Commissioner have not yet been obtained.

VII. (1) If no final order as specified in paragraph VI (1) above has been passed by the Deputy Commissioner, the Assistant Collector shall, *if he is of the opinion that a fresh entry should be made in the jamabandi*, refer the case to be Deputy Commissioner by means of a separate self-contained report for such orders as the Deputy Commissioner may deem necessary to pass for carrying into effect the purposes of the Act ; and the Deputy Commissioner's orders on such a reference shall include a decision on the question whether in regard to the transaction in question the alienor is to be deemed a member of an agricultural tribe and whether the alienee is to be deemed a member of the same notified tribe, or group of tribes as the alienor.

(2) The Assistant Collector shall, on receiving the Deputy Commissioner's order in response to his reference, or otherwise, proceed in the manner prescribed in paragraph VI above.

VIII. If no final order as specified in paragraph VI (1) above has been passed by the Deputy Commissioner, and the Assistant Collector does not consider it necessary to make the reference, he should ordinarily adjourn the proceedings for a reasonable period to enable the parties to make any lawful application to the Deputy Commissioner for exercising the said powers.

Final orders to be reported to the Deputy Commissioner.

IX. Every final order passed by the Assistant Collector under paragraph VI or VII shall be reported to the Deputy Commissioner as soon as possible after it has been passed, whether the case has already been referred to the Deputy Commissioner or not.

Cancellation of transactions.

X. (1) When the parties agree to cancel the transaction in respect of which an entry has been made by the patwari in the Register of Mutation under sub-section (3) of section 34 of the Land Revenue Act, any Revenue Officer may, at any stage, terminate the proceedings without reference to any other authority, although this may otherwise be required by the foregoing rules.

(2) If the case has already been referred to the Deputy Commissioner under paragraph VII (1), the Assistant Collector shall make a supplementary report accordingly, aud may thereafter terminate the proceedings without awaiting further orders.

[See The Puniab Alienation of Land Rules, 1937 reproduced at page 347 of Author's ' Agrarian Legislation in the Punjab Vol. I ']].

7'23. *Deleted.*

Non-Muslims.

7'24. 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 Sheiks belonging to a tribe notified as agricultural do not lose their agricultural status simply by their change of religion, and the Mohammadan 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.

Treatment of right of absentees.

7·25. (1) Rules regarding the omission from the *jamabandi* of the names of persons entered as *ghair-hazir* or *ghair-kabiz* are given in paragraph 281 of the Settlement Manual, sub-clauses (1) and (2), and should be carefully followed.

(2) When a right-holder entered in the record of rights or annual record as *ghair-hazir* or *ghair-kabiz* has been heard of within seven years but has been so entered for more than twelve years, the patwari shall enter the case in his register of mutations and shall report it to the Revenue Officer.

(3) When a right-holder, entered in the record of rights or annual record whether he is or is not described therein as an absentee (*ghair-hazir*) or as out of possession (*ghair-kabiz*), has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the officer attesting a mutation may (unless he sees reason to the contrary) presume that he is dead and pass orders on the case accordingly ; but before ordering the omission of his name from the record of rights or annual record, such officer should satisfy himself that all reasonable endeavour has been made to ascertain whether the absentee is alive and to give him an opportunity of appearing.

(4) No new entry of any one as *ghair-hazir* should be made. A right-holder should not be entered as *ghair-kabiz* if he is himself in legal or constructive possession, or when he has put some one else in possession on his behalf, or the land is lying waste, or he is by reason of poverty unable to cultivate it. A familiar instance would be where a sepoy has left his land in his brother's possession while he is with his regiment. In such a case the sepoy should be entered as in possession of the land through his brother. An entry of *ghair-kabiz* should not be made unless some other person than the right-holder is in adverse possession.

(5) No effect shall be given to any order (1) directing the omission of the name of a right-holder who has been entered as *ghair-hazir* or *ghair-kabiz* or (2) directing the entry of a right-holder as *ghair-kabiz* until such order has been confirmed by the Collector or Revenue Assistant.

(6) For reason explained in paragraph 7·41 (4) *infra* the entry against a tenant-at-will of *bila lagan ba waja tusuwwur milkiyat* is misleading and no new entry of this description should be made, but when this entry exists it should not be altered except by mutation sanctioned by the Collector or Revenue Assistant.

Escheats.

7·26. In mutation cases dealing with lands of deceased proprietors who have left no apparent legal or customary heirs or successors, the mutation should be disposed of by the Collector or by an Assistant Collector of the 1st grade. Deputy Commissioners should see that there

is no indiscriminate or indiscreet pressing of Government's claim to escheat and careful attention should be paid to the instructions contained in paragraph 838 of the Land Administration Manual.

Mutations resulting from assignments.

[1]7·27. The proceedings preliminary to orders creating or resuming assignments of land revenue, or continuing them to successors or transferees, are not entered in the mutation registers, but are recorded in separate files to which the patwari has no access. Nevertheless, the patwari's *jamabandi* must contain accurate entries relating to all assignments, and the proper mutation fee must be levied. It is therefore necessary to instruct the patwaris as to the entries to be made in each case, and to provide for the levy of the mutation fee due on the entry.

The following procedure should be adopted :—

When a final order is passed in any case of this class, it will be communicated by *parwana* to the tahsildar. This *parwana*, after the usual recital of the substance of the order will direct the tahsildar to correct the village papers accordingly. To this end, it will state the entries to be removed and those to be substituted in the annexed form :—

1. Punjab Government Notification No. 80, dated 1st March, 1888.

1	2	3	4	5	6	7	8	9	10
—	Name and description of assignee	If land is assigned details thereof *viz.*, *jamabandi* No. holding.	*Area of land assigned.* Cultivated.	Uncultivated.	Total.	Revenue assessed.	Amount of revenue assigned.	If only cash revenue is assigned without specification of lands, state in this column the amount so assigned.	Amount of *nazrana* due annually from assignee.
Entry to be corrected.									
Entry to be substituted.									
Date of order and by whom passed.									

The tahsildar will send the *parwana* on receipt to the field kanungo of the circle in which the case has occurred, directing him to transcribe the *parwana* in red ink in the appropriate columns of the mutation register of the village concerned, attest the entry as a true copy, and return the *parwana* with report endorsed to the tahsildar. When the kanungo has done this, the patwari will incorporate the new entry in the next *jamabandi* and also include in his next list of mutation fees the fee due on the entry.

Cases where no mutations are necessary.

*7·28. With the following exceptions, no mutation or rights can be incorporated in the *jamabandi* until a Revenue Officer has sanctioned it by an order recorded in the mutation register. The *jamabandi* entries concerning holdings in which mutations have occurred, but on which no orders have been passed will remain unaltered, see also paragraph 7·41 (10) *infra*. The only entries in the *jamabandi* for the variation of which in subsequent records no mutation need be entered in the registers, are the following :—

(*i*) The entries in columns 1—3 of the *jamabandi* as given in paragraph 7·40 *infra*.

(*ii*) In column 4—

(*a*) the name or the father's name when it has been legally changed, but in such case the former name shall continue to be shown also, preceded by the word "*alias*" or "formerly" (*urf*).

(*b*) the military rank or civil title,

(*c*) the place of residence,

(*d*) the omission of the word "minor" and of the name of the guardian under paragraph 7·41 (4) *infra* of the *jamabandi* form,

(*e*) the recasting of the form of the details of internal shares without changing the shares.

(*iii*) In column 5—

(*a*) undisputed entries relating to cultivation by an owner shown in column 4, or by a non-occupancy tenant holding under a lease whether oral or written, for a period not exceeding one year ; provided that even for such a lease a mutation shall be entered if the owner of a joint holding to whom the tenant pays rent has to be specified ;

(*b*) entries relating to tenants described otherwise than in these terms may be varied without a mutation order only to the extent that entries relating to owners may be varied under clause (*ii*) above.

(*iv*) The entries in column 6—"Well or other means of irrigation."

(*v*) (*a*) Entries in columns 7 and 8 "field number" and "area" and "soil" resulting from map correction (chapter 4) or from measurements in connection with alluvion and diluvion or with fluctuating assessments,

*Punjab Government letter No. 144-Rev., dated 23rd December, 1914.

(*b*) corrections in addition of the area, where the area of each field has been correctly shown, but the total has been wrongly added up.

(*vi*) Undisputed entries in column 9, relating to rents of tenants-at-will and entries made in pursuance of an order under section 27 of the Tenancy Act.

(*vii*) Entries in column 11 "Demand," provided that the variations are supported by an order by the Collector, or higher authority.

(*viii*) Entries in column 12 "Remarks," relating to the matters specified in the instructions relating to that column given in paragraph 7·41 (10) *infra*; provided that new remarks shall be limited to such matters, and provided further that entries relating to the rights of mortgagors or mortgagees or assignees of land revenue or the user of trees or grass shall not be varied without orders being obtained in the mutation register.

Orders for the correction of clerical mistakes in records to be obtained on the fard badar.

7·29. *Jamabandi* entries not enumerated in the preceding paragraph should not be varied in subsequent records without first obtaining orders for their variation on mutations entered for this purpose except where the variation merely consists in the removal of a clerical mistake, that is to say, of a mistake which has been made in copying the entries of one *jamabandi* into another or in incorporating a mutation in a *jamabandi* and the correction of which does not involve the alteration of any mutation order. Subject to the exception noted below, orders for the correction of such mistakes in subsequent records should be obtained on the *fard badar*, the form of which is given below :—

1	2	3	4	5	6
Serial No.	Number of holding in last *jamabandi*.	Number of holding in new *jamabandi*.	Patwari's report.	Field Kanungo's report.	Orders of the attesting Officer.

Whenever a clerical mistake is detected in the current *jamabandi* after it has been finally attested and filed, whether that mistake was originally made in that or any previous *jamabandi*, the patwari should make the necessary entries about it in the first four columns of the *fard badar*. His report in the fourth column should be as brief as possible. For instance, if any field has been omitted by mistake from any holding the report should merely state that such and such field has been omitted, and if any proprietor's share has been entered as one-half instead of one-third, the report should merely state that the share should be one-third and not one-half. The *girdawar* should, from time to time, examine the *fard badar* entries and enter his own report in column 5 of the *fard badar*. His report should also be as brief as

possible and where he finds that he has nothing to add to the patwari's report, he should merely put his signature in this column. In passing orders upon any *fard badar* entry the Revenue Officer should see whether it actually relates to a clerical mistake which, under the present instructions, should be dealt with in the *fard badar*, and if he finds that it relates to such a mistake, he should record an order for the correction of the mistake in question in column 6. Otherwise he should order that the *fard badar* entry in question should be considered as cancelled. It will not be necessary to hear the parties concerned in connection with the disposal of *fard badar* entries.

The only clerical mistakes in *jamabandi* entries, orders for the correction of which in a subsequent record should not be obtained on the *fard badar*, are those which cannot be conveniently described in the *fard badar*. The difficulty of describing a clerical mistake in the *fard badar* may, for instance, arise where the mistake relates to the share of an owner whose name enters into several different combinations in the *jamabandi* entry relating to the same holding.

A few blank sheets of the *jamabandi* sizes will be stitched to the patwari's copy of each *jamabandi*. When the next *jamabandi* is prepared a copy of the *fard badar* attested by the *girdawar* will be attached to the Government copy of that *jamabandi*.

The Collector and Revenue Assistant should examine *fard badars* from time to time in order to see that the procedure prescribed in connection therewith is properly understood and followed by the subordinate revenue staff.

Mutation of correction not to be made.

7'30. When an entry has been incorporated in the *jamabandi* a mutation should not be entered up or sanctioned for the purpose of correcting it, except to correct a clerical error (where this cannot be done by a *fard badar*) or in consequence of a patent fact. The party aggrieved by such an entry must seek his remedy by suit [L.L.T. 1934, page 2].

Note.—This does not apply where any of the provisions of the Punjab Alienation of Land Act, 1900, is found to have been contravened. An entry in the *jamabandi* should be corrected in such a case after reviewing the orders passed on the mutation concerned.

Interrogatories.

7'31. If a patwari finds when entering a case in the mutation register or otherwise, that a person whose statement is essential for the disposal of the case, is residing outside the limits of the tahsil, he should write up an interrogatory which may conveniently be in the following form :—

Interrogatory in the name of.....son of.....
caste.. .....village.....tahsil.....
district.....State..... .....

1	2	3	4	5	6	7
Name of village with hadbast No. Name of tahsil and district.	Mutation No.	Brief account of the transfer showing the name of transferer and transferee, the total area of the land transferred, the nature and date of transfer, and consideration money, etc., etc.,	Questions with date and signatures of patwari and field kanungo.	Answers with date and signature of persons giving statement as well as the person identifying (*lambardar* or *zaildar*) and that of the official recording the statement.	Order as to compliance with the interrogatory.	Reports and orders after compliance with the interrogatory.

The patwari will fill in columns 1 to 4 of this statement and then despatch it to his field kanungo, noting the fact in column 15 of the mutation sheet. The field kanungo will add his signature in column 4 of the form and send it on to the tahsildar. In column 6 the tahsildar will address the tahsildar or other officer in whose jurisdiction the person is residing, or, if the interrogatory has to be sent through the Deputy Commissioner, will write his report. The tahsildar addressed should himself, as far as possible, take the statement of the person concerned, but may depute the naib-tahsildar or the field kanungo of the circle to do so, to avoid delay. The date of receipt and despatch of interrogatories should be recorded in the despatch book of every officer through whose hands they pass. In the case of persons residing in Indian States paragraphs 3—6 of standing order No. 3 should be referred to :—

Tahsildars and naib-tahsildars to examine all mutations.

(*a*) Tahsildars and naib-tahsildars on visiting a village should examine all mutations in which interrogatories have issued and either decide such as are ripe for decision and the parties are present, or arrange for the decision of the mutation on the next suitable occasion.

Period for replies to interrogatories.

(*b*) Replies to interrogatories should generally be awaited three months if the enquiry is to be made within the Punjab and four or five months in the case of persons risiding elsewhere, but it is left to the discretion of the attesting officers to wait longer in particular cases for special reasons.

An interrogatory may also be issued under the order of the attesting officer for the examination of a person residing within the limits of the tahsil if the officer thinks that such person cannot attend without an amount of expenditure and inconvenience which would be unreasonable in the circumstances of the case. No interrogatory should, however,

be issued for the examination of a person residing within the limits of the tahsil unless such person resides at a distance of more than 25 miles from the village to which the mutation relates. An interrogatory issued under this clause should be entered on the same form as that prescribed for other interrogatories and should be addressed to the tahsildar who, after taking or having taken the statement of the persen concerned, will return it to the field kanungo, the dates of receipt in and despatch from the tahsil being entered in the despatch book. In the absence of any special reasons replies to interrogatories issued within the limits of the tahsil should not be waited for more than three weeks.

In order to see that prompt action is taken on interrogatories, inspecting officers should devote particular attention to ascertaining that interrogatories sent from other districts are promptly dealt with in the district concerned. The tahsildar should at the close of each month send a list to the Deputy Commissioner showing the interrogatories received in his tahsil which have not been returned to the tahsil or district concerned as well as the dates of their receipt. The Deputy Commissioner should scrutinize these lists and take disciplinary action in cases where he finds that unnecessary delay has been allowed to occur in the disposal of these interrogatories. A separate despatch register should be opened in each tahsil office for entering interrogatories only. This register will be kept by the office kanungo who will enter in it all interrogatories issued to or received from other tahsils. He will divide this register in two parts. In one part he will enter the interrogatories issued from his tahsil and in the second part those received from other tahsils, in the last column of the register will be entered the date on which the reply to the interrogatory has been received or the date on which a reply has been sent to the tahsil from which the interrogatory was received.

Procedure as regards registered deeds of transfer.

7·32. Registrars and sub-registrars send monthly to tahsildars particulars of all registered deeds which purport to transfer agricultural land. The office kanungo forwards these slips to the field kanungo of the circle who distributes them to the patwaris concerned. The form of the notice is as follows :—

1	2	3	4	5	6	7	8
Serial No.	Name of the village where the land is situated.	Nature of alienation and the area, field No. and *jamabandi* holding No. of the land alienated and in the case of buildings situated within the limits of a municipal committee small town committee, or notified area committee, details of property according to section 21 (2) of the Registration Act.	Amount of the consideration money entered in the deed.	Name and residence of person executing the deed.	Name and residence of the person to whom the land is alienated.	Number and date of the registration of the deed.	Remarks.

With the memoranda is sent an invoice in the following form :—

1	2	3	4	5
Serial No.	Number of deed.	Name of village.	Date of field kanungo's report returning the registration memo. to the tahsil office.	Remarks.

Where a deed is not to take effect immediately but after a specified period, this fact should be noted in the column for remarks.

(*i*) A file should be kept of all invoices received during the year and a fly index will be attached to it in the form usually adopted for miscellaneous files.

(*ii*) The registration memoranda should then be sent to the field kanungo, who will distribute them to the various patwaris for entry in their mutation registers in the usual way. The information in the memoranda is sufficient to enable the patwari to enter up the transfer in his register of mutations as soon as he receives them without reference to the transferee.

(*iii*) When the field kanungo hands over the memoranda to a patwari the latter should make a note of the fact in his diary recording the serial numbers of the sheet received by him. The entry should be signed by the field kanungo. The patwari will then enter up in his register the mutations detailed in the memoranda and endorse the fact of entry on the memoranda giving the serial number of each mutation and the date of entry. On his next inspection the field kanungo will see that this has been done and after comparing the entries in the mutation registers with the memoranda, will sign both and himself forward the latter to the office kanungo. If a memorandum contains land situated in more than one patwari circle, the field kanungo will take similar action as regards all the circles concerned before forwarding the memoranda to the office kanungo.

(*iv*) On receipt of the memoranda from the field kanungo the office kanungo will place them on the file together with the invoice covering them. In the " remarks " column of this he will note the date of receipt. Thus he will be able to detect any delay in the return of the memoranda and bring it home to the responsible official.

(*v*) When all the memoranda appertaining to an annual file have been returned by the patwaris, a note of the date on which the last memoranda is received should be entered on the fly index. The annual file which will then be complete should be kept in the tahsil and destroyed on the expiry of one year from such date.

7·33. (*i*) The scale of mutation fees fixed by the Local Government under the authority given it by section 38 of the Land Revenue Act is stated in Punjab Government notification No. 2825-R., dated 8th August, 1934, (see section 38). Under this notification two-fifths of the fee charged shall be paid to the patwari making the entry in the register, the balance being credited to Government. The patwari is not entitled to any share of the penalty imposed under section 39 of the Land Revenue Act. **Mutation fees.**

Mutation fee can be legally levied only from the person in whose favour the mutation entry is made. In the case of a rejected mutation, the Revenue Officer may remit the fee for any special reason to be specified by him in the order. In the case of every rejected mutation whose fee is not thus remitted, the order should give the name of the transferee from whom it should be recovered. This precaution is necessary in order to ensure that the fee is not recovered from the person from whom it is not legally recoverable.

The portion of the order referring to the recovery of mutation fee may be corrected by the Revenue Officer who passed the order, by his successor, or by a superior officer, for reason to be recorded in writing.

(*ii*) The following are rulings of the Financial Commissioners on the subject of the levy of mutation fees :— **Rulings regarding fees.**

[1](1) Separate mutation fees are leviable in respect of eachholding created by partition proceedings (including the residuary holding if any part of the original joint holdings is left undivided), and not one fee only for the whole. In the case, however, of the annual recurring partition of *shamilat* land affected by river action among the several shareholders, only one fee should be levied in respect of the entire holding, and when the converse case occurs and diluviated land held in severally is on recovery treated as *shamilat*, only one fee of course is leviable.

(2) No mutation fee can be levied from any department of Government for land acquired in the interest of Government. As a corollary to this ruling no fee is leviable on the resumption of revenue-free assignments, the mutation in such cases being in favour of Government. Fees should, however, be levied on grants of, or successions to, revenue assignments. Local bodies are not exempted from the payment of mutation fees, even when the property is acquired under the Land Acquisition Act.

(3) The enhancement of the rent of an occupancy tenant is the acquisition of a right or interest necessitating mutation and the payment of a fee by the landlord.

(4) In cases of exchange of land a fee should be taken from each of the two parties.

1. Punjab Government letter No. 2180-S. Rev., dated 22nd August, 1908.

(5) No fee should be levied on simple corrections or mistakes in a previous record of rights as no right is acquired. Similarly no fee should be levied for an eutry of change of names provided that it involves no acquisition of any definite right in the estate concerned.

(6) When land which has originally been mortgaged by registered deed is redeemed, the mutation fee is four annas unless the land revenue does not exceed Rs. 5, in which case it is two annas only. No fee is leviable on land redeemed as a preliminary to its sale to the mortgagee.

[1](7) Paragraph 7'18 *supra* directs that a second mortgage should be regarded as a collateral one and given effect to as such, and that subsequently a new mortgage with possession should be sanctioned when the land is redeemed by the second mortgagee from the first one. A mortgages his land in the first instance to B in whose favour a mutation of mortgage with possession is sanctioned. Then A remortgages the same land to C, and a mutation of collateral mortgage in favour of C is the result in accordance with the instructions laid down in paragraph 7'18 *supra*. Subsequently C redeems the land from B and consequently two mutations of redemption in favour of A—one from B and the other from C—followed by a mutation of mortgage with possession in favour of C are entered up, and sanctioned. At present there is a diversity of practice in regard to the levy of mutation fees on such redemptions. In the case of redemption from B in favour of A the mutation fee should be levied from A in accordance with the provisions of section 38 (2) of the Land Revenue Act, while no such fee should be levied in the case of redemption from C as such redemption is only a '*tartibi*' one and analogous to the case mentioned in sub-paragraph (6).

(8) Where, as in Multan, Muzaffargarh and Jhang, the number of *jamabandi* holding has been artificially swollen owing to the practice of giving each well a separate *jamabandi* number only as many fees should be levied on transfers other than by inheritance as there are genuine separate proprietary holdings.

(9) If a holding is transferred in separate parts by different instruments even though executed on the same day, the transactions should be separately recorded in the mutation register, and a separate fee should be levied for each transaction.

(10) Where a mutation fee is to be levied in respect of a holding of which the revenue is fluctuating, the mutation fee should be calculated on the total of the *kharif* and *rabi* assessments of the agricultural year during which the transfer took place. If this, however, is the current year and the *rabi* assessment has not been made at the time of attestation, the fee should be calculated on the assessments of the preceding year.

1. Director of Land Record's, circular No. 12, dated 18th November, 1921.

(11) No mutation fee is levied in the case of a mortgage of land to Government or in the case of the redemption of such mortgage.

(12) A separate mutation fee should be levied for the *shamilat* holding where a transfer includes a share of the *shamilat*.

(13) No mutation fee is leviable on the entry of the name of a posthumous child.

(14) For mutation entry made under section 34 of the Land Revenue Act, 1887, for the acquisition by a tenant of a right of occupancy in accordance with the statement of conditions under the colonization of Government Land (Punjab) Act, 1912, the mutation fee should be charged under clause (*c*) of Punjab Government Notification No. 2825-R, dated 8th August, 1934.

(15) In the case of mutations of voluntary partition the fee should be charged in accordance with clause (*a*) of Punjab Government Notification No, 2825-R, dated 8th August, 1934.

Payment of fees into the treasury.

[1]7'34. Each year in the month of September the *patwari* should prepare for each village in his circle a list of the fees due on mutations attested during the past year and of the persons from whom fees are due. He should also give full detail of the amount to which the various *patwaris* are entitled as their respective share. After the field kanungo has completed the check prescribed by paragraph 7'36 *infra* the patwari will, after revising the list if necessary, make it over to the *lambardar* whose duty it is to pay the amount of the fees, when the first instalment of the next *kharif* land revenue is due, less any share to which the patwari is entitled. The *lambardar* will pay the share of the patwari in charge of the village and will obtain a receipt for the same. The share of other patwaris, if any, will be deposited by him into the treasury and placed in revenue deposit and the tahsildar will arrange for its disbursement among the rightful claimants. The receipt obtained by the *lambardar* for the amount paid to the patwari must be produced by him when fees are paid into the treasury and in its absence no deduction on account of patwari's share of the fees will be allowed by the tahsildar. In case of the absence, death or transfer of the patwari entitled, or in case of a dispute as to who is entitled, the tahsildar on the application of the absentee or by a disputant, shall keep the money in deposit pending the appearance of the absentee or the rightful claimant or settlement of the dispute. The patwari's share of the mutation fee shall otherwise not be put in deposit.

An overpayment made to patwari on account of mutation fee should be recovered by deduction of this amount from his next pay bill under the orders of the Collector. Recovery of any amount of over-payment from a dismissed patwari may be made from his Special Provident Fund under rule 13 of the Special Provident Fund Rules.

Patwari's share to whom due.

7'35. The share of the mutation fee to which the patwari is entitled should always be paid to the man who enters the case in the mutation register and not to the man who incorporates the sanctioned entries in the *jamabandi*.

1. **Financial Commissioner's circular letter No. 687, dated 29th January 1907, read with, D. L. R's, U. O. No. 465 dated 1st December, 1933.**

Entry of fees in lists.

7·36. In order to secure the correct entry and collection of mutation fees, the patwari when preparing the lists referred to in paragraph 7·38 (*v*) *infra* will enter in red ink over the serial number of each mutation (column 4 of the lists) the amount of fee according to the mutation sheets, and at the bottom of column 4 will enter the total demand of the village. It is the duty of the field kanungo when checking *jamabandi* in the tahsil (see paragraph 7·61 *infra*), carefully to check these entries with the original sheets of accepted and rejected mutations, and to certify that they are correct. The entry of amount of the fees in statement 5 of the village note-book should be discontinued. Any mistake discovered by the field kanungo should be communicated by him at once to the patwari who will then complete the lists referred to in paragraph 7·34 *supra*.

Office kanungo's statement of mutation fees.

[1]7·37. As soon as the field kanungo's check is completed the office kanungo will prepare a statement in duplicate in the form below :—

Tahsil.....

Statement of demand on account of mutation fees for the year *kharif* 193 *and rabi* 193 .

Number of *mauza*.	Name of *mauza*.	Total mutation fees due from each estate.	Deduct patwari's share.	Balance to be credited to Government with first *kharif* instalment of land revenue.

Explanation.—Give against each *mauza* only the total sum due from it : not the fee due from each holding.

One copy of the statement should be sent by the tahsildar to the Collector as soon after the end of September as possible for incorporation in the Running Register [see paragraph 29 (12) (*g*) of standing order No. 31]. The other copy should be made over to the tahsil *wasil baqi navis* in whose custody it will remain. It will then be the duty of the tahsil *wasil baqi navis* to see that the fees are realized and credited in the tahsil account as above directed.

Disposal of forms containing mutation orders.

7·38. The following instructions prescribe the method of disposal of forms containing mutation orders :—

(*i*) Each patwari will be provided with two counterfoil registers the one for accepted, the other for rejected, mutations. This

1. Financial Commissioner's Circular No. 72 of 1886.

register will be in the following form in duplicate, except that the last column will only be in the foil :—

1	2	3	4	5	6	7	8	9
Hadbast No. with name of village.	Serial number of batch for the current year for the village shown in column 1.	Particulars of Mutation.					Signature of attesting Officer.	Date of receipt in tahsil with signature of office kanungo.
		Date of order.	Total number of mutations.	Number of mutation sheets.	Serial number of mutation.	Signature of patwari.		

(*ii*) On each occasion that he attests the mutations of a village, a Revenue Officer should have the mutation sheets, on which orders have been passed, arranged in serial order in two bundles, the one of accepted, the other of rejected mutations and he should order the patwari to enter the necessary particulars in the registers aforesaid. The foils should then be detached from the counterfoils and affixed as indices to the bundles, each of which should be stitched together with stout thread.

(*iii*) The bundles of sheets should then be despatched, or personally made over by the attesting officer to the tahsil office kanungo. Attesting officers are responsible for the safe custody of the sheets until they are so made over and should be very careful to prevent their loss.

(*iv*) On receiving the sheets the office kanungo will check them with the indices, sign the latter and then place both sheets and indices in an almirah, where he will arrange them in files by field kanungos' circles and between boards tied round with tape by string. Within these boards the sheets should be arranged by patwaris' circles, those of each village being placed together, along with their indices in the order in which they reach the office kanungo. The files of accepted and rejected mutations in each field kanungo's circle should be kept distinct and on separate shelves.

(*v*) After June 15th the patwari should prepare two lists in the form below of all mutations attested during the year

for each village in his circle. One list will show accepted, the other rejected, mutations :—

1	2	3	4	5	6	7
Hadbast No. and name of village.	Total number of mutations.	Total number of sheets	Numbers of mutations in serial order.	Signature of patwari.	Signature of tahsil office kanungo.	Remarks.

These lists should be prepared from the counterfoil register described in paragraph 7·4 *supra* and after being checked with the register of mutations should be sent to the tahsil not later than August 1st, a copy of entries in the first four columns being retained by the patwari in his diary.

(*vi*) On receipt of these lists the office kanungo should compare them with the mutation sheets in his custody, arrange the latter in their serial order, remove and destroy their indices, sign the lists in column 6 in token of their correctness, and attach them to the bundles of sheets to which they refer.

(*vii*) As soon as a *jamabandi* is filed, the office kanungo should make over the accepted mutation sheets of the village in question to the field kanungo and take his receipt in the last column of the list which is attached to those sheets and which he will retain. The sheets will then be attached by the field kanungo to the *jamabandi*.

(*viii*) The list containing the receipts of the field kanungos should be made into *kuliat* files, one for each field kanungo's circle. Each file should be indexed and the lists which it contains should be arranged by the serial order of the *hadbast* numbers of the villages to which they relate. The files should be destroyed after four years, that is, after the next detailed *jamabandis* have been prepared.

(*ix*) The rejected mutation sheets of any village for which a *jamabandi* has been prepared should be sent to the district record room along with that *jamabandi* and the lists attached to them. These sheets should be kept in the Land Record Office for twelve years and then destroyed.

Disposal of miscellaneous papers.

7'39. Petitions and exhibits should be returned to the parties by the attesting officer. If depositions are taken by commission the essential part of them should be very briefly incorporated in the attesting order so that the mutation sheet be complete in itself. Any papers which cannot be returned should remain attached to their proper mutations. When the *jamabandi* of any village is filed the miscellaneous papers should be removed from the sanctioned sheets of mutations and made into distinct files one for each kanungo's circle. These should be kept with the files mentioned in paragraph 7'38 (*viii*) *supra* and destroyed with them after 4 years.

OTHER MISCELLANEOUS INSTRUCTIONS.

Copy of mutation register filed with jamabandi.

As has already been noted, the mutation register is kept in duplicate, one copy being retained by the patwari and the other sent to the tahsil to be attached to the *jamabandi* as an authority for the new entries which it contains. The patwari's report, the attestation of it by the field kanungo, and the order of the Revenue Officer are written only in the copy of the register to be filed with the *jamabandi*. It is enough in the patwari's copy to show how the case was disposed of by entering the briefest possible abstract of the order, and this abstract should be written by the Revenue Officer with his own hand (*Para.* 376, *Land Administration Manual*).

Contents of mutation orders.

Every mutation order should show on the face of it the place where, and the date on which, it was passed, and that all the parties interested were present, or, if any one was absent, the way in which his evidence was obtained, or, if it was not obtained, what opportunity was given to him to be present. No detailed record of the statements of parties and witnesses is required, but the order should note briefly the persons examined and the facts to which they deposed.* The facts on which the order is based should be stated succinctly but clearly, and the order must show without any possibility of doubt whether the Revenue Officer accepts the new entry proposed by the patwari as it stands, or, if it requires amendment, exactly what the entry is which is to be made in the *jamabandi*. The order must always show whether a share of the village *shamilat* has been included in the transfer (*Para.* 383, *Land Administration Manual*).

Attendance of parties.

A person who, after receipt of notice by summons or proclamation to appear before a Revenue Officer at some place within the estate in which he ordinarily resides or cultivates land, fails to present himself becomes liable to a fine not exceeding Rs. 50.† This provision can suitably be put in force when the default is wilful and contumacious. But where a man's attendance would involve an

*Rules 39 and 44 (*i*) of the Land Revenue Rules framed under the provisions of the Punjab Land Revenue Act, 1887, provide as follows :—

39. In proceedings under section 34, sub-section (4) of the Land Revenue Act, no detailed record of the statements of parties and witnesses shall be made, but the order of Revenue Officer shall state briefly the persons examined by him, the facts to which they deposed, and the grounds of the order.

44 (*i*) The language of Revenue Officers shall be—

(*a*) English, in cases in which English is the mother tongue of both the parties to a revenue proceeding, and

(*b*) Urdu in all other cases.

†Section 149 of the Punjab Land Revenue Act, 1887.

amount of inconvenience which under all the circumstances could reasonably be regarded as excessive, the proper plan is to take his evidence by commission (*Para. 384, Land Administration Manual*). *See also the provisions regarding issue of interrogatories prescribed in para. 7.31 of the Land Records Manual, supra.*

Arbitration.—Disputed cases may be referred to arbitration with or without the consent of the parties,* but little use is made of this provision of the Act. Where it is resorted to care must be taken to make the arbitrators understand that they must give a clear opinion as to the question whether the right claimed is actually enjoyed. If the Revenue Officer cannot satisfy himself as regards the fact of possession and thinks it inexpedient to refer the point to arbitration, he is required to make a summary enquiry as to title, and to direct that the person who appears to have the best right to the property shall be put in possession of it and that his name shall be entered in the *jamabandi* § The disappointed claimant must be referred to the civil Courts for the establishment of any right he conceives himself to have.†

Revenue Officer competent to pass orders in mutation cases.

According to Section 10 of the Punjab Land Revenue Act, 1887 except where the class of the Revenue Officer by whom any function is to be discharged is specified in the Act the Local Government may by notification, determine the functions to be discharged under that Act by any class of Revenue Officers. And according to Punjab Government notification No. 81, dated the 1st March, 1888, under that section, orders in mutation cases can be passed by an Assistant Collector of either grade except placing persons in possession of disputed property under Section 36 (2) of that Act which cannot be done by a Revenue Officer below the rank of Assistant Collector, 1st grade. In practice nearly the whole of the work is disposed of by tahsildars and naib-tahsildars. In a country of small peasant proprietors, the number of mutations to be attested annually is very large, and it is found necessary every year to appoint in some districts one or more extra naib-tahsildars selected from the lists of accepted candidates and to invest them with the powers required for the disposal of business under Chapter IV of the Land Revenue Act (*see Land Administration Manual, para. 379*). These men should not be employed as general assistance to the tahsildar but should be required to devote the whole of their time to the attestation of mutation. At the same time the tahsildar and naib-tahsildar should not be relieved of all their mutation work. The best plan is to transfer the whole mutation work of certain zails or kanungo's circles to the extra naib-tahsildar (*Land Administration Manual, para.* 243).

A *girdawar kanungo* is not a Revenue Officer within the meaning of Section 6 of the Punjab Land Revenue Act, 1887, and he therefore cannot pass any order in any mutation case.††

*Section 127 (2) (*a*) of the Act.

§Section 36 (2) of the Act.

†If he does not admit dispossession, his suit may be one for a declaration of his right under Chapter VI of the Specific Relief Act, 1 of 1877, (Section 42).

††Suba *v* Mohd. Ali=57 I C. 721.

The following points are te be remembered :—

Miscellaneous.

(1) All mutation cases relating to transfers in contravention of the provisions of the Punjab Alienation of Land Act must be submitted to the Deputy Commissioner for necessary sanction.

(2) Although the Punjab Alienation of Land Act places no restriction on gifts for religious or charitable purposes whether *inter vivos* or by will, all the mutation proceedings of all cases purporting to be such gifts should be submitted to the Deputy Commissioner, who would, after enquiry, record a decision whether the transaction is really a gift and not a disguised sale, and whether the purpose is really religious or charitable. The mutation should then be treated according to the order passed on it [*see para. 7·22 of the Land Records Manual, supra*].

(3) Mutations relating to alteration of the records in the case of non-Muslims should be sanctioned by the Deputy Commissioner (*Para. 7·24, Land Records Manual, supra*).

(4) No effect shall be given to any order (1) directing the omission of the name of a right-holder who has been entered as *ghair-hazir* or *ghair-kabiz*, or (2) directing the enrty of a right-holder as *ghair-kabiz* until such order has been confirmed by the Collector or Revenue Assistant [*Para. 7·25 (5), Land Records Manual*].

(5) When an entry of *bila lagan bawaja ya tussuwar milkiyat* exists in the *jamabandi* it should not be altered except by mutation sanctioned by the Collector or Revenue Assistant [*Land Records Manual, para. 7·25 (6)*].

(6) In mutation cases dealing wirh *escheats*, the mutation should be disposed of by the Collector or by an Assistant Collector of the 1st grade (*Land Records Manual, para. 7·26*).

In the cases of mutations relating to voluntary partitions if any of the parties objects to the record of the alleged partition and the attesting officer considers the objection valid, he should refuse mutation of names and refer party seeking it to proceedings under Section 123 of the Land Revenue Act. But if he finds that the objection is vexatious or frivolous, and that a fair partition has been carried out, he should record the objection and his proposed order disallowing it and submit the proceedings for confirmation to the Revenue Assistant or any other Assistant Collector, 1st grade authorized by the Deputy Commissioner to deal with these cases (*Land Administration Manual, para. 451*).

Supervision of work by Deputy Commissioner and Revenue Assistant.

When a Deputy Commissioner or a Revenue Assistant is inspecting a tahsil, the mutation work of the tahsildar, naib-tahsildar, and any extra naib-tahsildar, who may have been employed, should all be brought under review. With the *jamabandi* of an estate lying open before him it is perfectly easy to pick out all the holdings in which changes have been made, for in support of them references to the mutation register are always given. If the inspecting officer looks up each case in the register, he can soon satisfy himself as to the quality of the work of the reporting patwari and of the Assistant Collector. Having done so, he can turn back to the *jamabandi*, and see whether the changes ordered have been correctly made. If this process is repeated for several estates in the circle of the tahsildar and naib-tahsildar respectively, the Deputy Commissioner cannot fail to gain a considerable insight into the value of the work

done by both these officers, and by some of the patwaris and kanungos under their control. In examining mutation sheets special attention should be paid to orders passed in the absence of any of the parties. No order should be passed affecting the share of any right-holder who has not had an opportunity of appearing (*Land Administration Manual, para.* 381).

Mutations to be attested on the spot.

Tahsildars and naib-tahsildars are expected to deal with revenue work, and especially with cases relating to *lambardars*, land revenue assignments, partitions, and mutations, within the estates in which the cases have arisen. The extent to which this obligation may be relaxed with the express permission of the Deputy Commissioner has been noted in paragraph 247 (*Land Administration Manual, para.* 382).

In the case of estates for which a detailed *jamabandi* is to be drawn up during the agricultural year, mutation work must be disposed of in the village itself. In other cases, the naib-tahsildar or tahsildar, if he cannot conveniently visit the estate, may pass orders on its mutations at any other place within the patwari's circle (*Land Administration Manual, para.* 247).

Importance of prompt disposal of mutation work.

Mutations which have not been attested before the end of the agricultural year (15th June) or the date approved by the Director of Land Records, are not incorporated in the *jamabandi* then under preparation. This in most cases means that they will not be brought to record till more than four years after they have taken place. This untoward result can easily be avoided if tahsildars and naib-tahsildars lay out their work properly and lay special attention to the estates for which *jamabandis* are about to be drawn up (*Land Administration Manual, para.* 386).

LAW RELATING TO MUTATIONS

Determination of disputes.

Law governing mutations.—Sub-section (1) of section 36 of the Act prescribes that if during the making, revision or preparation of any record or in the course of any enquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion, or on the application of any party interested, but subject to the provisions of the next following section (relating to restrictions on variations of entries in records), and *after such inquiry as he thinks fit*, determine the entry to be made as to that matter.

Restrictions on variations of entries in records.

Section 37 of the Punjab Land Revenue Act, 1887, provides that—

" Entries in records-of-rights or in annual records, except entries made in annual records by patwaris under clause (*a*) of section 35 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by—

(*a*) making entries in accordance with facts proved or admitted to have occurred ;

(*b*) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties ;

(*c*) making new maps where it is necessary to make them.

Extent, nature and scope of inquiry.—The nature and scope of inquiry in mutations have been left by the legislature to the discretion of the Revenue Officer but he is guided in this direction by the various rulings of the Financial Commissioners pointing out the extent of the inquiry necessary. After the Revenue Officer has arrived at the conclusion what the fact 'proved or admitted to have occurred' is as the result of his inquiry, his work finishes and he is to order making of the entry according to his conclusion.

Inquiry must be summary ending in a presumption.

It is not necessary now, as it was in the case of the corresponding section of the older Act of 1871, that the facts should have occurred since the date of the entry which it is sought to vary. An erroneous entry can he corrected at any time, and proof of a mistake in this respect is proof of a fact having occurred within the meaning of section 37.[1]

Under section 44 of the Act an entry in an annual record or in a record-of-rignts made according to law is presumed to be true. The ultimate object of mutation procedure is to keep this record up-to-date and to bring it into accordance with facts *so far as this can be done by a summary inquiry*. When the annual record has been corrected, it is under section 44 of the Act merely presumed to be true so that an order in a mutation case does not finally settle any substantive question of right as between the parties concerned ; it merely raises a presumption in favour of one side or the other.[2] The Financial Commissioner observed in *Maumanda* v. *Farid and others*[3]—"Under section 44 of the Land Revenue Act an entry in an annual record is presumed to be true. In altering the record by the mutation procedure, we are bound, with due regard to the conditions of a summary inquiry, to satisfy ourselves that the altered record will be at least most probably true. A safeguard is provided by section 37 of the Act which enacts that the new entries must[2] be in accordance with facts proved or admitted to have occured or[3] be agreed to by all the parties interested therein, or[4] be supported by a[5] decree or order binding on those parties.

The mutation procedure is not designed for the final settlement of rights. It is concerned merely with the alteration of presumptions. *The Act therefore requires only a summary inquiry ending in a presumption.* If we go beyond this and attempt to make the inquiry in mutation cases as full as the inquiry ought to be in a judicial case we ignore the distinction which the legislature has drawn between the acts of Revenue Officers and the acts of Civil or Revenue Courts.

In mutation proceedings Revenue Officers are required to reach a decision, in so far as they are able to do so in summary proceedings, as to the disputed title to the land in question. The decision on a mutation is not a final adjudication on a question of title ; it is the formal recording of what the Revenue Officers dealing with the case consider the facts in regard to title to be and the final adjudication on a question of title between the parties is a matter for the Civil Courts except in so far as the legislature may by special statute take away the jurisdiction of the Civil Courts in regard to certain matters and confer that jurisdiction over another authority[5].

1. 4. P.R. 1913 (Rev.)
2. Hira Nand *v.* Jamna=1 P.R. 1901 (Rev.)=60 P.L.R. 1901.
3. 14 P.R. 1901 (Rev.)=177 P L.R. 1901.
4. 1926 L.L.T. 29.
5. Melu *v.* Gajju=(1941) 20 L.L.T. 183.

We may be satisfied therefore in mutation cases with *prima facie* proof ; but it must be proof sufficient to raise strong presumption. If neither party can establish a strong presumption, mutation must be refused, and the parties left to settle their dispute by obtaining a decree."

In *Parma Nand* v. *Ram Lal and others*[1] it has been held that no change in previous entries in Revenue Records can be effected by Revenue Officers when the reasons for the change are such as can only be gone into by a Civil Court and cannot be decided by a Revenue Officer in mutation proceedings. The mutation procedure is, and must be summary.[2]

How far possession proof of title.

Title v. Possession.—During the early years of the British occupation of the Punjab possession was more or less the only proof of title to land and it was, therefore, a rule to mutate in favour of the person in possession. Even at the time of the passing of the first Land Revenue Act (Act XXIII of 1871) it was definitely laid down that in disputed cases possession must be the basis of mutation.*

They followed the ancient tradition of the revenue system of the North-Western India set forth with the greatest clearness and precision in Barkley's Directions for Collectors (page 175). " The person whose name should be entered in his own right is the proprietor *de facto*, *i.e.*, the person in apparent and acknowledged proprietary possession. This appears from the necessity of the case. The register must be compiled on some uniform plan. It would be impossible to make it a complete and correct register of proprietors *de jure*, because right as separate from possession is an obscure matter, difficult of ascertainment, and falling entirely within the province of the Civil Courts, and beyond the cognizance of a Collector. To enter in the registers sometimes proprietors *de jure*, and at other times proprietors *de facto*, would cause confusion, and deprive the register of its proper character, as uniformly exhibiting the same class of facts. It therefore results that the latter only should be entered."[3]

With the repeal of the Act of 1871 the rules under it were also repealed but the notion that in all disputed cases mutation must follow possession, survived The Revenue Officers were strengthened in this view by a judgment delivered by Mr. (late Sir) Denzil Ibbetson published as *Mian Khan* v. *Alam Khan*[4] in which it was held that " the ancient tradition of the revenue system that mutation is simply the registration of actual existing possession and in no way an adjudication of right is not departed from by the Punjab Land Revenue Act 1887." His

1. 1926 L. L T. 29.
2. Manzur Ali *v.* Amir Ali Khan and others=1931 L.L.T. 3.

*Extract from Rule-E of the Rules under section 66 of the Land Revenue Act, 1871 :—

2. .....If the right of succession be disputed, the names of the parties in possession shall be entered under the order of.....and the objectors shall be referred to a regular Civil suit.

3. When a decree for land passed by a Civil Court has been executed by delivery of possession, mutation of names will be effected.....either on intimation being received from the Court that possession has been given, or on the report of the patwari to that effct.

4. Sales or transfer of land paying revenue to Government in execution of decrees for money, and sales or transfers of land to recover arrears.....the necessary mutation shall be ordered by the officer directing the sale or transfer, when possession has been given to the purchaser or transferee.

3. See also 6 P.R. 1883 (Rev.).
4. 1 P.R. 1891 (Rev.).

line of argument was—" The provisions of the existing law on the subject are contained in sections 34 to 37 of the Land Revenue Act, 1887, and are not absolutely clear on the point. But unless they clearly express the contrary, it must be held that they continue a policy of old standing, which, in cases of dispute at least, commends itself to the judgment as obviously wise and proper. It is true that the case has been somewhat altered by the fact that presumption of truth now attaches for the first time to entries in the Annual Record based upon mutation proceedings. But the Evidence Act already gives a presumption of ownership to the man in possession, and the burden of proof is primarily upon the person who attacks him ; so that a record based upon actual possession, even though wrongful, in no way strengthens his position..... ...Section 36 prescribes the procedure in cases of dispute. The wording is not as clear on the point as it might be ; but clause (2) practically amounts to a direction to the Revenue Officer to ascertain possession; and if he cannot ascertain it, to make it, by putting the person who is apparently entitled into possession. In this latter case, the entry is to follow possession ; and I think it must be held that it will do so in the former case also, otherwise there is no object in ascertaining possession. Thus, in all disputed cases mutation is to follow possession."

Obviously these arguments could not be convincing and the ruling was dissented from in *Secretary of State* v. *Bhagwan Das*[1] in which it was held that as regards the determination of disputes, clause (1) of section 36 is not limited by clause (2) thereof merely to disputes regarding possession, and that in making a first record of rights the Revenue Officer is competent to determine a disputed question of ownership and to make an entry in accordance with his decision in the said record." The Financial Commissioner observed—

" It should be remembered that we have to frame, not a record of possession, but a Record of Rights, and that we require the Courts to presume that the rights are as stated in the record.....I submit that the framing of the Record of Rights is a *quasi* judicial operation, and however strongly possession may be insisted on as the main guide, the Revenue Officers who frame it ought to be allowed a certain discretion to be exercised in cases such as I have instanced, and that we ought not by a too rigid framing of the law to compel the entry of rights as belonging to persons to whom it is notorious they do not belong, nor to compel our officers to substantially support possession which is wrongful thereby referring innocent persons unnecessarily to costly civil litigation."

In *Harnand* v. *Jamna*[2] and *Mamanda* v. *Farid*[3] also the Financial Commissioner held the same view. The most elaborate and clear pronouncement on the subject of mutation in general and on the question of *Title* v. *Possession* in particular, is contained in the well-known judgment *Ghulam Mohammad* v. *Mst. Zewaro*[4] and the **following principles laid down** :—

1. " The Record of Rights is a record of titles and not a record of possession. The procedure of the Revenue Officers in dealing with mutations is determined by the nature of the mutation. *If the case is*

1. 7 P.R. 1895 (Rev.).
2. 1 P. R. 1901 (Rev.)=60 P. L. R. 1901.
3. 14 P. R. 1901 (Rev.)=177 P. L. R. 1901.
4. 5 P. R. 1912 (Rev.)=85 P. L. R. 1913.

one in which the proposed entries "are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties," possession may be disregarded. In other cases, that is to say, *in disputed cases, section* 36 *makes it clear that the facts as to possession are relevant to the decision of the dispute, but they are relevant not for the purpose of making mutation follow possession, but for the purpose of ascertaining whether facts are proved or admitted to have occurred," which would justify a variation in the existing Record of Rights.* Clause (4) of section 34 authorises the Revenue Officer to make " such order as he thinks fit." His discretion is, of course, governed by section 37, as above explained, and before passing orders an inquiry is necessary. But subject to these limitations the mutation officer has under the Act a very wide discretion to pass " such order as he thinks fit."

2. " The extent to which possession or the absence of possession should be regarded as proof, for mutation purposes, that a fact has or has not occurred, depends mainly as whether the case is one of transfer or of inheritance. There are certain fundamental differences between the two classes of cases. In succession cases, a mutation of some sort must be effected. There is in these cases no such thing as a rejected mutation.....A particular claim may be rejected but mutation must be sanctioned in favour of some heir or heirs. In transfer cases, on the other hand, and especially in disputed cases, which constitute the test of the whole system, the issue is not only what the new entry shall be, but whether a new entry shall be made at all or not. In succession cases, there is seldom any dispute as to what property shall be mutated. It is the totality of the rights of the deceased right holder. In transfer cases, not only may there be a dispute as to the area or extent of the right transferred, but also as to the nature of the interest alienated. Such questions arise as to whether the taansfer is of a share of specific fields; whether *shamilat* rights are or are not also conveyed; whether a mortgage is with or without possession; whether redemption money has, or has not been paid. In succession cases the dispute is between rival heirs. In transfer cases it is generally between the transferer and transferee.

3. " Possession as evidence of title has a different value in two classes of cases (cases of inheritance and cases of transfer). The possession of the alert heir who is on the spot and makes the most of his opportunities to circumvent the claims of his rivals by seizing the property of the deceased right holder as soon as the breath leaves his body, does not count for very much as evidence of title. On the other hand, the possession of the right-holder who all along has been in possession and whose title is impugned by a transferee under an alleged contract counts for a very great deal. Mutation officers are very chary of deciding against possession in the latter class of cases, and rightly so. They decide in favour of possession because an alleged contract of sale, mortgage, gift or the like, not followed by possession, when disputed by the alienor who remains in possession, is not regarded as a " fact proved to have occurred " within the meaning of section 37 (*a*) of the Land Revenue Act, or, to adopt the language of Barkley's Direction " the truth of the transfer" has not been proved. *In some cases and especially in inheritance cases, as above explained, it is often not feasible or not equitable to dicide on the basis of possession without some inquiry into title.*

4. " In disputed cases of inheritance, comparatively little stress should be placed upon possession as it often is not true evidence of right. The relatives living with the deceased naturally take possession on his death, and there may be others who have obviously an equal or superior right, for instance, when one of the sons is absent on service or when the deceased has a resident son-in-law, who cannot by custom exclude the collaterals, I would not require the Assistant Collecter to alter the record merely in accordance with the facts of possession (often difficult to ascertain) when they are obviously contrary to right. I would here also give him some discretion, and would instruct him to record the facts of possession so far as he can ascertain them by summary inquiry, but to make the new entry in accordance with what he finds to be the rights of the claimants, if they seem free from reasonable doubt. "—per Sir James Wilson.

" In disputed cases of inheritance apparent right should be the rule of decision. A strict application of the possession rule would in some cases land us in manifest injustice."—*per* Sir James Douie.

5. " But the obligation to investigate in mutation proceedings disputed questions of title will not commend itself to some officers. *Such officers should, however, note that there is ample authority for the view that investigations of the kind should be of a very summary character.* "

6. " In transfer cases, where anything more eleborate than a summary inquiry is necessary to decide whether a fact is " proved to have occurred, " it will be best to refuse mutation and refer the parties to the Courts. But as above explained, in inheritance cases a new entry must be made. The scope of the inquiry must be left to the discretion of the mutation officer, but it must necessarily be summary. *It will generally be preferable in doubtful cases (of inheritance) to follow the rule of possession rather than embark upon an elaborate inquiry into titles, especially when the issues are those which depend upon the application and interpretation of controversial points of Customary Law. But for reasons above explained care should be taken to recognise fiduciary, constructive and vicarious possession as well as physical possession when the situation justifies such recognition.* "

7. " The inference that the mutation must follow possession is based on the premise that there can be no other object in ascertaining possession. If the validity of this premise can be successfully assailed, the conclusion derived from it must be abandoned. Now it seems to me that there is another very distinct and definite object to be attained by ascertaining possession. The most important issue which presents itself to the mutation officer in disputed cases is whether he is at liberty to vary the previous entry in the Record of Rights. By section 37 (*a*) of the Act, he is debarred from doing so otherwise than in accordance with " facts proved or admitted to have occurred. " For the purpose of determining whether an alleged alienation, for instance, is " a fact proved to have occured, " the most obviously essential step in the inquiry, which under section 34 (4) and section 36 (1) the mutation officer is bound to hold, is the ascertainment of the facts as to possession. An alleged gift, sale or mortgage, if disputed, will generally be regarded by the mutation officer, and reasonably be regarded, as a fact *not* " proved to have occurred " if the donor, vendee or mortgagee has failed to obtain possession. Possession being proverbially nine points of the law,

the mutation officer is very rightly required to ascertain it, as being one of the most important to be considered in determining whether an alleged transfer is a " fact proved to have occurred. " In view of the importance of possession in this connection, and not because it is the sole determining factor, the mutation officer is, in disputed cases, required to ascertain possession. For there may be in every case a tenth point of the law. There are cases in which title does not, and ought not, follow possession. It cannot, for instance, be seriously contended that either in pursuance of the law or of any considerations of policy or expediency, the mutation officer is bound to recognise the possession of the mere trespasser, of the party who by fraud, stealth or violence gains possession of that which is the undoubted property of another and holds it without any colourable title whatsoever other than 'might is right.' To extend recognition to such a tenure would be tantamount to acknowledging the title of a burglar to the proceeds of his burglary. "

These principles must be clearly grasped before proceeding to study the law on the subject of mutations.

How far custom should be enquired into.—section 5 of the Punjab Laws Act, IV of 1872, enacts that " custom is the first rule of decision in the Punjab in all questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution and alluvion or diluvion. " The mutation officer, therefore, has often to find out the custom applicable to the parties. The question is what should be the extent of his inquiry into custom applying to the parties ?

In this province there is no rule of law which prescribes any period during which a custom in order to be valid and enforceable must have been observed. The custom here is tribal or family and not local. Different tribes residing in the same village may observe different customs. Custom being tribal or family, if a tribe in a certain locality has a particular custom the presumption is that members of that tribe migrating elsewhere from that locality carry their customs with them.[1]

In order to find out the customary rule of succession applicable to the parties the Revenue Officer must consult the revenue records and if he can find out any rule of succession in the family from the revenue records, he must decide according to that rule, for it has been held that if once one rule is followed the presumption is very strong in favour of its continuance.[2] If there is no family custom he must consult *riwaj-i-am* of the district and if he can find out any tribal custom he must decide according to that, for an entry in a *riwaj-i-am* even though unsupported by instances and opposed to the general custom of the Punjab, is *prima facie* evidence of the custom recorded therein and places the onus of rebuttal on the party disputing its correctness.[3] If the revenue records or the *riwaj-i-am* do not give any special rule of custom applicable to the family or tribe concerned, the general custom of the

1. 5 P. R. 1913 (Rev.)=200 P. L. R. 1913 ; 148 P. R. 1908=45 P.L.R. 1908 Supp ; 34 P. R. 1907.
2. 4 P. R. 1891 [F. B.].
3. 4 P. R 1917 P. C ; 1930 L. 724 ; 8 L. 281=1927 L. 241=100 I. C. 924 ; 10 L. 531=1928 L. 893.

Punjab should be followed, where the parties are governed by customary law[1] and no evidence of special custom should be entertained as this would exceed the limits of summary inquiry possible for the purpose.[2]

Intricate questions of law and custom not to be inquired into.

A mutation officer is not concerned with the discussion of intricate questions of religion and customary law.[3] In deciding cases of mutation there is one sound rule which should always be followed, and that is to avoid as far as possible all intricate questions of law or custom. If decision can be reached which on the face of it is not inequitable without going into any intricate questions of law or custom, or even of facts, it is better to come to that decision, rather than go into the whole maze of intricacies, which another decision might entail.[4]

Where in a mutation relating to the striking out of the name of a widow from her share entered in the revenue records on account of her remarriage the facts were admitted but the law was in dispute, the Financial Commissioner observed—" We are not here concerned with law or custom except so far as the law applicable or the custom applicable is admitted by the parties to the proceedings. In this case the facts are admitted, but the law is in dispute. It seems to me clear then that the proper course to take is that taken by the Collector to refuse to sanction mutation of names. If the respondents the opponents of *Mst.* Hayat Bibi have a case, they must prove it by a regular suit, and it is not for a Revenue Officer acting under this section (section 37) to discover what the law is when it is doubtful or to attempt to interpret custom under similar conditions of doubt. "[5]

Again, in a case where a transfer by way of gift had been effected, it was held that a Revenue Officer should attest the mutation, if *prima facie*, there is no objection to this being done and it is not for the said officer to enter into intricate questions of law like Civil Court, for instance, that on account of the requirements of Hindu Law the mutation should be refused.[6] In *Lal Singh alias Lal Din* v *Maluk Singh and Makhan Singh*[7] also, a case of mutation relating to gift, the Financial Commissioner remarked—" I see no reason why mutation should not now be effected in accordance with the gift, the actuality of which transaction is amply attested. The reversioners may sue in the Courts to have the gifts set aside as invalid, but until in such a suit they succeed in proving its invalidity the transaction must be treated by mutation officers as a valid one. "

Similarly, it was observed in *Ghulam Mohammad* v. *Mst. Zavaro*[8] —" There remains the question whether a mutation of sale should be rejected, if or because the mutation officer considers that the vendor has exercised a power of alienation opposed to the Customary Law of the alienor. For three reasons, one of convenience, one of law and one of policy, *I consider that in such cases when possession has taken place in pursuance of the contract, the mutation officer should sanction*

1. 148 P. R. 1908=45 P. L. R. 1908 Suppl.
2. 3 P. R. 1913 (Rev.)=20 I. C. 436=289 P. L. R. 1913.
3. Lal Singh alias Lal Din *v.* Maluk Singh and Makhan Singh=80 I. C. 889=1 P. W. R. 1915=1917 L. L. T. 2.
4. Nadra and others *v.* Nihal Devi=1926 L. L. T. 30.
5. Mst. Hayat Bibi *v.* Jalal Din and others=1924 L. L. T. 11.
6. Vir Bhan *v.* Lakshmi Datt and others=1929 L. L. T. 21.
7. 1917 L. L. T. 2=1 P. W. R. 1915 (Rev.)=30 I. C. 889.
8. 5 P. R. 1912 (Rev.)=85 P. L R. 1913.

mutation irrespective of Customary Law considerations. Firstly, the ascertainment of the Customary Law, entails an inquiry exceeding in scope the limits of the summary inquiry which alone is appropriate in mutation cases. Secondly, the transfer though it may be a contract voidable at the instance of a reversioner, is not, as between the contracting parties, in itself void. Thirdly, as a matter of policy, it is not desirable that Executive Officer should by action in mutation cases interpose obstacles to the development of custom. It is a recognised principle that by a multiplicity of precedents and instances departing from an ancient custom, a new custom opposed to that previously prevailing may be established. Such instances of innovation, if unchallenged, will in time become so numerous as to justify recognition by the Civil Courts. But the challenge should be before tribunals competent to decide the issues involved. Mutation officers are not competent to decide these issues and they should not take any action prejudicing their decision."

Registered and unregistered deeds.—The real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be effected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration.

Section 17 of the Indian Registration Act, XVI of 1908, prescribes the documents of which registration is compulsory and may be referred to.

Under the proviso to that section the Lieutenant Governor has exempted from compulsory registration.

(*a*) agricultural leases;

(*b*) leases executed by or on behalf of or in favour of Government, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed Rs. 50, (*Punjab Government notification No. 29 of 4th July* 1888 *and No.* 81 *of 16th December* 1904).

Value of registration in mutation cases.

There are some special features and sound presumptions attendant to registration as distinguished from unregistered deeds. The registration is a solemn act to be performed in the presence of a competent official appointed to act as registrar whose duty it is to attend the parties during the registration and see that proper persons are present and are identified to his satisfaction, and all things done before him and in his official capacity and verified by his signature will be presumed to be done duly and in order.[1] Thus when certain deeds are duly executed and duly registered the burden of proving that they are not real transactions lies on those who allege the same.[2]

When a person has admitted execution of a deed before a registrar or sub-registrar, the statements in that deed should be taken as "facts proved to have occurred," and mutation should be entered accordingly, no matter what allegation the person make after registration (always excepting any transfer which is contray to the provisions of the Land Alienation Act). It has been clearly laid down in *Nawab and*

1. 35 Cal. 537, P. C.
2. 25 Cal. 78, P. C.

others v. *Ganda Mal and others*[1] that "formal effect to a registered deed should be given inspite of receipt of consideration being denied as a deed is *prima facie* proof of both execution and receipt of consideration."

Again, it has been held that "where the fact of possession having passed is recited in a registered deed the Revenue Officer will presume at least between parties to the deed that the possession passed and may act on that presumption."[2] Effect should be given in mutation proceedings to a registered deed especially between the parties to the deed and the fact that the deed is not in point of fact a sale deed but is only a deed of transfer and that the executant is a *parda nashin* woman does not justify a departure from this rule. Nor should the fact of the alienation being invalid, if the possession has passed prevent the Revenue Officer from granting mutation.[3] It has, however, been held in *Saleh Mohammad* v. *Mst. Sardar Bibi*[4] that in mutation proceedings as between the parties to a registered deed the Revenue Officer should presume the correctness of the recital as to transfer of possession of the property does not extend to mutation proceedings, relating to death-bed gifts.

Where an alienation, *e. g.*, a lease has been effected by means of a registered deed, it is the duty of the Revenue Officers in mutation proceedings to give effect to the deed. If there has been a mistake in the deed that mistake can be rectified not by a Revenue Officer in mutation proceedings but only in a Civil Court.[5]

In the case of registered mortgage deed the burden of proving want of consideration lies on the mortgagor or the person who claims under him.[6] Similarly, its proper execution, proper delivery and proper consideration will be presumed.[7]

Note.—In the case of a registered deed it is wrong to refuse mutation because the executant is not present to attest the transaction, in view of the above considerations. All that the Revenue Officer is to see is that there is *prima facie* proof of the fact to have occurred and he will be safely guided in that by the fact of transfer of possession.

Effect of non-registration of a compulsorily registrable document.

The Registration Act does not direcly enact that a contract reduced to writing and not registered as required by law, is not enforceable, or shall cease to be enforceable. All that the Act does is to prohibit the reception of the unregistered writing as evidence of any transaction affecting immovable property, except as evidence of any collateral transaction not required to be effected by registered instrument, and prevents it affecting such property.[8]

When, therefore, a transfer is made by an unregistered deed which requires registration under section 17 of the Registration Act, and the transferer does not admit the transfer and it has not been acted upon by

1. 1932 L. L. T. 35.
2. Shrimati Ram Khetri *v.* Kuldip Chand and another=1932 L. L. T. 114; referred to in 1935 L. L. T. 5.
3. Ibid.
4. 1936 L. L. T. 35.
5. Bisra Stone Lime Co. Ltd. *v.* Raja Mohammad Afzal Khan=(1941) 20 L. L. T. 11.
6. 401 P. L. R. 1900; 19 P. L. R. 1907.
7. 40 P. R. 1906; 88 P. L. R. 1909; 68 P. R. 1900; 29 P. W. R. 1917; 189 P. L. R. 1913; 17 P. R. 1883; 153 P. R. 1882; 21 Mad. 56; 8 Cal. 597 F. B.
8. Section 49 of the Indian Registration Act, 1908; 88 P. R. 1891.

transfer of possession or the like, the mutation should be refused as section 49 of that Act forbids the document to be taken in evidence. But the mutation should be sanctioned if the transferer admits the fact of transfer.

Some Revenue Officers reject a mutation on the ground that the deed on which it is based was compulsorily registrable and is inadmissible in evidence. This is obviously a false notion as a mutation order is to record a fact which is proved to have occurred and it cannot be rejected if that has been acted upon.[1]

Deed registered but execution denied by the executor before the Revenue Officer.

Another important point which deserves notice is what should be the order of the Revenue Officer in a mutation case when the deed is registered but the executor denies its execution. Some Revenue Officers are of opinion that in such a case mutation should be refused while others think that transfer has taken place and mutation should be allowed. It is submitted that mere registration is not in itself proof of its execution.[2] In such a case, therefore, the fact of transfer of possession in favour of the transferee will count very much in deciding the mutation. If the transfer as alleged in the document is *prima facie* proved to have been acted upon by transfer of possession, mutation should be allowed; and if the transfer is not shown to have been acted upon, mutation should be refused.

Unregistered deeds.

In the case of unregistered deed not requiring registration, the person who is entered as having executed it should be asked whether he executed it; if he deines having done so, mutation should be refused unless it is shown that it was acted upon by delivering possession or in some other manner. If he admits execution but pleads fraud or want of consideration, etc., the contents of the deed should be taken as correct against him unless he definitely shows that the deed was never acted upon.

Registered v. unregistered deeds or oral transactions

Suppose A has transferred some land by a registered mortgage-deed in favour of B. C comes forward before the Revenue Officer at the time of mutation and says that he has mortgaged the same land to him also orally or by an unregistered deed. What order should the Revenue Officer pass in such a case or similar other cases?

Section 48 of the Indian Registration Act lays down that "all non-testamentary documents duly registered under this Act and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force: provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against the mortgage-deed subsequently executed and registered which relates to the same property."

And section 50 of the same Act provides—"(1) Every document of the kinds mentioned in clauses (*a*), (*b*), (*c*), and (*d*) of section 17, sub-section (1), and caluses (*a*) and (*b*) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

1. See 4 Lah. 249.
2. See 12 W. R. 500, 508; 15 W. R. 487; 17 Cal. 908.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act."

Thus a registered agreement takes effect against unregistered agreement and relating to the same property unless where it is accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force. Of course, delivery of possession, whether it accompanies or follows the oral agreement must be made *before the date* of the subsequent registered document.

Where there is a prior unregistered deed which was not compulsorily registrable and the subsequent incumbrancer had *notice* of the prior valid unregistered incumbrancer, the Courts are not bound to interpret section 50 so as to defeat the title of the prior incumbrancer; and when it is shown that the original transferee was in possession under his transfer at the time of the second conveyance, it is to be presumed that the second transferee had notice of the prior title or interest.[1] If is settled law that a subseqnent registered document with notice (actual or constructive) of an earlier unregistered document of which registration is optional, is not entitled to priority over the earlier unregistered document.

But this principle does not apply where the earlier document is compulsorily registrable and is not registered. The holder of a subsequent registered document is entitled to priority over the holder of an earlier unregistered document of which registration is *compulsory*, even though the holder of the registered document has notice of the earlier unregistered document.[2] If, however, the possession is still with the previous transferee and he disputes the second transfer, the fact of the second transfer may not be taken as "proved" for the purposes of mutation and the second transferee left to seek his remedy in a competent Court.

Oral transactions.

The regular practice in regard to mutation proceedings is that the person who alleges an oral transaction in his favour which is not admitted by the other party must be refused mutation and left to seek his remedy in the Civil Courts.[3]

Registered v. Registered deed.

Where the fact of possession having been passed is recited in a registered deed of gift but is negatived by a ractial in another deed registered before the Revenue Officer is seized of the case, the Revenue Officer would not be justified in sanctioning mutation of the gift merely on the basis of the first deed.[4] R deceased, the father of G, executed on 15th March 1933 a deed of gift in respect of certain land. This deed was subsequently registered. On 16th May 1933, however, R executed another deed which was also registered whereby he cancelled the said deed of gift. The Assistant Collector refused mutation of the gift on 30th Septemher 1933, on the ground that transfer of possession was

1. Shankar Dass *v.* Sher Zaman=56 P.R. 1900 (F.B.) over-ruling 115 P.R. 1890; See also 7 P.R. 1901 (Rev.)=43 P.L R. 1901 and 4 P.R. 1901 (Rev.)=106 P.L.R. 1901.
2. Harnam Dass *v.* Hira=90 P.R. 1885; distinguished in 143 P.R. 1889.
3. Rur Singh *v.* Surain Singh=(1941) 20 L.L.T. 146.
4. Nazar Hussain *v.* Ghulam Mohammad=1935 L.L.T. 5; 1932 L.L.T. 114 distinguished.

not proved. The Collector ordered mutation on the ground that transfer of possession was recited in the first registered deed. On appeal, however, the Commissioner restored the Assistant Collector's order on the ground *inter alia* that the second registered deed very largely discounted from the recital as to possession recorded in the first deed. On revision the Financial Commissioner observed—"I have admitted this revision solely on the question whether the Commissioner was correct in disregarding the recital in the first deed of gift as regards the transfer of possession in view of Sir Miles Irving's ruling in *Ram Khetri* v. *Kuldip Chand, etc.*,[1] where it is laid down that 'where the fact of possession having passed is recited in a registered deed the Revenue Officer may properly act on presumption given by that deed at any rate, as between the parties to the deed.'

I find that the present case is distinguishable because there was here not an "agreement" but an unilateral recital in a registered deed, which was negatived by a recital in another deed registered before the Revenue Officer was seized of this case."[2]

Conclusions.

Thus we come to the following conclusions :—

(*a*) When there is a registered deed relating to a transaction and the executor admits its execution and the fact of transfer of possession is recited in the deed, mutation should be sanctioned.

(*b*) If there is a registered deed and the executor admits its execution but pleads fraud or non-receipt of consideration, and receipt of consideration is mentioned in the deed and possesion has been transferred, mutation should be sanctioned.

(*c*) If the executor denies the execution of the registered deed, but possession has been transferred to the transferee in whose favour the deed is alleged to be executed, mutation should be sanctioned.

(*d*) If the executor denies the execution of the registered deed and possession has not been transferred, mutation should be refused.

(*e*) If a document of which registration is compulsory under section 17 of the Registration Act, is produced and it is not disputed by the executor and possession has been transferred, mutation should be sanctioned.

(*f*) If such a document is produced and the executor denies its execution or pleads fraud or non-receipt of consideration, but possession has been transferred to the alleged transferee, mutation should be allowed. If, however, possession is with the executor and has not been made over to the transferee, mutation should be refused.

(*g*) If there is an oral transaction or transaction by an unregistered deed and it has been acted upon by transfer of possession and it is a valid transfer, subsequent registered deed relating to the same property will not operate.

1. 1932 L.L.T. 114.
2. 1935 L.L.T. 5.

(*h*) When there is an unregistered document of which registration is not compulsory and a subsequent registered document relating to the same property, and the possession is with the previous transferee, mutation should be in favour of the previous transferee.

(*i*) When there is an unregistered document of which registration is compulsory and a subsequent registered document relating to the same property, if the possession is with the previous transferee and he disputes the subsequent transfer, mutation should be refused; but if the possession is with the subsequent transferee or the previous transferee does not dispute the subsequent transfer, mutation may be sanctioned in favour of the subsequent transferee.

MUTATIONS RELATING TO INHERITANCE.

When a right-holder dies or in the case of limited interest, just as in the case of females, when that interest terminates, his or her name has to be removed and that of his or her successor substituted in his or her place. Cases relating to inheritance, therefore, form a very important class of mutations and are quite numerous. They differ from ordinary cases of transfer inasmuch as in these cases a mutation of some sort must be effected and the rights in devolution must be recorded as belonging to somebody else, while in transfer cases, and especially in disputed cases, the issue is not only what the new entry shall be but whether a new entry shall be made at all or not.

Summary inquiry.

Fact of possession how far to be taken into account in mutation relating to inheritance.—It has already been explained on pages 232 to 235 that possession as evidence of title has a different value in cases relating to succession from cases relating to transfer. In cases of inheritance possession does not affect matters to any appreciable extent. In these cases, therefore, it is often not feasible nor equitable to decide primarily on the basis of possession without some inquiry into title. In this connection remarks of Sir James Wilson and Sir James Douie quoted on pages 233 and 234 may be referred to with advantage.

But in these cases also enquiry must necessarily be a preliminary and summary one ending in a presumption.[1] It will generally be preferable in *doubtful* cases to follow the rule of possession rather than embark upon an elaborate enquiry into title, especially when the issues are those which depend upon the application and interpretation of controversial points of Customary Law. But care should be taken to recognise fiduciary, constructive and vicarious possession as well as physical possession when the situation justifies such recognition.[2] The Nawab of Mamdot died. There was a dispute as to succession. One party claimed that the ownership of the estate should go by primogeniture in the male line as of an impartible estate. The widow of the late Nawab claimed that the estate should be divided according to the Mohammedan Law, or at least that she was entitled to a life interest. The decision of the question of apparent right was one of great difficulty and complexity. Fiduciary possession actually existed in the shape of the possession

1. Mst. Parmeshri *v.* Ram Das and another=1932 L.L.T. 68; Manzur Ali *v.* Amir Ali Khan and others=1931 L.L.T. 3; see also 5 P.R. 1912 (Rev.); 1932 L.L.T. 39.
2. 5 P.R 1912 (Rev.).

of the Court of Wards. Mutation was ordered to be effected in respect of all rights or interests in land of the late Nawab as described in sections 34 and 35 of the Land Revenue Act, in the name of the Court of Wards, Punjab, on behalf of the heirs of the late Nawab.[1]

Rule of succession to be first ascertained.—Where in mutation proceedings the Revenue Officer has to determine who is the heir, he must obviously first determine what is the rule of succession. He need not enter into intricate questions of law, but when any of the parties to a mutation claims it to be governed by personal and not by customary law he must come to a decision however summary.[2]

When does custom and when does personal law apply?

Section 5 of the Punjab Laws Act, 1872, provides as follows :—

" In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(*a*) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority ;

(*b*) the Mohammedan Law, in cases where the parties are Muhammadans, and the Hindu Law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.

Thus the primary rule of decision in all questions relating to the matters specified above, is custom, where a custom is proved to exist and the Hindu and Mohammedan Laws should only be applied where no such customary rule prevailed.[3] When the custom is proved as required by law it is only then that is made the rule of decision.[4] No presumption arises in favour of the existence of custom to the exclusion of the personal law. The onus is on the person asserting that he is ruled in regard to a particular matter by custom to prove that he is so governed, and not, by personal law, and further to prove what the particular custom is.[5]

In the Punjab agriculturists are mostly governed by custom in the matters referred to above. It has already been explained on page *supra* that for the purposes of mutation the Revenue Officer must first consult the revenue records and if he can find out any rule of succession in the family from those records, he must decide according to that rule. If there is no family custom he must consult the *riwaj-i-am* of the district and if he can find out any tribal custom he must decide according to that. If the revenue records or the *riwaj-i-am* do not give any special rule of custom applicable to the family or tribe concerned, the custom generally followed in the Punjab should be followed, where the parties are governed by Customary Law.

1. In the matter of mutation of Mamdot Estate=1932 L. L.T. 39 ; following 5 P. R. 1912 (Rev.).
2. Chandar Prakash *v.* Lakshmi Narain=1932 L. L. T. 15.
3. 149 P. R. 1888 ; 23 P. R. 1897.
4. 43 I. C. 306 ; 1931 Lah. 446.
5. See 1934 P. L. R. 215 ; A. I. R. 1931 Lah. 446 ; A. I. R. 1931 Lah. 708 ; 1917 P. C. 181 ; 110 P. R. 1900.

All intricate questions of law and custom do not fall within the scope of "Summary inquiry" and should be avoided. When there is a dispute as to whether a certain matter is governed by custom or by personal law and the Revenue Officer cannot arrive at any decision on the lines indicated above as to whether the parties are governed by custom or by personal law, it should be decided according to personal law.[1]

General rule of succession according to Customary Law.

Sons.—Sons are first entitled to the inheritance, whether the deceased was joint with others or not.[2]

Pagwand and Chundawand.

Pagwand is a word used where an estate is distributed in equal shares amongst the sons, from *pag*, a turban, and corresponds exactly to the phrase *per capita*. *Chundawand* is from *chunda*, which means the hair braided on the top of the head, and is applied where the division is governed by the number of mothers ; the sons, however few, by one wife, take share equal to that of sons, however many, by another.

As a general rule, sons, whether by the same or different wives share equally.[3] *Chundawand* where the wives are the units is an exception which requires special reasons to account for it.[4] Thus where there is a dispute as to whether succession is by the *pagwand* or *chundawand* rule, the former custom should be followed as a general rule in the Punjab, unless custom to the contrary can be shown to exist either by entries in the revenue records relating to that family or in the *riwaj-i-am* of the district or by any decision of Civil Court.[5] The *onus* lies heavily upon the person who relies upon the *chundawand* rule. It may be mentioned that in the Kangra district it is just the reverse, for the *chundawand* rule is generally observed there.

The rule of primogeniture only prevails in families of ruling chiefs or of jagirdars whose ancestors were ruling chiefs ; but in some cases the eldest brother is allowed a somewhat larger share than his younger brothers.[6] But there are also exceptional cases and persons who claim such rights must be required to prove within the scope pointed out above that it is recognised by the customary law applicable to them.

The share of a son who predeceassd his father descends to his son, and the son of such son.[7] The principle of representation generally recognized in the Punjab is that if a man be dead his place is taken by his son, or, if the son also be dead, by the grandson, and so on, and in such a case the son or grandson is in just as good a position as the father or grandfather.[8]

Step-sons (*pichlags*) as a class are not entitled to succeed to the estate of their step-father, in the presence of male collaterals, even

1. See 111 I. C. 814.
2. Rattigan's Digest, para. 6 ; Aggarwala's Customary Law, page 259.
3. Rattigan's Digest para. 7 ; Aggarwala's Customary Law, page 263.
4. 46 P. R. 1897 ; 74 P. R. 1898 ; 22 P. R. 1899 ; 29 P. R. 1900 ; 148 P. R. 1908 ; 91 I. C. 482 ; 1922 L. L. J. 212 ; 111 I. C. 814.
5. See also 8 P. R. 1918 (Rev.).
6. 62 P. R. 1868 ; see also 65 P. R. 1917.
7. Rattigan's Digest, para. 8 ; Aggarwala's Customary Law, page 263.
8. See 68 I. C. 767.

when they have long lived with, and been brought up by, their step-father, or to succeed as collaterals in the family of the step-father.[1]

Adoption. In adoption cases also the Revenue Officer will in the first instance try to find out from the revenue records or the *riwaj-i-am* if there is apparently some rule of custom applicable to the family or the tribe concerned. If he finds no such special rule he will be guided by the custom generally followed in the province.

Among the agriculturists of the Punjab the so-called adoption is in no sense connected with religion. It is more or less a public institution by a sonless owner of land of a person to succeed him as his heir, and this character has freed the act of appointment of an heir in the Punjab from most of, if not all, the formalities and other essential requisites of adoption under Hindu Law.[2] There are no restrictions as to age,[3] nor, with some exceptions in favour of persons in the agnatic line of kindred, as to the choice of the person to be appointed. It has been laid down by their Lordships of the Privy Council that "an unequivocal declaration by the adopting father that a boy has been adopted and the subsequent treatment of that boy as the adopted son is sufficient to constitute a valid adoption."[4] Thus intention is the essence and test in all adoption cases, unequivocal declaration may, for example, be made orally before the brotherhood or by registered deed, and the subsequent treatment of the person adopted as an adopted son may be inferred from circumstances, *e. g.*,—cultivation by adoptee of adoptor's lands and being supported by him;[5] being joint with the deceased and helping him in business or performing his funeral ceremonies,[6] the betrothal, marriage, etc., of the adoptee being performed by the adoptor, or the like.[7] But unless satisfactory evidence ending in a presumption of fact of adoption of both exists, it would not be safe to sanction mutation in favour of the adopted son.

Registration of deed of adoption and subsequent treatment as son have been held sufficient to constitute a valid adoption.[8] While dealing with the case of an adopted son, therefore, the Revenue Officer, if he finds a registered deed of adoption, may proceed to satisfy himself by summary inquiry as pointed out above as to the subsequent treatment of the claimant by the deceased. If the deceased treated him as his son, the mutation will be sanctioned in favour of the adopted son. When there is no registered deed and the fact of adoption is seriously contested by the persons otherwise entitled to succeed, it will be safer to decide mutation, in the absence of clear and unequivocal proof, in favour of others having the right to succeed and leave the alleged adopted son to establish his claim in a Civil Court, rather than embark on elaborate inquiry beyond the scope of *summary* inquiry. Deed of adoption, if registered, should be accepted as duly executed. When the deed is unregistered and not clearly contrary to Customary Law,

1. Rattigan's Digest, para. 10; Aggarwala's Customary Law, page 316.
2. See 50 P. R. 1898; 97 P. R. 1898; 22 P. R. 1913; 78 P. L. R. 1912.
3. 5 P. R. 1867; 58 P. R. 1879; 40 P. R. 1905; 49 P. R. 1909; 95 P. R. 1909; 22 P. R. 1913 and 44 P. R. 1913.
4. 102 P. R. 1913 P. C.
5. 80 P. R. 1878; 5 P. R. 1874.
6. 79 P. R. 1901; 111 P. R. 1868.
7. 67 P. R. 1902; 116 P. R. 1901; 77 P. R. 1878; 70 P. R. 1878.
8. 3 P. R. 1901; 79 P. R. 1901; 116 P. R. 1901; 67 P. R. 1902; 40 P. R. 1905; 42 P. R. 1911; 78 P. L. R. 1912; 22 P. R. 1913; 102 P. R. 1913 P. C.; 78 P. L. R. 1914.

and there is no doubt that it was *duly* executed by the deceased, it should be acted upon. If the deed is unregistered and disputed, then ordinary heir should be appointed. Where there is no deed it is generally desirable to sanction mutation in favour of the ordinary heir if he and other collaterals deny the adoption or its legality, especially when the alleged adopted son is not in possession and has not been in cultivating possession.

It may also be noted that, *vide* section 17 (3) of the Indian Registration Act authority to adopt a son, executed after the first day of January 1872 and not conferred by a will, is required to be registered.

Succession to appointee.

An heir appointed in the manner above described ordinarily does not thereby lose his right to succeed to property in his natural family, as against collaterals, but does not succeed in the presence of his natural brothers.[1]

Nor, on the other hand, does the heir acquire a right to succeed to the collateral relatives of the person who appoints him, where no formal adoption has taken place, inasmuch as the relationship established between him and the appointer is a purely personal one.[2]

He cannot, however, relinquish his status.[3]

Nor can he be disinherited for misconduct, disobedience, or neglect to support his adopted or *quasi*-adopted father ; nor can the latter subsequently resolve or repudiate the adoption or appointment once lawfully made.[4]

The appointed heir succeeds to all the rights and interests held or enjoyed by the appointer, and, *semble*, would succeed equally with a natural son subsequently born.[5]

On the death of the appointed heir his male issue succeeds, and in default of such issue his widow takes his estate on the usual life-interest.[6]

In the event of his dying childless (sonless, *vide* 8 Lah. 584 at p. 592), and leaving no widow, the estate which he inherited from the person who appointed or affiliated him passes (1) to his own natural heirs if the estate consists of property over which the appointer had an absolute power of disposal, and (2) to the male collaterals of the appointer's family if the estate consists of property over which the appointer had only a restricted power.[7]

Posthumous son.

Posthumous son is to be treated like an ordinary son of the deceased right-holder.

Illegitimacy.

Section 112 of the Indian Evidence Act provides—

Illegitimate son.

" The fact that any person was born during the continuance of a valid marriage between his mother and any man or within 280 days

1. Rattigan's Digest, para. 48 ; 99 P. R. 1914 ; 45 P. R. 1912 ; 40 P. R. 1914 ; 67 P. L. R. 1911 ; Aggarwala's Customary Law, pages 616, 617.
2. Ibid, para. 49 ; Aggarwala's Customary Law, page 621.
3. Ibid, para. 50 ; Aggarwala's Customary Law.
4. Rattigan's Digest, para. 51.
5. Ibid, para. 52 ; 93 P. R. 1893.
6. Ibid, para. 54.
7. Ibid, para. 55.

after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

This section, however, does not lay down a maximum period of gestation, and therefore it does not bar the proof of legitimacy of a child born more than 280 days after dissolution of marriage. The effect of this section is merely that no presumption in favour of legitimacy is raised, and the question must be decided upon the evidence for and against legitimacy.[1] But the inquiry to be made by a Mutation Officer must necessarily be summary, and so in such a case the Revenue Officer may be justified in referring parties to a Civil Court. He must confine himself to legal presumptions.

Where illegitimacy is alleged, it is for the party alleging it to prove it, particularly if the child has been residing with the deceased, or if the birth was entered in the chowkidar's register of births. The Mutation Officer shall only inquire *summarily* whether the child was born during the continuance of a valid marriage or within 280 days from its dissolution. If the answer is in the affirmative the mutation should be sanctioned in favour of the child ; if the answer is in the negative it should be sanctioned in favour of the ordinary heir.

It has also been laid down that a child born even soon after marriage would be legitimate and the time which elapsed between the marriage and the birth is altogether immaterial for determining legitimacy.[2] Where a child was born 279 days after the death of the first husband of its mother who had by the time of its birth married a second husband, *held*, he was the legitimate son of the *second* husband, and any evidence led to prove that the first husband had access to the woman at a time when the child could have been conceived is wholly irrelevant.[3] If, of course, the woman had remained unmarried the child would have been presumed to be the legitimate son of the *first* husband.

Objections under this heading may be of two kinds, *viz.* (1) the fact of marriage or the validity of the marriage of the mother of the child with the deceased may be disputed ; (2) marriage may not be denied, but it may be alleged that (*i*) the child was born so soon after the marriage that he could not be begotten by the deceased, or (*ii*) that the child was born so long after the dissolution of the marriage or the death of the deceased that he could not possibly be the issue of the deceased. The scope of the second objection and nature of inquiry necessary in that case have already been noted above. With respect to fact of marriage the Revenue Officer may satisfy himself about it by referring to entry of marriage in the marriage register, if any ; by noting the fact if she bore children and they were entered as of the deceased in the birth register ; if the couple was treated as husband and wife by the brotherhood, and the like. This objection, it may be noted, should not be given undue weight unless there are very strong reasons to hold to the contrary. Mutation should generally be allowed in such a case.

1. 1 P. R. 1884.
2. 79 P. R. 1907 ; 194 P. L. R. 1908.
3. 7 Lah. 368.

It is not the function of the Revenue Courts to give maintenance to the unsuccessful party in mutation cases. That is the function of Civil Courts.[1] Maintenance.

Widow.—In the absence of male lineal descendants the widow of the deceased ordinarily succeeds to a life-estate. If there are two or more widows they succeed jointly. On the death of one of two co-widows the survivor takes by survivorship, even if she has remarried by *karewa*, provided such re-marriage has not caused a forfeiture of her own share. The circumstance that the husband was joint in estate with others, does not ordinarily deprive the widow of her right to succeed to his share.[2] A widow in possession of her husband's estate succeeds to his collaterals in the same way as her deceased husband would have done, if living.[3]

The widow of a sonless son who predeceased his father, is, in some tribes, permitted to succeed to his share, but the right is not universally admitted, and the onus of proving it lies on the widow who asserts it to exist.[4]

In the presence of a male descendant of the deceased his widow is ordinarily only entitled to suitable maintenance whether such descendant is the issue of the surviving widow or of another wife.[5] In some cases where the hostility of the sons seems to render such a course advisable, a separate portion of the estate is allotted to the widow in lieu of maintenance, but that is not for the mutation officer to decide.

Under the orders of the Financial Commissioners contained in letter No, 4657-R, dated the 21st December 1939 from the Revenue Secretary to the Financial Commissioners to all Commissioners and Deputy Commissioners in the Punjab, whenever a mutation is sanctioned of a widow's life-interest in her husband's estate, the words "*ta hin-i-hayat ya nikah-i-sani*" should be incorporated in the mutation order and repeated in all revenue records subsequently prepared.[6]

Amongst Hindus generally, and less frequently amongst Mohammadans, uncondoned adultery in the husband's lifetime deprives a widow of her right to succeed to his estate ; and her unchastity as a widow sometimes causes a forfeiture of her life-interest in that estate. But the *onus* is on those who assert the existence of a custom sanctioning forfeiture.[7] A mutation officer need not go into such complicated questions and allow those who allege so to establish their right in the competent Court. The mutation officer should not entertain general allegations of unchastity against a widow unless they are supported by the birth of a child or by some documentary evidence. Then he should proceed to inquire into the tribal custom on the fact of unchastity and its effect.[8] Unchastity.

In the absence of custom, the re-marriage of a widow causes forfeiture of her life-interest in her first husband's estate, which then reverts to the nearest *heir* of the husband.[9] But though in the presence Re-marriage of the widow.

1. Tara Singh and others *v.* Mst. Iso and others=1929 L. L. T. 48.
2. Rattigan's Digest of Customary Law, paras. 11 to 14; Aggarwala's Customary Law, page 325.
3. 32 P. R. 1915 ; 121 P. R. 1916.
4. Rattigan's Digest, para. 9 ; Aggarwala's Customary Law, page. 385.
5. Rattigan's Digest, para. 16.
6. Mohd. Aslam Khan *v.* Mst. Irshad Begam =(1941) 20 L. L. T. 104.
7. Rattigan's Digest, para. 31 ; Aggarwala's Customary Law, page 380,
8. Ibid, para. 32.
9. See 90 P. R. 1888 ; 76 P. R. 1901 ; 74 P. R. 1910.

of the widow of the deceased owner, his mother is only entitled to maintenance, after the death or re-marriage of the deceased owner's widow, his mother would succeed to a life-interest.[1]

When the widow admits her re-marriage the matter is settled and the mutation must be sanctioned in favour of the person next entitled to succeed. When the widow denies her re-marriage, the question is how far the Revenue Officer should make inquiry to ascertain the fact of re-marriage ? In such a case mutation applied for against her should ordinarily be refused unless there are clear circumstances to prove her re-marriage. The birth of a child at a time longer than nine months after the death of the husband may be sufficient to prove re-marriage, or at any rate, unchastity, which as already pointed out above, among some tribes terminates the interest of a widow in the land.

The form of marriage is immaterial. *Karewa* or *Chaddar andazi* is the most common form. When a marriage is proved in fact the presumption is always in favour of its being good in law.[2] Ceremonies are not generally necessary to validate a marriage and co-habitation for a long time will suffice to presume marriage. The essential thing is intention to live as husband and wife.[3] The Revenue Officer may well direct his inquiry regarding the points specified on page *supra* and decide accordingly. He need not go further. It has even been laid down in *Mst. Hayat Bibiv. Jalal Din and others*[4] that the mere fact of a widow having remarried does not entitle the reversioners to have her name expunged from the revenue records, if although the fact of remarriage is admitted the law is in dispute.

Mother.—In default of male lineal desendants and of a widow, the mother of the deceased succeeds to a life-interest, provided she has not remarried.[5] She succeeds not as the mother of her son, but as the widow of her husband, *i e.*, the father of the son.[6]

Where a man was succeeded by his minor son who subsequently died while still a minor without issue, it was held that his grandmother, who would have succeeded her husband if he had died without issue, was entitled to succeed in preference to the boy's grand-uncle.[7] This decision proceeded on the general principle governing succession to an estate amongst agriculturists, that where the male line of descendants dies out it is treated as never having existed, so that succession is then reckoned with reference to the last male owner who died leaving descendants.[8]

A step-mother generally does not inherit with a step-son.[9]

Daughter.—A daughter only succeeds to the ancestral landed property of her father, if an agriculturist, in default—

(1) of male lineal descendants, widow and mother of the deceased owner ; and

1. 4 Lah. 392 at pp. 397, 398; 8 Lah. 139 at p. 143.
2. 72 P. R. 1908.
3. See 50 P. R. 1900 ; 54 P. R. 1900 ; 65 P. R. 1911 ; 115 P. R. 1900 ; 73 P.R. 1897 ; 48 P. R. 1890 ; 35 P. R. 1889.
4. 1924 L. L. T. 11.
5. Rattigan's Digest, para. 22 ; Aggarwala's Customary Law, p. 391.
6. 322 P. L. R. 1913 ; see also 117 P.R. 1888 ; 64 P. R. 1910 ; 46 P.R. 1914.
7. 171 P. R. 1888.
8. See 146 P. R. of 1889 ; pages 500, 501 ; 117 P. R. 1888 ; and 134 P. R. 1907 (F. B.).
9. See No. 341 of 1880 ; 46 P. R. 1891 ; 153 P. R. 1889 ; 322 P. L. R. 1913 ; 5 Lah. 274 ; 61 I. C. 893.

(2) of near male collaterals of her father, *provided* that a married daughter sometimes excludes near male collaterals, especially amongst Mohammadan tribes :—

(*a*) where she has married a near collateral descendant from the same common ancestor as her father ; or

(*b*) where she has, with her husband, continuously lived with her father since her marriage, looking after his domestic wants, and assisting him in the management of his estate ; or

(*c*) where, being married to a collateral of the father's family, she has been appointed by her father as his heir.

A daughter's son is not recognised as an heir of his maternal grandfather, except in succession to his mother.

(3) But in regard to the acquired property of her father, the daughter is preferred to collaterals.[1]

The seventh degree is sometimes found to be the extreme limit of collateral male relationship which excludes the succession of a daughter.[2] More usually the fifth degree is found to be the customary limit.[3] Where a collateral is more distantly related than the fifth degree, the *initial* onus is on him to prove that he excludes the daughters and the more remote the collateral is the more heavily does the *onus* lie upon him.[4]

In regard to the acquired property of her father, the daughter is preferred to collaterals. The initial *onus*, therefore, is on the collaterals to show that this general custom in favour of the daughter's succession to the self-acquired property of her father has been varied by special custom excluding daughters.[5] Of course, the Revenue Officer is to confine himself only to enquiry regarding entries in revenue records and the *riwaj-i-am*.

Ancestral property means and includes all property inherited from an ancestor common to the deceased owner and the collaterals who claim to succeed in preference to the daughter. Property which has never been held by the common ancestor cannot be regarded as ancestral property in any sense.[6] The ancestral nature of the land is not affected by the fact that a woman takes a place in the line of succession, in as much as she merely acts as a conduit pipe.[7]

In computing degrees in collateral branches the generation commencing with and including the deceased upwards is to be reckoned until the common ancestor is reached, he being also counted and included.[8]

"Acquired property" means property not necessarily acquired by the father himself but includes also property acquired by him or any of his ascendants short of the common ancestor.[9]

The dictum that a daughter's son is not recognised as an heir of his maternal grandfather except in succession to his mother, has been Daughter's son.

1. Rattigan's Digest, para. 23 ; Aggarwala's Customary Law, p. 398.
2. 1922, 3 Lah. 184 at pp. 186, 187.
3. 2 P. R. 1901 ; 5 P. R. 1908 ; 86 P. R. 1908 ; 74 P. R. 1916.
4. 3 Lah. 184 ; 5 Lah. 364 ; 3 L. L. J. 547 ; 75 I. C. 855 ; 6 Lah. 193.
5. 5 L. L. J. 203 ; 3 L. L. J. 453 ; 98 I. C. 881.
6. See 6 Lah. 502 (P. C.).
7. See 7 L. L. J. 190.
8. 126 P. R. 1890 ; 34 P. R. 1891 ; 106 P. R. 1892 ; 74 P. R. 1906 ; 19 P. R. 1912 ; 18 P. R. 1919.
9. 1 Lah. 365.

doubted[1] and it has been been held that the son of a predeceased daughter may succeed to the property of his maternal grandfather to the exclusion of the collaterals.

Unmarried daughters.

Sometimes unmarried daughters are permitted to remain in possession of the father's estate till their marriage.[2] But in such a case that right lapses on her marriage.

When a daughter succeeds her own daughter will also exclude collaterals of the last male proprietor.[3]

On the lineal descendants of the person in whose favour a diversion (of ancestral land) had been made dying out, the land reverts to the male heirs of the last owner before the diversion and not to those of the person who received the land from him.[4]

A *riwaj-i-am* provided as follows :—

"Married daughters do not inherit in the presence of collaterals. This is the general rule but under the influence of judicial decision some people admit that daughters succeed in preference to collaterals, of the 5th or remote degrees."

It was held that mutation should be effected in favour of daughter's son in preference to collaterals.[5]

According to custom a motherless daughter succeeds equally with his father's surviving widows (1931 L.L.T. 51).

Sisters.—Sisters are usually excluded as well as their issue.[6] When a proprietor governed by the customary law of the Punjab dies leaving no sons but a sister the latter cannot for purposes of inheritance be regarded as the daughter of the penultimate proprietor.[7]

Collaterals.—By virtue of the right of representation, whereby descendants to different degrees from a common ancestor succeed to the share which their immediate ancestor, if alive, would succeed to and which presumbly prevails amongst agriculturists, all collateral heirs succeed together and not to the exclusion of each other, whether they were associated with or separated from the deceased. But the right of collaterals to succeed is not a single indivisible right so as to give each collateral right of action for the whole estate. Each collateral is entitled only to his own share.[8]

In the case of collateral succession, in a contest between relations of the whole blood and those of the half-blood, the Court may presume, until the contrary is proved, that—

(*a*) when the property of common ancestor was distributed according to the rule of *chundawand* (per stripes), the whole blood excludes the half-blood ; and

(*b*) where the property of the common ancestor was distributed according to the rule of *pagwand* (per capita), the whole blood and half-blood succeed together.

1. See 8 Lah. 536 ; 74 I. C. 644.
2. See 139 P. R. 1892 ; 18 P. R. 1894 ; 56 P. R. 1899 ; 12 P.R. 1902 ; 2 P. R. 1910 ; 66 I. C. 433 ; 6 Lah. 356.
3. 2 P. R. 1910 ; see also 57 P. R. 1885 and 54 P. R. 1903.
4. 92 I. C. 252.
5. Manzur Ali *v.* Amir Ali Khan and others=1931 L. L. T. 3.
6. Rattigan's Digest, para. 24 ; Aggarwala's Customary Law, page 486.
7. 134 P. R. 1907 ; 4 Lah. 392.
8. Rattigan's Digest para. 25 ; Aggarwala's Customary Law, page 502.

But where the brothers of the whole blood subsequently form separate groups and so regulate succession amongst themselves as to alter the original rule of distribution, (*e.g.*, from *pagwand* to *chundawand*), the presumption arising from the original rule of distribution will cease to operate.[1]

Khanadamad.—A resident son-in-law, or *Khanadamad*, was, under some of the older decisions, recognised as an heir to the father-in-law's estate in default of male issue.

But according to the more recent decisions, it is his wife, as a daugher, and her issue, as grand children, who, by reason of her continued residence with the father after her marriage, are alone intended to be benefitted by custom.

Hence the *onus* lies on the *Khanadamad* to prove that he is entitled to exclude the ordinary heirs in his own right.[2]

Village proprietary body and escheat to Government.—When there are no heirs, agnatic, or cognatic, the question arises whether the village proprietary body should inherit or the land will escheat to the State.

In the event of a proprietor dying without heirs his estate ordinarily escheats to Government. But there is one exception to it. In joint estates, *where a complete community of interest is maintained* the succession of the proprietary body is usually provided for by the *wajib-ul-arz* in such cases.[3]

Escheats.

The principles governing the escheat to the State of property left by heirless proprietors are set forth in Punjab Government Consolidated Circular No. 9 and in the Judgment of the Financial Commissioners in *Wazira and others* v. *Mangal and others* [2 P.R. 1911 (Rev.)]. The following propositions were laid down by Sir James Douie in that case :—

(1) The right of the Crown to claim escheat rests not on Customary or Hindu Law, though Hindu Law recognises escheats, but on grounds of general or universal law.

(2) The right can only arise in the absence of relations entitled by law or custom to inherit.

(3) The right of the proprietary body as a whole to succeed in cases in which it exists is primarily based on real or assumed relationship to the holder of the land, or to the member of the proprietary body from whom his title was derived.

(4) Such a right should be assumed in the case of homogeneous estates or sub-divisions of estates, where the owners are all or nearly all of the same tribe as the last holder of the land or the member of the proprietary body from whom he derived his title.

(5) It should not be assumed in the case of hetrogeneous estates or sub-divisions of estates, held by persons of different tribes or different *gots* of the same tribe. The presumption in such cases is that the State has right of escheat.

1. Rattigan's Digest, para. 26 ; 34 P. R. 1900 ; 33 P. R. 1919 ; 5 Lah. 117; 8 Lah. 127.
2. Rattigan's Digest, para. 27 ; Aggarwala's Customary Law, page 473.
3. Rattigan's Digest, para. 28 ; Aggarwala's Customary Law, page 515.

(6) When the property in the land was originally derived by gift from a member of the tribe of the original proprietary body, the right of that body should be recognised on failure of the donor's and donee's lines.

(7) In any case in which the *wajib-ul-arz* declares the right of the proprietary body to succeed to the land of heirless owners Government should set up no claim.

It has further been held by the Financial Commissioner that escheat should not be claimed for Government when there is a daughter, daughter's son, sister or sister's son.[1]

Thus the proprietary body of a village is not entitled to succeed to the estate of a deceased proprietor dying heirless, where it consists of a hetrogeneous collection of various tribes none of whom can show any connection or relationship whatsoever with the founder of the village or with any member of the original proprietary body.[2] Where no general community in interest between the several land-holders in the village has been preserved, the estate of an heirless proprietor escheats to the Crown and does not devolve upon the proprietary body.[3] *Zamindari* villages afford an instance where a joint community of interests is maintained.

While dealing with the claim of a village proprietary body, therefore, the mutation officer must first satisfy himself that there are no such persons agnate or cognate who are entitled to succeed to the deceased. On being so satisfied he must ascertain he constitution of the village proprietary body inorder to find out whether it is hetrogeneous or homogeneous, and then refer to the *wajib-ul-arz* of the village and study its provisions with respect to succession in such a case, and decide the mutation according to the above remarks. *Riwaj-i-am* may also serve as a useful guide but in this connection it may be noted that *riwaj-i-am* being primarily concerned with the custom prevalent amongst the agricultural tribes in the district the claims of Government to escheat are not generally referred to, and where it is not so provided the provisions should be read subject to this limitation.[4]

In a village divided into *pattis*, *pattidars* have a preferential right.[5]

Where the heirless land concerned being situated in *patti* of a village owned by an utterly hetrogeneous proprietary body, where even the jat proprietary body was of different *gots*, both in the village as a whole and in the *patti* concerned, and the land, having originally been owned by a Jat of a *got*, of which he was the only representative in the village, and having been held after his death by his wife's nephews belonging to a village in another district, *held*, there was no possible claim of succession in the proprietary body of the village or the *patti* as a whole, or in the Jat proprietors separately, and the land reverts to the Crown.[6] Where a proprietor governed by customary law dies

1. Land Administration Manual para. 838 as amended by C. S. No. 28 L. A. M. dated the 20th February 1934.
2. 103 I. C. 274.
3. 100 I. C. 917; 97 I. C. 369.
4. See 9 P. R. 1898; 323 P. L. R. 1913; 61 P.R. 1898; 142 P. L. R. 1913; 235 P. L. R. 1912.
5. 9 P. R. 1898.
6. 2 P. R. 1911 (Rev.); see also 323 P. L. R. 1913.

without heirs his property will go to the proprietors of the deceased's *patti*, provided it is owned by one *got* forming a compact and homogeneous community – a fact from which the Courts may draw a presumption of common descent.[1]

Rules for division when escheat to the village proprietary body exists.

Where the proprietary body does succeed on the extinction of a line, the property goes to all proprietors in the *thulla* or *patti* of one tribe.[2] Where land is in a *thulla* within a *patti*, and the *thulladars* are in possession, the *pattidars* have no right as against the *thulladars*.[3] When there are no *pattis*, or other sub-divisions, the land will escheat to the proprietary body as a whole.[4]

In villages where the *adna maliks* are the real proprietors, the *ala maliks* being merely *talukdars* receiving a certain percentage on the revenue, the latter does not succeed to the *adna malkiat* when the line of the *adna malik* has become extent.[5] It will obviously escheat to Government.

Preference of sisters and daughters over proprietary body.

Whatever rights the village proprietary body may ordinarily have, they have never been given preference to a daughter.[6] In 65 P. R. 1918 and 1 L. L. J. 46 a sister and sister's son were held to exclude a village proprietary body or Government in a hetrogeneous village. Similarly, it has been held in 100 I. C. 917 that both under custom as well as under Hindu Law, a sister is entitled to succeed in preference to the proprietary body. *See* also 136 P. R. 1884 ; 28 P. R. 1904 ; 85 P. R. 1916. *Wajib-ul-arz* will generally throw much light on this point.

Abandonment.—Death and intentional abandonment are both facts. As regards intentional abandonment the proof of this would scarcely ever be direct proof of a specific declaration to this effect. It would almost invariably be a fact to be gathered and inferred from conduct ; and actual abandonment, if sufficiently prolonged and continous, does, under the general power given by section 114, justify the Court in presuming, *i.e.*, regarding as ' proved ' the element of *intention*, in the absence of explanation warranting a contrary inference. The fact of intentional abandonment if thus held legally as " proved " to have occurred, this does, under section 37 (*a*) of the Land Revenue Act, justify the making of an entry in accordance with that fact.[7]

In cases of abandonment the determining factor is the *animus revertendi* ; in other words the intention to return. If the owner leaves the land without any intention of returning, it constitutes abandonment. But if he intends to return there is no abandonment.[8] Intention, however, is not a tangible thing. It can only be inferred from

1. 323 P. L. R. 1913 ; see also 18 P. R. 1910 ; 102 P. R. 1906 ; 26 P. L. R. 1904 ; 61 P. R. 1898.
2. 85 P. L. R. 1912.
3. 57 P. R. 1912 ; see also 235 P. L. R. 1912.
4. See 235 P. L. R. 1912.
5. 5 Lah. 382 ; see also 80 I C 264 ; 97 I. C. 369.
6. Punjab Custom by Ellis, page 79 ; see 31 P. R. 1867 ; 136 P. W. R. 1908 ; 11 P. R. 1911 ; 102 P. R. 1906 ; 57 P. R. 1912.
7. See the opinion of the Government Advocate on this point quoted in para. 280 of the Settlement Manual and Financial Commissioner's Circular No 1, dated 13th March 1806, which was superseded by Circular No. 2, dated 3rd June 1913.
8. 44 P. R. 1917=39 I. C. 163=1 P. W. R. 1917=51 P. L. R. 1917.

circumstances. The following are some of the facts or circumstances which may give an inference of abandonment—

1. Long absence coupled with entire severance with the land.[1]

2. Residing in or near the village in which the land is situate for a number of years without claiming re-entry.[2]

3. Giving consent of the removal of his name from the revenue records.[3]

4. Failure to object to partition of his land.[4]

5. Permitting the occupiers to mortgage his land.[5]

6. Entering service other than agricultural coupled with long absence and occasional visits to the ancestral land without claiming re-entry.[6]

7. Acceptance of a small portion of land in the same village for cultivation as a tenant.[7]

8. Leaving land in possession of a person not related to the owner and having no concern for 20 years and living in another village 7 or 8 miles off and cultivating other land there.[8]

9. Evacuation of whole of property and departure from village for good by ancestors.[9]

No abandonment by mere absence from possession.

It must be clearly noted that mere absence from possession is not abandonment. The possession of one co-sharer is in law the possession of all the co-sharers and therefore mere non-participation in the profits by one and exclusive occupation and enjoyment of the joint property by the others is not *per se* adverse possession.[10] To constitute adverse possession, there must be a disclaimer of the other's right by an open assertion of an hostile title on the part of the co-sharer setting up adverse possession and notice thereof to the others.[11]

When a person claims any title on the ground of adverse possession the mutation of *ghair-kabiz* should be made, and disposed of as shown below and on page 212 (*see* 1932 L. L. T. 141).

Merely allowing the land to be waste, in the absence of motive or intention to abandon, does not constitute abandonment.[12] Similarly, there can be no abandonment when there has been a promise to restore the land on the absentee's return.[13]

1. 49 P. R. 1876; 29 P. R. 1910=61 P. L. R. 1910=17 P. W. R. 1910=5 I. C. 888; 72 P. L. R. 1913=33 P. W. R. 1913=19 I. C. 3.
2. 78 P. R. 1875; 118 P. R. 1893; 38 P. R. 1878.
3. 18 P. W. R. 1911=29 P. L. R. 1911 supp.=9 I. C. 925.
4. 114 P. R. 1880.
5. 72 P. L. R. 1913=33 P. W. R. 1913=19 I. C. 3.
6. 153 P. R. 1871.
7. 34 P. R. 1874; 15 P. R. 1873.
8. 72 P. L. R. 1913.
9. 96 P. R. 1919.
10. 1929 Lah. 549; 118 P. R. 1889; 39 P. L. R. 1906=40 P. W. R. 1906; 64 P. R. 1918 P. C.=58 P. W. R. 1918=47 I. C. 626; 56 I. C. 169.
11. 48 P. L. R. 1910=13 P. W R. 1910=5 I. C. 840; 120 P. R. 1908=18 P. L. R. 1909=4 I. C. 912; 12 P. R. 1899; 1929 Lah. 579; 1922 P. C. 84.
12. 117 P. L. R. 1917=161 P. W. R. 1917=42 I. C. 412; 53 P. R. 1907; 49 P. R. 1884.
13. 4 P. R. 1871; 150 P. R. 1908; 5 P. R. 1871; 68 P. R. 1874; 87 P. R. 1875; 43 P. R. 1901.

While dealing with cases relating to abandonment the Revenue Officer will be well advised to pay special attention to the following remarks under the heading "Absentees."

Question of exclusion of names of absentees.—According to sections 107 and 108 of the Indian Evidence Act when the question is whether a man is alive or dead and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it :

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Like 'abandonment,' therefore, if the fact of death be held as 'proved' to have occurred, this does, under section 37 (*a*) of the Land Revenue Act justify the making of an entry in accordance with that fact.[1]

Existing rules on the subject.—The existing rules on the subject are as follows :—

(1) When a right-holder entered in the record of rights or annual record whether he is or is not described therein as an absentee (*ghair hazir*) or as out of possession (*ghair kabiz*), has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the officer attesting a mutation may (unless he sees reason to the contrary) presume that he is dead and pass orders on the case accordingly ; but before ordering the omission of his name from the record of rights or annual record such officer should satisfy himself that all reasonable endeavour has been made to ascertain whether the absentee is alive and to give him an opportunity of appearing.

(2) When a right-holder entered in the record of rights or annual record as *ghair hazir* or *ghair kabiz* has been heard of within seven years, but has been so entered for more than 12 years, the patwari shall enter the case in his register of mutations and shall report it to a Revenue Officer. The Revenue Officer to whom the case is reported shall enquire into the question whether the right-holder has abandoned the land or his interest therein. All reasonable endeavour shall be made to give the right holder an opportunity of appearing and stating his claim. Direct evidence of an intention of abandonment will rarely be forthcoming ; but the intention of the right-holder may be inferred from what can be ascertained in regard to his conduct. Long absence coupled with entire severance from all concern with the land or interest is a strong circumstance to be taken into consideration in determining whether there has been abandonment or not. If the Revenue Officer finds that the right-holder has abandoned the land he shall pass an order accordingly :

Provided that, if the right-holder was a minor when first recorded as *ghair hazir* or *ghair kabiz*, no such order shall be passed until it appears that he is, or if still living would be, thirty years of age.

(3) No new entry of any one as *ghair hazir* should be made. A right-holder should not be entered as *ghair kabiz* if he is himself in legal or constructive possession or when he has put some one else in

1. See para. 280 of the Settlement Manual.

possession on his behalf, or the land is lying waste, or he is by reason of poverty unable to cultivate it. A familiar instance would be where a sepoy has left his land in his brother's possession while he is with his regiment. In such a case the sepoy should be *entered* as in possession of the land through his brother. An entry of *ghair kabiz* should not be made unless some other person than the right-holder is in adverse possession.

(4) No effect shall be given to any order (1) directing the omission from the record of the name of a right-holder who has been entered as *ghair hazir* or *ghair kabiz*, or (2) directing the entry of a right-holder as *ghair kabiz*, until such order has even confirmed by the Collector or Revenue Extra Assistant Commissioner.

(5) All such orders shall be preserved as orders sanctioning mutations in the records.[1]

See also remarks on page 212 to the same effect.

The *jamabandi* provides one column for the owner and another for the cultivator. It does not provide for any one being in possession except as owner (which includes mortgagee with possession) or as cultivator (under which is included a tenant or lessee who arranges for the cultivation through inferior tenants) unless the owner is explicitly declared to be *ghair kabiz* in which case the person in possession is shown not in the column of cultivation, but in that of ownership as *ghair malik kabiz* and the owners as *malik ghair kabiz*. If a person other than one of the owners (including mortgagees with possession) shown in column 4 who is not the actual cultivator of the land claims to appear in column 5 the patwari should enquire by what right he claims. If he says he is an intermediary tenant of the owner the mutation may be entered up in column 5 to be accepted or rejected as facts may show. But if he claims adverse possession or to be a trespasser his claim should be treated as a mutation of *ghair kabiz* in column 4.[2]

This ruling does not prevent one of the owners being shown in column 5 as the person to whom rent is paid because the possession of one is the possession of all. Nor does it prevent a tenant who arranges for the cultivation through sub-tenants being shown in this column. But it does prevent what are really mutations of *ghair kabiz* appearing in the guise of mutations of cultivating possession.[3]

In this ruling the case related to a mutation of change of cultivation in respect to certain land which fell to A and others on partition which was disputed by S and others, but effect to the partition was given by a mutation, the land being at that time uncultivated. S objected that he was in cultivating possession of this land through his sub-tenants and the Revenue Assistant sanctioned the mutation accordingly. It was held that the mutation must be set aside as being bad in form.

Note.—The practice has in the past existed of making a note in the rent column (column 9) against the entry of a tenant-at-will of *bila lagan ba waja tasawwar malkiyat*. This entry, which tends to operate as one of *ghair kabiz* in respect of the owner should never be made. It is in the first place inconsistent because a person who is a tenant cannot

1. Settlement Manual, para. 281.
2. Ch. Udha Mal and others *v.* Mst. Mewa Bibi and others=1932 L. L. T. 47.
3. Ibid.

be in adverse possession; further the record is one of facts and not of claims. If the facts show adverse possession the mutation of *ghair kabiz* should be made, and disposed of as shown above.[1]

The same remarks apply to the entry "*lagan bashara malikan bawaja tasawwar rahan.*"[2]

Forfeiture cases.—The principle on which a widow by remarriage or otherwise or any other female coming into the line of succession by marriage or otherwise looses her right has already been described on pages 249 and 250 and may be referred to. When her right terminates, it will go to person next entitled to succeed and mutation should be disposed of accordingly.

The attention of all officers is drawn to the judgment of the Chief Court reported as Punjab Record 8 of 1908, the summary of which is as follows:—

"Held, by a majority of the Full Bench (Johnstone J. dissenting) that where ancestral immovable property held by a person subject to Punjab Customary Law is attached and sold by order of a Criminal Court under section 88 of the Code of Criminal Procedure, the sale conveys the life interest of that person only and does not extinguish the right of inheritance after his death of his male lineal descendants or of collaterals descended from the original holder of the property."

Sometimes the land so sold is purchased in the *bona fide* belief that full proprietary rights are being conveyed. Care should be taken to make it clear in all announcements of such sales, and at the time of sale that a life-interest only is being sold.[3]

Succession to right of occupancy.—Section 59 of the Punjab Tenancy Act, 1887, provides as follows—

(1) When a tenant having a right of occupancy in any land dies, the right shall devolve.—

(*a*) on his male lineal descendants, if any, in the male line of descent, and

(*b*) failing such descendants on his widow, if any, until she dies or re-marries or abandons the land or is under the provisions of this Act ejected therefrom, and

(*c*) failing such descendants and widow on his widowed mother, if any, until she dies or re-marries or abandons the land or is under the provisions of this Act ejected therefrom,

(*d*) failing such descendants and widow or widowed mother, or, if the deceased tenant left a widow or widowed mother, then when her interest terminates under clause (*b*) or (*c*) of this sub-section, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives:

Provided, with respect to clause (*d*) of this sub-section, that the common ancestor occupied the land.

1. Ranbhir Singh *v.* Lehna Singh=1932 L. L. T. 141; see also para. 7·41 Land Records Manual, Chapter VII (page 36).
2. Ibid.
3. See para. 839 of the Land Administration Manual.

Explanation.—For the purpose of clause (*d*), land obtained in exchange by the deceased tenant or any of his predecessors-in-interest in pursuance of the provisions of sub-section (1) of section 58-A shall be deemed to have been occupied by the common ancestor if the land given for it in exchange was occupied by him.

(2) As among descendants and collateral relatives claiming under sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.

(3) If the deceased tenant has left no such persons as are mentioned in sub-section (1) or when his right of occupancy may devolve under that sub-section, the right shall be extinguished.

The following points are to be remembered in this connection :—

(1) Succession to an occupancy tenancy is governed not by custom applicable to the parties or by their personal law except as provided in sub-section (2), but by the above provisions laid down in section 59 of the Tenancy Act, 1887. Thus the statement of custom in a *wajib-ul-arz* cannot ove-ride section 59 of that Act.[1]

(2) The provisions of the Punjab Tenancy Act in regard to succession to an occupancy tenancy may be over-ridden by an agreement valid according to the provisions of sections 111 and 112 of that Act.[2]

(3) There is no reversion to donor's line on the line of donee becoming extinct.[3]

(4) There is no power in the occupancy tenant to dispose of the occupancy tenancy by a will taking effect after his death.[4]

(5) A mere customary adoption or appointment of an heir, whether amongst Hindus or Mohammadans, does not bring the adopted son within the term " lineal descendant " as understood in section 59 of that Act, but there should be full adoption equivalent to an adoption under the Hindu Law, that is, the adoption should have the effect of severing the connection of the adoptee with his natural family and transplanting him into the new family of the adopter.[5] It is only in this case that an adopted son will be taken as a ' male lineal descendant in the male line of descent. '

(6) The chela of a deceased *fakir* is not a ' male lineal decsendant ' of the *fakir*, and as such cannot succeed to occupancy rights recorded in the name of the deceased personally.[6] But where the occupancy rights vest in a religious institution the chela of the last incumbent who has become *mahant* of the institution is entitled to succeed to those rights in his representative capacity as head of the institution.[7]

1. A. I. R. 1929 Lah. 778 ; A. I. R. 1921 Lah. 27 ; 50 P. R. 1910 ; 52 P. R. 1906 ; 97 P. R. 1909.
2. 2 P. R. 1919 (Rev.) ; 130 P. R. 1907 ; A. I. R. 1931 Lah. 371 ; 36 P. L. R. 31 ; 19 P. R. 1917.
3. 113 P. R. 1913.
4. A. I. R. 1933 Lah. 400.
5. A. I. R 1930 Lah. 764 ; 5 P. R. 1913 (Rev.) ; 43 P. R. 1895.
6. 22 P. R. 1896 ; A. I. R. 1930 Lah. 764.
7. 2 P. R. 1907 (Rev.) ; 1932 L. L. T. 4.

