

Procedure
when Collec-
tor thinks
that lands
belong to
parent
estate.

decided by a court of competent jurisdiction, or has been amicably settled;

or if the Collector shall find that possession of the disputed lands is with the proprietors of the parent estate, and if it shall appear to him that the claim of the other parties to the right in such lands is untenable, he may order that the partition shall proceed, and that the disputed lands be treated as part of the estate under partition.

Provided that no partition shall be made under this section, if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate would, in the opinion of the Collector, endanger the safety of the land revenue for which such estate would be liable after the partition.

NOTE.—While the partition proceedings of an estate were in progress, an objection was raised by the owner of another estate that his lands were included in the measurement of the estate under partition. Thereupon the Deputy Collector held a local enquiry; and it was found that the proprietors were in possession of a portion only of the lands claimed by the objector, and that the objectors were in possession of the rest of the land under objection. The Commissioner in appeal considered that the claims of the objectors could therefore not be said to have been wholly untenable, and held that the Collector had no option but to strike the case off the file. The construction which the Commissioner had put on this section was one in which the Board found themselves unable to concur. They observed that the object of this section was to provide a procedure in cases where there was a dispute as to whether any lands formed part of the parent estate. "Clause 1 provides for local enquiry by a Deputy Collector as to possession; clause 2 empowers the Collector in cases where he thought fit to do so to order the partition to be struck off the file, quite irrespective of the question whether possession be with the proprietor of the parent estate or not; clause 3 gives the Collector the alternative power in cases where he shall find that possession of the disputed land is with the proprietor, and that the claim of other parties to the right is untenable, to order the partition to proceed. The Board held that the fact that possession of only some of the lands claimed might be given to the proprietors did not affect the question in any way. The Board therefore held that the construction put by the Commissioner on clause 3 of this section was an erroneous one. They, however, in consideration of the numerous disputes existing as to the lands which formed part of the estate, ordered under the second clause of this section that the partition should be



struck off the file. (Board's Proceedings of 14th March 1885, No. 399, Collection 5, File 1672).

117. If after a partition has been completed in accordance with an order passed by the Collector under clause three of the last preceding section, the proprietor of any separate estate shall be dispossessed by a decree of a court of competent jurisdiction of any lands which may have been assigned to his estate by the partition, such proprietor shall not be entitled to claim any modification of the partition (which shall hold good), but shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession ;

Procedure when partition completed and proprietor of an estate dispossessed by order of a competent court.

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

PART IX.

OF THE PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF THE PARTITION.

118. If no appeal or objection shall be presented within the time allowed by section eighty-four, the Commissioner may proceed to consider the case without issue of any notice, and may confirm the partition made by the Collector.

If no appeal presented, Commissioner may consider the case without issue of notice.

119. If it shall appear to the Commissioner that the proceedings of the Collector should be amended, or if a petition of appeal or an objection shall have been presented within the time allowed by section eighty-four, the Commissioner shall fix a day for hearing and disposing of the case, and shall

Commissioner to fix a day for hearing case.



cause a notification of the same to be published and a notice of the same to be posted up in his own office.

Commis-
sioner to con-
firm, amend,
or return peti-
tion.

120. On the day so fixed, which shall not be less than thirty days after the publication of the said notification at the office of the Collector, or on any subsequent day to which the hearing of the case may extend, or on any subsequent day to which the hearing may have been postponed by a notice published in his own office, the Commissioner shall, after hearing and disposing of all objections, and calling for any further information which may be necessary, either confirm the partition as made by the Collector or amend the same, or return the papers of the partition to the Collector for any changes the Commissioner may think proper to be made.

If the partition is returned to the Collector for amendment, the Collector shall proceed to make the said amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector.

Commis-
sioner may
return papers
for amend-
ment or
enquiry.

121. The Commissioner may, before confirming a partition, return the papers for amendment or enquiry as often as he shall think fit, and as often as he shall so return them the procedure prescribed in the three last preceding sections shall be followed.

Procedure by
Collector on
receipt of
order of Com-
missioner or
of Board of
Revenue on
appeal.

122. After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or, if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board determining that the partition as sanctioned by the Commissioner shall not be disturbed, the Collector shall cause to be published in his office, and in some conspicuous place in each of the estates separately constituted by such order, a notice that the partition has been finally confirmed as it was sanctioned by the Commissioner, or with any amendments or alterations, as the case may be.

If the partition as finally sanctioned involves any amendments which may conveniently be made on the extracts of the partition paper and on any maps which have been prepared



and delivered or offered by notice to the recorded proprietors as required by section seventy-nine or section eighty-five, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and if the alterations made in the partition as finally sanctioned be such as to make it desirable to prepare fresh extracts and maps as aforesaid, the Collector shall cause such fresh extracts and maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which was furnished or offered to him under section seventy-nine or section eighty-five, as the case may be, to be cancelled and requiring him to take out of the Collector's office the fresh extract and map which have been prepared.

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

Procedure as to giving possession of separate estates.

and shall cause to be served on every recorded proprietor of a separate estate a notice informing him that from the date specified in such notice the separate estate assigned to him (as described in the extract from the partition paper prepared and delivered or offered to him under section seventy-nine, section eighty-five, or the last preceding section, as the case may be) will be deemed to be separated from the parent estate, and to be separately liable for the amount of land revenue specified in such notice, and calling upon him to enter into a separate engagement for the payment of such revenue.

NOTE.—A sharer of an estate, the partition of which has been confirmed, is entitled to be placed in possession of the lands included in the partition, as demarcated and shown in the map and measurements and assigned to his share, but they will not be demarcated by the Collector. The proprietor of the newly-formed separate estate may himself demarcate his lands, and if any party feels himself aggrieved by the proceedings of the proprietor, his remedy lies in the Civil Court. (Board's Proceedings of 3rd August 1878, No. 268, Collection 7, File 143).

124. The date specified in such notice shall not be more than three months after the proprietors have been put in possession of their respective separate estates as herein provided.

Date specified in notice under preceding section.

Each separate estate to be borne on the revenue roll as separately liable for revenue assessed upon it.

125. From the date specified in such notice, each separate estate shall be borne on the revenue roll and General Register of the Collector as a distinct estate separately liable for the amount of land revenue assessed upon it under this Act; and shall be so liable, whether the proprietor have executed an agreement for the payment of the amount of land revenue so assessed upon the said estate, or whether he shall have failed to execute such agreement.

Collector may direct the construction of boundary marks.

126. The Collector may direct the construction of such boundary marks as he may think proper to distinguish the lands of each separate estate, and the cost of such boundary marks shall be deemed to be expenses of the partition.

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

PART X.

MISCELLANEOUS.

Any point may be referred to arbitration.

127. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration; any point arising in the course of a partition; and the provisions of sections sixty-five and sixty-seven shall, as far as possible, be applicable to such references.

Case of proprietor who has created a tenure.

128. If any proprietor of an estate held in common tenancy and brought under partition in accordance with the provisions of this Act shall have given his share or a portion of it in patni or other tenure or lease, such tenure or lease shall hold good, as regards the lands finally allotted to the share of the lessor, and only as to such lands.

*Illustrations.*

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

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

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

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

Partition of the estate is made under the Act, and certain specific lands are assigned to A as his separate estate ;

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

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

130. Such application shall be made in writing to the Collector, and the Collector shall, not less than thirty days after the issue of a notification of such application (provided he see no objection), comply with the same, and cause the necessary entries to be made in the records of his office, and shall report the case to the Commissioner. Application for such union how to be made, and how to be dealt with.

131. Whenever any separate estate created under this Act shall fall in arrear so as to require a sale of the land for the discharge of the arrear at any period within twelve years of the date of the confirmation of the partition, the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether such arrear has been caused Cause of sale of a separate estate for arrears to be ascertained.



by any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

In certain cases Lieutenant-Governor may order a new allotment of the land revenue.

132. If it shall be proved to the satisfaction of the Lieutenant-Governor at any time within twelve years from the date of the final confirmation of a partition by the Commissioner or by the Board, as the case may be, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land revenue for which such estate was made liable, or that the amount of land revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate, the Lieutenant-Governor may order a new allotment of the land revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable respecting the same.

Under-assessed estates to make refund to over-assessed estates.

133. Whenever the Lieutenant-Governor shall pass an order for the re-allotment of the land revenue on any separate estate under the last preceding section, the Lieutenant-Governor may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter shall be found to have been over-assessed, and in default of payment the amount shall be leviable as provided in section one hundred and thirty-eight.

No order passed by the Lieutenant-Governor under this section shall be liable to be contested in any Court.

Publication of notifications under this Act.

134. Every notification required to be published in and by this Act shall, unless it is otherwise especially directed, be published by posting up copies of the same at the office of the Collector, and of the Deputy Collector who is making or has made the partition, at the māl cutcherry or māl cutcherries (if any) of the proprietors of the parent estate, and at one or more of the principal villages on the said estate.



135. Every notice in and by this Act required to be served on any person may be served— Service of notice.

- (1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person usually resides,
or by delivering the said notice to a general agent of the person to whom such notice is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or
- (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to be residing; or
- (3) by posting a copy of the notice at any māl cutcherry of the person to whom the notice is directed;
or, if no such māl cutcherry be found, and if the notice cannot be served in any of the other modes mentioned in this section, on some conspicuous place on the estate to which such notice relates.

In all cases where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, service of notice under this section on any one such joint applicant shall be deemed to be good and sufficient service on each and all of such joint applicants.

136. Provided the directions of this Act be in substance and effect complied with, no proceedings under this Act shall be affected by reason of any mistake or by reason of any other informality, unless any person has suffered, or is in danger of suffering, material injury in consequence of such mistake or informality; No proceedings under this Act to be affected by any mistake or misdescription.

and no proceedings under this Act shall be affected by reason of the omission to issue any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is, required to be served.



Fine in case of non-compliance with notice or requisition.

137. If any proprietor or other person shall fail to comply within the time fixed by a notice served on him as by this Act provided, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees ;

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

and the Collector or Deputy Collector may proceed from time to time to levy the amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending ;

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by authority of the Commissioner.

NOTE.—This section “ must be held to apply in all butwarra cases.” (Board’s No. 363 A, dated 14th August 1880).

Fees, &c., to be deemed a demand under Bengal Act VII of 1868.

138. Except as herein expressly otherwise provided, all fees, fines, costs, and other sums ordered to be paid by any person under this Act, shall be deemed to be demands under* section 1 of Bengal Act VII of 1868 (*an Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue*), and shall be leviable as such.

Power of Collector to enforce attendance of witnesses.

139. For the purpose of any enquiry under this Act, the Collector and Deputy Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses, to examine witnesses, and to compel the production of documents by the same means (as far as may be), and in the same manner as is provided in the case of a Court under the Code of Civil Procedure.

Powers and functions assigned to Deputy Collector may be exercised by Collector.

140. All powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector ; and whenever it is provided by this Act that any act done, or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the

* Repealed from this word to the end of this section See the first schedule of Act VII (B.C.) of 1880 and section 7 (3) of that Act.



Collector, if such act shall have been done or such order shall have been made by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

141. The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of the parent estate. Government may vest Collector or Deputy Collector with certain powers.

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

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

(a) directing, under section forty-one, by whom the costs of an enquiry held in consequence of an objection preferred shall be paid ;

(b) accepting or adopting any papers under section sixty-three for the purposes of a partition ;

(c) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators ;

(d) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity ;

(e) refusing, under section one hundred and four, to make a partition as applied for by the joint applicants ;

(f) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure ;

(g) imposing a fine under section one hundred and thirty-seven.

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



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

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

(c) accepting or adopting any papers under section sixty-three for the purposes of a partition;

(d) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators;

(e) setting aside, amending, or approving the general arrangement of the partition under section seventy-five;

(f) approving, with or without amendment, a partition made by a Deputy Collector, or directing such partition to be amended or a fresh partition to be made, or making a fresh partition under section eighty-one;

(g) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity;

(h) refusing, under section one hundred and two, to allow a partition to be made in accordance with an existing private division;

(i) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure;

(k) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates;

(l) passed under section one hundred and sixteen as to disputes or doubts regarding land;

(m) imposing or confirming the imposition of a fine under section one hundred and thirty-seven;

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

Appeal to the
Board.

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



against every order of the Commissioner which confirms, modifies, or reverses any order of the Collector

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

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

(c) accepting or adopting any papers under section sixty-three for the purposes of a partition ;

(d) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates ; and against every order of the Commissioner.

