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31/

THE PUNJAB ALIENATION OF LAND ACT

(XIII of 1900)

WITH

Exhaustive Commentary, Notifi-
cations, Circulars and
Proceedings

G. N. Dhillon
Advocate High Court
Jammu & Kashmir
Srinagar.

OF THE

LEGISLATIVE COUNCIL.

BY

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Law, Constitutional History and Legal History ;
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P R E F A C E.

While officiating as Principal of the Law College, Lahore, I had to deliver to the Law Classes a short course of lectures on the Punjab Alienation of Land Act XIII of 1900, during the present Winter Session and the following pages are mainly, though not exclusively, based on those lectures. The subject has been treated from the standpoint of not only a student but of a practical lawyer as well and more especially of a Revenue Officer who, without any legal assistance, has to apply the provisions of the Act to the many cases coming before him for decision.

The plan of the book is very simple. I have tried to analyze every section, subsection or clause of the Act into its component parts and incorporate in their proper places the decisions of the Chief Court and the Financial Commissioner. These decisions are very few in number and mostly confined to section 9 but the Hon'ble Sir Lewis Tupper, the Financial Commissioner of the Punjab, has contributed a good deal to the elucidation of the obscure provisions of the Act by a large number of instructive Circulars he has issued to his subordinate officers and by the learned and suggestive Reports on the working of the Act which he has submitted to the Local Government during the last four years. A study of these Circulars and Reports has helped me materially in writing these pages, as will be evident from the extracts I have given from them where I thought it necessary to do so.

But many a section has still remained untouched by the authorities and I had to draw on my imagination for the prospective difficulties which might arise and their possible solutions. These difficulties, which are likely to arise in the practical working of the Act, are pointed out in their appropriate places with suggestions, if possible, to get over them. Such a course necessarily involves many pitfalls and it is possible that what appeared to me difficulties might be quite clear to others or that my solutions of them might be quite wrong. If it be so, my apology would be that the only other alternative—namely, feeling the difficulties and not tackling them—

though easier, would have been hardly proper and in adopting it, I would have been avoiding the very task which, I think, is the duty of every commentator to undertake.

Though believing in the utility of the measure generally, I can not say that I am a great admirer of all its principles and details and I have not, therefore, refrained from criticising either its substance or its form where I thought it was my duty to do so. This has been done, not with any desire to pick holes, but with a view to future reform if the Government desires so to do.

In Appendix I, will be found all the Circulars which have been issued on the subject up to the date of the publication and the majority of which have recently been consolidated by the Financial Commissioner in the form of a Handbook. For the convenience of the Revenue Officers, I have kept the numerical order in which the Circulars appear in the Handbook and my best thanks are due to the Hon'ble Sir Lewis Tupper for kindly allowing me to do so. The recent Circular No. 39 has not yet found place in the Hand-book and I have copied it from the Punjab Gazette.

In Appendix II, I have incorporated those portions of the Proceedings of the Legislative Council which I considered likely to be of use in understanding the *rationale* of the provisions of the Act.

The professional duties have not left me much time and I feel that the book is a hurried publication and capable of improvements in many respects. It would probably have not seen the light of the day, had it not been for the fact that my Commentary on the Punjab Pre-emption Act (which is nearly ready) would not have been of much use without a Commentary on the Punjab Alienation of Land Act, the former being a complement of the latter. The readers will, I hope, look upon its many faults with indulgence and oblige me by their valuable suggestions which will be embodied in the second edition.

LAHORE :
12th March 1905.

}

SHADI LAL.



THE PUNJAB ALIENATION OF LAND ACT, 1900.

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ACT No. XIII of 1900.

(PASSED ON THE 19TH OCTOBER 1900.)

An Act to amend the law relating to Agricultural land in the Punjab.

WHEREAS it is expedient to amend the law relating to agricultural land in the Punjab; It is hereby enacted as follows:

Preliminary.

1. This Act may be called the Punjab Alienation of Land Act, 1900;

2. It extends to all the territories for the time being administered by the Lieutenant-Governor of the Punjab; and

3. It shall come into force on such day as the Governor-General in Council may, by notification in the Gazette of India, direct.

NOTES.

Subsection (1).—The title of the Act “Punjab Alienation of Land Act” seems to be a misnomer, when we know that the Act, instead of allowing alienation, contains provisions restricting and prohibiting it.

Subsection (2).—The Act, proprio vigore, extends to the Punjab only and not to the North-West Frontier Province which is no longer a part of the Punjab. But the Governor-General in Council has, by Regulation I of 1904, made the Act applicable to that Province with the modification that Section 2 (1), Section 3 (1) (b) and the proviso to section 3 (1) do not occur in the Regulation. In other words, the Statutory agriculturist and all references to him in section 3 are done away with as far as the North-West Frontier Province is concerned. I understand it is intended to follow the same course with respect to the Punjab and an amending Bill will shortly be

SEC. 2. introduced. Moreover the occupancy rights in land are expressly brought within the definition of "land" which, in the Punjab, is the result of the judicial interpretation.

Subsection (3).—The Act came into force from the 8th June 1901. (*Gazette of India* Notification. No. 1243, dated Simla, the 8th June 1901). This date is important as will be seen in connection with sections 9, 10 and 16.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) the expression "agriculturist" means a person holding agricultural land who either in his own name or in the name of his ancestor in the male line was recorded as the owner of land or as an hereditary tenant or as an occupancy-tenant in any estate at the first regular settlement, or, if the first regular settlement was made in or since the year 1870, then at the first regular settlement or at such previous settlement as the Local Government may, by order in writing, determine :

Provided that, if since the making of any such settlement a Civil Court or other competent authority has before the commencement of this Act decided that any person was wrongly included in or omitted from the record thereof or that any right recorded in the record is erroneously stated, this definition shall be construed with due regard to such decision :

Provided also that the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, extend or restrict this definition so as to include any persons or classes of persons in any part of the territories to which this Act extends :

(2) all expressions which are defined by section 4 of the Punjab Tenancy Act, 1887 or by section 3 of the Punjab Land-revenue Act, 1887, shall, subject to the provisions of this Act, have the meanings assigned to them in the said sections respectively; and the expressions "record-of-rights" and "annual record" shall have the meanings assigned to them respectively in Chapter IV of the said last-mentioned Act :

(3) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes—

SEC. 2.
—

- (a) the sites of buildings and other structures on such land;
- (b) a share in the profits of an estate or holding;
- (c) any dues or any fixed percentage of the land-revenue payable by an inferior landowner to a superior landowner:
- (d) a right to receive rent; and
- (e) any right to water enjoyed by the owner or occupier of land as such:

(4) the expression "permanent alienation" includes sales, exchanges, gifts and wills, but does not include any gift for a religious or charitable purpose whether made *inter vivos* or by will:

(5) the expression "usufructuary mortgage" means a mortgage by which the mortgagor delivers possession of the mortgaged land to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits of the land and to appropriate them in lieu of interest or in payment of the mortgage-money or partly in lieu of interest and partly in payment of the mortgage-money: and

(6) the expression "conditional sale" includes any agreement whereby in default of payment of the mortgage-money or interest at a certain time the land will be absolutely transferred to the mortgagee.

Notes.

Subsection (1).—This definition creates a special class of land holders called the Statutory agriculturists. To be an agriculturist, a person must satisfy two conditions: —

SEC. 2.
—

- (1) He must hold agricultural land at the time when he wants to claim the privileges of an agriculturist. If he does not hold land *at that time* then he is not an agriculturist though he might have held land previously.
- (2) At the time of the first regular settlement, either he or his ancestor (not necessarily male) in the *male line* was recorded owner of land or occupancy tenant or hereditary tenant (not a mere tenant at will). It is not necessary that the land now held must be the same with respect to which the entry was made at the time of the settlement. A man in charge of a temple and recorded as owner of land as such is not the ancestor in male line of his *chela* in charge of the same temple.

“Holding agricultural land.”—First we have to find the meaning of the word ‘holding.’ Is it the same thing as ‘owning’ or does it mean “possessing”? The matter is arguable but I should think the meaning of the word could be gathered from the latter part of the definition which shows that ‘holding’ means either owning land or occupying it as hereditary or occupancy tenant. Possessing land in any other capacity will not bring a man within the purview of this definition. The second point to be considered is what is meant by “agricultural land.” I personally do not think that Legislature intended to draw any distinction between this term and the word ‘land’ as defined in subsection. (3). If that be so, the word ‘agricultural’ is mere surplusage.

“First regular settlement.”—The law requires that the entry must have been made at the time of the first regular settlement and if, in a particular district, the first regular settlement was made as late as 1870, then the Local Government has got the power to notify that the entry must have been made at some settlement previous to the first regular settlement.

The Local Government has determined by notifications Nos. 98 and 99, dated the 23rd August 1901, that in the Muzaffargarh District, and the Bhakkar and Leiah Tahsils of the Dera Ismail Khan District, the entry must have been made at the Summary Settlements of 1866 and 1862 respectively. Another notification No. 156, dated the 1st October 1902, states that in the Isa Khel and Mianwali Tahsils

of the Mianwali District, the entry must have been made at the Summary Settlement of 1854. The notification No. 10, dated the 23rd January 1905, determines that in the case of Ahmadpur and Garh Maharaja Ilaqas of the Jhang District comprising the estates mentioned in the notification, the entry must have been made at the 4th Summary Settlement of these ilaqas of 1862-65. (*Vide Punjab Gazette* of 26th January, 1905).

SEC. 2.
—

If the entry has been made at the first regular or determined settlement, that is quite enough and it is not further required that the entry must have been continued at subsequent settlements. It is thus possible that immediately after the making of the entry at the first regular or determined settlement, a man might have parted with the land and held no land for a very long period but if he holds some land now, he will be an "agriculturist."

The settlement at which entry must have been made must be a *regular* settlement. Any settlement other than a regular one will not do unless it is determined by the Local Government under section 2 (1).

“ Owner of land.....on any estate ”

It is not necessary that the land *now* held must be identically the same with respect to which the entry was made at the first regular settlement. It may be that the entry was made with respect to a plot A, and the land *now* held is a plot B. But it seems that the entry at the time of the settlement must have been made with reference to land in that particular village in which the status of agriculturist is claimed. In other words, a man may satisfy both the conditions in one village and be an agriculturist in that village, but may not satisfy those conditions in another village and be, therefore, debarred from claiming the privilege of the agriculturist in the latter village. That is to say, an agriculturist in one village is not an agriculturist every where.

‘ **Estate** ’—See the definition under subsection (2).

Provisos.—There are two provisos added to this subsection. The first is important and lays down that the entry or the want of it must be taken along with the correction made by a civil court or other competent authority. It is possible that a person A might have

SEC. 2. — been wrongly entered as holding land, or B might have been wrongly omitted from being entered as holding land and the mistake has subsequently been corrected by the proper authority. This correction will relate back to the time of the settlement in deciding whether a person is agriculturist or not, it is not the actual entry but the correction made subsequently which will be taken into account.

But the correction must have been made before the commencement of the Act (*i. e.* 8th June 1901). Otherwise it will open a door to all sorts of frauds and a person now holding land but not recorded at the time of settlement will become an agriculturist by getting a collusive decree as to the record corrected in his favour. Therefore, all corrections made before the 8th June 1901 will be taken into account but none made afterwards. A case might arise, in which proceedings as to the correction of entry were begun before the 8th June 1901, but the decision was given after. Such a case though perfectly *bona fide* will not be taken into account, because it was not decided before 8th June 1901. The second proviso empowers the Local Government to vary the definition of 'agriculturist' with a view to include or exclude any persons or classes of persons. This power has not yet been exercised and I doubt whether it will ever be exercised.

It might be stated here that the only section in which the word 'agriculturist' occurs is section 3, which allows an agriculturist, not being a member of an agricultural tribe, but holding land in a village, to permanently acquire land in the same village from a member of an agricultural tribe and puts him, qua the future transfer of this land, in the same position as a member of an agricultural tribe. In all other respects, an agriculturist who is not a member of an agricultural tribe is on the same footing as a person other than a member of an agricultural tribe and has got plenary power of alienation except that by way of conditional sale.

Subsection (2).—The Act contains the definitions of only five words or phrases (*i. e.* agriculturist, land, permanent alienation, usufructuary mortgage and conditional sale) and all other words and phrases used in the Act have, *mutatis mutandis*, the same meanings as in the Punjab Tenancy Act or the Punjab Land

Revenue Act. The words and phrases used but not defined in this Act are :— SEC. 2.

1. "Landlord" (*vide* section 6) means a person under whom a tenant holds land and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land. Punjab Tenancy Act section 4 (6).

2. "Tenant" (*vide* section 6) means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person ; but it does not include—

- (a) An inferior land owner, or
- (b) A mortgagee of the rights of a land owner, or
- (c) A person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or
- (d) A person who takes from the Government a lease of unoccupied land for the purpose of subletting it.

Punjab Tenancy Act section 4 (5).

3. "Rent" (*vide* sections, 6, 7, 22) means whatever is payable to a landlord in money, kind or service, by a tenant on account of the use or occupation of land held by him. Punjab Tenancy Act section 4 (3).

4. "Rates and cesses" (*vide* section 6) means rates and cesses which are primarily payable by landowners, and includes—

- (a) Repealed.
- (b) the local rate, if any, payable under the Punjab District Boards Act, 1883, and any fee leviable under section 33 of that Act from landowners for the use of or benefits derived from such works as are referred to in section 20, clauses (i) and (j) of that Act ;
- (c) any annual rate chargeable on owners of land under section 59 of the Northern India Canal and Drainage Act, 1873 ;
- (d) the zaildari and village officer's cesses ; and
- (e) sums payable on account of village expenses.

J. N. Datta
Advocate High Court
Jammu & Kashmir

SEC. 2.

Punjab Tenancy Act, section 4 (11).

Punjab Land Revenue Act, section 3 (9).

5. "Agricultural year" (*vide* section 8) means the year commencing on the sixteenth day of June or on such other date as the Local Government may by notification appoint for any local area.

Punjab Tenancy Act section 4 (17).

Punjab Land Revenue Act, section 3 (14).

6. "Revenue Court" (*vide* section 16) means a revenue court having authority under the Act to discharge the functions of a revenue court under that provision. Punjab Tenancy Act, section 4 (14). There are five grades of revenue courts corresponding to five classes of revenue officers.

7. Revenue Officer (*vide* sections 19, 20, 21, 23 and 25) means a revenue officer having authority under the Act to discharge the functions of a revenue officer under that provision. (Punjab Tenancy Act, section 4 (14); Punjab Land Revenue Act, section 3 (12).

There are five classes of revenue officers:—

(a) the Financial Commissioner,

(b) the Commissioner,

(c) the Collector,

(d) the Assistant Collector of the first grade ;
and,

(e) the Assistant Collector of the second grade.

8. "Land Revenue" (*vide* sections 6, 16) means land revenue assessed under any law for the time being in force or assessable under the Punjab Land Revenue Act, 1887, and includes—

(a) any rate imposed in respect of the increased value of land due to irrigation, and

(b) any sum payable in respect of land, by way of quit-rent or of commutation for service to the Government or to a person to whom the Government has assigned the right to receive the payment.

Punjab Tenancy Act, Section 4 (10).

Punjab Land Revenue Act, section 3 (6).

9. Record of Rights (vide section 18) for an estate shall include the following documents namely :— Sec. 2.

(a) statements showing so far as may be practicable,——

(i) the persons who are landowners, tenants, or assignees of land-revenue in the estate, or who are entitled to receive any of the rents, profits or produce of the estate, or to occupy land therein ;

(ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto, and

(iii) the rent, land-revenue, rates, cesses or other payments due from and to each of those persons and to the Government ;

(b) a statement of customs respecting rights and liabilities in the estate ;

(c) a map of the estate ; and

(d) such other documents as the Financial Commissioner may, with the previous sanction of the Local Government prescribe.

(Punjab Land Revenue Act, section 31 (2))

10. "Annual Record." (vide section 18) is an yearly edition of the record of rights amended in accordance with the provisions of Chapter IV of the Punjab Land Revenue Act. (Punjab Land Revenue Act, section 33.)

11. "Legal Practitioner" (*vide*, section 20) in the Punjab Tenancy Act has the same meaning as in the Legal Practitioners Act, 1879, and is, in the latter Act, defined as meaning an Advocate, Vakil, or Attorney of any High Court, a Pleader, Mukhtar or Revenue Agent- (section 3 Act XVII of 1879). But in the Punjab Tenancy Act, a Mukhtar was excluded from the definition of Legal Practitioner but is now included as far as the Alienation of Land Act is concerned (*vide* section 20 Explanation).

12. "Estate" (*vide* section 2 (1), 2 (3) (b)). means any area—

(a) for which a separate record of rights has been made ; or

SEC. 2.

(b) which has been separately assessed to land-revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed ; or

(c) which the Local Government may, by general rule or special order, declare to be an estate.

(*vide* section 3 (1) of the Punjab Land Revenue Act).

13. " Holding " (*vide* section 2 (3) (b)) means a share or portion of an estate held by one landowner or jointly by one or more landowners (*vide* section 3 (3) of the Punjab Land Revenue Act).

Subsection (3).—The definition of 'land' as given here is wider than that given in section 4 (1) of the Punjab Tenancy Act. Clauses (b), (c), (d) and (e) are the additions, the rest of the definition (*i. e.* up to the end of clause (a)) is common in both the Acts.

The essence of the definition consists in the purpose for which the land is used. If it is agricultural or pastoral, then the land will be 'land' within the meaning of the Act. If the land is used for building purposes either in a town or a village then that land is not 'land.' Land occupied, as a fruit garden unless such land be the courtyard or compound of a house (III P. R. 1890); or by a well sunk for the purpose of irrigating agricultural land (62 P. R. 1891; 40 P. R. 1893) is 'land.' Land reserved as the village graveyard (20 P. R. 1892; 46 P. R. 1893), or occupied by water-mill (41 P. R., 1892), or by tank used for watering cattle and excavating earth for making bricks (48 P. R. 1898) is not land.' The Financial Commissioner has ruled (6 P. R. 1903, Revenue) that the rights of a usufructuary mortgagee of land are land within the meaning of section 2 (3) of the Punjab Alienation of Land Act and the same has been the decision of the Chief Court with respect to occupancy rights in land (11 P. R. 1904). Some doubt has been expressed as to the correctness of the last ruling on account of the fact that the Punjab Tenancy Act has got provisions as to the transfer of occupancy rights which have not yet been repealed by the present Act or any other Act and the Legislature did not, therefore, intend to make any alteration in those provisions. But the learned Judges of the Chief Court have got over this difficulty and the Revenue authorities have now, as the result of this judgment, issued a Circular

to that effect cancelling their previous Circular Letter No. 96, dated Lahore, 14th January 1903, which laid down that a right of occupancy was not intended to be affected by Act XIII of 1900 and was not 'land' within the meaning of the Act. SEC. 2.
—

Clause (a).—This clause only means that land used for agricultural or pastoral purposes does not cease to be 'land' because a part of it is used as the site of a building (*e.g.* a shed for a man looking after the crops or for cattle etc. etc.)

Clause (b).—As land is valuable because of its produce, a transfer of a share in the profits or produce of land is as objectionable as that of the land itself. This clause therefore, enacts that a share in the profits of an estate or holding is 'land.' In other words the right to receive a share of the profits is 'land' but the Chief Court has held that the 'Mahsul' or the part of crops which is landlord's share is not 'land' and can be sold in execution of a decree.—No. 14 P. R. 1905. Clauses (b) and (d) do not refer to things material such as crops but refer to incorporeal rights.

Clause (c).—The interest of a superior landowner in the land is represented by the dues or the percentage of the land-revenue he receives from his inferior landowner and this interest is 'land.'

Clause (d).—The interest of a landlord in the land held by his tenant is his right to receive rent and this interest is 'land' within the meaning of this definition. A usufructuary mortgage of land is 'land'; 52 P. L. R. 1904.

Clause (e).—If the owner or occupier of land possesses, in his capacity as such owner or occupier, the right to receive water, then this right is 'land.'

Subsection (4).—Sale, exchange and gift are defined by the Transfer of Property Act.

"Sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised—section 54.

"Exchange." When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange"—section 118.

SEC. 2.
—

“ Gift ” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee—section 122.

‘ Will ’ is defined by several enactments and means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.—Succession Act X of 1865, section 3; Hindu Wills Act XXI of 1870 section 6; Probate and Administration Act V of 1881, section 3.

“ Charitable purpose ” includes relief of the poor, education, medical relief and the advancement of any other object of public utility.” Charitable Endowments Act VI of 1890, section 2.

Not only are sales disallowed by the Act but also gifts whether made inter vivos or by means of wills. Bona fide exchange would ordinarily have been harmless but as it might have been made a cloak for evading the provisions of the Act, this form of the alienation is also included within the definition of “ permanent alienation”. But as the people often make a gift of land for a religious purpose (*e.g.* a mosque, a temple etc.) or for a charitable purpose (*e.g.* a dharmasala or sarai), a wholesale restriction on the power of gift would have gone against their religious susceptibilities and the Legislature has thought it wise to exempt such gifts from the restrictions of the Act. Care, however, should be taken that undesirable alienations should not assume the garb of religious or charitable gifts.

An Adhlapi tenure will, it seems, be a permanent alienation within the meaning of this subsection.

“ **Subsection** ” (5).—This definition is taken, almost word by word, from the Transfer of Property Act, section 58 (*d*). The real essence of the transaction is that the creditor is put into possession of the property and keeps it until payment of the principal. The rents and profits taken by the mortgagee are used according to the agreement of the parties which gives rise to three classes of usufructuary mortgages: first, where they are appropriated in lieu of interest; second, where they are applied in payment of the mortgage-money; third, where they are received in lieu of interest and partly in payment of the mortgage-money. Unless there is a special agreement to the contrary,

the usufructuary mortgagor does not incur a personal liability and as far as this Act is concerned, such an agreement is not allowed. (vide, section 7). Though the definition is wide enough to include all the three classes, it will be seen under section 6, that the only class allowed by the Act is the third one, that is, the self-redeeming mortgage in which the rents and profits are to be taken in payment of interest as well as principal. The period of mortgage is also not allowed to exceed the maximum of twenty years. It will thus be seen that for the purposes of this Act, the definition contained in sub-section (5) is perfectly useless and confusing; useless, because it is not required for the purpose of construing the sections of the Act and its omission from the Act will not make the slightest difference; confusing, because it gives one an idea that any one of the three classes of usufructuary mortgage may be used and the possession may be retained until payment of mortgage-money, which is not true.

Subsection (6).—The definition of 'conditional sale' is not intended to be exhaustive. It gives only one, and the most usual, form of conditional sale which is a mortgage to start with but ripens into absolute ownership on the default of the mortgagor to pay the mortgage-money or interest at the stipulated time. The other two forms of conditional sale (vide Transfer of Property Act, section 58 (c)) start with an ostensible sale of property with a condition that on payment of the mortgage-money on a certain date the sale shall become void or the buyer shall transfer the property to the seller.

Permanent Alienation of Land.

3. (1) A person who desires to make a permanent alienation of his land shall be at liberty to make such alienation where—

- (a) the alienor is not a member of an agricultural tribe; or
- (b) the alienor is a member of an agricultural tribe and the alienee holds lands as an agriculturist in the village where the land alienated is situated; or
- (c) the alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group;

SEC. 3.
—

Provided that, if an agriculturist desires to make a permanent alienation of land acquired under clause (b), he shall not be at liberty to make such permanent alienation under this sub-section unless the alienee is a member of an agricultural tribe or person holding land as an agriculturist in the village.

(2) Except in the cases provided for in sub-section (1), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by a Deputy Commissioner:

Provided that sanction may be given after the act of alienation is otherwise completed.

(3) The Deputy Commissioner shall inquire into the circumstances of the alienation and shall have discretion to grant or refuse the sanction required by sub-section (2).

Notes.

This is a very important section and requires a very careful consideration. It will be noticed that throughout the Act, a sharp distinction is drawn between members of an agricultural tribe and those who do not belong to this privileged class. The whole population of the Punjab may be divided into two classes:—

- (1) Members of agricultural tribes—hereafter called ‘Zamindars’ in this commentary. It will be seen in the next section who the members of agricultural tribes are.
- (2) The rest of the population—hereafter called “Non-Zamindars” in the commentary—Every person who is not a member of an agricultural tribe is a ‘Non-Zamindar. Non-Zamindars may be sub-divided into:
 - (a) Agriculturists as defined in section 2 (1).
 - (b) Non-Agriculturists.

This sub-division is required for the purposes of this section only and the other sections of the Act apply *pari passu* to all non-zamindars whether agriculturists or not.

Subsection (1).—In order to decide whether a permanent alienation of land is good or not, find out

who the *alienor* is. If he be a non-zamindar, then with one exception mentioned in the proviso to this subsection, there is no restriction on his power of alienation. He can do whatever he likes with his land and neither the law nor the Deputy Commissioner can touch him. If the alienor be a member of an agricultural tribe, then he can alienate without the sanction of the Deputy Commissioner provided the alienee belongs to one of the two classes :—

- (1) He is a member of the same tribe as the alienor is or a member of a tribe in the same group to which the alienor's tribe belongs. In order to find whether the alienee stands this test, reference must be made to section 4.
- (2) He is an agriculturist holding land in the same village in which the land going to be alienated is situate. It seems also essential that the land held by him in the village must be held as an agriculturist, or in other words, he must satisfy the two conditions required for an agriculturist in that particular village. A person who is an agriculturist in virtue of his status in village A can not purchase land in villages B. C. and D, simply because he holds land in the latter villages, unless he has got the status of an agriculturist in those villages as well. If the alienee does not belong to one of these two classes, then the zamindar has no power to alienate except with the sanction of the Deputy Commissioner—*vide*, sub-section (2).

As an agriculturist holding land in a village is given the privilege of buying in the same village from a member of an agricultural tribe, it is important that a proper inquiry should be made into the status of the persons claiming to be agriculturists and that after inquiry, these persons should be given some sort of document mentioning the fact of their being agriculturists; the Director of Land Record has, therefore, issued a Circular providing for both these matters, for which see, No. 28, pp. 134-136 *infra*.

The proviso to this sub-section lays down a very wholesome rule. It is seen that an agriculturist non-zamindar has got the power to acquire land permanently from a zamindar provided the former holds land as

SEC. 3. — an agriculturist in the same village. Suppose, after acquiring this land, the agriculturist non-zamindar wants to permanently alienate it. Is he at liberty to alienate it in favour of any person he likes? If he were, he will the very next day part with it to a non-zamindar who is not even an agriculturist and perpetrate just the mischief which the Act aims to guard against. In other words, such an agriculturist will become a conduit pipe between a zamindar and a non-zamindar (whether agriculturist or not) and the whole object of the Act will be defeated. The proviso, therefore, lays down that *qua* the land acquired from a member of an agricultural tribe by an agriculturist, the latter stands in the shoes of his alienor and his power of alienating this land is restricted in the same way as that of the original owner—Or to put it in another way, land passing from a zamindar to an agriculturist non-zamindar is stamped with the disabilities of the zamindar and that taint attaches to it unless it is removed by the sanction accorded to its alienation by the Deputy Commissioner.

It is, therefore, necessary to identify such parcels of land with facility and the Director of Land Records and Agriculture has, therefore, issued the following orders:—

- (a) Patwáris will now overhaul all entries in their mutation registers made after June 8th, 1901, and in the case of all permanent alienations effected after that date, where the alienee is an "agriculturist," but is not a member of an agricultural tribe, they will note in the column of remarks in the *jamabandi*, opposite to the land alienated as the case may require, remarks as follows:—
- (i) "Acquired from a member of an agricultural tribe, after the Act came into force (*bád ijrae Act zaráiti kaum ke zamindár se hasil ki*)," or
- (ii) "Not acquired from a member of an agricultural tribe (*zaráiti kaum ke zamindár se nahin hásil ki*)."
- (b) In future one of these notes will be made in the *jamabandi* in the case of all permanent alienations of this kind, and the remark will be carried on from one *jamabandi* to another.
- (c) Patwáris will keep land acquired by agriculturists from members of agricultural tribes in separate holdings in the *jamabandi*. But where an

agriculturist has acquired several such plots from different zamindárs after the commencement of the Act, they may be clubbed together in one holding, if this is not otherwise objectionable.

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It is clear that an agriculturist who acquires land under clause (b) can permanently alienate such land either to a zamindár or to a person holding land as an agriculturist in the village. Suppose, the land is alienated to the latter, is the second agriculturist, who has got the land under the proviso, free to alienate it to any body he likes or is he bound down by the same restrictions as his alienor agriculturist was? The Legislature evidently did not intend that he should have an unrestricted power of disposal over this land otherwise the object of the Act will be defeated. At the same time, after a careful consideration of the provisions of this subsection and construing the words in their ordinary sense, I do not find anything which restricts the alienation. The only thing which could possibly be said to apply is the proviso to subsection (1). But the proviso applies when the agriculturist has acquired the land under clause (b), that is, from a member of an agricultural tribe; but the second agriculturist has not acquired the land under clause (b), because he has acquired the land not from a member of an agricultural tribe but an agriculturist. The proviso does not, therefore, restrict the power of the second agriculturist and there is no other provision in the Act which does so. The result is that he is free to alienate land which once belonged to a zamindár but has come to him through an agriculturist. This result is certainly unfortunate but can not be helped. Interpose two agriculturists between a zamindár and a money-lender and the latter will get the land belonging to the former without asking the Deputy Commissioner.

Subsection (2).—I have already dealt with this subsection. The only matter which requires notice is that it is not necessary that sanction must be obtained before the alienation is made. What the law says is that an alienation will not have effect until the sanction is obtained not that the alienation can not be made without first obtaining the sanction. Therefore, a sanction subsequently obtained will make a prior alienation effectual.

Suppose a permanent alienation, which is ineffectual, as such without the sanction of the Deputy Commissioner,

SEC. 3. — is made and no sanction has yet been given or the sanction has been refused, is such an alienation without any effect whatever? The answer is given by section 14 which says that it will be converted into a usufructuary mortgage of section 6 (1) (a). For further information on this subject reference must be made to section 14 and the commentary thereon.

Subsection (3).—In the case of alienations requiring sanction, the law leaves the Deputy Commissioner with unfettered discretion. He may grant the sanction or refuse it without assigning any reason and is accountable to none except his superior revenue officers. But he must remember that if he does refuse sanction, his duties do not end there. Unless the parties choose to cancel the transaction, he must pass an order under section 14, declaring that it will take effect as a usufructuary mortgage in form (a) of section 6 and fixing the term and the conditions which he considers reasonable. The Financial Commissioner has laid down some rules to guide him in the matter of granting or refusing sanction. Para. 11 of the Financial Commissioner's Circular Letter No. 3441, dated the 5th June 1901, which contains these rules, is as follows :—

11. In determining whether to grant or refuse sanction under section 3, the Deputy Commissioner should be guided by the following instructions in which the term "alienation" is used to denote permanent alienations only :—

- (i) Sanction should not be given unless the sanctioning officer is satisfied—
 - (a) that the transfer is really advantageous to the vendor and his family, and
 - (b) that no member of an agricultural tribe included in the same group as the vendor has offered or is ready to offer a fair price for the land.
- (ii) The distinction between self-acquired and hereditary property has to be born in mind. If there is no reason to suppose that the alienee is a mere intermediary intending to re-transfer the land to a money-lender (in which case instruction (viii) would apply), then, other things being equal, there should be less reluctance to sanction the alienation of self-acquired than of hereditary land.

