



other* persons. If the lands be in possession of the proprietors of the estate under partition and further if it should appear that the claim of the other persons is untenable, the Collector can make the partition, but otherwise he is enjoined to strike off the proceedings.

So, if lands in the estate under partition be actually held rent-free, then, whether their rent-free character be good or bad, the partition proceedings should be made on the basis of the lands being treated as rent-free unless they are capable of being rateably partitioned among the owners.

Sec. 87 provides that every attempt should be made to secure compactness in the division into parcels and the next Section requires the revenue officers to regard the advantages, and disadvantages of the situation of the land in reference to roads, railways, water channels &c.

Compactness.

If in the dividing of the land, the dwelling house or garden of any proprietor should fall into the *putti* of another proprietor, the law allows the former to enjoy the same as a permanent holding or tenure under the latter for rent fixed by the revenue authorities. This part also provides for the drawing of lots in the case of equal shares as well as in other cases, and for keeping apart as common property certain portions of the property under partition.

Part IX treats of proceedings ending with the confirmation of a partition by Commissioner. You will note that Sec. 123 gives the Collector authority to put the owners into possession of their separated shares.

Confirmation of partition by Commissioner.

Part X treats of various matters. We have seen how the jurisdiction of the Civil Courts is ousted in respect of all questions relating to the

* Sec. 116.



apportionment of Government revenue and how such jurisdiction is kept intact as respects other matters. Then, there are elaborate provisions for appeals from various orders passed by Deputy Collectors and Commissioners. We have already noticed the provisions which authorize the Lieutenant-Governor to re-open a partition within 12 years of its completion.

You should note the provisions of Sec. 128 under which a lease of an undivided interest before partition holds good in respect of the divided share after partition. But if there had been a private partition before the granting of the lease, the lease would hold good notwithstanding the partition (ante p. 398). You should also note the important provisions of Sec. 117 which provides for the case when after the completion of partition proceedings the title to some lands included in a *puttee* fails.

Analogy
between
partition by
Collector
and that by
Civil Court.

In conclusion let me point out to you the close analogy that exists between the procedure prescribed in the Civil Procedure Code for the partition of immovable property in general and that which we have just considered.

In both cases the applicants must be sharers and entitled to immediate possession; in both cases all the persons interested must be parties to the proceedings; while in one case there must be a preliminary decree and a reference to Commissioners for partition, in the other, there must be a preliminary order under Sec. 31 determining the shares and the mode of partition and a reference to the Deputy Collector. The duties of the Commissioners for partition are similar to those of Deputy Collectors under the Estates Partition Act. While in one case the Civil Court has the making of the final decree of partition, in the other case the Commissioner's order confirming the Collector's



report completes the partition; so also if in one case upon failure of title to a portion of a separated share the owner of such share can claim compensation, in the other the owner is expressly declared entitled to compensation. In conclusion the rules for partition contained in Part VIII of the Estates Partition Act are all founded on equity and the Civil Courts in the absence of any rules adopt them in making allotments.

Under Sec. 152 the Board of Revenue are authorized to make rules for the guidance of officers in conducting partitions. The rules now in force have been printed in the Appendix.

Rules of
Board of
Revenue.



LECTURE XIII.

Procedure for Partition of estates in the N.-W. Provinces, Oudh, the Punjab, the Central Provinces, Assam and the Presidencies of Madras and Bombay.

THE LAW OF THE N.-W. PROVINCES.

The law of partition of revenue-paying estates in the N.-W. P. is contained in Secs. 107 to 139 of Act XIX of 1873.

The Law in force has been printed in the Appendix with explanatory notes of some of the sections, and the Rules of the Board of Revenue, N.-W. Provinces.

The leading features of the Law of Partition are :—

(1) There are two kinds of partition, — perfect and imperfect. Perfect partition makes a severance of the lands and the Government revenue so as to create distinct mahals. Imperfect partition effects a division of one property into two or more properties, jointly responsible for the revenue assessed on the whole. This agrees in some respects to the opening of separate accounts under Act XI of 1859 in Bengal.

Under Sec. 150 of the Act arrears of revenue may be recovered by sale of a *putti* or of the whole mahal as well as by other means. When an imperfect partition has been made of any mahal, the Collector generally sells the defaulting share in the exercise of his discretion. This is the reason why proprietors sometimes make imperfect partitions. An imperfect partition can only be made with the consent of all the owners.



(2) Questions of title involved in applications for perfect partition may be tried by the Collector of the District or the Assistant Collector in the course of his making a partition, and his decision would have the effect of a decision of a Civil Court and would be open to appeal like other decrees in civil cases.

(3) The amount of revenue to be paid by each portion of a divided mahal is determined by the Collector (Sec. 128.)

(4) The word "revenue-free" has a peculiar signification under the Act. It applies "to land whereof the revenue has either wholly or in part been released, compounded for, redeemed or assigned." (Sec. 3 cl. 10).

(5) The rules for the partition of revenue-paying mahals have been made applicable to the partition of revenue-free mahals by Sec. 139. The word "revenue-free mehal," would here mean only mahals partially released from the revenue-demand.

(6) The jurisdiction of the Civil Courts is barred (Sec. 135).

(7) Mahals are to be made as compact as possible (Sec. 123).

OUDH LAW.

The Law for the partition of revenue-paying mahals in Oudh is contained in Sec. 68—101 of Act XVII of 1876.

These sections have been printed in extenso at the end of the book in the Appendix with explanatory notes.

You will find that the law of partition in Oudh is almost the same as in the N.-W. Provinces. The following are some of the principal distinctions.

(1) The chief controlling revenue authority



in all matters connected with land revenue is the Chief Commissioner of Oudh.

Under him are the Commissioner for each Division including several districts, the Deputy Commissioner for each District and the Assistant Commissioner.

The powers of the Deputy Commissioner are the same as those of the Collector of a District and the Deputy Commissioner is the revenue-authority to make partitions.

(2) When the Deputy Commissioner has decided upon a partition he may, with the sanction of the Commissioner, hold the mahal under direct management pending the completion of the partition.

(3) The rules for the partition of mahals have been made applicable to the partition of revenue-free estates and to taluqdary and underproprietary mahals and mahals held by lessees whose rent has been fixed by the Settlement-officer (Sec. 99 and 100).

THE PUNJAB LAW.

The Law for the partition of Revenue-paying estates in the Punjab is contained in Chapter IX Act XVII of 1887. This chapter has been printed in the Appendix at the end.

You will observe that the Revenue-Officers are authorized to effect partitions of tenancy with the express consent of the landlord and to make decrees in other cases where the partition has been effected otherwise than through his intervention.

Sec. 121 contemplates the preparation of an instrument of partition which under Section 122 can be executed as a decree of Court within 3 years of its date.



THE CENTRAL PROVINCES LAW.

The Law for the Partition of estates paying revenue to Government is contained in Chapter X of Act XVIII of 1881 as amended by Act XVI of 1889. The sections bearing on the Law of Partition have been printed in extenso in the Appendix at the end.

This Act adopts the provisions of the Partition Acts for the N.-W. Provinces and Oudh.

ASSAM LAW.

The Law of Partition of Revenue-paying estates in Assam is contained in Regulation I of 1886, Chapter VI.

These provisions have been printed in extenso in the Appendix.

MADRAS LAW.

By Reg. XXV of 1802 the Government declared its intention to fix for ever a moderate assessment of public revenues on all lands. Sec. 3 of Regulation provides for the grant on the part of the British Government to the Zemindars or proprietors of land, *Sanad-i-milkiyat-i-istimrar* or deed of permanent property and of a corresponding *kubulyat* on the part of the Zemindar to the Collector of the District.



In reference to the question of the partition of revenue-paying estates, Secs. 8 and 9 of this Regulation, Secs. 44, 45 and 46 of Madras Act II of 1864, the whole of Madras Act I of 1876 and Secs. 17, 18, 20—24 of Reg. II of 1803 (all of which have been printed in the Appendix at the end) have to be consulted.

BOMBAY LAW.

The Law of Partition of revenue-paying estates in Bombay is contained in Secs. 113-117 of the Bombay Act V of 1879. The Sections with explanatory notes have been printed in the Appendix.



APPENDIX.

Sections of the Civil Procedure Code, ACT XIV OF 1882, bearing on partition.

D.—Commission to make Partition.

396. In any suit in which the partition of immovable property, not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Commission
to make parti-
tion of non-
revenue pay-
ing immov-
able property.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

Procedure of
Commis-
sioners.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

*E.—General Provisions.*

Expenses of
commission
to be paid
into court.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into court by the party at whose instance or for whose benefit the commission is issued.

Powers of
Commis-
sioners.

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,—

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance,
examination
and punish-
ment of wit-
nesses before
Commis-
sioner.

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

Court to di-
rect parties to
appear before
Commis-
sioner.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Procedure
ex parte.

If the parties do not so appear the Commissioner may proceed *ex parte*.

**ACT IV OF 1893.**

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the
9th March, 1893.)*

AN ACT TO AMEND THE LAW RELATING TO PARTITION.

Whereas it is expedient to amend the law relating to partition; It is hereby enacted as follows :—

1. (1) This Act may be called the Partition Act, 1893.
(2) It extends to the whole of British India; and
(3) It shall come into force at once.
(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immovable property paying revenue to Government.
2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.
3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at

Title, extent, commencement and saving.

Power to Court to order sale instead of division in partition suits.

Procedure when sharer undertakes to buy.



the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition suit
by trans-
feree of
share in
dwelling-
house.

4. (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

Represent-
ation of
parties under
disability.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved
bidding and
bidding by
shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-



money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :—

Procedure to be followed in case of sales.

(a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon, the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ;

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made the procedure prescribed in the Code of Civil procedure in respect of sales in execution of decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Orders for sale to be deemed decrees.

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

Saving of power to order partly partition and partly sale.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

Application of Act to pending suits.



THE law in force regarding the Partition of Estates in the Provinces subject to the Lieutenant-Governor of Bengal is contained in Act VIII (B.C.) of 1876 only.

ACT VIII (B.C.) OF 1876.

(Received the assent of the Lieutenant-Governor on the 26th August 1876, and of the Governor-General on the 18th September 1876).

AN ACT TO MAKE BETTER PROVISION FOR THE PARTITION OF ESTATES.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to the partition of estates : It is enacted as follows :—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called the "Estates' Partition Act, 1876."

Local extent. It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal ;

Commence-
ment. And it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General, which date is hereinafter referred to as the commencement of this Act.

Laws
repealed. 2. On the commencement of this Act, the Regulations and Acts specified in the schedule hereto annexed, to the extent mentioned in the third column thereof, shall cease to have effect in the territories subject to the Lieutenant-Governor of Bengal, save so far as they repeal or modify any other Regulations or Acts, and save so far as regards the partition of any estate which shall be pending at the time of the said commencement.

The partition of any estate which shall be pending at the time of the commencement of this Act shall (except as provided in the next succeeding section) proceed and be completed in the same manner as if this Act had not been passed.

NOTE.—Where several steps had been taken to promote a butwarra, and the Collector decided that he would not bring the butwarra under section 3, the Board held that the proceedings were to be completed under the old law under this section. (Board's Proceedings of 29th June 1878, No. 239, Collection 1, File 37).