(e) directing, under section forty, that any proprietor shall pay more than his proportionate share of the expenses of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;

(f) directing, under section one hundred and thirteen, that any sum shall be paid by the proprietor of an estate other than the estate under partition, when such sum exceeds five hundred rupees ;

(g) confirming, under section one hundred and eighteen or section one hundred and twenty, or amending or setting aside, under section one hundred and twenty, a partition as made by the Collector ;

(h) imposing, or confirming the imposition of any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

NOTE 1.—There is no appeal, as of right, to the Board under this section against the order of a Commissioner in connexion with orders passed by the Collector under section 75 as to the general arrangement of a partition. Against such orders appeals are not admitted on the Board's file except on special cause shown. (Board's Proceedings of 19th March 1886, No. 113, Collection 7, File 118.)

NOTE 2.—A dispute as to the rent of one small plot of land was not considered as bringing the case within clause (c) of this section. *Prima facie* there were no special grounds shown for any interference by the



Board under section 145. (Board's Proceedings of 8th May 1886, No. 50 Collection 7, File 189.)

NOTE 3.—There is no appeal, as of right, to the Board from an order of the Commissioner against an order of the Collector under section 116 of the Act as to disputes or doubts regarding land. (Board's Proceedings of 30th July 1887, No. 80, Collection 7, File 251.)

NOTE 4.—This section was held not to apply to proceedings which had been finally completed under Regulation XIX of 1814. (Board's Proceedings of 25th August 1888, No. 64, Collection 158, File 7.)

No appeal to lie against any order passed under this Act.

145. Except as provided in the three last preceding sections, no appeal shall lie as of right against any order passed under this Act by any officer; but the proceedings and orders of every Deputy Collector under this Act shall be subject to the supervision and control of the Collector; the proceedings and orders of every Deputy Collector and of the Collector to the supervision and control of the Commissioner; and the proceedings and orders of all revenue officers to the supervision and control of the Board;

and any order passed and anything done under this Act may be modified, amended, or reversed by the supervising and controlling authority at any time before possession of their respective separate estates has been given to the several proprietors as provided in section one hundred and twenty-three, but not after such possession has been given except as provided in the next succeeding section.

NOTE.—A Commissioner, without going into the merits of a case, decided on appeal a preliminary objection, and against his order an appeal was preferred to the Board. It was held that, apart from the fact that the parties agreed to the Board's entering into the merits of the case, this section fully authorized the Board to do so, when dealing with the appeal regarding the preliminary objection. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

Proceedings connected with giving possession may be set aside within three months of date of giving possession.

146. Any proceedings of a revenue officer connected with giving possession to the proprietors of their respective separate estates as provided in section one hundred and twenty three may be set aside or amended as above provided by any supervising and controlling revenue authority, provided that such supervising and controlling authority shall, within three months of the date on which such possession may have been given, make an order to the effect that such proceedings are under the consideration of such authority.



Such order shall be communicated to the Collector of the district, who shall cause the same to be published by notification in the manner prescribed by section one hundred and thirty-four.

NOTE.—At the time of giving possession, the Amin proceeded to divide the trees standing on the estate among the several proprietors, whereupon an objection was raised by certain sharers to the effect that the trees standing on their plot should be left entirely in their sole possession, as they should go with the lands on which they stood. The Deputy Collector held that the value of the trees had not been included in the assets of the land according to the practice there in vogue, and that they should therefore be separately divided among the parties. The Collector confirmed this order, dismissing the appeal. Against the above orders an appeal was preferred to the Commissioner, who decreed it on the ground that it would be impossible to put one proprietor in possession of a certain plot of land, and to put other proprietors in possession of different trees which were growing upon that plot of land. On appeal this view was upheld by the Board as in accordance with fairness and common sense. (Board's Proceedings of 27th March 1886, No. 46, Collection 7, File 1485.)

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

Orders as to costs on appeal.

NOTE.—A pleader, who was engaged in a partition case, having taken 20 years' purchase as the valuation of his claim for his fee, the question how the valuation should be made in partition cases in Revenue offices was referred to the Board, who pointed out that in partition proceedings before Revenue officers in calculating such fees the rules prescribed by the Board under the Legal Practitioners' Act XVIII of 1879 should be observed. (Board's Proceedings of 19th May 1883, No. 23, Collection 7, File 221.)

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

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

Orders of revenue officer which are not liable to be set aside by civil suit.

149. No order of a revenue officer
 (a) refusing to allow a partition on the grounds mentioned in section eleven ;
 (b) rejecting or directing to be amended an application under section twenty ;
 (c) made under the first clause of section thirty-two ;
 (d) made under Part IV, Part V, Part VI, Part VII, Part VIII (except as provided in the next succeeding section), or Part IX.
 (e) imposing a fine ;
 (f) in respect of the payment of costs of any appeal under section one hundred and forty-seven,
 shall be liable to be contested or set aside by a suit in any court, or in any manner other than as is expressly provided in this Act.

When suit may be brought to set aside order of revenue officer.

150. Notwithstanding anything contained in clause (d) of the last preceding section, any person claiming a greater interest in any lands which were held in common tenancy between two or more estates than has been assigned to him by the order of a revenue officer under section one hundred and twelve or section one hundred and fourteen ;

and any person who is aggrieved by any order of a revenue officer passed under section one hundred and sixteen ;

may bring a suit in a court of competent jurisdiction to modify or set aside such orders of the revenue officer.

Board to be guided by instructions of Lieutenant-Governor.

151. In the execution of the duties vested in the Board by this Act, the Board shall be guided by such order or instructions as they may from time to time receive from the Lieutenant-Governor.

Board may lay down rules.

152. The Board may, from time to time, make rules, } not being inconsistent with this Act—

(a) to regulate the expenses of effecting partitions, or the amount of fees to be levied in respect of partitions, the allotment of the same among the proprietors, and the instalments in which, and the times at which, the same shall be levied under Part IV ;

(b) to regulate the receipts, disbursements, and management of any " Estates' Partition Fund " formed under section forty-five ;



(c) to regulate the employment and remuneration of amins and other subordinate officers appointed under Part IV, to enable the officer making the partition to keep himself informed of the proceedings of such officers, and to exercise a proper control over them ;

(d) to regulate the form in which the partition papers shall be framed under section sixty-six and section seventy-seven ;

(e) and generally for the guidance of officers in conducting partitions under this Act.

SCHEDULE.

See Section 2.

Number and year.	Subject or abbreviated title.	Extent of repeal.
Regulation XI of 1811	For extending period of revising jumma on certain lands.	So much as has not been repealed.
Regulation XIX of 1814	Consolidating Regulations respecting Partition of Estates.	Ditto.
Act XX of 1836	Quashing of Butwarra.	Ditto.
Act XI of 1838	Remuneration of persons effecting a partition.	Ditto.

RULES

UNDER SECTION 152 OF ACT VIII (B. C.) OF 1876, FRAMED BY
THE BOARD FOR THE GUIDANCE OF OFFICERS IN CONDUCTING
PARTITIONS UNDER THAT ACT.

1. All notifications under this Act shall be published, and all notices shall usually be served, by means of the nazirs' peons, fees being charged on the scale prescribed for the service of non-judicial processes and denoted in the usual way by adhesive stamps. When a notice is served by post under section 135, clause 2, the actual cost of postage only shall be charged and denoted upon the cover in postage stamps. Service labels should not be used.

Manner of
publishing
and serving
notices, &c.

- “1A. Before publishing the notification under section 21, the Collector shall record a proceeding, specifying under which of the clauses of section 9 the application and the office reports on it show the case to fall, and certifying that the case is not barred, so far as appears from the above papers, under sections 10 or 12 of the Act.” 7-5-93.
- Prepayment of fees.** 2. Before publishing a notification under section 21 and issuing a notice under section 22, the Collector shall require the proper amount of fees to be paid by the applicant under section 17. If the application is admitted under section 31, the fees thus paid will be included in the expenses of partition under heading 6 of sections 44 and 49, and the expense incurred in the publication of this notification and service of this summons should be taken as a basis for the calculation of the expense to be incurred on account of the other notifications and notices which are required by the Act.
- Payment of costs of partition by instalments.** 3. Under section 39 the estimated cost of a partition shall be paid in not less than three instalments, of which the first shall consist of one-half of the total amount estimated. The first instalment should be demanded by the Collector as soon as the estimate required by section 39 has been passed by the Collector, and the remaining instalments at such times as the Collector may think fit. Every instalment shall be paid within one month from the date on which a demand for it shall have been served upon the person or the accredited agent of the person from whom it is due, and, in the event of non-payment within one month from such date, the Collector shall proceed to levy the amount under section 138.
- Proportional debit of certain costs to estates** 4. The cost of peshkars and other superior officers employed by the Collector under the latter part of section 37 shall be borne by the several estates for whose benefit they are employed in proportion to the amount of the sudder jumma of each estate.
- and of certain establishments.** 5. The yearly cost in any district of an establishment employed under section 38, and of any Deputy Collector employed under section 43, shall be borne by all estates for the time being under partition in the said district in proportion to the amount of the sudder jumma of each estate. Similarly, the yearly cost of an establishment employed under section 38



in the office of any Commissioner will be borne by the estates under partition in his division in proportion to the amount of the sudder jumma of each estate.

6. At the commencement of each year the Collector shall submit to the Commissioner, in duplicate, a list of all estates under partition in his district, with the amount of their respective sudder jummas, and the Commissioner shall then determine the amount to be borne under rule 8 by each estate on account of the establishment employed in his office under section 38, and enter the same in the several district lists, returning one copy of each to the Collector by whom it was submitted.

List of estates under partition to be prepared annually.

7. Estimates under section 44 shall be prepared in the Form, A, annexed :—

Preparation of estimates.

(a)—In estimating the probable cost of the measuring establishment required, careful consideration should be given not only to the size of the estate, but also to its compactness or the reverse, the number of separate shares to be formed, and similar circumstances. It should be borne in mind that in cases where no superior officers are employed under the latter part of section 37, and where there is no district establishment under section 38, it may be necessary to retain the services of the amin, not only for measurement, but until the proceedings of the partition are completed by the Collector.

NOTE.—In certain districts of the Patna Division the Board have sanctioned the employment of amins permanently on fixed salaries as mohurrirs in the offices of the Butwarra Deputy Collectors to prepare measurement papers, maps, rent-rolls, &c., and other office work, leaving the field-work to be performed by extra amins for so long as they are required. The establishments are sanctioned from year to year. (Board's Proceedings of 22nd May 1886, No. 98, Collection No. 10, file No. 216.)

(b)—Under the head of contingent expenses provision should be made for the service of the notices and the publication of the notifications likely to be required.

Contingent expenses.

8. The Board, under section 46, direct that, until further orders, the charges on account of partitions in districts where an Estates' Partition Fund is established shall be levied ac-

Levy of charges for partitions.

according to the estimate in each case as provided in sections 39 and 40, subject to final adjustment under section 42, the salary of any Deputy Collector who may be appointed under section 43 being included under the head of special district establishments.

Scale of charges.

"9. The following maximum scale of charges, including expenses of all kinds (*i.e.*, amin's fees, cost of instruments and other contingencies, costs of supervision, &c.), is prescribed for guidance :—

First 100 acres	...	1 rupee per acre,
Second 100 "	...	14 annas "
Third 100 "	...	12 " "
Fourth and fifth 100 acres	...	10 " "
Sixth 100 acres	...	8 " "
All subsequent 100 acres	...	8 " "

and a fee of Re. 1 per day to the amin for every day he is engaged subsequently on local enquiries and reports.

If the Collector should consider in any case that a higher scale is required, he must report the exceptional circumstances to the Commissioner for sanction. If the excess is more than 25 per cent. of the ordinary scale, or amounts to more than Rs. 1,000 in all, the Commissioner will report the case for the orders of the Board.

Qualifications of Amins.

"10. As a general rule amins appointed to make measurements in partition cases must be capable of surveying with the plane-table and chain according to the system described in the Board's Survey Manual, Chapter VIII, and Appendix V to that Manual.

[NOTE.—It should always be possible to procure amins possessing these qualifications in Bihar, Orissa and the districts of Eastern Bengal, in which there have been professional surveys on a large scale. Amins not possessing these qualifications are not to be employed without the special sanction of the Board.]

Qualifications of Peshkars.

"11. Peshkars employed to supervise or check the work of amins must always be qualified as amins, and should ordinarily have acted as amins in practical surveys.

Rates to be paid.

"12. The rates to be paid to amins should be so fixed as to allow those officers not less than Rs. 30 per mensem, exclusive of the wages of chainmen, of whom three will be required



for each amin, and of other contingent charges. For this remuneration an amin will ordinarily be expected to survey and prepare the measurement papers of 200 acres a month. For other work connected with partitions, such as enquiry into objections, the remuneration to be allowed should be as nearly as possible analogous.

In the case of petty estates, such as would occupy an amin less than a month, the Collector may at his discretion allow the amin a rupee per diem.

" 13. In reckoning the remuneration of an amin, a reasonable time must be given for going to and from the estate.

Reckoning of remuneration.