(7) Illegitimate son, *khanadamad*, or daughter's son are not entitled to succeed.[1]

(8) In the case of male collateral relatives in the male line of descent from the common ancestor of deceased tenant and those relatives, it is essential to show that the common ancestor occupied the land, and the burden of proving so lies on the collateral. From their having taken possession of the land it cannot be inferred that the collaterals were entitled to succeed.[2] The Mutation Officer should consult the pedigree table and other revenue records with the patwari on this point, and decide accordingly. He need not go further and leave the aggrieved party to establish his claim in a competent Court.

Succession under the Punjab Colonization of Government Lands Act, 1912.—Once proprietary rights are acquired the ordinary law of succession applies. There is no provision as to succession in the Colonization of Government Lands (Punjab) Act, 1912, relating to proprietors, the provisions to succession being confined to succession to tenancies except, as we shall presently note, in one small particular.

Succession to colony grants after proprietary rights have been acquired.

Succession to colony grants before proprietary rights have been acquired.

S. 20. Subject to the proviso to section 14, when after the commencement of this Act, any original tenant dies the succession to the tenancy shall devolve in the following order upon—

Successor to original tenants.

(*a*) the male lineal descendants of the tenant in the male line of descent. (The term "lineal descendants" shall include an adopted son whose adoption has been ratified by a registered deed) ;

(*b*) the widow of the tenant until she dies, or re-marries or loses her rights under the provisions of this Act ;

(*c*) the unmarried daughters of the tenant until they die or marry, or lose their rights under the provisions of this Act ;

(*d*) the successor or successors nominated by the tenant by registered deed from among the following persons that is to say, his mother, his married daughter, his daughter's son, his sister, his sister's son, and the male agnate members of his family ;

(*e*) the successor or successors nominated by the Collector from among the persons enumerated in clause (*d*) of this section.[3]

S. 21. When, after the commencement of this Act, any male tenant, who is not an original tenant, dies, or any female tenant dies, marries, or re-marries, the succession to the tenancy shall devolve—

Succession to tenants acquiring by succession and to female tenants.

(*a*) in the case of a female, to whom the tenancy has been first allotted, on the successor nominated by the Collector from

1. 15 P. R. 1918 ; 44 P. R. 1885 ; 40 P. R. 1894 ; 46 P. R. 1914.
2. A. I. R. 1927 Lah. 534 ; A. I. R. 1929 Lah. 198.
3. Section 20 of the Colonization of Government Lands (Punjab) Act of 1912.

the issue of such female tenant, or from the male agnates of the person, on account of whose services the tenancy was allotted to her ;

(*b*) in all other cases on the person or persons, who would succeed if the tenancy were agricultural land acquired by the original tenant.[1]

Acquisition of ownership not to affect nomination of heir.

S. 22 (1) When a tenant has nominated a successor to his tenancy under section 20 (*d*) and subsequently acquires a right of ownership in the tenancy, the right of succession of the person so nominated shall, unless the deed of nomination expressly provides to the contrary, be unaffected by such acquisition of ownership.[2]

Revocation of nomination.

S. 23. When a tenant has, under section 20 (*d*) of this Act nominated a successor, he may at any time, whether before or after acquiring ownership, revoke such nomination but not otherwise than by registered deed.[3]

Note.—(1) " Original tenant " means any male to whom a tenancy is first allotted by the Collector, and includes the male transferee of such a tenant and any male nominated by the Collector in accordance with the provisions of section 21 to succeed a female to whom a tenancy was first allotted.[4]

Position of tenants holding hitherto under Act III of 1893.

[5](2) Any person, who at any time before the commencement of this Act, was a tenant from the Crown of land to which the Government Tenants (Punjab) Act, 1893, applied and for which a statement of conditions was issued under that Act, shall, notwithstanding any previous agreement or anything contained in the Punjab Tenancy Act, 1887, or any other enactment now in force, be deemed to have accepted and to hold the lands of which he is a tenant in accordance with such statement of conditions :

Provided that unless such tenant shall, by deed executed and registered within twelve months from the date on which this Act comes into force, declare that the succession to his tenancy shall be in accordance with the statement of conditions applicable thereto the succession to his tenancy shall be regulated by the provisions of sections 20, 21, 22 and 23 of this Act.

It has been held in *Mst. Alam Khatun* v. *Mehr Wali Mohd.*[6] that Revenue Officers in mutation proceedings have a responsibility to ensure that as far as possible the revenue records are correctly maintained, and especially in the case of colony tenancies governed by statements of conditions and executive orders of Government, it is the duty of Revenue Officers to examine carefully all Government records that may be available at whatever stage the attention of such Revenue Officers is directed to the existence of such record he should not refuse to inspect them on the ground that they were not placed before officers below.

Mutation in village sites in canal colonies.—Changes in village sites are not recorded by means of mutations until a standing record-

1. The Colonization of Government Lands (Punjab) Act of 1912, section 21.
2. Ibid, section 22.
3. Ibid, section 23.
4. Ibid, section 3.
5. Ibid, section 14.
6. (1941) 20 L. L. T. 130.

of-rights has been compiled. A tenant does not acquire a right of occupancy in his site and, until proprietary rights have been obtained, the formal orders should only record changes in possession or occupation of the compounds. The land remains the property of Government, and transfers strictly speaking, can be made only of the house materials until proprietary rights have been acquired.[1]

Succession to revenue grants.—When the holder of a jagir or muafi dies, the patwari has to make a special report, which finally reaches the Deputy Commissioner, who passes an order as to the succession after referring to the entry in the file or register containing the conditions, relating thereto. The order is then forwarded to the Revenue Officer for sanction of the mutation accordingly. Care has to be taken that lapses of such grants are duly noted as they occur, and that they are not continued to persons not entitled to them.

In many instances a temple, shrine or other religious institution, which enjoys a muafi has a manager whose name appears in the ownership column ; on the death of such a person his successor is appointed by the supporters of, or worshippers at the institution. Government merely interests itself in the proper maintenance of the land and buildings of the institution which enjoys the muafi and in the case of mismanagement a threat to abolish the grant will usually have the desired effect : it does not concern itself with the appointment or dismissal of the manager beyond recording the name of a new, in place of an out going incumbent. Some officers consider that the name of the manager should not appear at all in the record, and that only the name of the institution should appear : but this leads to difficulty in communicating orders and collecting the revenue. It is, therefore, desirable to record the name of the manager for the time being in the remarks column or in the column of cultivation, and to alter it from time to time as occasion requires.

Will.—When in mutation proceedings the question of succession to the property has arisen by reason of death and it is sought to prove that the title has devolved under a will, *the case is nevertheless to be treated as a disputed case of inheritance to be decided after a summary inquiry into the title in which inquiry the validity of the will should receive its proper consideration.*[2] The Financial Commissioner observed—"What apparently lies at the basis of the Collector's view is what is said in *Ghulam Mohammad* v. *Mst. Zawaro*[3] that in a case when possession has taken place in pursuance of a transfer the mutating officer should sanction mutation irrespective of Customary Law considerations. This ignores the vital difference between a will and a transfer *inter vivos*, which is this that in the latter case the rights of the reversioners are not immediately affected while in the case of a will the rights of a legatee and those of reversioners come into immediate conflict."

The registration of will is optional and therefore it is not necessary for the Revenue Officer to give effect to every registered will however clear it may be that the testator had no power to make such will to the prejudice of third parties.[4]

1. Colony Manual, para. 647.
2. Mst. Roshan Bibi *v.* Gulam Mohammad and others=1934 L.L.T. 1.
3. 5 P R. 1912 (Rev.).
4. See 1934 L.L T. 1.

Will, if registered, may be accepted as duly executed. If the will is unregistered and there is no doubt that it was duly executed, it may be acted upon if not clearly contrary to customary law.

Customary Law.

The Customary Law ordinarily recognises no distinction between the power of making verbal or written transfers of property *inter vivos*, nor, where an unrestricted power of transfer is recognised to exist, between a transfer *inter vivos* and one to take effect upon the death of the transfer. The form of alienation is treated as immaterial.[1] The distinction between the power to gift *inter vivos* and the power of testation is a matter of degree and form only, and when the power of gift is shown to exist, an *initial* presumption arises that there is a co-extensive power of testation.[2] If the former is proved to be governed by custom, the latter is presumed to follow.[3]

There is, however, one very important difference, *viz.*, that where a gift has been validly made it is irrevocable, a will is always revocable in the life time of the testator. With this distinction the power to gift and will would appear to be identical.

Will by Males.

There is a general presumption, which is, however, variable, that gifts *inter viovs* or wills affecting ancestral property are invalid under Customary Law.[4] This does not apply to self acquired property.

Will by Females.

(*a*) A female holding a life estate has ordinarily no right of gift, though she may surrender her estate to the reversioner entitled to succeed her. The onus is on her to show she has the right.

(*b*) The same rule applies in regard to wills.

(*c*) The rule applies equally to estates held under gift as to estates held by inheritance.

(*d*) The same restrictions ordinarily apply to gifts of a widow's husband's self-acquired property.[5]

It is also to be noted that delivery of possession is unnecessary to validate a will.[6]

For personal law see Mulla's "Hindu Law" and "Mohammadan Law."

MUTATIONS RELATING TO TRANSFERS.

Possession as evidence of fact "proved to have occurred" counts a good deal in cases of transfer. An alleged contract of sale, mortgage, gift or the like, not followed by possession, when disputed by the alienor who remains in possession, will not be regarded as a "fact proved to have occurred" within the meaning of section 37 (*a*) of the Land Revenue Act, or to adopt the language of Barkely's Directions, "the truth of the transfer" has not been proved.[7] Similarly, if possession has been transferred in pursuance of an alleged contract of sale, mortgage or the like, and the alienor disputes the transfer, it may safely be

1. Rattigan's Digest, para. 56-B ; Aggarwala's Customary Law, p. 671.
2. 48 P.R. 1903 [F.B.] ; followed in 1926, 8 Lah. 149, at page 152 ; See also 1928 Lah. 489=110 I.C. 550.
3. 1928 Lah. 489=110 I.C. 550.
4. Notes as Punjab Customs by Ellis ; 1917 edition, page 155.
5. Ibid, pages 184 and 185.
6. Ibid, page 190.
7. See Ghulam Mohd. *v.* Mst. Zewaro=5 P.R. 1912 (Rev.).

taken as "fact proved to have occurred." Thus, where the vendee is in possession of the land, the mutation officer is not bound to go into the validity of the transaction. He is merely bound to pass an order in accordance with the ascertained facts as to possession as established before himself.[1] The business of a Revenue Officer in mutation is to decide whether a fact has been proved to exist or not. He has no jurisdiction to decide whether it ought to exist. It is the settled practice in mutation procedure that the fact that a transaction is voidable does not prevent a mutation where possession has passed. The principle is that the record has to be altered in conformity with facts proved to exist. A void transfer is not a fact. It has never existed. But a voidable transfer is a fact and exists until it is avoided.[2]

Intricate questions of law and custom are not to be inquired into in cases of transfer also (*see page supra*).

Transfer may be made orally or by a written deed. Again, the written deed may be registered or unregistered. Value of registration in mutation cases and the effect of non-registration of document have already been referred to on the preceding pages. Similarly, it has been previously noticed how far the fact of possession is to be taken into account in these cases (*see page supra*). We shall take up now each case of transfer separately.

Void transfers.—Void transfers are those which are not recognised by law. The common instances of void transfers which a Revenue Officer shall have to deal with are :—

(1) A transfer in contravention of the provisions of the Punjab Alienation of Land Act, 1900.

(2) A transfer by a minor.

(3) A transfer of occupancy rights by a widow.

In the case of void transfers mutation must be refused though the deed be a registered one and possession has passed. Mutation cannot be carried out of a transaction which contravenes an express provision of the statutory law.[1] A void transfer is not a fact. It has never existed.[4] Revenue Officers should refuse mutation of names based on an alienation that is *prima facie* void until a decree (*i.e.*, of a Civil Court) affirming the validity of the ostensible transfer is obtained.[5]

Restrictions on alienation—Transfers in contravention of the provisions of the Punjab Alienation of Land Act.—The relevant provisions of the Punjab Alienation of Land Act, 1900, are as follow :—

Permanent Alienation.

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

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

.....

(*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.

1. Imam Baksh *v.* Wali Mohammad and others=1929 L.L.T. 30.
2. Nathu Ram *v.* Ude Ram and others=1932 L.L.T. 109.
3. 6 P R. 1913 (Rev.).
4. Nathu Ram *v.* Ude Ram and others=1932 L.L.T. 109 ; 1933 L.L.T. 21.
5. Mamanda *v.* Farid=14 P.R. 1901 (Rev.)=177 P.L.R. 1901 ; Ghulam Mohd. *v.* Mst. Zewaro=5 P.R. 1912 (Rev.) ; Mst. Bibi *v.* Mst. Fatima and others =1929 L.L.T. 36 distinguished.

(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—

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

(*ii*) 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.

Note.—(1) The expression " permanent alienation " includes sales, exchanges, gifts, wills and grants of occupancy rights.

(2) " land " means land as defined in section 2 (3) of the Punjab Alienation of Land Act, 1900.

S. 3-A. (1) Except with the sanction of the Deputy Commissioner as provided for in this Act, no member of an agricultural tribe shall make (an alienation) of his land to a member of the same tribe or of a tribe in the same group who being a creditor has advanced to such person any loan, until such loan has been repaid or settled in full by the debtor and a period of three years has elapsed since repayment, or settlement ; provided that if the Deputy Commissioner after making such enquiries from the persons concerned as may be prescribed in this behalf by the Provincial Government, finds that an alienation has been made by a debtor to a person other than his creditor the effect of which is to pass the beneficial interest to such creditor in evasion of the provisions of this section, he shall, after recording his reason by order in writing, declare the alienation void and shall eject any person in occupation of the land by virtue of such alienation and shall place the alienor in possession thereof.

Explanation.—In this section—

(1) " An alienation " means a permanent alienation or an alienation in any form other than those permitted by section 6 of this Act.

(2) The term " creditor " means a person or a firm carrying on the business of advancing loans and shall include the legal representative and successor-in-interest whether by inheritance, assignment or otherwise, of such person or firm.

(3) The term " creditor and debtor " shall be deemed to including their husbands or wives as the case may be and all persons (including their husbands or wives as the case may be) who are descended from the grandfather of such creditor or debtor as the case may be.

(4) The term loan means an advance whether secured or unsecured of money or in kind at interest (as defined in section 2 (6) of the Punjab Regulation of Accounts Act, 1930) and shall include any transaction which a Court finds to be in substance a loan, but it shall not include—

(*i*) an advance in kind made by a landlord to his tenant for the purposes of husbandry ; provided the market-value of the return in kind does not exceed the market-value of the advance estimated at the time of the advance ;

(*ii*) a deposit of money or other property in Government Post Office Bank, or any other Bank, or with a Company, or with a Co-operative Society or with any employer as security from his employees ;

(*iii*) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment;

(*iv*) a loan advanced by or to the Central or any Provincial Government or by or to any local body under the authority of the Central or any Provincial Government;

(*v*) a loan advanced by a Bank, a Co-operative Society or a Company whose accounts are subject to audit by a certified auditor under the Indian Companies Act, 1913;

(*vi*) a loan advanced by a trader to a trader in the regular course of business, in accordance with trade usage;

(*vii*) an advance made on the basis of a negotiable instrument as defined in the Nogotiable Instruments Act, 1881, other than a promissory note.

The terms "Bank," "Company", "Co-operative Societies" and Traders" shall have the same meanings as are assigned to them in section 2 of the Punjab Regulation of Accounts Act, 1930.

S. 6. (1) 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:— **Temporary Alienation.**

(*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 redelivered 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 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 the land tenant subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupuee 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 mort-

gagor 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 ; or

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

(2) If in the case of a mortgagee in form (*c*) 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 ejectment, relinquishment or abandonment, and for such sum of money as the Deputy Commissioner considers to be reasonable.

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

Leases and farms.

Any member of an agricultural tribe may make a lease or farm of his land for any term not exceeding twenty years (accumulatively in case there are more than one at one time or during the currency of the first).[1]

Benami transactions intended to evade the provisions of the Act to be void.

S. 13-A. (1) Where a sale, exchange, gift, will, mortgage, lease or farm purports to be made either before or after the commencement of the Punjab Alienation of Land (Second Amendment) Act, 1938, by a member of an agricultual tribe to a member of the same agricultural tribe or of the tribe in the same group, but the effect of the transaction is to pass the beneficial interest to a person who is not a member of the same tribe or of a tribe in the same group, the transaction shall be void for all purposes, and the alienor shall be entitled to possession of the land so alienated, notwithstanding the fact that he may have himself intended to evade the provisions of this Act.

Explanation.—Any alienation made in consequence of a transaction deemed void by this sub-section shall also be deemed void for all purposes.

(2) If the Deputy Commissioner either of his own motion or on the application of alienor, is satisfied after making such enquiries as may be prescribed from the parties concerned and recording evidence, that an alienation is void under the provisions of the preceding sub-section he shall by order in writing, after recording his reasons eject any person in occupation of the land under such sale, exchange, gift, will, mortgage, lease or farm and place the alienor in possession :

Provided that the Deputy Commissioner may, in ordering the ejectment of a person who is a *bona fide* transferee for consideration before the 20th June, 1938, and is in occupation of such land, allow to any such person other than the original transferee, compensation for improvements (as defined in section 4 of the Punjab Tenancy Act, 1887) effected by him while in occupation, up to a sum not exceeding in value the consideration for the original transaction.

Such compensation shall be assessed by the Deputy Commissioner on such principles as may be prescribed, and shall be deposited by the alienor and paid to the persons so ejected, in such manner as may be prescribed.

1. Punjab Alienation of Land Act, sections 11 and 12.

(3) For the purpose of enforcing an order under sub-section (2), the Deputy Commissioner may exercise all the powers of a Civil Court conferred by Order 21, Rules 97 and 98 of the Code of Civil Procedure.

Procedure for mutations—

1. (1) These rules may be called the Punjab Alienation of Land Rules, 1939.

The Punjab Alienation of Land Act Rules, 1939.

(2) In these rules unless there is anything repugnant in the context :—the " Act " means the Punjab Alienation of Land Act, 1900.

2. (1) The Deputy Commissioner may direct any Subordinate Revenue Officer to enquire and report whether there is reason to suppose that the provisions of section 3-A of the Act have been evaded.

(2) The officer deputed under the above rule shall, after recording the statements of the parties to the alienation, the *lambardars* of the village and the patwari or the field *kanungo* as the case may be, and after making such further enquiries as he may under the circumstances consider necessary, report the case for the orders of the Deputy Commissioner, forwarding the entire record of the proceedings to him.

Execution—sale of land forbidden.

S. 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.

(2) Notwithstanding anything contained in any other enactment for the time being in force, no land belonging to a member of an agricultural tribe shall, in execution of any decree or order of any Civil or Revenue Court whether made before or after the enactment of this sub-section be leased or farmed for a period exceeding 20 years or mortgaged except in one of the forms permitted by section 6. And if the land is already under lease, farm or mortgage, the period of the lease, farm or mortgage made by the Court shall not exceed the period, if any, remaining after the total period of the existing lease, farm or mortgage is deducted from the period of twenty years :

Provided that the period of any lease, farm or mortgage, made by the owner (*a*) subsequent to the institution of the proceedings which have led to the decree or order in execution of which the land is being alienated by the Court or (*b*) within twelve months previous to the institution of proceedings referred to in (*a*) above and proved to be of a fraudulent and collusive character, shall not be so deducted.

(3) Nothing in this section shall affect the right of any Government to recover arrears of land revenue, or any dues which are recoverable as arrears of land revenue, in any manner now permitted by law.

Instructions as to giving or withholding sanction to sale.

The following instructions have been issued by the Financial Commissioners, with the approval of Government, as to the considerations which should influence a Deputy Commissioner in giving or withholding sanction. Subject to the proviso to sub-section (*iii*) below, he need not concern himself with the possible rights of reversioners or pre-emptors :—

(*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 he allowed which will reduce the land he retains to less than is required for the support of himself and his family.

Note.—Deleted by C. S. No. 53-L.A.M., dated the 22nd September, 1937.

(*ii*) Sanction should be given if the Deputy Commissiner 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 officer 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 ;

(*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 only if the Deputy Commissioner is satisfied that the transfer is really advantageous to the vendor and his family, and that the vendor is not able to sell the land to a member of agricultural tribe included in the same group as the vendor at a price which will enable him to attain his object (as substituted by C. S. No. 60-L.A.M., dated the 8th October 1937) ;

(*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 Indian States adjoining Punjab districts somewhat different considerations apply ; and such applications should be dealt with on their merit :

Provided that in cases (*a*), (*b*), (*c*), (*d*) and (*e*) of sub-paragraph (*iii*) no member of an agricultural tribe included in the same group as the vendor has offered, or is ready to offer, a full price for the land.

(The proviso substituted by C. S. No. 40—L. A. M., dated 25th January, 1935).

For the procedure regarding the treatment of mutations of alienations which contravene the provisions of the Punjab Alienation of Land Act, see pages 209 to 211.

Benami transactions. Executive instructions relating to *benami* transfers before the passing of the Punjab Alienation of Land (Second Amendment) Act, 1938, were to the following effect—

"31. (*a*) A transaction which contravenes the provisions of the Land Alienation Act does not cease to be void because it is *benami*, that is, one in which a nominal alienee, a member of an agricultural tribe, as merely an agent of the real alienee, who is not a member of such a tribe ; and mutation of such a transaction should be rejected accordingly. It has been ruled by the Financial Commissioner in P. R. 44 of 1932 that when a non-agriculturist appears to be interested in an alienation permanent or temporary—between two agriculturists the burden of proof for the purpose of mutation proceedings should be upon the alienee to show that the transaction is not *benami*.

(*b*) 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.

(*c*) 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.[1]

(*d*) An entry in a *jamabandi* incorporating a *benami* transaction which contravenes any provision of the Punjab Alienation of Land Act should be corrected after reviewing the orders passed on the mutation concerned."

Legal view before the enactment of the Punjab Alienation of Land (Second Amendment) Act, 1938.

It has been held in *Nathu Khan* v. *Fateh Mohammad*,[2] that it is not illegal for an agriculturist coming in and taking the land of another agriculturist in sale or mortgage, undertaking in exchange to pay the debt due by the mortgagor to a non-agriculturist. In *Dillu* v. *Ram Ditta*,[3] an agriculturist owed some debts to a non-agriculturist. On the death of the debtor his minor son inherited his non-ancestral property. The mother of the minor acting as his guardian mortgaged some portion of the land to an agriculturist who in exchange undertook to pay off the debts of the minor's father. The remainder of the estate was kept intact for the maintenance and up-bringing of the minor. *Held*, that the transaction was binding on the minor. In *Wasinda Ram* v. *Bahadur Khan*,[4] one Mohammad Ramzan, a member of a notified agricultural tribe owed about Rs. 2,000 to Wasinda Ram and others, the petitioners. In order to recover their debt the petitioners arranged with Bahadur Khan that Ramzan's land be mortgaged to him and he undertook to pay Rs. 2,000 to the petitioners. Accordingly, in

1. Financial Commissioner's Standing Order No. 1, para. 31 as amended by C. S. No. 1267-S. O., dated 19th October, 1932.
2. A. I. R. 1939 Lah 395.
3. A. I. R. 1937 Lah. 696=39 P. L. R. 538=168 I. C. 973.
4. A. I. R 1934 Lah. 434=35 P. L. R. 361 = 152 I. C. 224; see also Jahan Khan *v.* Dala Ram=142 P. R. 1907 ; Haidar *v.* Fateh Khan=A. I. R. 1917 Lah. 71=37 I. C. 193 ; Ladha Singh *v.* Ahmad Yar=60 I. C. 463 relied on in A. I. R. 1928 Lah. 202 ; see also Author's Agrarian Legislation in the Punjab, Vol. I, pages 229—233.

July 1927 mutation of the land was effected in favour of Bahadur Khan as mortgagee, and he made an entry in the petitioner's *bahi* undertaking to pay them the amount which Ramzan owed them. It was alleged that the petitioners had been in actual possession of the land and had enjoyed the produce all along. *Held*, that there is nothing illegal or opposed to public policy in one agriculturist taking the land of another agriculturist on mortgage undertaking in exchange to pay off the debts due by the mortgagor to a non-agriculturist.

View held by the revenue authorities—mutations.

The duty of a Revenue Officer in attesting a mutation is under section 37 of the Land Revenue Act to ascertain whether a fact is established. As void transaction is not a fact, *and a mortgage in contravention of section 6 of the Land Alienation Act must be regarded as void*, therefore the Revenue Officer is bound to enquire whether the mortgage is in contravention of the Act, and is particular whether it is *benami*, and to come to a conclusion one way or the other. Some guidance to Revenue Officers is given in Standing Order No. 1, 41 (*d*) where it is said that where 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, mutation should not be refused. On the other hand, sub-clause (*c*) says that where a Revenue Officer has reason to suspect a *benami* transaction mutation in the first instance should always be refused. The Revenue Officer must come to the best possible conclusion one way or the other as to whether the transaction is or is not *benami*. Translated into legal language sub-clause (*c*) may be taken to mean that where a non-agriculturist appears directly interested in the transaction, the burden of proof lies on the mortgagee to show that the transaction is not *benami*. For the purpose of mutation proceedings a transaction by which an agriculturist genuinely accepts responsibility for a debt due by a second agriculturist is not to be regarded as *benami*. But it follows from the first proposition that the burden of proof lies upon the person who desires to show the genuineness of the transaction.[1]

In *Imam Baksh* v. *Wali Mohammad and others*[2] the Financial Commissioner observed—" It appears to me that what happened was that Wali Mohammad bought the land from Imam Baksh and agreed to discharge the latter's debt to Isar Mal. This transaction did not itself offend against the provisions of the Alienation of Land Act. There is nothing to prevent a non-agriculturist creditor obtaining satisfaction of his debt by means of such a transaction, and it is a relevant fact that at no stage of the case was the objection put forward on behalf of the vendor that the sale was in actual fact to Isar Mal and not to Wali Mohammad.....As regards possession the Naib Tahsildar's order of the 10th of July states definitely that the vendee is in possession of the land. In the circumstances, the mutation officer was not bound to go into the validity of the transaction."

In *Mula* v. *Sohan Singh*[3] the learned Financial Commissioner observed :

" A transaction is *benami* if the beneficial interest passes not to *soi distant* mortgagee but to the non-agriculturist usually a banker or money-lender concerned. The " beneficial interest includes certainly

1. Kala *v.* Dullah=1933 L. L. T. 21.
2. 1929 L. L. T. 30.
3. (1941) 20 L. L. T. 1.

the rents and profits of the land and in most if not in all cases the control of the land. But a transaction between two agriculturists is not *benami* only because a money-lender has derived some benefit from the transaction. If that benefit is short of the full beneficial interest, the transaction can still subsist as a genuine mortgage. In certain circumstances one agriculturist may find a profitable investment in taking over a mortgage which is crippling another, who has not the capital or resources of his better equipped fellow agriculturist. The former may conceivably have the same banker as the latter, and that banker may profit by the transaction; but unless substantially the beneficial interest in land passes from the mortgagee to the money-lender or banker, the transaction is not *benami*. A very important detail of evidence in all such cases is the payment of land revenue. In a completely *benami* transaction revenue is collected by the *lambardar* from the money-lender, to whom the beneficial interest has passed: in a genuine transaction the land remains with the mortgagee who pays the land-revenue."

It has been held in *Melu* v. *Gajju*[1] that a decision by a Civil Court that a mortgage by a member of an agricultural tribe is not *benami* in favour of a non-agriculturist given before the coming into force of section 13-A of the Punjab Alienation of Land Act is binding on Revenue Officers.

Changes brought forth by the Punjab Alienation of Land (Second Amendment) Act, 1938.

The key-note of all the cases cited above as representing the view before the enactment of the Punjab Alienation of Land (Second Amendment) Act, 1938 is that a transfer made by a member of an agricultural tribe is not in contravention of the provisions of the Act if the transferee is a member of the same agricultural tribe or of a tribe in the same group and he is in possession of the land, although the alienor might have effected this transaction to pay off debt due to a non-agriculturist or even if no payment is actually made the debt is transferred from the alienor to the transferee and takes the shape of a fresh bond between the transferee and the non-agriculturist money-lender or is secured in any other form The Amending Act of 1938 declares void any sale, exchange, gift, will, mortgage, lease or farm made either before or after the commencement of the said Amending Act, by a member of an agricultural tribe to a member of the same agricultural tribe or of a tribe in the same group, *but the effect of which is to pass the beneficial interest to a person who is not a member of the same tribe or of a tribe in the same group*. A simple illustration of this would be where A, an agriculturist, sells his land to B, another agriculturist of the same tribe or of a tribe in the same group in order to pay off debt due to a non-agriculturist. No consideration for sale passes from B to A. On the other hand, A's debt is liquidated and although B is avowedly the purchaser of this land, the non-agriculturist money-lender is the real purchaser in asmuch as he arranges for the cultivation of the land on his own behalf and enjoys its produce. In such a case the beneficial interest passes to a person who is not a member of the same tribe or of a tribe in the same group.

If, however, B genuinely purchases the same from A on payment of full consideration and A pays the sale money to a non-agriculturist *sahukar* for liquidation of his debt, the transaction will not be in contravention of the provisions of this Act.

1. (1941) 20 L. L. T. 183.

It is to be observed that under this Amending Act, it is the Deputy Commissioner who is to decide whether any transaction is a *benami* transaction or not.

(*See Author's "Agrarian Legislation in the Punjab, Vol. I," pages* 226 *to* 249 where this subject has been fully discussed).

Procedure for mutations.

Note.—Sometimes it happens that a mutation is sanctioned and even incorporated in the *jamabandi* and the fact that it was only *benami* or was in favour of a person who was really belonging to a non-agricultural but represented himself as belonging to an agriculturist tribe and therefore in contravention of the Land Alienation Act, comes to light after lapse of five or six years. What should be the procedure in such a case ?

It will be impracticable and inconvenient to review the mutation after it has been incorporated in the *jamabandi*. What the Revenue Officer should do in such a case is to submit the case to the Deputy Commissioner for orders who should see whether it is really a *benami* transaction or in contravention of the Land Alienation Act, and pass orders accordingly. If the transfer is to be cancelled, fresh mutation can be entered on the basis of the order of the Deputy Commissioner and decided with reference to that order just as in the case of a decree of a competent Court. This procedure is simple and efficacious. It has been held in *Babu* v *Shera*,[1] that where a mutation is found to offend against the provisions of the Punjab Alienation of Land Act, it can still be corrected by simple mutation proceedings.

Transfers by minors and persons of unsound mind

Transfer by a minor and a person of unsound mind.—According to section 11 of the Indian Contract Act, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. The Act makes it essential that all contracting parties should be competent to contract. A contract by a minor is therefore void.[2] Similarly, a person of unsound mind must be held absolutely incompetent to contract.[3]

A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.[4]

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.[5]

Thus the presence or absence of the capacity mentioned above at the time of making the contract is in all cases a question of fact which the mutation officer should try to determine by summary inquiry. In cases of doubt, and especially when possession has been transferred, he should sanction the mutation leaving the aggrieved party to seek remedy, if any, in a Civil Court.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.[6]

1. (1942) 21 L. L. T. 4.
2. See 30 Cal. 539 ; L. R. 30 I. A. 114 ; 39 Cal. 232 ; 13 I. C. 331 ; 22 Bom. L. R. 531 ; 55 I. C. 793.
3. See 17 Mad. L. J. 78 ; 41 P. R. 1912.
4. Section 12, Indian Contract Act.
5. *Ibid.*
6. *Ibid.*

A minor is thus incompetent to enter into a contract and a contract one of the parties to which is a minor, is not merely voidable but is void. *It is not validated by the transfer of possession*, and may not be followed by mutation.[1] When a vendor, though he be major at the date of application for mutation order was minor at the time of sale, mutation should be refused.[2]

What should be the procedure of the Revenue Officer if the transfer is made not by the minor but on his behalf by a person purporting to be his guardian ? The following points are to be taken into consideration :—

(1) If the transfer is made by any guardian appointed by the Court, the mutation should be sanctioned if otherwise duly proved, because the guardian is responsible for his acts to the Court and is considered its officer and the presumption is that he has the permission to do so.

(2) If it is made by any other guardian it would be safe to refuse mutation except in an exceptional case where the transfer is clearly for the benefit of the minor.

There is another interesting case which sometimes arises before a Revenue Officer. Two co-sharers A and B jointly transfer land to C. A is a minor at the date of the transfer. The best course to follow in such a case would be to sanction mutation as if B alone transfers to C *if the parties agree to it*; otherwise it should be sanctioned with respect to B's share alone, with due regard to the considerations mentioned above.

It is not provided anywhere in the Act that a person not competent to contract is incapable of being a transferee of property. It has accordingly been held that though a sale or mortgage of his property by a minor is void, a duly executed transfer by way of sale or mortgage in favour of a minor who has paid the consideration money is not void and it is enforceable by him or any other person on his behalf.[3]

Transfer of occupancy rights by a widow.

Transfer of occupancy rights by a widow.—Sub-section (3) of section 59 of the Punjab Tenancy Act, 1887, provides that ' when the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right by sale, gift or mortgage or by sub-lease for a term exceeding one year.'

It has recently been held by a Full Bench of the Lahore High Court in *Labh Singh* v. *Hassu*,[4] that section 59 (3) of the Punjab Tenancy Act distinctly forbids all alienations of whatever sort by a widow except a sub-lease for a year. Hence an alienation by her in contravention of this provision of is void and not merely voidable, whether it is made in favour of the landlord or a stranger. It follows, therefore, that the reversioners of the widows have a right to get such an alienation declared to be void and, therefore, not binding on them, independently of the question of valid necessity and consideration for the alienation, on which the reversioners can usually challenge an alienation under custom. Section 60 of the Act cannot be taken to make valid what is prohibited positively and in the clearest terms by section 59 (3). It

1. Gulam Mohammad *v.* Mst. Zewaro=5 P. R. 1912 (Rev.).
2. Abdul Haq *v.* Umar Din=1925 L. L. T. 4.
3. See pages 73 and 74 of Mulla's Indian Contract Act, 6th edition.
4. A.I.R. 1940 Lah. 364 (F.B.)=190 I. C. 769 over-ruled=42 P.L.R. 538; 44 P.R. 1917.

is an enabling provision, enacted to make it clear that the landlord has a *locus standi* to intervene and avoid any transfer which has been made in contravention of the provisions of sections 52 to 59. A general provision of this kind cannot in the absence of express words to the contrary, be taken to abrogate by implication the special provision contained in the earlier section relating to widow's alienation.

It was laid down by the Financial Commissioner in 6 P. R. 1913 (Rev.) that in the case of alienation of occupancy rights by a widow mutation could not be carried out of a transaction which contravened an express provision of the statutory law laid down in section 59 of the Act.

Transfer of occupancy rights.

Voidable transfers.—Voidable transfers are those which are not void by law but can be set aside at the instance of one of the parties or of some one else. The common cases of voidable transfers are—

(1) A transfer of proprietary rights by a widow or by a male governed by customary law which can be set aside at the instance of reversioners.

(2) A transfer of right of occupancy by a tenant in contravention of sections 53 and 56 of the Punjab Tenancy Act, 1887.

In mutations relating to voidable transfers if possession has been made over to the transferee in pursuance of the transfer, the fact of transfer should be taken as " proved to have occurred " and mutation should be sanctioned accordingly. If, however, possession has not been transferred mutation should be refused.

In *Ghulam Mohammad* v. *Mst. Zewaro*,[1] an unmarried girl sold some land to a person and her reversioners objected to the mutation on the ground that she was not empowered to alienate. The Financial Commissioner remarked—" There remains the question whether a mutation of sale should be rejected, if or because the mutation officer considers that the vendor has exercised a power of alienation opposed to the Customary Law of the alienor. For three reasons, one of convenience, one of law and one of policy, I consider that *in such cases when possession has taken place in pursuance of the contract, the mutation officer should sanction mutation irrespective of customary law considerations* (*See also page supra*).

Where the vendee is in possession of the land, the mutation officer is not bound to go into the validity of the transaction. He is merely bound to pass an order in accordance with the ascertained facts as to possession as established before himself.[2] The business of a Revenue Officer in mutations is to decide whether a fact has been proved to exist or not ; he has no jurisdiction to decide whether it ought to exist. It is the settled practice in mutation procedure that the fact that a transaction is voidable does not prevent a mutation where possession has passed. A void transfer is not a fact as it never has existed. But a voidable transfer is a fact and exists until it is voided.[3]

1. 5 P. R. 1912 (Rev.).
2. Imam Baksh *v.* Wali Muhammad and others=1929 L. L. T. 30.
3. Nathu Ram *v.* Ude Ram and others=1932 L. L. T. 109.

Where the question is whether the mutation should be refused because a widow has no right to alienate her property, the fact of the alienation being invalid, if the possession has been passed, should not prevent the Revenue Officer from granting mutation.[1]

Mutations relating to transfer of occupancy rights must not be refused simply because the landlord refuses his consent or because the provisions of sections 53 and 56 of the Punjab Tenancy Act have not been complied with, if the transfer has taken place as a matter of fact. If possession has been transferred mutation should be sanctioned.[2]

See also instructions laid down in paras. 7·17 and 7·20 of the Land Record Manual, Chapter VII, (pages 206 and 209).

Mutations relating to sale or mortgage with possession.—In mutations relating to sale or mortgage with possession the fact of transfer of possession will go a good deal in showing whether the fact of sale or mortgage may be taken to have been proved or not. If the possession is with the transferee the fact of transfer may reasonably be taken to have been established and mutation sanctioned accordingly. On the other hand, if the possession is still with the alienor and he denies the alienation, mutation may be refused.

Want of consideration.

Sometimes in these cases the transferer raises an objection before the mutation officer to the effect that consideration money or part of it has not been paid to him or that the transferee has acted fraudulently. The mutation officer is not to go into these questions but he is to ascertain the fact of possession and decide the mutation as indicated above. The aggrieved party may well seek remedy in the proper Court. The general considerations are the same as in other mutations relating to transfers. It may be pointed out that a sale is complete when even a part of the consideration has been paid. The rule of equity is that from the time of the contract for the sale of immoveable property the vendor becomes a trustee of the property for the vendee and vendee becomes a trustee for the vendor in respect of the purchase money.[3]

In the absence of a covenant or stipulation to the contrary a mortgage is complete, or in other words, the "transfer of interest" is effected, not when the consideration for it is paid or made good but when the mortgage contract is entered into, regardless of whether and when the consideration is paid or made good. The presumption would be in favour of immediate transfer but this presumption could be rebutted by proof of an express stipulation to the contrary, or by proof of facts and circumstances from which such a contrary intention might reasonably be inferred.[4]

Collateral mortgages.

A note about collateral mortgages is given in the remarks column of the *jamabandi*, and mutation is therefore entered in case of collateral mortgages also. For hypothecation of land to Government for *takavi* loans also a mutation is similarly entered and a similar note is made in the *jamabandi*. Where land is already mortgaged and the subsequent mortgagee is to redeem it and obtain possession the second mortgage will be shown as a collateral mortgage till then as it creates a charge on the land (*see page* 207).

1. Shrimati Ram Khetri *v.* Kuldip Chand and another=1932 L. L. T. 114.
2. Khushal Das and another *v.* Kesar Singh and others=1932 L. L. T. 18.
3. See 1929 I. C. 116 ; 1925 P. L. R. 369.
4. Allah Ditta *v.* Nazar Din=53 P. R. 1916=A. I. R. 1916 Lah. 155.

In a case of collateral mortgage there is no question of transfer of possession. If the parties admit the transaction, the mutation, of course, will be sanctioned accordingly. If, however, the mortgagor denies it and there is no registered deed or any other document mutation should be refused (*see also page supra*).

A mortgage without possession had been effected by a registered deed. The Tahsildar refused mutation on the ground that the land had been attached This was a mistake of fact, but the Collector rejected the appeal on the ground that the mortgage had simply taken place to defeat the claims of a third party who were plaintiffs in a civil suit. The facts were that the mortgage was effected by a registered deed on the 23rd of June, 1931 ; an injunction was passed on the second of July that the land should not be alienated and mutation was rejected by the Tahsildar on the 28th of July. The Financial Commissioner remarked :—" No injunction existed when the land was actually alienated and it was no part of the Collector's duty to go into the question of the object of alienation. " Mutation was consequently ordered.[1]

A collateral mortgage cannot be entered even in the remarks column of a *jamabandi* without a mutation.[2]

Gifts.

Gifts.— In cases of transfer by gift also fact of possession counts a good deal. A gift to be valid must ordinarily be followed by possession.[3]

It has been held that it is irregular to sanction the mutation of gift without summoning the donor as his consent to the mutation is necessary.[4]

Where the fact of possession having passed is recited in a registered deed of gift the Revenue Officer will presume at least between parties to the deed that the possession has passed and may act on that presumption.[5] But where the fact of possession having been passed is recited in a registered deed of gift but is negatived by a recital in another deed registered before the Revenue Officer is seized of the case, the Revenue Officer would not be justified in sanctioning mutation of the gift merely on the basis of the first deed.[6]

Where a deed of gift is registered after the death of the donor but before the Revenue Officer is seized of the case, the Revenue Officer should act on it and effect mutation, because under section 47, Registration Act, the document operates from the time from which it would have commenced to operate if no registration thereof had been required.[7] Where the donor has made a gift by registered deed of his undivided share in land held jointly by himself and the donee, and the deed recites the fact that possession has passed, the Revenue Officer should enter mutation on the basis of such deed.[8]

1. Nathu Ram *v.* Ude Ram and others=1932 L. L. T. 109.
2. Tara Chand and another *v.* Charan Lal and others=1930 L. L. T. 24.
3. Rattigan's Digest, para. 60 ; Aggarwala's Customary Law, page 709.
4. Mst. Jaswant Kaur *v.* Baljit Singh=1937 L. L. T. 1.
5. Mst. Ram Khetri *v.* Kuldip Chand=1932 L L. T. 114.
6. Nazar Hussain *v.* Ghulam Mohammad=1935 L. L. T. 5 ; 1932 L. L. T. 114 distinguished.
7. Mst. Rahmate *v.* Allah Baksh=1935 L. L. T. 7; 1932 L. L. T. 114 followed.
8. Ibid.

The Revenue Officer is not concerned with the motive of gift. If the gift is proved mutation must follow, unless it is declared invalid by a competent Court. In *Mst. Kishen Kaur* v. *Santa Singh and others*[1] the Financial Commissioner observed :—" It appears highly probable that this gift (by a husband in favour of his wife) has been made in order to save his property from his creditors, but the revenue authorities are not concerned with the motive of the gift, but with the question whether it has been made or not. "

When a transfer by way of gift has been effected, the Revenue Officer should attest the mutation if it has been acted upon and it is not for him to enter into intricate questions of law like a Civil Court.[2] In another case reported as *Lal Singh alias Lal Din* v. *Maluk Singh*[3] the Financial Commissioner remarked :—" I see no reason why mutation should not now be effected in accordance with the gift, the actuality of which transaction is amply attested. The reversioners may sue in the Courts to have the gifts set aside as invalid, but until in such a suit they succeed in proving its invalidity the transaction must be treated by mutation officer as a valid one. "

Thus if possession has been transferred as consequence of gift mutation should be sanctioned, and if the transferer denies the fact of gift and possession has not been made over, mutation should be refused. If both the parties admit the transaction mutation, of course, will be sanctioned.

Exchanges.—When exchange takes place, whether the land concerned is in the same village or in different villages, it is better to take up the connected mutations at one and the same time and decide together. Exchanges.

In cases of exchange mutual transfer of possession is a strong indication of the fact of exchange having taken place, and mutation should be decided accordingly. Where a person backed out of a transfer to which he had agreed and which he had given effect to, it was held that the fact of exchange should be taken as " proved " and mutation sanctioned.[4]

The Revenue Officer is not to go into such questions as that the area of the land taken in exchange is not equal to the area of the land given in exchange or the like.

Leases.—Where an alienation, *e.g.*, a lease has been effected by means of a registered deed, it is the duty of the Revenue Officers in mutation proceeding to give effect to the deed. If there has been a mistake in the deed that mistake can be rectified not by a Revenue Officer in mutation proceedings but in a Civil Court.

Mutations based on decrees or orders of Courts.—A Revenue Officer dealing with a mutation case should always accept a decree of a Civil Court and act upon it. It is not his business to inquire whether it is right or wrong ; nor it is permissible for him to go behind the decision of a Civil Court and reopen matters already decided by competent judicial authorities.[5] Mutation proceedings being of a summary nature, Decrees or orders of Courts

1. 1933 P. C. L. 51 (Rev.).
2. Vir Bhan *v.* Lakhmi Datt and others=1929 L. L. T. 21.
3. 1917 L. L. T. 2=1 P. W. R. 1915 (Rev.)=30 I. C. 839=19 P. L. R. Sup. 1915.
4. Sardar Singh *v.* Lal Khan=1932 L. L. T. 8.
5. 13 P. R. 1901 (Rev.)=41 P. L. R. 1902.

he should decline to go behind the plain language of a decree in force not varied or set aside or superseded by any act of parties or competent authority.[1]

There is an obligation laid on all Revenue Officers to bring the revenue records into conformity with fact and in particular to incorporate therein any final judgments of Civil Courts. Therefore when it is brought to the notice of a Revenue Officer that there is in existence a judgment of the High Court on which a party bases his title he should insist on the production before him of a copy of the judgment in question in order to enable him to satisfy himself as to the rights of parties in accordance with the orders of the High Court.[2]

A Revenue Officer should not in mutation proceedings question the propriety of a decree or order of a Civil Court which is binding on the parties.[3] Even its apparent absurdity is no ground for refusing to recognise it. It is not the function of a Revenue Officer in any way to scrutinise the merits of such decree and a failure to give effect to it is an irregularity which always merits intervention by the Financial Commissioner.[4]

Mutation proceedings convey no right and if the parties are not satisfied with the attempt of the revenue authorities to interpret the terms of a Civil Court decree or order they have a recourse to Civil Court.[5]

The decree is to be presumed to be correct until it is set aside or modified and there is no authority for deferring mutation proceedings on a decree on the ground that an appeal against such decree is pending.[6]

But the order of the Court must be clear and free from ambiguity. Revenue Officers are clearly not bound by the mistakes of Civil Courts; where the decree itself is so vague as to prove difficult of interpretation, a Revenue Officer is justified in examining the judicial record in order to interpret the vague portions of the decree.[7]

A decree passed without jurisdiction, however, may be ignored by the Revenue Officer.[8] Similarly, under the terms of section 37 (*b*) in order to vary an entry the decree must be binding upon all the parties interested.[9] A decree barred by time is inoperative and it is not a " decree binding on the parties " within the meaning of section 37 (*b*) of the Act.[10]

A gifted his land to his minor son R and mutation was effected; the gift was declared to be invalid and ineffective by a Civil Court on the ground that it was a fraudulent transfer. Mutation was applied to replace

1. 11 P. R. 1901 (Rev.)=118 P. L. R. 1902.
2. Ibrahim *v.* Madho Singh=(1941) 20 L. L. T. 57.
3. Bhagwant Dass and others *v.* Partap Singh and others=1934 L. L. T. 10.
4. Mohammad Waris *v.* the Crown=1934 L. L. T. 58; the earlier decision reported as 1933 P. C. L. 39 (Rev.) in the same case dissented from on review in this judgment.
5. Guru Harnam Singh *v.* Guru Dalip Singh=(1940) 19 L. L. T. 46.
6. Sampuran Singh and others *v.* Gurbachan Singh and others=1928 L. L. T. 17.
7. Nawab Khan *v.* Fateh Singh and others=1933 L. L. T. 43.
8. 2 P. R. 1895 (Rev.).
9. See 1934 L. L. T. 53 and 1933 P. C. L. 39 (Rev.) (judgments relating to the same case).
10. Mangal Singh *v.* Milkha Singh=1928 L. L. T. 6.

the name of A, donor, instead of B, the donee and was accepted. Subsequent to the decree, R who was then major sold his land to N; but the mutation was rejected on the strength of the decree, on the ground that the decree is sufficient not only to cancel alienation but also to destroy the effect of R's sale to N. *Held*, that a Revenue Officer is bound to give effect to a decree or order binding on the parties but that the above decree that the gift was ineffective and invalid has only a limited effect, *viz.*, to ensure the interest of the creditors and does not justify an alteration of the records restoring the condition existing before the gift, that the mutation in the name of A must be rejected. *Held also*, that as the Revenue Officer cannot be a party to make the gift and subsequent sale effective, mutation of sale should be rejected.[1]

Declaratory decree.

A simple declaratory decree that a certain person is owner or occupancy tenant falls under section 37 and may very properly be given effect to in mutation proceedings by inserting the name of the person declared to be owner or tenant. But when a declaratory decree is conditional on payment of a sum of money the only entry which the authorities can make on the basis of it is a note to the effect that the declaratory decree has been passed. It is not the business of the Revenue Officer to receive the money and pass it on to the other party nor has he any authority to compel the other party to receive it. If the parties come to him and say that the money has been paid and received then he may enter up the consequent mutation of ownership otherwise the remedy on the basis of the declaratory decree is a civil suit for possession on payment.[2]

The Sub-Judge gave a decree for certain sum of money, and the decree-holders applied verbally for a mortgage of the land of the judgment debtor. The Sub-Judge on this merely ordered that the file should be sent to the Collector for proposals according to law. The Collector merely passed the file on to the Tahsildar for usual action. The Tahsildar passed it on to the Kanungo who ordered mutation to be entered. The mutation was entered and the Naib-Tahsildar sanctioned it, *held*, that there was no order of any competent authority that the land should be transferred by way of mortgage to the decree-holder, that the Collector never made any proposals, and the Civil Court never accepted or rejected them and that therefore there was no support under section 37 of the Act for the alienation in the record of rights.[3]

Partitions.

Mutations relating to partitions.—In the case of partition through the Revenue Officer under the provisions of Chapter IX of the Punjab Land Revenue Act, 1887, as soon as may be after the date mentioned in the instrument of partition as that from which it will take effect, the patwari should enter in mutation register all changes consequent on the partition. Before sanctioning any mutation due to partition the attesting officer must satisfy himself that possession has been obtained. In the case of uncultivated land it is not necessary that there should be any tangible sign of the possession of the person to whom the land has been allotted so long as no one else is in adverse possession.[4]

1. **Niaz Ahmad** *v.* **Bhagwan Dass=1932 P. C. L. 62 (Rev.).**
2. **Shib Saran Das** *v.* **Chuhra and others=1932 L. L T. 112.**
3. **Allah Rakha** *v.* **Khurshid Alam=1933 P. C. L. 40 (Rev.).**
4. **Para. 18·19, Chapter XVIII of the Punjab Land Records Manual.**

Although no formal application has been made the patwari is bound to record voluntary partitions for orders in the mutation register as soon as they have been acted upon. In passing orders on such cases care must be taken not to treat as partitions of proprietary right arrangements which the parties did not intend to be permanent. Share-holders may be content for years to have in their cultivating possession less than their full share of a common holding without intending to give up any part of their rights of ownership. If any of them objects to the record of the alleged partition and the attesting officer considers the objection valid, he should refuse mutation of names, and refer the party seeking it to proceedings under section 123 of the Land Revenue Act. But if he finds that the objection is vexatious or frivolous, and that a fair private partition has actually been carried out, he should record the objection and his proposed order disallowing it, and submit the proceedings for confirmation to the Revenue Assistant, or any other Assistant Collector, 1st grade authorized by the Deputy Commissioner to deal with these cases (*Land Administration Manual, para.* 151).

Correction of wrong enteries or *Sihat Indraj*, **mutation when permissible.** Section 37 (*a*) of the Land Revenue Act says that the existing entries can be varied by making entries in accordance with the facts proved or admitted to have occurred. An application for correction of mutation (not incorporated in the jamabandi) which is contested and which on the face of it is not based on an obvious clerical error or patent fact, should therefore be rejected summarily and the parties referred to a civil suit.[1] It is settled law that sanctity attaches to records which have continued over a period of years and changes which are disputed are not to be made by mere mutation entry.[2]

Similarly, when a mutation entry has been incorporated in a *jamabandi*, it should not be altered by a mutation except on the basis of an obvious clerical error or patent fact.[3] It is thus now settled law that no disputed entry in a *jamabandi* should be altered by a mutation whether on the ground of mistake or of fraud except on the basis of " an obvious clerical error or patent fact."[4] A fact that needs an elaborate inquiry to establish is not a " patent fact."[5] Thus, where a mutation was effected several years ago and was incorporated in subsequent *jamabandis*, it should not be reversed on review on the ground that it was effected as a result of fraud in collusion with the subordinate revenue staff.[6]

Two exchanges were effected between H and others on the one hand and I on the other by two mutations. Both these mutations were incorporated in the *jamabandi*. In the course of an enquiry into the conduct of the Patwari, the Tahsildar found reasons for believing that the exchanges had been made by fraud. An application was made praying for cancellation of one mutation and modification of the other, which

1. Thakar Singh *v.* Abdul Hamid and others=1932 L. L. T. 128 ; Ibrahim *v.* the Crown=1934 L. L. T. 17.
2. Mohammad Abdur Rahman Khan *v.* Mst. Azmat=(1940) 19 L. L. T. 29.
3. Harnam Singh and others *v.* Ishar Singh=1934 L. L. T. 2 ; 1932 L. L. T. 18 followed and 1932 L. L. T. 33 distinguished ; see also Babu *v.* Shera=(1942) 21 L. L. T. 4 ; Aziz Ullah *v.* Ghulaman=(1941) 20 L. L. T. 54.
4. Ch. Bostan Khan *v.* Ch. Karam Khan=1934 L. L. T. 37 ; 1932 L. L. T. 128 and 1934 L. L. T. followed ; and 4 P. R. 1918 (Rev., dissented from.
5. Ibid
6. Aziz Ullah *v.* Ghulaman=(1941) 20 L. L. T. 54.

was sanctioned by the Tahsildar. The case came to the Collector on appeal, who rejected it. He observed that the exchange had been sanctioned not only under misapprehension of facts but also on account of fraud committed by the patwari on I. He also found that possession had never been transferred between the parties and that the parties continued to be in possession against the mutations. The Financial Commissioner accepted the revision and restored the original entries.[1]

The mutation related to 2 *khasra* numbers each of which was the site of a water-mill. The sites in question were *shamilat deh* and the owners were the co-sharers in the village. The names of the petitioner B and the respondent K were entered in the column of possession in equal shares, for the first time in the *jamabandi* of 1923-24, following on entries of the *khasra gridawri* which started in 1922. Before this year there was no entry in the possession column. The dispute began with an application from K to the Tahsildar to the effect that the name of B had been incorrectly entered in the revenue papers without applicant's knowledge. A mutation was entered for the removal of B's name from the column of possession and, after a detailed enquiry by the *Tahsildar* and the Revenue Assistant, was finally sanctioned. The order was cancelled by the Financial Commissioner and the *jamabandi* entry as it stood before the Revenue Assistant's mutation restored.[2]

One I was allowed to have his caste designation changed from *darzi* to Awan in 1917. Subsequently it was discovered that he had three brothers who were *darzi* by tribal designation and the Collector with the sanction of the Commissioner reviewed the order of sixteen years previous and changed I back into a *darzi*. It was held—"Now no doubt it is an obvious patent fact that either the entry of I as Awan is wrong or that of his brothers as *darzi* is wrong. But what is not a patent obvious fact is which is wrong. No doubt it is anomalous, even absurd, to have one brother entered as a member of an agricultural tribe and the others not. But this anomaly is more tolerable than the consequences that might follow from a review. The order converting I back into a *darzi* has a presumption of truth being passed after 1926 and as such an entry is declaratory of status, it conveys the presumption that he never was an Awan and so might be used to invalidate alienations made in good faith in his favour. Moreover such anomalies are not likely to recur while the precedent for reviewing old standing mutations would be a serious one. I therefore think it best that matters should be left alone and I accept revision and order the mutation to be set aside."[3]

Revenue Officers are not permitted to alter revenue records merely because they think that mistakes exist in them. They must have certain facts before them and they must act in accordance with the law, that is, there must lie new facts proved or admitted or the new entries agreed to by all the parties interested therein.[4]

When once an order rejecting a mutation has been passed it is not right that a contrary order affecting the same parties and the same land should be sanctioned a few months later. If a party who has unsuccess-

1. 1934 L. L. T. 2.
2. 1934 L. L. T. 37.
3. Ibrahim *v.* the Crown=1934 L. L. T. 17.
4. Karam Din *v.* Jamu=1924 L. L. T. 9.

fully applied for mutation is entitled to renew its application at intervals of few months there would be no finality about such proceedings.[1]

It would be a most dangerous doctrine to admit that several years after a mutation has been passed it is open to a Revenue Officer to substitue for it another and completely different order, merely on the ground that the original order was mistaken. The case of a purely clerical error is however an exception to this rule. A mutation was sanctioned in favour of the two surviving sons of the deceased proprietor in 1919. There was a widow of another son who had predeceased his father ; but the order made no reference to the widow. In 1926 the widow applied for the entry of her name in the record of rights as the proprietor of a 3rd share on the ground that her name was omitted in the previous mutation by mistake. The Tahsildar sanctioned the mutation accordingly. It was held that the widow had her proper remedy in a Civil Court.[2]

When an Assistant Collector directs an entry in revenue records to be corrected and one of the parties strongly objects to the new entry, no question of correction arises. If a mistake has been made owing to a mutation order and if that mistake has been incorporated in the revenue records, the only way to correct that entry is by a regular suit.[3] This is rather too absolute a conclusion [1932 L. L. T., page 34].

In *Ram Rattan and others* v. *Devi Ram and others*[4] it has been held that it is quite improper that an alteration should be made in the revenue papers by way of correction of an entry which has been in existence for a large number of years. Every share-holder in a village has right to object to the inclusion in the village records of the name of a person who has by mere fact of such entry been given rights in the village *shamilat* which he would not otherwise have had. Similarly, in *Parma Nand* v. *Ram Lal and others*[5] it has been held that no change in previous entries in revenue records can be effected by Revenue Officers when the reasons for the change are such as can only be gone into by a Civil Court and cannot be decided by a Revenue Officer in mutation proceedings.

On the other hand, the law does not entirely exclude the correction of a mistaken record. For instance, the patent fact of a man having been dead at a certain time when he was thought to be alive, or of a clerical error having been made, may no doubt be grounds for correction. There are circumstances which happen rarely ; and if they happen it is very rarely that the facts are contested.[6] The intention of the law is that a mutation order after the period of appeal has expired is final, and can only be altered in a regular way by review or by application to a Civil Court, and it is very important that this position should not be weakened by the abstract possibility of a correction being justified.[7]

In *Kishen Singh* v. *Roda Singh and others*[8] the correction of a mutation was allowed, in the case of a person found to be the grandson

1. Mangal Singh *v.* Milkha Singh and others=1928 L. L. T. 6 (2).
2. Sattar and another *v.* Mst Jawai=1928 L. L. T. 14; Hari Singh and another *v.* Attar Singh and another=1932 L. L. T. 121.
3. Chhittar *v.* Are Mal Mali=1924 L. L. T. 31.
4. 1926 L. L. T. 21.
5. 1926 L. L. T. 29.
6. Thakar Singh *v.* Abdul Hamid and others=1932 L. L. T. 128=1933 P. C. L. 26 (Rev.).
7. Ibid.
8. 1932 L. L. T. 33 ; see also 1934 L. L. T. 2, page 3 ; 1928 L. L. T. 14 distinguished.

of the deceased owner, which was made six months after the original entry, partly because the existence or non-existence of an heir is a patent fact, and partly on account of the short time which had elapsed after the entry so made was sought to be corrected and the mutation had not been incorporated in the *jamabandi*.

In *Taja and others* v. *Karam Ali*[1] the question was whether a mistake made by a patwari in drawing up an annual record and not detected by the Revenue Officers at the time of attestation, could be corrected by a mutation entry when subsequently discovered. The patwari who was responsible for the entry confessed that he made a mistake. It was held that proof of a mistake having been made in this respect was proof of a fact having occurred within the meaning of section 37 (*a*) of the Land Revenue Act, and that the mistake could be corrected by a mutation. The Financial Commissioner observed—"It would create an intolerable situation if, as Financial Commissioner, I were to rule that those right-holders, whose rights are prejudiced by mistake or fraudulent action on the part of a patwari or kanungo, have no remedy other than a regular suit..... .....In taking cognizance of such errors when discovered and dealing with them by the method of a new mutation entry a Revenue Officer is not reviewing or revising any order of a predecessor or other Revenue Officer."

This case was distinguished in *Sattar and another* v. *Mst. Jawai*,[2] referred to in *Thakar Singh* v. *Abdul Hamid and others*,[3] and dissented from in *Ch. Bostan Khan* v. *Ch. Karam Khan*.[4]

Thus the settled law now is that no disputed entry in a *jamabandi* should be altered whether on the ground of mistake or of fraud, except on the basis of "an obvious clerical error or patent fact." Of course, if the parties agree to a certain entry or admit its correctness the case will fall under section 37 and mutation will be allowed.[5]

This, however, does not absolve the Collectors from their duty in regard to the Punjab Alienation of Land Act. Therefore, where a mutation is found to offend against the provisions of the Act, it can still be corrected by simple mutation proceedings.[5]

Record of tribal and caste designation—mutation not permissible.—In *Sadiq Hussain* v. *Anup Singh*[6] it was held that "a statement as to the caste of a landowner is not a statement covered by section 31 of the Punjab Land Revenue Act, and therfore no presumption of correctness attaches to such an entry." Consequently, Notification No. 1686-R, dated the 9th June, 1926 was issued by the Financial Commissioner under section 31 (2) (*d*) of the Act, and this has been superseded by Notification No. 1647-R, dated the 11th August 1937, which runs a follows :—

Entry relating to caste or tribe a part of the record-of-rights.

"In supersession of Notification No. 1686-R, dated the 9th June, 1926, and in pursuance of the provisions of clause (*d*) of sub-section (2) of section 31 of the Punjab Land Revenue Act, 1887, the Financial Commissioner, with the previous sanction of the Governor of the Punjab is pleased to prescribe that the record-of-rights for every estate

1. 4 P. R. 1913 (Rev.)=201 P. L. R. 1913.
2. 1928 L. L. T. 14.
3. 1932 L. L. T. 128.
4. 1934 L. L. T. 37.
5. Babu *v.* Shera=(1942) 21 L. L. T. 4.
6. I.L.R. IV Lah. 327.

outside a municipality or cantonment and outside the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil shall include a document recording the father's name, caste or tribe, *got* or sub-tribe, if any, and residence of all the persons described in paragraph (2) of clause (*a*) of the said sub-section other than (1) non-occupancy tenants, and (2) mortgagees or lessees for a period of 20 years or less, provided that if the father's name, caste or tribe, *got* or sub-tribe, if any, and residence are entered in any document prepared in accordance with clause (*a*) of the said sub-section, no separate document shall be necessary for the purpose."

Official instructions.

The official instructions[1] regarding record of tribal designation before coming into operation of the Punjab Alienation of Land (Second Amendment) Act, 1938 were as follows :—

Record of tribal designation.

32. (1) Attempts are frequently made by persons who are not zamindars to get themselves recorded as members of agricultural tribes aud it is desirable 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. It has been ruled (1 P.R. 1923 Rev.) that mutation proceedings should not be used to change caste designations. Applications for mutations, which have only this object in view, should be summarily rejected.

" If, however, the applicant gives notice that he will bring a civil suit to that end, the Deputy Commissioner should without delay, consult all available records and make full enquiries on the merits of the case. It should be borne in mind that according to the judgment of a Divisional Bench of the High Court of Judicature at Lahore in Civil Appeal No. 1020 of 1931, the production of a few oral witnesses about alleged marriages between the family of the applicant and the caste to which he claims to belong is not sufficient to rebut the presumption of correctnsss which attaches to the entry in the revenue records for every estate outside a municipality or cantonment or outside the district of Simla except the ilaka of Kotgarh in the Kot Khai tahsil (cf. Financial Commissioner's Notification No. 1647-R., dated the 11th August 1937).

The Deputy Commissioner should then report to the Commissioner his opinion on the merits of the case, supported by copies of the revenue records and other relevant papers. If in any case the Commissioner is satisfied beyond reasonable doubt that the claim of the plaintiff is just in such a case he should order not only that the suit be not defended, but that necessary steps should be taken to prevent such suits being brought, by making an admission that the entries in the revenue records were previously incorrect and by ordering their correction.

(2) The above instructions relate to mutations which take place between settlements and need not be followed when a special revision of records in accordance with section 32 (1) of the Punjab Land Revenue Act, is in progress. When such a revision takes place a a man's caste can be changed under section 37 (*b*), if all the parties agree and if the Settlement Officer finds that there is a mistake which requires correction. But orders in such mutations should not be passed by officers subordinate to the officers in charge of the settlement, who

1. Financial Commissioner's Standing Order No. 1, paras. 32 to 34.

should submit the records for the confirmation of the Commissioner in case if a change in caste entry is proposed to be sanctioned (Junior Secretary to the Financial Commissioner's letter No. 2866-R., dated the 25th October 1935).

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 Punjab Alienation of Land Act. **The same.**

(*ii*) Sub-sections (1) and (2) of paragraph 7'22 of the Land Records Manual provide for the procedure of patwaris and Revenue Officers when dealing with permanent and temporary alienations of land suspected to be made otherwise 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 the issue whether the alienee is or is not a member of the same notified tribe as the alienor.

(*iii*) If in such a case the claim of the alienee does not depend on any entry in the record of rights (*e.g.*, when the alienee is not recorded as the owner of agricultural land outside the limits of a municipality or a cantonment and it is asserted or there is any other reason to believe that the alienee is not a member of the same notified tribe or group of tribes as the alienor, the case will be one for decision by the Deputy Commissioner under Rule 7 (1) of the Punjab Alienation or Land Rules 1937.

34. (*i*) A more difficult class of cases is where the alienee though shown in a record of rights, is described by a group 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 Bagga claims that the Baggas are Awans. **The same.**

(*ii*) Here there is general question for decison, *viz.*, whether the contention is correct that the group 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 group 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. (1) A person's change of caste in the revenue records has retrospective effect as it is not a question of adopting a new status (1931 L.L.T. 45). Similarly, the adoption of a profession, the change of religion (71 I.C. 312) or marriage (141 I.C. 268), (55 I.C. 236) cannot affect a man's tribe for the purposes of the Act, cf. paragraph 7'24 of the Land Records Manual. **The same.**

(2) It has been held that, when a son is born to widow of a member of an agricultural tribe more than 280 days after his death, and is not allowed to his ancestral land till the decision of a Civil Court, his caste

if he acquires any land should, for the purposes of the Act, be considered, till the decision of a competent Court on the matter, to be the caste of his mother.

The Punjab Alienation of Land (Second Amendment) Act, 1938.

Decision of revenue authorities as to the tribe to which a person belongs is now conclusive and binding—decree of a Civil Court not binding in this respect.—Sub-section (2) of section 4 of the Punjab Alienation of Land Act, as inserted by the Punjab Alienation of Land (Second Amendment) Act 1938, section 4, prescribes that "if any question or doubt should arise as to whether a person is or is not a member of a notified agricultural tribe, the Deputy Commissioner shall after such enquiry as may be prescribed determine whether that person is to be deemed to be a member of the said agricultural tribe for the purposes of this Act." Sub-section (3) of the same further lays down that "in passing an order under the above sub-section the Deputy Commissioner shall not be bound by any decree of a Civil Court, and may review any order previously passed under that sub-section." The *proviso* to this sub-section states that "nothing in sub-sections (2) and (3) referred to above shall affect a decree passed in a suit instituted before the 15th June, 1938."

The order of the Deputy Commisoner whether in original or on review is, however, not final but is subject to appeal and revision as provided in sections 13-B and 13-C of the Punjab Alienation of Land Act.

Procedure.

Under the amended law, the inctructions laid down above will not be applicable now in entirety. Rule 6 of the Punjab Alienation of Land Act Rules 1939 framed under section 25 of the Land Alienation Act, now lays down the following procedure to be followed in these cases.

"Every enquiry under section 4 (2) of the Act shall be held by the Deputy Commissioner or by an Assistant Collector under the orders of the Deputy Commissioner.

The enquiring officer shall cause notice to be served on the person concerned and shall record the statements of witnesses produced by the person concerned or summoned by himself and shall examine such documentary evidence as may be produced."

Mutation proceedings not to be used to change caste designations.

Mutation proceedings should not be used to change caste designations. It was held in *Jiwan* v. *Crown*[1] that a Revenue Officer should not alter the caste of a person as shown in the revenue records by taking action of a general nature. He should do so only when a definite cause of action has arisen or when a Civil Court has passed a declaratory decree to that effect. The Financial Commissioner observed in this case: "I am averse from making any change in the existing revenue records, merely because the applicant is believed to have proved that the entry is wrong. The only satisfactory proof of a wrong entry will be put forward in the course of a regular suit ending in a decree and unless the applicant is prepared to take action by way of a regular suit and unless he obtains a declaratory decree, I do not think that any change should be made."

1. 1924 L. L. T. 3; see also Ghulam Farid *v.* Feroze Khan=1932 L. L. T. 8. Feroze Khan *v.* Ghulam Farid=1932 L. L. T. 110; Ibrahim *v.* Crown=1934 L. L. T. 87.

The effect of enactment of the Punjab Alienation of Land (Second Amendment) Act, 1938 is that instead of the Civil Court the matter will now be decided by the Deputy Commissioner. All cases should therefore be referred to the Deputy Commissioner for orders. Entry to be made in the revenue records will abide the decision of the Deputy Commissioner, subject, of course, to appeal and revision as provided in sections 13-B and 13-C of the Punjab Alienation of Land Act.

Mutation based on facts agreed to or admitted by the parties.—Of course, when the parties to a mutation admit the facts mutation must be sanctioned and the fact of possession need not be inquired into. When a mutation is effected according to the agreement arrived at between the parties interested in the land, it remains binding on them notwithstanding that it is much more advantageous to one party than to the other ; the fact that one of them got considerable quantity of land without any right was no ground for cancelling the contract.[1] The onus of proving that a mistake was made and the intention of one of the parties was not correctly expressed in recording the mutation entries lies heavily upon the party seeking to impugn the entries on that ground specially where it appears that (*a*) parties were present at the time of mutation ; (*b*) Revenue Officers made every effort to ascertain what they wished to be done and (*c*) mutation entries themselves are quite clear.[2] But where the parties agree in contravention of the Punjab Alienation of Land Act, 1900, mutation of names should not be sanctioned.[3]

A Settlement Officer should not repeat an entry regarding an agreement in a new *wajib-ul-arz* unless it is formally reviewed by the parties.[4]

Mutation on basis of decree of enhancement of rent.—A declaratory decree enhancing the rent of an occupancy tenant is not a decree which is capable of being executed and is therefore outside the ambit of Article 182, Limitation Act. Hence a mutation regarding enhancement of rent on the basis of such decree cannot be refused on the ground that it was obtained more than three years before that date.[5]

Lapse of time no reason for refusing mutation.—Mutation cannot be refused on the score of lapse of time as no period of limitation is laid down under section 37 of the Act.[6] Delay can be condoned where there is a transfer of the equity of redemption but not of possession.[7]

Review of old mutations.—When once an order rejecting a mutation has been passed it is not right that a contrary order affecting the same parties and the same land should be sanctioned a few months later. If a party who has unsuccessfully applied for mutation is entitled to renew its application at intervals of a few months there would be no finality about such proceedings.[8]

1. 2 P. W. R. 1918=44 I. C. 277=153 P. L. R. 1917.
2. Ibid.
3. 35 I. C. 709=79 P. L. R. 1916.
4. Dilbagh Rai and another *v.* Mehr Shah=1932 L. L. T. 101.
5. Nawab and others *v.* Ganda Mal and others=1932 L. L. T. 35.
5. Mst. Bhaian *v.* Mst. Khem Kaur=1937 L. L. T. 26.
6. Nawab and others *v.* Ganda Mal and others = 1932 L. L. T. 35; Mst. Bhaian *v.* Mst. Khem Kaur=1937 L. L. T. 26.
7. Ibid.
8. Mangal Singh *v.* Milkha Singh and others=1928 L. L. T. 6 (2).

Limitation.—Mutation cannot be refused on the score of lapse of time as no period of limitation is laid down under section 37 of the Punjab Land Revenue Act.[1]

Presence of parties.—It is irregular to sanction a mutation without summoning all the interested parties,[1] and such order in mutation is liable to be set aside in revision. When in a mutation order the presence of a party concerned is not mentioned, the presumption is that such party was not present.[2] Where the entries in the revenue papers are proposed to be altered to the disadvantage of the recorded owner, the Revenue Officer must serve notice of the proceedings on that person.[3]

See also commentary under sections 13, 16 *and* 23 *with respect to appeal, and revision and the place where mutation proceedings should be conducted.*

A co-sharer alienating a portion of the common holding—mutation.—Suppose A and B are co-sharers, having equal shares in a certain holding. A sells or mortgages to C more than his share. Should the mutation be sanctioned for the whole of the portion alienated or only to the extent of the share of A ? The answer will depend on the fact whether A had possession over that portion and whether he transferred the possession of the whole of it. If the possession of the whole of it has been transferred mutation will be sanctioned as possession of one co-sharer is the possession of all. If possession has not been transferred, it should be refused. There is no guarantee for the view that it should be sanctioned only to the extent of his share.

Mutation fees.

Scale of fees.

Notification No. 2825—R, dated the 8th August 1934.—In supersession of Punjab Government Notification No. 1324-R, dated the 26th June 1925, and in exercise of the powers conferred by sub-section (1) of section 38 of the Land Revenue Act, XVII of 1887, the Governor in Council is pleased to direct that, with effect from the 8th August, 1934, the following scale of fees shall be levied for every entry relating to the acquisition of any right or interest in an estate made in a mutation register under sub-section (3) of section 34 or under section 35 (*b*) of the said Act :—

(*a*) When the entry relates to the acquisition of a right or interest by a registered deed or by a decree or order of a Court or by an order of a Revenue Officer making or affirming a partition under Chapter IX of the Land Revenue Act, or directing the incorporation in the record of a private partition, a fee of annas four shall be charged on each proprietary holding ; provided that when the land revenue does not exceed Rs. 5 the fee shall be annas two only. In the case of a proprietary holding consisting entirely of date-palms, a fee of anna one shall be charged on each holding.

(*b*) When the entry relates to the acquisition of a right or interest by inheritance, the fee shall be reckoned at the rate of Rs. 1-9-0 per cent. on the revenue assessed ; provided that when the revenue does not exceed Rs. 5 the fee shall be five annas ; and when the revenue exceeds Rs. 5 but does not exceed Rs. 32 the fee shall be eight annas ; provided also

1. Nawab and others *v.* Ganda Mal and others = 1932 L. L. T. 85 : Mst. Bhaian *v.* Mst. Khem Kaur=1937 L. L. T. 26.
2. Shaukat Ali *v.* Rala Ram=(1941) 20 L. L. T. 14.
3. Rur Singh *v.* Surain Singh=(1941) 20 L. L. T. 146.

that in these cases not more than one fee shall be charged on the acquisition in one and the same village of a right or interest in one and the same capacity, although entries may have been made in more than one proprietary holding ; and

(*c*) When the entry relates to the acquisition of a right or interest, not otherwise provided for in clauses (*a*) and (*b*), the fee shall be Rs. 4-11-0 per cent. on the revenue assessed on each proprietary holding ; provided (1) that when the revenue of any proprietary holding does not exceed Rs. 5, the fee on that holding shall be ten annas, and when the revenue exceeds Rs. 5 but does not exceed Rs. 21-5-4, the fee shall be one rupee, and (2) that in the case of a date-palm proprietary holding when the land revenue does not exceed Re. 1 the fee shall be two annas per holding, when the land revenue exceeds Re. 1 but not Rs. 5 it shall be four annas and when the land revenue exceeds Rs. 5, it shall be ten annas.

The above fees shall be charged on all mutations whether accepted or rejected : provided that the attesting officer may remit the fee on any rejected mutation when in his opinion it would not be proper to recover it from the person in whose favour the mutation was entered.

Two-fifths of the fee charged shall be paid to the patwari making the entry in the register, the balance being credited to Government.

When more than the minimum fee under (*b*) or (*c*) is charged, fractions of an anna shall be reckoned as a full anna.

In any case in which the fee payable under the foregoing provisions is found to be excessive in amount with reference to the value of the right or interest transferred or for any other reason, the Commissioner may either remit the fee or reduce it to such amount as he deems to be reasonable.

For rulings of the Financial Commissioner on the question of fee in mutation cases see para. 7·33 (ii) of the Land Records Manual (page 221).

SECTION III—HARVEST INSPECTIONS

(The Punjab Land Records Manual, Chapter 9).

The object of harvest inspections is to collect accurate information regarding—

(*a*) crops,
(*b*) changes in rights, rents and possession of land,
(*c*) amendments required in the village map.

The first is indispensable for the assessment and collection of land revenue ; the second and third are aids to the maintenance of a true record of rights in the soil.

Instructions.

9·1. The date on which the inspection of each harvest shall commence may be fixed for each district by the Commissioner as its special circumstances may require. But in the absence of any special order, the inspection of each harvest shall commence as follows :— Date on which inspection of each harvest should begin.

Kharif	...	...	1st October.
Rabi	...	...	1st March.

And if extra rabi crops, such as melons and tobacco, are grown, which cannot be observed in March, the patwari shall make an inspection of these immediately after the 15th April. When for any reason the ripening of the crop is later than usual, the Deputy Commissioner may postpone the inspection for a period not exceeding fifteen days.

Form of khasra girdawri with instructions.

9·2. The form of the *khasra girdawri*, or harvest inspection book, with instructions regarding the entries to be made in it, is given below :—*

Khasra girdawri, or harvest inspection book.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
					Kharif 19 Rabi 19			Kharif 19 Rabi 19			Kharif 19 Rabi 19.			Rharif 19 Rabi 19		
Khasra No.	Owner (written short with jamabandi No.).	Cultivator with rent (written short with Khatauni No.).	Area.	Class of land according to last jamabandi.	Kharif crop.	Rabi crop.	Changes of rights, possession and rent.	Kharif crop.	Rabi crop.	Changes of rights, possession and rent.	Kharif crop.	Rabi crop.	Changes of rights, possession and rent.	Kharif crop.	Rabi crop.	Changes of rights, possession and rent.

9·3. (*i*) A new *khasra girdawri* will be brought into use whenever a new quadrennial *jamabandi* has been prepared.

(*ii*) Where *tarafs* or *pattis* are *chakbat* and all fields included in the *taraf* or *patti* are in one series, the name of the *taraf* or *patti* should be entered across the page above the entry of the first field included in it. The same procedure may be adopted in the case of well holdings, such as are common in some districts of the Multan Division. Where *tarafs* or *pattis* are *khetbat*, the name may be entered below the khasra number if the information is considered to be required for any purpose, as, *e.g.*, to help the Irrigation Department in framing demand statements *pattiwar*.

(*iii*) In estates under fluctuating assessment, and elsewhere, if considered desirable for special reasons, a new *khasra girdawri* may, if necessary, be prepared each year. The form used in such cases should be as simple and brief as possible. If not already sanctioned by

*For the period for which the Khasra girdawri is preserved, refer to section XXVI.

the Financial Commissioner, it must be referred to the Director of Land Records for approval.

(*iv*) The ordinary form should be used in the case of urban lands to which the Land Revenue Act applies. In it both agricultural (*zarai*) and urban (*sakni*) land should be included. Land specially assessed as 'potential' building land, as in Lahore, should be classed as in the former, but distinguished from other agricultural land by the addition of the words 'qabil tamir.' The *girdawri* for all such urban lands should be dealt with by the patwari in the usual way at the ordinary *girdawri*.

(*v*) In the column of *kharif* crops show the two kinds of cotton *desi* and American separately by sub-dividing the column for cotton."

(*vi*) In the column of *rabi* crops, show the three kinds of tobacco, *viz.* :—

(1) N. Rustica.

(2) N. Tobacum—Virgina type.

(3) N. Tobacum—Desi type,

separately by sub-dividing the column for tobacco.

(*vii*) *Column* 1. The fields will usually be entered in the order of the field map (*shajra kishtwar*). New numbers of sub-divided fields will be shown in the same place as the old number of the undivided field and not at the end of the khasra.

If it is necessary to re-number a field, this should be done as in the following example:—If a field number say 24, has been sub-divided into two and the last number in the field-register of the village is 150, entry No. 24 should be scored through and the new fields entered as 151/24 and 152/24. Where a second sub-division takes place, the denominator number should simply be the numerator of the field which is again sub-divided. Thus in the example we should have first 151/24 then 185/24 and lastly 201/185 from each of which, if necessary, it would be very easy to trace back to the old number. If field Nos. 31 and 32 have been joined into one field, the new entry may be 153/31 and 32, 152 being the last number in the field register.

Care must be taken not to increase numbers and sub-numbers needlessly. They should not be increased for temporary changes of cultivating possession, or because part of a field is cultivated and part uncultivated. Tempopary changes of cultivation can be shown in the column headed "Changes of rights, possession and rent," thus—

A. Owner, 2 bigha.

B. Tenant-at-will, 1 bigha.

Similarly, when part is cultivated and part uncultivated, the entry in the harvest column can be—

{ Khali — 1 bigha, }
{ Wheat — 2 bighas }

or

{ Banjar jadid 1 bigha }
{ Wheat, 2 bighas. }

The chain should not be used for such measurements ; they should be made by stepping or by rough estimate as may in each case be suitable.

A circle in red ink should be drawn round the number of every field of which the revenue is assigned.

A red ink entry without number will be made for every pakka survey mark of trijunction pillar or base line mark following the field in which the mark is placed and which it adjoins. In his field inspections the patwari should note whether the mark is in good repair.

(*viii*) *Column* 3. Rent should be entered as briefly as possible.

(*ix*) *Column* 4. The areas in this column and in the crop column must be in figures and not in *rakms*.

(*x*) *Columns* 6-7. (1) If the land is cultivated, enter the crop by the name prescribed in the *jinswar* statement. If the crop is irrigated, add the word *chahi*, *nahri* or *abi*, as the case may be, so also *sailab*, if the crop falls under that class; in the case of rain crops, the word *barani* need not be added. Details of flow and lift irrigation, when required by the Canal Department, can be shown, as also any other details on which the rate of a fluctuating assessment may depend.

(*b*) When a crop fails to germinate or dries up, or is destroyed by calamity of season, enter it as *kharaba*. Very careful attention must be given to partially failed crops, that is, crops of which the yield appears to be much below average. When the actual yield as a whole of the crop grown in one khasra number is estimated by careful inspection to be not more than 75 per cent. of the usual or average yield, then a deduction from the whole area of the crop should be made; for example, an inferior field of wheat, area 4 kanals, may be returned as (wheat 3 kanals, kharaba 1 kanal), but this should only be done when the actual yield of the whole crop is estimated to be not more than 75 per cent. of the average, and the *kharaba* allowed should be only as much as is necessary to raise the whole crop of the area returned as under crop to the average of an ordinary harvest. The average yield is that adopted by the Settlement Officer at the previous settlement for the assessment circle in which the village is included, unless some other yield has been specially prescribed in the *dastur-ul amal* or elsewhere. The crops for which average yields are not fixed at settlement are generally unimportant. The revenue official concerned should judge for themselves what yield should be regarded as average in such cases. Where two or more distinct crops are grown separately in different portions of one khasra number, the above procedure should be applied separately to each of such distinct crops. Deductions for *kharaba* made under this instruction should, unless some other special local scale has been prescribed by proper authority, be entered as far as is reasonably practicable in accordance with the following scale, taking 16 annas as the average yield of a crop :—

Yield more than 12 annas—No deduction.

Yield more than 8 annas but—Deduct 1/4 of the sown area not more than 12 annas.

Yield more than 4 annas but—Deduct 1/2 of the sown area not more than 8 annas.

Yield not more than 4 annas—Deduct whole sown area.

Jowar which fails in the ear should be entered not as "*jowar kharaba*" but as "*chari pukhta*." The same details shold be given for failed crops as for matured crops.

(*c*) Under Director of Land Records' circular letter No. 2377 of 10th September 1909, the following instruction will only apply to *nahri* and *chahi-nahri* land in the Multan, Muzaffargarh and Dera Ghazi Khan Districts.

If the field bears no crop in the current harvest, but has been ploughed for the next harvest or is occupied by trees or plants which will fruit in the coming harvest, enter it as *taraddadi*. Such entries will be required in these districts, for instance, against fields of indigo, cotton or cane in the *rabi* harvest, and, in the kharif harvest for land under fruit trees which fruit in the *rabi*.

(*d*) If the field was cultivated in one or other of the three previous harvests, but is not under crop in the current harvest, enter it as *khali*.

(*e*) If for four harvests in succession no crop is sown and fruit trees are not standing on the land, enter it in the fourth harvest, and the three succeeding harvests as *banjar jadid* and thereafter as *banjar kadim*. The area reserved exclusively for *charagah* should be entered as *banjar kadim charagah*.

(*f*) Enter unculturable land according to the class to which it belongs; for example *ghairmumkin abadi, ghairmumkin sarak, ghair mumkin ret,* and so on.

(*g*) Enter the area of the crop, etc., below the soil description. Except for opium and garden produce, smaller fractions than a biswa or 1/4 kanal need not be stated. In the case of mixed crops for which there is no separate column in the *jinswar* statement, enter the area of each crop by estimate.

(*h*) In fields containing a well, note whether it is at work (*jari*) or out of use (*uftada*). If a new well has been made, note this.

(*i*) In the villages under special *thur* and *sem* girdawari, the following instructions should be followed, regarding the recording of damaged areas :—

(1) Damaged areas are those which are affected by *thur* or *sem*.

(2) *Thur* must be recorded as such, whether found in cultivated or in uncultivated areas. *Thur* which does not prevent the land from producing more than a 4 anna crop should be left unrecorded.

(3) Cultivated area will be classed as *sem* if owing to sub-soil moisture it has become unfit for cultivation or is so badly affected that it does not produce more than a 4 anna crop. The damaged portion of a field should be considered by itself irrespective of the average crop of the whole field.

Note. Sub-soil moisture may have begun to affect a field, and it may be certain that the field will in a short time cease to produce more than a 4 anna crop. Nevertheless it will not be classed as *sem* unless the crop actually growing on it is not more than a 4 anna crop If the field is fallow and actually bears no crop it will not be classed as *sem* if it has been ploughed for sowing. Any *thur* found in it should, however, be recorded.

2. Fields containing damaged patches which spoil the whole of it will be returned as wholly damaged.

(4) Where land is *banjar* it will be classed as *sem* if it is surrounded on three or four sides by land classed as *sem* or if it shows sub-soil moisture or the effects thereof at the surface at the time of inspection or in any other season of the year.

(5) Fields will be described as usual as *chahi, nahri* or *barani*, etc. Only in cases of fields which have been damaged will a change be made. In such cases the word *thur* or *sem* as may be necessary, will be added to the ordinary description. The land which has been described as *chahi thur, chahi sem, nahri thur*, etc. for three successive harvests will be shown as *Banjar Jadid thur* or *sem* as the case may be in the 4th harvest. Similarly if such *Banjar Jadid* continues to be recorded as *Banjar qadim thur* or *sem* as the case may be.

Note. It should be noted that ordinarily only cultivated and banjar lands come into this classification. Lands described as *ghair mumkin, abadi, roads*, will not be classed as either *thur* or *sem*. Land which is already classified as *ghair mumkin thur* or *ghair mumkin sem* will, however, be recorded as *thur* or *sem*, as the case may be.

(*xi*) *Column* 8. When no change in the cultivating occupancy has occurred in the *kharif* the patwari should make a stroke of the pen across the oblong space provided for changes in the *khasra* from the right hand top corner to the left hand bottom corner, and another diagonal from the left hand top to the right hand bottom corner, if no change has occurred in the *rabi*.

Put a red cross in this column, or in column 11, or 14 or 17 according to the year against a field, the boundaries or areas of which have changed in such a manner that a correction of the field map is required.

9·4. The form of *khasra girdawari* of harvest inspection book for colony towns and *chaks* with instructions regarding the entries to be

made in it is given below :—

Khasra girdawari for colony towns and *chaks.*

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
Block No.	Khasra No. or site No.	Name of owner (in brief) with khataunī No.	Name of tenant or occupier or rent payer (in brief) with khataunī No.	Area according to the registered deed or according to the original contract.	Area given in the last Jamabandi.	Class of site according to the last Jamabandi.	Purpose for which the land was originally allotted.	Name of occupier or rent-payer (in brief).	Year 19				Name of occupier or rent payer (in brief).	Year 19				Name of occupier or rent-payer (in brief).	Year 19				Name of occupier or rent-payer (in brief).	Year 19			
									Amount of rent paid.	Present area.	Purpose for which the land is used.	Changes in ownership.		Amount of rent paid.	Present area.	Purpose for which the land is used.	Changes in ownership.		Amount of rent paid.	Present area.	Purpose for which the land is used.	Changes in ownership.		Amount of rent paid.	Present area.	Purpose for which the land is used.	Changes in ownership.

Note. This form will be used where the land in colony towns and chaks has been built upon. The existing form of *khasra girdawari* (paragraph 9·2) will continue to be used in the case of land which is still culturable though situated within the limits of town and chak.

A new *khasra girdawari* will be brought into use whenever a new quadrennial jamabandi has been prepared.

Instructions.

9·5. *Column* 2. The khasra number or site number will usually be entered in the order of the field map (*shajra kishtwar*). New numbers of the sub-divided sites will be shown in the same place as the old numbers of the undivided sites and not at the end of the khasra. For renumbering of site numbers the procedure given in the example under column 1 of the ordinary *khasra girdawari* form [paragraph 9·3 (vii)] should be followed.

In case where blocks have their sites numbered serially blockwise, the number khasra of site number should be entered accordingly.

Column 4. The entries in this column will be the same as in column 6 or 8 of the last *jamabandi*, as the case may be.

Column 5. This column will be left blank when the area originally allotted has been divided or amalgamated with other fields and separate field numbers have been given to it.

Column 9. In case the site is occupied by the owner the word "*maqbuza malik*" should be written. The person occupying the upper flat should be entered in this column also.

Column 10. In case the site is occupied by the owner, this column will be left blank. If the site is occupied by a tenant, the total amount of rent paid during the year, should be given.

Column 11. The area held by each tenant or occupier or rent-payer should be stated separately, in *kanals*, *marlas* and *sarsahis* or square feet :

Provided that where the holding is joint, it is not necessary to specify the exact share of each shareholder : and

Provided that where there is an upper flat the area of that flat will not be entered but the words "*Bala khana*" will be written against the names of the occupiers of that flat given in column No. 9 :

Provided further, that where Government land is encroached upon, full details should always be given.

Column 13. The number of mutation and the names of the new owners should be entered in this column.

The instructions for columns 14 to 18, 19 to 23 and 24 to 28, are the same as in the case of instructions for columns 9 to 13.

Patwari not to hinder agriculturists during harvest operations.

9·6. When making the harvest inspection, the patwari must on no account hinder the harvest operations of any agriculturist.

Rough tracing of field map to be used.

9·7. In working over the fields, the patwari will carry in his hand his cloth copy of the field map.

9·8. The crops will be entered in the *khasra girdawari* as the inspection proceeds, in the column provided for the purpose. The changes in rights, rents and possession will be noted in the appropriate column. And, where the boundaries or area of a field have changed in such a manner as to require a correction of the field map, the patwari will make a rough measurement, sufficient for the crop entries. Entry of crops and rights.

9·9. The following subsidiary instructions should be observed for preventing errors, etc., in the *khasra girdawari* :— Procedure for preventing errors in the khasra girdawari.

(*a*) The patwari must enter in his diary a list of all field numbers in which any change of cultivating occupancy or rent has occurred in the following form :—

changes in rent-field numbers so and so ;
changes in cultivating occupancy-field numbers so and so :

and place this list before the field kanungo at his next visit for verification. The numbers so entered will be verified by the kanungo and totalled under his signature. But if the change is such as to necessitate an entry in the register of mutations it need not be entered in the diary as well.

(*b*) Whenever a patwari has to alter an entry once made in the *khasra girdawari* he must enter it in his diary. But no such alteration should be made after the *bachh* papers of the harvest have been drawn up or corrected. The field kanungo is bound to inspect the patwari's diary, and he should be directed to check the alterations which have been made in the *khasra girdawari* very carefully. If at the preparation of the *jamabandi* an entry in the *khasra girdawari* is found to be incorrect, it will nevertheless be retained unaltered, but the correct entry will be noted in red ink and will be attested by the kanungo.

9·10. At the end of each day's work the patwari should total the pages completed. He should write at the top of each page the day on which the inspection work recorded in it was done. Patwari to show the work done on each day's inspection.

9·11. As soon as the field inspection of a harvest is finished in any village, the patwari will complete the crop abstract (*jinswar*), before commencing work in a second village. When the field kanungo has seen the abstract and signed it as correct, the patwari will enter a copy in his *jinswar* register and despatch the abstract to the office kanungo of the tahsil. The field kanungo will satisfy himself that areas have been correctly converted into acres from the local standard. Crop abstracts and their record and despatch.

9·12. The form of the crop abstract (*goshwara jinswar*) with instructions for preparing it, is given in chapter 10 (agricultural statistics). Form of crop abstract.

9·13. The returns of the kharif and rabi crops should reach the Tahsil within a month of the date on which *girdawari* commenced ; those of the extra *rabi* by the 1st June. Date of filing jinswar returns.

An aditional ten days for filing crop abstracts may, if necessary, be allowed to patwaris of circles containing canal irrigation.

Patwaris work in intervals between harvest inspections.

9·14. On the completion of the *kharif jinswars* of his circle, the patwari will prepare the *bachh* papers and write up the mutation registers, and then, under the orders of the field kanungo, will undertake any amendments of the field map or remeasurements that may be necessary (See appendix VII to the Settlement Manual and chapter 5 of this manual). This will be the ordinary course ; but in riverain *chaks* it may be necessary to amend the survey before preparing the *tachh* and mutation papers. On the completion of the *rabi* girdawari, the patwari will similarly first make any corrections that may be required in the *bachh* papers, then write up the mutation registers, and afterwards set to work on the *jamabandis* that have to be prepared for the current year.

SECTION IV—PROCEDURE FOR CORRECTION OF FIELD MAPS IN THE INTERVAL BETWEEN TWO SETTLEMENTS.

(The Punjab Land Records Manual, chapter 4, part D as amended up-to-date).

Responsibility of Revenue Officers for correctness of patwaris survey.

4·18. All Revenue Officers are reminded of their responsibility for the correctness of field surveys executed by the patwaris whom they control,—a responsibility which is much increased by the circumstance that the patwari's maps are occasionally used for the correction of the topographical sheets of the Survey of India.

Instructions regarding incorporation of field map changes.

4·19. The following instructions are issued for the purpose of collecting material from year to year for incorporating in the field map changes which occur in fields in the interval between two settlements.

Changes of a permanent nature.

4·20. The changes in fields, which ought to lead to the correction of a field map in the interval between two settlements, and the methods by which the map should be corrected, are stated in the following instructions.—Firstly, changes which are due to transactions on account of which a mutation order has been, or should be, passed. The chief examples are,—

(*a*) Partitions.

(*b*) Sales.

(*c*) Mortgage with possession.

(*d*) Redemption when part of an old field has been mortgaged and in consequence a new number has been made, the result of redemption being the restoration of the original number.

(*e*) Exchange.

(*f*) Gifts.

Changes due to nautor and hissadari kasht.

4·21. Secondly, other changes of a sufficiently permanent character. Examples are :—

(*a*) *Nautor.*

(*b*) Conversion of part of a *barani* field into irrigated land when the change is of a permanent nature. Such changes will especially occur when a new well has been sunk or some other new means of irrigation has been provided.

(*c*) Separate cultivation of share-holders in fields jointly owned (*hissadari kasht*) when the arrangement for separate possession has lasted for not less than four years. Such arrangements when once made usually continue until a partition is carried out under the orders of a Revenue Officer.

4·22. (*a*) Care should be taken not to increase the number of fields needlessly. New fields should not be made on account of changes of cultivating occupancy by tenants-at-will. Such changes will, as at present, be recognised by *min* numbers in the *khasra girdawri* and *jamabandi*. Similarly, new numbers are not required when part of a field is cultivated by the owner and part by a tenant-at-will, or when part is cultivated and part uncultivated. In the former case the entry can be shown in the column headed "changes of rights, possession, and rent of the *khasra girdawri*" thus :— New field numbers not to be created needlessly.

A,	Owner	... ...	2 bighas.
B,	tenant-at-will	... ...	1 bigha.

(*b*) Petty cases of *nautor*, due to ploughing out, are not a cause for making new fields or changing the boundaries of old ones.

(*c*) Field numbers should not be combined into a single field unless the clubbing is clearly desirable for the purposes of girdawri.

4·23. In the case of new numbers due to transactions on account of a mutation order (para. 4·20) the Revenue Officer must not sanction the mutation in the absence of a proper map of the new field numbers attested by the kanungo and checked by himself. When the patwari enters up the mutation he will draw to scale on the back of the mutation sheet and its counterfoil the numbers affected and will enter under them the details prescribed for the field book referred to in paragraph 4·26. The new fields will be temporarily numbered, *e. g.* 155/1, 155/2, etc., permanent numbers, not being adopted lest the mutation be rejected or the new fields be affected by subsequent mutations. The kanungo will check on the spot the dimensions and areas of the new numbers and will sign his name at the foot of the map with a note "attested on the spot." In the case of mutations due to sales, etc. the kanungo is responsible for seeing that the measurements correspond with the areas actually transferred. In the case of partitions it will not always be possible to show the new numbers and field book details on the back of the mutation order. If so, they will be shown on separate mapping sheets. The *tatimma shajra* in the case of a partition will be a copy of that prepared as soon as the partition is completed [finally kept and 18·14]. The kanungo who attests the *tatimma* sh[illegible] of a partition will be held strictly responsible that the map really shows the land allotted to each share-holder and pointed out to him (paragraph 18·14). Method of preparation of tatima shajras based on permanent changes.

4·24. The changes referred to in paragraph 4·21 are already recorded by the patwari by putting a red cross in columns 8, 11, 14, or 17 of the *khasra girdawri* (vide note to column 8 of the form of *khasra girdawri* in paragraph 9·3). All such entries must be carefully checked by the field kanungo harvest by harvest. In the year in which the quadrennial *jamabandi* of an estate is to be prepared the *kharif girdawri* must be made with great care, and the field kanungo is responsible that no number which has changed permanently escapes Preparation of tatimma shajras necessitated by hissadari kasht, etc.

detection. After the girdawri is finished he will at once draw up a list of the cross-marked numbers and give it to the patwari, who will make the necessary measurements without delay and prepare the *tatimma shajras* on mapping sheets of the same size as the sheets used for *jamabandis*. Field book details will be entered on the back of these maps as prescribed in paragraph 4·23. In the case of villages measured on the square system these mapping sheets will have two squares marked on them. The field kanungo will check the *tatimma shajras* on the spot during the cold weather before the end of January. The new fields will at this stage be temporarily numbered as laid down in the preceding paragraph.

Boundaries and dimension of new field numbers to be shown in red ink.

4·25. In the maps prescribed by the two last paragraphs all new boundaries and other amendments will be shown in red ink. It is unnecessary to re-chain such of the boundaries of the new fields as have undergone no alteration, and if a side of a new field includes the whole of a side of an adjoining field which is not being amended only the remaining part of the side of the new field need be re-measured. When an old field number is divided into two or more new numbers the patwari will recalculate the areas of each of the new numbers. To facilitate reidentification one adjoining number which has not altered will be shown in the *tatimma shajra*.

Prepation of field book of new field numbers.

4·26. In the case of any further changes brought to light at the rabi girdawri the procedure prescribed by paragraph 4·23 and 4·24 must be gone through as soon as possible and when it is completed the patwari will enter all the new fields for which *tatimma shajras* have been prepared under the above-mentioned paragraphs in a field book in the form below :—

No. of field.		Number of Holding.	Area Calculation.	Area.	Soil.	Signature of Kanungo.
Old	New.					

In the field book the fields will be finally re-numbered as follows :—

If a field number, say 24, has been sub-divided into two, and the last number in the field register of the village is 150, entry no. 24 should be scored through and the new field entered as 151/24 and 152/24.

Where a second sub-division takes place the denominator number should simply be the numerator of the field which is again sub-divided. Thus in the example we should have first 151/24, then 185/151, and lastly 201/185, from each of which, if necessary it would be very easy to trace back to the old number. If fields nos. 31 and 32 have been joined into one field the new entry may be 153/31 and 32, 152 being last number in the field register. The new numbers given in the field book will be entered in red ink in the *tatimma shajras* prepared under paragraphs 4·23 and 4·24 above, and each entry in the field book will be initialled by the field kanungo in token of its correctness. A slip containing a copy of the entries in the field book will be given to the owner or mortgagee or in the case of land held in joint ownership to the share-holder in occupation of the new field.

4·27. The original *tatimma shajras* prepared on the spot under paragraph 4·24 will be bound up with the Government copy of the *jamabandi*, and copies checked and signed by the field kanungo will be bound with the patwari's copy of the *jamabandi*. No copy of the *tatimma shajras* prepared on the back of mutation sheets is required for the Government copy of the *jamabandi*, in which the original mutation sheets are incorporated, but copies of them must be made on mapping sheets for the patwari's copy of the *jamabandi*. The field book details need not be copied on the copies of the *tatimma shajras* filed with the patwari's copies of *jamabandis* as the details are already given in the field book kept by him. Tatimma shajras to be bound with the jamabandi.

4·28. The Tahsildar and naib-tahsildar, shall when on tour, will check on the spot at least 25% of the *tatimma shajras* prepared in each village in the period intervening between two *jamabandis*. They are not expected to do much in the way of chaining, but they must remember that they are responsible for the general accuracy of the measurements. They should be able to recognise by eye whether there is any palpable mistake in the *karukan* or in the area. and if there is any reason to believe that a mistake exists they must have the field rechained and the area re-calculated in their presence. They must also check the entries in the field book referred to in paragraph 4·26. All *tatimma shajras* so checked must be endorsed "Certified that this has been verified on the spot" and signed and dated. Keeping up to date of maps.

4·29. The above instructions apply to all districts. The intention is that the patwari's copy of the settlement map and the fair copy kept in the tahsil should include all changes from time to time brought to life, but it is recognised that when the last settlement of a district is not very recent it would be difficult to keep the maps completely up-to-date at present. But it is a matter of great importance that the maps of all recently settled districts should be kept completely up to date, and Deputy Commissioners are responsible that this is carried out. To secure this end the following additional instructions are issued. They apply in the first instance, to the districts of Gurgaon, Karnal, Rohtak, Hissar, Ludhiana, Gurdaspur, Gujranwala and Amritsar, and on completion of settlement in any other district or tahsil since 1910 should be applied to the district or tahsil in question. Keeping up to date of maps.

4·30. The patwari will in future have in his custody only one copy of the settlement map for use at *girdawari* and for all other purposes. The *Karukan* will be shown in the copy. The patwari's copy will be on *latha* cloth. The fair copy of the settlement map formerly in the custody of the patwari will hereafter be permanently kept in the tahsil. The patwari's copy of the map of every village must be renewed at the time of filing of every other *jamabandi* of that village. For special reasons, however, a fresh copy may be prepared after the lapse of a shorter period under the order of the Collector; in which case the map will be again renewed at the second *jamabandi* from the date of this special renewal, *e. g.*, if a map was prepared at the *jamabandi* of 1920 it would be renewed in 1928 and then again in 1936; but if the Collector orders its renewal in 1926, it will be again renewed not in 1936 but in 1932. The date of renewal should always be noted on the map. Renewal of patwari's copies of shajra kishtwar.

4·31. When the patwari brings the *jamabandi* to the tahsil at the beginning of Septemper he will at the same time bring his copy of the settlement map, the *tatimma shajras* prepared under paragraph 4·24, the field book, the work book, and the mutation register. He will, under Incorporation of amendments in the parat tahsil maps

and in the shajra kishtwar kept by patwaris.

the field kanungo's supervision, transfer to his own copy of the settlement map and to the fair copy kept in the tahsil all the new fields shown in the *tatimma shajras* prepared under paragraphs 4·23 and 4·24. The new lines of amended fields should in the first instance be shown in pencil by the patwari and then inked by the kanungo in *shingraf* after comparison with the *tatimmas* concerned. The *tatimma shajras* relating to mortgages of all kinds, redemptions, leases and *hissadari kasht* need not be incorporated in the fair copy of the field may kept in the tahsil. If the new fields are so small that the corrections are difficult to read they should be drawn on a larger scale in the margin of the map. If under the above instructions it becomes necessary to make any further alterations in any portion of the tahsil copy of the settlement map which portion has been already so much altered that further alterations cannot be made therein without giving rise to confusion then a tracing of the portion in which further alterations have to be made should be prepared on the margin of the map, or, if sufficient space be not available on the margin, on a separate sheet, and the alterations necessary as well as any alterations that may have to be subsequently made in this portion should be made in tracing thereof prepared on the margin or on the separate sheet as the case may be. The kanungo must carefully compare the changes made in the maps with those shown in the *tatimma shajras*, and must state in his note of the result of checking the jamabandi that he has done so. The Tahsildar and naib-tahsildar shall also examine the incorporation of 25 per cent. of *tatimma shajras* in the *parat tahsil musavi.*"

Preparation or tatimma shajras of alluvion and diluvion tract.

4·32 The above instructions do not apply in their entirety to estates subject to alluvion and diluvion. In such estates no *tatimma shajras* should be prepared for changes due to alluvion or diluvion even if such changes necessitate the passing of a mutation order, as in the case of estates where the submergence of proprietary land involves its conversion into *shamilat*. For changes due to other causes however, *tatimma shajras* will be prepared in accordance with the above instructions. The instructions contained in paragraph 4·31 regarding the correction of maps will apply only to the portion of the estate not subject to alluvion or diluvion. As regards the remaining portion the changes due to alluvion or diluvion as well as those for which *tatimma shajras* have been prepared will be incorporated in the tracing to be filed with the datailed *jamabandi* according to local alluvion diluvion rules or orders as sanctioned at settlement. But the fields which actually touch the fields affected by river action should always be shown in this map or tracing

Co ordination of departmental plains with corresponding revenue papers.

4·33. In order to obviate the difficulties that have occurred in the past the Punjab Government consider it essential that all departmental land plans of Government property should, in future, be co-ordinated with the corresponding revenue papers.

A sufficient number of fixed and easily identifiable points, such as tri-junction pillars, base line marks, milestones or in defaults of these other permanent topographical details, which may be found on the corresponding revenue map then in existence, should be plotted on the departmental plan and the Government property should then be plotted on it with reference to such fixed points.

The following procedure will be observed :—

(1) The Public Works Department have agreed to provide technical surveyor to carry out the surveying on a large scale of feet and inches of any areas of Government property required to be surveyed

under the instructions issued in the Punjab Government circular no. 2240 (Rev. and Agr.—Genl.), dated 21st January 1921.

(2) In districts or portions of districts not under settlement, the Deputy Commissioner will communicate to the Executive Engineer, P. W. D. by April 1st of each year the exact area in which quadrennial revision of Revenue records is to take place in the year commencing October 1st of each year, the exact area in which quadrennial revision of revenue records is to take place in the year commencing October 1st following, and state the parcels of Government property in that area

In tracts under settlement, the Settlement Officer will, as his work progresses, give the Executive Engineer information as long ahead as possible of the date on which re-measurement or revision of the maps of estates in which Government property is situated, will be commenced

(3) The Executive Engineer will then cause to be prepared plans showing the extent and position of each parcel according to the Public Works Department's records. These plans will also show both all topographical features adjoining the Government land which are likely to assist the revenue officials in checking its boundaries and area, and also any Revenue " fixed " points in the neighbourhood

All distances will be shown in feet and inches. The plans should reach the Collector concerned by a date to be agreed on between him and the Executive Engineer.

When land plans of any area have once been prepared and discrepancies, if any, have been settled, it will not be necessary to prepare them again at a future quadrennial revision unless in the meantime some change has occurred which necessitates an alteration in the plans. If there has been no such change the Executive Engineer should merely supply a certificate to the effect that the land plans are as they were at last quadrennial revision.

(4) The Collector will then arrange for the plans to be checked by the tehsildar. If no discrepancies are found then the tahsildar will note in red ink on the *shajra kishtwar* (*parat tahsil* as well as on the patwari's copy) the distances given in feet and inches on the Public Works Department plan. The revenue record will thus read.....*karams*..... *gathas*, the equivalent of .....feet.....inches.

(5) The tahsildar will then return the plan for signature by the Collector and the Executive Engineer, and for the preparation of a duplicate to form an inset to the *shajra kishtwar* (*parat Sarkar*) and to be similarly signed.

If the discrepancy is observed, then the tahsildar will note it in pencil on the plan and return the plan to the Colloctor concerned for transmission to the Executive Engineer. Executive Engineer will then direct his surveyor to consider these discrepancies in consultation with the patwari. If the two are satisfied that the revenue record is correct, and the Public Works Department plan incorrect, then that plan will be corrected accordingly and the papers returned to the tahsildar who will enter distances as required above in revenue record and forward the plan for signature to the Collector.

If the revenue map appears to be incorrect the case will be submitted to the Collector, who will, if he concurs direct that mutation proceedings be entered up for the carrection of the map.

When mutation proceedings have been completed, a *tatimma shajra* will be prepared for the revenue records. Distances will be marked on it in feet and inches according to the Public Works Department plan, and the inset signed and recorded as above.

(6) The procedure prescribed in the preceding sub-paragraphs for checking departmental land plans of the Public Works Department will *mutatis mutandis* be carefully observed in the case of Forest, District Board and Railway Department maps also.

(7) The detailed plan of any property belonging to the Crown in the estate shall form part of the record of rights, vide Financial Commissioners' notification No. 1953-R., dated the 21st September 1937.

(8) It shall be the duty of the revenue staff to afford every assistance to the officials of these departments in matters connected with the co-ordination of departmental land plans.

Cantonment boundaries.

4·34. Under instructions from the Government of India it is necessary that in any survey which may in future be made by the Revenue Establishment so as to include any portion of the boundary or a cantonment that boundary should invariably be defined by a series of straight lines drawn from each of the cantonment boundary pillar to the next, except where it is distinctly stated to the contrary in the description of the boundary published by notification in the local gazette. Before any such survey is finally accepted it should be communicated to the military authorities for information and scrutiny. The attention of Settlement officers is particularly directed to these instructions.

SECTION V—THE JAMABANDI

(The Punjab Land Records Manual *Chapter 7 as amended up-to-date*).

Note—Paragraphs 276—278, 283, 284, 290 of the Settlement Manual, and paragraphs 387—393 of the Land Administration Manual should be consulted.

Form of jamabandi with Instructions. Land Revenue Rule 72.

7·40. The form of the *jamabandi* is as follows:—

JAMABANDI.

1	2	3	4	5	6	7	8	9	10	11	12
Khewat No.	*Khatauni* No.	Name of *patti* or *taraf*; with name of *lambardar* and revenue.	Owner with description.	Cultivator with description.	Well or other means of irrigation.	Field numbers.	Area.	Rent paid by cultivator, rate and amount.	Share or measure of right and rule of *bachh*.	Demand, with detail of revenue and cesses.	REMARKS.

Note.—The form may be altered with the sanction of the Financial Commissioner to meet the requirements of any particular district or tract. For canal colonies in particular a special form will generally be found necessary (see the form given in paragraph 7·45 *infra*), and in other districts it may prove advisable to effect minor alterations. Thus if there are two classes of owners, superior and inferior, a column to show the superior owners can be inserted between columns 3 and 4. A column may, if necessary, be added for "date-trees liable to assessment." In tracts under fluctuating assessment this form may be used or the alternative form given in paragraph 7·44 *infra*, as may appear more suitable. In the case of urban lands to which the Land Revenue Act applies, the ordinary form should be adopted, but it should be divided into two parts, namely, (*a*) for agricultural (*zarai*), and (*b*) for urban (*sakni*) lands. Lands specially assessed as potential building land, as in Lahore, should be classed in the former but distinguished from other agricultural land by addition of the words '*qabil tamir*.'

Special instructions relating to the jamabandi.

7·41. (1) *Column* 1.—The *khewat* number is the number of the owners' holding. Except as provided in paragraph 7·19 (3) *supra*, arrange owners' holdings in the order in which the names of owners are given in the village genealogical tree (*shajra nasab*). *Muafi* holdings must not be collected at the end of the *jamabandi*. Each should be put in the place to which, with reference to the order of ownership, it belongs. A mortgagee in actual possession, and paying the land revenue should have a *khewat* and not a *khatauni* number, except as provided in clause (5) *infra*.

(2) *Column* 2.—The *khatauni* number is the number of the holding (*khata*) of the person responsible for the cultivation. Enter in order all the holdings belonging to each *khewat* number showing first the holding, if any, cultivated by the owner himself (*khudkasht*), next the holdings of occupancy tenants, lastly, those of tenants-at-will. If a tenant holds land under one owner, part in occupancy right and part as a tenant-at-will, the whole may be entered as a single holding, the fields held under each tenure, and, if necessary, their rent, being separately detailed. Where there are several tenancy holdings under one proprietor the tenants in their several classes should be entered, so far as possible, in alphabetical order. The Collector may prescribe a different order of entry for the *khatauni* holdings of Government lands in a colony area if he finds that the orders prescribed in this instruction cannot be suitably followed as regards such holding.

(3) *Column* 3.—Enter the *pattis* or *tarafs* in the order in which they appear in the *shajra nasab*. If there is any common land belonging to all the owners of the *patti* or *taraf*, enter it as a separate *khewat* number after the *khewat* numbers of the individual owners. Enter the total for each *patti* or *taraf* after the last of the *khewat* numbers contained in it.

(4) *Column* 4.—"Description" in this column includes father's name, caste or tribe, *got* or sub-tribe, if any, and residence; and for officers of the Indian Army the title of their rank, as *Subedar*, *Risaldar*, etc. If the owner is a firm, its manager should also be named and described. If the firm is registered under the Indian Partnership Act, IX of 1932, the partners need not be mentioned; but if the firm is not registered the partners should also be named and described and the details of their shares recorded. The mortgagee with possession, *i.e.*, one who is responsible for the payment of land revenue for the mortgaged land, should also be entered with a similar description in this column under the name of the owner, thus, *Allah Bakhsh rahin wa Sewa Ram wald Rura Ram, Arora, sakin Lahore murtahin*. It is to be noted that although the caste or tribe, *got* or,

sub-tribe is entered in all cases, the presumption of truth attaches to such entries only in respect of owners and of mortgages with possession for a period of more than 20 years in estates outside a municipality or cantonment and in the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil; and it is only in regard to such persons that careful inquiry is necessary. The amount of the mortgage debt will not be entered anywhere in the *jamabandi*. If any of the recorded owners in a joint holding is out of possession note the fact and show who is in possession of his share, thus: *Allah Bakhsh ek tihai wa niz kabiz hakkiyat Rahim Bakhsh, ghair-kabiz do tihai.* If the person in possession, *i.e.*, who pays the revenue, is not owner, show this clearly, thus: *Allah Bakhsh ghair-malik kabiz hakkiyat Rahim Bakhsh malik ghair kabiz.* Regarding the entry of a right-holder as *ghair kabiz* (*see* paragraph 7'25 *supra*). The practice has in the past existed of making a note in the rent column (No. 9) against the entry of a tenant-at-will of *bila lagan ba waja tasawwar milkiyat.* This entry, which tends to operate as one of *ghair-kabiz* in respect of the owner should never be made. It is in the first place inconsistent because a person who is a tenant cannot be in adverse possession; further the record is one of facts and not of claims. If the facts show adverse possession the mutation of *ghair-kabiz* should be made, and disposed of as shown in paragraph 7'25 (6) *supra* (L.L T. 1932, page 141).

If a sharer in a joint holding sells or mortgages the whole or a definite fraction of his share, the name of the transferee will be shown in this column.

When a person whose name is entered in the record-of-rights is a minor, a female or otherwise incapacitated from managing his own affairs, the name of his or her *sarbarah* or guardian need not be shown. It is needless to specify whether a right-holder is of age, or a minor. Where such entries have already been made the patwari may, when the right-holder comes of age, omit the designation "minor" and the name of the *sarbarah* without entering the case in the mutation register.

(5) *Column* 5.—"Description" in this column includes the father's name, caste or tribe, *got* or sub-tribe, if any, and residence; and for officers of the Indian Army the title of their rank as *Subedar*, *Resaldar*, etc. If the tenant is a firm its manager should also be named and described. If the firm is registered under the Indian Partnership Act, IX of 1932, the partners need not be mentioned; but if the firm is not registered the partners should also be named and described and the details of their shares recorded. It is to be noted that although the caste or tribe, *got* or sub-tribe, if any, is entered in all cases, the presumption of truth attaches to such entries only in respect of occupancy tenants, and of leases for a period of more than 20 years in estates outside a municipality or cantonment and in the district of Simla except the *ilaqa* of Kot Garh in Kot Khai tahsil and it is only in regard to such persons that careful enquiry is necessary. The status of the cultivator should also be recorded which may be as follows:—

(*a*) Cultivating owner.—*Khudkasht*; or if one of several shareholders is cultivating a portion of the holding (*hissadari kasht*) *khud kasht hissadar*;

(*b*) Occupancy tenant—*Maurusi* or *dakhilkar*. It is desirable that the section of the Tenancy Act applicable should be entered, but where this has been omitted the deficiency must not be supplied without a mutation. Also *muqarraridar* and any other local form of right ;

(*c*) Tenant holding for a fixed term under a contract (*pattadar*) or a decree of a Court or an order of competent authority. It should be remembered that the status of a leaseholder for a year differs from that of a tenant-at-will ;

(*d*) All other tenants, *i.e.*, tenant at-will (*ghair maurusi* or *ghair dakhilkars*). A person who is in adverse possession should not be described as *ghair dakhilkar* or *ghair maurusi*. These words imply the relationship of landlord and tenant which is incompatible with adverse possession ;

(*e*) " *Adhiogias, Siris, Lachhains, Halis, Adhalis* and other partners in cultivation should also be entered in this column, care being taken to distinguish them from tenants within the meaning of section 4 (5) of the Tenancy Act. They are not ' tenants ' because they do not possess the right of excluding the landlord under section 12 (2) of the Act from interfering in the cultivation. Their entry regarding such partners in cultivation should be ' *khud kasht fulan be sharakat fulan Adhjogia, Siri,* etc.' Field workers, who get fixed wages in cash or in kind, should not find a place in the *jamabandi*."

