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The Estates Partition Act, 1897

Act 5 of 1897

Keyword(s):

Board, Collector, Commissioner, Proprietor, Recorded Proprietor, Tenure, Applicant, Estate, Joint Undivided Estate, Parent Estate, Separate Estate, Land, Rent, Assets, Chapter

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Bengal Act V of 1897

(The Estates Partition Act, 1897.)¹

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| REPEALED IN PART | ... | ... | Ben. Act XVI of 1946. |
| AMENDED | ... | ... | Ben. Act VI of 1935. Ben. Act I of 1939. |
| | | | (a) The Government of India (Adaptation of Indian Laws) Order, 1937. |
| | | | (b) The India (Adaptation of Existing Indian Laws) Order, 1947. |
| ADAPTED | ... | ... | (c) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. |
| | | | (d) The Adaptation of Laws Order, 1950. |

(8th December, 1897.)

An Act to amend the law relating to the Partition of Estates.

Whereas it is expedient to amend the law relating to the partition of estates ;

And whereas the sanction of the Governor-General of India has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions contained in section 12 of this Act amending the Code of Civil Procedure² ;

It is hereby enacted as follows :—

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons. *see the Calcutta Gazette* of 1896, Part IV, page 34 ; for Preliminary Report of Select Committee, *see ibid.*, 1897, Pt. IV, page 41 ; and for Proceedings in Council, *see ibid.*, Supplement, pages 695, 741 ; 2900 ; *ibid.*, 1897, Supplement, pages 137, 160, 1687, 3364 and 4023. The final Report of Select Committee was not published in the *Calcutta Gazette*.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal, *see*, section 1.

²Act XIV of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (Act V of 1908).

*(Chapter I.—Preliminary.—Sections 1—3.)*

CHAPTER I

Preliminary.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Estates Partition Act, 1897 ;

(2) It extends to the ¹[States of West Bengal and Bihar and that part of the State of Orissa which on the eighth day of December, 1897, was]^{2*} * under the administration of the Lieutenant-Governor of Bengal³; and

(3) It shall come into force on the day⁴ on which it is first published in the ⁵[*Official Gazette*] after having received the assent of the Governor-General.

Repeal and
savings.2. ^{6*} * * * * *

(2) Any enactment or document referring to the said Estates Partition Act, 1876, or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section, be construed to refer to this Act or to the corresponding portion thereof.

Ben. Act
VIII of
1876.

Definitions.

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

(i) "Board" means the Board of revenue for ⁷[the State];

(ii) "Collector" means the Collector of the district on the revenue-roll of which an estate which is under partition, or which it is proposed to bring under partition is borne, and includes—

¹The words "Province of West Bengal and Bihar and that part of the Province of Orissa which on the eighth day of December 1897 was" were originally substituted for the word "territories" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word "States" was substituted for the word "Provinces" and the word "State" for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "for the time being" were omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³This includes the present State of West Bengal and other territory.

⁴*i.e.*, the 8th December, 1897.

⁵These words were substituted for the words "*Calcutta Gazette*" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The original sub-section (1) was repealed by s. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

⁷The words "the Province" were originally substituted for the words "the territories for the time being under the administration of the Lieutenant-Governor" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.



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- (a) any officer whom the Board generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his functions in respect of the partition of an estate, and
- (b) any officer whom the Board specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act;
- (iii) "Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate;
- (iv) "Deputy Collector" includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition ;
- (v) "proprietor" includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate;
- (vi) "recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein;
- (vii) the words "tenure", "permanent tenure", "holding" and "tenant" have the meanings attached to them in the Bengal Tenancy Act, 1885;
- (viii) "applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable;
- (ix) "estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue;
- (x) "joint undivided estate" means an estate of which two or more persons are proprietors;
- (xi) "parent estate" means an estate for the partition of which

*(Chapter I.—Preliminary.—Section 3.)*

proceedings are in progress under this Act, or of which the partition has been effected under this Act;

(xii) "separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act;

(xiii) "land" does not include houses or other buildings standing thereon;

(xiv) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant; and "rent payable in kind" means, in money, the amount which would be determined as the rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885;

VIII of 1885.

(xv) "assets" when used with reference to land, means—

(a) in the case of land held by cultivating *raiyats*—the rent payable by them;

(b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating *raiyats* if the land were occupied by them;

(c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue—the rent payable by the holder of such tenure;

(d) in the case of land held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and

is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estate or any person deriving his title from such proprietors,—

the rent payable by the holder of such tenure whether he be known as *talukdar*, *patnidar* or *mukararidar* or by any other designation;

(e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case,

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(Chapter II.—Right to Claim Partition.—Sections 4, 5.)

and includes—

- (f) all profits derived out of land by proprietors from trees, rights of pasturage, forest-rights, fisheries and all other legal sources;
- (xvi) "assets", when used with reference to an estate, means the assets of all land included in the estate;
- (xvii) "Chapter" means a chapter of this Act ; and
- (xviii) "section" means a section of this Act.

CHAPTER II
Right to claim Partition.

4. (1) Subject to the provisions of this Act, every recorded proprietor of a joint undivided estate who is in actual possession of the interest in respect of which he is so recorded shall be entitled to claim a partition of the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession.

Who entitled to claim partition.

(2) Any two or more of such recorded proprietors may claim that land representing the interest of all such claimants be formed into one separate estate to be held by them as a joint undivided estate; and every provision of this Act, which applies to an applicant for partition shall apply to any two or more persons making any such claim.

5. (1) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate, land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

Partition according to interest.

(2) If the interest of such recorded proprietor is the proprietary right over specific *mauzas* or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said *mauzas* or lands.

(3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific *mauzas* or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific *mauzas* or tracts of which the assets shall bear the same proportion to the assets of such specific *mauzas* or tracts as his undivided share in such specific *mauzas* or tracts bears to the entire *mauzas* or tracts :

*(Chapter II.—Right to Claim Partition.— Sections 6, 7.)*

Provided that, if the interest of such recorded proprietor consist of such an undivided share in more than one *mauza* or tract, he shall not be entitled to have land assigned to him in every such *mauza* or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said *mauzas* or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such *mauzas* or tracts.