- (iii) If a zamindár depends entirely or mainly on his land, no alienation should ordinarily be allowed which will reduce the land he retains to less than is required for the support of himself and his family.
- (iv) If the Deputy Commissioner is satisfied that there is no intention of evading the Act, sanction may be given to the alienation of land for building purposes near towns or village sites.
- (v) Sanction may be given to the alienation of land—
- (a) by wealthy zamindárs owning much land, for commercial reasons or to improve or consolidate their properties ;
- (b) by indebted zamindárs owning mortgaged land and desiring to sell a part of their land in order to raise money to redeem the whole or part of the rest.
- (vi) Zamindárs who, by reason of their insignificant numbers, have not been classed in the particular district as members of agricultural tribes, will ordinarily be able as agriculturists to acquire, under section 3 (i) (b), land situated in their own villages. Subject to these instructions, and particularly to (i), and when there is no reason to suppose that such zamindárs are mere intermediaries attempting to evade the Act, sanction may be freely given to alienations of land situated elsewhere proposed or effected in their favour.
- (vii) The instructions in (vi) apply also in the case of persons holding land in districts of the North-Western Provinces adjoining Punjab districts who, if they had held land in the Punjab districts, would have been deemed to belong to agricultural tribes. To applications for sanction in favour of subjects of Native States adjoining Punjab districts somewhat different considerations apply ; and such applications should be dealt with on their merits.
- (viii) No Deputy Commissioner, unless specially authorized in this behalf by the Local Government, may, on his own authority, sanction an alienation to a money-lender, whether the

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money-lender is a zamindár or a bania or any one else. It will generally be possible to ascertain from the income-tax papers whether any person is a money-lender or not. If it is clear that sanction might be given consistently with the objects of the Act, and that there would be hardship in refusing it, the Deputy Commissioner may transmit the file to the Commissioner and ask his permission to give sanction. The case will then be disposed of as the Commissioner may direct. If, however, there is any doubt, the Deputy Commissioner should refuse sanction and leave the parties, if so minded to appeal.

A special procedure is laid down by Notification No. 23, S. dated 22nd May 1901 (see under section 18 (2), *infra*) for the purpose of bringing to the notice of the Deputy Commissioner permanent alienations which are ineffectual as such without his sanction. But this does not prevent the parties or any of them to apply to the Deputy Commissioner for sanction. The rules governing the form of the application etc., are referred to under section 25, *infra*.

4. The Local Government shall, by notification in the local official Gazette, published with the previous sanction of the Governor-General in Council, determine what bodies of persons in any district or group of districts are to be deemed to be agricultural tribes or groups of agricultural tribes for the purposes of this Act.

Notes.

The following notification has recently been issued by the Local Government.

GAZETTE NOTIFICATION.

The 18th April 1904.

No. 63.—Notification.—In exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900 (XIII of 1900), and in supersession of Punjab Government Notifications Nos. 21 S. dated the 22nd May 1901, 114, dated the 16th July 1902, and 34, dated the 6th April 1903, the Lieutenant-Governor of the Punjab, with the previous sanction of the Governor-General in

Council, is pleased to determine that for the purpose of Sec. 4.
the said Act :—

- (1) In each district of the Punjab mentioned in column 1 of the schedule annexed to this notification, all persons either holding land or ordinarily residing in such district and belonging to any one of the tribes mentioned opposite the name of such district, in column 2, shall be deemed to be an "agricultural tribe" within that district.
- (2) All the "agricultural tribes" within any one district shall be deemed to be a group of agricultural tribes.

SCHEDULE.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
HISSAR ...	Ahir. Arain. Bishnoi. Dogar. Gujar. Jat. Mali. Moghal. Pathan. Rájput. Syad,	GURGAON	Ahir. Biloch. Gujar. Jat. Khánzáda. Koreshi. Máli. Meo. Moghal. Pathan. Rajput. Syad.
ROHTAK ...	Ahir. Biloch. Gujar. Jat. Máli. Moghal. Pathán. Rájput. Ror. Syad.		

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SCHEDULE.—*continued.*

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
DELHI ...	Ahir. Aráin. Biloch. Chauhán. Gora. Gujar. Jat. Máli. Meo Moghal. Pathan. Rajput. Reah. Ror. Taga. Saini. Syad.	UMBALLA...	Ahir. Aráin. Biloch. Gora. Gujar. Jat. Kamboh. Magh. Máli. Moghal. Pathán. Rajput. Ror. Saini. Syad. Taga.
KARNAL...	Abbási. Ahir. Ansári. Arain. Dogar. Gadi. Gujar. Jat. Kamboh. Koreshi. Máli. Meo. Moghal. Pathán. Rájput. Ror. Syad. Taga. Usmáni.	KANGRA...	Dagi. Gaddi. Girath. Gujar. Jat. Kanet. Koli. Rajput. Ráthi. Thákur.

SCHEDULE—continued.

SEC. 4.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
HOSHIAR- PUR,	Arain.	FEROZEPUR	Arain.
	Awan.		Bodla.
	Bahti.		Dogar.
	Chhang.		Gujar.
	Dogar.		Kamboh.
	Girath.		Mahtam.
	Gujar.		Mussalman Jat
	Jat.		Other Jat.
	Kanet.		Pathan.
	Mahton.		Rajput.
Moghal.	Saini.		
Pathan.	Ahir.		
Rajput.	Arain.		
Saini.	Awan.		
JULLUNDUR...	Arain.	MOOLTAN	Biloch,
	Awan.		Gujar.
	Dogar.		Jat.
	Gujar.		Kamboh.
	Jat.		Kharral.
	Kamboh.		Khokhar.
	Mahton.		Koreshi.
	Pathan.		Mahtam.
	Rajput.		Moghal.
	Saini.		Od.
Syad.	Pathan.		
LUDHIANA	Arain.	JHANG ...	Rajput.
	Awan.		Syad exclud- ing Bhatia.
	Dogar.		Biloch.
	Gujar.		Jat.
	Jat.		Kokarsa.
	Kamboh.		Koreshi.
	Pathan.		Nekokara.
	Rajput.		Rajput.
	Saini.		Syad.
	Syad.		

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SCHEDULE.--continued.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
MONTGOM- ERY.	Arain. Bhatti. Biloch. Jat. Kamboh. Kharral. Mahtam. Pathan. Rajput. Syad.	GURDASPUR	Arain. Dogar. Gujar. Jat. Moghal. Pathan. Rajput. Saini. Syad.
	Arain. Awan. Bodla. Dogra. Jat. Kamboh. Kharral. Koreshi. Labana. Mahtam. Moghal. Pathan. Rajput. Syad.		SIALKOT	Arain. Awan. Baghban. Dogar. Ghakkhar. Gujar. Jat. Kamboh. Moghal. Pathan. Rajput. Saini. Syad.
LAHORE ...	Arain. Dogar. Gujar. Jat. Kamboh. Moghal. Pathan. Rajput. Syad.	GUJRAT ...	Arain. Awan. Biloch. Gujar. Jat. Koreshi. Moghal. Pathan. Rajput. Syad.
AMRITSAR	Arain. Dogar. Gujar. Jat. Kamboh. Moghal. Pathan. Rajput. Syad.		

SCHEDULE.—*continued.*

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1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
GUJRAN- WALA	Arain.	JHELUM ...	Jat.
	Awan.		Jodh.
	Biloch.		Kahut.
	Ghakkar.		Kasar.
	Gujar.		Khandoya.
	Jat.		Khokkar.
	Kamboh.		Koreshi.
	Moghal.		Lilla.
	Pathan.		M a i r a n d
	Rajput.		Manhas.
Syad.	Maliar.		
SHAHPUR	Ahir.	JHELUM ...	Moghal and
	Arain.		Kok.
	Awan.		Panwar.
	Biloch.		Pathan.
	Gujar.		Phaphra.
	Jat.		Rajput.
	Kamboh.		Sail.
	Khokkar.		Sohlan.
	Koreshi.		Syad.
	Maliar.		Awan.
Moghal.	Biloch.		
Pathan.	Danial.		
Rajput.	Dhund.		
Syad.	Ghakkar.		
JHELUM ...	Akra.	RAWALPIN- DI.	Gujar.
	Awan.		Jat.
	Bhatti.		Jodhra.
	Biloch.		Kethwal.
	Chauhan.		Khattar.
	Chib.		Koreshi.
	Ghakkar.		Maliar.
	Gujar.		Moghal.
	Jalap.		Pathan.
	Janjua.		Rajput.
	Satti.		
	Syad.		

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SCHEDULE—concluded.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
MIANWALI	Ahir. Arain. Awan. Baghban. Biloch. Gujar. Jat. Kharral. Khokkar. Koreshi. Pathan. Rajput. Syad.	DERA GHAZI KHAN.	Arain. Biloch. Jat. Khetran. Koreshi, Machi. Moghal. Mujawar. Pathan. Rajput. Syad.
		MUZAFFAR-GARH.	Biloch. Jat. Koreshi. Pathan. Rajput. Syad.

Member of an agricultural tribe.—This phrase is very often used in the Act and, as will be seen later on, the restriction on the power of alienation either temporarily or permanently exists with respect to a member of an agricultural tribe only. It is, therefore, very important to have a clear idea as to the meaning of the phrase. The Act itself does not define it but leaves the Local Government to do so and the latter has done it in the notification just quoted.

From clause (1) of the notification, it appears that in order to be a member of an agricultural tribe, a person must satisfy two conditions:—

- I. He must in a district of the Punjab mentioned in column 1 of the schedule:—

- (a) either hold land ;
- (b) or ordinarily reside.

II. He must belong to one of the tribes mentioned in column 2 opposite the name of that particular district with respect to which the first condition is satisfied.

If both these conditions are satisfied, a person is a member of an agricultural tribe. If either or both of them are not satisfied, then he is not.

Both these conditions must be satisfied at the time when his status comes into question. A person who held land or ordinarily resided in a district two years previously, but does not do so now, does not satisfy the first condition ; while in the converse case, the condition is satisfied.

The following matters require further consideration in connection with the first condition—

- (1) Every district of the Punjab is not mentioned in the notification. Simla, for instance, which is exempted from the operation of the Act, is not found in the notification and, therefore, a person residing or holding land in that district can not be a member of an agricultural tribe.
- (2) *Holding* land in a district will satisfy the first condition. But the question arises as to the meaning to be attached to the word "holding." I have discussed this point in connection with the definition of the word "agriculturist" under section 2 and do not wish to repeat the same thing over again.
- (3) *Ordinary* residence itself, without the necessity of holding land, will satisfy the first condition. But what is the meaning of "ordinary residence" ? One thing is certain that it does not mean mere temporary residence or residence for a particular purpose. Does it then mean what is called "domicil" ? I should be inclined to think so. A person is said to ordinarily reside in that district in which he has what is generally called "home." The habitual residence in a district with the intention of residing there permanently will amount to "ordinary residence." Habitual residence does

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not mean presence for a length of time but it means presence for the greater part of the time. It is doubtful whether mere habitual residence will amount to "ordinary residence" when the *animus manendi* is absent. I should not however pursue this discussion any further because, in the majority of the cases, the difficulty will not arise in practice.

As regards the second condition, it is sufficient to mention that a person must belong to one of the tribes of that district in which he holds land or ordinarily resides. If the first condition is satisfied with respect to one district and the second with respect to another, then the person is not a member of an agricultural tribe. On the other hand, it is possible that a person might satisfy both the conditions with respect to two or more districts at the same time and, in that case, he will be a member of an agricultural tribe in each of those districts. As all these points are important, I will illustrate them by means of examples.

- (1) An Arain holds land in Simla district. He is not a member of an agricultural tribe, because Simla is not one of the districts mentioned in the notification.
- (2) An Arain owns land in Lahore district. He is a member of an agricultural tribe in Lahore district.
- (3) An Arain is an occupancy tenant in Lahore district. He is a member of an agricultural tribe in the district.
- (4) In the last example the same person instead of being an occupancy tenant, is a hereditary tenant. It is doubtful whether he is a member of an agricultural tribe. I should say he is.
- (5) An Arain does not hold land in Lahore district but ordinarily lives in it. He is a member of an agricultural tribe in Lahore district.
- (6) A Rajput ordinarily resides in Meerut district but owns land in Delhi district. He is a member of an agricultural tribe in Delhi district.

- (7) An Arain held land in Lahore district for 40 years but sold it 4 years ago. He does not even live in Lahore district. He is not a member of an agricultural tribe in Lahore district.
- (8) An Arain neither lives in Lahore district nor did he ever hold land in that district but he bought some land in that district one month ago. He is a member of an agricultural tribe in Lahore district.
- (9) An Arain ordinarily residing in Amritsar district, is employed as a clerk in the Chief Court, Lahore, and holds no land in Lahore district. He is not a member of an agricultural tribe in Lahore, because his residence as a clerk is not ordinary residence.
- (10) An Arain ordinarily resides in Rohtak district. He is not a member of an agricultural tribe in Rohtak, because though the first condition is satisfied, the second is not; Arain not being one of the tribes mentioned opposite Rohtak district.
- (11) An Arain owns land in Gurgaon district. He is not, for the same reason, a member of an agricultural tribe in Gurgaon district and is free to sell his land.
- (12) An Arain ordinarily residing in Lahore district owns land in Kangra district. He is a member of an agricultural tribe in Lahore but not in Kangra district because Arain is not one of the tribes mentioned opposite Kangra district.
- (13) An Arain ordinarily resides in Lahore district and owns land in Amritsar, Delhi and Jhang districts. He is a member of an agricultural tribe in Lahore, Amritsar and Delhi districts, but not in Jhang, because Arain is not one of the tribes mentioned opposite Jhang district.

“Member of the same tribe.”—This phrase is used in several sections, *e. g.* 3, 6, 11 and must be properly understood. Two persons are members of the same tribe, if both of them satisfy the above-mentioned two conditions in one particular district and belong to one and the same tribe of that district.

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In other words, A and B are members of the same tribe, if they fulfil the following requirements:—

- (a) A and B are members of an agricultural tribe.
- (b) They are members of an agricultural tribe in the same district. If A is a member of an agricultural tribe in one district, and B in another, then they have no bond of affinity, because each is not a member of an agricultural tribe in the district of the other.
- (c) Both must belong to the same tribe or clan. A, an Arain fulfils both the conditions of clause (1) of the notification in Lahore district and B, an Awan fulfils the same conditions in Lahore district. Both of them are members of an agricultural tribe in Lahore district but they are not members of the same tribe, because one is an Arain, the other is an Awan.

The following illustrations will further make my meaning clear:—

- (1) An Arain owns land in Lahore district, another Arain ordinarily resides in Lahore district. They are members of the same tribe.
- (2) An Arain owns land in Lahore district, another Arain owns land in Amritsar district. They are not members of the same tribe.
- (3) An Arain owns land in Lahore district; an Awan owns land in Lahore district. They are not members of the same tribe.
- (4) A, an Arain, owns land in Lahore district, B, an Arain, holds land in Amritsar district, C, an Arain ordinarily resides in Lahore district and owns land in Amritsar district. C is a member of the same tribe with A as well as B but A is not a member of the same tribe with B.

Member of a tribe in the same group.—

This phrase too is very commonly used in the Act. For this purpose clause (2) of the notification says that all agricultural tribes in the same district form one group. In order that a person A might be a member of a tribe in the same group with B, the only thing required is that both A and B must be members of an agricultural tribe

in the same district. It is not further required that both of them must belong to the same tribe in that district. The following illustrations may be consulted:—

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(1) A, an Arain, is a member of an agricultural tribe in Lahore, B an Awan is a member of an agricultural tribe in Lahore. A is a member of a tribe in the same group with B.

(2) A, an Arain, is a member of an agricultural tribe in Lahore district; B, an Arain, is a member of an agricultural tribe in Amritsar district. A is not a member of a tribe in the same group with B.

It will thus be seen that the bond of affinity is created among persons who are members of agricultural tribes in the same district. There is no relationship between a zamindar of one district with the zamindar of the other district.

It must also be borne in mind that as far as the present notification is concerned, the mention of the words "member of the same tribe" as distinct from "member of a tribe in the same group" in sections 4, 6, 11 is superfluous. Every person who is a member of the same tribe is *a fortiori* a member of a tribe in the same group. The latter will include the former or, in other words, the latter is the genus, the former is the species.

5. When a Deputy Commissioner sanctions a permanent alienation of land, his order shall not be taken to decide or affect any question of title, or any question relating to any reversionary right or right of pre-emption.

NOTES.

A zamindar has not, except in the cases mentioned in section 3 (1), the power to permanently alienate his land. This disability can, however, be removed by the sanction given by the Deputy Commissioner to a particular alienation. The sole effect of the sanction is, therefore, the removal of the disability of the alienor created by the Act. The sanction does not mean that the person alienating the land is really the *owner* of that land or that the reversioners, who might have the right to impeach the sale by means of a declaratory suit, are debarred from bringing the suit or that a person having the right of pre-emption with respect to the alienation is prohibited from taking the land by pre-emption. The Deputy Commissioner,

SEC. 5. while sanctioning the sale, can not obviously go into all these intricate questions and his sanction, therefore, leaves all these matters untouched. A suit brought by the real owners to dispute the title of the alienor or that brought by the reversioners to protect their rights does not have the effect of transferring the land of a zamindar into the hands of non-zamindars. But the same thing can not be said with respect to pre-emption suits. It is possible, nay probable, that a non-zamindar, who will not be able to permanently acquire land from a zamindar under the provisions of this Act, will do so by virtue of pre-emption and the very mischief the Act is intended to guard against will be done. For instance, A a non-zamindar wants to buy land from B a zamindar but he can not do so without the sanction of the Deputy Commissioner which is certain to be refused. He however, asks B to sell his land to C another zamindar in the same district and institutes, the next day, a suit for pre-emption and gets a decree, because under the pre-emption sections of the Punjab Laws Act, he is not debarred from having a superior right of pre-emption. It will thus be noticed that these persons who are prohibited from acquiring land under this Act, will go on doing the same by means of pre-emption decrees. To prevent this anomaly, a Bill has been introduced in the Local Council to amend the law of pre-emption and bring its provisions into conformity with the principles of the Punjab Alienation of Land Act and will soon be passed into law. But a Division Bench of the Chief Court has recently decided that a person who can not buy land under this Act can not get it by means of a pre-emption decree (15 P. R. 1905, Civil). The reasoning of the learned Judges of the Chief Court is that a pre-emption decree is a permanent alienation and the latter can not, under section 3 (2), take effect as such unless it comes under section 3 (1) or the sanction of the Deputy Commissioner is obtained. They hold that the pre-emption sections of the Punjab Laws Act are *pro tanto* impliedly repealed by this Act in so far as the pre-emption with respect to sale of land by a member of an agricultural tribe is concerned. The point is not free from difficulty and had the matter been *res integra*, one, with all respect to the great authority of the learned Judges, I would have been inclined to take a contrary view. It is not clear how the conclusion arrived at in the judgment is justified either by the scheme of the Act or the general principles of law applicable to pre-emption. It is well known that the Legislature, while

enacting the present law, never intended that it should affect the law of pre-emption and contemplated that a separate Bill bringing the pre-emption law into conformity with the provisions of the Act will be introduced. But it might well be said that this argument can not legally influence judicial interpretation. It seems to me, however, that the scheme of the Act distinctly shows that section 3 is intended to apply to private alienations and not to alienations through the intervention of court. Moreover, pre-emption is the substitution of one vendee in place of another. It is not a new transaction, between the original vendor and the pre-emptor or the vendee and the pre-emptor, but the original transaction with the name of the vendee replaced by that of the pre-emptor. If the original sale was good, then the pre-emption decree is also good and does not stand in need of the sanction of the Deputy Commissioner. According to this view, (which I submit is the correct view) and which evidently was not put before the learned Judges, the pre-emption is not a new permanent alienation and the question of the applicability of the Punjab Alienation of Land Act does not arise. Mahmood J, in delivering the judgment of the Full Bench says in 7 All. 775 (p. 809):—

“The right of pre-emption is not a right of “repurchase” either from the *vendor* or from the *vendee*, involving any new contract of sale; but it is simply a right of *substitution*, entitling the pre-emptor, by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title. It is, in effect, as if in a sale-deed the vendee’s name were rubbed out and the pre-emptor’s name inserted in its place. Otherwise, because every sale of a pre-emptional tenement renders the right of pre-emption enforceable in respect thereto, every successful pre-emptor obtaining possession of the property, by the so called “repurchase” from the vendee, would be subject to another pre-emptive claim, dating, not from the original sale, but from such “repurchase”—a state of things most easily conceivable where the new claimant is a pre-emptor of a higher degree than the pre-emptor who has already succeeded. The result would be that pre-emption litigation could never end.” In 7 All, 917, and 25 All 334 the contention that a pre-emption decree, by which, as a result of the compromise, part of the property was decreed and the other part given up to the vendee, was a sale in respect of which a new pre-emption suit could be filed

SEC. 6. was rejected. This seems to show that a decree is not a permanent alienation. That pre-emption decree is not a repurchase is also clear from the wording of section 214, Civil Procedure Code, according to which the decree grants possession of the property and does not require the vendor or the vendee to execute a conveyance in favour of the pre-emptor which would be the case if it were a repurchase. For examples of cases in which conveyances are executed under the provisions of the Civil Procedure Code, vide, sections 261, 262, 316. The judgment of the Chief Court, 49 P. L. R. 1902, adopts the view expressed by Mahmood J. in 7 All. 775. Moreover, the title of the pre-emptor antedates to the time of the sale which is the subject of pre-emption and this shows that pre-emption decree is not a fresh alienation.

Temporary Alienation of Land.

6. (1) If a member of an agricultural tribe mortgages his land and the mortgagee is not a member of the same tribe, or of a tribe in the same group, the mortgage shall be made in one of the following forms :

(a) in the form of a usufructuary mortgage by which the mortgagor delivers possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal on condition that after the expiry of term agreed on, or (if no term is agreed on, or if the term agreed on exceeds twenty years) after the expiry of twenty years, the land shall be re-delivered to the mortgagor ;
or

(b) in the form of a mortgage without possession, subject to the condition that if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Deputy Commissioner to place him in possession for such term, not exceeding twenty years as the Deputy

Commissioner may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and for such sum as may be due to the mortgagee on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate and for such period as the Deputy Commissioner thinks reasonable ; or

(c) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land-revenue in addition to the amount of the land-revenue of the tenancy and the rates and cesses chargeable thereon and for such term as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy and the mortgagee having no right to eject the mortgagor unless on the grounds mentioned in section 39 of the Punjab Tenancy Act, 1887 ; or,

(d) in any form which the Local Government may by general or special order, permit to be used.

(2) If in the case of a mortgage in form (c) the mortgagor is ejected or relinquishes or abandons cultivating occupancy of the land, the mortgage shall take effect as a usufructuary mortgage in form (a) for such term not exceeding twenty years from the date of ejectment, relinquishment, or abandonment, and for such sum of money as the Deputy Commissioner considers to be reasonable.

NOTES.

We now come to the temporary alienations of land. It has already been noticed that the restriction on the power of alienation whether temporary or permanent exists only if a zamindar is the alienor and the alienee is a person other than a zamindar of the same tribe or of a tribe in the same group. There is no restriction on the power of a non-zamindar to temporarily alienate his land nor on that of a zamindar provided the alienee is also a zamindar of the same tribe or of a tribe in the same group. But if the temporary alienation is made by a zamindar in favour of a non-zamindar or a zamindar of a different district then the power is restricted. The only temporary alienations dealt with in the Act are mortgages (section 6) and leases and farms (section 11). I will first take up the mortgages.

There are three forms of mortgages allowed by the Act and specifically mentioned in clauses (a) (b) and (c) of section 6 (1) and in clause (d), power is given to the Local Government to permit any other form if it thinks fit but has not yet been exercised. The mortgages which are restricted by this section are those made after the 8th June 1901. Previous mortgages, except those mentioned in section 9 (2) are not affected by the Act. If the mortgage is effected before the 8th June 1901 and a further advance is made after that date on the old security, then the further advance is not a new mortgage provided no changes are made in the terms of the original transaction. Such an advance is simply a charge on the land.

Clause (a).—The definition of usufructuary mortgage is given in section 2 (5) and I have already noticed that there are three kinds of usufructuary mortgage. Here only the third kind is allowed, namely where the rents and profits of the land are to be taken in lieu of interest and towards payment of the principal. The object of this provision is that at the expiry of the stipulated period, not only is the interest taken to be paid off but also the mortgage-money is automatically wiped off and the mortgagor gets his land back free from all incumbrances and without any personal liability. The same point is further emphasised in section 7 (2) and (4).

The usufructuary mortgage of form (a) can come into existence in four ways:—

- (1) The parties may from the very beginning enter into this form of mortgage. SEC. 6.
- (2) The mortgage in form (b) may be converted into a usufructuary mortgage on mortgagor's default to pay the principal and interest according to contract.
- (3) The mortgage in form (c) may be converted into this form on the mortgagor's ejectment, relinquishment or abandonment; vide section 6 (2).
- (4) A permanent alienation, ineffectual without sanction, shall, until such sanction is given or if such sanction is refused, take effect as usufructuary mortgage; vide, section 14.

The important incidents of this form of mortgage are:—

- (1) The mortgagor delivers possession of his land to the mortgagee, on the latter advancing him a certain sum of money.
- (2) The mortgagee retains possession of the land for the term agreed on which must not exceed twenty years. If the term agreed on exceeds twenty years or no term is agreed on, the mortgagee retains possession for twenty years.
- (3) During the time of possession, the mortgagee receives rents and profits of land.
- (4) During the time of possession the mortgagee is not entitled to interest on the mortgage-money, vide, section 7 (1).
- (5) The mortgagor is not personally liable for the payment of the mortgage-money and even a special stipulation to that effect will be null and void; vide section 7 (4), and section 8 (2).
- (6) The mortgagor has got the right to redeem the property at any time during the term of the mortgage. The amount to be paid by him as the redemption money will be determined by the Deputy Commissioner; vide section 7, (3).
- (7) At the expiry of the term of the mortgage, the land *must* be redelivered to the mortgagor who gets it back free from all incumbrances. The mortgage-debt is extinguished *ipso jure*.

SEC. 6.

Clause (b).—This form of mortgage is, to start with, nothing else than a mere hypothecation. The creditor advances the money, the debtor, without parting with the possession of the land, makes it a collateral security for the payment of the debt. But there is this condition added that if the money lent with the interest on it is not paid according to the stipulation between the parties, the mortgagee has got the option of applying to the Deputy Commissioner, who will, thereupon, convert the mortgage into a usufructuary one and put the mortgagee in possession of the mortgaged property. It will be noticed that the turning point in the life of this mortgage is when the mortgagor has made the default in payment according to stipulation. At that time, the mortgagee has two courses open to him; firstly he can continue the old state of things and need not take advantage of the default clause; secondly, he can seek the help of the Deputy Commissioner and ask him to convert his mortgage into a usufructuary mortgage. It seems that the Deputy Commissioner when applied to by the mortgagee, has no discretion to refuse the application but is bound to lend him a helping hand. When the Deputy Commissioner comes to the rescue of the mortgagee, the mortgage will be converted into a mortgage of clause (a) and all the incidents enumerated above will apply with the following modifications :—

- (1) The period of this new mortgage does not depend upon the agreement of the parties. The Deputy Commissioner has got full power to fix any period he likes provided it does not transgress the maximum limit of twenty years. He can fix if he likes, one year, two years and so on, and the mortgagee has no voice in the matter. It is doubtful whether a shrewd mortgagee will put himself entirely under the thumb of the Deputy Commissioner by resorting to this form of mortgage. It will be far better for him to adopt form (a) from the very beginning.
- (2) The money for which this new mortgage will be created will consist of :—
 - (a) the balance of the principal still unpaid; and,
 - (b) the interest due. But the interest will not exceed the sum calculated as simple interest

at the rate considered reasonable by the Deputy Commissioner and for the period which the Deputy Commissioner thinks reasonable. Here, again the Deputy Commissioner has got his a voice in the matter. In fixing the amount which the interest is not to exceed, he has got the discretion to fix the rate of interest and the period for which interest will accrue.

It may however be seen that the determination of the amount of mortgage-money for which the new mortgage is created will in the majority of cases be entirely useless. If no redemption takes place during the currency of the mortgage, the mortgagee will have to redeliver the property at the expiry of the period and the mortgage-money will be extinguished. If, perchance, the mortgagor wants to redeem before the term is over, then this amount will be important and the Deputy Commissioner will, under section 7 (3), determine the proportion of this amount which the mortgagor should pay before he can redeem. With the exception of these two matters (*i. e.* the period of mortgage and the amount of mortgage debt), this new mortgage will have all the other incidents of the mortgage of form (a). These other incidents are (1), (3), (4), (5), (6), and (7).

Clause (c).—This is the third form of mortgage and is by way of perpetual lease determinable on payment of the mortgage-money or convertible into form (a) on mortgagor's ejectment from, or relinquishment or abandonment of, the land. It will prevent confusion if I state under separate heads, the various incidents of this form of mortgage. They are :—

- (1) The creditor advances a certain sum of money and the debtor hypothecates his land as a collateral security.
- (2) The transaction must be reduced to writing. It seems that the document, in case the mortgage-money is one hundred rupees or more, requires registration under section 17 of the Indian Registration Act and if it be so, there does not appear any reason why the Legislature should have subjected the zamindar mortgagor to this expense, when the avowed policy of the Act was to help him. This

SEC. 6.

evidently is an oversight when we find that instruments of collateral security granted under the Land Improvement Loans Act, 1871 (now Act XIX of 1883) and those for securing the repayment of loans under the Agriculturists' Loans Act, 1884 are exempt from compulsory registration.

- (3) The mortgagor remains in possession of the land and cultivates it as the tenant of the mortgagee who is regarded as landlord.
- (4) The amount of rent to be paid by the tenant, besides the land-revenue on the land and the rates and cesses chargeable thereon is the sum agreed on between the parties but should not exceed sixteen annas per rupee of the land-revenue. The rent may be cash rent or kind rent.

It might be added that all suits relating to rent by the mortgagor must be brought in Revenue Courts. (section 22 *infra*).

- (5) The period for which the tenancy might last will be agreed on by the parties. There is no limit fixed here as is done in clauses (a) and (b).
- (6) During the term of the tenancy, the mortgagor-tenant has no power to alienate either temporarily or permanently the land occupied by him as tenant.
- (7) The mortgagee-landlord has no right to eject the mortgagor except on the grounds mentioned in section 39 of the Punjab Tenancy Act 1887, which are :—
 - (a) That the tenant has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it ;
 - (b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate

- (c) that a decree for an arrear of rent in respect of the tenancy has been passed against him and remains unsatisfied. SEC. 6.
—
- (8) No interest shall accrue during the period for which the mortgagee is in receipt of rent; *vide*, section 7 (1).
- (9) The mortgagor has under section 7 (3) got the right to redeem the land at any time on payment of the mortgage-debt, unless the mortgage has been converted into a usufructuary mortgage under section 6 (2). In the latter case, the incidents of usufructuary mortgage will apply.
- (10) If the mortgagor is ejected or relinquishes or abandons cultivating occupancy of the land, the mortgage will be converted into a usufructuary mortgage, for which see section 6 (2), *infra*.

Clause (d).—No order has been passed under this clause. The object of the clause is to empower the Local Government to permit other forms of mortgage (*e. g.* a local form) which it in future might consider innocuous.