3. The provisions of this Act, so far as they relate to the continuation of a partition from the point which it has reached, or to the staying of the partition of an estate, or to striking a partition case off the file, may be applied, at the discretion of the Collector, in all cases of partition of estates pending at the time of the commencement of this Act; provided that, before applying such provisions to the continuation of a partition, the Collector give due notice in each case to the parties concerned that such provisions will be applied.

Certain provisions of Act applicable to partition cases pending at the time of its commencement.

NOTE 1.—Four butwarra cases were instituted in July 1876, *i.e.*, several months prior to the date on which Act VIII (B C.) of 1876 came into force (which was on the 4th October 1876 under the 3rd clause of section I of the Act). During these months several steps were taken to promote the butwarra. It may specially be noticed that on the 5th August 1876 both parties (the two shares being equal) applied to the Collector to have the estate divided under section 22 of Regulation XIX of 1814 on the basis of a former partition measurement made in 1858. The Collector on the 16th November referred to the butwarra proceedings already taken, and decided under section 2 to carry out the butwarra under the old law, instead of bringing it under the new Act by issuing a notice under section 3 to the parties as he might have done. When the papers were submitted for the Commissioner's confirmation, that officer quashed the proceedings, ordering that the partition should be made under the new Act. On appeal the Board held that (a) as the Collector did not bring the case under the new Act by issuing a notice as required by this section, and as he had properly treated the case as pending at the time of the commencement of the new Act, he was right in completing the proceedings under the old law; and that (b) inasmuch as the commencement of the butwarra was considered, under the old law, to be from the date of the application, there having been no such provision in the old law as section 31 of the new Act, section 5 did not apply to the Collector's order of the 16th November 1876. (Board's Proceedings of 29th June 1878, No. 239, Collection 1, file 37).

NOTE 2.—See also note 1 to section 11.

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

Interpretation clause.

(i) "Amin" means a person who is appointed by the Collector or Deputy Collector to make any measurement, survey, or local inquiry, or to prepare the papers showing the result of any measurement, survey, or local inquiry.

(ii) "Applicant" means any person who has applied to the

"Applicant."

Collector under the provisions of this Act for the separation from the parent estate of lands representing his interest in such parent estate, and for the assignment to him of such lands as a separate estate liable for a demand of land revenue distinct from that for which the parent estate is liable.

"Assets of land."

(iii) "Assets of land" include the rental of the land with respect to which the expression is used, and all profits derived by the proprietors out of such land from rights of pasturage, forest-rights, fisheries, and all other legal sources.

"Assets of an estate."

(iv) "Assets of an estate" mean the assets of all land included in an estate.

"Board."

(v) "Board" means the Board of Revenue for the provinces for the time being subject to the Lieutenant-Governor of Bengal.

"Chapter."

(vi) "Chapter" means a chapter of this Act.

"Deputy Collector."

(vii) "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 and allotment of assessment under this Act, or to conduct any of the proceedings connected with such partition and allotment.

"Estate."

(viii) "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.

"Joint undivided estate."

(ix) "Joint undivided 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, and of which two or more persons are proprietors.

"Land."

(x) "Land" does not include the houses and building standing thereon.

"Lieutenant-Governor."

(xi) "Lieutenant-Governor" means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

"Parent estate."

(xii) "Parent estate" means any estate for the partition of which proceedings may be in progress under this Act, or of which the partition may have been effected under this Act.

"Proprietor."

(xiii) "Proprietor" includes every person who is in possession of any estate under partition, or of any portion of such estate, or of any interest in such estate, or in any part of such



estate as owner thereof, whether such person be or be not a recorded proprietor of the estate.

(xiv) "Recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying lands as proprietor of an estate, or of any share or interest therein. "Recorded proprietor."

(xv) "Section" means a section of this Act. "Section."

(xvi) "Separate estate" means any distinct estate which may be formed by the partition of a parent estate under this Act, or for the formation of which proceedings may be in progress under this Act. "Separate estate."

(xvii) "The Collector" means the Collector of the district on the revenue-roll of which the estate under partition, or which it is proposed to bring under partition, is borne, and includes any officer whom the Board may generally vest (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector of the district has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his duties and functions in respect of the partition of any estate; and any officer whom the Board may specially vest (as it is hereby empowered to do) with the powers of a Collector for purposes of any partition under this Act. "The Collector."

(xviii) "The Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making the partition is subordinate. "The Commissioner."

5. All partitions of estates which shall be ordered to be made after the commencement of this Act, shall be made under the provisions of this Act, and no such partition made otherwise than under this Act shall relieve any lands from liability to Government for the total demand of land revenue assessed upon the estate of which they form a part. Future partitions to be made under provisions of this Act.

NOTE.—In a case in which several steps had been taken to promote a butwarra instituted under Regulation XIX of 1814, and which the Collector decided not to bring under the new Act (as he might have done by issuing a notice under section 3), the Board held that the proceedings previous to the 4th October 1876 (the date of the commencement of the Act) constituted it a butwarra case pending under the old law, so that an order of the Collector, dated the 16th November 1876, did not make this section applicable to the case. (Board's Proceedings of 29th June 1878, No. 239, Collection 1, File 237).

Revenue to be assessed on each separate estate.

Definition of rental.

6. 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.

7. Except as hereinafter otherwise expressly provided, the average of the amount of rent which was payable for any land by the cultivating ryots during the three years immediately preceding the year in which proceedings are taken under this Act for the partition of the estate shall, for the purposes of this Act, be deemed to be the rental of such land ;

and if any land is not let, but is held and occupied directly by the proprietors or any of them, the annual rent for which such land might reasonably be expected to let shall be deemed to be the rental of such land.

Exception 1.—If the rent payable by the cultivating ryots on account of any land shall have been determined by any Court of competent jurisdiction, or shall have been altered with the consent of the said ryots at any time during the said three years, the amount so determined, or the amount to which the rent may have been so altered, may, if the Collector think proper, be deemed to be the rental of the land.

Exception 2.—If any land is 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 revenue, the rent payable by the holder of such tenure shall be deemed to be the rental of such land.

Exception 3.—If any land is held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure created by all the proprietors of the estate, subject only to the payment of an amount of rent fixed in perpetuity, and of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the said 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, mukarraridar, or by any other designation) shall be deemed to be the rental of such land.

Exception 4.—If any land be unoccupied, such amount as the Collector may determine, with reference to all the circumstances of the case, shall be deemed to be the rental of such land.



PART II.

OF THE RIGHT TO CLAIM PARTITION.

8. Except as hereinafter otherwise provided, every recorded proprietor of a joint-undivided estate, who is in actual possession of the interest in respect of which he is so recorded, is entitled to claim a partition of the said estate, and the separation therefrom and assignment to him as a separate estate of lands representing the interest of which he is in such possession; provided that, and as far only as such partition, separation, and assignment can be made in accordance with the provisions of this Act.

Who entitled
to claim
partition.

Any two or more such recorded proprietors may claim that lands representing the interests of all such claimants may 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 such joint claim.

NOTE 1.—The Partition Act clearly contemplates more than the mere record of the fact of possession on the part of an applicant for partition. He must be in actual possession of the interest in respect of which he is so recorded. If the fact of registration in the Collector's books were by itself to be accepted as sufficient evidence of possession to entitle an applicant to claim partition, it would have been unnecessary for the law to declare (as it does) that partition may be claimed by a recorded proprietor who is in actual possession of the interest in respect of which he is so recorded. (Board's Proceedings of 15th January 1887, No 106, Collection 7, File 4).

NOTE 2.—In the year 1226 F (1819) a fourteen-anna eight-gundas share of a certain mouzah was permanently settled. The remaining one-anna twelve-gundas share was permanently settled in 1861. This share was sold for arrears of Government revenue in 1873, and purchased by the plaintiff, who subsequently applied to the Collector for partition under the Butwarra Act. The Collector refused to partition upon the ground that the Act was not applicable to the partition of a mouzah held jointly by the proprietors of two separate estates. The plaintiff then brought the present suit, to which he made the Collector a party, to obtain a declaration that he was entitled to have his share separated from the fourteen-anna eight-gundas share by metes and

bounds, and also for a decree directing a partition of the whole mouzah into two parts.

Held, that so far as the plaintiff on the one hand and the owners of the fourteen-anna eight-gundas share on the other, were concerned, the mouzah could be partitioned, but that such partition would not be binding upon the Government unless by consent.

(Ajoodya Persad *versus* Collector of Durbhunga, 9, I. L. R., Calc., page 419).

NOTE 3.—In 1851 an estate was brought under butwarra under the provisions of Regulation XIX of 1814. At such butwarra a portion of the estate being land covered with water and unfit for cultivation was not divided, but left joint amongst all the co-sharers, the land revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Bengal Act VIII of 1876, but that officer refused to do so, on the ground that the land "did not bear an assessed revenue and was not shown in the towji."

In a suit brought under the above circumstances to compel the Collector to make the partition, and in the alternative to have it made by the Civil Court, *Held*, that, though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Bengal Act VIII of 1876, as the land in suit was not liable for the payment of one and the same demand of land revenue, and was therefore not a joint undivided estate within the terms of section 4, clause (g) of that Act.

Held, also, that the word "estate," as used in section 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. Chunder Nath Nundy, *versus* Hur Narain Deb (1) approved. (The Secretary of State for India in Council *versus* Nundun Lall, 1884 I. L. R., 10, Cal., page 435).

Partition according to interest.

9. (a) If the interest of any recorded proprietor who is entitled to claim partition as aforesaid is an undivided share in an estate held in common tenancy, such person shall be entitled to have assigned to him as his separate estate lands 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.

(b) If the interest of such recorded proprietor is the pro-



proprietary right of certain specific mouzahs 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 mouzahs or lands.

(c) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in certain specific mouzahs 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 lands situated within such specific mouzahs or tracts, of which the assets shall bear the same proportion to the assets of such specific mouzahs or tracts as his undivided share in such specific mouzahs or tracts bears to the entire mouzahs or tracts.

Provided that, if the interest of such recorded proprietor consists of such undivided share in more than one mouzah or tract, he shall not be entitled to have lands assigned to him in every such mouzah or tract, but the Collector may assign to him as his separate estate lands situated in any one or more of the said mouzahs or tracts, provided that the assets of such lands are in proportion to the aggregate of the interests which he holds in all such mouzahs or tracts.

(d) If such recorded proprietor holds in the parent estate more than one of the kinds of interest specified in this section, lands shall be assigned to him as far as possible in accordance with the principles above laid down.

NOTE TO CLAUSE (c).—In the case of an estate made up of lands or shares in five different mouzahs, application for butwarra having been made by the recorded proprietor of a share in the share of one of the mouzahs, and objection having been taken thereto, it was held by the Board that an interest in one of the five mouzahs, consisting of an undivided share in the mouzah which was held jointly with the proprietors of four other estates, did not come under this clause. As the basis of all partition proceedings is the division of the lands which are borne on the Collector's rent-roll as liable for the payment of one and the same demand of land revenue, it was held that by reason of the existence of such an interest as that above described (viz., in a mouzah held jointly with estates other than the estate under partition) no partition was feasible. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

10. Notwithstanding anything hereinbefore contained, no Life estate. person having a proprietary interest in an estate for the term



of his life only shall be deemed to be a person entitled to claim partition under this Act.