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down.

6. Whenever any land is held in common between the proprietors of two or more estates not being under partition any one or more of such proprietors may, without applying for partition of their several estates *inter se*, apply for separation of the land held by them in common, and for the allotment of the proper shares of such land to each of their separate estates, the land-revenue of those estates remaining unaltered; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.

7. (1) Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

- (a) on the joint application of all the proprietors, or
- (b) in pursuance of a decree or order of a Civil Court.

(2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

Separation of land held in common between the proprietors of two or more estates when the estates are not under partition.

Partition of lands under Act where a partition has been made by private arrangement.

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(Chapter II. — Right to Claim Partition. — Section 8. — Chapter III.—Security of the Land-revenue.—Sections 9—12.)

8. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

Tenants for life not entitled to claim partition.

CHAPTER III
Security of the Land-revenue.

9. No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total demand of land-revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.

Future partitions not to relieve land from liability for total land-revenue, unless made as provided in this Act. Amount of land-revenue to be assessed on each separate estate.

10. Except as otherwise provided in this Act, the amount of land-revenue assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was liable as the assets of such separate estate bear to the whole assets of the parent estate.

Restrictions on partition of estate with reference to land-revenue.

11. Subject to clauses (b) and (c) of section 2 of this Act, no partition of an estate shall be made, and no application for the partition of an estate shall be admitted,—

- (a) if the annual amount of land-revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees; or
- (b) if, after separation of the applicant's interest, the annual amount of land-revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees; or
- (c) if the Collector considers that for any of the separate estates would be likely to prove an insufficient security for the payment of the land-revenue which would be separately charged upon it.

12. (1) Any Civil Court which has made a decree for the partition or for the separate possession of a share of an undivided estate paying land-revenue to the Government may, notwithstanding anything in ¹[section 54 of the Code of Civil Procedure, 1908], cause the decree to be executed in the manner prescribed in ²[rules 13 and 14 in Order

Execution of decree for partition.

Act V of
1908.

¹These words and figures were substituted for the words and figures "section 265 of the Code of Civil Procedure" by s. 2 and Sch. 1 of the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

²These words and figures were substituted for the words and figures "section 396 of", *ibid.*

*(Chapter III.—Security of the Land-revenue.—Sections 13, 14.)*

XXVI in Schedule I to] that Code; and if it does so the joint and several liability of the entire estate for the whole of the land-revenue chargeable upon it shall not be prejudiced or affected.

(2) If any decree is sent to the Collector for execution under [section 54] of the said Code, the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.

Power to refuse partition which would result in formation of estates scattered so as to endanger the safety of the land-revenue.

13. The Collector may refuse to admit an application for the formation of land held in severalty into a separate estate, or to proceed with a partition undertaken on such an application, or to admit or proceed with any other application for partition, if, in consequence of the land being intermingled with that held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land-revenue :

Provided as follows :

- (a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact;
- (b) nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consist only of scattered parcels of land.

Interest alienated with special condition as to liability for land-revenue.

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific land of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such a transferee, shall be entitled to claim a separation of the interest which has been so acquired :

¹This word and figures were substituted for the word and figures "section 265", by s. 2 and Sch. I of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

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*(Chapter III.—Security of the Land-revenue—Sections 15, 16.—
Chapter IV.—Initiation and Discontinuance of Partition
Proceedings.—Section 17.)*

Provided that a separation of such interests may be made if the parties concerned agree—

- (a) to waive the conditions of the contract as regards the proportion of land-revenue for which the transferor and transferee or their representatives respectively are liable, and
- (b) to hold the estates which may be allotted to them respectively by the partition subject to the payment of such amount of land-revenue as may be assessed upon them respectively under this Act.

15. If any estate has been declared to be under partition as provided in section 29, any arrears of land-revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

Sale, for arrears of land-revenue, of an estate which is under partition.

XI of 1859.

16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13 or section 14 of ¹[the Bengal Land-revenue Sales Act, 1859,] or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby :

Sale, for arrears of land-revenue, of share in an estate which is under partition.

Provided that, if any share in any estate is sold for its own arrears of land-revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

CHAPTER IV

Initiation and Discontinuance of Partition Proceedings.

17. Every application for partition shall be made in writing to the Collector of the district on the revenue-roll of which the estate is borne, and shall be presented by the applicant or by his duly authorized agent.

Application for partition how to be made.

¹These words and figures were substituted for the words, figures and brackets "Act XI of 1859 (an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency)", by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

*(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 18, 19.)*

Application to be signed and to contain certain particulars.

18. Every such application shall be signed by the applicant or by his duly authorized agent, and shall contain the following particulars, so far as they are known to or can be ascertained by him, namely :—

- (a) the name of the parent estate ;
- (b) the number under which such estate is borne on the revenue-roll, and the land-revenue demand for which it is liable ;
- (c) the number under which such estate is borne on the Collector's General Register of the revenue-paying lands ;
- (d) the name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post office of the area within which each of the said proprietors resides ;
- (e) the character and extent of the interest of which each proprietor of the parent estate is in possession ;
- (f) a specification of any land held by proprietors of the parent estate in common with proprietors of other estates and of the rights of such proprietors respectively in such land ; and
- (g) such further particulars, if any, as may be prescribed by rules made by the Board.

Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.

19. (1) Every such application shall, subject to the provisions of sub-section (4) of this section, be accompanied by a copy of the rent-roll of the estate, and by a specification referring to the papers of every measurement and record-of-rights which has respectively been made of and prepared for the estate, by any officer appointed in that behalf [by the State Government] or other competent authority and of which the person verifying the application under sub-section (2) has knowledge.

(2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorized agent having personal knowledge of the facts stated therein in the manner following, or to the like effect :—

¹The words "by the Provincial Government" were originally substituted for the words "by the Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.



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(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 20, 21.)

“I, A.B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief.”

(3) If the said application, rent-roll or specification contains any entry which the person making the verification knows or believes to be false, or does not believe to be true, such person shall be liable to be punished in the same manner as if he gave false evidence.

