

(3) The Deputy Commissioner may, from time to time, postpone the sale and every postponement of sale of a permanently-settled estate shall be reported to the Commissioner or (where there is no Commissioner) to the Chief Commissioner.

75. If the defaulter pays the arrear of revenue in respect of which the property is to be sold and *the fee (if any) prescribed in this behalf* at any time before the day fixed for the sale, the sale shall be stayed. When sale may be stayed.

76. Where the arrear has accrued on a separate account opened under section 65, and a sale of the entire estate has been directed under section 70, proviso (2), any proprietor of the estate who is not comprised in the separate account may, within ten days from the time at which the direction is given, purchase the share or lands comprised in the separate account by paying the amount of the arrear, and provisions of section 71 shall, notwithstanding the third proviso thereto, apply to such a purchase. Right of co-proprietors to purchase share or land sold on separate account.

77. The person declared to be the purchaser at an auction-sale under the foregoing sections shall be required to deposit immediately twenty-five *per centum* on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold. Deposit by purchaser.

78. (1) The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the auction sale took place, or, if that day is a Sunday or other authorized holiday, then on the next following office day. Payment of balance of purchase money, and consequences of default.

(2) In default of payment within that period the deposit after defraying thereout the expenses of the sale, shall be forfeited to the Government, the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may be subsequently sold :

Provided that no re-sale under this section shall be made unless and until a fresh notice has been issued in the manner prescribed for the original sale.

(3) If the proceeds of the sale which is eventually made are less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the provisions of this Chapter as if it were an arrear.

* * The words "the fee (if any) prescribed in this behalf" inserted by section 6 of Regulation II of 1889.

Applica-
tion to set
aside sale.

79. At any time within sixty days from the date of the sale, application in writing may be made to the Commissioner, or (where there is no Commissioner) to the Chief Commissioner, to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it :

Provided that no sale shall be set aside on this ground unless the applicant proves to the satisfaction of the Commissioner, or the Chief Commissioner (as the case may be), that he has sustained substantial injury by reason of the irregularity or mistake complained of :

Provided also that the non-delivery or misdelivery of a registered cover despatched under section 72, sub-section (5), shall not, for the purposes of this section, be deemed an irregularity or mistake in publishing or conducting the sale.*

Sales when
final.

80. (1) A sale on which the purchase-money has been paid as directed in section 78, and against which no application under section 79 has been preferred, shall, subject to the provisions of sections 81 and 82, be final at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(2) A sale against which such an application has been preferred and has been dismissed by the Chief Commissioner or Commissioner shall, subject as aforesaid, be final from the date of the dismissal, if more than sixty days from the day of sale, or, if less, then at noon of the sixtieth day as above provided.

Annulment
of sale on
ground of
hardship.

81. The Chief Commissioner may, on application made to him at any time within one year of a sale becoming final under section 80, set the sale aside on the ground of hardship or injustice.†

Annulment
of sale by
Civil Court.

82. (1) A sale for arrears of revenue shall not be annulled by a Civil Court, except on the ground of its having been made contrary to the provisions of this Regulation, and on proof that the plaintiff has sustained substantial injury by reason of the neglect of those provisions.

* The second proviso added by section 7 of Regulation II of 1889.

† New section substituted by section 8 of Regulation II of 1889.

(2) A suit to annul such a sale shall not be entertained upon any ground, unless that ground has been specified in an application made to the Commissioner or Chief Commissioner under section 79, or unless it is instituted within one year from the date of the sale becoming final under section 80.

(3) No person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money.

83. Nothing in the forgoing sections shall be construed to debar any person, considering himself wronged by any act or omission connected with a sale under this Regulation, from his remedy in a suit for damages against the person by whose act or omission he considers himself to have been wronged. Saving of right to sue for damages.

84. Whenever the sale of any estate is set aside, the purchaser shall be entitled to receive back from the Government his purchase-money, except the surplus thereof (if any) paid away under the last clause of section 87, with or without interest, at such rate, not exceeding six *per centum* per annum, as the Chief Commissioner thinks fit. Repayment of purchase-money when sale is set aside.