Where the cultivation of the same field in the two harvests is done by different cultivators, the name of the *rabi* cultivator should be entered in red ink under the *kharif* tenant : he should not be given a separate *khatauni* number. In urbanized areas to which the Land Revenue Act applies, it is not often practicable to record the tenants of every class of land. The Collector is given discretion, therefore, to direct that no entries be made in this column save in respect of land which is occupied or has been let for agricultural purposes or for pasture in any such area.

If a sharer in a joint holding sells or mortgages certain fields, and the transferee obtains possession, the name of the latter will be shown in this column not in column 4. He will be given a *khatauni* and not a *khewat* number.

If a sharer in a joint holding purports to create occupancy rights and the tenant obtains possession, the latter should be entered as " *ghair maurusi ba wada marusiyat* " in this column a brief note regarding the nature of arrangement being entered, if necessary, in the column of remarks (*see* 1937 L L. T. 29).

The tenant is the person responsible for paying the rent. If he sublets the land the entry should be *Allah Bakhash ghair maurusi awwal marfat Khuda Bakhsh ghair maurusi doyam.*

(6) *Column 7.*—The field or *khasra* number is the number given to the field in the village map (*shajra kishtwar*). The order of entry should usually be that of the *khasra girdawari*. The soil description in the *jamabandi* is intended to show the permanent method of husbandry applied to each field, and not the condition applicable to any particular harvest or harvests, *see* paragraph 260 of the settlement Manual. The

soil entry must, therefore, be changed, when, but only when, a permanent change has occurred, as *e. g.*, by the cultivation of land which was previously *banjar jadid* or *banjar kadim* or by the conversion of *barani* into *chahi land* owing to the sinking of a new well. Ordinarily changes in soil classification need only be made in the year in which quadrennial attestation takes place. But in the case of changes from uncultivated to cultivated land, the change of classification must be made in the next *jamabandi*, whether it be one made after a quadrennial attestation or not.

(7) *Column* 8.—Where the *ghumao* measure is in use, enter the area of holdings in *kanals* and *marlas* only reckoning out *ghumaos* only in the totals of *pattis* or *tarafs* and of the estate.

(8) *Column 9.*—Where rent is paid by a share of produce (*batai*) enter the share only. If by a lump sum note the amount, otherwise note both rate and amount in the case of cash rents. Where part of a holding pays at one rate, and part at another, see that areas, etc., are given in sufficient detail ; so also where cash rents are paid on particular crops (*zabti*). Where no rent is paid by a person in possession other than the owner briefly explain the reason for non-payment of rent. If the fact is undisputed as above explained, the entry of no rent because of a claim to adverse possession should never be made. If the fact is that the possession is adverse the entry should be of *ghair-kabiz*, if the fact is that he is a tenant then if the rent cannot be ascertained it should be recorded as doubtful. " For the share of partners in cultivation see sub-clause (10) (*viii*) below. (Correction slip No. 10, dated 26th July 1935).

(9) *Column 11.*—If the revenue of a holding is assigned (*muafi* or *jagir*) enter the amount in red ink. In the totals of *pattis* or *tarafs* and of the whole estate show the whole revenue in black ink with a detail of *khalsa* in black and *muafi* or *jagir* in red ink.

(10) *Column 12.*—In the case of all new entries of names of owners, mortgagees with possession and occupancy tenants and alterations in shares, etc., which are supported by any mutation or *fard badar* entry refer in this column to the entry by which they are supported. References to *fard badar* entries should be given in the manner described in paragraph 7'2 *supra*. If mutation of rights has occurred and has been entered up before June 15th or the date approved by the Director of Land Records but not attested, note briefly the facts which are believed to have occurred giving the serial number of the entry in the register but stating that the mutation has not been attested.

(*i*) If a new well has been made, or a deserted well has been brought into use, or if a well has fallen in or been deserted, be very careful to note the fact.

(*ii*) If a holding or part of a holding has been hypothecated to Government as security for a *takavi* loan, make a note of the fact.

If a second loan is given on the same security a second mutation is not required, *see* paragraph 7'18 (*ii*) *supra*, but whether a mutation has to be entered up or not the *patwari* should make a note of the loan in column 12 of the current *jamabandi* which should be carried over to all succeeding *jamabandis*.

(*iii*) A brief description of the terms of collateral mortgages attested in the mutation register will be entered in this column, but no entry relating to such mortgages will be made in any other column.

(*iv*) If the revenue of a holding, *patti*, or *taraf*, or of a whole estate, is assigned (*muafi* or *jagir*), note the fact and the names, description, and shares of the assignees in red ink in this column.

(*v*) If mutation is refused in any case with reference to which notice of the registration of a deed has been received, note the fact in this column, specifying the nature of the deed (sale, mortgage, etc.) and its date.

(*vi*) For special instructions regarding transfers on which certain conditions are imposed by the Punjab Alienation of Land Act, *see* paragraphs 7'22 *supra* and 7'23 *supra*.

(*vii*) If any land in a colony town has been sold by Government for a specific purpose or subject to any particular conditions, then note here the purpose or the conditions.

(*viii*) " The amount of produce received by *Adhjogias* and other partners in cultivation from the landlord as their share and the contribution towards seeds, Government dues, etc., if any, made by them, should be recorded in this column." (Correctian slip No. 9, dated 26th July, 1935).

(*ix*) A note showing the names of owners whose land has been acquired by Government wholly or partially and without a share of the *shamilat*, together with the area transferred and the number of the relevant mutation, shall be entered in this column. It shall also be stated in this note that the owner concerned will be entitled to a due share of the *shamilat* area at the time of partition. The note in question shall be copied from *jamabandi* to *jamabandi* till partition of the *shamilat* takes place [*see* paragraph 7'19 (4 *supra*)].

7'42. All land owned by Government should be entered in one place after the village common. All land permanently appropriated for public purposes since the date of the last settlement should be entered thus—

(1) Where land belongs to a department of the provincial Government the words " Provincial Government " should be recorded in the column of ownership. Where land belongs to a department of the Government of India, the words " Central Government " should be entered in that column.

(2) In the occupier's column the name of the department which has charge of the land, *e.g.*, Deputy Commissioner, Canal Department, Executive Engineer, North Western Railway, Postal Department, Defence Department, etc.

(3) In lieu of soil entries, state the purpose to which the land is applied, *e.g.*, encamping ground, *sarai*, canal, *rajbaha* bungalow, etc.

(4) When *nazul* or other Government property is vested in a local body, or is otherwise in its possession, such property should be described as " Provincial Government or Central Government as the case may be, " *maqbuza* District Board, Cantonment Board, " or as the case may be. But property acquired by a local body should be shown as owned by that body. In order to guard the interests of Government, no mutation of any new acquisition or of sale of property owned by a local body should be made without the order of the Collector.

Concerning land occupied by Government at the date of last settlement which Government still holds, the entries of the last settlement in the column of ownership will be repeated unaltered. The columns of occupancy and description of land will be filled up as above directed.

If the land is occupied only temporarily, as for instance, the approach to a ferry, the names of the owner and hereditary tenants will usually be continued, and separate numbers need not be made. Government possession can be described in the column of remarks.

Land held by Government on lease for specific purposes.

"**7·42-A.** In connection with the making of entries in the *jamabandi* on the basis of the mutations, referred to in paragraph 7·11-A, inserted by correction slip No. 34, dated the 8th April, 1936, the following instructions are issued :—

(*i*) The entries in column 4 (owner) of the *jamabandi* should remain unaffected.

(*ii*) In column 5 (cultivator) the department of Government, for whose operations the lease has been effected, should be shown as lessee and the land owner as lessor.

(*iii*) In column 9 (rent), the entry should be "rent at owner's rate on account of the construction and maintenance of (.....here specify the purpose of the lease)."

Changes in soil entries.

7·43. A note should be added at the end of the *jamabandi* stating briefly what changes have been made in the soil entries, and where the changes are important, explaining the reason for making them. This note should be signed by the *kanungo* and by the *naib-tahsildar* or *tahsildar*.

7·44. [*Alternative form of* jamabandi *for fluctuating assessment referred to in the note to the form in paragraph* 7·40 supra].

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Khewat number.	*Khatauni* number.	Name of well or *patti*.	Owners with description.	Cultivators with description.	Detail of			Name of canal and area irrigated in each field, with details of flow and lift.	Crops.		Rent.		Demand kharif 193 . rabi 193 .		Remarks.
					Khasra number.	Area of field and total of holding.	Class of land & rates.		*Khrif.*	*Rabi*	Cash.	Kind.	Revenue.	Cesses.	

Column 8.—The rate should be entered only against the total of each class of land, and at the end of each holding or once for all at the beginning of the *jamabandi*.

Column 16.—Enter balances due, also authority for new *abiana* demands.

7·45. Alternative form of *jamabandi* for colony towns and *chaks* referred to in the note to the form in paragraph 7·40.

JAMABANDI ABADI.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Serial No. according to auction or allotment register private treaty.	*Khewat* number.	*Khatauni* number.	Name of *lambardar* with revenue.	Name of owner with description.	Name of tenant with description.	Name of owner of building material with description.	Name of rent payer with description.	Number of block.	Field number or site number.	Area in *kanals*, *marlas* and *sirsahis* or square feet.		Description of land		Rent annually paid by the occupier.	Class of *abata*.	Rate of revenue imposed.	Demand with details of revenue and cesses.	Remarks.
										Area according to the registered deed or according to the original contract.	Present area.	Purpose for which the land was originally allotted.	Purpose for which it is being used.					

Nant—This form will be used where the land in a colony town or a *chak* has been built upon. The ordinary form of the *jamabandi* (paragraph 7·40 *supra*) will be used in the case of land which is still culturable though within the town limits.

INSTRUCTIONS

7·46. (1) *Column* 1.—Against each field number in the *khewat*, the serial number of the auction or allotment register or the register of sales by private treaties, in which the land of each field No. is included, should be given in this column.

(2) *Column* 2.—The *khewat* is the number of owner's holdings which should be arranged in the order in which the names of owners are given in the village genealogical tree. In the case of towns where the genealogical trees are not in existence, the order of *khasra* numbers will be followed. No one should be given a separate *khewat* number, until he has obtained full proprietary rights.

The old *khewat* number should be given in red ink under the new *khewat* number.

(3) *Column* 3.—The *khatauni* number is the number of the holdings of persons responsible for the payment of rent or are in possession of the site. Occupancy tenants, auction purchasers, peasant grantees, or persons holding sites under special conditions, will be given separate *khatauni* numbers under the *khewat* of *Sarkar*. In such cases the old number of *khatauni* should be in red ink under the new *khatauni* number.

(4) *Column* 4.—The name of *lambardars* responsible for the realization of land revenue assessed on sites should be entered. The total land revenue demand for which each *lambardar* is responsible should be entered in this column.

(5) *Column* 5.—"Description" in this column includes father's name, tribe, *got* and residence, and in the case of officers of the Indian Army, the title of their ranks such as *Subedar*, *Resaldar*, *Jamadar*, etc. The name of a mortgagee with possession must be shown under the name of mortgagor. If a sharer in the joint holding sells or mortgages the whole or a definite fraction of his share the name of the transferee will be shown in this column. The name of *sarbrah* or guardian of minors or females need not be shown.

(6) *Column* 6.—In this column those persons will be entered who will ultimately obtain proprietary rights but have not yet acquired their rights. Their holdings will be entered in the following order :—

(1) Auction purchasers.

(2) Occupancy tenants.

(3) Peasant grantees.

(4) Persons holding on half-resumable conditions.

(5) Persons holding land on the planting conditions.

(6) *Lambardari* grants.

(7) Leaseholders on horse-breeding conditions.

These persons will be shown within their separate groups in the order given in the pedigree table.

After the holdings of the above named persons the holdings of the following should be entered :—

(1) Non-occupancy tenants.

(2) Shopkeepers.

(3) *Kamins* (menials) permanently settled.

(4) [illegible]ditional *kamins*.

(5) *Ahatas* allotted for *masjids*, *dharamsalas*, etc.

(6) *Takias*.

(7) *Deras*.

These persons will be shown within the group in alphabetical order.

"Description" in this column includes father's name, tribe, *got*, residence and status, *e. g.*, rent-payer, occupancy tenant, *abadkar*, etc. In the case of an officer of the Indian Army, the title of his rank should be prefixed to his name. In case the site is in the possession of *malik*, the words *maqbuza malik* should only be written.

(7) *Column* 7.—This column will be filled in the case where the owner of the site has lent the area to another person and has at the same time allowed him to erect building at the latter's own cost. "Description" in this column also includes father's name, tribe, *got*, residence. In case of an officer of the Indian Army, the title of his rank should also be prefixed to his name.

(8) *Column* 8.—In this column those persons will be shown who pay rent to persons shown in columns 5, 6 and 7. They will be shown in alphabetical order. The holdings of *maliks* will also be shown in this column. The "Description" in this column includes father's name, tribe, *got*, residence of the person occupying the building erected by the person mentioned in column 7. In the case of officers of the Indian Army the title of their rank should be prefixed to their names.

(9) *Column* 9.—Block number should be given against the site number or field number in column 10.

(10) *Column* 10.—The field number of the site number means the number given to it in the map The order of entries should usually be that of *khasra girdawari*.

(11) *Column* 11.—This column will be left blank when area originally allotted has been divided or amalgamated with areas and given separate field numbers.

(12) *Column* 12.—The area arrived at the last *girdawari* of the field concerned or shown in the mutation register will be given in this column and will be in *kanals*, *marlas* and *sarsahis* or square feet.

(13) *Column* 13.—This should be ascertained by reference to the order of allotment.

(14) *Column* 14.—This should be ascertained by reference to the *khasra girdawari*.

(15) *Column* 15.—The amount of rent paid annually by the occupier should be entered here. This can be ascertained from the *khasra girdawari*.

(16) *Column* 16.—According to the condition of sale or allotment, as far as payment of revenue is concerned, the *ahatas* are classified differently such as (1) residential sites, (2) shop sites, (3) combined residential and shop sites, (4) manials' sites and (5) factories etc. This column should show the class of *ahatas*.

(17) *Column* 17.—The rate of revenue sanctioned should be given.

(18) *Column* 18.—The total amount of the land revenue demand with details of revenue and cesses should be specified in this column.

(19) *Column* 19.—In the case of all new entries of names of owners, mortgagees with possession, occupancy tenants and alterations in shares, etc., which are supported by any mutation or *fard badar* entry, the number of such mutation or *fard badar* should be given.

A brief description of the terms of collateral mortgagees attested in the mutation register will be entered in this column, but no entry relating to such mortgagee will be made in any other column.

If mutation is refused in any case with reference to which notice of the registration of a deed has been received, note the fact in this column, specifying the nature of the deed (sale, mortgage, etc.) and its date.

"For special instructions regarding transfers on which certain conditions are imposed by the Punjab Alienation of Land Act, *see* paragraph 7·22 *supra*."

(20) No mutation of rights can be incorporated in the *jamabandi* until a Revenue Officer has sanctioned it by an order recorded in the mutation register. The *jamabandi* entries concerning holdings in

which mutations have occurred, but on which no orders have been passed will remain unaltered.

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

7·47. 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 6, 11 or 12 or the Act :—

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

(*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.

Treatment of the transferee after refusal of the mutation on account of the contravention of the provisions of the Punjab Alienation of Land Act.

7·48. If the order passed on a mutation under paragraph 2·27 *supra* amounts to a refusal 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 *khud kasht*.

Soil entries in the jamabandi. Financial Commissioner's Circulars No. 1258, dated 8th February, 1911 and No. 19 of 1889.

7·49. The classification of fields in column 7 of the *jamabandi* has its origin in each case in the entries made in the *khataunis* when a village is remeasured. If note 14 of the instructions appended to the *khatauni* form (*see* appendix VII, Settlement Manual), be read, it will be seen that the classification of soils may be considered under three heads :—

(*a*) land which is cultivated without the aid of irrigation,

(*b*) land which is cultivated with the aid of irrigation,

(*c*) land which is not cultivated.

In all returns in which soils or crops are classified as irrigated and unirrigated, *sailab* soils and crops should be included in the latter class.

Unirrigated land.

7·50. *Land which is cultivated without the aid of irrigation.*—In the village papers of many districts unirrigated land which are not affected by flooding or percolation from rivers (*sailab*) are simply classified as *barani*. In those districts in which the *barani* lands are classified according to the kind of soil (*see* paragraphs 261—265 of the Settlement Manual), no revision of this classification should ordinarily be attempted. If, for special reasons, as for instance, the spread of sand or *reh* it may sometimes be necessary to revise any entries relating to the classification of *barani* land, such revision should always be limited

strictly to those lands in which some real occasion for the revision exists.

7·51. *Land which is cultivated with the aid of irrigation.*—In note 14 appended to the *khatauni* form (appendix VII of the Settlement Manual), it is directed that all land irrigated regularly from a well should be classed as *chahi*, and that all land irrigated regularly from a canal should be classed as *nahri*. And it is explained that the actual area of crops irrigated in each case will not appear from the *khatauni* entries, but from the crop returns. The distinction herein contemplated is further explained in paragraph 260 of the Settlement Manual. The limits of the land permanently served by each well or canal distributary having once been ascertained and indicated in the field map, the same caution should be observed in changing these entries as is directed above with respect to the alteration of classes of *barani* land. Ordinarily no such change need be attempted except in the year of quadrennial attestation, and in carrying out these changes care should be taken that lands once classed as irrigated be not classed as *barani* nor *barani* as irrigated unless a permanent change of this nature has occurred. Classes of irrigated land.

7·52. It will result from these instructions that the method of distributing the cropped area over the various classes of cultivation shown in column 27 of the *jinswar* abstracts will differ from the method adopted in columns 7 and 11 of the *milan raqba*. The entries in the *jinswar* returns are derived from the *khasra girdawari*, and the entries in that *khasra* are intended to show how each field is treated from harvest to harvest; whereas the classification of soils in the *milan raqba* is taken from the *jamabandi*, and is intended to show the conditions under which the village husbandry is permanently carried on. Distribution of the cropped area in crop abstract and in area statement.

7·53. This land is described in the village papers either as unculturable waste (*ghair mumkin*), or as old waste (*banjar kadim*), or as new waste (*banjar jadid*). For the meaning of these terms, the instructions appended to the *khasra girdawari* (Chapter 9), and paragraph 267 of the Settlement Manual may be consulted. Land which is not cultivated.

When waste land of either of these three classes is cultivated, or when cultivated land is so injured as to make it unculturable (*e. g.*, by the action of rivers or torrents), there is no difficulty in showing the change at once in the annual *jamabandi* or diluvion or fluctuating assessment papers.

The entries connected with the changing of cultivation into *banjar jadid* and of *banjar jadid* into *banjar kadim* are less easily carried out with accuracy. Such changes, therefore, should not be shown in an annual *jamabandi* or in diluvion or fluctuating assessment papers but in the next detailed *jamabandi*.

7·54. Paragraph 388 of the Land Administration Manual shows why detailed *jamabandis* are, as a rule, only prepared every fourth year. They should be written on paper of A quality. They are prepared for those estates or parts of estates in each year in which the Collector directs that a detailed *jamabandi* should be prepared and they are ordinarily prepared annually in a quarter of the villages in a district. They should contain every field entry in full. For these villages, quadrennial returns (*see* Chapter 10) should be compiled. Jamabandi, how and when to be prepared.

A table should be given to each field *kanungo*, showing the arrangements apporved for the preparation of detailed *jamabandis* for each

patwari's circle in his charge, this table being so arranged that the work of each year shall cover about a fourth of the *kanungo's* whole circle.

As regards villages under fluctuating assessment, special permission has been given in certain districts, by which the preparation of annual *jamabandis* is dispensed with unless it is required for purposes of the fluctuating assessment. The principle approved of is that when special records have been prescribed which suffice for the purposes of fluctuating assessment, annual *jamabandis* are unnecessary.

In villages subject to diluvion, if the diluvion rules of the district prescribe the preparation of a record which enables us to dispense with an annual *jamabandi*, it is unnecessary to insist on its preparation in a year other than that of the quadrennial attestation. If such rules, however, are not sufficient for this purpose, it would only be necessary to prepare a detailed revised *jamabandi* for those holdings which are affected by river action. In such cases the patwari will prepare two copies of the revised *jamabandi* of the holdings affected, one copy to be retained by him, and the other sent to the tahsil to be placed with the last detailed *jamabandi* field in the district office.

Necessity of preventing errors, etc., in the khasra girdawari.

7·55. Thus for a large portion of the district no *jamabandi* will be prepared for one, two or three years, and certain precautions are therefore necessary to avoid errors and prevent the *patwaris* from tampering with the entries in the *khasra girdawri* or other papers. The instructions issued for this purpose are contained in Chapter 9.

Mutations occurring up to 15th June to be incorporated in the jamabandi. Financial Commissioner's Circular No. 30, dated 4th December, 1909.

7·56. Tahsildars and naib-tahsildars must, without neglecting record work in other villages, pay special attention to estates for which new detailed *jamabandis* are to be drawn up. All mutations upon which final orders have been passed up to 15th June inclusive or any later date approved by the Director of Land Records are incorporated in the *jamabandi*. Every effort should be made to have all mutations which have occurred up to that date entered in the register and attested by that date.

The tahsildar or naib-tahsildar in charge of the circle in which any estate for which a *jamabandi* is to be drawn up is situated, must visit the estate in the cold weather before the middle of January, and, as far as possible, attest all pending mutations. All attestations of mutations during the 9 months preceding the drawing up of a new detailed *jamabandi* must be carried out in the village itself. At his first visit to the estate in the cold weather the tahsildar or naib-tahsildar should see that the patwari and kanungo have arranged their work so as to carry out the instructions in the next paragraph.

Preparations for the drawing up of new jamabandi. Financial Commissioner's Circular No. 30, dated 4th December, 1909.

7·57. Preparation for the drawing up of a new *jamabandi* should be started by the patwari and field kanungo in the cold weather, and if possible, in all the estates concerned before the middle of January. They should together visit each estate for which such a *jamabandi* is to be prepared and by enquiry from the right-holders ascertain whether any changes have occurred which have not been brought to record. The patwari should, in the presence of the kanungo (who should have the patwari's copy of the genealogical tree open before him), read out to the people the entries in the existing *jamabandi*, and note changes in pencil in the remarks column, and in cases in which mutation orders are required, make the necessary entries in the mutation register. The kanungo should bring the genealogical tree up-to-date and should check the entries in the mutation register with the

jamabandi and note that they agree. He should help the patwari to prepare a list of fields which require amendment. The patwari should later make tracings in pencil of such portions of the village map as require to be amended.

Rabi girdawari of estates to which jamabandi is to be prepared. Financial Commissioner's Circular No. 30, dated 4th December, 1909.

7·58. At the *rabi girdawri* the patwari must take up first the estate or estates for which a detailed *jamabandi* is to be drawn up, and be very careful to note all changes and fresh cases requiring mutation orders. If the work described in the last paragraph has been properly done the new entries in the mutation register should be few in number. They should be made before the harvest inspection of the next village is started. As soon as the crop inspection of the estate for which a new *jamabandi* is to be prepared is finished, the patwari should send notice to the tahsil.

Attestation of mutations before the 15th June. Financial Commissioner's Circular No. 30, dated 4th December, 1909.

7·59. After receiving this notice the naib-tahsildar or tahsildar concerned must visit the estate as soon as possible, but in any case before the 15th of June, or the date approved by the Director of Land Records, and attest all pending cases.

Preparation of the jamabandi

7·60. The *jamabandi* should be prepared in duplicate and one of the copies should be eventually filed in the district office and the other retained by the patwari. In the months of June, July and August the field kanungo should pay special attention to the detailed *jamabandis* which are being prepared by his patwaris. He should attest all the entries, holding by holding, in the presence of the *zamindars* concerned and see that due effect has been given to the mutations on which final orders have been passed by the 15th of June or the date approved by the Director of Land Records. His attestation should be made on the copy which has eventually to be filed in the district office. This copy should contain his report to the effect that he has duly attested it, a list of errors discovered and alterations made being added in the kanungo's hand-writing. A copy of this report signed by the field kanungo should be attached to the patwari's copy of the *jamabandi*. Any alterations that may be found to be necessary should be made at once in red ink by the kanungo in both copies of the *jamabandi* and signed by him. He is personally responsible that the patwari's copy tallies in all respects with the other copy. Fairing of the *jamabandi* by the substitution of a new page for one on which corrections have been made is absolutely forbidden.

Preparation and attestation of khakas and fard taqsim in the canal colonies.

7·60-A. *Khakas* of agricultural and abadi areas and fards taqsim indicate how Crown Waste is allotted to colonists. With the help of these documents applications for the grant of occupancy or proprietary rights, additional ahatas, new village roads and exchanges from one chak to another and the renewal of horse-breeding leases, can be disposed of easily and promptly. It is, therefore, of the utmost importance that these records which are kept in duplicate—one set with the patwari and the other in the colony office—should be kept up-to-date. Wide divergencies often come to light between the Sadr and the field records on account of their not being attested at regular intervals. To

obviate this difficulty and to ensure prompt disposal of the applications mentioned above, the following instructions have been issued :—

New fards taqsim and khakas should be prepared in duplicate along with the *jamabandis* of villages which come under quadrennial attestation. As in the case of *jamabandis* they should be properly attested by field kanungos and tahsil Revenue Officers. Patwaris should, when they come to the tahsil for filing *jamabandis* bring with them fards taqsim and khakas, where they will be compared with the sadr copies of these records. As the sadr copies of fards taqsim and khakas will not be available at tahsils other than the headquarter tahsils of colony districts, it will be the duty of the Colony Assistant or the Revenue Assistant, as the case may be, to arrange to send these records to tahsil headquarters for attestation and comparison with 'the patwaris' copies. As it would not be safe to leave the sadr copies of fards taqsim in the hands of patwaris for any time, this attestation and comparison should be done under the supervision of the Colony Assistant, and his Reader or the Revenue Assistant, his Reader and Ahlmad assisted by the tahsildars and kanungos. For this purpose the Colony Assistant or Revenue Assistant will fix dates on which the two records will be compared at the different tahsil headquarters. It will be the duty of Colony or Revenue Assistant as the case may be, to watch this work very closely. After the comparison has been made, one copy of the records will be kept at sadr and the other returned to the patwari. In order to keep the sadr copies of fard taqsim up to date during the four years in which they will be in use, information of all mutations of death, exchanges, mortgages, etc., will be sent in the form of parcha intiqal (printed copies whereof will be supplied to patwaris) by all patwaris direct to Sadr Colony Office.

When no change has occurred since the last attestation of fards taqsim and khakas, fresh fards taqsim and khakas need not be prepared, but the old ones should be signed in token of their being correct and up-to-date.

Blank forms of fard taqsim and parcha intiqal and khakas can be obtained on indent from the Superintendent, Government Printing, Punjab.

(Development Secretary to the Financial Commissioner's letter No. 424-C., dated the 26th January 1939.)

Filing of jamabandi in the tahsil.

7·61. The *patwari* should give the first copy of the *jamabandi* to the office *kanungo* at the tahsil not later than September 7th. During that month the field *kanungo*, with a view especially to see that the changes based on mutations have been properly incorporated and that the statistical statements filed with the *jamabandi* are correct, should again check the latter at the tahsil, following the same procedure as before, that is, he should himself make a copy of the list of the errors discovered and the alterations made at his inspection and sign it. This copy should be handed to the patwari who should stitch it into the duplicate *jamabandi* and make the necessary alterations in the latter. The field *kanungo* at his next visit to the patwari's circle should see that the patwari has done this, and initial all the alterations made.

Check of detailed jamabandis by Revenue Officers.

7·62. The tahsildar or naib-tahsildar in charge of the circle in which the village lies shall make his final attestation on the spot and shall observe the following instructions :—

(*i*) At least 25 percent. of the *khatauni* holdings should be read

out on the spot and in the presence of the assembled right-holders.

(*ii*) At least 25 per cent. of the mutations attached to the *jamabandis* should be compared with the *khewats* concerned.

(*iii*) At least 15 per cent. of the *khewat* holdings should be compared with the old *jamabandis*.

(*iv*) At least 25 per cent. of the *khewat* entries in the original copy should be compared with the corresponding entries in the patwari's copy of the *jamabandi*.

The number of the fields, the *tatima shajras* of which have been attested, must be specified as also that of the unattested mutations entered before the 16th June or the date approved by the Director of Land Records. Of these there should be as few as possible. This check must usually be carried out in the cold weather months between the end of the *kharif* and the beginning of the *rabi girdawari*. For the purposes of this check the Revenue Officer should take with him the copy of the *jamabandi* which has been filed in the tahsil, and he should record on this the report of the attestation and a list of mistakes discovered and alterations ordered. The report should specify what and how many entries were attested by personal enquiry from the right-holders and when and where the attestation was made. A copy of the report signed by the tahsildar or naib-tahsildar as the case may be should be attached to the patwari's copy of the *jamabandi*. Any alterations that may be found to be necessary should be made in both copies of the *jamabandi* and initialled by the Revenue Officer under whose orders they are made. "When this has been done, the Revenue Officer should fill in two copies of the final attestation slip in the form given below and attach one copy to each of the two copies of the *jamabandi*. Final attestation of *jamabandi* for the year 193, village_____, tahsil_____, district _____.

1	2	3	4	5	6	7		8	9
						a	*b*		
Date of attestation.	Place of attestation.	*Khatas* attested.	Verification of mutation orders incorporated in the *jamabandi*.	*Khatas* checked with the previous *jamabandi*.	*Khatas* compared with the patwari's current copy of the *jamabandi*.	*Khasra* numbers of which tatimmas were checked on the spot.	*Khasra* numbers of which tatimmas were checked with reference to their incorporation in the parat tahsil map.	Mutations entered but not attested before 15th June.	REMARKS.

I certify that all necessary corrections have been made and that this *jamabandi* is correct and complete in all respects, except as regards mutations shown in col. 8 and other transfers discovered to have taken place before 15th June last and referred to in the memorandum attached to the *jamabandi*.

Dated.....193 .

Assistant Collector.

If any part of the local attestation can be done adequately in the hot weather before the *jamabandis* are filed in the tahsil, so much the better, but in that case a further check must be made to see that the *kanungo* has carried out properly the instructions in paragraph 7·61 *supra* and the final certificate of correctness alluded to above must not be given until the second check has been carried out. A Revenue Officer superior in rank to the tahsidar or naib-tahsildar should note the *result* of his attestation *on the spot* a *jamabandi* on the copy to be eventually filed in the district office and attach a copy of this note signed by him to the patwari's copy of the *jamabandi*. He should initial all alterations made in both copies of the *jamabandi* under his orders. The *result* of any examination of *jamabandi* made by such officer in the tahsil office should be entered in the minute book of the tahsil and not on the *jamabandis* examined by him. The district *kanungo* should note the result of his attestation of a *jamabandi* in the diary and not on the *jamabandi* itself.

Appellate orders.

7·63. When an order is passed in appeal, on review or revision after the 15th June, a note in red ink should be made on the original mutation sheet by the district *kanungo* if the *jamabandis* are at *sadr* or by the office *kanungo* if the *jamabandis* are in the tahsil office. The field *hanungo* of the circle will make a similar note on the patwari's copy of the mutation order. If the *jamabandi* entries are not in accordance with the order finally passed on appeal, review or revision, the patwari should be instructed to enter a mutation by way of correction of the *jamabandi* and this mutation will be given effect in the *jamabandi* prepared at the subsequent quadrennial attestation. No fee will be charged.

Form of list of revenue assignments with instructions. Financial Commissioner's circular No 1 of 2nd January, 1889 and No. 46 of 18th October, 1888.

7·64. A list of revenue assignments and pensions will be compiled for every village when a detailed *jamabandi* is prepared (paragraph 284 of the Settlement Manual) and its form along with instructions for its preparation is appended. The field *kanungo* must assist the patwari in the compiling of this return, and must sign it in token that he is satisfied of its accuracy. The *tahsildar* or *naib-tahsildar* must attest every entry in the list of *muafidars*.

List of revenue assignments and pensions.

1	2	3	4	5	6	7	8	9	10	11	12	13
No.	Name and description of assignees.	Jagir or muafi where revenue or specific land is assigned. *Area of land assigned.* *Jamabandi No.*	Cultivated.	*Uncultivated.*	Total.	Revenue assessed.	Amount of revenue assigned.	Amount assigned where a fixed amount of revenue is assigned without specification of land.	*Nazrana.*	Cash pension per annum paid from the treasury or through the post office.	Conditions of each grant.	Remarks.

INSTRUCTIONS.

Enter the assignments in four groups and total each group separately, namely :—

A.—Land of which the revenue is assigned in whole or in part to the owners thereof.

B.—Land of which the revenue is assigned to others than the owners thereof.

C.—Grants of fixed amounts out of the village *jama*, no land being specified.

D.—Pensions paid from the treasury or through the post office to persons resident in the estate.

Show under D pensions of all kinds and whether civil or military or political.

If the grants held by an assignee fall under more than one of the above groups, each portion should be entered under the group to which it belongs.

Columns 4-7.—Abbreviate the entries as much as possible.

Column 13.—State whether the *nazrana* has been paid. The field *kanungo* will add a note in this column or at the foot of the return explaining any difference between it and the previous returns.

The totals of columns 8 and 9 should agree with column 4 of the *jama wasil baki.*

Note.—As regards the amendment of the pensioners' list see paragraph 63 of Standing Order No. 7.

Maps to be filed with the jamabandi.

7·65 As regards the maps to be filed with the *jamabandi*, the relevant instructions will be found in paragraphs 4·27, 4·32 and 4·33.

Genealogical tree.

7·66. An amended copy of the genealogical tree of owners complete to date shall be filed with the *jamabandi*. In these trees the first entries shall in every case be the names of the holders at the last settlement, the earlier being omitted. No general statements or entries of area and revenue need be made at the foot of those amended copies. In other respects the orders in Appendix VIII to the Settlement Manual apply to the amended copy of the *shajra nasab*. The new entries shall be attested by the field *kanungo* and he shall sign the paper in evidence thereof.

Arrangement of papers in annual records.

7·67. The following instructions relate to the arrangement and binding of annual records :—

I.—The sheets of the *jamabandi* should be placed one upon the other as in a file of papers.

II.—The list of revenue assignments and pensions should come next, followed by the *tatimma shajras.*

III.—Then should follow the mutation sheets.

IV.—Having arranged the papers in the above manner, sew them with a strong thread, but take care that it does not pass through any writing.

V.—Paste two or three pieces of paper together and cut to the size of the *jamabandi*, then place the *jamabandi* between the two covers thus prepared and join them together by pasting chintz or *gahra* on the outside as is done in binding. Boards should not be used. The *shajra nasab* should be placed in the pocket of the cover, or if too large in a separate cover.

In the case of *jamabandis* to be filed in the tahsil binding can be done at about two annas a volume, and the charge can be met from the contingent grant. In the case of the patwari's copies of the *jamabandi* paper bindings covered with chintz or this cloth should be provided.

Check of jamabandis by district kanungo.

7·68. All *jamabandis* must reach the district office by the date on which the *rabi girdawari* ends [*vide* paragraph 3·104 (2)]. On receipt the district *kanungo* should check them to see that all the instructions contained in paragraphs 7·60 to 7·97 *supra* have been complied with. If incomplete in any respect, which admits of correction, they should be returned for completion.

Rights of the Government and presumptions with respect thereto and to other matters.

Rights of the Government in mines and minerals

*41. All mines of metal and coal, and all earth-oil and gold washings shall be deemed to be the property of the Crown for the purposes of the Province and the Provincial Government shall have all powers necessary for the proper enjoyment of the Crown's right thereto.

The ownership of all mines of metal and coal and of gold washings by the State was asserted in section 29 of Act XXXIII of 1871 and again in the above section of Act XVII of 1887, where earth-oil is also declared to be Government property.

Thus according to this section all mines of metal and coal, all gold-washings and all earth-oil belong to Government. As regards other minerals such as quarries and *kankar* beds, the law is contained in section 42 of the Act. The extraction of metals, coal, earth-oil, gold, salt and generally speaking minerals not included in the definition of "minor minerals." [*See notification under section* 60-*c*] is governed by the Punjab Mining Manual. For minor minerals a reference should be made to the Punjab Minor Minerals Rules. [*See notification under section* 60-*c*].

Royalties on mines, minerals etc., that are property of Government, have been held by Government to be identical in their nature with land revenue as levied on minerals that are not the property of Government but of the landowners. In practice wherever the minerals are the property of Government the dues of Government are taken in the shape of a royalty. Where on the other hand they are the property of the landowners the gains from them should be included in the assets of the estate at settlement. Section 59 (1) (*c*) of the Land Revenue Act provides for a special assessment in cases where this has not been done.[1]

Kankar.—The following instructions were issued in 1876 with reference to the claim of Government to the ownership of *kankar* found in village lands :—

"In the case of all villages in which *kankar* beds are known to exist, or in which there is any probability of their being hereafter discovered, an entry is to be made in the administration paper, when framed at settlement, declaring all *kankar* already discovered or which may hereafter be discovered, to be the property of Government, and in such villages *kankar* is not to be reckoned as an asset of the village for the purpose of assessment.

"Where *kankar* beds are claimed as the property of the village or of individuals, the Settlement Officer will investigate the claim and, if it is supported by a judicial decision or by any relinquishment of the Government rights made by competent authority, will report the case for special orders. If in anny such case it is decided that the Government rights have been lost or relinquished, the *kankar* should be taken into account in framing the assessment of the village."[2]

*As amended by the Government of India (Adaptation of Indian Laws) Order, 1937. Previously it ran as follows :—

"All mines of metal and coal, and all earth-oil and gold washings shall be deemed to be the property of the Government, and the Government shall have all powers necessary for the proper enjoyment of its rights thereto."

1. See para. 831 of the Land Administration Manual, as amended by C.S. No. 38, dated the 17th October 1934.
2. Settlement Manual, para. 192.

Saltpetre.—In 1891 the Punjab Government held that neither the saltpetre earth nor the educed saltpetre can properly be brought under the term " spontaneous produce or other accessory interest in land " within the meaning of section 42 of the Land Revenue Act. Saltpetre or *shora* must not be recorded therefore as Government property in the village administration paper, and any profits which the landowners derive from it may be taken into account in assessing the land-revenue. If for any reason they are left unassessed the fact that Government has not abandoned its right to assess them at some future time should be distinctly noted.[1]

See also the Punjab Minor Minerals Rules under section 60-C of the Act.

Some general observations may be found in Financial Commissioner's Standing Order No. 42.

Presumption as to ownership of forests, quarries and waste lands.

42. (1) When in any record-of-rights completed before the eighteenth day of November 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste-land, spontaneous produce or other accessory interest in land belongs to the land owners, it shall be presumed to belong to the [2][Crown].

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the [2][Crown] it shall be presumed to belong to the land owners.

(3) The presumption created by sub-section (1) may be rebutted by showing—

(*a*) from the records or report made by the assessing officer at the time of assessment, or

(*b*) if the record or report is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest, that the forest, quarry, land or interest was taken into account in the assessment of the land revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the [2][Crown].

Presumption.

Presumption as to ownership of forests, quarries and waste lands.—The fact that a record-of-rights framed after the passing of

1. Para. 193, Settlement Manual, Punjab Government No. 650, dated 9th November 1891.
2. Substituted for ' Government ' by the Government of India (Adaptation of Indian Laws) Order, 1987.

Act XXXIII of 1871 does not expressly declare that any "forest, quarry, unclaimed, unoccupied, deserted or waste-land, spontaneous produce, or other accessrry interest in land belong to Government raises a presumption that it belongs to the land-owners of the estate in which it is situated. To such presumption arises in the case of records framed before the passing of that Act. Unless it is expressly provided in them that any forest, quarry, etc., belongs to the land-owners, it is presumed to be the property of the State. But the presumption may be rebutted by showing—

(*a*) from the record or report made by the assessing officer at the time of assessment, or

(*b*) if the record or report is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest, that the forest, quarry, land, or interest was taken into account in the assessment of the land-revenue.

The legal provisions contained in this section carry out the policy laid down in a despatch from the Secretary of State, No. 35 of 25th March 1880, and Government of India letter No. 1—43, dated 15th May 1880.

(*See Punjab Settlement Manual, para.* 191).

Waste lands in the Punjab.—The result of the physical conformation of the province as well as of the historical conditions, was, that there was a very large area of waste-land, the right to which had to be considered at the time of the British occupation of the Punjab. Native Governments claimed large rights over the waste, whether it was included in the somewhat uncertain boundaries of villages or consisted, as in the Western Punjab, of vast tracts of land covered with scanty grass and scrub *jungle* over which certain classes or families asserted a loose sort of dominion. In the hills the Raja possessed a definite and exclusive proprietorship in the forests and waste lands, and any rights over them enjoyed by his subjects were merely rights of user. Waste lands.

Government has dealt with the waste in one of three ways. Where the village system was strong, the limits within which the cattle of each community grazed were known. It was the policy of Government to define these limits exactly so as to prevent disputes between adjoining estates which often ended in riot and bloodshed and to treat all unoccupied waste included within the boundry of each estate as the common property of its owners. This was the plan generally carried out in the Eastern and Central Punjab.

But at the same time the Government was prepared to a certain extent to follow the practice of the native rules whom it had succeeded by planting new settlements in villages which had more waste than they could manage or bring under cultivation whithin a reasonable period; accordingly it was provided in section 8 of Regulation VII of 1822 that "where the waste land belonging to or adjoining any *mahal* is very extensive, so as considerably to exceed the quantity required for pasturage or otherwise usefully appropriated it shall be competent to the Revenue Officers to grant leases for the same, to any persons who may he willing to undertake the cultivation, in perpetuity or for such periods as the Governor-General in Council shall determine, and to

assign to the *zamindars* or others who may establish a right of property in the land so granted an allowance equivalent to 10 per cent. on the amount payable to Government by the lessees in lieu of and bar all claims to or in the waste lands so granted."

In Kangra, as we have seen, the State could properly have claimed the ownership of all the waste with some unimportant exceptions. But the policy of the settlements in the plains was unfortunately followed in dealing with an entirely different set of circumstances, and the waste became village property except that the State's rights in certain valuable kinds of trees (for instance *chil* trees) were reserved. In Kulu the waste has been retained as the property of the State, subject to rights of user enjoyed by the people.

In the Western Punjab the villages cannot be said to have had any boundaries so far as the waste was concerned. Boundaries were laid down at Settlement in such a way as to include in each estate an ample area of grazing land, and the rest of the waste was claimed as the property of the State, commonly called the *rakhs* available for forest or for any other public purpose. Much of this area has since been granted or leased for cultivation or colonized. Some parts have been constituted State forests, and other parts district rakh—useful for grazing and supply to fuel to the villages around, who pay '*tirni*,' or grazing dues, for the right of grazing cattle in the area.[1]

For rules for the lease of Waste Lands in the Punjab, see Appendix III to the Land Administration Manual.

Metals, minerals, quarries and spontaneous produce.

Metals and minerals, quarries and spontaneous produce.—Metals, coal, earth-oil or goldwashings and generally speaking minerals not included in the definitions of "minor minerals" are all the property of Government and consequently any gains accruing to the landowners by extracting these from the soil or river sand cannot appropriately be subject to an assessment in the ordinary way. The orders of Government should, however, be taken whether the proprietary title of the State is to be asserted by the imposition of a royalty. Quarries and "minor minerals" generally as defined in the Punjab Minor Minerals Rules, (see under section 60-C) with spontaneous produce of the land, may or may not be the property of the State as explained above. Where they are all that is necessary is to ascertain that the provisions of the Punjab Minor Minerals Rules are in force. Where they are the property of the landowners the gains from them should be included in the assets of the estate.

Suits for the value of kankar.

Procedure in suits for the value of *kankar*.—In all cases between landlords and tenants for the value of *kankar* the Revenue Court should adjudicate as between landlords and tenants without regard to the latent claims of Government, leaving the Collector in his executive capacity to take subsequent or independent action if so advised. Revenue Courts should (*a*) on the institution of any such suit send intimation of the fact to the Deputy Commissioner with reference to this Standing Order, and (*b*) when the case has been decided, submit the file, in original, to the Deputy Commissioner, for his orders, in his executive Capacity, as to whether any further action is required.[2]

1. See Settlement Manual, paras. 185 to 189; and Chapter XXI of the Land Administration Manual.
2. Para. 10; Standing Order No. 42.

Compensation for infringement of rights of third parties in exercise of a right of the Government.

43. (1) Whenever in the exercise of any right of the [1][Crown] referred to in either of the two last foregoing sections, the rights of any persons are infringed by the occupation or disturbance of the surface of any land, the [1][Provincial Government] shall pay, or cause to be paid to that person compensation for the infringement.

(2) The compensation shall be determined as nearly as may be in accordance wlth the provisions of the land Acquisition Act, 1870.[2]

Presumption in favour of entries in Records-of-rights and annual records.

44. An entry made in a record-of-rights in accordance with the law for the time being in force or in an annual record in accordance with the provisions of this chapter and the rules thereunder shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Entries in records of rights and annual records presumed to be true unless rebutted.

Evidential value of records-of-rights—presumption of truth to the entries therein—meaning and scope —Section 16 of the old Punjab Land Revenue Act (XXXIII of 1871) provided that 'entries in the record-of-rights made or authenticated at a regular settlement or re-settlement in the manner prescribed by the Local Government, shall be presumed to be true.'

Thus before the introduction of the new Act no special evidential value was attached by the law to entries in as patwari's records except when they were prepared under the supervision of a Settlement Officer. Under the new Act the same presumption of truth attaches to these records, whether prepared under the supervision of a Settlement establishment or without that supervision, under the provisions of this Chapter. According to section 44 of the Act, the presumption of correctness attaches not only to a record-of-rights prepared at a settlement but to any entry made in a record-of-rights in accordance with law or in an annual record in accordance with the provisions of this Chapter and the rules thereunder (A.I.R. 1935 Lah. 87, page 90). This change in the law was made in compliance with the declared policy of the Government of India and with the object of avoiding periodical revisions of the village records by an expensive Settlement establishment.

Retrospective effect.

It must be clarly noted that the presumption of truth under this section is not confined to entries made in the record-of-rights prepared under the present Act. It attaches also to the entries made in a record-of-rights prepared at any settlement made even before the enactment of the present Act. [*Vide* section 2 (2) of the Act].[3] The section applies clearly to record-of-rights prepared in pursuance of any law for the time being in force. The presumption of truth under this section

1. Substituted for 'Government' by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. See now the Land Acquisition Act, 1894 (I of 1894).

3. See Makhdum Hassan Baksh *v.* Ilahi Baksh=27 P.R. 1913 (P.C.)=83 P.L.R. 1913=17 I.C. 744; Maddu Mal *v.* Baggu and others=20 I C. 831=280 P.L.R. 1913; Jumma *v.* Mubarik Khan= 55 P.R. 1915=A.I.R. 1915 Lah. 98=50 P.L.R. 1916=30 I.C. 87.

applies not only to the record-of-rights prepared in pursuance of a notification under section 32, but applies also to those prepared at the settlements made before the passing of this Act and no matter what importance was attached to them at the time when they were made.[1]

Section 44 of the Act has retrospective effect and the presumption of correctness of entries in the record-of-rights can equally be made with reference to entries in the earlier settlements, even though the law in force at that time did not contain any provision corresponding to that section.[2]

Summary Settlement v. Regular Settlement.—Under section 10 of the old Punjab Land Revenue Act, 1871, settlements were classified into three kinds as follows :—

(1) a *summary settlement* is a provisional settlement made pending a first regular settlement; the declaration of the Local Government that a settlement was summary shall be conclusive proof that it was so ;

(2) a *first regular settlement* is a settlement in which the revenue is assessed, and a record-of-rights is, for the first time, formed ;

(3) a *re-settlement* is a settlement, subsequent to a first regular settlement in which either the revenue is reassessed, or the record-of-rights is revised, or in which both these processes are conducted.

As noted above, according to section 16 of that Act no presumption of truth was attached to the entries in the record of summary settlement. Section 44 of the present Act applies even to the entries in summary settlements though they have not the same value as regular settlements. Presumption arising from entries in a regular settlement cannot be rebutted by entries in an earlier summary settlement.[3] The entries of the summary settlement in regard to rights in land cannot have the same force as those of the subsequent regular settlement at which a detailed record-of-rights was prepared after full enquiry.[4] In *Jai* v. *Achi Ram*,[5] it has been held under the old Act that entries made at summary settlement should be presumed to be true when there is no evidence to discredit them. The person who desires to upset an entry in the summary settlement records should be called upon to prove the entry wrong.

Presumption of truth.

Section 4 of the Evidence Act defines 'presumption' for the purposes of that Act as follows :—" Whenever it is directed by this Act that the Court shall presume a fact it shall regard such fact as proved unless and until it is disproved."

Thus an entry made in a record-of-rights in accordance with the law for the time being in force, or in annual record under the provisions of this Chapter must be presumed to be true until proved to the contrary, the *onus* of which will lie on the person challenging its correctness.[6]

1. A.I.R. 1931 Lah. 189=31 P.L.R. 1024=132 I.C. 397 following A.I.R. 1923 Lah. 12.
2. Nagina Singh *v.* Municipal Committee, Banga,=42 P.L.R. 531.
3. Saddu and others *v.* Mani Ram and others=A.I.R. 1931 Lah. 139 ; following A.I.R. 1923 Lah. 12.
4. A.I R. 1923 Lah. 12.
5. 3 P.R 1876 (Rev.).
6. Maddu Mal *v.* Baggu and others=20 I.C. 831=280 P.L.R. 1913 ; Makhdum Hassan Baksh *v.* Ilahi Baksh=27 P.R. 1913 (P.C.).

Under this section there is a statutory presumption that the entries in the record-of-rights are correct. An entry made in a record-of-rights is presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. It is on him who contends it is erroneous to prove it.[1] When a mutation has been duly incorporated in the *jamabandi* the person challenging the correctness of the entry based on that mutation must establish that the mutation order is a false document. The mere fact that the patwari has committed some irregularities in submitting the report on which the order of mutation is passed, is insufficient to displace the presumption that arises under section 44 and in the absence of definite proof that the order of mutation itself is false or that a fraud has been practiced on the revenue aurhorities, the burden cannot be held to have been discharged.[2] An entry made in record-of-rights in accordance with the law for the time being in force must be presumed to be correct until the contrary is proved or a new entry is lawfully substituted therefor. The burden of proving the contrary rests heavily on the party who alleges it.[3] Under section 44 of the Land Revenue Act, revenue entries are presumed to be correct unless rebutted by inherent evidence.[4] An entry in such records is sufficient to shift the onus of proof.[5]

Mutations.

An adverse entry in the record-of-rights even if allowed to remain unchallenged does not necessarily extinguish the right of the party against whom such entry has been made and a *fortiori* an order to alter the entry to the prejudice of the party without the actual alteration of the entry cannot by itself extinguish the right unless the other party can prove adverse possession.[6] It is true that the Punjab Land Revenue Act or the rules thereunder do not require any reason for non-payment of rent or adverse title set up by the tenants to be recorded in the record-of-rights. But though the presumption under section 44 may not, strictly speaking, apply to such an entry, there is no good reason why an entry of this kind in a public record made by a public servant in the discharge of his official duties should not be held to be relevant under section 35, Evidence Act. The record-of-rights is publicly attested in the presence of the people of the village and this fact should be sufficient to raise a presumption that the landlord had notice of the adverse claim at the date of such attestation.[7]

Adverse entry in record-of-rights allowed to remain unchalleng

It is well known that when a person other than the real owner is found to be in possession of land belonging to any person the revenue officers frequently enter that person as a tenant-at-will of the owner. If, therefore, the plaintiff himself does not allege that the defendant is his tenant but contends that he is a trespasser, no presumption of correctness can be attached to the entry in the revenue records showing that he is a tenant-at-will of the plaintiff.[8] Where it is established that

1. Wallan *v.* Fazla=A.I.R. 1939 P C. 114 (P.C.).
2. Nizam Din and others *v.* Godar and others=A.I.R. 1934 P.C. 40; 120 I.C. 789 reversed; Lala *v.* Sardara and another=A.I.R. 1934 Lah. 472.
3. Sundar Singh *v.* Chajju Khan=A I. R. 1934 Lah 309=151 I. C. 407; A. I. R. 1927 Lah. 607.
4. Bhagwan Das *v.* Mangal Sain=A. I. R. 1929 Lah 93=111 I. C. 357.
5. Joti Parshad *v.* Rahmat Ali=A. I. R. 1923 Lah. 243=81 I. C. 336.
6. Fateh Ali Shah *v.* Mohd Baksh=A. I. R. 1928 Lah. 516; 56 I. C. 931; 79 P. R. 1917 dist.; 30 P. R. 1880 and 140 P. R. 1907 followed.
7. A. I. R. 1932 Lah. 586=I. L. R. 13 Lah 432=33 P. L. R. 771; See also A. L. R. 1934 Lah. 82.
8. Sher *v.* Phuman Ram,=42 P. L. R. 497.

an entry regarding a person as tenant is a conventional one and that he was never a tenant that presumption does not avail.[1]

An instance of this is the possession of a person of land which has been allotted to another co-sharer on partition.

Adoption.

Thus presumption of correctness attaches to an entry in revenue records in respect of adoption of a person.[2]

Similarly, the Revenue Officer is bound to presume that those persons are the landowners who are entered as such in the records-of-rights.[3] A party is entitled to the fields or lands, which he actually held when the settlement entry in respect thereof was made, in the absence of any positive proof to the contrary.[4] In cases in which the previous measurement record is known to be perfect and accurate, the fact that a defendant entitled under that record is found to hold a larger area than that shown against his name in the record may when taken in connection with other facts, help to support a contention that a plaintiff or defendant has since the date of the record encroached on adjacent land. But where the measurements made thirty years ago are known to have been often rough and inaccurate, a comparison of the areas given by the original measurements with those ascertained by later and more accurate surveys is an unsafe basis on which to found either a claim or a division.[5]

Entries in record-of-rights cannot be used as foundations of title but as mere items of evidence to prove sale.[6] This section also does not help where the fact to be established is the existence of a custom and not a fact of the class contemplated by the section.[7]

The presumption may be rebutted.

The presumption, however, arising under this section is rebuttable. When the annual record has been corrected it is under this section merely presumed to be true so that an order in mutation case does not finally settle any substantive question of right as between the parties concerned, it merely raises a presumption in favour of one side or the other.[8] It is true that under section 44 of the Act presumption of truth attaches to entries in record-of-rights but if they are inconclusive or appear on the face of them to be erroneous a Court would be justified in not accepting them. It is not necessary that such entries be taken as correct till some extraneous evidence is produced showing their incorrectness.[9] Where a series of old entries are inconsistent with the new ones, and it is not certain how the new alterations were made, presumption of correctness is sufficiently rebutted.[10]

Where A is in possession of land and B is shown in revenue records prepared at settlement, and therefore presumably after an enquiry, as proprietor with A as his tenant, in the absence of any other indication B should be presumed as proprietor. The presumption, however, is rebuttable and it at once becomes weak even if nothing is found more than

1. Rasil Singh *v.* Dhani Ram=(1941) 20 L. L. T. 31.
2. Kesar Singh *v.* Thakar Singh=1933 L. L. T. 29.
3. 4 P. R. 1888 (Rev.).
4. 5 P. R. 1888 (Rev.).
5. Bahadur *v.* Sher=5 P. R. 1887 (Rev.).
6. Wali Mohammad *v.* Mohd. Baksh=A. I. R. 1930 P. C. 91=122 I. C. 316.
7. Devi Singh *v.* Premi=11 P. R. 1911=9 I. C. 683.
8. 1 P. R. 1901 (Rev.)=60 P. L. R. 1901.
9. Wali Mohd. and others *v.* Mohd. Baksh=A. I. R. 1924 Lah. 444=80 I. C. 998.
10. Sher Bahadur *v.* Abezar and others=95 I. C. 236 ; See also A. I. R. 1926 Journal 150.

that A and his predecessor in title had held possession under the immediate eye of B's local agent for forty years without ever being asked to pay rent or *malikana* dues of any kind, and without B's making any open assertion of his claim.[1]

Where the entries in two columns of the *jamabandi* are contradictory the presumption of truth attaching to them is rebutted. Thus where in column 5 the person is entered as *ghair maurusi* while in column 9 the entry relating to the rent is *lagan bishara malikan bawaja tassawar rahn*, it cannot be presumed that that person is in possession as tenant by a mere entry as such in column 5.[2] Similar remarks apply to the entry *bila lagan batasswar malkiyat khud*.

Where the presumption of correctness of entries in the revenue records is challenged a finding without considering evidence in rebuttal is liable to be set aside.[3]

Second appeal.

The question whether a presumption under this section has been rebutted is a question of fact and cannot therefore be examined in second appeal.[4] Finding of fact could be upset in second appeal, where it is vitiated by the fact that the presumption attaching to the current settlement record under section 44 was not taken into account and such finding was given under the misapprehension that a settlement had been carried out in the year 1884.[5]

Later v. earlier record—conflict—presumption.—Sometimes conflicting entries relating to the same matter in records prepared at different periods are met with and in that case the question arises which entry should be presumed to be true. It has been held in *Sundar Singh* v. *Chajju Khan*[6] which related to the case of a pathway that the presumption of correctness that attaches to revenue records must attach to the later record in preference to the earlier one unless it could be shown to be wrong. The same view had been held earlier in *Mst. Alo* v. *Sher*.[7] In *Sant Singh* v. *Frangu*[8] also it has been held that by law presumption of correctness attaches to the entries in the settlement records of 1868 to 1892 ; and this presumption cannot in the least be upset by an ambiguous passage in the *riwaj-i-am* of 1852. The later settlement records were undoubtedly prepared with much greater care and accuracy, and Courts cannot discard the records of the two later settlements in favour of an ambiguous entry in the first settlement. The learned Judges deciding *Data Ram* v. *Khazana Ram and others*[9] however observed in that case—" For the appellant it is pointed out that the evidence bearing on the point consists of the pedigree-tables prepared in the various settlements to all of which a presumption of correctness attaches under section 44, Land Revenue Act, but that in case of a conflict between them the pedigree prepared at the more recent settlement should be preferred. On the other hand Counsel for the respondent urges that whatever may be the position with regard to

1. The Secretary of State for India *v.* Babu Ishutosh Mitra=13 P. L. R. 1903.
2. Ranbir Singh *v.* Lehna Singh=1932 L. L. T. 141.
3. Gurdit Singh *v.* Mst. Bhago=A. I. R. 1927 Lah. 850=105 I. C. 562=26 P. L. R. 67.
4. A. I. R. 1924 Lah. 444=80 I. C. 998.
5. Sundar Singh *v.* Chajju Khan=A. I. R. 1934 Lah. 309 ; A. I. R. 1924 Lah. 444 dist.
6. Ibid ; A. I. R. 1927 Lah. 607 relied on.
7. A. I. R. 1927 Lah. 607=103 I. C. 266.
8. 41 I. C. 755=54 P. W. R. 1917.
9. A. I. R. 1935 Lah. 108 ; A. I. R. 1927 Lah. 607 dist.

entries as to ownership, tenancy right, etc., in the matter of relationship the earlier pedigree-table should be preferred as the exact degree of relationship was likely to be known more accurately to persons who were nearer in descent to the common ancestor and whose memory was fresher than that of their grandsons, who were born a generation or two later. *In my opinion it is not possible to lay down any hard and fast rule on this point and each case must be decided* on its own peculiar facts. The pedigree-table prepared in the course of each settlement is a part of the record-of-rights and as such there is a statutory presumption of correctness attaching to it (74 P. R. 1888). It is, however, impossible to say on a priori grounds that the presumption is stronger in favour of the one rather than the other. In a particular district the earlier settlement might have been more carefully done and the record more accurately prepared than in the later settlement. In another district, investigation made in the subsequent might have been more complete and exact, and led to discovery of errors in the preparations of pedigree tables which had crept in the records of the former settlement. If the parties conduct their cases properly it will not be difficult for them to produce additional evidence from the entries in the *khewat* and other authentic documents from which it would be easy to determine which of the two pedigrees is correct."

It has been held in *Mohammad Sharif* v. *Teja Singh*[1] that the statutory presumption raised by section 44 applies to the records of the current settlement where these differ from those of previous settlements which have been corrected.

In the settlement of 1863, it was entered that the *shamilat* of the village belonged to all the members of a certain tribe and this entry was repeated in the Settlement of 1887, but in the Settlement of 1900 it was provided that it belonged to only one section of the tribe ; *held*, that the last entry was unauthorised and was not of much evidential value as there was nothing on the record to show why the entries of the two previous Settlements were changed and the new entry substituted in the place (31 I C. 287).

Mutations.

Mutation—its evidential value.—Where land has been mutated in favour of a person and his name has been incorporated in the revenue papers as owner there arises a statutory presumption in his favour under section 44 of the Act, which should be given effect to by Courts.[2]

But unless a mutation entry has been incorporated in a *jamabandi* it has no presumption of truth attaching to it. It is only when it is so incorporated that it has a presumption of truth.[3] It is, however, not necessary to prove that all the formalities were duly complied with in respect of the mutations. There is a presumption that all official acts are done in regular manner and it is for the other side challenging it to rebut this presumption. It is not necessary to produce the Revenue Officer who sanctioned the mutation or the *girdawar* as a formal witness.[4] Where the parties were present at the time when certain mutation entries were made with their consent, and the Revenue Officers made every effort to ascertain what the parties wished to be done, the entries themselves

1. A. I. R. 1936 Lah. 453.
2. Munshi Ram *v.* Mehr Das=18 Lah. 642.
3. Harnam Singh and others *v.* Ishar Singh=1934 L. L. T. 25 ; see also A. I. R. 1929 Lah. 93=111 I. C. 357 ; and A. I. R. 1926 P. C. 100.
4. A.I.R. 1929 Lah. 93=111 I.C. 357 ; See also A.I.R. 1934 P.C. 40 ; A.I.R. 1934 Lah. 472.

being quite clear, the onus of proving that a mistake was made lies heavily upon the party who asserts that his attention was not correctly expressed by the entries, and this onus is not discharged by showing merely that there is a certain amount of confusion in the report of the patwari and that the area given by that party is considerably in excess of the area recieved by him.[1] In *Diwan Chand* v. *Mehr Khan*[2] it was held that the report of the patwari, that the land sought to be attached had been mutated in favour of the son of the judgment debtor, about four months prior to the application for attachment was not conclusive to show that the land was not held by the judgment-debtor.

A mutation register does not form part of the record-of-rights but is a separate document, and therefore section 44 of the Act does not apply to it and it carries no presumption of truth. An entry in it is however relevant under section 35 of the Indian Evidence Act as an entry in a public record made by a public servant in the discharge of his duties.[3]

A mutation by itself does not confer any title and cannot affect the terms of the written contract between the parties.[4]

It is a common fallacy that the decision of a mutation coupled with the consequeut correction of the revenue records operates to create a title previously not in existence or to determine a previously existing title. This is the view that is frequently held but it is erroneous. The entry of a title in the revenue records as the result of the mutation proceedings is merely the recognition by Revenue Officers of a title which they believe to exist. It is true that the entry when made is entitled to a presumption of correctness unless rebutted. But the mere making of an entry does not in any way create a title.[5]

Mutation proceedings admissibility

Entries in mutation proceedings can be accepted as evidence, even without the revenue official who sanctioned them being produced as a witness.[6]

Pedigree tables.

Pedigree-tables.—*Shajra nasbs* or pedigree tabels from part of the record-of-rights as prescribed by the Financial Commissioner under section 31 (2), clause (*d*). The presumption of truth attaching to entries in a record-of-rights under this section extends therefore to these pedigree-tables also, and the burden of proving that an entry in it is wrong rests heavily on the person who makes such assertion.[7]

But although a presumption of correctness attaches to the pedigree-table contained in the record-of-rights under this section, that presumption does not extend to an extraneous matter entirely unconnected with the question of relationship, as for instance devolution of lands in a village. If such entries appear on the face of them to be erroneous, a Court should refuse to accept them.[8]

1. Wadhawa Singh and others *v.* Balwant Singh and others=A.I.R. 1918 Lah. 321=153 P.L.R. 1917; See also A.I.R. 1934 P.C. 40; A.I.R. 1934 Lah. 472.
2. 18 P.W.R. 1907.
3. 91 P.R. 1902=15 P.L.R. 1902 Suppl.
4. Mulk Raj and another *v.* Rasal Singh and others=35 P.L.R. 606.
5. Ch. Sardar Khan *v.* Lakshmi Chand=(1939) 18 L.L.T. 31.
6. Nizam-ud-Din *v.* Fateh Din=41 P.L.R. 308.
7. 174 P.R. 1888; 111 P.L.R. 1913=18 I.C. 218=215 P.W.R. 1912; 98 P.W.R. 1912
8. A.I.R. 1921 Lah. 444=80 I.C. 998=5 Lah. 84.

If it can be shown that the law requires that entries dealing with ownership of land should be included in pedigree-tables then such pedigree-tables are properly part of the revenue records and constitute an entry in a public document which is *prima facie* evidence of the truth of its contents As references with respect to the ownership of land are by law included in a pedigree-table, presumption of correctness attaching to a pedigree-table also attaches to such entries.[1] Similarly entries made in the pedigree-table prepared at the time of the settlement giving the history of the land are admissible in evidence.[2]

Although a pedigree-table may be presumed to be correct about the relationship shown in it and although the devolution of property may be rightly shown in it, the reason for the devolution is not a matter which is strictly an essential part of a pedigree-table. The accuracy of such an entry carries no presumption with it.[3]

The evidence of a family *mirasi* is also admissible to prove a pedigree-table.[4]

As to the case when there is a conflict between the entries prepared at two different occasions, see remarks on page supra . See also 111 P.L.R. 1913, wherein it is laid down that a pedigree-table is superseded by another which appears to have been more carefully made at the time of subsequent settlement.

Fard Bachch. According to sub-section (2) of section 151 of the Act, a patwari shall, with respect to any such record or paper as he is required by law, or by any rule under this Act to prepare or keep in his custody, be deemed for the purposes of the Indian Evidence Act, 1872, to be a public officer having the custody of a public document which any person has a right to inspect. It being his obvious duty to record *bachh* document they are relevant facts within the meaning of section 35 of the Evidence Act while the papers can be proved under section 76 of that Act by production of a certified copy.[5]

Khasra girdawri. **Khasra girdawri.**—*Khasra girdawris* are public documents and are properly proved by the production of certified copies as is allowed by section 77 of the Indian Evidence Act. Moreover they are made relevant by section 35 of that Act.[6] *Khasra girdawri* is, however, not a part of record-of-rights and therefore its entries carry no presumption of truth under this section. It being a public document prepared by a public servant in the discharge of his official duties, furnishes a valuable and important piece of evidence upon question of possession under section 35 of the Indian Evidence Act.[7]

Wajib-ul-arz. **Wajib-ul-arz.**—The *wajib-ul-arz* is a part of the record-of-rights [*vide* section 31 (*b*)]. All entries in it are therefore presumed to be correct but are capable of rebuttal.[8] Where no record-of-rights is prepared at a settlement and the *wajib-ul-arz* being a paper of a summary settlement it has not the evidentiary value of a record of a regular settlement under section 44 of the Land Revenue

1. A.I.R. 1928 Lah 214=103 I.C. 182=29 P.L.R. 675.
2. A.I.R. 1929 Lah. 58=30 P.L.R. 678; A.I.R. 1928 Lah. 214 followed.
3. Pirthi *v.* Mst. Kanta Devi, A.I.R. 1939 Lah. 309=182 I.C. 990=41 P.L.R. 133.
4. 98 P.W.R. 1912.
5. A.I.R. 1931 Lah. 605=131 I.C. 638.
6. Mohammad Din *v.* Fateh Din and others=35 P.L R. 405.
7. 1 I. C. 205.
8. A. I. R. 1930 Lah. 150=124 I. C. 337.

Act, but it is admissible under section 35 of the Evidence Act.[1] (*But see remarks on page supra as to the value of the records prepared at Summary Settlement*).

The entries in a *wajib-ul-arz* are presumed to be correct until the contrary is proved, although they are not repeated in later settlements.[2]

It is not the function of a *wajib-ul-arz* to record statements regarding the legitimacy or otherwise of the off-spring of a proprietor in the village. And such statement recorded in the *wajib-ul-arz* is inadmissible to prove that fact.[3] An entry in *wajib-ul-arz* having no bearing on questions put at the time of making it is inadmissible in evidence.[4] As a separate *wajib-ul-arz* is prepared at every settlement the question arises which *wajib-ul-arz* should be relied upon to decide the dispute ? It is a natural presumption from the omission of an entry that it has been done deliberately and with due cause. When a new *wajib-ul-arz* is prepared it supersedes the old *wajib-ul-arz*.[5] If it is expressly laid down that the terms of the *wajib-ul-arz* refer only to the period of settlement, the matter ends and the next *wajib-ul-arz* is to be looked into. Entries in the *wajib-ul-arz* are generally not valid beyoud the settlement for which they are made[6] except those relating to succession and the like. (*See Chapter VIII of Author's Commentary on the Punjab Tenancy Act, pages to*). An entry in an *iqrarnama malikan* is superseded by a contrary entry in a subsequent *wajib-ul-arz*.[7]

Riwaj-i-am.—*Riwaj-i-am* is a tribal customary Code of the district describing customs relating to succession, adoption, gifts, wills, legacies, bastardy, special property of females, etc., prevalent amongst the principal agricultural tribes of the district. In any district in which no such record of tribal custom has been prepared it is the duty of the Settlement Officer to have one drawn up, and likewise where a *riwaj-i-am* has been drawn up at a former settlement, there is a provision for its revision, if necessary, at the next settlement. **Riwaj-i-am.**

Though it is not a part of the record-of-rights and no presumption of truth is attached to it under this section, yet it is a public record prepared by a public officer in discharge of his duties and is under the rules clearly admissible in evidence to prove the facts therein entered subject to rebuttal. The statements contained in *riwaj-i-am* form a strong piece of evidence in support of the custom.[8]

Where a *riwaj-i-am* states that a custom of general well-known applicability exists in a particular locality, it should be followed even when it is unsupported by instances.[9] Even with respect to a special custom (whether supported or unsupported by instances) *riwaj-i-am* is a

1. 97 P. R. 1902=121 P. L. R. 1902.
2. Shankar Lal *v.* Kailash Chand=A. I. R. 1939 Lah. 105=183 I.C. 794=41 P. L. R. 21.
3. A. I. R. 1933 Lah. 412=142 I. C. 606=34 P. L. R. 115.
4. *Ibid.*
5. Dilbagh Rai and another *v.* Mehr Shah=1932 L. L. T. 101 ; 1930 L. L. T. 9 explained.
6. 1930 L. L. T. 9.
7. Pars Ram and others *v.* Makhan Lal and others=1932 L. L. T. 81.
8. 45 P. R. 1917 P. C. followed in 8 L. 281=1927 L. 241 ; 1930 L. 724 ; 1922 Lah. 320 ; 1925 Lah. 35 ; 1925 Lah. 269 (P. C.).
9. 84 P. R. 1917 ; 94 P. R. 1918 ; 13 P. R. 1919 ; 1 Lah. 284.

piece of evidence which, if unrebutted, is sufficient to decide the case,[1] although the burden of proof on the party challenging such an entry would be comparatively light in view of the general custom in the province.[2]

The *riwaj-i-am* carries with it a certain presumption of correctness but the presumption is rebuttable and when positive instances are given the *riwaj-i-am* cannot be regarded as overriding them.[3] Where special, custom in *riwaj-i-am* is opposed to general custom and effects women's rights who have no opportunity to appear before revenue authorities presumption in favour of *riwaj-i-am* is weak and can be easily rebutted.[4] Entries in the last *riwaj-i-am* must prevail unless it is shown conclusively that they are wrong.[5]

As a rule, the entries in *riwaj-i-am* regarding customary succession relate to ancestral lands and not to self-acquired property.[6] It refers only to ancestral land unless there is a clear statement to the contrary.[7] (See A. I. R. 1932 Lah. 553 also wherein it is laid down that the use of expressions that certain persons are excluded from succession "in any case" under any circumstances without reference to ancestral character of property or otherwise shows that the exclusion refers to self-acquired property also). An entry in a *riwaj-i-am* subsists for all times and is not confined to the terms of the settlement only.[8]

Legitimacy.

Legitimacy.—Where mutation has been effected in favour of a person as the legitimate son of his father, the burden of proving his illegitimacy is on the person asserting it.[9]

Mortgage money.

Mortgage money.—The amount of mortgage money due set out in the statement of mortgages with possession prepared at the settlement of 1898, has the same presumption of correctness under section 44 of the Punjab Land Revenue Act as all other entries in a record-of-rights made in accordance with law, such statement being the one prescribed as statement H under section 86 of the rule framed under section 46 of the Act.[10]

As to possession.

Presumption as to fact of possession.—There is a presumption of truth attaching to an entry regarding possession in revenue records. But where such entry is based merely on the alteration of the record as a result of a mutation order passed in the absence of and without notice to a party previously recorded as entitled to possession the presumption may be rebutted as the mere decision of a mutation does not constitute an act of possession or dispossession.[11]

Surati Dehi not a part of record-of-rights.

Surati Dehi.—*Surati Dehi* is the result of a general survey and is not a part of the record-of-rights and no presumption of correctness

1. 1927 Lah. 281; 1927 Lah. 527; 103 I. C. 170; 101 I. C. 852; 35 P. L. R. 585; 144 I. C. 646; A. I. R. 1928 Lah. 893; 45 P. R. 1917.
2. A. I. R. 1929 Lah. 318 following 1927 Lah. 241.
3. 1 Lah. 204.
4. A. I. R. 1931 Lah. 641=I. R. 1931 Lah. 1003.
5. A. I R. 1931 Lah. 453=I. R. 1931 Lah. 285.
6. A. I. R. 1933 Lah. 535; 14 Lah. 630; 1933 Lah. 553.
7. A. I. R. 1932 Lah. 591; A. I. R. 1934 Lah. 351.
8. See 1932 L. L. T. 101.
9. 26 I. C. 969=2 P. L. R. 1915 Supp.=255 P. W. R. 1915.
10. Jumna *v.* Mubarik Khan=55 P. R. 1915=30 I. C. 87=50 P. L. R. 1916=167 P. W. R. 1915.
11. Rirku *v.* Jaswant Singh=(1941) 20 L. L. T. 65.

attaches to the entries made in it. The statements made in the *Surati Dehi* do not purport to have been made by any person and are the result of heresay information gathered by the Surveying Officer. They are not signed by any individual. It follows that irrespective of their being a part of record-of-rights or not, they cannot be preferred to the entries made in the record-of-rights and annual records which are based on available particulars and to which a presumption of truth attaches.[1]

Religious trusts.

Interpretation of revenue records—religious trusts.—In case of a land belonging to an institution, *e. g.*, a *thakardwara*, the name of the mahant or the trustee is generally entered in the column of ownership. The mere entry of the name of the mahant of the institution, therefore, in the column of ownership does not prove that the land is his private and exclusive property.[2]

Similarly, it has been laid down that much significance cannot be attached to the mere fact that in the revenue records the names of the *guddinashins* (trustees of a Mohammedan shrine) have been shown in the column of owners. The fact that the incumbent is only a "trustee" and not an owner in the true sense of the term is not ordinarily of importance for the purpose of the revenue records and it is not unusual to find such entries in the case of persons who are mere custodians or trustees.[3]

The presumption of correctness attaching to the revenue records cannot be cancelled by an entry occurring in a *muafi* register. Where entries consistently made from 1851 in all the *jamabandis* showing the *mahant* for the time being of a gurdwara as the owner of the land in suit cannot be rebutted by an entry in the *muafi* register made in 1856 and by an order passed at the time of the last settlement to the effect that the land was attached to the gurdwara.[4]

Entry regarding caste in revenue records—presumption.—See remarks on page *supra* under section 37.

How to prove entries in records-of-rights—function of Special Kanungo —See pages 77 to 81.

Suit for declaratory decree by persons aggrieved by an entry in a record.

45. If any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights, or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.

Meaning and scope.— Section 42 of the Specific Relief Act lays down that 'any person entitled to any legal character, or any right as to property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief :

Provided that no Court shall make any such declaration where the plaintiff, being able te seek further relief than mere declaration of title, omits to do so.

1. Abdul Jabbar *v.* Aziz-ul-Haq=A. I. R. 1942 Pesh. 35.
2. Raghunath Das *v.* Gajpat Rai and others=35 P. L. R. 443.
3. A. I. R. 1933 Lah. 725=14 Lah. 624.
4. A. I. R. 1932 Lah. 513=14 Lah 156=138 I. C. 387 distinguished in A. I. R 1934 Lah. 68.

There is no distinction between a suit under section 45 of the Punjab Land Revenue Act and one under section 42, Specific Relief Act because section 45, Punjab Land Revenue Act, also contemplates a declaratory suit with or without consequential relief under the provisions of the Specific Relief Act. It does not create a new description of suit but merely indicates the remedy of a persen who may feel aggrieved by an adverse entry in the record-of-rights ; in other words it specifies an occasion when a party may bring a declaratory suit under the provisions of the Specific Relief Act.[1]

This section clearly empowers any person aggrieved by an entry in the record-of-rights to seek relief under section 42, Specific Relief Act. It is for the plaintiffs to decide whether they feel aggrieved by any such entry, and if the plaintiffs assert that they are so aggrieved, the defendants cannot be allowed to urge that the plaintiffs should not feel aggrieved and be not permitted to knock at the door of the Court.[2]

Under the Land Revenue Act of 1871, a suit could be instituted with the sole object of having it declared that a Settlement entry was incorrect and that a different entry ought to have been made (section 20). But Act XVII of 1887 has introduced a change in this respect, and while leaving it still open to a person aggrieved by an entry in a record-of-rights to sue for a declaration of his rights under the Specific Relief Act, 1877, it has wisely enough reserved the mere correction of the entry alleged to be wrong to the Revenue Officers [Section 158 (2) (*vi*)].[3] But this power to the exclusion of the jurisdiction of Civil Courts extends only to the correction of entries in the records. A suit by a person in possession of a right asking for a declaration of such right considering himself aggrieved by an entry in an annual record or a record-of-rights touching the same, is one of civil nature and must be heard and determined by a Civil Court, and the correction of the entry complained of is not one of the matters which necessarily arise in such a suit.[4] The plaintiffs alleged that the entries in the revenue papers relating to the ownership of certain *khasra* numbers of a village were incorrect, in so far as the land comprised in those khasra nos. was shown as the property of the defendants whereas it really formed part of the *shamilat deh*, and the relief prayed for by them was that the proceedings relating to the mutation of the land in question in the Settlement Record be held null and void and the entries in the record-of-rights and the annual record be corrected. It was held that the suit is cognizable by a Civil Court, for the relief claimed by the plaintiffs is not the actual correction of the entries complained of, as contemplated by clause (*vi*) of sub-section (2) of section 158 of the Act, but only to obtain a declaration under section 45 of the said Act in respect of certain rights of which the plaintiffs claim to be in possession and in respect of which they allege that a wrong entry has been made in the record-of-rights and in the annual record.[5]

A suit for a declaration of proprietary rights in land of which the plaintiffs alleged themselves to be in possession, but which appeared in

1. Fateh Ali Shah *v.* Mohammad Baksh=A. I. R. 1928 Lah. 516=9 Lah. 428.
2. Ghulam Mohammad Khan *v.* Samundar Khan=A. I. R. 1936 Lah. 37.
3. Raja Nur Khan *v.* Mst. Darab Khatun=25 P. R. 1889.
4. 25 P. R. 1889.
5. Ram Singh and others *v.* Bakshi=64 P. R. 1917=A. I. R. 1917 Lah. 411=41 I. C. 895 ; 25 P. R. 1889 relied upon.

the revenue papers as the property of the defendant was within the purview of section 45 of the Act and section 42 of the Specific Relief Act.[1]

Section 158 (2) (*vi*) bars the jurisdiction of a Civil Court for the correction of any entry in a record-of-rights, annual record or register of mutations. The proviso to section 42 of the Specific Relief Act lays down that 'no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.' Thus cases arising under section 45 of the Act fall outside the scope of this proviso, the present section limiting the jurisdiction of the Civil Court to entertaining a suit for a declaration of right only [*See Commentary under section 117 of the Act also*].

Jurisdiction of Civil and Revenue Courts with respect to declaratory suits.—Following *Raja Nur Khan* v. *Mst. Darab Khatun*[2] it was held in *Rahmun* v. *Hashim*[3] that all suits under the Specific Relief Act must be brought in Civil Courts only because as remarked—'the preamble of the Specific Relief Act refers to civil suits only and no exception to this limitation is made in Chapter VI of the Act,' laying thereby that suits under section 45 of the Land Revenue Act were cognizable by Civil Courts alone. But in *Bahadur Khan* v. *Sardar*[4] it had been held by Rivaz J., that section 45 of the Act must be read subject to section 77 of the Punjab Tenancy Act, and the other provisions of either Act relating to the jurisdiction of the Revenue Courts, and the cases falling within the former section would be cognizable either by the Civil or Revenue Court, according to the nature of the subject matter of the suit, and the rules for the exercise of jurisdiction by the Revenue Courts enacted under the relevent sections of the two Acts. In fact, it had been held by Reid C. J., himself, who decided '*Rahmun* v. *Hashim* in *Attar Singh* v. *Rala Singh*[5] that a suit by an occupancy tenant for a declaration that he was occupancy tenant in respect of a certain occupancy holding for which he had exchanged his original occupancy holding was governed by section 77 (3) (*d*) of the Punjab Tenancy Act and was cognizable by a Revenue Court only. *Bahadur Khan* v. *Sardar* was approved and followed by him in that case, and no reference was made to *Rahmun* v. *Hashim*. Even in *Raja Nur Khan* v. *Mst. Darab Khatun* there was no authority for the view that a suit under section 45 of the Punjab Land Revenue Act would not be brought in a Revenue Court at all. The question came up before the Financial Commissioner in *Sajawal* v. *Sodagar*[6] in which all these rulings were discussed and it was laid down that in all cases in which subject matter was such as was mentioned in section 158 of the Punjab Land Revenue Act and section 77 (3) of the Tenancy Act and similar statutory provisions excluding the jurisdiction of the Civil Court, a suit in which relief in the form of a declaratory decree was sought was excluded from the cognizance of a Civil Court and was within the jurisdiction of a Revenue Court. The same view was endorsed in *Feroze* v. *Bahadur*.[7]

1. Natha Singh *v.* Sadiq Ali=90 P. R. 1900=25 P. L.R. 1900.
2. 25 P. R. 1889.
3. 73 P. R. 1910.
4. 89 P. R. 1895.
5. 139 P. R. 1906=110 P. L. R. 1907=169 P. W. R. 1906; see also 165 P. L. R. 1900.
6. 2 P. R. 1913 (Rev.)=81 P. L. R. 1913=18 I. C. 796.
7. 1926 L. L. T. page 10.

It, therefore, does not follow that because a Civil Court can entertain a declaratory suit in regard to title as entered in the record-of-rights, it will therefore have jurisdiction in declaratory suits of a different nature covering matter specially referred to in section 77 of the Tenancy Act.[1] Where a suit involved the question as to whether the land revenue should be paid to the *jagirdar* in cash or in kind, a matter which the Provincial Government alone was competent to decide [section 48 (2) and section 158], it was held that though the suit was one for a declaration it was excepted from the jurisdiction of the Civil Court.[2]

See also commentary under sections 117 and 158 of the Land Revenue Act and section 77 of the Tenancy Act, as to cases falling within the cognizance of Revenue Officers and Revenue Courts exclusively. See also section 9 of the Code of Civil Procedure.

Limitation—cause of action—time from which limitation begins to run.—Article 120 of the Limitation Act applies to suits under section 45 of the Land Revenue Act, and therefore a suit under this section must be brought within six years *from the date when the right to sue accrues.*[3] The words in italics are important and need explanation. If a plaintiff is in possession or enjoyment of the property in suit he is not obliged to sue for a declaration of title on the first or on each succeeding denial of his title by the defendant. He may look upon each denial with complacency or at his option may institute a suit to falsify the assertions of the other side. But when his rights are actually jeopardised by the action or assertion of the defendant then he must take proceedings within six years from the date of such action or assertions. Consequently a suit for declaration by a person in possession of certain rights brought within six years of date of the action making of an adverse entry against him as distinguished from a mere order for the making of such an entry is within limitation for the statutory period or similar reason in support of his plea of such extinction.[4]

A suit for a declaration in respect of an entry made in record-of-rights filed under section 42, Specific Relief Act, read with section 45 of the Punjab Land Revenue Act, is governed by Act 120, Limitation Act. The cause of action in all such cases would accrue when the plaintiff feels aggrieved and not from date of entry.[5]

In the year 1879, an entry was made in the revenue papers to the prejudice of plaintiffs, co-sharers in the *shamilat*, without their knowledge. They continued in the enjoyment of their rights as co-sharers in the *shamilat*. In 1923, mutation was sanctioned recognizing the plaintiffs as full owners in the *shamilat* but the defendants got the mutation cancelled, taking advantage of the aforesaid entry. Plaintiffs brought a declaratory suit to establish their rights. Objection was taken that the suit was timebarred as the limitation ran from the entry of 1879. *Held*, that the suit was not time barred for the limitation ran not from

1. See 110 P. R. 1918=48 I. C. 884=A. I. R. 1918 Lah. 191.
2. 110 P.R. 1918.
3. Fateh Ali Shah *v.* Mohammad Baksh=9 Lah. 428=1928 Lah. 516; 30 P.R. 1880; A.I.R. 1925 Lah. 391; A.I.R. 1922 Lah. 94; 140 P.R. 1907; 1927 Cal. 30=97 I. C. 635; 20 P. R. 1900.
4. 9 Lah. 428=1928 Lah. 516.
5. Ghulam Mohammad Khan *v.* Samundar Khan=A.I.R. 1936 Lah. 37.

the date of the entry of 1879, but from the date the mutation was cancelled.[1]

Thus it is a well established principle that where the plaintiff is in actual possession or enjoyment of the property each fresh invasion of his rights gives him a fresh cause of action to bring a suit for declaration of his title. Every subsequent denial by the defendant is a fresh infringement of his right.[2] A man is not bound to bring a declaratory suit on any and every possible invasion of his title.[3] An adverse entry in the record-of-rights even if allowed to remain unchallenged, does not necessarily extinguish the right of the party against whom such entry has been made and *forttori* an order to alter the entry to the prejudice of the party without the actual alteration of the entry cannot by itself extinguish the right unless the other party can prove adverse possession or give some similar reason in support of his plea of such extinction.[4]

Considers himself agggrieved.—Where the proprietors in one *patti* sued the proprietors in another *patti* in the village for a declaration of proprietary rights in certain land entered in the revenue papers as the property of the defendants, *held* that the entry in the revenue paper could not be the cause of action in the suit as it was not the fact of defendants but of a third person, *viz*., the revenue authorities; *held*, however, that the allegation in the plaint that the defendants were now taking advantage of the entry to endeavour to oust the plaintiff from the land did constitute a cause of action, and so the suit could proceed under this section, and that the limitation for it would be computed from the time when the cause of action thus arose and not from the date of the entry.[5] Where a proprietor used his occupancy tenant for a declaration that the defendants were entitled to cut trees on the occupancy for agricultural implements only basing his claim on an entry in a record-of-rights, *held*, that this section was not applicable as the plaintiff was not aggrieved by the entry in the record ; on the other hand his claim was based on it.[6]

Punjab Limitation (Custom) Act (1920).—Plaintiff was in possession of the land which was the subject of alienation by will in favour of the defendant; mutation was effected in favour of defendant whereupon plaintiff sued for declaration of his title; *Held*, that it was unnecessary for him to bring any suit to set aside the alienation by will as he was in possession of the property and that his suit fell under section 45 of this Act and was governed by Article 120, Limitation Act, and not by Sch. I, Art. I, Punjab Limitation Act.[7]

Supplemental Provisions

46. The Financial Commissioner may make rules—

(*a*) prescribing the language in which records and registers under this chapter are to be made;

Powers to make rules respecting records and other matters connected therewith.

1. Ballo and others *v.* Ganeshi Lal and others=A.I.R. 1929 Lah. 379 ; see also 20 P.R. 1900 and 140 P.R. 1907.
2. A.I.R. 1925 Lah. 391 (2)=6 Lah. 132 ; see also A.I.R. 1922 Lah. 94.
3. 140 P.R. 1907 ; see also 1927 Cal. 30.
4. A.I R. 1928 Lah. 516 ; 30 P.R. 1880 aud 140 P.R. 1907 relied on, 56 I.C. 931 and 97 P.R. 1917 dist.
5. 20 P.R. 1900.
6. 165 P L.R. 1900.
7. Dalip Singh *v.* Mst. Tabi=A.I.R. 1934 Lah.134.

(*b*) prescribing the form of those records and registers, and the manner in which they are to be prepared, signed and attested ;

(*c*) for the survey of land so far as may be necessary for the preparation and correction of those records and registers ;

(*d*) for the conduct of inquiries by Revenue Officers under this chapter ; and

(*e*) generally for the guidance of Revenue Officers and village officers in matters pertaining to records and registers mentioned or referred to in this Chapter.

Form of jamabandi—Land Revenue Rule 72.—See page 186.

Language of Revenue Officers.—See Rules under section 155 (1) (*f*).

Records-of-rights and annual records for groups of estates.

47. (1) The Financial Commissioner may direct that a record-of-rights be m ade for any group of neighbouring estates instead of separately for each of the estates.

(2) The provisions of this chapter with respect to a record-of-rights and annual record for an estate shall then, so far as they can be made applicable, apply to a record-of-rights and annual record for a group of estates.

CHAPTER V

Assessment.

General.—As has already been explained on page 15 the theory upon which our Land Revenue system is based is that Government is entitled to a share of the produce of the land to be fixed by itself [*See also preamble to Act XXXIII of 1871*]. The object of the fiscal part of the Settlement is to fix the demand upon the land for a certain period of years prospectively within such limits as may leave a fair profit to the proprietors and create a valuable and marketable property in the land. The process is known as "assessment."

This end cannot be attained with certainty by any fixed arithmetical process or by the prescription of any rule that a certain portion of the gross or net produce of the land shall be assigned to the Government and to the proprietors. If the produce of any one year or any given number of past years, could be determined, it would afford no certain guide to the produce of years to come. The future produce may be more, if there is waste land to come into cultivation; if the former system of cultivation were faulty; if the products of the land are likely to come into demand in the market; and the like factors. The future produce may be less if the reverse of all these be the case. The Government demand therefore is rightly fixed as a *certain proportion of the average money value of the net assets of the estate or group of estates.* This expression will be found explained under section 48-B. The most difficult task before the Settlement Officer is the determination of the average net assets and he is to be guided in this by the provisions laid down in this Act and the rules thereunder although still much will depend upon his own knowledge of the local conditions.

Outlines of process of assessment.—The main principles governing land revenue assessment in the Punjab will be found explained in this Chapter while for want of enough space detailed account is left for separate treatment. To put briefly, the first step towards the assessment of any tract is the determination of the assessmeut circles into which it should be divided. These should be formed by grouping together neighbouring villages which are in general similarly circumstanced as regards quality of soil, facilities for irrigation, proximity to markets, and other factors referred to on page 28. His next duty will be to form general rates for the assessment circle, founded upon a comparison of the produce estimates with the other estimates obtained by him, with the estimate (if any) and rates of the previous Settlement, and with the information he has gained as to the condition of the villages by personal visits. Certain tests have been provided to check these and to arrive at correct estimates of net assets. After these Revenue rates have been determined and approved by the competent authority, the Settlement Officer proceeds to determine the amount at which each estate should be assessed. The estimated value of the produce of the estate, as calculated by the application of the average yield rates and prices for each crop which have been adopted for the assessment circle, will be useful as a guide in making the assessment, though here also the assessing officer has to take into account all the information which he has gained as to the circumstances of the estate.

Process of assessment.

The assessment of each estate is then proposed and approved of by competent authority. The next step is to offer the Settlement to the persons with whom settlement is to be made and when it has been accepted to distribute it over the various holdings according to certain principles.

The Punjab Land Revenue (Amendment) Act, III of 1928.— The law dealing with assessment is contained in Chapter 5 of the Punjab Land Revenue Act, 1887. Before the enactment of Act III of 1928, beyond establishing the fact that all land is liable to the payment of land revenue to Government and directing that a general re-assessment of the land revenue of a district or tahsil shall not be undertaken without the previous sanction of the Local Government, the existing law contained nothing about the principles of assessment. All these principles were embodied in a series of instructions which were issued from time to time either from the Government of India or from the Local Government or the Financial Commissioner. The intention of the new legislation was—

(i) to embody the more important of these rules and instructions in the statute law of the province, and

(ii) to provide machinery for the making of rules and instructions in future so as to ensure that no change shall take place in the more important of these rules and instructions without the special cognizance of the elected representatives of the Province in the Legislative Council.

The changes made by this Amending Act have been referred to at appropriate places.

Limit of assessment.

48. (1) All land to whatever purpose applied and wherever situate is liable to the payment of land-revenue to the Government except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force *and such land as is included in the village site.*

(2) Land revenue shall be assessed in cash.

(3) Land may be assessed to land-revenue notwithstanding that that revenue, by reason of its having been assigned, released, compounded for or redeemed, is not payable to the Government.

(4) Land-revenue may be assessed—

(*a*) as a fixed annual charge payable in a lump sum or by instalments;

(*b*) in the form of prescribed rates per acre or other unit of area applicable to the area recorded as sown, matured or cultivated during any harvest or during any year.

Sub-section (1).—The words 'and such land as is included in the village site' have been inserted by Punjab Act III of 1928, section 3, so that land included in the village site is now definitely exempted from assessment though this was the practice previously also and village sites have never been assessed.

[1]Instructions regarding assessment of urban lands and of lands which may become urban.

Assessment of urban lands.

1. All lands in a military cantonment and all village and town sites of ancient standing will be exempt from assessment in the absence of special orders and if exempt heretofore.

2. Land in a civil station will not ordinarily be exempt but application for exemption on special grounds, or in the interest of a municipality, may be submitted through the Settlement Officers for the orders of Government.

3. Lands such as roads and sites of hospitals, dispensaries and schools and the like, which yield no return to private individuals or local bodies and are devoted to public purposes, may, so long as they are utilized for the purposes of the character indicated, be exempted from assessment of land revenue, whatever the amount of the land revenue assessed or assessable on those lands may be. All cases in which it is intended to exempt land from assessment under this ruling should be referred for the orders of the Financial Commissioner.

4. Lands taken up by a municipality for markets, cart stands and similar objects, from which an income is raised, should contribute their share of land revenue.

5. Municipalities have no claim to the assignment of the land revenue assessed upon lands within their limits, which like all revenue, is a Government asset. No such alienation of this revenue to municipalities should be made.

6. In assessing lands in a civil station, Settlement Officers wil be guided by the following rules :—

(*a*) Land cultivated with a view to sale of produce, such as market gardens, corn-fields, is to be assessed in the ordinary way on a share of the produce.

(*b*) Lands attached to dwelling-houses or shops, in which is included compound or garden land, not of the nature of market gardens, to be assessed according to the usual rate, for the description of soil of the land in question, provided first, that if such rate gives a smaller sum than that hitherto paid, the old assessment shall be maintained, and, secondly, that the assessment shall always be payable by the proprietor of the land ; and, where the amount de ; andable on one property is less than one rupee, it may be remitted at the discretion of the Settlement Officer. The same rule and exemptions to apply to the assessment of land occupied by public buildings, not the property of Government.

(*c*) Lan ds owned by the State, *e. g.* reserved plots of waste land attached to Government buildings, etc. to be exempt

1. Appendix XV, Settlement Mannual.

from assessment. Where, however, under the practice of the province, town lands are assessed to land revenue, Government property in any town or station consisting merely of isolated plots, the area of which is inconsiderable, should ordinarily form no exception, even though sold outright by Government.

7. With reference to the Land Revenue Act land under buildings may be divided into three main classes,—

I. Village and town sites of ancient standing, which have always been revenue free.

II. Land assessed to land revenue as being arable or pastoral which has been—

(*a*) absorbed in an old revenue-free village or town site, or

(*b*) built over, though lying at a distance from any village or town.

III. Land which has been sold by Government for the express purpose of being made use of for a town or village or a factory or other building.

No assessment will be imposed on land of the first class (paragraph 1).

8. As regards land of the second class, the mere conversion of arable into building land at the will of its owner, and probably to his advantage, is no reason for remitting its land revenue. Where the land is merely absorbed in the village site, the revenue may fairly continue to be realized, and may at the next settlement be raised to the same pitch as the assessment of arable land in the neighbourhood. Where it has been sold at a profit, *e. g.*, to be a factory site, whether adjoining the village site or at a distance from it, then the revenue may justifiably be raised at the next settlement to an amount equal to 2, 3 or 4 percent. On the price paid for the land, and at subsequent settlements the revenue may be further raised at the next settlement to an amount equal to 2, 3 or 4 per cent. On the price paid for the land and at subsequent settlements the revenue may be further raised in proportion to the rise ascertained in the price of land generally. But it will not be justifiable to take into account under the Land Revenue Act the profits made by the factory owner which are due not to the land, but to the use of his capital and his machinary. On the other hand, the considerations which ordinarily operate to prevent the imposition of a full land revenue such as small holdings, and the objection to a large *per saltum* increase, are not applicable in such cases, and it will be right to take the equivalent of the highest assessment rates of arable land, or even the full one-fourth asset rates arrived at in the produce estimate. In small villages where land in the village site is of little value, it is scarcely worth while to maintain the assessment of land absorbed in it, and the present practice may be maintained of remitting the revenue and measuring the whole village site in one khasra number.

9. With land of class III Government has a free hand, and may stipulate at the time of sale that the purchaser and his representatives in interest shall be liable to make an annual payment to the State—whether it is called land revenue or ground rent or anything else

matters little—which shall be liable to revision from time to time. The letting value of a site, apart from the building is hard to determine, but the definition in Punjab Govt. letter No. 448, dated 24th March 1869, may be followed, *i. e.*, " that portion of the net rent which exceeds a fair remuneration for the capital invested in building the house. " Or it may be simpler to take 2, 3, or 4 per cent. On the original price to start with, and to judge the increase in the value of the site from time to time by comparison with the selling price of land, arable or urban, in the neighbourhood, and to enhance the ground rent to 2, 3, or 4 per cent. on the increased value so guaged. In the case of new towns, the first reassessment of ground rent may be fixed for five years after sale, and subsequent reassessments may be at the intervals of ten years.

10. The redemption of land revenue assessed on lands taken up by a municipality for a public or quasi-public purpose is contrary to the policy of the Government of India, and is not permitted. If, however, a Settlement Officer thinks that owners of urban land of the second and third classes described above are likely to welcome redemption of the revenue, he may include proposals to that end in his assessment report.

11. When estates are assessed purely to fluctuating crop rates, and there is no fixed assessment, a clause is to be added at settlement providing for the imposition of a fixed assessment on any area converted during the currency of settlement into a building site, the fixed assessment to be leviable at the highest rate per harvest sanctioned for the assessment circle to which it belongs.

For Land Revenue Redemption Rules, see page 7.

Land ceasing to be agricultural.—Land which has ceased to be agricultural land is not excluded from the payment of land revenue *ipso facto*. In cases of distributing assessment, the Collector should give a self-contained order which would not require reference to any other order or proceeding.[1]

Sub-section (2).—Sub-section (2) as it stood before prescribed that land revenue could be assessed in cash or in kind. Assessments in kind commended themselves neither to Government nor to the public and were obsolete. It was accordingly proposed to omit the provision for assessment in kind and to legislate for assessment in cash only. This was done by Punjab Act, III of 1928.

Sub-section (3).—This sub-section provides that land may be assessed to land revenue notwithstanding that that revenue by reason of its having been assigned, released, compounded for, or redeemed, is not payable to the Government. It shall be assessed like any other land and it is the general policy of the administration to make no distinction in this respect between *jagir* und *khalsa* land. In the despatch of the Government of India constituting the Punjab Board of Administration it was directed that in order to prevent *jagirdars* or other revenue-free holders from deriving more from the land than would be taken by the Government whose place they occupy, the Government revenue should be assessed upon each village or tract which constitutes a separate revenue-free tenure. On the commencement of

1. Lal Chand *v.* the Crown=1927 L.L.T. 25.

Regular Settlement operations in the Punjab proper, the Board of Administration issued orders that, on the introduction of the Regular Settlement into any district, all *jagir* villages should be assessed simultaneously with those of Government. This has continued to this day. Its advantages are obvious.

In *Nandu* v. *Malla Singh*[1] it has been held that a Settlement Officer is bound to assess every estate to a cash assessment, even when held in *jagir*.

See also commentary under sections 59 *and* 61 *of the Act.*

Fixed and fluctuating assessments.

Sub-section (4)—fixed and fluctuating assessments.—This sub-section states the two systems of assessment—fixed and fluctuating. The normal assessment takes the form of a fixed amount for each estate for a term of years : The Settlement Officer announces a fixed sum to be paid annually by each estate. This sum is not liable to be varied, except in accordance with the rules for progressive assessment, exemption of improvements, di-alluvion, suspension and remission, or similar special circumstances.

But according to clause (*b*) it is also permissible for an assessment to be in the form of rates chargeable according to the results of each year or harvest. This is called a " fluctuating assessment." It is generally employed where the results of each harvest are most dependent upon conditions beyond the cultivators' control *e.g.*, river-floods, canal-supplies, or precarious rainfall.

There is much to be said in favour of each of these forms, if applied to appropriate areas and efficiently worked. The great advantage of the 'fixed,' form to the landowner is that it gives him all the benefit of wasteland broken up or fields improved between settlements ; and from the point of view of Government, the form has the merit of fostering development and increasing wealth : but it is generally necessary, as has been pointed out above, to modify rigid fixity so as to allow for unforeseen circumstances. The advantage of the ' fluctuating ' form is that the demand is automatically adjusted to the ability to pay : but if it is not to become either an occasion of loss to the Government or of oppression to the land-owners, strict supervision is essential.

So far, these fluctuating assessments in the Punjab have been mainly confined to lands subject to river inundation and to some canal-irrigated tracts, and the extensions of the system to areas dependent on rainfall, in which variations of outturn are even more marked, has generally been deemed inadvisable (*Land Administration Manual para.* 546).

Basis of assessment.

[2]**48-A.** The assessment of land revenue shall be based on an estimate of the average money value of the net assets of the estate or group of estates in which land concerned is situated.

Based on an estimate of the average money value of the net assets—meaning and scope.—This section gives statutory force to the

1. 14 P.R. 1892 (Rev.).
2. Inserted by Punjab Act, III of 1928, S. 4.

orders existing before the enactment of Punjab Act, III of 1928, under which net assets formed the basis of assessment.

" Net assets " has been defined in sub-section (18) of section 3 of the Act and means the *estimated average annual surplus produce of such estate or group of estates remaining after deduction of the ordinary expenses of cultivation as ascertained or estimated.*

In settlement practice one does not refer to the net assets of an assessment circle, but one refers to the net assets estimate of an assessment circle, thereby expressing the fact that it is an estimate on which the Settlement Officer has to base his proposals. It is necessarily an estimate because into the calculation of that estimate come four factors, none of which could be determined with absolute certainty. First of all there is the classification of the soil. There are different kinds of soil and according to the different kinds of soil one has naturally to take different yields. Secondly, there is the question of yield. It is quite impossible for a Settlement Officer or anybody else to say what the yield of a particular field is in a certain year without actually carrying out experiments to ascertain what it is. He has to strike an average. Then again another uncertain factor which comes into this calculation is what the average cultivated area will be in the future, and how that cultivated area is to be split up amongst the various classes of crops. Having got his figures of the various crops and the yields, there is still another uncertainty, that is, the uncertainty of prices. He knows what the zamindar has been getting for his grain in the past but he cannot possibly know what they are going to get in future and there again he has to make an estimate of future prices. There are other uncertain factors also that come into the preparation of net assets. It is therefore only an estimate and not actual average struck by any method. The assessment of land revenue is therefore based on ' an estimate of the average money value of the net assets ' of the estate or group of estates in which land concerned is situated.

Limit of assessment.

[1]**48-B.** If the land revenue is assessed as a fixed annual charge the amount thereof, and if it is assessed in the form of prescribed rate the average amount which according to an estimate in writing approved by the [2][Provincial Government] will be leviable annually, shall not, in the case of any assessment circle, exceed one-fourth of the estimated money value of the net assets of such assessment circle :

Provided that nothing contained in this section shall affect any assessment in force at the time of the commencement of the Punjab Land Revenue (Amendment) Act 1928.

History of the proportion of Government demand of ' net assets ' as land revenue.—This new section fixes a statutory limit for future assessments which will be one-fourth of the estimated money value of the net assets of any assessment circle.

1. Inserted by Punjab Act, III of 1928, S. 4.
2. Substituted for " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

It shall be of interest to note the history of Government demand of the land revenue. The settlement system of the Punjab was in its inception the system of the North-Western Provinces (now the United Provinces of Agra and Oudh) as it stood in 1849. The preamble to Regulation VII of 1822 declares that "a moderate assessment being equally conducive to the true interests of Government and to the well being of its subjects," the officer engaged in revising the settlement were to aim not at "any general and extensive enhancement," but at "the equalizing of public burdens." The demand was to be "fixed with reference to the produce and capabilities of the land" (section 7) and the Government share of the rental, which, following the precedent of the permanent settlement of Bengal had been fixed at 91 per cent by Regulations IX and X of 1812 was reduced to five-sixths. But the plan could not be successful and when Regulation VII of 1822 had been in force for eleven years an Amending Act, Regulation IX of 1833, was passed. This is the law under which the Punjab Settlements, before the passing of the first Land Revenue Act, XXXIII of 1871, purported to be made. The main provision of the new law was to prescribe—

that the amount of *jama* to be demanded from any *mahal* shall be calculated on an ascertainment of the quantity and value of actual produce, or on a comparison between the cost of production and value of produce.

During the first period of Punjab Settlement (1846—1863) the standard of assessment was recognized to be two-thirds, and at the end of the period one-half of the net assets. According to clause (*i*) of the Assessment Instructions issued in 1873, the Government demand of land revenue was not to exceed the estimated value of half the net produce of an estate, or in other words one-half of the share of the produce of an estate ordinarily receivable by the landlord either in money or in kind. There was similar provision in the Instructions issued in 1889 and in those sanctioned in 1893 and revised in 1914. The Punjab Land Revenue Amendment Act, III of 1928, has lowered the maximum standard of assessment from one-half of the net assets to one-fourth.[1]

General Assessments

Notification of intended re-assessment and instructions as to principles of assessment.

49. (1) Assessments of land revenue may be general or special.

(2) A general re-assessment of the land revenue of any area shall not be undertaken without the previous sanction of the [2][Provincial Government] and notfication of that sanction.

(3) In granting such sanction the [2][Provincial Government] may give such instructions consistent with the provisions of this Act and the rules made thereunder as it may deem fit.

1. See Chapters III and VI and Appendix I of the Settlement Manual.
2. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Section 59 of the Act relates to special assessments. This section speaks of 're-assessment' as there is now no general assessment of a district for the first time to be done. Previously sanction of the Governor-General in Council was necessary for re-assessment. By the Punjab Land Revenue Amendment Act (II of 1912) the words 'the Local Government' were substituted for 'Governor-General in Council.'

Sub-section (2)—"an area."—The original section has been amended by Punjab Act III of 1928. It previously contemplated assessments by districts or tahsils. This amendment expressly allows Government to sanction assessments of any areas.

Mode of determining assessment.

50. (1) A general assessment shall be made by a Revenue Officer.

(2) Before making such assessment the Revenue Officer shall report through the Financial Commissioner for the sanction of the Provincial Government his proposal with regard thereto.

This section has also been ameneded by Punjab Act, III of 1928. Previously the Financial Commissioner was empowered to pass orders which became final with the consent of the Local Government. This section now provides that the Provincial Government and not the Financial Commissioner shall pass orders on such proposals.

Announcement of assessment.

51. (1) After consideration of the proposals submitted by the Revenue Officer under the provisions of section 50 the [1][Provincial Government] shall pass such orders as it may deem fit, subject to the provisions of sub-sections (3) and (4), and on the receipt of such orders the Revenue Officer shall make an order determining the assessment proper for each estate concerned and shall announce it in such manner as the [1][Provincial Government] may by rule prescribe.

(2) At the time of announcing the assessment the Revenue Officer shall also declare the date from which it is to take effect, and, subject to the other provisions of this Act, it shall take effect accordingly.

(3) Subject to the provisions of sub-section (4) the average rate of incidence on the cultivated area of the land revenue imposed under the provisions of sub-section (1) on any assessment circle forming part of any area in respect of which a notification has been issued under sub-section (2) of section 49 shall not exceed the rate of incidence of the land revenue imposed at the last previous assessment by more than one-fourth: provided that the rate of incidence of the assessment imposed on any estate shall not exceed the rate of incidence of the last previous assessment on that estate by more than two-thirds.

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(4) The provisions of sub-section (3) shall not be applicable in the case of land which has not been previously assessed to land revenue or in which canal irrigation has been introduced after the provisions of sub-section (1) at the last previous assessment, or in the case of land of which the last previous assessment was made under the provisions of clause (*b*) of sub-section (1) of section 59 or in the case of an area which has been declared by notification to be an urban assessment circle and for the purpose of calculating the increase in the incidence of land revenue for the purpose of sub-section (3), all such land shall be excluded from calculation :

Provided that no area shall be declared to be an urban assessment circle unless it is included within the limits of a municipality or of an area in respect of which a notification has been issued under section 241 of the Punjab Municipal Act, 1911, or of an area declared to be a small town under the provisions of the Punjab Small Towns Act, 1921.

The original section ran as follows :—

" (1) When the Revenue Officer has obtained the sanction of the Financial Commissioner to his proposed methods of assessment he shall make an order determining the assessment proper for each estate and announce it in such manner as the Local Government may prescribe.

(2) At the time of announcing the assessment he shall also declare the date from which it is to take effect, and, subject to the other provisions of this Act, it shall take effect accordingly."

This section has been amended by Punjab Acts III of 1928 and VI of 1934 in the present form. Sub-section (3) places a limit on the enhancement to be taken at a re-settlement while sub-section (4) excludes from the application of sub-section (3) areas whose revenue-paying capacity is likely to expand with more than ordinary rapidity.

Sub-section (3)—calculation of rate of incidence.—See rule 31 of the rules under section 60 of the Act (page *infra*) for the method of calculating incidence of the land revenue. According to this sub-section the average rate of incidence on the cultivated area of the land revenue imposed on re-assessment on any assessment circle shall not exceed the rate of incidence of the land revenue imposed at the last previous assessment by more than one-fourth thus calculated, but within the circle the new rate of incidence for a particular estate shall not exceed the previous settlement rate on that estate by more than two-thirds. Thus the assessment of an estate may be raised by two- third, but the total *jama* of the circle must be kept within the limits fixed. This sub-section is subject to the provisions of sub-section (4).

Sub-section (4).—This sub-section specifies the cases to which the limits fixed in sub-section (3) do not apply.

Under sub-section (4) of section 51 of the Act, the following lands have been declared to be urban assessment circles :—

Lands.	Notification.
Lands situated within the municipal limits of Patti mandi, in the Kasur Tahsil of the Lahore District.	No 1350-R, dated the 23rd, March, 1933.
Lands situated within the municipal limits of Tarn Taran in the Tarn Taran Tahsil of the Amritsar district.	No. 656, dated the 31st October, 1939.
Lands situated within the municipal limits of Amritsar (excluding the area within the limits of Rakh Shikargarh revenue estate), the Small Town of Sultanwind, and the notified area of Chheharata in the Amritsar Tahsil of the Amritsar District.	No. 658-S, dated the 31st October, 1939.
Land situated within the estate of Model Town in the Lahore tahsil of the Lahore district.	No. 1026-S, dated the 14th December, 1939.

Sections 50, 52 and 61—Punjab Land Revenue Rules 23 (3), 30 (2), 3—new assessment—appeal—right of lambardar or individual to appeal on behalf of all.—By virtue of sections 51, 52 and 61, Punjab Land Revenue Act, a *lambardar* of an estate is competent to file an appeal on behalf of all or any of the landowners against an order imposing a new assessment. The right of a *lambardar* to file such an appeal also follows from Rules 23 (3) and 30 (2), (3) of the Punjab Land Revenue Rules. But even if these rules do not exist, since there is no special provision to the contrary, it would be lawful to entertain an appeal presented by a *lambardar* on behalf of all or any of the land owners.[1]

Application for reconsideration of assessment.

52. (1) The land-owner may, within thirty days from the date of the announcement of the assessment, present a petition to the Revenue Officer for a reconsideration of the amount, form or conditions of the assessment.

(2) Where the land revenue is assigned, the assignee thereof may, within thirty days from that date, present a like petition to the Revenue Officer.

(3) The order passed by the Revenue Officer on the petition shall set forth his reasons for granting or refusing it.

1. Land owners of Chak No. 242—R.B Tahsil and District Lyallpur *v.* the Crown=1939 L.L.T. 21.

When an assessment is made involving a large area such as a tahsil or an assessment circle and when over the greater part of that area the assessments have been accepted without appeal it is quite legitimate for the Settlement Officer to call attention to this fact when dealing with particular villages. The fact that other adjacent villages have not appealed although their circumstances appear to be somewhat similar, indicates that taking the whole area the assessment is not excessive. If any particular village appeals it must do so on the grounds special to itself (1927 L. L. T. 26).

Confirmation and duration of assessment.

[1]**53.** (1) An assessment, the undertaking of which has been sanctioned under the provisions of section 49, shall not be considered final until it has been confirmed by the [2][Provincial Government].

(2) At any time before an assessment is so confirmed the Commissioner or Financial Commissioner may subject to the provisions of sub-section (3) modify the assessment of any estate.

(3) Before any enhancement is ordered under the provisions of sub-section (2) the Commissioner or the Financial Commissioner, as the case may be, shall cause reasonable notice to be given to the land-owners by proclamation published in the manner described in section 22 to show cause in a petition addressed to the Revenue Officer why the proposed enhancement should not be ordered and the Revenue Officer shall enquire into any objections raised by any land-owner and submit such petition received with his report thereon to the Commissioner or the Financial Commissioner, who shall consider the petition and the report and shall also hear the petitioner if he so desires.

Sub-section (2)—"At any time."—In *Faker Hayat and other*, v. *Baba Naraingir*[3] the Financial Commissioner was held competent to revise his orders as to any assessment, notwithstanding lapse of time as the law empowers him to modify the assessment of any estate at any time before its sanction by Government.

Duration of assessment.

53-A. (1) The [2][Provincial Government] shall, when confirming an assessment under sub-section (1) of section 53, fix a period of time for which the assessment shall remain in force.

(2) The period fixed under sub-section (1) shall be forty years :

1. As amended by Punjab Act, III of 1928.
2. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.
3. 2 P. R. 1889 (Rev.).

Provided that—

(*i*) a period not exceeding forty years and not shorter than ten years may be fixed for any area, specified by the [1][Provincial Government], on which canal irrigation has been introduced after the date of the orders passed under the provisions of sub-section (1) of section 51 at the last previous assessment or in which it has been proposed to introduce such irrigation during the period fixed;

(*ii*) a period not exceeding forty years and not shorter than twenty years may be fixed on the expiry of a period fixed under the provisions of clause (*i*) of this proviso;

(*iii*) nothing in this sub-section shall affect any assessment in force at the time of the commencement of the Punjab Land Revenue (Amendment) Act, 1928, or apply to an area which has been declared to be an urban assessment circle under the provisions of sub-section (4) of section 51.

Duration of assessment.—This section has been inserted by Punjab Act, III of 1928. Previous to that sub-section (3) of section 53 provided—"The Local Government shall, when confirming an assessment under sub-section (1), fix the period for which the assessment is to be in force." By this section the ordinary period for a settlement is fixed at forty years—exceptions being allowed in certain circumstances where such a period would be unreasonable.

For the North Western Provinces (now the United Provinces of Agra and Oudh) Mr. Thomason advocated long term settlement for periods of twenty or thirty years according to circumstances. His policy was followed in the Punjab also and continued to be till the passing of the Punjab Act, III of 1928, though the usual term for settlements in the Western Punjab was for some time twenty, and not as in the United Provinces thirty years. During the second and third periods (1863—1879) of Punjab settlements the assessments of the districts lying in that part of the provinces which was annexed before the second Sikh war and consequently had bad time to develop was sanctioned for thirty years (Hissar was an exception; the term for that district being 20 years) while the rest of the province was settled for 20 yers only, except Bannu and Hazara, which were settled for thirty years. A similar policy was followed during the remainder of the 19th century, but most of the districts settled since its close have reached such a stage of development that it has been possible to allow them a 30 years' term. It is only where extensions of canal irrigation are still in progress, or have been carried out so rapidly that it has been impossible to make the land revenue demand keep pace with them, or where other exceptional reasons exist that a shorter period of 20 years or less has been decided on.[2]

1. Substituted for "Local Government by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. See para. 488 and Appendix III of the Settlement Manual.

Assessment to remain in force till new assessment takes effect.

54. Notwithstanding the expiration of the period fixed for the continuance of an assessment under the last foregoing section, the assessment shall remain in force till a new assessment takes effect.

Refusal to be liable for assessment and consequences thereof.

55. (1) At any time within ninety days from the date of the announcement of an assessment the land-owner or, where there are more land-owners than one, any of them who would be individually or collectively liable for more than half the sum assessed may give notice to the Revenue Officer of refusal to be liable for the assessment.

(2) When the Revenue Officer receives a notice under sub-section (1), the Collector may take possession of the estate and deal with it, as nearly as may be, as if the annulment of the assessment thereof had been ordered as a process for the recovery of an arrear of land revenue due thereon.

(3) While the estate is in the possession of the Collector, the land-owner or land-owners shall be entitled to receive from the Government an allowance, to be fixed by the Financial Commissioner, which shall not be less than five or more than ten per cent. of the net income realized by the Government from the estate.

See section 73 of the Act.

Distribution of the assessment of an estate over the holdings comprised therein.

56. (1) If the assessment announced under section 51 is in whole or in part a fixed assessment of an estated for a term of years, the Revenue Officer shall, before the date on which the first instalment thereof becomes payable, make an order distributing it over the several holdings comprised in the estate and make and publish a record of the distribution

(2) The Collector may for sufficient reason make an order revising that record at any time while the assessment continues to be in force, and publish the record so revised.