NOTE 1.—In a case the Collector rejected the application of a Hindu widow for the partition of her share in a joint undivided estate on the ground, among others, that as she held a proprietary interest in the estate for the term of her life only, she was debarred under the provisions of section 10 of the Act from claiming a partition of her share.

On the widow's appeal against the Collector's orders, the Commissioner held that the proper course to pursue in the case was to give the reversionary heirs permission to join with the widow in the petition for partition. He then went on to discuss the question who were the reversionary heirs, and having decided that they were the daughters and daughter's children of the widow, and not the brothers and nephews of her deceased husband, he returned the case to the Collector with directions to proceed with the partition if the reversionary heirs joined in the application. The Board were of opinion that the orders issued by the Commissioner were erroneous and must be set aside. They observed:—"The terms of section 10 of the Act which disqualify any person having a proprietary interest in an estate for the term of his life only, from claiming a partition are absolute. Apart also from the fact that the revenue courts have no jurisdiction to enquire into or determine questions of right or inheritance, it is to be observed that the only persons who can claim a partition, or who can be recognized by the revenue courts, are registered proprietors who are in actual possession."

The appeal was accordingly decreed, and the orders originally passed by the Collector rejecting the application for partition were confirmed. (Board's Proceedings of 30th July 1881, No. 201, Colln. 1576, File I)

NOTE 2.—A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband is not a person having a proprietary interest in an estate for the term of her life only, within the meaning of section 10, Bengal Act VIII of 1876. Even if she were, a civil court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her.

(*Mohadeo Koorer versus Haruck Narain and others*, 1883, I.L.R., 9, Calc., page 244.)

NOTE 3.—A Hindu widow and a recorded share-holder of an estate having an adopted son applied to have her share of the estate partitioned off. The application to the Collector was opposed by one of the co-proprietors of the estate on the ground that her interest in the estate was one for life only, and that therefore under section 10 of the Act she was not entitled to claim a partition. The Collector held that with reference to the opinion expressed by the High Court in the case of *Mohadeo versus Haruck Narain* (IX, I. L. R., Calc., page 244), the widow was bound to establish in a civil court exceptional circumstances



justifying her application for partition. The Commissioner on appeal remanded the case with instructions that the partition should be allowed to proceed if the adopted son of the widow was of age and of sound mind, and there was no reasonable objection on his part. The Commissioner subsequently stopped the partitioned proceedings. The adopted son having given his consent, it was eventually held by the Board on appeal that as the name of the applicant was recorded in the Collector's register in respect of her share for the partition of which she claimed, and as her possession was not disputed and the interests of the heir presumptive were according to the terms of the decision of the High Court not injuriously affected by an order for partition, the appellant Hindu widow was entitled to the partition she claimed. (Board's Proceedings of 19th March 1886, No. 112, Collection 9, File 132.)

11. No application for the partition of a permanently-settled estate shall be admitted, and if the application shall have been admitted, no partition shall be carried out in accordance with such application, if the separate estate of any of the proprietors would be liable for an annual amount of land revenue not exceeding one rupee, until the proprietor of such separate estate agrees to redeem the amount of revenue for which his estate would be liable, by payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of such estate.

No partition of a permanently-settled estate allowed if separate estate liable for less than one rupee annual land revenue, until proprietor agrees to redeem.

NOTE 1.—The provisions of this section were held not to apply to partition proceedings which were pending at the time of the commencement of this Act and were carried out under Regulation XIX of 1814 under section 2 of this Act, no notice having been given under section 3 of this Act to bring the partition under its provisions. It was ruled that the shareholders could not be compelled to redeem their shares of the Government revenue. (Board's Proceedings of 25th January 1879, No. 27, Collection 5, File 38, and of 19th March 1881, No. 126, Collection 5, File 599).

NOTE 2.—Under this section no partition is to be allowed if the separate estate of any of the proprietors would be liable for a Government revenue of one rupee or less; and under the interpretation clause (3—XVI) of the Act, a separate estate is explained to mean any distinct estate which may be formed by partition.

No partition, then, can be allowed if the share of any of the applicants for partition would be liable to pay revenue of one rupee or less, or if the *ijmali* share of the estate belonging to proprietors who had not applied for partition were similarly circumstanced. There would be no obstacle to a partition if the several individual proprietors of an

ijmali share were each of them possessors of an interest representing a jumma of less than one rupee, provided that the whole aggregate of the *ijmali* share were liable to pay a revenue of more than one rupee. What remains as the *ijmali* share of the proprietors who have not applied for partition is a separate estate under the meaning of the Act.

A larger shareholder cannot be allowed to redeem the revenue of smaller shareholders without their consent. No such procedure is contemplated by the law.

(Board's proceedings of 17th September 1881, No. 211, Collection 1, File 1648, and of 27th June 1885, No. 187, Collection 5, File 362.)

Partition of an estate in which private division has been made not to be made, except on joint petition of proprietors or on order of Civil Court.

12. Whenever a division of the lands of any estate has been made by private arrangement of the proprietors thereof, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in the estate, no such estate shall be brought under partition, and no partition of such estate shall be made under this Act otherwise than on a joint petition presented under section one hundred and one or section one hundred and five by all the proprietors thereof, unless such partition shall have been ordered to be made by a Civil Court.

NOTE 1.—An estate was brought under partition by an application of some of its proprietors. The proprietors of another share objected that, there having been a previous private partition, the butwarra in progress was inadmissible under section 12. The Deputy Collector who held a local enquiry found that the proprietors were in separate possession of specific lands, and that the partition could not proceed. This view was upheld by the Collector, but the decision was reversed by the Commissioner in appeal. On the hearing of the appeal before the Board, it was urged that separate possession was alone sufficient to prove the existence of a private arrangement. But the Board could not accept this view. They observed that what the law contemplated was a formal arrangement, agreed to by all the parties concerned, and followed by separate possession in accordance with the arrangement, and that the law very justly declared that when such an arrangement had been made the parties should not be permitted to resile from it. They further observed that it would be unjust that a proprietor, who had received specific lands under such an arrangement, and had allowed such lands to fall out of cultivation or otherwise to deteriorate, should be permitted to claim an interest in lands which had been improved by the good husbandry of his fellow-proprietors. The Board held that in such a case the first step would be to establish the existence of an agreement, and that although some of the proprietors might have entered into an informal understanding among themselves to occupy



certain lands and not occupy others, yet when the owners of other shares were not parties to the arrangement, and had not in any way recognized it, the partition was not barred by such an arrangement. (Board's Proceedings of 8th July 1882, No. 86, Collection 7, File 2123).

NOTE 2.—A partition can only be demanded, as of right, when each of the separate shares is made liable for an amount of Government revenue in proportion to its assets as compared with those of the undivided estate. When a private arrangement has been made among the proprietors, by which certain lands have been made liable for an amount of Government revenue not bearing the same proportion to the assets of such lands as the Government revenue of the entire estate bears to the assets of the whole estate, a partition may still be made if all the proprietors agree to it, and if the Collector is satisfied that the Government revenue is sufficiently secured. But no such partition can be made except on the joint application of all the recorded proprietors, and unless the Collector is fully satisfied that the interests of Government will not be endangered (Board's Proceedings of 30th September 1882, No. 334, Collection 7, File 20.)

NOTE 3.—Certain proprietors representing altogether a nine-annas share in an estate applied for a partition of their shares. Subsequently, the owners of a two-annas share also applied to have their share separately assessed and demarcated. Their applications were opposed on the ground that a private partition of the estate having been previously made in the year 1226 Fusli, the present partition could not be made with reference to the provisions of the present butwarra law. The Deputy Collector in immediate charge of butwarra proceedings considered that the division of 1226 was a bar to further proceedings. The Collector took the opposite view. The Commissioner on appeal held that a private butwarra had undoubtedly taken place, but he admitted the force of the technical objections raised on behalf of the respondents that, as a portion of the lands, viz., some 17 bighas were held ijmalī, and as the several shareholders under the private partition were not in separate possession of the entire lands representing their interests, the private partition was, with reference to the terms of section 12, no bar to the proceedings, and he in consequence confirmed the Collector's order allowing the butwarra to proceed. On appeal the Board upheld the Commissioner's order. They held that, though the butwarra of sixty years before into two 8-annas shares had taken place, it had clearly been superseded by some subsequent arrangement under which the proprietors were in possession, and admittedly holding shares representing 9, 2, 5, annas. Under these circumstances, it could not be said in the terms of this section that the private arrangement of 1226 Fusli was in force. They, however, did not attach much weight to the objections raised regarding the 17 bighas of land which were admittedly always held ijmalī, as, for special reasons, tanks and other special plots

of land are frequently retained *ijmal*. (Board's Proceedings of 30th December 1882, No. 140, Collection 1, File 1996).

NOTE 4.—The private partition of an estate, such as that contemplated by this section, having taken place, it was held to be binding on the purchaser of a portion of one of such separated estates, as he must have been well aware at the time of his purchase of the existence of a private partition between his vendor and other co-proprietors. He could not therefore claim a partition under this Act. (Board's Proceedings of 30th January 1886, No. 58, Collection 1, File 67).

NOTE 5.—The wording of this section shows that it contemplates the objection being taken before an estate has been brought under partition, *i.e.*, before the proceeding referred to in section 31 has been recorded. (Board's Proceedings of 6th March 1886, No. 153, Collection 5, File 294).

NOTE 6.—The private partition contemplated in this section is one of the entire estate, and not merely of one village out of several. A division of only one village out of several, however complete the arrangement, would in no way operate as a bar to partition. (Board's Proceedings of 13th March 1886, No. 98, Collection 7, File 91).

NOTE 7.—The Board have on more than one occasion held that the partition referred to in this section as sufficient to bar proceedings for a *butwarra* under this Act must be of the most complete and formal description, that there must be a distinct demarcation of the lands of each recorded proprietor, and that, as required by the section itself, clear evidence must be forthcoming to show that each proprietor of the estate is in possession of lands severally representing his interest in the estate. (Board's Proceedings of 13th March 1886, No. 205, Collection 7, File 35).

NOTE 8.—An estate A consisted of two entire villages and a half share of another village B, the other half belonging to two other estates, C and D. The lands of the half share of B in estate A were demarcated by the survey from the half share of B belonging to the two other estates C and D. The proprietor of a seven-annas share in the half of the village B only of the estate applied for the partition of his share. The proprietor of the remaining one-anna objected that the partition could not proceed, inasmuch as by a private arrangement he was in separate possession of certain specific lands, and inasmuch as the jungle lands were held in common between the three estates. In appeal the Board observed that although it might be shown that the objector held a defined area of some 200 bighas, and there might be complete evidence of separate holding of this portion of the estate, yet this did not bring the case within section 12:—"The separate possession in severalty of one proprietor will not suffice: it is necessary that each proprietor should hold his lands in this manner, and moreover it has been more than once ruled by the Board that separate possession must be one by metes and bounds, each proprietor's share being clearly and fully defined. The case would seem to be one in which the terms of section 106 would apply." Thus



they held that the private arrangement in this case was not such as was contemplated in this section, and that this section was no bar to the partition proceedings. (Board's Proceedings of 1st May 1886, No. 160, Collection 7, File 262).