(4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

20. If any such application does not in the opinion of the Collector fulfil the requirements of the foregoing sections of this chapter, he may either reject it or return it for amendment.

Procedure if application is not in order.

21. If in the opinion of the Collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition he shall—

Notification and notice of application.

- (a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the Court of the Judge of the district and at the Court of every *Munsif* and Subdivisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which, any land appertaining to the estate is known to be situated ;
- (b) by such notification invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate ; and
- (c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

*(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 22—25.)*

Power to reject application on receipt of objection.

22. If any person claiming a proprietary right as aforesaid states an objection to the partition on or before the day specified in the notification published under section 21, or at any subsequent time if it shall then seem fit to the Collector to admit such objection, and the Collector, on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and if he does so shall record the grounds of such rejection.

Procedure when objection raises any question of right or title or of extent of interest.

23. If any such objection raises any question of right or title or of extent of interest as between any application and any other person claiming to be a proprietor of the parent estate, and if it appears to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry into the objection as he may deem necessary, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may instead of rejecting the application as provided in section 22,

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate ; or
- (b) direct that such proceedings be postponed for four months.

Resumption of proceedings after postponement.

24. At the expiration of the said four months the Collector shall resume the proceedings, unless the person who has made the objection, or some other person,—

- (a) has obtained an order from a Civil Court directing that such proceedings be stayed, or
- (b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.

Suits instituted after four months not to affect or stay proceedings for partition.

25. No suit instituted in a Civil Court, after the lapse of four months after the Collector has—

- (a) made a direction under clause (a) or clause (b) of section 23, or
 - (b) recorded a proceeding under section 29,
- by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

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(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 26, 27.)

26. (1) Every decree affecting a parent estate made by a Civil Court after the estate has been declared under section 29 to be under partition, but before the date specified in the notice served under section 94—

Decree made while partition proceedings are in progress.

- (a) shall be made in recognition of the proceedings in progress under this Act for the partition of the estate, and
- (b) shall be framed in such manner that the decree may be applied to, and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.

(2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceedings has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceedings, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings be deemed to have the same rights, and to the same liabilities, as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed ;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him or them of the lands representing the extent of interest so acquired ;

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30 ;

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

27. (1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—

Decree made after partition proceedings completed.

- (a) shall be made in recognition of the partition proceedings, and
- (b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.



(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Section 28.)

(2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors ;

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only ;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

Power of
Civil Court
to order
partition on
application
being made
to
Collector.

28. (1) A Civil Court may at any time direct the Collector, upon an application being made to him in accordance with sections 17, 18 and 19,—

- (a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate; or
- (b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate :

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

(2) The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act.

*The Estates Partition Act, 1897.*

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(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 29, 30.)

29. If no objection be made, within the time specified in the notification published under section 21, to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for,

Admission of application for partition, and procedure thereupon.

he shall direct that the application be admitted, and shall record a proceeding—

- (a) declaring the estate to be under partition for the purpose of forming and assigning to the applicant a separate estate ;
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants ; or, if more than one separate application for separation has been admitted, the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively ;
- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants ;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants ; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate ;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

30. (1) At any time after the Collector has recorded a proceeding under section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.

Subsequent application for separation of another share.

(2) The Collector may reject or admit any such application ; and if he admits it may order either that proceedings for affecting such separation shall be carried on simultaneously with the previous

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sections 31—34.)

proceedings, or that compliance with the application be postponed until such previous proceedings have been completed, and the shares separated in accordance therewith.

(3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.

31. The Collector may refer any application for partition to any Deputy Collector for the purpose of making inquiries and doing any other thing authorized or required by this chapter :

Provided that every order—

- (a) rejecting an application under section 22,
- (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
- (c) directing, under section 29, that an application for partition be admitted,
- (d) made under section 30, or
- (e) appointing a Deputy Collector under section 32,

and every proceeding recorded under section 29, shall be made and recorded, respectively, by the Collector and not by any Deputy Collector.

32. As soon as the Collector has declared an estate to be under partition as provided in section 29, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings necessary thereto.

33. (1) If, at any time after an order has been passed for making a partition of a parent estate, all the recorded proprietors of the estate present a petition to the effect that they do not wish the partition to proceed, the Collector may, after such inquiry as he considers necessary, strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

(2) Any such costs which have not already been levied as provided in section 37 shall be levied in proportion to the shares of the respective proprietors.

34. (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any

Power of Collector to refer application for partition to Deputy Collector.

Power of Collector to appoint Deputy Collector to carry out partition.

Power to strike partition case off the file, on petition of parties. Recovery of costs.

Power of Commissioner to strike partition case off the file. Recovery of



of 1897.]

(Chapter V.—Establishments and Costs.—Sections 35—38.)

objections which may be made, order the partition case to be struck off the file.

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

CHAPTER V
Establishments and Costs.

35. The Deputy Collector, with the approval of the Collector, and subject to any rules made in that behalf by the Board, may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

Power to appoint establishments and prescribe scale of remuneration.

36. In any district or division in which partitions are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board, may appoint such establishment.

Power to appoint special establishment.

37. (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.

Estimating and levy of cost of partition.

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares :

Apportionment of cost of partition.

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him or them.

*(Chapter V.—Establishments and Costs.—Sections 39—41.)*

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

39. Whenever any local inquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared—

- (a) shall be paid by the person making the objection, or by any one of the proprietors ; or
- (b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them ; or
- (c) shall be deemed to be a part of the cost of the partition.

On completion of partition, total cost to be declared and account adjusted.

40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions.

41. (1) Whenever it appears to the ¹[State Government] that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, ²[it] may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the ¹[State Government] that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36,

¹The words "Provincial Government" were originally substituted for the word "Lieutenant-Governor" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²This word was substituted for the word "he" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.



of 1897.]

(Chapter V.—Establishments and Costs.—Section 42.)

the ¹[State Government] may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partition.

42. ²{(1) The State³ Government may direct that in any district an account, to be called the "Estates Partition Account" shall be kept in which shall be entered all sums levied from the proprietors of estates in such district in respect of partitions of their estates and of all costs of making partitions of estates in such district, whether such costs are costs directed under section 43 to be defrayed by any party to any proceedings in respect of a partition, or not.]