(3) If the assessment announced under section 51 is in the form of rates chargeable according to the results of each year or harvest a Revenue Officer shall, from year to year or from harvest to harvest, as the conditions of the assessment may require, make and publish, not later than one month before the first instalment of the land revenue falls due, a record of the amount payable in respect of each holding.

See rule 23 of the Rules framed under section 60 of the Act (page *infra*) for 'distribution of assessment over holdings.' It provides that in deciding the method of the new distribution regard shall be had to the former usage and to the wishes of the land-owners so far as may be practicable and equitable, and prescribes the contents and method of publication of the record referred to in sub-section (1).

For instructions see Chapter XXXII of the Settlement Manual.

The order required by section 56 (1) of the Land Revenue Act should describe briefly, the former method of distribution, that which has now been adopted, and the reasons which make it suitable. Any objections made and the decisions passed with reference to them may be shortly noticed. In cases for distribution of *bachh* the judgment of the Collector should be selfcontained not requiring any reference to any other order or proceeding.[1]

Sub-section (2).—Sub-section (2) provides that the Collector may at any time for sufficient reason revise the settlement *bachh*. This power is seldom exercised and it is not desirable that a power of this sort should be often exercised, but circumstances may arise when it may usefully be put in force. (*See paras. 545 and 438 of the Settlement Manual*).

Application for amendment of the distribution of an assessment.

57. (1) Any person affected by a record made under sub-section (1) or sub-section (3) of the last foregoing section, or by the revision of a record under sub-section (2) of that section, may, within thirty days from the date of the publication of the record, present a petition to the Revenue Officer for a reconsideration of the record so far as it affects him.

(2) The order passed by the Revenue Officer on the petition shall set forth his reasons for granting or refusing it.

Appeals from orders under sections 52 and 57.

58. An appeal from an order under the last foregoing section or section 52 shall lie to the Commissioner, and from the appellate order of the Commissioner to the Financial Commissioner.

Special Assessments.

Special assessments.

59. (1) Special assessment may be made by Revenue Officers in the following cases, namely :—

(*a*) when land revenue which has been released or assigned is resumed ;

(*b*) when lands are sold, leased or granted by the [2][Crown] ;

(*c*) when the assessment of any land has been annulled or the landowner has refused to be liable therefor, and the

1. Lal Chand and another *v.* the Crown=1927 L L.T. 25.
2. Substituted for 'Government' by the Governmnet of India (Adaptation of Indian Laws) Order, 1937.

term for which the land was to be managed by the Collector or his agent or let in farm has expired;

(*d*) when assessments of land revenue require revision in consequence of the action of water or land or of calamity of season or from any other cause;

(*e*) when revenue due to the [1][Crown] on account of pasture or other natural products of land, or on account of mills, fisheries or natural products of water or on account of other rights described in section 41 or section 42, has not been included in an assessment made under the foregoing provisions of this chapter.

(2) The Financial Commissioner may confirm any assessment made under this section.

(3) The foregoing provisions of this chapter with respect to general assessment shall, subject to such modifications thereof as the Financial Commissioner may prescribe by executive instructions issued under the provisions of section 60-C, regulate the procedure of Revenue Officers making special assessments.

Sub section (1) (*a*)—assessment of lands of which the revenue is assigned.—It is rarely necessary for the Collector to make a new assessment when a grant is resumed. The following orders which were previously Land Revenue Rules 214 and 215 and issued under section 59 of the Land Revenue Act provide that :—

> "(*a*) When in any district or tahsil an assignment of land revenu is resumed, if that land revenue was assessed in the same form and by the same method as that in and by which land revenue paid to Government on the same estate or on adjacent estates was assessed at the last general assessment, no new assessment of the resumed assignment shall be made until a general re-assessment of the district or tahsil is undertaken.
>
> (*b*) If the land revenue enjoyed by the assignee was not so assessed, or if, where the assignee was himself the landowner, no assessment of his land has hitherto been made, the Collector shall assess land revenue on the land of which the revenue has been resumed in conformity with the principles and instructions on which the current assessment of the tahsil or district was made."[2]

Care should, however, be taken that the land revenue imposed on such land does not raise the total assessment of the circle in which it is situated to more than one-forth of the net assets of the circle. If the land forms part of an estate and is not excluded from the provisions of section 51 (3) by section 51 (4) of the Punjab Land Revenue Act, 1887, this object can in most cases be secured for all practical purposes

1. Substituted for 'Government' by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Land Administration Manual, para. 197, and C. S. No. 58—L. A. M. dated the 24th September, 1937.

by providing that the average rate of incidence on such land does not exceed the average rate of the estate in which it is included. Any case in which this is not suitable, as for example of specially valuable land, should be referred for orders. If, however, the land consists of a fresh estate, the rate of incidence of the assessment imposed thereon should not be such as to raise the existing average rate of incidence of the assessment circle beyond the limit prescribed in section 51 (3).

For law and practice relating to settlement with assignees or with their heirs, see under section 61.

Sub-section (1) (*b*).—assessment of land revenue of Government waste land given on lease.

(1) In the absence of special instructions issued by the Financial Commissioner with the sanction of the Local Government for lands of the class to which the area applied for belongs, in fixing the charges payable in the case of a lease applied for under rule 4 (of the rules for the lease of waste lands in the Punjab), the land revenue shall be assessed with due regard (*a*) to the revenue rates assessed on similar land at the last settlement of the district, and (*b*) the present renting value for cultivation and grazing of similar land in adjacent estates. Care should, however, be taken that the land revenue imposed on such land does not raise the total assessment of the circle. In applying this rule, so much of the area to be leased shall be treated as cultivated as the lessee may fairly be expected to bring under cultivation within the term of the lease.

(2) To this assessment of land revenue there shall be added as proprietary due or *malikana* a sum which shall ordinarily be calculated with reference to the market value of the land in its waste condition, (subject to land revenue and cesses). The *malikana* so fixed shall be four per cent. of that market value unless the Financial Commissioner, for special reasons to be stated, considers that a lower rate of *malikana* should be fixed.

(3) If the market value of the land or of similar land in adjacent estates is not ascertainable or approximately ascertainable, the *malikana* shall be a sum based on the difference between the land revenue assessment and the renting value as ascertained under clause (1), but which shall not ordinarily be less than half the land revenue assessment. If in any case it is proposed to fix a rate of proprietary due less than one-half of the land revenue assessment, the case shall be reported to the Financial Commissioner for sanction, and the Financial Commissioner may, for reasons to be stated, reduce the *malikana* to a sum not lower than one-fourth of the land revenue assessment.

(4) In fixing the assessment of land revenue and *malikana* in the manner above prescribed, regard shall be had to the improvements necessary to bring the land into cultivation and to the time necessary for the execution of those improvements ; and the authority by whom the lease is sanctioned may, in view of these considerations, exempt the lessee for a portion of the term of the lease from payment of the whole or part of the land revenue or *malikana* or both, assessed under this rule.[1]

1. See Appendix III of the Land Administration Manual, page 360.

Special revisions of assessment in riverain villages.

Sub-section (1)—re-assessment of lands affected by water.—The action of the seven great rivers of the Punjab and of the numerous torrents which issue from the hills renders the assets of the estates on their banks very unstable. It is therefore imperative that some means should exist by which the land revenue demand of such villages can be revised from time to time. It was ultimately found that in some large tracts the changes caused by the rivers were so frequent and so extreme that nothing would serve but the abandonment of a fixed assessment altogether in favour of a fluctuating one which involved the re-assessment of the whole demand harvest by harvest. (The fluctuating assessments of *sailab* lands now prevail on both banks of the Indus from Bannu downwards, on the Ravi and Sutlej from the points where they leave the Lahore district to their junctions with the Chenab and on the last river in Multan and Muzaffargarh, and to a considerable extent also in Jhang and Gujranwala). But elsewhere it has been possible to retain the fixed demand, providing for its annual revision as regards those parts only of villages which have been lost or gained, been injured or been improved by river action. This latter system prevailed throughout the province for many years after annexation, and it is still in force in large part of it.[1]

2. **Existing orders.**—The following orders have been issued for general guidance in conformity with section 59 of the Land Revenue Act :—

(*i*) Where land of an estate paying land revenue is injured or improved by the action of water or sand, the land revenue due on the estate under the current assessment shall be reduced or increased in conformity with the instructions issued from time to time in this behalf by the Financial Commissioner.

(*ii*) And in every such case the distribution of the land revenue over the holdings of the estate shall be revised so as to similarly reduce or increase the sum payable in respect of the holding in which the land that has been injured or improved is situated.

Supersession of general by special local rules.—In many districts special rules have been drawn up by Settlement Officers to suit the circumstances of each locality. Where there have not been drawn up, general rules prevail and these are to be followed.

GENERAL RULES REGARDING ALLUVION AND DILUVION.

(Chapter 6, Punjab Land Records Manual).

Law and rules governing the subject.

6·1. When estates affected by rivers or torrents have assessments of land revenue which are fixed for terms of years, it is a condition of the settlements, in default of a special agreement to the contrary, that such assessments are liable to revision when the lands of the estates are injured or improved by the action of water or sand. Such revisions

1. Land Administration Manual, para. 438 ; Chapter XXVII of the Settlement Manual.
2. Land Administration Manual, para. 442 ; see also para. 455 of the Settlement Manual.
3. Ibid, para. 443.

are governed by section 59 (1) (*d*) of the Land Revenue Act, 1887 and by the following general rules :—

(*i*) Where land of an estate paying land revenue is injured or improved by the action of water or sand, the land revenue due on the estate under the current assessment shall be reduced or increased in conformity with the instructions issued from time to time in this behalf by the Financial Commissioner,—*vide* appendix I to the Land Administration Manual.

(*ii*) In every such case the distribution of the land revenue over the holdings of the estate shall be revised, so as similarly to reduce or increase the sum payable in respect of the holding in which the land that has been injured or improved is situated.

Besides these general rules special rules have been framed in the case of certain districts to suit special local conditions,—*vide* Settlement Manual, paragraph 455.

New estates formed by fluvial action.

6·2. When lands are thrown up, that by law, or custom having the force of law, do not belong to any particular estate, they may be constituted into a new estate and settled, application being made to the Financial Commissioners for permission to bring such estates upon the district revenue roll, or they may be reckoned as Government waste lands or the Punjab Riverain Boundaries Act, 1899 may be brought into use,—(*vide* sections 101-A to 101-F and section 158 of the Punjab Land Reveune Act, 1887, and sections 2 and 3 of Bengal Regulation No. XI of 1825).

Removal of estates from the revenue roll in consequence of diluvion.

6·3. When an estate is entirely cut away by the river it should be removed from the district revenue roll, but it should be restored on a subsequent formation of land on the same site, if the original owners are entitled to recover possession.

Village lists

6·4 The tahsil office *kanungo* should be required to maintain a simple list of villages liable to increment or decrement of area by the action of river, hill-torrent or swamps, to enable him to satisfy himself that di-alluvion files of such villages are prepared in due course.

Submission of annual statement.

6·5. The Collector should submit for confirmation of the assessments by the Financial Commissioners, a statement in the form below, showing the net changes caused by alluvion and diluvion. These statements should be forwarded to the Financial Commissioners for confirmation by the 1st May. On receipt of such confirmation the new assessments will take effect.

(For the form of the statement *see* page 2 of Chapter 6 of the Land Records Manual).

Distribution of reduction or remission on account of diluvion.

6·6. Where special rules have been framed, they provide for the preparation of a statement showing the distribution of the new assessment over holdings. Where no special rules have been framed, a statement should always be filed by the patwari, showing how the reduction or remissiom has been distributed among the several holdings which have suffered loss.

Assignments of land revenue, how affected by alluvion and diluvion.

6·7. When the land revenue of the estate has been assigned, the assignee will benefit from any increase of revenue and will suffer from any loss. If he pays commutation for service in a fixed proportion upon his revenue, the commutation will fluctuate with the amount of the revenue.

Effect of removal of the land assigned by diluvion.

6'8. An estate or plot, of which the revenue was assigned, once swept away, has ceased to exist, and the assignee has no claim to the revenue of alluvial deposits afterwards formed upon the same site, unless when the original owners would be entitled to recover possession of the newly-formed land on the ground of their previous ownership.

Form of alteration of revenue roll.

6'9. Enhancements of revenue on account of alluvion or reductions on account of diluvion must be sanctioned by the Financial Commissioners before alteration of the revenue roll. Reductions generally involve the remission of the current demand of land revenue, which has to be written off under the authority of the Financial Commissioners as an irrecoverable balance. No difficulty in preparing the revenue roll arises in the case of alluvial sub-divisions, the settlement of which is annual, as under section 54 of the Punjab Land Revenue Act, 1887, persons continuing to occupy after expiration of the term of settlement hold under the conditions of the expired settlement until a new settlement is made. The Revenue demand of the previous year will, therefore, continue to be shown in the revenue roll until an alteration is sanctioned.

Alterations to take effect from the kharif.

6'10. Except where the orders passed at settlement and still in force require the observance of a different practice increases due to alluvion and decreases due to diluvion should take effect from the *kharif* season in which they occurred; but while increases due to alluvion, or to excess of alluvion over diluvion, in any village will be collected as fluctuating revenue due on account of the *kharif* harvest in which the alluvion and diluvion occurred, the decreases on account of losses due to diluvion, or to excess of diluvion over alluvion, in any village, will ordinarily be refunded by means of reductions from the collections of the fixed revenue due on account of the following *rabi*. In cases, however, in which no such revenue is recoverable from an individual to whom a refund has to be made, the usual refund procedure will be adopted. In all other cases a reduction will be made by the patwari in the demand recoverable for the following *rabi* from the individuals to whom refund is due, the reduction being duly incorporated in the the *fard bachh*. The net increase or decrease for the district, as the case may be, will appear as an addition or deduction in the rent roll submitted for the ensuing agricultural year in the following October.

Power of Collector to suspend in anticipation.

6'11. Cases in which it is apparent that a considerable decrease will be necessary in the demand of an estate should be specially reported by the Tahsildar to the Collector as soon as they come to his notice in the course of inspection, and the Collector may, in such cases, at his discretion, suspend the collection of a suitable portion of the revenue, subject to the necessary adjustment consequent on the final orders of the Financial Commissioners on the proposed assessment.

Remissions; how shown in balance statements.

6'12. The amount remitted on account of diluvion will be shown in the balance statements under the head "Irrecoverable," and the authority for remission will be the orders of the Financial Commissioners upon the annual statement of changes, in which the amount to be remitted will be specified separately from the amount by which the rent roll of the succeeding year is to be altered.

6·13. Remissions for the destruction of crops should not be dealt with in di-alluvion work, but should be sepatately reported for sanction in the same way as remissions for crop failures of lands other than riverain lands are reported,—(*vide* Standing Order No 31). Remissions for destruction of crops.

Sub-section (1) (*e*)—Assessments on account of pasture or natural products of land or water.—(*i*) Where revenue due to Government on account of pasture or other natural products of land, or on account of mills, fisheries or natural products or water, or on account of any rights of the Government described in sections 41 and 42 of the Land Revenue Act, has not been included in the current assessment of an estate, the Collector when directed by the Financial Commissioner, from time to time, assesses the revenue so due in accordance with the instructions issued to him by that authority in each case.

(*ii*) These instructions may prescribe the term for which the revenue shall be assessed and leased, the persons or class of persons to whom the lease shall be given; the form of the lease; and the procedure to be followed in granting the lease, and may further direct that the assessment be determined by tender or by public auction.[1]

Special assessment of lands sold or granted by Government.—When Crown lands, whether agricultural or townsites liable to pay land revenue, are sold or granted, a special assessment thereof can be made under section 59 (1) (*b*) of the Land Revenue Act 1887 as amended. Such assessments are confirmed by Financial Commissioners under sub-section (2) of the same section. In making these assessments it is not necessary to follow the procedure of general assessments. Care should, however, be taken that the land-revenue imposed on such land does not raise the total assessment of the circle in which it is situtated to more than one-fourth of the net assets of the circle. The restrictions imposed by section 51 (3) of the Act do not apply in such cases in view of sub-section (4) of the same section.

The term of the special assessment of a particular area shall expire, unless the Financial Commissioner otherwise directs with the term of the general assessment of the assessment circle in which that area is situtated.

60. The [2][Provincial Government] shall, subject to the provisions of section 60-A, from time to time, make rules prescribing— Power to make rules.

(*a*) the method by which the estimate of the money value of the nett assets of an estate or group of estates shall be made;

(*b*) the method by which assessment to land revenue shall be made;

(*c*) the principles on which exemption from assessment shall be allowed for improvements;

1. Para. I, Standing Order No 42.
2. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(*d*) the manner in which assessment shall be announced;

(*e*) the manner in which the rate of incidence of the land-revenue is to be calculated for the purpose of sub-section (3) of section 51.

LAND REVENUE ASSESSMENT RULES, 1929.

Notification No. 6073-R, dated the 23rd Decemaer 1929.—In exercise of the powers conferred by section 60 of the Punjab Land Revenue Act, 1887, the Governor in Council is pleased to make the following rules under the said Act :—

(*a*) *The method by which the estimate of the money value of the net assets of an estate or group of estates shall be made.*

Estimate of net assets based on rents in kind.

1. (1) An estimate of net assets as defined in clause (18) of section 3 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act), shall be framed on the basis of rents in kind paid by tenants-at-will prevailing in the estate or group of estates under consideration.

Factors involved.

(2) The accurate calculation of this estimate depends on four factors—

(*a*) the average acreage of each crop on each class of land for which it is proposed to frame separate rates ;

(*b*) the average yield per acre of each crop so grown for which rent is taken by division of produce ;

(*c*) the average price obtainable by agriculturists for each of the crops referred to under clause (*b*) ; and

(*d*) the actual share of the gross produce received by landowners in the case of crops which are divided and the rent payable on zabti crops.

From the first three of these factors an estimate shall be made of the value of the annual gross produce of the estate or group of estates in question.

From that estimate and the fourth factor an estimate shall be made of the annual value of the landowner's share of that produce or net assets.

Classes of land.

2. (1) The most important classes of cultivated land are follows :—

(*a*) *barani* : dependent on rainfall ;

(*b*) *sailab* : flooded or kept permanently moist by river ;

(*c*) *abi* : watered by lift from tanks, jhils, streams, or by flow from springs ;

(*d*) *nahri* : irrigated by canals by flow or lift ; and

(*e*) *chahi* : watered from wells.

(2) The most important classes of uncultivated land are as follows :—

(*a*) *banjar jadid* : land which has remained unsown for four successive harvests ;

(*b*) *banjar qadim* : land which has remained unsown for eight successive harvests ; and

(*c*) *ghair mumkin* : land which has for any reason become unculturable, such as land under roads, buildings, streams, canals, tanks, or the like, or land which is barren sand or ravines.

Average acreage.

3. The acreage to be used in the estimate shall be the average matured area of the selected years. These years will be the cycle or period of years of which the harvests are a fair sample of the ordinary fluctuations characteristic of the agriculture of the tract.

Prices to be adopted.

4. The prices to be adopted in the estimate shall be the average prices which are likely to be obtained for their crops by agriculturists during the coming settlement, but shall be based on the average of a sufficiently long period in the past, and it shall be assumed that the range of future prices will not be dissimilar. The prices prevailing in years of famine or severe scarcity shall be excluded from the calculation.

The price adopted for each crop shall be based on the prices current in the month in which the agriculturists of the tract ordinarily dispose of their produce. If in any estate or group of estates it is found that most of the agriculturists take their produce to market towns and dispose of it there, allowance shall be made for the cost of cartage to markets and for any fees paid at markets to agents, weighmen, etc., and for any customary deductions such as "*watta*" as actually prevail.

Note. – In determining the prices to be adopted, the Revenue Officer shall among other data available to him, scrutinize the following :—

(*a*) shopkeepers' books in selected villages ;

(*b*) harvest prices for each assessment circle reported by the field kanungo for entry in the circle notebooks ;

(*c*) harvest prices published in the Gazette ;

(*d*) prices obtaining in markets ; and

(*e*) prices obtained by estates under the Court of Wards and by large proprietors for their produce.

Average yields.

5. In estimating the average yields of each crop on the different classes of land in an estate or group of estates, the Revenue Officer shall be guided by the results of—

(*a*) experimental cutting ;

(*b*) his own observations ;

(*c*) information gathered from trustworthy persons ;

(*d*) accounts of landowners, where obtainable, *e.g.*, accounts of estates under the Court of Wards and of farms maintained by the Department of Agriculture ; and

(*e*) yields assumed for similar tracts elsewhere.

Menials' dues and expenses of collection.

6. In estimating the actual share received by landowners of the gross produce, calculated in accordance with the preceding rules, the value of any portions of that produce paid, before it is divided, to artisans or menials for help in village, or harvesting or for the supply and repair of agricultural implements, or for any other work subsidiary to agriculture, and any expenses of collection of rent paid out of the common heap, shall be deducted.

Tenants' share.

From the balance the value of the share retainable by the tenants, on the assumption made in the concluding portion of clause (18) of section 3 of the Act, shall be deducted. The value of the remainder shall be the estimate of net assets after adjustment in accordance with the instructions contained in rule 7.

Adjustment to be made.

7. (*a*) In the absence of a contract to the contrary, land revenue is payable by landowner, and water rates by tenants. In case where tenants pay a certain proportion of the land revenue, or landowners of the water-rates, a corresponding addition to, or deduction from the estimate shall be made.

(*b*) Where means of irrigation and embankments are maintained by a tenant at his own expense, no deduction shall be made from the estimate on this account. If, however, any part of the cost of such maintenance is borne by the landowner, a corresponding deduction shall be made from it.

(*c*) Where the cost of all or any part of the seed or manure used on the land is borne by a landowner, and is not counterbalanced by either the receipt by him of a large share of the produce, or a smaller allowance of fodder to tenant than is customary or the like, a corresponding deduction shall be made from the estimate.

(*d*) Where a landowner provides, at his own cost, improved agricultural implements for the use of his tenants, and makes no charge for the use thereof, whether in the way of a large share of the produce, or otherwise, a corresponding deduction shall be made from the estimate.

(*e*) Concessions with regard to fodder ordinarily take one of the following forms:—

(*i*) a specified area per pair of bullocks or some similar unit of area is devoted by a tenant to the raising of fodder crops of which the landowner receives no share;

(*ii*) a tenant is permitted to cut certain crops green for fodder and the landowner receives nothing on account thereof; or

(*iii*) the landowner takes either no share of fodder or only a share of the grain of certain crops. In any of these cases, or in any other case in which a landowner permits the use for fodder by his tenants of crops grown on his land, and takes either no share thereof, or share smaller than that of the grain, a corresponding deduction shall be made from the estimate;

(*f*) Where a landowner employs paid agency at his own expense to collect his share of produce, a corresponding deduction on account of the cost of that agency shall be made from the estimate;

(*g*) Where a landowner advances monies free of interest to his tenants for agricultural purposes, a deduction on account of the interest due on such advances shall be made from the estimate.

The rate of interest to be allowed in making such deduction shall not be lower than that allowed by the local Central Co-operative Bank on deposits made with it, or higher than that charged by the same bank on loans advanced by it.

Estimates of net assets based on cash rents.

8. A second estimate of net assets shall also be framed on the basis of cash rents payable by tenants-at-will prevailing in the estate or group of estates under consideration on the assumption made in the concluding portion of clause (18) of section 3 of the Act. This estimate shall only be framed where the following factors are present :—

(*a*) The existence in any circle of a system of cash rents on a sufficiently large scale to enable them to be used as a guide in estimating the renting value of the remainder of the land of the circle ; and

(*b*) the recognition in the revenue records of such distinctions of soil and class as are usually accompanied by marked differences of renting value.

Abnormal rents.

9. All rents which are not true economic rents, and are not based on the prevailing rent-rate or the average rate actually paid on any class of land, shall be excluded by the Revenue Officer from his calculations as abnormal. Thus the following rents shall be considered abnormal :—

(*a*) rents consisting of the land revenue, with or without a small additional payment as proprietary fee, unless the land revenue is high and the land poor ;

(*b*) privileged rents paid by relations, friends, dependents or persons discharging religious duties ; and

(*c*) rents unduly inflated by jealously or special local or personal conditions of a transitory character, rents so exorbitant as to be no index of the real letting value of land and rents in which other factors such as mortgage money enter.

The Revenue Officer shall scrutinize cash rents carefully in each village as it comes under inspection. He shall satisfy himself that they have been correctly recorded, and shall then decide what rents shall be eliminated as abnormal.

Adjustments to be made.

10. The Revenue Officer shall, from the rents remaining after elimination of abnormal rents, frame an estimate of landowners' net assets, subject to the following instructions :—

(*i*) the provisions of rule 7 (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) shall *mutatis mutandis* apply ;

(*ii*) deduction shall be made, if necessary, for fallows or bad harvests ;

The amount of the deduction to be made in each case depends on the result of the local enquiries made by the Revenue Officer ;

(*iii*) deduction shall be made for shortage in collection of rent where such shortage is not due to bad management.

Miscellaneous income.

11. Should the landowners, whether they take rents in cash or in kind, also enjoy as such any income or dues from lands which have not been taken into account in the estimates framed under the preceding rules, the amount of such income or dues shall be added to the net assets.

Estimates of true net assets.

12. The final estimates of net assets based on, (*a*) rents in kind, and (*b*) cash rent calculated in accordance with the preceding rules,

shall be compared, and the Revenue Officer shall then arrive at a definite estimate of what are the true net assets of each estate or group of estates.

(b) The method by which assessment to land revenue shall be made.

Forecast report.

13. Before the reassessment of any area is undertaken a forecast report shall be submitted of the expected financial results of the re-assessment, showing whether, for financial reasons or otherwise, re-assessment is desirable. In the report specific mention shall *inter alia* be made of the following matters :—

(a) the existing assessment, the suitability of its form to local circumstances and the fairness of its distribution over estates ;

(b) changes in cultivation, population, means of irrigation and markets and communications ;

(c) rainfall ;

(d) prices ; and

(e) any factors affecting the general property of the tract as an increase in water-logging.

Before the report is prepared, the leading agriculturists and organizations of landowners of the area concerned shall be consulted, so far as practicable, and it shall be noted in the report to what extent this has been done, and what opinions have been elicited.

Assessment circles.

14. The area under reassessment shall be divided into assessment circles as defined in clause (1) of section 3 of the Act.

Publication of proposals.

15. (1) The Revenue Officer shall frame his proposals with respect to classes of soils, selected years, prices to be adopted and assessment circles in accordance with the provisions of rules 2, 3, 4 and 14 respectively, as soon as possible after the commencement of settlement operations.

(2) The Revenue Officer shall have an abstract of his proposals prepared and translated into the vernacular. Printed copies of this abstract shall be supplied by post to all zaildars, sufedposhes, headmen and organizations of landowners of the area concerned and to non-official members of the District Board and elected members of the Punjab Legislative Council representing the said area. A period of thirty days from the date of posting shall be allowed within which they may file objections on all or any of the matters referred to in sub-rule (1) to the Revenue Officer.

(3) The Revenue Officer shall take such objections into consideration and forward them, with his views thereon, together with his proposals, through the Commissioner, for the orders of the Financial Commissioner.

16. Before preparing the report prescribed by sub-section (2) of section 50 of the Act, the Revenue Officer shall make a special inspection of each estate, and record an inspection note thereon.

Assessment proposals.

17. The Revenue Officer shall, having taken into consideration the existing assessment, the true net assets arrived at under rule 12 and all other relevant factors, make his proposals as to the future assessment of each assessment circle.

Particulars to be stated.

18. In the report submitted under sub-section (2) of section 50 of the Act the Revenue Officer shall *inter alia* state clearly for each assessment circle—

(*a*) the value of the true net assets as calculated by him ;

(*b*) the reassessment which he proposes ; and

(*c*) the detailed rates by which he proposes to distribute it over different classes of land or crops.

Abstract of assessment report to be published.

19. (1) After the preparation of his report, but before it is forwarded to the Commissioner, the Revenue Officer shall have a brief abstract prepared and translated into the vernacular, containing—

(*a*) the principal data on which the true net assets estimate has been based, *viz.*, rates of yield assumed, rates of rent in cash or in kind, average total areas cultivated and matured, deductions allowed for expenses of cultivation, menials, dues, etc., and the value of land as disclosed by sales and mortgages ;

(*b*) the general considerations on which the pitch and amount of the total actual assessment proposed to be taken are based, *i. e.*, the increase in resources through irrigation, extension of cultivation, rise in prices, miscellaneous income, etc., and

(*c*) the total assessment and the average revenue rates proposed for adoption in framing village assessments, with such brief explanations as may be necessary, including the clear proviso that there is no guarantee that any particular estate will be ultimately assessed at the exact rates proposed.

(2) Copies of this abstract shall be supplied by post to all zaildars, sufedposhes, headmen and organizations of landowners of the area concerned and to non-official members of the District Board and elected members of the Punjab Legislative Council representing the said area.

A period of thirty days from the date of posting shall be allowed within which any revenue-payer or group of revenue-payers or occupancy tenants may make a representation or objection to the proposed assessment to the Revenue Officer.

Any such representations or objections shall be considered by the Revenue Officer, who shall forward them, with his views thereon, together with the report to the Commissioner.

Deviation allowed.

20. The assessment ordered by Government for each assessment circle shall be imposed within a margin of three per cent. either way.

Assessment of particular estates.

21. Subject to the provisions of sub-section (3) of section 51 of the Act the assessment of each estate shall be fixed according to circumstances.

Progressive assessments.

22. Large enhancements of land revenue on particular estates shall, if necessary, be mitigated by the imposition of the revised demand in a progressive form, *i. e.*, a portion of the increased demand shall be deferred for a peroid of years.

Distribution of assessment over holdings.

23. (1) Before making or revising the distribution of a fixed assessment over the several holdings of an estate, the Revenue Officer shall enquire into the usage followed in the previous distribution, and, in deciding the method of the new distribution, he shall have regard to

that usage and to the wishes of the landowners, so far as may be practicable and equitable.

(2) (*a*) The Revenue Officer shall then make an order setting forth the method of the former distribution, and the method by which the new distribution is to be made, and shall direct that a record of the new distribution be prepared, showing—

(1) serial number of holding;

(2) land owner (with description) liable for the land revenue on each holding;

(3) area of holding, with such details as are necessary for the purposes of the distribution;

(4) rate or measure by which the new distribution is made;

(5) amount charged to each holding by former distribution;

(6) rates and cesses charged by a percentage on the land revenue payable by each holding by the former distribution;

(7) amount charged to each holding by the new distribution; and

(8) rates and cesses charged by a percentage on the land revenue payable by each holding by the new distribution;

(*b*) Where the rent of tenancy is the whole or a share of the land revenue thereof, with or without an addition in money, kind or service, or where an occupancy tenant pays his rent by a cash rent on a recognized measure of area, or by a cash rent in gross on his tenancy, the tenancy and the result of proceedings, if any, taken under section 27 of the Punjab Tenancy Act, 1887, shall be shown in this record under the land owners' holding of which the tenancy is part, an additional entry showing the tenant's name being inserted between entries (2) and (3).

(*c*) Where there are superior and inferior landowners in the same estate, both classes of landowners shall be shown in the record under the entry (2); and there shall be added after entry (8) any *malikana* due to the superior landowner which is charged by a percentage on the land revenue; or if part of the land revenue is payable to the superior landowners, details showing the amount so due to the superior landowners shall be shown under entry (7).

(3) The record thus made shall be published by delivering a copy thereof to the headman of the estate, and by posting another copy at a conspicuous place in or near the estate. A copy shall also be supplied to the patwari.

(4) If the assessment is in the form of rates chargeable according to the results of each year or harvest, the Assistant Collector, to whom the Revenue Officer may assign this business by order under section 12 of the Act, shall cause a record of the sum chargeable to each holding to be prepared for each year or harvest (as the case may be), giving the particulars [entries (5) and (6) excepted] set out in sub-rule (2), and shall publish it in the manner prescribed in sub-rule (3).

(c) *The principles on which exemption from assessment shall be allowed for improvements.*

Exemption of land benefited by improvement from enhancement.

24. (1) When a masonry well is constructed at private expense or with the aid of a loan from Government, for purposes of irrigation, after the coming into force of these rules, the land which benefits from the well shall be exempted from liability to any such enhanced or additional assessment of land revenue as may be due to the existence of the well until the expiry of such period as may have been sanctioned at the previous settlement, reckoned from the harvest in which the well is first brought into use. The minimum period of exemption for the purpose of this rule shall be 20 years, but in any case where it is shown that such period is insufficient to repay the landowner twice the cost of the well out of the additional net assets due to the well, it may be extended to such longer period, not exceeding 40 years, as may be considered sufficient for that purpose. In cases where the Revenue Officer refuses to grant an exemption up to a period of 40 years, the aggrieved party shall have a right of appeal to the Commissioner.

(2) When a well, whether in use or out of use through disrepair, is repaired for the purpose of irrigation, an exemption from liability similar to that in sub-rule (1) may be given for such period, if any, not exceeding half the period specified in that sub-rule, as the officer granting the exemption may consider equitable, with reference to the amount of expenditure incurred on repairing the well and to the principle explained in sub-rule (1).

*(3) When a tube-well is constructed at private expense or with the aid of a loan from Government for purposes of irrigation, the land which benefits from the well shall be exempted from liability to any such enhanced or additional assessment of land revenue as may be due to the existence of the well until the expiry of such period as may be considered by the Financial Commissioner to be sufficient to repay the landowner twice the cost of the well out of the additional net assets due to the existence of the well. The minimum period of exemption for the purpose of this rule shall be 30 years and the maximum 40 years.

(4) During the period of exemption specified in sub-rules (1) to (3) the land revenue assessment of the land irrigated by the well or tube-well shall not exceed the amount which would have been assessed had no new well been constructed or no old well repaired, and in particular no fixed lump assessment shall be imposed on the well during the period of exemption.

(5) In tracts where there is practically no assessment on land in its unirrigated aspect the whole fixed assessment on well lands lying beyond the reach of river floods or canal water, *i. e., chahi-khalis* lands, shall be remitted during the period of exemption. In the case of *chahi-sailab* and *chahi-nahri* lands the rates of assessment imposed for the period of exemption shall be as follows :—

(*a*) where the land irrigated by the well is situated within reach of river floods, the *sailab* rate or rates, fixed or fluctuating as the case may be, as sanctioned for the time being ; and

*As amended by P. G. Not. No 215—S, dated the 4th February, 1942.

(*b*) where it is within reach of canal water, the *nahri-khalis* rate or rates, fixed or fluctuating as the case may be, as sanctioned for the time being.

Where in the tracts mentioned above there is no fixed assessment on well-irrigated lands, no rates other than *sailab* or *nahri-khalis* rates as above shall be charged.

(6) For irrigation works other than wells or tube-wells, such as dams, reservoirs, water-cuts, minor canals or canal distributaries, constructed or repaired at private expense or with the aid of a loan from Government, exemptions similar to those allowed for wells under sub-rules (1) and (2) shall be granted. The period of such exemptions shall be determined in each case by the Revenue Officer, but no exemption for a period exceeding 10 years shall be granted without the sanction of the Commissioner, or exceeding 20 years without that of the Financial Commissioner.

(7) The periods of exemption specified in the foregoing sub-rules may, for sufficient reasons, be extended with the sanction of the Financial Commissioner.

Note.—As a question of principle land has to be assessed at the rate at which it is assessable owing to its state at the time of the assessment. There are certain definite classes of improvement (as explained above) which are allowed for when an assessment is made. The ordinary improvements during the course of regular cultivation are not included among the improvements for which an allowance is made when an assessment is imposed (1924 L. L. T. 5).

Remission of revenue when wells fall out of use.

24-A. (1) So much of the assessment on the land irrigated from a masonry or tube-well as is based on the profits of irrigation from such well shall be remitted—

(*a*) when the well ceases to be fit for use ; and

(*b*) when irrigation from it is superseded by canal irrigation and, canal-advantage revenue of owner's rate has been imposed.

(2) A similar remission may be granted if the well, though still fit for use, has been out of use for four harvests, provided that no remission shall be given if the disuse of the well—

(*a*) occurs in the ordinary course of husbandry, the well being intended for use merely in seasons of drought ; and

(*b*) is due to the introduction of canal irrigation and canal-advantage revenue or owner's rate has not been imposed.

NOTE.—The revenue based on the profits of irrigation from the well shall ordinarily be assumed to be as follows :—

(*i*) where a lump sum has been imposed at the distribution of assessment on the well in addition to a non-well rate : such lump sum ;

(*ii*) where a lump sum, inclusive of a non-well rate, has been imposed at the distribution of assessment : such lump sum, after deducting the equivalent of non-well rate ; and

(*iii*) where the distribution of the assessment has been by soil rates, the difference between the actual assessment of the area irrigated and the amount which would have been assessed on that area if it had not been irrigated.

Period of exemption for wells to be fixed at settlement.

25. When settlement operations are in progress, the Revenue Officer shall obtain, through the Commissioner, the sanction of the Financial Commissioner with respect to the period of exemption for wells, other than tube-wells, for each assessment circle.

Grant of exemption certificates at settlement

26. In every case in which the Revenue Officer grants exemption he shall give the landowner a certificate specifying the well or other work on account of which it is granted, the date of its construction or repair, the term for which the exemption will last, the land which would otherwise have been assessed at irrigated rates and the additional demand to be imposed at the end of the period of exemption. If the land is under fluctuating assessment, the certificate shall further state what the exemption will be under the system as sanctioned for the tract.

Grant of certificate at other times.

27. When a well, tube-well or other work is constructed or repaired during the currency of a settlement in such circumstances as to entitle the owner to an exemption from assessment at irrigated rates, the Revenue Officer shall make a special enquiry and grant a certificate of exemption in accordance with the provisions of rule 24. If the exemption is to take effect immediately, the certificate shall state, as nearly as may be, all the particulars mentioned in rule 26, and in addition shall show distinctly the amount of existing land revenue to be remitted. But, if the exemption is not to take effect till the next revision of assessment, no action need be taken unless the owner of the work in question applies for a certificate. In such a case, no entry shall be made as to the area subject to the concession or the amount of the exemption.

Exemption of reclaimed waste lands.

28. When landowner desires to secure an exemption from assessment on reclaimed waste land in order to compensate him for incurring substantial expenditure on its reclamation, he shall apply, before he commences the work, to the Financial commissioner for such exemption, giving a description of the land to be reclaimed, the difficulties attending its reclamation and the sum proposed to be expended on reclamation operations. The Financial Commissioner shall, after making such enquiries as he deems necessary decide as to whether any exemption shall be given.

If the Financial Commissioner sanctions an exemption, he shall fix the maximum period of the exemption to be granted. At the close of reclamation operations, the Financial Commissioner, after verification of the actual amount expended on reclamation and the area reclaimed, shall, by written order, exempt the area reclaimed from assessment of land revenue for a period sufficient to reimburse the landowner to the extent of twice the sum expended on the reclamation operations, subject to the maximum limit previously fixed.

(d) The manner in which assessment shall be announced.

Order of assessment for each estate.

29. The Revenue Officer shall, on receipt of the orders of Government on his assessment proposals, draw up an order determining the assessment proper on each estate.

Announcement of assessment.

30. (1) For the purposes of announcing the assessment imposed on each estate, a notice shall be issued summoning the headmen and other persons interested to attend at a place and on a date specified. On such date and at such place the Revenue Officer shall announce the assessment.

(2) The headmen of each estate shall be given a memorandum showing the future assessment of the estate, and any additional particulars deemed necessary.

(3) The harvest from which the new demand shall take effect shall be annouced to the headmen and other persons interested, and shall be noted in the memorandum furnished to the headmen.

(e) The manner in which the rate of incidence of the land revenue is to be calculated for the purpose of sub-section (3) of section 51.

Calculation of incidence.

31. (*a*) In assessment circles in which fixed assessment was imposed at the last previous assessment, the rate of incidence of such assessment shall be the rate obtained by dividing the total assessment, on cultivated land, as finally imposed by the Revenue Officer who made the assessment, by the cultivated area as ascertained by him for the purposes of assessment.

(*b*) In assessment circles in which fluctuating assessment was imposed at the last previous assessment, the average acreage of crops forming the basis of the net assets estimate at such assessment shall be multiplied by the final rates sanctioned. The figures thus arrived at shall be divided by the cultivated area as ascertained, for the purpose of assessment, by the Revenue Officer who imposed the assessment, and the result shall be the rate of incidence of the last previous assessment.

(*c*) In assessment cirlces in which the assessment imposed at the last previous assessment was partly fixed and partly fluctuating, the average acreage of crops forming, either partly or wholly, the basis of the net assets estimate of such assessment that are subject to fluctuating assessment shall be multiplied by the final rates sanctioned for fluctuating assessment. To the figure thus arrived at shall be added the final fixed demand imposed by the Revenue Officer, and the total shall be divided by the cultivated area as ascertained for the purpose of assessment by the Revenue Officer. The result shall be the rate of incidence of the last previous assessment.

(*d*) The rate of incidence on the cultivated area for the purposes of the revised assessment shall be determined *mutatis mutandis* by such of the methods in clauses (*a*), (*b*) and (*c*) of this rule as are applicable to the circumstances of the circles under assessment applied to the cultivated area determined by the Revenue Officer at re-assessment.

Procedure to be followed in making rules.

60-A. Before making any rules under the provisions of section 60, the [1][Provincial Government] shall in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby at least thirty days before a meeting of the [2][Punjab Legislative Assembly]. The [1][Provincial Government] shall defer consideration of such rules

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Substituted for "Punjab Legislative Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

until after the meeting of the [1][Punjab Legislative Assembly] next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

This section was inserted by the Punjab Land Revenue (Amendment) Act, III of 1928, and provides for an opportunity for criticism by the Legislative Assembly.

60-B. Notwithstanding anything contained in section 60-A, for the purpose of assessment operations begun before the date of publication of rules made after the commencement of the Punjab Land Revenue (Amendment) Act, 1928, the rules and executive instructions relating to the matter mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 60 which were in force before such publication shall remain in force.

Rules and executive instructions issued before commencement of Punjab Land Revenue (Amendment) Act, III of 1928, to be followed for the purpose of assessment operations begun before issue of rules made under the provisions of section 60-A.

This section was also inserted by the Punjab Land Revenue (Amendment) Act, III of 1928. This was to obviate interference with the then existing settlement operations.

[2]**60-C.** The [3][Provincial Government] or the Financial Commissioner with the approval of the [3][Provincial Government] may, for the guidance of Revenue Offices, from time to time, issue executive instructions relating to all matters to which the provisions of this chapter apply, provided that such instructions shall be consistent with the provisions of this Act, and the rules made thereunder.

Power to issue instructions.

Notification No. 2345-R, dated the 23rd December 1933.

With reference to Notification No. 1234-R dated the 18th March 1933, it is hereby notified that the following Rules and Executive Instructions made under section 60 (*c*) and clauses (*e*) and (*g*) of subsection (1) of section 155 of the Punjab Land Revenue Act, 1887, have been sanctioned by the Financial Commissioner, Revenue, with the previous approval of the Governor in Council :—

THE PUNJAB MINOR MINERALS RULES.

1. (*i*) These rules may be called the Punjab Minor Minerals Rules ;

(*ii*) They extend to the whole of the Punjab, but the Local Government may, by order in writing, suspend their operation altogether or in part, in respect of any person or area.

Extent of application.

(*iii*) They shall come into force with effect from 1st February 1934.

1. Substituted for " Punjab Legislative Council " by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Inserted by the Punjab Land Revenue (Amendment) Act, III of 1928.
3. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(*iv*) Nothing in these rules shall be deemed to effect the provisions of section 7 (1) (*f*) and section 9 (1) and (2) of the Indian Railways Act, 1890.

(*v*) These rules do not apply to the quarrying of minerals from land belonging to Government in the possession of the Punjab Public Works Department the Punjab Forest Department or any department of the Government of India, for the permission of the department concerned is required according to the rules of the department.

A.—Definitions.

2. In these rules :—

(*i*) " minerals " includes all *kankar* (calcareous carbonate of lime), stone, marble gypsum, fire-clay, china-clay, limestone, slate, boulders, shingle, gravel, rori and bajri, but excludes coal, the ores of metal, earth-oil, gold and salt and all minerals the extraction of which is governed by the Punjab Mining Manual ; and it also includes sand in any area or locality which the Local Government may by notification direct ;

(*ii*) " quarry " means to dig or bore on, into or under any land, or to win, extract or collect therefrom in any manner ;

(*iii*) "occupancy tenant" includes a tenant as defined by section 3 of the Colonization of Government Lands (Punjab) Act, 1912.

B.—Permit to quarry necessary.

3. No person shall quarry any minerals belonging to Government from land, whether privately owned or otherwise included within any revenue estate, or situated in land the property of Government not included within the limits of a revenue estate, unless he has first obtained a permit in the manner hereinafter prescribed.

But no permit is necessary nor shall royalty be levied for quarrying any mineral proved to belong to the land owners as provided in section 42 of the Land Revenue Act, XVII of 1887.

Notes.—Government have a right to levy royalty on stone and *bajri* excavated in the estate of Mari in the Mianwali District [Lal Chand *v.* The Crown=(1941) 20 L.L.T. 51.

C.—Information to be furnished in applications for the grant of permits.

4. Every application for a permit to quarry shall be made in form M.-1, M. 2 or M. 3, attached to these rules, bear a court-fee stamp of one rupee, and contain the following particulars :—

(*a*) name, parentage and residence of the applicant ;

(*b*) name and quantity of the mineral to be quarried ;

(*c*) specific purpose for which the mineral is required ;

(*d*) particulars as given in the last *jamabandi* of revenue estate regarding the land from which the mineral is to be quarried.

A plan of the land together with the relevant excerpt from the *jamabandi* in question shall be attached to the application. The application may be made personally or by post.

D.—Applications from land owners to quarry minerals for personal or charitable purposes.

5. Any person being an owner or occupancy tenant of agricultural land desiring to quarry in the revenue estate within which his land is situated for use within such revenue estate any mineral—

(*a*) for his own personal, agricultural or domestic purposes, and not for alienation by sale or otherwise, nor for contract work ; or

(*b*) for constructing, otherwise than by contract, a hospital, school, dharamsala, well, *piao*, tank, mosque, temple, or any other work of public utility or religious worship, within the said estate,

shall make an application in form M.-1 to the Collector either directly or through the patwari of the revenue estate. If the land from which the mineral is to be quarried is not in the applicant's possession the application shall also be signed by the owner or occupancy tenant thereof as a token of consent.

6. (*i*) Where the application is given to the patwari, the patwari shall forthwith enter the receipt and contents of the same in his diary and shall also record declarations in writing, from the applicant and the other parties, if any, concerned and the lambardar of the village or *patti*, on both the application and the diary to effect that the application is for one of the purposes specified in rule 5 and he shall then forward the application to the tahsildar, who, after verifying it, shall forward it to the Collector.

(*ii*) On receipt of the application directly or through the patwari the Collector may after such enquiry as he deems necessary issue a permit for quarrying free of royalty in form M.-4.

(*iii*) The permit shall be returned to the patwari within one week after the date of its expiry. The patwari shall forthwith forward it to the tahsildar, with a note that the conditions of the permit have been kept, who shall forward it to the Collector.

E.—Applications by officers of Government etc., by contractors and others, to quarry minerals.

7. (*i*) Any person who desires to quarry minerals in circumstances other than those related in paragraph 5 shall make his application to the Collector.

(*ii*) Every application by a contractor for quarrying minerals on behalf of a Government Department or a local body shall be made to the Collector in form M.-2, through the Executive Engineer or other official of corresponding authority concerned, or through the Secretary of the local body concerned, as the case may be.

(*iii*) Application in cases other than those provided for in rule 5 and in sub-rule (*ii*) of this rule, shall be made in from M.-3.

8. On receipt of an application under rule 7 the Collector may after such inquiry as he deems necessary issue a permit in form M.-5, subject to the following conditions :—

(*i*) The permit shall be issued for a period not exceeding one year from the date of issue of the permit.

(*ii*) The quarrying operations and the removal of the mineral quarried shall, except as hereinafter provided, be completed within the period specified in the permit.

The time allowed for the quarrying operations shall be as follows:—

(*a*) Up to 1,000 cubic feet	...	One month
(*b*) Exceeding 1,000 cubic feet but not exceeding 5,000 cubic feet	...	Three months
(*c*) Exceeding 5,000 cubic feet but not exceeding 10,000 cubic feet	...	Six months
(*d*) Exceeding 10,000 cubic feet	...	One year.

*(*iii*) The applicant shall be required to pay royalty in advance at the rate of Rs. 1-4-0 per hundred cubic feet or a fraction thereof of stone or *kankar* and Re. 1 per hundred cubic feet or fraction thereof of any other mineral to be quarried.

(*iv*) In addition to the amount of royalty paid in advance under sub-rule (*iii*) of this rule the applicant shall make the following deposits:—

(*a*) A security deposit equal to half the amount of the royalty as a guarantee for the observance of the conditions prescribed by these rules.

(*b*) An amount to be estimated as provided in rule 12 on account of compensation for damage payable to the land owner or occupancy tenant as the case may be from whose land the mineral is to be quarried:

Provided that the advance payment prescribed by sub-rule (*iii*) and the deposits prescribed by sub-rule (*iv*) may be waived where the authority endorsing an application under rule 7 (*ii*) itself gives a guarantee as provided at the foot of form M.-2 for all sums that would otherwise be payable by the applicant.

9. If the holder of a permit in form M.-5 is unable to complete the quarrying operations within the period specified in the permit, he may make through the channel, if any, prescribed under rule 7, and before the expiry of the period specified in the permit, an application for a renewal of the permit for a further period not exceeding three months and during this period the quarrying operations shall be finally closed.

An application under this rule shall be accompanied by the permit it is desired to renew and may be made personally or by registered post and shall bear a court-fee stamp of one rupee.

10. (*i*) The holder of a permit in Form M.-5 shall keep a clear account of the quantity of minerals quarried each week and the quantity removed for sale or use. This account shall be checked by the officials of the Revenue Department whenever they inspect the quarrying operations under the provisions of rule 13.

(*ii*) Except as provided in sub-rule (*iii*) of this rule no mineral quarried under a permit in Form M.-5 shall be removed from the site until it has been measured by the patwari or in some other manner sanctioned by the Collector. The measurements so taken shall be recorded on the back of the permit as well as in the patwari's diary.

*As amended by Not. No. 1250-R, dated the 20th March, 1940.

The permit shall be returned to the Collector within one week after the date of its expiry by the holder in person or by registered post.

(*iii*) If the mineral is quarried on behalf of a Government department or a local body, the measurements prescribed in sub-rule (*ii*) shall not be made, but the permit shall be returned within one week after the date of its expiry by the holder personally or by registered post to the Government department or local body, as the case may be, who will return the same to the Collector together with a certificate of the quantity of the mineral received at works.

11. (*i*) If the quantity of mineral quarried is less than that for which royalty was paid in advance under rule 8 (*iii*) the permit-holder shall be entitled to a refund of the excess on application being made in writing after one month and not later than three months after the date of the expiry of the permit, to the Collector. The Collector after satisfying himself regarding the actual quantity of the mineral quarried as shown or certified on the permit, received back under rule 10 (*ii*) and (*iii*), shall refund the difference between the amount of royalty paid by the applicant in advance and that actually due to Government for the mineral quarried and removed.

(*ii*) For the refund of the deposits made under rule 8 (*iv*) a separate application shall be made.

(*iii*) An application under this rule may be made personally or by registered post and need not be stamped.

12. Where the holder of a permit in Form M.-5 is not himself the owner or occupancy tenant of the land from which the mineral is quarried the owner or occupancy tenant shall, unless he has agreed in writing to forego his claim, he granted compensation for damage caused to him by the quarrying operations. Such compensation shall be estimated as nearly as may be in accordance with the provisions of sections 11, 23, 24 and 25 of the Land Acquisition Act, I of 1894, and be paid out of the sum deposited or guaranteed under rule 8 (*iv*). If the damage ultimately caused exceeds the compensation so estimated the owner or occupancy tenant in question may, within one month after the date of expiry of the permit, apply to the Collector for the balance of the compensation which shall, to the extent to which it is awarded by the Collector, be recoverable as an arrear of land revenue under the provisions of section 98 (*b*) of the Punjab Land Revenue Act, XVII of 1887.

The award of the Collector under this rule shall be final.

An application under this rule may be made personally or by registered post and need not be stamped.

13. The kanungo of the circle in which the quarrying operations are in progress shall, provided he can do so consistently with his other duties, check once a week the accounts of the quarrying operations prescribed in rule 10 (*i*), and in all cases verify the quantities actually quarried and removed by the permit-holder. He shall make a report of all such inspections to the tahsildar noting in particular any breaches of the rules or of the conditions of the permit, and informing him as soon as the period specified in the permit has expired, or quarrying operations have ceased whichever is earlier.

F.—Levelling.

14. If the landowner or occupancy tenant of the land has, under the provisions of rule 12, agreed to forego his claim for compensation, or if he has, under the provisions of rule 5 agreed to the issue of a free permit, the holder of the permit shall level up the ground as soon as he reasonably can after the completion of the quarrying operations. Failure on his part to do so shall be reported by the landowner or occupancy tenant within one month after the date of expiry of the permit to the Collector direct or through the patwari. The Collector shall thereupon proceed as if compensation had been claimed under rule 12 for damage caused by the quarrying operations.

An application under this rule may be made personally or by registered post and need not be stamped.

G.—Breach of rules to be reported by Revenue Officials.

15. It shall be the duty of every lambardar, sufedposh, zaildar and patwari to report any breach of these rules to the tahsildar.

16. The Collector may delegate any of his powers under these rules to an Assistant or an Extra Assistant Commissioner.

H.—Penalties

17. (*i*) If a permit issued under rule 6 is not returned to the Collector or to the patwari within one week of the date of its expiry as prescribed in rule 6 (*iii*) the Collector may impose on the holder a penalty equal to the amount of royalty that would have been charged on the mineral if it were assessable to royalty and if the penalty so imposed is not paid within one month of demand it shall be recoverable as an arrear of land revenue under the provisions of section 98 (*b*) of the Punjab Land Revenue Act, XVII of 1887.

Failure to return the permit in time.

(*ii*) If a permit issued under rule 8 is not returned to the Collector or Government department or local body, as the case may be, within one week after the date of its expiry, as prescribed in rule 10, the Collector may, in his discretion, forfeit a sum not exceeding one fourth of the security deposit made or guaranteed under rule 8(*iv*).

Failure to remove in time the mineral quarried.

(*iii*) If any quarried mineral under a permit issued under rule 8 is not removed within the period specified in sub-rule (*ii*) thereof including any period of extension granted under rule 9 it shall be liable to be forfeited to Government. The Collector shall arrange to dispose of the forfeited mineral by sale or otherwise as he deems fit and credit the sale-proceeds to the head " V-Land Revenue-Miscellaneous. "

Unauthorised extraction of minerals.

(*iv*) Any person who (*a*) quarries any mineral without a permit or who (*b*) quarries a different mineral from that specified in the permit or a larger amount than what is so specified or (*c*) alienates by sale or otherwise any mineral in contravention of the conditions prescribed in these rules or in his permit, shall be liable to pay double the amount of royalty payable under rule 8, and such royalty if not paid within one month of demand may be realized as an arrear of land revenue under the provisions of section 98 (*b*) of the Punjab Land Revenue Act, XVII of 1887.

Failure to level up the ground on completion of quarrying operations.

(*v*) If the permit holder fails to level up the land as provided in rule 14 as soon as he reasonably can, after the quarrying operations are complete he shall be liable to forfeit the whole or such part of the security deposit made or guranteed under Rule 8 (*iv*) as the Collector may determine.

I.—How royalty, etc., is to be accounted for.

18. (*i*) The amount of royalty recoverable in advance under rule 8 (*iii*) shall at once be entered in the running register prescribed in paragraph 29 of Standing Order No. 31 and on recovery from the permit holder be credited into the Treasury or Sub-treasury to the head " V-Land Revenue-Miscellaneous. " The amount of refund if any admissible under rule 11 should be drawn on a refund voucher and charged to " V-Land Revenue-Deduct Refunds. "

(*ii*) The amount recovered on account of " Security deposits " shall be credited into the treasury as a " Revenue Deposit. " On the expiry of the permit the amount lying in deposit on this account should be withdrawn either in cash or partly in cash and partly by transfer credit to " V-Land Revenue-Miscellaneous, " according as any part of it is not or is ordered to be forfeited to Government under rule 17 in accordance with the procedure laid down in Article 201 of the Civil Account Code, Volume I.

(*iii*) Similarly the amount recovered on account of " compensation for damage, etc., payable to the landowner or occupancy tenant " may in the first instance be credited to " Revenue Deposits " pending subsequent withdrawal for disbursement to the land owners or occupancy tenants on the sanction of the Collector.

(*iv*) The amount of penalty imposed under rule 17 (*i*) if recovered in cash should be credited to the head " V-Land Revenue-Miscellaneous. " Its record will be kept in the books of the *wasil baqi nawis.*

(*For forms see the notification.*)

CHAPTER VI

Collection of Land Revenue

Security for payment of land revenue.

61. (1) In the case of every estate, the entire estate and the landowner or, if there are more than one, the landowners jointly and severally, shall be liable for the land revenue for the time being assessed on the estate :

Provided that—

(*a*) the [1][Provincial Government] may by notification declare that in any estate a holding or its owner shall not be liable for any part of the land revenue for the time being assessed on the estate except that part which is payable in respect of the holding ; and

(*b*) when there are superior and inferior landowners in the same estate, the Financial Commissioner may, by rule, or by special order in each case, determine whether the superior or inferior landowners shall be liable for the land revenue, or whether both shall be so liable, and, if so, in what proportions.

(2) A notification under proviso (*a*) to sub-section (1) may have reference to any single estate or estates or to any class of estate or estates generally in any local area.

Superior and inferior land-owners.

Proviso (b) to sub-section (1)—[2]Land Revenue Rule 51—superior and inferior land-owners—who is liable for the land revenue.—Where there are superior and inferior land owners in the same estate or in the same holding, the inferior land owner shall, in the absence of any special order of the Financial Commissioner to the contrary, be liable for the land revenue.

Security for payment of land-revenue.

Scope of section 61.—Section 61 applies to all cases in which land revenue is assessed. It applies equally to general re-assessment and to special assessments. The Revenue Officer is bound to presume that those persons are the landowners who are entered as such in the record-of-rights. He has no authority to make an alteration converting a *jagirdar* into a landowner and then refusing to allow the landowner entered in the record-of-rights to engage for the revenue, except with the consent of the parties, or pursuant to a decree, or in order to make the record agree with facts which have occurred since it was made.[3]

Landowners jointly and severally responsible.—The joint and several responsibility of all the landowners in an estate for the payment

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Land Administration Acts, Vol. II, page 44.
3. Mawaz Khan *v.* Mahant Ganesh Das=4 P. R. 1888 (Rev.).

of the whole land revenue assessed upon it is emphatically asserted in this section. Each shareholder is therefore liable not only for the demand due on his own holding, but also for any arrears that may arise in respect of another holding. If he happened to be the only solvent landholder in the estate, he could raise no legal objection to an order that he should himself pay the whole balance. In such a case the holdings of the defaulters would of course, if he so wished, be transferred to him for a term (section 71). When an estate consists of two or more recognized sub-divisions (*pattis* or *tarafs*), the joint and several responsibility for an arrear arising in any particular sub-division should, in the first instance, be enforced against the shareholders in the sub-division, and not against the whole community (*Land Administration Manual, para.* 503).

Extent to which joint responsibility should be enforced.—The communal bond never in fact existed in some parts of the Punjab. Where it is a mere fiction of our revenue system, and estates are only artificial groups of independent holdings, the enforcement of common responsibility, though legal, would not be just. Everywhere the tendency of our rule has been to promote individualism, and the intrusion of strangers into village communities has in many places weakened the feeling of corporate life and duties. A Revenue Officer, in his dealings with estates, should do what he can to check this process of disintegration. As far as possible, village communities should be left to themselves. As Thomason remarked :—

" So long as the Government revenue is punctually paid, it is most important that the Collector, as a fiscal officer, should abstain from all interference. The great desire and object of the Government is to teach the people self-government.....They should be instructed and encouraged thus to conduct their affairs, and by punctual payment of the Government demand to bar all direct interference on the part of the fiscal officers of the Government."[1] Where default occurs, prompt action is of course required. If the arrears cannot be recovered from the defaulters themselves the measures adopted for their realization should be so framed as to assert the principle of common responsibility (*Land Administration Manual, para.* 504).

Settlement with assignees or with their heirs and ex-muafidars.—It has been the practice in the Punjab since annexation to admit, in certain cases, the right of assignees of land-revenue or their heirs to become responsible for the revenue assessed on lapsed revenue-free grants. In making a settlement of this sort, the Revenue Officer virtually adopts the view that the *muafidar's* interest in the land had come to be something different from that of a mere assignee of Governmen revenue, and had, in fact, grown into a more or less complete proprietary or sub-proprietary status. Settlement with assignees.

The Sikh Government took its revenue upon an estimate of a share of the produce and the share which it demanded as the ruler's portion (*hakimi hissa*) frequently amounted to what we now regard as the full rent of the land. The dues claimed by the State were, as a rule, collected by the *kardars* direct from the cultivators. If there were any other persons in a village, who, as the representatives of its original founders, or for any other reasons, claimed a position superior to the rest of the cultivators, they might, if they were able, get from their

1. Thomason's Directions for Collectors, edition of 1850, paragraph 34.

inferiors some trifling proprietary fee, such as the " *sermanni* " or allowance of one *ser* per maund of the produce.

It thus happened that a revenue grant, large or small, made by Sikh rulers frequently conveyed to the grantee the right to take from the cultivators all that a landowner would now realise. If the *jagirdar* or *muafidar* was non-resident, he usually interfered little with the cultivating arrangements, but contented himself with realising his share of grain at harvest time ; if he were resident, he often interfered freely, especially as regards waste lands, on which he had located new cultivators, planted gardens, and sunk wells.

The early settlement Reports of Punjab Districts contain many references to the perplexing questions which arose as to the ownership of assigned lands, when cash assessments had begun to give a value to land which it had not possessed before. It was argued, on the one hand, that assignees under the Sikh Government had, for many years exercised all the rights and enjoyed all the profits which a landowner exercised and enjoyed under British rule ; while, on the other hand, it was pointed out, that he held these privileges simply as representing the Government of the day, and that the British Government, in continuing a grant, only gave the assignee what it would itself have claimed as land revenue.

The question of the status to be assigned to an assignee was of course closely connected with that of his right to claim a settlement when his grant was resumed. His admission to one involved the idea that he possessed a proprietary title of some kind. In Book Circular LIII of 1860, the following rules on the subject were laid down, and these were reproduced with some alterations in the rules issued under the first Land Revenue Act (XXXIII of 1871).

The ex-muafidars or heirs of deceased muafidars are only entitled to demand the privilege of a sub-lease supposing :—

(*i*) they reside in the village and own or cultivate the land,
(*ii*) they have planated gardens, or have tombs, temples, or buildings on the land,
(*iii*) they have sunk wells and improved the land,
(*iv*) they can show some particular cause connecting them with the land. It is obvious that the great majority of muafidars cannot urge these claims. In cases of peculiar hardship the Deputy Commissioner may recommend that the settlement be made with the ex-m'afidars.

" If their claim be admitted they are entitled to a sub-lease on half assets, but they will pay their assessment through the *lambardars* .... Of the assessment thus calculated, 10 per cent. is deducted and left at the disposal of the *cambardars* to cover *pachotra*, patwaris' fees, road fund, school fund, *malba*, and *lhaukidari*, the expenses of management and village cesses, but, if the *m'afidar* was in the habit of paying *malikana*, the sub-lessee will pay it still. The sub-lessees will have power to locate cultivators, but they are liable to be ousted from the lease at once as an intermediate tenure, should they fail to pay on demand to the *lambardar* the assessment and the 10 per cent. and *malikana* (where this last is proved to be demandable) at any time within one month before the instalments of the Government revenue fall due."

Provision was also made for the settlement of lapsed grants with the heirs of the late assignees at half the usual rates of assessment if the Deputy Commissioner considered the case one of hardship " proprietary or occupancy rights remaining undisturbed " (*Settlement Manual, para.* 181).

Existing rule on the subject.—When the late assignee is not recorded in the record-of-rights as owner of the land of which the

revenue has been resumed, the Collector must nevertheless consider whether his occupation or enjoyment of the land has been, as a matter of fact, such as to entitle him or his heir to be made liable for the land-revenue, and, if so, he must make him or his heir liable for the same for the term of the settlement (*Settlement Manual, para.* 182).

Instructions issued with reference to the rule.—The following instructions have been issued with reference to the last section :—

" When an *ex-m'afidar* or the heir of a *m'afidar* claims to become responsible for the payment of the revenue of a lapsed assignment, the Collector will enquire whether the history and circumstances of the holding lead to the conclusion that the *m'afidars* have actually held and enjoyed an interest in the land equivalent to a proprietary or sub-proprietary tenure, and entitling the claimant to a settlement under section 61 of Act XVII of 1887. The mere fact that another person or the village community is shown as owner in the record-of-rights must not be taken as justifying the summary rejection of the claim. It throws the burden of proof on the petitioner from whom the Collector will require satisfactory evidence before holding that he is entitled to a settlement. It must be remembered that it is often difficult to decide from some of the older settlement records whether or not a *m'afidar* was admitted to be the owner of his m'afi plot. His name was usually shown in the ownership column with the title of *ma'fidar*. Sometimes a note was added that he was owner as well as assignee, or that another person was owner. *The tendency in later settlements has been to assume that the m'afidar has no proprietary title, and to record his fields as common land of the village, if no individual proprietor appeared to have any special connection with them.* When a settlement is claimed, a careful inquiry must therefore be made. The manner in which the grant was originally acquired, and the question whether at that time the land was waste or under cultivation and whether the *m'afidars* have cultivated themselves or arranged for the cultivation, putting in and ejecting tenants at pleasure, are of great importance. Although possession for three generations does not entitle the heir of a *m'afidar* to settlement if another person really has exclusive ownership of the land, length of possession may be a weighty element in the consideration. If it is proved that the *m'afidars* have tombs, temples, or buildings on the land, or that they have planted gardens, sunk well, or effected other improvements due weight must be given to these facts. The mere fact that a *m'afidar* always realized his dues by a share of the produce as a landlord would have done does not prove that he was owner. In our earliest settlements m'afi plots were excluded from assessment and the assignee was frequently allowed to realize as before the old *hakimi hissa* in grain, and, notwithstanding that a cash assessment may afterwards have been fixed at re-settlement in pursuance of standing orders or to facilitate the calculation of the amount of local rate, the former arrangements as between the assignee and the cultivators were often continued without dispute. On the other hand the fact the *m'afidar* paid a small proprietary fee or *malikana* in grain or cash to the village community or some individual member of it, must not be taken as conclusive proof that he had no kind of inferior proprietary title (*milkiyat adna*). His heir will still be liable to pay *malikana* though a settlement is made with him. When settlement is made in future the assignee's heir will be responsible for all local rates and cesses in addition to the revenue imposed on the land. Settlements at favourable rates should be rarely adopted, and, when adopted, they

should be distinctly noted and the reasons for them explained in the half-year statement of lapsed and resumed assignments. Such favourable assessments will hold good for the life or lives of the persons with whom they are made. The principle laid down in paragraph 174 of the Land Administration Manual will apply. Should a general revision of the assessment of a district take place during the life or lives of such persons, the land will be re-assessed in the usual manner, and the settlement will be made at the same proportionate rate on the new assessment. In dealing with cases of the nature above described, it cannot be too clearly kept in view that the status of the assignee as such is distinct from any status to which he may be entitled as proprietor, sub-proprietor, *mukarraridar*, or tenant with right of occupancy. The latter status is not, like the former, excluded from the operation of the civil Courts, and, in cases of dispute in regard to such matters, the ultimate resort to the Courts is always available. But the Revenue Officer who is charged with the duty of settling lapsed revenue assignments should not refer the parties to the Courts before taking action under the rules for assessment of such assignments and section 61 of the Land Revenue Act. He should make the settlement with the village proprietary body, the owner in severalty, or the assignee or his heirs, in accordance with the principles laid down above, and his action will have the same validity and finality as that of an officer charged with a general assessment of the land-revenue acting under sections 50 and 61 of the Act. Mutation of names may follow, subject to the provisions of section 37 of the Act, or a civil suit determining the proprietary status of the parties may possibly involve the necessity of a reconsideration of the settlement of the resumed assignment, but the claim of any person to be liable for an assessment of land-revenue is by section 158, clause (*viii*) of the Act, excluded from the cognizance of the Civil Courts, and the Revenue Officer's decision in regard to this matter will, therefore, not be liable to be disputed in the Court (*Settlement Manual, para.* 183).

Land under lease.

Land under lease—liability of owner for land-revenue—lessee's liability for abiana.—Though contracts are frequently made, especially in colony districts, between landowners and lessees for a cash payment on the understanding that the tenant pays all Government charges, *i. e.*, *abiana*, cess and land-revenue, this does not in any way diminish the owner's sole liability for the payment of land-revenue. *Abiana*, however, is admittedly recoverable from the actual occupier.[1]

Further security for payment of land revenue.

62. (1) The land revenue for the time being assessed on an estate or payable in respect of a holding shall be the first charge upon the rents, profits and produce thereof.

(2) Without the previous consent of the Collector, the rents, profits or produce of an estate or holding shall not be liable to be taken in execution of a decree or order of any Court until the land-revenue chargeable against the rents, profits or produce, and any arrear of land-revenue due in respect of the estate or holding, have been paid.

The land revenue of a holding, or of an estate, being a cash commutation of the right of Government to a share of the crops grown upon

1. Kala Singh *v.* Abdul Rahim=1938 L. L. T. 8.

it, is properly declared to be " the first charge upon the rents, profits and produce thereof." It is the Deputy Commissioners's business to safeguard this right. Without his consent no Court can attach the " rents, profits or produce " until the current land revenue and any arrears that may be due have been paid. Orders issued by Civil and Criminal Courts for the attachment of land, or any interest in land or the produce of land, must be addressed to and executed by the Revenue Department (*Section* 141). [*Land Administration Manual, para.* 501].

Order to regulate payment of land-revenue.

63. (1) Notwithstanding anything in any record-of-rights, the Financial Commissioner may fix the number and amount of the instalments, and the times, places and manner, by, at and in which land-revenue is to be paid.

(2) Until the Financial Commissioner otherwise directs, land-revenue shall be payable by the instalments at the times and place and in the manner, by, at and in which it is payable at the commencement of this Act.

Rules to regulate collection, remission and suspension of land-revenue.

64. (1) The Financial Commissioner may make rules consistent with this Act to regulate the collection, remission and suspension of land-revenue, and may by those rules determine the circumstances and terms in and on which assigned land-revenue may be collected by the assignee.

(2) Where land-revenue due to an assignee is collected by a Revenue Officer, there shall be deducted from the sum collected such a percentage on account of the cost of collection as the Financial Commissioner may by rule in this behalf prescribe.

(3) A suit for an arrear of assigned land-revenue shall not be entertained unless there is annexed to the plaint at the time of the presentation thereof a document under the hand of the Collector specially authorizing the institution of the suit.

LAND REVENUE RULES.

Place of payment and payment to assignee.

[1]52. (*i*) Land revenue payable in cash shall be paid at the office of the tahsil to which the estate belongs except in the following cases:—

(*a*) Where the tahsil treasury at the district headquarter has been incorporated with the district treasury. In this case the payment shall be made into the district treasury, the statement of the manner in which the sum paid is to be appropriated being first checked and attested by the tansildar.

(*b*) Where a special arrangement has been made with the sanction of the Deputy Commissioner authorizing any person under engagement to pay land revenue to pay direct into the district treasury. In this case the payment shall be made as provided in clause (*a*).

1. As amended by Financial Commissioner's Notification No. 361—42-6, dated 12th March 1921.

(*c*) Where the special permission of the Commissioner has been given authorizing any person to pay land revenue into the headquarters treasury of another district within his division or with the concurrence of the Commissioner concerned into the headquarters treasury of any district in another division of the Punjab.

(*d*) Where the land revenue is assigned, and the assignee has made arrangements satisfactory to the Collector for receiving such revenue at any place approved of by him on or within fifteen days after the dates fixed for the payment of the instalments of the Government demands. In this case the payment shall be made at the place so approved.

(*ii*) If only part of the land revenue of an estate has been assigned, the assignee shall not be permitted to appoint under this rule a place for payment of the land revenue due to him other than a place in the estate.

Places of appraisement and payment where the amount payable is determined by appraisement.

53. (*i*) Where by the terms of the current assessment the land revenue is payable in cash, but the amount to be paid at each harvest is determined by appraisement of the produce, the appraisement shall be made by the Revenue Officer or other agent appointed by the Collector in this behalf at the place where the produce is grown, but the land revenue determined to be due shall be paid at the place and in the manner provided under the last foregoing rule.

(*ii*) Where in a case under this rule the land revenue is assigned, the Collector may at his discretion permit the assignee to make the appraisement.

Place of payment where land revenue is payable in kind.

54. (*i*) Where land revenue is payable in kind, the produce shall be divided at the place where it is grown, in the presence of a Revenue Officer or agent appointed by the Collector to superintend the division, and the produce thus ascertained to be due as land revenue shall be paid to that Revenue Officer or agent at the same place.

(*ii*) Where in a case under this rule the land revenue is assigned, the Collector may at his discretion authorise the assignee to make the division and to receive the land revenue in person or through an agent.

Assignees allowed to collect must receive payment from headmen.

55. (*i*) No order under the foregoing rules, by which arrangements made by an assignee for the receipt of assigned land revenue payable in cash are approved, shall authorize the assignee to receive payment otherwise than from village headmen empowered under these rules to collect the same from the landowners.

Where assignee fails to collect, the Collector will realize on his behalf.

(*ii*) If the land revenue is not paid to the assignee by the date fixed for payment, the Collector of his own motion or on the application of the assignee may order that it be paid to himself in the same manner and at the same place as is appointed for the payment of land revenue due to Government in the same tahsil.

Order allowing assignee to realize direct may be cancelled by Collector.

56. The Collector may at any time cancel an order made in favour of an assignee of land revenue under rules 52, 53 or 54. And the land revenue due to the assignee shall thereafter be paid or the produce be appraised or divided (as the case may be) in the same manner and at the same place as is appointed in respect of estates in the same tahsil of which the land revenue is due to Government.

57. (*i*) Land revenue due to assignees, that is paid under the foregoing rules into a Government treasury, shall be held in deposit at the credit of the assignee, and shall be paid to him on his demand. Assigned land revenue kept in deposit.

(*ii*) A charge of 2 per cent. for expenses of collection or such other charge as may in any case have been prescribed, shall be deducted by the Collector from all such sums. Hakk-ul-tahsil.

58. The continuance of such special arrangement as is referred to in the second exception to rule 52 for payment of land revenue direct into the district treasury shall depend on the punctual payment of the revenue, and on any arrear falling due the Collector shall make an order cancelling that arrangement. Special arrangements for payment into the district treasury conditional on punctuality.

Collection of Rates and Cesses

59. (*i*) Where the annual land revenue of an estate is payable at one harvest, the demand of each year from that estate on account of rates and cesses shall be paid at the same harvest. Number of instalments and amount.

(*ii*) In all other cases the demand of each year from an estate on account of rates and cesses shall be paid in two instalments, *viz.*, one at the *kharif* harvest, and the other at the *rabi* harvest : and each instalment shall bear the same proportion to the total demand of the year as the instalment or instalments of land revenue due on the same estate for the same harvest bear to the total land revenue payable by the estate for the same year.

60. Rates and cesses due at each harvest shall be payable on the date on which the first instalment of land revenue due from the same estate on account of the same harvest is payable, and, except as by these rules is otherwise provided, at the revenue office appointed for the receipt of land revenue due to Government in the same tahsil. Rates and cesses to be paid along with first instalment of land revenue.

61. Where no land revenue is payable by an estate, the rates and cesses due therefrom shall be payable by the same instalments and at the same dates by and at which the rates and cesses of the adjacent estates are payable. And the Collector shall by order determine the instalments and dates which are applicable under this rule. Rule in case of estates in which no land revenue is payable.

62. (*i*) A headman, when paying an instalment of rates and cesses as required by rule 60, shall be entitled to withhold— Portion of rates and cesses not payable to Government.

(*a*) any portion of the due demand which consists of produce in kind due to village officers holding office in the estate ;

(*b*) the remuneration due to persons other than the patwari ;

(*c*) the proceeds of any cess levied on account of village expenses.

(*ii*) It shall be the duty of the headman to pay sums thus withheld to the persons entitled to the same.

It was formerly the rule to allow large assignees of land revenue to take it direct from the headman. This privilege was often abused, and has been withdrawn in many cases. It can only be continued if the arrangements for receiving the money are satisfactory to the Deputy Commissioner. It should cease where the *jagirdar* makes it an instrument for illegal reactions or for putting pressure as landowners to transfer their lands to himself. But, where he acts fairly, and the landowners have no valid ground of complaint, it is harsh to deprive the assignee of a privilege which he greatly values. The collection must be Direct payment to assignees.

made from the headmen, and not direct from the landowners. A *jagirdar* cannot of course employ any of the coercive processes to be presently described. If the revenue is not paid to him at the proper time, he can ask the Deputy Commissioner to collect it for him, or, with the assent of the Deputy Commissioner, he can sue the defaulter in a revenue Court [Section 77 (3) (*p*) of the Punjab Tenancy Act, 1887]. Where the revenue is realized by the Deputy Commissioner for the *jagirdar*, a charge of 2 per cent. known as *haq-ul-tahsil*, is made to cover the cost of collection (*L. A. M., para.* 513).

[1]SUSPENSION AND REMISSION OF LAND REVENUE.

Classification of grounds for relief.

The circumstances which call for suspensions and remissions may be roughly classed as—

(*a*) ordinary, which are usually widespread ;

(*b*) extraordinary, which are usually local and isolated.

The distinction is one of practical importance for the treatment appropriate to the two descriptions of cases is, as a rule, different.

Ordinary calamities of season.

The circumstances falling under the head of "ordinary" occasions for relief are mostly those arising from the normal vicissitudes of the seasons. Loss of crops is generally due to deficiency or excess of moisture. The rainfall in most parts of the Punjab is very capricious both as regards its total amount, and, what is quite as important, its distribution over the months of the year. According to the time at which the deficiency occurs, the calamity takes the shape either of a shrinkage in the area sown or of the destruction of growing crops. In a very bad season it is but too common to find both these evils united to produce disaster. When rain fails at seed-time the contraction of the area sown is of course most marked in unirrigated lands, but well crops are also affected. Their acreage is often reduced, and the cost of raising them is much enhanced. If the land has to be watered before it can be sewn, the effect of drought on growing crops can hardly escape the most careless observer. But the mischief done by frequent heavy falls of rain to crops on light sandy soils is more likely to pass unnoticed. The case of flooded lands under fluctuating assessment will be referred to later. Where their assessment is fixed, the same principles apply as in the case of other unirrigated lands. But it must not be forgotten that a flood which ruins the autumn crops may be of the greatest value for the much more important spring harvest (*L. A. M., para.* 552).

Remissions of revenue when wells fall out of use.

The precariousness of the well cultivation in some of the western and south-western districts has been so clearly recognized that it has been made a condition of the land revenue settlement that well assessment will be remitted when a well falls out of use from any cause, and reimposed when it is again brought into use. The following rules have recently been sanctioned providing for the reduction of revenue when a private irrigation work falls out of use during the term of settlement.

The rules do not apply—

(*a*) to any district, or part of a district, for which local rules have been sanctioned, or may hereafter be sanctioned ;

(*b*) to unlined (*kacha*) wells or *jhalars* of similar description.

1. See Chapter XVI of the Land Administration Manual and Financial Commissioner's Standing Order No. 30.

RULES.

I. The Collector shall remit so much of the assessment on the land irrigated from a masonry or tube-well as is based on the profits of irrigation from such well—

(*a*) when it ceases to be fit for use ;

(*b*) when irrigation from it is superseded by canal irrigation, and canal advantage revenue has been imposed.

II. The Collector my grant a similar remission if the well, though still fit for use, has been out of use for four harvests, provided that no remission shall be given if the disuse of the well—

(*a*) occurs in the ordinary course of husbandry, the well being intended for use merely in seasons of drought ;

(*b*) is due to the introduction of canal irrigation, and canal advantage revenue has not been imposed.

Note.—The revenue based on the profits of irrigation from the well shall ordinarily be assumed to be as follows :—

(*i*) Where a lump sum has been imposed at the distribution of assessment on the well in addition to a non-well rate—such lump sum ;

(*ii*) Where a lump sum, inclusive of a non-well rate, has been imposed at the distribution of assessment—such lump sum, after deducting the equivalent of the non-well rate ;

(*iii*) Where the distribution of the assessment has been by soil rates—the difference between the actual assessment of the area irrigated, and the amount which would have been assessed on that area, if it had not been irrigated.

III. Cases may occur which will not be sufficiently met by the remission of only so much of the assessment as is based upon the profits of irrigation from the well. Such cases should be referred through the Commissioner for the orders of the Financial Commissioner.

IV. In deciding whether to use the discretion given to him by rule II, the Collector shall consider whether the disuse of the well is due to some cause beyond the control of the landowner, such as the spread of salts in the soil, the loss of tenants or cattle, and extreme difficulty in replacing them.

V. Except with the sanction of the Financial Commissioner, no remissions shall be given under these rules unless the distribution of the assessment of the estate has been made in one or other of the ways described in the note to rule II.

VI. When a remission is granted, it shall take effect from such harvest as the Collector may determine.

VII. If a new well is made to irrigate the land attached to a well in respect of which remission has been granted under these rules, or if such well is repaired, the reimposition of the assessment will ordinarily be affected in accordance with the rules for the grant of certificates of exemption contained in paragraphs 505 to 508 of the Settlement Manual.

VIII. Where a well for which a remission has been given is again brought into use, and no certificate of exemption is granted, as for instance, on the return of tenants or by reason of replenishment of cattle, the Deputy Commissioner shall reimpose the whole of that portion of the assessment which was remitted with effect from such harvest as he may determine.

If in any case the Collector thinks the whole should not be reimposed, he should report the case for the orders of the Commissioner.

IX. These rules may be applied, so far as they are applicable, to the grant of remissions in the case of other irrigation works constructed at private expense, such as canals, water-courses, dams, embankments, reservoirs and masonry *jhalars*. They may also be applied to wells which, though only partially lined with stone or brick, are expensive to make, and may ordinarily be expected to last for some years.

Changes in the fixed land revenue roll necessitated by the remission or reimposition of well assessments, either under these general rules or under analogous special local rules, as approved, *e.g.*, for parts of Dera Ghazi Khan and Muzaffargarh, should be reported once a year on 1st September for orders in the form of a comparative demand statement prescribed by paragraph 9 of Standing Order No. 31 (*Land Administration Manual, para.* 558).

Suspension, usual relief in case of calamities.

The following instructions have been issued as to the relief to be given in the case of ordinary calamities. It will sometimes be found advisable to grant relief from the beginning in the form of remissions. If, for instance, the amount of revenue which it is decided not to collect is such that, when considered with reference to the recent history and present condition of the people, the nature of the assessment and the character of the tract, it is practically certain that it will be impossible subsequently to collect it, it should not be kept unnecessarily hanging over the heads of the revenue-payers, but should be remitted at once. So again the special conditions of certain tracts may justify the adoption of initial remission as the rule. But in view of the fact that remissions require more careful investigation than is necessary for an order of suspension, it may be taken as a general rule that, in cases of widespread calamity, where promptitude is essential, relief should in the first instance be given in the form of suspensions (*L.A.M., para.* 559).

Extent of crop failure justifying relief.

It is impossible to lay down a fixed criterion for the determination of the exact point of crop failure which should be deemed to justify the grant of relief. It has been suggested that only those calamities which are too severe to have been contemplated by the assessing officer as included in the normal course of events should be recognized, and the principle is sound in itself, but does not cover the whole case. An eight-anna failure of crops in a precarious tract where it is of no unusual occurrence would have been taken into account at assessment, and would not on this principle admit of the grant of relief, whereas a similar degree of failure in a rich and stable tract, not having been taken into consideration, would, on the same principle, be held to justify relief. In this matter it has been decided to accept the conclusion arrived at in 1882 and endorsed by the Famine Commission of 1901 that "relief will not ordinarily be required when there is half a normal crop." It may

indeed be necessary to vary the standard for special tracts, or under special conditions, and the considerations indicated above should then be borne in mind, but it should not be departed from except in rare cases and under exceptional circumstances. On the other hand, it does not necessarily follow that the failure of more than half a crop will always justify relief, as much depends upon the nature of the harvests immediately preceding and upon the importance of the harvest in question (*L.A.M.*, *para.* 560).

Scale on which relief should be given.

(*i*) Once it is decided that relief is necessary, it remains to determine the scale on which relief should be afforded. In dealing with the scale of relief to be given when the crops do not reach half the normal standard, it would be fallacious to suppose that the various degrees of crop failure can be accurately dealt with by slavishly following any arithmetical formula. At the same time, without the guidance of some arithmetical standard, it is impossible to ensure any kind of uniformity in the grant of relief, and accordingly, although anything in the shape of servile adherence to formula is to be deprecated, a standard scale of relief on an arithmetical basis is now prescribed for general guidance, and a scale should be laid down in this form for each district or other suitable tract. When a district comes under settlement, the revision of the scale for that district will be made a part of the duties of the settlement officer. In deciding on the correspondence between the degree of relief to be given and the degree of crop failure experienced, one important principle should be borne in mind, namely, that the degree of relief should increase, as the yield decreases, more rapidly than the degree of failure. The cultivator has to depend for his own sustenance and that of his family upon the margin left to him after his obligatory payments have been deducted from the yield of his fields. The amount required for that sustenance will no doubt be larger in good than in bad years since in the latter he must be content with a lower standard of living than in the former; but there is a minimum standard below which it is impossible for him to go—a minimum which depends to some extent upon the general circumstances and habits of his class. And the deduction for subsistence being to this extent a constant quantity, it is obvious that a four-anna crop will leave much less than half the margin which will be left by an eight-anna crop out of which to pay rent for revenue. The relief, therefore, should be more than double in the former, of what it is in the latter, case. Accordingly, the following may be taken as a suitable type in cases where no relief is given for a failure of less than half the normal crop :—

Crop (16 annas normal).	Degree of relief.
6 annas, and less than 8 annas	... 25 per cent.
4 annas, and less than 6 annas	... 50 per cent.
Less than 4 annas ...	... 100 per cent.

The above may moreover be looked upon as showing the degree of elaboration which is considered suitable for such scales, and the introduction of tables of relief containing much greater complication than the type above indicated is deprecated (*L.A.M.*, *para.* 561).

Caution regarding use of scale.

(*ii*) In regard to the above scale, it must be remembered that, in judging the value of a crop ; and in deciding whether it is, for instance, equal to 6 annas, and less than 8 annas, regard must of course be had

not only to the area matured, but also to the yield. Thus occasionally bad conditions at sowing time may be followed by very favourable conditions later, with the result that outturns on a reduced matured area may be larger per acre than the normal; moreover, the general rule that yield per acre falls as the matured area decreases applies less fully to irrigated, than to unirrigated, land. Other considerations, which should not be lost sight of in applying the scale of relief, as distinct from judging the value of the crop, are given in paragraph 563 (*iii*) *infra*. *Revenue Officers should bear in mind that, in dealing with suspensions and remissions, the normal standard of outturn and area of crop is that assumed by the Settlement Officer on which the assessment was based* (*L.A.M., para.* 561).

The danger rate.

(*i*) When suspensions have to be granted on a large scale, Collectors should always refer to the district suspension scheme drawn up under paragraph 554 of the Settlement Manual. For each district, and where necessary for each assessment circle, and with the special permission of the Financial Commissioner, for smaller area, a danger-rate will have been framed by the Settlement Officer, or if special orders have been given in this behalf, by the Collector.

(*ii*) The danger-rate is intended as a rough guide to the necessity for giving relief in insecure areas, and in no way supersedes the necessity for oral and general enquiries whereby the need for such action may be otherwise establishd. It is not meant that suspensions shall of course be confined to villages to which attention is called by the danger-rate or of necessity granted in such villages. Nor is it intended that the danger-rate should be used for the purpose of determining the scale on which relief should be afforded. The relief will be granted in accordance with the crop standard referred to in paragraph 561 *supra*, after account has been taken of the considerations mentioned in (*iii*) *infra*. But it may safely be said that any village in an insecure tract in which at any harvest the incidence of the revenue instalment on the matured area equals or exceeds the danger-rate, should be inspected by a Revenue Officer, and the circumstances which bear on the question, whether relief should be allowed or not, should then be fully investigated.

(*iii*) Amongst these circumstances are the extent to which prices have risen since the land-revenue demand was framed by the settlement officer the character of the preceding harvests and prospects of the next, the presence or absence of stocks for food or seed, the condition of the cattle, the kinds of crops grown, whether for food, for fodder, or for sale, the character of the cultivation, whether dependant on rain, canals, river-spills, hill-torrents, or wells, the nature of the rents, whether in cash or kind, the migration, if any, of tenants, the relative importance of the *kharif* and *rabi* harvests, the power of expanding the area of cultivation, the presence or absence of sources of income other than the crop, such as grass, charcoal, the carrying trade, employment in cantonments, etc., the size of the holdings, and the number of rent receivers not themselves cultivators-in short, all those circumstances which show the general condition of the landowners and their capacity to pay the revenue (*L.A.M., para.* 563).

Extra-ordinary grounds for relief.

Under the head " extraordinary " fall such calamities as hailstorms and locusts. These are accidents which the settlement officer could not foresee or take account of when fixing the assessment of an estate. The assets are suddenly reduced by a cause which the husbandman is powerless

to control. He has no means of recouping such losses, which are as likely to affact rich irrigated crops raised by a large outlay of money and labour as the cheap millets and pulses grown on roughly-tilled lands, of which the yield is normally insecure. In the case of a total and irrecoverable loss of which no account was taken in the arrangement made at settlement between the supreme landlord, the State and the land-holders, it is but right that Government should forego its claim. Remission of the demand, rather than suspension, is required, and relief should be given to rich and poor alike because by the malignity of fortune the basis of the arrangement between Government and revenue-payers has been disturbed. Pending receipt of orders sanctioning remission, the Collector should himself order suspensions. In deciding whether relief is necessary or not, an adequate discrimination between the persons concerned will be secured if regard is had not merely to the field affected, but to the property or holding in which it lies. If the field is cultivated by the owner, and the loss is small compared with the total income of his whole property, or if it is cultivated by a tenant, and the loss is small compared with the total income of the holding, no relief need be given. No relief need be given moreover in areas where relief cannot be assured to the tenant because his rent is not payable in cash, or, if payable in kind, is not of a fixed amount, and where the landlord belongs to one of the following classes :—

(1) bad landlords and rack-renters ;

(2) well-to-do landlords who can pay without imperilling their future solvency ;

(3) capitalist, money-lending, and professional landlords who hold land purely as an investment (*L. A. M., para.* 564).

Discrimination between holdings desirable.

Fortunately hailstorms move in narrow, well-defined lines, and the damage done by locusts is also likely to affect some holdings more than others. Relief therefore is as a rule required not for a whole estate, but only for particular holdings. The correct method of calculating remissions of land revenue necessitated by extraordinary calamities such as hailstorms, visitations of locusts, floods, and the like, is to apply the *bachh* rates worked out for each village concerned at settlement to the area actually damaged. No remission should be given if the amount so arrived at is less than one fourth of the total land revenue of the holding (*L. A. M., para.* 565).

Note.—The *bachh* rate mentioned herein is an annual rate and is generally available ; where this should happen not to be the case, the circle rate may be employed for the purposes in question. The amount arrived at by the application of the *bachh* or the circle rate (where the former is not available) to the damaged area should be reduced to the proportion which the demand of the harvest bears in the village to the total demand for the year. This may then be remitted, if it is not less than one-fourth of the total land revenue demand of the holding for the harvest.

Floods affecting lands not usually inundated.

Heavy floods which destroy crops on lands not usually subject to destructive inundation may be classed as " extraordinary " calamities. But in this case the question may arise whether the water which has ruined the husbandman's hopes in the autumn will not secure to him an unusually large spring crop. If so, there is no call for remission, and even suspension may be unnecessary (*L. A. M., para.* 566).

Flooded lands under fluctuating assessment.

The floods of the great rivers of the Punjab are so uncertain that, as already noted, it has in many cases been deemed wise to put the lands subject to their influence under a fluctuating assessment. Where the demand is calculated by applying acreage rates to the area of crops harvested, no question of suspension or remission usually arises. If serious loss occurs after the harvest inspection owing to some sudden calamity, such as a hailstorm or a flood, a fresh inspection and assessment should be made. In riverain villages a heavy flood sometimes sweeps away crops after they have been garnered. If the damage is great, the loss should be estimated as well as possible, and a remission of part of the demand proposed. The amount to be remitted obviously should not exceed the revenue which would have been due on account of the area on which the crops that have been lost were grown. The yield per acre can be roughly determined, and the calculation then becomes a simple one. Where the assessment is partly fixed and partly fluctuating, it will be found that in a normal year the fixed part of the demand is not a large fraction of the whole. Even so, it may be prudent to suspend it in an exceptionally bad season, or when a succession of poor harvests has depressed the agriculturists. But mixed systems of assessment are not now much in favour (*L. A. M., para.* 567).

Relief to tenants.

(*i*) Section 30 of the Punjab Tenancy Act (XVI of 1887), provides that, in the case of occupancy tenants who pay rent in cash, or rent in kind of which the amount is fixed, the Collector's order for suspension or remission of land revenue carries with it automatically proportionate suspension or remission of the rent payable to the landlord. A separate order of this description for each tenancy is not necessary. A general order may be passed applicable to a whole estate or to an area in respect of which suspension or remission has been allowed. The matter is left to the discretion of the Revenue Officer. In considering whether he should pass an order suspending or remitting the payment of rent by a tenant-at-will, he should carefully consider whether the issue of such an order is desirable in the interests of both the parties, but more especially of the tenant.

(*ii*) It must be remembered that the landlord retains the power of ejecting the tenant, of enhancing his rent, and of changing it from a cash into a *batai* rent, and may be inclined to adopt one or other of these courses if he thinks the order unfair, as he may do, *e. g.*, where a cash rent is suspended which had been fixed at a low rate in the expectation that it will be paid in full, harvest by harvest.

(*iii*) It will be observed that, when the Collector orders recovery of suspended revenue, any rent of which the payment has been suspended in consequence of the order suspending the revenue becomes realizable from the tenant. In the case of tenants who have not occupancy rights, landlords may find difficulties in realizing suspended rents. The likelihood of such difficulties might constitute a special reason for the Revenue Officer refusing to pass an order suspending the rent when the revenue is being suspended, but such an order should be refused in very exceptional cases only.

(*iv*) If a landlord collects from a tenant rent of which the payment has been remitted or is under suspension, section 30 gives the power to realize from the landlord, and refund to the tenant, the rent so realized ; and it gives the further power of realizing from the landlord by way of

penalty an amount equal to the rent so realized and refunded. It should be recognized that the power of imposing a penalty is to be used with some discrimination. A landlord might be willing enough to recognize the justice of requiring him to refund to a tenant rent which he had improperly realized, but might resent the imposition of the penalty and endeavour to visit his dissatisfaction on the tenant. In deciding whether the penalty should be imposed in any case, the Revenue Officer should consider the possible effects on the relations between the landlord and tenant ; in many cases it would obviously be to the disadvantage of the tenant that the landlord should regard him as being the cause of his punishment. In the case of kind rents other than those mentioned above, no orders are required because, where the landlord takes a fractional share of the crop, the tenant gets relief automatically (*L. A. M., para. 568*).

Suspended revenue usually realized.

Though there are circumstances under which suspension ought to be merely a preliminary to remission, and others in which the attempt to collect arrears should after full trial be abandoned, the general rule is that suspended revenue shall be recovered whenever the return of better seasons permits. If the expectation that the landowners would in bad years meet their obligations from the stored up surplus of past harvests has had in too many cases perforce to be abandoned, there is the more reason for recovering from the abundance of future years the amount which the State is compelled to forego in the present. As in the case of suspensions, the Collector is required to take account of the value of the crop harvested as well as of the area and outturn, so, in considering the extent to which recoveries of suspended revenue can be made, it is necessary not to overlook any rise in prices which may have occurred since settlement and which may cause the value of the estimated produce of subsequent harvests to be materially greater than that which the Setttlement Officer adopted for assessment purposes (*L. A. M , para. 570*).

Care required in recovery of arrears.

Prudence in the realization of suspended revenue is not less important than prudence in the grant of suspensions, and it is a matter in which mistakes are just as likely to occur. It has sometimes been asserted that landowners set no store by suspensions, coupled with an obligation to pay the arrears so created in the future. Where this feeling exists, it has generally sprung from past experience of ill-considered action in the matter of the recovery of balances. The old practice of fixing in the suspension order the instalments by which the arrear was to be liquidated was a direct encouragement to such action, and has therefore been forbidden (*L. A. M., para. 571*).

Remission of arrears.

(*i*) It has been usual in the Punjab, in the case of ordinary calamities of season, to suspend revenue first ; and, if the experience of three years has proved that it cannot prudently be recovered within that time, to remit the arrears then outstanding. Government has, however, now decided that the question of the remission of the outstanding arrears should be taken into consideration after the lapse of three harvests if it has not been found possible to recover them during this period notwithstanding due diligence on the part of the Collector. It should not, however, be considered a hard-and-fast rule that, in the case of ordinary calamities remission shall under no circumstances be given immediately, or, on the other hand, that all arrears must be wiped out which remain unrealized for three harvests. In unirrigated tracts with large holdings no harm will be done by keeping the account open for more than three

harvests if care is taken to recover more than the current demand only when this can be done without hardship to the people. But large arrears ought not to be kept hanging over the heads of landowners for an indefinite period. In future, in estates in which the land revenue has been suspended and has not been recovered for three harvests, the crop statistics of those three harvests should be invariably examined with particular care at the next harvest, together with the statistics of that harvest, and the Collector should decide whether any of the accumulated land revenue can prudently be recovered, and, if so, how much, or whether any part of it should be remitted.

In connection with the working of the three harvests rule it is first necessary to make clear how the three harvests in question are to be calculated. The easiest way to do this is by a concrete example. Let it be assumed that a Collector is considering, when all the figures of the *rabi* 1930 crop are before him, whether he should propose any remissions of suspended revenue of preceding harvests. The latest harvest he can consider in this connection is *kharif* 1928.

But, however bad the intervening harvests may have been in the villages under consideration, if the greater part of the annual land revenue demand on them and of their annual croping falls in the *kharif*, he should not propose any remission of land revenue suspended from *kharif* 1928, or earlier, with the *rabi* harvest of 1930 ; he should wait till the following *kharif* to consider the matter seriously. To this point particular importance is directed.

If, however, the incidence both of annual land revenue demand and annual cropping of the villages in question is fairly equally divided between the *kharif* and *rabi* harvests, he should, when dealing with past arrears of suspended revenue, take the following points into consideration :—

(*a*) whether any money due on account of past suspended arrears for any harvest can be recovered with the present demand ; or

(*b*) whether all or any part of those arrears should remain under suspension, or

(*c*) whether he should recommend for remission any portion of the demand suspended from *kharif* 1928 ; no later.

And, in arriving at a decision on these important points, he should of course be guided by the settlement statistics of the villages in question and their crop figures and other relevant statistics for the harvests from *kharif* 1928 to *rabi* 1930. It may well be that, having done so, the Collector will decide not to recommend remission at once but to leave the arrears even though they may have been under suspension from *kharif* 1928, under suspension for yet another harvest or even more. Such a decision would be in no way contrary to these instructions. The principal object Government is aiming at in this matter is to prevent large burdens of suspensions accumulating against villages over a group of harvests (*L. A. M., para.* 576).

Suspension and remission of cesses.

It was formerly the parctice in the Punjab that the suspension or remission of a part of the land revenue implied the suspension or remission of a corresponding fraction of the local rate. But in consequence of the orders contained in Government of India, Department of Revenue and Agriculture, resolution No. 13-356-10 of 21st August 1906, this has

been changed. Under extisting orders the local rate will no longer be proportionately suspended or remitted with suspensions or remissions of land revenue. Except in a great emergency, or unless special measures in any particular case are required, the collection of the local rate will, subject to the exception noted below, be made in full at every harvest, suspensions and remissions falling on land revenue alone. Occasions may possibly arise when the remission of the local rate will be inevitable but the intention is that under all ordinary conditions the local rate will be recoverable notwithstanding the remission of the land revenue. But, when the land revenue demand in any estate has been entirely suspended or remitted, it will be convenient to suspend the collection of the local rate until the next collection of land revenue takes place. Under the provisions of section 62 of the Punjab Land Revenue Act, 1887, the land revenue for the time being assessed on an estate or payable in respect of a holding, is the first charge upon the rents, profits and produce thereof, but as a matter of administrative convenience it has been decided that wherever there are collections of land revenue (including current demand) the local rate demand, both current and arrears, will first be satisfied, the balance being credited to land revenue. Thus, in all but the most exceptional cirumstances, if the whole of the land revenue is suspended or remitted, the local rate will be suspended ; if only part of the land revenue is suspended, the local rate will be collected ; and, whenever any part of the land revenue is collected, the local rate account will be cleared.

Local rate on fluctuating land revenue is calculated on the amount assessed according to rates fixed at settlement, and therefore is not affected by the grant of special remissions (*L. A. M., para.* 578).

Headman's pachotra.

A suspension or remission of the land revenue involves the suspension and remission of a corresponding share of the *pachotra* (*L. A. M., para.* 308).

Zaildar's inam.

The *zaildar's inam* is a first charge on the revenue of the estate from which it is paid. Partial suspensions or remissions therefore do not affect the *zaildar* so long as the balance is large enough to cover his *inam*. If it is not, the deficiency should be made up to the *zaildar*, from the revenue of some other village (*L. A. M., para.* 341).

Remission of canal revenue.

Claims for the remission of canal revenue, *i. e.*, occupiers' rates are disposed of by the Canal Department in accordance with the rules given in paragraphs 23 (*a*) and (*b*) and 25—27of Standing Order No. 61, except when the remission of occupiers' rates is required solely owing to the default of the cultivator, *e. g.*, when he absconds or becomes bankrupt-*vide* paragraphs 23 (*e*) and 24 of Standing Order No. 61. In this latter case the claims will be dealt with by the Collector under the ordinary rules for the remission and recovery of land revenue in like circumstances.[1]

Water-advantage rate.

Water advantage rate is assessed under the Land Revenue Act and not under the Canal Act, and the ordinary instructions for the suspension and remission of fluctuating land revenue, given in paragraphs 17—19, apply.[2]

1 Standing Order No. 30, para. 20, as amended by C S. No. 318-S.O., dated 18th October, 1917.

2. *Ibid*, para. 21.

Suspension and remission of fluctuating land revenue[1]

(*a*) In estates where the assessment is in the form of rate chargeable according to the matured crops of each year or harvest, the assessment is based on the *girdawri* which is made before the harvest is reaped. If by any unforeseen accident, as, for instance, by hail or flood, the harvest is destroyed after the *girdawri* is made and before it is reaped, a new *girdawri* and assessment are required, and the Collector can order this on his own authority.

(*b*) Where, however, the assessment fluctuates not on the matured crop area, but on some other basis, *e g.*, the irrigated area, it may occasionally be necessary to suspend or remit the fluctuating revenue, when the area harvested falls much short of the area on which the assessment was calculated. In such cases the instructions regarding the suspension and remission of fixed land revenue will apply.

(*c*) It will frequently be found that in an estate where the greater part of the land revenue is paid by a fluctuating assessment assessed on the results of the husbandry of each year on harvest, there is also a fixed assessment payable in addition in respect of well *abiana*, grazing profits, date trees, or other produce. In these cases, suspension of the fixed demand will not usually be required. But where bad seasons follow each other successively, and especially in those few cases in which these fixed demands bear a not inconsiderable proportion to the fluctuating revenue, the claims of landowners to temporary relief should not be overlooked.

Power to sanction remissions.[2]

(*a*) Collectors may sanction immediate remissions of land revenue due to locusts or hail in the harvests for which the land revenue is due up to a limit of Rs. 500.

(*b*) Commissioners may sanction immediate remission of land revenue due to any calamities in the harvest for which the land revenue is due up to a limit of Rs. 5,000 per district. They may also sanction remissions due to special causes unconnected with calamities affecting crops, for which special rules have not been sanctioned, up to a limit of Rs. 250 in each case, for instance loss in transit of revenue collected by a headman, an erroneous demand due to a premature addition to the rent roll, and distress due to an unavoidable cause, such as plague.

(*c*) Commissioners may sanction remissions under the procedure set forth in paragraph 576 of the Land Administration Manual up to a limit of Rs. 10,000 per district, if they are satisfied that since the revenue was suspended due diligence has been shown in collections.

(*d*) Commissioners may sanction the remission of arrears of rent in a Government estate up to a limit of Rs. 25 per holding or Rs. 250 per estate in any harvest.

(*e*) Remissions sanctioned under the above orders must be reported at once, if by the Collector through the Commissioner, for the Financial Commissioner's information.

(*f*) The Financial Commissioners may sanction remissions without limit.

Costs recoverable as part of arrear.

65. The costs of any process issued under this Chapter shall be recoverable as part of the arrear of land revenue in respect of which the process was issued.

1. *Ibid*, paras. 17 to 19.
2. Financial Commissioner's Standing Order No. 30, para. 4; see also L.A.M, *para.* 569.

66. A statement of account certified by a Revenue Officer shall be conclusive proof of the existence of an arrear of land-revenue, of its amount and of the person who is the defaulter. Certified account to be evidence as to arrear.

67. Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely :— Processes for recovery of arrears.

(*a*) by service of a writ of demand on the defaulter ;

(*b*) by arrest and detention of his person ;

(*c*) by distress and sale of his movable property and uncut or ungathered crops;

(*d*) by transfer of the holding in respect of which the arrear is due ;

(*e*) by attachment of the estate or holding in respect of which the arrear is due ;

(*f*) by annulment of the assessment of that estate or holding ;

(*g*) by sale of that estate or holding ;

(*h*) by proceedings against other immovable property of the defaulter.

Revenue Rule 63.—For the service of every writ, warrant or other process for the collection of revenue under Chapters VI and VII of the Punjab Land Revenue Act, 1887 a charge of Re. 1 shall be made where the revenue involved is more than Rs. 5 and annas 12 where the revenue involved is Rs. 5 or less. Charge for service of process.

Application of headman for process against defaulter.—A headmam who has shown proper diligence can obviate the risk of proceedings being taken against himself by applying to the tahsildar or Deputy Commissioner for assistance. Applications will not be entertained if the arrear has been outstanding for over six months unless the *lambardar* satisfies the Revenue Officer that the delay in realization has not been due to his own neglect. If the application is entertained, a date is fixed, a writ of demand is served on the defaulter and he is summoned to appear. If the existence of the arrear is proved, an order is recorded stating the amount and the person from whom it is due, and the duty of recovery is transferred from the headman to the tahsildar (*L. A. M., para.* 517). Process against defaulter.

Personal action by tahsildar.—Such is the prescribed procedure. But, when it is clear that a headman without any apparent reason finds difficulty in inducing his co-sharers to pay their quota, it is a good plan for the tahsildar or his naib to go to the village and find out what the real cause is. If he sees that the refusal is due to private enmity or jealousy, he should uphold the *lambardar*'s authority by convincing the defaulters that they themselves are the persons who will suffer by delay. If they assert that they suspect the headman of misappropriating the money he collects, and are afraid to entrust him with it, he should

realise the revenue at once through the *lambardar* and tell him to take it to the tahsil (*L. A. M., para.* 518).

Writ of demand.

68. A writ of demand may be issued by a Revenue Officer on or after the day following that on which an arrear of land revenue accrues.

Writ of demand.—A writ of demand is known as a "*dastak.*" It is little more than a reminder. It shows the amount of the arrear, and requires the person addressed, to pay it, together with a service fee (*talabana*) of one rupee where the revenue involved is more than Rs. 5 and of twelve annas where the revenue involved is Rs. 5 or less, into the tahsil by a certain date. Writs are served by a special staff temporarily engaged for the purpose, and the issue of many *dastaks* may mean more to a village than an addition of *talabana* to the land revenue demand. A writ may be addressed to the actual defaulter, but it is usually directed to his headman unless the latter has made an application under section 97 of the Land Revenue Act. It can be issued on any day after the date of the instalment, but it is proper to allow a few days' grace, and this may reasonably be extended to a fortnight where, though there are two instalments, it is the custom of the estate to pay the whole demand at one time. There is no legal objection to the sending out of repeated *dastaks*, but only a weak tahsildar would think of doing so. A tahsildar can issue writs of his own authority. If he has his tahsil well in hand, he ought not to find many necessary. Any tendency to use too freely this or the next form of coercion, which are the only two which a tahsildar can put in force himself, can easily be checked by the Collector as the tahsildar sends in monthly statements of writs and warrants issued (*L. A. M., para.* 521).

Arrest and detention of defaulter.

69. (1) At any time after an arrear of land-revenue has accrued a Revenue Officer may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue Officer.

(2) When the defaulter is brought before the Revenue Officer, the Revenue Officer may cause him to be taken before the Collector, or may keep him under personal restraint for a period not exceeding ten days and then, if the arrear is still unpaid, cause him to be taken before the Collector.

(3) When the defaulter is brought before the Collector, the Collector may issue an order to the officer incharge of the civil jail of the district directing him to confine the defaulter in the jail for such period not exceeding one month from the date of the oder, as the Collector thinks fit.

(4) The process of arrest and detention shall not be executed against a defaulter who is a female, a minor, a lunatic or an idiot.

Defaulter.

For definition and meaning of "defaulter" see section 3 (8) page 21.

[1]**Land Revenue Rule 67—bail of defaulters under detention.**—A defaulter who, under section 69 (2) of the Land Revenue Act, is being kept under personal restraint may be allowed to be at large upon bail being given that he shall not absent himself from a place to be specified by the Revenue Officer ordering the restraint during certain hours until ten entire days have elapsed from the commencement of his detention, unless the arrear be sooner paid.

[1]**Land Revenue Rule 68—cirumstances under which a defaulter is liable to detention or imprisonment for arrears.**—No defaulter shall be detained under section 69 (?) of the Act or confined under section 69 (3) for an arrear unless it is due from himself or from a co-proprietor of whom he is the representative village headman; nor shall any defaulter be imprisoned for an arrear due before he came into possession or office.

[1]**Land Revenue Rule 69—Order for detention issued by Assistant Collector, 2nd grade, to be reported to Collector.**—If in any case an Assistant Collector of the 2nd grade decides to keep a defaulter arrested by warrant under detention instead of causing him to be taken before the Collector, he shall without delay report his action to the Collector, for information, if the detention exceeds twenty-four hours.

Detention of defaulter.—Thus the actual defaulter or the headman who represents him may be arrested and detained at the tahsil or district office for ten days. He may be released on bail being given that he will not absent himself for certain hours daily during that period. If the arrear is not paid by the end of the term, the Deputy Commissioner may order his further detention for a month in the civil jail. If the tahsildar finds it necessary to detain the defaulter for more than twenty-four hours, he must report his action to the Deputy Commissioner. The other landowners in the estate are not liable to this form of coercion because of their joint responsibility for arrears, nor can it be used in the case of females, minors, lunatics or idiots. The peon who executes the warrant must not receive the money if the defaulter produces it, but must instruct the latter to take it or send it to the tahsil. Of this form of coercion Thomason remarked: "It is only in peculiar cases that the process of imprisonment is likely to be effective. When the defaulter is living in circumstances which make him fear imprisonment, and when he has resources which enable him at once to pay the demand, there may be no more efficient process. But on the poor or the embarrassed it is not likely to have any effect, whilst to the unfortunate, but honest and industrious man it is a cruel hardship. It used to be a very common practice to imprison defaulters as the first step towards the realization of the demand, but the harshness and impolicy of this have been long admitted."[2] (*Land Administration Manual, para.* 522).

70. (1) At any time after an arrear of land-revenue has accrued, the movable property and uncut or ungathered crops of the defaulter may be distrained and sold by order of a Revenue Officer. **Distress and sale of movable property and crops.**

(2) The distress and sale shall be conducted, as nearly as may be, in accordance with the law for the time being

1. Land Administration Acts, Vol. II, page 47.
2. Thomason's Directions for Collectors, edition of 1850, para. 68.

in force for the attachment and sale of movable property under the decree of a Revenue Court constituted under the Punjab Tenancy Act, 1887 :

Provided that, in addition to the particulars exempted by that law from liability to sale, so much of the produce of the land of the defaulter as the Collector thinks necessary for seed-grain and for the subsistence, until the harvest next following, of the defaulter and his family, and of any cattle exempted by that law, shall be exempted from sale under this section.

Exemptions prescribed by section 60 of the Civil Procedure Code (Act V of 1908), as regards sales in execution of decrees of Court apply, and in addition so much of the produce must be left unattached as the Deputy Commissioner thinks necessary for seed-grain and the subsistence of the defaulter and his family and of exempted cattle until the next harvest. This course should be followed only when there is good reason to suppose that it will be the means of compelling payment of the whole or a considerable portion of the arrear (*L. A. M., para.* 523).

According to clause (*p*) of sub-section (1) of section 60 of the Civil Procedure Code, section 60 of the Civil Procedure Code must be read with section 70 of the Land Revenue Act, 1887, and a Civil Court must therefore attach only so much of the fodder belonging to an agriculturist judgment-debtor, as the Collector to whom a reference must be made, may judge to be right.[1] The income of the *pachotra*, however, is not covered by section 60, Civil Procedure Code, nor by section 70 of the Land Revenue Act.[2]

Transfer of holding.

71. (1) At any time after an arrear of land-revenue has accrued on a holding, the Collector may transfer the holding to any person being a land-owner of the estate in which this holding is situate and not being a defaulter in respect of his own holding, on condition of his paying the arrear before being put in possession of the holding, and on such further conditions as the Collector may see fit to prescribe.

(2) The transfer may, as the Collector thinks fit, be either till the end of the agricultural year in which the defaulter pays to the transferee the amount of the arrear which the transferee paid before being put in possession of the holding, or for a term not exceeding fifteen years from the commencement of the agricultural year next following the date of the transfer.

(3) The Collector shall report to the Financial Commissioner any transfer made by him under this section, and the Financial Commissioner may set aside the transfer or

1. 82 P. R. 1907 ; 93 P. R. 1904 not followed.
2. A. I. R. 1924 Lah. 226=73 I. C. 928.

alter the conditions thereof, or pass such other order as he thinks fit.

(4) A transfer under this section shall not affect the joint and several liability of the land-owners of the estate in which it is enforced.

(5) In respect of all rights and liabilities arising under this Act, the person to whom the holding is transferred shall, subject to the conditions of the transfer, stand in the same position as that in which the defaulter would have stood if the holding had not been transferred.

(6) When the transfer was for a term, the holding shall, on the expiration of the term, be restored by the Collector to the defaulter free of any claim on the part of the Government or the transferee for any arrear of land-revenue or rates and cesses due in respect thereof.

Attachment of estate or holding.

72. (1) At any time after an arrear of land-revenue has accrued the Collector may cause the estate or holding in respect of which the arrear is due to be attached and taken under his own management or that of an agent appointed by him for that purpose.

(2) The Collector or the agent shall be bound by all the engagements which existed between the defaulter and his tenants, if any, and shall be entitled to manage the land and to receive all rents and profits accruing therefrom to the exclusion of the defaulter until the arrear has been satisfied, or until the Collector restores the land to the defaulter.

(3) All surplus profits of the land attached beyond the cost of attachment and management and the amount necessary to meet the current demand for land-revenue and rates and cesses shall be applied in discharge of the arrear.

(4) Land shall not be attached for the same arrear for a longer term than five years from the commencement of the agricultural year next following the date of the attachment, but, if the arrear is sooner discharged, the land shall be released and the surplus receipts, if any, made over to the land-owner.

This process is known as *kurk* tahsil. Usually the Tahsildar should be the manager; but, if the estate is large, a non-official agent may be appointed and paid by a fixed salary or by a percentage on the collections. The land revenue assessment is not affected.

This process is suitable when the defaulter is a large proprietor or where the cause of default is a quarrel among the members of the village community (*L.A.M., paras.* 526 *and* 527).

Annulment of assessment of estate or holding.

73. (1) When an arrear of land-revenue has been due for a longer period than one month, and the foregoing processes are not deemed sufficient for the recovery thereof, the Financial Commissioner may, in addition to or instead of all or any of those processes, order the existing assessment of the estate or holding in respect of which the arrear is due to be annulled.

(2) The provisions of this section shall not be put in force for the recovery of an arrear of land-revenue which has accrued on land—

(*a*) while under attachment under the last foregoing section, or

(*b*) while under the charge of the Court of Wards.

(3) When the assessment of any land has been annulled, the Collector may, with the previous sanction of the Financial Commissioner, either manage the land himself or through an agent, or let it in farm to any person willing to accept the farm, for such term and on such conditions as may be sanctioned by the Financial Commissioner:

Provided that the term for which land may be so managed or farmed shall not be longer than fifteen years from the commencement of the agricultural year next following the date of the annulment.

(4) At some time before the expiration of that term the Collector shall determine the assessment to be paid in respect of the estate or holding for the remainder of the term of the current assessment of the district or tahsil, and, when that assessment has been sanctioned by the Financial Commissioner, shall announce it to the land-owner.

(5) The land-owner may give notice to the Collector of refusal to be liable for the assessment within thirty days from the date on which the assessment was announced to him.

(6) If notice is so given, the Collector may, with the previous sanction of the Financial Commissioner, take the estate or holding under direct management or farm it for the remainder of the term of the current assessment of the district or tahsil, or for any period within that term which the Financial Commissioner may fix.

(7) When the assessment of a holdinng is annulled, the joint responsibility of the other land-owners of the estate

for the land-revenue of that holding becoming due after the annulment shall be in abeyance until a new assessment takes effect.

(8) the Financial Commissioner may direct that any contract made by the defaulter, or by any person through whom the defaulter claims, with respect to any land comprised in an estate or holding of which the assessment has been annulled, shall not be binding on the Collector or his agent or farmer during the period for which the estate or holding remains under the management of the Collector or his agent or is let in farm.

Term of direct management or farm

The term of direct management or of the farm must not exceed 15 years. When it is over, the holding or estate is reassessed in the light of the evidence as to its real assets which has been obtained. Care should, however, be taken that the land revenue imposed on such land does not raise the total assessment of the circle in which it is situated to more than one-fourth of the net assets of the circle. If the land forms part of an estate and is not excluded from the provisions of section 51 (3) by section 51 (4) of the Punjab Land Revenue Act, 1887, this object can in most cases be secured for all practical purposes by providing that the average rate of incidence on such land does not exceed the average rate of the estate in which it is included. Any case in which this is not suitable, as for example of specially valuable land, should be referred for orders. If, however, the land consists of a fresh estate, the rate of incidence of the assessment imposed thereon should not be such as to raise the existing average rate of incidence of the assessment circle beyond the limit prescribed in section 51 (3). If the owners refuse to accept the new assessment, the Financial Commissioner can order direct management for the remainder of the term of the current settlement of the district or for any shorter term (*L.A.M., para.* 530 *as amended by C. S. No.* 54, *dated* 24*th September*, 1937).