NOTE 9.—An estate was at first privately divided in two equal shares. After some years it was privately divided into six equal shares. After several years it was held by no less than 28 recorded proprietors. One of them having a one-anna interest applied for partition, and an objection was preferred that there had been a private partition which under this section would be a bar to a partition under this Act. The Board held that the circumstances having changed from the time of the original private partition, and even from the second, when there were six equal shares, the partition could proceed. It was clear, the Board held, that the division into six puttees did not represent the existing state of things on the property, and that it could not be said that, in accordance with this division, each of the present proprietors was in possession of separate lands representing his interest in the estate. (Board's Proceedings of 29th May 1886, No. 276, Collection, 7, File 472).

NOTE 10.—In an estate a partition of which was applied for under this Act, there had been a private partition of the lands, leaving 68 bighas held in ijmali tenure. The case having come up to the Board in appeal, they observed that "as the Commissioner has rightly remarked, section 12 contemplates the division of all the lands of an estate, and separate possession of each proprietor or set of proprietors of lands representing their full interest in the estate. The exclusion of the 68 bighas is therefore fatal to the claim of a private partition having been effected." (Board's Proceedings of 4th September 1886, No. 46, Collection 7, File 197).

13. The Collector may refuse to admit an application for the formation of lands held in severalty into a separate estate; if, in consequence of such lands being intermingled with those 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, and the Collector may at any time refuse to proceed with a partition which would have such a result.

But a partition may be allowed in such a case if the recorded proprietors shall agree to such a distribution of land as shall make the estates formed by the partition reasonably compact.

Nothing in this section shall be understood to prohibit the partition into separate estates of a parent estate which before

Under certain circumstances Collector may refuse to declare lands held in severalty to be a separate estate.

Interest alien-
 ated with
 special con-
 dition as to
 revenue
 liability.

such partition is not compact and consists only of scattered parcels of land.

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific lands 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 the provisions of section six);

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 transferee, shall be entitled to claim a separation of the interest which has been so acquired;

Provided that a separation of such interests may be made, if the parties concerned agree to waive the conditions of the contract as regards the proportion of revenue for which the transferor and transferee or their representatives respectively are liable, and 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 by the revenue authorities under this Act.

NOTE.—A certain share in an estate was sold, reserving certain rent-free and homestead lands. The purchaser, however, was made liable by the deed of sale for the revenue of the purchased share: by this was meant, not the revenue proportionate to the amount of land actually sold but the revenue proportionate to the share in the estate that was sold. The Board, agreeing with the Commissioner, held that under this section the partition could not proceed. (Board's Proceedings of 20th February 1886, No. 61, Collection 5, File 293).

Arrears of
 revenue may
 be realised
 by sale of
 parent estate.

15. Notwithstanding that a parent estate may have been declared to be under partition as provided in section thirty-one, any arrears of revenue accruing due on such estate before the date specified in the notice issued under section one hundred and twenty-three may be realised by sale of the parent estate as if such estate had not been declared to be under partition; and



if such sale takes place, the partition proceedings shall cease from the date thereof.

16. Nothing contained in the last preceding section shall be deemed to affect the provisions of sections 10, 11, 12, 13, or 14 of Act XI of 1859 (*an Act to improve the law relating to sales of lands for arrears of revenue*), or any provisions of 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.

Shares may be protected from liability for arrears under laws in force.

Provided that, if any share in any estate is sold for its own arrears of 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.

PART III.

OF THE APPLICATION FOR THE PARTITION; THE ADMISSION OF AN ESTATE TO PARTITION; AND THE DISCONTINUANCE OF THE PARTITION PROCEEDINGS AFTER SUCH ADMISSION.

17. All applications for partition shall be made to the Collector of the district on the revenue-roll of which the estate is borne, and shall be made in person, or by duly authorised agent, on paper bearing such stamp as may be required by any law for the time being in force.

Application for partition to be made to Collector of the district.

NOTE 1.—Revenue-paying estates must be partitioned by the Collector. They cannot be partitioned by metes and bounds by the Civil Court Ameen; and if the shares in such an estate are not separate estates, but are mere fractional shares of integral estates, they cannot be partitioned in the absence of the other co-sharers. (*Damooder Misser and another versus Sennabutty Misra* and others, 8 I. L. R., Calc. 537).

NOTE 2.—Partition of an estate paying revenue to Government can-



Application to be signed, and certain particulars specified.

not be effected in a civil court. (Badri Roy and another *versus* Bhugwat Narain Dobey and others, 8. I. L. R., Calc. 649).

18. The application shall be signed by the applicant, and shall supply the following information in regard to the parent estate, so far as the particulars are known to the applicant or can be ascertained by him :—

(a) name of the estate ;

(b) number under which the estate is borne on the revenue-roll, and the revenue demand for which it is liable ;

(c) number under which the estate is borne on the Collector's General Register of revenue-paying lands ;

(d) name and address of every proprietor, whether recorded or unrecorded ;

(e) the character and extent of the interest of which each proprietor is in possession ;

(f) a specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands.

Application must be accompanied by copy of rent-roll and statement of rents.

19. Subject to the provisions of section sixty-one, every application shall, if possible, be accompanied by a copy of the rent-roll of the estate, by a statement of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding such application, and by copies of any measurement papers of the estate which the applicant may have in his possession.

The said rent-roll, statement and measurement papers shall be attested by the patwaris of the villages, if any, and every such application, rent-roll, and statement shall be presented, subscribed, and verified as provided in section fifty-two.

If the applicant is unable to produce a rent-roll or statement as above required, 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 statement, and the Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

Collector may reject application.

20. If the application does not fulfil the requirements of the three last preceding sections, the Collector may reject such application or may order it to be amended.



21. If in the opinion of the Collector the application fulfils the said requirements, and there appears to be no objection to making the partition, the Collector shall publish a notification of the application in the manner prescribed in section one hundred and thirty-four, and shall also cause copies thereof to be posted up at the Court of the Judge of the district, at the court of every Munsif and Sub-divisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which any lands appertaining to the estate are known to be situated, and shall 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 authorised agent, on 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.

Procedure of Collector on receipt of application.

22. Notice of the application shall also be served in the manner prescribed by section one hundred and thirty-five on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application.

Notice to proprietors who have not joined therein.

23. If any objection be made to the partition by any person claiming a proprietary right as aforesaid on or before the day specified in the notification published under section twenty-one, or at any subsequent time if it shall seem fit to the Collector to admit such objection, and the Collector, on consideration of such objection, shall be of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and in that case shall record the grounds of such rejection.

In case of valid objection being made within time allowed, application may be refused.

NOTE.—Patnidars cannot be considered as persons claiming a proprietary right who are entitled to object under this section, but a recorded part-proprietor of a mouzah, a portion of which mouzah also formed a part of the estate under butwarra, so that the name of such proprietor would be entered in the application under section 18 (f), was held to be entitled to object. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630).

24. If the objection raises any question of the extent of interest or of right or title as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it shall appear to the Collector that such question has not been already determined by a Court of competent jurisdiction,

Procedure when objection raises any question of title or right.



tion, the Collector may hold such inquiry as he may deem necessary into the objection, 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 the last preceding section,

(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.

When Collector to resume proceedings.

25. 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, shall have obtained an order from a Civil Court directing that such proceedings be stayed, or shall be able to show that a suit has been instituted before such Court to try some question, of such nature that the Collector shall think fit to stay the proceedings until the question shall have been finally decided, or until the proceedings in such Court in respect thereof shall have terminated.

Suit in Civil Court when not to affect proceedings taken under this Act.

26. No suit instituted in a Civil Court by any person claiming any right or title in the parent estate, after the lapse of four months from the issue of an order of the Collector under clauses (a) and (b) of section twenty-four, or after the lapse of four months from the issue of an order of the Collector under section thirty-one declaring the estate to be under partition, shall avail to stay or affect the progress of any proceedings which shall have been taken under this Act for the partition of an estate; and all rights which may be conferred on any person by the final decree in such suit shall be subject to such proceedings in the manner hereinafter provided.

Decree made while partition proceedings are in progress.

27. Every decree passed in such suit after the parent estate shall have been declared to be under partition as provided in section thirty-one, but before the date specified in the notice under section one hundred and twenty-three, shall be made in recognition of the proceedings then in progress under this Act for the partition of such parent estate, and shall be framed in such manner that the provisions of such decree



may be applied to, and may be carried out in reference to, the separate estate which the Collector in his proceeding under section thirty-one shall have ordered to be formed out of the parent estate ;

and if the effect of any such decree be to declare any person or body of persons entitled to any extent of interest in such parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, such 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 proceeding, 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 declared 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 be subject to the same liabilities, as a person who has acquired such extent of interest from such proprietor or body of proprietors by private purchase after the estate was brought under partition under section thirty-one, 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 such application shall be dealt with as provided in section thirty-two.

28. Every decree passed after the date specified in the notice under section one hundred and twenty-three in a suit which was instituted as mentioned in section thirty-six, shall be made in recognition of the partition proceedings, and shall be framed in such manner as to give effect to such division of the parent estate into separate estates as shall have been made by the Collector, and not to disturb such division ; and if the effect of any such decree shall 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 repre-

Decree made
after partition
proceedings
completed.

sented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, such 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 declared 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 every such decree as aforesaid shall be executed by placing the person or persons so declared entitled to recover 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 aforesaid decree.

Civil Court
may order
partition.

29. Subject to the provisions of section eleven, a Civil Court may at any time direct the Collector to assign to any person lands 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 to divide off from any estate any specified villages or lands, and to assign them to any person to be held as a separate estate, provided that an application for such partition and separation shall be presented by such person as required by sections seventeen, eighteen, and nineteen; but no Civil Court shall in any case specify the amount of revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable.

Collector to
assess land
revenue in
accordance
with this Act.

30. The Collector shall assess the land revenue on every such separate estate in accordance with the provisions of this Act, and no Civil Court shall direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.



31. If no objection be made within the time allowed under section twenty-one 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, he shall direct that the application be admitted, and record a proceeding declaring the estate to be under partition, for the purpose of forming and assigning to the applicant a separate estate.

Collector may declare the estate to be under partition.

In such proceeding the Collector shall declare the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants ;

and, if more than one separate application for separation shall have been made and admitted, the extent of interest which he finds to be held by every separate applicant or body of joint applicants respectively ;

and also the extent of interest which remains to any recorded proprietor, or to any number of recorded proprietors who are not applicants ;

and shall order that lands 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 that lands proportionate to the interest so declared to remain to the recorded proprietor, or the number of recorded proprietors who are not applicants, shall be left forming a separate estate.

32. If at any time after the Collector has made an order for partition under the last preceding section, any recorded proprietor in the estate, other than the original applicant, shall apply for the separation of his share, the Collector may either order that the proceedings for effecting such separation shall be carried on simultaneously with those for separating the share of the original applicant, or, if he consider that such a course would entail delay in the completion of the original proceedings, he may order that no action shall be taken on such subsequent application until after the proceedings for the separation of the original applicant's share shall have been completed.

Subsequent application for separation of another share.