" 14. The forms of khatians and khasras prescribed by the Rules under the Tenancy Act should be used, omitting the columns relating to rent settled and special incidents of the tenancy, and the rules for filling up those forms should be adhered to as closely as the circumstances permit.

Forms of khatians and khasras.

" 15. Before an amin is deputed to make measurements, the Deputy Collector or other superior officer in charge of the partition shall prescribe the time within which the measurement is to be completed. He may also prescribe the time within which any portion of the measurement is to be completed. He should from time to time call for progress reports, and insist on their punctual submission. The following or some similar form may be adopted :—

Time to be prescribed.

1. Total area allotted to amin for survey.
2. Surveyed up to date and covered by last report.
3. Surveyed during the period under report.
4. Total area surveyed.
5. Area which should have been surveyed according to the scale laid down by the Deputy Collector.
6. Explanation of any deficiency.

" 16. The whole remuneration of an amin should not be paid to him until his papers have been examined and passed as correct. The officer in charge of the partition should see that the amin is not permitted to remain on the estate without reason or make unnecessary delay in filing his papers. Advances not exceeding two-thirds of the remuneration earned may from time to time be given at the discretion of the officer in charge of the partition. He will be responsible for seeing that no un-

Advances to be granted.



reasonable delay occurs in examining the amin's work and settling his accounts.

The same rule applies, *mutatis mutandis*, to peshkars and other officers.

Instruments.

"17. The instruments required by the amins are described on page 86 of the Survey Manual, and may be indented for from the Mathematical Instrument Department.

Measurements to be tested.

"18. It is expected that, in all but unimportant cases, the officer in charge of the partitions should visit the estate and test the measurement and other records generally following (so far as it applies) the procedure prescribed for the guidance of Settlement Officers.

Survey records to be utilised.

"19. Whenever a professional or other trustworthy survey or record of rights has been made, the Collector will see that it is utilised so far as may be possible. He will also bear in mind that whenever a record of rights and settlement of rents have been made, these are binding on all parties so long as they are in force, and must be accepted as the basis of partition. In such cases it will be merely necessary to bring the records up to date and to assess for the purposes of the partition such lands of the estate as have not been assessed by the Settlement Officer." 10-6-92.

Supplementary estimates.

20. Whenever the amount first estimated for any partition is found to be insufficient, a supplementary estimate in the same form A as the original estimate may be passed by the Collector. Two or more supplementary estimates may, if necessary, be made. Rules 7 and 8 apply to supplementary as well as to original estimates.

Special proceedings as to costs.

21. Any special proceedings as to costs under sections 40-41 should be reported to the Commissioner of the division, and should be specially mentioned in the final report of the partition.

Abstract of Fund.

22. The abstract of the Estates' Partition Fund required by section 48 shall be in the form, B, annexed.

Ledger form.

23. In order to check the expenditure incurred in each case, an account should be kept up in each district in which any estate is under partition in Ledger form (see Appendix), showing separately in opposite columns the receipts and disbursements on account of each separate estate. Besides this

General Register of receipts, &c.



book a general register of receipts and disbursements on account of the Estates' Partition Fund generally should be kept up in every district in which such a fund has been established.

24. The partition paper referred to in section 77 shall be drawn up as nearly as possible in the form, C, annexed. Partition paper.

"24A. Early in April of each year the Commissioner will prepare an account of the total actual expenditure incurred during the last official year on account of the butwarra establishment entertained in his office, and apportion it among the several districts in his division, and will communicate these figures to the district officers concerned for insertion in their Partition Fund accounts, and abstract annual statements of Partition Fund which should be prepared under section 48 of the Estates Partition Act, VIII (B.C.) of 1876, with a note that the amount was drawn by him direct from the treasury. Copy of this account will also be furnished to the Accountant-General, Bengal, for adjustment of the Partition Fund accounts of each district in his office." 9-11-94.

25. A Progress form, D, has been prescribed by the Board, for adoption in certain districts, to show the progress made in the disposal of Butwarra cases during a quarter, as compared with the two preceding quarters. Progress Form.

"25A. At the close of each financial year, the Collectors should submit through the Commissioners to the Board a statement in the form of Return XXVIIA in the Appendix, showing the expenditure incurred and the average cost per acre of the land partitioned in their districts." 2-9-90. Return of average cost.

26. Security for the faithful discharge of their duties may, when the Collector thinks this necessary, be taken from amins and peshkars. When security is taken, the bond should be registered, and the registration fee should be treated as forming part of the contingent expenses of the partition. The amin and peshkar shall submit a report once a month, or more frequently if the Collector thinks fit in any case, showing the progress made in the partition proceedings of each case. Security, and bond.

27. The most convenient date to be fixed under section 123 as that from which separate liability of the new estates will commence will be the day following the next latest day for the payment of revenue. The Collector should therefore Commence-ment of se-
parate liabi-
lity of new
estates.



endeavour to arrange the date for making over possession in such a way that it may be possible to fix a latest day of payment in the notice consistently with the provisions of section 124. It will be seen that, even at this stage of the case, after possession has been given, a sale of the parent estate for arrears will render all partition proceedings null and void (section 15).

No fee on completion of partition.

28. Regulation XV of 1797 having been repealed, no fee is now leviable on the completion of a division except the stamp on which the partition paper has to be engrossed.

Entry in roll of new estates.

29. The mode in which the newly-formed estates are to be entered on the Roll is described in Chapter IV, Section VII of the Board's Rules, 1888. Register 2 contains a column for the General Register numbers of the newly-formed estates, and if this column is properly filled up, there can be no danger of the separated shares being lost sight of.

30. A partition case will be kept upon the Collector's file—

- (i) until any appeal against the proceedings of the Revenue officers under section 123 has been decided, or until three months have elapsed without any order being made under section 146;
- (ii) until the date prescribed in the notice for the commencement of separate liability has elapsed and the Towjih Navis has certified that the joint estate is not in arrears, or, if in arrears, until the arrear has been recovered;
- (iii) if any expenditure has been incurred in the construction of boundary marks under section 126, until the cost of erecting such boundary marks has been recovered.

On these three conditions being fulfilled, the partition will be treated as completed and the case removed from the file.

Objections in certain cases.

31. The law (section 116) appears to contemplate that objections to the effect that lands under division do not form part of the parent estate will be made before the partition has been approved by the Collector under section 81. It is possible, however, that objections worthy of consideration may be made at a later stage; but such objections should not be



entertained after a partition has been finally confirmed under section 122. The objectors should be referred for their remedy to the Civil Court.

32. With a view to ensure the personal attention of Revenue Officers to the proper making up of the record of a partition case, and to enable them to see at once the progress of every such case from its institution to its close, the Board have directed an Order-sheet to be attached to each record: See Circular Order No. 6 of January 1889 in the Appendix.

33. The numerous forms of notices, &c., in use in butwarra proceedings are not printed and supplied by the Superintendent of Stationery. It has been ruled that, as a Butwarra pays its own expenses, the notices, &c., should be issued in manuscript, the cost being met in the same way as other charges connected with butwarra. As it is within the competency of a Commissioner to sanction any butwarra charge, a Commissioner has been authorised to have the forms printed at a local press, apportioning the expenditure to all the estates under partition.



A.
[See Rule 7.]

I.—Statement showing the estimated cost of partition to be levied under section 39 of Act VIII (B.C.) of 1876.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Number of estate in register.	Name of estate.	Registered proprietors.	Government revenue.	Area by survey, or, if the district has not been surveyed the estimated area.	Name of estate and revenue at the period of the decennial settlement.	Petitioner's name.	Shares into which it is at present proposed to divide the estate, with the names of the respective proprietors.	Names of Peshkars and amins employed, and time likely to be taken up in measurement and other proceedings under section 54.	Rate of pay, and total cost of establishment shewn in column 10.	Yearly and total cost of contribution towards establishments employed under the latter part of section 37.	Yearly and total cost of contribution towards district establishments employed under sections 38 and 43.	Yearly and total cost of contribution towards divisional establishments employed under sec. 38.	Other expenditure likely to be incurred (if any) in detail.	Total estimated cost of partition (columns 11 to 14).	Apportionment of cost to each proprietor.	Instalments and times at which it is proposed to levy the cost.	REMARKS.

B.

[See Rule 12.]

Abstract of the Partition Fund of district

, for the year _____, prepared as required by Section 48 of Act VIII
(B.C.) of 1876.

Receipts.		Rs. A. P.	Disbursements.		Rs. A. P.
Balance in hand on 1st April 18	Contribution towards establishments employed in the		
Received on account of estate	Commissioner's Office under section 38 of the Act.		
	—		Salary of Deputy Collector employed under section 43		
			of the Act.		
	—		Salary of district establishment employed under section		
			38 of the Act.		
	—		Cost of establishments employed under section 37 of		
			the Act.		
			"Pension and leave allowances."		
			Contingent expenditure
			Balance in hand on 31st March 18
Total	...			Total	...



CSL

C.

[See Rule 14.]

Partition Statement of estate bearing No. _____ in the towjih of district _____, prepared as required by section 77 of Act VIII (B.C.) of 1876.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Names of recorded proprietors.	Quantity of land.	Average rental for one year as per amin's paper.	Average rental for three years from as per patwari's papers, &c.	Other assets, if any.	Sudder jumma of entire estate.	Market-value of entire estate.	Fractional shares of the several proprietors or villages held in severally or shares in such villages.	Names of proprietors.	Quantity of land assigned to each shareholder.	Produce of each partition as per one year's papers filed by the amin.	Produce of each separate estate as per three years' papers filed by the patwari.	Jumma of each separate estate.	Towith number of each separate estate.	Date of Commissioner's confirmation.	REMARKS.
	B. C. Ch. K.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.				Rs. A. P.	Rs. A. P.	Rs. A. P.			

The market-value should be ascertained by multiplying the net-profits of the estate by the number of year's purchase which is usually paid in the district for lands of a similar description.

APPENDIX



The North Western Provinces Land Revenue ACT XIX OF 1873

AS AMENDED BY ACTS I AND VIII OF 1879, XII OF 1881,
XIII AND XIV OF 1882, XX OF 1890 AND XII OF 1891.

PARTITION AND UNION OF MAHALS.

Partitions.

'Perfect
partition.'

107. Partition is either perfect or imperfect.

'Perfect partition' means the division of a mahal into two or more mahals.

The word 'mahal' is defined in sec. 3 cl. (1) thus :—

'Mahal.'

(1) "Mahal" means—

(a) any local area held under a separate engagement for the payment of the land-revenue, and for which a separate record-of-rights has been framed;

(b) any local area of which the revenue has been assigned or re-deemed, and for which a separate record-of-rights has been framed; and

(c) for such purposes as the Local Government may from time to time determine, any grant of land made heretofore or hereafter under the waste land rules for the time being in force. (This last clause has been added to the original Act by Act VIII of 1879.)

'Imperfect
partition'

'Imperfect partition' means the division of any property into two or more properties, jointly responsible for the revenue assessed on the whole.

Persons en-
titled to per-
fect partition.

108. Any recorded co-sharer in a mahal, and any person in whose favour a decree has been passed by any Civil Court, awarding to him the proprietary right in a portion of a mahal, whether such portion consists of a fractional share in the whole or a part of the mahal, or of specific lands, is entitled to claim perfect partition of his share.

Any two or more recorded co-sharers may claim that their shares be divided from the other shares by a perfect partition, and be held by them as a single mahal.

A division of an isolated plot cannot be properly called either a "perfect" or "imperfect" partition within the meaning of section 107 and 135 of the Land-Revenue Act. The law as to partition by Revenue Authorities of estates paying revenue to Government was consolidated



in Regulation 19 of 1814 which was repealed by Act XIX of 1863, which in its turn was repealed by this Act which is the present law on the subject. These enactments relate to such partitions of an estate paying revenue to Government as would affect the interest of the Government in the imposition, apportionment or collection of revenue. They cannot be understood to bar the inherent power of the Civil Court to apportion an isolated piece of land (*Ram Dayal v. Megu Lal*, I. L. R 6 All 452.)

The words "recorded co-sharer" in section 108 include a recorded mortgagor as well as mortgagee, and unless the recorded mortgagor joins with the mortgagee in possession the Court can refuse the partition (*Badam Sing v. Nand Kishore*, B. S. D. 1885—87, p. 35).

109. Applications for perfect partition are to be made in writing to the Collector of the District or the Assistant Collector in charge of the sub-division of the district in which the mahal is situated ;

Applications for perfect partition.

and shall be accompanied by a certified copy of the record, showing the share held by the applicant in the mahal :

Provided that, if the mahal be situated in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Collectors of those districts as the Board may direct.

Provision as to estates situated in more than one district ;

The record filed under section 109 ought to be a certified copy of the record of rights showing the names of co-sharers, their several interests, and the revenue, so that there be no difficulty in issuing the notices required.