Direct management accompanied by annulment of the assessment is known as *kham tahsil*. It differs from *kurk tahsil* because the proprietary rights and obligations of the owners are for the time being in abeyance, and the land revenue settlement made with them is cancelled. If part only of an estate is under farm or direct management, the joint responsibility of the landowners of the rest of the estate is suspended as regards that part only. The Financial Commissioner may order that contracts regarding cultivation or payment of rent already made by the defaulter, or by other persons under whom the defaulter claims, shall not be binding on the Deputy Commissioner. If it is part of the sanctioned arrangement that the owners shall remain in cultivating possession of their *khudkasht* lands, they will do so as tenants, and will pay such rent as the Deputy Commissioner thinks proper (*L.A.M., para.* 531).

However profitable direct management may be to Government, the defaulters cannot claim re-entry until the end of the term, and they are not entitled to any account of profit and loss when they recover possession (*L.A.M , para.* 532).

Kham tahsil is only suitable in the case of a whole estate, or at least of a recognised subdivision of an estate. It is a punitive, or at least an

exemplary, measure, which it would only be right to adopt in case of contumacy, on the part of a village community, which is nowadays very rare, or where the assessment has broken down on account of the gross mismanagement or idleness of the owners. Mr. Thomason's remarks may be quoted: "When land is valuable, population abundant, and the assets.....consist of money collections from non-proprietary cultivators, and the rent-roll shows a fair surplus above the Government demand, there should be no hesitation in holding *kham*. Ordinary care will enable the Collector to recover the balance, and probably improve the estate. But when the population is scanty, when the defaulters are a community of cultivating proprietors, when the collections are made in kind, or when the estate is deteriorated and fallen out of cultivation, *kham* management requires much caution. Its success evidently depends upon knowledge of agriculture, influence over the people, and prompt and steady action. When the Collector is conscious that he possesses these qualities himself, or can command them through means of his subordinates, he has the strongest possible hold on the people. Nothing more convinces them of the hopelessness of attempting by combination to defraud the Government of its dues, or to force a reduction of settlement, than the example of a few estates successfully held *kham*, and made to yield more than the original assessment..... .....It should not, however, be attempted on any great scale because of the time and minute attention it requires, nor should it be attempted at all unless the Collector finds himself in a position where he may reasonably expect to have time and opportunity to carry his experiment fairly out (*L.A.M., para.* 533).

Farm to a private person after annulment of the assessment is a still more drastic measure than *kham* tahsil. Paragraph 531 applies *mutatis mutandis* to this process. If the defaulters are inferior proprietors, it will usually be right to offer the lease to the superior proprietors. No female, minor, or resident in an Indian State can be appointed farmer (*L.A.M., para.* 534).

Rights of farmer.—A farm is neither heritable nor transferable. Subject to this limitation, and to any other conditions expressly embodied in the lease, the farmer has for the time being all the rights of ownership in the estate, at least all the rights which Government takes into account in fixing the assessment. The lease lapses on the death of the farmer unless the Financial Commissioner thinks fit to renew it in favour of his heir. In any case the old proprietors are not entitled to resume possession on account of a lapse occurring before the end of the period originally sanctioned. For further conditions of farming leases paragraphs 25, 26 and 28 of Financial Commissioner's Standing Order No. 29 may be consulted. The case of direct management or farm rendered necessary by the refusal of the landowners to accept the demand fixed at a general reassesssment of the land revenue has been dealt with in paragraph 521 of the Settlement Manual (*L.A.M., para.* 535).

Proclamation of attachment or annulment of assessment and consequence of the proclamation.

74. (1) When any land is attached under section 72, or when the assessment of any land has been annulled under the last foregoing section, the Collector shall make proclamation thereof.

(2) No payment made by any person to the defaulter before the making of the proclamation on account of rent

or any other asset in anticipation of the usual time for the payment shall, without the special sanction of the Collector, be credited to that person or relieve him from liability to make the payment to the Collector or his agent or farmer.

(3) No payment made after the making of the proclamation on account of rent or any other asset of the estate of holding to any person other than the Collector or his agent or farmer shall be credited to the person making the payment or relieve him from liability to make the payment to the Collector or his agent or farmer.

Sale of estate or holding.

75. When an arrear of land-revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector, with the previous sanction of the Financial Commissioner, may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due:

Provided that land shall not be sold for the recovery of—

(*a*) any arrear which has accrued while the land was under the charge of the Court of Wards, or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the provisions of section 35 of the Punjab Laws Act, 1872, clauses (*a*), (*b*), (*c*), or (*d*); or

(*b*) any arrear which has accrued while the land was under attachment under section 72 of this Act; or

(*c*) any arrear which has accrued while the land was held under direct management by the Collector or in farm by any other person, under section 73, after either an annulment of assessment or a refusal to be liable therefor.

This measure can only be adopted when all the foregoing processes are deemed to be ineffectual. The sanction of the Financial Commissioner is required, and, in order to obtain it, the Deputy Commissioner would require to prove that the proprietor or the community was either hopelessly insolvent or stubbornly contumacious. The exceptions pointed out above should be noted. As a preliminary step, the Deputy Commissioner should attach the holding or estate under section 72 of the Land Revenue Act (*Land Administration Manual, para.* 537).

Effect of sale on incumbrances.

76. (1) Land sold under the last foregoing section shall be sold free of all incumbrances; and all grants and

contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale.

(2) Nothing in sub-section (1) shall affect—

(*a*) a tenant's right of occupancy, unless the right was created by the defaulter himself, or

(*b*) any lease at a fair rent temporary or perpetual, for the erection of a dwelling house, or manufactory, or for a mine, garden, tank, canal, place of worship, or burial-ground, so long as the land continues to be used for the purpose specified in the lease, or

(*c*) any incumbrance, grant, contract or right of occupancy specially saved by order of the Financial Commissioner and proclaimed as hereinafter provided.

If sale is sanctioned, the first step is to issue a proclamation. The land is sold free from all incumbrances and all previous grants and contracts, respecting it become void as against the purchaser. The justification for this lies in the paramount claim of the Crown as the land until its title to a share of its produce has been satisfied. But rights of occupancy not created by the defaulter, and leases of land for gardens, buildings, and, certain other non-agricultural purposes, are saved. and also any rights excepted in the proclamation of sale. For the procedure to be followed in sale, sections 79—96 of the Act may be referred to.

Effect of sale.

If the highest bid is evidently inadequate, and especially if it does not cover the arrears and the cost of the sale, it will usually be advisable to buy in the estate for the Crown. The defaulter is still liable for the balance, but except under every exceptional circumstances, it would be wrong to take any further proceedings against him. He is entitled to receive any surplus (*Land Administration Manual, para.* 538).

Proceedings against other immovable property of defaulter.

77. (1) If the arrear cannot be recovered by any of the processes hereinbefore provided, or if the Financial Commissioner considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding, or any other immovable property, proceed under the provisions of this Act against that property as if it were the land in respect of which the arrear is due :

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this section against immovable property other than the land

in respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

(3) The Collector may at any time by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the arrear has been paid or the interests of the defaulter in the property have been sold for the recovery of the arrear.

(4) Any private alienation of the property, or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void.

(5) In proceeding against property under this section the Collector shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land-revenue is due.

It is to be noted that as the result of proceedings against other immovable property of defaulter no grants or encumbrances created or contracts made in good faith by the defaulter are affected.

Remedies open to person denying his liability for an arrear.

78. (1) Notwithstanding anything in section 66, when proceedings are taken under this Act for the recovery of an arrear the person against whom the proceedings are taken may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

(2) A suit under sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the district in which the arrear or some part thereof accrued is situate.

Procedure in Sales.

Proclamation of sale.

79. (1) On the receipt of the sanction of the Financial Commissioner to the sale of any immovable property, the Collector shall issue a proclamation of the intended sale, specifying—

(*a*) the date, time and place of the sale;

(*b*) the property to be sold, and, if it is an estate or holding, the land revenue assessed thereon or payable in respect thereof;

(*c*) if the property is to be sold for the recovery of an arrear due in respect thereof, the incumbrances, grants, contracts, and right of occupancy, if any, specially saved by order of the Financial Commissioner under section 76, sub-section (2), clause (*c*);

(*d*) if the property is to be sold otherwise than for the recovery of an arrear due in respect thereof any incumbrance, grant or contract to which the property is known to be liable; and

(*e*) the amount for the recovery of which the sale is ordered.

(2) *Repealed by Punjab Act II of 1905.*

(3) The place of sale specified under clause (*a*), sub-section (1), must be either the office of the Collector or some place appointed by the Collector in this behalf and situate in or near the property to be sold.

Indemnity to Revenue Officer with respect to contents of proclamation.

80. A Revenue Officer shall not be answerable for any error, mis-statement or omission in any proclamation under the last foregoing section, unless the same hase been committed or made dishonestly.

Publication of proclamation.

81. (1) A copy of the proclamation shall be served on the defaulter and posted in a conspicuous part of the office of the Tahsildar of the tahsil in which the property to be sold is situate.

(2) After a copy of the proclamation has been served on the defaulter and posted in the office of the Tahsildar, a copy thereof shall be posted in the office of the Collector.

(3) The proclamation shall be further published in manner prescribed in section 22 and in such other manner as the Collector thinks expedient.

Time and conduct of sale.

82. (1) The sale shall not take place on a Sunday or other holiday, or till after the expiration of at least thirty days from the date on which the copy of the proclamation was posted in the office of the Collecter.

(2) The sale shall be by public auction and shall be conducted either by the Collector in person or by a Revenue Officer specially appointed by him in this behalf.

Power to postpone sale.

83. The Collector may from time to time postpone the sale.

Stay of sale.

84. If at any time before the bidding at the auction is completed the defaulter pays the arrears in respect of which the property has been proclaimed for sale, together with the cost incurred for the recovery thereof, to the officer conducting the sale, or proves to the satisfaction of that officer that he has already paid the same either at the place and in the manner prescribed under section 63 or into the Government treasury, the sale shall be stayed.

Payment of deposit by highest bidder.

85. When the highest bid at the auction has been ascertained, the person who made that bid shall, on the requisition of the officer conducting the sale, pay to that officer a deposit of twenty-five per centum on the amount of his bid, and shall, on payment thereof, be declared to be the purchaser subject to the provisions of this Chapter with respect to the exercise of any right of pre-emption.

Consequences of failure to pay deposit.

86. If the person who made the highest bid fails to pay the deposit as required by the last foregoing section, the property shall forthwith be put up again and sold, and all expenses attending the first sale, and the deficiency of price, if any which may happen on the re-sale, may be recovered from him by the Collector as if the same were an arrear of land-revenue.

87. *Repealed*—vide *Schedule annexed to Punjab Pre-emption Act, II of 1905.*

Time for payment in full.

88. The full amount of the purchase-money shall be paid by the purchaser before the close of the fifteenth day from that on which the purchaser was declared.

Procedure in default of payment.

89. In default of payment of the full amount of the purchase-money within the period mentioned in the last foregoing section, the deposit referred to in section 85 or section 87, as the case may be, shall, after defraying the expenses of the sale, be forefeited to the Government and may, if the Collector, with the previous sanction of the Commissioner, so directs, be applied in reduction of the arrear, and the property shall be re-sold, and the defaulting purchaser shall have no claim to the property or to any part of the sum for which it may subsequently be sold.

Report of sale to Commissioner.

90. Every sale of immovable property under this Chapter shall be reported by the Collector to the Commissioner.

Application to set aside sale.

91. (1) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it.

(2) But a sale shall not be set aside on that ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of the irregularity or mistake.

Order confirming or setting aside sale.

92. (1) After the expiration of thirty days from the date of the sale, if such application as is mentioned in the last foregoing section has not been made, or if such application has been made and rejected, the Commissioner shall make an order confirming the sale, and, if such application has been made and allowed, the Commissioner shall make an order setting aside the sale.

(2) An order made under this section shall be final.

Refund of purchase-money on setting aside of sale.

93. Whenever the sale of any property is set aside, the purchaser shall be entitled to receive back his purchase-money.

Proclamation after postponement or on re-sale.

94. A sale made after a postponement under section 83, and a re-sale consequent on a purchaser's default under section 89 or on the setting aside of a sale under section 92, shall be made after the issue of a fresh proclamation in the manner hereinbefore prescribed for the sale.

On confirmation of sale possession and certificate to be granted to purchaser.

95. (1) After a sale has been confirmed in manner aforesaid the Collector shall put the person declared to be the purchaser into possession of the property sold, and shall grant him a certificate to the effect that he has purchased that property.

(2) The certificate shall state whether or not the property was sold for the recovery of an arrear due in respect thereof, and, if it was so sold, shall set forth the incumbrances, grants, contracts and rights of occupancy, if any, specified in the proclamation of the sale as specially saved by order of the Financial Commissioner under section 76, subsection (2), clause (*c*).

(3) The certificate shall be deemed to be a vaild transfer of the property but need not be registered as a conveyance.

(4) Any suit brought in any Court against the certified purchaser on the ground that the purchase was made on behalf of a person other than the certified purchaser shall be dismissed with costs.

(5) The certified purchaser of any immovable property shall be entitled to all rents and profits, falling due in respect of the property after the date of the confirmation of the sale and be liable for all instalments of land-revenue and rates and cesses falling due in respect thereof after that date.

Proceeds of sale.

96. (1) When a sale of immovable property under this Chapter has been confirmed the process of the sale shall be applied in the first place to the payment of any arrears, including costs incurred for the recovery thereof, due to the [1][Crown] from the defaulter at the date of the confirmation of the sale, whether the arrears are of land revenue, or of sums recoverable as arrears of land-revenue, and the surplus, if any, shall be paid to the person whose property has been sold, or, if the property sold was owned by more than one person, then to the owners either collectively or according to the amount of their recorded interests, as the Collector thinks fit.

(2) The surplus shall not, except under an order of a Court, be paid to any creditor of a person whose property has been sold.

(3) If the proceeds of the sale fall short of such arrears as are referred to in sub-section (1), the balance remaining due from the defaulter may be recovered from him by further proceedings under this Chapter or by any other means authorized by law.

1. Substituted for "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER VII

Recovery of other demands by Revenue Officers

Recovery of certain arrears through Revenue Officer instead of by suit.

97. When a village officer required by rules under section 28 to collect any land-revenue or sum recoverable as an arrear of land-revenue satisfies a Revenue Officer that the revenue or sum has fallen due and has not been paid to him, the Revenue Officer may, subject to any rules which the Financial Commissioner may make in this behalf, recover it as if it were an arrear of land-revenue.

LAND REVENUE RULES.

Application of headmen for recovery of arrears from defaulters.

[1]64. (*i*) An application under section 97 of the Land Revenue Act shall state—

(*a*) the name and description of the defaulter ;
(*b*) the arrear of which recovery is desired ;
(*c*) the circumstances which have made the application necessary.

(*ii*) Any number of defaulters residing in the same estate may, at the discretion of the Revenue Officer to whom the application is made, be included in the same application, but the arrear due from each defaulter shall be separately specified.

Defaulter to be summoned.

65. (*i*) If the application is in due form and the arrear of which recovery is desired has not been due for more than six months, the Revenue Officer shall fix a date for the hearing of the case (Revenue Officer's case) and shall serve a writ of demand on the defaulter together with a notice requiring him to appear on the date so fixed if the demand has not in the meantime been paid.

(*ii*) If the arrear has been due for more than six months the application shall be rejected, unless the applicant satisfies the Revenue Officer that the delay in realizing the arrear is not due to his neglect. And, if so satisfied, the Revenue Officer shall proceed as in sub-section (*i*).

Recovery of arrears from defaulters.

66. On and after the date fixed for the attendance of the defaulter the Revenue Officer shall make an inquiry into the existence of the arrear. And if it is proved, he shall record an order stating the amount of the arrear and the person who is the defaulter, and shall thereafter proceed to recover the same.

Other sums recoverable as arrears of land revenue.

98. In addition to any sums recoverable as arrears of land-revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered, namely :—

(*a*) fees, fines, costs and other charges, including the village-officer's cess payable under this Act ;

1. Financial Commissioner's Notification No. 142, dated 9th November 1909.

(*b*) revenue due to the Government on account of pasture or other natural products of land, or on account of mills, fisheries or natural products of water, or on account of other rights described in section 41 or section 42 in cases in which the revenue so due has not been included in the assessment of an estate ;

(*c*) fees payable to district boards or local boards under section 33 of the Punjab District Boards Act, 1883, for the use of or benefits derived from such works as are referred to in section 20, clauses (*i*) and (*j*), of that Act ;

(*d*) sums leviable by or under the authority of the Government as water-rates, or on account of the maintenance or management of canals, embankments or other irrigation-works, not being sums recoverable as arrears of land-revenue under any enactment for the time being in force ; and

(*e*) sums payable to the Government by a person who is surety for the payment of any of the foregoing sums or of any other sums recoverable as an arrear of land revenue.

Taluqdari dues.

Collection of taluqdari dues—instructions.—" Enquiries made in 1936 revealed that in districts where *taluqdari* tenures exist the dues payable by *malikan adna* are collected by the *lambardars* of the estates concerned and paid by them to the *malikan ala*. This is generally done by private arrangements between the *lambardars* and the parties concerned except in the Kangra and Attock districts where there are Government orders to this effect. *Taluqdari* dues being of the nature of rent of privately owned land, Government is in no way concerned with their collection or payment, and the superior landowners must, therefore, make their own arrangements in this regard without the intervention of official agency. While it is not considered desirable to disturb the practice existing in many places of *lambardars* collecting the *taluqdari* dues by private arrangement, Government is not prepared to recognize it officially or to permit any official help being given to *lambardars* to deal with the defaulters of such dues (*Settlement Manual, para.* 169-A).

Recovery of malba whether permissible as arrear of land revenue.—" As some misapprehension appears to exist in the minds of district officers whether *malba* can be collected as arrears of land revenue, it is important that all Revenue Officers should understand the legal position about *malba* and should refrain from attempts to collect sums due on account of *malba* as arrears of land revenue. Provided this is understood, there is no objection to the inclusion of *malba* dues in the *dhal bachh* as before, since without the patwari's assistance landowners cannot ascertain how much each man should pay. Government wish also to emphasize the fact that it is optional with villagers either to have or not to have a *malba* fund, and that the money can be handed over either to the *lambardars* or to a village panchayat or to any kind of trust that they may like to set up for the purpose.

Malba is a village cess within the meaning of section 3 (10) and section 145 of the Punjab Land Revenue Act. It has also been included in the definition of " rates and cesses " being a sum payable on account of village expenses, *vide* section 3 (9) (*e*) of that Act. The nature and scope of this cess is fully described in the above paragraph, to which particular attention is invited. Although rule 60 of the Land Revenue Rules provides that rates and cesses due at each harvest shall be payable on the date on which the first instalment of land revenue due from the same estate on account of the same harvest is payable, and under rule 62 (*c*) a headman, when he is paying an instalment of rates and cesses is entitled to withhold proceeds of any cess levied on account of village expenses, it appears that sums levied on accouut of village expenses are not recoverable as arrears of land revenue under section 98 of the Land Revenue Act. Sub-section (*a*) of that section provides for the recovery of fees, fines, costs, and other charges, including the village officers' cess payable under the Act. If rates and cesses, as such were recoverable as arrears of land revenue, the reference to the village officers' cess, which is included in the definition of ' rates and cesses ' [section 3 (9) (*d*), would not have been necessary. The only way of recovering *malba*, therefore, is by a regular suit under section 77, Second group, (*j*), of the Punjab Tenancy Act] " (*Settlement Manual, para.* 93 as amended by C. S. No. 48—S. M. dated the 5th January, 1939).

Application of Chapter VI to sums recoverable under this chapter.

99. The provisions of Chapter VI shall, with respect to any sum mentioned or referred to in this Chapter, apply, so far as they can be made applicable, as if the sum were an arrear of land Revenue and the person from whom, either as principal or as surety, it is due, were a defaulter in respect of such an arrear.

(2) Unless any such sum is declared by any enactment for the time being in force to be recoverable as if it were an arrear of land-revenue due in respect of the land charged therewith, the provisions of section 77 shall apply under sub-section (1) to the recovery thereof.

The effect of the application of section 77 would be that proceedings may also be taken against the defaulter's immovable property other than that directly liable to the payment of the sum in question.

Recovery of public demands by enforcement of process in other districts than those in which they become payable.—See the Revenue Recovery Act, 1890 (Act No. I of 1890), Appendix.

CHAPTER VIII

Surveys and Boundaries.

[1]**Systems of land surveys in the Punjab.**—In order to carry out either of the two branches of his work, the framing of a record of rights or the making of a fair assessment, the Settlement Officer must have an accurate map of each village showing the position and boundaries of every field. Such a map is known as the *shajra kishtwar*.

There is a separate assessment and a separate record of rights for each estate or *mahal*. But the writ for purposes of survey is not the estate, but the village or *mauza*. These terms have already been explained (*See* S. 3). The distinction between them introduces no complication into settlement work, for as a matter of fact the things which they denote are in the Punjab almost invariably one and the same.

Topographical and cadastral surveys.

There are two surveys with which a Settlement Officer has to concern himself, the topographical survey made by the Imperial Survey Department and the cadastral or field survey made by the patwaris. The second is indispensable for his work, the first is chiefly useful to him as a means of testing the accuracy of the second. The Imperial Survey deals with villages as a whole, mapping their boundaries and showing the main topographical features, such as the home-stead or *abadi*, roads, canals and large sheets of water. The limits of the cultivated, culturable, and barren land have also sometimes been indicated. The cadastral survey marks on the village map the boundaries of every field, and by means of it, the areas shown in the *jamabandi* are calculated.

In the first regular settlements the survey of a village consisted of two distinct stages, the preparation of a boundary map (*naksha thakbast*) after all disputes as to the limits or the village land had been settled, and the making of a field map or *shajra kishtwar* and a *khasra*. The latter was a register, showing, in respect of each field, its number in the map, the names of its owner and of the person who cultivated it, its linear dimensions and area, the soil or class of land which it contained, and the crops growing in it at the time of measurement.

"Plane-table" system of survey.

According to this system the area of a village was cut up into triangles, and the frame work on which the field survey was built up consisted of the straight line farming their sides. The triangulation was effected by taking up convenient points all round the boundry, but not necessarily on it, and connecting there with one another and with other fixed points in the interior of the village. The distance between the various points was carefully chained, and their relative bearings were fixed by the sighting rod, the true north and south having first been determined by means of the compass. The boundary line was laid down by means of offsets from the bases of the nearest triangles, and the accurate plotting of fields was ensured by marking on the ground and on the map the point where the boundary of any field intersected the side of any triangle. The final test of it was the way in

1. See Chapter XII of the Settlement Manual.

which the circuit closed; in other words, its correctness was proved if the last triangle of the series fitted properly into its place, its dimensions as scaled on the map corresponding with the actual dimensions on the ground as determined by chain measurement. A common fault of maps prepared on this system is that the boundaries of adjoining estates do not interlock.

Square system of measurement.

In plains districts the " plane-table system " has given place to " square system ". According to this the area of a village is divided into squares of equal size, the skeleton traverse being built up as a square usually of 200 *kadams* laid down with great care save where near the centre of the village. In making this square the first thing to do is to measure with the utmost accuracy in open ground a base line of 200 *kadams*. The boundary is laid down by means of offsets from the nearest square, and the sides and diagonals of squares are utilized in connection with the plotting of fields in the same way as the sides of triangles in the plane-table system.

Note.—(1) In colony areas the system of laying down " squares " and " rectangles " and *killabandi* has been adopted (*See* Chapter III of the Colony Manual).

(2) In the case of estates near a river the plan of having a common base line has been usefully adopted in many tracts. In recent settlement surveys of several riverain tracts much valuable assistance has been obtained from plotted sheets supplied by the Survey Department. They show in correct relative position certain convenient points (*chandas*) or corners of squares which have been fixed by a skeleton traverse survey run along or over the tract bordering both banks of the river concerned. Identical orientation of squares on either side of it can thus be secured.

(3) In hilly tracts the square system is impossible. Recourse has therefore, to be had to a modification of the plane-table system.

(4) A *kadam* or *karam* is the usual unit of measures of length and a square *kadam* (called *biswansi* or *sarsahi*) the unit of measures of area Twenty *biswansis* make a *biswa*, and twenty *biswas* a *bigha*. Nine *sarsahis* make a *marla*, twenty *marlas* a *kanal* and eight *kanals* a *ghumao*. The *bigha* of the Western Punjab is one-half of a *ghumao*. The *kadams* in use vary from 54 to 76 inches, the latter being the most usual length [For details see Land Records Manual, Chapter 4]

Powers of Financial Commissioner to make rules for demarcation of bounadries and erection of survey marks.

100. (1) The Financial Commissioner may make rules as to the manner in which the boundaries of all or any estates in any local area are to be demarcated and as to the survey-marks to be erected within those estates.

(2) Rules under this section may prescribe, among other matters, the forms of survey-marks and the material to be used in their construction.

LAND REVENUE RULES.

Marks to be erected at angles on boundary of estate.

[1]32. At every angle on the boundary between two estates and at such other places on the boundary line as may be necessary for the convenient determination of the boundary of an estate, pillars of mud or stone shall be erected, not less than three feet in height.

1. Financial Commissioner's Notification No. 142, dated 9th November 1909.

33. At every point where the boundaries of more than two estates meet a tri-junction pillar of the following specification shall be erected :— Tri-junction pillars.

Material.—A single block of stone, or masonary of stone or burnt brick with lime mortar : if masonary, upper surface to be plastered with *pakka* lime plaster.

Shape.—If a stone block, in length and breadth not less than 18 inches and in depth not less than 4 feet. If masonary cubic, each edge of the cube not less than three feet long.

Position.—The lowest side of the pillar to be accurately bedded upon a levelled surface, and only half the pillar to be above ground.

For instructions regarding " survey marks ", see Chapter 4 of the Land Records Manual.

101. (1) A Revenue Officer may, for the purpose of framing any record or making any assessment under this Act or on the application of any person interested, define the limits of any estate, or of any holding, field or other portion of an estate and may, for the purpose of indicating those limits require survey-marks to be erected or repaired. Power of Revenue Officers to define boundaries.

(2) In defining the limits of any land under sub-section (1) the Revenue Officer may cause survey-marks to be erected on any boundary already determined by, or by order of, any Court, Revenue Officer or Forest Settlement-Officer or restore any survey-mark already set up by or by order of, any Court or any such officer.

Power of Revenue Officers to define boundaries—instructions. —Should the party to a dispute about the boundary line apply in writing to have survey marks erected at his own expense and agree to maintain them at his own expense, the application should be acceded to. In such a case the applicant should generally be required to collect the material and erect the survey marks, the function of the Revenue Officers being confined to verifying the position on the ground and in the maps.

This does not prevent the exercise by Revenue Officers of their power to order the erection of survey marks and to recover their cost compulsorily from those liable. But these powers are exercised sparingly. As to require the erection of survey marks in every boundary case would be to inflict a great deal of unnecessary expenditure and there is no need to comply with a request unless—

(*a*) the applicant undertakes to erect the survey marks at his own cost ; or

(*b*) there are exceptional circumstances such as a boundary once laid being again encroached on.

In the latter case the Revenue Officer may in his discretion cause the offending party to pay the whole or the greater part of the cost.

[1]Instructions for the guidance of Revenue Officers and Field Kanungoes dealing with encroachment cases or disputes as to

1. Circular Memo No. VI—2862-G, dated 11th May 1920 from the Registrar, High Court of Judicature at Lahore.

boundaries.—Enquiries lately made by the Financial Commissioner, into procedure followed in boundary cases under section 101 of the Land Revenue Act have shown that there is not much uniformity in such procedure and that while some cases are dealt fairly thoroughly in many others the proceedings are very summary and the report of the Field Kanungo who does the actual delimitation or demarcation cursory and incomplete. The following instructions are accordingly issued for the guidance of the Revenue Officers who dispose of such cases and of the Kanungos or other officials who carry out the demarcation of boundaries on the spot :—

I. If a boundary is in dispute the Field Kanungo should relay it from the village map prepared at the last settlement. If there is a map which has been made on the square system he should reconstruct the square in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares, he should with his scale read on the map the position and distance of those points from a line of a square and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute as near to it as he can, and, if possible, not more than 200 *kadams* apart, which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances when thus compared agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then lay them out with the cross staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

II. In the report to be submitted by him the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant portion of the current settlement field map of the village showing the fields if any with their dimensions (*karu kan*) of which he took measurements situated between the points mentioned in Instruction I above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.

III. If a question is raised as to the position of the disputed boundary according to the field map of the settlement preceding the current settlement, that also should be demarcated on the ground so far as this may be possible and also shown in the copy of the current field map to be submitted under Instruction No. II.

IV. On the same copy should be shown also the limits of existing possession.

V. The areas of the fields abutting on the boundary in dispute as recorded at the time of last settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Field Kanungo's report with an explanation of the cause or causes of increase or decrease if any discovered.

VI. When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end he should record the statements of all the parties to the effect that they have seen and understood the measurements, that they have no objection to make to this (or if they have any objection he should record it together with his own opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when the report comes before the Court one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

VII. The above instructions should be followed by Revenue Officers or Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.

[1]FIXING OF BOUNDARY BETWEEN RIVERAIN ESTATES.

Riverain law in the Punjab.

Riverain law is concerned with the effect on rights in land of river action, which is usually qualified according to its nature by the terms erosion, accretion and avulsion.

The two former are applied to the process by which land is sucked into the channel by the inset of a river at one place and fresh land exposed at another by its retirement. The loss and gain thereby caused are respectively described as diluvion and alluvion.

When part of an estate is transferred in a recognizable condition from the right to the left bank of the main channel of a river or *vice versa*, it is called avulsion.

These various kinds of river action are all provided for in Regulation XI of 1825 which was the law on the subject with which the first administrators of the Punjab had been familiar in the North-West Provinces. The new province was not subject to the Bengal Regulations, but twenty-three years after annexation Regulation XI of 1825. [*See* appendix] was expressly extended to it by the third section of the Punjab Laws Act, IV of 1872, and it is still in force.[2]

The regulation makes custom the rule of decision in all "disputes relative to alluvial land" between private owners, whenever any clear and definite usage.....may have been immemorially established."[3] As an example of such a usage it cites the *deep-stream rule* pure and simple, by which the main channel, wherever it may happen to be for the time being, forms the boundary between estates on opposite banks of a river, and property in land changes hands with every alteration in its course. The "*deep-stream rule*" is expressed by various vernacular terms, *hadd sikandri, kach mach, darya banna, kishti banna, mach-hisim*. It was recorded as the prevailing custom on the Beas where

1. See Chapter XI of the Land Administration Manual.
2. As amended by section 4 of Punjab Act, I of 1899, by which sections 101-A to 101-F were added section 2 of Regulation XI of 1825.
3. Section 2 of Regulation XI of 1825.

it forms the dividing line between the Gurdaspur and Hoshiarpur districts (now the boundary has been fixed).

As a rule regulating the ownership of land, it is so harsh in its working that it was universally condemned by British Officers. It may be partly on this account that in the vast majority of estates elsewhere in the Punjab, which are recorded as following the deep-stream rule, it is declared to be subject to the qualification that the transfer of land in an identifiable state by avulsion from one bank of a river to another involves no change of ownership.

Rules of decision in absence of custom.

In the absence of well-established local usages,[1] two rules of decision are laid down—

(1) Land added gradually owing to the " recess " of a river is to be considered an increment of the property of the person to whose holding or estate it has become annexed.

(2) When a river—

(*a*) by a sudden change in its course breaks things or intersects an estate, or

(*b*) by the violence of its stream separates a considerable piece of land from one estate and joins it to another " without destroying the identity and preventing the recognition of the land so removed, " the land is to remain the property of the original owner.[2]

Islands.—Islands thrown up in large and navigable rivers, the beds of which do not belong to private owners, are to be at the disposal of Government if the channel between the island and the river bank is unfordable throughout the year. If the channel is fordable, the island is to become an accession to the estate on the nearer of the two banks. In the case of small rivers the property in whose beds and the right of fishery have been recognized as belonging to a private owner, the island is also to belong to him.[3]

Cases not governed by rules.—In other cases not governed by the rules the Courts are to be guided by the best evidence available as to local custom, or, in default of such evidence, by general principles of equity and justice.[4]

Rule of fixed boundaries—The Punjab Riverain Boundaries Act, 1899.— In some cases, for example on the Upper Ravi in the Gurdaspur and Lahore districts and on part of the Jhelum in the Jhelum district, the rule of fixed boundaries, known as *warpar*, prevails. As long ago as 1867 Sir James Lyall proposed the adoption of fixed boundaries everywhere, but the Financial Commissioner of the day, regarded the proposal as impracticable because of the lack of skill in survey work among the subordinate revenue staff. This objection has ceased to be valid, and the first Act passed by the Punjab Legislative Council (Act I of 1899) was one enabling Government to order the substitution of fixed for varying boundaries in estates subject to river action. It added six sections 101-A to 101-F, to the Punjab Land Revenue Act, 1887, and made additions to section 158 of the same Act, and to the second and third sections of Regulation XI of 1825.

1. Section 3 of Regulation XI of 1825.
2. Section 4 (1) and (2) of Regulation XI of 1825.
3. *Ibid*, section 4 (5).
4. Section 4 (5) of Regulation XI of 1825.

By an addition to section 158 of the Land Revenue Act questions connected with proceedings for the determination of boundaries under Punjab Act I of 1899 are excluded from the jurisdiction of the Civil Courts [Section 158 (*xviii*) (*a*)].

Additions made to sections 2 and 5 of Regulation XI of 1825 make that enactment of no effect after a fixed boundary has been laid down.

Jurisdiction boundaries.

In theory, there is no necessary connection between the boundaries of private property and those of jurisdiction. In the case of the latter, three kinds of riverain boundaries may be distinguished—

(*a*) between districts in the same administration ;
(*b*) between two administrations ;
(*c*) between British administration and Indian States.

A notification published in 1869 declared the deep-stream of the Sutlej to be the boundary between adjoining districts along its whole course (*Revenue Department No.* 344, *dated 6th March* 1869). No similar notification has been issued as regards any of the other rivers in the Punjab. The tendency in most places probably was to apply the same rule to the determination of ownership and jurisdiction. In 1889 the Punjab Government accepted a proposal made by Colonel Wace to declare by notification that the boundaries of districts separated by rivers followed the boundaries of ownership in the boundary villages, the deep stream being adopted where that was the practice followed for regulating proprietary rights, and the rule of fixed boundaries being observed where the estates on opposite banks defined their rights of ownership thereby. To the notifications relating to the different rivers, schedules were annexed giving the names of the boundary estates on their right and left banks.

The boundary along the course of the Jumna between the Punjab and the United Provinces is regulated by the deep-stream rule pure and simple in the Panipat and Karnal *tahsils* of the Karnal district. But the boundary of the Thanesar *tahsil* of Karnal, the Jagadhri *tahsil* of Ambala and the Gurgaon are fixed.

The boundary on the rivers Ravi and Jhelum between the Punjab and the Kashmir State is a fixed one. The boundaries of Indian States cannot be legally affected by Punjab Act I of 1899. But, since it was passed, a fixed boundary has been laid down by consent between British territory and Kapurthala along the course of the Beas and the Sutlej, and a similar line has been demarcated between the Punjab and Bahawalpur along the Sutlej and the Indus. With respect to the Punjab and Native States at first the deep-stream rule in its extreme form prevailed. But in 1860 it was declared that " it was incorrect to assume that as between Sovereigns the only safe rule of practice is that the main river should be the boundary, irrespective of all other considerations. The rule is such only in cases of alluvion, and not in those of avulsion..... When a boundary river suddenly quits its bed and cuts for itself a new channel, it ceases to be the boundary, and the Government which ruled over the territory cut off by the change in the river continues to rule it." This governs all cases which had occurred after the date, August 1860 (*Land Administration Manual, para.* 436).

Power to fix boundary between riverain estates.

101-A. (1) When any two or more estates are subject to river action and the limits of any such estates are by any law, custom, decree or order applicable thereto, liable to

vary according as variations may from time to time occur in the course or action for such river, the [1][Provincial Government] may, * * * * order a permanent boundary line to be fixed between any such estates or such portion thereof as are liable to river action.

(2) Upon an order being made under sub-section (1) the Collector shall fix a boundary line between such estates or portion of such estates accordingly, and shall demarcate the same, in accordance with the rules (if any) made under section 100 and the provisions of section 101.

(3) Every such boundary line shall be fixed with due regard to the history of the estates and the interests of the persons respectively owning them or possessing rights therein, in such manner as may be just and equitable in the circumstances of each case.

(4) No such boundary line shall be deemed to have been permanently fixed until it has been approved by the Financial Commissioner.

Sub-section (3)—instructions.—The Collector should in the first place try to get the villages concerned to come to an amenable agreement. Failing that, he must himself fix a line.. ....., and, in doing so, should aim at putting each party in as good a position on the whole as he would have been; taking a long series of years together, if matters had been allowed to continue under the existing law or custom. Among other things he would have to bear in mind that a bird in the hand is worth two in the bush. If, for example, the river were making a dead set upon its right bank, which it was in a high degree likely would continue for some years, some allowance would have to be made for the fact that the riparian owners on the left bank would, by our taking action under the Act be deprived of land which would be pretty certain to have accrued to them for some years if we had left matters alone. On the other hand, it should be borne in mind that in all probability after some years the river would begin to work back again, and whatever was reasonable should be allowed *per contra* on this account in fixing the line. The object should be to draw the line as far as possible so that neither party should feel that the other had obtained a very clear advantage by our intervention (*Land Administration Manual, para.* 422).

See also A. I. R. 1915 Lah. 239.

Effect of fixing a boundary between riverain estates. Proviso.

101-B. (1) Every boundary line fixed in accordance with the provisions of section 101-A shall, notwithstanding any law or custom, or any decree or order of any Court of law to the contrary, be the fixed and constant boundary between the estates affected thereby, and the proprietary and all other rights in every holding, fields or other portion

1. Substituted for " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.
* * * The words " in its discretion " were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

of an estate situate on each side of the boundary line so fixed, shall, subject to the following proviso, vest in the land-owners of the estate which lies on that side of the boundary line on which such holding, lied or other portion of an estate is situate :

Provided that, if, by the operation of this section, the proprietary or any other rights in any land which at the time a boundary line is fixed is under cultivation, or reasonably fit for cultivation, or yields any produce of substantial value would be transferred from the land-owners and other right-holders of any one estate to the land-owners of any other estate, the Collector shall, by written order, direct that the right in such land shall, subject to the provisions of section 101-C and section 101-D, not be so transferred unless and until the land, in respect of which any such order is made, ceases to be reasonably fit for cultivation, or to yield any produce of substantial value, and upon any such order being made, the transfer of the rights in such land shall be suspended accordingly :

Provided further that when any portion of the land specified in any such order ceases to be reasonably fit for cultivation or to yield any produce of substantial value, the order shall, when the Collector, in writing, so directs, cease to operate as to that portion.

(2) The decision of the Collector as to whether for the purposes of the proviso to sub-section (1) of this section, any land is or is not reasonably fit for cultivation or does or does not yield any produce of substantial value shall be final.

Application for immediate transfer of rights reserved under the proviso to sub-section (1) of section 101-B upon payment of compensation, and procedure thereupon. Award of compensation and extinguishment of rights thereby.

101-C. (1) When any order has been made under the proviso to sub-section (1) of section 101-B, the land-owners (or any of them) in whom, but for such order, the rights in the land specified therein, would vest, may apply in writing, to the Collector to forthwith transfer the rights, the transfer of which has been suspended by such order upon payment of compensation for the same.

(2) When an application under sub-section (1) is made, the Collector shall—

(*a*) fix a day for the hearing of the application ;

(*b*) cause notice of the application, and of the day fixed for the hearing thereof, to be served on, or proclaimed for the information of, all persons recorded as having rights in the land specified in the order made under the proviso

to sub-section (1) of section 101-B, and all other persons interested or claiming to be interested therein ;

(*c*) upon the day so fixed for hearing, or any day to which the hearing may be adjourned, inquire into the rights in the land and award compensation in respect of all rights found established therein, to the persons severally entitled thereto ;

(*d*) inform the applicant of the aggregate amount of compensation so awarded and require him to deposit the amount with the Collector on or before a day to be fixed by him in that behalf :

Provided that, notwithstanding anything in this sub-section contained, it shall be lawful for the Collector, in his discretion and at any time before an award of compensation thereon has been made, to reject any application made under sub-section (1).

(3) In awarding compensation under sub-section (2), the Collector shall be guided by the provisions of section 23 and section 24 of the Land Acquisition Act, 1894, so far as the same may be applicable to the circumstances of the case.

(4) Upon the fifteenth day of May next after the whole amount of compensation so awarded has been deposited with the Collector, the order made under the proviso to sub-section (1) of section 101-B, shall cease to operate, and the rights specified therein shall be transferred and vest in the manner prescribed in sub-section (1) of section 101-B, notwithstanding anything in the proviso thereof contained, and the Collector shall proceed to tender the compensation to the persons severally entitled to receive the same under his award. If any such person shall refuse to accept the sum so awarded and tendered to him, it shall be placed to his credit in the public treasury.

(5) When any order made under the proviso to sub-section (1) of section 101-B, shall, under the provisions of sub-section (4) of this section, cease to operate and determine, all rights reserved to any person by such order shall be extinguished.

101-D. When any person possessing any rights in any land, in regard to the rights in which an order has

been made under the proviso to sub-section (1) of section 101-B voluntarily transfers such rights to any land-owners of the estate, in the land-owners of which, but for such order, such rights would vest under the operation of sub-section (1) of section 101-B, the rights so transferred shall forthwith cease to be subject to such order.

Order under the proviso to sub-section (1) of section 101-B to cease to apply to rights voluntarily transferred to a landowner of the estate to which the land is transferred by fixing boundary.

101-E. In every case in which, by the operation of section 101-B or section 101-C, or section 101-D, proprietary or other rights in land are transferred from the land-owners and other right holders of any one estate to the land-owners of any other estate, such rights shall be subject to all the incidents of tenure and liabilities which under any law or custom for the time being in force, apply to the rights of the land-owner of the estate to which such rights are so transferred.

Rights transferred to be liable to all the incidents of tenure of the estate to which the transfer is made.

101-F. For the purposes of sections 101-A, 101-B and 101-C, respectively, the expression " Collector " shall be deemed to include any Revenue Officer appointed by the Provincial Government to perform all or any of the functions of a Collector under any of the provisions thereof.

Meaning of the expression " Collector " in sections 101-A, 101-B and 101-C.

102. Subject to any rules which the Financial Commissioner may make in this behalf, survey-marks shall be erected and kept in repair by or at the cost of the persons interested in the land for the indication of the limits of which they are required :

Cost of erection and repair of survey-marks.

Provided that the Provincial Government may in any case direct that the cost of erection shall be borne by the Government or be paid, out of the proceeds of the village-officers' cess.

103. (1) If the persons interested in the land fail to erect or repair a survey-mark within thirty days from the date of their being required by a Revenue Officer to do so, the Revenue Officer may cause it to be erected or repaired.

Recovery of costs incurred by the Government.

(2) Where the Revenue Officer causes a survey-mark to be erected or repaired, he shall, subject to any rules or

direction under the last foregoing section, apportion the cost among the persons interested in the land in such manner as he deems just and certify the same to the Collector.

(3) The Collector may recover the cost as if it were an arrear of land-revenue.

Power of Revenue Officers to enter on land for purposes of survey and demarcation.

104. Any Revenue Officer and any person acting under the order of a Revenue Officer, may, in the discharge of any duty under this Act, enter upon and survey land and erect survey-marks thereon and demarcate the boundaries thereof and do all other acts necessary for the proper performance of that duty.

Survey for preparation of records.

105. (1) When any land is being surveyed in pursuance of rules under section 46, clause (*c*), any Revenue Officer directing the survey may, by notice or proclamation, require all persons having rights or interests in the land to indicate, within a specified time, by temporary marks of a kind to be described in the notice or proclamation, the limits of those rights or interests.

(2) If a person to whom the notice or proclamation is addressed fails to comply with the requisition, he shall be liable at the direction of the Revenue Officer to fine which may extend to ten rupees.

Provision of flag-holders and chainmen for those surveys.

106. (1) For the purposes of the survey of any land in pursuance of rules under section 46, clause (*c*), the land-owners shall be bound to provide fit persons to act as flag-holders and chainmen.

(2) If the land-owners fail to provide such persons or to provide them in sufficient number, such other persons as a Revenue Officer considers necessary may be employed and the cost of employing them recovered from the land-owners as if it were an arrear of land-revenue.

Professional surveys.

107. (1) If it is necessary to make a survey by other agency than that of Revenue Officers or village-officers, the Provincial Government may publish a notification stating—

(*a*) the local area to be surveyed and the nature of survey;

(*b*) the names or official designation of the officers by whom the survey is to be made; and

(*c*) the kind of survey marks to be erected by those officers.

(2) From the date of the notification the officers specified therein, and the persons acting under their order, shall have for the purposes of the survey the powers conferred on Revenue Officers by section 104.

Penalty for destruction, injury or removal of survey-marks.

108. (1) If any person wilfully destroys or injures or without lawful authority removes a survey-mark lawfully erected, he may be ordered by a Revenue Officer to pay such fine not exceeding fifty rupees for each mark so destroyed, injured or removed as may, in the opinion of the Revenue Officer, be necessary to defray the expense of restoring the same and of rewarding the person, if any, who gave information of the destruction, injury or removal.

(2) The imposition of a fine under this section shall not bar a prosecution under section 434 of the Indian Penal Code.

Report of destruction or removal of, or injury to survey-marks.

109. Every village-officer of an estate shall be legally bound to furnish a Revenue Officer with information respecting the destruction or removal of, or any injury done to, any survey-mark lawfully erected in the estate.

INSTRUCTIONS REGARDING THE OPERATION OF THE PUNJAB RIVERAIN BOUNDARIES ACT.

(Appendix to Chapter 5, Punjab Land Records Manual).

Instructions regarding the carrying out of the provisions of the Punjab Riverain Boundaries Act.

I. The provisions of the Act may be set in motion in two ways:— either the Deputy Commissioners of any two districts may, as for an order to be passed under section 101-A (1) with regard to any particular estates within their districts, and the Commissioner or Commissioners concerned will, forward the application to the Financial Commissioners with a recommendation as to who should be the Collector for the purposes of the Act ; or Government may depute a special officer as Collector to carry out the demarcation of all village riverain boundaries along a particular stretch of river, with discretion in special cases to leave the boundaries of any particular villages undetermined.

II. In considering where the fixed boundary should be laid under section 101-A, the Collector should in the first place, try to get the villages concerned to come to an amicable agreement as to the positions of the boundary line.

If a boundary line can be fixed by agreement, that line should be declared by the Collector to be the line fixed under section 101-A.

III. It should be remembered that a village may often agree to a boundary which is not as favourable as might reasonably be expected, on the condition that all rights in the lessor area transferred to it are not transferred at once and not reserved under the first proviso of section 101-B (1). Such a compromise should always be attempted as it promises finality. To help the villages to come to a decision, the Collector might lay down two boundary lines, one the line which he would fix under the Act, and the other as a basis for a compromise on the condition of immediate transfer

of rights, and let the people choose. Care must, of course, be taken that the rights of individuals do not suffer. The Collector might, where necessary, arrange for the payment of compensation by consent by one party to the other.

IV. If a line cannot be fixed by agreement, the Collector must himself fix a line under section 101-A (3), and in doing so should aim at putting each party in as good a position on the whole as he would have been, taking a long series of years together, if matters had been allowed to continue under the existing law or custom. Among other things he would have to bear in mind that a bird in the hand is worth two in the bush. If, for example, the river were making a dead set upon its right bank, which in a high degree likely would continue for some years, some allowance would have to be made for the fact that the riparian owners on the left bank would, by our taking action under the Act, be deprived of land which would be pretty certain to have accrued to them for some years if we had left matters alone. On the other hand, it should be borne in mind that in all probability after some years, the river would begin to work back again and whatever was reasonable should be allowed per contra on this account in fixing the line. The object should be to draw the line, as far as possible, so that neither party should feel that the other had obtained a very clear advantage by our intervention under the Act.

V. Cases of estates now entirely in the bed of the river will occasionally come before the Collector. In each case it will have to be decided according to the custom of the locality whether such estates should be included in adjacent estates or maintained as separate estates.

VI. The Collector should in all cases record his reason for adopting the boundary line fixed by him, and should file copies of the old settlement maps with the proceedings. The statements of the headmen should always be recorded. Where possible the boundary line should be marked on the ground with pillars.

VII. When the villagers do not agree that valuable land should be transferred at once, the Collector must determine what land "is under cultivation, or reasonably fit for cultivation, or yields any produce of substantial value." Generally all land which has ever been cultivated or ploughed, and has not since been materially altered by river action and all land which yields grass for grazing or thatching purposes should be regarded as coming within the first proviso of section 101-B (1). In cases of doubt the land should be held to come within the terms of the proviso.

VIII. Where the land on both sides of the river bed has not been already mapped on a common system of squares, the Collector must survey and map the whole of the land ordinarily liable to diluvion. Where separate diluvial chaks have not been marked out at settlement, the Collector will determine how much land it is necessary to map. If the length of the sides of the squares used on either side of the river is the same, the boundary map should be prepared on the same scale. If the scale differs on the two sides of the river, the Collector may adopt whichever scale he chooses In either case he should take as his base line the sides of existing squares on one side of the river or the other So long as the river has the same district or the same two districts on either side of it, the same scale should be maintained, and the Collector should have his base on the same side of the river : but the same system

of squares should not be continued from village to village unless the settlement maps are also continuous. When the river passes out of one district into another the Collector may, if he thinks fit, start from a base on the other side of the river.

IX. The map will show the natural features of the river bed, etc., the new boundary line and so many khasra numbers entered in the settlement or subsequently amended maps of the villages on either side of the line as will be affected by the action taken under the Act, or are necessary for easy identification. Numbers should be given to blocks of land which for any reason (*e.g.*, because they have always been under water) have not got khasra numbers already. The new numbers should be in continuation of the numbers in the estate to which the land will in future belong.

The lands coming under the first proviso to section 101-B (1) must be colour-washed, so as to distinguish them from the lands the rights in which vest at once in the landowners of the estate within which they are included.

X. The Collector shall also, where necessary, determine and delineate on the map the boundaries of estates on the same side of the river *inter se*. The ordinary rule is *mahaznuqabala*, *i.e.*, the boundary line between the villages will be prolonged in its original direction up to the fixed boundary. This rule should be observed unless there is strong proof of established custom to the contrary, or unless the parties concerned agree in some other boundary.

XI. The Collector will then draw up a khasra for each estate for all lands included in the estate and not already shown in the records as belonging to the estate. Lands coming within the proviso of section 101-B (1) will be shown separately. All lands, the rights in which are transferred at once, should be entered against the names of the persons who are entitled to them by custom : all lands coming within the proviso of section 101-B (1) should be shown against the names of the persons in whose favour the rights in the land are reserved.

FORMS OF KHASRA.

A.—*Khasra for the village from which land has been transferred immediately.*

Serial No.	Field No.	Khewat or Khatauni No.	Owners.	Tenant, if any, with description.	Area with class of land.	Date of transfer and name of village to which transferred.
1	2	3	4	5	6	7

B.—*Khasra for the village to which land has been transferred immediately.*

Serial No.	Field No. as in former village.	Area as in former village.	New No.	Area.	Owner.	Tenant, if any, with description.	Date of transfer and name of village from which transferred.
1	2	3	4	5	6	7	8

C.—*Khasra of land coming under the proviso of Section 101-B (1).*

Serial No.	Field No. in former village.	Field No. in new village.	Area.	Class of land and purpose for which used.	Owner (Malik Kabza).	Tenant, if any, with description.	Order with date by which the rights reserved under proviso to section 101-B (1) were extinguished.
1	2	3	4	5	6	7	8

XII. Files will be prepared by villages and should resemble the ordinary diluvial files. They will contain the following documents :—

(*a*) Number and date of Government order under section 101-A (1).

(*b*) List of villages conterminous with the village for which the file is prepared.

(*c*) Description of custom hitherto prevailing as to river boundary.

(*d*) Tracing of the map prepared under instructions VIII and IX.

(*e*) Record of oral and written evidence.

(*f*) Order of the Collector under instruction VI.

(*g*) The khasra prescribed in instruction XI.

XIII. The patwaris of the riverain estates will be given copies of the khasra, and will show the fixed boundary line in their maps. The field kanungo must certify on the maps that he has personally supervised the plotting in of the new line. In the next annual papers the land included in an estate under section 101-B (1) and not coming within the proviso, will be shown if it had been transferred to the estate by the custom hitherto prevalent in the estate, and land excluded under that section will be excluded from the record.

XIV. Land coming within the first proviso to section 101-B (1) will be shown in the revenue papers of the estate to which the land is transferred, against the names of the persons in whose favour the rights have been reserved, and the words "*malik kabza zer* Act I, 1899" shall be entered in the column of remarks. In the records of the village from which the land has been transferred, the land will be shown in appendices under the same *khatauni* or *khasra* numbers as it would have come had it been shown in the body of the jamabandi or khasra girdawri. In the jamabandi a note should be entered against the main khatauni number referring to the entry in the appendix. Such land should be excluded from all totals of area, revenue, etc, relating to the village from which it has been transferred.

XV. Persons having rights in land under the proviso will pay their revenue to the lambardar of the *taraf*, *patti* or village within which the land has permanently been included.

XVI. Limited owners under the proviso will retain all rights accruing to them in their own villages from the possession of such lands. For example, the fact of a man's land having been transferred under the Act to another village will not deprive him of any share in the common land to which he was entitled before the boundary was laid down by reason of his ownership of the transferred land. If the rights in the common land are governed by the rule *hasb rasad khewat*, the revenue of the transferred lands will be taken into account in any partition of common land so long as the order under the proviso to section 101-B (1) is maintained.

XVII. An application under section 101-C may be made either when the boundary line is first laid down for any subsequent time.

The notice under section 101-C (2) (*b*) should be issued to all owners of the village within which the land is included. The compensation to be awarded will be calculated as if the limited owner were a full proprietor.

XVIII. In deciding whether to entertain or reject the application the Collector will consider whether it is to the interest of both villages that the limited owners should be bought out. The chief consideration will be how best to avoid future litigation in the Civil Courts. It must be remembered that a person acquiring land by payment of compensation under section 101-C does not thereby acquire an indisputable title. His title is liable to be called in question in the Civil Courts under section 101-E by persons who claim a prior right of pre-emption. When, then, more than one person claims to purchase under section 101-C, the Colloctor should, so far as he can, select the applicant who seems best entitled to the land, and who is least likely to be subsequently sued in the Civil Court.

Generally the proprietors with the strongest claim to pre-emption area (*a*) those to whom according to custom or law the land would have fallen had it been transferred by river action ; then (*b*) the joint proprietary of the *patti* or *taraf*, to which these special proprietors (if any) belong ; then (*c*) any proprietor of that *patti* or *taraf* ; then (*d*) the joint proprietary of the estate ; and lastly, (*e*) any proprietor of the estate.

In rare cases it may be best to refuse to proceed with the application until the disputes between the different applicants have been settled amicably or by a declaratory decree in a Civil Court.

XIX. Subject to what is said in the last paragraph, a person acquiring land under section 101-C acquires right of full ownership, together with all the contingent rights which belong to owners in the estate in which the land is situated.

XX. When any land is acquired under section 101-C, the patwari both of the estate to which the land belongs and of the estate or estates to which the limited owners belong, shall enter the acquisition in their mutation registers, and the land will thenceforward be excluded from the records of the latter estates. No fee should be charged on the entry in the register of the village to which the limited owners under the proviso to section 101-B (1) belong.

XXI. A transfer under section 101-D takes precedence of an application under section 101-C, that is to say, if an application under section 101-C is pending, and in the meantime the limited owner voluntarily transfers his rights to a land-owner of the estate in which the land is included, the voluntary transfer takes effect, and the proceedings under 101-C should be stopped, so far as they apply to the land transferred.

The title of the transferee is, of course, liable subsequently to be called in question in a Civil Court under section 101-E but, until upset, carries with it the rights of full ownership.

XXII. A transfer under section 101-D should be shown in the mutation registers as directed in paragraph XX.

XXIII. At the annual di-alluvion inspections the Collector shall inspect all plots of land in which rights have been reserved under

proviso 1 to section 101-B (1), and, if in his opinion any plot has ceased to be reasonably fit for cultivation or to yield any produce of substantial value, he shall after considering what the limited owners and transferring the lands to the persons entitled to them under section 101-B (1). His order shall be communicated to the Collector of the district to which the limited owners belong, in order that they may be informed and the necessary amendments made in the records.

XXIV. The Financial Commissioners will determine under section 12 of the Land Revenue Act which Commissioner will hear appeals from the order of the Collector when the order affects villages situated in two revenue divisions.

XXV. The record of the proceedings under section 101-A will, in each case, be submitted to the Financial Commissioners through the Commissioner in original.

CHAPTER IX

Partition

Introductory

Joint ownership.—Ownership, in its most comprehensive signification denotes the relation between a person and any right that is vested in him. As a general rule a right is owned by one person only at a time, but duplicate ownership is perfectly possible. Two or more persons may at the same time have the same rights vested in them. This may happen in several distinct ways, but the simplest and most obvious case is that of co-ownership. The right is an undivided unity, which is vested at the same time in more than one person. It is not correct to say that a right owned by co-owners is divided between them, each of them owning a separate part. A and B may be in separate possession of their respective shares in the land but still they may be co-owners. Joint ownership is one of the different forms that co-ownership may assume and is distinguished from *ownership in common.*

In India joint family and common enjoyment of family property had been the tradition for centuries. Even in the present days, when individualistic ideas have to a great extent been engrafted on the Indian mind, joint family is very common institution in almost every province. India is mainly an agricultural country. The number of villages far exceeds the number of cities and towns. And what is true about India is true about the Punjab also. It is an essential feature of the village community, at least in its original form, that the proprietary body should possess part of their lands in common. The village site, the grazing lands over which the cattle wandered, and sometimes the wells from which the people drew their drinking water, were held in joint ownership. But besides the large joint holdings in which all the joint owners in an estate or a sub-division of an estate have any interest, it constantly happens that many of the other holdings are jointly owned by several share holders. Even to this day, where-ever real village communities exist, it is a general idea that the land belongs rather to the family than to an individual. These family holdings were very common when the first records of rights were framed. Though the tendency of the British legal and revenue system has been to substitute individual for communal holdings, the holdings of the latter type are still numerous. And holdings owned by individuals are constantly reverting to the condition of joint holdings under the Law of Inheritance which gives to each son or failing sons to each male collateral in the same degree of relationship, an equal share in the land of a deceased proprietor. A joint holding is also created whenever a land-owner sells or mortgages with possession a share of his holding instead of particular fields included in it.

Partition of joint property.—Jointness has its natural consequence of separation sometime or other either when the family grows too big, or the members of it prove to be of different temperament and ways, or a stranger has been introduced voluntarily or otherwise. Again, the profits derived from agriculture lead in time to large portions of the common waste of the village or *patti* being broken up

by individual share-holders, with the result that in the end a demand arises for its division. Partition of agricultural land, therefore, comes to be a common occurrence in this country. The legal maxim *Nemo in communione potest invitus detineri* (no one can be kept in coproprietorship against his will) is a growth of modern jurisprudence. In ancient times the invariable rule with every society was aggregate ownership as opposed to individual proprietary right. In India, the idea slowly developed, though the distribution of the family property by the father appears to be a very ancient practice, being the outcome of a natural exercise of the *patria potestas*, as Professor Jolly points out.

The right to partition flows from the notion of individual ownership of property which is again the outcome of a slow process of contraction from the notion of tribal ownership This right is one of the ordinary legal incidents of joint ownership. It seems very closely and intimately connected with the right of alienation, that is, sale or exchange. But sale as well as exchange is a transfer of property, but partition is not a transfer, for it merely effects a change in the mode of enjoyment ; it does not effect any alteration in the rights of the parties. The distinctions between sale, exchange and partition are well defined. Exchange is transfer of one thing for another. In sale the consideration is paid in property or goods, to which the money may be added to equalise the consideration or the price. Partition, however, is merely an arrangement whereby co-owners having an undivided interest in one or many properties take by arrangement specific property in lieu of their shares in all.

But partition should not be confused with family arrangement or compact which is a friendly settlement arrived at by the members of the joint family with a view to quieting hostilities and ill-feelings among themselves, and avoiding costs and troubles of a long-drawn partition proceedings. Unlike partition it does not determine the legal rights but simply indicates a mode of enjoyment of properties among themselves. Partition is not again a substitute for ejectment because the former implies an existing joint possession and enjoyment, to be converted into possession in severalty.

According to Civil Law, it is only joint property that is liable to partition at the instance of one or several persons who own it jointly, property held in severalty being divisible only by the act or will of the owner. The Land Revenue Act deals only with the partition of joint property, and so far acknowledges the rule of Civil Law, but it also empowers the Revenue authorities for sufficient reasons to disallow partition. The result is that the right of partition may in some cases exist as a right, defeasible by the order of a Revenue Officer refusing to enforce it.

Partition of a part of joint property.—Sir Meredyth Plowden remarked in *Shadi* v. *Sain Ditta*.[1]—" If a sharer in joint property chooses to select a portion of the joint property for partition, and sue for partition of that alone, his suit for partition of such portion cannot proceed without the assent or acquiescence of the defendants. If the latter object, the plaintiff must either amend with leave of the Court so as to include the whole of the joint property, or such less portion as the parties agree to divide, or submit to have his suit dismissed. "

1. 77 P. R. 1887.

These remarks equally apply to the partition of land under the P. L. R. Act. Holding is defined as a share or portion of an estate held by one landowner or jointly by two or more landowners. A holding may consist of a single field or more than one field. From the above analogy of Civil Law, it, therefore, seems clear that a co-owner cannot apply for the partition of some fields included in the joint holding without including the other fields also unless other co-owners agree to it. It was held in *Sheo Nath* v. *Parma Nand*.[1] " Reasons that apply to the partition of joint property apply also to the partition of *shamilat*, and, therefore, a co-sharer cannot maintain a suit for partition of a portion only of the *shamilat* is objected to by any of the other co-sharers. It is obvious that to allow a partial partition might produce a very unfair result. It is quite possible that a co-sharer might have already more than his share in other plots of *shamilat* and be in fact entitled to nothing in the plot of which partition is being sought. "

Effect of partitions of estates and tenancies on joint liability for revenue and rent.

110. (1) A partition of land, either under this Chapter or otherwise, shall not, without the express consent of the Financial Commissioner, affect the joint liability of the land or of the landowners thereof for the revenue payable in respect of the land, or operate to create a new estate, and if any conditions are attached to that consent, those conditions shall be binding on the parties to the partition.

(2) A partition of a tenancy shall not without the express consent of the landlord, affect the joint liability of the co-sharers therein for the payment of the rent hereof.

Complete (perfect) and incomplete (imperfect) partitions.— " Perfect " partition, as distinguished from " imperfect " indicates that form of division whereby not only is the separate enjoyment of fields and holdings secured, but the joint revenue responsibility is dissolved, and wholly separate estates are created. When a complete partition is made there is a total severance of rights and liabilities. In fact, each divided share becomes a separate estate. Complete partitions have been fully allowed in the United Provinces with the result that many villages have been split up into a number of small estates. But they have always been looked down upon with much disfavour in the Punjab, as the provisions of the above section show. Although the joint responsibility for payment of land revenue is rarely enforced, because serious revenue default is so rare ; but still it is a reality.

Application for partition.

111. Any joint owner of land, or any joint tenant of a tenancy in which a right of occupancy subsists, may apply to a Revenue Officer for partition of his share in the land or tenancy, as the case may be, if—

(*a*) at the date of the application the share is recorded under Chapter IV as belonging to him, or

1. 32 P. R. R. 1908=75 P. W. R. 1908=151 P. L. R. 1908.

(*b*) his right to the share has been established by a decree which is still subsisting at that date, or

(*c*) a written acknowledgment of that right has been executed by all persons interested in the admission or denial thereof.

Scope of the section.—The Code of Civil Procedure is only general and procedural law. It is qualified by all local, special, and substantive laws (*vide* section 4, Civil Procedure Code). Clause (*xvii*) of section 158 (2) of the Punjab Land Revenue Act, 1887, expressly excludes from the jurisdiction of Civil Courts 'any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, *not being a question as to title in any of the property of which partition is sought.*' It is, however, to be remembered that the above section of the Land Revenue Act allows only joint owners or joint occupancy tenants to apply for partition of joint land or joint tenancy as the case may be. This section, therefore, would have no application where, for instance, a land-owner applies for partition of a tenancy held under him. In *Mst Aso* v. *Jagdip Singh*,[1] the defendant Mst. Aso originally held all the land in occupancy right but fell into arrears of rent and in consequence a decree was passed against her in 1896, ejecting her from half of the occupancy. The order did not specify the definite area which she was to vacate. The plaintiff subsequently issued a notice of ejectment on the defendant respecting half of the land and received formal entry in 1913. He then proceeded to apply for partition under section 111 of the Land Revenue Act but failed to obtain the assistance he sought, the case not coming within the provisions of that section. He then brought a suit in a Civil Court. The Munsiff held that owing to section 77 of the Tenancy Act, the suit would not lie in a Civil Court. He then brought his case claim for possession through partition before a Revenue Court. It was held that the jurisdiction of the Civil Court though not barred under section 158 (2) (*xvii*) of the Land Revenue Act, was barred by section 77 of the Tenancy Act, as the whole of the defendant's holding was a tenancy.

Only joint owner of land or joint occupancy tenant may apply for partition under this section.

Section 111, Punjab Land Revenue Act, requires that the parties to a partition must bear the same status, that is to say, they may be either owners or occupancy tenants but not both. Certain occupancy tenants, applied for partition of holdings jointly held by themselves and the owners. It was held : "The summary procedure contemplated by this Act (Land Revenue Act) is not applicable to proceedings in which the parties are admittedly landlord and tenant respectively. The case falls within the purview of section 77, sub-section (3) (*i*) of the Punjab Tenancy Act.....The proper course for the aggrieved occupancy tenants in this case is to bring a suit against the owners for possession by partition of the land which they claim, or for a share of profits."[2]

Does not apply to land excluded under section 4 of the Act.

Again, the provisions of the Land Revenue Act do not apply to land excluded from the operation of that Act by section 4 of the same. Thus, for instance, with respect to *abadi* not assessed to land revenue the suit for partition will lie in a Civil Court only according to the provisions of the Code of Civil Procedure.

1. 1922 L.L.T. 7.
2. Tuhi Ram *v.* Bola and others=1931 L.L.T. 32.

Besides this, it is to be borne in mind that one or other of the three conditions (*a*), (*b*) and (*c*) laid down in this section must be fulfilled by the applicant before he is entitled to apply for partition under this section.[1]

Only owner of land may apply for partition.

Distinction between 'owner of land' and 'landowner.'—Under this section any joint 'owner of land' may apply to a Revenue Officer for partition of his share in the land. The word 'owner' has not been defined in the Act, and according to the accepted canons of interpretation we must, unless the context negatives such a construction, take it to have been used in its ordinary sense. 'Landowner' is, however, defined by section 3 (2) of the Act, and we have already noticed the distinction between the two terms 'owner of land' and 'landowner.' Thus, mortgagees with possession are certainly 'landowners' within that definition but not 'owners of land.' We shall study now the right of mortgagees with possession, lease-holders and other persons having similar limited interest, to apply for partition.

Mortgagee.

Mortgagees' right to apply for partition.—The question of the mortgagee's right to apply for partition has been fully discussed in *Hira Singh* v. *Devi Ditta*[2] which lays down as follows :—

"A mortgagee making as such a claim to partition must show that the right of partition has come to him in consequence of his mortgage. He could acquire such right by express stipulation in the mortgage deed, by operation of law, or by custom ; and there may by circumstances also under which a Civil Court might grant him the right on grounds of justice, equity and good conscience. When a mortgagee of agricultural land as such applies for partition his mortgage deed or the record of the oral transaction in the revenue papers should be examined, and if there is no express agreement that the mortgagee is entitled to partition, the application should ordinarily be refused under section 115 of the Punjab Land Revenue Act. If the mortgagee alleges custom, the *wajib-ul-arz* and if asked to do so the *riwaj-i-am* must be referred to. The Revenue Officer need not go further. If there is doubt, it is for the mortgagee to establish his right in a Civil Court. If not satisfied that the mortgagee can claim partition by the express term of his mortgage or by custom the Revenue Officer should not stay proceedings and refer the applicant to a Civil Court under section 117 (1) of the Act but simply reject his claim leaving the mortgagee to take such other steps as may be open to him. If a Civil Court grants the mortgagee a decree for partition it would be the duty of the Revenue Officer to give effect to that decree.

As to the operation of law, a landowner as defined in section 3 (2) of the Act, includes a mortgagee with possession but not a collateral mortgagee who is not in the enjoyment of any part of the profits of an estate. A mortgagee, however, may be a land-owner for the general purposes of the Act without being a joint owner of land for purposes of partition."

A partition effected, therefore, with the consent of the joint owners of the land is not invalidated by reason of the lack of the mortgagee's consent. A mortgagee alleging injury to his interest by collusive partition of his mortgagor can, however, claim his remedy by a regular suit in a Civil Court as pointed out further because to hear such suits

1. See 9 P.R. 1895 (Rev.).
2. 4 P.R. 1903 (Rev.).

does not fall within the functions of a Revenue Officer dealing with partition.

In the case *Hardial* v. *Hakim*[1] a mortgagee sued for partition of half the share in a joint estate and the *wajib-ul-arz* of the village made no provision for such case. It was held, that the mortgagee must first establish his right to claim such partition by a civil suit before the Revenue Court could separate the share mortgaged to him. The learned Financial Commissioner while referring to the equitable grounds on which this right would be decreed, remarked: "When the case comes to be tried in the Civil Court, it is probable that following the decision of the Chief Court reported in the Punjab Record as *Ranjha* v. *Mst. Rajji*, (22 P. R. 1878) appellants' claim to have the share mortgaged to him separated off on the equitable ground stated in the Deputy Commissioner's order in this case, *viz.*, that the respondent, the mortgagors, are doing all they can to keep the appellant out of his rightful share of the produce of the mortgaged land, will be recognized, and he will obtain a decree declaring his right to partition."

A mortgagee is not an owner of land and cannot enforce partition.[2]

Mortgagee with possession as landlord of the tenancy.

That being the case, it does not appear to be the intention of the Legislature to recognise the claim of a mortgagee with possession as such to intervene in partition proceedings or to be a party to them, except in one single case. Clause (*a*) of section 113 of the Act provides that when the share of which partition is applied for is a share in a tenancy, a notice of this application and of the date fixed for hearing shall be caused on the landlord also. Landlord as defined in section 4 (6) of the Punjab Tenancy Act 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. It has, therefore, been laid in *Ch. Thakar Dass* v. *Sultan Bux*[3] that 'the mortgagee with possession is technically the landlord of a tenancy, if any, under the original mortgagor. He may, therefore, intervene in partition proceedings or be a party to them only when the property to be partitioned is a tenancy of which he is technically the landlord.

Lease-holder.

Lease-holder's right to apply for partition.—A lease is a form of an encumbrance which consists in a right to the possession and use of property owned by some other person. It is the outcome of technical separation of ownership and rightful possession. Possession is the continuing exercise of a right, and although a right is normally exerised by the owner of it, it may in special cases be exercised by some one else. The right which is thus encumbered by a lease is the ownership of land. Thus the lessee of the land is he who rightfully possesses it but does not own it. In *Bhagwat Sahai* v. *Bipin Behari Mitter*[4] it was held by their Lordships of the Privy Council that, although a *mokarrari* lease was in certain contingencies liable to forfeiture, the lessee's title was permanent and the rights incidental to it must be those attached to it as it existed, including the right to partition without reference to what might be lost in the future under changed circumstances. But this does not appear to be the law under the Punjab Land Revenue Act. In *Bhan Singh* v. *Jagat Singh*,[5] Sawan Singh, one of the joint

1. 11 P. R. 1885 (Rev.)
2. Seva *v.* Mohan Singh = A. I. R. 1938 Lah. 615=178 I. C. 64 = 40 P. L. R. 612 = I. L. R. 1938 Lah. 589.
3. 2 P. R. 1918 (Rev.)=3 P. W. R. 1918 (Rev.)=45 I. C. 405.
4. 37 Cal. 918 P. C.=7 I. C. 549.
5. 55 P. R. 1919=51 I. C. 645.

owners of certain land, leased his share to the plaintiffs for six years. The plaintiffs got a decree for joint possession and obtained formal possession in execution. They then brought a suit asking for a decree for actual possession by partition. It was held that the plaintiffs were not owners of the land since they were tenants under Sawan Singh and the term landowner as defined in section 3 (2) of the P. L. R. Act did not include tenants. However long the duration of a lease may be the lessee only seems to enjoy certain rights without owning those rights as the result of a certain contract between the lessor and the lessee, and is, therefore, not entitled to claim partition under the P. L. R. Act.

Adhsalidar.

Adhsalidar.—In paragraph 58 of Lyall's Kangra Settlement Report *Adhsali* is defined as implying partnership in payment of revenue. He is neither a joint owner nor a joint tenant though he has been erroneously recorded as proprietor and as laid down in *Gadso* v. *Rijaha*[1] is not entitled to partition or separate possession.

Widow.

Widow's right to apply for partition.—' The claims of widows for partition are often strongly opposed by the other co-sharers. Amongst the agricultural tribes in the Punjab, a widow who has no sons inherits as a rule life-interest in her deceased husband's property. Her right is indisputable but it is one that is viewed with great jealousy by the ultimate heirs. Where her property consists of a share in a joint holding they are very loath to allow her separate possession from a fear, often well founded, that she will manage it badly and probably in the end attempt to alienate it. At the same time, as long as the holding is undivided, the widow often finds it difficult to obtain her fair share of the produce ' (*L. A. M., para.* 461).

Widow's right to apply for partition is unquestioned now. Following *Dan Singh* v. *Mst. Sukhan*[2] and *Buta* v. *Mst. Jiwani*[3] it was held in *Abdul Kadir* v. *Mst. Rabia*[4] that a widow in possession of her deceased husband's undivided share in a joint holding has a *locus standi* under section 111 of the P. L. R. Act for claiming, that is, for applying for partition before a Revenue Officer, she being undoubtedly a joint owner (though with limited rights of ownership) within the meaning of that section. This view has been upheld in *Sant Singh* v. *Mst. Basant Kaur.*[5]

A widow's right to apply for partition must, however, be distinguished from her right to obtain or compel partition and we shall discuss this point in more details subsequently.

Declaratory suits.

Suits for declaration for right to partition.—It has been laid down in *Prabhu* v. *Maya* (104 P. R. 1906) that a Civil Court can give declaration to the effect that a certain person holds such an interest in land as entitles him to ask for partition under section 111 of the Punjab Land Revenue Act, that being a question of title and, therefore, not exempted from the jurisdiction of the Civil Court under section 158 of the same Act. A Civil Court can undoubtedly adjudicate upon that the plaintiff is a co-sharer in a holding to the extent of a certain share where the defendants allege that the land is their sole property, or

1. 75 P. R. 1911=152 P. L R. 1911=10 I C. 147=191 P. W. R 1911.
2. 11 P. 1895 (Rev.).
3. 82 P. R. 1898 (F. B.).
4. 4 P. R. 1917 (Rev.)=1 P. W. R. 1917 (Rev.)=41 I. C. 473.
5. A. I. R. 1923 Lah. 81=71 I. C 28=19 P. W. R. 1923 following 70 P.R. 1912 and dessenting from 219 P. L. R. 1913 ; 1922 Lah. 302 ; see also *Gopali* v. *Mst. Shamon*=A. I. R. 1926 Lah. 533.

that the plaintiff has a share in the occupancy tenancy when it is denied by the opposing party. The same view has been upheld in *Paras Ram* v. *Muhammad Yasin Khan* (13 I. C. 953) where it was laid down that person in the partition proceedings regarding land before a Revenue Officer to establish his right to a share of the land, was entitled to maintain a suit for a mere declaration of title.

When a person comes forth and alleges that he has a right in the joint holding though his name has inadvertently been omitted in the record of rights, there are two courses open for him ; namely, (1) he can bring a suit for a declaration in a Civil Court as to the right to which he claims to be entitled ; or (2) he can lodge an application before the Revenue Officer for the correction of the record itself. The latter remedy is excluded from the cognizance of a Civil Court by section 158 (2) (*vi*) of the Act, although when his right is declared by a competent Civil Court it may entail a corresponding correction in the record-of-rights. Before that person, therefore, can apply for partition he must establish his right to do so by any of the remedies suggested above. His application cannot be entertained unless he fulfills those conditions.

Section 54, Civil Procedure Code and Chapter IX, Land Revenue Act.—Section 54 of the Code of Civil Procedure lays down that 'where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.' Thus the Collector will be bound by the provisions of Chapter IX of the Land Revenue Act in executing such a decree of partition if passed by a Civil or Revenue Court. He partitions land in such a case just as he would do in an ordinary application under section 111 of the Land Revenue Act.[1]

Partition as distinguished from separate possession.—Another mode of enjoying the profits of their respective shares by the co-sharers in a joint holding is to have separate possession of their shares instead of partition. The distinction between the partition of a joint holding and a mere separation of the possession between the co-sharers has been pointed out by Justice Smyth in *Nupa Singh* v. *Mst. Sobrai.* (116 P. R. 1879) He remarked :—"When a partition is effected, there is a separation of the proprietary rights, and the portions into which the holding is divided are afterwards held in severalty by the individual sharer to whom it has been allotted. But where there is a mere separation of the possession as distinguished from a partition, the entire holding still remains the joint property of all the co-sharers ; and though each sharer holds separate possession of a portion of the holding, and may be allowed to manage such portion, and appropriate the whole of its proceeds, yet he is not competent to deal with it in any manner which would be prejudicial to the joint proprietary interests of all the co-sharers in each and every part of the holding. He could not, for instance, acting alone so alienate the portion in his possession as to present its being dealt with as a portion of the joint holding in any general

1. See 1922] L. L. T. 7.

partition of the holding which might afterwards be applied for by any of the other co-sharers."

But a Revenue Officer acting under Chapter IX of the Punjab Land Revenue Act has no power to award separate possession except by effecting partition. This mode, therefore, is beyond his power, though it may be given by a Civil Court.[1]

Application for partition.

Who is to receive application for partition.—Only an Officer who is empowered to decide the case should receive the application for partition. It is, however, within the competence of a Revenue Court to dispense with an application from a joint tenant under section 111 of the Land Revenue Act and to direct by its decree that a partition shall be effected and that the share of the tenant in which he has right of occupancy shall be marked off and that he shall be ejected from the residue.[2]

Restrictions and limitations on partition.

112. Notwithstanding anything in the last foregoing section,—

(1) places of worship and burial-grounds held in common before partition shall continue to be so held after partition, unless the parties otherwise agree among themselves and record their agreement and file it with the Revenue Officer ;

(2) partition of any of the following properties, namely :—

(*a*) any embankment, watercourse, well or tank and any land on which the supply of water to any such work may depend,

(*b*) any grazing-ground, and

(*c*) any land which is occupied as the site of a town or village and is assessed to land-revenue,

may be refused, if in the opinion of the Revenue Officer the partition of such property is likely to cause inconvenience to the co-sharers or other persons directly or indirectly interested therein or to diminish the utility thereof to those persons ;

(3) the fact that a partition on the application of a joint owner of land would render necessary the severance into two or more parts of the land comprised in the tenancy of a tanant having a right of occupancy may, unless the tenant assents to the severance, be a sufficient reason

1. See Dan Singh *v.* Mst. Sukhan=11 P. R. 1895 (Rev.), and Abdul Qadir *v.* Mst. Robia=4 P. R. 1917 (Rev.).
2. 4 P. R. 1904 (Rev.).

for the disallowance of the partition in so far as it would affect that tenancy ; and

(4) the fact that landlord objects to the partition of a tenancy may be sufficient reason for the absolute disallowance of the partition thereof.

Restrictions and limitations on partition.—It has already been remarked that rights of ownership in actual life do not convey the idea of uncontrolled possession, enjoyment, and disposition of those rights. (*See pages* 15 to 17). Partition also being an ordinary incident of ownership, the law does not contemplate that all joint property must be partitioned at the instance of every joint owner of land. Just as in the case of alienation certain safeguards are provided for the rights of heirs and other persons interested in the property to be alienated, the law provides also that with respect to partition certain rights of other persons should be respected. It is the object of this section to state the restrictions imposed on partition.

Places of worship and burial grounds.

Sub-section (1)—Places of worship and burial grounds.— 'Places of worship and burial grounds' held in common, before partition shall continue to be so held after partition unless the parties otherwise agree among themselves and record their agreement and file it with the Revenue Officer. Such places will generally be found in the village common land and such a question, therefore generally arises in partition of common land or *shamilat* of the village or the *patti*. If such places are also allowed to be partitioned, much inconvenience will be caused to the people and may result in everlasting disputes and differences. Even where the parties agree among themselves and file a written agreement with the Revenue Officer, he has the discretion to refuse the application under section 115 of the Act for good and sufficient reason.

Village site.

Sub-section (2) (c)—Village site.—The village site, unless in the very rare case of its being assessed to land revenue, cannot be partitioned by proceedings under the Land Revenue Act. Even if it is assessed the Revenue Officer may refuse partition if in the opinion of that officer the partition is likely to cause inconvenience to the co-sharers, or other persons directly or indirectly interested therein, or to diminish the utility thereof to those persons.[1] This discretionary power may properly be held to extend to the uncultivated land round a village which is used as a standing ground for cattle or occupied by enclosures for fodder and manure (*L.A.M., para.* 453).

The following remarks of Justice Benton about the partition of village *abadi*, as recorded in *Ishar Singh* v. *Atma Singh*[1] will not be out of place here :—

"Village sites are usually recoded as the common property of the community. They are very soldom recorded as held in portions by sections of the community. It does not follow in the least from such a record that a portion of the community is at liberty at any time to call for redistribution of the area. Of course, the settlement record may contain an agreement for a partition according to *Khewat* or according to ancestral shares on a demand by a portion of the community at any time, and there is no reason why such an agreement should not be enforc-

1. 117 P. R. 1894.

ed just as it may be enforced for a redistribution of the agricultural land where *vesh* system is still in force. Speaking generally, however, the greater part of the village site is in most cases indivisible in the nature of things, and, with due regard to the rights of the members of the community in portions of the site held by them, it may be from time immemorial, and with reference to the right of ousiders. According to the usual rule prevalent throughout the province a *Kamin* who is allowed to build on a site by the village community can continue to hold the same as long as he pleases, and his posterity may go on holding likewise to the end of the time on the same condition. All the more may the members of the community itself go on holding the sites on which they have built or which they have occupied ages ago with the assent or with the acquiescence of their co-sharers. It does not appear how their long prescriptive use can be ignored in the absence of express agreement and how they can be ousted when any one demands a new distribution. Other portions of the site are set apart for public use. The *Chaupal* or *Hujra* is used for a general place of meeting. There is usually an open place round the village commonly called *Gorah Deh* on which the cattle are collected before going to pasture and other operations are perfomed. Lands are by common consent devoted to be used for *Dharamsala*, for mosques, for grave-yards, for burning *ghats*, for tanks, and for necessary public ways. It does not appear that in the nature of things a portion of a community is at any time at liberty to recall its consent to the dedication of any of these objects and demand that all or some of them be distributed among the proprietary body. The assertion is too absurd. This covers the greater part of most village sites. It may be that over and above the land already described, there may be empty site in and about the village unoccupied by any individual and not used by the community for any purpose. There is no objection to the partition of those according to the rules applicable in the particular case."

Thus it is clear that a civil suit can be brought to divide the *abadi* but it can only succeed as regards those parts of it which consist or empty sites in or about the village unoccupied by any individual and nof used by the community for any purpose. But the village common lant used by the co-sharers for tethering cattle is not precluded from beind brought into partition because it cannot be said to have been dedicateg to a common purpose and owners of cattle can after partition tethed them on their own land.—*Makhan Singh* v. *Ishar Singh*.[1]

In *Hira Singh* v. *Mohar Singh*[2] it was remarked—"In suits for partition of the whole village site, though the Civil Courts may technically have jurisdiction to go into the question of partition, they are usually well advised to decline to attempt, what is an almost impossible task. There is no basis for the theory that each individual proprietor is enitled to a certain portion of the *abadi* area calculated with reference to village sharers whether determined by pedigree or revenue payments. The only safe ground to take is that the distribution of such vacant land as there may be attached to the *abadi* should be left in the hands of the *lambardars* who alone can determine whether it should be divided up or kept in tact for the common purpose of the village." But this view was not upheld in *Mohammad Khan* v. *Fazal*

1. 136 P. R. 1906=118 P. L. R. 1908=178 P. W. R. 1908.
2. 2 P. L. R. 1912=228 P. W. R. 1911=12 I. C. 605.

Dad[1] where following *Ishar Singh* v. *Atma Singh*[2] it was held that the *abadi* of the village being joint property was liable to partition, but the portions occupied by houses of the villagers or used for public purposes would necessarily have to be excluded from partition.

In *Manji* v. *Ghulam Mohammad*[3] it was again held that where a plot of *abadi* land was taken exclusive possession of by the defendants, two of the proprietors of the village, who asserted their exclusive title and denied the title of the other proprietors, a suit for joint possession by other proprietors was competent, and that a Civil Court, but not a Revenue Officer or Revenue Court, had jurisdiction to partition the *abadi* land, and that the *onus* of proving that there was *shamilat* in the *abadi* which could be partitioned and that partition thereof was feasible rested upon the persons claiming partition.

Embankments, water-courses, wells, tanks, grazing grounds.

Sub-section 2 (*a*)—Embankments, water-courses, wells, tanks, grazing grounds.—In arid tracts, where the people depend on tanks for their own drinking water and for the watering of their cattle, it may be a matter of importance to keep the waste area which feeds a tank free from cultivation though the land hunger is now so great that many of the owners may clamour to have it divided. Where pasture is scarce or likely to become so, especially where a supply of fodder crops is not assured by abundant artificial irrigation, the power of setting aside part of the village common as a grazing ground may often be usefully exercised. If any of the joint owners afterwards encroaches on the reserved land, he may be ejected from it on the application of any other co-sharer. In deciding whether to use the discretion given by section 112 (2) of the Act one must think not only of the wishes or interests of the land-owners, but also of the likelihood of the partition causing inconvenience to other residents of the village, as, for example, the menials who have been accustomed to use the common property. When any of it is excluded from partition the Assistant Collector may determine the extent and manner to and in which the co-sharers and other persons interested therein may make use thereof, and the proportion in which expenditure incurred thereon and profits derived therefrom, respectively are to be borne by and divided among these persons or any of them (*L.A.M.*, *para.* 453).

Rights of grazing.

Sub-section (2) (*b*)—Rights of grazing and partition.—Usually the rights of grazing enjoyed by the non-proprietors in the village are mentioned in the *wajib-ul-arz* and the Revenue Officer must consult that and act accordingly. That will be his sure guide. It will be of interest, however, for the Revenue Officer to know how the custom stands with respect to the right of grazing. Para. 220, clause (*b*) of Rattigan's Digest of Customary Law lays down that in the absence of any special custom every tenant having a right of occupancy shall be deemed to possess the right to graze agricultural cattle on the common land and to water them from the common tank. In *Hira and Haji* v. *Nathu*[4] in a suit by occupancy tenants against proprietors for a declaration of right to graze their cattle on the original common land, the lower appellate Court held that the plaintiff's right was conditional on the land continuing *shamilat*, and that as the land had been partitioned in 1871, the right ceased. The plaintiffs based their claim on the *wajib-ul-arz* prepared previous to partition, which provided that all the village cattle were to graze in future upon the common land of the

1. 149 P. R. 1919=55 I. C. 14
2. 117 P. R. 1894.
3. A. I. R. 1921 Lah. 157=68 P. L. R. 1921=61 I. C. 415=2 Lah. 73.
4. 119 P. R. 1889.

village, without distinction of proprietors and non-proprietors. Plowden, J., on further appeal held :—"The grazing right was declared in the *wajib-ul-arz* not of tenants only, but of all proprietors, and as declared then, it extended over the whole *shamilat deh* as then constituted. But this cannot be held to exclude absolutely the liability of the *shamilat deh* to be partitioned at the will of the proprietors collectively, and to be dealt with thereafter by them severally, each as owner of the portion allotted to him. At the same time the partition could not of itself by converting the property divided from joint property into several property, extinguish the right of grazing over it. The right of grazing over what was *shamilat* at the time of settlement and the proprietary right therein, may and do co-exist side by side, both before and after partition. Neither right overrides the other so as to extinguish it, but each right limits and is limited by the other. The proprietary rights of the proprietors whether collectively before, or individually after partition, may be fully exercised so long as this exercise leaves sufficient area to graze the cattle of the non-proprietors. But the mere act of partitioning the *shamilat* does not entitle the non-proprietors to sue the proprietors to have a portion of the original *shamilat* sufficient to graze their cattle demarcated and reserved by the Civil Court. When, however, a large portion of the original *shamilat* has after partition been enclosed or reduced to cultivation, and the non-proprietors' grazing rights are seriously threatened, they may jointly sue the proprietors to prevent any further interference with what remained open of the original *shamilat*, or possibly to have some portion of the enclosed or cultivated land thrown open, so as to secure to them the proper enjoyment of their grazing right."

This view was upheld by Justice Coldstream in *Aso* v. *Bishan Singh*.[1] In *Inder Singh and others* v. *Jai Singh and others*[2] also it has been held that a provision in a *wajib-ul-arz* entitling the village cattle to graze on the common land of the village without distinction of proprietors or non-proprietors, does not take away the right of the proprietors to partition the *shamilat* and bring it under cultivation if they desire to do so provided a sufficient area is left for the necessary cattle of the non-proprietors to graze on.

It was held in *Gurditta* v. *Dheru*[3] that where non-proprietors enjoyed grazing right over *shamilat*, they were only entitled to have a reasonable area set apart for their animal to graze upon, and it was held in *Hans Raj* v. *Narain Chand*[4] that the word '*muweshi*' in the *wajib-ul-arz* conferring grazing right on non-occupancy tenants and other residents over the *shamilat* should be confined for cattle used for agricultural and domestic purposes and should not include sheep and goats kept for trading purposes.

The directions of the *wajib-ul-arz* should be rightly interpreted. A clause in the *wajib-ul-arz* the heading of which referred only to proprietors and others connected with settlement laid down that cattle of every *malik* and *ghair malik* would graze in *shamilat banjar*. Shopkeepers claimed right and urged that they had previously grazed free. It was held in *Munshi Ram* v. *Rulia Ram*[5] that they were not members

1. A. I. R. 1927 Lah. 130=99 I. C. 818.
2. 1935 P. L. R. 386.
3. 160 P. L. R. 1912=150 P. W. R. 1912=14 I. C. 562.
4. 86 P. R. 1911.
5. 95 P. R. 1914.

of the village community and had no such right, and previous permission exercised would not help them. Had the clause referred to *bashinda*, perhaps all residents would have been entitled.

Can the non-proprietors bring a suit in the Civil Court for a declaration that certain land should not be partitioned unless some portion is set aside for grazing purposes on account of their rights in grazing in the said land ? In *Sundar* v. *Wazira*[1] it was held by Johnstone, J., that a suit by occupancy tenants against the whole of the individuals forming the proprietary body to establish that they *in common with all the residents of the village* were entitled to graze their cattle over the village common land, and that, therefore, it should be exempted from partition was not barred from the cognizance of the Civil Courts either by clause XVII of section 158 of the P. L. R. Act, 1887, or by clause (*i*) of section 77 (3) of the Punjab Tenancy, Act, 1887. The same view was upheld in *Nandu* v. *Jaimal*.[2] Ordinary disputes as to grazing right between co-sharers and third parties must be dealt with as questions of title. A dispute between occupancy tenants and co-sharers who are landlords, with respect to right of grazing and arising out of the conditions of tenancy will, however, fall within the jurisdiction of Revenue Court under section 77 (3) (*i*) of the Tenancy Act.

Other persons directly or indirectly interested therein.—By other persons directly or indirectly interested therein are meant such persons as *kamins*, menials and others who have been accustomed to the use of the common land and thus have established their right for its use as such.

Objections by landlords and occupancy tenants to partition of tenancy.

Sub-section (4)—Objections by the landlords and the occupancy tenants to the partition of tenancy.—It must be remembered that the word used being ' may ' the partition of land is not prohibited in every case in which the tenants themselves, or even some of the landlords object. The Act only gives the Revenue Officer a discretion to act upon the objection of the occupancy tenant or a landlord co-sharer or to permit partition.[3]

Is the term ' landlord ' synonymous with ' owner of land ' ? It has already been pointed out that a mortgagee with possession can be taken as a landlord for the purposes of these objections (See *page supra*) and that if he objects to the partition of the tenancy it may be a sufficient reason for the absolute disallowance thereof. The term ' landlord ' must, therefore, be taken in its ordinary sense within the meaning of section 4 (6) of the Tenancy Act.

The most important case arising under this heading is when the landlords are desirous of getting land under their occupancy tenant or tenants partitioned on the ground that some of them have to get the rents enhanced while the others may not like it at all.

In *Sube Khan* v. *Rahmat Ali*[4] the majority of certain owners sued for enhancement of rent, but their suit was dismissed, on appeal, by the Commissioner on the ground that to secure an enhancement of rent paid by tenants all the landlords sharing in a joint holding must sue. The landlords desiring enhancement of rent, thereafter applied for partition of

1. 144 P. R. 1907=188 P. W. R. 1907.
2. A. I. R. 1918 Lah. 150=108 I. C. 170.
3. Sube Khan *v.* Rahmat Ali=1 P. R. 1895 (Rev.).
4. 11 P. R. 1895 (Rev.).

the joint holding, but their application was disallowed on the ground that the occupancy tenants did not agree to a partition being made of the land in their occupation. It was held, on revision by the Financial Commissioner that where there seemed reason to think that the proprietors of a small share were colluding with the occupancy tenants to defeat the claim of the proprietors of the bulk of the village to enhancing the rent, it was a case worth consideration by the Revenue Officer, that partition might be allowed, but that it might be an instruction that, in making it the convenience of the tenants should, as far as possible, would be considered, and that it was not necessary to completely separate every owner's share ; owners willing to remain joint might be left joint.

In *Gurdit Singh* v. *Ganpat*[1] it has been held that a suit against an occupancy tenant for enhancement of rent brought by the majority of the joint proprietors as representing the proprietary body is maintainable, especially where the minority is indifferent or has not shown any interest in the matter. But such cases are exception rather than a rule (2), and partition should be allowed.

Notice of application for partition.

113. The Revenue Officer, on receiving the application under section 111 shall, if it is in order and not open to objection on the face of it, fix a day for the hearing thereof, and—

(*a*) cause notice of the application and the day so fixed to be served on such of the recorded co-sharers as have not joined in the application, and, if the share of which partition is applied for is a share in a tenancy, on the landlord also ; and

(*b*) if he thinks fit, cause the notice to be served on or proclaimed for the information of, any other persons whom he may deem to be directly or indirectly interested in the application.

Parties to an application for partition.—The application made by any person for partition is not a plaint but merely to move the Revenue agency to take proceedings to get his share of the land separated from the other co-sharers. In fact, there are no persons like plaintiffs and defendants in this case.

In an ordinary application for partition of a joint holding they will be the recorded co-sharers, also the tenants having the right of occupancy, if any, in that holding, and the landlord too if the partition is of a share in the tenancy. In the case of the partition of the *shamilat* of a village there is generally involved the question of the grazing ground and other land required for common purposes, and the desire and opinion of persons other than the proprietors are also to be taken into account. In such a case though it is not necessary that the whole of the village be made party to the proceedings, proclamation ought to be issued for the

1. 3 P. R. 1905 (Rev.)=54 P. L. R. 1906.
2. See I. L. R. III Bom. 23 ; 1930 P. C. L. 12 (Rev.) ; 11 C. W. N. p. 44.

information of the general public so that if they desire they may be able to represent their cause.

The right of a mortgagee to be made a party to an application for partition has already been discussed (*see page supra*). A mortgagee with possession may come under the definition of 'landlord', but he is in no sense an owner or a co-sharer.[1] It is clear that in a partition effected with the consent of the joint owners of the land a mortgagee with possession of an undivided share of it has no right to intervene except when the property to be partitioned is a tenancy of which he is technically the landlord.

Where a widow alleged private partition of joint occupancy made during her husband's lifetime, it was held in *Ghulami* v. *Mst. Bannon*[2] that the reversioners being interested in the alleged partition were competent to object and were entitled to have their objections duly considered. It is, however, not essential to issue notices for their specific appearance and presence.

Ex-parte proceedings.—Ordinary rules of service as laid down in sections 20 and 21 of the Act are observed in partition cases also. Some general observations will be found in para. 18'6 of Chapter 18 of the land Records Manual quoted *infra*. All notices and proclamations should specify definite dates of hearing. Before ordering *ex-parte* proceedings the Revenue Officer should satisfy himself that all parties were duly served and have had an opportunity of appearing.

It is also to be remembered that it is not admissible for a Revenue Officer to set aside an *ex-parte* order, except by means of a review.[3]

Where an unchallenged *ex-parte* order has been passed in certain proceedings against a party, that order remains in force until the whole proceedings are exhausted and it is not necessary that at each separate stage of the proceedings he should be served afresh.[4]

Addition of parties to application.

114. On the day fixed for the hearing, or on any day to which the hearing may be adjourned, the Revenue Officer shall ascertain whether any of the other co-sharers desire the partition of their shares also, and, if any of them so desire, he shall add them as applicants for partition.

Absolute disallowance of partition.

115. After examining such of the co-sharers and other persons as may be present on that day, the Revenue Officer may, if he is of opinion that there is good and sufficient cause why partition should be absolutely disallowed, refuse the application recording the grounds of his refusal.

Revenue Officer's power to disallow partition.

Scope of the section.—It will be seen that this section gives the Revenue Officer a very wide discretion which is subject to control by the higher revenue authorities only, and it is beyond dispute that Civil Courts have no jurisdiction to question the reasons given by the

1. See also Mohammad Din *v.* Mohammad=A. I. R. 1921 Lah. 83.
2. 6 P. R. 1896 (Rev.).
3. See 1932 L. L. T. 42=1932 P. C. L. 51 (Rev.).
4. Mst. Balwant Devi *v.* Parmodh Chand=(1940) 19 L. L. T. 16

Revenue Officer disallowing partition under this section.[1] Even if there is a decree of a competent Court declaring that a certain person has the right to partition, the Revenue Officer may still for good and sufficient cause, disallow the partition under this section.

This discretion, however, should not be exercised in an arbitrary way. Ordinarily the ground for refusal should be one of those already mentioned under section 112. But the Assistant Collector is not debarred from rejecting an application on other grounds if a sufficient case is made out by the opponents of partition. If, for example, he finds that many of the new holdings which would be created by the partition of the common land of a village would be so minute as to be useless to the right-holders to whom they would be allotted, he may reasonably refuse to sanction a holding-by-holding partition, and either reject the application entirely or order a *pattiwar* partition, each *patti* being given separate possession of its share in the common land of the estate (*L. A. M., para.* 460).

As section 115 authorises a Revenue Officer to disallow partition even of the whole of the land included in an application for partition, there is no bar to his disallowing partition of a part of it, if he finds a 'good and sufficient cause' for doing so.[2]

Conditions in the *wajib-ul-arz* restricting partition.

Good and sufficient cause for refusing partition.—When there is a clause in the *wajib-ul-arz* prohibiting partition of a certain joint land, is it a bar to partition under all circumstances, and is the Revenue Officer competent to decide this question as such?

In *Khubi* v. *Asaf Khan*[3] an application for partition of the village common land having been refused by a Revenue Officer on the ground that by the terms of the *wajib-ul-arz* the consent of all the share-holders was necessary and had not been obtained, a suit was instituted in order to establish the plaintiffs' title in a certain portion of the common land and for a declaration of their right to partition the same without the assent of the other co-sharers. The Divisional Judge being of opinion that the only question involved in the case was whether the land was or was not to be divided, and that such question could be decided by a Revenue Officer alone under section 115 of the Act dismissed the suit on that ground. It was held that the question was one of title and that the Civil Courts were both competent and bound to determine it. The same view appears to have been taken in an earlier ruling reported as *Dewa Singh* v. *Mst. Jawali*[4] where it was held that a question whether a joint holding was liable to partition inspite of a prior agreement between two co-owners whereby one of them had agreed not to claim partition, provided certain quantity of grain was given to her at stated intervals, was one of title. In *Nandu* v. *Jaimal*[5] also it has been laid down that a suit for declaration that a plot of land was reserved for grazing purposes and was not liable to partition in accordance with an agreement recorded in the earlier *wajib-ul-arz* which had not been repeated in the recent settlement was one of title and was not excluded from the jurisdiction of Civil Courts under section 158 (2) (*xvii*) of the Punjab Land Revenue Act.

1. See A. I. R. 1930 Lah. 513 F. B.=11 Lah. 449=128 I. C. 529; Dost Mohd. *v.* Habib Sultan=A. I. R. 1940 Lah. 428=42 P. L. R. 759.
2. Dost Mohammad *v.* Habib Sultan=A. I. R. 1940 Lah. 428.
3. 82 P. R. 1993.
4. 39 P. R. 1892.
5. A. I. R. 1928 Lah. 150=108 I. C. 170.

In *Taja* v. *Tara Chand*[1] it was, however, held by the Financial Commissioner that the question whether such a clause in the *wajib-ul-arz* would prevail was one that should be decided by the Revenue Officer dealing with the partition case and should not be referred to a Civil Court, this being not a question of title. This was followed in *Lakhi* v. *Malik Dost Mohammad Khan*[2] wherein it was held that an entry in the *wajib-ul-arz* prohibiting the partition of *shamilat* was not necessarily a bar to partition and the Revenue Officer dealing with it should himself decide whether under the circumstances of the case the prohibition should prevail or not. Again, in *Rammast Khan and others* v. *Amir Mohammad Khan and others*[3] the Financial Commissioner remarked—" The Collector in his order appears to hold that the question of title is the question of whether an entry in the village administration papers stating that the common land of the village is not to be partitioned but is to be kept for grazing is a question of title.....I am very doubtful whether the point made by the Collector can really be considered a question of title. I think that the wording of section 117 of the Land Revenue Act clearly intends that the question of title to be determined is not the question whether the land shall or shall not be partitioned but the question of proprietary and other rights of occupation. *The question whether a partition should or should not be allowed is one for a Revenue Officer to decide, and it is clearly placed within the powers of the Revenue Officer by section* 112, *sub-section* (2) *of the Land Revenue Act.*"

In *Singh Ram* v. *Data Ram*[4] the co-sharers entered into an agreement on the settlement of 1879 that a certain piece of *shamilat* land would continue to be joint and indivisible. The terms of this agreement were entered in the *wajib-ul-arz*. On an application for partition the Collector, however, directed the partition by *pannas*. Some of the proprietors of one of the *pannas* thereupon, instituted a civil suit for a declaration that the land was not subject to partition. It was held that there was no question of title involved and was, therefore, not cognizable by a Revenue Court. This ruling has, however, been overruled by a Full Bench ruling reported as *Sheo Nath* v. *Giani*.[5] In that case on an agreement between all the village proprietors a certain area out of the village *shamilat* was set apart for partition which was to continue to be joint and impartible. This agreement was duly recorded in the *wajib-ul-arz*. A few years later some of the proprietors applied for partition of the area and the Revenue Officer ordered partition overruling the objection raised by some of the other proprietors that the land was not liable to partition in accordance with the aforesaid entry in the *wajib-ul-arz*. Thereupon, the objectors instituted a suit in the Civil Court for a declaration that the land could not be partitioned. It was held that the question involved was one of title and was within the jurisdiction of Civil Courts.

Thus the existing law is that the question whether a clause in the *wajib-ul-arz* prohibiting partition will prevail or not is a question of title, though the Revenue Officer has full authority under section 115 of the Act to refuse an application for partition, acting on such a clause and that cannot be questioned. It is to be remembered that this section

1. 11 P. R. 1896 (Rev.).
2. 1 P. R. 1915 (Rev.)=32 P. L. R. 1916=29 I. C. 498.
3. 1927 L. L. T. 29.
4. A. I. R. 1930 Lah. 88=3 Lah. 4.
5. A. I. R. 1930 Lah 513=11 Lah. 449.

gives the Revenue Officer authority to refuse an application for partition on sufficient ground but no authority to allow partition inspite of a provision to the contrary.

Other agreements between the parties prohibiting partition.

Same remarks as above, under (*a*). A question whether a certain agreement between two or more co-sharers to keep their property joint was still operative or had ceased to be so was essentially one of title involving a determination of civil rights of the parties and would be triable exclusively by a Civil Court or by a Revenue Officer acting as such under section 117 of the Act, though even after it had been decided in favour of the party seeking the declaration that the property was partible, the Revenue Officer might still for good and sufficient cause, disallow the partition at any particular time under section 115.[1]

Question of payment of compensation for improvements before allowing partition.

A and B are recorded co-sharers in a certain joint holding. A applies for partition but B objects on the ground that he being in possession of the land made certain improvements in that land at his own expense and that, therefore, before A is allotted his share he must be made to pay him half the expenses incurred in improving the joint holding, or partition should be refused. This is a valid objection and the Revenue Officer is to take it into consideration. He can order, no doubt, under section 115 of the Act that before the application of A for partition is sanctioned he must pay to B the amount judged to be equitable by the Revenue Officer or agreed to between the parties.[2] A Revenue Officer may refuse to grant an application for partition before compensation is paid to the other party, but the Civil Court alone can declare that certain person has the right to partition without or on paying any or certain sum as compensation.

In *Elahi* v. *Dadu*[3] the plaintiff was an absentee co-sharer in a certain holding, and he had to bring a suit in the Civil Court to establish his rights. The defendants did not claim anything on account of expenses incurred by them during the plaintiff's absence and the plaintiff's claim was decreed unconditionally. In a suit for partition between the parties no question of any claim for compensation was raised by the parties but the Collector of the District in an intermediate order recorded a direction to the Officer conducting the partition that if any improvements were proved to have been made the party making the improvement must be compensated. The R.E.A.C. thereupon passed an order to the following effect :—

"The defendants will be entitled to compensation for improvement but they will have to make a separate application for it." Plaintiffs sued and got a decree. The lower Courts treated the case exactly as if it were a suit between landlord and tenant and the sum decreed included compensation for improvements and compensation for disturbance. It was held that the question was one of title and should have been raised if at all in the civil suit which had been decided.

Widow's right to partition.

It has already been pointed out under section 111 that a widow has a statutory right to apply for partition. But when she applies for partition before a Revenue Officer the latter has got the discretion to refuse the application under section 115 of the Act. When should her application be rejected and when granted ? The Revenue Officer must bear in mind that a widow has only a life-interest in her husband's estate and

1. See A. I. R. 1930 Lah. 513 F. B. ; 11 Lah. 449.
2. See Salig Ram *v.* Wadhawa Mal=3 P. R. 1886 (Rev.).
3. 70 P. L. R. 1902.

that the partition if once effected is irrevocable and that there is no provision in the law for bringing a share which has been separated by partition back into the joint estate. The partition is undesirable in such a case and the Revenue Officer before whom such an application is put should induce the parties to effect such an arrangement as may without effecting partition secure to the widow her due enjoyment of her life-interest. If no such arrangement can be effected partition should only be allowed where private partition of the share has been effected during her husband's life-time or where the co-sharers are not acting up to their obligation in respect of the widows so that the due enjoyment by her or her share cannot be otherwise secured.[1]

But as we shall presently see, the question whether a widow is entitled to partition or not is a question of title, and the Revenue Officer in deciding this question should proceed under section 117 of the Act rather than under section 115. It was laid down in *Abdul Quadir and Abdul Aziz* v. *Mst. Rabia*[2] that if the Civil Court found that the widow had a right to obtain partition the mere fact of her widowhood would not constitute us against her a good and sufficient cause under section 115 of the Act for refusing partition.

It was further held in *Mst. Thakari* v. *Sadhu Singh*[3] that the mere fact that a widow once agreed to receive a certain amount as maintenance from the co-sharers of her deceased husband would not debar her for all time from seeking to have her share in the holding partitioned off.

Conclusions.

From what has been stated above it seems sufficiently clear that although the Revenue Officer can refuse partition under this section even if there is a decree of the Civil Court declaring the right of the applicant to partition, it is doubtful if the same objection on which the right of the applicant was decreed would constitute 'good and sufficient cause' for refusing partition. Thus, for instance, if the Civil Court decrees that a certain clause in the *wajib-ul-arz* does not prohibit partition, it does not seem 'good and sufficient reason' for the Revenue Officer to refuse partition on the ground that there is a clause in the *wajib-ul-arz* prohibiting partition, although he may refuse on other grounds.

Res judicata.—What is the legal effect of the rejection of an application for partition under section 115 of the Act ? Is it a bar to a subsequent application or not ?

A Revenue Officer passing an order on an application for partition under this section is acting not as a Court, but merely as a Revenue Officer ; the proceeding is an administrative adjustment, not a suit, and the decision is embodied in an order not in a decree. And when the matter is an administrative one the principle of *res judicata*, as embodied in section 11 of the Civil Procedure Code, does not apply.[4]

But this does not mean that there is no finality about the orders of Revenue Officer. It would be most inconvenient and improper if every one who had been disappointed over an application for partition were at liberty te start fresh proceedings over the same issue. Under section 115 of the Land Revenue Act, a Revenue Officer has discretionary

1. See 11 P. R. 1895 (Rev.), and 6 P. R. 1896 (Rev.).
2. 4 P. R. 1917 (Rev.)=41 I. C. 473
3. A. I. R. 1921 Lah. 308=67 I. C. 356.
4. 6 P. R. 1868 (Rev.) ; 5 P. R. 1914 (Rev.).

authority absolutely to disallow an application for partition : and he ought to use this authority in every instance in which the same question has been previously decided, unless it is shown that the circumstances, which made the previous order appropriate, have changed.

A very common instance of change of cirumstances effecting the propriety of a partition is the introduction into a village of new means of irrigation converting unculturable land into culturable land. Changes in method of cultivation whatever the cause must always tend to carry with them changes in the manner in which the land is held and the recent discovery in the North-West of the Punjab that *barani* cultivation with profit is possible over extensive areas where it was formerly regarded as hopeless, is another instance of a change which may make it reasonable and even necessary to allow partition of areas where partition has formerly been disallowed.[1]

In *Nathu* v. *Bishna*,[2] the refusal of partition in 1909 was based upon the belief that the point in dispute between the parties could, and would be appropriately dealt with under section 150 of the P. L. R. Act. It was supposed that the present applicant was prepared to surrender certain land which was in his possession. His subsequent proceedings showed that this was not the case, for he obtained from a Civil Court a decree that he was entitled to retain possession of that land until partition should take place. It was held that the Revenue Officers were justified in declining to exercise that discretionary authority to disallow partition notwithstanding the opposite decision in 1909.

Procedure on admission of application.

116. If the Revenue Officer does not refuse the application under the last foregoing section, he shall ascertain the questions, if any, in dispute between any of the persons interested distinguishing between—

(*a*) questions as to title in the property of which partition is sought ; and

(*b*) questions as to the property to be divided, or the mode of making the partition.

'Questions' as to title distinguished from 'questions as to the property to be divided or the mode of making partition.'

Distinction between 'questions as to title' and 'questions as to the property to be divided, or the mode of making the partition.'— Questions as to title are to be distinguished from the questions as to the property to be divided, or the mode of making the partition, for the procedure adopted in deciding these questions in each case is different. The distinction between the two classes of questions though necessarily very fine is ordinarily clear as the latter class usually concerns one or other of the particulars set forth in section 112 of the Act and the former directly raises an issue of title. It was remarked by the Financial Commissioner in *Malang* v. *Mst. Naimti*[3] that in case of doubt the guide for decision should be whether or not the objection impugns the correctness of an entry affecting title in the settlement or annual records, or calling in question the correctness of an entry in the record-of-rights upon which the shares to be assigned to the parties may depend. The wording of the section clearly intends

1. 5 P. R. 1914 (Rev.).
2. *Ibid.*
3. 4 P. R. 1898 (Rev.); see also 150 P. R. 1890.

that the question of title to be determined is the question of proprietary and other rights of occupation.[1] Every question of title in land to be divided must of necessity affect the mode of making the partition.

In fact, questions as to the property to be divided or to the mode of making the partition are questions other than questions of title.[2] Broadly speaking questions as to the property to be divided raise the issue whether and to what extent a certain joint holding should not be partitioned, while the questions as to the mode of making partition raise the issue how partition ought to be effected and how land allotted.

It is a wrong notion that questions of title means only the questions about the specification of shares of the co-sharers in the joint holding. Civil rights are very comprehensive and as we shall presently see, questions of title as we understand here include many other questions besides the specification of shares.

QUESTIONS OF TITLE

The question whether certain land is subject to partition or not.

Partition of land is a civil right and, therefore, the question whether certain land is to be partitioned or not is a question of title. It has already been remarked on previous pages that a suit for declaration that certain land be exempted from partition on the ground that certain persons have right of grazing in it, is within the cognizance of Civil Courts, and similarly the question whether certain piece of land should or should not be partitioned on account of some clause in the *wajib-ul-arz* or some other agreement between the parties not to do so, is a question of title (*page supra*). A suit for declaration that the land in suit was not subject to partition raised a question of title for the decision of which Civil Courts had jurisdiction.[3] Similarly, a suit for a declaration that the land in suit be exempted from partition and the plaintiff's right of user of the whole of it be confirmed is a question of title.[4]

The plaintiffs brought a suit against four defendants claiming a declaration to the effect that out of the total area of 5,023 *kanals* included in a partition of the *shamilat* land of a village by the Revenue Assistant, an area of 3,063 *kanals* 16 *marlas* should have been excluded on the ground that they had converted an area of 1,807 *kanals* 18 *marlas* from *barani* into *chahi*, and had reclaimed and made culturable a further area of 1,255 *kanals* 18 *marlas*, that they had reclaimed and irrigated this land relying on an agreement made by them with the ancestors of the defendants and that as a result of this action on their part this area was excluded from the ordinary *shamilat* and could not be partitioned. The suit was dismissed by the trial Court on the finding that the question was not a question of title but related to method of partition and that, therefore, the Civil Courts had no jurisdiction. It was held that the question was clearly one of title as to whether this area was partible or not.[5]

Where an *ala-lambardar*, who was not a proprietor in *shamilat-tarafs*, was in possession of certain *muafi* land belonging to the *tarafs*

1. 1927 L. L. T., page 29.
2. See A. I. R. 1930 Lah. 513=11 Lah. 449.
3. Dewa Singh *v.* Mst. Jawali=39 P. R. 1892.
4. Sundar *v.* Wazira=144 P. R. 1907=188 P. W. R. 1907.
5. Mohammada *v.* Jhanda=A. I. R. 1931 Lah. 654=133 I. C. 893.

by virtue of his office and it was contended on his behalf in partition proceedings that the *muafi* land should be excluded from partition, *held*, that there was no reason for excluding the land from partition, as there was nothing in the village records which precluded the holding from being brought into partition the tenure of the *ala-lambardar* being only of the tenant of holding under the proprietors of the *tarafs*.[1]

Restrictions on partition in wajib-ul-arz.

As already observed on page *supra*, it is a decided fact that whether a clause in the *wajib-ul-arz* restricting partition should prevail or not, is a question of title. It remains to be examined when that clause should be allowed to prevail and when not.

When can the provisions of the *wajib-ul-arz* prohibiting partition be over ridden ? One instance has been pointed out in *Lakhi* v. *Dost Mohammad Khan*.[2] It was held in that case that where the *wajib-ul-arz* was drawn up to suit a time when the land was valued only for its pasture and conditions since then greatly changed, large areas having been broken up for cultivation and the number of cattle kept greatly reduced and there was then a large section of community opposed to the provisions against partition, the Revenue Officer was justified in sanctioning partition. Another proposition has been laid down in *Suba* v. *Daulat*.[3] It was held therein that where on the application of the majority of the sharers, partition of the village common land was ordered by the local authorities and only the minority of the sharers objected, the Revenue Courts had discretion to order partition whenever it would be in their opinion advisable to do so even in cases when a minority only desired partition, though there might be a clause in the *wajib-ul-arz* that it would be partitioned only by the consent of the majority. Such would be the case where an influential majority of the co-sharers had broken up more than their proper share of the common land, and refused to account to the minority for the share of the latter in the common profits.

Every case must be judged by the Civil Courts on its own merits. One broad principle is that free enjoyment of all civil rights is one of the natural inheritage of mankind, and it should not be restricted by any kinds of bonds unless it is in the interest of the right-holders. Similar considerations will be paid to other agreements also.

Question of locus standi for partition.

The question whether a person holds such an interest in land as entitles him to ask for partition under the Act is a question of title.[4] For instance, when a widow applies for partition of her share in a joint holding, and the reversioners object that she is not entitled to partition, it is a question of title to be decided in a regular manner.[5] Similarly, the question whether the plaintiffs were entitled to partition of their share in the village common land without the consent of the other co-sharers inspite of a provision in the *wajib-ul-arz* that consent of all the shareholders was necessary was held to be a question of title.[6]

A objects that he was entitled to a share in land partitioned twenty-five years ago, but got no share and that it may now be made good to

1. Arjan Singh *v.* Suchet Singh=15 P. R. 1892 (Rev.).
2. 1 P. R. 1915 (Rev).=32 P. L. R. 1916=29 I. C. 498.
3. 12 P. R. 1885 (Rev.).
4. Prabu *v.* Maya=104 P. R. 1906=135 P. L. R. 1906.
5. See 82 P. R. 1898. (F. B.) ; 4 P. R. 1917 (Rev.) ; 7 P. R. R. 1919=A. I. R. 1919 Lah. 332. and remarks on previous pages.
6. Khubi v. Asaf Khan=8 P. R. 1893.

him out of the joint land sought to be partitioned. B urges that A is not entitled to urge his claim. This question also has been held to be a question of title[1] as the one party asserts and the other denies the right of a person to a particular share which is claimed. Again, where a person claimed that he was sole owner of the land and occupancy tenant of the remainder it was held to be a question of title.[2]

Question whether a right holder has got a share in the shamilat.

The question whether a certain person has got a share in the *shamilat* or not is a question of title.[3]

Questions about the jointness of property.