In the latter case all or any of the rent-rolls, measurements,

and other papers which were used in the separation of the original applicant's share, may be used, as far as they are applicable, in the partition for which subsequent application has been made.

Collector may refer application for partition to any Deputy Collector.

33. The Collector may refer any application for partition to a Deputy Collector for the purpose of making any inquiries and doing anything required by this Part; provided that every order—

- (a) rejecting an application under section twenty-three;
- (b) directing, under section twenty-four, that the partition shall proceed, or shall be postponed;
- (c) directing, under section thirty-one, that an application for partition be admitted, and declaring an estate to be under partition;
- (d) made under the first clause of the last preceding section;
- (e) appointing a Deputy Collector under the next succeeding section to carry out the partition;

shall be passed by the Collector and not by any Deputy Collector.

As soon as estate declared to be under partition, Collector may appoint Deputy Collector.

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

Partition may be stayed if parties so desire. Recovery of costs.

35. If at any time after an order shall have been passed for making a partition, all the recorded proprietors of the estate shall present a petition to the effect that they do not wish the partition to proceed, the Collector may, on the report of the Deputy Collector or otherwise, strike the partition case off the file, on payment by the proprietors of all costs and expenses incurred in and about such partition; and any such costs and expenses which shall not already have been levied as provided in section thirty-nine or section forty, shall be levied in proportion to the shares of the respective proprietors.

NOTE.—From this section it is clear that a partition case can only be struck off the file by a Collector on a petition from all the recorded proprietors that they do not wish the partition to proceed. The power which is reserved to a Commissioner under section 36 to quash a partition must be exercised at the Commissioner's discretion with reference to the circumstances of each case. (Board's Proceedings of 17th September 1881, Collection 1, File 1648.)



36. If at any time after an order shall have been passed for making a partition, it shall appear from information which was not before the Collector at the time the partition was ordered or otherwise, that any sufficient reason exists why the partition should not be proceeded with, the Commissioner may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file; and in such case any costs and expenses of the partition which shall not already have been levied as provided in section thirty-nine or section forty shall be levied in proportion to the shares of the respective proprietors.

Partition may be stayed and proceedings quashed by Commissioner.

NOTE 1.—When an estate was entered under one number and one sudder jumma in the Government rent-roll, and the two mouzahs of the estate were jointly liable for the Government revenue, it was held that there was no legal obstacle to the application of the owner of an eight-annas share in one of the mouzahs for a butwarra of his share, and that the whole estate must be considered liable to measurement and assessment under the butwarra proceedings. It was added—"The identity of the separate villages must be considered as having become merged at the time of the permanent settlement in the common responsibility which they jointly share for the Government revenue of the entire estate. A butwarra can only be effected under section 6 of the Partition Act, and the separate and distinct manner in which the two mouzahs have been held by perfectly distinct proprietors offers no legal disability in the way of the completion of the butwarra." Whatever the early history of the mouzahs might have been (with regard to separate engagements), the fact to be regarded was that at the time of the butwarra they constituted a joint and undivided estate. The Board therefore reversed the Commissioner's order that the case should be dealt with under section 36. (Board's Proceedings of 8th November 1884, No. 248, Collection 1, File 247.)

NOTE 2.—In the event of legislation being undertaken, it has been reserved for consideration whether the powers vested in Commissioners under this section and section 40 should not be transferred to Collectors, subject to the safeguard that an appeal shall in each instance lie to the Commissioner (Board's proceedings of 19th May 1888, No. 230, Collection No. 7, File No. 420).



PART IV.

OF ESTABLISHMENTS FOR EFFECTING PARTITIONS AND OF THE
COST THEREOF.

Deputy Col-
lector may
appoint
officers for
making
measurement
of lands, &c.

37. For the purposes of this Act, the Deputy Collector may, with the approval of the Collector, and subject to any rules made in that behalf by the Board, appoint such establishments as may be required for making the measurement and survey of lands for ascertaining and recording the rates of rent, for making any other local inquiries, for the preparation of the papers, and for other matters in each case; and the Collector may appoint such peshkars or other superior officers as may be required to test the work of the amins and for the performance of similar duties; provided that the scale of remuneration of such officers, and the time for which they shall be employed, shall be sanctioned by the Commissioner.

Special estab-
lishments
may be
appointed.

38. In any district or division in which partitions may be so numerous or so extensive as to render necessary the appointment of special establishments in the office of the Collector or of the Commissioner, the Collector and the Commissioner may, with the sanction of the Board, appoint such establishments.

Cost of parti-
tion to be
levied from
proprietors in
accordance
with rules
laid down by
the Board.

39. As soon as possible after an estate has been declared to be under partition as provided in section thirty-one, the cost of making the partition shall be estimated, and the amount shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf.

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 above provided.

Apportion-
ment of costs.

40. The cost shall be apportioned on the proprietors of each share in proportion to their shares; but whenever it shall appear to the Commissioner that the partition proceedings have been unnecessarily delayed, and the cost of the partition enhanced by obstacles vexatiously put in the way of their comple-



tion 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 requisitions made upon him or them, the Commissioner may direct that such portion of the cost as he may think proper in excess of the amount proportionate to his or their share shall be levied from such proprietor or proprietors.

NOTE 1.—As the cost of a partition is regulated, not by the Government revenue or the gross assets or the net profits, but by the area (the maximum being Rs. 36 per 100 acres), it does not seem unreasonable that the area should be made the basis of determining the proportion of costs to be paid by each of the parties. If the circumstances of an estate render it impossible to apportion the expense of the partition in accordance with area, the apportionment should be made in accordance with the amount of the Government revenue payable on account of each of the shares into which it is proposed to divide the estate. (Board's Proceedings of 13th May 1882, No. 139, Collection 8, File 963).

NOTE 2.—See note 3 to section 36.

41. Whenever any local inquiry may be held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-rolls, 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 shall be paid by the person making the objection, or by any one of the proprietors, or that such cost shall be paid in such proportions as he shall think fit, by the said person and the proprietors or any of them, or that such cost be deemed a part of the general cost of making a partition as prescribed in section thirty-nine.

Deputy Collector may declare cost of local inquiry.

42. Upon the completion of the partition, the Collector shall make an order declaring the total cost thereof. 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 by levying from them in the manner provided in section one hundred and thirty-eight, if necessary, any sums remaining due.

After completion of partition Collector shall declare total cost thereof.

43. Whenever it shall appear to the Lieutenant-Governor that in any district the work required to be done by Deputy Collectors in connection with partitions under this Act is so great that such work would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one

Salary of Deputy Collectors when to be deemed part of cost of partition.

or more Deputy Collectors, the Lieutenant-Governor 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 cost of such partitions, and thereupon such charge as the Collector may think fit to make in respect of such salary shall in addition to the items mentioned in the last preceding section, be deemed to be a portion of the costs of every partition.

For the purposes of this section the salary of every Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

NOTE.—If, while employed on partition work, a Deputy Collector is promoted to, or confirmed in, an appointment of which the pay is higher than that of a Deputy Collector of the lowest grade, and if his continued deputation to that work is considered necessary, the excess over the pay of a Deputy Collector of the lowest grade (Rs. 250) is to be paid by Government, and cannot be charged to the Estates' Partition Fund. (Board's Proceedings of 5th September 1885. No. 122, Collection 10, File 40).

What are costs leviable from proprietors.

44. For the purposes of sections thirty-nine, forty, and forty-two, the costs of any partition shall be deemed to be—

(a) the cost of any establishments entertained for the partition under section thirty-seven, or such amount as the Collector may think proper in respect of the services of any such establishments which are entertained for the purposes of making partitions in the district;

(b) all contingent expenses incurred in and about the partition, and

(c) such portion of the cost of any establishment entertained under section thirty-eight as the Collector may order.

NOTE 1.—The cost of surveying instruments clearly comes within section 44 (b), as well as section 49 (b) of the Act, as all butwarra charges should be met by the proprietors of estates under partition, and not by Government. (Board's Proceedings of 15th March 1884, No., 150 Collection 10, File 98).

NOTE 2.—To clause (b)—This is a very general heading, and must be held to include travelling, leave and pension allowances, as well as all ordinary contingencies. In addition to their salaries, a charge "at the rate prescribed in Article 823 of the Civil Service Regulations is levied



on the salaries" (3-8-90) in the shape of partition fees, from the proprietors of estates under partition to meet the liability of Government for the leave allowances and pension of the Deputy Collectors employed under section 43 (whether members of the Subordinate Executive Service or not holding substantive appointments under Government or not in service of a pensionable nature), and of such members of their establishments as hold substantive appointments under Government. (Board's Proceedings of 4th September 1886, No. 240, Collection 10, File 295, and of 29th May 1880, No. 159, Collection 10, File 767, "and of 9th August 1890, No. 23, Collection 10, File 15.") 3-8-90.

45. Notwithstanding anything contained in the eight last preceding sections, the Lieutenant-Governor may direct that in any district a fund to be called the "Estates' Partition Fund" shall be formed, into which all sums levied from the proprietors of estates in respect of partitions of their estates shall be paid.

Lieutenant-Governor may direct "Estates' Partition Fund" to be formed.

Whenever such a fund shall have been established in any district, all expenses of making partitions of estates in such district shall, except as hereinafter otherwise provided, be defrayed from such fund.

46. Whenever the Lieutenant-Governor shall have ordered an "Estates' Partition Fund" to be formed in any district, the charges leviable from the proprietors of any estate under partition may be estimated and levied according to the estimate in each case as provided in sections thirty-nine and forty, subject to final adjustment, as provided in section forty-two; or they may be levied according to a general scale of fees to be fixed by the Board.

Procedure when Estates' Partition Fund formed in any district.

NOTE.—The fees or charges levied under this section and section 47 are to be credited to XXIII, "Miscellaneous" and not to "Miscellaneous Land Revenue." (Board's Circular Order No. 3 of June 1883.)

47. Such scale of fees shall be fixed as nearly as may be, so that the receipts and expenditure of the said fund shall balance one another, and shall be revised from time to time by the Board for that purpose.

Scale of fees.

Such fees shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf, and the provisions of section forty shall be applicable to such fees.

NOTE.—See NOTE to section 46.

Abstract of Estates' partition Fund to be published.

48. An abstract of the Estates' Partition Fund of each district made up to the end of each year shall be published in the *Calcutta Gazette*, and by being posted up at the office of the Collector of the district.

What costs of partition chargeable to Estates' Partition Fund,

49. For the purposes of sections forty-five, forty-six, and forty-seven, the expenses of making partitions in any district shall be deemed to be—

(a) the cost of all establishments entertained in the district under section thirty-seven ;

(b) all contingent expenses incurred in all partitions in the district ;

(c) the cost of any special establishment appointed in the office of the Collector under section thirty-eight ;

(d) such portion as the Commissioner may direct of the cost of any special establishment appointed in his office under section thirty-eight ;

(e) the salary of any one or more Deputy Collectors which the Lieutenant-Governor may have ordered under section forty-three to be recovered from the proprietors of estates under partition.

NOTE.—See also NOTE to section 44.

Civil Court may in certain cases order parties to pay expenses incurred in dividing an estate.