Estates
Partition
Account.

(2) When ⁴[the keeping of an Estates Partition Account] has been directed in any district, the charges leviable in that district from the proprietors of any estate under partition may notwithstanding anything contained in the foregoing sections of this chapter, be levied according to a general scale of fees to be fixed by the Board.

(3) Such scale of fees shall be fixed, as nearly as may be, so that the receipts and expenditure ⁵[shown in the said Account] shall balance one another, and shall be revised from time to time by the Board so as to secure compliance with this condition.

(4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased, in the manner and under the circumstances mentioned in section 38.

(5) The said fees shall be levied from the proprietors in such instalments and at such times as may be fixed in accordance with any rules which the Board may make in this behalf.

(6) An abstract of the ⁶[Estates Partition Account] of each district, made up to the end of each financial year, shall be published in the ⁷[*Official Gazette*] and posted up at the office of the Collector of the district.

¹See foot-note 1 on page 136. *ante*.

²Sub-section (1) was substituted for the original sub-section (1) by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "the formation of an Estates Partition Fund", by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "of the said Fund", *ibid*.

⁶These words were substituted for the words "Estates Partition Fund", *ibid*.

⁷These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1), *ibid*.



Chapter V.— Establishments and Costs.—Section 43.—Chapter VI.—Proceedings up to the Determination of the Partition.—Sections 44, 45.)

26 Geo. V.
c. 2.

¹(7) A direction in force immediately before the commencement of Part III of the Government of India Act, 1935, that an Estates Partition Fund shall be formed in any district shall, after that date, have effect as if it were a direction that an Estates Partition Account should be kept in that district.

Order by
Civil Court
for payment
by parties
of costs of
partition.

43. (1) Whenever any Civil Court makes a decree awarding or declaring any proprietary right in an estate, and requires the Collector to make a partition of the estate, the Court shall, subject to the provisions of sections 38 and 39, at the same time direct either—

- (a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or
- (b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportion as the Court may, upon a consideration of the particular circumstances of the case, deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance, together with the precept which the Court issues to him requiring him to divide the estate; and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

CHAPTER VI

Proceedings up to the Determination of the Partition.

Powers of
Deputy
Collector in
making a
partition.

44. Every Deputy Collector making a partition shall, as regards the estate under partition, have, so far as they are applicable, all the powers exercisable by a Survey-officer under the Bengal Survey Act, 1875, and by a Revenue-officer employed in preparing a record-of-rights under Chapter X of the Bengal Tenancy Act, 1885.

Ben. Act V
of 1875.
VIII of
1885.

Deputy
Collector
when to
make
survey and
prepare
record of
existing
rents and
assets.

45. As soon as the Collector has recorded a proceeding under section 29, declaring an estate to be under partition, the Deputy Collector shall, subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate.

¹Sub-section (7) was inserted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

*The Estates Partition Act, 1897.*

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(Chapter VI.—Proceedings up to the Determination of the Partition.—Sections 46, 47.)

46. In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely :—

Particulars
to be
recorded.

- (a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein ;
- (b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the character and extent of the interest held by each and the area of all other land in the estate which is not held by tenants ;
- (c) the rent then payable for all rent-paying lands,—
 - (i) as stated by the landlord,
 - (ii) as stated by the tenant, and
 - (iii) as taken by the Deputy Collector for the purposes of the partition ; and
- (d) the assets, if any, of all other lands ;

and shall be guided by such rules as the Board may make under section 121, clause (1).

47. (1) When the Deputy Collector has made a survey and prepared a record of existing rents and other assets of land under section 45, he shall publish a notification, in a form to be prescribed by the Board, fixing a day on which he will be present in the village, or at a convenient place within limits of distance to be fixed by general or special order of the Board, for the purpose of attesting the survey papers and record of existing rents and other assets.

Attestation
of survey
papers and
record of
existing
rents and
assets.

(2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board may by rule prescribe shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.

(3) If the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local inquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.

(4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.

*(Chapter VI.—Proceedings upto the Determination of the Partition.—Sections 48—50.)*

(5) If the re-measurement shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Publication of survey papers and record of existing rents and assets.

48. When the survey papers and the record of existing rents and other assets have been attested as provided in section 47, the Deputy Collector shall cause a copy thereof to be locally published in such manner and for such period as the Board may by rule prescribe, and there shall be furnished to each landlord and tenant a copy of such of the entries relating to his estate, tenure, or holding, as the case may be, as the Board may by rule prescribe.

Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.

49. If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the ¹[State Government],

OR
if any measurement papers and rent-rolls are filed under section 19, or at any time before a survey has been begun under section 45 and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land-revenue would not be endangered,

the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45.

Record of order, fixing of day for determining partition, and service of notices.

50. When the documents referred to in section 48 have been published or any documents referred to in section 49 have been accepted, the Deputy Collector shall record an order stating that such documents have been adopted for the purposes of the partition and shall—

- (a) fix a day on which to determine the partition of the lands into the several separate estates,
- (b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and

¹The words "Provincial Government" were originally substituted for the word "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

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(Chapter VII.— Partition by Amicable Arrangement or by Arbitration.— Sections 51—54.)

- (c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

CHAPTER VII

Partition by Amicable Arrangement or by Arbitration.

51. (1) If all the recorded proprietors present, on or before the day fixed under section 50, a petition requesting to be allowed to make the partition on the basis of the papers adopted by the Deputy Collector under Chapter VI,—

- (a) privately among themselves, or
(b) by arbitration,

the Deputy Collector may grant the request.

(2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make partition himself.

52. When a partition has been referred to arbitration, the proceedings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of ¹[rules 1 to 15 in Schedule II to the Code of Civil Procedure, 1908], so far as they are applicable.

53. (1) The arbitrator or arbitrators shall within a period to be fixed by the Deputy Collector, which period may be further extended by him, deliver to the Deputy Collector a full and complete paper of partition, in such form as the Board may, by rule, prescribe.

(2) If default is made in complying with sub-section (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

54. (1) The arbitrator or arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for his or their services.