Two sorts of questions arise under this heading, namely, whether the property in question was ever jointly owned by the alleged co-sharer, and secondly whether the property once jointly owned has now ceased to be joint property and the co-sharers possess it in severalty. In *Radhu* v. *Mst. Nando*,[4] Justice Plowden illustrated this point with an example. A claims partition either in a Civil Court or before a Revenue Officer alleging that the particular property X is the joint property of himself and B. B alleges that X is not the joint property of himself and A. The question raised is a question of title to X. If B alleges that X comprises two parts Y and Z, of which Y is joint property of A and B and Z having been the joint property of A and B is now the sole property of B alone, and A denies that Z is the sole property of B, the question in dispute between A and B is the title to the part Z. If B, however, objects to partition not on the ground that it is not joint property but on some other ground of inconvenience or the like, there is no question of title. A question in which the contention of the plaintiffs was that land going to be partitioned was never jointly owned by the defendants but was full property of the plaintiffs, and that the Revenue authorities had, therefore, no power to include it in partition was held to be a question of title.[5]

Where the only dispute between the brothers was about a garden (*baghicha*) and *kothas* in the garden and one brother claimed that he alone had planted the *baghicha* and built *kothas* therein at his own expense and the other brother claimed that this was done during the lifetime of their father and that he was entitled to a half share: *Held*, that the question was one of title as to who owned the garden and the *kothas* therein within the meaning of section 116 of the Act.[6]

A suit by a person claiming to be a joint owner of certain property the defendants denying his right to the entire property and stating that he is in possession as owner of certain fields that had fallen to his share at a private partition involves a question of title and is maintainable under section 117 (1) of the Act.[7]

Question of private partition.

The other set of questions is illustrated by such objections as that private partition has already taken place between the parties and that the land is not liable to be partitioned now. When there is a claim for partition of land and its liability to partition is denied on the ground of a

1. Ayub v. Wali=63 P. L. R. 1900
2. Mst. Lachmi Bai v. Mst. Handi Bai=100 P. R. 1913=21 I. C. 719.
3. Chanda Singh v. Fateh Singh=15 P. R. 1890 (Rev.).
4. 150 P. R. 1890.
5. Sarwar *v.* Sadullah=29 P. R. 1901=2 P. L R. 1901.
6. Muzaffar Ali *v.* Ghazanfar Ali=A. I. R. 1935 Lah. 175 ; 4 P. 1908 dist.
7. Jamala *v.* Mohammoda=A. I. R. 1938 Lah. 202=40 P. L. R. 524

private division, the question whether the division has or has not severed the joint title, and converted the joint property or any portion of it into property held in severalty, is a question of title within the meaning of this section.[1] Similarly, the objection that partition had been fully carried out by an arbitrator appointed by the parties, the question there also being that of the liability of the land to partition in force of a private division was also held to raise a question of title.[2]

A record of the several titles in the revenue papers is not an assential condition of severance of the legal title. It is, however, a reasonable presumptin of fact when the parties have not moved the revenue authorities to record a division that it was intened to be only provisional and subject to reconsideration, and not intended to be final. In such a case the burden of proof that a private partition has taken place is on the person who alleges it. But when a private arrangement by way of partition is admitted to have existed and to have been acted upon for a long period of time (say 40 years) it has been held that the fact raised a presumption that it was of a permanent character throwing upon the other party who sought to disturb the existing state of things the onus of showing that it was not so.[3]

With respect to proof of private partition having taken place, it was remarked by Roe, J., in *Matu* v. *Hirde*[4]—" No doubt the profits of the joint holding have been enjoyed by the co-sharers by separate possession, but this separation for the purpose of enjoyment of profits is a very different thing from partition. The revenue papers show that the total area of the holding is 138 *kanals* 9 *marlas*. Defendant should, as owner of one-third, hold 46—3 ; he actually holds 53—19, and his holding of the *nahri*, the most valuable land, is 41—10 instead of 35—8 his proper share." It was further remarked by Plowden S. J , in the same case—" The mere fact that co-sharer has dealt with specific portions is not proof that it has been divided (for instance at various times previously mortgaging the actual numbers held by him as sole property), but proof that portions have been separately possessed and enjoyed, which is frequently the case with joint property."

Questions of measure of right.

Measure of right is the most important factor in partition. All questions of measure of right are essentially questions of title. For instance, in some villages the *shamilat* is owned *hasab rasad khewat* (according to revenue holdings) while in others it is *hasab rasad jaddi* (according to ancestral shares). The question whether certain land is to be partitioned according to revenue holdings or according to ancestral shares is a question of title.[5] Similarly, a question like the one that common land is to be partitioned in accordance with the *khewat* of 1919 settlement and not according to the *khewat* of 1880 settlement is a question of title.[6]

The question whether certain land should be divided as *khewat* land or as *shamilat* land, where according to para. (1) (*a*) of the

1. Radhu *v.* Mst. Nando=150 P.R. 1890; 4 P.R. 1898 (Rev.); 1932 L.L.T. 61 (1) ; Dhian Singh *v.* Dalip Singh=1939 L. L. T. 10.
2. Sardar Wasawa Singh v. Sardar Arur Singh=63 P. R. 1893.
3. See " Law of Evidence " by Woodroff and Amir Ali, Eighth Edition, page 771.
4. 44 P. R. 1894.
5. Raja Fazal Dad Khan *v.* Ata Mohammad=99 P. R. 1905; Faiz Bakhsh and others *v.* Niamat Khan and others=105 P. R. 1918 = 48 I.C. 365= A. I.R. 1918 Lah. 186.
6. Chajju *v.* Dallu=112 P. R. 1919=53 I. C. 419.

wajib-ul-arz every co-sharer in the *shamilat* was entitled to retain at partition the land already in his possession while according to para. (1) (*b*) of the same in partition of *khewat* land possession was to be disregarded, was held to be a question of title.[1]

A suit for a declaration that the plaintiffs were on partition entitled to shares according to the *chundawand* rule of succession in place of the *pagwand*, relates to a question of title.[2]

Interpretation of 'hasab rasad khewat.'

The ordinary sense in which this phrase is used is "according to the revenue assessed" and it is only in exceptional cases that the extraordinary interpretation, *viz.*, "according to the area" holds good. When used in a revenue record in reference to a partition of the *shamilat* area it always meant "according to the revenue assessed on the holding" and not "according to their areas." But this rule was subject to an exception in favour of villages of a peculiar type, *i. e.*, in those cases where it may be unfair and inequitable to interpret it differently, as for example in riverain villages where the land revenue was fluctuating.[3]

Question of ownership of specific area instead of specific share in the joint holding.

Sometimes the question arises whether a right holder is the owner of specific fields in the joint holding or of a certain share on the whole. Such a question generally arises in the case of a sale by a co-sharer out of the land in the joint holding. Suppose for instance, A has got one half share in a joint holding and he sells to B certain specific *khasra* Nos. out of the land in his possession up to the extent of one-half of his share, that is, one-fourth in the entire holding. At the time of partition B may urge that he is not the owner of ¼th share in the entire holding but of those *khasra* Nos. sold in particular, while the co-sharers may urge that he is entitled to one-fourth share in the joint holding. This is obviously a question of title for the question to be determined is whether the specific fields are still the joint property of the co-sharers and not the sole property of vendee B. This is the view held in *Matu* v. *Hirde*.[4] But if B only urges that at the time of sanctioning the mode of partition care may be taken that land in his possession may be allotted to him, there is no question of title but only of the mode of partition and it is not cognizable by a Civil Court.

The following remarks of Plowden, S. J., in the above case are significant :—"The purchase by defendant of specific land cannot make him a sharer in the *khata*, and whatever right he may have to the land comprised in the deed if it falls to the share of his vendor, as it probably will, it cannot alter the land from being joint property of the co-sharers in the *khata* into separate property of the purchaser." Such a vendee is not shown in the column of ownership in the *jamabandi* but in the column of occupancy next to it. This speaks of the relative position of such a vendee with respect to partition.

Widow's right to obtain partition.

It has already been noticed that where a widow is a joint owner of land she has got statutory right to apply for partition of the joint holding But the widow with a life estate has not an interest which gives her

1. Gela Ram *v.* Sohna Ram=A. I. R. 1925 Lah. 172.
2. 12 P. R. 1899.
3. Sunder and others *v.* Inder Singh and others=A. I. R. 1935 Lah. 446 ; case-law referred ; see also 69 P. R. 1913 ; 1925 Lah. 127 ; 1927 Lah. 807.
4. 4 P. R. 1894.

the right to compel partition at her pleasure and agricultural custom in the province may not concede to her the right to obtain partition.

When a suit is brought in a Civil Court by a widow to establish her right to obtain partition or by her opponents to contest such right, the question arises on whom the *onus probandi* lies. In *Doulat Khan* v. *Mst. Mehtab Bibi*[1] it was laid down that in general a widow had by custom no right to insist on partition by the revenue authorities, but if she could show that she could not otherwise obtain the full enjoyment of her share in the property she could obtain a decree in a Civil Court for separate possession of her share. But in *Mst. Bhagbhari* v. *Wazir Khan*[2] it was held that a widow of a deceased co-sharer in a joint holding had a statutory right to demand partition and although a suit for declaration that she was not so entitled was competent, the plaintiff could only succeed by proving a custom by which widows were restrained from claiming partition and no consideration of desirability or undesirability would weigh with the Civil Court.

Again a Division Bench in *Parshotam* v. *Mst. Raj Devi*[3] held that where a widow claimed partition and parties were governed by custom the *onus* lay on the widow of proving that she could claim partition, following para. 15 of Rattigan's Digest of Customary Law. This view was upheld in *Abdul Quadir and Abdul Aziz* v. *Mst. Rabia*,[4] by the Financial Commissioner who, following pages 54 and 60 of Notes on Punjab Custom by Mr. T. P. Ellis, *Doulat Khan* v. *Mahtab Bibi*,[5] and *Mukandi* v. *Balwant Singh*[6] remarked that agricultural custom generally did not recognize the existence of the widow's right to obtain partition and the burden of proving that would be placed upon her.

The question has been fully discussed by a Division Bench in *Sant Singh* v. *Mst. Basant Kaur*,[7] in which *Parshotam* v. *Mst. Rajdevi*, was not approved and following *Mst. Bhagbhari* v. *Wazir Khan* it was held that a widow was possessed of a statutory right to demand partition and applying the ordinary rule of law of evidence the *onus* was then clearly on the parties who disputed the right to prove custom to the contrary. The same view has been held in *Ghansham* v. *Ramjilal*[8] *and Gopali* v. *Mst. Shamon*.[9]

QUESTIONS AS TO THE PROPERTY TO BE DIVIDED, OR THE MODE OF MAKING THE PARTITION.

Questions about the allotment of specific areas.

A, a co-sharer urges that he spent money in clearing the area in his possession and making it fit for cultivation and that, therefore, at the time of partition it must fall to his share. This is a question as to the mode of making the partition, for there is no question of title involved in this case. In *Devi Dayal* v. *Ahmad Khan*[10] it was held that the question whether a garden having been planted on a part of the common land by the plaintiff by his own individual labour and at his own cost,

1. 100 P. L. R. 1909=4 I. C. 1016 ; following 5 P. R. 1868=93 P. R. 1869 ; 28 P. R. 1870 ; 22 P. R. 1878 ; 116 P. R. 1879 ; 65 P. R. 1881 ; 82 P. R. 1898.
2. 70 P. 1912=14 I. C. 45.
3. 219 P. L. R. 1913=19 I. C. 702.
4. 4. P. R. 1917 (Rev.)=41 I. C. 473.
5. 100 P. L. R. 1909.
6. 210 P. L. R. 1913=19 I. C. 215.
7. A.I.R. 1923 Lah. 81 ; see also A.I.R. 1922 Lah. 362.
8. A.I.R. 1923 Lah. 625=4 Lah. 344.
9. A.I.R. 1929 Lah. 533=7 Lah. 346.
10. 4 P.R. 1908=91 P.L.R. 1908=14 P.W.R. 1908.

should or should not according to the rule laid down in the village-administration-paper, be allotted to the plaintiff at partition was a question relating to the mode of making partition, because it was simply a question of the allotment of a particular plot of land. It was also held that the suit for declaration that that orchard was planted by him alone at his own expense and that he was in sole possession thereof was not a land suit within the meaning of section 3 of the Punjab Courts Act, 1884.

Similarly in *Khuda Bakhsk* v. *Kaim Din*[1] at a partition of *shamilat* land, the plaintiff alleged that the land in dispute was broken up by him and was in his possession for many years and contended that according to the terms of the *wajib-ul-arz* of the village a proprietor who broke a plot out of the *shamilat* and was in possession thereof as a co-sharer was entitled to retain possession of the same and to be considered its owner, and that the plaintiffs had, therefore, a right to remain in possession of the land in question. It was held that the Civil Courts had no jurisdiction to take cognizance of the case, this being not a question of title.

Questions as to how much land is to be exempted from partition in a joint holding.

As has already been pointed out, even though the Revenue Officer may not absolutely disallow an application for partition, he may exempt from partition certain area on the ground of public policy or some other ground indicated therein, and this discretion cannot be questioned by the Civil Court. He is, therefore, as such the judge to determine the extent of such area to be exempted, this being obviously a question as to the property to be divided. For instance, where there is a well in a culturable joint holding, it will be always expedient to exclude it from partition and if either party does not like to keep it joint, it cannot bring a suit in the Civil Court, this being only a question as to the property to be divided. And again, when the *shamilat* of a village is going to be partitioned, the Revenue Officer is to point out how much area is to be kept for pasture and the like, and this is also a question as to the property to be divided.

Clauses in village-administration-paper how far to be considered.

Sometimes in the village administration paper there is a clause as to how the land is to be partitioned amongst the share-holders. The question whether that clause should be followed in partitioning the joint holding will obviously be a question as to the mode of making the partition. It is to be pointed out that due consideration must be paid to such provisions in the *wajib al-arz*, because these give us an idea how the custom stands with respect to this subject, and the party alleging to the contrary must have to make out a forcible cause. Of course, these clauses must be distinguished from dealing with such questions as whether certain land should be divided or not, which have already been discussed at length being questions of title.

Mode of partition.—Mode of partition will comprise the following main factors :—

(1) classification of land ;

(2) how the trees and buildings standing on the land are to be divided ;

(3) how the land is to be distributed amongst the co-sharers ;

1. 3 P.L.R. 1910=6 I.C. 486.

(4) how far existing possession is to be kept intact at the time of allotment.

We shall study these points in greater detail under section 118.

See also commentary under section 158 (xvii), (xviii) of the Act.

Disposal of questions as to title in property to be divided.

117. (1) When there is a question as to title in any of the property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

(2) Where the Revenue Officer himself proceeds to determine the question, the following rules shall apply, namely :—

(*a*) If the question is one over which a Revenue Court has jurisdiction, the Revenue Officer shall proceed as a Revenue Court under the provisions of the Punjab Tenancy Act, 1887.

(*b*) If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court, and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

(*c*) An appeal shall lie from the decree of the Revenue Officer under clause (*b*) as though that decree were a decree of a Subordinate Judge in an original suit.

(*d*) Upon such an appeal being made, the District Court or High Court, as the case may be, may issue an injunction to the Revenue Officer requiring him to stay proceedings pending the disposal of the appeal.

(*e*) From the appellate decree of a District Court upon such an appeal, a further appeal shall lie to the High Court if such a further appeal is allowed by the law for the time being in force.

Disposal of questions of title

Scope of section 117—Questions of title.—When there is a report from the Revenue Officer holding the inquiry in a case of partition that there is a question of title between the parties, the Assistant Collector 1st Grade should himself examine the parties. If he finds that there is a question as to title in any of the property of which partition is sought, he cannot proceed further till that question has been

decided. It has been laid down in clear words in *Ganda Singh* v. *Jhanda Singh*[1] and *Bachan Singh* v. *Madan Singh*[2] that in no case is he to proceed with partition until the question of title which has arisen has been determined. To proceed with partition without any decision on the question of title arrived at is opposed to law. "We think it is clear that no third course is allowed by this section, as has been argued, of proceeding in the capacity of a Revenue Officer to make a partition, brushing aside the question of title as of no consequence or as depending upon the entries in the Revenue Records where such exist. It is the plain duty of a Revenue Officer in order to act in conformity with section 117 when a question of title cognizable by a Civil Court is raised in a partition proceeding before him, to make up his mind whether he will proceed to determine that question as though he were himself a Civil Court or whether he will have it to be determined by a Civil Court: and in the former event he ought to proceed in conformity with the rules in sub-section (2), and in the latter event to stay further proceedings."—Per Plowden, S. J. in *Ata Mohammad Khan* v. *Arjan Singh*.[3]

The same view has been upheld in *Tirath Ram* v. *Mst. Nihal Devi*.[4] It was, however, remarked by the Financial Commissioner in *Murid Hussain Shah* v. *Jowala Sahai*[5] that the provisions of section 117 (1) of P. L. R. Act empowering a Revenue Officer dealing with a partition case in which a question of title was involved to refuse partition until that question had been determined by a competent Court were permissive and not mandatory and their application was to be decided in relation to the merits of each particular case. But it is difficult to understand the significance of these remarks in face of the above cited authorities and the wordings of section 116 of the Act which lays down that such question *shall* be ascertained. What is the use of ascertaining these questions when the process of partition can be carried on even without determining these questions? The difficulty seems to arise with the word '*may*' used in section 117 (1). It seems that this word has been used not because there is option for the Revenue Officer to carry on partition without the decision of these questions but because there are two alternative courses suggested by the Legislature for him for decision of the question of title.

Jurisdiction of Civil Court if question disposed of summarily.

If a question as to title in property is raised before the Revenue Officer in the course of partition proceedings, that officer should either (*a*) constitute himself into a Civil Court and try the question in accordance with the procedure laid down in section 117 (2) of the Land Revenue Act or (*b*) he should stay the partition proceedings and refer the parties to have this question also determined by a Civil Court. If, instead of adopting either of these courses, he, in a summary manner, expresses the opinion that the objectors have failed to establish their title, his finding cannot bar the cognizance of the question by Civil Courts.[6]

Competency of the Revenue Officer to decide questions of title.

It was remarked in *Saraj Din* v. *Narain Dass*[7] that a Civil Court was the only authority having jurisdiction to adjudicate upon a dispute

1. 14 P. R. 1890 (Rev.).
2. 61 R. 1897 (F. B.).
3. 72 P. R. 1896 (F. B.); see also 1932 L. L. T. 43; 1932 L. L. T. 61.
4. A. I. R. 1931 Lah. 664.
5. 1929 L. L. T. 39.
6. Jawala Singh *v.* Jagdish Singh=A. I. R. 1941 Lah. 144=43 P. L. R. 41=195 I. C. 244.
7. A. I. R. 1927 Lah. 412=102 I. C. 33.

relating to title but in order to expedite partition proceedings the Legislature had created an exception to the ordinary rule and invested the Revenue Officer with jurisdiction to decide the questions of title arising out of partition proceeding as if he were a Court. Section 117 (1) of the Act provides that when there is a question as to title in any of the property of which partition is sought the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court or he may himself proceed to determine the question as though he were such a Court.

It must, however, be remembered that this special jurisdiction is limited to a suit raising only the question of title and the Revenue Officer has no power to entertain any other suit simply because one of the issues involved therein relates to title. In *Narain Dass* v. *Saraj Din*[1] one Gurdit Singh mortgaged his land in question to Nihal Singh. After Gurdit Singh's death one of his four sons, Baghel Singh sold his one-fourth share to Musa, and the remaining three sold their three-fourth share to Narain Dass. The latter redeemed the whole land from the mortgagee in 1900. In 1923, Musa's son Saraj Din applied for partition of his share. His title being disputed by Narain Dass, he was referred by the Assistant Collector to a suit and he then brought the suit in the Assistant Collector's Court, asking for joint possession. He was given a decree subject to the payment of one-fourth of the amount due on the mortgage ; and this decree was affirmed by the Additional District Judge on appeal. It was held on second appeal that the only power which Section 117 of the P. L. R. Act gave to a Revenue Officer acting as a Court was to determine the question of title arising in the partition proceedings and he had no power under that section to pass a decree for possession of the land of which the title was in dispute. An appeal was made again against this order under clause 10 of the Letters Patent and this view was upheld in *Saraj Din* v. *Narain Dass.*[2]

What cases to be taken up by the Revenue Officer himself and what to be referred to the Civil Court ?—The cases relating to questions of title may be broadly divided into two classes ; *firstly* those where an applicant believing that the partition proceedings will give him an advantage over the opposite party, has asked for partition in order to evade direct resort to the Civil Courts in respect of a question of title which he knows would be disputed, and, *secondly* those where it appears that the applicant is acting in a straight forward manner, that is to say, in which partition is really desired by him and is the principal matter in which he requires official assistance. In the first case the Revenue Officer should file the proceedings with leave to either party to apply to have them reopened on showing that the point at issue had been determined by a competent Civil Court In the latter class of cases a Revenue Officer should exercise the full jurisdiction vested in him by law, and should refrain from putting the parties to the trouble of separate proceedings in a Civil Court even although the question is one which would ordinarily fall within the jurisdiction of such a Court. When the respondent in the partition proceedings puts forward an objection as to title the Revenue Officer should invariably, unless there is some special reason to the contrary, proceed to determine the question himself and not refer the objection to a Civil Court.[3] Thus

1. A I. R. 1926 Lah. 238=92 I. C. 980.
2. A. I. R. 1927 Lah. 412=102 I. C. 33.
3. Para. 18·9 Land Records Manual

where an application for partition is made by a person who is recorded as a co-sharer but is not in actual possession and the other co-sharer as respondents raise a question of title, the Revenue Officer should under para. 8 of Standing Order No. 27 himself proceed to decide question of title without referring the objection to Civil Court.[1] Similarly, when there is a *prima facie* ground for believing that the widow is being obstructed by the other co-sharers in the due and reasonable enjoyment of her life-interest and the co-sharers object to partition, the Revenue Officer should himself proceed in the exercise of the discretion allowed to him by section 117 of the Act to decide the question of title as a Civil Court. But where on the other hand there is no such *prima facie* ground and the other co-sharers object to the partition, the Revenue Officer should decline to grant her application for partition until the question has been determined by a competent Civil Court.[2]

As laid down in *Ghulam Mohammad* v. *Salabat*,[3] no legal question arises as regards whether Revenue Officer or Civil Court should decide the question of title.

Question of title application of S. 10, C. P. C.

Direction to institute suit in Revenue Court—record consigned to record room—question of application of section 10, C. P. C. does not arise.—Previously it was held that after a Revenue Officer has, acting under the statutory authority of this section, decided to try the case himself, a Civil Court could not entertain and try a suit for the determination of the same question.[4] The partition proceedings were still pending when the suit was dismissed by the Civil Court. In *Sukhdeo Singh* v. *Mathra Singh*[5] however, the Assistant Collector ordered the objectors to file a declaratory suit in the Revenue Court. The plaintiffs preferred to have recourse to the ordinary Civil Courts. It was held—" As to issue No. 4 the argument in favour of this finding is that as jurisdiction is given to the Revenue Court, the jurisdiction of the ordinary Courts is ousted. Section 117, Land Revenue Act, to which this effect is attributed does not expressly deprive the ordinary Courts of jurisdiction and I do not find in the section any such strong implication as would be necessary to effect the result suggested ; in form the section merely enables the Revenue Court to make such a declaration as the plaintiffs have sought." Again in *Mohammad Ali* v. *Wazir Ali*[6] it has been held that section 117 does not itself contemplate the institution of a suit in the Revenue Court. Where, however, a direction has been given by the Revenue Officer to the plaintiffs to institute the suit in his Court and has further directed that the record of the proceedings relating to partition be consigned to the record room, no proceedings are pending in his Court, so as to attract the application of section 10, Civil Procedure Code. Where the suit is instituted in a Civil Court no question of the application of section 10, C P. C. (stay of the suit) arises. Section 10 is applicable only if the suit as directed by the Revenue Officer has been instituted in his Court.

1. Kirpa *v.* Nasib Singh=6 P. R. 1918 (Rev.). See now Para. 18·9 of the Land Records Manual.
2. 82 P. R. 1898 ; 4 P. R. 1917 (Rev.) ; A. I. R. 1923 Lah. 81.
3. 1928 L. L. T. 9.
4. Ghulam Mohammad *v.* Mohammad Mansur Jan=146 P. L. R. 1902 *i* 63 I. C. 787.
5. A. I. R. 1933 Lah. 412 ; see also A. I. R. 1931 Lah. 664.
6. A. I. R. 1936 Lah. 589 ; 1933 Lah. 412 and 1931 Lah. 664 referred ; 146 P. L. R. 1902 distinguished.

Ghulam Mohammad v. *Mohd Mansur Jan*[1] has been again followed in *Abdullah Said Mohd.* v. *Arbab Taj Mohammad Khan*[2] in which it has been held that once the Revenue Officer decides to determine the question of title himself under section 117, the jurisdiction of the Civil Court is precluded by section 158 (1) of the Act.

Procedure.—When the Revenue Officer stays proceedings until the question of title has been settled in a Civil Court, he should send the partition file to the record office and treat the case in the quarterly business return as a decided one. If, on the termination of the proceedings in the Civil Court, the applicant petitions to revive the partition case, the file will be restored to the register of pending cases and be reckoned in the business return as a new institution. If the Revenue Officer determines to hear the case himself and the burden of proof is on the applicant for partition he should order the applicant to put in by a certain date a written statement giving full particulars of his claim. Similarly, if the objecting party is the respondent in the partition proceedings he should be required to put in a written statement by a certain date, giving full particulars of his objections. If either party fails or refuses to obey these instructions the Revenue Officer should pass orders under Order VIII, Rule 10 of the Civil Procedure Code. On a plaint being presented, the Revenue Officer should record a brief note stating whether the question at issue is cognizable by the Revenue Court [section 117 (2) (*a*)] or by a Civil Court [section 117 (2) (*b*)] and consequently, what his future procedure is intended to be.[3]

Revenue Officer has no power to fix the time for bringing the suit in the Civil Court.—In rule E. II. 4 of the rules under section 65 of the old Punjab Land Revenue Act[4] it was laid down that when there was a question of title, the proceedings would be stayed for three months to enable the persons contesting the correctness of the record to bring a Civil suit. No such restriction has been laid down under the present Act. A Revenue Officer has no power to fix a period and order the parties or a party to have the question of title decided by instituting a civil suit within that period directing that otherwise the partition will proceed. The parties in such a case may or may not institute the suit or may institute it whenever they like.[5]

The Revenue Officer cannot proceed after the expiry of such period if fixed in any way, because the parties have not brought a suit to that effect in the Civil Court and consequently do not desire to have it so. If the party directed by him to bring a suit fails to do so within a reasonable time, two ways are open out of the *impasse* thus created. Either the other co-sharers who desire partition may and can make a fresh application to the Revenue Officer for the purpose, or the Revenue Officer may and can take up the question himself and straightway proceed to determine it as a Court.[6]

It may be noted that a Revenue Officer cannot direct either party to file a suit in a Civil Court. He can only file his own proceedings,

1. 146 P. L. R. 1902.
2. A. I. R. 1942 Pesh. 16 ; 28 P. R. 1913; A. I. R. 1937 Lah. 315 and A. I. R. 1941 Lah. 144 distinguished.
3. Para. 18-9, Land Records Manual.
4. Act XXXIII of 1871.
5. See 14 P. R. 1890 (Rev.) and 61 P. R 1897 (F. B.).
6. See 61 P. R. 1897 (F. B.).

with permission to either party to reopen them on production of a judicial decision.

Where a question as to title of the land to be partitioned is raised during partition proceedings, the Revenue Officer may decide the question of title himself as a Civil Court or refer the matter to a Civil Court for decision. In such a case if there is no plaint, no written statement, no issues are struck—in a word there are no formal proceedings and the Revenue Officer opines that the title of a party is ill-founded and orders that a suit to establish title may be instituted in a Civil Court within 60 days of the order, the Revenue Officer is not proceeding as a Civil Court. So his direction to lodge a Civil suit still stands and therefore the Civil Court has jurisdiction to decide the title. Even if such a civil suit to establish title is not instituted within 60 days it may be instituted at any time within limitation, even after the partition is completed.[1]

Question of the *onus*.—It was laid down in *Ganda Singh* v. *Jhanda Singh*[2] that a Revenue Officer as such had no jurisdiction to decide upon which party lay the *onus* of appealing to the Civil Court. If he does so he exceeds his power under section 117 of the Act.

When of course he proceeds as a Civil Court to decide a question of title he is bound under the Code of Civil Procedure and Indian Evidence Act to decide the question of onus first in the ordinary way.[3]

Injunctions *pendente lite*.—When a Revenue Officer has decided a question of title, section 117 (*d*) above empowers the District Court or the High Court to issue an injunction to the Revenue Officer requiring him to stay further proceedings pending the disposal of an appeal from his decree. In this respect the provision is in striking contrast with the provisions of the Code of Civil Procedure under which neither the District Court nor the High Court has such power if the question of title has been determined by a regular Civil Court.[4]

It was held in *Malak Sobaro Khan* v. *Ahmad Khan*[5] that the same principle applied to the granting of a temporary injunction as to the grant of a perpetual injunction, and that these principles would be sought in the Specific Relief Act. Therefore, in accordance with the principle embodied in section 5 (*b*) of the Specific Relief Act the Chief Court was not competent to grant a temporary injunction to restrain partition proceedings in a revenue Court, the latter Court not being sub-ordinate to the Chief Court. Similarly, it was laid down in *Mohammad Masud* v. *Shib Charan Lal*[6] that no injunction could be issued to the Revenue Officer before whom partition proceedings were pending for stay of those proceedings, when section 117 (2) (*d*) was in applicable to the case. Thus where it is common ground that the parties are co-sharers in the property and there is no dispute about the shares to which they are entitled and the partition proceedings, if carried out are not likely to disturb the *status quo* Court should refuse to grant injunction for stay of partition proceedings before a Revenue Officer.

1. Ghulam Mohd. Shah *v.* Said Hussain Shah=A. I. R. 1937 Lah. 315.
2. 14 P. R. 1890 (Rev.).
3. 1921 L. L. T. 17 ; 6 P. R. 1918 (Rev.).
4. A.I.R. 1926 Lah. 284=96 I.C. 540=77 P.L.R. 11.
5. 57 P.R. 1899.
6. A.I.R. 1931 Lah. 176=123 I.C. 82=32 P.L.R. 277.

Declaratory suits in partition about the questions of title and the Specific Relief Act.—Section 42 of the Specific Relief Act lays down that 'any person entitled to any legal character, or any right as to property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief :

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so.'

In a suit for declaration, the Lower Courts dismissed the claim on the ground that the party could ask for further relief, *viz.*, exclusive possession and, therefore, no declaration could be given. It was remarked by Justice Scott-Smith, in *Mst. Lachhmi Bai* v. *Mst. Handi Bai*[1] on further appeal—"Such a suit is not like an ordinary declaratory suit under section 42 of the Specific Relief Act; it is rather a suit to determine a question of title arising out of partition proceedings such as is contemplated in section 117 of the P.L.R. Act. That section clearly allows a party to partition proceedings to bring a suit to establish his title when that title is disputed, and we do not see what other relief such a party could obtain beyond a declaration of his title. No doubt he could ignore the partition proceedings and bring a possessory suit for any land of which he was not in possession, but we are clear that he is not bound to do so." It was further remarked in *Gopal* v. *Shewag Ram*[2] that no other relief than a declaration of title was available at all to an aggrieved party in such cases owing to the exclusion of the jurisdiction of the Civil Courts in all such matters beyond granting only a declaration of title and a claim for partition annexed to a claim for declaration of title would be beyond a Civil Court's jurisdiction because a claim for the partition of a revenue paying estate could not be entertained in a Civil Court.

J instituted a suit in which he alleged that the entire estate left by his ancestor was joint, that no private partition ever took place, that he was entitled to a declaration to the effect that the land in question belonged to him and the co-sharers jointly and that he was entitled to have it partitioned. The suit was contested by the co-sharers on the ground that J had no right to sue for the declaration prayed for on the ground that he never applied for partition to the revenue authorities, that he was not directed to bring a Civil suit, that he was estopped from instituting the suit since he had previously admitted that the land had already been partitioned; *held*, that the suit being for a declaration of title, was maintainable under section 117 (1) Land Revenue Act. *Held further*, that the principle of estoppel did not apply.[3]

Indian Limitation Act and questions of title.—According to the provisions of Article 14 of Schedule I of the Indian Limitation Act, the period of limitation for setting aside any act or order of an officer of Government in his official capacity, not therein otherwise expressly provided for, is one year from the date of the act or order. When a Revenue Officer absolutely disallows an application for partition under section 115 of the Act, he is acting as a Revenue Officer, and this

1. 100 P.R. 1913=7 P.L.R. 1914=21 I.C. 719.
2. 12 P.R. 1899.
3. Jawala *v.* Mohammada=A.I.R. 1938 Lah. 202.

article has nothing to do with this order as there are specific provisions with respect to limitation in the P.L.R. Act. If, however, the Revenue Officer is deciding a question of title as a Civil Court or as a revenue Court under the provisions of section 117 of the Act, he is not acting as an Executive Officer of Government but as a Civil Court and again this article will not apply. In *Kalu Khan* v. *Umda*[1] the ancestors of the defendants sold a part of their estate to the plaintiffs' ancestors in 1863 and put them in possession. Having sold the remaining estate to other persons in 1884-1885 they left the village. In 1908, the plaintiffs applied for partition of the *shamilat* but the Revenue Officer rejected the application in 1909. Thereupon they brought a suit for declaration of their title in 1912 to a proportionate share of the *shamilat* area. For the defendants it was urged that the suit not having been instituted within one year from the date of the order refusing partition was barred under Article 14 of the Limitation Act. It was held that the Revenue Officer having no jurisdiction and not professing to decide the question of title which arose in that case, the suit was governed by Article 120 and not Article 14 of the Limitation Act.

The most important question with respect to limitation that sometimes arises is when an entry in the record-of-rights is contested by either party. Two points are noteworthy in this connection. In *Khem Singh* v. *Kesar Singh*[2] a partition of the *shamilat* of the *taraf* Burhan Pur in *mauza* Dhadiala, in which both parties were co-sharers, took place on the 13th January, 1882, according to the amount of the land revenue paid by each proprietor. The holding in dispute was, however, kept joint and the plaintiffs and the defendants were recorded owners thereof in the proportion of $3/7$th and $4/7$th shares respectively. In the year 1885-86, for some unknown reason the plaintiffs were recorded as owners of $\frac{1}{3}$rd share in the joint holding instead of $3/7$th share. In 1891 one of the co-sharers complained of the incorrectness of the entry in question but the Naib-Tahsildar by his order dated 12th June, 1891, refused to alter the entry noting that objecting co-sharers were absent and that all the other co-sharers stated the entry to be correct. The said entry was repeated in the record of current Settlement. On 13th January 1906, the defendants applied for partition of the joint holding, stating that they were owners of $\frac{2}{3}$rd share and plaintiffs of $1/3$rd share in it. The plaintiffs on the other hand alleged that the entry in the Settlement Records was wrong and that they were entitled on partition to a $3/7$th share of the joint area and not to $\frac{1}{3}$rd. A question of title being thus raised, the plaintiffs were referred by the Revenue Officer by order dated 5th January 1907, to a Civil Court under section 117 of the P.L.R. Act to establish their title. The plaintiffs brought a suit for declaration that they were proprietors of $3/7$th share in the joint holding and that the entries in the revenue records showing them as proprietors of only $1/3$rd of the afresaid holding was wrong. The first Court held that the entries in the Settlement Record showing the plaintiffs as proprietors of $1/3$rd share of the joint holding was wrong and decreed their claim. On appeal the Divisional Judge held that as the suit fell under Article 96 or Article 120 of Schedule I of the Limitation Act it was barred by time as according to him the plaintiff's knowledge of the alleged erroneous entry of 1891 fixed the time of the accrual of their right to sue. It was, however, held on further appeal that the

1. 47 P.R. 1916=150 P.L.R. 1916=34 I.C. 546.
2. 22 P.L.R. 1910=7 I.C. 528.

suit did not fall under Article 96 but Article 120 of the Limitation Act and that according to the decision in *Hakim Singh* v. *Waryaman*[1] though a cause of action did accrue to the plaintiffs in 1891 yet a fresh cause of action occurred to them in January 1906, when by applying for partition of the joint land according to the entry in the revenue records, the defendants committed a much more serious invasion of the plaintiff's title to $^3/_7$th share in the joint holding, and the present suit being based upon that fresh cause of action was within limitation.

In *Man Singh* v. *Rasul*[2] another proposition has been laid down. In that case certain persons who were recorded as owners by purchase in the revenue papers applied in 1890 for partition of their shares in the joint holdings to the revenue authorities. The co-sharers who denied the right of the petitioners were referred to bring a Civil suit which they failed to file but the partition proceedings were dropped for about 17 years. During this period the petitioners never exercised any right of ownership nor paid Government revenue. The whole land remained in possession of the objectors. In 1907 there was fresh application for partition and the objectors were again directed to establish their rights to exclusive ownership by a Civil suit. It was held that the suit on the fresh application for partition being made was maintainable and that the objector's possession commenced to become adverse from the date of the first denial and that after expiry of 12 years from that date the right to demand partition had become barred by limitation.

An application for partition is an act of invasion which gives a new cause of action for a suit for declaration.[3]

Appeal from the decree of a Revenue Officer deciding a question of title as a Civil Court.—Clause (*c*) of section 117 of the P.L.R. Act lays down that an appeal shall lie from the decree of the Revenue Officer deciding a question of title as a Civil Court as though that decree were a decree of a subordinate Judge in an original suit. And clause (*e*) of the same section further lays down that from the appellate decree of a District Court upon such an appeal, a further appeal shall lie to the High Court if such further appeal is allowed by the law for the time being in force.

The value of the subject matter determines whether an appeal from a decree passed by a Revenue Officer acting under section 117 (*2*) lies to the District Judge or to the High Court.[4] Plaintiff sued for a declaration that certain land was his absolute property and was not liable to partition. It was held in *Sohan Singh* v. *Devi Singh*[5] that for the purposes of the Court-fees Act this suit though fell under Article 17 of the Second Schedule and court-fee was a fixed one of Rs. 10, section 8 of the Suits Valuation Act, did not apply and the only statutory provision which did apply was section 4 of the Suits Valuation Act but that section merely fixed the maximum value of the jurisdiction in such suits and did not deal with any minimum. Consequently the matter is one which has been left for judicial decision. In *Khuda Bux* v.

1. 140 P.R. 1907=187 P.W.R. 1907.
2. 75 P.L.R. 1913.
3. See A.I R. 1927 Lah. 119; A.I.R. 1933 Lah. 414; 98 P.R. 1919; A.I.R 1930 Lah. 284 (2).
4. A.I R. 1925 Lah. 136=82 I.C. 243.
5. 81 P.R. 1918=46 I.C. 490=119 P.L.R. 1918.

Wahab Din[1] it was, however, laid down that in such cases the proper valuation for purpose of jurisdiction of a suit for declaration that certain property was his absolute property and was not liable to partition was thirty times the *jamma*.

See also commentary under sections 45 *and* 158 (*xvii*), (*xviii*) *of the Act*.

Disposal of other questions.

118. (1) When there is a question as to the property to be divided, or the mode of making a partition, the Revenue Officer shall, after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under sub-section (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue Officer by the authority to whom the appeal has been preferred the Revenue Officer shall stay proceedings pending the disposal of the appeal.

(3) If an applicant for partition is dissatisfied with an original or appellate order under this section, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit.

(4) When an applicant withdraws under the last foregoing sub-section, the Revenue Officer may, where the other applicants, if any, desire the continuance of the proceedings continue them in so far as they relate to the partition of the shares of those other applicants.

MODE OF PARTITION.

Classification of land.—The skill of the Revenue Officer conducting the enquiry is shown by the method in which he classifies the land for partition.

The distinction may consist in part being cultivated, part culturable waste and part barren. Again some land may be more valuable than the rest on account of its natural quality or its situation, or the existence of the means of irrigation. Part may be mortgaged, or held by an occupancy tenant or by a tenant-at-will who cannot equitably be turned out. All these facts are to be taken into consideration while reporting on this point.

No general rule can be laid down for classification, for everything depends on local circumstances. All that can be said is that classification should be as simple as possible, and be based on broad differences of a fairly permanent character which effect in a marked decree the economic rental of the land. It is to be noted that the Revenue Officer is not

1. 35 P. R. 1901=47 P. L. R. 1901.

to classify the land geologically. The test to be applied is its utility for practical purposes. The value of the land as such will clear this difficulty. For instance, in some parts of the province, unirrigated manured land near the houses called *niain or gora* is rightly considered far more valuable than the rest of the unirrigated area. A wide divergence between the cash rents usually paid on two classes of land is the best proof of the necessity of showing them separately.

No difficulty generally arises in the classification of cultivated land for the subject of partition, but classification of uncultivated land, for instance, in the case of partition of *shamilat* land, is a more difficult task. Uncultivated land is classed as *banjar jadid*, *banjar kadim*, and *ghair mumkin*. Lands under buildings, roads, streams, canals, tanks, etc. are entered as *ghair mumkin* and they are usually excluded from partition being left for the common purposes of the villagers. If for four successive harvests land which was once cultivated has not been sown, it is classed in the last of the series as *banjar jadid* or new fallow. If it continues to be uncultivated this entry is maintained for the next four harvests after which the land passes into the category of *banjar kadim*, or old fallow. It also includes all culturable waste whether it has ever been under the plough or not. But these classes are not of very practical importance for the subject of partition. The co-sharers care more for the comparative value of the land that depends upon factors like the distance of the land from the village, for instance, its nearness to the city, and the labour that may be required to clear it to make it fit for agricultural purposes. Sometimes some part of it is overgrown with bushes, and again there may be sandy tracts where no well can be dug or other means of irrigation introduced. All factors likely to affect the value of the land as such must be taken into consideration.

It is a matter of common experience that the parties generally agree among themselves to have the same classes of soil as were formed in the last Settlement, because they know that the whole of the land was well surveyed during the Settlement and different rates of land revenue were imposed on different classes. The parties may mutually agree to classify the land in any other way also and when a compromise has been come to between the parties the decision should be in accordance therewith.[1] But when the parties cannot agree among themselves it is for the Revenue Officer to decide how the land is to be classified. He can, however, refer the matter to arbitration and then give his decision on the award of the arbitrator or arbitrators.

Distribution of land amongst the co-sharers.—When the land has been classified, the next question that arises is how to distribute the land amongst the co-sharers. There will be no ambiguity about the proportion of the land which each co-sharer has to receive because that question would have been decided under sections 116 and 117. The simplest way of making the distribution would naturally appear to give to each co-sharer his due share from all classes of the land separately. But such a division of land entails many difficulties and has many disadvantages from the point of view of agricultural efficiency. It is generally likely to result in the splitting up of the holding into a very large number of small portions which are economically of practically no value. This would result in the waste of the cultivator's time and labour and add to the work of the bullocks by multiplying journeys to and from his land. It also causes waste of water and even

1. 1930 L.L.T. page 14.

water-logging by involving the use of unnecessarily long tortuous or badly aligned water courses from wells or canals. It makes the sinking of wells, drainage, levelling and other agricultural improvements, more difficult, while small fields may often be an obstacle to the employment of improved agricultural implements and machinery. Especially in the central districts of the Punjab very long strips of land and only a few yards wide, owned by different owners are very common. The result of this is already being felt in this Province, and its dire effects are being met by such movements as consolidation of holdings.

In this connection efforts should be made to persuade co-sharers to abstain from insisting on an exact application of the rule of equal proportions where this would result in the formation of an excessive number of small scattered plots or fields. Should the parties nevertheless desire the application of the rule of equal proportions of each class of land, the Revenue Officer has discretion under section 118 of P.L.R. Act to refuse compliance if he thinks that the circumstances of the case render the rule inappropriate and he may instead authorize duly specified deviations from the rule of equal proportions. He should set forth clearly how far deviations from the rule of equal proportions are to be allowed, and how men receiving inferior land are to be compensated by an increase in the area allotted to them or otherwise.[1]

In effecting a partition there is no sense in microscopic partition of each *khewat*. But where the land is of various kinds such as *chahi*, *nahri* and *barani*, each class should be partitioned separately and the parties should be allotted their proper share in each class and in the process of such allotment value and rent must be taken into consideration (1931 L.L.T. 37).

Land with potential value as building site—unearned increment.

Shamilat—partition—part valuable on account of being suitable as building site or nearness to manufacturing concern—unearned increment—right of all co-sharers—adjustment of.—Where a portion of a common land becomes valuable as a building site or on account of proximity to some big manufacturing concern, the case is one of increase by unearned increment and the unearned increment should not accrue to only one of the several co-owners who happens to be in possession of it but should accrue to the entire proprietary body. If such a portion is small and the number of co-owners is large it is not desirable to partition it. The best course is to allow the person in possession to continue in possession as owner of his own undivided share and as tenant-at-will of the rest on behalf of the proprietary body on payment of customary rent to his co-sharers with the proviso that if and when that plot is sold the sale proceeds should be divided among the co-sharers.[2]

Possession and improvements to be respected.

In partition cases possession should be maintained in an equitable manner and regard had to the improvements effected by a co-sharer.[3]

Existing possession.

How far existing possession is to be taken into account.—But the above are not the only considerations that a Revenue Officer has to bear in mind while suggesting or sanctioning mode of partition. Suppose a co-sharer has taken into possession a part of the *shamilat* of the village in which he has got his share and begun to cultivate it by clearing it, manuring it and improving its value even by digging a

1. Land Administration Manual, para. 459.
2. Roshan Din *v.* Mahbub Ali Khan=(1941) 20 L.L.T. 21.
3. Dhian Singh *v.* Dalip Singh=(1939) 18 L.L.T. 10.

well. He cannot accept that at the time of the partition of that *shamilat*, this area should fall to the share of other co-sharers and he would have some other area out of the *shamilat*. This is against reason too.

Thus existing possession sometimes counts much in partition cases and due consideration should be paid to it. A co-sharer might have improved the land in his possession by manure while the other co-sharers might have neglected their land altogether. In a suit for partition plaintiffs claimed to disturb defendant's possession in and share equally with defendant in three wells sunk by defendant in waste land, and in the land attached to them, which was not cultivated before the wells were sunk and only became culturable in consequence of the sinking of the said wells. They relied upon para. 11 of the *wajib-ul-arz* which provided that in dividing a holding between the joint sharers thereof, the wells and roads should be kept out of the partition and remain joint, and that with this exception such holdings could be divided without regard to former possession. It was held in *Ram Jawaya* v. *Amrit Ram*[1] that the above provision while it expressly authorised the revenue authorities to make a partition which should disturb previous possession did not lay down any rigid rule by virtue of which plaintiffs could claim to be awarded a half share in all the land improved by defendant or in the wells sunk at defendant's cost and risk and that the proper principle, therefore, to apply in effecting a partition was to make every possible allowance for the labour spent by a co-sharer in breaking the land, in bringing the land into cultivation by sinking wells, in reclaiming it, or in improving the land by planting trees or in any other way. A co-sharer should be allowed to keep possession of the land improved by him unless it appears that land equal in original value cannot be awarded to another party from the rest of the joint holding. Otherwise possession should be respected upto the extent of each share-holder's share in each of the different classes of land.[2] In hilly broken country in the Punjab in particular it is the general custom that those share-holders who have broken a part of the common waste land retain at partition such cultivated land as their share of the culturable waste if other culturable waste of equal quantity is available to make good the share of the other share-holders.[3]

In *Hukam Singh* v. *Sham Singh*[4] the question before the Financial Commissioner was whether the applicants should retain possession of more than their share by way of compensation for the well sunk by them which had changed 16 *kanals* 17 *marlas* into *chahi* from *barani*. It was held that they were equitably entitled to some compensation, that this would take the form of some small additional share of the joint holding, and that it was advisable to direct the parties to appoint arbitrators to decide what additional share out of the joint holding should be allowed.

Provision for land mortgaged or sold by co-sharers.—Sometimes the co-sharers are in cultivating possession of different parts of the joint holding without its being partitioned. A co-sharer may instead of mortgaging or selling his share in the joint holding, mortgage or sell the specific fields that may be under his cultivating possession so that at the time of the partition of the joint holding question may arise how the

1. 9 P. R. 1885 (Rev.).
2. Chandan Khan *v.* Fateh Mohammad=2 P. W. R. 1908 (Rev.)=96 P. L. R. 1908 Suppl.
3. See Sharfu *v.* Malik Sultan Mohammad=11 P. R. 1881 (Rev.).
4. 1 P. W. R. 1911 (Rev.).

land under the mortgage or vendee may be dealt with. It is also possible that a co-sharer may be in cultivating occupation of a greater area than should fall to his share proportionately and if he sells or mortgages the whole of that area the other co-sharers shall claim a part of that as falling to their share.

It has been laid down in *Harnam Singh* v. *Bhan Singh*[1] that subject to the rule that the land should be given to each co-sharer in the same proportion according to its classes, the respective possession of co-sharers should be maintained as far as possible where a co-sharer has mortgaged a portion of the land in his possession. The same remarks apply to the case of a sale.

Where a co-parcener has mortgaged joint property and the mortgagee has been in possession adversely for more than 12 years, a claim for partition against the mortgagee is barred by limitation under Art. 144 of the Second Schedule of the Limitation Act, and his possession cannot be disturbed.[2]

Similarly, where a co-sharer sells a specific portion of a joint holding which portion is in his possession and possession of which is immediately delivered to the purchaser, the possession of such purchser is adverse to the other co-sharers from the moment of his entry, and the same rule of 12 years will apply.[3]

The mortgagee or the vendee feeling aggrieved by this procedure has the remedy as explained under section 158 (*xvii*) of the Act.

Principle of division of land under the occupancy tenants.—Two kinds of occupancy tenants are met with according to the rent they pay to the landlords, *viz* , firstly those who pay cash rents and, secondly, those who pay *batai* rents. With respect to the holdings of the occupancy tenants paying cash rent the process of dividing their holdings is simpler and easier as money adjustment is an easy affair. But the difficulty arises with respect to the division of the holdings under the occupancy tenants who pay produce rent. In *Chandan Khan* v. *Fateh Mohammad*[4] the Financial Commissioner approved the order of the Assistant Collector 1st Gade fixing that in partition as regards the area held by occupancy tenants, the holdings of each tenant should not be split up into pieces but that each holding should go as a whole. This principle is a sound one and must be followed in every case where it is possible. But where division of a tenancy becomes absolutely necessary for equitable partition between co-sharers, it may be either left joint and excluded from partition or if the occupancy tenants do not object, it may be split up as may be found necessary, keeping in view that it should be kept in tact as far as possible.

But other considerations are also to be taken into account. There may be a tract of land occupied by an occupancy tenant who has no reversioners so that it has to revert to the landlords after his death. The co-sharer who is to get that tract will certainly be envied by the other co-sharers and will not assent to this mode of partition and will insist on equal division of that also according to their respective shares. This objection appears to be a vaild one as the co-sharer getting that tract is

1. 1930 L. L. T. 3.
2. 1 P. L. R. 1902.
3. 71 I. C. 171.
4. 2 P. W. R. 1908 (Rev.).

surely to gain in comparison with those who get equal occupancy-tenant holdings according to their proportionate shares and who have got reversioners to inherit their rights after his death. In such a case the best course appears to be to exclude this tract altogether out of the partition proceedings.

Question of distribution of trees.—For the purposes of partition three classes of trees may be distinguished, namely (1) fruit bearing trees, like mangoes and oranges ; (2) trees used for timber like *shisham*, and (3) ordinary trees of fuel value only. The general practice in the Punjab is that ordinary trees of no significant value are allowed to go with the land and fall to the share of the person who gets that portion of the land on which they are growing. An orchard of fruit bearing trees is generally divided amongst the co-sharers according to their shares, for that is nearly always one unit and can be easily partitioned. The difficulty, however, arises for dividing the second class of trees, that is, those trees that are of significant value and also lie scattered throughout the area to be divided. Sometimes it so happens that these cluster together more in one place than in any other place, so that if that particular portion is allotted to one person according to his proportionate share, he is likely to gain more by the trees standing on his land, and the other co-sharers will object to it. In such a case the practice that is commonly followed in the province is that the trees are valued and then adjustment made so that the person getting more trees is made to pay in cash to the other co-sharers in lieu of their getting less number of trees. This procedure is very simple and equitable when the parties come to an agreement on this point. But some difficulty is experienced if the parties do not come to any understanding. An alternative course can be suggested. Just as an irrigated area is considered more valuable than an unirrigated one because the former can yield better results in terms of economic produce, so also a tract of land overgrown with more trees can be considered more valuable than the tract of the land with lesser number of trees, or otherwise, because in certain circumstances trees may also be held to weaken the natural soil of the land by taking too much of the natural food from the soil and spreading their shade on the crops and preventing the rays of the sun from them. These facts are well known even to an ordinary cultivator and they will easily grasp the fact if it is explained to them. It was, therefore, remarked in *Waris* v. *Dara*.[1] "If in a division of *shamilat* land fields broken up and improved before division can be given to the share-holder who broke them up as is constantly done, I think in the same way land containing trees grown in *shamilat* by a share-holder can be awarded to such share-holder though such a principle of division should not be generally followed." The authority is not direct on this point but it is required to be emphasised that trees may be adjusted in value of the land between the parties. For instance, if A and B have equal shares in 12 *kanals* of land A may be allotted 5 *kanals* of land and B 7 *kanals* because A gains also in the trees standing on his land. If this principle is explained to the people they will readily come to terms and no difficulty like the the one explained above will be experienced. But the former method is simple to work out and easily understood by the people and should be followed generally.

Buildings on land.—Rule 21 E. 3 under section 65 of the Old Punjab Land Revenue Act[2] provided that if a dwelling house belong-

1. 15 P. R. 1881 (Rev.).
2. Act XXXIII of 1871.

ing to one sharer was situated on any land in any village which it may be necessary to include in the share of another sharer, the owner of such house would be at liberty to retain it with the offices, buildings and ground immediately attached thereto on agreeing to pay equitable rent for ground to the proprietor of the land or village in which it was situated, and that the limits of the ground and the rent paid would be fixed by the officer making the partition and would be stated in the paper of partition. There is a similar provision under the N. W. P. and Oudh Land Revenue Act and the Estate's Partition Act for Bengal. If the parties do not agree to keep such a *kotha* as joint and it is to be partitioned the only course left for the Revenue Officer is to proceed just as in the case of trees.

Decisions of Civil Courts.—In effecting partition Revenue Officers must adopt a mode of partition which gives effect to any decision of the Civil Courts binding on the parties.

Presence of the parties necessary—fair and equitable partition.—Where land near *abadi* was partitioned by *quara andazi* and three of the share-holders were absent at the time the mode of partition was sanctioned, *held*, that the Revenue Officer ought to have made efforts to give effect to a mode of partition which was fair and just and as the land adjoining the village was much more valuable than the portions at the extreme, *quara andazi* ought not to have been resorted to, especially when three of the share-holders were absent at the time of sanctioning the mode of partition.[2]

Where partition was effected without even consulting many of the share-holders and there were other irregularities committed, so much so that the possession of many of the share-holders had been disturbed against their wishes, *held*, that the proceedings were irregular and unsatisfactory.[3]

It may also be noted that it is not admissible for a Revenue Officer to set aside an *ex-parte* order in partition proceedings except by means of a review as the provisions of Civil Procedure Code relating to setting aside of *ex-parte* decree have no application to such a case.[4]

Actual partition not to be entrusted to an assistant patwari.—After sanction of the mode of partition the actual partition should not be entrusted to an assistant patwari. The partition should be carried out by the patwari of the village and his work must be strictly supervised by the kanungo of the circle.[5]

Agreement between parties.—When the parties have come to a compromise, the decision should be in accordance therewith.[6]

Lay out of the village—interference with allotment of street.—It is very objectionable that the original lay-out of the village should be interfered with and lanes blocked up. Where the Extra Assistant Settlement Officer sanctioned the allotment on the recommendation of the *halqa* officer, and objections were lodged with great delay after the ground had been built over and the objector secured for themselves the

1. Mohd Shafi *v.* Wasti Ram=(1941) 20 L. L. T. 110.
2. Daman *v.* Pheru Shah=1931 L. L. T. 1.
3. Bahawal *v.* Nur Khan=1 P. W. R. 1912 (Rev.)=13 I. C. 815; see also 1932 L. L. T. 45.
4. 1932 L. L. T. 42.
5. Charanji Lal *v.* Din Mohammad=1929 L. L. T. 40.
6. Phula Singh v. Santa Singh and others=1930 L. L. T. 14.

division of a part of the adjoining land, and the blocking up of the lane in dispute did not inconvenience the objectors and the Commissioner on appeal set aside the order of the Extra Assistant Settlement Officer, *held*, that the original order must be restored in the special circumstances of the case but it should not be considered as a precedent in future cases.[1]

Commission for valuing property—objections must be heard.—Where a local Commissioner is appointed in partition proceedings for ascertaining value of certain property, the officer concerned should give a reasonable opportunity to the parties to file objections against the report of the Commissioner. Failure to do so is a material irregularity justifying interference in revision.[2]

Sub-section (2)—limitation for appeal.—The limitation for an appeal to the Commissioner against an appellate order of the Collector under section 118 (2) of the Act, determining the mode of partition is the usual period of 60 days under section 14 of the Act.[3]

Sub-section (3)—withdrawal from an application for partition.—It is within the discretion of a Revenue Officer to allow a partition application to be withdrawn under section 118 (3) of the Act and no action is necessary under sub-section (4) where the applicant is no other than one of the parties to partition proceedings.[4]

Administration of property excluded from partition

119. When any such property as is referred to in section 112, clause (2), is excluded from partition, the Revenue Officer may determine the extent and manner to and in which the co-sharers and other persons interested therein may make use thereof, and the proportion in which expenditure incurred thereon and profits derived therefrom, respectively, are to be borne by and divided among those persons or any of them.

For instance, when a well is excluded from partition and is retained as the joint property of the co-sharers the Revenue Officer may determine how the different co-sharers will irrigate their respctive area from that well and how the cost of repairing it is to be met with. Similarly, in the case of grazing ground excluded from partition, rights of the *kamins* and other people of the village to graze their cattle may be determined by the Revenue Officer.

Distribution of revenue and rent after partition.

120. (1) The amount of revenue to be paid in respect of each of the holdings into which land has been divided on a partition, and the amount of rent to be paid in respect of each of the portions into which a tenancy has been so divided shall be determined by the Revenue Officer making the partition.

(2) The determination of the Revenue Officer as to revenue to be paid in respect of each holding shall, where the estate in which the holding is situate is subject to a

1. 1925 L. L. T. 8.
2. 1933 L. L. T. 13.
3. Mohd Shafi v. Wasti Ram=(1941) 20 L. L. T. 110.
4. Ahmad *v.* Ahmad=3 P.R. 1912 (Rev.)=15 I. C. 937.

fixed assessment, be deemed to be an order under section 56, sub-section (1).

(3) Where new estates have been created at a partition and the land revenue has been fraudulently or erroneously distributed among them, the Provincial Government may, within twelve years from the time of discovery of the fraud or error, order a new distribution of the land-revenue among the several estates on an estimate of the assets of each estate at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

Instruments of partition

121 When a partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein.

Instrument of partition.—*See* para. 18·17 of the Land Records Manual, *infra*.

Date of partition.—It was remarked in *Hadayat Khan* v. *Shahamad*[1]—"It is, of course quite possible that a partition should be made, and possession of the several lots be given and taken, and that no formal instrument of partition be prepared, in which case no doubt the giving and taking of possession by the several sharers of their several lots would be held to be the date on which the joint holding ceased to be joint and became severalty. But where the instrument of partition specifies a certain time from which the partition is to take effect, that date is to be taken as the date from which the shares become separate. Thus where the instrument of partition provided that the land should remain joint up to *kharif* 1905 and become severalty only in that harvest, even if the shares took possession of the plots allotted to them before *kharif* 1905, their possession up to that date was merely the possession of co-sharers in separate possession of portions of the joint estate." In *Gurdit Singh* v. *Labh Singh*[2] where there was no formal instrument of partition the date on which the Revenue Officer ordered to send the file to the Record Room after a report had been made that the patwari had taken a copy of the Collector's order for giving effect to the partition and that entry of sanction to the partition had been made in the Tahsil register, was taken to be the latest date from which it could be said that the partition was to take effect.

Delivery of possession of property allotted on partition.

122. An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representative, and a Revenue Officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last

1. A.I.R. 1924 Lah. 155=73 I.C. 665.
2. 63 P.R. 1894.

foregoing section give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.

Meaning and scope—adverse possession—The instrument of partition is a *quasi* decree and during three years following the date specified in the instrument of partition as the date from which the partition is to take effect, a Civil Court is not competent to entertain a suit for possession founded upon the instrument of partition. But if no such application is made by a person to whom a portion of land is allotted whithin that period and after that period he brings a suit for possession of the portion so allotted there is nothing in the Land Revenue Act to prevent the Civil Court from entertaining the suit.[1]

Landlord and tenant—partition—allottee not landlord of person in possession—remedies of allottee to obtain partition.

It is a well known fact that when partition of a joint holding takes place and land allotted to one share-holder is found to be in possession of another, the ordinary practice adopted is for the person entitled under the partition proceedings to be recorded as owner, the other members of the proprietary body remaining in possession being recorded as tenats-at-will with or without some note in the rent column, *e.g.*, explaining that the recorded tenants pay no rent either because they claim to be proprietors in possession or for some other similar reason. In such circumstances the recorded proprietor has a right under section 122, Punjab Land Revenue Act, to apply to the Revenue Officer who carried out the partition to eject the co-sharers in possession and to place him in possession. After the lapse of three years this remedy is no longer open to the recorded owner though he may still have a remedy under the ordinary law to bring a suit for possession. But a suit in a Revenue Court for possession and ejectment of the defendant by the recorded owner is not competent as the relation of landlord and tenant does not exist between the parties.[2]

When a partition of land takes place and a particular field is allotted to B, which remains in possession of A, from the date of partition A begins to hold adversely against B and B must, if he wishes to preserve his rights, take action within the time allowed by law. Nor will the mere fact of A going on paying land revenue for the land in question be any evidence of his constructive or any other sort of possession; and B will be taken to be holding under adverse possession even though he is recorded in the revenue papers as a mere tenant-at-will. In the case of land coming under the Land Revenue Act, the remedy for the plaintiff in such a case is at any time during the first three years to apply under section 122 of the Act to be put in possession of the field allotted to him, or sometime during the following nine years to bring a suit in the Civil Court for possession.[3]

Even where there is no formal instrument of partition fixing the date for the partition to take effect a civil suit for possession of land can be lodged under this section after the lapse of three years from the time that the partition proceedings were finally closed.[4]

Where the parties had not been even inducted into several shares which it was proposed to allot to them under the scheme of any partition

1. Gurdit Singh *v.* Labh Singh=63 P.R. 1894.
2. Rasil Singh *v.* Dhani Ram=(1941) 20 L.L.T. 31.
3. Fateh Din *v.* Nikka=81 P.R. 1911=13 I.C. 790.
4. 63 P.R. 1894.

and apparently no formal order of that kind was ever passed, *held*, that none of the co-sharers could be said to be holding adversely to another. *Held*, also, that completion of partition proceedings means simply that all disputes raised before the Revenue Officer had been decided by him.[1]

Where the plaintiff who had been awarded possession of a small corner or *gorah* land at a partition of the whole cultivable land of the village, subsequently met the defendant for possession of it, *held*, it may be presumed that the plaintiff got at least formal possession of the portion of the land now in dispute and that as it is now occupied by the defendant he can sue to oust the latter in Civil Court and is entitled to succeed in his suit unless the defendant can rebut the case set up in the plaint.[2]

It is to be remembered that this section does not make the instrument of partition a decree. It only declares that it is to be enforceable as a decree under certain circumstances.[3]

Affirmation of partition privately effected.

123. (1) In any case in which a partition has been made without the intervention of a Revenue Officer, any party thereto may apply to a Revenue Officer for an order affirming the partition.

(2) On receiving the application, the Revenue Officer shall inquire into the case, and, if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 119, 120, 121 and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter.

Affirmation of private partitions.—*See* para. 451, Land Administration Manual and para. 18*1. Land Records Manual, pages 339 and 541.

Power to make rules as to costs of partitions.

124. The Financial Commissioner may make rules for determining the costs of partitions under this Chapter and the mode in which such costs are to be apportioned.

Re-distribution of land according to custom.

125. When by established custom any land in an estate is subject to periodical re-distribution, a Revenue Officer may, on the application of any of the land owners, enforce the re-distribution according to the custom, and for this purpose may exercise all or any of the powers of a Revenue Officer in proceedings for partition.

Vesh system.

Some customary methods of re-distribution of land.—*Vesh* or the periodical re-distribution of village or tribal lands is an interesting feature of primitive landowning tenures both in the East and the West. It seems to have almost universally arisen when nomad communities first became sedentary. The idea was to secure a continuance of the original equality of conditions. In time the collective form of "ever

1. Hadayat Khan *v.* Shahmand=A.I.R. 1924 Lah. 155=73 I.C. 665.
2. 5 P.R. 1892.
3. Bachan Singh *v.* Madhan Singh=61 P.R. 1897 (F.B.).

shifting severality " gives place to one or other of the many existing tenures of fixed individual severalty. It has done so in most civilized countries. In this country, too, as the importance of fixity of tenures and the consequent benefits derived therefrom was recognized, the system began to vanish so much so that even in the Punjab it has almost died out, though we cannot say it is absolutely extinct. As the custom of *vesh* has gradually disappeared, the members of the village community have become full proprietors of their individual holdings.

System of vesh in Pathan territory.

Vesh was an important feature of the Pathan tenures in the beginning. It is said that in Peshawar the custom originally extended to an exchange of *tappas* but in this form it has been very long dead. Inside *tappas* it lasted, however, down to a recent period, and involved the transfer of whole village, including the inhabited site and not only the exchange inside villages of the *kandis* or sub-divisions, or of individual holdings.[1]

Vesh was enforced in one form or another in some Pathan tracts in the frontier districts when they were first settled. In carrying it out the recognized shares were in some places those adopted in the original partition; in others every male, old and young, got an equal portion. Speaking of the Sangarh Tahsil of D. G. Khan District, Mr. Fryer remarks in para. 219 of his settlement Report of D. G. Khan District (1869—74)—" The custom of *Vaish* or periodical distribution of land prevails in 29 *mauzahs*, of which, all but two are in the Pachad circle. ' *Vaish* ' signifies a division of land for a term only. This term is from one year to twenty-four. The custom of *vaish* is probably due to the fact that lands irrigated by hill streams are of very different value. The lands with the greatest facility of irrigation are the best, and the lands least irrigated the worst. The hill streams too are liable to change, and lands do not always retain the sams character. The proprietors by dividing lands only for a time consider that they secure to each proprietor a chance of holding good lands in turn. Besides this all the proprietors have a common interest in the maintenance of dams, which they may use themselves some day. '

In Kohat District the whole cultivated land was divided into blocks (*veshes*) with due regard to the character of the land. Each block was then divided by lot between the *kandis* or main sub-division of the proprietary body, and the *kandis* then divided down to families and individuals. The land was periodically redivided on this system, the term for which the *vesh* was in force varying in the different villages. It was rarely less than five years and never more than fifteen or twenty These redistributions were based on the original proprietary shares. which were capable of transfer by sale or mortgage.[2]

The *Vaish* system prevalent in *Marwat*, a part of Bannun District, was known by the name of *Khula vesh* (mouth partition). All or most of the territorial blocks (wards), into which each village was parcelled, were held as communal property, which was periodically divided *per capita*, the position of each share or mouth (khula) being decided by lot. After the expiry of a term of *vesh* a majority could within any reasonable time demand a new partition, in which case a redistribution of the land was made.[3]

1. Settlement Manual, para., 158.
2. See para. 183 of Mr. Tucker's Settlement Report of Kohat District (1875—82).
3. See para. 136 of Mr. Thorburn's Settlement Report of Bannun District 1872—78.

Panapalat System.

Panapalat (from *pana*, a block of land and *palat*, change), still exists in some of the villages of the Gurgaon District. It is thus described in Mr. Channing's Report on the Revised Settlement of the Gurgaon District (1872-83)—"The owners of the village, or more usually of a sub-division of the village, owing their land in common, divide it into several blocks (pana) which different bodies of them cultivate, separately exchanging blocks at the end of a fixed period, each body of proprietors cultivating all the blocks in turn. There is no universally acted on period; sometimes it is two or four or six years, and sometimes in the same village are found two different periods acted on. Some times there are two, sometimes four, sometimes eight blocks belonging to the same set of owners and exchanged about among them. Usually the blocks are fixed and separately marked off, and simply change hands in regular recognised turn at the end of each successive period, but sometimes the land is redistributed, fields which formed one block being mixed up with fields that formed another block. Sometimes the blocks of land are approximately equal, sometimes one better than another; the different sets of proprietors taking the good and bad blocks in turn. Usually the block is not cultivated by an individual proprietor but by a number who either cultivate the block in common or divide among themselves by lot for the period of their occupation. Generally the body of proprietors which practise this custom, besides the blocks periodically exchanged hold permanently some part of their land which is exempt from the custom. A proprietor, occupying for the time a block of this nature, cannot mortgage or sell it, but may transfer his share in the whole land, the transferee taking his place and becoming bound by the custom as he was."

The custom of periodical redistribution of wells is also found in this district.

Rassi-buti system in some of the riverain estates.

This system has been thus described by Captain Dunlop Smith in para. 133 of his Settlement Report of Sialkot District.—"This is a peculiar form of tenure by which a share is the measure of right, and each shareholder benefits in direct proportion to his share when the river has thrown up new land, or suffers in the same proportion when the area under cultivation has deteriorated or actually decreased owing to the action of the river. Thus each share-holder is responsible for some part of the additional demand levied on new land at the annual dialluvion assessments or receives some relief whenever these operations result in a net decrease in the total assessment of the village. In the yearly redistribution of land no regard whatever is paid to the possession of previous years. The cultivated area is divided according to the shares of each proprietor into long narrow strips from 25 to 800 *kadams* long and from 1 to 10 *kadams* broad by the use of long ropes, from which the system derives its name. The direction of these strips is not always the same as it depends on the actual position of the river. Whenever the latter changes its course the line of the fields follows the deflection .....The Rassi-buti system is a striking example of the efforts of the people to secure to each member of the proprietary body his just dues and of their ability to govern fairly their own village communities."

The system may be met with in a few of the riverain estates along the river Ravi, especially in Sialkot District.

Existing condition of vesh.

The custom of *vesh* is an exception rather than a rule. 'A redistribution of common land, after partition has once been effected cannot,

in the absence of a well established custom or, of an express agreement be demanded.[1] It is for these exceptional cases that section 125 of the P.L.R. Act provides that 'when by established custom any land in an estate is subject to periodical redistribution a Revenue Officer may, on the application of any of the landowners, enforce the re-distribution according to the custom, and for this purpose may exercise all or any of the powers of a Revenue Officer in proceedings for partition.

It is for the party who alleges the existence of this custom to prove it. The *wajib-ul-arz* or village-administration-paper of the village may be consulted on this point with advantage.

Revenue Officers empowered to act under this Chapter.

126. The Revenue Officer by whom proceedings may be taken under this Chapter shall be a Revenue Officer of a class not below that of Assistant Collector of the first grade.

Plaintiff brought a suit aiming directly at and impugning the correctness of the partition as carried out by a Naib Tahsildar who was only an Assistant Collector of the 2nd grade. *Held*, that a Civil Court was competent to try the suit as the mutation proceedings before the Naib-Tahsildar are not proceedings for partition as by section 126 of the Punjab Land Revenue Act the only Revenue Officer who can hold proceedings far partition must be of a class not below that of an Assistant Collector of the 1st grade.[2]

PROCEDURE IN PARTITION CASES

(Chapter 18, Punjab Land Records Manual)

Private partitions.

18'1. Although no formal application has been made, the patwari is bound, under Chapter 7'1, to record voluntary partitions for orders in the mutation register as soon as they have been acted on. In passing orders on such mutations care must be taken not to treat as partitions of proprietary right arrangements which the parties did not intend to be permanent. Share-holders may be content for years to have in their cultivating possession less than their full share of a common holding without intending to give up any part of their rights of ownership. If any of them objects to the record of the alleged partition and the attesting officer considers the objection valid, he should refuse mutation of names and refer the party seeking it to proceedings under section 123 of the Land Revenue Act. But if he finds that the objection is vexatious or frivolous, and that a fair private partition has actually been carried out he should, if not himself the Revenue Assistant or other officer of equivalent or higher rank, submit the case for the orders of the Revenue Assistant or other Assistant Collector of the Ist grade authorised by the Collector to deal with such cases.

Partition cases.

18'2. Partition cases are excluded from the jurisdiction of the Civil Courts, [section 158 (2) (*xvii*) and (*xviii*) of the Land Revenue Act]. They are heard by a Revenue Officer of a class not below that of an Assistant Collector, 1st grade (section 126 of the Act), and usually by the Revenue Assistant of the district. Only an officer who is empowered to decide the case should receive an application for partition. A qualified officer to whom the application has been

1. Para. 232 of Rattigan's Digest of Customary Law, Eleventh edition.
2. 96 I. C. 70=A.I.R. 1926 J. 89 (1).

presented can either conduct the whole enquiry himself or refer it, under section 17 (3) of the Act, to a Revenue Officer of a lower grade for investigation and report. The latter course is usually adopted, and it is, as a rule, the best way of dealing with the case. But the officer before whom the case has been instituted is responsible for its proper conduct throughout, and should exercise close supervision over the proceedings of the subordinate official to whom he has referred it for enquiry. A Revenue Officer, who in a disputed partition case, is content to pass orders on reports received from the tahsildar or naib-tahsildar, without ever having the parties before himself distinctly fails in his duty. In particular he is responsible that no undue delay takes place at any stage of the proceedings. In serious cases of delay it is not sufficient to issue reminders. The cause of the delay must be ascertained, and, if it be avoidable, suitable action must be taken against the subordinate official concerned.

Investigation by tahsildar or naib-tahsildar.

18·3. It is to the Tahsildar, or to the Naib-Tahsildar in whose circle the estate concerned lies under the division prescribed in paragraph 242, Land Administration Manual, that the case is referred for investigation or report. But when settlement operations are in progress the reference should be made to the settlement tahsildar, who should himself conduct the first stages of the proceedings, including the method of partition (paragraphs 18·6 to 18·10 *infra*). When the method of partition has been sanctioned, he may, if he thinks fit, send the file to the Naib-Tahsildar of the circle to complete the remaining stages of the case under his supervision. The Naib-Tahsildar will maintain no register, and the tahsildar will remain responsible that the Naib-Tahsildar carries out the work entrusted to him correctly and without undue delay.

Who may apply for partition.

18·4. Any joint owner and any joint tenant, who has a right of occupancy in his holding, may apply for partition if—

(*a*) his share is entered in the last record-of-rights, or

(*b*) his right to a share has been established by decree of Court, or

(*c*) his title has been admitted in writing by all persons interested in the admission or denial thereof (section III). The mere fact that a man is a "landowner" as defined in section 3 (2) of the Land Revenue Act does not entitle him to apply unless he fulfils one or other of the above three conditions.

A mortgagee cannot apply for partition unless he proves that he is entitled to it by custom or by the term of his mortgage.

A widow in possession of her husband's undivided share can apply for partition.

Application to be accompanied with an extract from jamabandi.

18·5. The application should be accompanied with an extract from the last detailed *jamabandi*, giving usually the complete entry for the holding or holdings of which partition is desired. A note of any mutations attested after the filing of the last detailed *jamabandi* should be added. Although the petitioner may only wish to divide part of the joint halding, he should, as a rule, be made to file a copy of the entries for the whole, for the other share-holders may object to a partial partition. The names of all owners, mortgagees, and occupancy

tenants must be given. If the Revenue Officer has not from the first a list of all the interested parties on his file, great delays are certain to occur. If, however, the area to be divided is very large, consisting, *e. g.*, of a whole village or *patti*, or of the common land of a whole village or *patti*, convenient abbreviations should be allowed in the extract. If the extract is manifestly incomplete, the application should be returned to the petitioner by the officer receiving it, with an order endorsed on it that it may be presented again accompanied with a proper extract. If the imperfection of the extract is not discovered till the case has been referred to the tahsildar, that officer should fix a reasonable time for the filing of a full extract, and, if the petitioner fails to comply with this order, he should return the application to the officer from whom he received it with the suggestion that it should be removed from the pending file.

Attendance of parties.

18'6. All parties interested should be summoned by the officer making the enquiry to appear [section 113 (*a*)]. If they are so numerous that personal service on each of them is not reasonably practicable, the procedure laid down in sections 20 (3) and 22 of the Land Revenue Act is generally desirable and is preferable to postal service under section 20 (4) of the Act, as the latter procedure involves the parties in unnecessary expense. Whether the parties are many or few, it is expedient to post up a proclamation on a village rest-house or on some other conspicuous place in the village calling on any persons who may have objections to urge to appear and state them within a certain time. The date fixed should usually be that on which the parties have been summoned to attend. The summonses and proclamations should be issued simultaneously. Dates should not be repeatedly changed because the parties have failed to appear. When the requirements of the law as regards the service of summonses have been complied with, and the Revenue Officer is satisfied that all interested parties have had an opportunity of being present, he should proceed with the hearing on the date fixed, putting on the file a note of the names of any parties who have not appeared. In cases in which the share-holders are numerous, or which are likely to present any difficulty, it is advisable to hold the first hearing in or near the village in which the land is situated. The real points in dispute and the merits of any objections raised are in this way easily brought to light and can be properly tested. The failure to ascertain from the first what is the actual contention of those who oppose partition is a fertile cause of delays and wrong decisions.

Rejection of application.

18'7. The real points in dispute having been elicited by a careful examination of the parties, the Revenue Officer should consider whether there is any sufficient cause for absolutely rejecting the application (section 115). If so, he should report the case for the decision of the officer who referred it to him for inquiry. The latter should usually, before passing his final orders, give the parties an opportunity to appear before himself. The discretion to disallow partition given by section 115 of the Land Revenue Act should not be exercised arbitrarily but ordinarily on the grounds set forth in sections 111 and 112. Special attention should be given to the requirements of the village including those of non-proprietors in the matter of grazing, and the *wajib-ul-arz* of the village should in every case be consulted. The question whether land can be partitioned in spite of an entry in the *wajib-ul-arz* must be dealt with under section 117 as a question of title.

Procedure when there are disputes as to title.

18'8. If the investigating officer does not consider that there is any valid reason for rejecting the application entirely, but it appears that there are disputes as to title, which must be dealt with in the manner laid down in section 117, he should record clearly what the points in issue are, and return the case for the orders of the officer who is competent to decide it. He must not himself take action under section 117. Examples of disputes as to questions of title are—

(*a*) the respondent denies the correctness of the entry in the record-of-rights ;

(*b*) the respondent admits the correctness of the entry in the record-of-rights, but asserts that the applicant is not in possession of his share, and is, therefore, not entitled to claim partition at all, or that he is not entitled to do so till he has had a settlement of accounts with respondent, or raises any other objection as to the *locus standi* of the applicant to ask for partition.

Procedure of Assistant Collector under section 117.

18'9. The Assistant Collector on receiving back the file should himself examine the parties and, if he finds that there is a question of title involved, either decline to grant the application for partition until the question of title has been determined by a competent Court, or himself decide the question of title raised under one or other of the procedures laid down in section 117 (2) and (*b*). The cases which will involve action under this section may be divided broadly into two classes—*first*, those in which an applicant believing that the partition proceedings will give him an advantage over the opposite party has chosen that procedure in order to evade direct resort to the Civil Courts in respect of a question of title which he knows would be disputed, and, *secondly*, those in which the applicant is acting in a straightforward manner, that is to say, in which a partition is really desired by him and is the principal matter in which he requires official assistance. In the class of cases first mentioned the Revenue Officer should file the proceedings with leave to either party to apply to have them reopened, on showing that the point at issue had been determined by a competent Civil Court. In the latter class of cases a Revenue Officer should exercise the full jurisdiction vested in him by law, and should refrain from putting the parties to the trouble of separate proceedings in a Civil Court, even although the question is one which would ordinarily fall within the jurisdiction of such a Court. When the respondent in the partition proceedings puts forward an objection as to title the Revenue Officer should invariably, unless there is some special reason to the contrary, proceed to determine the question himself and not refer the objector to a Civil Court. When he stays proceedings until the question of title has been settled in a Civil Court, he should send the partition file to the record office and treat the case in the quarterly business returns as a decided one. If, on the termination of the proceedings in the Civil Court, the applicant petitions to revive the partition case, the file will be restored to the register of pending cases and be reckoned in the business return as a new institution. If the Revenue Officer determines to hear the case himself and the burden of proof is one the applicant for partition, he should order the applicant to put in by a certain date a written statement giving full particulars of his claim. Similarly, if the objecting party is the respondent in the partition proceedings, he should be required to put in a written statement by a certain date, giving full particulars of his objections. If either party fails or

refuses to obey these instructions the Revenue Officer should pass orders under Order VIII, rule 10 of the Civil Procedure Code (Act V of 1908). On a plaint being presented, he should record a brief note stating whether the question at issue is cognizable by Revenue Court, [section 117 (2) (*a*)] or by a Civil Court, [section 117 (2) (*b*)] of the Land Revenue Act, and consequently what description of Court the question was really cognizable the note of the Revenue Officer will determine the course of appeal in the first instance and thus save both litigants and the appellate Court much trouble.

Enquiry as to methods of partition.

18·10. (*i*) If there are no disputes as to title or if all such disputes have been decided under section 117, and the case has been returned to him for report, the tahsildar should proceed to enquire into any question to the property to be divided and the method to be followed in dividing it [section 116 (*b*)]. A map of the land to be partitioned should be obtained from the patwari and a statement showing the area to be divided and the share of the parties should be prepared. Form Ptn.—1 in the appendix is given as a specimen, but it may be modified to show further details when this is considered necessary. In reporting the mode of partition for sanction, the tahsildar should state clearly what are the points remaining for decision, and they should be fully dealt with. The first matter to be noticed is whether the applicant's share only will be separated off, the other co-sharers continuing to hold jointly, or whether all the shares will be divided. If there is any provision regulating partitions in the village adminstration paper, it should be referred to ; if not, the absence of any such provision should be stated. It should be noted whether all the land is to be thrown into one account or whether different classes are to be distinguished. The distinction may consist in part being cultivated, part culturable waste and part barren. Some land may be more valuable than the rest on account of its natural quality or its situation, or the existence of means of irrigation. Part may be mortgaged, or held by an occupancy tenant-at-will who cannot equitably be turned out. It will, as a rule, be quite impracticable to give every man his exact share of every sort of land, and the investigating officers should set forth clearly how far deviation from the rule of equal proportions is to be allowed, and how men receiving inferior land are to be compensated by an increase in the area allotted to them or otherwise. In this connection efforts should be made to pursuade co-sharers to abstain from insisting on an exact application of the rule of equal proportions where this would result in the formation of an excessive number of small scattered plots or fields. It should be pointed out that such a division of holding has many disadvantages from the point of view of agricultural efficiency. It entails waste of the cultivator's time and labour, and adds to the work of his bullocks by multiplying journeys to and from his land. It causes waste of water and even water-logging by involving the use of unnecessarily long, tortuous or badly aligned water-courses from wells or canals. It makes the sinking of wells, drainage, levelling and other agricultural improvements more difficult, while small fields may often be an obstacle to the employment of improved agricultural implements and machinery. Should the parties, nevertheless, desire the application of the rule of equal proportions of each class of land, the Revenue Officer has discretion under section 118, Land Revenue Act, to refuse compliance if he thinks that the circumstances of the case render that rule inappropriate, and he may instead authorize duly specified deviations from it.

(*ii*) It is impossible to settle every detail till the partition is actually made on the ground. Something must be left to the patwari, aided if necessary by arbitrators; but to order a partition, "*balihaz nakas wa kamil*" as is constantly done, is to throw everything into the patwari's hand. The extent to which existing possession will be respected must be noted. It should be maintained, especially when it is of old standing, as far as this can equitably be done. If it is proposed to appoint arbitrators, the matters which they are to determine should be noted, and also what remuneration, if any, they are to receive. The value of the land, for the purpose of calculating the stamp duty on the instrument of partition, the amount of the stamp duty and all fees and costs, and the proportion of the total costs to be borne by the different parties, should be mentioned so that sanction to their recovery may be given. The stamp duty on instruments of partition should be calculated in accordance with item No. 45, read with item No. 15 in Schedule I-A appended to the Indian Stamp Act, II of 1899, as amended by the Indian Stamp (Punjab Amendment) Act, VIII of 1922. The provisions of the two items are reproduced below. Revenue Officers are warned that they should give immediate effect to any further amendment of the stamp law without waiting for a correction slip to this Chapter :—

For the amount of the value of the separated share or shares of the property—

	Proper stamp duty Rs.	
Where the amount or value secured does not exceed ...	10	Two annas.
Where it exceeds Rs. 10 and does not exceed ...	50	Four annas.
Where it exceeds Rs. 50 and does not exceed ...	100	Eight annas.
Where it exceeds Rs. 100 and does not exceed ...	200	One rupee.
Where it exceeds Rs. 200 and does not exceed ...	300	One rupee, fourteen annas.
Where it exceeds Rs. 300 and does not exceed ...	400	Two rupees, eight annas.
Where it exceeds Rs. 400 and does not exceed ...	500	Three rupees, two annas.
Where it exceeds Rs. 500 and does not exceed ...	600	Four rupees, eight annas.
Where it exceeds Rs. 600 and does not exceed ...	700	Five rupees, four annas.
Where it exceeds Rs. 700 and does not exceed ...	800	Six rupees.

		Proper stamp duty Rs.	
Where it exceeds Rs. 800 and does not exceed	...	900	Six rupees, twelve annas.
Where it exceeds Rs. 900 and does not exceed	...	1,000	Seven rupees, eight annas.
And for every Rs. 500 or part thereof in excess of	...	1,000	Three rupees, twelve annas.

N. B.—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated :

Provided always that—

(*a*) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than twelve annas;

(*b*) where land is held on revenue settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than ten times the annual revenue ;

(*c*) where a final order for effecting a partition passed by any revenue authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed twelve [1][annas].

N B.—By Punjab Government Notification No, 1699-St., dated the 9th November, 1937, the provisions of clause (*b*) have been extended to lands held on revenue settlement for a period not exceeding forty years.

(*added by C.S. No.* 116, *dated* 19-3-38).

(*iii*) The attention of Revenue Officers is drawn to the necessity of considering in partition cases any equitable claims which a shareholder who has spent money and labour in reclaiming ravine land may have to protection from ejectment or to compensation as a preliminary to partition.

Orders of Assistant Collector on method of partition.

18'11. On receiving the file from the investigating officer, the officer empowered to decide the cases should, if he finds that there is a dispute between the parties on any of the points connected with the proposed mode of partition, fix a date for hearing the case, and have the parties duly informed thereof, so as to give them an opportunity of appearing before him. On the date so fixed, he should examine, so far as may appear necessary, any of the parties who may be present, and should then record with his own hand his orders as to the method of partition, the amount of costs, and the proportion in which they are to

1. C. S. No. 68 dated 26-4-37.

recovered from the different parties. The orders as to the method of partition should be clear and unmistakeable, and care should be taken that every essential question raised by the investigating officer's report, or contained in the pleadings, is decided. Even in cases in which the investigating officer has indicated alternative courses, and a decision is required between them, it is too common to find vague and general terms of sanction used, such as "the method of partition proposed by the investigating officer is sanctioned." The case will then be returned to the investigating officer. Before taking any step to carry out the partition, the investigating officer should direct the parties to deposit the whole amount of the costs in cash by a fixed date. If the money is not deposited within that period, the case should be forwarded to the officer empowered to decide it for orders. If the applicant is in earnest in desiring the partition he is often willing to pay in the whole costs, if the amount is not large, and the shares due from defaulters can ultimately, under section 98 (*a*), be recovered as arrears of land revenue and made over to the applicant. But if it appears to the Revenue Officer that the applicant has paid in his share of the costs, but that the respondent, in order to delay the case, refuses or neglects to pay his share he should order the amount due from the respondent to be at once recovered as an arrear of land revenue. All sums received as costs will be credited in the naib sheriff's accounts and paid into the treasury, the number and date of the *dakhila* being noted under the tahsildar's signature in the tahsil register of partition cases (page 10 of standing order No. 55). Such costs, as are not susceptible of speedy disbursement should be treated as revenue deposits (Civil Account Code, article 195). Receipts for all disbursements will be put on the partition file.

Method of carrying out partition.

18'12. If the partition is to be made by the patwari, the tahsildar should give him on the spot, if possible, detailed instructions from which he should not be allowed to deviate. As little as possible should be left to the patwari's discretion, and he should not be called on to decide how land should be classified or as to its respective value. Points of this sort are for the parties to agree upon among themselves; if they cannot agree, the tahsildar must decide them himself. He may, however, appoint arbitrators to do so, if the parties desire it and he thinks their appointment likely to lead to an equitable and speedy decision. The patwari should only be required to make a correct survey and record of the lands to be partitioned, and of the manner in which they have been divided. Measurements are necessary if numbers are broken up, and in order to determine the proper boundaries of the joint fields, if these have been encroached upon to a serious extent by any of the shareholders. If the shares are equal and the particular parcels of land to be allotted to each shareholder are to be decided by lot, "*Kurras*," in the form of khatauni slips, should be prepared for each share, the names being left blank. When the partition is completed, the following papers must be drawn up by the patwari and put on the file:—

(*a*) A tracing from the *shajra* showing the new field numbers. If the village has been measured on the the square system, the square should be shown on the map and the position of the new numbers within the square should be correctly indicated.

(*b*) A *khatauni* showing the names of the shareholders, and a full list of the field allotted to each with their areas.

(*c*) A field-book of all new fields.

(*d*) A statement showing in separate columns the area to which each shareholder was entitled according to his recorded share and the area which he has actually received. A specimen form Ptn.—2 is given in the appendix, but it may be modified to whatever extent appears desirable.

Employment of amins forbidden.

18·13. The employment of amins to carry out partitions in ordinary cases is forbidden. In the case of partitions of small joint holdings the patwari can do any survey and record work required without detriment to his ordinary work. When a large area, such as the common land of a village or *patti* has to be divided, the patwari should in ordinary cases be responsible for the partition, but if the work is heavy a qualified assistant may be appointed to help him in carrying on his ordinary duties and the assistant's pay can be charged as part of the costs of the partition. The patwari himself should receive no extra remuneration for what is part of his proper duties.

Duties of field kanungo.

18·14. (*a*) The papers filed in partition cases are often full of errors, which pass from them into the annual papers and are corrected with great difficulty when they come to light long afterwards in the course perhaps of a new settlement. The field kanungo is as responsible for the accuracy of the patwari's partition work as he is for that of his ordinary work, and this responsibility should be rigorously enforced. He is bound to see that the patwari is carrying out exactly the instructions he has received, and that the work is being done regularly and in order. If not carefully supervised patwaris spend far more time than they need on partition cases. The map and *khatauni* should be tested and signed by the kanungo. He must compare the map and *khatauni* with each other and with the village *shajra* and the last *jamabandi* and see that no numbers are omitted and none entered twice. He must check the entries as to the dimensions and areas of fields as he would check similar entries in the patwari's map and field book when remeasurement is going on. He should make the patwari take copies and himself sign these in token of their agreement with the original. The kanungo should then point out to the parties on the spot the lands allotted to each, making over at the same time to each shareholder a copy of the khatauni relating to his land attested by himself. In forwarding to the tahsildar or naib-tahsidar the map and the khatauni which are to be filed with the record, he should report that he has pointed out the land and distributed khatauni to the parties. Mud pillars should be put up to define boundaries where numbers are divided. It sometimes happens that, when the parties are asked by the tahsildar if they agree to the partition, they answer that they do not know what land has been allotted to each. And cases have frequently occurred of a man being allotted one field in the khatauni, but in reality getting possession of another. The patwari following the partition papers records him as holding the latter field merely as a tenant-at-will, and the recorded proprietor may take out a notice of ejectment against him after he has been dealing with the land for years as full owner. It is, therefore, of the greatest importance that there should be no room left for misunderstanding as to the locality of each man's field or fields. In petty cases, the duty of pointing out of his land to each shareholder may be entrusted to the patwari under a special order of the tahsildar recorded on the file.

(*b*) In an estate or part thereof which has been repartitioned through the Co-operative Consolidation of Holdings Societies, the inspector or

sub-inspector of co-operative societies shall give demarcation on the spot by actual measurement (*C. S. No. 2, dated 24th April*, 1935).

Attestation of partition before the tahsildar.

18·15. On receiving the map and *khatauni* with the field kanungo's report, the tahsildar or naib-tahsildar must give notice to all the parties to appear and state whether they agree to the partition or not. Repeated notice should not be issued to absentees, but, as soon as he is satisfied that all parties have had an opportunity of appearing, the tahsildar should dispose of the case, making any modifications in the partition which are shown to be necessary, and correcting the *khatauni* accordingly. He should then send the case for sanction to the officer empowered to decide it. All corrections made by the tahsildars should be communicated to the kanungo and patwari. The former should point them out to the parties on the ground and correct their *khatauni* and the latter should correct his copy of the khatauni. If the tahsildar can arrange to collect the parties when he is in or near the village and dispose of objections on the spot, this stage of the proceedings will be shortened and much trouble saved.

Transfer of shamilat at partition.

18·16. The attention of all Revenue Officers dealing with partition cases is drawn to the following ruling. The *onus* of poving that a deed relating to the transfer of specific land carries with it as necessary thereto a proportionate share of *shamilat*, lies, when the deed is silent upon the subject upon the person who asserts that the gift operates to grant more than it purports to grant. In other words, if a deed of transfer does not specifically mention that a share of the *shamilat* is transferred with the land the presumption is that the shamilat is not transferred. Officers should not blindly follow the khewat, but should throw on alienees the onus of proving that they have a share in the *shamilat*. See also paragraph 7·19.

The instrument of partition.

18·17. When sanction has been received, any further correction in the papers which is rendered necessary by the order of the sanctioning officer must be made and communicated to the patwari and kanungo and to the parties. The kanungo should point out to the parties any changes in the allotment of land made under the order finally passed, and should correct their khataunis, after the period for appealing has elapsed without any appeal being lodged, or after any appeal that has been presented has been decided, an instrument of partition must be drawn upon stamped paper by the officer empowered to decide the case (section 12). It should describe the claim and give a detail of the division effected with a reference to the order sanctioning it. The date on which the partition is to take effect must be noted. The form Ptn.—3 given in the appendix may conveniently be followed and to each such instrument of partition in which new field numbers are shown in column 4 of the schedule a copy of the tracing of *shajra* referred to in paragraph 18·12 (*a*) *supra* should be attached. The instrument of partition should thus be complete in itself so as to enable a Civil Court in any subsequent litigation to ascertain from it without reference to any other files or records (1) what belonged to whom jointly; and (2) who got what severally. This object will be secured if the schedule of the form of instrument of partition given in the appendix is carefully filled up. Before sending the case to the record room, the deciding officer should ascertain that the sums paid in as costs have all been disbursed and that vouchers for the expenditure are on the file. If there is any balance he should pass a distinct order as to the manner in which it is to be disposed of.

Obtaining possession.

18·18. As a rule, the parties will have no difficulty in obtaining possession of the lands allotted to them if the procedure laid down in paragraph 18 14 *supra* is carefully observed. But if any party to the proceedings is refused possession by another party he can, at any time within three years from the date entered in the instrument as that from which it will take effect, apply under section 122 to the Revenue Officer to be put in possession.

District kanungos and record keepers not to be employed in checking partition files.

18·20. District kanungos and record keepers should not be employed in checking partition files. All needful checking can be done by the reader of the Revenue Officer who decides the case.

Employment of arbitrator.

18·21. Allusion has been made in paragraphs 18·10 and 18·12 *supra* to the employment of arbitrators in partition cases. If the patwari is an experienced and trustworthy man, it is rarely advisable to appoint arbitrators, who cannot in any case prepare the partition papers without his help. Arbitrators nominated by the parties themselves are usually ignorant men, and each is apt to be the partizan of his own nominator. It will, therefore, generally be expedient for the tahsildar to advise the appointment of some man of more standing as umpire. In fact, it is often best to appoint some man of influence in the neighbourhood such as a zaildar or inamdar, sole arbitrator [section 127, (2) (*d*)]. The tahsildar should carefully explain to the arbitrators what they are expected to do, and should arrange that the patwari gives them the assistance they require.

(*For forms see chapter* 18, *Punjab Land Records Manual*).

CHAPTER X

Arbitration.

Power to refer to arbitration.

127. (1) Any Revenue Officer may, with the consent of the parties, refer to arbitration any dispute arising before him in any matter under this Act.

(2) A Collector or any Assistant Collector of the first grade may, without the consent of the parties, refer to arbitration any dispute before him with respect to—

(*a*) any matter of which an entry is to be made in any record or register under Chapter IV;

(*b*) any matter relating to the distribution of an assessment under section 56;

(*c*) the limits of any estate or of any holding, field or other portion of an estate; or

(*d*) the property to be divided at a partition or the mode of making a partition.

Arbitration in partition proceedings.

So far as the Revenue Officer dealing with the partition proceedings is concerned he may under section 127 (1), Punjab Land Revenue Act, with the consent of the parties refer to arbitration a dispute arising before him in any revenue proceedings. But this sub-section will not apply where all the parties do not agree to reference being made. In the latter case an Assistant Collector, 1st grade, may without the consent of the parties refer to arbitration any dispute arising in the course of partition proceedings, but this power is a discretionary power only and if the Assistant Collector does not consider the case suitable for the use of this discretionary power it is not possible for a revising authority to interfere where there has been no irregularity of any kind in the exercise of jurisidiction.[1]

Order of reference and contents thereof.

128. (1) In referring a dispute to arbitration a Revenue Officer shall make an order of reference, and specify therein the precise matter submitted to arbitration, the number of arbitrators which each party to the dispute is to nominate, the period within which arbitrators are to be nominated, and the period within which the award is to be delivered.

(2) The number of arbitrators which each party may nominate must be the same and must not exceed two.

(3) If from any cause arbitrators are not nominated, or an award is not delivered, within the period fixed therefor

1. Bhagwan Das *v.* Narain Das=(1942) 21 L.L.T. 20.

in the order of reference, the Revenue Officer may from time to time enlarge that period, or may cancel the order of reference.

Nomination of arbitrators.

129. (1) When an order of reference has been made the parties may each nominate the number of arbitrators specified in the order, and the Revenue Officer shall nominate one other arbitrator.

(2) The Revenue Officer may, for reasons to be recorded by him, make an order disallowing any nomination made by either party and requiring the party to make another nomination within a time to be specified in the order.

(3) An order under the last foregoing sub-section shall be final.

Substitution of arbitrators by parties.

130. If an arbitrator nominated by a party dies, desires to be discharged or refuses or becomes incapable to act, the party may nominate another person in his stead.

Nomination and substitution of arbitrators by Revenue Officers.

131. In any of the following cases, namely:—

(*a*) If either of the parties fails to nominate an arbitrator under sub-section (1) of section 129 within the period fixed in the order of reference, or

(*b*) if the nomination of an arbitrator has been disallowed under sub-section (2) of section 129, and another arbitrator is not nominated within the time specified in the order under that sub-section or having been so nominated, his nomination is also disallowed, or

(*c*) if a party entitled to nominate an arbitrator in the place of another arbitrator under section 130 fails to nominate him within one week from the date of the communication to him of a notice requiring him to make the nomination, or

(*d*) if an arbitrator nominated by the Revenue Officer dies, desires to be discharged or refuses or becomes incapable to act,

the Revenue Officer may nominate a person as arbitrator.

Process for appearance before arbitrators.

132. (1) The Revenue Officer shall, on the application of the arbitrators, issue the same processes to the parties and witnesses whom the arbitrators desire to examine as he may issue in any proceeding under this Act before himself.

(2) Any such party or witness shall be bound to appear before the arbitrators in obedience to a process issued under sub-section (1) either in person or by agent, as the arbitrators may require.

(3) The person attending in obedience to the process shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as may be specified in the process.

Award of arbitrators and presentation thereof.

133. (1) The arbitrators shall make an award in writing under their hands concerning the matters referred to them for arbitration, and state therein their reasons therefor, and any arbitrator dissenting from the award made by a majority of the arbitrators shall state the grounds of his dissent.

(2) The arbitrators shall present the award to the Revenue Officer in person unless that officer permits them to present it by agent.

Procedure on presentation of award.

134. (1) When the award has been received, the Revenue Officer shall, if the parties are present, consider forthwith any objections which they may have to make thereto, and, if they are not present, fix a date for the consideration thereof.

(2) Where a date has been fixed for the consideration of an award, the Revenue Officer shall on that date or on any subsequent date to which an adjournment may be made hear any objections which the parties may have to make to the award.

(3) The Revenue Officer may also, if he thinks fit, question the arbitrators as to the grounds of their award.

Effect of award.

135. (1) The Revenue Officer may accept, modify or reject the award, recording his reasons for doing so in his decision respecting the dispute which was referred to arbitration.

(2) An appeal shall lie from the decision as if arbitrators had not been appointed.

Arbitration under the Punjab Land Revenue Act, 1887, and the Arbitration Act, 1940.—(*i*) Before the passing of the Arbitration Act, 1940, the enactments relating to arbitration in British India were scattered in various Statutes but were contained mainly in two Acts, *viz.*, the Indian Arbitration Act, 1899 and the Code of Civil Procedure, 1908. The Indian Arbitration Act 1899 applied only to the Presidency towns and to certain other commercial centres to which the application of the

Act had been extended by the Provincial Government and it dealt with arbitrations by agreement without the intervention of Court. The provisions of the Code of Civil Procedure, 1908, applied to all arbitrations which did not come under the provisions of the Indian Arbitration Act. Section 89 of the Code not only saved all references to arbitration governed by the Indian Arbitration Act, 1899, but all references to arbitration goverend by any other law for the time being in force. The Code of Civil Procedure, 1908, made no material alterations as to any question of policy or principle relating to arbitration. It relegated the Law of Arbitration to the second schedule in view of the contemplated codification of the subject in a separate enactment. The second schedule to the Civil Procedure Code applied to the whole of British India, save in so far as was otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, and dealt with three kinds of arbitrations (*a*) a reference to arbitration during the pendency of a suit by order of the Court before which the suit is pending; (*b*) a private arbitration which has taken place out of Court and in respect of which an application is made to the Court to file the award of the arbitrator or arbitrators and to pass a decree thereof; and (*c*) a procedure by which an agreement to refer to arbitration can be filed and thereupon the Court makes an order to refer the matter to arbitration.

Both these enactments have now been repealed by the Arbitration Act, 1940 (section 49).

(*ii*) Chapter X of the Punjab Land Revenue Act, 1887, specifies the law relating to arbitration to be followed by the Revenue Officer in certain cases and so far as those cases are concerned the provisions of the Arbitration Act, 1940 on that point do not apply. Other cases will be governed by the provisions of the Arbitration Act, 1940.

The chief points of difference are—

(1) A Civil Court can refer a case pending before it to arbitration only if the parties agree and if certain other conditions are present (section 21 of the Arbitration Act, 1940). With the consent of the parties a Revenue Officer may refer any dispute under the Act to arbitration and a Collector or Assistant Collector 1st grade may even without the consent of the parties refer to arbitration any dispute with respect to any matter specified in sub-section (2) of section 127.

(2) Under the Arbitration Act, 1940, the parties have to name their arbitrators in advance of the order of reference (section 22). The Land Revenue Act provides for the making of the order of reference first and then for giving of time to the parties to nominate their arbitrators.

(3) Under the Arbitration Act, 1940, there may be one arbitrator if both the parties agree to his nomination while under the Land Revenue Act the parties are to nominate at least one arbitrator each and another one is to be nominated by the Revenue Officer. In certain cases mentioned in section 131 a party's arbitrator can also be appointed by the Revenue Officer.

(4) Under the Arbitration Act, 1940, an award cannot be modified or rejected unless it is vitiated by certain defects or irregularities, but under section 135 of the Land Revenue Act

the Revenue Officer may accept, modify or reject any award.

(*iii*) It may also be noted that the present Chapter does not contain any provision similar to the one in the Arbitration Act, 1940, which provides for filing in Court of an agreement to refer to arbitration, or even a completed award arrived at without the intervention of the Court. Similarly, there is no provision for the submission of an award to the arbitrators for reconsideration.

CHAPTER XI

Special jurisdiction with respect to land.

Power to invest officers making records-of-rights or general re-assessments with powers of Civil Courts.

136. (1) The [1][Provincial Government] may, by order published in the Official Gazette, invest any Revenue Officer making or specially revising records-of-rights in any local area in pursuance of a notification under section 32 or making a general re-assessment of land-revenue in any local area in pursuance of a notification under section 49, (or any Revenue Officer in a Colony) or any Revenue Officer to whose control that officer is subject, with all or any of the powers of any Court constituted under the Punjab Courts Act, 1884, for the purpose of trying all or any specified classes of suits or appeals relating to land arising in the local area.

(2) The [1][Provincial Government] may cancel an order under sub-section (1) wholly or in part.

(3) While an order or any part of an order under that sub-section continues in force, the powers conferred shall be exercised by the officer invested therewith and not otherwise.

(4) Any cases pending before that officer under the order or a subsisting part of the order at the time of cancellation thereof may be disposed of by him as if the order or that part of it continued in force, unless the [1][Provincial Government] directs, as it is hereby empowered to do, that those cases shall be transferred for disposal to the Courts by which they would have been disposed of if the order had not been published.

Control over such officers and appeals from and revision of their decrees and orders.

137. (1) The [1][Provincial Government] may by notification direct that the provisions of this Act with respect to the superintendence and control over Revenue Officer shall, subject to any modification of those provisions which the [1][Provincial Government] thinks fit, apply to any Revenue Officer, except the Financial Commissioner, who has been invested with the powers of Civil Court of any of the classes specified in clauses (*a*), (*b*), (*c*) and (*d*) of section 17 of the Punjab Courts Act, 1884, and that appeal shall lie from his decrees and orders to, and his decrees and orders be subject to revision by a Revenue Officer invested under

1. Substituted for " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

the last foregoing section with the powers of a Court which would be competent under the Punjab Courts Act, 1884, to hear appeals from, or revise, such decrees and orders if they had been made by a Court with the powers of which the Revenue Officer who made them has been invested.

(2) In the absence of any such notification, a Revenue Officer invested under the last foregoing section with the powers of any such Civil Court as aforesaid shall, with respect to the exercise of those powers, be deemed to be such a Civil Court for the purposes of the Punjab Courts Act, 1884.

CHAPTER XII

Supplemental Provisions

Revenue Deposits.

Power to deposit certain sums other than rent.

138. (1) In either of the following cases, namely :—

(*a*) when a headman or other land-owner, or an assignee of land-revenue, to whom any sum other than rent is payable on account of a liability under this Act, refuses to receive the sum from, or to grant a receipt therefor to, the person by whom it is payable,

(*b*) when the person by whom any such sum is payable is in doubt as to the headman or other land-owner, or the assignee of land-revenue, entitled to receive it,

that person may apply to a Revenue Officer for leave to deposit the sum in his office, and the Revenue Officer shall receive the deposit if, after examining the applicant, he is satisfied that there is sufficient ground for the application, and if the applicant pays the fee, if any, which may be chargeable on any notice to be issued of the receipt thereof.

(2) When a deposit has been so received, the liability of the depositor to the headman or other land-owner, or the assignee of land-revenue, for the amount thereof shall be discharged.

Procedure in case of deposit on account of a payment due to Government.

139. If the deposit purports to be made on account of any payment due to the [1][Crown], it may be credited accordingly.

Procedure in case of other deposits.

140. (1) A Revenue Officer receiving a deposit purporting to be made on any other account shall give notice of the receipt thereof to every person who he has reason to believe claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the deposit pending the decision of a Civil Court as to the person so entitled.

1. Substituted for " Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

(2) No suit or other proceeding shall be instituted against the [1][Crown] or against any officer of the [1][Crown] in respect of anything done by a Revenue Officer under this section, but nothing in this sub-section shall prevent any person entitled to receive the amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue Officer.

Execution of Orders of Civil and Criminal Courts by Revenue Officers.

141. Orders issued by any Civil or Criminal Court for the attachment, sale or delivery of any land or interest in land, or for the attachment or sale of the produce of any land, shall be addressed to the Collector or such Revenue Officer as the Collector may appoint in this behalf, and be executed by the Collector or that Officer in accordance with the provisions of the law applicable to the Court issuing the orders and with any rules consistent therewith made by the Financial Commissioner with the concurrence of the High Court and the previous sanction of the [2][Provincial Government].

Order of Civil and Criminal Courts for execution of processes against land or the produce thereof to be addressed to a Revenue Officer.

LAND REVENUE RULES.

[3]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 appraisement 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 appraisement has been approved by the Collector or by a Revenue Officer appointed in that behalf by the Collector.

Appraisement of value of produce before sale.

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 zaildar, 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.

Agency to be used in conducting sale.

49. When produce sold by a kanungo consists of movable property the purchase money shall not be received nor the sale become absolute until the sale has been confirmed by the Collector, or by a Revenue Officer named by the Collector.

Confirmation of sale.

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

Date on which possession is to be given to decree holder under orders of Civil Court.

1. Substituted for " Secretary of State for India in Council " and " Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Substituted for " Government " by the Government of India (Adaptation of Indian Laws) Order, 1937
3. Financial Commissioner's Notification No. 201, dated 18th August 1915 ; Land Administration Acts, Vol. II, page 43.

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.

Meaning and scope of the section.—The cases falling under this section may conveniently be divided into five classes, namely—

(*a*) execution of decrees against the agricultural produce and other movable property of agriculturists;

(*b*) execution of decrees by the attachment and sale or temporary alienation of revenue paying or revenue free land;

(*c*) sale of land which may legally be sold;

(*d*) satisfaction of a decree out of the income of land, which under section 16 of the Punjab Alienation of Land Act, cannot be sold in execution of the decree; and

(*e*) delivery of possession.

Instructions for the procedure to be adopted in different cases are laid down in Financial Commissioner's Standing Order No. 64, and High Court Rules and Orders, Vol. I and have been reproduced below *in extenso*.

FINANCIAL COMMISSIONERS' STANDING ORDER NO. 64

The attachment and sale of agricultural produce and of land.

Preliminary.

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 1900), in the Punjab Alienation of Land Act (XIII of 1900) and the Punjab Debtors' Protection Act (II of 1936). 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, the provisions of which have to be considered, are the Land Revenue, Tenancy, Alienation of Land, and Debtors' Protection 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.

Punjab Alienation of Land Act.—Sections 2, 3 and 16.

Punjab Debtors' Protection Act.—Sections 4, 5, 6 and 10.

A.—Execution of decrees against the agricultural produce and other movable property of agriculturists.

1. The following instructions have been issued by the High Court in Rules and Orders, Volume I, Chapter 12-N. :—

(1) In executing decrees against agriculturists it is to be borne in mind that clause (*p*) of the *proviso* to section 60 (1) of the Code of Civil Procedure exempts from liability to attachment or sale any movable property belonging to a judgment-debtor, who is liable for the payment of land revenue, which, under the revenue law, is exempt from sale for the recovery of arrear of revenue. Sub-section (2) of section 70 of the Punjab Land Revenue Act lays down what property is not liable to attachment and sale in the recovery of an arrear of revenue. Reading the provision of the Code with the revenue law alluded to, it will be seen that the following movable property is, in the case of agriculturists paying revenue, exempted from liability to attachment and sale in execution of decree, namely :—

(*a*) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments, as, in accordance with religious usage, cannot be parted with by any woman [section 60 (1) (*a*) of the Code] ;

(*b*) 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 an agriculturist, and such portion of agricultural produce or of any class of agricultural produce as may have been declared by the Local Government wth the previous sanction of the Governor-General-in-Council to be free from liability under section 61 [section 60 (1) (*b*)] ;

(*c*) so much of the produce of the land, *as the Collector thinks* necessary for seed-grain and the subsistence, until the harvest next following, of the *judgment-debtor, his family and cattle* exempted under head (*b*) [section 70 of the Punjab Land Revenue Act read with section 88 of the Punjab Tenancy Act and section 60 (1) (*p*) of the Code of Civil Procedure].

Section 60 (1) (*c*) of the Code further exempts, from attachment and sale, 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.

[The words " occupied by him " however have been replaced in the Punjab by the words " not let out on rent or lent to others or left vacant for a period of a year or more (*High Court Rules and Orders, Vol. I, C.S. No. 225 of 16th May,* 1938).

(2) The movable property of an agriculturist who is liable for the payment of land revenue may be protected in three several ways, namely, by the orders of the Local Government made under section 61 of the Code, by the opinion of the Collector under section 70 of the Punjab Land Revenue Act read with section 60 (1) (*p*) of the Code, and by the opinion of the Court under section 60 (1) (*b*) of the Code.

(2-A) In exercise of the powers conferred by section 61 of the Civil Procedure Code, the Punjab Government has declared that in the case of agriculturists the judgment-debtor's entire fodder crops, including gram, oats, *chari*, maize and *guara*, one-third or 20 maunds,

whichever is greater, of food-grains, and one-third of all other crops, shall, subject to the provisions of clauses (*b*) and (*p*) of sub-section (1) of section 60 of the Civil Procedure Code and of the *proviso* to section 70 of the Land Revenue Act, be exempted from liability to attachment or sale in the execution of a decree, for the purpose of providing, until the next harvest, for the due cultivation of the land for the support of the judgment-debtor and his family [Punjab Government, Revenue Department Notification No. 359 R. (S.), dated 15th June, 1938].

(3) As to the mode of attaching the movable property of agriculturists, section 141 of the Punjab Land Revenue Act must be read with Order XXI, Rules 43 to 45, of the Code of Civil Procedure, and the attachment or sale of the *produce of any land* must be effected by an order addressed by the Civil Court to the Collector or such Revenue Officer as the Collector may appoint in the behalf, and the execution of the order must be left to the Collector or such officer. The Collector is, however, required by law to carry out the execution in accordance with provisions of the law *applicable to the Court issuing the order, i.e.*, Order XXI. Rules 44 and 45, or such rules as may be framed under section 141 of the Punjab Land Revenue Act.

3-A. The Lahore High Court has provided by an amendment of Rule 45 that with every application for the attachment of a growing crop, the decree-holder must pay into Court such charges as may be necessary for the custody of the crop up to the time at which it is likely to be fit to be cut or gathered—added by C. S. No. 228 of 16th May, 1938, *High Court Rules & Orders, Vol. I.*]

(4) It is thus duty of the Civil Court executing a decree against the movable property of an agriculturist to decide what property, including cattle, is to be exempted from attachment or sale under clauses (*a*) and (*b*) of the *proviso* to section 60 (1) of the Code of Civil Procedure and other provisions of law and to attach and sell such movable property (other than produce of land) as may not be so exempted. But the attachment and sale of agricultural produce must be effected in the manner described in Order XXI, Rules 41, 45, 74 and 75. An amendment of Order 21, Rule 75 (2) Civil Procedure Code as made by the Lahore High Court, enables the Court to sell a crop before it is cut and gathered if it can be sold to "great advantage in an unripe stage." These rules prescribe the procedure for the attachment and sale of agricultural produce, and must be carefully studied and observed by executing Court. The attachment and sale will be carried out by the Collector, subject to the provisions of the Code, as well as to any rules that may be made consistent therewith under section 141 of the Punjab Land Revenue Act (as amended by C. Ss. No 226. and 229 of 16th May 1938, *High Court Rules and Orders, Vol. I*).

[(4-A) It is important, however, to note that according to section 10 of the Punjab Debtors' Protection Act, standing crops, except cotton and sugar-cane, are not liable in the Punjab to attachment or sale in execution of a decree. Similarly all standing trees (apart from the land itself) have been exempted from liability to sale in execution of a decree or order of Court (C. S. No. 217 of 16th May, 1938, *High Court Rules & Orders, Vol. I*)].

(5) According to section 16 of the Punjab Alienation of Land Act, 1900, no land belonging to a member of an agricultural tribe notified under that Act, can be sold in execution of any decree or order of a Civil or Revenue Court.

2. It would appear from the above 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 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.

3. In carrying out the sale of agricultural produce, the Collector will act in accordance with the instructions of the High Court given in paragraph 1 above, 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 appraisement 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 appraisement 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 the presence of a *zaildar*, *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 movable 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.

4. After execution of orders of attachment and sale, the Collector shall forthwith report to the Court the action taken by him.

5. 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.

6. Standing crops and trees are exempted from attachment or sale by section 10 of the Punjab Debtors' Protection Act as under :—

(*i*) Standing crops, other than cotton and sugarcane, are not liable to attachment or sale in the execution of a decree;

(*ii*) Standing trees apart from the land on which they stand, are not liable to sale in execution of a decree or an order of a Court.

B.—Execution of decrees by the attachment and sale or temporary alienation of revenue paying or revenue free land.

7. The following general instructions have been issued by the High Court in Rules and Orders, Volume I, Chapter 12-M., paragraphs 1, 2 and 3 :—

(1) No notification under section 68 of the Code of Civil Procedure has been issued in the Punjab. (A notification under this section has been issued; *see supra*; *The instructions given below will therefore apply to such cases only as do not fall within the ambit of that notification*).

(2) It should be noted that under section 141 of the Punjab Land Revenue Act, the Court must effect attachment of any land or interest in land as defined in that Act, through the Collector or such Revenue Officer as the Collector may appoint in this behalf.

(3) After the land has been attached, the procedure to be followed further depends on—

(*a*) whether the land can legally be sold, or

(*b*) whether its sale is prohibited by section 16 of the Punjab Alienation of Land Act, in which case a further point for consideration is as to—

(*i*) whether the "land" falls within the definition of that word as given in the Punjab Debtors' Protection Act, or

(*ii*) is outside its scope.

8. Under section 24 of the Punjab Alienation of Land Act, the Provincial Government has, in Notification No. 16176-Revenue and Agriculture, dated 21st June 1919, exempted—

(*i*) from the operation of the provisions of the Act, other than those of section 10, the district of Simla, except the *ilaqa* of Kotgarh in the Kotkhai tahsil; and

(*ii*) from the operation of the provisions of the Act, other than those of sections 1 and 2, clauses (2), (3) and (6), sections 4, 10, 16, and 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.

9. For the purposes of section 16 of the Punjab Alienation of Land Act, the word "land" has the more extended meaning given to it by section 2 (3) of the Act which is as under :—

"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 landowner to a superior landowner;

(*d*) a right to receive rent;

(*e*) any right to water enjoyed by the owner or occupier of land as such;

(*f*) any right of occupancy, and

(*g*) all trees standing on such land."

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 agriculturists need not necessarily be a member of an agricultural tribe.

11. On receipt of orders issued by a Civil Court for the attachment, sale or delivery of any *land* or interest in land, 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.