50. Whenever any Civil Court shall make a decree awarding or declaring any proprietary right in an estate, and shall require the Collector to make a partition of the estate, such Court may at the same time direct,

that the party or parties who may have withheld the right so decreed shall defray the whole of the expense which may be incurred in and about the partition, or the whole of the fees payable in respect of the partition under section forty-six,

or that the said expenses or fees shall be defrayed by all or any of the parties to the suit in which the decree was made in such proportions as the Court may, from a consideration of the particular circumstances of the case, deem equitable ;

Copies of all orders which the Court may pass under this section shall be transmitted to the Collector for his guidance, together with the precept which the Court may issue to him



requiring him to divide the estate; and the Collector shall levy the said expenses and fees from the parties in the proportion ordered by such Court in the same manner and by the same means as if the levy of such expenses and fees had been ordered by the Collector.

PART V.

OF THE PARTITION PROCEEDINGS UP TO THE ADOPTION OF A RENT-ROLL AND MEASUREMENT PAPERS.

51. As soon as the Collector shall have made an order under section thirty-one declaring an estate to be under partition, the Deputy Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four, and shall also cause copies thereof to be posted up at the Court of the Judge of the district in which any lands appertaining to the parent estate are known to be situated, and at the Court of every Munsif and of every subdivisional officer within the jurisdiction of whom, and at every police station within the jurisdiction of which, any such lands are known to be situated, intimating his intention to proceed with the partition, and requiring all the proprietors of the estate to produce before a certain date, being not less than forty days from the date of such notification, either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement papers of the estate which may be in their possession.

As soon as estate declared to be under partition, Deputy Collector shall cause notification to be published.

A notice to the same effect shall also be served as provided in section one hundred and thirty-five on each proprietor of the parent estate.

The Deputy Collector may, on sufficient grounds for so doing being shown to his satisfaction, from time to time extend the period for producing any such return.

52. Every rent-roll, statement of rents collected, and measurement paper furnished to the Collector under this Act shall be presented by the person who is required to produce the same or by a duly authorised agent of such person who

Rent-roll filed by a proprietor to be subscribed and verified.

has a personal knowledge of the facts stated therein, and shall be subscribed and verified at the foot by such person or such agent in the manner following, or to the like effect:—

“I, A, B, do declare that this rent-roll (*statement or measurement paper*) is correct to the best of my knowledge and belief.”

If the rent-roll, statement or measurement paper shall contain any entry which the person making the verification shall know or believe to be false, or shall not believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

Procedure if person required cannot produce rent-roll or statement.

53. If any proprietor who is required to produce any rent-roll or statement by notice as aforesaid is unable to produce such rent-roll or statement, he shall state to the Deputy Collector the cause thereof and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Deputy Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

Deputy Collector may order measurement of land and may test rent-roll.

54. The Deputy Collector may, if necessary, make, or may cause to be made, a measurement of all or any of the lands comprised in the estate, and may prepare or cause to be prepared a rent-roll, and may test or cause to be tested on the spot any rent-roll which has been produced as aforesaid, and may make or cause to be made any local enquiry which he may consider necessary.

NOTE.—At present measurement is ordinarily made by the native method by pole and chain only. A proposal came before the Board from a district in the Patna Division to introduce measurement by chain and compass. The Board considered that the change of system would be an improvement, but that it would probably also prove much more expensive than the ordinary method, and that the additional expense would be a heavy burden on the estates under partition. It was ultimately decided that, though it was at present inexpedient to adopt the proposal in full, yet when the existing amins have learnt the scientific system of measurement, they should be directed to adopt it, and that amins should in future be introduced who understand the scientific system. (Board's Proceedings of 10th October 1885, No. 314, Collection 7, File No. 546.)



55. Before proceeding or deputing the amin to the spot, the Deputy Collector shall publish a notification in the manner prescribed by section one hundred and thirty-four, requiring the several proprietors of the estate, their managers, and any other persons employed in the management of the land, or otherwise interested therein, to attend in person or by agent upon him, or upon the amin who is deputed to make the measurement or enquiry, for the purpose of pointing out boundaries and of affording such assistance and information as may be required for the purposes of this Act.

Deputy Collector to summon proprietors by proclamation to attend proceedings.

56. The Deputy Collector, and any amin or other person who is specially authorized in that behalf by the Collector, may, by a notice served as provided in section one hundred and thirty-five, require any proprietor or other person whose attendance may be required to attend before the Deputy Collector or amin who is making such measurement or enquiry within a specified time at any place for any of the purposes aforesaid.

Deputy Collector and amin may require attendance of proprietor or any other person.

57. If any objection be made to a measurement, map, or rent-roll prepared by the amin, or if for any other reason it seems desirable, the Deputy Collector shall, as soon as possible after completion of the amin's work, himself test, or shall cause to be tested on the spot, such measurement, map, and rent-roll, and may accept, amend, or reject the same or any of them. If the Deputy Collector shall deem it necessary, he may cause the work or any portion thereof to be done again.

Deputy Collector to test amin's work.

58. The Deputy Collector may examine any person on solemn affirmation in regard to the papers produced before him, whether by the proprietors, by the amin, or otherwise, and shall allow the parties concerned to put any necessary questions to such person.

Examination of the parties and their papers.

The Deputy Collector shall also allow any proprietor or other person interested to examine the papers so produced, and to take a copy of the same, and after such examination shall hear any objections which any of the persons interested may make in respect of such papers, and shall decide whether any, and (if any) which of the papers, as they stand, or with such modifications as he may think necessary, shall be accepted as correct for the purposes of the partition.

Power of Deputy Collector if proprietor fails to file rent-roll.

59. If any proprietor who has been required to produce a rent-roll or statement under section fifty-one, fails to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, or fails to state to the Deputy Collector the name and address of any person under section fifty-three, the Deputy Collector may declare that the said proprietor shall, for the purposes of the partition, be bound by such rent-roll as the Deputy Collector may adopt as the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

Power of Deputy Collector, if person fails to produce rent-roll.

60. If any person who has been required to produce a rent-roll or statement under section fifty-three, shall fail to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, the Deputy Collector may declare that the proprietor who may have stated the name of such person under section fifty-three shall, for the purposes of the partition, be bound by the rent-roll which the Deputy Collector may adopt for the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

Collector may dispense with rent-roll, maps, and other papers.

61. Notwithstanding any thing contained in this Act, if it shall appear to the Deputy Collector that any measurements, maps, rent-rolls, or other papers relating to the estate which have been prepared otherwise than for the purposes of the partition, or otherwise than for the purposes of this Act, afford information sufficiently trustworthy to enable him to effect the partition, the Deputy Collector may adopt such information and such papers either wholly or in part for the purposes of the partition, and may dispense with any rent-rolls, maps, or other papers for which he is authorised to call, or which an applicant is required to produce under this Act.

Proprietor who has failed to attend shall not be entitled to object subsequently.

62. No proprietor or other person, who shall have failed to attend in person or by agent during the measurement as required by the notification published under section fifty-five, shall be entitled at any subsequent time to make any objection to such measurement; but the Collector may admit any objection



made by such proprietor or person if he think fit, provided that any expense entailed by a local enquiry made in consequence of such subsequent objection shall be paid entirely by such proprietor or person.

63. When the Deputy Collector is finally satisfied that the papers before him, whether rent-rolls, measurement papers, maps, or other papers, are sufficient and sufficiently correct to be accepted or adopted for the purposes of the partition, he shall make an order to that effect, and shall fix a day on which to determine the general arrangement of the partition, and shall publish a notification in the manner prescribed by section one hundred and thirty-four, 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 shall serve a notice to the same effect on each proprietor or his agent.

Notification of date for deciding the mode of partition.

NOTE.—In the case of an estate in which several mouzahs had completely diluviated since the measurement of 16 years before, and valuable large accretions had occurred in other mouzahs, none of which were shown in any of the maps or papers, the Board observed (there being apparently a number of small shareholders) that it would be incumbent on the officers making the partition to exercise considerable caution that the Government revenue does not ultimately suffer by the butwarra, as small shares, consisting of lands in villages subject to active diluvion, may completely disappear in a few years to the serious detriment of the Government revenue. (Board's Proceedings of 18th December 1886, No. 85, Collection 5, File 247).

PART VI.

OF PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

64. On the date fixed under the last preceding section, if a petition to that effect signed by all the recorded proprietors shall have been presented, the Deputy Collector may allow such proprietors to make a private partition of the estate amongst themselves on the basis of the papers which have been accepted or adopted for the purposes of the partition by the Deputy Collector, or may refer the partition to be made by an arbitrator or arbitrators on such basis.

Deputy Collector may allow parties to make a private partition.

If the proprietors who have elected to make such private partition shall fail to make the same within such time as may be fixed by the Deputy Collector, the Deputy Collector may refer the partition to be made by an arbitrator or arbitrators, or may make the partition himself.

Procedure on reference to arbitration.

65. Whenever any partition shall have been referred to arbitration, the proceedings shall be conducted in accordance with the provisions of sections 313 to 325 (both inclusive) of Act VIII of 1859 (*an Act for simplifying the procedure of the Court of Civil Judicature not established by Royal Charter*) as far as those provisions are applicable, and except as herein otherwise expressly provided.

NOTE.—Act VIII of 1859 has been repealed, and the corresponding sections are 506 to 522 of Act XIV of 1882.

Arbitrators to deliver a partition paper.

66. The arbitrators shall deliver, within a time to be fixed by the Deputy Collector, which time may be further extended by him, a full and complete paper of partition, in such form as may be prescribed by the Board for partitions made by the Collector or Deputy Collector.

Remuneration of arbitrators.

67. The arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for their services, the amount of which shall be fixed, with the approval of the Commissioner, by the officer making the reference to arbitration, and shall be considered to form part of the cost of making the partition.

Partition made under this Part to be subject to approval of Collector, and superior revenue authorities.

68. Every partition made under the provisions of this Part by the parties, or by arbitrators appointed by them, shall be subject to the approval of the Deputy Collector and to the confirmation of the Collector and the orders of the superior revenue authorities; provided that neither the Deputy Collector nor any other authority shall disallow any partition so made on any other ground than that of fraud, or that, in the opinion of the Deputy Collector or such other authority, the partition cannot be confirmed without endangering the safety of the land revenue.

Land revenue to be assessed by Collector.

69. Whenever a partition has been made under the provisions of this Part, the land revenue shall be assessed by the Collector on each separate estate into which the parent estate is divided by such partition in the manner prescribed by section six.



70. If the paper of partition be not delivered within the time fixed by the Deputy Collector, or within any further period to which the time may have been extended, the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

In default of delivery of partition paper, Collector may withdraw case from arbitration.

PART VII.

OF THE PROCEDURE FROM THE DETERMINATION OF THE GENERAL ARRANGEMENT OF THE PARTITION BY THE DEPUTY COLLECTOR TO THE APPROVAL OF THE PARTITION BY THE COLLECTOR.

71. If no petition shall have been presented under section sixty-four, the Deputy Collector shall, on the date fixed under section sixty-three, or on any other date to which the hearing may have been postponed by a notice posted at the office of the Deputy Collector, consult orally each proprietor present, and endeavour, as far as possible, with the concurrence of the proprietors present, to settle a general arrangement of the partition in accordance with the requirements of this Act.