(2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference

Power to allow partition to be made by proprietors themselves or by arbitrators.

Procedure on reference to arbitration.

Arbitrators to deliver a partition paper.

Remuneration of arbitrators.

Act V of
1908.

¹These words and figures were substituted for the words and figures "sections 506 to 522 (both inclusive) of the Code of Civil Procedure" by s.2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Chapter VII.— Partition by Amicable Arrangement or by Arbitration.— Sections 55, 56. —Chapter VIII.— Making of Partitions by the Deputy Collector, and approval thereof by the Collector.— Section 57.)

to arbitration, and shall be deemed to form part of the costs of making the partition.

Approval of Collector and other authorities.

55. Every partition made under this chapter by proprietors or by an arbitrator or arbitrators shall be subject to the approval of the Collector and the confirmation of the Commissioner :

Provided that no such partition shall be disallowed except—

- (a) on the ground of fraud, or
- (b) on the ground that the partition cannot be confirmed without endangering the safety of the land-revenue.

Assessment of land-revenue.

56. When a partition has been made under this chapter, the land-revenue on each separate estate into which the parent estate is divided by such partition shall be assessed by the Collector in the manner prescribed by section 10.

CHAPTER VIII

Making of Partitions by the Deputy Collector, and approval thereof by the Collector.

Procedure where no petition presented under section 51.

57. (1) If no petition is presented under section 51, the Deputy Collector shall, on the day fixed under section 50, or on any subsequent day or days to which the hearing may be postponed by notice posted at his office,—

- (i) consult all proprietors who are present, and
- (ii) hear, and after such inquiry as he may consider necessary, dispose of any objections which they may urge.

(2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition; and shall cause to be prepared—

- (a) a paper of partition, in a form prescribed by rules made by the Board, specifying in detail—
 - (i) the lands which he has included in each separate estate, and the area of such lands,
 - (ii) the rental of such lands, and the other assets, if any, of each separate estate,
 - (iii) the name or names of the recorded proprietor or proprietors of each separate estate,

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(Chapter VIII.— Making of Partitions by the Deputy Collector, and approval thereof by the Collector.— Sections 58, 59.)

- (iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and
 - (v) the amount of land-revenue to be assessed on each separate estate in the manner prescribed by section 10 ; and
- (b) a map showing the lands which fall within each separate estate and the boundaries of such lands.

(3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.

58. (1) The partition, as made under this chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same.

Submission of case to Collector ; his duties.

(2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.

(3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.

(4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper—

- (a) approving the partition, with or without amendments ; or
- (b) making a new partition ; or
- (c) returning the papers to the Deputy Collector for amendment of the partition, or for making a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

(5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing sub-sections of this section.

59. (1) When the partition has been approved by the Collector, the Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or map, in accordance with the orders passed by the Collector,

Duties of Deputy Collector when partition has been approved by Collector, or when Collector makes a new partition.

- (a) cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,



(Chapter VIII.— Making of Partitions by the Deputy Collector, and approval thereof by the Collector.— Sections 60, 61.)

- (b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate, and
- (c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as aforesaid, to take out of the Deputy Collector's office the extract of the partition paper relating to his separate estate.

(2) If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in sub-section (1).

(3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.

Proprietor not appearing on fixed day not entitled to make objection.

60. No proprietor who has failed to appear before the Deputy Collector in person or by agent on a day fixed, under section 50 or section 57 for the partition of the lands into the several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

Submission of the papers to the Commissioner after approval of the partition by the Collector.

61. When a partition has been approved by the Collector, or when he has made a new partition, and after the tender of extracts and the publication of a notification as provided in section 59, the Collector—

shall cause a notice to be served on each of the recorded proprietors, stating that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the service of the said notice ;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.



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(Chapter IX.— *General Principles for making Partitions.* —
Sections 62—65.)

CHAPTER IX

General Principles for making Partitions.*Lands held in common tenancy.*

62. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this chapter.

Separate estates to be made compact.

63. In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from—

Circumstances to be considered in making partitions.

- (a) situation ;
- (b) the vicinity of roads, railways or navigable rivers or canals ;
- (c) the nature and quality of the soil and produce ;
- (d) the quantity of cultivable and uncultivable waste land ;
- (e) the facilities for irrigation ;
- (f) the state of embankments and water-courses ; and
- (g) liability to accretion and diluvion ;

and any other circumstances affecting the value of the land.

64. (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings and grounds to the proprietor of the separate estate in which such land is included.

Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.

(2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

(3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from the house to some portion of the separate estate allotted to him.

65. Whenever the Deputy Collector thinks fit, he may apply the provisions of section 64 to gardens, orchards, land planted with bamboos, and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

Power to apply section 64 to gardens, etc.



(Chapter IX.—General Principles for making Partitions.—
Sections 66 — 70.)

Rent for land fixed under section 64 or 65 deemed to be the assets of the land.

66. The rent fixed in perpetuity on any land by the Deputy Collector under section 64 or section 65 shall be deemed, for the purposes of the partition, to be the assets of such land.

Redemption of rent fixed under section 64.

67. When the dwelling-house of one proprietor, with the buildings and grounds immediately attached thereto, has been included in the separate estate of another proprietor, and the rent to be paid in perpetuity for the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition,

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

Amount payable in redemption of rent.

68. (1) If the Deputy Collector gives permission as aforesaid he shall certify the amount payable by the applicant in redemption of the rent.

(2) Such amount shall be ten *per centum* above the sum which would be required to produce, in interest at four *per centum per annum*, an annual sum equal to the said rent.

Such amount when payable.

69. The amount certified under section 68 may be paid to the Deputy Collector at any time before, but not after, possession is under section 94, given to the several proprietors of the separate estates allotted to them.

Notice of payment to be given, and land to be held rent-free.

70. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate the land is situated—

- (a) that such payment has been made ;
- (b) that the sum will be paid to him or to his authorized agent on application ; and
- (c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given

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*(Chapter IX.—General Principles for making Partitions.—
Sections 71—73.)*

and against any auction-purchaser at a sale for arrears of revenue, including the ¹[Government]; and from such date the land shall be so held as a rent-free tenure.