The following are the Rules issued by the Board of Revenue regulating the procedure to be observed by officers in making partitions :—

PART I.—PROCEDURE.

1. If two or more co-sharers apply at the same time for separate partition of their shares in the mahal, their applications shall be dealt with together ; but if during the progress of a partition a co-sharer who has not joined in the original application files an application for partition of his share, such application shall be separately dealt with, unless it shall have been filed before the expiry of the term allowed by the notification issued under section 111 of Act XIX of 1873.

2. The copy of the record filed under section 109 shall be a certified copy of the whole khewat of the mahal.

3. If the application is not in order or is open to objection on the face of it, it should be rejected or returned for amendment. If it is in order and not open to objection, the order for issue of the notification and notices required under section 111 of the Act shall be passed, and the applicant shall be informed of the costs and required to pay them into



the Court within a given time. The period fixed by the notification for the filing of objections shall not ordinarily exceed 40 days.

4. During the term allowed by the notification, the record-keeper shall be called upon to certify that no changes in the register have been made or ordered since the copy of the khewat was given to the applicant. He shall also be required to state how the constitution of the mahal was defined in the settlement record-of-rights, and to quote any provisions regarding partition therein contained. Within the same period the registrar-kanungo shall furnish copies of the milan khasra (Part I of the Village Register) and of Parts I and II of the Mahal Register (rental demand and collections, and classification of holdings). These shall be paid for out of the general costs of the partition, and shall form a part of the record. The officer making the partition shall call for the pargana book, and cause all entries in it which may be of use to be copied and filed with the proceedings. He shall also send for the jamabandis of the mahal for the past three years.

5. On the day specified in the notice any objections made under section 112 will be taken up and formally inquired into (section 215 lays down the method of taking the evidence in these cases). The officer making the partition shall use the same diligence and strictness in disposing of the objections as he would in trying an ordinary revenue case.

6. If the objection is found to raise any question of title or proprietary right, the officer making the partition must proceed under section 113.

7. If there are no objections, or if the objections have been disposed of, the officer making the partition will record an order under section 116, deciding that the partition is to be made, and will summon all the co-sharers in the mahal and the patwari to attend on a date to be specified in the order. This date shall not ordinarily be less than 15 or more than 30 days from the date of the final disposal of objections. The summons to the patwari shall require him to bring the village map, together with the khasras of the past and current years, and the bahikhate, bujharat and khewat.

8. On the date so fixed, if the applicant does not attend, the case may be struck off, and any costs that have been paid may be returned. If the applicant appear, he and such of the co-sharers who are present and the patwari shall be examined as to the constitution of the mahal and the manner in which the partition is to be effected. The existence of sir, baghs, dwelling-houses, tanks, wells, watercourses, graveyards, temples and the like, about which difficulties are likely to arise, shall be carefully ascertained, and, so far as possible, the wishes and consent of the parties as to the mode of dealing with them shall be recorded; any disputes arising during this inquiry shall be settled or overruled by the officer making the partition.



APPENDIX.

513

9. A formal proceeding will then be drawn up, laying down all the particulars of the partition, specifying the lands in the mahal, the lands held in common, the lands held in severalty; describing what lands are to be divided and what left as they are; and laying down definite rules for dividing the lands with regard to the quality of soil, class of tenants or other circumstances affecting their value, and for dealing with all matters coming under sections 124, 125, 126 and 127. This proceeding shall be called the "partition proceeding." A table shewing all the principal points on which it is likely that instructions may be wanted has been prepared under the order of the Board, and is appended to this circular. It should be consulted by every officer drawing up a partition proceeding, and he should ascertain by reference to the sharers in the Court that no point has been overlooked. At the time of drawing up the partition proceeding, the officer making the partition shall ascertain whether the present map is serviceable, or whether a fresh survey of the mahal must be made. The costs of partition shall be calculated and distributed as in Part II. Provided that if it is found in the course of the proceedings that the costs fixed at this stage are insufficient, the officer making the partition shall have powers at any subsequent stage to fix and apportion such additional costs as he may think necessary.

10. When the partition proceeding has been drawn up, it shall be carefully explained to all the co-sharers present, and their assent or dissent recorded and signatures attached. The costs as fixed in the preceding Rule shall then be realized.

11. When the case has been committed under section 237 to an Assistant Collector not exercising first class powers; that officer shall submit the partition proceeding with the record of the case to the Collector of the District for instructions. In all cases where the case is tried by an Assistant Collector of the first class, the Collector may by either general or special order direct that the partition proceeding be submitted to him before further action is taken.

12. The officer making the partition, or, if it has been submitted to him, the Collector shall decide under section 116 by whom the partition is to be made.

13. Should the parties be allowed to elect to make the partition themselves, or to appoint arbitrators for that purpose, the officer making the partition shall furnish them with such copies of the records as they may require, and shall fix a date on or before which they are to complete the partition.

14. If it has been ascertained at the inquiry held under section 9 that a new survey of the mahal is necessary, the officer making the partition shall appoint an amin to survey the mahal and prepare a new map and khasra. The khasra will contain the classification of soils as made at the last settlement.

15. If a new survey is not required, or, in the event of a survey being

necessary, after the preparation of the new map, an amin shall be appointed to execute the partition in all cases where it is not to be made either by the parties themselves or by arbitrators. At the same time an order will be issued to all the co-sharers, notifying the appointment of the amin and requiring them to attend him during the partition.

16. If a new survey is not required, a copy of the field map and *khāsra* shall be given to the amin, who shall test the map field by field, and make any alteration or correction that may be needful. He shall also test and correct the recorded rental of the *mahal*.

17. On being appointed to execute the partition, the amin shall be furnished with a copy of the partition proceeding. The amin will be paid by results, and before he is sent to the village his total remuneration will be calculated with reference to the area, number of fields, number of shares to be divided and other points to be considered in connection with the operation. Payments not exceeding in all half his total remuneration may be made at any time during the operation at the discretion of the officer making the partition. The other half will be paid on the completion of the work. He shall report progress at such intervals, not ordinarily being more than a month apart, as may be prescribed by the officer making the partition. Any unreasonable delay will be made a cause of the removal of his name from the list of amins, and may entail the forfeiture of the whole or any part of the outstanding balance of his fees as the officer making the partition may direct.

18. Where the parties undertake the partition themselves, a date shall be fixed after consideration of all the facts of the case, within which the partition must be completed, and if the case is referred to arbitration, such date will be entered in the order of reference. The parties should be warned that if the partition is not completed by the date fixed, and no good reason is shown for the delay, the officer making the partition may rescind his order, permitting the partition to be made by the parties themselves or by arbitrators, and proceed to make it under his own orders.

19. On arriving at the village the amin shall go over the ground and make out such proposals of partition in the manner prescribed in the partition proceeding, marking out the proposed lots by coloured lines on the map and by earthen pillars on the ground, and making such rough schedules of the proposed lots as may be necessary. He shall then point out to all the parties concerned on the ground the way in which he proposes to divide the land, and shall hear their objections and make such alterations in his proposals as he may think necessary.

20. On completion of this work, the amin shall report progress to the officer making the partition, who will then issue a notice to all the parties, summoning them with the amin and *patwari* to appear before him on a day specified in the notice.

21. On the day specified, the officer making the partition shall



APPENDIX.

515

examine the amin's proposals in presence of the parties, and shall satisfy himself that the proposals are just, and are understood by all concerned.

22. If all agree to the proposals or to such amended proposals as the officer making the partition may think fit to make, their agreement shall be recorded and attested by the officer making the partition. If any objections are raised, the officer making the partition shall hear them and record an order overruling them, or amending the proposals to meet them as he thinks fit. If it is found that the objections are such as cannot be disposed of on the same day, the officer making the partition may refer the case back to the amin for further report, and shall appoint a further day for hearing the case, informing all the parties present. If, on the further day fixed for hearing the objections, either party be not present, he may either dismiss the objections or allow them *ex parte* as the case may be, or pass any order that may seem justified by the evidence before him.

23. On the day fixed for hearing objections, or on any subsequent day to which the case may be adjourned for that purpose, the officer making the partition shall decide what rent is payable under sections 124 and 125 for the sites of houses and other buildings, and the sir land of one co-sharer, if any, which have been included in the mahal assigned to another co-sharer, and such rent shall be entered in the partition khasra. At the same time if any disputes remain undecided after the procedure enjoined in Rule 8, he should, if possible, decide all disputes on points referred to in sections 126 and 127, Act XIX of 1873.

24. When the proposals have been finally settled, either by agreement of the parties or order of the officer making the partition, that officer shall so sign or mark the coloured map that the boundaries of the proposed lots cannot be altered.

25. The map and rough schedule shall then be returned to the amin who shall forthwith make out in duplicate the records of the new mahals (or pattis), *i.e.* the new mahalwar khasras, jamabandis and khewats, in the same form as the records prepared at last settlement. One complete set of the new records will then be despatched to the tahsil by the officer making the partition, and of these the copies of the khasras and jamabandis will be handed over to the patwari by the registrar-kanungo, on the former's first visit to the tahsil, after their receipt. The registrar-kanungo will at the same time require the patwari to copy for his own use the new khewat and will sign the copy. If a new map has been prepared under Rule 14, the amin in charge of the survey will prepare a duplicate copy, which will be sent to the tahsil with the other records, and the patwari will be required to make a copy for his own use, which will be signed, after examination, by the registrar-kanungo. If a new map has not been prepared, but the old map has merely been altered or corrected under Rule 16, the corrected map

should be sent in original to the tahsil, and the registrar-kanungo will see that the patwari copies the alterations or corrections on to both the tahsil map and his own copy, and will sign both maps when so corrected. The original map will then be returned for record in the Collector's office.

Parties who want copies of the new mahalwar papers must obtain them in the ordinary manner and at their own charge.

If the partition is perfect, the revenue of each of the new mahals shall be in even rupees, subject to the proviso to section 128, Act XIX of 1873.

26. The partition shall then be reported (if necessary under section 131), and the notification prescribed by that section shall be published. An English statement in Form I shall be drawn out, signed by the officer making the partition, and placed with the record.

27. Possession shall be given to the parties from the first day of July next following the date of such notification.

28. Before the commencement of the camping season the Collector should inspect the file of pending partition cases, and should arrange that either he, or one of his assistants in whose Court the case is, should visit any village in which from the length of time it has been pending or for any other reason a local inspection appears to be desirable.

29. The Collector of the District shall maintain under his own signature a list of duly qualified amins, and fix their number in such a way with reference to the ordinary partition work of his district that each amin should derive from it a fair average salary. Unless no amin on this list is out of employ, or likely to be out of employ within a fortnight, an officer making partitions shall always select the amin to be appointed under section 15 of these Rules from the men on the Collector's list. If none of these are available, an Assistant Collector making a partition shall report to the Collector the name of the man he proposes to appoint, and his reason for appointing him. If it is likely that any amin whose name is on the Collector's list may not find employment on partition cases, he may be deputed to assist in alluvion and diluvion cases where assistance is required; and shall have a preferential claim to such employment. The Collector may at any time remove the name of any amin from his list.

30. The officer making the partition under section 236, and any officer to whom a partition case has been referred under section 237, shall keep up in his own handwriting a brief history of the case, in which he shall record every order of whatever kind which he may give during the course of the proceedings, and make a note of all important objections and his decision on them. This record will be divided into the following parts, which must be kept distinct :—

(1) Proceedings between the filing of the original application and the order allowing (section 116 of Act XIX of 1873) or disallowing (section 112 of Act XIX of 1873) the partition.



(2) Proceedings between the order allowing the partition and the final completion of the partition proceeding.

(3) Proceedings from the appointment of the amin (or reference to the parties or arbitrators, as the case may be) and the filing of his partition proposals.

(4) Proceedings between the filing of the award and the final order of the Collector confirming the partition.

31. A register shall be maintained in each Court showing all the partition cases pending in it and giving the following information :—

(1) Date on which the case was brought on the register of this Court.

[A comparison of this with the subsequent dates will show at what stage of the proceedings a case instituted in another Court was transferred to the Court for which the register is maintained]

(2) Date on which application was filed.

(3) Date of issue of notification and notices under section 111.

(4) Date of final disposal of objections.

(5) Date of partition proceeding.

(6) Date of reference to amin (or arbitrators or parties).

(7) Date of receipt of award.

(8) Date of final order.

(9) Explanations.

32. A form for this register will be provided by the Board. It will be inspected by the Collector of the District once in three months, and he should call for explanations in all cases where unnecessary delay appears to have been permitted.

33. The officer in charge of a settlement shall have all the powers of the Collector of the District under these rules.

34. The Collector of the District shall report the state of the partition files in his district to the Commissioner half-yearly in Form II, and a similar report shall be made by the Commissioner to the Board regarding each district in his division.

PART II.—REGARDING THE COST OF PARTITION.