Subsection (2).—If the mortgagee is ejected on one of the grounds mentioned in section 39 of the Punjab Tenancy Act or relinquishes (*cf.* sections 35, 36 and 37 of the Punjab Tenancy Act) or abandons (*cf.* section 38 of the Punjab Tenancy Act) cultivating occupancy of the land, then the relationship of the landlord and tenant comes to an end and if the mortgage is not already redeemed by payment of the mortgage-debt, it shall be converted into a usufructuary mortgage with all its incidents except the period, which should not exceed twenty years from the date of ejection, relinquishment or abandonment, and the sum of money, for which the new mortgage will be created, will be determined by the Deputy Commissioner. The mode of bringing the matter to the notice of the Deputy Commissioner is thus prescribed by the Financial Commissioner in one of his Circulars (*vide* No. 7, para. 25, p. 109) :—

“If the mortgagor is ejected, the revenue officer ordering the ejection under section 45 of the Tenancy Act must report the case to the Deputy Commissioner, so that

SEC. 7. he may exercise the powers conferred upon him. If the mortgagor relinquishes or abandons his cultivating occupancy of the land, the necessary report to the Deputy Commissioner should be made by the patwari, the field kanungo and the tahsildar. The usufructuary mortgage resulting from the proceedings should be entered in the annual record or record of rights."

7. In the cases of mortgages made under section 6—

- (1) no interest shall accrue during the period for which the mortgagee is in possession of the land or in receipt of rent ;
- (2) if the mortgage is in form (a) or form (b), then at the end of such period of possession the mortgage-debt shall be extinguished ;
- (3) the mortgagor may redeem his land at any time during the currency of the mortgage, on payment of the mortgage-debt, or, in the case of a mortgage in form (a) or form (b), of such proportion of the mortgage-debt as the Deputy Commissioner determines to be equitable ;
- (4) in the case of a usufructuary mortgage the mortgagor shall not be deemed to bind himself personally to repay the mortgage-money.

NOTES.

The various matters referred to in this section have already been dealt with in the commentary on section 6 and I do not, therefore, propose to go over the same ground again. Some of the sub-sections will, however, require lengthy explanations.

Subsection (1).—The mortgagee is in possession of land either in the case of a mortgage which is usufructuary *ab initio*, as in form (a) of section 6, or in the case of a mortgage which is a mere hypothecation to start with, but is converted into a usufructuary mortgage on failure

to pay the money at the stipulated time, as in form (b) of section 6. Both cases are those of a usufructuary mortgage and the mortgagee, being in possession, receives rents and profits of the land. Such being the case, it is rightly provided that the mortgagee is not, at the same time, entitled to interest on his money.

It seems to me that the provision as to interest not accruing during the period of possession is redundant, because the same result will follow from a careful consideration of the other sections of the Act. Clause (a) of section 6 (1) provides that the rents and profits will be taken in lieu of *interest* and towards payment of the principal and that after the expiry of the period of mortgage, the land shall be given back to the mortgagor and the usufructuary mortgage itself excludes the idea of personal liability and even the inclusion of a special stipulation to that effect is prohibited by section 8 (2). In face of all this, the mortgagee could not seriously contend that he was entitled to receive interest after the period of possession was over. But the provision is by way of precaution and intended to put the matter beyond dispute.

The second case in which the interest will not accrue is that of the mortgagee being the landlord of, and receiving rent from, the mortgagor-tenant who has made a mortgage in form (c) of section 6. This is perfectly equitable.

Subsection (2).—I will take the two forms of mortgage separately. If the mortgage is in form (a), then the *ipso facto* extinguishment of the mortgage-debt follows from the definition of usufructuary mortgage given in the opening words of clause (a) of section 6 (1), the provision in the same clause that after the expiry of the period the land shall be redelivered to the mortgagor, the provision in section 7 (4) that in a usufructuary mortgage there is no personal liability, and the wordings of section 8 (2) which prevent the insertion of a special stipulation as to personal liability. It is, therefore, clear that this sub-section too is redundant and the only justification for its presence in the Act is that the Legislature wanted to make the matter quite clear.

This subsection also applies if the mortgage is in "form (b)." The mortgage in form (b) is in its inception, a mere hypothecation, but what the Legislature means by a

SEC. 7. mortgage in form (b) in this connection is that the mortgage has not continued to be a simple hypothecation but that the mortgagor has made default and that the mortgagee has applied to the Deputy Commissioner who has converted the mortgage into a usufructuary mortgage. It is this usufructuary mortgage which the hypothecation has put on through the help of the Deputy Commissioner which is referred to, and intended to be governed by subsection (2) of section 7. The period of the usufructuary mortgage will be determined by the Deputy Commissioner and at the end of this period, the mortgage-debt shall be extinguished. The objection as to the redundancy of this provision raised in connection with form (a) will equally apply in the present case.

Subsection (3).—The mortgagor, during the currency of the mortgage is entitled to bring a suit for the redemption of mortgage. The amount of the money to be paid by the mortgagor on redemption depends upon the circumstances of each mortgage. If the mortgagee has not been in possession of land or in receipt of rent thereof, the money to be paid on redemption is the principal sum lent plus interest agreed upon. This seems to be the rule I deduce by reading the different sections of the Act, though I must admit that the wordings of the sub-section are wide enough to include a case like this. Suppose a mortgage is made for Rs. 500 for 10 years with the condition that if principal is not paid at the expiry of ten years, then the mortgage will be treated as a usufructuary mortgage. At the end of 5 years from the date of mortgage and before the stipulated period of ten years is over, the mortgagor wants to redeem the land. As the mortgage is in form (b) of section 6 (1), the Deputy Commissioner has, by virtue of section 7 (3), the power to cut down the sum to be paid by the mortgagor but I doubt very much whether the Legislature intended to apply the provisions of this subsection to a case of this kind. I presume that the Deputy Commissioner will not exercise his power, but there is nothing in law to prevent him from fixing say, Rs. 250 as the money to be paid by the mortgagor which will obviously be hard.

The real cases to which this subsection is intended to apply are those in which the mortgage is either a usufructuary mortgage *ab-initio* or converted into it by

failure to pay principal and interest according to stipulation and the mortgagor wishes to redeem before the term of usufructuary mortgage is over. In such cases the Deputy Commissioner will determine the proportion of the mortgage-debt to be paid by the mortgagor. There is no rule laid down by the Legislature to be followed by the Deputy Commissioner in determining this amount which will depend upon the idea of justice and equity of each Deputy Commissioner. But I should venture to suggest that the workable and just rule will be that the amount to be paid will bear the same proportion to the mortgage-debt as the unexpired term bears to the whole term of the usufructuary mortgage or to put it in a mathematical form:—

$$\frac{\text{Amount to be paid}}{\text{Mortgage-debt}} = \frac{\text{Unexpired term}}{\text{Whole term.}}$$

As to interest, it is clear that it will not accrue during the period for which the mortgagee has been in possession or in receipt of rent (*vide* section 7 (1)).

The suit for redemption will of course lie in the Civil Court but as the proportion of the mortgage-debt to be paid can only be determined by the Deputy Commissioner the Chief Court issued on 30th May 1901 the following Circular to guide the subordinate Courts in the disposal of the cases:—

“Circular Memo. No. 9—2178 G. of 1901. When a suit to which the provisions of section 7 (3) of the Punjab Alienation of Land Act XIII of 1900 apply, is brought before a Civil Court, the Court should, *on the application of either of the parties* refer to the Deputy Commissioner to determine the proportion of the mortgage debt that is equitable and keep the case pending until such determination has been made.” The italics are mine. What will happen if neither party applies? Surely the Civil Court has no jurisdiction to determine the proportion (*vide* section 21 (1) *infra*). I should, therefore, say that a Civil Court should, *suo motu*, make the reference and not wait for the application of either party.

Upon reference being made by a Civil Court, the Deputy Commissioner may exercise his power under the Act, either at once or after sending the reference to any Revenue Officer subordinate to him for investigation and report and upon consideration of the report so required (*vide*, No. 5, p. 100).

SEC. 8.

Subsection (4).—This is a typical example of the slipshod manner in which the Indian Acts are drafted. The opening words of section 7 are a part and parcel of each of the sub-sections which follow them.—If we add the opening words to sub-section (4), the latter will read thus :—“ In the case of mortgages made under section 6, in the case of a usufructuary mortgage.....”; which is obviously absurd. Such a defect is hardly excusable when we remember that the present Act is by no means the result of a hasty effort but was on the legislative anvil for a pretty long time and subjected to a careful scrutiny by a select Committee of able and experienced officers and had, previous to its *debut* in the Legislative Council, been the subject of long and careful deliberation by a Committee of the Punjab Revenue-Officers. As to the merits, I have nothing to say except that it is well known that in a usufructuary mortgage, there is no personal liability of the mortgagor but special stipulation providing for the personal liability was allowed to be inserted and enforced by Courts of justice and this sub-section coupled with section 8 (2) is intended to emphasize the fact that such a stipulation will not be valid.—

(8) (1) In a mortgage made under section 6, the following conditions may be added by agreement between the parties ;

- (a) a condition fixing the time of the agricultural year at which a mortgagor redeeming his land may resume possession thereof ;
- (b) conditions limiting the right of a mortgagor or mortgagee in possession to cut, sell or mortgage trees or to do any act affecting the permanent value of the land ; and
- (c) any condition which the Local Government by general or special order may declare to be admissible.

(2) In mortgages made under section 6 any condition not permitted by or under this Act shall be null and void.

NOTES.

Subsection (1).—Section 7 has laid down the conditions which are to be considered as part and parcel of

a mortgage made under section 6 and do not depend on the consent of the parties. The parties have no choice in the matter. The present section, however, is not obligatory but allows the contracting parties a free hand. They may, if they like, add any or all of the conditions herein mentioned. I will now take up these conditions *seriatim*.

Clause (a).—This clause applies to the case in which the mortgagee is in possession of the land. This will be so, when the mortgage is usufructuary either *ab initio* or has been converted into such under section 6 (1) (b) or section 6 (2). During the period of mortgagee's possession the mortgagor has under section 7 (3) the right of redeeming the land and resuming possession at any moment he likes to do so. But as it is expected that the mortgagee will, when in possession, be cultivating the land and consider it a great hardship to be turned out of possession at a moment's notice, more especially at a time when he has already sown the land or when the crops are standing, the clause provides that the parties may by agreement fix the time of the year at which possession will be resumed by the redeeming mortgagor.

Clause (b).—The rents and profits of the land which the person in possession is entitled to take are different from those acts which affect the permanent value of the land. Under the latter category, there will also, in the majority of the cases, come the right to cut, sell or mortgage trees growing on the land. As regards these matters, the Act gives the parties a free hand to define their rights by mutual agreement.

Clause (c).—The power conferred by this clause has not yet been exercised. The object of this clause, as of clause (d) of section 6 (1), is to empower the Local Government to permit other conditions which it considers useful and not likely to give the mortgagee an undue advantage over the mortgagor.

Subsection (2).—The various conditions, which must, or by agreement may, be regarded as part of the mortgage transaction are referred to in sections 6 and 7 and sub-section (1) of section 8. Any other condition which does not come under the above-mentioned sections can not be inserted by the parties and shall, if inserted, be null and void. For example, a special agreement making the usufructuary mortgagee personally liable for the debt shall be void. In such cases, the transaction will stand but the condition will be null and void.

SEC. 9.

9. (1) If a member of an agricultural tribe makes a mortgage of his land in any manner or form not permitted by or under this Act, the Deputy Commissioner shall have authority to revise and alter the terms of the mortgage so as to bring it into accordance with such form of mortgage permitted by or under this Act as the mortgagee appears to him to be equitably entitled to claim.

(2) If a member of an agricultural tribe has before the commencement of this Act made a mortgage of his land in which there is a condition intended to operate by way of conditional sale, the Deputy Commissioner shall be empowered at any time during the currency of the mortgage to put the mortgagee to his election whether he will agree to the said condition being struck out, or to accept in lieu of the said mortgage, a mortgage which may at the mortgagee's option be either in form (a) or in form (b) as permitted by section 6 and which shall be made for such period not exceeding the period permitted by the said section and for such sum of money as the Deputy Commissioner considers to be reasonable.

(3) If proceedings for the enforcement of a condition intended to operate by way of conditional sale are instituted or are pending at the commencement of the Act in any Civil Court or if a suit is instituted in any Civil Court on a mortgage to which sub-section (1) or sub-section (2) applies, the Court shall refer the case to the Deputy Commissioner with a view to the exercise of the power conferred by the sub-section applying thereto.

NOTES.

Subsection (1).—This sub-section applies to a mortgage made after the commencement of the Act (*i.e.* the 8th June 1901). Such a mortgage must be in one of the three forms described in section 6. If the mortgage is made in any other manner or form, then the sub-section gives the

Deputy Commissioner authority to so alter the mortgage as to bring it into conformity with the provisions of this Act. The matter as to which of the three forms this unpermitted mortgage should be converted into rests with the Deputy Commissioner and his idea of equity is the sole guide for him. The mere fact that the term of the usufructuary mortgage is longer than the maximum fixed by section 6 or that the mortgage contains any condition not permitted by the Act does not, it seems, bring this sub-section into operation; because such term shall *ipso facto* be reduced to twenty years in pursuance of section 6 (1) (a), and such condition shall be considered as null and void under section 8 (2). At the same time, I feel the difficulty that in the majority of the cases, it is hardly possible to draw a distinction between a condition in a mortgage which remains a mere condition and does not change the form of the mortgage and a condition which changes the form of the mortgage. The fact that it is not a mere speculative difficulty but one likely to arise in practice will be evident from the following example.

A mortgage is in accordance with form (b) of section 6 except that there is a condition intended to operate by way of conditional sale. Will the present sub-section apply to this mortgage? If it does not apply, then all the terms of the mortgage will remain except that the condition shall be taken to be non-existent. If it does apply, then the Deputy Commissioner has got plenary power and can, if he likes, alter the mortgage into form (a) or form (c). I do not mean that the Deputy Commissioner will, as a matter of fact, exercise his power in such a way but, all the same, he has got the power and nobody can complain or get any redress in any court of justice, if he exercises his power to the prejudice of the mortgagee. But the matter does not end here. The applicability or otherwise of the sub-section will be a matter for the consideration of the Civil Courts also, because if it does apply, the Civil Court must refer the case to the Deputy Commissioner under sub-section (3); otherwise, not.

I have given an example in which the mortgage contains a condition intended to operate by way of conditional sale. Examples may easily be cited in which any other condition or term of the mortgage militates against those provisions, and to all these cases, the remarks I have just made will equally apply.

SEC. 9. — The Deputy Commissioner can exercise his power *suo motu*, or on the application of any of the parties, or on reference being made by a Civil Court under sub-section (3).

It will happen in many cases that the Deputy Commissioner can not very well revise or alter the terms of the mortgage under this sub-section unless a new deed is drawn up. The question then arises as to who will bear the expenses incidental to the new mortgage and what will happen if the mortgagee refuses to execute the fresh mortgage. The same difficulties arise under sub-section (2), but the first difficulty has been partially solved as far as that subsection is concerned by a notification of the Government of India remitting so much of the duty with which the fresh mortgage-deed is chargeable as is not in excess of the duty already paid in respect of previous mortgage-deed. But this notification does not apply to the mortgage executed under this sub-section. The fact is that the mortgages executed after the commencement of the Act have not been very many and the Revenue Officers have not yet felt the difficulties in this connection as they have done in connection with the next sub-section. For further information on the subject, reference should be made to the commentary on sub-section (2).

Subsection (2).—This subsection is retrospective and must, for that reason, be considered an unfortunate provision in the Act. It is not, however, for me to state here the various reasons for regarding it as an unjust and harsh measure.

The following conditions must be satisfied before the Deputy Commissioner can intervene under this subsection.

1. The mortgage was made *before* the Act came into force (*i.e.*, before the 8th June, 1901).

2. The mortgage was made by a member of an agricultural tribe. It does not matter whether the mortgagee is or is not a member of an agricultural tribe. Even, if the mortgagee is a member of an agricultural tribe, the Deputy Commissioner will interfere provided that other requirements of this subsection are fulfilled, (Sec. No. 5 P. R., 1905).

This shows that the provision is anomalous. In other words, a mortgage by way of conditional sale, though made

before the commencement of the Act, is not tolerated in those cases in which a sale out and out can even now be effected without the sanction of the Deputy Commissioner.

3. The mortgage has got a condition intended to operate by way of conditional sale.

The case will still be within the subsection even though the mortgagee agrees not to enforce the condition intended to operate by way of conditional sale and takes possession of the mortgaged land by agreement of the parties and in pursuance of the other terms of the mortgage. The Deputy Commissioner must intervene under this subsection and put the mortgagee to his election (No. 7 P. R., 1903 Rev.). In this case, it is not clear from the judgment whether the possession was taken by the mortgagee in pursuance of the terms of the mortgage or a subsequent agreement. If the mortgage did not authorize the mortgagee to take possession and it was taken solely on account of the subsequent agreement, then the transaction will be a fresh mortgage, even though it may be by word of mouth and subsection (1) will apply.

4. The mortgage is still current or subsisting; that is to say, it had not been converted into a complete sale by foreclosure proceedings under Regulation XVII of 1806 having been taken and the year of grace having expired before the commencement of the Act. If the year of grace has expired before the 8th June 1901 and the foreclosure proceedings were regular, then the mortgage is no longer a mortgage and has become a sale and the Deputy Commissioner can not touch it. It must be remembered that if the foreclosure proceedings are regular and the year of grace has expired, then the mortgage *ipso facto* becomes a sale and the *quondam* mortgagee does not stand in need of a declaratory suit to perfect his title.

If all these conditions are satisfied then the Deputy Commissioner has got the power to intervene either at his own instance or that of the parties or on reference by a Civil Court under subsection (3). The Deputy Commissioner will then ask the mortgagee to choose one of the two alternatives:—

(1) Whether he will agree to the condition intended to operate by way of conditional sale being struck out of the mortgage and all other terms remaining unaltered. If the mortgagee chooses to adopt this course, then the

SEC. 9. Deputy Commissioner will simply strike out the condition and leave all other things in *status quo*.

(2) Whether the mortgagee will like his mortgage to be converted into another mortgage. If the mortgagee agrees to this alternative, then a further question will be asked from him whether he will like the new mortgage to be in form (a) or form (b) of section 6. As soon as this question is answered, the mortgagee's choice is over, and he has no voice in the proceedings which will follow. The period of the new mortgage will be determined by the Deputy Commissioner and should, in no case, exceed twenty years and the sum of money for which the new mortgage shall be regarded as made will also be determined by the Deputy Commissioner. If the mortgagee chooses this second alternative, then a new deed of mortgage will have to be drawn up and the difficulty will arise in case the mortgagor refuses to execute the new deed or pay the expenses incidental to it. As regards the expenses the difficulty has been only partially solved by the following notification.

GOVERNMENT OF INDIA GAZETTE NOTIFICATION.

The 6th December 1901.

"No. 6167 S. R.—Notification—In exercise of the power conferred by Section 9, clause (a), of the Indian Stamp Act, 1899 (II of 1899), the Governor-General in Council is pleased, where a fresh mortgage-deed is executed in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of Section 9, subsection (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900), to remit so much of the duty with which such fresh mortgage-deed is chargeable as is not in excess of the duty already paid in respect of such previous mortgage-deed."

But the other difficulty still remains and the Financial Commissioner has not been able to find a solution of it, as is seen from the following Circular:—

Financial Commissioner's Circular Letter No. 3482, dated Lahore, 6th June 1903.

To all Commissioners and Deputy Commissioners in the Punjab.

"In this office Circular Letter No. 6014, dated the 9th October 1901, the question was discussed as to the circumstances under which, in pursuance of the provisions

Sub-head No. 441, No. 190.

of Section 9 (2) of the Punjab Alienation of Land Act, a fresh mortgage-deed should be drawn up. Certain other aspects of the case were also discussed in paragraph 10 (1) and (2) of the annual report on the working of the Act for 1900-01.

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—

2. By Government of India Notification No. 6167 S. R. dated the 6th December 1901, so much of the stamp duty on a new mortgage-deed drawn up as referred to above as is not in excess of the duty already paid in respect of the previous mortgage was remitted.

3. It was hoped that this concession would obviate any objection on the part of a mortgagor to executing a revised mortgage, but apparently in a good many cases it has not been sufficient to secure this end. The question, therefore, has come up for decision as to what the legal position is as regards the rights of a mortgagor and mortgagee when the former refuses to execute the fresh mortgage; and the following instructions are issued for information and guidance with the approval of Government.

4. Where a mortgage made before the commencement of the Act, and still current, is brought to the notice of the Deputy Commissioner, and the mortgagee does not agree to the striking out of the conditional sale clause, but elects (as he is at liberty to do) to accept an approved form of mortgage in lieu of the original mortgage, and the mortgagor refuses to execute such fresh mortgage, the only course open to the Deputy Commissioner to adopt is to refrain from further action and leave matters as he found them.

5. If the mortgagee, on being put to his election by the Deputy Commissioner, prefers to accept another mortgage instead of merely having the conditional sale clause struck out, his consent is conditional on his receiving such other mortgage, and if the mortgagor declines to execute the latter, the mortgagee can justly claim that, inasmuch as he has done everything required of him by the Act, his original mortgage should be left unaltered.

6. The parties will thus be relegated to their former position, and it seems probable that the mortgagee will in due course follow the procedure laid down in Regulation XVII of 1806. At any rate the case will pass out of the hands of Revenue Officers, and it remains to be seen how it will be dealt with by the Civil Courts. If a Deputy Commissioner or Commissioner becomes acquainted with any

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ruling of a Civil Court not open to appeal or no longer open to appeal, which shews how a mortgage thus left in its original condition by a Deputy Commissioner has been dealt with by such Court, he should report the same for the information of the Financial Commissioner."

The only possible solution of the difficulty seems to be that the Deputy Commissioner should order that the terms of the new mortgage be recorded in the revenue records.

I have already stated that in the case of a mortgage fulfilling the requirements of this sub-section, the Deputy Commissioner has power to ask the mortgagee to choose between the alternatives mentioned above. Suppose the mortgagee refuses to make his choice, does he, thereby, place himself in a position in which he is bound to accept the choice made for him by the Deputy Commissioner. The Financial Commissioner answers in the affirmative in the following Circular and directs what the Deputy Commissioner should do in such a case.

Financial Commissioner's Circular Letter No. 2858, dated Lahore,
the 2nd May 1904.

To all Commissioners and Deputy Commissioners in the Punjab.

" It has come to the notice of the Financial Commissioner that occasionally a mortgagee, when put to his election by the Deputy Commissioner, under Section 9 (2) of the Alienation of Land Act, as to whether he will agree to the conditional sale clause being struck out of the deed or accept a mortgage in one of the forms permitted by Section 6 (a) and (b) of the Act, refuses to adopt either course. In such a case the Deputy Commissioner should explain to the mortgagee that he is not at liberty thus to attempt to defeat the law, that he must choose one of the two courses provided for him by the section of the Act, and that the only practical result of his refusal to elect is that he leaves it to the Deputy Commissioner to make the election for him. If in the face of such an explanation the mortgagee still refuses to act, the Deputy Commissioner should then act for him and define what the mortgage is to be in accordance with the power conferred upon him by section 9 (2).

2. In such a case ordinarily the best course will be to strike out the condition intended to operate by way of conditional sale, because this avoids the further complication that if a new mortgage is ordered the mortgagor may decline

to execute it. What is to be done in such a case has been SEC. 9.

* No. 27 in Appendix to Annual Report for 1902-03.

explained in this office Circular letter No. 3482,* dated the 6th June 1903. One of the objects of the Act was to cancel conditional sales with retrospective effect subject to an arrangement by which the mortgagee should not lose his security. When he would have adequate security with the sale clause struck out there need be no hesitation in compelling him to accept that arrangement if he will not do so voluntarily. It is only when the mortgage deed with the sale condition excised would not afford adequate security and when the mortgagee refuses to exercise the option allowed to him by law that the Deputy Commissioner need of his own motion order a new mortgage.

This may be the practical solution of the difficulty but is not warranted by the Act.

I have often been asked by many mortgagees or their friends as to which of the two alternatives mentioned in this sub-section will be more beneficial to the mortgagee and should, therefore, be adopted. I must say the answer can not be given off hand and must depend upon the circumstances of each case. Sometimes, and more especially in those cases in which the mortgagee is entitled to possession under the mortgage, it is better to have the condition struck out. In other cases, the mortgagee must remain content with a new mortgage in form (a). But a large number of the mortgagees have up to this time refrained from bringing the matter either to the Civil Court or to the Deputy Commissioner and simply kept quiet.

Subsection (3).—This subsection directs the Civil Court to refer the matter to the Deputy Commissioner with a view to the exercise of the power conferred by the preceding subsections. It applies to the following two cases only :—

(1). Foreclosure proceedings under Regulation XVII of 1866 are--

(a) pending at the time of the commencement of the Act, or

(b) instituted after the Act has come into force.

If the foreclosure proceedings were over, before the 8th June 1901, then the subsection does not apply.

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— — The foreclosure proceedings must, it seems, be with reference to a mortgage to which subsection (1) or subsection (2) applies; that is to say, a mortgage by way of conditional sale executed by a member of an agricultural tribe either before or after the commencement of the Act. If a person who is not a member of an agricultural tribe had executed a mortgage by way of conditional sale before the commencement of the Act, then that mortgage is not affected by the Act and no reference to the Deputy Commissioner is called for. If the same person (*i. e.*, non-zamin-dar) has executed a mortgage by way of conditional sale after the 8th June 1901, then the condition is null and void under section 10, but the Court has, it seems, no power to make the reference, though there is no reason why the reference in such a case should be excluded.

(2.) A suit is instituted in a Civil Court *after* the commencement of the Act and relates to a mortgage to which subsection (1) or sub-section (2) applies. Here again if a suit is instituted on a mortgage by way of conditional sale executed by a person who is not a member of an agricultural tribe, the Civil Court has no power to make the reference, though the condition, if the mortgage is executed after the 8th June 1901, is void under section 10 and a reference, for that reason, is desirable. I need not dilate on this subject here because I will have to say something in this connection under section 10.

These are briefly the two cases in which a reference must be made by the Civil Court. But before leaving this part of the subject, I will refer to a few more points which are interesting because they presented some difficulty to the subordinate Courts of this province.

The words "proceedings for the enforcement of a condition intended to operate by way of conditional sale" refer to foreclosure proceedings under section 8 of Regulation XVII of 1806 only and do not include suits or appeals arising out of suits. This is clear from the wording of the subsection, has been so held by the Chief Court (No. 26 P. R. 1902. Civil; Civil Reference No. 9 of 1901) and been the subject of a Circular by the Chief Court, for which see *infra*, p. 124.

The second part of the subsection applies only to *suits* instituted after the Act came into force. The word *suit*

does not include 'appeals' and, therefore, no reference is permitted when an appeal was pending at the commencement of the Act, in the Divisional Court (see No. 26 P. R. 1902 Civil; No. 47 P. R. 1902 Civil); or in the Chief Court (see, No. 26 P. R. 1902 Civil; No. 94 P. R. 1901 Civil; 150 P. L. R. 1901); provided that the suit out of which the appeal arose was not instituted after the coming into force of the Act. Nor does the subsection apply to suits which were instituted before the Act came into force and were pending in the Court of first instance on the 8th June 1901 (No. 26 P. R. 1902); or to suits instituted after the 8th June 1901, provided that the foreclosure proceedings with respect to the mortgage had been regularly taken and the year of grace had, without payment, expired before the 8th June 1901. (No. 38 P. R. 1904 Civil; 20 P. R. 1905, Civil; 38 P. R. 1905, Civil.)

The gist of all these decisions is that the subsection applies to all foreclosure proceedings pending on the 8th June 1901 or instituted after that date. It also applies to *suits* (not appeals) instituted *after* that date (not pending suits) but not to suits, which though instituted after the 8th June 1901, are based on a mortgage which had become a sale by the foreclosure proceedings being regularly taken and the year of grace having expired before the 8th June 1901.

Another question has arisen, A suit is instituted to which *prima facie* the subsection applies but the mortgagee himself gives up the condition intended to operate by way of conditional sale and bases his suit on other terms of the mortgage-deed. Is the Civil Court bound to make the reference? On the one hand it can be urged that what the Deputy Commissioner would have done on reference, the mortgagee has himself done and the reference will be futile. On the other hand, it may be argued that the wordings of the subsection are imperative and if a particular case comes within their meaning, the Civil Court is bound to make the reference and it is not for it to see what the Deputy Commissioner could or could not do. The Chief Court has held in No. 20 P. R., 1903 Civil, that the case can proceed without reference but the judgment of a Single Bench in 91 P. R. 1903, lays down a contrary rule but has recently been disapproved in 38 P. R. 1905.

It is clear that in cases in which reference must be made by a Civil Court, not only the Court of first instance

SEC. 9. is bound to do so, but also the Appellate Court, if the original Court has failed to do its duty (No. 20 P. R. 1903, Civil). In cases to which the subsection does not apply but in which the reference has been wrongly made by a Civil Court, not only is the order of the Civil Court making the reference *ultra vires* but also the order of the Deputy Commissioner taking action on the reference and all the proceedings in connection with these orders must be regarded as non-existent (No. 47 P. R. 1902, Civil).

As to the particular time when a Civil Court must in cases coming under subsection (3) make the reference the Chief Court has issued a Circular which is here quoted.

Chief Court Circular Memo. No. 3—1118 G., dated Lahore, the 13th March 1902.

To all Civil Courts in the Punjab.

“Some difficulty having been felt in the interpretation and working of Section 9, subsection 3, of Act XIII of 1900 (Punjab Alienation of Land Act), the Hon’ble Judges are pleased to issue the following instructions :—

2. The difficulty of interpretation is in connection with the words “Proceedings for the enforcement of a condition intended to operate by way of conditional sale.”

The question has been raised whether they mean proceedings taken under Section 8 of Regulation XVII of 1806 *only*, or whether they include proceedings in suits, appeals or execution of decree as well.

This Court has now held that the words above quoted mean proceedings under Section 3 of Regulation XVII of 1896 *only*, *vide* this Court’s ruling in Punjab Record No. 26 of 1902 (Civil).

3. The difficulty in the working of the subsection relates to the stage at which a reference should be made by the Civil Courts to the Deputy Commissioner. The question is whether the Civil Court should not postpone reference until it has recorded a finding as to the validity of the mortgage or on any dispute concerning limitation. The section itself is silent on the subject, but the Act must be construed reasonably, and it is obvious that, unless the mortgage is a subsisting one and is not time-barred,

to refer any matters connected with it to the Deputy Commissioner is to waste time. SEC. 10.

The Hon'ble Judges accordingly direct that Civil Courts shall not make references to the Deputy Commissioner under Section 9 subsection 3 until they have disposed of any objections brought by the mortgagor against the validity of the mortgage or of any plea raised by him on the point of limitation."

The same view has been taken in 38 P. R. 1905 (pp. 137, 138).

10. In any mortgage of land made after the commencement of this Act any condition which is intended to operate by way of conditional sale shall be null and void.

NOTES.

This is an important and at the same time a strange provision. It has been stated several times that the policy of the Act is to keep the land with the zamindars by restricting their power of alienations, and a non-zamindar has, therefore, full power of permanent or temporary alienation. The various sections which lay down restrictions expressly mention that the restrictions are in the case of zamindars and non-zamindars, consequently are not hampered in their power of disposal. But the present section draws no such distinction and applies to all persons equally. If a mortgage of land is made after the commencement of the Act (8th June 1901) by any person, whoever he may be, and contains a condition intended to operate by way of conditional sale, then that condition shall be null and void. Notice, the mortgage itself is not void, only the condition is void; the result of which is that the mortgage will remain good and the condition will be taken as non-existent.