85. (1) After a sale has become final, the Deputy Commissioner shall put the purchaser into possession of the property sold, and shall grant him a certificate to the effect that he has purchased the property to which the certificate refers. On sale becoming final, purchaser to be put in possession.

(2) The certificate shall bear the date on which the sale became final under section 80, and the title to the property sold shall vest in the purchaser from the date of the certificate, and not before.

(3) A certificate granted to a purchaser under this section shall be conclusive evidence in his favour, and in favour of any person claiming under him that every publication, serving, posting or despatch of any statement, list, notice or letter required by this Regulation, or the Rules made under it, to be published, served, posted or despatched has been duly effected, and the title of any person who has obtained any such certificate or of any person claiming under him shall not be impeached or effected under section 82 or otherwise by reason of any omission, informality or irregularity as regards the publica-

tion, serving, posting or despatching of any statement, list, notice or letter in the proceedings under which the sale was held at which the property was purchased :

Provided that nothing in this sub-section shall affect the power conferred on the Chief Commissioner by section 81.*

Bar of suit against certified purchaser.

86. The name of the purchaser to be entered in the certificate shall be that of the person declared at the time of sale to be the actual purchaser, and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Application of proceeds of sale.

87. When a sale has become final under section 80, the proceeds of the sale shall be applied—

- first*, to defraying the expenses of the sale;
- secondly*, to the payment of the arrear due;
- thirdly*, to the payment of any other arrear due by the same defaulter ;

and the surplus, if any, shall be paid to the person whose property has been sold, and shall not, except under an order of a Civil Court, be payable to any creditor of that person.

Liability of purchaser for revenue.

88. The person named in the certificate of title as purchaser shall be liable for all instalments of land revenue becoming due in respect of the property purchased subsequently to the accrual of the arrear for the recovery of which the property was sold.

Right of pre-emption.

89. When an estate held by settlement-holders situate in any local area to which the Chief Commissioner may, by notification, apply this section, is sold under section 70, any recorded settlement-holder of the estate, not being himself in arrear with regard to the revenue which as between him and the other settlement-holders, is payable by him, may, if the lot has been knocked down to a stranger, claim to take the property at the sum last bid :

Provided that the claim is made on the day of sale, and before the officer conducting the sale has left the office for the day, and that the claimant fulfils all the other conditions of the sale.

Annulment of Settlement.

Annulment of settlement.

90. (1) Where the estate in respect of which the arrear has accrued is not a permanently-settled estate, and is situate in any local area to which the Chief Commissioner may

* Clause (3) added by section 9 of Regulation II of 1889.

by notification apply this section, if the process provided for in section 69 is not sufficient for the recovery of the arrear, the Deputy Commissioner may, by proclamation published in the prescribed manner, annul the existing settlement of the estate and relinquish the claim of the Government to the arrear :

Provided that—

(a) if the arrear is in respect of an estate in which the settlement-holder has a permanent, heritable and transferable right of use and occupancy, the Deputy Commissioner shall not, unless the Chief Commissioner otherwise, by rule, directs, annul the settlement without the sanction of the Chief Commissioner ;

(b) this section shall not apply to the recovery of any arrear which may have accrued on an estate—

(1) while it was under the management of the Court of Wards or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the law for the time being in force ; or

(2) while it was under attachment by order of a revenue authority.

(2) Upon the publication of a proclamation under this section, all incumbrances, other than the tenures mentioned in section 71, proviso *first*, clause (b), affecting the estate, or any portion thereof, shall become void, and the Deputy Commissioner (a)—may eject the settlement-holder from possession and—(a)* may enter upon and manage the estate and receive all rents and profits accruing therefrom, or may dispose of the estate, in accordance with the rules issued by the Chief Commissioner under section 12.

Sale of immoveable property other than the defaulting estate.

91. (1) If an arrear cannot be recovered by any of the foregoing processes, and the defaulter is in possession of any immoveable property, other than the estate in respect of which the arrear has accrued, the Deputy Commissioner may proceed against any of that other property situated within his district according to the law for the time being in force for the attachment and sale of immoveable property under the decree of a Civil Court.