35. The costs shall be divided into two parts—costs of survey and costs of partition.

36. The costs of survey are, by section 129, to be paid rateably by co-sharers in the mahals according to their shares. Unless a new survey is made for the partition, no charge shall be made for such costs.

37. The costs of partition shall include every charge except that of the survey; and no extra fees shall be levied for copying, pointing out boundaries, or any other purpose. The costs of partition shall be paid rateably by all the co-sharers of the mahal according to their shares, unless it is otherwise expressly ordered by the Collector of the District: provided that any co-sharer obstructing or delaying the partition by frivolous objections, or other means, may be ordered to pay as costs any

sum not exceeding double the amount of costs due on his share: provided, also, that any co-sharer intervening under the 2nd clause of Rule I shall pay all such additional costs as his intervention may cause to be incurred.

38. The costs of the survey shall be calculated at Rs. 6-8-0 per 100 acres of total area, and for the survey of the village site at the rate of Rs. 2 per acre or per 100 houses. The surveyor may be paid either according to the area measured or the time occupied by the survey, as the Collector of the District may think fit.

39. The costs of partition shall be calculated on the area of the land to be divided and on the number of classes of soil in such land and on the number of co-sharers, and shall not exceed the following scale:—

For any area not exceeding 150 acres, not more than Rs. 10			
From 150 and	"	200	" " 15
" 200	"	300	" " 20
" 300	"	500	" " 30
" 500	"	800	" " 40
" 800	"	1,000	" " 50

For every 100 acres or part of 100 acres over 1,000 " 5

40. If the land to be divided consists (1) of two classes of soil, an addition may be made of 20 per cent.; (2) of three classes, 35 per cent.; (3) of four or more, 50 per cent. to the above scale of charges.

41. If there are less than five co-sharers in the mahal, no addition shall be made to the costs on account of the number of co-sharers.

42. If there are from 5 to 10 co-sharers, an addition may be made of 10 per cent.

If there are from 10 to 20 co-sharers, an addition may be made of 20 per cent.

If there are from 20 to 30 co-sharers, an addition may be made of 30 per cent. And so on, provided that not more than 100 per cent. be added in any case on account of the number of co-sharers.

43. When the receipts are sufficient to stand the charge, one or more muharrirs may be appointed on such salaries not being below Rs. 15 or above Rs. 25 per mensem as the Collector may determine. Their duty will be to check the partition papers after they have been filed by the amins and, in the case of the appointment of a special partition officer, to act as his Court establishment for partition work generally. Ten per cent. shall be appropriated from the fees payable to the amins and shall constitute a fund from which the salaries of these muharrirs may be paid, and a personal ledger account for this item will be opened at the treasury. The services of the muharrirs employed under this Rule will not qualify for pension.

APPENDIX.

519

APPENDIX TO RULES FOR OFFICERS MAKING PARTITION.

Points on which it may be necessary to give orders in framing a Partition Proceeding.

1. Into how many mahals the village is to be divided and the fractional share represented by each.
2. By whom the partition is to be made, by an amin, or by the parties themselves, or by arbitration.
3. Whether a new survey is required of the whole village or of any part of it, as, for instance, in the case of alluvion or diluvion which has not been sufficiently mapped.
4. Whether the new mahals are to be compact blocks, and if not, how far and under what conditions and restrictions a khetbat division is to be allowed.
5. If any lands or other property are at the time held in severalty, how are they to be dealt with at partition; and if they are to be retained by their present owners, on what principle is compensation to be given in making out the remaining mahals?
6. The terms to be observed in dealing with—
 - (1) sir,
 - (2) khudkasht of proprietors,
 - (3) occupancy and exproprietary land,
 - (4) tenants-at-will,
 - (5) rent-free and favoured tenures.
 - (6) groves (a) of proprietors,
(b) of tenants,
 - (7) houses (a) of proprietors,
(b) of tenants,
 - (8) places of worship and burning ghats,
 - (9) wild trees and jungle,
 - (10) grazing land and waste,
 - (11) irrigation from wells, tanks, bandhs, or streams or canals.
The method of distribution, and the liability for repairs.
 - (12) What roads are to be kept open with common right of way.
 - (13) Any customs as to the right to manure.
 - (14) Rights in bazars or camping-grounds.
 - (15) Rights in fisheries, singhars, lac, kankar, saltpetre and other miscellaneous products.
 - (16) Rights in threshing-floors, sugar yards, indigo factories, brick-kilns, ferries or boats and landing places.
 - (17) The term within which the award is to be filed.
 - (18) The method on which the payment of the costs of partition and stamp-duty on final proceedings is to be divided.



FORM I.

Statement of Partitions effected under Act XIX of 1873 in Zila.

FORM II.

Half-yearly Statement of Partition Cases.

	District.	Court and name of presiding officer.	Number of cases pending at beginning of half-year.	Number of new applications filed.	Total for disposal.	Number of partitions actually carried out.	Number of applications otherwise disposed of.	Remaining for disposal	Cases in column 8 which were instituted in current year.	Cases in column 8 which were instituted in 1883.	Cases in column 8 which were instituted in 1882.	Cases in column 8 which were instituted in 1881.	Cases in column 8 which were instituted before 1881.	Date of oldest case pending.	Before partition.	After partition.	Number of mahals or pattis.
Perfect partition. Imperfect partition.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	



110. If the mahal is situated in two or more sub-divisions of a district, the partition shall be made by such one of the Assistant Collectors respectively in charge of such sub-divisions as the Collector of the District may direct.

and as to estates in more than one sub-division.

111. The Collector of the District or Assistant Collector, on receiving an application for partition shall, if the application be in order and not open to objection on the face of it, publish a notification of the same at his office, and at some conspicuous place on the mahal to which the application relates,

Notification of application.

and shall serve a notice on all such of the recorded co-sharers in the mahal as have not joined in the application, requiring any co-sharer in possession who may object to the partition to appear before him to state his objection, either in person or by a duly authorized agent, on a day to be specified in the notice, not being less than thirty or more than sixty days from the date on which such notice was issued.

Notice to co-sharers not joining.

Where, from any cause, notice cannot be personally served on any co-sharer, the notification shall be deemed sufficient notice under this section.

Notification when alone sufficient.

112. If, on or before the day specified, any objection is made to the partition, by any co-sharer in possession, and the Collector of the District or Assistant Collector, on a consideration of such objection, is of opinion that there is any good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Power to refuse partition when objection admitted.

If the question of title or right thus raised has not been determined by a competent Court, the usual course will be to refuse the application if the matter at issue is at all complicated. But it is optional to the Collector to sit as a Civil Court and try the matter formally. The object of this provision is to at once dispose of the objections raised as to title, and more with the object to stop partition.

The Collector's order deciding an objection in the partition cases is appealable to the Commissioner (*Mahdi Ali v. Madho Singh*, B. F., No. 909 of 1879).

113. If the objection raises any question of title, or of proprietary right, which has not been already determined by a Court of competent jurisdiction, the Collector of the District or Assistant Collector may either decline to grant the application until the question in dispute has been determined by a com-

Procedure if question of title be raised.

petent Court, or he may proceed to inquire into the merits of the objection.

In the latter case the Collector of the District or Assistant Collector, after making the necessary inquiry and taking such evidence as may be adduced, shall record a proceeding declaring the nature and extent of the interests of the party or parties applying for the partition, and any other party or parties who may be affected thereby.

Procedure in
such cases.

Reference to
arbitration.

The procedure to be observed by the Collector of the District or Assistant Collector in trying such cases shall be that laid down in the Code of Civil Procedure for the trial of original suits, and he may with the consent of the parties refer any question arising in such case to arbitration, and the provisions of Chapter XXXVII (relative to arbitrators) of the same Code shall apply to such references.

(1). Where in the course of carrying out an order for a partition and of assigning the lands to each co-sharer, certain co-sharers claimed certain plots of land as belonging to them in severalty and demanded that the same should be assigned to them, and the Collector decided that some of such plots were held in severalty and one was held in common. *Held*, that his decision was not passed under section 113 of this Act, and was therefore not appealable under section 114 (*Shibban Lal v. Tiloki Chund*, 1880 I. L. R., 2 All., p. 619).

(2). In the case of an objection to a partition raising a question of title, it is only when the Collector or Assistant Collector records a proceeding declaring the rights of the parties, after an adjudication of the objection on its merits, that his order becomes an order under section 113 of Act XIX of 1873, within the meaning of section 114 of that Act. Where, therefore, an Assistant Collector made an order disallowing an objection to a partition raising the question of title, on the ground that each question had been determined against the objection in a suit for profits between the parties. *Held*, that such order was not a decision of a Court of Civil Judicature within the meaning of section 114 of this Act, but that it could be contested by a suit in the Civil Court (*Romesher Rai v. Subhoo Rai*, I. N. W. Ed. 1873; 134; *Bukhta v. Gunga*, 3 Agra, 161; and *Asghar Ali Shah v. Jhandamal*, I. L. R., 2 All., p. 839).

(3). A childless Hindu widow who has succeeded to her deceased husband's share of a mahal, such share having been his separate property and is recorded as a co-sharer of such mahal, is as much entitled, under section 108 of Act XIX of 1873 as any other recorded co-sharer is, to claim a perfect partition of her share. The circumstance that she may after partition alienate her share contrary to Hindu Law, will not

APPENDIX.

523

bar her right as a co-sharer to partition. If she acts contrary to the Hindu Law, in respect of her share, the reversioners will be at liberty to protect their own interests. (*Jhunna Kuar v. Chainsukh*, 1881 I. L. R. 3 All., 400).

(4) Where in proceedings for partition under Act XIX of 1873, a question of title to land is raised between the parties to the partition, and there is an adjudication of each question, such adjudication will operate as to bar to a suit between the same parties in the Civil Court to contest the title of each land, notwithstanding that in some respects such adjudication may have been irregular or defective, *Harshahai Mal v. Maharaj Singh*, I. L. R., 2 All. 294, and S. A. No. 129 of 1881, decided on the 27th July 1881, followed. Held in this case, on consideration of the partition proceedings, that the question of title raised therein had been adjudicated on, and therefore the rule mentioned above applied (*Bateshar Nath v. Faizul Hasan*, 1883 I. L. R., 5 All. p. 280).

(5) It is necessary to prepare a formal decree in proceedings under section 113, declaring the rights of the parties in a partition case (*Ranjit Singh v. Ilahi Bakhsh and others*, 1883 I. L. R., 5 All. 520.).

(6) A Revenue Court acting under the provisions of sections 112 and 113 of the Land-Revenue Act, recorded a proceeding declaring the nature and extent of the respective rights of the parties before the Court, and prescribing the mode in which partition should be effected. No decree was framed in accordance with this proceeding: *Held*, that the proceeding of the Revenue Court was a decision by a Court of competent jurisdiction, and could not be interfered with by a suit in the Civil Court disputing its correctness (*Bhola v. Ramdhin*, 1885 I. L. R. 7 All. 894).

(7) Upon an application made under Chapter IV of the Land-Revenue Act for partition of common land in which the owners of six *pattis* were interested, into six equal parts, an objection was raised that the land should be divided into parts proportionate to the size of the different *pattis*. The Assistant Collector disallowed it with reference to provisions of the *Wajib-ul-ars* in which the custom of the village was recorded, and made the partition in the manner prayed. No appeal was preferred by the objectors to the District Judge. The Collector confirmed the partition, and after an appeal to the Commissioner, the Assistant Collector's decision was upheld. The objectors then brought a suit in the Civil Court for a declaration that the defendants were only entitled to a share of the common land proportionate to the area of their *pattis*: *Held*, that the objection which was raised in the Revenue Court was one which raised a question of title or of proprietary right in respect of the common land within the meaning of section 113 of the Land-Revenue Act; that the decision of the Assistant Collector was a decision within the meaning of section 114, and that consequently the suit was barred

by section 13 of the Civil Procedure Code: *Held*, also, that the question was not affected by any mistakes in procedure that had been made in the Revenue Courts (*Amir Singh v. Nimati Pershad*, I. L. R., All. p. 388).

(8) Reading together sections 111, 112 and 113 of the Land-Revenue Act as they must be read, the objection contemplated in each of them is an objection to be made by the person upon whom the notice required by section 111 is to be served, i.e., a person who is a co-sharer in possession and who has not joined in the application for partition.

So far as sections 111, 112, 113, 114 and 115 are concerned, a Civil Court is the Court which has jurisdiction to adjudicate upon questions of title or proprietary right either in an original suit in cases in which the Assistant Collector or Collector does not proceed to enquire into the merits of an objection raising such a question under section 113, or an appeal in those cases in which the Assistant Collector or Collector does decide upon such questions raised by an objection made under section 112. The remaining sections relating to partition do not provide for or bar the jurisdiction of the Civil Court to adjudicate upon questions of title which may raise in partition proceedings or on the partition after the time specified in the notice published under section 111. Section 132 is not to be read as making the Commissioner the Court of Appeal from the Assistant Collector or the Collector upon such questions, nor does section 241 (f) bar the jurisdiction of the Civil Court to adjudicate upon them.