Procedure when no petition presented under section 64.

For this purpose he shall endeavour to obtain from each proprietor an acknowledgment of his acceptance of the rent-roll, map, and any other papers which have been adopted by the Deputy Collector for the purposes of the partition, and shall briefly record the objections of any proprietor who still objects to accept such rent-roll, map, or other papers.

72. If, in consequence of any objections made before the Deputy Collector has settled the general arrangement of the partition as provided in the last preceding section, the Deputy Collector considers it necessary to make further enquiry, he may, by notice to the recorded proprietors, postpone the settlement of the general arrangement of the partition to a date being not less than fifteen days from the service of the notice on any proprietor.

Deputy Collector may postpone settlement of general arrangement of partition.



Deputy Collector may award compensation for attendance to proprietor.

73. If the objections on account of which the said settlement is postponed are such that the person making the same might have made them on an earlier day, the Deputy Collector may award to each proprietor, who shall have attended in person or by agent in accordance with the notice, such sum, not exceeding sixteen rupees, as he shall think fit by way of compensation for such attendance.

The sum so awarded shall be paid by the person making the objections as aforesaid, and may be recovered from him in the manner provided by section one hundred and thirty-eight.

If no postponement made, Deputy Collector to determine the general arrangement of the partition.

74. If the objections have already been enquired into and disposed of, or are such as not to render necessary any further enquiry and postponement, or when any objections which may require further enquiry have been disposed of, the Deputy Collector shall record an order to that effect, and, after hearing what each proprietor present may urge, shall hold a proceeding determining the general arrangement of the partition and the mode in which the present estate shall be divided, and, in a general way, the position of the lands which shall be assigned to each of the separate estates.

In determining the general arrangement of the partition, the Deputy Collector shall be guided by the rules which are laid down in Part VIII, and shall direct the partition to be made in the manner which, in his opinion, is on the whole most in accordance with such rules, and most equitable and most convenient to all parties concerned.

NOTE.—The general arrangement of the partition must be determined by the Deputy Collector himself. It should never be left to the Amin. (Board's Proceedings of 13th April 1878, No. 60, Collection 7, File 65.)

General arrangement of partition to be submitted for sanction of Collector.

75. The general arrangement of the partition, as determined under the last preceding section, shall be submitted for the sanction of the Collector, who shall by notice fix a date for the consideration of the same, not being less than fifteen days after the publication of the said notice in his office, and, after hearing and disposing of any objection which may be preferred, shall pass such orders as he may think proper, setting aside, amending, or approving the general arrangement made by the Deputy Collector.



NOTE.—A Deputy Collector, in the exercise of executive functions, is in the fullest sense the assistant and agent for carrying out the views of the Collector, and over his proceedings the Collector is bound to exercise the closest superintendence, and to interfere whenever he thinks proper to do so. The relative positions of Collector and his Deputy are entirely different from those of a Collector and Commissioner, or those of the Commissioner and the Board. (Board's Proceedings of 14th May 1881, No. 155, Collection 7, File 493.)

76. When the general arrangement has been approved by the Collector, the Deputy Collector shall proceed to fix the exact boundaries of each separate estate, after considering the wishes which the parties may express in respect thereof.

Deputy Collector to fix boundaries.

77. When the Deputy Collector shall have so determined the boundaries, he shall cause to be drawn up a paper of partition specifying in detail the villages and lands which he has included in each of the separate estates, the rental thereof, with any other assets of each separate estate, the name or names of the recorded proprietor or proprietors of each separate estate, any stipulations which may have been made regarding places of worship, tanks, or other matters as mentioned in Part VIII, and the amount of land revenue to be assessed on each separate estate; he shall also prepare a map showing the lands which fall within each separate estate and the boundaries thereof, unless the preparation of such map shall be dispensed with by special permission of the Collector.

Deputy Collector to draw up paper of partition and map.

78. The Deputy Collector shall submit the partition paper and map as aforesaid and all other papers of the partition to the Collector with a full report of the proceedings taken, the reasons which influenced the Deputy Collector in selecting the lands included in each separate estate, the nature of the accounts upon which the apportionment of the land revenue assessed thereon has been based, and all other particulars material to the case.

Deputy Collector to submit papers to Collector.

79. The Deputy Collector shall at the same time cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,

and shall 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;

Deputy Collector to prepare extracts of partition papers for each proprietor.



and the Deputy Collector shall publish a notice at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as above mentioned, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

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 herein mentioned.

On receipt of papers and report Collector to publish notification.

80. On receipt of the papers and report mentioned in section seventy-eight, the Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four fixing a date, not being less than six weeks from the date of the publication of such notification on the parent estate, on which he will proceed to take up the case, and to consider any representations and objections which may be preferred in respect of the partition made by the Deputy Collector, and calling on all parties concerned who may wish to do so, to inspect the papers at his office before such date, and to take copies of any such papers as they may require.

The Collector shall also cause a notice to the same effect to be served on each of the recorded proprietors.

Procedure of Collector thereupon.

81. On the date so fixed, or on any other date to which the hearing may have been postponed, the Collector shall take into consideration the papers as laid before him, and after calling for any further information which he may deem necessary, and disposing of any objections which shall be made to the proposed partition and allotment of land revenue, may approve the partition as made by the Deputy Collector with such amendments as he may think proper, or return it for amendment to the Deputy Collector who made it, or to another Deputy Collector, or make a fresh partition himself.

The Collector may return the said papers for amendment or enquiry as often as he may think fit.

NOTE.—The modifications which a Collector is entitled under this section to make in a general arrangement of partition finally settled under section 75 are such as are referred to in sections 76 and 77, and relate to the fixing of the exact boundaries of each separate estate, to assessing of the land revenue on each such estate and other matters of



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detail. He cannot change the general arrangement approved by him under section 75 and confirmed or amended by the Commissioner on appeal. (Board's Proceedings of 18th December 1886, No. 87, Collection 7, File 249).

82. No proprietor who shall have failed to appear before the Deputy Collector in person or by agent on any date fixed for the arrangement of the partition under section sixty-three or section seventy-two, and no proprietor who shall have failed so to appear before the Collector on any date fixed under either of the two last preceding sections, shall be entitled, at any subsequent time, to make any objection to the orders which may be passed on such dates respectively.

Proprietor when not entitled to make subsequent objection.

83. When the Collector approves the partition made by the Deputy Collector with amendments, he may cause a fresh partition paper and map to be prepared, or may cause the amendments made by him to be noted on the paper and map submitted by the Deputy Collector.

Collector may cause a fresh partition paper and map to be prepared.

When the Collector makes a fresh partition himself, he shall cause a fresh partition paper and map to be prepared.

84. Whenever the Collector shall have approved a partition (whether with or without amendment), he shall cause a notice to be served on each of the recorded proprietors 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 of the date of the service of the said notice, or, if the Collector has approved the partition with amendments, and the notice requires the proprietor to produce the extract of any partition in order that amendments may be noted thereon, or to take out a fresh extract from the partition paper, as provided in the next succeeding section, then within six weeks of such date.

Procedure when Collector approves of a partition without amendment.

85. Whenever the Collector shall have approved a partition with amendments, and shall, under section eighty-three, have caused such amendments to be noted on the partition paper and map submitted by the Deputy Collector, the notice to be served on each of the recorded proprietors under the last preceding section shall, in the case of every such proprietor whose separate estate is affected by such amendment, in addi-

Procedure when Collector approves partition paper with amendments.



tion to the particulars mentioned in the said section, require such proprietor to produce before the Collector, within fifteen days of the service of such notice, the extract from the paper of partition which has been prepared, and any map relating to his separate estate which may have been prepared under section seventy-nine, in order that the amendments made by the Collector in the partition may be noted thereon; and such amendments shall be noted thereon by the Collector accordingly, and such extract and map shall be returned to the proprietor who produced them.

Whenever the Collector shall have caused, under section eighty-three, a new partition paper and map to be prepared, he shall order separate extracts from the portions of the partition paper which relate to each separate estate, and maps, if necessary, to be prepared as required by section seventy-nine, and in such case the notice served under the last preceding section shall, in addition to the particulars mentioned in that section, declare the extracts and maps which were furnished or offered to proprietors under section seventy-nine to be cancelled, and shall require the recorded proprietors to take out of the Collector's office such extracts and maps relating to their respective separate estates.

Papers to be forwarded to Commissioner.

86. As soon as practicable after the issue of the notice under section eighty-four, the Collector shall forward to the Commissioner all papers relating to the partition as approved or as made by the Collector.

PART VIII.

OF THE GENERAL PRINCIPLES ON WHICH PARTITIONS SHALL BE MADE.

Rules applicable to the partition of lands which are held by the proprietors in common tenancy.

Estates formed in course of partition to be as compact as possible.

87. 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 other provisions of this Part, but no partition made or approved by a Collector shall be set aside on the ground only that the separate estates are not compact.



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88. In selecting the villages or lands 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 situation ;

Circumstances to be considered in making partitions.

the vicinity of roads, railways, navigable rivers, or canals ;
the nature and quality of the soil and produce ;
the quantity of cultivable and uncultivable waste land ;
the facilities for irrigation ;
the state of the embankments and water-courses ;
liability to accretion and diluvion,
and any other circumstances, affecting the value of the lands.

89. 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 such house may retain occupation thereof with the offices, buildings and grounds immediately attached thereto, upon agreeing to pay rent for the land occupied by such dwelling-house, offices, buildings, and grounds to the proprietor of the separate estate in which such land is included.

Rule when dwelling-house belonging to one proprietor is situated on ground to be allotted to another proprietor.

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

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

90. Whenever the Deputy Collector shall think fit, he may apply the rule contained in the last preceding section to gardens, to orchards of trees, to land planted with bamboos, and to any other lands which in his opinion are of special value to the proprietor in whose occupation they are found to be, in consequence of improvements made by such proprietor or of the particular use to which such lands are put.

Rule contained in last preceding section may be applied to gardens, orchards, &c.

91. The rent fixed in perpetuity on any land by the Deputy Collector under either of the two last preceding sections shall be considered to be the rental of such land for the purposes of the partition.

Calculation of rental.

92. Whenever the dwelling-house of one proprietor, with the offices, buildings, and grounds immediately attached thereto,

Rent may be redeemed.



shall have been included in the separate estate of another proprietor, and the annual rent to be paid in perpetuity in respect of the land occupied thereby shall have been fixed by the Deputy Collector and stated in the paper of partition, the proprietor whose dwelling-house, offices, buildings, and grounds have been included as aforesaid may apply to the Deputy Collector for permission to redeem the annual rent so fixed, and the Deputy Collector shall give such permission, unless he shall be of opinion that such redemption would endanger the safety of the land revenue for the payment of which the separate estate in which such dwelling-house, offices, buildings, and grounds have been included will be liable.

Deputy Collector to certify amount payable in redemption of rent.

93. If the Deputy Collector shall see no such reason to refuse his permission to the redemption being made, he shall certify the amount payable by such proprietor in redemption of such annual rent; and such amount shall be calculated and fixed by the Deputy Collector at ten per centum above the sum which would be required to purchase, at the market prices then prevailing, so much stock of the Government loan which was last issued as would yield an annual amount of interest equal to the annual land rent fixed by the Deputy Collector under section eighty-nine.