The question arises: what will happen to such a mortgage? If the mortgage is with possession or provides for possession being given to the mortgagee in the happening of a certain event, then the mortgagee will not be so badly off, otherwise his lot seems to be hard. He can not (unless the mortgagor is a member of an agricultural tribe) ask the Deputy Commissioner to convert the mortgage into some other mortgage because the latter, except in the case mentioned in brackets, has no such power. If proceedings for the enforcement of condition are instituted in a Civil Court then the case must it seems be referred to the Deputy Commissioner under section 9 (3). But what

SEC. 10. will the Deputy Commissioner do? If the mortgagor is not a member of an agricultural tribe, then the Deputy Commissioner has no power which he can exercise. The reference in that case becomes futile. It may be argued and perhaps with some force that in such a case, the Court is not bound to make the reference. If such be the case, then the result seems to be that the Court must *suo motu*, file the proceedings, because the condition which is the basis of proceedings is to be taken as non-existent. The anomaly of this construction is that had the mortgage been by a member of an agricultural tribe, the Deputy Commissioner could have helped the mortgagee by acting under section 9 (1) but he can not do so, when the mortgagor is not a member of an agricultural tribe. The result may be thus summarised. A person not being a member of an agricultural tribe makes a mortgage by way of conditional sale after the 8th June 1901 and has failed to pay the money at the stipulated time. The mortgagee takes advantage of the condition and institutes proceedings for its enforcement. It is not clear what the Civil Court should do in such a case. One of two possible courses might be open to it. Either refer the matter to the Deputy Commissioner, but this will be useless because section 9 (1) does not apply and the Deputy Commissioner has no power. Or, treat the condition as non-existing and drop the proceedings. The difficulty, as pointed out already, is that if the mortgagor had been a member of an agricultural tribe, the Deputy Commissioner could have helped the mortgagee and there does not seem to be any reason why the same indulgence should not be shown when the mortgagor belongs to a less favoured class.

The provision of this section, it has been already pointed out, is strange inasmuch as it restricts the power of those persons who do not belong to agricultural tribes. But this is not all. There is another anomaly. The members of agricultural tribes in certain cases, and the rest of the population of the Punjab in all other cases (except an agriculturist *qua* the land bought under clause (b) of subsection (1) of section 3) have got the power of selling their land out and out but are denied the right of mortgaging by way of conditional sale which is certainly a lesser right than the sale. The result is that a European, a Bania, a Khatri or a Brahmin can not mortgage by way of conditional sale, even to a member of an agricultural tribe, though he has got the plenary power of sale or

gift. A conditional sale is evidently a bugbear of the Indian Legislature and I have not been able to find out any valid reasons which will justify the enactment of such a curious provision.

11. Any member of an agricultural tribe may make a lease or farm of his land for any term not exceeding twenty years, and any lease or farm made by a member of any agricultural tribe for a longer term than twenty years shall, if the lessee or farmer is not a member of the same tribe or of a tribe in the same group, be deemed to be a lease or farm for the term permitted by this section.

NOTES.

This section deals with two other forms of temporary alienation; *i-e.* leases and farms. Lease is pretty well known and has been defined in section 105 of the Transfer of Property Act which says, "a lease of immovable property is a transfer of a right to enjoy such property" made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promised or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms." This definition is rather cumbersome but as almost everybody knows what lease means, there is no need of explaining the term. *Farm* may briefly be described as an arrangement by which a person is placed in management of the land of another on an undertaking to hand over the rent or a fixed portion of the rent to the owner.

The restrictions on lease or farm are in harmony with those placed on mortgage. A member of an agricultural tribe can not make a lease or farm for a period exceeding twenty years, when the lessee or farmer is not a member of the same tribe or of a tribe in the same group. It must be noticed that the only restriction herein specified is with respect to the duration and that too, when the other party is not a member of the same tribe or of a tribe in the same group. The object is to prevent evasions of law by resorting to leases or farms. As regards all other matters (*e.g.* the money etc. to be paid by the lessee or farmer) the parties are allowed a free hand and can enter into any terms they like. But if a member

Sec. 12. of an agricultural tribe creates, in favour of one who is not a member of the same group, a right of occupancy in his land, the transaction will be considered to be a lease for more than twenty years and will, for that reason, be deemed to be a lease lasting for twenty years only. In 43 P. R. 1892, a perpetual lease was held to be equivalent to a right of occupancy.

12. (1) During the currency of mortgage made under section 6 in form (a) or form (b) or of a lease or farm under this Act the owner shall be at liberty to make a further temporary alienation of the same land for such term as together with the term of the current mortgage, lease or farm, will make up a term not exceeding the full term of twenty years.

(2). Any such further temporary alienation, if made for longer a term than is permitted by this section, shall be deemed to be a temporary alienation for the term permitted by this section.

NOTES.

Subsection (1).—This subsection applies to the following temporary alienations:—

(1) Mortgage in form (a) of section 6. This includes not only the mortgage coming under section 6 (1) (a) from the very beginning but also the mortgage which began with form (c) of section 6 but has been converted into form (a) under the provisions of section 6 (2).

(2) Mortgage in form (b). This means the mortgage which began as a collateral security but has since been converted into form (a) under the provisions of clause (b) of section 6 (1).

(3) Lease or farm made under section 11.

In the case of all these temporary alienations, the owner will be out of possession and the alienee will be in possession. The period of possession may be twenty years or less but can, in no case, be more than twenty years. If it be less than twenty years then the law gives the alienor a power to do what he could have done in the very beginning; namely, he can, during the currency of the first temporary alienation, make another temporary alienation in favour of the same person for a period which, coupled

with the period of the first temporary alienation, should not exceed twenty years. This second alienation is practically a continuation of the first alienation and the combined period should not, therefore, be more than twenty years. If it exceeds twenty years, the term of the second alienation will be so reduced as to make the combined period twenty years.

The second temporary alienation made under this subsection need not be of the same kind as the first alienation; that is to say, it is not necessary that a mortgage should be followed by a mortgage and not a lease or farm.

Suppose the period of the first alienation is only five years and the alienor takes advantage of this subsection and during the currency of the first alienation, makes a second alienation for five years more. The period of both the alienations is ten years and there are still ten years more to make up the maximum twenty years. Can the alienor make a third temporary alienation for ten years during the currency of the second alienation? I should be inclined to answer in the affirmative because I fail to see any justification for denying the alienor the right, as long as the combined duration of all the alienations does not exceed the maximum twenty years.

It is clear that the restriction contained in this subsection applies to the alienation made during the *currency* of the first alienation. The moment the period of the first alienation is over, the alienor can make a fresh alienation for twenty years.

Subsection (2).—This subsection only provides that if the second alienation transgresses the limit laid down by subsection (1), it will not, for that reason, be null and void. The alienation will hold good but the term will be taken as reduced to such as will, with the term of the first alienation, make up the full term of twenty years.

13. If a mortgagee, lessee or farmer holding possession under a mortgage made under section 6 or under a lease or farm made under section 11 or under a mortgage, lease or farm made under section 12 remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm, the Deputy Commissioner may, of his own motion or on the application of the person

SEC. 14. entitled to possession, eject such mortgagee, lessee or farmer and place the person so entitled in possession.

NOTES.

First mortgage can be made under section 6, first lease or farm can be made under section 11. A second mortgage, lease or farm can, during the currency of the first temporary alienation, be made under section 12. Under each of these transactions, the alienee will come into possession of the land, the period of which will depend upon the agreement of the parties and should, in no case, exceed twenty years. As soon as the stipulated period or the maximum period in case the stipulated period exceeds the maximum twenty years, is over, the alienee must go out of possession. If he does not, the alienor can apply to the Deputy Commissioner who will eject the alienee and, put the alienor in possession. Even if the alienor does not apply, the Deputy Commissioner has got the power, if he chooses to exercise it, to act *suo motu* and eject the alienee and put the alienor in possession. The object of conferring this extraordinary power is clear and intended to prevent evasions of the law. If it were not so, the restriction as to the maximum of twenty years would become illusory.

In order to carry out the provisions of this section, the Revenue authorities have ordered that the date of the commencement of possession under sections 6, 11, 12, and except in the case of a mortgage under section 6 (c), the date of the expiry of the term of possession must be entered in the remarks' column of the *jamabandi* and these remarks must be carried on from one *Jamabandi* to another during the currency of the mortgage, lease or farm. If the alienee wrongfully remains in possession after expiry of the term, the case must be reported by the Patwari, Field Kánúngo and Tahsildar to the Deputy Commissioner for orders.

General Provisions.

14. Any permanent alienation which under section 3 is not to take effect as such until the sanction of a Deputy Commissioner is given thereto shall, until such sanction is

given or if such sanction has been refused, take effect as a usufructuary mortgage in form (a) permitted by section 6 for such term not exceeding twenty years and on such conditions as the Deputy Commissioner considers to be reasonable. SEC. 15.
—

NOTES.

I have already referred to this section in connection with the provisions of section 3. It has been explained that a permanent alienation by a zamindar, when the alienee is not a zamindar of the same tribe or of a tribe in the same group or an agriculturist holding land in the same village in which the land to be alienated is situate, requires the sanction of a Deputy Commissioner. This section enacts that as long as the sanction is not applied for or if the sanction is applied for and refused, the permanent alienation will take effect as a usufructuary mortgage in form (a) of section 6. The term of this mortgage and other incidents will be determined by the Deputy Commissioner whose guide in this matter will be his ideas as to what is reasonable and just under the circumstances. There is no need of mentioning the fact that if the sanction is not given, the parties can, if they so choose, cancel the alienation and restore themselves to *status quo*.

I may add that under the rules framed by the Punjab Government for the purpose of giving effect to the provisions of section 18, a special procedure is laid down for the purpose of bringing to the notice of the Deputy Commissioner such permanent alienations as require his sanction. If the sanction is granted, well and good, if it is refused the Deputy Commissioner must exercise his powers under this section and determine the duration and other conditions of the usufructuary mortgage to which the permanent alienation is, *ipso facto*, reduced by the refusal of the sanction.

15. Every agreement whereby a member of an agricultural tribe purports to alienate or charge the produce of his land or any part of, or, share in, such produce for more than one year shall not take effect for more than one year from the date of the agreement unless the sanction of a Deputy Commissioner

SEC. 15. is given thereto, and shall, until such sanction is given or if such sanction is refused take effect as if it had been made for one year.

Explanation.—The produce of land means—

- (a) crops and other products of the earth standing or ungathered on the holding.
- (b) crops and other products of the earth which have been grown on the land during the past year and have been reaped or gathered.

NOTES.

Here again the restriction is on the power of a member of an agricultural tribe. And this restriction will continue even if the alienee is a member of the same tribe or a tribe in the same group. In this respect, the provisions of this section mark a departure from the general policy of the Act which do not prohibit alienations provided the alienee is a member of the same tribe or of a tribe in the same group. I can not see any valid reason why this special sanctity should be attached to the alienations of the *produce* of land, when the land itself could be transferred without any restriction. Another point which requires notice is that the duration of the alienation must not exceed one year unless the Deputy Commissioner has granted sanction for more than one year. This again is anomalous when we compare it with the provisions of the Act which allow mortgages up to twenty years even when the alienee is not a zamindar.

The Financial Commissioner has laid down the following rule to guide the Deputy Commissioner in granting or refusing sanction :—

“ It is not intended to prevent zamindars from borrowing on the security of the crops of the two next following harvests, nor to interfere with *bona fide* contracts for the disposal of produce to large firms engaged, for example, in the wheat export trade. When a case under this section comes before a Deputy Commissioner, the main point for his consideration is whether the transaction for which his sanction is sought will amount to an evasion of the Act.

If not, restraint of trade being obviously objectionable, sanction should be freely given. When, however, the contract is made for more than one year by a zamindar in favour of a money-lender, it is most probable that an evasion of the Act is intended."

The object of the section is clear. It is to prevent the evasion of the prohibitory provisions of the Act by the substantial mortgage of the land under the garb of the alienation of, or of a charge upon, its produce. Land is valuable because of its produce and to give its owner an unrestricted power of alienating or charging its produce is tantamount to giving him an unrestricted power of mortgaging the land itself.

Explanation.—The explanation defines the word 'produce' for the purposes of this section. It means the crops etc. which are either standing on the land or, though not actually standing, remain ungathered on the land. It also includes the crops etc. which had grown on the land during the preceding year and have since been reaped and gathered. In other words, the 'produce' means the produce of the present year and the past year.

16. (1) No land belonging to a member of an agricultural tribe shall be sold in execution of any decree or order of any Civil or Revenue Court, whether made before or after the commencement of this Act.

(2) Nothing in this section shall affect the right of Government to recover arrears of land-revenue or any dues which are recoverable as arrears of land revenue, in any manner now permitted by law.

NOTES.

Subsection (1).—Even before this Act, revenue-paying or revenue-free land, whether belonging to a member of an agricultural tribe or not, could not be sold in execution of a decree without the sanction of the revenue authorities. Now, land as defined in the Act and belonging to a member of an agricultural tribe can not, in any possible case, be sold in execution of any decree or order of any Civil or Revenue Court and it does not make any difference that the decree or order was passed before the Act came into force, as long as the sale is made after the 8th June.

SEC. 17. The date of confirmation of sale under section 316, Civil Procedure Code, is the date of sale within the meaning of this section. Therefore, if the auction took place before the Act came into force but the sale was confirmed by the Court after the Act came into force, the sale was held to be void. (Khan v. Bawa Gurbukhsh Singh and another, 45 P. R. 1902).

The Act does not prohibit the *attachment* of land belonging to members of an agricultural tribe and action under section 326, Civil Procedure Code, may be taken in regard to such land. This is clear from the wordings of the section itself and the Chief Court has also ruled to the same effect in Badar Din v. Bura Mal, No. 4 P.R. 1903.

Though the sale of land is prohibited, a temporary alienation for the satisfaction of a decree can be made under the provisions of the Code of Civil Procedure for a term longer than 20 years and the restrictions imposed by the various sections dealing with temporary alienation do not apply to such an alienation made in execution of a decree. This seems to be the law but the point is not free from difficulty.

Subsection (2).—This protects the rights of the Government to recover arrears of land-revenue or any dues which are recoverable as arrears of land-revenue, in any manner it likes. On this subject, Chapters VI or VII of the Punjab Land Revenue Act XVII of 1887 and the Revenue Recovery Act I of 1890 should be consulted. It will be noticed that the Government has got this privilege as far as the recovery of revenue or any dues recoverable as revenue is concerned; in all other cases, the Government stands on the same footing as a private person and is bound by the prohibition contained in subsection (1).

17. Notwithstanding anything in the Indian Registration Act, 1887, or in any rules made under section 69 of that Act—

- (1) an instrument which contravenes any provision of this Act shall not be admitted to registration:
- (2) an instrument which records or gives effect to any transaction which requires the sanction of a Deputy Commissioner shall not be admitted to registration until a certified copy of the

order giving such sanction is produced to the officer empowered to register such instrument. Sec. 17.

NOTES.

The preceding sections of the Act contain provisions as to three kinds of transactions :—

- (1) Transactions which are allowed by the Act and no sanction of a Deputy Commissioner is required to give them validity. Registration of instruments evidencing such transactions is governed by the ordinary law and does not require any special treatment here.
- (2) Transactions which are valid if the Deputy Commissioner grants sanction.—Instruments relating to such transactions shall not be registered until a certified copy of the order granting the sanction is produced before the registering officer; vide section 17 (2).
- (3) Transactions which are contrary to the provisions of this Act and the sanction of the Deputy Commissioner can not make them valid.—Instruments evidencing such transactions shall not be registered ; vide, section 17 (1).

The Inspector-General of Registration, Punjab, has issued a Circular to all Registrars drawing their attention to the provisions of the Act as far as they are concerned, for which, see Appendix, I No. 18 (pp. 119—124). The Punjab Government has made the following rules to give effect to the provisions of this section :—

The 8th November 1901.

No. 44.—Notification.—In exercise of the powers conferred on him by Section 25 of Act XIII of 1900 (Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab is pleased to make the following rules for giving effect to the provisions of Section 17 of the said Act :—

1. (a) When an instrument, which records or gives effect to a permanent alienation of land, requiring, under Section 3 of the Act, the sanction of the Deputy Com-

SEC. 17. missioner, is presented to a registering officer unaccompanied by a certified copy of an order giving such sanction ; or

(b) when an instrument of agreement purporting to charge or alienate the produce of land, which, under Section 15 of the Act, requires the sanction of the Deputy Commissioner, is presented unaccompanied by a certified copy of an order giving such sanction ; or

(c) when an instrument of mortgage, which is required to be made in one of the forms prescribed in Section 6 of the Act, is presented, not made in any such prescribed form, the registering officer in refusing to admit the instrument to registration shall proceed in the following manner :—

He shall (d) record no endorsement upon the document itself, nor shall he make any entry of reasons for refusal to register in Register Book II ;

but (e) he shall enter his reasons for not admitting the instrument to registration in a separate book (to be prescribed and provided by the Inspector-General of Registration) and shall give to the presenter of the instrument a copy of such entry, and shall at the same time return the instrument unendorsed to the presenter.

2. An instrument of the kinds mentioned in the foregoing rule, which has been returned thereunder, may be presented again for registration, and may then be admitted to registration if accompanied by the certified copy of the order which was required, or if amended by the parties themselves, or by the Deputy Commissioner acting under Section 9 of the Act, so as to make it conform to the prescribed form.

3. (a) In registering an instrument of the kinds mentioned in clauses (a) and (b) of Rule 1, the registering officer shall regard the accompanying order of the Deputy Commissioner giving the necessary sanction as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book ; and

(b) In registering an instrument of the kind mentioned in clause (c) of Rule 1, when the same has been revised or altered by the Deputy Commissioner acting under Section 9 of the Act, the registering officer shall regard

such order of revision or alteration as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book.

SEC. 18.
—

4. An appeal may be lodged to the Registrar against any return of an instrument made by a Sub-Registrar under clause (e) of Rule 1, and if the Registrar directs that the instrument shall be registered in the form in which it was originally presented, the Sub-Registrar shall register it accordingly. If the Registrar directs that the instrument shall be registered only after specified amendment or addition, then the provisions of Rule 2 as to admission to registration shall apply.

18. (1) Where, by reason of any transaction which under this Act requires the sanction of a Deputy Commissioner, a person claims to have acquired a right the acquisition whereof he is bound to report under section 34 of the Punjab Land-revenue Act, 1887, such person shall, in making his report, state whether the sanction required has been obtained or not, and his right so acquired shall not be entered in the record-of-rights or in any annual record until he produces such evidence of the order by which such sanction is given as may be required by any rules made under this Act.

(2) No right claimed by reason of any transaction or condition which is declared by this Act to be null and void shall be entered in the record-of-rights or in any annual.

NOTES.

Subsection (1).—This subsection deals with those transactions with respect to land which are only valid provided that the sanction of a Deputy Commissioner is obtained with respect to them. These transactions are :—

- (1) Permanent alienations of land requiring the sanction of a Deputy Commissioner under section 3 (2).
- (2) Alienations of, or charges on, produce of land effected by a member of an agricultural tribe for more than one year. (*vide*, section 15).

SEC. 18. The rights, the acquisition whereof a person is bound to report under section 34 of the Punjab Land Revenue Act, are given in section 34 (1) of that Act which runs thus :—

“ Any person acquiring, by inheritance, purchase, mortgage, gift, or otherwise, any right in an estate as a land-owner, assignee of land-revenue, or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.”

The object of section 34 of the Land Revenue Act is to keep the revenue records up to date by entering new transactions with respect to land and making mutations accordingly. The present subsection enacts that a person, making a report, under section 34 of the Land Revenue Act, with respect to the acquisition of a right requiring the sanction of a Deputy Commissioner, must :

- (1) state whether the sanction of a Deputy Commissioner has been obtained or not, and,
- (2) if the sanction has been obtained, produce such evidence of the order granting the sanction as is required by the rules.

If sanction has not been obtained, the entry in the record of rights or annual record shall not be made. If sanction has been obtained but the evidence of order granting the sanction has not been produced, the entry shall not be made until such evidence is produced.

Subsection (2).—Subsection (1) has dealt with transactions which depend for their validity upon the sanction of the Deputy Commissioner. The present subsection deals with transactions or conditions which are declared null and void by this Act and enacts that a right claimed by reason of such void transaction or void condition shall not be entered in the revenue records. The transactions or conditions rendered null and void by the Act are :—

1. In mortgages made under section 6, any condition not permitted by or under this Act; vide, section 8 (2).
2. In mortgages made after the commencement of this Act, any condition intended to operate by way of conditional sale; vide section 10.

For the purpose of supplying the Revenue Officers in charge of mutations of names with the necessary information, the Director of Land Records and Agriculture has given the patwaris certain directions in paras 5 and 6 of his Circular No. 9, dated the 20th November 1903, which I quote below.

5. "In the matter of temporary alienations, where the alienor is a member of an agricultural tribe and the alienee is not, it is necessary that the Revenue Officer should know what the terms of the contract are. At present, under paragraph 37 of Revenue Circular 28, the patwari, in his report, where a written deed has been prepared has to note —

- (a) the nature of the deed ;
 - (b) the names of the parties ;
 - (c) the date of execution ;
 - (d) the date of registration, if any,
- and (e) any other necessary details.

In future, where the alienor is a member of an agricultural tribe and the alienee is not, the patwari must also note briefly the terms of the deed as to possession, period, rent, interest, redemption, &c., and the attesting officers must satisfy themselves of the correctness of these entries.

6. Where there is no written deed, the patwari should note the terms agreed to by the parties, or, when they do not agree, he should record the terms alleged by each. The attesting officer will then proceed to pass suitable orders on the mutation. If the provisions of the Act are not contravened by the terms of the contract, he will direct a mutation ; otherwise he will refuse mutation."

In order to give effect to section 18, the Punjab Government has framed the following rules :—

GAZETTE NOTIFICATION.

The 22nd May 1901.

"No. 23 S.—*Notification.*—In exercise of the powers conferred on him by sections 19 and 25 of the Punjab Alienation of Land Act, 1900, and section 17 of the Punjab Land Revenue Act, 1887, the Lieutenant-Governor of the Punjab is pleased to make the following rules and

SEC. 18. to direct that they shall be read as an addendum to Chapter V of the Rules made under the last-named enactment relating to Mutation Lists, Parchas, Bâchh Papers and Orders of Court :—

Addendum to Chapter V of the Rules under the Punjab Land Revenue Act.

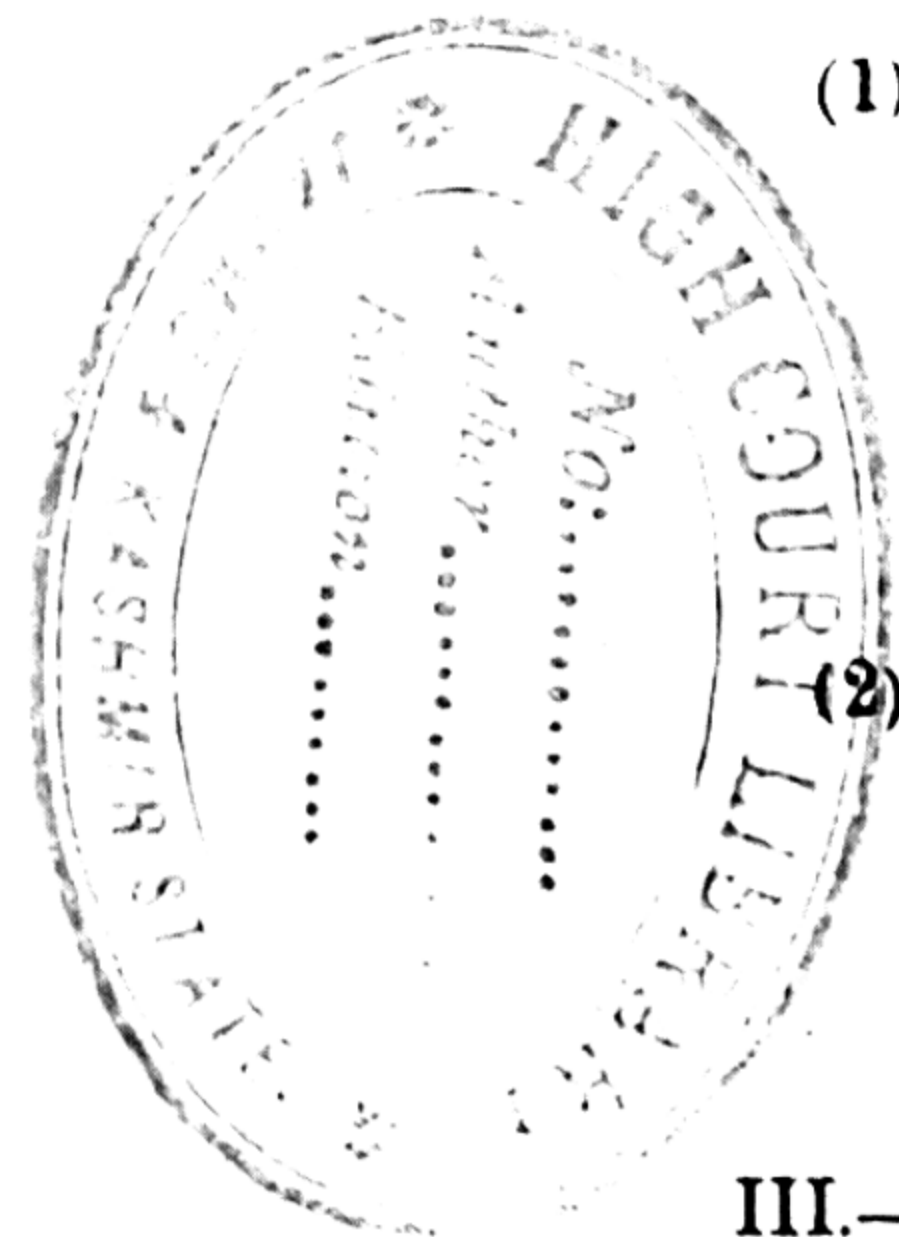
I.—If any alienation of land is made otherwise than in accordance with the provisions of the Punjab Alienation of Land Act, 1900, or involves any condition contrary to those provisions, the patwari shall nevertheless enter the same, when it comes to his knowledge, in his register of mutations for the village where it occurred.

II.—An entry made under the preceding rule shall be dealt with like other entries in the register of mutations which are made under this chapter, except that the Revenue Officer to whom the register is submitted for orders under Rule 48 of this chapter shall, after hearing the parties and recording a note of their representations,—

(1) in the case of any permanent alienation, transmit the mutation proceeding with his recommendation, as to whether sanction should be granted or refused, to the Deputy Commissioner for his orders under section 3 (2) and (3) of the Punjab Alienation of Land Act ; or

(2) in the case of any temporary alienation refuse to sanction mutation of names and refer the parties to the provisions of the Punjab Alienation of Land Act which they have contravened.

III.—The Deputy Commissioner on receipt of any mutation proceeding transmitted to him under Rule II (1) shall, after such further inquiry, if any, as he may consider necessary, grant or refuse the sanction required by sub-section (2) of section 3 of the Punjab Alienation of Land Act. For the purposes of any further inquiry under this rule the Deputy Commissioner may refer the case to any Revenue Officer subordinate to him for investigation and report and may decide the case upon the report.



IV.—When the Deputy Commissioner has decided any case dealt with under Rule III, he shall record his order upon the mutation proceeding and direct the same to be returned to the Revenue Officer whose duty it is to dispose of mutation cases arising in the village where the land alienated is situated.

V.—If the Deputy Commissioner sanctions the alienation, the record of his sanction made upon the mutation proceeding shall be deemed to be sufficient evidence of the order of sanction for the purposes of section 18 of the Punjab Alienation of Land Act, and the Revenue Officer whose duty it is to dispose of the mutation case shall dispose of the same and shall not refuse mutation on the ground of any objection arising out of the said Act.

VI.—If the Deputy Commissioner refuses to sanction the alienation, the Revenue Officer disposing of the mutation case shall pass such order in the case as may be in accordance with the order of the Deputy Commissioner refusing sanction.

VII.—When a mutation proceeding has been transmitted to the Deputy Commissioner under Rule II (1) the transmission thereof shall be deemed to be an application to the Deputy Commissioner to exercise the powers conferred upon him by section 3 of the Punjab Alienation of Land Act. Such application need not be stamped nor is any separate application necessary for the exercise of those powers in the same case,

VIII.—Nothing in these rules shall be so construed as to disallow applications to the Deputy Commissioner for the exercise of any power conferred upon him by the Punjab Alienation of Land Act, 1900, which are made in any other manner authorized by law or by rules having the force of law."

It will be noticed that this section applies to transactions effected after the Act came into force. If the transaction was complete before the Act came into force, it must be recorded in the record of rights or annual record. Thus a good deal will depend upon the date on which the transaction was entered into. The Financial Commissioner has issued the following Circular dealing with this question :—

SEC. 18. FINANCIAL COMMISSIONER'S CIRCULAR No. 8.

Dated 14th August 1901.

To

ALL COMMISSIONERS, EXCEPT PESHAWAR, AND
ALL DEPUTY COMMISSIONERS, EXCEPT SIMLA,
HAZARA, PESHAWAR AND KOHAT.

The Financial Commissioner has been asked for a ruling as to how Deputy Commissioners should deal with mutation proceedings referred to them under Rule II of the Rules published under Punjab Government Notification No. 23 S. of the 22nd May, and relating to transfers made before the commencement of the Punjab Alienation of Land Act, 1900.

2. The following instructions are issued with the approval of the Local Government.

3. It is only in the case of permanent alienations that a reference is required by Act XIII of 1900 and the rules thereunder to be made to the Deputy Commissioner. Except as regards conditions intended to operate by way of conditional sale (section 9 (2) and (3)), and sale in the execution of decree, of land belonging to members of agricultural tribes, (section 16 (1)), the Act is not retrospective in its effect. If the permanent alienation has been completed before June 8th, 1901, there is therefore no need arising out of Act XIII of 1900 to refer the case to the Deputy Commissioner at all ; and the whole Revenue staff should be instructed accordingly. If, however a reference is made, the Deputy Commissioner should deal with it on the principle that no objection is to be raised to the mutation on any ground arising out of Act XIII of 1900, inasmuch as that Act does not apply to the case.

4. As to temporary alienations, the like principle applies. Here no reference would in any case, as a consequence of existing instructions, be made by an official as such to the Deputy Commissioner, but revenue officers should be instructed that they are not to refuse sanction to mutation under Rule II (2) of the Notification above quoted if the temporary alienation has been completed before the same date.

5. As to determining when an alienation has been completed, the Financial Commissioner, does not think it is wise by any general order to import into these cases the issue whether possession has been had or not. He would hold the transaction to be complete if both parties by some formal act, such as the execution of a deed, or a concurrent application for mutation, had signified that they had completed it. In cases where deeds of sale had been executed before June 8th, 1901, the Financial Commissioner would certainly hold that, for present purposes, the transactions were complete. It might of course happen in disputed cases, where it was contended by one party that the transaction was not complete, that the question of possession would be material to the decision of that issue. Ordinarily it should be avoided.

6. It should also be noted in this connection that in the case of documents compulsorily registerable under section 17 of Act III of 1877, the transactions to which they relate cannot be deemed to be complete unless and until such documents are duly registered. If, however, such a document is subsequently registered, it will operate from the *date of its execution*, and not from the date of its registration (section 47 of Act III of 1877), and, consequently, if executed before the 8th June 1901, will not be affected by the provisions of Act XIII of 1900."

It is quite possible that many persons who are incapable of acquiring land under the Act may do so by making out that the sale was orally entered into before the 8th June 1901. This evasion of law is not permitted and the Financial Commissioner has issued the following Circular on the subject :—

FINANCIAL COMMISSIONER'S OFFICE.

CIRCULAR No. 6

FINANCIAL COMMISSIONER'S OFFICE :

Dated Lahore, 20th July 1904.

To

ALL COMMISSIONERS AND ALL DEPUTY COMMISSIONERS, EXCEPT SIMLA.

With a view to the prevention of evasions of the provisions of the Alienation of Land Act by persons who collude to represent an alienation as having taken place before the Act came into force, the following

Sub-head No. 721 File No. 154.

SEC. 19. instructions are issued for the guidance of Revenue Officers in supersession of those contained in paragraph 5 of Financial Commissioner's Circular No. 8, dated the 14th August 1901, which have become unsuitable now that the Act has been in operation for more than three years.