Where, therefore, after the day specified in the notice published by the Assistant Collector under section 111, and after an amin had made an apportionment of lands among the co-sharers of the mahal, the original applicants for partition raised for the first time an objection involving a question of title or proprietary right, and this objection was disallowed by the Assistant Collector and the partition made and confirmed by the Collector under section 131: *Held*, that the objection was not one within the meaning of section 113, that the remedy of the objectors was not an appeal from the Collector's decision under section 132, and that a suit by them in the Civil Court to establish their title to the land allotted to other co-sharers was not barred by section 241 (f), and, with reference to section 11 of the Civil Procedure Code was maintainable (*Mohammed Abdul Karim v. Mahomed Shadikhan*, I. L. R. 9 All. 429).

Collector's
 decision
 equivalent to
 decision of
 Civil Court.

114. All orders and decisions passed by the Collector of the District or Assistant Collector under the last preceding section, for declaring the rights of parties, shall be held to be decisions of a Court of Civil Judicature of First Instance, and shall be open to appeal to the District or High Court, under the rules applicable to regular appeals to those Courts.



Upon such appeal being made, the District or High Court, as the case may be, may issue a precept to the Collector of the District or Assistant Collector, desiring him to stay the partition pending the decision of the appeal.

Appeal thereupon.
Appellate Court may stay partition.

115. From every decision passed under section one hundred and fourteen by a District Court, a special appeal shall lie to the High Court, under the rules for the time being in force relating to special appeals to that Court.

Special appeal to High Court.

116. When it has been decided to make a partition under this Chapter, the Collector of the District or Assistant Collector may give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he shall make the partition himself or cause it to be made by any Assistant Collector subordinate to him.

Option to parties to make partition themselves or to appoint arbitrators.

If arbitrators are appointed, the provisions of sections two hundred and twenty to two hundred and thirty-one, both inclusive, shall apply.

117. In making partitions, the Collector of the District or Assistant Collector, and any person appointed by him, shall have the same powers to enter on the land under partition, for marking out the boundaries, surveying the mahal, and other purposes, as have been conferred on Settlement Officers under Chapter III.

Power to enter on land for purposes of partition.

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

Partition of lands held only in severalty.

119. Where some of the lands are held in common, the Collector of the District or Assistant Collector shall allot to the applicant for partition his share of such lands in accordance with village-custom, if any such exist.

Partition of lands some of which are held in common.

If no such custom exist, the Collector of the District or Assistant Collector shall make such division as may secure to the applicant his fair portion of the common lands.

120. The portion of the common lands falling by such partition to the share of the applicant shall be added to the land held by him in severalty, and the mahals thus formed shall be assessed and declared separate mahals.

Formation of separate mahals from shares allotted in partition.

Transfers to be effectuated in making partition

121. In making partitions under sections one hundred and eighteen, one hundred and nineteen and one hundred and twenty the Collector or Assistant Collector shall give effect to any transfer of lands held in severalty, forming part of the mahal, agreed to by the parties, and made previous to the declaration of the partition.

This section enables the parties to make any exchange of lands held in severalty that may be agreed to by them. The Act gives Collector no power to disturb possession. The lands held in severalty may be so intermixed as to render any sort of compactness in the new mahals impossible. If this is thought objectionable, the only course is to report to the Board under section 123. The land in separate possession of a co-sharer cannot be given to other co-sharers in partition without the consent of the former (*Debi v. Goburdhan*, B. F., No. 30 of 1879).

Partition where all lands held in common.

122. Where all the lands are held in common, the Collector of the District or Assistant Collector shall make such a partition as may secure to the applicant his fair share of the mahal.

Mahals to be compact; partition not to be disallowed for incom- pactness.

123. In all cases each mahal shall be made as compact as possible: Provided that, except with the sanction of the Board, no partition be disallowed solely on the ground of incom- pactness.

The attention of the Collectors has been drawn by the Board of Revenue to section 123, Act XIX of 1873, that in all cases of partition, the mahals shall be made as compact as possible. The Board shall not disallow partitions solely on the ground of incomcompactness, but they expect that compactness shall be carefully studied, and insisted on within reasonable degrees, and amins should not be allowed to make incom- pact partitions simply to save themselves trouble and to satisfy only, for a time, the contending parties (Circular letter No. B12-11 of 15th December 1890 from the Board to all Commissioners).

Rule when dwelling-house of one sharer is in- cluded in mahal as- signed to another.

124. If in making the partition it be necessary to include in the mahal assigned to one sharer, the land occupied by a dwelling-house or other building in the possession of another co-sharer, such other co-sharer shall be allowed to retain it, with any buildings thereon, on condition of his paying a rea- sonable ground-rent for it to the sharer into whose portion it may fall.

The limits of such land, and the rent to be paid for it, shall be fixed by the Collector of the District or Assistant Collector.



125. No sir land belonging to any co-sharer shall be included in the mahal assigned on partition to another co-sharer, unless with the consent of the co-sharer who cultivates it, or unless the partition cannot otherwise be conveniently carried out.

Rule as to sir land of one sharer being included in mahal assigned to another.

If such land be so included, and after partition such co-sharer continue to cultivate it, he shall be an occupancy-tenant of such land, and his rent shall be fixed by order of the Collector of the District or of the Assistant Collector.

(1) When the co-sharers of a mahal agree to have such mahal partitions by an arbitrator, they must be understood to agree to the arrangements made by such arbitrator, and if he provides by his award that the sir land of one co-sharer that falls by lot into the share of another co-sharer should be surrendered, that land must be given up by the co-sharer who has hitherto cultivated it. Such co-sharer's consent to such arrangements must be understood to have been given when he agreed to arbitration. Section 125 of Act XIX of 1873 must not be regarded as empowering a co-sharer who has once given his consent to surrender the cultivation, to continue to cultivate the land against the will of the co-sharer, who has become the owner of it by partition.

An agreement to refer to arbitration, the partition of a mahal provided that if sir land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer, to whom it might be assigned. The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants. The defendants sued the plaintiffs in the Revenue Court claiming such produce as their own. The Revenue Court held that such distress was illegal, as the land was in possession of the defendants as occupancy-tenants under section 125. The plaintiffs subsequently sued the defendants in the Civil Court for possession, basing it on the partition-proceeding. *Held*, that the decision of the Revenue Court did not debar the Civil Courts from determining the rights of the parties under the partition, and such suit was cognizable in the Civil Courts (*Abhai Pandi v. Bhagwan*, 1881, 1. L. R. 3 All 818).

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

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

Where, from the extent, situation or construction of such works, it is found necessary that they should continue the joint

Rule as to places of worship and burial-grounds.

property of the proprietors of two or more of the mahals into which the mahal may be divided, the Collector of the District or Assistant Collector shall determine the extent to which the proprietors of each mahal may make use of the said works, and the proportion of the charges for repairs of such works to be borne by such proprietors respectively, and the manner in which the profits, if any, derived from such works, shall be divided.

127. Places of worship and burial-grounds, held in common previous to the partition of a mahal, shall continue to be so held, unless the parties otherwise agree among themselves.

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

Determination of revenue payable by each division of a mahal.

128. The amount of revenue to be paid by each portion of the divided mahal shall be determined by the Collector of the District or Assistant Collector: provided that the aggregate revenue of the new mahals shall not exceed the revenue assessed on the mahal immediately before partition,

Liability of proprietors.

and the proprietors of the new mahals shall be held liable for the portions of the revenue severally assessed on their mahals, whether new engagements be taken from them or not.

Under the terms of section 128 it is obligatory on the officer in charge of a partition to redistribute and determine the amount of revenue payable by each of the newly formed mahals, subject to the proviso at the end of the section (Pandit Jawahir Lal and others *v.* Rachpal Singh and another, B. S. D. 1885-87, p. 47).

Power to make rules as to costs.

129. The Board shall make rules for determining the costs of partitions under this Act, and the mode in which such costs are to be apportioned :

Cost of survey.

Provided that the cost of surveying a mahal, when such survey is necessary for the purpose of partition, shall be paid rateably by all the co-sharers of the mahal, according to their shares therein.

The Revenue Courts should explain the partition-proceedings and show all the papers to the parties, and obtain their signature (Akbar Khan *v.* Kishen Sahai, No. 227 of 1879).

Case may be struck off for default as to costs.

130. If the costs to be paid by the applicant for partition are not paid within a time to be fixed by the Collector of the District or Assistant Collector, the case may be struck off the file.



APPENDIX.

529

And if at any stage of the proceedings there appears to be any reason for stopping the partition, the Collector of the District may of his own motion, or on the report of the Assistant Collector making the partition, stay the partition and order the proceedings to be quashed.

Power to stay partition.

A partition case cannot be struck off the file by a Revenue Court, because the applicant for partition, though prepared to pay his rateable share of the costs, objects to pay the costs payable by the other parties to the partition. Such costs should be realized in accordance with the procedure laid down in the Act from the persons by whom they are payable (*Makhan Lal v. Akbar Husain and others*, Legal Remembrancer p. 54, Vol. II). Nor it can be struck off on the ground that the mahals after partition will be too small (*Raghinath Bhand v. Jumman Lal*, Board's File No. 412 of 1880).

131. Every partition shall either be made by the Collector of the District, or, if made by an Assistant Collector, be reported to the Collector of the District for his sanction and confirmation ;

Partitions to be made or confirmed by Collector, and notified to parties.

and on completion of a partition, the Collector of the District shall publish a notification of the fact at his office and at some conspicuous place on each of the new mahals, or in the village of which they form part ;

and it shall take effect from the first day of July next after the date of such notification.

When to take effect.

The Collector before confirming may, under his general power of control, cause any necessary amendment to be made.

132. An appeal against the decision of the Collector of the District making or confirming a partition, shall lie to the Commissioner of the Division within one year from the date on which such partition takes effect.

Appeal to Commissioner from orders of Collector.

133. Where the public revenue is fraudulently or erroneously distributed at the time of the partition, the Local Government may, within twelve years from the time of discovery of the fraud or error, order a new allotment of the public revenue upon the several mahals into which the mahal has been divided, on an estimate of the assets of each mahal at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

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

The limitation is twelve years.

134. Imperfect partition shall be carried out according to the provisions of the preceding sections, so far as they are applicable :

Making of imperfect partitions.

Consent
required.

Provided that no application for imperfect partition shall be entertained unless the consent of all the recorded co-sharers in the property of which partition is sought be first obtained.

Civil Courts
barred from
entertaining
applications
for partition.

135. No Civil Court shall entertain any suit or application for perfect or imperfect partition.

A suit by a co-sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated lot of land is not maintainable in a Civil Court (*Ijrail v. Kanhai*, (1887) I.L.R., 10, All. p. 5).

Union of
mahals ori-
ginally part
of same
village.

136. If two or more revenue-paying mahals have originally formed portion of the same village, the proprietors shall be entitled to have such mahals united and to hold them as a single mahal.

Application
for such
union.

137. Every application for the union of such mahals shall be made in writing to the Collector of the District or Assistant Collector in charge of the sub-division of the district in which the mahals are situate.

How to be
dealt with.

138. If the Collector of the District or Assistant Collector, as the case may be, see no objection, he shall comply with the application, and cause the necessary entries to be made in the records of his office, reporting the case to the Commissioner of the Division.

Application of
Chapter to
partition or
union of re-
venue-free
mahals.

139. The provisions of this Chapter, so far as they are applicable, may be applied by the order of the Collector of the District to the partition or union of mahals held free of revenue.



Partition Law for Oudh
ACT XVII OF 1876

PASSED BY THE GOVERNOR GENERAL OF INDIA IN
COUNCIL.

CHAPTER V.

PARTITION AND UNION OF MAHALS.

68. Partition is either perfect or imperfect.

Partitions.

'Perfect partition' means the division of a mahal into two or more mahals, severally responsible for the revenue assessed on each. 'Perfect partition.'

'Imperfect partition' means the division of any mahal, or of any portion of a mahal, into two or more portions jointly responsible for the revenue assessed on the whole mahal. 'Imperfect partition.'

69. Any recorded co-sharer in a mahal, and any person in whose favour a decree has been passed by any Civil Court, awarding to him the proprietary right in a portion of a mahal, whether such portion consists of a fractional share in the whole or a part of the mahal, or of specific lands, is entitled to claim perfect partition of his share. Persons entitled to perfect partition.

Any two or more recorded co-sharers may claim that their shares be divided from the other shares by a perfect partition, and be held by them as a single mahal.

If any recorded co-sharer be under disability, the person in possession of his property shall, for the purpose of this section, be deemed to be a recorded co-sharer.