* (a)—(a) Inserted by Regulation II of 1905.

(2) If there is no such other property in his district, the Deputy Commissioner may make under his hand a certificate in the prescribed form, of the amount of the arrear remaining unpaid and may forward the same to the Deputy Commissioner of any other district in which this Regulation is in force, and within the limits of which the defaulter is possessed of any such property; and that Deputy Commissioner shall thereupon proceed to realise the arrear as if it were an arrear accruing in his own district.

Supplemental.

Recovery of costs.

92. The costs of serving any notice, proclamation or other process under this Chapter shall be recoverable as part of the arrear in respect of which such process was issued.

Recovery of existing arrears.

93. Arrears of land revenue due at the commencement of this Regulation shall be recoverable as nearly as may be according to the provisions of this Chapter.

Recovery of other money.

94. The provisions of this Chapter shall, so far as may be, apply to the recovery of any sum of money realisable under any enactment for the time being in force as if it were an arrear of land revenue.

Power of Chief Commissioner to make rules.

95. The Chief Commissioner may, from time to time, make rules, not inconsistent with this Regulation, to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Chapter.

CHAPTER VI.

PARTITION AND UNION OF REVENUE-PAYING ESTATES.

"Perfect partition" and "imperfect partition" defined.

96. Partition is either perfect or imperfect. "Perfect partition" means the division of a revenue-paying estate into two or more such estates, each separately liable for the revenue assessed thereon. "Imperfect partition" means the division of a revenue-paying estate into two or more portions jointly liable for the revenue assessed on the entire estate.

Persons entitled to partition.

97. (1) Every recorded proprietor of a permanently-settled estate and every recorded landholder of a temporarily-settled estate may, if he is in actual possession of the interest

in respect of which he desires partition, claim perfect or imperfect partition of the estate :

Provided that—

- (a) no person shall be entitled to apply for perfect partition if the result of such partition would be to form a separate estate, liable for an annual amount of revenue less than five rupees ;
- (b) no person shall be entitled to apply for imperfect partition of an estate unless with the consent of recorded co-sharers holding in the aggregate more than one-half of the estate ;
- (c) a person may claim partition only in so far as the partition can be effected in accordance with the provisions of this Chapter.

(2) When two or more proprietors or landholders would be entitled under sub-section (1) to partition in respect of their respective interests in the estate, they may jointly claim partition in respect of the aggregate of their interests.

98. Every application for perfect partition shall be in writing, shall be presented to the Deputy Commissioner, and shall specify the area of the estate, the applicant's interest therein, and the names of the other proprietors or landholders.

Application for perfect partition.

99. (1) The Deputy Commissioner shall, if the application is in order and not open to objection on the face of it, publish a proclamation at his office, and at some conspicuous place on the estate to which the application relates; and shall serve a notice on all such of the recorded proprietors or landholders of the estate as have not joined in the application, requiring any of them in possession who may object to the partition to appear before him and state their objections, on a day to be specified in the proclamation and notice, not being less than thirty or more than sixty days from the date on which the proclamation is issued.

Notification of application

(2) Where, from any cause, notice cannot be personally served on any proprietor or landholder, the proclamation shall be deemed sufficient notice under this section.

100. (1) If an objection preferred as required under section 99 raises any question of title which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner shall stay his proceeding for such time as, in his opinion, is sufficient to admit of a suit being instituted in the Civil Court to try the objection.

Objection on question of title.

(2) A Deputy Commissioner staying his proceedings under this section shall make an order requiring the objector, or, if for any reason he deems it more quitable, the applicant to institute such a suit within the time fixed, and, in the event of such a suit not being instituted within that time, may, in his discretion, disallow the objection, or dismiss the application, as the case may be.

(3) On a suit being instituted to try any objection under this section, the Deputy Commissioner shall, with reference to the objection, be guided by the orders passed by the Civil Court in the suit.

Other objections how dealt with.