2. When a mutation comes up relating to an alienation which contravenes the provisions of the Alienation of Land Act, but in which it is alleged that the alienation was completed before the Act came into force, the attesting officer must decide whether the alienation took place before or after June 8th 1901. It is important that there should be a careful enquiry, reference being made to the revenue records, and the parties being given an opportunity of producing evidence. The record of the proceeding should be in some detail. The nature and amount of the evidence required will vary with the circumstances of each case. A registered deed will not ordinarily require much, if any corroboration. But an unregistered deed or an oral contract will demand close examination. A scrutiny of the girdawari register will show who has been in possession since the alleged date of the alienation. If the alienee did not obtain possession himself or through an agent or through a tenant before the 8th June 1901 or within a reasonable time, it is for him to explain why he did not take advantage of his rights.

By order,

R. HUMPHREYS,

Senior Secretary to Financial Commissioner, Punjab.

19. Subject to the provisions of this Act the provisions of Chapter II of the Punjab Land-revenue Act, 1887, shall, in so far as they are applicable, apply to the proceedings of Revenue-officers under this Act.

NOTES.

I transcribe below sections 13-22 only of Chapter II of the Punjab Land Revenue Act 1887 which deal with appeal, review, revision and procedure, and do so simply because a reference to the Punjab Land Revenue Act itself, might in some cases be considered inconvenient by those who will have to deal with this Act. By quoting these sections of Chapter II, I do not for a moment imply

that every word of these sections is applicable to proceedings before the Revenue officers under this Act or that the remaining sections of Chapter II are not applicable. The words of the present section are quite clear and distinctly lay down that the provisions of Chapter II shall apply, "subject to the provisions of the Act" and "in so far as they are applicable." It will be for the Revenue-officers to decide what sections of Chapter II are consistent with the present Act and should be made applicable and what sections are inconsistent and should be rejected.

It is however clear that out of the ten sections which I quote and which will be the sections to be used pretty often, that part of section 18 which has reference to legal practitioners is not applicable to the proceedings under the Act (*vide*, section 20 of this Act). Though a legal practitioner is not allowed to appear, there is no objection to the appearance of recognised agents who may sometimes be of use to an ignorant zamindar who is unable to put his facts before a Deputy Commissioner.

There is an impression abroad that the Deputy Commissioner is the master of the whole show under the Act and that his orders are final. This might be true so far as the practical result is concerned, because the higher authorities are not likely to interfere with the discretion of the Deputy Commissioner, but the *law* gives them full powers of interference by way of appeal or revision and authorises them to pass any orders they think fit.

SECTION 13-22, OF THE PUNJAB LAND REVENUE ACT, APPEAL, REVIEW AND REVISION.

13. Save as otherwise provided by this Act, an appeal
 Appeals. should lie from an original or appellate order of a Revenue-Officer as follows, namely :—

- (a). to the Collector when the order is made by an Assistant Collector of either grade ;
- (b). to the Commissioner when the order is made by a Collector ;
- (c). to the Financial Commissioner when the order in made by a Commissioner: Provided that—

SEC. 19.

- (i). when an original order is confirmed on first appeal a further appeal shall not lie ;
- (ii). when any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, if any, to him, shall be final.

14. Save as otherwise provided by this Act, the period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows, that is to say :—

- (a). when the appeal lies to the Collector—thirty days ;
- (b). when the appeal lies to the Commissioner—sixty days ;
- (c). when the appeal lies to the Financial Commissioner—ninety days.

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

- (a). when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed and when a Revenue-Officer of a class below that of Collector proposes to review any order, whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue-Officer to whose control he is immediately subject ;
- (b). an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-Officer that he had sufficient cause for not making the application within that period ;
- (c). an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order ;

(d). an order against which an appeal has been pre-ferred shall not be reviewed. SEC. 19.

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

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

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

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

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

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

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

PROCEDURE.

17. (1). The Local Government may make rules consistent with this Act for regulating the procedure of Revenue-Officers under this Act in cases in which a procedure is not prescribed by this Act.
Power to make rules as to procedure.

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

SEC. 19.

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

18. (1). Appearance before a Revenue-Officer, and applications to and acts to be done before him, under this Act may be made or done—
Persons by whom appearances and applications may be made before and to Revenue-Officers.

- (a). by the parties themselves, or,
(b). by their recognized agents or a legal practitioner.

Provided that the employment of a recognized agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2). For the purposes of subsection (1), recognized agents shall be such persons as the Local Government may by notification declare in this behalf.

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

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

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

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

20. (1) A summons issued by a Revenue-Officer shall, if practicable, be served (a) personally on the person to whom it is addressed, or failing him on (b) his recognized agent or (c) an adult male member of his family usually residing with him.
Mode of service of summons.

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

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

(4). A summons may, if the Revenue-Officer so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the Indian Post Office Act, (XIV 1886).

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

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

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

20. No legal practitioner shall appear on behalf of any party interested in any proceeding before a revenue-officer under this Act.

Explanation—The term "Legal practitioner" includes a mukhtar.

SEC. 21.

NOTES.

The term "Legal practitioner" is defined in the notes under section 2, a Mukhtar did not come under this designation for the purposes of Tenancy and Land Revenue Acts. Here, he is as much an undesirable person as his brother advocate or pleader. The orthodox explanation for this strange provision is that the object of the Act is to confer discretionary powers upon revenue officers for the protection of zamindars which could be exercised cheaply and expeditiously by the exclusion of legal practitioners. This may be true as far as it goes but it presumes that all the Deputy Commissioners will, without any legal assistance, be able to work out the complicated provisions of the Act and apply them correctly to the facts of each case and that the members of the subordinate staff of each district, who will practically run the whole show, will do their work without charging something from the zamindars.

Though the legal practitioners are excluded, the recognised agents are allowed to appear before the Revenue officers and it is hoped that they will be able to state the facts, if not the law, of a particular case for their ignorant principals.

21. (1). A Civil Court shall not have jurisdiction in any matter which the Local Government or a Revenue-officer is empowered by this Act to dispose of.

(2). No Civil Court shall take cognisance of the manner in which the Local Government or any Revenue-officer exercises any power vested in it or in him by or under this Act.

NOTES.

This section is a reproduction of subsection (1) of section 158 of the Punjab Land Revenue Act and excludes the jurisdiction of the Civil Courts over proceedings under the Act and prevents them from interference with the mode of exercise of their powers by the Revenue-officers or the Local Government.

It seems to me that subsection (1) of the present section is surplusage. The various sections of the Act which define the powers state at the same time that the Deputy Commissioner shall exercise those powers and I doubt whether any lawyer who is acquainted with the ordinary rules of interpretation of Statutes, will seriously contend that if subsection (1) be expunged from the Statute

book, the Civil Courts will be able to usurp the functions of the Deputy Commissioner. The insertion of a provision, which is redundant, is certainly a defect of codification but we should not expect scientific drafting from the Indian Legislature.

Something might, however, be said in favour of subsection (2). It might be argued that a person dissatisfied with the mode of the exercise of their powers by the Revenue-officers or the Local Government will, in the absence of this provision, be in a position to file a suit for a declaration or a suit requiring the Revenue-officer or the Local Government to exercise their powers in a certain manner, though it is doubtful whether such a suit will lie in face of the non-applicability of Chapter VIII of the Specific Relief Act to the Punjab. In any case, such a suit is absolutely barred by subsection (2) of the present section.

22. In subsection (3) of section 77 of the Punjab Tenancy Act, 1887, the following words shall be added to clause (c) of the First Group of suits therein mentioned, namely :

“and suits relating to the rent to be paid under a mortgage made in accordance with form (c), as prescribed by section 6 of the Punjab Alienation of Land Act, 1900.”

NOTES.

It is already noticed that one of the mortgages allowed by section 6 is a kind of perpetual lease by which the mortgagor is regarded as tenant and the mortgagee as landlord. The rent to be paid by the tenant to the landlord is a matter of contract but should not exceed the maximum laid down in section 6 (1) (c). The relationship thus created resembles that existing between an ordinary landlord and a tenant under the Punjab Tenancy Act and it is, therefore, reasonable that all suits relating to rents to be paid in pursuance of the relationship should be exclusively cognizable by the Revenue Courts. Hence, it is provided that such suits should be included among the suits enumerated in section 77 of the Punjab Tenancy Act and decided by the Courts mentioned therein.

An interesting question arises at this stage. Can a legal practitioner appear in a suit mentioned in this section? I should say yes and that for two reasons. Firstly, section 20 which prohibits the legal practitioners from appear-

SEC. 23-24 ing applies only to proceedings before Revenue Officers and a suit for rent filed in a Revenue Court is not a proceeding before a Revenue Officer. Secondly, section 20 applies to a proceeding "under this Act," and these suits, though referred to in section 22 of this Act, have become a part and parcel of the Tenancy Act and could not, I venture to suggest, be said to come "under this Act."

If this be so, it is also clear that an Assistant Collector of the first grade, if empowered by the Local Government under section 77 (4) (b) of the Tenancy Act, can hear these suits, even though he has not been authorised under section 23 of this Act.

23. The power conferred by this Act upon a Deputy Commissioner may be exercised by a Revenue-Officer of higher rank, or by any officer authorised by the Local Government in this behalf.

NOTES.

The powers conferred by this Act upon a Deputy Commissioner may be exercised by a Commissioner or the Financial Commissioner. But they can not be exercised by a Revenue Officer of a lower rank than a Deputy Commissioner (*i-e* an Assistant Collector of the First Grade or the Second Grade) unless he is so authorised by the Local Government. No officer of lower rank than a Deputy Commissioner has yet been authorised by the Local Government in this behalf (*vide*, copy of a Memo No. 3711, dated 17th June 1901 from Financial Commissioner—p. 111 *infra*).

24. The Local Government, with previous sanction of the Governor General in Council may, by notification in the local official Gazette, exempt any district or part of a district or any person or class of persons from the operation of this Act or of any of the provisions thereof.

NOTES.

The object of this section is clear. In some cases, it might be found that the restrictions placed by the Land Alienation Act will arrest the growth of towns or work hardship or lead to other undesirable results. It is, therefore, enacted that the Local Government should have power to remedy these evils by notifying exemp-

tions from the operation of the entire Act or a part of it. **SEC. 25.**
 The only notification now existing on the subject is No. 84 — —
 dated the 14th May 1902 and exempts.—

(1) from the operation of the provisions of the Act, other than those of section 10, the district of Simla ; and

(2) from the operation of the provisions of the Act, other than those of section 1, section 2, clauses (1), (2), (3) and (6), sections 4, 10 and 16 ; section 17, subsection (1), section 18, subsection (2), section 21, subsection (2) and section 24, every area included within the limits of any cantonment or municipality in any part of the Punjab, other than the district of Simla.

25. (1) The Local Government may make rules for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Local Government may make rules prescribing the Revenue-officers to whom applications may be made, and the manner and form in which such applications shall be made and disposed of.

NOTES.

For rules made under this section, reference should be made to Appendix I. These rules may be classified under different heads in the following manner :—

- (i.) Rules as to the Revenue officers to whom applications may be made and the manner and form in which such applications shall be made and disposed of ; see No. 4. (pp. 99-100).
- (ii.) Rules for giving effect to the provisions of section 17 of this Act ; see No. 17 (pp. 117-119).
- (iii.) Rules for giving effect to the provisions of section 18 of the Act ; see No. 3 (pp. 97-99).
- (iv.) Rules as to the exercise by a Deputy Commissioner of the powers conferred on him by this Act in cases referred to him by a Civil Court ; see No. 5 (p. 100-101).

APPENDIX I.

TABLE OF CONTENTS.

Orders and Instructions issued under Act XIII of 1900.

1. Gazette of India Notification No. 1234, dated 8th June 1901.
2. Punjab Government Notification No. 63, dated 18th April 1904.
3. Punjab Government Notification No. 23 S., dated 22nd May 1901.
4. Punjab Government Notification No. 24 S., dated 22nd May 1901.
5. Punjab Government Notification No. 25 S., dated 22nd May 1901.
6. Chief Court Circular Memo. No. 9-2178 G., dated 30th May 1901.
7. Financial Commissioner's Circular No. 3441, dated 5th June 1901, without enclosures.
8. Financial Commissioner's Circular Memo. No. 3711, dated 17th June 1901.
9. Financial Commissioner's Circular No. 4, dated 20th June 1901.
10. Chief Court Correction Slip No. 2, dated 26th June 1901.
11. Financial Commissioner's Circular No. 6, dated 19th July 1901.
12. Financial Commissioner's Circular No. 8, dated 14th August 1901.
13. Financial Commissioner's No. 233 S., dated 17th August 1901.
14. *Punjab Gazette* Notification No. 98, dated 23rd August 1901.
15. *Punjab Gazette* Notification No. 99, dated 23rd August 1901.
16. Financial Commissioner's Circular Letter No. 6014, dated 9th October 1901.

17. *Punjab Gazette* Notification No. 44, dated 8th November 1901.

18. Inspector-General of Registration, Circular No. 9, dated 15th November 1901.

19. Government of India Notification No. 6167 S. R., dated 15th November 1901.

20. Chief Court Circular Memo. No. 3-1118 G., dated 13th March 1902.

21. *Punjab Gazette* Notification No. 84, dated 14th May 1902.

22. *Punjab Gazette* Notification No. 157, dated 1st October 1902.

23. Financial Commissioner's Circular Letter No. 96, dated 14th January 1903.

24. Financial Commissioner's Circular Letter No. 3482, dated 6th June 1903.

25. Financial Commissioner's Circular No. 3, dated 10th August 1903.

26. Financial Commissioner's Circular No. 4, dated 9th September 1903.

27. Director of Land Records' Circular Letter No. 7, dated 29th October 1903.

28. Director of Land Record's Circular No. 9 dated 20th November 1903.

29. Financial Commissioner's Circular Letter No. 563, dated 25th January 1904.

30. Financial Commissioner's Circular Letter No. 2858, dated 2nd May 1904.

31. Inspector-General of Registration, Circular No. 2, dated 19th May 1904.

32. Financial Commissioner's Memo No. 3994, dated 28th June, 1904.

33. Financial Commissioner's Circular Letter, No. 4036, dated 30th June, 1904.

34. Financial Commissioner's Circular No. 6, dated 20th July, 1904.

35. Financial Commissioner's Circular Letter No. 5407 dated, 5th September 1904.

36. Financial Commissioner's Circular Letter No. 5555, dated, 14th September 1904.

37. Inspector-General of Registration, Circular, No. 4, dated 5th October 1904.

38. Financial Commissioner's Circular Letter No. 6272, dated 19th October 1904.

39. *Punjab Gazette* Notification, No. 10, dated, 23rd January 1905.



[No. 1.]

GAZETTE OF INDIA NOTIFICATION.

No. 1243. dated SIMLA, the 8th June 1901.

In exercise of the powers conferred by section 1, subsection (3), of the Punjab Alienation of Land Act, 1900, (XIII of 1900), the Governor-General in Council is pleased to direct that the said Act should come into force from the 8th June 1901.

[No. 2.]

GAZETTE NOTIFICATION.

The 18th April 1904.

No. 63.—Notification.—In exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900 (XIII of 1900), and in supersession of Punjab Government Notifications Nos. 21 S., dated the 22nd May 1901, 114, dated the 16th July 1902, and 34, dated the 6th April 1903, the Lieutenant-Governor of the Punjab, with the previous sanction of the Governor-General in Council, is pleased to determine that for the purposes of the said Act :—

- (1) In each district of the Punjab mentioned in column 1 of the schedule annexed to this notification, all persons either holding land or ordinarily residing in such district and belonging to any one of the tribes mentioned opposite the name of such district, in column 2, shall be deemed to be an "agricultural tribe" within that district.
- (2) All the "agricultural tribes" within any one district shall be deemed to be a group of agricultural tribes.

SCHEDULE.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
HISSAR ...	Ahir.	DELHI ...	Ahir.
	Arain.		Arain.
	Bishnoi.		Biloch.
ROHTAK ...	Dogar.	Chauhan.	
	Gujar.	Gora.	
	Jat.	Gujar.	
	Mali.	Jat.	
	Moghal.	Mali.	
	Pathan.	Meo.	
	Rajput.	Moghal.	
	Syad.	Pathan.	
	Ahir.	Rajput.	
	Biloch.	Reah.	
Gujar.	Ror.		
Jat.	Taga.		
Mali.	Saini.		
Moghal.	Syad.		
Pathan.	Abbasi.		
Rajput.	Ahir.		
Ror.	Ansari.		
Syad.	Arain.		
GURGAON	Ahir.	KARNAL ...	Dogar.
	Biloch.		Gadi.
	Gujar.		Gujar.
	Jat.		Jat.
	Khanzada.		Kamboh.
	Koreshi.		Kcreshi.
	Mali.		Mali.
	Meo.		Meo.
	Moghal.		Moghal.
	Pathan.		Pathan.
	Rajput.		Rajput.
	Syad.		Ror.
	Syad.		
	Taga.		
	Usmani.		

SCHEDULE—continued.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
UMBALLA...	Ahir. Arain. Biloch. Gora. Gujar. Jat. Kamboh. Magh. Mali. Moghal. Pathan. Rajput. Ror. Saini. Syad. Taga.	LUDHIANA	Arain. Awan. Dogar. Gujar. Jat. Kamboh. Pathan. Rajput. Saini. Syad.
KANGRA...	Dagi. Gaddi. Girath. Gujar. Jat. Kanet. Koli. Rajput. Rathi. Thakur.	FEROZE-PORE.	Arain. Bodla. Dogar. Gujar. Kamboh. Mahtam. Mussalman Jat. Other Jat. Pathan. Rajput. Saini.

SCHEDULE—continued.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
HOSHIAR- PUR.	Arain. Awan. Bahti. Chhang. Dogar. Girath. Gujar. Jat. Kanet. Mahton. Moghal. Pathan. Rajput. Saini.	MOOLTAN...	Ahir. Arain. Awan. Biloch. Gujar. Jat. Kamboh. Kharral. Khokhar. Koreshi. Mahtam. Moghal. Od. Pathan. Rajput.
JULLUNDUR	Arain. Awan. Dogar. Gujar. Jat. Kamboh. Mahton. Pathan. Rajput. Saini. Syad.	JHANG ...	Syad, exclud- ing Bhatia. Biloch. Jat. Kokarsa. Koreshi. Nekokara. Rajput. Syad.
MONT- GOMERY.	Arain. Bhatti. Biloch. Jat. Kamboh. Kharral. Mahtam. Pathan. Rajput. Syad.	SHAHPUR...	Ahir. Arain. Awan. Biloch. Gujar. Jat. Kamboh. Khokkar. Koreshi. Maliar. Moghal. Pathan. Rajput. Syad.

SCHEDULE—continued.

1	2	1	2
DISTRICT,	Tribe.	DISTRICT.	Tribe.
LAHORE ...	Arain. Awan. Bodla. Dogra Jat. Kamboh. Kharral. Koreshi. Labana. Mahtam. Moghal. Pathan. Rajput. Syad.	JHELUM ...	Akra. Awan. Bhatti. Biloch. Chauhan. Chib. Ghakkar. Gujar. Jalap. Janjua. Jat. Jodh. Kahut. Kasar. Khandoya. Khokkar. Koreshi. Lilla. Mair and Manhas. Maliar. Moghal & Kok. Panwar. Pathan. Phaphra. Rajput. Sial. Sohlan. Syad.
AMRITSAR	Arain. Dogar. Gujar. Jat. Kamboh. Moghal. Pathan. Rajput. Syad.		Awan. Biloch. Danial. Dhund. Ghakkar. Gujar. Jat.
GURDASPUR	Arain. Dogar. Gujar. Jat. Moghal. Pathan. Rajput. Saini. Syad.		

SCHEDULE—continued.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
SIALKOT ...	Arain. Awan. Baghban. Dogar. Ghakkar. Gujar. Jat. Kamboh. Moghal. Pathan. Rajput. Saini. Syad.	RAWAL-PINDI.	Jodhra. Kethwal. Khattar. Koreshi. Maliar. Moghal. Pathan. Rajput. Satti. Syad.
GUJRAT ...	Arain. Awan. Biloch. Gujar. Jat. Koreshi. Moghal. Pathan. Rajput. Syad.	MIANWALI	Ahir. Arain. Awan. Baghban. Biloch. Gujar. Jat. Kharral. Khokkar. Koreshi. Pathan. Rajput. Syad.
		DERAGHAZI KHAN.	Arain. Biloch. Jat. Khetran. Koreshi. Machi. Moghal. Mujawar. Pathan. Rajput. Syad.

SCHEDULE—concluded.

1	2	1	2
DISTRICT.	Tribe.	DISTRICT.	Tribe.
GUJRAN- WALA.	Arain. Awan. Biloch. Ghakkar. Gujar. Jat. Kamboh. Moghal. Pathan. Rajput. Syad.	MUZAFFAR- GARH.	Biloch. Jat. Koreshi. Pathan. Rajput. Syad.

[No. 3.]

GAZETTE NOTIFICATION.

The 22nd May 1901.

No. 23 S.—Notification.—In exercise of the powers conferred on him by sections 19 and 25 of the Punjab Alienation of Land Act, 1900, and section 17 of the Punjab Land Revenue Act, 1887, the Lieutenant-Governor of the Punjab is pleased to make the following rules and to direct that they shall be read as an addendum to Chapter V of the Rules made under the last-named enactment relating to Mutation Lists, Parchas, Bachh Papers and Orders of Court:—

Addendum to Chapter V of the Rules under the Punjab Land Revenue Act.

I.—If any alienation of land is made otherwise than in accordance with the provisions of the Punjab Alienation of Land Act, 1900, or involves any condition contrary to those provisions, the patwari shall nevertheless enter the same, when it comes to his knowledge, in his register of mutations for the village where it occurred.

II.—An entry made under the preceding rule shall be dealt with like other entries in the register of mutations which are made under this chapter, except that the Revenue Officer to whom the register is submitted for orders under Rule 48 of this chapter shall, after hearing the parties and recording a note of their representations,—

- (1) in the case of any permanent alienation, transmit the mutation proceeding with his recommendation, as to whether sanction should be granted or refused, to the Deputy Commissioner for his orders under section 3 (2) and (3) of the Punjab Alienation of Land Act: or
- (2) in the case of any temporary alienation refuse to sanction mutation of names and refer the parties to the provisions of the Punjab Alienation of Land Act which they have contravened.

III.—The Deputy Commissioner on receipt of any mutation proceeding transmitted to him under Rule II (1) shall, after such further inquiry, if any, as he may consider necessary, grant or refuse the sanction required by subsection (2) of section 3 of the Punjab Alienation of Land Act. For the purposes of any further inquiry under this rule the Deputy Commissioner may refer the case to any Revenue Officer subordinate to him for investigation and report and may decide the case upon the report.

IV.—When the Deputy Commissioner has decided any case dealt with under Rule III, he shall record his order upon the mutation proceeding and direct the same to be returned to the Revenue Officer whose duty it is to dispose of mutation cases arising in the village where the land alienated is situated.

V.—If the Deputy Commissioner sanctions the alienation, the record of his sanction made upon the mutation proceeding shall be deemed to be sufficient evidence of the order of sanction for the purposes of section 18 of the Punjab Alienation of Land Act, and the Revenue Officer whose duty it is to dispose of the mutation case shall dispose of the same and shall not refuse mutation on the ground of any objection arising out of the said Act.

VI.—If the Deputy Commissioner refuses to sanction the alienation, the Revenue Officer disposing of the mutation case shall pass such order in the case as may be in accordance with the order of the Deputy Commissioner refusing sanction.

VII.—When a mutation proceeding has been transmitted to the Deputy Commissioner under Rule II (1) the transmission thereof shall be deemed to be an application to the Deputy Commissioner to exercise the powers conferred upon him by section 3 of the Punjab Alienation of Land Act. Such application need not be stamped nor is any separate application necessary for the exercise of those powers in the same case.

VIII.—Nothing in these rules shall be so construed as to disallow applications to the Deputy Commissioner for the exercise of any power conferred upon him by the Punjab Alienation of Land Act, 1900, which are made in any other manner authorized by law or by rules having the force of law.

[No. 4.]

GAZETTE NOTIFICATION.

The 22nd May 1901.

No. 24 S.—Notification.—In exercise of the powers conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant-Governor of the Punjab is pleased to prescribe the following rules as to the Revenue Officers to whom applications may be made for the exercise by a Deputy Commissioner of the powers conferred on him by the Punjab Alienation of Land Act, 1900, and as to the manner and form in which such applications shall be made and disposed of:—

RULES.

1. An application to a Deputy Commissioner for the exercise of any power conferred on him by the Punjab Alienation of Land Act shall be in writing and signed and verified by or on behalf of the person making it and shall be accompanied by an extract from the annual record or record of rights sufficiently describing the land which is the subject of the application. The application shall bear a stamp of the value of eight annas; and the extract from the revenue records shall also be duly stamped in accordance with section 6 and Schedule I, Number 9, of the Court Fees Act.

2. Such application may be received by the Deputy Commissioner or by any Assistant Collector of the 1st or 2nd grade.

3. If the Assistant Collector receiving such an application is dealing with mutation cases and the application is made to him in connection with any such case, he shall proceed as directed in the addendum to the rules in Chapter V under the Punjab Land Revenue Act, published in Notification No. 23 S., dated the 22nd May 1901, and shall forward the application to the Deputy Commissioner with the mutation proceeding therein mentioned.

4. If the application is made to an Assistant Collector but is not made in connection with a mutation case, the Assistant Collector shall, if generally or specially empowered in this behalf by an order in writing made by the Deputy Commissioner inquire into the case and transmit the application with a report of the results of his inquiry to the Deputy Commissioner for orders. The Assistant Collector, if not so empowered, shall transmit the application to the Deputy Commissioner for orders without remark.

5. The Deputy Commissioner, on receipt of an application made under these rules, may decide the case upon the application, or may himself make any inquiry which he considers necessary, or may refer the case to any Revenue Officer subordinate to him for investigation and report, and may decide the case upon the report or upon the results of his own inquiry as the case may be.

[No. 5.]

GAZETTE NOTIFICATION.

The 22nd May 1901.

No. 25 S.—Notification.—In exercise of the power conferred on him by section 25 of the Punjab Alienation of Land Act, 1900, the Lieutenant-Governor of the Punjab is pleased to make the following rule as to the exercise by a Deputy Commissioner of the powers conferred on him by that enactment in cases referred to him under the said Act by a Civil Court:—

RULE.

When a Civil Court makes a reference to a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, the Deputy Commissioner may exercise any power applicable to the case, which is conferred upon him by

that Act, either upon the reference or after any further inquiry, which he considers necessary, or after sending the reference to any Revenue Officer subordinate to him for investigation and report and upon consideration of the report so required.

[No. 6.]

Chief Court Circular Memo. No. 9—2178 G., dated Lahore, the 30th May 1901.

To all Civil Courts in the Punjab.

WHEN a suit to which the provisions of section 7 (3) of the Punjab Alienation of Land Act, XIII of 1900, apply, is brought before a Civil Court, the Court should on the application of either of the parties, refer to the Deputy Commissioner to determine the proportion of the mortgage debt that is equitable, and keep the case pending until such determination has been made.

[No. 7.]

Financial Commissioner's Circular Letter No. 3441, dated Lahore the 5th June 1901.

To all Commissioners and Deputy Commissioners in the Punjab.

THE Punjab Alienation of Land Act, No. XIII of 1900, has been brought into force with effect from the 1st instant; and it is very necessary that patwaris, kanungos, all revenue officers, and indeed the agricultural community at large, should possess an adequate acquaintance with the objects and effect of the Act. Accordingly this Circular of instructions for working the Act has been approved by Government and is issued, by the direction of the Financial Commissioner, for the information and guidance of all concerned. Notifications 23 S., 24 S., and 25 S., dated 22nd May 1901, hereto annexed,* have also been sanctioned by Government and is issued in *Punjab Government Gazette Extraordinary*, dated the 25th May 1901. They will be explained below so far as necessary.

2. In this Circular members of agricultural tribes within the meaning of the Act will be referred to briefly as zamindárs; and the rest of the agricultural community will be described as "banias and others" or as "banias and persons other than zamindárs."

*NOTE.—Printed as Nos. 3, 4 and 5 above.

3. An "agriculturist" within the meaning of the Act may be a zamíndár or a bania or any one else, provided that he holds agricultural land and was recorded in his own name or in the name of his ancestor in the male line at the first regular settlement (or in a few cases at some other settlement) as an owner of land or a hereditary or occupancy tenant in any estate. If the record has been corrected by a Civil Court or other competent authority effect will in this behalf be given to the revised entry. As a general rule, every zamíndár will also be an "agriculturalist"; but this will not deprive him of any privilege he has as a zamíndár. Banias and others will not be "agriculturists" unless they exactly fulfil the requirements of the definition in section 2 of the Act which should be closely studied with reference to the above remarks. Throughout this circular the expression "agriculturists" is used as defined in section 2 (1) of the Act.

4. As will be seen from section 3 (1) (b), the object of thus defining "agriculturist" is to dispense with the sanction of the Deputy Commissioner when banias and persons other than zamíndárs, who have held agricultural land since annexation or thereabouts, desire to permanently acquire such land in their own villages. It will be observed that from the date when the Act comes into force an agriculturist who is not a zamíndár will be unable without sanction to acquire land permanently from a zamíndár except in the village in which he (the purchaser) is an agriculturist. The working of the definition should be very carefully watched. You will note that it may be extended or restricted without fresh legislation; and when the Act has been in force for two years, or sooner if necessary, you should report whether any action seems needed in this respect.

5. The other definitions in section 2 also need careful study. No immoveable property is affected by the Act, except "land" as here defined. You will notice that the definition is a somewhat enlarged version of that contained in section 4 (1) of the Tenancy Act. The expression "permanent alienation" is so defined that the Act does not place any restriction on gifts for religious or charitable purposes. The working of this exemption is another point to watch, as it must not be allowed to become a cloak for evasions of the law.

6. You have already been informed in paragraph 6 of Punjab Government letter No. 117, dated the 12th November last, that the objects of the Act are "to restrict as much as possible the permanent alienation of their lands by peasant proprietors, to prevent the acquisition of these lands by non-agriculturists, and to do this without at the same time unduly limiting the credit on which the peasants depend for the means of cultivation." The agricultural tribes of your district or division have been enumerated and grouped by separate orders which have been notified in the *Gazette Extraordinary* referred to above under Notification No. 21 S., dated 22nd May 1901.*

7. The restrictions on permanent alienation are imposed on zamindars and on agriculturists as defined in the Act. Zamindars may without sanction permanently alienate their lands—

- (a) to other zamindars of the same tribe or *group of tribes*, and
- (b) to agriculturists (whether zamindars or not) who hold land in the village where the land alienated is situated.

But zamindars may not permanently alienate their lands to any one else without the sanction of the Deputy Commissioner.

8. Agriculturists who are also zamindars have the same power of permanent alienation as other zamindars. Agriculturists who are not zamindars may not permanently alienate land which they have acquired as agriculturists from zamindars after the Act comes into force except (1) to zamindars, or (2) to agriculturists in the village, or (3) with the sanction of the Deputy Commissioner, but they may freely alienate other land.

9. The annexed rules (Notification No. 23 S., dated 22nd May 1901), which have received the sanction of Government, will show how section 3 is to be worked. In the first instance the patwari, the field kanungo and the Naib Tahsildar or Tahsildar dealing with mutation cases will have to come to a conclusion as to whether any permanent alienation entered in the mutation register requires

*NOTE.—This Notification has been superseded by Notification No. 63, dated the 18th April 1904, printed as No. 2 above.

the sanction of the Deputy Commissioner or not. If it is found that sanction is required, the case will be reported to the Deputy Commissioner as provided in the rules.