70. Applications for perfect partition are to be made in writing to the Deputy Commissioner of the district in which the mahal is situated; Application for perfect partition.

and shall be accompanied by a certified copy of the record, showing the share held by the applicant in the mahal:

Provided that, if the mahal be situated in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Deputy Commissioners of those districts as the Chief Commissioner may direct. Provision as to estates situated in more than one district.

Notification of application.

71. The Deputy Commissioner, on receiving an application for partition, shall, if the application be in order and not open to objection on the face of it, publish a notification of the same at his office, and at some conspicuous place in the mahal to which the application relates,

Notice to co-sharers not joining.

and shall serve a notice on all such of the recorded co-sharers in the mahal as have not joined in the application, requiring any co-sharer in possession who may object to the partition to appear before him to state his objection, either in person or by a duly authorized agent, on a day to be specified in the notice, not less than thirty, or more than sixty, days from the date on which such notice was issued.

Notification when alone sufficient.

72. Where, from any cause, notice cannot be personally served on any co-sharer, the notification so published shall be deemed sufficient notice.

Power to refuse partition when objection admitted.

73. If, on or before the day so specified, any objection is made to the partition by any co-sharer in possession, and the Deputy Commissioner, on a consideration of such objection, is of opinion that there is any good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Procedure if question of title be raised.

74. If the objection raises any question of title, or of proprietary right, which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner may either decline to grant the application until the question in dispute has been determined by a competent Court, or he may proceed to enquire into the merits of the objection.

In the latter case the Deputy Commissioner, after making the necessary inquiry and taking such evidence as may be adduced, shall record a proceeding declaring the nature and extent of the interests of the party or parties applying for the partition, and any other party or parties who may be affected thereby.

Procedure in such cases.

The procedure to be observed by the Deputy Commissioner in trying such cases shall be that laid down in the Code of Civil Procedure for the trial of original suits, and he may, with the consent of the parties, refer any question arising in such case to arbitration, and the provisions of chapter VI (relative to arbitrators) of the same Code shall apply to such references.

Reference to arbitration.



75. All orders and decisions passed by the Deputy Commissioner under the last preceding section, for declaring the rights of parties, shall be held to be decisions of a Court of civil judicature of first instance, and shall be open to appeal under the provisions of the Oudh Civil Courts Act XXXII of 1871.

Deputy Commissioner's decision equivalent to decision of Civil Court. Appeal thereupon.

Upon such appeal being made, the appellate Court may issue a precept to the Deputy Commissioner, desiring him to stay the partition pending the decision of the appeal.

Appellate Court may stay partition.

76. When it has been decided to make a partition under this chapter, the Deputy Commissioner shall either give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he shall make the partition himself or cause it to be made by any Assistant Commissioner subordinate to him, and when made by an Assistant Commissioner, it shall be reported to the Deputy Commissioner for his confirmation.

Option to make partition themselves or to appoint arbitrators.

77. If arbitrators are appointed, the provisions of sections one hundred and ninety-one to two hundred and two, both inclusive, shall apply.

Partition by arbitrators.

These sections are as follow :—

191. The Chief Commissioner, a Commissioner of a Division, a Deputy Commissioner, an Assistant Commissioner of the first class, an officer in charge of a settlement, or an Assistant Settlement Officer may, with the consent of the parties, by order, refer any dispute before him to arbitration; and any officer acting under the provisions of sections one hundred and two to one hundred and seven, both inclusive, may, with the consent of the parties, refer to arbitration any dispute arising before him respecting the matters mentioned in the same sections.

192. In referring any such dispute to arbitration, the officer making the reference shall specify, in the order of reference, the precise matter submitted to the arbitrators, and such period as he may think reasonable for the delivery of the award;

and he may from time to time extend such period.

193. The parties to the case may each nominate either one or two arbitrators, provided that each party shall nominate the same number;

and a third or fifth arbitrator (as the case may be) shall be appointed by the parties, or, in the event of their being unable to agree, by the officer making the reference.

194. Every officer making a reference under this chapter may, on good cause shown, excuse any person from serving as an arbitrator, and may call on the party who nominated such person to nominate another in the place of the person so excused.

195. If an arbitrator die, desire to be discharged, or refuse or become incapable to act, the party who nominated him shall nominate another person in his place.

196. If in any of the cases provided for by section one hundred and ninety-four or section one hundred and ninety-five, any party fail for a week to nominate in manner aforesaid, the officer making the reference shall appoint some person to act as arbitrator.

The arbitrators shall determine and award concerning the matters referred to them for arbitration; and the parties disputing, and all persons claiming through them respectively, shall abide by and perform the award of the arbitrators.

197. If the arbitrators require the presence of the parties, or any other persons whose evidence may be necessary, they shall apply to the officer making the reference, who shall summon such parties or persons;

and all such parties or persons shall be bound to attend, either in person or by agent, as the arbitrators may require, and to state the truth as to the subject-matter of the reference, and to produce such documents and other things as may be required before the arbitrators.

198. The award shall be made in writing under the hands of the arbitrators, and shall be submitted by them to the officer making the reference, who shall cause notice to be served on the parties to attend and hear the award.

199. The officer making the reference may remit the award or any of the matters referred to arbitration to the re-consideration of the same arbitrators,

(a) if the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration;

(b) if the award is so indefinite as to be incapable of execution;

(c) if an objection to the legality of the award is apparent upon the face of the award.

200. No award shall be liable to be set aside except on the ground of corruption or misconduct of all or any of the arbitrators.

Any application to set aside an award shall be made within ten days after the day appointed for hearing the award.

201. If the officer making the reference does not see cause to remit the award or any of the matters referred to arbitration for re-consideration in the manner aforesaid,

and if no application has been made to set aside the award,

or if he has refused such application,



he shall decide in accordance with the award of the majority of the arbitrators,

and shall fix the amount to be allowed for the expenses of the arbitration, and direct by and to whom, and in what manner, the same shall be paid.

202. Such decision shall not be open to appeal, and shall be at once carried out;

and no Civil Court shall entertain any suit for the purpose of setting it aside or against the arbitrators on account of their award.

In making a partition, arbitrators shall not be bound by the provisions of sections eighty to eighty-three, both inclusive; but they shall deliver a full and complete paper of partition, specifying the separate mahals into which they propose that the mahal shall be divided; the names of the parties to whom the several mahals are proposed to be allotted, and the amount of land-revenue which in the opinion of the arbitrators should be assessed on each of such mahals.

78. In making partitions, the Deputy Commissioner, and any person appointed by him, shall have the same powers to enter on the land under partition, for marking out the boundaries, surveying the mahal, and other purposes, as are conferred on Settlement Officers under this Act.

Power to enter on land for purposes of partition.

79. When a Deputy Commissioner has decided that a partition shall be made, he may, with the sanction of the Commissioner, hold the mahal under direct management pending the completion of the partition.

Power to hold mahal under direct management pending partition.

The provisions of the law in force for the time being for the management of mahals held under direct management under section one hundred and nineteen for arrears of revenue, shall be applicable to mahals the management of which is assumed under this section.

The collections of the mahal shall be applied to the payment of the Government revenue, and, after defraying the expenses of management and any other expenses with which the mahal is chargeable, the residue shall be divided amongst the recorded co-sharers, in proportion to their respective shares, at such periods as the Deputy Commissioner may see fit.



Partition of lands held only in severalty.

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

Partition of lands some of which are held in common.

81. Where some of the lands are held in common, the Deputy Commissioner shall allot to the applicant for partition his share of such lands in accordance with village-custom, if any such exist.

If no such custom exist, the Deputy Commissioner shall make such division as may secure to the applicant his fair portion of the common lands.

Formation of separate mahals from shares allotted in partition.

82. The portion of the common lands falling by such partition to the share of the applicant shall be added to the land held by him in severalty, and the mahals thus formed shall be assessed and declared separate mahals.

Transfers to be effectuated in making partition.

83. In making partitions under this Act, the Deputy Commissioner shall give effect to any transfer of lands held in severalty and forming part of the mahal, which has been agreed to by the parties previous to the declaration of the partition.

Partition where all lands are held in common.

84. Where all the lands are held in common, the Deputy Commissioner shall make such a partition as may secure to the applicant his fair share of the mahal.

Estate to be compact.

85. In all cases each mahal shall be made as compact as possible : Provided that, except with the sanction of the Chief Commissioner, no partition be disallowed solely on the ground of incompactness.

Rule when dwelling-house of one sharer is included in mahal assigned to another.

86. If in making the partition it be necessary to include in the mahal assigned to one sharer, the land occupied by a dwelling-house or other building in the possession of another co-sharer, such other co-sharer shall be allowed to retain it, with the buildings thereon (if any), on condition of his paying a reasonable ground-rent therefor to the sharer into whose portion it may fall.

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

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

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



Where, from the extent, situation or construction of such works, it is found necessary that they should continue the joint property of the proprietors of two or more of the mahals into which the mahal may be divided, the Deputy Commissioner shall determine the extent to which the proprietors of each mahal may make use of the said works, and the proportion of the charges for repairs of such works to be borne by such proprietors respectively, and the manner in which the profits, if any, derived from such works, shall be divided.

88. Places of worship and burial-grounds, held in common previous to the partition of a mahal, shall continue to be so held, unless the persons who so held them otherwise agree among themselves.

Rules as to places of worship and burial-grounds.

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

89. In all cases, whether partition has been made by arbitrators or otherwise, the amount of revenue to be paid in respect of each portion of a mahal partitioned under this chapter shall be determined by the Deputy Commissioner, provided that the aggregate revenue payable in respect of the new mahals shall not exceed the revenue assessed on the mahal immediately before partition ;

Determination of revenue payable by each division of a mahal.

and the proprietor of each new mahal shall be held liable for the portion of the revenue assessed on his mahal, whether a new engagement be taken from him or not.

Liability of proprietors.

90. If at any stage of any proceedings under this chapter there appears to be any reason for stopping the partition, the Deputy Commissioner may of his own motion, or on the report of the Assistant Commissioner making the partition, stay the partition and order the proceedings to be quashed.

Power to stay partition.

91. A partition, whether made by the Deputy Commissioner himself or otherwise, shall not be deemed to be complete unless the Deputy Commissioner has made an order confirming it.

Order confirming partition.

On making such order, he shall publish a notification of the fact at his office and at some conspicuous place in each of the new mahals,

Notification of order.

Partition when to take effect.

and the partition shall take effect on and from the first day of July next after the date of such notification.

Appeal to Commissioner from orders of Deputy Commissioner.

92. An appeal against the decision of the Deputy Commissioner confirming a partition, shall lie to the Commissioner of the division within one year from the date on which such partition takes effect.

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

93. Where the land-revenue is fraudulently or erroneously distributed at the time of the partition, the Chief Commissioner may, within twelve years from the time of discovery of the fraud or error, order a new allotment of the land-revenue upon the several mahals into which the mahal has been divided, on an estimate of the assets of each mahal at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

Making of imperfect partitions.

94. Imperfect partition shall be carried out according to the provisions of sections sixty-nine to ninety-two (both inclusive) so far as they are applicable: Provided that no application for imperfect partition shall be entertained unless the consent of recorded co-sharers holding in the aggregate more than one moiety of the property of which partition is sought be first obtained.

Civil Courts barred from entertaining applications for partitions.

95. No Civil Court shall entertain any suit or application for perfect or imperfect partition.

Previous imperfect partitions and partitions of under-proprietary mahals.

96. All imperfect partitions and all partitions perfect or imperfect of under-proprietary mahals hitherto made, shall be deemed to have been made under the provisions of this Act.

Union of mahals originally part of same village.

97. If two or more revenue-paying mahals have originally formed portions of the same village, the proprietor shall be entitled to have such mahals united and to hold them as a single mahal.

Application for such union.

98. Every application for the union of such mahals shall be made in writing to the Deputy Commissioner of the district in which the mahals are situate.

Application how dealt with.

If the Deputy Commissioner see no objection, he shall comply with the application, and cause the necessary entries to



be made in the register of his office, reporting the case to the Commissioner of the division.

99. The provisions of this chapter, so far as they are applicable, may be applied by order of the Deputy Commissioner to the partition or union of mahals held free of revenue. Partition or union of revenue-free mahals.

100. The partition of taluqdari and under-proprietary mahals and of mahals held by lessees whose rent has been fixed by the Settlement Officer or other competent authority, shall be carried out according to the provisions of sections sixty-nine to ninety-three (both inclusive), so far as they are applicable. Partition of taluqdari and under-proprietary mahals.

(a) In the partition of taluqdari mahals, all mahals, whether under-proprietary or held by lessees whose rent has been fixed by the Settlement Officer or other competent authority, shall, if practicable, be assigned to one or other of the new taluqas to be formed by the partition; Assignment of inferior mahals.