101. If any objection, other than an objection of the nature referred to in section 100, is preferred as aforesaid to the partition, the Deputy Commissioner shall dispose of it himself; unless for any reason he thinks fit to require that it be submitted to a Civil Court for adjudication, in which event the provisions of section 100 shall apply to the objection.

Proceedings of Deputy Commissioner after objections have been disposed of.

102. When the period specified under section 99 has expired, and the objections (if any) made have been disposed of by the Deputy Commissioner or by the Civil Court, as the case may be, the Deputy Commissioner shall, if no such objection has been allowed, proceed to make the partition:

Provided that the Deputy Commissioner may, in his discretion, in order to admit of the institution of an appeal from any decision regarding an objection, or for any other reason he deems sufficient, further postpone his proceedings.

Mode of partition.

103. The Deputy Commissioner may give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he may make the partition himself.

Power to enter on land for purposes of partition.

104. In making partitions the Deputy Commissioner and any person appointed by him shall have the same powers for entry on the land under partition, for marking out the boundaries, surveying and other purposes, as have been conferred on Survey officers by or under this Regulation.

Partition of lands held only in severalty.

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

Partition of lands some of which are held in common.

106. (1) Where some of the lands are held in common, the Deputy Commissioner shall allot to the applicant for partition his share of those lands in accordance with village-

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

(2) The portion of the common lands falling by the partition to the share of the applicant shall be added to the land held by him in severalty, and the aggregate thus formed shall be declared a separate estate, and shall be separately assessed to the Government revenue.

107. 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 estate, and the land allotted to him shall be declared a separate estate, and shall be separately assessed to the Government revenue.

Partition where all lands held in common.

108. In making the partition under section 105 or section 106, the Deputy Commissioner shall give effect to any transfer of lands held in severalty, forming part of the estate, agreed to by the parties and made before the declaration of the partition.

Transfers to be effectuated in making partition.

109. In all cases, each estate shall be made as compact as possible:

Estates to be compact.

Provided that, except with the sanction of the Commissioner or, where there is no Commissioner, with the sanction of the Chief Commissioner, no partition shall be disallowed solely on the ground of incompactness.

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

Rule when building of one sharer is included in estate assigned to another.

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

111. (1) 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.

(2) Where, from the extent, situation or construction of any such work, it is found necessary that it should continue the joint property of the proprietors or landholders of two or more of the estates into which the estate is divided, the Deputy Commissioner shall determine the extent to which

the proprietors or landholders of each estate may make use of the work, and the proportion of the charges for repairs to be borne by them respectively, and the manner in which the profits, if any, derived from the work are to be divided.

Rule as to places of worship and burial grounds;

112. (1) Places of worship and burial grounds, held in common previous to the partition of an estate, shall continue to be so held, unless the parties otherwise agree among themselves.

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

Determination of revenue payable by each portion of divided estate.

113. (1) The amount of revenue to be paid by each portion of the divided estate shall be determined by the Deputy Commissioner: Provided that the aggregate revenue of the new estates shall not exceed the revenue assessed on the estate immediately before partition.

(2) The proprietors or landholders of each of the new estates shall be jointly and severally liable for the portion of the revenue assessed on their estate, whether new acceptances are taken from them or not.

Costs.

114. (1) The Chief Commissioner shall make rules for determining the costs of partitions under this Act, the mode in which those costs are to be apportioned, and the parties by whom and the stage of the proceedings at which they are to be paid:

Provided that the cost of surveying an estate, when a survey is necessary for the purpose of partition, shall be paid rateably, by all the proprietors or landholders of the estate, according to their interests therein.

(2) If the costs to be paid by the applicant for partition are not paid within a time to be fixed by the Deputy Commissioner subject to the rules made under this section, the case may be struck off the file.

Power to stay partition.

115. If any stage of the proceedings there appears to be any reason for stopping the partition, the Deputy Commissioner may, of his own motion, stay the partition and order the proceedings to be quashed.

Proclamation of partition.

116. On completion of a partition the Deputy Commissioner shall publish a proclamation of the fact at his office and at some conspicuous place on each of the new estates or in the estate of which they originally formed part;

and the partition shall take effect from the beginning of the agricultural year next after the date of the proclamation.