10. The "mutation proceeding" referred to in Rules II (1), III, IV, V and VII of Notification 23, S., dated 22nd May 1901, is the same thing as the copy of the entry which, under Rule 49 of Chapter V of the rules under the Land Revenue Act, has to be filed with the *jamabandi*. The procedure is fully explained in paragraph 8 of the Circular of the Director of Land Records, No. 6 dated the 8th July 1891, and in his Circular No. 11, dated the 14th August 1897. The patwari retains the mutation register and his entries therein are copied on to a form or counterfoil, on which the patwari writes his report and the revenue officer passes his order. It is this form or counterfoil with the reports made on it, which is referred to in Notification No. 23 S., dated 22nd May 1901, as the mutation proceeding. Under the circumstances described in the notification the form or counterfoil has to be sent to the Deputy Commissioner for orders instead of being taken away by the revenue officer to be made over to the office kanungo.

11. In determining whether to grant or refuse sanction under section 3, the Deputy Commissioner should be guided by the following instructions in which the term "alienation" is used to denote permanent alienations only :—

- (i) Sanction should not be given unless the sanctioning officer is satisfied—
 - (a) that the transfer is really advantageous to the vendor and his family, and
 - (b) that no member of an agricultural tribe included in the same group as the vendor has offered or is ready to offer a fair price for the land.
- (ii) The distinction between self-acquired and hereditary property has to be borne in mind. If there is no reason to suppose that the alienee is a mere intermediary intending to re-transfer the land to a money-lender (in which case instruction (viii) would apply), then, other things being equal, there should be less reluctance to sanction the alienation of self-acquired than of hereditary land.

- (iii) If a zamindar depends entirely or mainly on his land; no alienation should ordinarily be allowed which will reduce the land he retains to less than is required for the support of himself and his family.
- (iv) If the Deputy Commissioner is satisfied that there is no intention of evading the Act, sanction may be given to the alienation of land for building purposes near towns or village sites.
- (v) Sanction may be given to the alienation of land—
 - (a) by wealthy zamindars owning much land, for commercial reasons or to improve or consolidate their properties ;
 - (b) by indebted zamindars owning mortgaged land and desiring to sell a part of their land in order to raise money to redeem the whole or part of the rest.
- (vi) Zamindars who, by reason of their insignificant numbers, have not been classed in the particular district as members of agricultural tribes, will ordinarily be able as agriculturists to acquire, under section 3 (i) (b), land situated in their own villages. Subject to these instructions, and particularly to (i), and when there is no reason to suppose that such zamindars are mere intermediaries attempting to evade the Act, sanction may be freely given to alienations of land situated elsewhere proposed or effected in their favour.
- (vii) The instructions in (vi) apply also in the case of persons holding land in districts of the North-Western Provinces adjoining Punjab districts who, if they had held land in the Punjab districts, would have been deemed to belong to agricultural tribes. To applications for sanction in favour of subjects of Native States adjoining Punjab districts somewhat different considerations apply ; and such applications should be dealt with on their merits.

(viii) No Deputy Commissioner, unless specially authorized in this behalf by the Local Government, may, on his own authority, sanction an alienation to a money-lender, whether the money-lender is a zamindar or a bania or any one else. It will generally be possible to ascertain from the income-tax papers whether any person is a money-lender or not. If it is clear that sanction might be given consistently with the objects of the Act, and that there would be hardship in refusing it, the Deputy Commissioner may transmit the file to the Commissioner and ask his permission to give sanction. The case will then be disposed of as the Commissioner may direct. If, however there is any doubt, the Deputy Commissioner should refuse sanction and leave the parties, if so minded to appeal.

12. Deputy Commissioners will see from section 5 of the Act, that in dealing with applications for sanction under section 3 they need not go into any question of title or any question relating to any reversionary right or right of pre-emption.

13. What is said in paragraphs 11 and 12 above applies equally (1) whether the permanent alienation has already been made or is merely proposed to be made; and (2) whether the case is reported to the Deputy Commissioner through the mutation procedure as provided in Notification No. 23 S., dated 22nd May 1901, or comes to his notice in any other way—as by an application made under Notification No. 24 S., dated 22nd May 1901.

14. When the permanent alienation is merely proposed to be made and is disallowed it is only necessary to communicate the order to the parties or to the revenue officer dealing with the mutation case. But if the permanent alienation has already been made and the Deputy Commissioner refuses sanction he must pass an order under section 14 of the Act, declaring that the transaction will take effect as a usufructuary mortgage in form (a) permitted by section 6, and fixing the term and the conditions which he considers reasonable.

15. As regards the conditions little latitude is allowed because those prescribed in section 6 (1) (a) and in section

7 would be applicable. Conditions may, however, be added in accordance with section 8.

16. Some further explanations seem necessary as to the effect and working of Notifications No. 23 S. and No. 24 S., dated 22nd May 1901.

17. Notification No. 23 S., dated 22nd May 1901, is operative only in regard to permanent or temporary alienations which contravene the Act. Mutations of names due to alienations which do not contravene the Act will continue to be dealt with in the usual way under Chapter V of the rules under the Punjab Land Revenue Act. A special procedure is laid down for the purpose of bringing to the notice of the Deputy Commissioner permanent alienations which require his sanction, because such sanction is necessary if the transaction as such is to be allowed or to hold good; and because if the transaction as such is disallowed, the alienation, nevertheless, is not entirely void, but takes effect under section 14 as a usufructuary mortgage. An order of the Deputy Commissioner under that section is therefore necessary before any fresh entry can be made in the annual record or record of rights.

18. The case of temporary alienations differs materially. Zamindars may make temporary alienations in any form to other zamindars who are members of their own tribe or of a tribe in the same group. Temporary alienations of land made by zamindars to banias or others do not require sanction, but may be made only in the forms prescribed by section 6 of the Act, or in accordance with section 11 or section 12. If such temporary alienations contravene the Act persons claiming under them will not be able to get them enforced by the Courts at any rate as regards those matters in respect of which the Act has not been complied with.

19. If the temporary alienation is a lease or farm or a further mortgage of which the conditions are in accordance with the Act, the special point for attention is the term of the lease, farm or mortgage. Unless the parties agree to some term permitted by law, mutation of names is to be refused.

20. If the temporary alienation is a mortgage which ought to have been made in accordance with sections 6, 7 and 8, and has actually been made otherwise, then mutation of names is to be refused, and the parties will have two

opportunities of applying to the Deputy Commissioner to revise and alter the terms of the mortgage so as to bring them into accordance with the Act. The parties can either do this directly mutation of names is refused, or they can do it later if their case comes into Court and the Court refuses to enforce the irregular mortgage. It has been suggested that these cases should be reported to the Deputy Commissioner through the mutation procedure like cases of permanent alienation in contravention of the Act, but it is thought that the amount of work which would so arise would be excessive, and that the parties or any other person interested may be left to make applications under Notification No. 24 S., dated 22nd May 1901. If, however, they choose to file a separate and duly stamped application in the course of the mutation case, the application may be forwarded to the Deputy Commissioner under rule 3 of that Notification and he can dispose of it under rule 5.

21. Notification No. 24 S., dated 22nd May 1901, has been so framed as to regulate all applications made in a separate form for the exercise of any of the powers conferred on Deputy Commissioners by the Act.

22. The report which is deemed to be an application under Notification No. 23 S., dated 22nd May 1901, does not require any stamp, the mutation fee being considered sufficient. But any one may apply on eight-anna stamp paper either before or after the transaction for the sanction of the Deputy Commissioner to a permanent alienation requiring the same under section 3. The procedure is in the alternative. If the case is taken up by the officials and reported, no separate application need be made. But a separate application may be made in any case if the parties or any of them so desire ; and it may be presented to an Assistant Collector, though only the Deputy Commissioner has power to decide the case.

23. Other applications which may be made to the Deputy Commissioner are the following :—

- (1). Under section 6 (1) (b) to place the mortgagee in possession :
- (2). Under section 6 (2) to fix the term and mortgage money of the usufructuary mortgage :
- (3). Under section 7 (3) to fix the proportion of the mortgage debt to be deemed equitable :

- (4). Under section 9 (1) to revise and alter the terms of the mortgage :
- (5). Under section 9 (2) to put the mortgagee to his election as therein prescribed :
- (6) Under section 13 to eject a mortgagee, lessee or farmer and place the person entitled in possession :
- (7). Under section 15 to sanction an alienation of or charge upon the produce of land for more than one year.

24. In all these cases the procedure will be regulated by Notification No. 24 S., dated 22nd May 1901. It will be observed that, in addition to applications from the parties, Deputy Commissioners will have references made to them by Civil Courts under section 9 (3) with a view to their exercising the powers conferred upon them by section 9 of the Act. Their procedure will then be regulated by Notification No. 25 S., dated 22nd May 1901, which is in substance the same as rule 5 of Notification No. 24 S., dated 22nd May 1901.

25. Some of the cases above enumerated, as those in which applications may be made to Deputy Commissioners, call for further remark.

Application No. (2).—Here an order of the Deputy Commissioner is necessary whether an application is made by any party or not. If the mortgagor is ejected, the revenue officer ordering the ejectment under section 45 of the Tenancy Act must report the case to the Deputy Commissioner, so that he may exercise the powers conferred upon him. If the mortgagor relinquishes or abandons his cultivating occupancy of the land, the necessary report to the Deputy Commissioner should be made by the patwari, the field kanungo and the Tahsildar. The usufructuary mortgage resulting from the proceedings should be entered in the annual record or record of rights.

Application No. (3).—If the mortgagor brings a suit for redemption, the case may be referred to the Deputy Commissioner by the Civil Court for determination of the proportion of the mortgage debt which is to be regarded as due. The procedure of the Deputy Commissioner will then be regulated by Notification No. 25 S., dated 22nd May 1901.

Application No. (6).—Care must be taken to see that the commencement of possession under section 6, section 11 or section 12 is duly entered in the *jamabandi*. The term for which the person in possession is entitled to hold may not expire for many years. If that person wrongfully remains in possession after expiry of the term, the case must be reported by the patwari, field kanungo and Tahsildar to the Deputy Commissioner for orders.

Application No. (7).—The object of section 15 of the Act is to prevent the evasion of its provisions by the substantial mortgage of the land under colour of the alienation of, or of a charge upon its produce. It is not intended to prevent zamindars from borrowing on the security of the crops of the two next following harvests, nor to interfere with *bonâ fide* contracts for the disposal of produce to large firms engaged, for example, in the wheat export trade. When a case under this section comes before a Deputy Commissioner the main point for his consideration is whether the transaction for which his sanction is sought will amount to an evasion of the Act. If not, restraint of trade being obviously objectionable, sanction should be freely given. When, however, the contract is made for more than one year by a zamindar in favour of a money-lender, it is most probable that an evasion of the Act is intended.

26. A few provisions of the Act remain to be noticed.

27. Section 6 (1) (d) empowers the Local Government to permit other forms of mortgage besides those specified in the Act to be used by zamindars in mortgaging their land to banias and others; and section 8 (1) (c) gives the Local Government a similar power as regards conditions of mortgage. Wide as this authority is, it is not intended to relax the safeguards of the Act in the case of mortgages to banias or money-lenders. The object is to permit forms of mortgage, such as the *niawa* of the Dera Ismail Khan District,* which are really quite innocuous and conditions which may be useful and do not give any bania or money-lender any undue advantage over a zamindar. Proposals under these

* The *niawa* mortgage is explained in paragraph 707 of Mr. H. St. G. Tucker's Dera Ismail Khan Settlement Report and on pages 220-224 of Vol. III of Punjab Customary Law. The *niawadar* is a middleman who obtains from the proprietors the right to manage their land on advancing a sum of money known as *niawa* and he cannot be ousted until this advance has been paid back. The proprietors receive such rent as is agreed upon with the *niawadar*, who in turn gets this out of his tenants with something extra as his own share.

provisions of the Act may be made whenever they are necessary.

28. Section 16 forbids the sale in execution of decree of land belonging to zamindars. Further instructions will be issued with reference to this section after communication with the Chief Court.

29. A Circular will be issued by the Inspector-General of Registration on the subject of section 17.

30. Revenue Officers will observe that, except as specially directed by this circular and by the Notifications Nos. 23 S., 24 S., and 25 S., dated 22nd May 1901, their proceedings under the Alienation of Land Act are to be regulated by Chapter II of the Punjab Land Revenue Act. This provides for appeal, review and revision.

[No. 8.]

Copy of a Memo. No. 3711, dated 17th June 1901, from M. S. D. BUTLER, Esquire, Junior Secretary to Financial Commissioner, Punjab, to all Commissioners except Peshawar, all Deputy Commissioners except Simla, Hazara, Peshawar and Kohat.

In this office Circular Letter No. 3441, dated 5th June 1901, general instructions were issued for the working of the Punjab Alienation of Land Act, 1900. I am now directed to inform you that, with reference to section 23 of the Act, it is not the present intention of Government to invest any officer of lower rank than a Deputy Commissioner, with the powers of a Deputy Commissioner under the Act. Commissioners, it will be observed, already have the powers under the section as it stands; Deputy Commissioners, until the routine part of the business is thoroughly understood by their subordinates, should themselves do all the work which, by the terms of the Act, has to be done by a Deputy Commissioner. If, however, any Deputy Commissioner finds that the amount of extra work falling on him is such that he needs relief, he may apply for relief in such a way as may be most expedient in the circumstances of his district. Either some Assistant Commissioner or Extra Assistant Commissioner might then be invested under section 23 with the powers of a Deputy Commissioner under the Act or the Deputy Commissioner might be relieved of some of his section 30, Criminal Procedure Code cases, or other magisterial work.

2. I am to add that these instructions have been issued with the approval of the Local Government.

[No, 9.]

Financial Commissioner's Circular No. 4, dated Lahore, 20th June 1901.

To all Commissioners and Deputy Commissioners in the Punjab.

In continuation of the orders contained in this office Circular Memo. No. 3 of 1891, relating to the treatment of applications for the sale of land in execution of decrees, and with reference to the remarks contained in paragraph 28 of this office Circular Letter No. 3441, dated 5th June 1901, the Financial Commissioner invites the special attention of Commissioners and Deputy Commissioners to the provisions of section 16 (1) of the Punjab Alienation of Land Act, 1900.

2. Now that the Act has been brought into force by a Notification under section 1 (3), land, which is defined in section 2 (3) of the Act and includes land applied to agriculture or pastoral purposes, is no longer saleable in execution of any decree or order of any Civil or Revenue Court when it belongs to a member of any agricultural tribe as notified in *Punjab Government Gazette* Notification No. 21 S., dated 22nd May 1901.* Accordingly no proposal for the sale in execution of decree of land belonging to a member of an agricultural tribe can now be made except by mistake, and, if any such proposal should reach a Commissioner, his proper course will be to reject it as not being in accordance with law.

3. Section 6 (1) of the Act, however, does not prohibit the attachment in execution of decree of the land of members of agricultural tribes, and such land may therefore still be dealt with in accordance with section 326 of the Code of Civil Procedure, and in intervening or refusing to intervene the Deputy Commissioner will be guided by the same considerations as heretofore.

4. Land which does not belong to a member of an agricultural tribe remains unaffected by the provisions of the Act, and the directions of Financial Commissioner's Circular

* Replaced by Notification No. 63, dated the 18th April 1904; No. 2 above.

Memo. No. 3 of 1891 will continue to be applicable to its treatment.

[No. 10.]

Chief Court Correction Slip No. 2, Volume I, Rules and Orders, 2nd Edition, dated Lahore, the 26th June 1901.

Add the following to the note under "Part G" of No. V, at page 25 :—

NOTE—Under the provisions of the Punjab Alienation of Land Act, XIII of 1900, land, as defined in section 2 (3) of that Act, which belongs to a member of an agricultural tribe, cannot now be sold in execution of any decree of a Civil Court, and a proposal to sell such land can now only be made by mistake. If a proposal is made, the Commissioner must reject it as not being in accordance with law.

(ii). The Act does not prohibit the *attachment* of land belonging to members of an agricultural tribe, and action under section 326, Civil Procedure Code, may be taken in regard to such land.

It must be understood that this note does not apply to land belonging to persons who are not members of an agricultural tribe.

[No. 11.]

Financial Commissioner's Circular No. 6, dated Lahore, 19th July 1901.
To all Commissioners and Deputy Commissioners in the Punjab.

Commissioners and Deputy Commissioners will have observed that by Notification No. 20 S., dated 22nd May 1901, in a *Government Gazette, Extraordinary, Punjab and its Dependencies*, the Punjab Alienation of Land Act, 1900 (XIII of 1900), was declared to come into force from June 1st, 1901. It was subsequently noticed that to bring the Act into force a Notification in the *Gazette of India* was necessary, and Punjab Notification No. 20-S., dated 22nd May 1901, was accordingly withdrawn and the Act was brought into force with effect from June 8th, 1901, by Notification No. 1243, dated 8th June 1901, in a *Gazette of India, Extraordinary*.

2. The effect of Punjab Government Notification Nos. 21 S.—25 S., inclusive, dated 22nd May 1901, which were published along with Notification No. 20 S., referred to above, remains, however, unimpaired by this change of date. Under the provisions of section 22 of Act X of 1897 (The General Clauses Act) these Notifications could be made and published in anticipation of the commencement of the Act at any time after the passing of the Act and they have

accordingly taken effect from June 8th, 1901, the date of the commencement of the Act as explained above.

[No. 12.]

Financial Commissioner's Circular No. 8, dated 14th August 1901.

To all Commissioners, except Peshawar, and all Deputy Commissioners, except Simla, Hazara, Peshawar and Kohat.

The Financial Commissioner has been asked for a ruling as to how Deputy Commissioners should deal with mutation proceedings referred to them under Rule II of the Rules published under Punjab Government Notification No. 23 S. of the 22nd May, and relating to, transfers made before the commencement of the Punjab Alienation of Land Act, 1900.

Instructions how to deal with mutation proceedings relating to transfers made before the commencement of the Punjab Alienation of Land Act, 1900.

2. The following instructions are issued with the approval of the Local Government.

3. It is only in the case of permanent alienations that a reference is required by Act XIII of 1900 and the rules thereunder to be made to the Deputy Commissioner. Except as regards conditions intended to operate by way of conditional sale (section 9 (2) and (3)), and sale, in execution of decree, of land belonging to members of agricultural tribes, (section 16 (1)), the Act is not retrospective in its effect. If the permanent alienation has been completed before June 8th, 1901, there is therefore no need arising out of Act XIII of 1900 to refer the case to the Deputy Commissioner at all; and the whole Revenue staff should be instructed accordingly. If, however, a reference is made, the Deputy Commissioner should deal with it on the principle that no objection is to be raised to the mutation on any ground arising out of Act XIII of 1900, inasmuch as that Act does not apply to the case.

4. As to temporary alienations, the like principle applies. Here no reference would in any case, as a consequence of existing instructions, be made by an official as such to the Deputy Commissioner, but revenue officers should be instructed that they are not to refuse sanction to mutation under Rule II (2) of the Notification above quoted if the temporary alienation has been completed before the same date.

5. As to determining when an alienation has been completed, the Financial Commissioner does not think it is wise by any general order to import into these cases the issue whether possession has been had or not. He would hold the transaction to be complete if both parties by some formal act, such as the execution of a deed, or a concurrent application for mutation, had signified that they had completed it. In cases where deeds of sale had been executed before June 8th, 1901, the Financial Commissioner would certainly hold that, for present purposes, the transactions were complete. It might of course happen in disputed cases, where it was contended by one party that the transaction was not complete, that the question of possession would be material to the decision of that issue. Ordinarily it should be avoided.

6. It should also be noted in this connection that in the case of documents compulsorily registerable under section 17 of Act III of 1877, the transactions to which they relate cannot be deemed to be complete unless and until such documents are duly registered. If, however, such a document is subsequently registered, it will operate from the *date of its execution*, and not from the date of its registration (section 47 of Act III of 1877), and, consequently, if executed before the 8th June 1901, will not be affected by the provisions of Act XIII of 1900.

[No. 13.]

Copy of a letter No. 233 S., dated 17th August 1901, from M. S. Dr. BUTLER, Esquire, Junior Secretary to Financial Commissioner Punjab, to the Settlement Commissioner, Punjab.

In reply to your letter No. 1932, dated 7th August 1901, I am directed to say that the Financial Commissioner agrees with you that Settlement Officers have no concern with the administration of the Punjab Alienation of Land Act.

[No. 14.]

The 23rd August 1901.

No. 98.—*Notification.*—In exercise of the powers conferred on him by section 2 (1) of Act XIII of 1900 (The Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab is pleased, by this order in writing,

to determine that in the Muzaffargarh District the expression "agriculturist" means a person holding agricultural land who, either in his own name or in the name of his ancestor in the male line, was recorded as the owner of land, or as a hereditary tenant or as an occupancy tenant in any estate at the Summary Settlement of 1866.

Provided that, if since the making of such settlement, a Civil Court or other competent authority has, before the commencement of this Act, decided that any person was wrongly included in or omitted from the record thereof, or that any right recorded in the record is erroneously stated, this definition shall be construed with due regard to such decision.

[No. 15.]

The 23rd August 1901.

No. 99.—Notification.—In exercise of the powers conferred on him by section 2 (1) of Act XIII of 1900 (The Punjab Alienation of Land Act), the Lieutenant Governor of the Punjab is pleased, by this order in writing, to determine that in the Bhakkar and Leiah Tahsils of the Dera Ismail Khan District the expression "agriculturist" means a person holding agricultural land, who, either in his own name or in the name of his ancestor in the male line, was recorded as the owner of land, or as a hereditary tenant or as an occupancy tenant in any estate at the Summary Settlement of 1862.

Provided that, if since the making of such settlement a Civil Court or other competent authority has before the commencement of this Act, decided that any person was wrongly included in or omitted from the record thereof, or that any right recorded in the record is erroneously stated, this definition shall be construed with due regard to such decision.

[No. 16.]

Financial Commissioner's Circular Letter No. 6014, dated 19th October 1901.

To all Commissioners except Peshawar, all Deputy Commissioners except Simla, Peshawar, Hazara and Kohat.

THE opinion of the Financial Commissioner has been requested as to whether, if under section 9 (2) of Act

XIII of 1900 (Punjab Alienation of Land Act), the mortgagee accepts a mortgage in a new form a new mortgage-deed is to be drawn up, or whether it is enough to record on the file the alterations made in the existing deed, and further, whether, if a new mortgage-deed is to be drawn up, the mortgagor or the mortgagee is to bear the cost. The following instructions are issued with the approval of the Local Government.

2. If the condition intended to operate by way of conditional sale is to the effect that, in default of payment of the mortgage money or interest at a certain time, the land will be absolutely transferred to the mortgagee, and if the mortgagee agrees to the said condition being struck out, no new mortgage-deed need be drawn up, and it will be sufficient for the Deputy Commissioner to strike out such condition and attest the alteration so made.

3. If, however, the mortgagee elects "to accept in lieu of the said mortgage" a mortgage which may at his option be either in Form (a) or Form (b) as permitted by section 6 of the Act, a new deed of mortgage will have to be executed, as in such a case there is no mere alteration of a subsisting mortgage, but the substitution of one mortgage of one kind for another mortgage of a different kind. In this case stamp duty will have to be paid on the new instrument, and in accordance with section 29 of the Stamp Act this would, in the absence of any contract to the contrary between the mortgagor and mortgagee, fall upon the mortgagor. So, too, under the ordinary rule of law, the mortgagor will have to meet other expenses incidental to the new mortgage.

4. I am to add that the Government of India will be moved under section 9 (a) of the Stamp Act to remit this stamp duty, but the law now applicable is as stated above.

[No. 17.]

The 8th November, 1901.

No 44.—Notification.—In exercise of the powers conferred on him by section 25 of Act XIII of 1900 (Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab is pleased to make the following rules

for giving effect to the provisions of section 17 of the said Act :—

1. (a) When an instrument, which records or gives effect to a permanent alienation of land, requiring, under section 3 of the Act, the sanction of the Deputy Commissioner, is presented to a registering officer unaccompanied by a certified copy of an order giving such sanction ; or

(b) when an instrument of agreement purporting to charge or alienate the produce of land, which, under section 15 of the Act, requires the sanction of the Deputy Commissioner, is presented unaccompanied by a certified copy of an order giving such sanction ; or

(c) when an instrument of mortgage, which is required to be made in one of the forms prescribed in section 6 of the Act, is presented not made in any such prescribed form, the registering officer in refusing to admit the instrument to registration shall proceed in the following manner :—

He shall (d) record no endorsement upon the document itself, nor shall he make any entry of reasons for refusal to register in Register Book II ;

but (e) he shall enter his reasons for not admitting the instrument to registration in a separate book (to be prescribed and provided by the Inspector-General of Registration) and shall give to the presenter of the instrument a copy of such entry, and shall at the same time return the instrument unendorsed to the presenter.

2. An instrument of the kinds mentioned in the foregoing rule, which has been returned thereunder, may be presented again for registration, and may then be admitted to registration if accompanied by the certified copy of the order which was required, or if amended by the parties themselves, or by the Deputy Commissioner acting under section 9 of the Act, so as to make it conform to the prescribed form.

3. (a) In registering an instrument of the kinds mentioned in clauses (a) and (b) of Rule 1, the registering officer shall regard the accompanying order of the Deputy Commissioner giving the necessary sanction as a part of the instrument, and shall cause a copy of such

order to be entered along with the copy of the instrument in the appropriate Register Book ; and

(b) In registering an instrument of the kind mentioned in clause (c) of Rule 1, when the same has been revised or altered by the Deputy Commissioner acting under section 9 of the Act, the registering officer shall regard such order of revision or alteration as a part of the instrument, and shall cause a copy of such order to be entered along with the copy of the instrument in the appropriate Register Book.

4. An appeal may be lodged to the Registrar against any return of an instrument made by a Sub-Registrar under clause (e) of Rule I, and if the Registrar directs that the instrument shall be registered in the form in which it was originally presented, the Sub-Registrar shall register it accordingly. If the Registrar directs that the instrument shall be registered only after specified amendment or addition, then the provisions of Rule 2 as to admission to registration shall apply.

[No. 18.]

Circular No. 9, from Inspector-General of Registration, Punjab, to all Registrars in the Punjab, dated 15th November 1901.

1. The attention of registering officers is drawn to the rules made by the Local Government under the Punjab Alienation of Land Act, 1900, and published under *Punjab Government Gazette Notification No. 44*, dated the 8th November 1901, concerning the duties of registering officers in refusing or admitting registration of instruments alienating rights in land.

2. These rules were required because section 17 of the Punjab Alienation of Land Act, 1900, enjoins that when an instrument is presented for registrations which—

(1) contravenes any provision of the Act, or

(2) records or gives effect to any transaction which requires the sanction of the Deputy Commissioner under the Act, and the instrument is not accompanied by a certified copy of the order giving such sanction, the instrument shall not be registered.

3. To apply the rules properly, registering officers must acquaint themselves with the meaning of the terms "agriculturist" and "agricultural tribe" as used in the Act.

The definition of the word "agriculturist" is given in section 2 of the Act, and it means, generally speaking, a person holding agricultural land who, either in his own name or in the name of his ancestor in the male line, was recorded as the owner of land, or as a hereditary tenant or as an occupancy tenant in any estate at the first regular settlement, or, if the first regular settlement was made in or since the year 1870, then at the first regular settlement, or at such previous settlement, as the Local Government may, by order in writing, determine.

As to the meaning of the term "agricultural tribe," Punjab Government Notification No. 21 S., dated 22nd May 1901,* has decided what persons are members of agricultural tribes in each district. In each district all the tribes named in the Notification opposite the name of that district form, to all intents and purposes, one society between the members of which alienations are not restricted by the Act.

Nor are alienations by persons who are not members of agricultural tribes restricted by the Act (except in one instance mentioned below).

4. Therefore, when a deed of permanent alienation of land is presented to a registering officer, his first business is to consider who the alienor is.

If the alienor is not a member of an agricultural tribe, the deed may be registered without attention to the question of who the alienee is, except in one case, and that is when the alienor is an agriculturist who has acquired the land in question from a member of an agricultural tribe of his village. In such case the alienee must be a member of an agricultural tribe, or an agriculturist of the village in which the land is situate. If the alienee is not such a person, the instrument should not be admitted to registration, action being taken under Rule 1.

5. When an instrument of permanent alienation of land is presented, if the alienor is a member of an

* Replaced by Notification No. 63, dated the 18th April 1904.

agricultural tribe, then the registering officer should ascertain who the alienee is.

If the alienee is (1) an agriculturist in the village in which the land in question is situate, or (2) a member of one of the agricultural tribes in the same district as the alienor, or of the same agricultural tribe in another district, the instrument may be registered without question.

If the alienee is not such a person, the Deputy Commissioner's sanction to the transfer is required, and, if no copy of such order is produced, the document should be returned unendorsed under Rule 1, with instructions that a copy of the Deputy Commissioner's order of sanction is required, and that the instrument can only be admitted to registration when this defect has been supplied, and it has been presented again under Rule 2.

6. When a mortgage-deed is presented it is necessary to ascertain who the alienor is. If he is not a member of an agricultural tribe, the deed can be registered without question, even although it contains a condition intended to operate by way of conditional sale, for, although such condition would be void under section 10 of the Act, the deed in other respects would not be necessarily invalid.

If the alienor is a member of an agricultural tribe, then, if the alienee is also a member of one of the agricultural tribes in the same district as the alienor, or of the same agricultural tribe in another district, the deed may be registered without question.

But if the alienor is a member and the alienee is not a member of an agricultural tribe, then the deed should be returned under Rule 1, unless it is drawn up in one or other of the following forms :—

- (a) in the form of a usufructuary mortgage by which the mortgagor delivers possession of the land to the mortgagee, and authorises him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on or if the term agreed on exceeds twenty years) after the expiry of twenty years, the land shall be re-delivered to the mortgagor ; or
- (b) in the form of a mortgage without possession, subject to the condition that if the mortgagor fails

to pay principal and interest according to his contract, the mortgagee may apply to the Deputy Commissioner to place him in possession for such term, not exceeding twenty years, as the Deputy Commissioner may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession, and for such sum as may be due to the mortgagee on account of the balance of principal due, and of interest due not exceeding the amount claimable as simple interest at such rate, and for such period as the Deputy Commissioner thinks reasonable ; or

- (c) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant, subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land revenue in addition to the amount of the land revenue of the tenancy, and the rates and cesses chargeable thereon, and for such term as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy, and the mortgagee having no right to eject the mortgagor unless on the grounds mentioned in section 39 of the Punjab Tenancy Act, 1887.

When a mortgage-deed is returned owing to its not being drawn up in one or other of the above forms, it may be accepted for registration if presented again in amended form under Rule 2.

7. When an instrument purporting to alienate or charge produce of land is presented, it is necessary to ascertain who the alienor is. If he is a member of an agricultural tribe, then, if the deed purports to alienate or charge the produce for more than one year, the Deputy Commissioner's sanction to the alienation is required, and if no copy of such order of sanction is produced, the deed should be returned under Rule 1 with instructions that a copy of the Deputy Commissioner's order of sanction is required before it can be admitted to registration under Rule 2.

8. An instrument of lease or farm made by a member of an agricultural tribe should not be refused admission to

registration merely because the term of years prescribed in section 11 of the Act is exceeded in the conditions of the instrument as the instrument in other respects would not be necessarily invalid.

9. If, when an instrument is returned for amendment under Rule 1 it is entirely re-written and re-executed so as to form a fresh document which conforms to the form prescribed by the Act, such fresh document may of course be admitted to registration under Rule 2 just as if it were the original document amended.