(b) if any such mahal cannot be assigned in whole, the assignment shall be made by thoks, pattis or other existent sub-divisions;

(c) and if no other satisfactory arrangement can be made, such mahal shall be partitioned;

(d) in cases in which one portion of any such mahal is assigned to one taluqa and another portion to another taluqa, each portion shall be deemed a separate mahal, the joint responsibility of the co-sharers being limited to such portion.

101. Whenever a partition of a mahal, whether under-proprietary or held by lessees whose rent has been fixed as aforesaid, is effected under this Act, the amount of rent to be paid in respect of each portion shall be determined by the Deputy Commissioner, and the person to whom such rent is payable may present an application in writing to the Deputy Commissioner objecting to the distribution of the rental over the several parts into which the mahal has been divided, and praying that such objection may be heard and determined; and his objection shall be heard and determined, and the Deputy Commissioner shall record his reasons for such determination. Objection to distribution of rental.



The Law of Partition in the Punjab ACT XVII OF 1887

PASSED BY THE GOVERNOR GENERAL OF INDIA IN
COUNCIL.

CHAPTER IX.

PARTITION.

Effect of par-
titions of es-
tates and
tenancies on
joint liability
for revenue
and rents.

110. A partition of land, either under this chapter or otherwise, shall not, without the express consent of the Financial Commissioner, affect the joint liability of the land or of the landowners thereof for the revenue payable in respect of the land, or operate to create a new estate, and, if any conditions are attached to that consent, those conditions shall be binding on the parties to the partition.

(2) A partition of a tenancy shall not, without the express consent of the landlord affect the joint liability of the co-sharers therein for the payment of the rent thereof.

Application
for partition.

111. Any joint owner of land, or any joint tenant of a tenancy in which a right of occupancy subsists, may apply to a revenue-officer for partition of his share in the land or tenancy, as the case may be, if—

- (a) at the date of the application the share is recorded under chapter IV as belonging to him, or
- (b) his right to the share has been established by a decree which is still subsisting at that date, or
- (c) a written acknowledgment of that right has been executed by all persons interested in the admission or denial thereof.

Restriction
and limita-
tions on par-
tition.

112. Notwithstanding anything in the last foregoing section—

- (1) places of worship and burial-grounds held in common before partition shall continue to be so held after partition, unless the parties otherwise agree among themselves and record their agreement and file it with the revenue officer;

APPENDIX.

541

(2) Partition of any of the following properties, namely:—

(a) any embankment, water-course, well, or tank, and any land on which the supply of water to any such work may depend,

(b) any grazing ground, and

(c) any land which is occupied as the site of a town or village and is assessed to land revenue, may be refused if, in the opinion of the revenue-officer the partition^a of such property is likely to cause inconvenience to the co-sharers or other persons directly or indirectly interested therein or to diminish the utility thereof to those persons;

(3) the fact that a partition on the application of a joint owner of land would render necessary the severance into two or more parts of the land comprised in the tenancy of a tenant having a right of occupancy may, unless the tenant assents to the severance, be a sufficient reason for the disallowance of the partition in so far as it would affect that tenancy; and

(4) the fact that the landlord objects to the partition of a tenancy may be sufficient reason for the absolute disallowance of the partition thereof.

113. The revenue-officer, on receiving the application under section 111, shall, if it is in order and not open to objection on the face of it, fix a day for the hearing thereof, and—

Notice of application for partition.

(a) cause notice of the application and of the day so fixed to be served on such of the recorded co-sharers as have not joined in the application, and, if the share of which partition is applied for is a share in a tenancy, on the landlord also; and

(b) if he thinks fit, cause the notice to be served on, or proclaimed for the information of, any other persons whom he may deem to be directly or indirectly interested in the application.

Addition of parties to application.

114. On the day fixed for the hearing, or on any day to which the hearing may be adjourned, the revenue-officer shall ascertain whether any of the other co-sharers desire the partition of their shares also, and if any of them so desire, he shall add them as applicants for partition.

Absolute disallowance of partition.

115. After examining such of the co-sharers and other persons as may be present on that day, the revenue-officer may, if he is of opinion that there is good and sufficient cause why partition should be absolutely disallowed, refuse the application, recording the grounds of his refusal.

Procedure on admission of application.

116. If the revenue-officer does not refuse the application under the last foregoing section, he shall ascertain the questions, if any, in dispute between any of the persons interested, distinguishing between—

(a) questions as to title in the property of which partition is sought; and

(b) questions as to the property to be divided, or the mode of making the partition.

Disposal of questions as to title in property to be divided.

117. (1) When there is a question as to title in any of the property of which partition is sought, the revenue-officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

(2) Where the revenue-officer himself proceeds to determine the question, the following rules shall apply namely :—

(a) If the question is one over which a Revenue Court has jurisdiction, the revenue-officer shall proceed as a Revenue Court under the provisions of the Punjab Tenancy Act, 1887.

(b) If the question is one over which a Civil Court has jurisdiction, the procedure of the revenue-officer shall be that applicable to the trial of an original suit by a Civil Court, and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

(c) An appeal shall lie from the decree of the revenue-officer under clause (b) as though that decree



APPENDIX.

543

were a decree of a district judge in an original suit.

(d) Upon such an appeal being made, the Divisional Court or Chief Court, as the case may be, may issue an injunction to the revenue-officer requiring him to stay proceedings, pending the disposal of the appeal.

(e) From the appellate decree of a Divisional Court upon such an appeal a further appeal shall lie to the Chief Court, if such a further appeal is allowed by the law for the time being in force.

118. (1) When there is a question as to the property to be divided, or the mode of making a partition, the revenue-officer shall, after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

Disposal of other questions.

(2) An appeal may be preferred to the Commissioner from an order under sub-section (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the revenue-officer by the Commissioner, the revenue-officer shall stay proceedings, pending the disposal of the appeal.

(3) If an applicant for partition is dissatisfied with an original or appellate order under this section, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his share, he shall be permitted to withdraw therefrom on such terms as the revenue-officer thinks fit.

(4) When an applicant withdraws under the last foregoing sub-section, the revenue-officer may where the other applicants, if any, desire the continuance of the proceedings continue them in so far as they relate to the partition of the shares of those other applicants.

119. When any such property as is referred to in section 112, clause (2), is excluded from partition, the revenue-officer may determine the extent and manner to and in which the co-sharers and other persons interested therein may make use thereof, and the proportion in which expenditure incurred

Administration of property excluded from partition.



thereon and profits derived therefrom respectively, are to be borne by and divided among those persons or any of them.

Distribution
of revenue
and rent
after parti-
tion.

120. (1) The amount of revenue to be paid in respect of each of the holdings into which land has been divided on a partition, and the amount of rent to be paid in respect of each of the portions into which a tenancy has been so divided shall be determined by the revenue-officer making the partition.

(2) The determination of the revenue-officer as to the revenue to be paid in respect of each holding shall, where the estate in which the holding is situate is subject to a fixed assessment, be deemed to be an order under section 56, sub-section (1).

(3) Where new estates have been created at a partition and the land-revenue has been fraudulently or erroneously distributed among them, the Local Government may, within twelve years from the time of discovery of the fraud or error, order a new distribution of the land-revenue among the several estates on an estimate of the assets of each estate at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

Instrument
of partition.

121. When a partition is completed, the revenue-officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein.

Delivery of
possession of
property al-
lotted on
partition.

122. An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a revenue-officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.

Affirmation
of partitions
privately
effected.

123. (1) In any case in which a partition has been made without the intervention of a revenue officer, any party thereto may apply to a revenue-officer for an order affirming the partition.



APPENDIX.

545

(2) On receiving the application, the revenue-officer shall enquire into the case, and, if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 119, 120, 121, and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this chapter.

124. The Financial Commissioner may make rules for determining the costs of partitions under this chapter and the mode in which such costs are to be apportioned.

Power to make rules as to costs of partitions.

125. When by established custom any land in an estate is subject to periodical re-distribution, a revenue-officer may, on the application of any of the landowners, enforce the re-distribution according to the custom, and for this purpose may exercise all or any of the powers of a revenue-officer in proceedings for partition.

Re-distribution of land according to custom.

126. The revenue-officer by whom proceedings may be taken under this chapter shall be a revenue-officer of a class not below that of Assistant Collector of the first grade.

Officers who may be empowered to act under this chapter.



The Law of Partition in the Central Provinces ACT XVI OF 1889

PASSED BY THE GOVERNOR GENERAL OF INDIA IN
COUNCIL.

CHAPTER XA.

PARTITION.

Perfect and Imperfect Partition.

Perfect and
imperfect
partition.

136. (1) Partition is either perfect or imperfect.
(2) Perfect partition means the division of a mahal into two or more mahals.
(3) Imperfect partition means the division of a mahal into two or more pattis jointly responsible for the revenue assessed on the whole mahal.

Persons
entitled to
imperfect
partition.

136A. Any recorded co-sharer of a mahal and any person in whose favour a decree has been passed awarding to him a proprietary interest in a mahal, whether such interest consists of a fractional share in the whole mahal or a part of the mahal or of specific lands, is entitled to claim at any time imperfect partition of his share.

Persons
entitled to
perfect parti-
tion.

136B. Any recorded co-sharer in a mahal not being a mahal

- (a) in the Sambalpur district, or
(b) held by superior and inferior proprietors and which the Chief Commissioner by rule declares to be incapable of perfect partition,

whose share, saving such part of it as may be impartible, has been completely separated from the rest of the mahal and is held by him in severalty, is entitled to claim perfect partition of his share at the time of settlement of such mahal.



136C. No Civil Court shall entertain any suit or application for the imperfect or perfect partition of a mahal.

Jurisdiction of Civil Court barred as to partition.

Imperfect Partition.

136D. (1) Applications for imperfect partition shall be made in writing to the Deputy Commissioner of the district in which the mahal is situate.

Applications for imperfect partition to be made to Deputy Commissioner.

(2) If the mahal is situate in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Deputy Commissioners of those districts as the Chief Commissioner may direct.

136E. (1) The Deputy Commissioner on receiving an application for imperfect partition shall, if the application be in order, and not open to objection on the face of it, publish a notification of the same at his office and at some conspicuous place on the mahal to which the application relates, and shall serve a notice on all such of the recorded co-sharers in the mahal as have not joined in the application, requiring any co-sharer in possession who may object to the partition to appear before him to state his objection either in person or by a duly authorized agent on a day to be specified in the notice, not being less than thirty or more than sixty days from the date on which such notice was issued.

Procedure on receipt of application.

(2) Where from any cause notice cannot be personally served on any co-sharer, the notification shall be deemed sufficient notice under this section.

136F. If on or before the day specified any objection is made to the partition by any co-sharer in possession, and the Deputy Commissioner on a consideration of such objection is of opinion that there is good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Objection to partition.

136G. (1) If the objection raises any question of title or of proprietary right which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner may either decline to grant the application until the question in dispute has been determined by a competent Court or may proceed to inquire into the merits of the objection.

Objection raising question of title.



(2) In the latter case the Deputy Commissioner, after making the necessary inquiry and taking such evidence as may be adduced, shall record a judgment declaring the nature and extent of the interests of the party or parties applying for the partition, and of any other party or parties who may be affected thereby.

(3) The procedure to be observed by the Deputy Commissioner in trying such cases shall be that laid down in the XIV of 1882. Code of Civil Procedure for the trial of original suits, and he may with the consent of the parties refer any question arising in such case to arbitration, and the provisions of Chapter XXXVII of the same Code relative to arbitration shall apply to such references.

Effect of
Deputy Com-
missioner's
orders in
such cases
and appeals
therefrom.

XVI of 1885.

136H. (1) All decrees and orders passed by the Deputy Commissioner under the last foregoing section deciding the rights of parties shall be held to be decrees and orders of a Court of Civil Judicature, and shall be open to appeal as if passed by the Court of the Deputy Commissioner acting as a Court of Civil Judicature of first instance under the Central Provinces Civil Courts Act, 1885.

(2) Upon such appeal being made the Court of appeal may issue a precept to the Deputy Commissioner directing him to stay the partition pending the decision of the appeal.

Second ap-
peal in such
cases.

136I. From any decree or order passed under the last foregoing section by a Commissioner sitting as a Court of appeal a second appeal shall, where a second appeal is by law allowed, lie to the Court of the Judicial Commissioner under the law for the time being in force relating to second appeals to that Court.

Option to
parties
to make
partition
themselves or
appoint arbi-
trators.

136J. When it has been decided to make a partition under this Chapter the Deputy Commissioner may give the parties the option of making the partition themselves or of appointing arbitrators for the purpose, or he shall make the partition himself.

Proceeding
to be recorded
by the De-
puty Com-
missioner
before mak-
ing partition.

136K. Before commencing to make the partition the Deputy Commissioner shall record a proceeding specifying the lands held in severalty, if any, and the land held in common, and laying down the principles to be followed in making the partition, with particulars of the method on which such principles are to be applied.