71. The Deputy Collector shall at the same time give notice to the Collector of the district of the creation of such tenure, and the Collector shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of ²[the Bengal Land-revenue Sales Act, 1859], or by any similar law for the time being in force.

Collector to register the rent-free tenure.

72. When two or more of the separate estates consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land,

Drawing of lots for equal shares.

unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector, with the sanction of the Collector, thinks proper to assign the equal, separate estates to the proprietors of the equal shares without causing lots to be drawn.

73. (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate;

Order and method of drawing lots when aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares.

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn;

and may cause lots to be drawn in like manner as often as he thinks proper for such purpose.

(2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were

¹The word "crown" was originally substituted for the word "Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 127, *ante*.



(Chapter IX.—General Principles for making Partitions.—
Section 73.)

formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in, such position as the Deputy Collector may think proper.

Illustrations.

I.—The partition of a parent estate is being made into the following shares :—

| | |
|----------|----------|
| 8 annas. | 3 annas. |
| 4 annas. | 1 anna. |

For the purposes of drawing lots, the 4 annas, 3 annas and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand and the proprietors on the other hand of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares:—

| | |
|----------|----------|
| 6 annas. | 3 annas. |
| 4 annas. | 2 annas. |
| 1 anna. | |

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share ; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining shares ; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot ; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.



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*(Chapter IX.—General Principles for making Partitions.—
Sections 74—76.)*

74. The Deputy Collector may, by notice, require any proprietor, in respect of whose share lots are to be drawn as provided in section 72 or section 73, to attend at the office of the Deputy Collector in person or by authorised agent, at a time to be fixed by the Deputy Collector, for the purpose of drawing lots :

Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf, and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment, or fail to cause the attendance of an agent authorised to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

75. If any proprietor or proprietors fail to comply with a requisition of the Deputy Collector under section 74, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

In default, Deputy Collector may appoint a person to draw lots.

Lands held in severalty.

76. (1) When the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor is, in pursuance of such arrangement, in possession of separate lands held in severalty as representing his interest in the estate, the joint applications presented under section 7 may be to the effect—

Partition according to separate possession, and apportionment of land-revenue.

- (a) that a partition of the estate be made by assigning to each proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement, and
- (b) that each separate estate so formed be made liable for such portion of the entire land-revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable.



(Chapter IX.—General Principles for making Partitions.—
Sections 77—79.)

(3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that with reference to the circumstances of the case, the partition of the land and the assessment of the land-revenue thereon may be made in the manner proposed without endangering the safety of the land-revenue, he shall reject the application, unless all the recorded proprietors agree that the land-revenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land-revenue shall not be endangered.

Lands of which each proprietor is in possession to be allotted to him.

77. Whenever the Deputy Collector who is appointed to carry out partition finds that, in pursuance of a private arrangement formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Explanation.—Land held in the occupation of the several proprietors of an estate as, *sir, khannar* or *tij-joi*, or under any other similar denomination, shall not be deemed to be land held in severalty as representing portions of their respective interest in the parent estate within the meaning of the section, which applies only to cases in which there has been a *bona fide* division, by private arrangement among the proprietors of land held by tenants.

Collector may cause transfer of lands agreed to by parties.

78. Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the possession of one proprietor to that of another.

Lands held in common tenancy and Lands held in severalty.

Places of worship, etc.

79. Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

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*(Chapter IX.—General Principles for making Partitions.—
Sections 80—83.)*

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

Tanks,
wells,
water-
courses,
reservoirs
and em-
bankments.

(2) In cases in which, from the extent, situation or construction of any such works, it is found necessary that they should remain the joint property of the proprietors of two or more separate estates, the paper of partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

81. (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

Splitting up
of tenure or
holding and
apportion-
ment of rent
thereof.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under Chapter VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

82. [*Land held rent-free not to be divided, except with consent of recorded proprietors.*—*Rep. by s. 2 of the Estates Partition (Amendment) Act, 1935 (Ben. Act VI of 1935).*]

83. (1) When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a *patti* or other permanent intermediate tenure created by all the proprietors of the estate or admitted by all the recorded proprietors to have been so created, he may either—

Land held
at fixed rent
on
permanent
intermedi-
ate tenure.

- (a) assign such land and the assets thereof entirely to one or more of the separate estates formed out of the parent estate; or
- (b) leave such land unassigned to any separate estate, and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate.



*(Chapter IX.—General Principles for making Partitions.—
Sections 84, 85.)*

(2) In the event of such land being so left unassigned, the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.

(3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.

84. When any land is held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common land ;

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition ;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estate who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common :

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate ; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs.

When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.

85. Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost,

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*(Chapter IX.—General Principles for making Partitions.—
Sections 86—88.)*

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

86. Every allotment made under section 84 shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and if he rejects it, may make or direct to be made another allotment.

Allotment made under section 84 to be submitted to the Collector.

87. When any allotment made under section 84 has been approved by the Collector, the land so allotted shall be dealt with in every respect as if it were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interest in the common land.

Land so allotted how to be dealt with.

88. (1) If a dispute or doubt is found to exist as to whether any land forms part of a parent estate, the Deputy Collector shall, after due notice to the parties interested, inquire into the fact of possession, and shall report his conclusions to the Collector ; and thereupon the Collector shall dispose of the matter as follows :—

Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.

- (a) he may order that the partition case be struck off the file, if such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise ; or
- (b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable ; or
- (c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable :

Provided as follows :—

- (i) if a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned into the separate estates, the claim shall not be inquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector ;



*(Chapter IX.—General Principles for making Partitions.—
Section 89.—Chapter X.—Procedure before the Commissioner up
to the completion of a Partition.—Section 90.)*

(ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

(2) If a partition case is struck off the file under clause (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled; but if a fresh application is admitted, the proceedings shall be revived from the point at which they were interrupted.

89. If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition,

the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

CHAPTER X

Procedure before the Commissioner up to the completion of a Partition.

90. (1) If it appears to the Commissioner that the proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.

(2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up

Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

Procedure if proceedings require amendment or if appeal or objection presented.