10. (a) Delay in registering a document occasioned by the necessity of obtaining any order of a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, should, in the absence of any reason to the contrary, be held by the registering officer to be a delay due to urgent necessity within the meaning, and for the purposes of sections 24 and 34 of Act III of 1877, and in such cases Sub-Registrars should take the orders of Registrars accordingly.

(b) If any delay occasioned by the necessity of obtaining an order of a Deputy Commissioner under the Punjab Alienation of Land Act, 1900, is not due to any default, on the part of the person desiring registration, the Registrar, in directing the registration of the document, should, whether he is acting under section 24 or section 34 of Act III of 1877, require payment of only a nominal fine. It is obvious that the fine or additional fine should be as nominal as possible, and an order for the payment of an amount of even only one anna in excess of the proper registration fee would satisfy the rule as to fines or additional fines, made under section 69 of Act III of 1877 to meet cases of this kind.

11. (a) It is necessary to add that "permanent alienations" mean sales, exchanges, gifts and wills, but not gifts for religious or charitable purposes, whether made by a gift or by will.

(b) Also that "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes—

(a) the sites of buildings and other structures on such land ;

- (b) a share in the profits of an estate or holding ;
- (c) any dues or any fixed percentage of the land-revenue payable by an inferior land-owner to a superior land-owner ;
- (d) a right to receive rent ; and
- (e) any right to water enjoyed by the owner or occupier of land as such.

[No. 19.]

GOVERNMENT OF INDIA GAZETTE NOTIFICATION.

The 6th December 1901.

No. 6167 S. R.—Notification.—In exercise of the power conferred by Section 9, clause (a), of the Indian Stamp Act, 1899 (II of 1899), the Governor-General in Council is pleased, where a fresh mortgage-deed is executed in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of Section 9, sub-section (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900), to remit so much of the duty with which such fresh mortgage-deed is chargeable as is not in excess of the duty already paid in respect of such previous mortgage-deed.

[No. 20.]

Chief Court Circular Memo, No. 3—1118 G., dated Lahore, the 13th March 1902.

To all Civil Courts in the Punjab.

Some difficulty having been felt in the interpretation and working of section 9, sub-section 3, of Act XIII of 1900 (Punjab Alienation of Land Act), the Hon'ble Judges are pleased to issue the following instructions :—

SUBJECT.
 Interpretation and working of Section 9, sub-section 3, of Act XIII of 1900.

2. The difficulty of interpretation is in connection with the words " Proceedings for the enforcement of a condition intended to operate by way of conditional sale."

The question has been raised whether they mean proceedings taken under section 8 of Regulation XVII of 1806 *only*, or whether they include proceedings in suits, appeals or execution of decree as well.

This Court has now held that the words above quoted mean proceedings under section 8 of Regulation XVII 1806 *only*, *vide* this Court's ruling in Punjab Record No. 26 of 1902 (Civil).

3. The difficulty in the working of the sub-section relates to the stage at which a reference should be made by the Civil Courts to the Deputy Commissioner. The question is whether the Civil Court should not postpone reference until it has recorded a finding as to the validity of the mortgage or on any dispute concerning limitation. The section itself is silent on the subject, but the Act must be construed reasonably, and it is obvious that, unless the mortgage is a subsisting one and is not time-barred, to refer any matters connected with it to the Deputy Commissioner is to waste time.

The Hon'ble Judges accordingly direct that Civil Courts shall not make references to the Deputy Commissioner under section 9, sub-section 3, until they have disposed of any objections brought by the mortgagor against the validity of the mortgage, or of any plea raised by him on the point of limitation.

[No. 21.]

GAZETTE NOTIFICATION.

The 14th May 1902.

No. 84.—Notification.—In exercise of the power conferred by section 24 of the Punjab Alienation of Land Act, 1900 (XIII of 1900), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of the Punjab is pleased, in supersession of so much of the Notification of the Government of the Punjab in the Department of Revenue and Agriculture, No. 111, dated the 17th October 1901, as affects the territories administered by him, to exempt—

- (1) from the operation of the provisions of the said Act, other than those of section 10, the district of Simla ; and
- (2) from the operation of the provisions of the said Act, other than those of section 1, section 2, clauses (1), (2), (3) and (6), sections 4, 10 and 16, section 17, sub-section (1), section 18, sub-section (2), section 21, sub-section (2), and

section 24, every area included within the limits of any cantonment or municipality in any part of the Punjab, other than the district of Simla.

[No. 22.]

The 1st October 1902.

No. 156—Notification.—In exercise of the powers conferred on him by section 2 (1) of Act XIII of 1900 (The Punjab Alienation of Land Act), the Lieutenant-Governor of the Punjab is pleased, by this order in writing, to determine that in the Isa Khel and Miánwáli Tahsils of the Miánwáli District the expression “agriculturist” means a person holding agricultural land, who, either in his own name or in the name of his ancestor in the male line, was recorded as the owner of land, or as a hereditary tenant or as an occupancy tenant in any estate at the Summary Settlement of 1854.

Provided that, if since the making of such settlement, a Civil Court or other competent authority has, before the commencement of this Act, decided that any person was wrongly included in or omitted from the record thereof, or that any right recorded in the record is erroneously stated, this definition shall be construed with due regard to such decision.

[No. 23.]

Financial Commissioner's Circular Letter No. 96, dated Lahore, 14th January 1903.

To all Revenue Officers in the Punjab.

I am directed to convey the following instructions, which are issued with the concurrence of Government, as to the applicability of the Punjab Alienation of Land Act (XIII of 1900) to cases of the creation or transfer of occupancy rights.

2. The instructions now issued should be acted on until they have been modified by an authoritative decision of the Courts or by Government.

3. If a proprietor creates in favour of any person a right of occupancy in his (the proprietor's) proprietary land, the transaction is for the purposes of the Alienation of Land Act to be considered to be a lease for more than

twenty years, and, therefore, in the circumstances set forth in section II of the Act, is to be deemed to be a lease for a term not exceeding twenty years.

4. It was not the intention of the Legislature, in drawing up Act XIII of 1900, to impose upon occupancy tenants any fresh restrictions in regard to the alienation of their holdings. It was held that their powers of alienation were already sufficiently restricted by Chapter V of the Punjab Tenancy Act (XVI of 1877), and consequently, although it was declared that "land" includes "a right to receive rent," the correlative of that right in certain cases, *viz.*, a right of occupancy, was omitted. Accordingly, if a tenant having a right of occupancy transfers or attempts to transfer that right by sale, gift or mortgage, his case should be dealt with under Chapter V of the Tenancy Act and Act XIII of 1900 should not be applied.

Note.—Para 4 of the Circular has been cancelled by Circular Letter No. 5555 dated 14th September 1904 (*vide* No. 36, *infra*).

[No. 24.]

Financial Commissioner's Circular Letter No. 3482, dated Lahore 6th June 1903.

To all Commissioners and Deputy Commissioners in the Punjab.

In this office Circular Letter No. 6014, dated the 9th October 1901, the question was discussed as to the circumstances under which, in pursuance of the provisions of section 9 (2) of the Punjab Alienation of Land Act, a fresh mortgage-deed should be drawn up. Certain other aspects of the case were also discussed in paragraph 10 (1) and (2) of the annual report on the working of the Act for 1900-01.

2. By Government of India Notification No. 6167 S. R., dated the 6th December 1901, so much of the stamp duty on a new mortgage-deed drawn up as referred to above as is not in excess of the duty already paid in respect of the previous mortgage was remitted.

3. It was hoped that this concession would obviate any objection on the part of a mortgagor to executing a revised mortgage, but apparently in a good many

cases it has not been sufficient to secure this end. The question, therefore, has come up for decision as to what the legal position is as regards the rights of a mortgagor and mortgagee when the former refuses to execute the fresh mortgage ; and the following instructions are issued for information and guidance with the approval of Government.

4. Where a mortgage made before the commencement of the Act, and still current, is brought to the notice of the Deputy Commissioner, and the mortgagee does not agree to the striking out of the conditional sale clause, but elects (as he is at liberty to do) to accept an approved form of mortgage in lieu of the original mortgage, and the mortgagor refuses to execute such fresh mortgage, the only course open to the Deputy Commissioner to adopt is to refrain from further action and leave matters as he found them.

5. If the mortgagee, on being put to his election by the Deputy Commissioner, prefers to accept another mortgage instead of merely having the conditional sale clause struck out, his consent is conditional on his receiving such other mortgage, and if the mortgagor declines to execute the latter, the mortgagee can justly claim that, inasmuch as he has done everything required of him by the Act, his original mortgage should be left unaltered.

6. The parties will thus be relegated to their former position, and it seems probable that the mortgage will in due course follow the procedure laid down in Regulation XVII of 1806. At any rate the case will pass out of the hands of Revenue Officers, and it remains to be seen how it will be dealt with by the Civil Courts. If a Deputy Commissioner or Commissioner becomes acquainted with any ruling of a Civil Court not open to appeal or no longer open to appeal, which shows how a mortgage thus left in its original condition by a Deputy Commissioner has been dealt with by such Court, he should report the same for the information of the Financial Commissioner.

[No. 25.]

Financial Commissioner's Circular No. 3. dated Lahore the 10th August 1903.

To all Revenue Officers in the Punjab.

THE directions as to the procedure to be followed by

Scrutiny of mutations of mortgages in order to detect violations of the Act which may have passed unnoticed by Revenue Officers.

Revenue Officers in mutation proceedings concerning mortgages by members of agricultural tribes which contravene the provisions of the Land Alienation Act are contained in paragraph II (2) of Government

Notification No. 23 S. of the 22nd May 1901, and are as follows :—

“ The Revenue Officer, after hearing the parties, and recording a note of their representations, shall, in the case of any temporary alienation (which contravenes the provisions of the Act), refuse to sanction mutation of names and refer the parties to the provisions of the Land Alienation Act which they have contravened.

2. The reasons for adopting this procedure are given in paragraph 20 of Financial Commissioner's Circular Letter No. 3441, dated the 5th June 1901. The procedure has, however, been the subject of considerable difference of opinion in the Annual Reports received from districts, and it has been pointed out that a certain number of alienations which contravene the Act have been allowed to pass unnoticed by Revenue Officers. To remedy this, it has been suggested that all cases of mortgages should be reported to Deputy Commissioners as a part of the Mutation Proceedings. The Financial Commissioner is, however, unwilling to take this extreme step, which would involve a great deal of extra work, and he hopes that if provision is made for systematic scrutiny of mutation cases with the object of detecting violations of the Act, and if Deputy Commissioners and Revenue Assistants take every opportunity of satisfying themselves that subordinate Revenue Officers are conversant with the Act and Rules thereunder, the decisions of subordinate Revenue Officers will in future be more frequently in accordance with the law.

3. As to the manner in which Deputy Commissioners should arrange for the systematic scrutiny required, the Financial Commissioner does not wish to lay down hard and fast rules, but Deputy Commissioners should consider the following suggestions and should note in the next Annual Report on the working of the Act the plan, whatever it may be, that they adopt. One suggestion is that Revenue Assistants in their periodical inspection of tahsils should carefully scrutinise one quarter or some

other fixed proportion of the mutation proceedings which have been filed since their last visit; and in doing this should examine a number of mutations from each patwari's circle. They should then send at once to the Deputy Commissioner, for such orders as he may deem fit to pass, all mutation proceedings which they find to be irregular by reason of any departure from the provisions of the Alienation of Land Act or of the rules thereunder. This procedure may be suitable where the Revenue Assistant is himself well acquainted with the Act and rules and can be trusted to do the work well and thoroughly. Another suggestion is that, say with four tahsils to manage, the Deputy Commissioner should order all mutations affected by the Act from two tahsils to be sent in for information through the Revenue Extra Assistant Commissioner or other Extra Assistant Commissioner or Assistant Commissioner for one month and from the other two for the next month. In the first month it would be seen whether the scrutinising and mutating officers understood their work, and, if so, no further orders in mutation would need to be sent in and periodical inspections of filed mutation orders would suffice. On the contrary, if any vagueness was found to exist, orders would continue to be sent in until the Deputy Commissioner was satisfied that his subordinates understood their work. Other suggestions may occur to different officers. The desire of the Financial Commissioner is that each Deputy Commissioner shall give in his own district such orders as shall in his own judgment best conduce to the attainment of the end in view.

4. No general rules are necessary or desirable as to the steps which Deputy Commissioners should take when mutation proceedings vitiated in some way by a violation of the Act or rules are brought to their notice. They will act according to the circumstances of the case, remembering that where they have not power to act themselves, but some order of superior authority is needed to set a case right, it is always open to them to initiate revision proceedings under section 16 of the Land Revenue Act, which has been made applicable to alienation of land cases by section 19 of Act XIII of 1900. As an illustration of what may be done under such circumstances the case may be taken of mutation of mortgages not allowed by the Act and wrongly accepted. Here, under section 9 (1) of the Act, the Deputy Commissioner can *suo motu*, revise or alter the terms of the mortgage. If he does this, he can then order a fresh mutation in accordance with facts. The alternative course is, as already

indicated, to initiate revision proceedings under section 16 of the Land Revenue Act, leaving the parties to themselves revise their contract. The Deputy Commissioner can decide at his discretion to follow either course. He will, however, bear in mind that conditions not permitted by or under the Act are null and void (section 8 (2)). If the parties hold to their contract for a time, the position of the mortgagee would be altogether insecure, for his mortgagor might at any time apply to the Deputy Commissioner under section 9 (1) to revise and alter the mortgage; and if the mortgagee sued on his mortgage, then the Court, under section 9 (3), would have no option but to refer the case to the Deputy Commissioner for the same purpose. Other cases of irregularity do not at present call for any remarks. The Financial Commissioner thinks it is specially necessary to guard against the erroneous acceptance of mortgages in mutation proceedings, and he has, therefore, commented on this part of the subject in some detail.

[No. 26.]

Financial Commissioner's Circular No. 4, dated Lahore, the 9th September 1903.

To all Commissioners and Deputy Commissioners in the Punjab.

When in connection with a mutation proceeding it comes to the notice of a Deputy Commissioner that a permanent alienation of land has been made which, under the provisions of the Alienation of Land Act, cannot take effect as such unless and until he gives sanction thereto, and he decides that he will not give sanction, he may indeed dispose of the mutation proceeding by refusing mutation, but such an order is not sufficient to dispose of the case. Effect must be given to section 14 of the Act unless the parties elect, as they are free to do, to cancel the transaction, the alienor being restored to possession, if he has parted with it, and the purchase money being repaid. If the parties elect for the benefit of section 14, then the form of the mortgage to be substituted for the permanent alienation is determined by the Act itself, *viz.*, form [a] in section 6; but the term, not exceeding twenty years, and the conditions of mortgage must be fixed by the Deputy Commissioner.

2. Accordingly, on refusing mutation, he should call for a report as to the wishes of the parties; and if they elect for a mortgage, for such particulars as will enable him to settle its duration and conditions.

The final result of the proceedings, whether the permanent alienation be cancelled or a mortgage be substituted for it, should be brought on to the annual record by means of the mutation procedure.

3. Commissioners of Divisions should carefully scrutinise the quarterly business returns of cases disposed of under the Alienation of Land Act, and should from time to time call for a few specimen cases in order to satisfy themselves that the principles of the Act are being duly observed. If in connection with any cases so called for, points of doubt or difficulty arise, a reference may be made for the orders of the Financial Commissioner.

[No. 27.]

Circular Letter No. 7, dated Lahore, the 29th October 1903, from Director of Land Records and Agriculture, Punjab, to all Commissioners, Deputy Commissioners, Settlement Officers and Colonisation Officers in the Punjab.

1. Under the directions of the Financial Commissioner I have the honour to address you with reference to certain matters connected with the efficient working of the Land Alienation Act.

2. In the case of an "agriculturist" who has obtained a permanent alienation of land from a member of an agricultural tribe after the commencement of the Act (June 8th 1901), his power of subsequent permanent alienation is restricted under the proviso to section 3 of the Act. It is consequently very important that Revenue Officers should be able to identify such parcels of land with facility, and to provide for this the following orders are issued :—

(a) Patwaris will now overhaul all entries in their mutation registers made after June 8th, 1901, and in the case of all permanent alienations effected after that date, where the alienee is an "agriculturist," but is not a member of an agricultural tribe, they will note in the column of remarks in the *jamabandi*, opposite to the land alienated as the case may require, remarks as follows :—

(i) "Acquired from a member of an agricultural tribe, after the Act came into force (bad ijrae Act zaraiti kaum ke zamindar se hasil ki)," or

- (ii) " Not acquired from a member of an agricultural tribe (zarait kaum ke zamindar se nahin hasil ki)."
- (b) In future one of these notes will be made in the *jamabandi* in the case of all permanent alienations of this kind, and the remark will be carried on from one *jamabandi* to another.
- [c] Patwaris will keep land acquired by agriculturists from members of agricultural tribes in separate holdings in the *jamabandi*. But where an agriculturist has several such plots from different zamindars after the commencement of the Act, they may be clubbed together in one holding, if this is not otherwise objectionable.

3. Turning to temporary alienations, the Deputy Commissioner, under section 13 of the Act, can, of his own motion, eject a mortgagee, lessee or farmer in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease of farm under sections 6, 11 or 12 of the Act.

The following rules are framed to enable the Deputy Commissioner to determine the cases in which he can exercise this authority :—

- (a) In the case of a mortgage, lease or farm effected with possession after June 8th, 1901, by a member of an agricultural tribe to a person who is not a member of an agricultural tribe, whether he be an " agriculturist " or not, the patwari shall enter in the remarks' column of the *jamabandi* a note stating :—
- the date of the commencement and, except in the case of a mortgage under section 6 (c), the date of expiry of the term of possession.
- (b) This remark will be made for all such mortgages, leases or farms executed after the commencement of the Act, and the Mutation Register since 8th June 1901 should be gone through for the purpose of writing up these remarks.
- (c) These remarks also will be carried from one *jamabandi* to another during the currency of the mortgage, lease or farm,

[No. 28.]

Circular No. 9, dated Lahore, the 20th November 1903, from Director of Land Records and Agriculture, Punjab, to all Commissioners, Deputy Commissioners, Settlement Officers and Colonisation Officers in the Punjab.

The following instructions are issued, with the approval of the Financial Commissioner, in order to facilitate the application of the Land Alienation Act by Revenue Officers, when they are attesting mutations of permanent or temporary alienations of agricultural land.

2. In the case of a permanent alienation of land, if the alienor is a member of an agricultural tribe, or an "agriculturist" who has acquired the land from a member of an agricultural tribe under section 3 (1) of the Act, it is necessary for the attesting officer to ascertain who the alienee is. A mutation relating to an alienation to a member of the same agricultural tribe, or to a member of an agricultural tribe in the same group, may be sanctioned, so far as the Land Alienation Act is concerned, for that imposes no restriction; but when the alienee is not a member of an agricultural tribe, the mutation proceeding must be transmitted to the Deputy Commissioner for orders, unless the alienee is an "agriculturist" as defined in section 2 (1) of the Act, holding land in the village where the land alienated is situated. In the last case, the attesting officer can himself sanction the mutation, but he must first satisfy himself that the alienee has the status which he alleges. I am directed by the Financial Commissioner to prescribe the following procedure for enquiries into the status of alienees who allege that they are "agriculturists."

3. Such alienee shall be instructed by the patwari, when he reports the transaction in his favour, to obtain a certificate of status in the attached form from District head-quarters, or from the tahsil, in cases where the relevant Settlement Records are kept at the tahsil. When the certificate is granted at the Sadr, it will be signed by the Sadr Kanungo, or his assistant if the Sadr Kanungo is on tour, and it will also be attested by an Extra Assistant Commissioner to be nominated for this purpose by the Deputy Commissioner. Trustworthy evidence as to the descent of the applicant will be necessary where the genealogical table is not up to date, and where

Procedure in granting certificate of status to "agriculturists."

no genealogical table has been prepared, as is often the case with occupancy tenants. This evidence need not be recorded in writing, but the statements should be made before the gazetted officer attesting the certificate, and the names of the persons making the statement should be entered in the certificate. Where copies of the relevant Settlement Records are at the tahsil, the certificate may be granted there, the Tahsildar or Naib Tahsildar attesting it in the same manner. Bound volumes, each containing one hundred certificates in duplicate, will be procurable on indent to the Director of Land Records in the usual way. The same details must be entered in the foil and counterfoil, and one copy will remain permanently in the office of issue. A certificate may be granted for more villages than one.

4. The certificate should not be attached to the mutation proceedings. It will always remain in the possession of the person in whose favour it has been granted ; and he will thus be able to use it on any number of occasions, and in registration as well as in mutation proceedings. The attesting officer in mutation proceedings should, however, be careful to note in his order the serial number, date and office of issue of the certificate. He is also reminded that he must satisfy himself that the person using the certificate is the person in whose favour it was granted, and that such person holds agricultural land as an agriculturist at the time of the permanent alienation in the village in which the land alienated is situated.

5. In the matter of temporary alienations, where the alienor is a member of an agricultural tribe and the alienee is not, it is necessary that the Revenue Officer should know what the terms of the contract are. At present, under paragraph 37 of Revenue Circular 28, the patwari, in his report, where a written deed has been prepared, has to note—

- (a) the nature of the deed ;
 - (b) the names of the parties ;
 - (c) the date of execution ;
 - (d) the date of registration, if any,
- and (e) any other necessary details.

In future, where the alienor is a member of an agricultural tribe and the alienee is not, the patwari must also note briefly the terms of the deed as to possession, period, rent, interest, redemption, &c., and the attesting officers must satisfy themselves of the correctness of these entries.

6. Where there is no written deed, the patwari should note the terms agreed to by the parties, or, when they do not agree, he should record the terms alleged by each. The attesting officer will then proceed to pass suitable orders on the mutation. If the provisions of the Act are not contravened by the terms of the contract, he will direct a mutation ; otherwise he will refuse mutation.

DISTRICT

OR TAHSIL, DISTRICT

Certificate granted to persons who claim to be "agriculturists" as defined in Section 2 (1) of Act XIII of 1900.

Serial No. of 19, dated 19.

Certified that _____, son of _____, caste _____, resident of _____, is recorded as holding the land noted on the reverse as an occupancy tenant/owner in village _____, tahsil _____, in the Settlement Record of 18 _____, and that _____, son of _____, caste _____, resident of _____, is a direct descendant in the male line of the above-named, in the manner shown by the genealogical tree on the reverse, which is a true copy from the Settlement Record of 18 _____, or which has been deposed to by _____

Signed,

Office or Sadr Kánungo.

Attested.

E. A. C.,

Tahsildar or Naib Tahsildar.



DISTRICT

OR TAHSIL, DISTRICT

Certificate granted to persons who claim to be "agriculturists" as defined in Section 2 (1) of Act XIII of 1900.

Serial No. of 19, dated 19.

Certified that _____, son of _____, caste _____, resident of _____, is recorded as holding the land noted on the reverse as an occupancy tenant/owner in village _____, tahsil _____, in the Settlement Record of 18 _____, and that _____, son of _____, caste _____, resident of _____, is a direct descendant in the male line of the above-named, in the manner shown by the genealogical tree on the reverse, which is a true copy from the Settlement Record of 18 _____, or which has been deposed to by _____

Signed,

Office or Sadr Kánungo.

Attested.

E. A. C.,

Tahsildar or Naib Tahsildar.



NOTE.--For officers attesting mutations and Registration officers.

Before the holder of this certificate can acquire land permanently in any village above-named, he must prove further that he holds agricultural land in such village at the time of the permanent alienation.

NOTE.--For officers attesting mutations and Registration officers.

Before the holder of this certificate can acquire land permanently in any village above-named, he must prove further that he holds agricultural land in such village at the time of the permanent alienation.

J. N. Das
Advocate High Court
Jammu & Kashmir
Srinagar.

[No 29]

Financial Commissioner's Circular Letter No. 563, dated Lahore, the 25th January 1904.

To all Commissioners of Divisions and Settlement Commissioners, Deputy Commissioners and Settlement Officers in the Punjab.

By this office letter No. 233 S., dated the 17th August 1901, which is printed as No. 14 in the Appendix to the annual Report for the year 1901-02 on the working of the Alienation of Land Act, it was laid down that Settlement Officers have no concern with the administration of the Act. In amplification of these orders, I am directed to convey the following instructions.

Sub-head No. 113.
File No. 441.

2. In districts under settlement mutation proceedings relating to transfers, which are sent to Deputy Commissioners under Rule II (i) issued with Punjab Government Notification No. 23 S., dated the 22nd May 1901, should be transmitted to him through the Settlement Officer who is responsible for seeing that each case is ready for transmission. The Settlement Officer is not required to make any recommendation as to whether sanction should be given or refused. His function is limited to seeing that the case is ready for transmission. The Deputy Commissioner may, however, if he wishes, ask the advice of the Settlement Officer; but he is in no way bound to do so.

3. In districts under settlement, although the record work is in the hands of the Settlement Officer and his establishment, and the mutation work is performed under his control, the discretion of the Deputy Commissioner under paragraph 3 of this office Circular No. 3, dated the 10th August 1903, to take any steps which seem to him to be necessary in order to satisfy himself that the Alienation of Land Act is being properly worked, is not curtailed, but it is part of the duty of the Settlement Officer and his establishment to bring to the notice of the Deputy Commissioner, for such orders as he may deem fit to pass, all mutation proceedings which they find to be irregular by reason of any departure from the provisions of the Act or the rules thereunder. The Settlement Department in the ordinary course of attestation work will scrutinise mutation; but in other respects the function proposed in paragraph 3 of the Circular above quoted to be entrusted to a really competent Revenue Assistant should be discharged by the Settlement Officer and his establishment.

*Khewat numbers of land recorded as held by applicant or his ancestors
in the male line.*

*Khewat numbers of land recorded as held by applicant or his ancestors
in the male line.*



Genealogical tree of the applicant.

Genealogical tree of the applicant.

J. N. Das
Advocate High Court
Jammu & Kashmir
Srinagar.

4. It is especially necessary that all mutation proceedings referred to the Deputy Commissioner by the Settlement Officer, as directed in paragraph 2 *supra*, should be promptly disposed of by the Deputy Commissioner.

5. Cordial co-operation between the District and Settlement authorities is very necessary.

6. As an exception to the usual rules of procedure above explained it may be necessary where *killabandi* proceedings are in progress, to invest the Settlement Officer with the powers of a Deputy Commissioner under the Alienation of Land Act for the limited purpose of sanctioning exchanges of small plots, which are often essential in order to make the boundaries of holdings coincide with those of *killas*. The possession of these powers by Settlement Officers would save delay and obviate a number of merely formal references to Deputy Commissioners. The powers in question can be conferred by the Local Government under section 23 of the Act; and it will be moved to confer them when necessary.

[No. 30]

Financial Commissioner's Circular Letter No. 2858, dated Lahore the 2nd May 1904.

To all Commissioners and Deputy Commissioners in the Punjab.

It has come to the notice of the Financial Commissioner that occasionally a mortgagee, when put to his election by the Deputy Commissioner, under section 9 (2) of the Alienation of Land Act, as to whether he will agree to the conditional sale clause being struck out of the deed or accept a mortgage in one of the forms permitted by section 6 (a) and (b) of the Act, refuses to adopt either course. In such a case the Deputy Commissioner should explain to the mortgagee that he is not at liberty thus to attempt to defeat the law, that he must choose one of the two courses provided for him by the section of the Act, and that the only practical result of his refusal to elect is that he leaves it to the Deputy Commissioner to make the election for him. If in the face of such an explanation the mortgagee still refuses to act, the Deputy Commissioner should then act for him and define what the mortgage is to be in accordance with the power conferred upon him by section 9 (2).

2. In such a case ordinarily the best course will be to strike out the condition intended to operate by way of

conditional sale, because this avoids the further complication that if a new mortgage is ordered the mortgagor may decline to execute it. What is to be done in such a case

* No. 27 in Appendix to Annual Report for 1902-03. has been explained in this office Circular letter No 3482, * dated the 6th June 1903. One of the

objects of the Act was to cancel conditional sales with retrospective effect subject to an arrangement by which the mortgagee should not lose his security. When he would have adequate security with the sale clause struck out there need be no hesitation in compelling him to accept that arrangement if he will not do so voluntarily. It is only when the mortgage deed with the sale condition excised would not afford adequate security and when the mortgagee refuses to exercise the option allowed to him by law that the Deputy Commissioner need of his own motion order a new mortgage.

[No. 31]

Circular No. 2, dated Lahore, the 19th May 1904.

From—H. J. MAYNARD, Esquire, I.C.S., Inspector-General of Registration, Punjab,

To—All Registrars in the Punjab.

Every alienee who alleges himself to be an "agriculturist" as defined in section 2 (1) of the Punjab Alienation of Land Act is required to supply himself with a certificate in the attached form, which is obtainable either at the Tahsil (in which case it will be signed by the Tahsildar), or at the District Head-Quarters (in which case it will be signed either by the Sadar Kanungo or his assistant, and countersigned by an Extra Assistant Commissioner).

Having satisfied themselves that the holder is the person whom the certificate names, Registering Officers should accept this certificate as evidence that he is "an agriculturist" in the village or villages to which it relates, and should decline to accept any other evidence of the fact.

2. After the document presented by the holder of the certificate has been admitted to registration, the certificate should be returned to him: but the Registering Officer should note in his endorsement the serial number, date and office of issue of the certificate.

3. Registering Officers should understand clearly that no certificate is required from a member of an agricultural tribe, but only from an "agriculturist" as defined in section 2 (1) of the Act; and also that the same certificate may be used on any number of occasions and in mutation as well as in registration proceedings.



DISTRICT.

OR TAHSIL

DISTRICT.

Certificate granted to persons who claim to be "agriculturist" as defined in Section 2 (1) of Act XIII of 1900.

Serial No.

, of 19 dated

19 .

Certified that

, son of , caste

resident of

, is recorded as holding the land noted on the reverse as an

owner
occupancy tenant in village

, tahsil , in the Settlement Record

of 19 , and that

son of , caste , resident of

is a direct descendant in the male line of the above-named in the manner shown by the genealogical tree on the reverse, which is a true copy from the Settlement Record of 19 , or which has been deposed to by



(Sd.)

OFFICE OR SADAR KANUNGO.

Attested.

Extra Assistant Commissioner.

Tahsildar or Naib-Tahsildar.

NOTE.—For Officers attesting mutations and Registration Officers.

Before the holder of this certificate can acquire land permanently in any village above-named, he must prove further that he holds agricultural land in such village at the time of the permanent alienation.

Khewat numbers of land recorded as held by applicant or his ancestor in the male line.



Genealogical tree of the applicant.

[No. 32.]

Memo. No. 3994, dated Lahore, 28th June 1904.

From—R. HUMPHREYS, Esquire, Senior Secretary to Financial Commissioner. Punjab,

To—The Commissioner,

Division.

With reference to correspondence ending with your ^{letter} ^{endorsement} No.

dated the 1903, on the subject of the inclusion of the tribe of Labanas among the lists of agricultural tribes notified under the Alienation of Land Act (XIII of 1900) in certain Districts of your Division, I am directed to send a copy of a letter No. 1716 S., dated the 3rd September 1903, from the Revenue Secretary to Government, Punjab, to the address of the Deputy Adjutant General, Punjab Command, and also a copy of paragraph 31 of the Annual Report on the working of the Alienation of Land Act for the year 1902-03 and to convey the following remarks.

2. The petitions of certain Native Officers of the 48th Bengal Pioneers, which originated the correspondence quoted in the preceding paragraph referred to the Hoshiarpur, Jullundur, Gurdaspur and Gujrat Districts. A subsequent letter of their Commanding Officer, communicated to the Financial Commissioner under cover of Punjab Government endorsement No. 175, dated the 4th December 1902, added the Amballa, Kangra, Amritsar, Sialkot, Gujranwala and Gujrat Districts. Accordingly these are the districts which we have more particularly to consider in order to enable Government to send a further reply to the Deputy Adjutant-General, Punjab Command, *vide* their No. 1716 S., dated the 3rd September 1903, already referred to.