But not after possession of separate estates has been given.

94. The proprietor, desiring to redeem the rent as aforesaid, may pay to the Deputy Collector the amount so certified at any time before possession is given to the several proprietors of the separate estates allotted to each, as provided in section one hundred and twenty-three, but not after such possession has been given.

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

95. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate such land is situated that such payment has been made, and that the sum will be paid to him or to his authorised agent on application; and that, from the date on which possession as aforesaid may be given, the proprietor who has redeemed the rent of such land will be entitled to hold such land as a rent-free tenure secured against the proprietor of the estate and against any auction purchaser at a sale for arrears of revenue, including the Government; and from such date the lands shall be so held as a rent-free tenure.



96. The Deputy Collector shall at the same time also give notice to the Collector of the district of the creation of such tenure; and the Collector of the district shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859, or by any similar law for the time being in force.

Collector to register rent-free tenure.

97. When two or more of the separate estates shall 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 lands, unless the recorded proprietors of the equal shares shall agree among themselves as to the allotment of the equal separate estates and shall present a petition to that effect; or unless for any other reason the Deputy Collector shall, with the sanction of the Collector, think proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

Lots may be drawn for equal shares.

98. 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.

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 shall think proper for such purpose.

And after lots shall 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 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.

Provided that lots shall in no case be drawn until after full opportunity shall have been given to the proprietors to advance



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their objections in respect of the papers accepted as the basis of the partition and in respect of the assets of the different lands as stated in such papers, and until any such objections which may have been made shall have been disposed of.

Illustrations.

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

8 annas.
4 annas.
3 annas.
1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas, and 1 anna share 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 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.
4 annas.
3 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 sharers; 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 pro-



prietors 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 shares respectively within the tract which fell to them jointly by lot.

99. The Deputy Collector may, by a notice served as provided in section one hundred and thirty-five, require any proprietor in respect of whose share lots are to be drawn as provided in either of the two last preceding section, to attend at the office of the Deputy Collector in person or by authorized 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 shall fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

100. Whenever any proprietor or proprietors shall have failed to comply with a requisition of the Deputy Collector under the last preceding section, 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.

Rules applicable to the formation into separate estates of lands which are held by proprietors in severalty.

101. Whenever in any parent estate a division of the lands thereof has been made by private arrangement of the proprietors of such estate, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in such parent estate, the joint application presented to the Collector by all the recorded proprietors of such estate as required by section twelve may be to the effect that a partition of such estate be made by assigning to each proprietor or to two or more proprietors jointly as his or their separate estate, the lands of which they are in separate possession in accordance with

Joint petition may be presented for partition according to private division.



such arrangement, and also 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.

Partition according to private division to be referred to Collector.

102. 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 are sufficient to secure the payment of the annual amount of land revenue for which it is proposed to make such separate estate liable; and if the Deputy Collector be satisfied that in this respect, and with reference to all the circumstances of the case, the partition of the lands and the assessment of the revenue thereon may be made in the manner proposed without endangering the safety of the revenue, the Deputy Collector shall submit the case with his opinion thereon; and the reasons on which such opinion is founded, to the Collector, who may admit or reject the said application.

Effect of Collector's approval.

103. If the Collector admits the said application, such admission shall be deemed to be the Collector's approval of the general arrangement of the partition as provided in section seventy-five, and the Deputy Collector shall proceed to complete the partition accordingly.

Such partition may be refused.

104. If the Deputy Collector, who is appointed to carry out the partition in accordance with a joint application under section one hundred and one, is not satisfied that the partition of the lands and the assessment of the revenue payable thereon can be made in the manner proposed without endangering the safety of the public revenue, or if the Collector rejects the application for such partition, the Deputy Collector shall refuse to make the same.

Joint petition may be presented for partition of land in accordance with private division with proportional redistribution of public revenue.

105. Whenever the proprietors of an estate are, in accordance with a private arrangement as aforesaid, respectively in possession of separate lands held in severalty as representing their respective interests in the estate, the joint application presented to the Collector by all the recorded proprietors of the estate, as required by section twelve, may be to the effect that a partition of such estate be made by assigning to each proprietor, or to two or more proprietors jointly, as his or their separate estate, the lands of which they are in possession in



accordance with such arrangement, and that the land revenue for which the parent estate is liable may be apportioned among the separate estates so formed in accordance with the provisions of section six.

A joint application under this section may be made notwithstanding that a joint application under section one hundred and one has been refused in respect of the same estate.

106. Whenever the Deputy Collector who is appointed to carry out a partition shall find that, in accordance with a private arrangement made by the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate lands held in severalty as representing portions only of their respective interests in the parent estate, while other lands of the parent estate are held in common tenancy between such proprietors, a joint application as mentioned in section twelve shall not be necessary to authorise the Collector to make a partition of the estate, but the Deputy Collector shall allot to the separate estate of each proprietor the lands of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

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

Lands held in the occupation of the several proprietors of an estate as sir, khamar, or nij-jote, or under any other similar denomination, shall not be deemed to be lands held in severalty as representing portions of their respective interests in the parent estate within the meaning of this 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.

107. Notwithstanding anything contained in the last preceding section, the Collector may cause any transfer of lands agreed to by the parties to be made from the possession of one proprietor to that of another.

Collector may cause transfer of lands agreed to by parties.

Rules applicable both to lands held in common tenancy and to lands held in severalty.

108. Places of worship, burning grounds, and burial grounds which have been held in common previous to the partition of an estate, and lands of which the proceeds have been assigned by the proprietors jointly for religious, charitable,

Rules as to places of worship.



or public purposes, shall continue to be held in common unless the proprietors shall otherwise agree amongst 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.

Rule as to tanks, wells, water-courses and embankments.

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

In cases in which, from the extent, situation, or construction of such works it shall be found necessary that they should remain the joint property of the proprietors of two or more of the separate estates, the paper of partition shall specify, as far as the circumstances may 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.

Lands held rent-free not to be divided.

110. Whenever the Deputy Collector shall find in the parent estate lands which are actually held rent-free (whether the proprietors of the estate do or do not claim a right to receive rent from such lands), the Deputy Collector shall make no division or assignment of such lands among the separate estates, but shall specify in the partition papers and proceedings that such lands are 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.

Provided that such lands or any of them may be allotted among the different separate estates with the consent of all the recorded proprietors of the parent estate, but not otherwise.

Rule as to permanent intermediate tenures.

111. Whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent on a patni or other permanent intermediate tenure falling within Exception 2 or Exception 3 of section seven, the Deputy Collector may either

(1) assign the lands which are held on such tenure and the assets thereof entirely to one or more of the separate estates, the rental being calculated as provided in Exception 2 or in Exception 3 (as the case may be) of section seven; or

(2) leave such lands unassigned to any separate estate, and specify in the partition paper and proceedings that the lands are



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. In the event of such lands being so left undivided, the Deputy Collector shall assign to each separate estate such share of the rental of the tenure as shall bear the same proportion to the entire rental of tenure, as the separate estate bears to the parent estate.

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

112. Whenever any lands are 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 lands of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common lands; and all the provisions of this Act in respect of the allotment between the shareholder in one estate, of lands which are held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common lands to the estate under partition;

Lands held in common between the proprietors of two or more estates how to be dealt with.

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

Provided that all expenses of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be expenses 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 expenses.

NOTE 1.—The words "any lands" in the first clause of the section may be held to mean "all the lands" of two or more estates held in common by several proprietors. (Board's Proceedings of 2nd September 1882, No. 210, Collection 7, File 2209, and of 18th July 1885, No. 264, Collection 5, File 385).

NOTE 2.—An application having been made for the partition of an estate, a portion of the assets of which consisted of a fractional interest in the rents of a mouzah which was held in common with four other estates in the Collector's register, it was considered by the Board that this section did not cover the case. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630).

NOTE 3.—Until the Collector has declared the extent of interest which the proprietors of the parent-estate are supposed to have in all the common lands of the several estates, no proceedings can be carried out under this section. (Board's Proceedings of 8th January 1887, No. 228, Collection 7, File 228).

NOTE 4.—The lands of an estate were mixed up with the lands of a rent-free holding. The estate having come under partition, a question arose how the Collector should carry on the partition. The matter having been referred to the Legal Remembrancer, that officer gave as his opinion on the following :—"The word 'estate' is distinctly defined in the Partition Act, and that definition must prevail wherever the word occurs throughout the Act. The Collector has no jurisdiction to partition *lakhiraj* lands—that is work for the Civil Court. He cannot therefore in any way bind the *lakhirajdars* to perform the first duty imposed by section 112, namely, to portion off the proportion of the joint lands which would be properly coming within the estate he is partitioning. If the *lakhirajdar* himself in an effectual manner broke up the joint holding and abandoned to the estate the exclusive possession of a definite area which the estate accepted, then the portion so falling exclusively within the estate might be partitioned by the Collector among the owners of the estate. But otherwise the Collector cannot interfere with the joint lands." (Board's Proceedings of 19th April 1890, No. 71, Collection 7, File 10 of 1890). 2-4-90.

NOTE 5.—Certain lands were held in common by the proprietors of estates Nos. — of the — towjih. The proprietors of each of these estates filed a separate application, not for partition of their several estates *inter se*, but for separation of the lands held in common and assignment of its proper share thereof to each of the above estates, the Government revenue of each remaining unaffected. The question whether the applications should be admitted and the estates declared to be under partition was referred by the Commissioner to the Board, who ruled as follows :—"The question for consideration is—can two or more entire estates not desiring partition as such, but having lands in common, get their common lands divided between them under section 112? The Board as at present constituted think that it would be conducive to the public convenience if they could, but they fear that the wording of the section is quite conclusive the other way. Section 112 can only come into operation when one of the estates is under partition as between its several proprietors. This is an indispensable condition.



"In this case there is no partition proposed of any estate as such, but only a separation of interests between 5 separate estates, and the law (section 112) cannot be applied."—(Board's Proceedings of 28th June 1890, No. 209, Collection 5, File 32 of 1890). 1-7-90.

113. Notwithstanding anything contained in the last preceding section, if it shall appear to the Commissioner, on the report of the Collector or otherwise, that the proceedings for 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 requisitions made upon him, the Commissioner 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, 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.

Proprietors of other estates may be required to pay a portion of expenses of partition.

114. The allotment to the estate under partition of the proportionate share of the lands so held in common shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and in the case of rejection, may make or direct to be made another allotment.

Allotment of lands held in common to be sanctioned by Collector.

115. As soon as the allotment to the estate under partition of a proportionate share of the said lands shall have been approved by the Collector, the lands so allotted shall be dealt with in every respect as if they were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common lands.

The portion of such common lands assigned to estate under partition how to be dealt with.

116. If a dispute or doubt shall be found to exist as to whether any lands form part of the parent estate, the Deputy Collector shall enquire into the fact of possession, and shall report his conclusions, with the reasons thereof, to the Collector; whereupon

Procedure when dispute exists as to whether any lands form part of the parent estate.

the Collector may (whether the possession of disputed lands is with the proprietors of the parent estate or otherwise) order that the partition be struck off the file, and in that case no application for a partition of the said estate shall be admitted until the applicant can show that the dispute or doubt has been