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(Chapter X.— Procedure before the Commissioner up to the completion of a Partition.— Sections 91—93.)

in his own office the Commissioner shall, after hearing and disposing of all appeals and objections, and calling for any further information which he may consider necessary, either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the collector for any amendments which the Commissioner may think proper to be made.

(3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

91. If it does not appear to the Commissioner that the proceedings of the Collector require amendment, or if no appeal or objection is presented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may confirm the partition as approved or made by the Collector.

Procedure
in other
cases.

92. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he thinks fit, and as often as he so returns them the procedure prescribed in the foregoing sections of this chapter shall be applicable.

Commis-
sioner may
return the
papers for
amendment
or inquiry
as often as
he thinks
fit.

93. (1) After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition,

or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

Procedure
by
Collector
on receipt
of Commis-
sioner's
order con-
firming, or
Board's
order sanc-
tioning, a
partition.

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall

*(Chapter X.— Procedure before the Commissioner up to the completion of a Partition.— Sections 94, 95.)*

cause a notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 59 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

Procedure as to giving possession of separate estates.

94. (1) The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession ;

and shall cause to be served on every recorded proprietor of a separate estate a notice—

- (a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of land-revenue specified in the notice, and
- (b) calling upon him to enter into a separate engagement for the payment of such land-revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1).

Each separate estate to be borne on the revenue roll and General Register as separately liable for the land-revenue assessed upon it.

95. From the date specified in such notice, each separate estate shall be borne on the revenue-roll and General Register of the Collector as a distinct estate separately liable for the amount of land-revenue assessed upon it under this Act, and shall be so liable whether or not the proprietor has entered into a separate engagement for the payment of the amount of land-revenue so assessed upon the estate.

*The Estates Partition Act, 1897.*

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(Chapter X.— Procedure before the Commissioner up to the completion of a Partition.— Section 96. — Chapter XI.—Miscellaneous.—Sections 97 — 99.)

96. (1) The Collector may direct the erection of such boundary marks as he thinks proper, to distinguish the lands of each separate estate ; and the cost of such boundary marks shall be deemed to be costs of the partition.

Boundary marks.

(2) Boundary marks so erected shall be assigned to *zamindars*, or to *zamindars* jointly with tenure-holders, for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875 ; and, after they have been so assigned, the provisions of sections 19, 20 and 52 to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks.

Ben. Act V
of 1875.

CHAPTER XI Miscellaneous.

97. For the purpose of any inquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by ¹[sections 30, 31 and 32 of, and Orders XI, XII, XIII and XVI in Schedule I to, the Code of Civil Procedure, 1908,] for compelling the production of documents and enforcing the attendance of witnesses.

Powers of Deputy Collector as to production of documents and attendance of witnesses.

98. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition ; and the provision of sections 52, 53 and 54 shall, as far as possible, be applicable to such references.

General power to refer to arbitration.

99. If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in *patni* or other tenure or on lease, or has created any other incumbrance thereon, such tenure, lease or incumbrance shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.

Saving of tenures, leases and incumbrances.

Act V of
1908.

¹These words and figures were substituted for the words and figures "Chapters X and XIV of the Code of Civil Procedure," by s. 2 and the First Sch. of the Bengal Repealing and Amending Act. 1938 (Ben. Act I of 1939).



(Chapter XI.—Miscellaneous.—Sections 100, 101.)

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a *patni* tenure of the whole of his interest in the estate entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every *raiyyat* on the estate ; and

partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the *raiyyats* on that estate.

II.—A, a proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a *patni* tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every *raiyyat* on the estate ; and

partition of the estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of one-half of A's separate estate and will hold his *patni* in common tenancy with the half of A's interest which A has not given in *patni*, so that B will be entitled to collect one-half of the rent payable by every *raiyyat* on A's estate, and A will be entitled to collect the other half.

Uniting of
estates.

100. (1) If two or more estates come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors may, after being recorded as proprietors, apply to have the estates united and to hold them as a single estate.

(2) Every such application shall be made in writing to the Collector, and the Collector shall, if he sees no objection to doing so, comply with it not less than thirty days after the publication of a notification thereof, and shall then cause the necessary entries to be made in the records of his office and report the case to the Commissioner.

If separate
estate falls
into arrear,
Collector
to inquire
into cause
and report
to Commis-
sioner.

101. If any separate estate created under this Act falls into arrear so as to necessitate a sale of the land for the discharge of the arrear at any time within six years from the date of the confirmation or sanction of the partition by the Commissioner or the Board, as the case may be.

the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall inquire whether the same is due to any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

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(Chapter XI.—Miscellaneous.—Sections 102—105.)

102. If it is proved to the satisfaction of the ¹[State Government] at any time within six years from the date of the confirmation or sanction of a partition by the Commissioner or the Board, as the case may be, whether or not upon inquiry made under section 101, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land-revenue for which such estate was made liable, or that the amount of land-revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate.

Power of State Government to order a new allotment of the land-revenue.

the ¹[State Government] may order a new allotment of the land-revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable.

103. (1) Whenever the ¹[State Government] passes an order under section 102 for the re-allotment of the land-revenue on any separate estate, ²[it] may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay, to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter are found to have been over-assessed; and in default of payment such sum shall be recoverable as provided in section 108.

Power to require proprietors of under-assessed estates to make refund to proprietors of over-assessed estates.

(2) No order passed by the ¹[State Government] under subsection (1) shall be liable to be contested in any Court.

104. Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same—

Publication of notifications.

- (a) at the office of the Collector,
- (b) at the office of the Deputy Collector who is to make, is making or has made the partition,
- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.

105. (1) Any notice required by this Act to be served on any person may be served—

Service of notices.

¹See foot-note 1 on page 136, *ante*.

²See foot-note 2 on page 136, *ante*.

*(Chapter XI.—Miscellaneous.—Sections 106, 107).*

- (a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides; or
- (b) by sending a registered letter, containing the notice, to such person directed to the address, if any, which he has registered under this Act; or
- (c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or
- (d) by affixing a copy of the notice at the village office of the person to whom the notice is directed;

or, if no such village office be found, and if the notice cannot be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates.