12. The method of attachment is given in Rule 54 of Order XXI of the Civil Procedure Code.

The following instructions have been laid down by the High Court in the Rules and Orders, Volume I, Chapter 12-H:—

(4) The attention of all Civil Courts is drawn to the necessity of making it a point to scrutinize the service of warrants of attachment before they take further action with regard to the sale or temporary alienation of the property attached. The attachment of land and houses requires particular care and the Court should thoroughly satisfy itself that all the formalities necessary for a legal attachment, have been complied with. Failure to comply with these legal formalities may constitute material irregularity, within the meaning of Order XXI, Rule 90, Code of Civil Procedure, and may cause very serious trouble and loss to the parties later on. All Courts will, therefore, require the reader to record a note under the attachment order on the file itself that the specific formalities, required by law in the case, have been actually complied with. The presiding officer will carefully scrutinize such note and intial in token of its correctness.

(5) Where the order is for the attachment of land, the warrant should, in accordance with the provisions of section 141 of the Punjab Land Revenue Act, be addressed to the Collector, and be sent to him for execution, along with the necessary copies of the prohibitory order. The Collector and his office will then be responsible for executing it in accordance with the specified legal formalities, and to affix the necessary prohibitory orders, etc. The Collector will return the warrant to the Court concerned when it has been duly executed, with an endorsement under his signature certifying that all the legal formalities required have actually been complied with, and the Court will thereafter proceed as directed in paragraph 4 above.

13. 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.

14. The following instructions have been laid down by the High Court in Rules and Orders, Volume I, Chapter 12-M., paragraphs 4 to 12 :—

(4) In cases where the land can legally be sold it is for the Court to decide whether it shall order—

(*i*) a sale of the land, or

(*ii*) only a temporary alienation to satisfy the decree under execution. For this purpose, the Court must, in such cases, give the Collector an opportunity of intervening under section 72, Civil Procedure Code.

(5) When any land, or interest in land, paying revenue to Government or of which the revenue has been assigned or remitted, has been attached in execution of a decree by the order of a Civil Court, the Court shall, on the return of the warrant of attachment duly executed, give notice of the attachment to the Collector in form No. 291 (part A-III, Rules and Orders, Volume VI-A), with a letter in vernacular enquiring whether he proposes to intervene under section 72 of the Code of Civil Procedure, 1908.

(6) On receipt of the notice referred to in the preceding paragraph, the Collector will, as soon as possible, but not later than 90 days from the date of receiving the notice, return the same, and either make the representation contemplated by section 72 of the Code or intimate that he will not intervene.

(7) If the Collector decides to intervene and represents under section 72 of the Code of Civil Procedure that a public sale of the 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 place the representation on the record, and after hearing the parties, shall determine whether the Collector should be authorized to provide for such satisfaction.

(8) If the Court decides for any reason not to accept the Collector's representation, or if the Collector himself has intimated that he does not wish to intervene, the land under attachment must be sold ; but if the Court decides to accept the Collector's representation it shall record an order to that effect and proceed further as hereinafter stated in order to secure a temporary alienation of the land.

B. (I)—Sale.

(9) When a sale has to be held, the order for the sale should be addressed to the Collector or such Revenue Officer as the Collector may appoint in this behalf (*vide* section 141 of the Punjab Land Revenue Act).

(10) The Court shall without delay cause to be prepared and transmitted to the Collector or such Revenue Officer as the Collector may appoint in this behalf, the necessary warrant for sale of the land attached. The warrant should be scrutinized by the parties or their counsel.

The Court may also send to the Collector or such other Revenue Officer as he may appoint, 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 interest therein of the judgment-debtor.

(11) Attention is invited to section 141 of the Punjab Land Revenue Act according to which orders for attachment or sale of land have to

be addressed either to the Collector or such Revenue Officer as the Collector may appoint. The warrants for attachment and sale may, therefore, after arrangement with the Collector, be sent direct to *tahsildars* or such other Revenue Officer as the Collector may appoint, who will return them after execution to the Court concerned through the Collector. Duplicate copies of warrants for attachment and sale should also be sent direct to the Collector for information.

(" 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) When any sale has been confirmed, the Court will receive from the Collector a report of his proceedings intimating the sum realized and held at the disposal of the Court.

All subsequent proceedings in connection with the decree including the preparation of a sale certificate and the delivery of possession to the purchaser, will be taken under the orders of the Court.

15. The above instructions of the High Court are intended to ensure that the Collector 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.

It is to be noted 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).

16. In deciding whether to intervene, 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) The fact that the decree-holder declines to take the land in farm is not sufficient reason for declining to intervene.

17. 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 order 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 authorize the republication of this notification or keep it in force.

B. (II) Temporary alienation.

18. The following instructions have been laid down by the High Court in the Rules aud Orders, Volume I, Chapter 12-M., paragraphs 13 to 32 :—

(13) A temporary alienation of the land may have to be arranged when either—

(*a*) the Court has accepted the Collector's intervention under section 72, Civil Procedure Code, in the case of land which can legally be sold, or

(*b*) the sale of the land is prohibited by section 16 of the Punjab Alienation of Land Act.

(14) The distinction should be noted because in case of land which can legally be sold, the Court authorizes the Collector under section 72, Civil Procedure Code, to provide for the satisfaction of the decree. The Collector then proceeds as directed by section 72 (2) of the Code of Civil Procedure. The Punjab Debtors' Protection Act is not applicable to such cases.

Cases governed by the Punjab Debtors' Protection Act.

(15) If the sale of the land itself, however, is prohibited by law, the property may either—

(*i*) fall within the definition of "land" as given in the Punjab Debtors' Protection Act, or

(*ii*) be outside its scope.

(16) It may be noted, for example, that the following type of cases would not be governed by the Punjab Debtors' Protection Act—

(*i*) when no attachment is necessary, *e.g.*, in the case of mortgage decrees ; and

(*ii*) when the land falls within the definition of the Punjab Alienation of Land Act, but not within the definition given in the Punjab Debtors' Protection Act, *e.g.*, right to receive rent, right of occupancy, etc. (The definition in the latter Act is narrow and its operation has to be limited accordingly).

(17) The Court does not in these cases of temporary alienation, act under section 72, Civil Procedure Code, and makes no reference to the Collector, under that section, as ruled in I. L. R. Lah. 192 [F. B.]. The Court has power independently of the provisions of section 72, Civil Procedure Code, to attach the land under section 141 of the Punjab Land Revenue Act and to arrange for its temporary alienation in execution of the decree.

(18) If the case is governed by the Punjab Debtors' Protection Act, the Court will attach the land and after an order has been passed for its temporary alienation, transfer the proceedings to the Collector for the determination of the period of alienation under section 4 of the Act. The Collector acts judicially in this matter. In other cases the Civil Court itself should proceed to arrange for temporary alienation of the land attached.

(19) It is necessary to emphasize the change made by section 6 of the Punjab Debtors' Protection Act in the position held by the Collector when a temporary alienation of land has to be arranged in the

execution of a Civil Court's decree in cases falling within the ambit of the Punjab Debtors' Protection Act.

It is now for the Collector to decide the period of alienation in cases under section 4 of the Punjab Debtors' Protection Act, and according to section 6 of the Act, the Collector in doing so is to be deemed to be acting judicially. In other cases if he is requested to act he acts as a ministerial officer of the Court.

(20) The Collector is also empowered under section 5 of the Act to decide what portion of the judgment-debtor's land is to be exempted from temporary alienation for the maintenance of himself and his family.

(21) It should be noted, however, that the proceedings are transferred to the Collector for the specified purposes only, under sections 4 and 5 of the Punjab Debtors' Protection Act. The whole of the decree itself is not so transferred.

(22) The Civil Courts will, therefore, continue to exercise jurisdiction even in these cases, as for instance in the following matters :—

(*i*) Objections under Order 21, Rule 58, Civil Procedure Code.

(*ii*) Objections as to the liability of the land to attachment or to sale without attachment, *e.g.*, under section 60, Civil Procedure Code.

(*iii*) Objections by third parties arising out of the sale, *e.g.*,Order 21, Rule 100, Civil Procedure Code.

(23) All objections, however, as to the regularity of the procedure in selling the land, *e.g.*, under Order 21, Rule 90, Civil Procedure Code will be determined by the Collector.

(24) The instructions contained in paragraph 6 above as to an enquiry by the Collector and report by him, shall be followed as far as possible in cases in which the Court has merely invited the opinion of the Collector on the character which the temporary alienation has to take.

(25) The Court should send to the Collector all necessary copies of extracts from the *jamabandi* and *khasra girdawri*. Decree holders should be required to file these copies with their applications (C. S. No. 281 of 21st November 1940).

(26) The Court's own execution proceedings will be consigned to the record room in cases where the proceedings have been transferred to the Collector under section 4 of the Punjab Debtors' Protection Act.

All Acts necessary for the completion of the execution proceedings such as transference of possession, will be performed under the order of the Collector. The Collector will also pass orders in regard to the release of land from attachment under section 5 of the Punjab Debtors, Protection Act.

(27) In cases of temporary alienation which are not governed by the Punjab Debtors' Protection Act, the Civil Courts may seek the Collector's advice.

(28) When the Collector's advice is received, the Court should ordinarily follow it if both the parties agree to it, but if either of the parties object to it, it shall be open to the Court after hearing the

parties, to put the period to auction. A date shall then be fixed by the Court, and in addition to the usual proclamation be notified by beat of drum or by handbills, etc., at the expense of the party who applies for this to be done. If the final bid is for a period less than that recommended by the Collector, it shall be accepted, otherwise the Court shall consider the question of accepting the recommendation of the Collector or of re-sale.

(29) When the Court has fixed the term of a farm it shall first collect in full the money from the person who takes farm, if he is not the decree-holder and shall then ask the Collector under section 141 of the Punjab Land Revenue Act, to put the purchaser in possession and effect the necessary mutation, etc. The Collector in such cases acts as the ministerial officer of the Court. There is nothing in the law that permits a Collector in these cases to ask the Court to modify its order in the interests of the judgment-debtor or the decree-holder.

(30) It should be made equally clear, however, that in cases falling under section 4 of the Punjab Debtors' Protection Act, the Collector acts judicially and the Civil Court cannot interfere with his orders. The parties if dissatisfied must pursue their remedy by appeal to the Commissioner.

(31) When the temporary alienation has been arranged by the Collector he shall send to the Court an intimation as to the sum realized and held at its disposal.

(32) Any documents received from the Collector shall be placed on the record of the Civil Court.

19. Every Civil Court is required to send to the Deputy Commissioner a copy of any order or decree involving a permanent alienation of land by a member of an agricultural tribe or a mortgage by a member of an agricultural tribe, when the mortgagee is not a member of the same tribe or of a tribe in the same group. Upon receipt of the copy the Deputy Commissioner should check it and if he is of opinion that it contravenes the provisions of the Alienation of Land Act, he should within two months of the date of information, apply to the Appellate Court for the revision of the decree or order. If the application is rejected by the Appellate Court, the Deputy Commissioner may, within two months of the date upon which he is informed of such order, apply to the High Court for further revision (*see* section 21-A of the Alienation of Land Act).

B. (III) Delivery of possession.

20. The procedure for the delivery of possession shall be in accordance with Rules 95 and 96, Order XXI, of the Civil Procedure Code.

21. 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.

22. 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 of land :—

(*a*) will specify whether delivery should take place at once or after some late 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 lands, 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 near 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 boundary 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 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*.

(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) and (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 Rule 36, Order XXI 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 other;

(2) the persons present at the time of delivery;

(3) the mode of delivery.

When attachment is made the patwari should note the facts in the remarks column of the *jamabandi*, as well as in the *roznamcha waqiyati*.

(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.

Section 68 of the Code of Civil Procedure—when execution of the decree to be transferred to the Collector.—(*P. G. Not. No. 365-R, dated the 17th January*, 1939). In exercise of the powers conferred by section 68 of the Code of Civil Procedure, the Governor of the Punjab is pleased to declare that throughout the Punjab, in all cases in which a Civil Court has ordered any land as defined in the Punjab Tenancy Act, 1887, or any interest in such land, to be sold, the execution of the decree shall be transferred to the Collector except when the decree is one for the recovery of money specifically charged on the land ordered to be sold.

Order by the Collector a decree.

It has been held in *Budhu Ram* v. *Pandhi*,[1] that an order by a Collector to whom a Civil Court decree has been transferred for execution under the said notification refusing to direct the alienation of any portion of the land belonging to the judgment-debtor on the ground that it was barely sufficient for his maintenance is a decree and as such appealable. Such an appeal lies to the Commissioner not only by virtue of rule 56 of the rules framed by the Punjab Government under section 70, Civil Procedure Code, but even otherwise under section 71 read with section 96 of the Code.

It has been further held in *Gulab Din* v. *Sardari Lal*,[2] that the proceedings in connection with the execution of a decree in a case where the Civil Court has ordered the land to be attached and sold and has transferred the execution proceedings to the Collector in accordance with the above notification, under section 68, Civil Procedure Code are not proceedings under the Debtors' Protection Act and for purposes of appeal and revision are governed by Third Schedule of the Civil Procedure Code and by the rules made by the Punjab Government under section 70 of the said Code.

Judgment debtor not member of agricultural tribe.

Civil Procedure Code—Sch. III, rule 1—Execution of decree transferred to Collector—judgment-debtor not member of agricultural tribe—Civil Court ordering sale of land—duties and powers of Collector.—Where the judgment-debtors are not members of an agricultural tribe there is no bar to the Court passing the decree ordering the attachment and sale of the land and the Collector cannot refuse to take any action in respect of it. Rule 1 of Schedule III, Civil Pro-

1. (1941) 20 L.L.T. 167.
2. (1942) 21 L.L.T. 15.

cedure Code, only permits the Collector to postpone the sale of the attached property in such cases temporarily or permanently in either of two cases, namely :—

(*a*) in order to give the judgment-debtors time to pay off the amount due in cash ; or

(*b*) if the Collector finds that the decree can be satisfied by a lease or other temporary alienation of the property.

Where there is no possibility of raising the decretal amount by any temporary alienation the Collector cannot refuse to carry out the sale.[1]

Rules framed under section 70 of the Code of Civil Procedure, 1908.—*P. G. Not. No. 2420-R, dated the 26th July,* 1940, With reference to Punjab Government Notification No. 3273-R, dated the 4th September, 1939, and in exercise of the powers conferred by section 70 of the Code of Civil Procedure (Act V of 1908), the Governor of the Punjab is pleased to make the following rules :—

Rules.

1. In these rules unless there is anything repugnant in the context,— Definitions.

(1) " Collector " means—

(*a*) the Collector of the district where the land ordered to be sold in execution of the decree is situated ;

(*b*) if the land is situated in more districts than one, the Collector of the district within the limits of which the judgment-debtor resides, or if he has no such residence, where the major portion of the land is situated ;

(*c*) if the judgment-debtor does not reside in any such district and the areas situated in different districts are equal, the Collector before whom, in the opinion of the Court, it is more convenient for the parties to the decree to attend.

(2) " Court " means a Civil Court of original, appellate or revisional jurisdiction in the Punjab.

(3) " Decree " means a decree of a Civil Court not being one for the recovery of money specially charged on land.

(4) " Land " means land as specified in the notification issued by the Punjab Government under section 68 of the Code of Civil Procedure, 1908.

(5) " Schedule " means Schedule III of the Code of Civil Procedure, 1908.

2. (1) Immediately after an attachment has been made and an order passed that any land be sold in the execution of a decree, the Court shall transmit, by post or in such other manner as may be most convenient, the following documents to the Collector :— Transmission of copies of record.

(*i*) a copy of the application for execution certified by the Court to be correct ;

(*ii*) a certified copy of the relevant portion of the latest *jamabandi* showing the land attached ;

1. Gulab Din v. Sardari Lal=(1942) 21 L.L.T. 15.

(*iii*) a copy of the warrant of attachment along with the report of attachment ;

(*iv*) 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, along with a statement showing, as clearly as possible, of which land and of what interests of the judgment-debtor in such land, as far as they are known to the Court, sale has been ordered ;

(*v*) any other document which in the opinion of the Court would be necessary to enable the Collector to determine the land of which sale has been ordered and the rights and interests therein of the judgment-debtor.

(2) The Court shall, if practicable, fix a date, which will ensure speedy disposal, for the appearance of the parties before the Collector. The date so fixed shall be noted on the record and communicated to such of the parties as may be present.

Preparation of copies and documents.

3. The documents mentioned under sub-rule (1) of rule 2 shall be prepared and transmitted to the Collector free of all cost to the parties. The decree-holder shall file his application for execution in duplicate. Of these only one copy shall be stamped as required by the Court-Fees Act, and the other shall be transmitted to the Collector after being certified by the Court to be correct. The copy of the warrant of attachment shall be prepared on a printed form, and the copy of the relevant portion of the *jamabandi* filed by the decree-holder with his application shall in original be sent to the Collector. The other statements shall be prepared by the establishment of the Court.

Note and register of executions and consignment of record.

4. (1) The Court shall make a note in column No. 22 of Civil Register No. X (Register of Execution of Decrees) regarding the transmission of the documents to the Collector and the date on which these were transmitted.

(2) On receipt of the intimation from the Collector under rule 5, the Court shall attach to it the record of the case, which shall then be consigned to the record room, unless the execution is to be proceeded with in some other respect.

Case to be registered.

5. The Collector shall notify the receipt of the documents to the Court, and shall register the decree in a book which may be prescribed departmentally for the purpose.

Date of first hearing.

6. The case shall be taken up by the Collector on the date, fixed by the Court under sub-rule (2) of rule 2 :

Provided that if on the date so fixed the Collector be not present at his headquarters, the file shall be put up before some other gazetted Revenue Officer subordinate to the Collector, or before an Assistant Collector of the first grade, if any, on duty at the headquarters, and he shall fix a fresh date for the appearance of the parties before the Collector which shall be noted and communicated as prescribed under sub-rule (2) of rule 2 :

Provided further that if there be no such Gazetted Officer on duty in the station, the case shall come up before the Collector on his return to headquarters.

Delegation of powers to Sub-Divisional Officers.

7. The Collector may by written order make over generally or in special cases, the execution of any decree transferred to him for execution to any Sub-Divisional Officer subordinate to him who shall thereupon, in relation to the execution of that decree, act as and exercise all the powers conferred by these rules on the Collector. When the execution proceedings are over the Sub-Divisional Officer shall return the record of the proceedings to the Collector.

Objections as to the liability of the land ordered to be sold and its attachment to be decided by the Court.

8. (1) All objections, whenever referred, regarding the liability to attachment of the land ordered to be sold, or the factum or procedure of its attachment shall be preferred to, and heard and decided by the Court transferring the decree.

(2) If any objection of the nature mentioned under sub-clause (1) above is at any time, whether during the continuance of the proceedings or thereafter, made in writing before the Collector, he shall forward it in original to the Court by which the decree was transferred:

Provided that in case the objection is preferred during the continuance of the proceedings before the Collector, further proceedings shall be suspended for such time as may be sufficient to receive directions from the Court.

(3) If after the transmission of the record under sub-rule (1) of rule 2 but prior to the confirmation of the sale or other arrangement under paragraphs 1 to 7 of the schedule, an objection about the liability of the land to, or the facturm or procedure of, attachment is preferred directly before the Court transferring the decree is received by it under sub-clause (2) above, the Court shall, if it decides to enquire into the objections, forthwith communicate its decision to the Collector who shall cause further proceedings to be stayed pending the disposal of the objection.

Court to intimate the result of objections to Collector.

9. After the objection is disposed of, the Court shall communicate the result to the Collector, and if in consequence thereof any further proceedings are to be taken in the case, the Court shall, if practicable, fix a date for the appearance of the parties before the Collector, notifying the same in the manner prescribed in sub-rule (2) of rule 2.

Result of objection to determine further proceedings.

10. (1) If the objection succeeds and the entire land is released from attachment, the Collector shall dismiss the execution case, and after forwarding a non-satisfaction certificate to the Court he shall consign the record to the Record Room.

(2) If the attachment of the whole or a part of the land is upheld, the Collector on receipt of the information shall proceed to complete the proceedings in accordance with law.

Procedure where the same land is ordered to be sold in two or more decrees.

11. (1) If the same land is ordered to be sold in two or more decrees transferred to the Collector under sub-rule (1) of rule 2, the following procedure shall with regard to such land be observed :—

(*i*) If all the orders of sale have been received from the same Court, the Collector shall enquire from the Court in which particular case the main proceedings are to be held.

(*ii*) If the orders of sale have been received from different Courts of the same grade, the main proceedings shall be held in the case in which attachment was first effected, and an intimation about this fact shall be sent to all the other Courts.

(*iii*) If the orders of sale have been received from Courts of different grades, the main proceedings shall be held in the case received from the Court from the highest grade, and an intimation about this fact shall be sent to all the other Courts.

(2) In the above mentioned cases though the proceedings are to be held in one case only, the result shall ensure for the benefit of all other cases as well.

(3) If on account of the decree-holder's default, or any adjustment of the decree or any order from the Court, the case is which proceedings are being held is dismissed and such a result does not affect the connected case or cases, the Collector shall start or continue proceedings as the case may be, in the latter cases in accordance with the above procedure.

Procedure where land is within the jurisdiction of two or more Collectors.

12. (1) If the land to be proceeded against under these rules is situated within the jurisdiction of more Collectors than one, the Collector holding these proceedings shall forthwith intimate the factum of his having taken cognizance of the case to every other Collector within whose jurisdiction any part of the said land is situated.

(2) If at any time after the Collector has started proceedings under sub-rule (1) above, any one of the other Collectors receives under sub-rule (1) of rule 2 any decree for execution by sale of the same land, he shall after stating the above circumstances forthwith return the papers to the Court from which the decree has been received.

(3) If prior to the receipt of the intimation under sub-clause (1) above any other Collector has also started proceedings against the same land, the following procedure shall be adopted :—

(*a*) If there is any difference in the areas involved in the different cases, the case involving a larger area shall proceed, and the proceedings in the other case or cases shall be stopped.

(*b*) If there is no difference in the areas involved in different cases, the case in which proceedings were first started by the Collector seized thereof shall proceed and the proceedings in the other case or cases shall be stopped.

(*c*) The Collector dealing with the case the proceedings of which have been stopped under sub-clause (*a*) or (*b*) above, shall after intimating the circumstances to the Court concerned, and issuing a non-satisfaction certificate, dismiss the execution case.

Enquiry by Collector.

13. The Collector shall make a summary enquiry in terms of paragraph *2* of the schedule with a view to finding out if all the liabilities of the judgment-debtor can be discharged without selling all the land available for the purpose.

Proceedings to be drawn up.

14. As soon as the enquiry contemplated by rule 13 is completed, the Collector shall draw up the proceedings in English setting forth the steps taken by him in this connection with the result of his enquiry.

Sale of land.

15. If the Collector comes to the conclusion that all the liabilities of the judgment-debtor cannot be discharged without the sale of the entire land available for the purpose, he shall record his opinion and proceed to sell the land ordered to be sold.

Arrangement short of sale.

16. (1) If the Collector comes to the conclusion that all the liabilities of the judgment-debtor can be discharged without the sale of the

entire land available for the purpose, he shall record his opinion with the reasons therefor, and shall proceed as laid down in paragraph 3 or 5 of the schedule.

(2) The Collector shall ordinarily follow procedure laid down in paragraph 5 of the schedule, unless the summary enquiry held under rule 13 points to the conclusion that no complicated question requiring to be determined by the Civil Court is likely to arise.

Tenancy Act procedure to be followed.

17. (1) In holding the enquiry under rule 13 the Collector shall, in so far as it may be possible, follow the procedure laid down for the guidance of Revenue Officers under the Punjab Tenancy Act, 1887.

(2) In the proceedings contemplated by sub-rule (1) above, the decree-holder, the judgment-debtor and such other creditors of the judgment-debtor, if any, as may have responded to the notice under paragraph 3 of the schedule shall be given an opportunity of leading such evidence, oral or documentary, as they may wish to produce.

Powers of Collector.

18. (1) The Collector dealing with a case under these rules shall have all the powers, and be subject to all the limitations regarding sale, mortgage lease or other temporary alienation of land, the awarding of costs incurred by the parties as also costs of adjournments and the dismissal of the case, as may for the time being be exercisable by or imposed on the Court ordering the sale, and shall be competent to pass any order incidental or relating to the execution of the decree which but for the transfer of the case could have been passed by the Court.

(2) Fees for the services of processes and fees for proclamations issued under these rules shall be levied according to the scale laid down for processes and proclamations issued by a revenue Court. These fees shall in the first instance be paid by the decree-holder, or if the process or proclamation is ordered to be issued at the instance of any other person, by such person and be treated as costs in the case.

Proclamation of sale by public auction.

19. (1) Where any land is to be sold under these rules, the Collector shall cause a proclamation of the intended sale to be made in the language of the Court.

(2) Such proclamation shall be drawn after notice to the decree-holder and the judgment-debtor, and besides stating the time and place of the intended sale, it shall specify as fairly and accurately as possible :—

(*a*) the land to be sold ;

(*b*) the revenue assessment on such land ;

(*c*) any encumbrance to which the land is liable ;

(*d*) the amount for the recovery of which the sale is ordered ;

(*e*) the number of lots in which the Collector proposes to sell the land, if he considers that the land should not be sold in one lot, and the reserved price fixed for each lot;

(*f*) every other thing which the Collector considers material for a purchaser to know in order to judge of the nature and the value of the property.

Note.—If the area to which the encumbrance mentioned in clause (*e*) attaches is more than the area mentioned in clause (*a*), whole of the area shall be specified in the proclamation.

(3) For purposes of ascertaining the matters to be specified in the proclamation the Collector may summon any person whom he considers necessary to summon, and may examine him in respect of any such matters and require him to produce any documents in his possession or power relating thereto.

20. (1) The Collector may subsequent to the drawing up of the proclamation for good and sufficient cause modify it in any respect.

(2) Where the sum total of the decretal amount to be realized and the encumbrance on the land to be sold is less than the value of the land, the Collector when making proposals regarding the sale in lots, shall take into account only that proportion of the encumbrance which appertains to the lot or lots proposed for sale. In order, however, to give information to the intending purchaser he shall in the proclamation issued under the last rule declare the whole amount of the encumbrance and the entire property to which it pertains.

Publication of proclamation.

21. (1) The proclamation drawn up under the above rules shall be published by beat of drum or other customary mode at some place on or adjacent to the land to be sold. A copy of the proclamation shall be affixed on or near the land to be sold, and in the office of the Collector as also in the Court-house of the Court issuing the order for sale:

Provided that if the Collector considers it necessary such proclamation shall also be published in the Official Gazette or in any local newspaper or in both, and the cost of such publication shall be deemed to be part of the costs of the sale.

(2) Where the land is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the same, in the opinion of the Collector, cannot otherwise be given.

Time of sale.

22. No sale shall, without the consent in writing of the judgment-debtor, take place until after the expiration of 30 days calculated from the date on which the copy of the proclamation has been affixed in the office of the Collector.

Sale by whom conducted.

23. Sale under these rules shall be conducted by the Collector in person or by an Assistant Collector generally or specially empowered by him in this behalf.

Adjournment of sale.

24. The Collector may in his discretion adjourn a sale ordered by him to a specified day and hour, and any other officer conducting such sale may also in his discretion adjourn the sale recording his reasons for such adjournment. When a sale is adjourned under this rule for a longer period than 15 days, a fresh proclamation shall be made unless the judgment-debtor consents in writing to waive it:

Provided that the Collector may dispense with the consent of any judgment-debtor who has failed to attend in answer to the notice issued under rule 19 (2).

Stoppage of Sale.

25. A sale held under these rules shall be stopped if before the lot put up for sale is knocked down, the amount of the decree and costs including the costs of the sale are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such decree and costs has been paid to the Collector ordering the sale.

Officer conducting sale not to bid or purchase.

26. No officer or other person having any duty to perform in connection with any sale under these rules shall directly or indirectly bid for acquiring, or attempt to acquire any interest in the land to be sold.

Co-sharer's bid to be preferred.

27. Where the land sold is an undivided share of a large area and two or more persons of whom one is co-sharer in that area make the same bid, the co-sharer's bid shall prevail as against the bid of the other persons.

Purchase money to be set off against decree-money.

28. If the decree-holder purchases the land put up for sale, the purchase money and the amount due on the decree may, subject to the rights of the other decree-holders, if any, to claim rateable distribution be set off against one another and the Collector executing the decree shall enter satisfaction of the decree in whole or in part, as the case may be.

Deposit by purchaser and resale on default.

29. As soon as a bid made under these rules is accepted, the person making the bid shall pay to the officer conducting the sale a sum equal to 25 per cent. of the amount of his purchase money. In default of the purchaser's making such a deposit, the land shall forthwith be resold:

Provided that where the decree-holder is the purchaser and is entitled to set-off the purchase money under rule 28 above the Collector may dispense with this deposit.

Payment in full of purchase money.

30. The balance of the purchase money left after the deposit of 25 per cent. made under rule 29 shall be paid by the purchaser to the Collector before his office closes on the 15th day from the sale of the and:

Provided that in calculating the amount to be so paid to the Collector the purchaser shall have the advantage of any set-off to which he may be entitled under rule 28 above.

Procedure on default of payment.

31. (1) If the purchaser does not pay the full amount of the purchase money within the period mentioned in the last preceding rule, the deposit made under rule 29 may, if the Collector thinks fit, after defraying the expenses of the sale, be forfeited to the Government.

(2) In a case covered by sub-rule (1) above, the land shall be resold subject to the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for sale, and the defaultiug purchaser shall forfeit all claim to the land or to any part of the sum for which it may subsequently be sold.

Deficiency in the sale price of resale.

32. Any deficiency in price which may occur on a resale under rule 31 and all expenses attending such resale shall be certified to the Collector by the officer conducting the sale, and shall at the instance of the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

Application to set aside sale on deposit.

33. (1) Where land has been sold in accordance with these rules, the judgment-debtor or any person holding an interest therein by virtue of a title acquired before the sale may within 30 days of date of the sale apply to have it set aside on his depositing with the Collector,—

(*a*) for payment to the purchaser a sum equal to 25 per cent. of the purchase-money together with the amount realized as commission from him under rule 40;

(*b*) for payment to the decree-holder the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which, since the date of such proclamation may have been received by the decree-holder.

(2) Where a person applies under the rule next following to set aside the sale he shall not unless he withdraws that application be entitled to make or prosecute his application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interests not covered by the proclamation of sale.

(4) If the application to have the sale set aside is disallowed, the deposit made under this rule shall be refunded to the applicant.

Application to set aside sale on ground of irregularity or fraud.

34. In case of sale of land under these rules the decree-holder, the judgment-debtor or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale may within 30 days of the date of the sale apply to the Collector to set aside on the ground of a material irregularity or fraud in publishing or conducting it :

Provided that no such sale shall be set aside on the ground of irregularity or fraud unless the Collector is satisfied that the applicant has sustained some injury by reason of such irregularity or fraud.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

35. The purchaser at any such sale may within thirty days of the date of the sale apply to the Collector to set it aside on the ground that the judgment-debtor had no saleable interest in the land.

Sale when to become absolute and power to order resale.

36. Where no application is made under rules 33, 34 or 35, or where such application is made and disallowed, the Collector shall make an order confirming the sale, and thereupon the sale shall become absolute :

Provided that if in any case the Collector is of opinion that the price offered is inadequate, he may refuse to confirm the sale, and the land shall thereupon, subject to the provisions made in these rules, be again put up for sale :

Provided further that no order shall be passed under this proviso unless notice has been given to all persons affected, and their objections, if any, heard.

Setting aside of sale.

37. Where an application is made under rules 33, 34 or 35 and allowed, the Collector shall make an order setting aside the sale :

Provided that no order shall be passed under this proviso unless notice has been given to all persons affected, and their objections, if any, heard.

Bar of civil suit.

38. No suit to set aside an order made under rules 36 and 37 shall be brought by any person against whom such order is made.

Return of purchase money in certain cases.

39. Where a sale is set aside under rules 36 or 37 the purchaser shall be entitled—

(*a*) in the case of a sale set aside on an application under rule 33

to an order sanctioning his withdrawal of the deposit made under that rule;

(*b*) in case of a sale set aside on application under rule 34 to an order for a refund of the commission, if any, deducted under rule 40.

Commission fee, how to be realized.

40. (1) Commission fee at the rate of 10% shall be levied on all sales held under these rules.

(2) The commission fee shall be realized—

(*a*) where no deposit is required under rule 29 by the person conducting the sale from the decree-holder, before he is declared the purchaser;

(*b*) where a deposit is required under rule 29 by deduction by the Collector from the deposit.

(3) When realized, the commission fee shall be credited to Government.

Grant of sale certificate.

41. Where a sale of land has become absolute, the Collector shall grant a certificate specifying—

(*i*) the land sold;

(*ii*) the name of the person who is declared to be purchaser;

(*iii*) the encumbrance, if any, and the entire area to which it attaches; and

(*iv*) the date on and the amount for which the sale has taken place.

Such certificate shall bear the date when the sale becomes absolute.

Procedure for delivering possession of land.

42. In delivering possession to a purchaser or transferee in any other form, the Collector shall follow the following procedure :—

(*a*) Where the land is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequent to the attachment of the land, the Collector shall on the application of the purchaser or transferee, order delivery to be made by putting such person or any person whom he may appoint to receive delivery on his behalf in possession of the land and if need be by removing any person who refuses to vacate the same.

(*b*) Where the land is in the occupancy of a tenant or other person entitled to occupy the same, the Collector shall on the application of the purchaser or transferee order delivery to be made by affixing a copy of the certificate or order in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, that the interest of the judgment-debtor in its entirety or to a limited extent, as the case may be, has been transferred to the auction purchaser or the other transferee.

Objections as to liability of land and delivery of possession.

43. Objections regarding the liability of the land, other than that the sale of which has been ordered by the Court, for the satisfaction of the judgment-debtor's debts, and objection regarding the delivery of possession shall be made to and decided by the Collector.

Resistance or obstruction to possession of land.

44. (1) Where the person entitled under the order of the Collector passed under these rules to the possession of land as an auction purchaser or transferee in any other form is resisted or obstructed by any person in obtaining possession of land, he may within thirty days of

the resistance or obstruction make an application to the Collector about such resistance or obstruction.

(2) The Collector may of his own accord initiate proceedings under this rule.

(3) The Collector shall fix a date for investigating the matter, and shall summon the party against whom the application is made or who is reported to have offered resistance or obstruction to appear and answer the allegation.

Resistance or obstruction by judgment debtor.

45. Where the Collector is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or some other person at his instigation, he shall direct that the applicant be put into the possession of the land, and where the applicant is still resisted or obstructed in obtaining possession, the Collector may also at the instance of the applicant order the judgment-debtor or any other person acting at his instigation to be detained in the civil prison for a term which may extend to 30 days.

Resistance or obstruction by bona fide claimant.

46. Where the Collector is satisfied that the resistance or obstruction was occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the land on his own account or on account of some person other than the judgment-debtor, the Collector shall make an order dismissing the application.

Application by a person other than the judgment-debtor when dispossessed.

47. (1) Where any person other than the judgment-debtor, whose case does not fall under rule 45 is dispossessed of land under these rules, he may make an application to the Collector complaining of such dispossession.

(2) The Collector shall fix a date for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Decision of the application.

48. Where the Collector is satisfied that the applicant was in possession of the land on his own account or on account of some person other than the judgment-debtor, he shall direct that the applicant be put into possession of the land. In case the Collector comes to a contrary decision, the application shall be dismissed.

Rules not applicable to transferee lite pendente.

49. Nothing in rules 46, 47 and 48 shall apply to resistance or obstruction by a person to whom the judgment-debtor has transferred the land after its attachment by the Court, in case the resistance or obstruction relates to such land or after the initiation of proceedings under paragraph 2 of the schedule in case the resistance or obstruction relates to any land proceeded against under that paragraph but not attached by the Court.

Order conclusive subject to civil suit.

50. Any party, not being a judgment-debtor, against whom an order is made under rules 45, 46 and 48 may within one year of the date of such order institute a suit in a Civil Court to establish the right which he claims to the present possession, of the land, but subject to the result of such suit, if any, the Collector's order passed under these rules shall be conclusive.

Costs how to be adjusted.

51. If any costs are allowed under these rules, the amount so awarded shall be added to the decretal sum in case the order be in favour of the decree-holder, and be deducted therefrom in case the order be against him.

Information about and orders regarding land outside the Collector's jurisdiction how to be collected and executed.

52. (1) The Collector seized of a case under these proceedings shall deal with it as if the entire land ordered to be sold or otherwise to be dealt with were situated within his jurisdiction.

(2) If the Collector is of the opinion that it is necessary to obtain any information regarding the judgment-debtor's land lying within the jurisdiction of any other Collector, he shall make a requisition in this behalf, and the Collector of the district concerned shall supply him with the requisite information.

(3) If the Collector passes any order regarding any land situated within the jurisdiction of any other Collector, he shall comunicate it to the latter who shall execute it as if it had been passed by himself.

Consignment of record.

53. After the Collector has completed the proceedings and informed the Court as contemplated by paragraph 9 of the schedule, the record shall be consigned to the record room.

Result of execution to be noted in Court's register and procedure of Court.

54. On receipt of the information under rule 53, the Court shall make note in column No. 2 of civil register No. X. (Register of Execution of Decrees) showing the date of the receipt of the intimation, and if necessary after sending for the record of the execution case from the record room shall proceed in the manner prescribed in paragraph 9 (3) of the schedule.

Delegation of power by Collector.

55. For the purposes of these rules, the Collector may make over to any Assistant Collector of the first grade any of the powers and duties conferred and imposed upon the Collector with the exception of the following :—

(1) Power to let or mortgage under paragraph 1 (*b*) of the schedule.

(2) Power to order sale under paragraph 1 (*c*) or paragraph 8 of the schedule.

(3) Power to take action under paragraph 3 or paragraph 5 of the schedule.

(4) Power to let, mortgage or order direct management under paragraph 7 (1) (*b*) of the schedule.

(5) Power to raise funds for and discharge encumbrances under paragraph 7 (3) of the schedule.

(6) Power to confirm sale under rule 36.

(7) Power to set aside sale under rule 37.

Appeals.

56. (1) An appeal shall lie under these rules to the Collector, when the order is passed by an Assistant Collector, and to the Commissioner when the original order is passed by the Collector :

Provided that the order would have been appealable, had it been passed by a Civil Court executing the decree.

(2) A second appeal shall lie from an appellate order passed by the Collector to the Commissioner, and from an appellate order passed by the Commissioner to the Financial Commissioner on ground on which a second civil appeal would have been competent had the appellate order been passed by a Civil Court.

(3) No appeal shall lie except as provided in these rules.

Period of appeals.

57. The period of limitation for an appeal under the foregoing rule shall be as follows :—

(*a*) When the appeal lies to the Collector, 30 days.

(*b*) When the appeal lies to the Commissioner, 60 days.

(*c*) When the appeal lies to the Financial Commissioner, 90 days.

Revisional powers of Financial Commissioner.

58. The Financial Commissioner may, at any time, call for the record of any case which has been decided under these rules by an officer subordinate to him, and in which no appeal lies to him, or if an appeal lies it has not been preferred and the period of limitation has expired, and if the said officer appears :—

(*a*) to have exercised a jurisdiction not vested in him by law ; or

(*b*) to have failed to exercise a jurisdiction so vested ; or

(*c*) to have acted in the exercise of his jurisdiction illegally or with material irregularity,

the Financial Commissioner may make such order as he may think fit.

Procedure for the disposal of appeals and applications for revision.

59. An appeal or application for revision filed under these rules shall be filed, heard and disposed of in accordance with the procedure laid down in the Code of Civil Procedure as far as it may be applicable.

The Punjab Debtors' Protection Act, 1936.—Sections 4, 5, 6 and 10 of the Punjab Debtors' Protection Act, 1936 (Act II of 1936) read as follows :—

4. *Temporary alienation of land in execution of decree for the payment of money.*—(1) Notwithstanding anything contained in any other enactment for the time being in force, whenever a Civil Court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money, the proceedings of such attachment and alienation shall be transferred to the Collector.

(2) On the proceedings being transferred to him by the Civil Court the Collector shall decide the period of alienation which shall not exceed twenty years in the case of land owned by a member of a statutory agricultural tribe, determined to be such by the Local Government in exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900.

5. *Partial exemption of land.*—Such portion of the judgment-debtor's land shall be exempted from temporary alienation as, in the opinion of the Collector, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person, is sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.

6. *Collector and Commissioner deemed to be acting judicially.*—The Collector when acting under sections 4 and 5 shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to the Court from which the proceedings were transferred to him and any party aggrieved by an order of the Collector under section 4 or 5 shall have a right of appeal to the Commissioner who when

hearing appeals under this section shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to a Civil Court of Appeal.

10. *Exemption of standing crops and trees from attachment or sale.*—Notwithstanding anything to the contrary contained in any other enactment for the time being in force :

(1) standing crops, other than cotton and sugarcane, shall not be liable to attachment or sale in the execution of a decree ;

(2) standing trees apart from the land on which they stand, shall not be liable to sale in the execution of a decree or an order of a Court.

'Land' for the purposes of this provision has the same meaning as in the Punjab Tenancy Act, 1887, *viz.*, which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land.

Relative function of the Court and Collector in proceedings under section 72, Civil Procedure Code.—Section 141 of the Punjab Land Revenue Act, 1887, lays down that—

" Orders issued by any Civil or Criminal Court for the attachment, sale or delivery of any land or interest in land, or for the attachment and sale of the produce of any land, shall be addressed to the Collector or such Revenue Officer as the Collector may appoint in this behalf, and be executed by the Collector or that officer in accordance with the provisions of the law applicable to the Court issuing the orders and with any rules consistent therewith made by the Financial Commissioner with the concurrence of the High Court and the previous sanction of the Local Government."

Section 72 of the Code of Civil Procedure, 1908, provides :—

"72. (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents 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 authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

"(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable."

Collector merely a ministerial officer except for cases falling under notifications issued under section 68, C.P.C. and under the Debtors' Protection Act.

The Collector, in pursuance of an order of Civil Court under section 141, Land Revenue Act, is merely a ministerial officer of the Court and does not perform any judicial functions. Objections with regard to proceedings connected with the sale of land under the section must be made to the Court and not to the Collector.[1] When the Collector is acting as a ministerial officer of the executing Court under this section, the objections to the manner in which an alienation is made should be heard and decided by the Court, although the arrangements about alienation

1. Chanan Ram *v* Devi Dayal=A. I. R. 1928 Lah. 475.

would be the duty of the Collector.[1] All sales under this section must be confirmed by the Court and not by the Collector.[2]

The Collector, when acting under section 72, does not perform any judicial function, but is merely a ministerial officer who in the matter of carrying out order of the Civil Court relating to the execution of a decree against land takes the place of an ordinary ministerial officer charged with the duty of executing decrees. If he (the Collector) makes any such representation as is referred to in section 72, he does so, not in any judicial capacity, but as an officer of the Court. It is within the jurisdiction of the Court to accept or decline such representation. On such representation and in the subsequent proceedings before the Collector he takes orders from the Civil Court and has no power to himself to order a temporary alienation or do any other act not sanctioned by the Court.[3]

If the Collector after having been asked refuses or reports his inability to interfere under section 72, it is the duty of the executing Court to proceed with the execution of the decree in accordance with law and not to file the application or stay the execution proceedings.[4]

Note.—It should be clearly noted that all these provisions are to be read subject to section 16 of the Punjab Alienation of Land Act and the Punjab Debtors' Protection Act. In cases falling within the ambit of the Punjab Debtors' Protection Act it is now for the Collector to decide the period of alienation under section 4 of that Act and according to section 6 of the Act, the Collector in doing so is to be deemed to be acting judicially.

The Collector is also empowered under section 5 of the Act to decide what portion of the judgment-debtor's land is to be exempted from temporary alienation for the maintenance of himself and his family.

If the land of an agriculturist has been attached and the Civil Court consults the Collector as to what farm of the land should be made and the Collector reports it to be an unfit case for a temporary alienation, the Civil Court should ordinarily follow the Collector's advice until and unless it is shown to be erroneous by one of the parties.[5]

Attachment of assigned land-revenue

142. (1) Notwithstanding anything in any other enactment for the time being in force, an order issued by any Court for the attachment of assigned land-revenue shall require the person by whom the revenue is payable to pay it to the Collector, and the Collector to hold it subject to the further orders of the Court.

(2) A payment to the Collector under sub-section (1) shall be an effectual discharge to the person making it.

Duties of Collector in connection with attachment of assignments.—Assigned revenue is an "interest in land" and an order for its attachment made by any Civil or Criminal Court must be addressed to the Collector, and must direct the person by whom the revenue is

1. Din Mohammad *v.* Shop Sain Ditta Mal—Diyal Mal=A. I. R. 1934 Lah. 407.
2. 83 P. R. 1896.
3. 1920 Lah. 456=1 Lah. 192 [F. B.].
4. A. I. R. 1926 Lah. 682.
5. 131 I. C. 92.

payable to pay it to the Collector and the Collector to hold it subject to the further orders of the Court. In execution proceedings the Collector is the agent of the Court and must obey its order without demur. But after the attachment has been made, he would be justified in pointing out to the Court any reason why in his opinion it should be withdrawn. It is for the Court to decide whether the reasons are valid. If the matter were properly represented, it seems probable that a Civil Court would hold that revenue granted for the support of an institution should not be attached in execution of a decree on account of the private debts of the manager (*L. A. M., para.* 169).

Attachment of assignments.—In 1898 the Punjab Government proposed the amendment of section 11 of Act XXIII of 1871 so as to protect all assignments of land revenue from attachment. The Government of India held that it would be enough te exempt those *jagirs* only in respect of which primogeniture has been, or shall be, declared to be the rule of descent. This was provided for by section 8 (3) of Punjab Act IV of 1900. As regards other *jagirs* the Government of India remarked that they saw no particular reason for exemption, as their liability to be sub-divided among numerous heirs divested them of any political importance (*L. A. M., para.* 170).

Assigned land revenue cannot be attached by any Court except in the manner prescribed by section 142 of the Act. The revenue thus attached is not of the nature of a debt saleable in execution of a decree, and the attached revenue can only be realized through the Collector. The liability of *jagir* revenue to attachment depends mainly upon the nature of the tenure on which the *jagir* was granted. The plea that *jagir* revenue is not liable to attachment can only be entertained on the application of the *jagirdar* himself.[1]

Preservation of attached Produce.

Preservation of attached produce.

143. (1) The attachment of the produce of any land in pursuance of an order of any Court or other authority shall not prevent the person to whom the produce belongs from reaping, gathering or storing it or doing any other act necessary for its preservation.

(2) The attaching officer shall do or cause to be done all acts necessary for the preservation of the produce if the person to whom it belongs fails to do so.

(3) When sale of produce follows on its attachment, the purchaser shall be entitled, by himself or by any person appointed by him in this behalf, to enter on the place where the produce is and do all that is necessary for the purpose of preserving and removing it.

Division of Produce.

Division produce.

144. In either of the following cases, namely :—

(*a*) where land-revenue is paid by division or appraisement of the produce ;

1. 4 P. R. 1894 (Rev.).

(*b*) where a superior and an inferior land-owner, or two or more share-holders in a holding or tenancy, are jointly interested in any produce, and either or any of the land-owners or tenants, as the case may be, desires the assistance of a Revenue Officer for the purpose of dividing or appraising the produce ;

the provisions of the Punjab Tenancy Act, 1887, with respect to the division or appraisement of produce shall apply so far as they can be made applicable.

Meaning and scope.—In dealing with an application under section 143 of the Punjab Land Revenue Act and section 17 of the Tenancy Act, the Revenue Officer should not go behind the entries in the revenue records. He should act as if the co-sharers recorded therein were in fact the co-sharers in the holding. A procedure is provided for those who dispute the correctness of the entries to have entries altered but pending alteration these entries should be treated as correct.[1]

Neither the language of the statute nor the general principles of law lend any support to the contention that the Revenue Officer, and not the Civil Court, should determine whether the produce belongs exclusively to one party or whether it is the joint property of both the parties. The complicated question of title should not be determined by a referee or a Revenue Officer.[2]

Section 144 gives a compulsory power to the Revenue Officer to effect division of produce and no objection by an interested party can prevail so as to put a stop to the process of division or appraisement. When the division has been affected and confirmed by the Revenue Officer, the parties become entitled each to the exclusive possession of his own share as thus determined on the analogy of section 12 of the Punjab Tenancy Act.[3]

For appointment of produce of a joint holding it is not necessary that all the co-sharers should join in making an application. A single co-sharer may bring the application by virtue of joint application of section 144 of the Land Revenue Act and section 17 of the Tenancy Act.[4]

Muafidar is not entitled to realize a share of the produce from the tenants notwithstanding that *batai* had been more or less regularly paid by them, unless he can show that in addition to the position of *Muafidar* his status includes certain elements or incidents of proprietary right or ownership as explained on page *infra*.[5]

Miscellaneous.

Village-cesses.

145. (1) At any of the following times, namely :—

(*a*) when a record-of-rights is being made or specially revised for an estate,

1. Mst. Nihal Devi *v.* Kishore Chand=15 I C. 914=4 P. W. R. 1912 (Rev.).
2. Ramji Lal *v.* Mangal Singh=A. I. R. 1922 Lah. 157=65 I. C. 256.
3. Mst. Murad Bibi *v.* Khadim Hussain=9 P. R. 1917 (Rev.)=43 I. C. 495.
4. 4 P. W. R. 1912 (Rev.)= 15 I. C. 914.
5. 2 P. R. 1916 (Rev.)=38 I. C. 41.

(*b*) when the local area in which an estate is situate is being generally re-assessed and before the assessment has been confirmed,

(*c*) at any other time on an order made with respect to any estate by the [1][Provincial Government],

a Revenue Officer shall prepare a list of village-cesses, if any, levied in the estate which have been generally, or specially approved by the [1][Provincial Government] or the title to which has, before the passing of this Act, been judicially established.

(*2*) *Repealed by Act XVII of 1896.*

(3) The [1][Provincial Government] may impose on the collection of any village-cess comprised in the list such conditions as to police or other establishments connected with the village, market or fair in or on account of which the cess is levied, as it thinks fit.

(4) The [1][Provincial Government] may declare whether any cess, contribution or due levied in an estate is or is not a village-cess.

(5) A declaration of the [1][Provincial Government] under the last foregoing sub-section shall be conclusive, and shall not be liable to be questioned in any Court.

As to definition of ' village cess ', see section 3 (10), page 22.

No declaration seems to have been made under sub-section (4) above by the Provincial Government.

Superior land owners' dues.

146. Where a superior land-owner is entitled to receive in respect of any land from an inferior land owner dues in kind or in cash of fluctuating quantity or amount, the Collector may—

(*a*) on the application of both land-owners, or

(*b*) with the previous sanction of the [1][Provincial Government] on the application of either of them, commute those dues into a fixed percentage of the land-revenue payable by the inferior landowner in respect of the land.

Substitution of service for payment of land revenue.

147. (1) The [1][Provincial Government] may, * * * authorise the remission of land-revenue in whole or in

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

***The words " with the previous sanction of the Governor General in Council " and "with the like sanction" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

part in consideration of the person liable therefor undertaking to render in lieu thereof such public service as may be specified in an agreement to be approved by the [1][Provincial Government] and executed by that person.

(2) The Provincial Government may, * * * cancel any remission authorised, and agreement made under sub-section (1).

(3) If a landowner bound by an agreement under that sub-section to render public service in lieu of paying land-revenue fails to render the service to the satisfaction of the Collector, the Collector may determine the portion of the land-revenue remitted which is represented by the service in respect of which the landowner is in default, and, with the previous sanction of the Financial Commissioner, recover that portion as if it were an arrear of land-revenue due in respect of the land for the land-revenue whereof the service was substituted.

Recovery of cost of assessing assigned land-revenue

148. (1) When land of which the land-revenue has been assigned in whole or in part is reassessed, the assignee shall be liable to pay such a share of the cost of making the reassessment as the Financial Commissioner may determine to be just.

(2) That share may be recovered by the Collector by deduction of the amount thereof from the land-revenue due to the assignee.

Penalty for failure to attend limits of estate in obedience to order of Revenue Officers.

149. If a person required by a summons, notice, order or proclamation proceeding from a Revenue Officer to attend at a certain time and place within the limits of the estate in which he ordinarily resides, or in which he holds or cultivates land, fails to comply with the requisition, he shall be liable at the discretion of the Revenue Officer to a fine which may extend to fifty rupees.

Prevention of encroachment on common lands.

150. (1) Where land which has been reserved for the common purposes of the co-sharers therein has been encroached on by any co-sharer, a Revenue Officer may, on the application of any other co-sharer, eject the encroaching co-sharer from the land, and by order proclaimed in manner mentioned in section 22, forbid repetition of the encroachment.

(2) The proceedings of the Revenue Officer under sub-section (1) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

***The words " with the like sanction " were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Meaning and scope—nature of the land altered long before action is taken.—It has been laid down in *Amir Bibi* v. *Dehru*[1] that section 150 is not intended to apply to cases where the original nature of land had been altered long before action under that section is taken. In *Rai Jagat Chand* v. *Haku and others*,[2] however, one of the proprietors of the village made an application under section 150 of the Act for demolition of structures built on a *khasra* No. of *shamilat deh* which was reserved for the common purposes of the village. The Revenue Officer made the order prayed for. The plaintiff then brought a suit to restrain the defendant and the revenue officials from interfering with the plaintiff's buildings existing on the said *khasra* no. The District Judge held that section 150 applied only to cases of encroachment of land and that the site of the buildings had ceased to be land when the application under section 150 was made ; *held*, that the definition of land in the Punjab Tenancy Act does not govern section 150 of Land Revenue Act. The ruling *Amir Bibi* v. *Dehru*[1] was not agreed with in this second ruling. Where a person acted in complete disregard of the original order directing his ejectment from an encroachment by erecting a building thereon and proceeding in erecting it though warned by the order, it has been held that the order compelling him to dismantle the house must be upheld as he is entirely to blame for any loss he might suffer thereby.[3]

No individual proprietor can appropriate to himself a portion of the common land and use it in such a way as to affect the rights of all the co-sharers at the time of partition. A plaintiff without instituting a suit for an injunction restraining a co-sharer from encroaching on the common land is entitled to a decree without proof of material and substantial injury.[4]

Process for ejecting an encroacher—Land Revenue Rule 43.—(*i*) Order of ejectment from, and delivery of possession of, immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a Civil Court has adjudged ejectment from, or delivery of possession of, such property.

(*ii*) And in the enforcing of these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree of the description mentioned in sub-section (1).

151. (1) Any record or paper which a village officer is required by law, or by any rule under this Act, to prepare or keep shall be deemed to be the property of the Government. **Papers kept by village-officers to be deemed public documents.**

(2) A village-officer shall, with respect to any such record or paper in his custody, be deemed for the purposes of the Indian Evidence Act, 1872, to be a public officer

1. A. I. R. 1927 Lah. 615 (2)=103 I. C. 511.
2. Civil Appeal No. 128 of 1933=1936 P. L. R. 428.
3. Sheo Baksh *v.* Mahipat=1925 L. L. T. 7 (1).
4. Manji *v.* Ghulam Mohd. and Dula Ram=1 Lah. 249=57 I. C. 207; see also 25 Cal. 396.

having the custody of a public document which any person has right to inspect.

See sections 76, 77, 79 and 83 of the Indian Evidence Act, 1872.

Costs.

152. (1) A Revenue Officer may give and apportion the costs of any proceeding under this Act in any manner he thinks fit.

(2) But if he orders that the cost of any such proceedings shall not follow the event, he shall record his reasons for the order.

As to costs of the fees of legal practitioners in proceedings before a Revenue Officer under this Act, *see* section 18 (3) of the Act.

Computation of periods limited for appeals and applications for review.

153. In the computation of the period for an appeal from, or an application for the review of, an order under this Act, the limitation therefor shall be governed by the Indian Limitation Act, 1908.

See Commentary under sections 14, 15 *and* 16.

Restriction on Revenue Officer's bidding at auctions or trading.

154. (1) A Revenue Officer, or a person employed in a revenue office, shall not—

(*a*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which any Revenue Officer or Revenue Court in the district in which he is employed has ordered to be sold, or,

(*b*) in contravention of any rules made by the Provincial Government in this behalf, engage in trade in that district.

(2) Nothing in sub-section (1) shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1882, the Indian Companies Act, 1913, or other law.

Power to make rules.

155. (1) The Financial Commissioner may, in addition to the other rules which may be made by him under this Act, make rules consistent with this Act and any other enactment for the time being in force—

(*a*) fixing the number and amount of the instalments, and the times and places and the manner, by, at and in which any sum other than rent or land-revenue which is payable under this Act or of which a record has been made thereunder is to be paid ;

(*b*) fixing the dates on which profits are to be divisible by headmen or other persons by whom they are realized on behalf of co-sharers ;

(*c*) prescribing the fees to be charged for the service and execution of processes issued by Revenue Officers and Revenue Courts, the mode in which those fees are to be collected, the number of persons to be employed in the service and execution of those processes, and the remuneration and duties of those persons ;

(*d*) regulating the procedure in cases where persons are entitled to inspect records of Revenue Officers, or records or papers in the custody of village-officers, or to obtain copies of the same, and prescribing the fees payable for searches and copies ;

(*e*) prescribing forms for such books, entries, statistics and accounts as the Financial Commissioner thinks necessary to be kept, made or compiled in revenue-offices, or submitted to any authority ;

(*f*) declaring what shall be the language of any of those offices and determining in what cases persons practising in those offices shall be permitted to address the presiding officers thereof in English ; and

(*g*) generally for carrying out the purposes of this Act.

(2) Until rules are made under clauses (*a*) and (*b*) of sub-section (1) the sums therein referred to shall be payable by the instalments at the times and places, and in the manner by, at and in which they are now payable.

(3) Rules made by the Financial Commissioner under this or any other section of this Act shall not take effect until they have been sanctioned by the [1][Provincial Government].

LAND REVENUE RULES.

Clause (a)—Collection of rates and cesses.

See page 391.

Clause (c)—process fees.

Charge for service of processes.

63. For the service of every writ, warrant or other process for the collection of revenue under Chapters VI and VII of the Punjab Land

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Revenue Act, 1887, a charge of Re. 1 shall be made where the revenue involved is more than Rs. 5 and annas 12 where the revenue involved is Rs. 5 or less.

Charges for service of process through post.

77. In all cases in which processes are issued by post, the parties concerned shall be required to pay *talbana* at the rate of five annas per head with a minimum of eight annas.

Clause (d)—inspection of records and grant of copies.

Inspection of records of patwaris and grant of certified extracts therefrom.

*71. The patwari shall allow any one interested to inspect his records and to take notes therefrom in pencil in his presence. He shall give to applicants certified extracts and enter in his diary a note of the inspections allowed and extracts given. The following charges shall be made :—

Serial No.	Name of work.	Charges.
	A—Copies or extracts from	
1.	*Jamabandi* including extracts called for by Courts or officers in connection with the preparation of abstracts of fields.	Four annas per khatauni holding upto 8 holdings and above that number one anna for every additional holding.
1-A.	Inspection notes attached to *jamabandis*.	(*a*) For the 1st 200 words or under, 8 annas.
1-B.	*Fard Badar*.	
1-C.	Copy of pending mutations.	(*b*) For every additional 100 words or fraction thereof, 4 annas.
1-D.	Interrogatories in pending mutations.	
1-E.	Counterfoil of mutation sheets.	
2.	*Misl haqiat*.	As for serial No. 1.
2-A.	*Fard haqiat* consisting of names of proprietors (or occupancy tenants), total No. of fields, area land revenue and rates and cesses.	A fixed charge of 4 annas irrespective of the number of *khewats*.
2-B.	List of co-sharers of proprietary or occupancy holdings.	Eight annas for each application.

*As substituted by Financial Commissioner's Notification No. 4573-R, dated the 16th December, 1939.

Serial No.	Name of work.	Charges.
3.	(*i*) Geneological trees of land holders, occupancy tenants and muqarridars. (*ii*) Statement of wells and other sources of irrigation. (*iii*) List of pensions and assignments. (*iv*) Wajib-ul-arz. (*iv*) (*a*) *Naqsha haquq jandrat wa pachaki.*	As for serial No. 1-A.
*	(*iv*) (*b*) *Fard bachh or dhal bach (Asamiwar).*	Eight annas for each application provided that each application shall be limited to not more than two harvests. (No fee being charged if copies are required for recovery of arrears of land revenue).
	(*iv*) (*c*) Demand statement (canal).	Eight annas for each application.
	(*v*) *Tariqa bachh* and (*vi*) Orders of Settlement Officers.	As for serial No. 1-A.
4.	Khasra girdawri including extracts from Khasra girdawri called for by Courts or officers in connection with the preparation of 5 yearly abstracts of yields.	Four annas for entries in a single volume relating to one field and two annas for each additional field.
5.	Diaries.	Four annas for each entry made on one subject on any of date.
6.	Fieldbooks.	Four annas for first 10 field or under and 2 annas for every additional 4 fields or part thereof.

*As amended by Financial Commissioner's Not. No. 2963-R, dated the 30th October, 1940.

Serial No.	Name of work.	Charges.
6-A.	Statement of grazing dues.	Eight annas for each application no fee being charged if copies are required by lambardars for recovery of arrears of grazing dues and chaukidari tax.
6-B.	Extracts from *chaukidar's* assessment list.	Do.
6-C.	Statement contained in village notebook.	Four annas per statement irrespective of years.
6-D.	Abstracts of quinquenial averages of mutations.	One rupee per statement.
6-E.	*Fard taqsim* (list of allottees of colony land).	Eight annas per rectangle.
6-F.	Parcha book	Cost price of the book plus one anna per *khatauni* holding.
	B—Inspections.	
7.	Inspection of papers relating to one quadrennium including relevant entries of the mutation registers.	Fixed charges of 8 annas for each inspection.
	C—Preparation of plans and tracings.	
8.	Tracing of field maps.	One anna for each field up to 32 fields and two annas for every additional 4 fields subject to a minimum charge of four annas.
9.	Tracing of tatimma shajra.	Ditto.
10.	Preparation of plans called for by Courts or Officers in connection with civil and revenue suits.	Ditto.

For the purposes of fee for copies or extracts from *jamabandis* in rent cases, the total number of *khatauni* holdings should be taken into account irrespective of the fact whether they are cultivated by the owner himself or by tenant or sub-tenant, and in calculating the fee the number of *khewats* of which the extracts are given, may be ignored.

Note.—(1) For extracts under serial Nos. 1 and 4 and plans under serial No. 10, if prepared in connection with the temporary alienation

of land in satisfaction of a decree of a Civil Court, the charges shall be subject to a maximum of Rs. 10. This maximum will be charged in a single case irrespective of the fact whether the extracts are prepared from a *jamabandi* or *khasra girdawri* or both, or whether or not they involve the preparation of a plan. These extracts should be obtained by the tahsildars themselves from the patwaris concerned after taking from the decree-holders a deposit equal to the estimated cost of the extract.

(2) Half of the fee thus realized should be retained by the patwari and half should be credited into the Government treasury under the head "V"—Land Revenue—miscellaneous—copying and inspection fees of patwari records."

(3) Patwaris are forbidden to prepare and supply copies or extracts of papers not shown in the above table.

(4) List of co-sharers shall not be prepared and supplied without the previous sanction of the Collector unless required in connection with a revenue, civil or criminal case.

(5) In the case of inspection of the patwari's record by Sub-Inspectors or Inspectors of Co-operative Societies under serial No. 7 the fee charged shall be annas four only and the whole of it will be retained by the patwari.

(6) In the case of parcha books the patwari is entitled to this fee except at the close of settlement operations and in the special cases cited in paragraph 3·50 of the Punjab Land Records Manual. If, however, the parcha book is supplied only after application to a Revenue Officer, the fee, less cost price of the book, should be credited to Government or allowed to the patwari, as the Revenue Officer may consider fit.

Clause (f)—Language of Revenue Officers.

Language of Revenue Courts and Officers.

44. (*i*) The language of Revenue Officers shall be—

(*a*) English, in cases in which English is the mother-tongue of both the parties to a revenue proceeding; and

(*b*) Urdu in all other cases—

(*ii*) If the Revenue Officer's mother tongue is English, the memorandum referred to in rule 40 shall be written in English. In other cases it shall be written in Urdu.

Use of English by parties or legal practitioners

45. A party to a proceeding to which clause (*b*) of the last foregoing rule applies, or his legal practitioner, may make an application and plead in the English language if both the parties or their legal practitioners understand English and the presiding officer consents to the use of English.

Language of orders.

46. (*i*) Orders under section 34, sub-section (4), and under section 56 of the Land Revenue Act shall be written in Urdu. But if the Revenue Officer's mother tongue is English he may at his discretion write the order in English and translate it into Urdu.

(*ii*) In every other case the order and the reasons for it shall—

(*a*) If the Revenue Officer's mother-tongue is English, be written by him in English; and

(*b*) if the Revenue Officer's mother-tongue is not English, be written by him in Urdu :

Provided that when an order and the reasons for it are written in English, if any party or his pleader is unacquainted with English a translation in Urdu shall, at his request, be supplied to him, and the officer shall make such order as he thinks fit in respect of the payment of the costs of such translation.

For other rules see under sections 17 and 64 of the Act and the Appendix.

Rules to be made after previous publication.

156. The power to make any rules under this Act is subject to the condition of the rules being made after previous publication.

Powers exercisable by the Financial Commissioner from time to time.

157. All powers conferred by this Act on the Financial Commissioner may be exercised from time to time as occasion requires.

Exclusion of Jurisdiction of Civil Courts.

Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.

158. Except as otherwise provided by this Act :—

(1) a Civil Court shall not have jurisdiction in any matter which the [1][Provincial Government] or a Revenue Officer is empowered by this Act to dispose of, or take cognizance of the manner in which the [1][Provincial Government] or any Revenue Officer exercises any powers vested in it or him by or under this Act ; and in particular :—

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely :—

(*i*) any question as to the limits of any land which has been defined by a Revenue Officer as land to which this Act does or does not apply ;

(*ii*) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue Officer, as such ;

(*iii*) any claim to the office of kanungo, zaildar, inamdar or village-officer, or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof ;

(*iv*) any notification directing the making or revision of a record-of-rights ;

1. Substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(*v*) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;

(*vi*) the correction of any entry in a record-of-rights, annual record or register of mutations;

(*vii*) any notification of the undertaking of the general re-assessment of a district or tahsil having been sanctioned by the[1] [Provincial Government];

(*viii*) the claim of any person to be liable for an assessment of land-revenue or of any other revenue assessed under this Act;

(*ix*) the amount of land-revenue to be assessed on any estate or to be paid in respect of any holding under this Act;

(*x*) the amount of or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force;

(*xi*) any claim relating to the allowance to be received by a landowner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceeding taken in consequence of the refusal of any person to be liable for an assessment under this Act;

(*xii*) the formation of an estate out of waste-land;

(*xiii*) any claim to hold free of revenue any land, mills, fisheries or natural products of land or water;

(*xiv*) any claim connected with, or arising out of the collection by the Government, or the enforcement by the Government of any process for the recovery of land-revenue or any sum recoverable as an arrear of land-revenue;

(*xv*) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue;

1. Substituted for "Governor General in Council," by the Government of India (Adaptation of Indian Laws) Order, 1937.

(*xvi*) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act;

(*xvii*) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought;

(*xviii*) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical re-distribution, of land, or as to the distribution of rent on the partition of a tenancy;

(*xviii*) (*a*) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101-C and 101-D, respectively of Chapter VIII;

(*xix*) any claim to set aside or disturb a division or appraisement of produce confirmed or varied by a Revenue Officer under this Act;

(*xx*) any question relating to the preparation of a list of village-cesses or the imposition by the Provincial Government of conditions on the collection of such cesses;

(*xxi*) any proceeding under this Act for the commutation of the dues of a superior landowner;

(*xxii*) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land revenue; or

(*xxiii*) any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or re-assessing such revenue or arising out of the liability of an assignee to pay out of assigned land-revenue, or of a person who would be liable for land-revenue if it had not been released, compounded for, or redeemed, to pay on the land-revenue for which he would, but for such release, composition or redemption be liable, such a percentage for the remuneration of a zaildar, inamdar, or village-officer as may be prescribed by rules for the time being in force under this Act.

Meaning and scope of the section.—Section 9 of the Code of Civil Procedure provides—'The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either, expressly or impliedly barred.' The Civil Courts have thus plenary jurisdiction in all matters mentioned in section 9 of the Code of Civil Procedure, and their jurisdiction in any particular matter cannot be regarded as ousted unless the Legislature has in unmistakable language taken away that jurisdiction.[1] The broad general principle is that jurisdiction of Civil Courts is only ousted by this section in regard to such cases only as are clearly actually covered by the precise terms of one or other of the clauses of this section.[2] It is a well established doctrine that a statute interfering with the established state of law must receive a strict construction, and when the language is doubtful, the Courts should lean against anouster of the jurisdiction of ordinary tribunals.[3] Of course, it is for the party who seeks to oust the jurisdiction of the ordinary Civil Courts to establish his contention.

Exclusion of jurisdiction of Civil Courts.

It is to be noted that section 158 of the Land Revenue Act, which debars the Civil Courts from exercising jurisdiction over matter specified therein, does not confer jurisdiction on a Revenue Court, as distinguished from a Revenue Officer, to try a suit relating to any of these matters. A matter, therefore, which is exclusively cognizable by a Revenue Officer under this section is not cognizable by a Revenue Court. The Land Revenue Act does not contemplate the creation or constitution of any Revenue Courts having jurisdiction to hear and determine any suits other than those specified in the various clauses of section 77 (3) of the Punjab Tenancy Act; and it does not follow that because the jurisdiction of a Civil Court is barred by section 158 (2) of the Land Revenue Act in respect of the matters detailed therein, therefore, a Revenue Court has power, as a Court, to entertain a suit with respect to any of those matters.[4]

It is also to be noted that where it is found, after inquiry, that a certain matter is cognizable by a Revenue Officer under this section and not by a Civil Court, the plaint may not be returned for presentation to the proper officer.[5]

Sub-section (2)—Sub-section (2) is an independent sub-section and is in no way controlled by sub-section (1). Consequently and by virtue of clause (17), sub-section (2), the Civil Courts have jurisdiction to try questions of title to the property of which partition is sought, inspite of a determination by the Revenue Officer to decide the question himself, Where, however, the suit is instituted in a Civil Court no question of the application of section 10, C. P. C. arises. Section 10 will apply only if the suit as directed by the Revenue Officer has been instituted in this Court.[6] *See also notes on page* 471.

'Except as otherwise provided by this Act.'

The following three classes of cases fall within the jurisdiction of Civil Courts—

(1) Declaration of right of a person to the correction of an entry in a record-of-rights or in an annual record (section 45).

1. See 70 P. R. 1909 [F. B.].
2. See 33 P. R. 1908 [F. B.].
3. Ali Mohd. *v.* Hakim and others=9 Lah. 504=A.I.R. 1928 Lah. 121 [F.B.]
4. Ram Singh and others *v.* Bakshi=64 P. R. 1917=A. I. R. 1917 Lah. 411.
5. See Harcharan Das *v* Diwan Chand and others=A. I. R. 1914 Lah. 334=198 P. L. R. 1914=96 P. W. R. 1914.
6. Mohammad Ali *v.* Wazir Ali=A. I. R. 1936 Lah. 589.

(2) Determination of a question of title arising in partition proceedings and not determined by a Revenue Officer himself acting as a Civil Court [Secs. 117 and 158 (2) (*xvii*)].

(3) A claim to set aside a revenue sale on the ground of fraud [Section 158 (2) (*xv*)].

Clause (vi).—This clause relates to the 'correction of any entry in a record-of-rights, annual, record or register of mutations.' It reserves, however, the mere correction of the entry alleged to be wrong to the Revenue Officers. A suit for a declaration under section 45 of the Act does not fall under this clause and is not excluded from the jurisdiction of Civil Courts by this section. A declaratory suit by a person who considers himself aggrieved as to a right of which he is in possession by an entry in a record-of-rights touching the same lies in a Civil Court.[1]

The plaintiffs alleged that the entries in the revenue papers relating to the ownership of certain *khasra* numbers were incorrect, in so far as the land comprised in those *khasra* numbers was shown as the property of the defendants whereas it really formed part of the *shamilat-deh* and the relief prayed for by them was that the proceedings relating to the mutation of the land in question in the Settlement record of 1910 be held null and void and the entries in the record-of-rights and the annual record be corrected. It was held that the suit was cognizable by a Civil Court.[2]

Certain *malikan kabza* and non-proprietary residents of a village and owners of houses occupied by them brought a suit for declaration that there was no custom as to realisation of *bakri* and thana *patti* dues in their village and therefore they were not liable to pay such dues. *Held*, that the suit was barred from the cognizance of Civil Court by this clause.[3]

A suit for declaration that the plaintiffs are entitled to receive rent in kind and not in cash, is not triable by Civil Courts and is covered by section 77 (3) of the Punjab Tenancy Act. But even if the contention that the suit is one for the correction of a revenue entry be sound, it would be triable by a Revenue Court alone, and the jurisdiction of the Civil Courts would be barred under section 158 (2) (*vi*) of the Act.[4]

Clause (viii).—Clauses (*viii*), (*xiii*) and (*xiv*) of section 158 of the Act are intended to oust the jurisdiction of the Civil Court to determine disputes between the Government and the owner connected with the assessment and recovery of land revenue. They do not present disputes between persons to whom such land revenue may have been assigned and others who dispute the right of such persons to the exclusive enjoyment of such rights.[5]

The Civil Courts have no jurisdiction to question the authority of the Revenue Officers to settle, in case of resumption of *muafi*, the land with the heirs of the last muafidar, ignoring the representatives of another joint muafidar who died earlier.[6]

Clause (ix).—A *jagirdar* sued the proprietors of a village which had recently been settled for a declaration that they were liable to pay

1. See 25 P. R. 1889 ; 64 P. R. 1917.
2. 64 P. R. 1917=A. I. R. 1917 Lah. 411.
3. 79 P. R. 1911=13 I. C. 812=144 P. W. R. 1912 following 33 P. R. 1908.
4. A. I. R. 1923 Lah. 405=73 I. C. 673=4 Lah. 127.
5. A. I. R. 1928 Lah. 713 (2)=111 I. C. 528.
6. A. I. R. 1914 Lah. 334=25 I. C. 622=198 P. L. R. 1914.

during the continuance of the *jagir* a share of the produce, as the revenue due to him in lieu of the revenue fixed at settlement. *Held*, that the suit was not within the jurisdiction of Civil Court.[1]

It is not within the jurisdiction of Civil Courts to declare what the revenue authorities have decided between the parties regarding assessment, *viz.*, that the assessment of land revenue is to be in the form of a cash payment or payment in kind.[2]

The plaintiff sued for a declaration that he being *jagirdar* or assignee of land revenue, was entitled to receive the revenue in kind out of the landlord's share of the produce which had to be paid by the tenants to proprietors, but which, as a matter of fact, had always been paid to him by the cultivators in the shape of one-4th of the produce. It was held that the suit involved the question as to whether the land revenue should be paid to the *jagirdar* in cash or in kind. This being a question which under section 48 of the Act can be decided only by the Local Government ; therefore no Civil Court can exercise jurisdiction in respect of it.[3]

A suit by the assignee of land revenue against a defaulter is maintainable in a Civil Court.[4]

Clause (x).—A suit for marriage-fee or *huq bukree* is cognizable only by the Revenue Court [1. P. R. 1876 (Rev.,]. So also a suit to establish a right to collect *Dharat* in a village [8 P. R. 1877 (Rev.)].

A suit for *kamiana* dues is on the other hand a suit for cess levied from the non-agricultural artisans of the village, and is not in any way rent, revenue or produce of land. It is, therefore, not cognizable by Revenue Courts [4 P. R. 1871 (Rev.)].

Clause (xiii).—See A. I. R. 1928 Lah. 713 quoted under clause (*viii*).

Clause (xiv).—Where in a case both the plaintiffs and defendants were proprietors in a village, the plaintiff brought a suit against the defendants for certain sum of money which they asserted to have been recovered by Government from them as land revenue, when those sums were in fact payable not by them but by defendants ; *held*, that the suit is cognizable by a Revenue Court.[5]

A suit by a lambardar for the recovery of the amount of land revenue paid on behalf of the defaulting proprietor is cognizable exclusively by the Revenue Court.[6]

A suit for '*nazranah*' is similarly cognizable by Revenue Court.[7]

Where a *jagirdar* started on a pilgrimage and authorized the lambardar to collect the revenue for certain harvest and pay to a particular person, and the lambardar collected and paid over as directed and the representative of the *jagirdar* sued the lambardar on the ground that the revenue when collected, belonged to the plaintiffs as *jagirdar* died before the harvest was either sown or

1. 53 P. R. 1890. [Section 4 of Act XXIII of 1871].
2. 77 P. R. 1891.
3. 110 P. R. 1918=48 I. C. 384.
4. 84 P. R. 1884.
5. 73 P. L. R. 1912=13 I. C. 401.
6. 36 P. L. R. 1905; A. I. R. 1934 Lah. 157 (2).
7. 1926 L. L. T. 41.

reaped and payment was made without his consent and *jagirdar's* authority terminated with his death, *held*, that the suit is not cognizable by a Civil Court.[1]

While matters relating to land revenue are no doubt removed from cognizance of the Civil Courts, the provisions of Section 65, cl. (6) [Section 158 of the present Act] are no bar to such Courts entertaining a suit between two joint proprietors for contribution of land revenue paid by the plaintiff on account of defendant, as the liability in such a case rose out of relations resembling those created by contract and did not arise out of, nor was it connected with the collection of land revenue (42 P. R. 1883, following 27 P. R. 1876).

A suit by a *lambardar* for his *pachotra*, the proprietors having directly paid their revenue to the *jagirdar*, is cognizable by the Civil Court (27 P. R. 1876). A suit by the plaintiffs to recover from a defendant money which they alleged he had improperly collected from them on account of the land revenue due for land held by him is cognizable by a Civil Court (54 P. R. 1885).

Clauses (xvii) and (xviii).—Clause (*xvii*) provides that any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out, of proceedings for partition, *not being a question as to title* in any of the property of which partition is sought, is excluded from the jurisdiction of a Civil Court. It is thus clear that questions of title in the property partitioned are within the cognizance of Civil Court even if partition proceedings have been completed. We have already seen under section 116 what are generally the questions of title that arise out of partition proceedings. We shall study some more cases here.

Clause (*xviii*) similarly bars the jurisdiction of a Civil Court from hearing any question as to the allotment of land on the partition of an estate, holding or tenancy and the like.

Thus where in partition proceedings before a Revenue Officer there is no dispute as to title in the land to be partitioned, Civil Court has no jurisdiction to entertain any question arising out of such proceedings, and the fact that the procedure of the Revenue Officer was defective would not give a Civil Court jurisdiction in face of the clear prohibition set forth above.[2]

See also notes on pages 461 to 466.

Collector disallowing partition.

When the Collector has chosen to disallow partition in the exercise of his discretion under section 115, a Civil Court has no jurisdiction to go into the question whether partition of the land in dispute was rightly disallowed by the Collector under that section.[3]

Effect of the completion of partition proceedings on questions of title arising therein, but left undecided.—Questions of title remain questions of title inspite of the fact that partition is completed, and if the Revenue Officer proceeds with the partition without deciding a question of title arising therein, the aggrieved party has still got their remedy in a competent Court and the partition will be subject to the result of such a suit. Where there was a question of title arising out

1. 123 P. R. 1883.
2. See Ghulam Haider *v.* Amir Haider=1 Lah. 298=5 P. L. R. 1921.
3. Dost Mohammad *v.* Habib Sultan=A. I. R. 1940 Lah. 428=42 P. L. R. 759.

of the objections put forth by some persons who were party to a certain partition, but no suit was brought by the objectors for getting decided that question of title, it was held in *Ahmad Gul* v. *Bostan*[1] that in as much as partition had already been carried into effect and was no longer 'sought' when the suit was instituted, the Civil Courts had no jurisdiction under section 158 (2) (*xvii*) of the P.L.R. Act, to entertain the suit, in face of the provisions of section 122 and clauses (*xvii*) and (*xviii*) of section 158 P.L.R. Act, despite the fact that there was a question of title involved in the property partitioned. This question again came before a Full Bench in *Bachhan Singh* v. *Madhan Singh* (61 P.R. 1897) where this view was over-ruled and was held that where the Revenue Officer completed the partition without the question of title raised before him being settled in one of the two ways provided in section 117, the mere fact that the partition had been completed could not oust the jurisdiction of the Civil Courts to entertain a subsequent suit regarding such questions of title.

Some doubt was again raised by a Single Bench ruling reported as *Inayat* v. *Naurang*.[2] In that case in mutation proceedings in 1903 plaintiffs were recorded as owning 16 shares and defendants 32 shares out of 480 shares in a joint *khata*. This *khata* was subsequently split up and a new *khata* No. 10 formed out of part of it, in which plaintiffs were shown as owning one-sixth according to what had gone before. In 1913, plaintiffs themselves applied to the revenue authorities for partition of *khata* No. 10 without specifying their own share and partition was duly made and was formally accepted by them, one-sixth share having been allotted to them. A suit was subsequently brought by the plaintiffs in a Civil Court asking one-twelfth share more on the ground that the mutation of 1903 was wrong. It was held by the Lower Civil Court that the case was not cognizable by it by reason of section 158 (2), clause (*xvii*), P.L.R. Act, and the Lower Appellate Court threw out the appeal on the strength of section 43 Civil Procedure Code (1882). It was held by Johnstone, J. on further appeal that the real bar to plaintiff's suit was to be found in section 158 (1) P.L.R. Act. The Revenue Court (Officer) was empowered to effect the partition, and if it chose, to decide any question of title that might arise, but no question of title was in dispute before it because plaintiffs never raised it, and that the Revenue Court (Officer) being so empowered, section 158 (1) prevented any Civil Court from taking cognizance of the matters. But this view was over-ruled in a Full Bench ruling reported as *Anwar* v. *Allah Yar*[3] when following *Ata Mohammad Khan* v. *Arjan Singh*[4] and *Bachhan Singh* v. *Madhan Singh*[5] it was held that if a party to a partition proceedings allowed a Revenue Officer to effect, carry on and complete the partition without raising any objection such as is referred to in section 117 of the P.L.R. Act and thereafter instituted a suit averring that there was a question of title, the suit was cognizable by a Civil Court.

In the course of a partition of village *shamilat* a plot of land was allotted as the proportion due on account of holding of *Mussamat* K, the mother of the plaintiffs, and defendants alleged that the right to this allotment had passed to them under a sale. This allegation was

1. 118 P.R. 1894.
2. 165 P.L.R. 1910=6 P.W.R. 1910.
3. 28 P.R. 1913 (F.B.).
4. 72 P.R. 1896 (F.B.).
5. 61 P.R. 1897 (F.B.).

denied by *Mussamat* K, who, however, filed a petition asking that the allotment might be left in the hands of the defendants and that the partition might proceed, and she added that she intended to bring a suit in the Civil Court to establish her title. This was allowed by the Revenue Officer making the partition and the proceedings were then continued and completed. Plaintiffs who were the representatives of *Mussamat* K, subsequently instituted a suit in the Civil Court to establish their title and recover the allotment from the defendants. For the latter, it was contended that the jurisdiction of the Civil Courts was barred under section 158 of the P.L.R. Act. It was held in *Atta Mohammad Khan* v. *Arjan Singh*[1] that the Civil Courts had jurisdiction to entertain the suit.

The same will be the effect if a question of title arising in partition proceedings is not decided in a regular manner as indicated in section 117, for instance, when it is decided by a Revenue Officer as such but not as a Civil Court.

Suit on the basis of errors in partition proceedings.—Different kinds of errors in partition proceedings are to be distinguished for the purpose of the suits based on such errors. There will be some errors which would result in the allotment of smaller share to a co-sharer than to which he may be entitled in which case it will obviously be a question of title and, therefore within the cognizance of Civil Courts. There again may be errors which would not effect the proportionate share falling to the lot of an individual co-sharer, but only result in some inferior land being allotted to him. In these cases, there is apparently no question of title and the jurisdiction of Civil Courts is barred.

In *Ahmad Khan* v. *Bahadur*[2] the plaintiffs sued for a declaration that they were owners of certain land contained in three specified *khata* Nos. of which they alleged that they were in possession under a partition made by the revenue authorities and the final record of partition showing the land as fallen to defendant's share was alleged to be due to an error in the preparation of the final papers. It was held that the claim distinctly raised a question connected with or arising out of proceedings for partition within the meaning of clause (*xvii*) af Sec. 158 (2) of P.L.R. Act and that the question was not one as to title in any of the property of which partition was sought and therefore, the plaintiff's remedy (if any) was before the Revenue Officer, the Civil Courts having no jurisdiction to entertain it. Similarly in *Bir Mohammad* v. *Rattan Singh*,[3] plaintiffs sued for a declaratory decree that a certain field was their sole property on the ground that it fell to their share in partition in 1894, but it was erroneously recorded in the final partition proceedings as belonging to their brother Sultan Mohammad (whose successor in interest was the defendant Rattan Singh). It was *held* that the suit directly challenged the correctness of a record of partition made by a Revenue Officer, and asked for a declaration of title opposed to that record and, therefore, the jurisdiction of Civil Court was expressly barred in such a suit by section 158 (2). And again, a suit for possession of a certain area of land on the allegation that that area should on a revenue partition have fallen to the share of their vendors but had by mistake been allotted to the defendants as held in *Amir Khan* v. *Howana Ram*,[4] falls within the purview of clause (*xviii*) of section 158 (2) and is not, therefore, cognizable by a Civil Court.

1. 72 P.R. 1896 (F.B.) ; see also A.I.R. 1919 Lah. 9=112 P.R. 1919.
2. 88 P.R. 1892.
3. 27 P.L.R. 1919.
4. A.I.R. 1925 Lah. 37=76 I.C. 6.

In *Sher* v. *Piare Ram*[1] the plaintiffs who were co-sharers in the *shamilat* of the village were allotted on partition a certain area to which they were entitled in accordance with their share in the joint holding. It was, however, subsequently discovered that one of the holdings awarded to the plaintiffs was wrongly assumed to contain more area than it actually did, the result being that there was a shortage in the plaintiff's share. After the discovery of this shortage it was found that a certain field had been omitted from the partition as indeed no body knew of the existence of this field. The plaintiff brought an action claiming that on a partition of the aforesaid field they were entitled not only to an area corresponding to their recorded share but also to the area that fell short in the previous partition in order that they may be compensated for the deficiency. It was held that a question of title was raised and the suit was, therefore, triable by a Civil Court. And when the plaintiffs sued for possession of an area equal to such shortage from a field which was omitted from the partition, it was held that no relief on the ground of mistake such as was contemplated by Article 96 of the Indian Limitation Act was claimed and hence the Article did not apply. "Article 96 is intended to apply to those cases in which the Courts are asked to relieve parties from the consequences of mistakes committed by them in the course of contractual transaction and it is doubtful whether a suit for possession of immovable property or for a declaratory decree with respect to such property comes within the Article."

Suits for possession of excess land than allotted in a partition.—It was agreed between the parties to partition proceedings that partition would be effected on the basis of the revenue paid by each co-sharer as assessed in the settlement then current. It was alleged by the plaintiffs that when the partition proceedings were completed, the other party was allotted more than what they were entitled to. They brought a suit for possession of the area in possession of the defendant in excess of their proper share. It was held in *Khanu* v. *Raja*[3] that it was a question of title in that land and the Civil Courts could try it.

But this case must be distinguished from a case in which the Revenue Officer allots more land to a co-sharer on the ground that the land falling to his share is inferior to the land falling to the share of the other co-sharer getting less area. If the latter co-sharer brings such a suit for possession of the excess area this is not a question of title but as to the mode of partition. The measure of right is not questioned at all but the adjustment as such could be made by the Revenue Officer.

Suits on the basis of collusive partitions.—Collusive means with fraudulent secret understanding especially between ostensible opponents as in law-suit. In partition this generally happens in those cases where a co-sharer who has got only a life interest in the land or otherwise is not on good terms with co-sharers in the joint holding. Although he or she cannot by mutual understanding concede to be given to them more share than their due, for the reversioners can, as already remarked bring a suit in a Civil Court on that score even after the partition,

1. A.I.R. 1924 Lah. 324=69 I.C. 501.
2. A.I.R. 1929 Lah. 324.
3. A.I.R. 1925 Lah. 97=78 I.C. 1029.

proceedings have been fully completed, what they can do is to concede to be allowed to them best portion of the joint holding to the extent of their share. Naturally therefore, when the reversioners inherit their lands they will find that the land fallen to their share is comparatively of little value as compared with the land fallen to their shares. Can a suit be brought in the Civil Court on this basis, for instance, for a declaration that the partition completed be not held binding on them ?

The most important case is that of the widow colluding with the other co-sharers. A proprietor holding jointly with a widow having applied to the Revenue authorities for the partition of her joint holding and partition having been effected and sanctioned the reversioners of the husband of the widow filed a Civil suit for a declaration that they should not be held bound by the partition after the widow's death, as such partition was improper. It was contended that the co-sharer obtained the more valuable land as the widow colluded in her so doing, and not that he acquired a larger share of the holding than he was entitled to in virtue of the extent of his proprietary rights. It was held in *Gulab Singh* v. *Mst. Sukhan*[1] that as the presence or absence of fraud did not affect the jurisdiction, and that the object of the suit being to strike directly at the formal proceedings of the Revenue authorities and to impugn the correctness of their method of partition the Civil Court had no jurisdiction to entertain the suit. This very question again came up before the learned Judges of the High Court in *Dasondhi* v. *Buta*.[2] In that case plaintiffs brought a suit alleging that their grandfather P had four sons K and B (plaintiff's respective fathers) and B II and S, that on his death K and B separated their share of their father's land while B II and S remained joint in the other half and after their death the son of B II continued to remain joint with S's sons whose sister he had married. The son of B II died childless and his widow wishing to favour her brothers entered into a collusive partition of their joint holding by which the latter got possession of the best parts of the holding. Plaintiffs therefore prayed, then that the widow had died, for possession of their one half share in the holding of B II, and S, as it stood before the partition between the defendants and the widow. It was held that the suit was cognizable by a Civil Court and did not fall within the terms of section 158 (2) (*xvii*) of the P.L.R. Act. Apparently the decisions in these two cases stand contradictory and require some explanation. No reference was made to *Gulab Singh* v. *Mst. Sukhan* while deciding the latter case. In fact, it was remarked by the learned Judges deciding that case—" No ruling applicable to the facts of this case has been quoted on either side and we are not aware of any such ruling. " They based their decision on the ground that sub-clause (*xvii*) was only intended to debar persons who were or should have been party to partition proceedings or representatives of such persons from breaking away from the proper course of such proceedings and appealing to the Civil Courts. Questions of title apart, partition proceedings are to be conducted by the Revenue Officer; and no appeal lies to the Civil Court from his proceedings as between the parties to those proceedings or their representative the proceedings are final. Here there is no question of title involved, for apparently there is no dispute as to the shares of the various parties. All that the plaintiffs claim is that a collusive partition to which they are no party should be held to be not binding on them.

1. 104 P.R. 1900.
2. 74 P.R. 1913=18 I.C. 452.

This case was distinguished in *Ghulam Haidar* v. *Amir Haidar*,[1] it was remarked by Le-Rossignol, J.—"The *ratio decidendi* in that case merely was that the action did not impugn the partition so far as the parties to it were concerned and the relief claimed could be granted without affecting the partition which had actually taken place." But that case does not throw much light on the subject inasmuch as the minor bringing a suit for declaration was represented before the Revenue authorities though the allegation was that he was not properly represented, and there was no question of collusive partition.

Suit to avoid partition on basis of fraud.—A suit praying that partition proceedings be declared void on account of fraud and the whole partition proceedings annulled is not cognizable by a Revenue Court.[2]

Minor as a party to partition proceedings.—The law provides for the safeguard of the interests of a minor under all circumstances and in a case where a minor is a party all formalities of law and procedure must be strictly followed. When a minor is a co-sharer in a joint holding or tenancy proper guardian should be appointed to represent him.

One Sarfraz Khan died in 1909, leaving two widows and two sons, one the plaintiff, the other defendant No. 1; also landed property in several villages. In 1910, after some competition with Amir Haidar, the eldest son of Sarfraz Khan, *Mst.* Nur Ilahi was appointed by the District Judge, guardian of the property and person of her minor son Ghulam Haidar; the same order accepted the appointment of Mohammad Sadiq to manage the minor's estate on behalf of the guardian. In May 1911, Amir Haidar applied to the Revenue authorities for partition of the joint estate and the partition was completed in December 1912. In 1915, a suit was lodged on behalf of the minor for a declaration that the land partitioned in 1912 was still the joint property of himself and his elder half-brother Amir Haidar, defendant No. 1, and consequently the partition of 1912, was not binding upon him. The plaintiff, after setting forth the circumstances above recited, alleged that Mohammad Sadiq betrayed his trust and colluded in the partition proceedings with dufendant Amir Haidar, with the result that the share of the land allotted to the plaintiff was of poor quality and comprised none of the land on which trees were growing, and he asked for the relief above-mentioned on the grounds, firstly, that he was practically unrepresented before the revenue authorities; secondly, that the partition had in fact resulted in great loss to him; thirdly, that in making the partition the Revenue Officer had taken no account of trees and, fourthly, that the partition was effected without the consent of the District Judge, and was, therefore, not binding on the plaintiff. It was held that there was no question of title, and therefore no jurisdiction of the Civil Courts to decide it.[3]

A Civil Court is debarred from entertaining a suit praying for a declaration that certain land was joint property of the parties; that there had been no legal partition of it, and that they were consequently entitled to have their half share partitioned, a partition having already been made by a Revenue Officer under the Act. A complaint that the interest of the plaintiffs who were minors was not properly safeguarded

1. I.L.R. 1 Lah. 298.
2. Rura *v.* Ramzan=(1941) 20 L.L.T. 173.
3. 1 Lah. 298.

by those who represented them before the Revenue Officer is a matter which a Revenue Officer is empowered by the Act to dispose of within the meaning of section 158 (1) and it is therefore a matter in which a Civil Court's jurisdiction is barred.[1]

Allotment of mortgaged lands to other co-sharers of mortgagor —remedy of mortgagee.—Though plaintiffs cannot proceed against the mortgaged property which has been attached on partition to the other co-sharers, they will be allowed in lieu thereof, to proceed against those lands, which have been allotted in substitution to the defendant mortgagor.[2]

Is the mortgagee entitled to recover the balance from the property other than the joint holding, if any, of the mortgagor ? It appears he can do so. (See *Amar Singh* v. *Bhagwan Singh*=I.L.R. 14 Lah. 749 and *Mohan Lal and others* v. *Wadhawa Singh*=35 P.L.R. 452). But so far as that particular joint property is concerned the mortgagee cannot enforce except against the share allotted to his mortgagor (53 I. C. 659).

Application to file in court agreement to refer arbitration.—Para. 17 of schedule II of the Code of Civil Procedure provides that 'where any persons agree in writing that any difference between them shall be referred to arbitration, the prties to the agreement, or any of them, may apply to any *Court having jurisdiction in the matter to which the agreement, relates*, that the agreement be filed in Court.' The words in italics are important. Where A applied under this clause that an agreement for reference to arbitration between himself and certain other parties might be filed in the Court and that the agricultural land and certain cattle belonging to the parties to the agreement, which related to the said land be partitioned between the parties through the arbitrators, it was held that the Civil Court had no jurisdiction, to entertain the application as it related to the partition of agricultural land within the meaning and for the purpose of section 158 (2), clauses (*xvii*) and (*xviii*) of the Land Revenue Act and that the agreement could not be accepted in part, that is, as to the division of the cattle.[1] The same view was upheld in *Jamala Shah* v. *Nihal Chand*[3] where it was laid down that an agreement to refer a dispute to arbitration authorising the arbitrators to partition Revenue paying land could not be filed in the Court under paragraph 17, Schedule II of the Code of Civil Procedure inasmuch as a Civil Court had no jurisdiction in a matter of that nature. The question again came up before a Division Bench in *Asa Nand* v. *Ganesha Ram*[5] It was held in that case—" Where an agreement to refer to arbitration authorizes the arbitrators to decide the question of title and also to make a partition of joint agricultural land along with other joint property, the Court can allow the agreement to be filed and make a reference to the arbitrators. Upon receipt of the award it may be that the Court can however, only pass a decree with regard to non-agricultural property and can grant only a declaration of title with regard to the agricultural land as determined by the award, leaving it to the parties to enforce partition in accordance with the

1. Amar Singh and others *v.* Ram Singh=A.I.R. 1932 Lah. 236 ; 74 P.R. 1918 and 3 P. R. 1918 (Rev.) dist.
2. 101 P. R. 1894 ; see also L.R. Ind. App. Vol. I, p. 106 ; 2 P. R. 1906.
3. 55 P.W.R. 1914=22 I. C. 381=46 P.L.R. 1914.
4. 166 P.W.R. 1917=42 I.C. 261=91 P.L.R. 1917.
5. A.I.R. 1930 Lah. 836=122 I.C. 724=11 Lah. 470.

award in revenue Court though again it is possible to argue that there should be no vaild objection to the Civil Court filing the award and pronouncing judgment in accordance therewith even with regard to the partition of land, because in such a case the Court merely files the award of the arbitrators, which is practically tantamount to an agreement between the parties, and does not make any adjudication on the merits of the dispute between parties on the matter referred to arbitrators. Suppose in a suit for partition of joint property including land the parties enter into a compromise with regard to the division of land as well, is it not open to the Civil Court to record such a compromise and to pass a decree accordingly ?"

It seems difficult to reconcile the above views. The two earlier rulings quoted above have not been over-ruled in any subsequent decision and yet this last ruling is also distinctly clear. It may be suggested that only that part of the agreement which pertains to a matter within the jurisdiction of the Civil Court may be filed while the rest excluded. In *Partap Singh* v. *Devi Singh* (15 P. R. 1883) the parties had referred to the arbitrator the question (1) partition of ancestral land by whole villages and (2) the allotment of the office of lambardar. It was held that the Civil Courts were not competent to make a reference and further that it was not permissible to strike out that portion of the agreement which was in excess of the Court's jurisdiction simply in order to give it jurisdiction unless the parties agreed this being done.

It is to be noted that there is no provision in the Punjab Land Revenue Act under which such an agreement to refer to arbitration a matter within the exclusive jurisdiction of a Revenue Officer can be filed with the Revenue Officer and there is no question of enforcing such an agreement.

Enforcement of a private award.—What is the position when the question of actually partitioning the land has been referred to arbitration by the parties themselves without reference to the Revenue Officer? Can the Civil Courts entertain a suit for the enforcement of an award of this nature ?

Three positions may arise in this case. If all the parties abide by the award, and the possession is taken accordingly the matter can be referred to the patwari for entering necessary mutation. If one of the parties does not abide by the award, the other party has got the remedy to apply to the Revenue Officer under section 123 of the Act to affirm that partition and if on inquiry the Revenue Officer finds that the partition has infact been made, he may make an order affirming it. The third position arises when one of the parties does not abide by the award while the other party abiding by it either applies to the Revenue Officer for affirmation and the Revenue Officer comes to a finding that no partition took place or that party does not apply to the Revenue Officer but moves the Civil Court directly for the enforcement of the award.

Paras. 20 (1) and 21 of schedule II of the Code of Civil Procedure may be referred to in this connection. (See now the Arbitration Act, 1940). Here also the question is of jurisdiction over the subject matter of the award. In 17 P. R. 1915 it was held that a Civil Court had jurisdiction to deal with that part of an award which fixed the shares of the party in any agricultural land as it was not an actual partition of the field but merely a decision of the share and only settled title. The same view was held in 81 P. W. R.

1918. Where an award does not partition any properties in the shape of agricultural land, the Court has jurisdiction to order filing of it (A. I. R. 1933 Lah. 1034).

But where an award partitioning joint property including agricultural land by metes and bounds is made, the Civil Court has no jurisdiction to entertain an application to file the award and pass a decree in accordance therewith [see A. I. R. 1930 Lah. 418, and Letter Patent appeal of the same case A. I. R. 1933 Lah. 732 (2)]. But see 63 P. R. 1893 in which contrary view had been held. In that case by written agreement the parties to the suit appointed K. L. their arbitrator to partition between them certain joint property consisting of land and house to equalise and adjust the shares by transfer from one party to the other of land exclusively owned by either party and generally to settle between them all disputes whatsoever relating to their joint or exclusive property. An elaborate and comprehensive award was prepared and the parties after having heard it read signed the document in token of their asssent. The defendant, however, refused subsequently to carry out the terms of the award and the plaintiff sued to enforce them. It was held that the claim was not excluded from the cognizance of the Civil Court by section 158 (2) (*xvii*) of the Land Revenue Act.

Res judicata, waiver and estoppel.—What is the legal position when the party does not raise an objection to title before a Revenue Officer in an application for partition during the pendency of such application but thereafter institutes a suit averring that the other party to the partition proceedings had no title and like wise ?

In 28 P. R. 1913 (F. B.) it has been laid down that there is not a *priori* objection to a Civil Court entertaining a plea of estoppel or waiver as a bar to a suit for title instituted before it, but the success of such a plea must necessarily depend upon the facts of each particular case (*See also* 61 P. R. 1897). A contrary view had been expressed in 8 P. R 1910 but it was not applied in 28 P. R. 1913. Another interesting case is reported as 68 P. R. 1919 to the same effect.

A decision by a Revenue Officer acting as Civil Court with respect to a question of title within authority would be as much *res judicata* as that by a regular Civil Court. But when there is a question of title and that is decided by a Revenue Officer and not by a Revenue Officer sitting as a Civil Court with all the formalities of civil procedure, it is not *res judicata* as being not decided by the proper Court (105 P. R. 1918).

Clause (xix).—Complicated questions of title should not be determined by a referee or a Revenue Officer. Neither the language of the statute nor the general principles of law lend any support to the contention that the Revenue Officer and not the Civil Court should determine whether the produce belongs exclusively to one party or whether it is the joint property of the parties.[1]

A suit, therefore, for the recovery of price of certin produce alleged to have been delivered by the referee to the defendant, on the ground that it belonged exclusively to the plaintiff is cognizable by a Civil Court (*ibid*).

1. A. I. R. 1922 Lah. 157=2 Lah. 302=28 P. L. R. 1922.

THE SCHEDULE

(*See Section 2*).

Enactment Repealed.

Number and year.	Title or subject of enactment.	Extent of repeal.
1	2	3
Act XXI 1836 ...	Creation of new Zilas ...	So much as has not been repealed.
Act VI of 1867	To enable the Lieutenant Governor of the Punjab to alter the limits of existing districts in any part of the territories under his Government.	The whole.
Act VII 1870 ...	The Court-fees Act, 1870...	In section 20, clause (*i*), the words " and Revenue," and the whole of section 23.
Act XXXIII of 1871.	The Punjab Land Revenue Act, 1871.	The whole.
Act IV of 1872	The Punjab Laws Act, 1872 ...	Section 21.
Act XVIII of 1884	The Punjab Courts Act, 1884	Chapter VI.
Regulation I of 1872.	The Punjab Frontier Regulation, 1872.	Rules 26 to 46 (both inclusive) comprising sections G, H, I and K of the Hazara Settlement Rules.

APPENDIX I

The Punjab Land Revenue Act, 1887, as applicable to the North-West Frontier Province and the Province of Delhi.

The North-West Frontier Province.

(*a*) Section 3 of the North-West Frontier Province Law and Justice Regulation, 1901 provides—

The enactment set forth in the first schedule, and all appointments, orders, schemes, rules, bye-laws, notifications or forms made or issued thereunder, shall, in their application to the North-West Frontier Province, be construed subject to the alterations indicated in the fourth column of the said schedule.

Schedule

Year.	No.	Short title.	Alterations.
1887	XVII	The Punjab Land Revenue Act, 1887.	In section 3, clause (13), *for* "within the meaning of the Legal Practitioners Act 1879, except a mukhtar," *read* "having authority from the Judicial Commissioner to appear and practise as such." In section 6, *for sub-section* (5) *read*:— "(5) Subject to the provisions of this Act and of any other enactment for the time being in force, the jurisdiction of the Revenue Commissioner extends to the whole of the North-West Frontier Province, and of Collectors and Assistant Collectors to the districts respectively in which they are for the time being employed." *Omit section 7.* In section 8, *omit* 'Commissioners.' In section 11, *omit sub-section* (3) *and in sub-section* (4) *for* "as aforesaid and to the control of the" *read* "to the control of the Revenue." In section 13, *omit* clause (*c*). In section 14, *omit* clause (*c*). In sections 15 and 16, *omit* the words "Commissioner or," *wherever they occur.*

(*b*) According to section 4 of the same, the Bengal Alluvion and Diluvion Regulation, 1825, is in force in the North-West Frontier Province.

(*c*) Section 6 of the same Act provides as follows :—

Construction of certain references in enactments in force.

(1) Save as otherwise expressly provided by this Regulation or by any other enactment for the time being in force, in every enactment passed before the commencement of this Regulation and continuing in force, or hereby declared to be in force in the North-West Frontier Province or in any part thereof, and in every appointment, order, scheme, rule, bye-law, notification or form heretofore made or issued thereunder, and for the purposes of the application of such enactment, appointment, order, scheme, rule, bye-law, notification or form to the said Province—

(*a*) all references to the Punjab, or to the territories under the administration of (or for the time being under the administration) of the Lieutenant Governor of the Punjab shall, save as regards the provisions of the Punjab University Act, 1882, be construed as referring to the North-West Frontier Province ;

(*b*) all references to the Local Government or to the Governor of the Punjab shall, save as regards the provisions of the Punjab University Act, 1882, be construed as referring respectively to the Provincial Government or to the Governor of the North-West Frontier Province ;

(*c*) all references to the High Court or to the High Court of Judicature at Lahore shall be construed as referring to the Court of the Judicial Commissioner, save etc. ;

(*d*) all references to the Chief Controlling Revenue authority or to the Chief Revenue authority shall be construed as referring to the Revenue Commissioner ;

(*e*) all references to the Financial Commissioners or a Financial Commissioner of the Punjab shall be construed as referring to the Revenue Commissioner.

(*f*) all references to a Commissioner or to the Commissioner of a division shall be construed as referring to the Revenue Commissioner ;

(2) For the purposes of the application to the North-West Frontier Province of the provisions of the Punjab Tenancy Act, 1887, and of the Punjab Land Revenue Act, 1887, and of any appointment, order, scheme, rule, bye-law, notification or form heretofore made or issued thereunder, the functions of both the Financial Commissioner or a Financial Commissioner and the Commissioner of a division shall, save, as otherwise provided by section 93 of this Regulation be combined and vested in, and discharged by, the Revenue Commissioner ;

Provided that nothing in this section shall be deemed to confer a right of appeal to, or a power of review or revision upon the Revenue Commissioner in respect of any order or decree made or passed by him in exercise of a power conferred by or under either of the said Act upon the Commissioner of a division.

THE PROVINCE OF DELHI.

(*a*) Section 3 of the Delhi Laws Act, 1912, provides :

"All enactments made by any authority in British India and all notifications, orders, schemes, rules, forms and bye-laws issued, made or prescribed under such enactments which immediately before the commencement of this Act were in force in, or prescribed for, any of the territory mentioned in Schedule A, shall in their application to that territory be construed as if reference there in to the authorities, or *Gazette* mentioned in column 1 of Schedule B, were references to the authorities, or *Gazette* respectively mentioned or referred to opposite thereto in column 2 of that Schedule.

SCHEDULE A

The Province of Delhi.

That portion of the District of Delhi comprising the Tahsil of Delhi and the Police Station of Mahrauli.

Schedule B.

Reference.	Construction.
1. [1][Omitted].	The [2][Provincial Government] of Delhi.
2. The Provincial Government of the Punjab.	
3. [1][Omitted].	
4. [1][Omitted].	
5. The Chief Customs Authority.	
6. The Financial Commissioner.	
7. The Commissioner of Revenue.	
8. The Commissioner of the Division.	
9. The Commissioner, etc.	

(*b*) By notification No. 984-C., dated 22nd of February, 1915, the territory mentioned in Schedule I below was added to the Province of Delhi from the United Provinces of Agra and Oudh.

According to section 2 of the Delhi Laws Act, 1915, the Punjab Land Revenue Act, 1887, is not applicable to that area.

Schedule I.

Revenue estates of—

1. Subehpur.
2. Jagatpur.
3. Baqiabad.
4. Beharipur.
5. Saadatpur Mahal Gujran.
6. Saadatpur Musalmanan.
7. Saadatpur Amad Delhi.
8. Wazirabad.
9. Khaujari Paramad.
10. Khajuri Khas.
11. Garhi Mendu.
12. Timarpur.
13. Chandrawal.
14. Usmanpur.
15. Ghonda Patti Gujran Khadar.
16. Ghonda Patti Chauhan Khadar.
17. Andhavli.
18. Kaithwara.

1. By the Government of India (Adaptation of Indian Laws) Order, 1937.
2. Substituted for Chief Commissioner by the Government of India (Adaptation of Indian Laws) Order, 1937.

19. Silampur Amad Delhi.
20. Ghondi Khadar.
21. Jatwara Khurd.
22. Mubarakpur Reti.
23. Shakarpur Khadar.
24. Nagla Manchi.
25. Shamspur.
26. Gharaunda Nimka Khadur.
27. Nagli Razapur.
28. Chilla Sarauda Khadar.
29. Qarawalnagar *urf* Dharauti Kalan.
30. Jwanpur Johripur.
31. Mustafabad.
32. Mirpur Turk.
33. Ziauddinpur.
34. Khanpur Dhani.
35. Maujpur.
36. Ghonda Patti Gujran Bangar.
37. Ghonda Patti Chauhan Bangar
38. Jafrabad.
39. Uldanpur.
40. Bawarpur.
41. Siqdarpur.
42. Gokalpur.
43. Sabauli.
44. Mandauli.
45. Taharpur.
46. Jhilmila.
47. Chandavli *urf* Shadara.
48. Silampur Bangar.
49. Silampur Khadar.
50. Ghondi Bangar.
51. Kakarduman.
52. Khureji Khas.
53. Khureji Baramad.
54. Shakarpur Khas Bangar.
55. Mandavali Fazilpur.
56. Hasanpur Bhuapur.
57. Ghazipur.
58. Khichripur.
59. Gharaunda Nimka Bangar (Patparganj).
60. Shakarpur Baramad.
61. Kotla.
62. Chilla Sarauda Bangar.
63. Dalupura.
64. Kondli.
65. Gharauli.

Note.—To this area the United Provinces Land Revenue Act, 1901, applies.

Amending Acts as extended to the Province of Delhi under the Delhi Laws Act, 1912 (*XIII of* 1912).

Name of Act.	Area to which extended.	Restrictions and Modifications.	Notification by which extended.
The Punjab Land Revenue (Amendment) Act, 1928 (3 of 1928).	That part of the Province of Delhi which is described in Schedule A to the Delhi Laws Act, 1912.	(1) All references to the Financial Commissioner or the Commisisioner should be read as references to the Chief Commissioner, Delhi. (2) In section 4, in the proviso to the new section 48-B, for the words, brackets and figures "at the time of the commencement of the Punjab Land Revenue (Amendment) Act 1928" the words and figures "on the 30th May, 1939" shall be substituted.	Not. No. 189/38, dated the 30th May, 1939.

Name of Act.	Area to which extended.	Restrictions and Notifications.	Notification by which extended.
		(3) In clause (*ii*) of section 6, the words "through the Financial Commissioner" shall be omitted. (4) In clause (*iii*) of section 7, the words and figures "or of an area declared to be a small town under the provisions of the Punjab Small Towns Act, 1921" shall be omitted. (5) In section 13, for the words, and figures and letter "subject to the provisions of section 60-A" the words "subject to the condition of previous publication" shall be substituted. (6) In section 14, the new section 60-A and 60-B, and in new section 60-C, the words "or the Financial Commissioner with the approval of the Provincial Government" shall be omitted.	
The Punjab Land Revenue (Amendment) Act, 1934 (6 of 1934).	Ditto	...	Ibid.

APPENDIX II

Jagirs and Muafis.

Space at my disposal does not permit me to give a detailed account of the origin of the institution of 'jagirs and muafis' in the Punjab, and the rules which were adopted for their resumption or continuity when the Punjab was annexed to the British territory, and their subsequent treatment. This I leave for separate treatment in my proposed book on 'Land System of the Punjab.' Here I shall confine myself to treating the subject from the tenure point of view only and attempt to lay down what the relation of a *jagirdar* or a *muafidar* really is in relation to land.

The Governments which preceded the British Government found it convenient to secure the swords of brave and the prayers of pious men, to pacify deposed chiefs and to reward powerful servants, by assigning to them the ruler's share (*hakimi hissa*) of the produce of the land in particular villages or tracts. This was an easier mode of payment for the State than the regular disbursement of salaries or cash pensions and it was much more gratifying to the recipients. The amount which a *jagirdar* could take as the ruler's share was only limited by his own judgment of the capacity of the cultivators to withstand oppression by force or to escape from it by desertion, and he enjoyed in practice most of the rights which we now regard as special evidences of ownership.

There can be no doubt that the old native Government idea of a *jagir* was always that of the grant of the revenue of certain lands. In the very beginning of the British administration in the Punjab it was definitely recognised that " the *jagirdar* or *muafidar* is only an assignee of the Government revenue.....he possesses no portion of the soil any more than the Government whose revenue is assigned to him, nor has he, as assignee of the Government share of the produce, any right or title to meddle with the management or cultivation of the soil. But he may possibly have a double or troble status; he may be a proprietor of a portion or a cultivator of a portion and as such he is subject to the ordinary laws of property and cultivation." [*Financial Commissioner's Circular No. LIII-109, dated 6th November, 1860, para.* 8; 10 P.R. 1886 (Rev.)]. The Sikh Government took its revenue upon an estimate of a share of the produce and the share which it demanded as the ruler's portion frequently amounted to what we now regard as the full rent of the land. The dues claimed by the State were, as a rule, collected by the *kardars* direct from the cultivators. If there were any other persons in the village, who, as the representatives of its original founders, or for any other reasons, claimed a position superior to the rest of the cultivators, they might, if they were able, get from their inferiors some trifling proprietary fee, such as the " *sermani* " or allowance of one *ser* per maund of the produce.

It thus happened that a revenue grant large or small, made by Sikh rulers frequently conveyed to the grantee the right to take from the cultivators all that a landowner would now realise. If the *jagirdar* or *muafidar* was non-resident he usually interfered little with the cultivating arrangements, but contented himself with realising his share of

grain at harvest time; if he were resident, he often interfered freely, especially as regards waste lands on which he had located new cultivators, planted gardens and sunk wells. While it was the general policy to treat *jagirdars* and *muafidars* merely as standing in the place of Government, it was hard to deny that their connection with the land had in many cases grown into something much stronger. In the case of small *muafi* plots the assignee of land revenue often cultivated himself or arranged for its cultivation.

The terms "jagir," "muafi," "inam" and "rent-free holding" explained.—The terms "*jagir*," "*muafi*," "*inam*" and "rent-free holding" all equally mean an assignment of the Government revenue. The several terms by which these various assignments are described, have reference to other incidents of the tenure. A large holding is commonly, but not always, described as a *jagir*, and has conditions of succession and service attached to it, which are not attached to other classes of assignments. An *inam* is usually a mere cash deduction from the village assessment with or without conditions attached. A *muafi* is usually, but not always, a small holding, and very commonly the *muafidar* himself owns and cultivates his holding, for which reason the terms *muafi* and rent-free holding are frequently used in the same sense. Ordinarily the Government grant jagirs in the form of assignment of Land Revenue but it may also take the form of cash allowance by the Government or the assignment of other dues recoverable by the Govenment as the recovery of the fines and recovery of the income of a garden (A.I.R. 1937 Lah. 211).

According to the *original meaning*, the term '*muafi*' implies that the holder of a plot of land is 'excused' from paying the Government revenue, and usually it would be the person's own land that is 'excused' from revenue-payment, or a grant of land at disposal, of the State has been made 'revenue-free'. But in the older days, when proprietary right was less thought of, the State no doubt granted in *muafi* a village, or plot of land which was already in the occupation of some one else. Here the *muafidar* contented himself with leaving the original occupants in possession, but he took *batai* from them. The practical distinction then came to be, that the *jagir* was a grant with condition of service, and the *muafi* was a grant, without such conditions. The terms '*jagir*' and '*muafi*' now, however, have come to be used very much as synonyms. This is owing to the fact that service is not required now as the condition of the grant [See A.I.R. 1930 Lah. 46 ; 10 P. R. 1886 (Rev.) and remarks on page 17].

Complexity of tenure.—The early Settlement Reports of Punjab Districts contain many references to the perplexing questions which arose as to the ownership of assigned lands when cash assessments had begun to give a value to land which it had not possessed before, and the new system of land and land-record was at the same time substituting the idea of property in the soil for the vaguer notions on the subject embodied in native systems. It was argued on the one hand that assignees under the Sikh Government had, for many years, exercised all the rights and enjoyed all the profits which a landowner exercised and enjoyed under the British rule ; while, on the other hand, it was pointed out that he held these privileges simply as representing the Government of the day, and that the British Government in continuing a grant, also gave to the assignee what it would itself have claimed as land revenue.

No difficulty arises when a person is himself the proprietor as well as the *muafidar*. Where, however, the original member of the proprietary body was a person different from the assignee, complexity in tenure arises. We shall now study such cases in more detail.

Sub-settlement of land revenue with the assignee or his heir—its effect on his status-malguzars (*thekedars*) or **malguzars** (thekedars) **muafi munzabta—their status.**—In early Settlements the question of the status to be assigned to an assignee was closely connected with that of his right to claim settlement when his grant was resumed. His admission to one involved the idea that he possessed a proprietary right of some kind. The circumstances under which an assignee or his heir is entitled to a sub-settlement have already been explained on page 385 and may be referred to with advantage. One general broad principle laid down is that a sub-settlement cannot be given to a *muafidar* or to a *muafidar's* heir unless his previous connection with the land has been of a proprietary character, nor could such a sub-settlement be given if the owner is in cultivating possession or has otherwise had full proprietary control of the land.

Rule D. 1. [(3) (1)] of the Rules under the Land Revenue Act, 1871 laid down—

"The Settlement shall be made with the proprietary body of the village or *patti*, or with the proprietors of the land in severalty, if any, except in the following cases, in which it shall in the first instance, be offered to the late assignee or his heirs as an intermediate tenure:—

(*i*) where they reside in the village, and own or cultivate the land;

(*ii*) where they have planted gardens, or have tombs, temples or buildings on the land;

(*iii*) where they have sunk wells and improved the land; or

(*iv*) where they can show some special circumstances connecting them with the land.

The mere receipt by the *muafidar* of a share of the produce is not sufficient to decide the issue in favour of the *muafidar*, because that share has been levied merely as revenue. If over and above the receipt of that share a considerable portion of the privileges of an owner as defined above have been enjoyed by the *muafidar*, his claim to be continued in those privileges should be supported. If on the other hand, he has not had any possession of this nature, then the persons in proprietary possession are entitled as of right, to a cash assessment at the rates and on the conditions sanctioned by Government [10 P. R. 1936 (Rev.)].

The following remarks quoted in para. 183 of the Settlement Manual are also worth perusal—

"It must be remembered that it is often difficult to decide from some of the older settlement records whether or not a *muafidar* was admitted to be the owner of his *muafi* plot. His name was usually shown in the ownership column with the title of *muafidar*. Sometimes a note was added that he was owner as well as assignee, or that another person was owner. The tendency in later settlements has been to assume that the *muafidar* had no proprietary title, and to record his fields as common land of the village, if no individual proprietor appeared to have any

special connection with them. When a settlement is claimed, a careful inquiry must therefore be made. The manner in which the grant was originally acquired, and the question whether at that time the land was waste or under cultivation and whether, the *muafidars* have cultivated themselves or arranged for the cultivation, putting in and ejecting tenants at pleasure, are of great importance. Although possession for three generations does not entitle the heir of a *muafidar* to settlement if another person really has exclusive ownership of the land, length of possession may be a weighty element in the consideration. If it is proved that the *muafidars* have tombs, temples, or buildings on the land, or that they have planted gardens, sunk wells, or effected other improvements due weight must be given to these facts. The mere fact that a *muafidar* always realized his dues by a share of the produce as a landlord would have done, does not prove that he was owner. In our earliest settlements *muafi* plots were excluded from assessment and the assignee was frequently allowed to realize as before the old *hakimi hissa* in grain, and, notwithstanding that a cash assessment may afterwards have been fixed at re-settlement in pursuance of standing orders or to facilitate the calculation of the amount of local rate, the former arrangements as between the assignee and the cultivator were often continued without dispute. On the other hand, the fact that the *muafidar* paid a small proprietary fee or *malikana* in grain or cash to the village community or some individual member of it, must not be taken as conclusive proof that he had no kind of inferior proprietary title (*milkiyat adna*). His heir will still be liable to pay *malikana* though a settlement is made with him."

Thus where the result of the *muafi* tenure has been to establish in this way an ownership, wholly or partly independent of the village proprietary body, the rules provided for the settlement of a resumed *muafi* with the heirs of the *muafidar*, this settlement being in subordination to the settlement of the whole estate [10 P. R. 1886 (Rev.)].

Settlement of land revenue made with heir of muafidar—Does it confer any right on him as such?—The above paragraph describes the circumstances under which an assignee or his heir is entitled to settlement of land revenue made with him. Does the mere fact that settlement of land revenue has been made with him, lead to the conclusion that the assignee or his heir as such has any proprietary right or right of occupancy in that land?

In *Santa Singh* v *Mst. Budhwanti* (108 P. R. 1892) the question for reference was—" When a *muafidar*, not being an owner of the land, has during the continuance of his *muafi* grant a right (otherwise than as tenant) to retain possession of the *muafi* land against the owners, and such *muafidar* has died and the *muafi* has been resumed; but the settlement has been made with an heir of the *mufidar*, has such heir the right (otherwise than as tenant) to retain possession against the owners?" It was held—" In dealing with this reference we desire to guard ourselves against being held responsible for any of the opinions or assumptions contained in the question. We regard a *muafidar* simply as the assignee of the Government right to revenue for particular land. He has not necessarily any right of ownership or occupation of the land, but he may possess such rights. The right of ownership of the land and the right to receive the revenue, are things quite distinct. A settlement of the revenue payable for a period, or a remission of the revenue for a period, consequently should not affect the right to own or

possess. Neither when the *muafi* is confiscated by Government and a settlement is made after the *muafidar's* death with his heir should this affect the proprietary right or the right to occupy. If the heir has no title to own or occupy, this settlement with him, so far as we can see, may only impose a burden on him for nothing. We should say, therefore, that the answer to the question, whether the heir is entitled to retain possession against the (original owners) after he has been settled with, depends entirely on the terms of the original grant to him by the owners and is unaffected by settlement operations."

In *Sadhu Ram and others* v. *Chuhar Khan and another* (A. I. R. 1928 Lah. 690) also it has been similarly held that the mere fact that settlement operations are conducted with the *malguzar* or the revenue is due from him does not confer any right to proprietary possession of the land on the *malguzar* (See also A. I. R. 1925 Lah. 391).

Status—inferior proprietors—superior proprietors—occupancy tenants.—To determine the real status of the *muafidar* or his heirs if the *muafi* is resumed or otherwise, we must therefore find out what the original conditions of the grant were and how the *muafidar* and his heirs have been dealing with the land. If it is proved that the land in question has been the exclusive property of a certain person from the very beginning while the *muafidar* or his heir has been arranging for the cultivation of the land, ejecting tenants, putting in other tenants, sinking wells, planting gardens, making any other improvement in the land or the like, his connection with the land is certainly more than a mere assignee of land revenue and he is entitled to continue enjoying the privileges which he has already been enjoying. Generally in most of the cases falling in this category his status amounts to an inferior owner which may be called *adna malkiyat, mukarridari,* etc., according to the general term used in each particular locality. But the incidents of the tenure and the rights enjoyed by him are as stated above, *viz.*, the rights which he has been enjoying from the time the grant was made to him. The original owner who will be called superior or *ala malik* in this case sometimes enjoys proprietary fee chargeable from the inferior owner over and above the amount of the land revenue which the inferior owner has to pay for that land, in acknowledgment of his superior title. In other cases he may establish his claim to such a proprietary fee if he can do so. It matters little if the *muafidar* or his heir is entered in the *jamabandi* in the column of proprietorship below the original owner or is entered in the column of cultivation. His status remains unchanged

It may be of interest to note that if the status of a *muafidar* or his heir is found to amount to that of an inferior owner, it is just possible some body may have acquired right of occupancy under him in that land if he has fulfilled the conditions laid down in the Punjab Tenancy Act for acquiring such a right. In that case the occupancy tenant will be holding land under the inferior owner and not under the original owner.

As superior proprietor—(*ala malik*).—It is not a curious fact that the right of a *muafidar* or his heir may amount to superior proprietorship with the original owner as inferior proprietor under him. A village was founded by the predecessors-in-interest of respondents, the present recorded owners. In Sikh times a predecessor-in-interest of appellants obtained the village in assignment, and found it in a very unprosperous condition. He made arrangements for extending the cultivation in it

and effecting improvements. His successors continued, in greater or lesser degree, to make improvements and arrange for cultivation, and realized their dues in kind until the assignment to them of the revenue of the estate was resumed. The cultivators were most of the original owners. It was held—" It seems clear to me that if the appellants have acquired any rights in this estate beyond their former status of revenue assignee, the rights thus acquired are those of superior proprietorship or *talukdari*, such as are possessed, for instance, by several *jagirdars* in the Kangra district, and not of *mukarridar*. As I understand the instructions in paras. 45 and 46, Revenue Circular 37, the status of *mukarridar* is intended for an ex-assignee of revenue or his heir, who, while the assignment lasted, exercised right of personal possession, or through cultivators put in by him, in connection with his *muafi* holding, which were beyond those of a mere receiver, but that he exercised such rights in subordination to the village proprietary body. The status of *mukarridar* is not as I understand it acquirable under such circumstances as exist in the present case, where the whole village was held in assignment and the assignee, in exercising any rights beyond those of revenue receiver clearly exercised them as subordinating the village proprietary body himself, not himself to the village proprietary body " [P. R. 1894 (Rev.)].

As occupancy tenants.—The old Punjab Tenancy Act, XXVIII of 1868, provided that—"*every tenant* who is or has been *jagirdar* of the village or any part of the village *in* which *the land occupied by him as tenant is situate*, and who has continuously occupied such land for not less than twenty years, shall be deemed to have a right of occupancy in the land so occupied." [Section 5 (4)]. The words in italics are important. Section 5 (1) (*d*) of the Punjab Tenancy Act, 1887, also provides that—" a *tenant* who being a jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or, having been such *jagirdar*, occupied the land while he was *jagirdar* and has continuously occupied it for not less than twenty years, has a right of occupancy in the land so occupied. " The essence of these provisions is that the Jagirdar or ex-Jagirdar must be a *tenant* of that land. The term '*jagirdar*' includes '*muafidar.*'

The rights accruing under this heading arose in various ways. In most villages are found petty grants made by the proprietors to persons who render service in return for which the proprietors pay the revenue of the land. Service is the essence of the grant. At the first Regular Settlements number of these grants were treated as revenue assignments from Government and entered in the records as such. Most of them were afterwards resumed and it was left to the discretion of the village proprietors to continue them or not as they liked. These were revenue-free rent-free grants.

Again, it is to be remembered that under the Sikh Government and even before that the proprietary right of individuals was generally recognized in these plots of land which were in their exclusive possession, the waste land attached to the village being held to be the joint property of the village community or claimed by the Government (*see page* 327). The Sikh Government in order to bring more land under cultivation for raising more revenue encouraged breaking up of waste land by assignees of land revenue in the village. At the time of the annexation of the Punjab by the British Government the question of dealing with the wast

land arose. In many villages all unoccupied waste included within the boundry of each estate was held to be the common property of its owners (*see page* 327). Under these circumstances " shamilat deh " became the proprietors while the assignees were entered as tenants under the proprietary body. Sometimes the assignee entered into a lease with the owner himself for breaking up the land and bringing it under cultivation.

All such cases should be investigated in terms of the original conditions of the tenures and it should be studied how the original possession was acquired. If this is done it will not be difficult to determine the status from what has been stated above.

Right of an assignee of land revenue to realize a share of produce as opposed to the mere land revenue.—No assignee of land revenue as such is entitled to land revenue in the form of a share of the produce nor is the mere receipt by him of such a share in the past sufficient to give him a title to such a share in the future. To secure the latter it is necessary that in addition to the position of *muafidar* his status should include certain element or incidents of proprietary rights or ownership explained on page 386 [2 P.R. 1916 (Rev.); 10 P.R. 1886 (Rev.); 4 P.R. 1887 (Rev.); 14 P.R. 1892 (Rev.); 1 P.R. 1885 (Rev.) dissented from].

For more details refer to Financial Commissioner's Standing Order No. 7 and Chapter III of Land Administration Manual.

See also Appendix X of Author's Commentary on the Punjab Tenancy Act, 1887, (2nd Edn.).

APPENDIX III

Land Tenures in the Punjab.

"Tenure" means the kind of right or title by which (especially real) property is held. It thus simply describes the relation of a person or group of persons to certain land and the rights therein and the liabilities pertaining thereto.

Of all kinds of property that in land has most deeply affected both the economic condition and the political career of human societies. It shall, therefore, be of interest to note the development of the idea of property in land.

Speaking of the progressive evolution of the general idea of property in land, Mr. De Laveleye's writes.[1]—"So long as the primitive man lived by the chase, by fishing or gathering wild fruits, he never thought of appropriating the soil; and considered nothing as his own but what he had taken or contrived with his own hands. Under the pastoral system, the notion of property in the soil begins to spring up. It is, however, always limited to the portion of land, which the herds of each tribe are accustomed to graze on, and frequent quarrels break out with regard to the limits of these pastures. The idea that a single individual could claim a part of the soil as exclusively his own never yet occurs to any one; the conditions of pastoral life are in direct opposition to it.

Gradually, a portion of the soil was put temporarily under cultivation and the agricultural system was established; but the territory, which the class or tribe occupies, remains its undivided property. The arable, the pasturage and the forest are formed in common. Subsequently, the cultivated land is divided into parcels which are distributed by lot among the several families, a mere temporary right of occupation being thus allowed to the individual. The soil still remains the collective property of the class to whom it returns from time to time, that a new partition may be effected.

By a "new step" of individualization, the parcels remain in the hands of groups of patriarchal families dwelling in the same house and working together for the benefit of the association.

Finally individual hereditary property appears. It is, however, still tied down by the thousaud fetters of seignorial rights. It is not till after a last evolution, sometimes very long in taking effect, that it is definitely constituted and becomes the absolute, sovereign, personal right."

Thus at different times very different rights and advantages are included under the ided of property. At very early periods of society it included vey few : originally, nothing more perhaps than use during occupancy, the commodity being liable to be taken by another the moment it was relinquished by the hand which held it : but one privilege is added to another as society advances and it is not till a considerable progress has been made in cultivation, that the right of property involves all the powers which are ultimately bestowed upon it. Property in land as a transferable marketable commodity absolutely owned

1. Primitive Property, page 3.

and passing from hand to hand like any chattel is not an ancient institution but a modern development (*Essay on Indian Land Tenures*, Sir George Campbell).

At present the main features of proprietary right are :—

(*a*) that the right holder is entitled to the use and occupation of the land during his lifetime ;

(*b*) that on his death his title passes to his descendants subject to customary rules of inheritance, which usually exclude females ;

(*c*) that the right-holder is entitled to let the land to tenants on such terms as he thinks fit ;

(*d*) that the right-holder can sell or mortgage the land subject to customary and legal restrictions which give to members of the same family or village community a right to interfere in certain circumstances ;

(*e*) that the right-holder is entitled to engage for the payment of the land-revenue.

(S. M., para. 120).

Indian Village Community.—Among the phenomena which India presents to the student of social institutions none are more interesting and important than its village communities. The constitution and form of these have not been exempt from the general laws of progress and decay, but the characteristic features of Indian village life have been handed down with extraordinary pertinacity from a distant past. The typical Indian village has its central residential site, with an open space for a pond and a cattle stand. Stretching round this nucleus lie the village lands, consisting of a cultivated area and (if possible) grounds for grazing and wood-cutting. But we are to distinguish two distinct types of villages : one is where the landholders are disconnected aggregates of families each claiming nothing but its own holding.—The *Raiyatwari* or *Non-Landlord Type* ; the other is where a class in the village, or it may be the entire body, claim to be a superior order, descendants of former rulers, or colonizing—founders, or conquerors or grantees, or, later on, of revenue-farmers and auction purchasers who claim jointly the entire estate ; and this is the *Joint* or *Landlord Village Type*. It is the second form that prevails in the United Provinces of Agra and Oudh and in the Punjab.

It has been observed (*The Indian Village Communities Baden Powell, page* 400) that the right to land grows out of two ideas ; one being that a special claim arises, to any object or to a plot of land, by virtue of the labour and skill expended on making it useful or profitable ; the other, that a claim arises from conquest or superior right. In a very early stage, a body of primitive settlers comes to a "boundless" area of wooded or jungle-clad but fertile plain. As each household group laboriously clears and renders fit for cultivation a certain area, the father, or the united family, as the case may be, regards the plot as now connected with himself or themselves specially, in virtue of the labour expended on it. This claim is recognised by all, because every other member of the class has the same feeling as regards the field he has cleared. The feeling of right is further developed when each holding is the result not merely of a random choice, but of some regular procedure of allotment of the class chief.

If there are no other human beings to contest the ownership, although the class occupies a more or less compact general territory, the sense of any wider or more general class-right is not as keen as it afterwards becomes when other, very likely unfriendly, class lie all-round, and each has to maintain its own limits against aggression. The idea of class-right to the territory must soon, in the natural course of events, become definite.

.....

But very soon another factor comes into the question : when tribes multiply, and, moving east or west. come into conflict and one is superior in energy and in power of combination to another, the possession no longer remains a matter of first appropriation in the absence of all other claims. Might becomes right, and conquest gives a new title .....,.....

But it is also a further phase of class development, under the necessity for military discipline, and organised movement, that the patriarchal rule of chiefs gives way to a system of kings and barons, as subordinate chiefs. And no sooner are these dignitaries acknowledged than there arise various kinds of territorial lordships which may take the form of a kingdom, or local chiefship or a sort of manorial holding of smaller portions of land.....It expresses itself by taking a share in the produce raised by tenants, dependents, or a pre-existing body of agricultural settlers, and it is made tolerable to the now subordinate original settlers by the degree of protection which the over-lord even in his own interest, affords to the villages from which he derives his revenue or income (*Ibid., page* 403).

" It is commonly said that property in land passes through three stages. First, it is held by the tribe or class, and is regarded as the common property of the whole body. Holdings indeed are allotted or recognized, because without that agricultural labour could not be performed ; but periodically the holdings are exchanged or redistributed .....The next stage is reached when redistribution is abandoned because each several holding—that of the man with his sons, has become improved, and each family desires to retain permanently its own. But still the *pater familias* is not the individual owner : he cannot sell or will away the holding. He must share it equally with his sons if he makes a partition and on his death it will go to all sons equally, or to all other heirs if there are no surviving sons.

That is said to be the stage when property vests in the family..... .....But gradually the desire to profit by one's own skill and labour individualizes property. A number of things conduce to this end. Family quarrels are an unfortunate but very common factor. Differences of taste and agricultural capability also have their sphere. Coined money comes into use, and men begin to buy and sell land. Finally, families break up, and *individual ownership* is the third or final condition " (*Land Systems, Baden-Powell, Vol. I, page* 110).

The historical researches of both the eminent writers Sir Henry Maine and M. de Laveleye coincide in establishing that the separate ownership of land is of modern growth, and that originally the soil belonged in common to communities of kinsmen. Baden-Powell, however, holds that in India the process was just the reverse : the earliest idea was appropriation by the individual, *i.e.*, the fathers of the

family ; that this gradually develops into an idea of equality between all the sons in succession to the father's property which leads to the idea of a joint ownership by a close kindred of which the father is the head. When a number of such families of common descent, kept together by circumstances, continually fighting side by side and conquering together have acquired and settled on a new land, they constitute a clan, and there is, further, a kind of collective sense of right to the whole, which is over and above the family right to the several lots that fall to each, and is largely dependent on the sense of unity which class life naturally produces, and on the sense of the right of every member to share in the common acquisition."

(*Indian Village Communities, page* 406).

Origin of villages of landlord type.—The villages of the joint landlord type have thus arisen :—

(1) Out of the dismemberment of the old Raja's or Chief's estate, and the division or partition of larger estates.

(2) Out of grants made by the Raja to courtiers, favourites, minor members of the Royal family, etc.

(3) By the later growth and usurpation of Government Revenue officials.

(4) By the growth of Revenue farmers and purchasers, when the village has been sold under the first laws for the recovery of arrears of revenue.

(5) From the original establishment of special clans and families by conquest or occupation, and by the settlement of associated bands of village families and colonists in comparatively late times.

After these preliminary observations, we shall proceed now to the special features in the Punjab.

Village communities in the Punjab.—What attracts attention most throughout the Punjab, is the prevalence of village communities, and the fact that they are most strong, well preserved, and the greater part of them of the joint or landlord type. In this province, however, we have an almost total absence of the class of villages owned by descendants of the manager, revenue-farmer, or auction-purchaser ; and we cannot trace any general earlier existence of villages which were aggregates of separate cultivators, or observe the upgrowth of landlord-bodies over them.

Both the North-West Frontier and Central districts exhibit tribal joint (and landlord) villages from the first. And we have also a special class of colony villages in the South-East.

The origin of Punjab villages will be found more or less to the following sources :—

(1) The conquest and settlement of great tribes like the Jat and Gujar, at a remote date.

(2) The later return and settlement of adventurers. Rajput and other small bodies of tribesmen, or single colonists whose descendants have now multiplied and spread.

(3) The comparatively late immigration of tribes into the districts of the North-Western Frontier.

(4) The establishment of bodies of associated colonists (South-East Punjab).

(5) The aggregation, under the present revenue system, of individual families of cultivators and settlers into villages.

Complexity in Tenure—ownership undivided or divided, and communal or non-communal.—Maine has observed that "the rights of property are.....a bundle of powers capable of being mentally contemplated apart and capable of being separately enjoyed."[1] Where an individual or a community is found in possession of all the privileges which have been noted above as the marks of proprietary right, he may be said to enjoy, subject always to the lien of the State on the produce of the soil, complete ownership. But the individuals who occupy the land and pay the revenue may be bound to render certain dues to another person, who is known in the language of revenue codes as a superior proprietor or *ala malik*. The latter's interest in the estate may be limited to the receipt of this quit rent, or he may have considerable rights over the waste lands included within its limits, though he has no power of interference in the management of the cultivated holdings. Or, on the other hand, the man who pay the revenue of the land may have no right to till it, but merely to receive a rent fixed by authority from a cultivator who has been held to have a permanent and heritable right of cultivation. Such cultivator is known as an occupancy tenant.....This gives us one primary division of ownership into *complete or undivided*, and *incomplete* or *divided*. Moreover, the land of an estate may be held by a community jointly responsible for the payment of the land revenue, holding part of the estate in common, and raising a certain amount of money for common expenses. Or again each holding may be a separate unit of which no part is subject to common rights and whose owner is responsible for its revenue and for nothing further. The former which may be called the *communal tenure*, is the form which property has taken in the village communities of a large part of the United Provinces and the Punjab. The latter is very similar to the well-known *raiyatwari* tenure of Southern India. It exists here also in law and in fact in the *malik kabza* tenures which are common in the Rawalpindi Division and not unknown elsewhere. It exists in fact, if not in law, throughout a considerable part of the south-western Punjab.

Proprietary right may therefore be classified as—

(1) Undivided ownership—

(*a*) Communal. Example—Village community in which there are no superior proprietors or occupancy tenants.

(*b*) Non-communal. Example—*malik-kabza*.

(2) Divided ownership—

(*a*) Superior or *ala malik* { 1. Communal. 2. Non-communal.

(*b*) Inferior or *adna malik* { 1. Communal. 2. Non-communal.

(*c*) Occupancy tenant. (*Settlement Manual, paras.* 60 *and* 61).

Official classification of village tenures.—The recognition of special features of village tenures has led to their official classification under the following heads :—

(1) *Zamindari* { (*a*) landlord (*khalis*). (*b*) communal (*mushtarka*).

1. Maine's Village Communities, 5th edition, page 158.

(2) *Pattidari* { (*a*) perfect (*mukammil*). (*b*) imperfect (*na-mukammil*).

(3) *Bhaiachara* { (*a*) perfect (*mukammil*). (*b*) imperfect (*na-mukammil*).

Zamindari estates are those owned by a single proprietor, or in common by more than one. Those of the landlord type are possessed in full proprietary right by a single owner. Such tenures are not co-parcenary. *Zamindari* tenures of the communal type are those in which the whole of the land is held and managed in common. Whatever land the owners cultivate themselves is occupied by them as tenants of the community. "Their rights are regulated by their shares in the estate, both as regards the extent of the holdings they are entitled to cultivate and as regards the distribution of profits, and if the profits from land held by non-proprietary cultivators are not sufficient to pay the revenue and other charges, the balance would ordinarily be collected from the proprietors according to the same shares."

Pattidari villages are those in which each proprietor owns not the particular fields which he holds, but a specific ancestral share in the whole estate. Perfect or complete *pattidari* tenures are those in which all the lands are divided and held in severalty by the different proprietors according to ancestral or other customary shares, each person managing his own lands and paying his fixed share of the revenue, while all are jointly responsible in the event of any one share-holder being unable to fulfil his obligations to Government. Imperfect or incomplete *pattidari* tenures are those in which part of the land is held in severalty and part on commonalty, and the interests of the landowners in both correspond to well-known customary shares [See also 1 P.R. 1899 (Rev.)].

Bhaiachara villages are those in which every man is owner of only as much land as is in his possession, or as it is commonly put "possession is the measure of right." In perfect *bhaiachara* tenures all the lands are held in severalty, but customary shares, if they ever existed, have disappeared and each man's holding, or rather the portion of the total revenue which he pays, has become the sole measure of his rights and liabilities. An imperfect *bhaiachara* differs from a perfect *bhaiachara* estate in exactly the same way as an imperfect *pattidari* differs from a perfect *pattidari* estate.

Thus mixed forms of the above tenures also exist, combining peculiarities of one tenure with those of another. The different forms of tenure described above are not in their nature permanent. A landlord *zamindari* estate at once becomes a communal *zamindari* estate when the sole owner dies leaving several sons behind him. Sooner or later the joint hold is split up on shares. The estate then becomes *pattidari*. If they effect a partition of any part of the joint property an imperfect *pattidari* tenure results. Gradually the lands held by each shareholder become more and more unequal in value and extent and possession diverges widely from ancestral shares. It then becomes necessary to do away with the old arrangement by shares, and to recognise possession as measure of right, though for certain purposes, such as *malba* payments, the owners sometimes elect to continue to be bound by the old shares. The tendency is for all villages to become *bhaiachara* estates (*See Settlement Manual, paras.* 135 *to* 141).

It is not always safe to assume that *pattidari* has the same meaning in an Act of the Legislature as it has in revenue rules or instructions. [*S.M., para.* 137; 1 P.R. 1899 (Rev.)].

Superior and inferior owners.—Reference has already been made to the possibility of existence of superior and inferior owners in the village. There were various causes which led to the superimposition of one right over the other, but the most obvious in the Punjab are the right of conquest and the various grants given by native Governments from time to time. Where the proprietary right is divided the superior owner is known in settlement literature as *ala malik* or *talukdar*, and the inferior owner as *adna malik*. The local names given to these tenures are not uniform.

According to Cust[1] among sub-proprietors we find—

1. Descendants on the female side from the original locators of the village, who received a small plot of land as a marriage portion.
2. Descendants of those who assisted in the location of the village but, not being of the same caste or tribe as the locators, were not admitted to the village community.
3. Cultivators who have not only asserted by prescription a right of occupancy, but, by lapse of time, or by permission, have freed themselves absolutely and for ever from paying rent.
4. Owners of plots of land the revenue of which was assigned to their own use by the native Government but which has been resumed by the British Government, leaving them the indulgence of a lease at reduced and fixed rates.
5. Purchasers of plots of land for houses, gardens, manufactories, etc.
6. Purchasers of waste land within village boundaries.
7. Cultivators who were once tenants, but who by private purchase or auction sale have converted their occupancy into ownership.
8. Parties who have purchased heritable and transferable rights in the village without becoming members of the proprietary community.
9. Parties who have been placed in possession of ownerless lands by a grant of Government.

Obviously the above classification includes the tenure what we commonly call "*malik kabza.*" These owners not belong to the brotherhood and are not sharers in the joint rights, profits, and responsibilities of its members. Their proprietary title is confined to certain fields and does not include any share in the village waste. This land he can let, mortgage, or sell as he pleases, and he is responsible for the payment of its revenue (*S.M., para.* 142).

But when there are superior (*malik ala*) and inferior (*malik adna*) proprietors, the former simply levies a sort of customary rent from the latter, who actually occupies the soil, either cultivating themselves or through agents. The rights of *ala* and *adna maliks* vary in different parts of the province.

There are two important ways in which the classes of *ala maliks* and *adna maliks* have been created in a village. *First* where the *ala maliks* so called are mere *talukdars* whose ancestors have been farmers of revenue or conquerors who have been content to leave all the management, etc., of the lands to the conquered peasantry and to take quit-rents.

1. Revenue Manual, page 33.

Scondly, where the *ala maliks*, originally the sole proprietors of the soil of the village have called in outsiders and settled them on some or all of the lands.

Distinction between "ala malik" and "talukdar".—The word "*ala malik*" literally means "superior proprietor' and the word '*talukdar*' conveys the idea of a land-holder or an over-lord. A *talukdar* may be an *ala malik* but it is not necessary that he should be so. All those persons who claimed this status at the time of the annexation of the Punjab by the British Government were really those petty chieftains who had settled with the Sikh Government for the payment of the revenue of locality in which they held sway or occupied some position of trust and responsibility. Though it is difficult to lay down any hard and fast rules which governed the settlement of such claims at the time of the trust regular Settlement, yet a study of the history of those times leads one to conclude that where the Government was satisfied that when the village had been founded by the ancestor of the claimants, their status was recognised as that of *ala maliks*; but where this was not the case and it was only proved that under the Sikh rule the claimants had exercised some sort of superior rights or had helped in the realization of land revenue, their rights were recognised as those of *talukdars* and the persons so recorded in the revenue papers were allowed a fixed percentage of the land revenue payable by the State.

The status of *ala maliks* carries with it certain privileges which a mere *talukdar* does not enjoy, and hence the important distinction between these two different kinds of tenures. An *ala malik* may *inter alia* be entitled to all the unculturable land in the village; he may possess the right of reversion or in other words the right of succession to all lands whose owners die without an heir; he is entitled by the law of pre-emption to exercise a preferential right of purchase on the sale of inferior proprietorships and he may claim a share of the sale money for himself if the inferior proprietorships are sold. But a *talukdar* is not entitled to any such privileges.

The *talukdars* are sometimes *ala maliks* of the village and as such own all uncultivated lands and have been recorded as *ala maliks* in the papers. Elsewhere, they have no rights of any description in the *talukdari* villages except to receive these dues and they have nothing to do with the payment of the revenue—*Ghulam Mohd. Khan and others* v. *Samundar Khan and others* (A.I.R. 1936 Lah. 37).

Muqarraridar.—Inferior in decree to a *malik-makbuza* is a *muqarraridar*, who is regarded as having an inheritable estate in the land he occupies, from which he cannot be ousted so long as he pays the fixed quit-rent to the proprietors [See 5 P.R. 1873; 67 P.R. 1890; 10 P.R. 1896 (Rev.); 16 P.R. 1905; 2 P.R. 1884 (Rev.)]. A *muqarraridar* of the Attock District is a tenant and not an inferior proprietor (71 I.C. 811). The status of a *muqarraridar* in the Rawalpindi division is described in 10 P.R. 1896 (Rev.) (See also 99 I.C. 962).

In Hoshiarpur District, at the time of the Revised Settlement one of the questions which came under consideration, connected with the new record of rights, was the status of *muafidars* or *ex-muafidars* on the land held by them. Unless a *muafidar* happened to be a member of the proprietary body at the first regular settlement, the usual entries in the old record were to show the land as part of the village common property (*shamilat-deh*) and to write the *muafidar's* name in the column of tenant simply as *muafidar*. Where the *muafis* were resumed, and

where the settlement of the plot has not been made with the *ex-muafidar*, or his heirs, the name of the *muafidar* has disappeared from the record; but where the settlement has been made with the *ex-muafidar*; or his heirs, their names have often been still shown in the tenants' column with the word *mukarraridar* after them (*Revised Settlement Report of Hoshiarpur District, page* 155).

Main characteristics of tenures in the Punjab.—In a discussion of land tenures the province may be roughly divided into five tracts—

(1) The plains of the Eastern and Central Punjab.

(2) The Himalayan tract to the north of these plains in so far as it is British territory.

(3) The Pathan tract lying mainly beyond the Indus and comprising the districts of Peshawar, Kohat, Bannu and Dera Ismail Khan.

(4) The South-Western Punjab.

(5) The North-Western Punjab and Hazara, embracing the districts of Jhelum, Attock, Rawalpindi, Gujrat and Hazara.

(1) *The plains of the Eastern and Central Punjab.*

The distinguishing mark of this division is the prevalence of well organized village communities. They are found in their purest form in the south-east of the province, and here it will generally be found that the proprietary body in each estate or main sub-division of an estate claim to be kinsfolk and that ancestral shares or some other definite measure of right, such as ploughs is, or at least in comparatively recent times was, recognized. In the north west of this division the communities were often much less homogeneous. *Talukdari* tenures are not common in the districts of the Eastern and Central Punjab.

(2) *Tenures of Kangra and Simla.*

In the hills no village communities in the proper sense exist. The villages recognized in our records are artificial collections of hamlets or holdings corresponding with the *tappas* or circuits which the hill Rajas formed for the sake of fiscal convenience. The individuals in possession of these grouped holdings are united by no real or pretended bond of relationship.

Every holder of land derived his title from a *patta* or deed of grant given to himself or his ancestor by the Raja. He called his right a *warisi* or inheritance. The *waris* had a permanent title in his holding. As regards the waste the landholders had merely rights of user which were not measured by the amount of land in their possession and were in fact shared by residents in the same *tappa* who had no land at all. Grazing fees were exacted from all alike. Subsequently at the time of the first Regular Settlement defined boundaries were assigned to waste and became the *shamilat deh*, though the rights of Government in valuable trees were reserved. In some cases *jagirdars* in Kangra who are representatives of old ruling families enjoy *talukdari* rights. These as regards cultivated holdings have been commuted into a percentage of the land revenue, but the rights enjoyed over the waste are sometimes very considerable.

(3) *Pathan tenures.*

When a tract was occupied by an invading tribe a partition took

place. The lot of each main sub-division of a tribe was sometimes called a *tappa* and described as its *daftar*, the individual proprietors being known as *daftaris*. Where circumstances required it, the lot was divided into *vands* according to the nature of the soil, facilities for irrigation, etc., and the number of *bakhras* or shares, which was to be the basis of division was calculated, one being often allotted to each man, woman and child. Each share properly included an allotment from each *vand* or at least from each kind of land so that a man's possessions might be a good deal scattered. But the whole or the main portion of the property of a sub-section (*khel*) of a tribe usually consisted of a single block of land, in the middle of which it built a village called after its name. The block was divided into *vands*, so that all might share alike. The *maliks* or leading men, and even the *khan* or chief, got no more than any one else in the division, but the latter sometimes received certain lands, as *seri* or a free gift from the tribe.

A pathan village did not consist wholly of proprietors. There were dependent cultivators known as *fakirs*, and also village servants and artizans. Both classes held land free of charge in return for service in peace and war to the *daftris*. Hamlets (*bands*) were established on the outskirts of the *tappas*, and occupied largely by *malatars* (loin-girders) or *hamsayas* who held land on condition of repelling raids on the territory of the tribe under whose shade (*saya*) they sat, and assisting in making raids on its rivals, but were free from any obligation to render the ordinary village service exacted from *fakirs*, menials and artizans.

His personal energy and powers, the favour of the ruler or the official position he had acquired as a revenue farmer or *jagirdar*, often enabled a *khan* to assert large rights in the unoccupied waste included within the bounds of a sub-section of a tribe, and enjoyed for common purposes of pasturage, etc.

As has already been noted before on page 488, to secure a continuance of the original equality of conditions it was customary to make *vesh* or redistribution of the land by lot at fixed intervals, if a majority of the community so desired.

In course of time the tenures described above might pass in a period of enforced peace into forms of property not widely different from the ordinary village community and *talukdari* tenures.

(4) *Tenures of South-Western Punjab.*

True village communities are rare in South-Western Punjab. In this tract the rainfall is extremely scanty and outside the river valleys the country was once, and to a considerable extent still is a grazing ground for sheep and a browsing ground for goats and camels. Hence one of the most essential features of the village tenure, the common waste, could not exist. The nature of the cultivation also opposed insurmountable obstacles to the growth of a village system. The unit of property is the well or, in the lands adjacent to hill torrents, the large embanked field or *band*.

An estate was often a mere group of scattered wells with the addition of a large block of the surrounding waste which was declared to be the common property of the well owners. A widespread, though far less universal feature of land holding in the South-Western Punjab is the recognition of two distinct classes having separate proprietary interests in the soil. Most of these superior proprietors are descendants of tribes who came here for grazing at a time when the country was depopulated

while some others are the descendants of *jagirdars* and former governors or officials who lost their position in troubled times, but were able to retain a right to a small grain fee in the tract over which they once exercised powers. Others are descendants of holy men who formerly held land free of revenue but whose rights have been circumscribed by successive Governments. The *chakdars, silhadars* and similar other tenures represent the sub-proprietary class or *adna maliks. Adhlapi* and *tarraddadkar* tenures are also worth noticing (*See Settlement Manual, pages* 76 *to* 83).

(5) *Tenures of the North-Western Punjab.*

The juxtaposition of dominant families and clans and of a miscellaneous collection of inferior tribes is a feature of the North-West as of the Punjab. There are generally recognised four classes of owners—

(*a*) talukdars as ala malikan,
(*b*) malikan or warisan,
(*c*) adna malikan,
(*d*) malikan kabza.

In Gujrat the original landowners were generally recognised as full proprietors, but a considerable body of *malikan kabza* was also created who paid nothing but the revenue assessed on their holdings but had no share in the village waste. In Rawalpindi full proprietary right was conceded to most of the persons found in possession of the soil. Where *talukdari* rights were admitted, the *talukdars* were given no rights in the common lands. This is also a feature of the land tenures of the Attock district. Some of the leading families there were able to maintain so strong a position that we still find large properties consisting of several or even many villages owned by a single person or by a small group of near relations. Some of the *talukdars* not only receive allowances from the inferior owners but also own the waste. The peculiar *mukarraridari* tenure of Attock may be studied in the Punjab Tenancy Act. Almost similar conditions exist in Jhelum District.

For detailed account see Chapter VIII of the Punjab Settlement Manual, from which the facts narrated above have been digested.

For tenures relating to landlords and tenants, see the Tenancy Act, and Appendix XII of the Author's Commentary on the Punjab Tenancy Act, 1887 (2nd Edn.).

APPENDIX IV

Rules for the Determination of Boundary Disputes in which Native States are concerned.

(Punjab Government Consolidated Circular No. 25).

The following instructions relating to the determination of disputed boundaries between estates in Native States in the Punjab and British territory have been framed by the Lieutenant- Governor after consulting the Darbars concerned, and are in future to be observed, except as regards such disputes affecting the Simla Hill State :—

1. The procedure to be followed when an officer has been specially appointed to decide boundary disputes between two Native States or between villages in the same State, is contained in the rules for the settlement of boundary disputes between Native States in Rajputana and in the Punjab, which were promulgated with the sanction of the Government of India in 1887 and are attached (Appendix A) to this circular for facility of reference. So far as may seem desirable the detailed procedure laid down in the rules may be followed in deciding disputes between a British District and a Native State in regard to matters for which provision is not expressly made in these instructions.

2. Where the boundary line follows the course of a river or is otherwise mutable and needs to be relaid yearly in accordance with accepted custom or express orders, this should continue to be done according to past practice, by which the local Revenue Officers on the British District and Native State concerned have usually met for the purpose in question after due intercommunication for fixing a date convenient to both sides. It is very important that the work should be finished before the end of the cold weather. The Deputy Commissioner of the British District concerned will therefore communicate with the officials of the Native State early in the camping season and arrange the necessary meeting for the earliest possible date. It is desirable that a copy of the map showing the disputed boundary, if such a map exists, should be sent to the Native State official before the date fixed for the meeting, as this procedure will save time. In general it is to be hoped that the joint local enquiry will result in an arrangement as to the line which should be laid down. But in some cases a difference of opinion may occur. It is necessary to provide for both contingencies. If an agreement be arrived at it will be carefully recorded by the revenue officials of the British District in the necessary papers which will include a map showing the accepted lines. The finding and the map should be attested by the officials on both sides. In cases in which no agreement can be arrived at by the officials making the local enqiury, the British official will record his own finding and the reasons for it and will illustrate it with such maps as may be necessary. He will also ask the native state official for a copy of the finding arrived at by the latter, and, if this is furnished, the British official will add it to his file, and will at the same time supply a copy of his finding to the Native State official.

3. In every case, whether an agreement has been arrived at or not, the proceedings will be submitted to the Commissioner. The Commissioner will make any enquiries which he may deem necessary from the

British authorities and from the Native State, and, if the dispute is between a village or villages in his Division and in a Native State under his political control, will pass orders in the case. If otherwise, he will report to Government what boundary he considers should be fixed, forwarding a copy of his report to the Deputy Commissioner and to the proper officer of the Native State concerned. It will be open to the Darbar to make any representation which it may choose to prefer to the Punjab Government on the subject of this report if it should consider it necessary to do so, but such representation should be made within sixty days of receiving the report in order that a final decision upon the matter may not be unduly delayed. Similarly, the Deputy Commissioner will, during the same period, if he thinks it necessary to do so, make any representation which he may consider necessary through the Commissioner. If neither the Native State nor the Deputy Commissioner take action as above indicated within sixty days of the date on which the Commissioner's report is received, it will be taken that the boundary proposed by the Commissioner is accepted, and the matter will be held to have been finally settled.

4. Where a regular settlement is in progress along the boundary line of a Native State due intimation of the fact will be given to the State by Commissioner of the Division in which the operations are being carried on. This intimation will be to the effect that survey operations along the boundary will be presently undertaken, and that the Settlement Officer will give due notice of the date when the measurement work in each estate will actually approach the boundary, and it will contain a request that the necessary orders may be issued to the proper State officials to be present both when measurements are being made and when it is desired to attest the boundary resulting from these measurements. It will also request that the names of these officials may be at once intimated so that the Settlement Officer may correspond direct with them in all unimportant matters connected with the subject in question. During the first stage or operations above mentioned it will usually be sufficient for the State patwari or kanungo or other subordinate Revenue Officer to be present. If during the progress of this stage it is necessary for the settlement official to extend their work across the accepted boundary line, the Settlement must first intimate the necessity to the State and obtain its assent, unless the work is done with the assent and in the presence of the Revenue Officials of the State. On the occasion of the actual attestation of the boundary an officer corresponding to the rank of Tahsildar or Extra Assistant Commissioner should be deputed by the state, and in any special case in which the Settlement Officer himself may think it desirable to be present an official of suitable rank should be sent to meet him.

The procedure to be followed thereafter will be the same as that laid down in paragraphs 2 and 3.

5. In any boundary case for which there is no custom, rule, or order, or in which any new question of principle arises, reference will always be made by the Commissioner of the Division, to the Financial Commissioner who will, if necessary, refer to Government, and the Darbar will be consulted in regard to the matter in due course. The special procedure prescribed in paragraphs 2 and 3 above will thus be confined to cases falling under those paragraphs. In other cases no change will be introduced in the procedure hitherto followed, except in the case

of a settlement, when the Commissioner of the Division in which the British District under settlement is situated will inform the State concerned when the measurements commence so that unnecessary delay and correspondence may be obviated in arranging for the correct survey of the boundary.

6. It will be understood that when the case originates with the Native State or when a settlement is in progress in such a State the preceding provisions *mutatis mutandis* apply.

APPENDIX A

Rules for the Settlement of Boundary Disputes Between Native States in Rajputana and the Punjab.

(*See the Punjab Government Consolidated Circular No.* 25).

Treatment of lands transferred by avulsion from British to Indian States territory.

(*Punjab Land Records Manual, Chapter 5*).

Treatment of lands transferred by avulsion from British to Indian States Territory.

5·2. The orders of the Government of India, issued in 1860 are applicable to all cases regarding the jurisdiction and dominion of lands transferred by avulsion from one bank of a river to the other which ordinarily forms the boundary between British Territory and Indian States. In those orders it was declared that "it is not correct to assume that, as betwixt soverigns the only safe rule of practice is that the main river should be the boundary, irrespective of all other considerations. The rule is such only in cases of alluvion, and not in those of avulsion. When a boundary river suddenly quits its beds and cuts for itself new channel, it ceases to be the boundary, and the Government which ruled over the territory cut off by the change in the river continues to rule it."

The question of proprietary right in the land is a totally different one from that of territorial jurisdiction, and remains unaffected by the decision on the latter question (paragraph 12 of Foreign Department No. 3631, dated 24th August, 1860).

It has been ruled by the Punjab Government that the rule affirmed by the Government of India is to be regarded as having been in operation from the date of issue of the orders above appended, and for no anterior period. In deciding boundary disputes to which the rule is applicable, reference must accordingly be made to the status of August, 1860, as the basis of decision, subject to such modifications as, under the operation of the rule regarding gradual accretion or erosion, will have to be made, but no transfer by avulsion of land capable of identification, which has taken place subsequent to the orders of 1860, will be held to have affected the boundary.

As long ago as 1867, it was proposed to adopt fixed boundaries everywhere but the proposal was regarded as impracticable because of the lack of skill in survey work among the subordinate revenue staff. This objection has been overcome by the utilization of the services of the Survey of India and the first Act passed by the Punjab Legislative Council was one (Punjab Act I of 1899) enabling Government to order the substitution of fixed for varying boundaries in estates subject to river action. It added six sections, 101-A to 101-F, to the Punjab Land Revenue Act, XVII of 1887, and made additions to section 158 of the same Act, and to the second and third sections of Regulation XI of

1825. The Financial Commissioners' instructions relating to the sections of the Land Revenue Act, referred to above, will be found in the appendix to this Chapter.

As a result of this enactment between the years 1903 and 1929 fixed boundaries have been laid by the Survey Dept. in over 1871 linear miles of river in the five rivers of the Punjab and the Indus, Jumna and Chakki. The sole remnants of the deep stream rule survive in the Jumna in Karnal, Rohtak and Gurgaon and the Indus river in part of the Attock district.

APPENDIX V

Revenue Agents.

See Financial Commissioner's Standing Order, No. 4, Appendix XIII of the Author's Commentary on the Punjab Tenancy Act, 1887. (2nd Ed.).

APPENDIX VI

THE BENGAL ALLUVION AND DILUVION REGULATION 1825 (XI of 1825)

As amended by—

Punjab Act I of 1899.

Act I of 1903.

A regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.

Preamble.

1. In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the provinces immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, chars or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by and encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side ; similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal.

The lands gained from the rivers or sea by the means above-mentioned are a frequent source of contention and affray, and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming chars or other lands gained in the manner above described.

The Court of Sadr Diwani Adalat, with a view to ascertain the legal provisions of the Muhammadan and Hindu laws on the subject, called for reports from their law-officers, of each persuasion, and on consideration of the reports furnished by the law-officers in consequence, as well as of the decision which have been passed by the Court of Sadr Diwani Adalat in cases brought before them in appeal, which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor-General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of the Courts of Judicature ; to be in force, as soon as promulgated, throughout the whole of the provinces subject to the Presidency of Fort William.

1. The whole of the Reg. XI of 1825 was declared to be in force in the Punjab by the Punjab Laws Act, 1872 (IV of 1872), S. 3 and Sch. I.

Short title. "The Bengal Alluvion and Diluvion Regulation 1825, see the Repealing and Amending Act, 1897, (V of 1897).

Claims and disputes as to alluvial lands to be decided by usage when clearly recognized and established.

Whenever any clear and definite usage of *shikast paiwast* respecting the disjunction and junction of land by the encroachment or recess of a river, may have been immemorially established, for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as the main channel of the river dividing the estate shall be the constant boundary between them, whatever changes may take place in the course of the river by encroachment on one side and accession on the other), the usage so established shall, [1](unless and until a boundary is fixed under the provisions of section 101-A of the Punjab Land Revenue Act, 1887, as amended by the Punjab Riverain Boundaries Act, 1899), govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

Where no usage established, claims how decided.

Where[1] (no boundary has been fixed under the provisions of section 101-A of the Punjab Land Revenue Act, 1887 as amended by the Punjab Riverain Boundaries Act, 1899, and) there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or dereliction either of a river or the sea.

Land gained by gradual accession from recess of river or sea.

4. *First.*—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a zamindar or other superior landholder, or as a subordinate tenure by any description of undertenant whatever :

Extent of interest in increment of person in possession.

Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819, or of any other Regulation in force.

When river by sudden change of course intersects estates.

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate, and join it to another estate without destroying the identity, and preventing the recognition of the land so removed.

Chars or islands thrown up in navigable river.

Third.—When a char or island may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usuage be at the disposal of Government.

Property therein when channel fordable.

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or tenures of the persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession.

1. These words were inserted by the Punjab Riverain Boundaries Act, 1899.

Fourth.—In small and shallow rivers, the beds of which, with the jalkar right of fishery, may have been heretofore recognized as the property of individuals, and sand-bank or char that may be thrown up, shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section. Sand-banks or chars thrown up in small shallow rivers.

Fifth.—In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice. Disputes relative to land gained by alluvion or by dereliction not provided for by Regulation.

5. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels of navigable rivers to prevent Zila Magistrates, or any other officers of Government, who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise. Encroachments on beds of navigable rivers and other obstructions.

THE PUNJAB RIVERAIN BOUNDARIES ACT, 1899.

(Incorporated in sections 101-A to F and in section 158, XVII of the Punjab Land Revenue Act, 1887, and in sections 2 and 3 of Bengal Regulation No. XI of 1825).

APPENDIX VII

The Revenue Recovery Act.

ACT NO. I OF 1890.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 14th February, 1890.)

As amended by Act XIII of 1898, Act IV of 1914 ; Act X of 1914.

An Act to make better Provisions for Recovering Certain Public Demands.

Whereas it is expedient to make better provisions for recovering certain public demands : It is hereby enacted as follows :—

Title, extent and commencement.

1. (1) This Act may be called the Revenue Recovery Act, 1890.

(2) It extends to the whole of British India, inclusive of British Baluchistan.

Definitions.

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

(1) "district" includes a presidency-town ;

(2) "Collector" means the chief officer in charge of the land-revenue administration of a district ; and

(3) "defaulter" means a person from whom an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

Recovery of public demands by enforcement of process in other districts than those in which they become payable.

3. (1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(*a*) the name of the defaulter and such other particulars as may be necessary for his identification, and

(*b*) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, or by any officer, to whom such Collector may, by order in writing, delegate this duty and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

Remedy available to person denying liability to pay.

4. (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part

thereof and pays the same under protest made in writing at the time of payment* and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid. amount recovered under last foregoing section.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

*(4) This section shall apply if under this Act as in force as part of the law of Burma, or under any other similar Act forming part of the law of Burma proceedings are taken against a person in Burma for the recovery of an amount stated in a certificate made by a Collector in British India.

5. Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which had accrued in his district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself. Recovery by Collector of sums recoverable as arrears of revenue by other public officer or by local authorities.

6. (1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immovable property belonging to the defaulter in the district. Property liable to sale under this Act.

(2) The Collector may at any time, by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the [1][Crown] and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immovable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

7. Nothing in the foregoing sections shall be construed— Saving of local laws relating to revenue.

(*a*) to impair any security provided by, or affect the provision of, any other enactment for the time being in force for the recovery of land-revenue, or of sums recoverable as arrears of land revenue, or

*Added by the Government of India (Adaptation of Indian Laws) Order, 1937.

1. Substituted for 'Government' by the Government of India (Adaptation of Indian Laws) Order, 1937.

(*b*) to authorise the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force.

Recovery in British India of certain public demands arising beyond British India.

8. When this Act has been applied to any local area which is under the administration of the [1][Central Government or the Crown Representative] but which is not part of British India, an arear of land-revenue accruing in that local area, or a sum recoverable as an arear of land-revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India.

Recovery in India of land-revenue, etc., accruing in Burma.

*9. (1) The Central Government may direct that an arrear of land revenue accruing in Burma or a sum recoverable in Burma as an arrear of land revenue and payable to a Collector or other public officer or to a local authority in Burma may be recovered under this Act in British India and thereupon such arrear or sum shall be so recoverable :

Provided that the Central Government shall not give any such direction unless it is satisfied that the remedy available under section 4 of this Act in British India to a person paying under protest in British India an arrear accruing in British India is available under Burma law in Burma to a person paying under protest in British India an arrear accruing in Burma.

(2) For recovering by virtue of this section any arrears of tax or penalty due under the enactments relating to income-tax or super-tax in force in Burma, the Collector shall have such additional powers as he has in the case of Indian income-tax and super-tax under the proviso to section 46 (2) of the Indian Income-tax Act, 1922."

Duty of Collectors to remit moneys collected in certain cases.

*10. Where a Collector receives a certificate under this Act from a Collector of another Province or a Collector in Burma he shall remit any sum recovered by him by virtue of that certificate to that Collector, after deducting his expenses in connection with the matter.

THE SCHEDULE.

CERTIFICATE

See section 3, *sub-section* (1).

From

The Collector of

To

The Collector of

Dated the *of* 19 .

The sum of Rs. is payable on account of by son of resident of who is believed (to be at) (to have property consisting of at in your district.

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A. B.,
COLLECTOR OF

1. Substituted for "Governor-General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

*Inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

APPENDIX VIII

Reductions and Remissions of Court Fees.

Under section 35 of the Court-fees Act, 1870, as modified by the Devolution Act 1920, and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the territories administered by the Governor of the Punjab, all or any of the fees mentioned in the first and second schedules to the said Act, the Governor of the Punjab has been pleased to make the reductions and remissions hereinafter set forth, namely,—

(*a*) To remit the fees chargeable on—

(*i*) copies of village settlement records furnished to land-holders and cultivators during the currency or at the termination of settlement operations;

(*ii*) lists of fields extracted from village settlement Records for the purposes of being filed with petitions of plaint in settlement Courts;

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-record (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office.

(*aa*) To remit with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on application for leave to occupy under direct engagement with the government, land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land.

(*b*) To remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office.

(*c*) To remit the fees chargeable on application for copies of documents detailed in clauses 4 and 14 *supra*.

(*d*) To remit the fees chargeable on applications presented to officers of land-revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed.

(*e*) To remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province.

(*ee*) To remit the whole of the fees chargeable on applications for mutations of names in respect of the property of persons mentioned below :—

(*i*) Any person subject to the Naval Discipline Act (29 & 30 Vict, c. 109), the Army Act (44 & 45 Vict., c. 58), the Air Force Act (7 & 8

Geo. 5 c. 51) or the Indian Army Act, 1911 (V I of 1911) who is killed while on active service or on services which is of a warlike nature or involves the same risk as active service, or dies from wounds inflicted, accidents occurring or disease contracted while on such service, and

(*ii*) any person, being a Government servant, Civil or Military, who dies from wounds or injuries intentionally inflicted (but not self-inflicted) while in actual performance of his official duties or in consequence of those duties.

(*f*) To remit the fees chargeable on copies of orders or proceedings under section 37 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made or recorded by Collectors or other Revenue Officers engaging in revising record-of-rights under a notification published in accordance with section 32 of the said Act :

Provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue Officer engaged as aforesaid in revising a record-of-rights or to the Commissioner of the Division or to Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interest therein, if presented previous to the final confirmation of such revision.

(*g*) To remit the fees chargeable on applications under section 97 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made by village officers in accordance with the provisions of rule 64 of the rules under that Act published with the Financial Commissioner's Notification No. 142, dated the 9th November, 1909.

(*h*) To remit the fees chargeable on copies of all records* maintained under the provisions of chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887) when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer.

(*i*) To remit the stamp duty chargeable on the following petitions under Article 1 (*b*) of the second schedule :—

" A petition or an application presented to a Revenue Officer asking him to record a statement or sanction a mutation under section 34 (4) of the Land Revenue Act, XVII of 1887, in consequence of consolidation of holdings carried out by the Co-operative Department in the Punjab."

(*j*) To remit the court-fees chargeable under clause (*c*) of Article 1 or Article 11 of the Second Schedule, or petitions and appeals against orders of punishment presented under the following Act or rules, by officials under the administrative control of the Government of the Punjab :—

Section 13 of the Punjab Land Revenue Act, 1887.

*The register of mutation is one of the records mentioned under Chapter IV of the Punjab Land Revenue Act, 1887, and no court-fee is therefore chargeable on a copy thereof. This item also operates to remit the fee otherwise due on a copy of the mutation proceeding when presented with an appeal against the mutation order (F. C's letter No. 4693-E & S, dated the 31st August, 1932).

APPENDIX IX

Land Revenue Rules.

Zaildars and Inamdars.

1. (*i*) The office of zaildar or inamdar shall not be established in any local area except with the previous sanction of the Local Government.

(*ii*) When that sanction has been obtained, the limits of the zail of each zaildar shall be fixed by the Collector with the sanction of the Commissioner; and the first appointments to the office shall be made as hereinafter provided.

(*iii*) The limits of a zail may be altered with the sanction of the Commissioner, provided that the number of zails is not changed.

2. No increase in the existing total percentage of revenue assigned for the emoluments of zaildars or inamdars in any district shall be made without the sanction of the local Government: subject to this condition the Financial Commissioner is authorized to sanction and to revise from time to time—but not usually otherwise than at resettlement—the zaildari and inamdari arrangements of a district, to vary the number of zails and inams and to revise the grading or amount of the allowances.

3. Ordinarily, save when other assignments exist for the remuneration of officers of these classes, the amount of the remuneration of the zaildars of a district (or any sub-division of the district to which the proposals may be confined) may amount to, but shall not exceed, 1 per cent. of the land revenue of the district (or sub-division of the district) and similarly the amount of the remuneration of the inamdars may amount to, but shall not exceed ¼ per cent. of the land revenue.

No person is eligible for appointment as a zaildar or inamdar unless he is a headman in the zail in which he is to be appointed, or to which the inam is attached, or unless he is a landowner or a tenant holding from Government in the zail who has been approved by the Commissioner as a suitable candidate for the office. Where inams have not been attached to particular zails the above qualifications must be held in the tahsil to which the inam belongs.

5. In the appointment of zaildars regard shall not be had to any alleged hereditary claim, but regard shall be had among other matters to—

(*a*) the extent of property in the zail possessed by the candidate;

(*b*) services rendered to the State by himself or by his family;

(*c*) his personal influence, character, ability, and freedom from indebtedness;

(*d*) the degree in which the candidate is by race or otherwise fitted to represent the majority of the agriculturists who reside in the zail.

6. (*i*) A zaildar shall be dismissed when—

(*a*) he is sentenced to imprisonment for one year or upwards or to any heavier punishment;

(*b*) he ceases to be a landowner in his zail;

(*c*) his holding has been transferred, or the assessment thereof has been annulled, for an arrear of land revenue;

(*d*) he has mortgaged his holding and has delivered possession thereof to the mortgagee.

(*ii*) A zaildar may be dismissed from any reason which would justify the dismissal of a headman of an estate.

7. When the office of a zaildar has been vacated, a successor shall be appointed in accordance with rule 5, provided that if the only suitable candidate for the appointment is a minor the Collector may leave the appointment vacant until the said candidate comes of age or may appoint the said minor to the vacant office with a substitute to discharge the duties attached to it. Appointment of a substitute under this rule shall be subject to the provisions of rules 27 to 30 inclusive.

8. Subject to any conditions and limitations expressly made by Government when granting an inam, appointments to the office of inamdar shall be made, the office shall be vacated, and successions to vacancies shall be filled up as nearly as may be in the manner provided in the rules relating to zaildars.

9. The duties of zaildars are :—

(*i*) to report heinous crime to the police and magistrate, to bring to their notice the presence in his zail of persons of notoriously bad livelihood, and to assist in the investigation and prevention of offences and in arresting criminals;

(*ii*) to see that the headmen, chief headmen and patwaris of the zail perform their duties properly provided that the zaildar must not personally interfere in the performance of their duties by these officials except under directions from a competent officer;

(*iii*) to render such assistance in the work of survey, crop inspection, preparation of records and assessments, or other branches of revenue administration within the zail as the Collector may require;

(*iv*) to report any repairs necessary to Government buildings, roads, or boundary marks within the zail;

(*v*) to notify in the estates of the zail all orders of Government communicated to him for that purpose, and to obey all orders, which required personal obedience from himself;

(*vi*) to exert his influence to secure within the zail prompt obedience to all orders of Government, and to abstain from interference with cases pending in the law Courts except under orders from the proper authority;

(*vii*) to assist Government officers in the execution of their duties, to supply them to the best of his ability with any information they may require, and to attend on them when they visit the zail;

(*viii*) Absence from his circle shall be no defence to a charge of neglect of duty against a zaildar, if the absence extended over a period of 14 days and if previous sanction in writing to it had not been obtained from the Tahsildar.

10. An inamdar shall perform such duties and render such assistance in the district administration as are required by the orders of Government under which the inam was first granted, and the Collector may also require him to perform any of the duties of a zaildar.

11. Every person to whom the land revenue of any land has been released or assigned, or who has redeemed or compounded for the same, shall, unless the local Government directs otherwise in any particular case, be required to pay, as a contribution towards the remuneration of zaildars and inamdars appointed under these rules, a rate, at the same percentage, as near as may be as that appropriated from the land revenue of the local area for the payment of zaildars and inamdars, but subject to a maximum of $1\frac{1}{2}\%$ on the land revenue which has been, or, but for such release, assignment, redemption, or composition, would have been assessed on such land ; and in any case in which land revenue is collected on account of such land by any Revenue Officer for any such person, such officer may deduct that percentage from the amount payable by him to that person.

12. The following rules apply only in cases where the inams of zaildars or inamdars are graded :—

(*i*) In any case the Collector may—

(1) in filling up a vacancy give grade to grade promotions so far as places are available and appoint a new nominee to the vacancy thus caused in the lowest grade ;

(2) reduce a zaildar or inamdar at any time to any lower grade for neglect of the duties imposed on him by these rules or by any other law for the time being in force and if the reduction is permanent, give any grade promotions in consequence of the vacancy thus caused.

(*ii*) Promotions shall not be made to fill places left temporarily vacant by temporary degradations.

(*iii*) No zaildar or inamdar shall ordinarily be promoted until he has served for a year in his grade.

(*iv*) A person appointed to fill a temporary vacancy shall ordinarily receive the emoluments of the zaildar or inamdar whose place he fills.

13. (*i*) No order of a Collector—

(1) placing a zaildar or inamdar on first appointment in any but the lowest grade, or

(2) promoting any zaildar or inamdar to any grade higher than the grade next above that in which he is placed when it is decided to promote him,

(3) promoting a zaildar or inamdar before he has served for a year in his grade, or

(4) giving a substitute for a zaildar or inamdar emoluments other than those of the zaildar or inamdar whose place he fills,

shall take effect unless it is confirmed by the Commissioner.

(*ii*) When an application for confirmation of an order is made to a Commissioner under this rule he shall keep it pending until the period of limitation fixed for an appeal from the order has expired ; and if he confirms the order, he may direct that it shall take effect from the date on which it was made.

Village Headmen

14. (*i*) A sufficient number of headmen shall be appointed to every estate, and this number when once fixed shall not be increased except by the order of the Commissioner, nor be reduced except by the order of the Financial Commissioner.

(*ii*) If an estate or a considerable portion thereof is owned by Government, the headmen may be appointed from among the tenants. In other estates he shall be appointed from among the landowners.

(*iii*) The lessee of the revenue or produce of an uncultivated or forest estate owned by Government shall be during the currency of his lease the headman thereof.

(*iv*) In the Kangra district for the purposes of this rule the estate shall mean the mauza, tappa, kothi, or other officially recognized revenue unit as the Collector, subject to the orders of the Commissioner, shall determine.

15. In all first appointments of headmen, regard shall be had among others matters to—

(*a*) his hereditary claims ;

(*b*) extent of property in the estate possessed by the candidate ;

(*c*) services rendered to the State by himself or by his family ;

(*d*) his personal influence, character, ability and freedom from indebtedness.

16. (*i*) A headman shall be dismissed when :—

(*a*) he is sentenced to imprisonment for one year or upwards, or to any heavier sentence ;

(*b*) in an estate owned altogether or chiefly by Government he ceases to possess the interest which lead to his appointment ; or

(*c*) in any other estate he ceases to be a land owner in the estate or sub-division of the estate in respect of which he holds office ; or

(*d*) he has mortgaged his holding and has delivered possession to the mortgagee ; but in special cases the Collector may, with the Commissioner's sanction retain him in his office under such circumstances, if he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties ; or

(*e*) his holding has been transferred under section 71 of the Land Revenue Act, or the assessment thereof has been annulled under section 73 of the same Act.

(*ii*) A headman may be dismissed when—

(*a*) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office ; or

(*b*) he is seriously embarrassed by debt, or if his unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibilities attached to the office of headman ; or

(*c*) owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office ; or

(*d*) there is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of cocaine, opium or charas ;

(*e*) he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order ;

(*f*) he neglects to discharge his duties, or is otherwise shown to be incompetent ; or

(*g*) the estate or sub-division thereof, in respect of which he holds office, or his own office, or his own holding is attached either for an arrear of land revenue or by order of any Court.

17. (*i*) In an estate, or sub-division thereof, owned chiefly or altogether by Government a successor to the office of headman shall be selected with due regard to all the considerations other than hereditary claims, stated in Rule 15 :

Provided that in such an estate or sub-division thereof notified for the purpose by the Financial Commissioner, the selection shall, as far as possible, be made in the manner prescribed by sub-rule (*ii*) if a suitable heir is forthcoming.

(*ii*) In other estates the nearest eligible heir according to the rule of primogeniture shall be appointed unless some special custom of succession to the office be distinctly proved, but subject in every case to the following provisions—

(*a*) The claim of a collateral relation of the last incumbent to succeed shall not be admitted solely on the ground of inheritance, unless the claimant is a descendant in the male line of the paternal great-grandfather of the last incumbent.

(*b*) Where a headman has been dismissed in accordance with the provisions of rule 16, the Collector may refuse to appoint any of his heirs :—

(1) if the circumstances of the offience, dereliction of duty, or disqualification, for which the headman was dismissed make it probable that he would be unsuitable as a headman ;

(2) if there is reason to believe that he has connived at the office of dereliction of duty for which the headman has been dismissed ;

(3) if any disqualification for which the headman has been dismissed attaches to him ;

(4) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

Note.—If a dismissed headman's heir is considered fit to succeed, regard shall be had to the property which he will inherit, in like manner as if he had already inherited it.

(*c*) The Collector may also refuse to appoint a person claiming as an heir on any ground which would necessitate or justify the dismissal of that person from the office of the headman.

(*d*) A female is not ordinarily eligible for the office, but may be appointed when she is the sole owner of the estate for which the appointment has to be made, or, for special reasons, in other cases.

(*iii*) Failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the considerations, described in rule 15.

(*iv*) Election shall not in any case be resorted to as an aid in making appointments under this rule and rule 14.

18. In the case of headmen of villages situated within the jagirs of Daba Sibar, Goler, Nadaun and Lambagraon in the Kangra district, rules 14, 15, 16 and 17 shall be subject to the following additions and alterations :—

Add to rule 14—

For the purposes of this rule an " estate " shall mean a " tappa " or such other area as the Collector, subject to the orders of the Commissioner, shall determine.

For clause (*a*) of rule 15 substitute—

(*a*) The recommendations of the jagirdars.

To Clause (*ii*) of rule 16 add—

(*f*) he is obnoxious to the jagirdars.

For clauses (*ii*) and (*iii*) of rule 17 substitute—

A successor to the office of headman shall be selected with regard to the considerations stated in rule 15 as modified by this rule.

19. (*i*) Where an office becomes vacant in consequence of any proceedings taken for the recovery of an errear of land revenue under sections 71, 72, or 73 of the Land Revenue Act, the transferee, agent, or farmer who under those proceedings obtains possession of the land on which the arrears were due may, in the discretion of the Collector, be appointed to the vacant office.

(*ii*) Where a headman, who as land owner is individually responsible for more than half the land revenue of an estate or of the sub-division thereof in respect of which he holds office, has mortgaged his holding and has delivered possession thereof to the mortgagee, and the office of headman has become vacant in consequence thereof, the headman shall be appointed with reference to the considerations stated in rule 15.

20. In addition to the duties imposed upon headman by law for any purpose, a headman shall—

(*i*) collect by due date all land revenue and all sums recoverable as land revenue from the estate, or sub-division of an estate in which he holds office, and pay the same personally or by revenue money-order or by remittance of currency notes through the post at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it.

Selected lambardars, approved by the Collector, may pay land revenue and all sums recoverable as land revenue from the estate or sub-division of an estate in which they hold office, by cheques on the Imperial Bank of India, provided that there is a Branch of Imperial Bank at the headquarters of the District in which the said estate is included ;

(*ii*) collect the rents and other income of the common land, and account for them to the persons entitled thereto ;

(*iii*) acknowledge every payment received by him in the books of the landowners and tenants ;

(*iv*) defray joint expenses of the estate and render accounts thereof as may be duly required of him ;

(*v*) report to the tahsildar the death of any assignee of land-revenue or Government pensioner residing in the estate, or the marriage or re-marriage of a female drawing a family pension and residing in the estate, or the absence of any such person for more than a year ;

(*vi*) report to the tahsildar all encroachments on roads (including village roads) or on Government waste lands and injuries to or appropriation of, nazul property situated within the boundaries of the estate ;

(*vii*) report any injury to Government buildings made over to his charge ;

(*viii*) carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information, or to assist in providing on payment supplies or means of transport for troops or for officers of Government on duty ;

(*ix*) assist in such manner as the Collector may from time to time direct all crop inspections, recording of mutations, surveys, preparation-of-records of right, or other revenue business carried on within the limits of the estate ;

(*x*) attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties ; supply, to the best of his ability, any local information which those officers may require and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with the Government ;

(*xi*) report to the patwari any outbreak of disease among animals ;

(*xii*) report to the patwari the deaths of any right-holders in their estates.

21. (*i*) The remuneration of a headman in an estate or sub-division of an estate owned chiefly or altogether by Government shall be such a portion of the village officer's cess or of the income accruing to Government from the estate as may be sanctioned by the Financial Commissioner.

(*ii*) In other estates the remuneration of a headman shall be the remuneration appointed when the land revenue of the estate was last assessed.

(*iii*) In any case not provided for by sub-sections (*i*) and (*ii*) a headman shall receive a portion of the village cess equal to five per cent. of the land revenue for the time being assessed on the estate or portion of the estate in which he holds office whether the assessment is leviable or not.

(*iv*) The Collector may at any time revise and alter the existing arrangements in an estate regarding the collection of the land revenue by the different headmen and the division of the remuneration between them.

Chief Headmen.

22. In an estate in which the appointment of a chief headman has been sanctioned by Government, the office shall be vacated as nearly as may be in the manner provided in the rules relating to headmen.

23. (*i*) In an estate in which a chief headman has been appointed, an order may, at the option of the officer by whom it is issued be addressed either to the chief headman or to any headman who is by his office responsible for the execution thereof. And if the order is addressed to the chief headman, he may either execute it himself or refer to the responsible headman.

(*ii*) In addition to his own duties as a headman, the chief headman shall be responsible for the due execution of their duties by other headmen in the same estate.

(*iii*) Nothing in sub-sections (*i*) and (*ii*) shall be deemed to apply to the matters defined in clauses (*i*) to (*iv*) of rule 20.

24. The remuneration of the chief headman of an estate shall be—

(*i*) the remuneration appointed in respect of his office when the land revenue of the estate was last assessed ;

(*ii*) or failing any such special provision, a portion of the village officer's cess equal to one per cent. of the land revenue collected from the estate ;

(*iii*) this remuneration shall be collected by the village headmen, and be paid by them to the chief headman.

Rules applying to zaildars, inamdars, headmen and chief headmen.

25. (*i*) Where a zaildar, inamdar, headman or chief headman commits a breach of or neglects the duties imposed on him by these rules or by any other law for the time being in force, the Collector may by order direct—

(*a*) that the emoluments of his office be withheld and forfeited to Government for a term not exceeding one year ; or

(*b*) that he be suspended from office for a term not exceeding one year.

(*ii*) In a case of suspension, a substitute shall or shall not be appointed, as in the circumstances of the case the Collector shall deem necessary.

26. (*i*) Where an estate is owned by a non-resident landowner, he may nominate, for the Collector's approval, a substitute to discharge the duties of headman from among the residents in the estate. If the non-resident owner fails to nominate a fit person, the Collector may appoint a substitute from among the resident tenants.

(*ii*) Where, in an estate owned by more landowners than one, non-resident headman is liable, either individually or as representative of other non-resident landowners, for more than half the land revenue of the estate, a substitute for such headman may be appionted from among either the resident landowners or tenants. In making such appointment the Collector shall consult the wishes of the non-resident headman.

27. Where, by reason of old age, physical infirmity, or absence from his circle or village with the permission of the Collector, a zaildar, inamdar, chief headman or headman, or, by reason of minority, or other cause, a headman is unable to perform the duties of his office in person, a substitute may be appointed to discharge those duties. A substitute may also be appointed, in accordance with the provisions of rule 7, to discharge the duties of a zaildar, who is a minor, in the special circumstances therein specified. A substitute appointed under this or the preceding rule or under rule 7,shall be deemed to be, and shall be equally with the person in whose behalf he is appointed the zaildar, inamdar, or village officer (as the case may be) appointed to the office and the Collector may in each such case direct, from time to time, whether the duties of the office shall be performed by the substitute or the substantive holder, or by both concurrently.

28. (*i*) When the person on whose behalf the substitute was appointed vacates his office, the tenure of office by the substitute shall thereupon abate.

(*ii*) Saving as provided in sub-section (*i*), an order appointing a substitute shall remain in force until it is revoked, or until the substitute dies or is dismissed or resigns the appointment.

29. (*i*) In appointing a substitute for a minor headman, the Collector shall select any landowner resident in the village, or any resident tenant if the case falls under rule 14 (*ii*).

(*ii*) In making other substitute appointments under rule 27, the Collector shall consult the substantive holder of the office when he is capable of expressing his wishes in the matter. Any resident landowner in the estate or circle, as the case may be, or any resident tenant in cases falling under rule 14 (*ii*), shall be eligible for appointment as a substitute under this sub-section.

(*iii*) In judging the fitness of a person for appointment as a substitute under this rule, regard shall be had to the property which he will inherit from the person he is intended to represent, in like manner as if he had already inherited it.

(*iv*) A substitute may be removed at any time by the Collector either on his own motion or, except in the case of a substitute for a minor headman, at the request of the person for whom the substitute is acting, for any reason which would justify the removal of the substantive holder of the office or for any other reason which the Collector thinks sufficient.

30. (*i*) For special reason to be recorded in the order appointing a substitute, the person in whose stead a substitute is appointed may be permitted to enjoy a portion not exceeding a moiety of the remuneration of the office.

(*ii*) In the absence of any such order a substitute is entitled to the whole remuneration of the office.

30-A. In the case of *negis* of '*kothis*' and lambardars of '*phatis*' in the Kulu sub-division of the Kangra district, the foregoing rules shall be read subject to the following modifications :—

(*i*) The appointment and dismissal of *negis* of '*kothis*' shall be governed by rules 5, 6, and 7, a '*kothi*' being for those purposes considered to be a zail.

(*ii*) The duties of *negis* of '*kothi*' shall be those prescribed for zaildars by rule 9 and also those prescribed for lambardars by rule 20, clauses (*i*) to (*iv*) inclusive.

(*iii*) In all appointments of lambardars of '*phatis*' the considerations shall be those prescribed in clauses (*b*), (*c*) and (*d*) of rule 15 and in the case of '*phatis*' in Waziri Rupi the recommendation of the jagirdars shall be considered.

Rule 17 shall not apply to such appointments.

(*iv*) A lambardar of a "*phati*" in Waziri Rupi may be dismissed when he is obnoxious to the jagirdar.

(*v*) The duties of lambardars of "*phatis*" shall be those prescribed in rule 20, clauses (*v*) to (*xi*) inclusive.

30-B. The remuneration of *gatpo chenmos* in the *kothis* of Waziri Spiti of the Kulu tahsil is fixed at 20 *khals nethal* in kind and Rs. 20 in cash assigned from the land revenue of their respective *kothis*.

30-C. In the case of the inams in the Jhelum district the foregoing rules shall be read subject to the following modifications :—

1. The Jhelum inams are of three descriptions :—

(*a*) The inams sanctioned at the 1st Regular Settlement (Mr. Brandreth's) Register A.

(*b*) New inams sanctioned at the 3rd Regular Settlement (1895—1901) for ilaqadars; Register B.

(*c*) New inams sanctioned at the 3rd Regular Settlement for non-ilaqadars; Register C.

Register A Inams.

2. Register A inams are hereditary grants from Government conditional on the performance of all the duties of an inamdar under rule 10.

3. When a register A inam has been vacated, the appointment thereto shall, as far as possible, be made in the manner prescribed fro lambardars by rule 17 (*ii*). If no suitable heir is thus forthcoming the appointment shall be made in the manner prescribed for zaildars unPer rules 4 and 5.

4. A register A inam may be confiscated or suspended under the provisions of rule 25, but it is not allowable to confiscate or suspend one inam to give its holder another of less value. No inam exceeding Rs. 100 in amount shall be confiscated without the previous sanction of the Commissioner.

5. When an inamdar dies the Collector has discretion to reduce the inam, but this should not be done, except for special reasons to be recorded in writing, when the eldest son succeeds, nor except in special cases when owing to the unfitness of the eldest son a younger son or grandson of the last holder succeeds. The power of reduction may be exercised more freely when the inam is given to a person who is not in the direct line of descent.

6. Savings and lapsed and forfeited inams are to be utilized for additions to register A inams anywhere in the district with a view to the ultimate introduction of a graded system. When inams are increased or reduced, the amount of the inam so altered should, as far as possible, amount to either Rs. 150, Rs. 125, Rs. 100 or Rs. 75. Such reductions and increases of inams are subject to confirmation by the Commissioner.

Register B Inams.

7. These correspond to zaildari allowances and have been sanctioned for ilaqadars who do not enjoy register A inams, and are graded at Rs. 150, Rs. 100 and Rs. 75. The numbers given at settlement in each grade may be increased from savings from Register C inams, but not from register A inams. The amount sanctioned for register B at settlement was Rs. 3,275 of which Rs. 675 was for Tallagang tahsil since transferred to the Attock district.

8. Register B inams are governed by the ordinary rules under the Land Revenue Act including (as they are graded) rules 12 and 13 and have been sanctioned for the term of settlement, but increases given from register C are for life only if this term is shorter (see rule 9 *infra*).

Register C Inams.

9. These correspond to sufedposhi inams ; they have been sanctioned for non-ilaqadars not enjoying register A inams, for life or for the period of settlement, whichever is shorter, to a deserving ilaqadar, whose inam appears to be too small, or to any other person of influence who is not an ilaqadar. The sanction of the Commissioner is not necessary when the proposed successor is the son of the deceased *inamdar* or a village headman in the same ilaqa.

10. These sufedposhi inams aggregated Rs. 815 which included Rs. 80 of the Tallagang tahsil, since transferred to the Attock district, and are graded Rs. 50, Rs. 40 and Rs. 30. Except for the special conditions given in rule 9 above, the Land Revenue Rules apply to them.

30-D. At last Settlement Government sanctioned in the Tallagang tahsil nine hereditary posts of zaildars and seven hereditary posts of

inamdars. To these hereditary posts the foregoing general rules apply subject to the following modifications :—

(*i*) These hereditary inams are grants from Government conditional on the performance of all the duties of a zaildar or inamdar, under rule 9 or 10 respectively.

(*ii*) The inams being hereditary, rule 12 about promotion and reduction of zaildars shall apply subject to the limitation that no hereditary inam shall be paid less than the amount shown in the special register maintained by the Collector, Attock, in which the names of the special inamdar and the amounts of their fixed inams are shown.

(*iii*) When any such inam becomes vacant due to death, resignation or dismissal, a successor to that vacant inam shall be appointed as far as possible, in the manner prescribed for lambardars by rule 17 (*ii*).

(*iv*) If none of the heirs of the last incumbent who succeeded to his property is considered fit for succession to the hereditary inamdari the Collector shall apply to the Commissioner for sanction to strike off that inam from the register of special inams. If the Commissioner accords this sanction, the Collector shall make an appointment in accordance with rules 4, 5, 7 and 8. If the Commissioner does not agree to the proposal, the Collector shall proceed to appoint the senior most incumbent according to the rule of primogeniture whom he considers fit to be appointed.

Estates and Survey marks.

31. All demarcated areas of uncultivated and forest land owned by Government are declared to be estates within the meaning of the Punjab Land Revenue Act, 1887.

32. At every angle on the boundary between two estates and at such other places on the boundary line as may be necessary for the convenient determination of the boundary, pillars of mud or stone shall be erected, not less than three feet in height.

33. At every point where the boundaries of more than two estates meet a tri-junction pillar of the following specification shall be erected :—

Material.—A single block of stone, or masonry of stone or burnt brick with lime mortar ; if masonry, upper surface to be plastered with pakka lime plaster.

Shape.—If a stone block, in length and breadth not less than 18 inches and in depth not less than 3 feet. If masonry cubic, each edge of the cube not less than three feet long.

Position.—The lowest side of the pillar to be accurately bedded upon a levelled surface, and only half the pillar to be above ground.

Procedure of Revenue Officers.

34. (*i*) The statements and pleadings made by or on behalf of parties to a revenue proceedings, whether oral or written, shall be as brief as the nature of the case admits; and shall not be argumentative, but shall be confined as much as possible to a simple and concise narrative of the facts which the party by whom or on whose behalf the

statement or pleading is made believes to be material to the case and which he either admits or believes that he will be able to prove.

(*ii*) Every written application or statement filed by a party to a revenue proceeding shall be drawn up and verified in the manner provided by the Civil Procedure Code for written statement in suits.

35. The death of one of the parties to a revenue proceeding, or in a proceeding to which a female is a party, her marriage shall not cause the proceeding to abate. And the Revenue Officer before whom the proceeding is held shall have power to make the successor in interest of the deceased person or of the married female a party thereto.

36. In fixing date for the hearing of parties and their witnesses, in adjourning proceedings, and in dismissing applications on default or for other sufficient reason, a Revenue Officer will, so far as the nature of the case may require or permit, be guided generally by the principles of the procedure for the time being in force in Revenue Courts.

37. The provisions of sections 75 to 78 of the Civil Procedure Code and of Schedule 1, Order XXVI, annexed to the said Code in respect of commissions shall apply in the case of proceedings before a Revenue Officer.

38. (*i*) A Revenue Officer may at his discretion award to a witness attending on summons a sum on account of his expenses not exceeding the sum to which the witness would have been entitled for a like attendance in a Civil Court.

(*ii*) The sum so awarded shall be costs in the proceedings.

39. In proceedings under section 34, sub-section (4), of the Land Revenue Act, no detailed record of the statements of parties and witnesses shall be made; but the order of the Revenue Officer shall state briefly the persons examined by him, the facts to which they deposed and the grounds of the order.

40. In other proceedings under the Land Revenue Act, not being proceedings under section 117, and in proceedings before a Revenue Officer under the Punjab Tenancy Act, the Revenue Officer shall make with his own hand a brief memorandum of the statements of parties and witnesses at the time when each statement is made.

41. In every proceeding in which an order is passed on the merits after inquiry, the Revenue Officer making the order shall also record a brief statement of the reasons on which it is founded.

42. (*i*) In proceedings in which costs have been incurred, the final order shall apportion the costs between the parties to the proceeding.

(*ii*) Costs thus apportioned shall be recoverable by the Revenue Officer by attachment and sale of the movable property of the person liable for the same in the manner prescribed in section 70 of the Land Revenue Act.

43. (*i*) Orders of ejectment from, and delivery of possession of, immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a Civil Court has adjudged ejectment from, or delivery of possession of, such property.

(*ii*) And in the enforcing of these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree of the description mentioned in sub-section (*i*).

Language of Revenue Offices.

44. (*i*) The language of Revenue Officers shall be—

(*a*) English, in cases in which English is the mother-tongue of both the parties to a revenue proceeding ; and

(*b*) Urdu in all other cases.

(*ii*) If the Revenue Officer's mother-tongue is English, the memorandum referred to in rule 40 shall be written in English. In other cases it shall be written in Urdu.

45. A party to a proceeding to which clause (*b*) of the last foregoing rule applies, or his legal practitioner, may make an application and plead in the English language if both the parties or their legal practitioners understand English and the presiding officer consents to the use of English.

46. (*i*) Orders under section 34, sub-section (4), and under section 56 of the Land Revenue Act shall be written in Urdu. But if the Revenue Officer's mother tongue is English he may at his discretion write the order in English and translate it into Urdu.

(*ii*) In every other case the order and the reasons for it shall—

(*a*) if the Revenue Officer's mother-tongue is English be written by him in English ; and

(*b*) if the Revenue Officer's mother-tongue is not English, be written by him in Urdu :

Provided that when an order and the reasons for it are written in English, if any party or his pleader is unacquainted with English a translation in Urdu shall, at his request, be supplied to him, and the officer shall make such order as he thinks fit in respect of the payment of the costs of such translation.

Execution of certain orders of Civil and Criminal Courts through Revenue Officers.

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 appraisement 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 appraisement 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 zaildar, 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 movable 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.

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.

Collection of Land Revenue.

51. Where there are superior and inferior landowners in the same estate or in the same holding, the inferior landowner shall, in the absence of any special order of the Financial Commissioner to the contrary, be liable for the land revenue.

52. (*i*) Land revenue payable in cash shall be paid at the office of the tahsil to which the estate belongs except in the following cases :—

(*a*) Where the tahsil treasury at the district headquarters has been incorporated with the district treasury. In this case the payment shall be made into the district treasury, the statement of the manner in which the sum paid is to be appropriated being first checked and attested by the tahsildar.

(*b*) Where a special arrangement has been made with the sanction of the Deputy Commissioner authorizing any person under engagement to pay land revenue to pay direct into the district treasury. In this case the payment shall be made as provided in clause (*a*).

(*c*) Where the special permission of the Commissioner has been given authorizing any person to pay land revenue into the headquarters treasury of another district within his division or with the concurrence of the Commissioner concerned into the headquarters treasury of any district in another division of the Punjab.

(*d*) Where the land revenue is assigned, and the assignee has made arrangements satisfactory to the Collector for receiving such revenue at any place approved of by him on or within fifteen days after the dates fixed for the payment of the instalments of the Government demands. In this case the payment shall be made at the place so approved.

(*ii*) If only part of the land revenue of an estate has been assigned, the assignee shall not be permitted to appoint under this rule a place for payment of the land revenue due to him other than a place in the estate.

53. (*i*) Where by the terms of the current assessment the land revenue is payable in cash, but the amount to be paid at each harvest is determined by appraisement of the produce, the appraisement shall be made by the Revenue Officer or other agent appointed by the Collector in this behalf at the place where the produce is grown, but the land revenue determined to be due shall be paid at the place and in the manner provided under the last foregoing rule.

(*ii*) Where in a case under this rule the land revenue is assigned, the Collector may at his discretion permit the assignee to make the appraisement.

54. (*i*) Where land revenue is payable in kind the produce shall be divided at the place where it is grown, in the presence of a Revenue Officer or agent appointed by the Collector to superintend the division, and the produce thus ascertained to be due as land revenue shall be paid to that Revenue Officer or agent at the same place.

(*ii*) Where in a case under this rule the land revenue is assigned, the Collector may at his discretion authorize the assignee to make the division and to receive the land revenue in person or through an agent.

55. (*i*) No order under the foregoing rules, by which arrangements made by an assignee for the receipt of assigned land revenue payable in cash are approved, shall authorize the assignee to receive payment otherwise than from village headman empowered under these rules to collect the same from the landowners.

(*ii*) If the land revenue is not paid to the assignee by the date fixed for payment, the Collector of his own motion or on the application of the assignee may order that it be paid to himself in the same manner and at the same place as is appointed for the payment of land revenue due to Government in the same tahsil.

56. The Collector may at any time cancel an order made in favour of an assignee of land revenue under rules 52, 53 or 54. And the land revenue due to the assignee shall thereafter be paid or the produce be appraised or divided (as the case may be) in the same manner and at the same place as is appointed in respect of estates in the same tahsil of which the land revenue is due to Government.

57. (*i*) Land revenue due to assignees, that is paid under the foregoing rules into a Government treasury, shall be held in deposit at the credit of the assignee, and shall be paid to him on his demand.

(*ii*) A charge of $2^0/_0$ for expenses of collection, or such other charge as may in any case have been prescribed, shall be deducted by the Collector from all such sums.

58. The continuance of such special arrangement as is referred to in the second exception to rule 52 for payment of land revenue direct into the district treasury shall depend on the punctual payment of the revenue, and on any arrears falling due the Collector shall make an order cancelling that arrangement.

59. (*i*) Where the annual land revenue of an estate is payable at one harvest the demand of each year from that estate on account of rates and cesses shall be paid at the same harvest.

(*ii*) In all other cases the demand of each year from that estate on account of rates and cesses shall be paid in two instalments, namely one at the kharif harvest and the other at the rabi harvest, and each instalment shall bear the same proportion to the total demand of the year as the instalment or instalments of land revenue due on the same estate for the same harvest bear to the total land revenue payable by the estate for the same year.

60. Rates and cesses due at each harvest shall be payable on the date on which the first instalment of land revenue due from the same

estate on account of the same harvest is payable, and except as by these rules is otherwise provided, at the revenue office appointed for the receipt of land revenue due to Government in the same tahsil.

61. Where no land revenue is payable by an estate, the rates and cesses due therefrom shall be payable by the same instalments and at the same dates by and at which the rates and cesses of the adjacent estates are payable. And the Collector shall by order determine the instalments and dates which are applicable under this rule.

62. (*i*) A headman, when paying an instalment of rates and cesses as required by rule 60, shall be entitled to withhold—

(*a*) any portion of the due demand which consists of produce in kind due to village officers holding office in the estate;

(*b*) the remuneration due to persons other than the patwari;

(*c*) the proceeds of any cess levied on account of village expenses.

(*ii*) It shall be the duty of the headman to pay sums thus withheld to the persons entitled to the same.

Process fees.

63. For the service of every writ, warrant or other process for the collection of revenue under Chapters VI and VII of the Punjab Land Revenue Act, 1887, a charge of Re. 1 shall be made where the revenue involved is more than Rs. 5 and annas 12 where the revenue involved is Rs. 5 or less.

Recovery of arrears.

64. (*i*) An application under section 97 of the Land Revenue Act shall state—

(*a*) the name and description of the defaulter;

(*b*) the arrear of which recovery is desired;

(*c*) the circumstances which have made the application necessary.

(*ii*) Any number of defaulters residing in the same estate may, at the discretion of the Revenue Officer to whom the application is made, be included in the same application, but the arrear due from each defaulter shall be separately specified.

65. (*i*) If the application is in due form and the arrear of which recovery is desired has not been due for more than six months, the Revenue Officer shall fix a date for the hearing of the case, *i.e.*, Revenue Officer's case, and shall serve a writ of demand on the defaulter together with a notice requiring him to appear on the date so fixed if the demand has not in the meantime been paid.

(*ii*) If the arrear has been due for more than six months the application shall be rejected, unless the applicant satisfies the Revenue Officer that the delay in realizing the arrear is not due to his neglect. And, if so satisfied, the Revenue Officer shall proceed as in sub-section (*i*).

66. On and after the date fixed for the attendance of the defaulter the Revenue Officer shall make an inquiry into the existence of the arrear. And if it is proved, he shall record an order stating the amount

of the arrear and the person who is the defaulter, and shall thereafter proceed to recover the same.

67. A defaulter who, under section 69 (2) of the Land Revenue Act, is being kept under personal restraint may be allowed to be at large upon bail being given that he shall not absent himself from a place to be specified by the Revenue Officer ordering the restraint during certain hours until ten entire days have elapsed from the commencement of his detention, unless the arrear be sooner paid.

68. No defaulter shall be detained under section 69 (2) of the Act or confined under section 69 (3) for an arrear unless it is due from himself or from a co-proprietor of whom he is the representative village headman ; nor shall any defaulter be imprisoned for an arrear due before he came into possession or office.

69. If in any case an Assistant Collector of the 2nd grade decides to keep a defaulter arrested by warrant under detention instead of causing him to be taken before the Collector, he shall without delay report his action to the Collector, for information, if the detention exceeds twenty-four hours.

70. When it is proposed to sell an estate or holding or any other immovable property under section 75 or section 77 of the Act, such estate or holding or immovable property shall in the first place be attached in the manner prescribed in section 72.

71. The patwari shall allow any one interested to inspect his records and to take notes of the same in pencil in his presence. He shall give to applicants certified extracts and enter in his diary a note of the inspections allowed and extracts given. The following charges shall be made :—

Serial No.	Name of work.	Charges.
	A—Copies or extracts from	
1.	*Jamabandi* including extracts called for by Courts or officers in connection with the preparation of abstracts of fields.	Four annas per khatauni holding upto 8 holdings and above that number one anna for every additional holding.
1-A.	Inspection notes attached to *jamabandis.*	(*a*) For the 1st 200 words or under, 8 annas.
1-B.	*Fard Badar.*	(*b*) For every additional 100 words or fraction thereof, 4 annas.
1-C.	Copy of pending mutations.	
1-D.	Interrogatories in pending mutations.	
1-E.	Counterfoil of mutation sheets.	

Serial No.	Name of work.	Charges.
2.	*Misl haqiat.*	As for serial No. 1.
2-A.	*Fard haqiat* consisting of names of proprietors (or occupancy tenants), total No. of fields, area, land revenue and rates and cesses.	A fixed charge of 4 annas irrespective of the number of *khewat.*
2-B.	List of co-sharers of proprietary occupancy holdings.	Eight annas for each application.
3.	(*i*) Geneological trees of land holders, occupancy tenants and muqarridars.	As for serial No. 1-A.
	(*ii*) Statement of wells and other sources of irrigation.	
	(*iii*) List of pensions and assignments.	
	(*iv*) Wajib-ul-arz.	
	(*iv*) (*a*) *Naqsha haquq jandrat was pachaki.*	
	(*iv*) (*b*) *Fard bachh or dhal bach* (*Asamiwar*).	Eight annas for each application provided that each application shall be limited to not more than two harvests. (No fee being charged if copies are required for recovery of arrears of land revenue).
	(*iv*) (*c*) Demand statement (canal).	Eight annas for each application.
	(*v*) *Tariqa bachh* and	As for serial No. 1-A.
	(*vi*) Orders of Settlement Officers.	
4.	Khasra girdawri including extracts from Khasra girdawri called for by Courts or officers in connection with the preparation of 5 yearly abstracts of yields.	Four annas for entries in a single volume relating to one field and two annas for each additional field.
5.	Diaries.	Four annas for each entry made on one subject on any one date.

Serial No.	Name of work.	Charges.
6.	Fieldbooks.	Four annas for first 10 fields or under and 2 annas for every additional 4 fields or part thereof.
6-A.	Statement of grazing dues.	Eight annas for each application no fee being charged if copies are required by lambardars for recovery of arrears of grazing dues and chaukidari tax.
6-B.	Extracts from *chaukidar's* assessment list.	Ditto.
6-C.	Statement contained in village notebook.	Four annas per statement irrespective of years.
6-D.	Abstracts of quinquennial averages of mutations.	One rupee per statement.
6-E.	*Fard taqsim* (list of allottees of colony land).	Eight annas per rectangle.
6-F.	Parcha books.	Cost price of the book plus one anna per *khatauni* holding.
	B—Inspections.	
7.	Inspection of papers relating to one quadrennium including relevant entries of the mutation registers.	Fixed charges of 8 annas for each inspection.
	C—Preparation of plans and tracings.	
8.	Tracing of field maps.	One anna for each field up to 32 fields and two annas for every additional 4 fields subject to a minimum charge of four annas.
9.	Tracing of tatimma shajra.	Ditto.
10.	Preparation of plans called for by Courts or Officers in connection with civil and revenue suits.	Ditto.

For the purposes of fee for copies or extracts from *jamabandis* in rent cases, the total number of *khatauni* holdings should be taken into account irrespective of the fact whether they are cultivated by the owner himself or by tenant or sub-tenant and in calculating the fee the number of *khewats* of which the extracts are given, may be ignored.

Note.—(1) For extracts under serial Nos. 1 and 4 and plans under serial No. 10, if prepared in connection with the temporary alienation of land in satisfaction of a decree of a Civil Court, the charges shall be subject to a maximum of Rs. 10. This maximum will be charged in a single case irrespective of the fact whether the extracts are prepared from a *jamabandi* or *khasra girdawri* or both, or whether or not they involve the preparation of a plan. These extracts should be obtained by the tahsildars themselves from the patwaris concerned after taking from the decree-holders a deposit equal to the estimated cost of the extract.

(2) Half the fee thus realized should be retained by the patwari and half should be credited into the Government treasuay under the head "V—Land Revenue—miscellaneous—copying and inspection fees of patwari records."

(3) Patwaris are forbidden to prepare and supply copies or extracts of papers not shown in the above table.

(4) List of co-sharers shall not be prepared and supplied without the previous sanction of the Collector unless required in connection with a revenue, civil or criminal case.

(5) In the case of inspection of the patwari's record by Sub-inspectors or Inspectors of Co-operative Societies under serial No. 7, the fee charged shall be annas four only and the whole of it will be retained by the patwari.

(6) In the case of *parcha* books the patwari is entitled to this fee except at the close of settlement operations and in the special cases cited in paragraph 3·50 of the Punjab Land Records Manual. If, however, the *parcha* book is supplied only after application to a Revenue Officer, the fee, less cost price of the book, should be credited to Government or allowed to the patwari, as the Revenue Officer may consider fit.

72. The statements prescribed by clause (*a*) of sub-section (2) of section 31 of the Punjab Land Revenue Act shall be recorded in the form set forth below, to be known as the *jamabandi* with such addition as the

Financial Commissioners may prescribe from time to time for each district :—

1	2	3	4	5	6	7	8	9	10	11	12
Khewat or Jamabandi No.	Khatauni No.	Name of patti or taraf, with name of lambardar and revenue.	Owner, with description.	Cultivator, with description.	Well or other means of irrigation.	Field No.	Areas.	Rent paid by cultivator, rate and amount.	Share of measure of right and rule of bachh.	Demand with detail of revenue and cesses.	Remarks.

Note.—(1) In column 4, the father's name, tribe or caste, got or sub-tribe, if any, and residence of the owner shall be entered.

The presumption of truth attaches to the entries so made only in respect of owners and of mortgages with possession for a period of more than 20 years in estates outside a municipality or cantonment and in the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil ; and it is only in regard to such persons that careful enquiry is necessary.

Note.—(2) In column 5, the father's name, tribe or caste, got or sub-tribe, if any, residence and status (*e.g., maurusi, ghair maurusi*) of the cultivator, shall be entered.

The presumption of truth attaches to the entries so made only in respect of occupancy tenants, and of lessees for a period of more than 20 years in estates outside a municipality or cantonment and in the district of Simla except the *ilaqa* of Kotgarh in the Kot Khai tahsil ; and it is only in regard to such persons that careful inquiry is necessary.

73, 74, 75, 76. Cancelled.

77. In all cases in which processes are issued by post, the parties concerned shall be required to pay *talbana* at the rate of five annas per head with a minimum of eight annas.

APPENDIX X

Documents included in Standing Records.

(Appendix VIII—Punjab Settlement Manual).

A—Shajra-Nasb or Genealogical tree of owners.

Statement of proprietary of village.

Pargana (or Tahsil), *District.*

Statement of the Proprietors.		Detail of coparcenary shares abstracted from the khewat.				Geneological tree of proprietors.	
Concerning the previous history of the village.	Concerning the constitution of the main divisions of the village.	Revenue.	Area of holding.	Share or measure of right.	Reference to Khewat holdings.	Names and descent.	Tribe.
					1. ... 2. ... 3. ... 4. ... Total of taraf 5. ... 6. ... 7. ... Total of taraf 8. ... 9. ... 10. ... Total of taraf Total of village	A — B — C — D — —Y— E — F — G — —X H — I — K — —Z— Village common.	

1. The *shajra-nasb* should be drawn on one continuous sheet, not on separate leaves—on strong paper, similar to that used for the Khasra girdawri. For strength one inch slips of thin cloth should be pasted on the back of the folds.

2. *Share or measure of right.*—The share or measure of right entered should be that which governs the relation of the holding to the whole village or taraf, and according to which the khewat is made. In a *bhaichara* village the entry will be a possession. The word "Kabza" should be written only once and not repeated under each holding. If shares prevail, they should be described by the term current among the owners; artificial symbols not so current should never be used. All employees and officers will take great care that the shares are not complicated artificially.

3. *Area and Revenue.*—When holdings are owned jointly by several owners whose names do not come together in the *shajra-nasab* the land of these holdings should not be artificially divided in the *shajra-nasab*. The whole should be shown against the first name with the word "*minjumla*" prefixed; and against the second name in the column land there should be a reference to the previous entry "entered under holding No." The revenue entries should agree with the jamabandi. These two columns should not be filled up until the end of measurements. Give the totals of each patti or taraf; and if a patti or taraf has common land enter it before those totals. The khewat number should be entered in pencil when the shajra-nasab is first drawn up, and be inked in at the end of measurements at the Revenue Officer's final attestation.

4. In villages in which a genealogical tree of the owners has been prepared at a previous settlement,—(*a*) if the table is a small one and can be easily copied, as in the case of a small village or villages of recent foundation, it should be copied out in full and brought up to date so as to be complete in itself; (*b*) if it is too large to be easily copied it will be enough to file with the new standing record a table showing the last three generations brought up to date. Where no genealogical tree has yet been prepared (1) a complete genealogical table should be prepared going back to the common ancestor in villages where the labour involved in its preparation would be small; but (2) where this would involve great labour, the table should be prepared as follows:—the owners of each taraf or patti should be brought together, and inside these divisions the men of each tribe or got. The ancestors of each existing land owner should be shown for at least 3 generations back. And if the family has held land in the village for a longer period than this, than the ancestors should be shown for as far back as the memory of the present owners goes and there is no dispute, but usually or not more than six generations.

5. The statements of the proprietors concerning each patti or taraf and concerning the whole village should be written briefly, and doubtful tales should be excluded. The statement of the proprietors concerning the previous history of the village should be arranged under the following heads:—

(*a*) Origin of rights and primary division of the land;

(*b*) The foundation of the village, and how named;

(*c*) Method of collection of the revenue under former Governments and under British rule.

6. The names of persons who have left no male issue and of widows and daughters should not be entered except for some special reason. Under the names of agnates still living out not in possession, should be entered the words "out of possessions" should be entered the words "out of possession" and a brief note of where they now live. Mortgagees names will not be entered.

7. In cases in which a father and a son both own land in separate holdings enter the son's name in the genealogical tree in red ink.

8. If an owner has lost his land(whether by sale or by diluvion), but he claims a share in the shamilat, note this under his name in the genealogical tree, but no such holding will be shown in the khatauni or jamabandi.

9. If property is divided by wells, add a column showing the "name of well" before the "area" column.

10. An owner by purchase should be entered on the left of the sub-division taraf or patti in which he has purchased, a note should be added below his name, showing from whom he has purchased; and if the purchaser has no share in the shamilat, this should be stated.

11. When an amended copy of a genealogical tree is drawn up (see Standing Order No. 23, paragraph 43), the column for 'Area' and 'Revenue' should be omitted. The Statement of the Proprietors should not be re-written, but a reference made to the statement recorded at last Settlement and a note added of any alterations made since the constitution of the village.

B and C.—Jamabandi and list of revenue assignments (See Punjab Land Records Manual, Chap. 7).

Note.—In the jamabandi which forms part of the standing record, column 7 (field numbers) should be divided into columns headed respectively "present number" and former number."

D.—Statement of rights in wells.

1	2	3	4	5	6	7	8	9	10	11
Serial No. of well.	No. in map.	Khatauni No.	Name of well.	Depth in feet. To water.	Depth in feet. Of water.	Whether single or double pakka or kacha, in use or out of use.	Whether at work at last settlement or male is subsequently, and in the latter case, in what year it began to be used.	Name and parentage and tribe of owners, with shares in ownership of well.	Name and parentage and tribe of persons who use the well, with share of water enjoyed by each.	Remarks.

(1) Ordinary drinking wells need not be entered in this statement ; but care is needed that wells which are likley to be used for agriculture are not omitted.

(2) Draw a red circle round the name of every well made since last settlement.

(3) In column No. 11 enter for each well :—

(*a*) History of well and when built or repaired, and when the present rights in it were acquired.

(*b*) Method of working the well, with other irrigation arrangements now in force.

(*c*) Mode of distributing the revenue.

(*d*) Particulars of exemption from irrigated rates, if any.

E.—Wajib-ul-arz or village administration paper.

1. The statement of customs respecting rights and liabilities on the estate shall be in narrative form ; it shall be as brief as the nature of the subject admits ; and shall not be argumentative, but shall be confined to a simple statement of the customs which are ascertained to exist. The statement shall be divided into paragraphs numbered consecutively, each paragraph describing as nearly as may be separate custom.

2. The statement shall not contain entries relating to matters regulated by law, nor shall customs contrary to justice, equity, or good conscience, or which have been declared to be void by any competent authority, be entered in it. Subject to these restrictions, the statement should contain information on so many of the following matters as are pertinent to the estate :

(*a*) Common land, its cultivation and management, and the enjoyment of the proceeds thereof.

(*b*) Rights of grazing on common land.

(*c*) Rights to the enjoyment at sayer produce.

(*d*) Usages relating to village expenses (malba).

(*e*) Customs relating to the irrigation of land.

(*f*) Customs relating to mills, tanks, streams, or natural drainages.

(*g*) Customs alluvion, and diluvion.

(*h*) The rights of cultivators of all classes not expressly provided for by law (for instance, rights to trees or manure, and right to plant trees) and

(*j*) The rights of Government to any nazul property, forests, unclaimed, unoccupied, deserted, or waste lands, quarries, ruins or objects of antiquarian interest, spontaneous products, and other accessory interest in land included within the boundaries of the estate.

(*k*) The rights of Government in respect of fish and fisheries in streams, rivers, etc.

(*l*) Any other important usage affecting the rights of landowners, cultivators or other persons interested in the estate, not

being a usage relating to succession and transfer of landed property.

3. Where the record of rights is being made for the first time if the persons interested are not agreed as to the existence of any alleged customs the Collector or an Assistant Collector of the 1st grade shall decide the dispute in the manner provided in section 36 of the Land Revenue Act. Where the record of rights is being revised, the Collector or Assistant Collector of the 1st grade shall similarly decide disputed entries ; but in doing so he shall have regard to the provisions of section 37 of the Land Revenue Act.

Tahsildars are authorised finally to attest all undisputed entries in a wajib-ul-arz prepared in accordance with the instructions contained in paragraphs 1 and 2 above, but all entries which at the time of their attestation they find to be disputed should be referred for decision to the Collector or to an Assistant Collector of the first grade.

4. When the statement is complete, the Revenue Officer aforesaid shall fix a date for its final approval and shall summon the persons interested to appear on that date at a place in or in immediate vicinity of, the estate to which the statement relates. And on the date and at the place appointed the statement shall be read over in the presence of such of the persons as are in attendance, and after such further correction as may be then found necessary, the Revenue Officer aforesaid shall sign the statement and shall add at its foot an order declaring that it has been duly attested.

Shajra Kishtwar.—See Appendix VII, Punjab Settlement **Manual.**

APPENDIX XI

Addenda

(*i*) **Sections 6 (3) and 6 (4)** (*Page* 33)—*P. G. Not. No.* 4043—*G*—42/32886, *dated the* 27*th May*, 1942.—In exercise of the powers conferred by section 6 (3) and section 6 (4) of the Punjab Land Revenue Act, 1887, and in partial modification of Punjab Government Notification No. 730, dated the 1st November, 1887, the Governor of the Punjab is pleased to appoint, and hereby appoints, every person who for the time being holds the office of Tahsildar to be an Assistant Collector of the 1st grade.

(*ii*) **Section 20 (2)** (*Page* 73).—If summons is legally served under section 20 (2) of the Land Revenue Act by affixation of summons on the house of a party and an *ex parte* order is passed against him, that order remains in force until the whole proceedings are exhausted. It is not necessary to serve him afresh at each separate stage of proceedings.

Balwant Devi v. *Parmodh Chand*, 19 Lah. L. T. 16.

(*iii*) **Section 27** (*Page* 76)—*P. G. Not. No.* 718—*S. G.*—42/3663—*S*, *dated the* 16*th July*, 1942.—In exercise of the powers conferred by section 105 of the Punjab Tenancy Act, 1887, and section 27 of the Punjab Land Revenue Act, 1887, the Governor of the Punjab is pleased to direct that every officer who is holding or may hereafter hold, the post of Revenue Assistant shall exercise the powers of a Collector under the said Act to hear and determine appeals from the orders and decrees of Assistant Collectors of the First and Second Grades, such powers to be exercised by each such officer within the limits of the area for which he holds charge, so long only as he holds charge of the post of Revenue Assistant and to be used under the control of the Collector of the district.

P. G. Not. No. 2857—*E*, *dated the* 28*th July*, 1942.—In exercise of the powers conferred by sub-section (1) of section 27 of the Punjab Land Revenue Act, 1887, the Governor of the Punjab is pleased to confer upon all persons for the time being employed as consolidation tahsildars or consolidation naib-tahsildars, the powers of an Assistant Collector of the second grade under sections 15, 19, 34, 40, 101, 104, 105 and 149 of the said Act, such powers to be exercised by each such person in the estates and consolidation circles situate in the area for which he holds charge, and specified in the schedule hereto annexed, in which the work of consolidating fragmented holdings is in the process of being carried out by registered co-operative consolidation of holdings societies :—

SCHEDULE

Serial No.	Consolidation Officer	District and Consolidation circles.
1.	Tahsildar, Consolidation of Holdings, Lahore.	Lahore, Sheikhupura, Amritsar, Gujranwala, Sargodha, Montgomery, Jullundur, Gurdaspur, and Kangra districts.
2.	Tahsildar, Consolidation of Holdings, Ludhiana.	Ludhiana, Hoshiarpur, Ferozepur, Ambala and Karnal districts.

Serial No.	Consolidation Officer	District and Consolidation circles.
3.	Naib-Tahsildar, Consolidation of Holdings, Ferozepur.	Ferozepur District and circles of Inspectors, Consolidation of Holdings, Ludhiana West and Jagraon
4.	Naib-Tahsildar, Consolidation of Holdings, Ludhiana.	Circles of Inspectors, Consolidation of Holdings, Ludhiana East, Ludhiana South, Samrala East, and Samrala West.
5.	Naib-Tahsildar, Consolidation of Holdings, Ambala.	Ambala Tahsil and Karnal District.
6.	Naib-Tahsildar, Consolidation of Holdings, Rupar.	Circles of Inspectors, Consolidation of Holdings, Rupar and Kharar.
7.	Naib-Tahsildar, Consolidation of Holdings, Phillaur.	Phillaur and Nawanshahr Tahsils.
8.	Naib-Tahsildar, Consolidation of Holdings, Gujranwala.	Gujranwala, Sargodha and Montgomery districts.
9.	Naib-Tahsildar, Consolidation of Holdings, Hoshiarpur.	Circles of Inspectors, Consolidation of Holdings, Hoshiarpur West, Hoshiarpur South and Gurshankar.
10.	Naib-Tahsildar, Consolidation of Holdings, Gurdaspur.	Gurdaspur and Kangra districts.
11.	Naib-Tahsildar, Consolidation of Holdings, Lahore.	Lahore, Amritsar and Sheikhupura districts.
12.	Naib-Tahsildar, Consolidation of Holdings, Jullundur.	Jullundur and Nakodar Tahsils.
13.	Naib-Tahsildar, Consolidation of Holdings, Dasuya.	Circles of Inspectors, Consolidation of Holdings, Dasuya North, Dasuya South and Hoshiarpur North.

(*iv*) **Land Revenue Rule 9** (*Pages 102 and 600*)—*P. G. Not. No.* 1212-*R*, *dated the 22nd May*, 1942.—With reference to notification No. 830-R, dated the 6th April 1942, and in exercise of the powers conferred by sub-section (1) of section 28 of the Punjab Land Revenue Act, 1887, the Governor of the Punjab is pleased to make the following amendment to the Land Revenue Rules, published with Financial Commissioner's Notification No. 142, dated the 9th November, 1909, as subsequently amended :

Amendment.

After clause (*viii*) of rule 9 of the Land Revenue Rules, the following shall be added, namely :—

(*ix*) Under the general or special directions of the Collector, to assist by the use of his personal influence and otherwise all officers of Government and other persons duly authorised by the Collector, in the collection and enrolment of recruits for military service whether combatant or non-combatant.

After clause (*xii*) of rule 20 of the Land Revenue Rules, the following shall be added, namely :—

" (*xiii*) Report any breach or cut in a Government irrigation canal or channel to the nearest Canal Officer, Ziladar or canal patwari (*P. G. Not. No. 1557-E., dated the 18th April* 1939).

After clause (*xiii*) of rule 20 of the Land Revenue Rules, the following shall be added, namely :—

" (*xiv*) Under the general or special directions of the Collector, to assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorised by the Collector, in the collection and enrolment of recruits for military service whether combatant or non-combatant." (*P. G. Not. No. 1214-R, dated the 22nd May*, 1942).

(*vi*) **Appointment of Zaildars** (*Pages 84, 90 and 105*).—The field of selection for zaildars should not be widened by the inclusion of non-lambardars, without good reasons. Even where the candidature of a non-lambardar has been sanctioned, lambardar candidates have a preferential claim.

A zaildar should be the resident of the zail whether or not he is lambardar. The principle underlying this rule is that he should be the representative of the hereditary owners of the zail by virtue (among other things) of being one of them, and it is undesirable to appoint a man whose ancestral home and primary claims as a zaildar are in another zail. Though it has been held that this rule can be relaxed, there must be very special reason for doing so.

The rule in zaildari cases that the Collector's decision should be respected and concurrent decision of the Collector and the Commissioner should not be interfered with, does not apply to cases in which the Collector or the Commissioner's decision cuts at the root of the principle underlying the Land Revenue Rules relating to appointment of zaildars.

Irshad Ahmad Khan v. *Agha Sher Zaman Khan*, (1942) 21, L. L. T. 47.

[*vi* (*a*)] **Disputes as to possession—competency of Revenue Officer to decide and eject persons—meaning and scope of section 36.**—Sub-section (1) refers to disputes in general, while sub-section (2) refers solely to disputes with regard to possession. Sub-section (1) is subject to the provisions of section 37 and so the two must be read together. Sub-section (3) must be read along with section 45 of the Act which lays down a general rule that any person considering himself aggrieved as to any right of which he is in possession by an entry in a record of rights or in an annual record may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.

Revenue Officer not a "competent Court" within the meaing of section 146 (1), Criminal Procedure Code.—A Revenue Officer when dealing with mutation proceedings is not a competent Court within the meaning and intention of section 146 (1), Criminal Procedure Code, which provides among other things that land which is subject of dispute

may be attached "until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof." Consequently land thus attached by a Magistrate is not to be released merely because a Revenue Officer comes to a certain decision with regard to the rights of the parties thereto for purposes of mutation. It is doubtless open to the Revenue Officer to order under section 36 (1) the making of such an entry as regards ownership as he thinks proper without, however, disturbing the possession of the Receiver.[1]

Sub-section (1).—The word "dispute" in section 36 (1) is not limited to disputes with regard to possession, though sub-section (2) refers solely to such cases. Even in case of dispute with regard to title the Revenue Officer is to determine the entry to be made in the record of rights as to that matter, subject to the provisions of section 37 of the Act, and after such inquiry as he thinks fit. It would be seen, therefore, that this sub-section prescribes the procedure to be observed by a Revenue Officer for the determination of entries in record of rights relating to all disputes whether they are disputes of title or of possession. In making a first record of rights, the Revenue Officer is competent to decide a disputed question of ownership (of course for purposes of making entries in records of rights only) and to make an entry in accordance with his decision in the record. Where, therefore, no previous record has been prepared at all no question arises of varying previous entries in subsequent records, and so section 37 does not apply and section 36 operates independently.[2]

Sub-section (2).—It must be clearly understood that section 36 (2) refers to only those cases in which "disputed possession" means that the fact who is in possession cannot be decided. The first question which the Revenue Officer, if he is Assistant Collector of 2nd grade, has to ask himself when dispute arises is "who is in possession"? If he is able to satisfy himself that a particular person is in possession then he must decide the case of his own motion in accordance with the provisions of section 37 (*a*). If he is unable to satisfy himself who is in possession then he must refer the case to an Assistant Collector of the 1st grade. This officer after summary inquiry not only decides who is entitled to possession but he actually puts the person entitled into possession, and has an entry in accordance with his order made in the register of mutations. *Vide* Government Notification No. 81, dated 1st March, 1888, under section 10 of the Act, only Assistant Collector 1st grade can take action under this sub-section.

No third party can be ejected.—Section 36 (2) of the Act gives no power to the officer ordering mutation to eject in favour of one or other party of the parties to a mutation proceeding, a third party, who is actually at the time in legal possession of the land, the subject of mutation. This section clearly only applies where (*i*) the legal (or constructive) possession is vacant in the sense that it cannot be proved to the satisfaction of the Revenue Officer to exist in favour of either of the parties; and (*ii*) it is not at the time actually held by any third party. It is doubtless open to the Revenue Officer to order under section 36 (1) the making of such an entry as regards ownership as he thinks proper without, however, disturbing the possession of the third party.[3]

1. Sardarni Anup Kaur *v.* Sardar Abdul Aziz=1921 L. L. T. 30.
2. Secretary of State *v.* Bhagwan Dass=7 P.R. 1895 (Rev.).
3. Sardarni Anup Kaur *v.* Sardar Abdul Aziz=1921 L. L. T. 30=43 I. C. 216=4 P. W. R. 1917 (Rev.).

When a joint owner of land in the possession of tenants dies it is wrong for the patwari to record in *khasra girdawri* possession of any of the heirs of the deceased or the survivors as cultivating the land. The heirs should be shown as joint-owners in the column of owners, in place of deceased and tenants' names must be recorded as before in actual possession. The order passed by the Settlement Collector under section 36 of the Act contrary to the above rule was set aside on appeal.[1]

The revenue records are intended to be a picture of existing facts. Ordinarily the question of title is not decided by mutation proceedings and it would be wrong to decide it in the course of such a summary proceedings except in certain exceptional cases such as those contemplated by section 36 (2), Land Revenue Act.[2]

Note.—It has been noticed that the procedure dictated by sub-section (2) is followed only where possession cannot be proved to the satisfaction of the Revenue Officer to exist in favour of any particular person. In such a case on the principle " possession follows title," the Revenue Officer directs the person who is found best entitled to the property to be put in possession thereof. This procedure seems to be based on sound principle. Where no body is clearly in possession of certain land it is an healthy rule that the person best entitled to it be put in possession thereof rather than let people take law into their own hands and work on the maxim ' might is right.' Of course, this placing into possession of any party is intended to be no more than a make-shift arrangement, such a direction by a Revenue Officer being subject to any decree or order of a competent Court according to sub-section (3).

It is also to be noted that to arrive at who is best entitled to it, inquiry need only be *summary*, but the Revenue Officer must arrive at some definite decision regarding that and cannot evade it by saying that he cannot satisfy himself as to which of the parties thereto is best entitled to it.

(*vii*) **Escheat to Government** (*Page 253*).—The attention of all Revenue Officers is drawn to the judgment of the Lahore High Court reported as A. I. R. 1940 Lah. 416, which lays down that in the absence of all agnates of a childless proprietor a cognate, however distantly related to him, is entitled to succeed to his property in preference to a stranger.

(*Para.* 838-*A, L. A. M., as added by C. S. No.* 98-*L. A. M., dated the* 13*th October*, 1941).

(*viii*) **Mutation fees** (*Page 290*)—*P. G. Not. No.* 1252-*R.* (S), *dated the* 10*th August*, 1942).—In exercise of the powers conferred by sub-section (1) of section 38 of the Punjab Land Revenue Act, 1887, and all other powers enabling him in this behalf, the Governor of the Punjab is pleased to direct that the following amendment shall be made in Punjab Government Notification No. 2825-R, dated the 8th August, 1934, namely :—

To the said notification, the following paragraph shall be added, namely :—

" Notwithstanding anything contained in the preceding paragraphs, no fees shall be charged in respect of entries relating to the acquisition

1. Anant Ram *v.* Mst. Drapodi and another=1926 L. L. T. 12.
2. Khushi Ram Kirpa Ram *v.* Atma Nand=1927 L. L. T. 38.

of a right or interest by inheritance in the property of any person, British or Indian, in any of the naval, military or air forces of the Crown—

(*a*) who is killed on active service in the present war, or

(*b*) who receives a wound or is involved in an accident or contracts a disease while on such service and dies within twelve months as a result of such wound, accident, or disease.

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