(2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.

Mistakes and irregularities not to vitiate proceedings.

106. If the directions of this Act are in substance and effect complied with, no proceedings thereunder shall be affected—

- (a) by reason of any mistake or informality unless any person has suffered, or is in danger of suffering material injury in consequence of such mistake or informality; or
- (b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required by this Act to be served.

Fine in case of non-compliance with requisition.

107. If any proprietor or other person fails to comply, within the time fixed therefor by notice, with any requisition made upon him under this Act by the Collector, or Deputy Collector, the Collector or Deputy Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees;

and such fine shall be payable daily until the requisition is complied with;

*The Estates Partition Act, 1897.*

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(Chapter XI.— Miscellaneous.— Sections 108—111.)

and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in respect of any such fine :

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

108. Except as herein otherwise expressly provided, all fees, fines, costs and other sums ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under ¹[the Bengal Public Demands Recovery Act, 1913].

Fees, etc., to be recoverable as public demands.

109. All or any powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector :

Powers and functions of Deputy Collector may be exercised by Collector.

and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such act has been done, or such order has been made, by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

110. (1) The ²[State Government] may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.

Power to vest Collector or Deputy Collector with settlement powers.

(2) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

111. (1) An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—

Appeals to the Collector and admission by him of objections.

- (a) directing under section 39, by whom or how the costs of any inquiry held in consequence of an objection raised shall be paid ;
- (b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition;

¹These words and figures were substituted for the words and figures "the Public Demands Recovery Act, 1895" by s.2 and the First Sch. of the Bengal Repealing and Amending Act, 1838 (Ben. Act I of 1939).

²See foot-note 1 on page 136, *ante*.

(Chapter XI.—Miscellaneous.—Section 112.)

(c) made under section 50, adopting a record of existing rent and other assets of land;

(d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration ;

(e) rejecting under section 76, sub-section (3), an application for partition according to separate possession ;

(f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned ; or

(g) imposing a fine under section 107.

(2) Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.

Appeals to the Commissioner, and admission by him of objections.

112. (1) An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of a Collector (whether such order be passed by the Collector in the first instance or in appeal from the order of a Deputy Collector) —

(a) rejecting an application for the partition of an estate or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted ;

(b) directing, under section 29, that an application for partition or separation be admitted ;

(c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition ;

(d) made under section 50, adopting a record of existing rents and other assets of land :

(e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators ;

(f) refusing to allow a partition to be made under section 76 in accordance with separate possession ;

(g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition ;

(h) confirming, amending or rejecting, under section 86, an allotment made under section 84 ;

(i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate ;

(j) imposing or confirming the imposition of a fine under section 107 : or

(k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

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(Chapter XI.— Miscellaneous.— Sections 113, 114.)

(2) Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

113. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner—

Appeals to
the Board.

- (a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted ;
- (b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted ;
- (c) confirming or amending a partition as approved or made by the Collector ; or
- (d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

114. (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie ; but the Board, acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.

Limitation
of appeal ;
revision by
Board ;
further
appeal to
Board.

(2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board in the following cases only, namely, when the order of the Collector was one —

- (a) directing, under section 38, that any proprietor shall, pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;
- (b) made under section 50, adopting a record of existing rents and other assets of land ;
- (c) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate under partition ; or
- (d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

*(Chapter XI.— Miscellaneous.— Sections 115—119.)*

Stay of proceedings pending appeal or revision.

115. When an appeal is presented under section 111, section 112 or section 113, or when the Board calls, under section 114, sub-section (1), for the record of a case, the proceedings shall not be stayed pending the appeal or revision unless the appellate or revising authority so directs.

Revision of proceedings connected with giving possession.

116. (1) Any proceedings of a Deputy Collector, Collector or Commissioner connected with giving possession to the proprietors of their respective separate estates in pursuance of section 94 may be set aside or amended by the Collector, Commissioner or Board, as the case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

(2) Every such order shall, when made by the Commissioner or the Board, be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.

Orders as to costs on appeal.

117. The Collector, the Commissioner and the Board respectively may pass such orders as they think fit in respect of the payment of the costs of any appeal which is made to them respectively under this Act.

Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.

118. If, in any case in which a Collector or other officer exercises jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same as are vested by the Code of Criminal Procedure [1898] in a Civil Court when any such offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court.

Act XLV of 1860.

Act V of 1898.

Certain orders under this Act not liable to be contested or set aside by civil suit.

119. No order—

(a) refusing to admit an application for partition, or to carry out a partition, on any of the grounds mentioned in section 11 ; or

(b) made under section 20, section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX (except section 81), Chapter X, section 107 or section 117,

shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act :

¹These figures were substituted for the figures '1882' by s. 2 of, and the First Sch. to, the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

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(Chapter XI.—Miscellaneous.—Sections 120, 121.)

Provided that —

- (i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86 ; or
- (ii) any person who is aggrieved by an order made under section 88,

may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

120. In the execution of the duties imposed on the Board by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the ¹[State Government].

Board to be guided by order or instructions of State Government.

121. The Board may, from time to time, with the previous sanction of the ¹[State Government] make rules —

Power of Board to make rules.

- (a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition ;
- (b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them ;
- (c) for determining the costs of partitions ;
- (d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partition shall be levied from proprietors ;
- (e) for fixing, a general scale of fees for the levy of charges from proprietors of estates under partition, when ²[the keeping of an Estate Partition Account] has been directed under section 42;
- (f) for fixing the instalments in which and the times at which the said fees shall be levied from proprietors ;
- (g) generally, for regulating the receipts, disbursements and management of any ³[Estates Partition Account kept] under the said section 42;

¹See foot-note 1 on page 136, *ante*.

²These words were substituted for the words "the formation of an Estates Partition Fund" by s. 2 of, and the First Sch. to, the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

³These words were substituted for the words "Estates Partition Fund formed". *ibid*.

*(Chapter XI.— Miscellaneous.— Section 121.)*

- (h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to, under section 47, sub-section (2);
- (i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48 ;
- (j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48 ;
- (k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57 ; and
- (l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.