3. The Financial Commissioner, however thinks we may include the Ludhiana and Ferozepore Districts (where the numbers of male Labanas according to the recent Census are 568 and 1,029, respectively), in order to complete the case.

4. As it appears to be the opinion of the Military authorities that the exclusion of Labanas from the list of notified tribes may have an unfavourable effect on recruitment for the army, it is very desirable to lay before Government conclusive data as regards all the Districts concerned.

5. In the case of the Amballa District, Mr. Meredith gives some useful particulars in his letter No. 141—784 R., dated 22nd April 1903 (copy enclosed), and he advises, for reasons which seem sufficient if the Labanas are not, in this district money-lenders, that they be notified in his district as an agricultural tribe. It appears that the Amballa Labanas are nearly all engaged in agriculture, or the relations or dependants of men so engaged. Under the present system of grouping the small total of the tribe is not material. It remains to supply, if practicable, a list of villages or tracts for notification, to report whether there are money-lenders amongst the Labanas, and if that be so, whether it is possible to exclude all or most of the money-lenders in framing the list of villages or tracts.

6. Turning to the Jullundur Division it appears that though many of the Labanas in the Kangra District own land their main source of livelihood is the carrying trade. Under these circumstances the Financial Commissioner thinks that, unless further facts are subsequently adduced in favour of notifying the Kangra Labanas, this should not be done. The total number of males of this tribe in the district is only 893.

7. As regards the other districts of this Division the percentage of Labana proprietors to others is immaterial; it is unnecessary to consider whether their acceptance would form a precedent for the acceptance of Kalals, as it is quite obvious that it need not do so; the fact that the tribe is of little social importance is not a conclusive bar because their inclusion in the list is really suggested on Military grounds. At the same time it would be an abuse of the Act to notify under it a tribe which is not really an agricultural one. A report is therefore required for the Hoshiarpur, Jullundur, Ludhiana and Ferozepore Districts showing, so far as is practicable, the number or percentage of Labanas actually engaged in agriculture, whether any Labanas are money-lenders, and whether it is possible to supply a list of villages or tracts for notification so framed as to include the Labanas who are *bonâ fide* dependant on agriculture from those who lend money or make their livelihood as carriers or mat and rope-makers even though they may also own a little land. If this is possible a list of villages or tracts should be

submitted. If not, the Military authorities should in due course be so informed.

8. The same instructions *mutatis mutandis* apply to all districts of the Lahore Division, except Lahore, where the Labanas have already been notified, and Montgomery, where there are none. Mr. Alex. Anderson's letter No. 183, dated 7th April 1903 (extract paragraph 3 and 4 enclosed), was before Government when their letter No. 1716 S., dated 3rd September 1903, was written. If lists of villages or tracts can be prepared on the principles indicated above, it seems probable that Labanas should be notified in the Gurdaspur and Gujranwala Districts. In Amritsar also the smallness of the total number of males (*viz.*, 298) need not be regarded as a conclusive objection. In the Sialkot District the 17 Labana villages should be more closely examined and an endeavour should be made to ascertain in what villages the Labanas are money-lenders and what proportion of the tribe is addicted to the practice of money-lending.

9. In the case of the Gujrat District, the Deputy Commissioner, Mr. Loxton, hesitated to accept the report of the Tahsildar that 50 per cent. of the Labanas are money-lenders. Of course if that report is correct they cannot be notified. But a village to village inquiry should be made as in other cases; and if it is impracticable to frame a list of villages which will exclude nearly all the money-lenders and admit only Labanas *bonà fide* engaged in agriculture the fact should be recorded so that the Military authorities may be informed.

10. I am accordingly to request that, after enquiries have been made on the lines indicated in this letter in the districts of your Division referred to, the result may be communicated with your opinion.

No. 1716 S., dated Simla, 3rd September 1903.

From—J. F. CONNOLLY, Esquire, Offg. Revenue and Financial Secretary to Government, Punjab,

To—The Deputy Adjutant-General, Punjab Command, Murree.

I AM directed to refer to your letter No. 7319 H., dated the 24th November 1902, regarding the inclusion of

Labanas in the list of agricultural tribes notified under the Punjab Alienation of Land Act, and to express regret that there has been such delay in replying to it. I am now to say that the point at issue has been under consideration in connection with the general question of the revision of the lists of agricultural tribes throughout the Province, and that the Lieutenant-Governor, after consideration of a report received from the Financial Commissioner on the subject, finds that he is not in a position to pass definite orders on the question of the general inclusion of Labanas as agricultural tribes until the Financial Commissioner has reported the result of further enquiries in regard to them which he proposes to make next cold weather.

2. I am to add that the reason why Labanas have been so far excluded in districts other than Lahore is because it is very doubtful whether they are (in these districts) purely agricultural tribes as they are reported to be in the Lahore District.

No. 1717 S.

COPY forwarded to the Senior Secretary to the Financial Commissioner, Punjab. for information, in continuation of Punjab Government endorsement No. 175, dated the 4th December 1902, and with reference to Mr. Butler's general letter No. 520, dated the 18th July 1903, to which a separate reply is being sent.

Copy of paragraph 31 from the Annual Report on the working of the Punjab Alienation of Land Act of 1903.

31. The correction and revision of the list of tribes notified under the Act is now practically settled and a draft notification has been submitted for the approval of Government. It has been decided for the present to limit revision to the correction of obvious errors and to the inclusion of those sub-tribes as to whose inclusion in a specific main tribe there was room for doubt, while their claims to the protection afforded by the Act were undeniable. The case of Brahmans, Kalals, Labanas and Sheikhs has been reserved for future consideration. The difficulty is that in some districts or parts of districts these tribes are not purely or even mainly agricultural in character. In Lahore, however, Labanas have been notified as they are in that district mainly agricultural. In the case of Sheikhs, owing to the

inclusion of sub-tribes, it has been found possible to discriminate, and it is now proposed to notify Koreshis and Ansaris in certain districts where they are undoubtedly agricultural. The point in dealing with these doubtful tribes is that the dangerously acquisitive members of them shall not be free to acquire the lands of zamindars without sanction. Two expedients seem possible; *viz.*, (1) to notify the doubtful tribe as a separate group, or (2) to notify territorially, *e.g.*, the Brahmans of such and such a tahsil or assessment circle or other group of villages. The first method is open to the objection that by putting a tribe in a separate group we deprive the members of it of the power of disposing of their land to the other agricultural tribes, and restrict them to (1) their own tribe or (2) agriculturists of the village. As already explained the latter would be an undesirable result. To the second method the Financial Commissioner sees no particular objection even if we have to publish lists of villages. The question would be one of fact, would the notified villages or other areas contain Brahmans, &c., who are money-lenders or otherwise dangerously acquisitive? As at present advised the Financial Commissioner proposes to pursue the question of these doubtful tribes on the lines of this latter method. In the case of tribes already notified he is not prepared without further experience of the working of the Act, to propose sub-groups within districts and as already implied, he is inclined to hold that in respect of such tribes it would not be consistent with the policy of the Act to make sub-groups until we have first abolished the agriculturist.

No. 141-784 R., dated 22nd April 1903.

From A. Meredith Esquire, Deputy Commissioner, Umballa,
To The Commissioner and Superintendent, Delhi Division.

IN continuation of my predecessor's letter No. 74-431, dated 2nd March 1903, I have now the honour to furnish a complete report regarding the Labanas in this district. According to the Census of 1901, their total numbers are as follows:—

			<i>Males.</i>	<i>Females.</i>
Hindus	...	...	725	586
Sikhs	...	...	131	32
Total	...	...	856	618
			856	618

Of the 856 males it has now been ascertained that 556 are recorded either as proprietors or occupancy tenants, *viz.*—

Proprietors	...	...	...	...	526
Occupancy tenants	...	...	...	...	30
					—
Total	...	...	...	...	556
					—

Of the remaining 300, it is believed that the majority are relatives or dependants of those engaged in cultivation. As far as is known, the Labanas do not largely engage in the carrying trade in this district, and the conclusion is that the greater number of the 856 males enumerated at the Census of 1901 derive their livelihood from agriculture. As far as proportion goes, therefore, it would appear that the tribe should be included among the agricultural tribes in this district for the purposes of the Land Alienation Act. They were probably originally excluded as being insignificant in numbers according to the instructions contained in Revenue Secretary to Government's letter No. 117, dated 12th November 1900, paragraph 10. For the reasons given in the Military Department, I would now include them among the agricultural tribes of this district, the same as in Lahore.

Copy of paras. 3 and 4 of a letter No. 183, dated 7th April 1903, from the Hon'ble Mr. A. ANDERSON, C. I. E., Commissioner of the Lahore Division, to the Senior Secretary to Financial Commissioner, Punjab.

3. The number of Labanas in the districts of this Division is given in the margin according to the Census of 1901. Lahore is the only district in the whole Punjab in which they have been notified as an agricultural tribe. In Amritsar they were excluded because they own little land and their number is small; but when it was proposed to make all tribes into one group, the Deputy Commissioner was prepared to include Labanas. The Financial Commissioner excluded them here as elsewhere. In Gujranwala the Labanas were not included because they are capitalists and engage in money-lending. I forward the replies of the Deputy Commissioners on the proposal of the Military authorities that they should be included. Mr. Tollinton of Sialkot would exclude them as addicted to money-lending;

Major Dallas recommends that they should be included, as, though originally carriers and traders, many of them have taken to agriculture ; Diwan Narendra Nath has changed his opinion and would include them as being few and being now devoted to agriculture ; Mr. Maclagan considers that the system of excluding tribes found only in small numbers is a correct one, but he would not class the Labanas as an agricultural tribe.

4. In my opinion Labanas should not be notified as an agricultural tribe. They are naturally traders and not agriculturists ; many of them still engage in trade and in money-lending. It cannot be said that they are purely agricultural. The object with which it is suggested that they should be notified is to enable them to acquire land from agricultural tribes, that is, to put them into a position to defeat the object of the Act ; if the Labanas wish to be declared an agricultural tribe so as to raise their status in the social scale, this might be secured by grouping them separately ; but that will probably not satisfy them. They are gradually rising in society. In some places I believe that Jats are ready to take wives from among the Labanas, and the issues of such a marriage are treated as true Jats. It is dangerous to argue that because they are Sikhs they should be notified. The Kalals are in very much the same position, and they must be excluded.

[No. 33]

Circular letter No. 4036. dated the 30th June 1904.

From—R. HUMPHREYS, Esquire, Senior Secretary to Financial Commissioner, Punjab,

To—All Commissioners in the Punjab.

I AM directed to address you as follows on the subject of the statutory "agriculturist" as defined in section 2 of the Punjab Alienation of Land Act (XIII of 1900).

2. Before any Bill of what was afterwards to become Act XIII of 1900 was drawn up, a Committee sat at Barnes Court on the 1st and 2nd July 1898, to consider certain proposals of the Government of India for the restriction of alienation of land in the Punjab. The following two resolutions passed by the Conference may be referred to in this connection :—

" Resolved—

VII.—That permanent alienation of land as defined

in the Punjab Tenancy Act, Section 4(1), to a non-agriculturist without the sanction of the Collector shall be void.

XIII.—That with a view to defining non-agriculturists' whatever enactment is drafted should contain a section as follows :—

The Local Government may declare for any district or part of a district what classes of persons shall be deemed to be non-agriculturists for the purpose of this Act. Until such a declaration is made all 'new agriculturists' as defined in Chapter V of the rules under the Land Revenue Act shall be deemed to be 'non-agriculturists.' "

The definition referred to runs as follows :—“ All persons who, neither in their own names nor in the names of their agnate ancestors, were recorded as owners of land or as hereditary tenants in any estate at the first Regular Settlement.”

3. The original Bill was then drawn up by the Government of India and circulated for opinion. It was pointed out by several officers that the word “ agriculturist ” was so defined as to include many persons who did not belong to agricultural tribes and with whose alienations we did not wish to interfere while we did wish to limit their acquisitions. The Financial Commissioner proposed that the whole of section 2 (1) should be struck out and that there should be no definition of an “ agriculturist.” In submitting the case to the Government of India, however, Sir Mackworth Young defended the statutory agriculturist, which was the outcome of Resolution XIII of the Barnes Court Conference reproduced above, in the following terms :—

“ I see no reason for receding from the position that the person who not being a member of an agricultural tribe has been connected with agricultural land from an early period in British rule must be treated as an agriculturist of the village in which that land is situated, and not as a non-agriculturist. There are two reasons for adhering to this position. The first is that it is defensible on the merits. The policy of the British Government has been to maintain as far as possible the status attained under previous Governments, and it is in accordance with this policy to deem those persons agriculturists who had embarked in agricultural enterprise before our revenue system was regularized. The definition

of ' new agriculturists ' embodied in the note on the yearly totals of transfers following Rule 56 of the Rules under the Punjab Land Revenue Act was framed for statistical purposes, but it was based upon the considerations of policy above indicated. And to degrade the class hitherto regarded as old agriculturists to the level of the money-lender who has embraced the facilities afforded him by a settled administration to effect an entrance into the land-owning class, would be at once harsh and a breach of continuity of our land record system. The second reason is that the maintenance of the position of the non-agriculturist who had obtained land in the early days of British administration has been indicated in the Bill which has now been before the public for some months. I do not think it would be wise to make a complete change in this respect without a further appeal to public opinion, which I deprecate.

At the same time I do not think it is necessary to extend the full privilege of the agricultural tribe to the *quasi*-agriculturists of the definition it is sufficient, in my opinion, that he should enjoy the privilege in respect of the village from which he derives his qualification."

4. This then is the case for the statutory agriculturist. On the other hand his inclusion has led to great difficulties in working the Act. The status is a highly technical one and the people and the majority of our Revenue Officers have had difficulty in comprehending the exact position which the " agriculturist " occupies under the Act. To a person knowing Urdu only it necessarily seems a contradiction in terms to refer to a Mahajan as a *zara'at peshha shakhs*. Moreover in some districts the records of the first Regular Settlement, or of the Settlement fixed for the purposes of determining who are agriculturists, do not contain the names of all the proprietors or occupancy tenants, which renders it difficult to determine whether persons claiming the status actually possess it. A further difficulty has been caused by the necessity for providing that our Revenue records shall show details of land purchased by agriculturists from members of agricultural tribes for the purpose of checking subsequent sales of the same land, *vide* the proviso to section 3 (1) (b) of the Act.

5. These difficulties, however, are comparatively small matters and are merely mentioned for what they are worth. The fundamental objection to the present state of the law

is that the so-called "agriculturist" is in many cases not really an agriculturist at all, and that when he is not a member of an agricultural tribe, he is a member of those classes whose acquisition of the lands of agricultural tribesmen it is the primary and avowed object of the Act to prevent. In every village where there are agriculturists who are not members of agricultural tribes, there is a standing menace to the successful working of the Act. If a bania has held land for thirty or forty years in a village he does not thereby cease to be a bania ; and if he is a landowner it does not follow that he is not also a money-lender. There is nothing in the structure of rural society in the Punjab to separate banias who have held lands since the first Regular Settlement from others. The statutory agriculturist is, in Sir Lewis Tupper's opinion, the mere creature of the fears with which the working of the Alienation of Land Act was regarded by those who had no real faith in its principles. Now that we have had a sufficient experience of the Act these fears may, in his opinion, be laid aside. It may be added that cases have occurred where statutory agriculturists have endeavoured to use their privileges by acting as go-betweens for the purpose of evading the Act and acquiring lands for non-agricultural relatives.

6. It has lately been under consideration to extend the Alienation of Land Act to the North-West Frontier Province, but in making his proposals the Hon'ble the Chief Commissioner has strongly recommended the omission of the statutory agriculturist, on the ground that the provisions regarding him had not worked well in the Punjab, and his inclusion would extend his privileges to a large proportion of the money-lenders in the Province.

7. It is also worthy of notice that in the Bundelkhand Alienation of Land Act (II of 1903) the statutory agriculturist finds no place.

8. I am to request that, after reference to the District Officers of your Division, you will record your opinion as to whether the statutory agriculturist should be abolished or not. If he is, the following provisions of Act XIII of 1900 will have to be repealed ; sections 2 (1), 3 (1) (b) and the proviso to the latter. It may be further noted that if the statutory agriculturist is to be eliminated from the Act the sooner this is done the better. At present he is in a position of great advantage because the door closed upon the mass of the money-lending classes is left wide open to

certain members of those classes who, by the absence of competition of their class, have better opportunities now of permanently acquiring the lands of zamindars than they had before the Act was passed. This privileged position will shortly be recognised and eagerly claimed; and it will be far more difficult to eject the occupants from it a few years hence than it is now.

9. I am to add that this letter was drafted under the orders of Sir Lewis Tupper before he went on leave, and its issue has been delayed by the necessity for a previous reference to Government.

[No. 34.]

Circular No. 6, dated Lahore, 20th July 1904.

From—R. HUMPHREYS, Esquire, Senior Secretary to Financial Commissioner, Punjab.

To—All Commissioners and all Deputy Commissioners, except Simla.

With a view to the prevention of evasions of the provisions of the Alienation of Land Act by persons who collude to represent an alienation as having taken place before the Act came into force, the following instructions are issued for the guidance of Revenue Officers in supersession of those contained in paragraph 5. of Financial Commissioner's Circular No. 8, dated the 14th August 1901, which have become unsuitable now that the Act has been in operation for more than three years.

Sub-head No. 721.
File No. 154.

2. When a mutation comes up relating to an alienation which contravenes the provisions of the Alienation of Land Act, but in which it is alleged that the alienation was completed before the Act came into force, the attesting officer must decide whether the alienation took place before or after June 8th, 1901. It is important that there should be a careful enquiry, reference being made to the revenue records, and the parties being given an opportunity of producing evidence. The record of the proceeding should be in some detail. The nature and amount of the evidence required will vary with the circumstances of each case. A registered deed will not ordinarily require much, if any, corroboration. But an unregistered deed or an oral contract will demand close examination. A scrutiny of the girdawari

register will show who has been in possession since the alleged date of the alienation. If the alienee did not obtain possession himself or through a tenant before the 8th June 1901 or within a reasonable time, it is for him to explain why he did not take advantage of his rights.

[No 35.]

Circular letter No. 5407, dated Lahore, 5th September 1904.

From—R. HUMPHREYS, Esquire, Senior Secretary to the Financial Commissioner, Punjab,

To—All Commissioners and Deputy Commissioners in the Punjab

A doubt having arisen as to the meaning of the words "member of the same tribe" in section 3 (1) (c) of the Alienation of Land Act (XIII of 1900), I am directed to explain that they should be held to be equivalent to "member of the same agricultural tribe in the same district." It follows therefore that a permanent alienation of land by a member of an agricultural tribe to a member of the same tribe in another district, even though the tribe may also have been notified as an agricultural tribe in the latter district, requires the sanction of the Deputy Commissioner of the district in which the land is situated. *A fortiori* a permanent alienation of land in a British district by a member of an agricultural tribe to a member of the same tribe residing in a Native State requires the sanction of the Deputy Commissioner of the district. In such cases the instructions contained in paragraph 11 (vii) of Financial Commissioner's Circular letter No. 3441, dated the 5th June 1901, as to the giving or withholding of sanction should be followed.

2. The same words recurring in section 6 (1) of the Act relating to temporary alienations of land should be similarly interpreted, and accordingly mortgages by a member of an agricultural tribe to a member of the same tribe in another district or in a Native State are invalid unless they are in one of the approved forms given in the section referred to.

[No. 36.]

Circular letter No. 5555, dated Lahore, 14th September 1904.

From—R. HUMPHREYS, Esquire, Senior Secretary to the Financial Commissioner, Punjab,

To—All Revenue Officers in the Punjab.

This office Circular letter No. 96, dated the 14th January

Sub-head No. 441. File
No. 116.

1903, conveyed certain instructions as to how questions relating to occupancy rights should be dealt with, with reference to the Punjab Alienation of Land Act (XIII of 1900), and it was said that these instructions should be acted on until they should be modified by an authoritative decision of the Courts or by Government. It has been ruled by the Punjab Chief Court in their decision reported in the Punjab Record as No. 11 of 1904 (Civil) that the word "land" as defined in section 2 (3) of the Alienation of Land Act includes occupancy rights in land. This Office Circular letter No. 96 of 1903, above referred to, is accordingly cancelled, and in future transactions affecting occupancy rights in land must be dealt with under the Act.

[No. 37.]

Circular No. 4, dated Lahore, the 5th October 1904.

From—H. J. MAYNARD, Esquire, I.C.S., Inspector-General of
Registration, Punjab,

To—All Registrars in the Punjab.

Owing to the issue of the Financial Commissioner's Circular letter No. 5555, dated the 14th September 1904, this office Circular No. 1 of the 21st April 1904 is cancelled, and in future Registering Officers should deal with occupancy rights in the same way as with proprietary rights, for the purposes of the Punjab Alienation of Land Act (Act XIII of 1900).

Published at page 1259,
Part III, of the *Punjab
Gazette*, dated 15th Sep-
tember 1904.

[No. 38.]

Circular letter No. 6272, dated 19th October 1904.

From—R. HUMPHREYS, Esquire, Senior Secretary to the Financial
Commissioner, Punjab,

To—All Commissioners and Deputy Commissioners in the Punjab.

I am directed by the Financial Commissioner to draw attention to the following mistakes which appear to be common in dealing with questions arising out of the Punjab Alienation of Land Act (XIII of 1900), and to point out how they should be avoided.

2. *Disposal of applications under the Act by Deputy Commissioners*—Unnecessary trouble is often caused by the failure of Deputy Commissioners to carefully
Applicants to be care-
fully examined.

examine applicants as to the nature of their application and to specify clearly in sending the application to a subordinate Revenue Officer for enquiry and report the exact point or points which require elucidation. Tahsildars have been known to send in long reports in cases where all that was required was a verification of the statement in the application that the land in question was within municipal limits. So also it is not uncommon for applications to be made to Deputy Commissioners for permission to mortgage land to persons not members of agricultural tribes in forms other than those approved in section 6 of the Act. Such permission cannot be granted in any case, and it is unnecessary to send such applications for report. All applications for permission to mortgage should be disposed of at once by the Deputy Commissioner, for in the case of the alienee being a member of an agricultural tribe there is no need of permission, and if he is not a member (even though he be an agriculturist) permission cannot be given.

Defective mutation proceedings.—It is often impossible to say from the mutation record as it stands whether mutation should have been allowed or refused. Paragraphs 5 and 6 of Director of Land Records' Circular No. 9 dated the 20th November 1903, will, if observed, remove most of the objections; but at present the circular does not appear to receive sufficient attention. The Revenue Officer attesting a mutation should himself see the deed on which it is based, if one exists. This is the only way in which he can satisfy himself as to its conditions. The caste or tribe of the parties must in all cases be recorded: in many cases this information is omitted, and perhaps the omission is intentional. If the caste or tribe is one of those notified by Government as agricultural tribes, it should be entered under the name used in the Government notification, and not by vague terms, such as "zamindar." &c. The Revenue Officer in his order should always state what the caste of each party is.

4. *Disposal of mutations regarding mortgages.*—Revenue Officers rarely write correct orders in cases of refusal of mutation regarding mortgages. The order is generally found to be—"mutation refused because the alienee is not a member of an agricultural tribe." But this is not a sufficient reason, nor is it the reason which as a fact the Revenue Officer has in his

Reason for refusal to grant mutation should always be given.

mind. The real reason is that the form of mortgage approved for use where the alienee is not a member of an agricultural tribe and the alienor is, has not been followed. He should state that fact, and show in what respect the mortgage does not comply with the conditions of the Act.

5. *Permanent alienations.*—In regard to permanent alienations a very common mistake is for Revenue Officers to dispose of cases by refusal of mutation, instead of by a reference to the Deputy Commissioner. Where a permanent alienation requires and has received the sanction of the Deputy Commissioner, if the Deputy Commissioner's sanction is not on the mutation proceedings themselves, the attesting Revenue Officer should note that he has seen a certified copy of the sanction or the original order. It is not sufficient to take the statement of the parties as showing that sanction has been given.

6. *Temporary alienations.*—A common form of mortgage is that in which the mortgagee gets possession on the condition that he will re-deliver possession when the profits cover the principal and interest. The custom appears to be to hold that such a mortgage contravenes the Act because no term is fixed, and mutation is refused. This is quite wrong. In such a case the Act (section 6 (1) (a)) fixes the period at 20 years, and the mortgage should be accepted as legal subject to the condition attached to it by law, and the mutation should be sanctioned as for a period of 20 years. The same applies *mutatis mutandis* to a case where the term in the deed is over 20 years. The mortgage should be treated as a mortgage for 20 years. Where there is no period the mortgagor may suffer, and so when the period is over 20 years he will gain. In accordance with the instructions in paragraph 3 (b) of Director of Land Records' Circular No. 7 of 1903, the term of the mortgage should be shown as 20 years in the remarks column of the *jamabandi*.

7. *The same.*—In mortgages which otherwise comply with the conditions of section 6 (1) (a) of the Act there are frequently other conditions. *e.g.*, (a) that, within the term fixed, redemption shall not be allowed, or (b) that redemption shall be allowed only on payment (i) of the whole mortgage money, which means

that the profits are to be in lieu of interest only, and not in lieu of both principal and interest, or (ii) of a sum equal to the mortgage money multiplied by a fraction represented by the remaining term of the mortgage divided by the whole term. Such conditions are all contrary to section 7 (3) as read with sections 6 and 8, and mutation should be refused. It is for the Deputy Commissioner to determine the amount to be paid in such cases where the mortgagor wishes to redeem his land during the currency of the mortgage. Similarly in the case of mortgages which otherwise comply with the conditions of section 6 (1) (b) of the Act there may be a condition saying that on non-payment of the interest the mortgagor shall give possession to the mortgagee for 20 years. This is illegal, and mutation should be refused. The sub-section leaves it to the Deputy Commissioner to determine the period.

8. *The same.*—Where a temporary alienation contravenes the Act mutation must be refused; but cases sometimes occur where the parties under such circumstances come to an agreement in the course of the mutation proceedings which brings the alienation into conformity with the Act. In such cases the Revenue Officer should instruct the parties that they may apply to the Deputy Commissioner to exercise the powers conferred upon him by section 9 (1), and if they agree, the mutation proceedings should be forwarded to the Deputy Commissioner as their application.

9. *The same.*—There are many cases of mortgages executed before the Alienation of Land Act came into force according to which possession is not to pass until there has been default in the payment of principal or interest. Where this contingency arises after the 8th June 1901 the Act does not apply, as the mere passage of possession in accordance with the terms of the original mortgage cannot be construed as constituting a new mortgage made after the coming into force of the Act.

10. *Working of Section 15.*—There is some doubt as to the effect of section 15 in cases where the fruit of gardens is sold for several years in advance. Deputy Commissioner's sanction to leases of fruit gardens for more than one year necessary. In the Financial Commissioner's opinion where the sale

is for more than one year the Deputy Commissioner's sanction is necessary.

11. *Interpretation of paragraph 11 (viii) of Financial Commissioner's Circular letter No. 3441, dated 5th June 1901.*
Treatment of money-lenders with regard to permanent alienations. Some doubts have been felt as to the proper interpretation of paragraph 11 (viii) of Financial Commissioner's Circular letter No. 3441, dated 5th June 1901. I am to refer to *Punjab Record* Ruling No 5 of 1904—Revenue—in which the Financial Commissioner's views are explained ; they are to the following effect :—

The money-lender may be (1) a member of an agricultural tribe, or (2) an agriculturist within the meaning of section 2 (1) of the Act, or (3) some other person.

If the money-lender falls under the third category there is no difficulty. The instructions of the Circular letter apply without explanation.

If the money-lender is a member of an agricultural tribe, and of the same tribe or a tribe in the same group as the alienor, the sanction of the Deputy Commissioner to the transaction is not required.

Nor is it required if the money-lender is an agriculturist within the meaning of the Act, holding as such land in the village where the land alienated is situated.

Where the Deputy Commissioner's sanction is not required his proper course is to inform the parties accordingly, and, so far as the proceedings under the Alienation of Land Act are concerned, to consign the case to the record room. But if mutation of names is applied for, it should be granted or refused on general grounds, and not refused for any reason arising out of the Alienation of Land Act or the Financial Commissioner's circular.

On the other hand, if it is found that the money-lender, though a member of an agricultural tribe is not a member of the same tribe as the alienor or of a tribe in the same group, or, though an agriculturist within the meaning of the Act, does not as such hold land in the village where the land alienated is situated then paragraph 11 (viii) of the Circular letter of 5th June 1901 applies without explanation as in the case of " (3) some other person " dealt with above.

[No. 39.]

GAZETTE NOTIFICATION.

The 23rd January 1905.

No. 10.—Notification.—In exercise of the powers conferred on him by Section 2 (1) of Act XIII of 1900. (The Punjab Alienation of Land Act), the Lieutenant Governor of the Punjab is pleased to determine that in the Ahmadpur and Garh Maharaja Ilaqas of the Jhang District comprising the undermentioned estates the expression "Agriculturist" means a person holding agricultural land who, either in his own name or in the name of his ancestor in the male line, was recorded as the owner of land or as an hereditary tenant or as an occupancy tenant in any of these estates at the 4th Summary Settlement of these ilaqas of 1862-65: Provided that if since the making of such settlement a Civil Court or other competent authority has before the commencement of the said Act decided that any person was wrongly included in or omitted from the record thereof or that any right recorded in the record is erroneously stated, this definition shall be construed with due regard to such decision:—

List of villages in Ahmadpur Ilaqa.

No.	Name of village.
1.	Ahmadpur.
2.	Chadhar.
3.	Jhandir Niaziwala.
4.	Chak Naurang Shah, West.
5.	Namdar Sial.
6.	Samandrana.
7.	Bokhu Sargana.
8.	Faqir Sial.
9.	Wagha.
10.	Saupal,
11.	Ahmadwala.
12.	Char Yari.
13.	Basti Wali Mahomed.
14.	Sidhana.
15.	Isewala.

List of villages in Garh Maharaja Ilaqa.

1. Pir Abdur Rahman.
2. Najaf Shah.
3. Kassana.
4. Kundal Khokhrau.
5. Kulachi.
6. Jairani.
7. Mahmud Shah.
8. Inait Shah.

List of villages in Garh Maharaja Ilaqa.
concluded.

- | No. | Name of village. |
|-----|------------------|
| 9. | Bela Garh. |
| 10. | Bela Kamlana. |
| 11. | Dal. |
| 12. | Kapuri. |
| 13. | Seva. |
| 14. | Shah Usafi. |
| 15. | Ujghi. |
| 16. | Basti Lal. |
| 17. | Sultan Bahn. |
| 18. | Diraj. |
| 19. | Bhidval. |
| 20. | Garh Maharaja. |
| 21. | Jana. |
| 22. | Sidkana Mir Ali. |
| 23. | Ranjit Kot. |
| 24. | Mahmud Kot. |
| 25. | Sial Kot. |
| 26. | Gadara. |

APPENDIX II.**Statement of Objects and Reasons.**

The object of this measure is to place restrictions on the transfer of agricultural land in the Punjab with a view to checking its alienation from the agricultural to the non-agricultural classes.

The expropriation of the hereditary agriculturist in many parts of the Province through the machinery of unrestricted sale and mortgage has been regarded for years past as a serious political danger. It is recognized that the danger is accompanied with bad economic results, that it is increasing, and that, if not arrested, it will grow to formidable dimensions. It is also recognized that the idea of a free transferable interest in land which is at the root of the trouble, is of comparatively modern origin and is contrary both to the existing practice in most Native States and to the traditions and sentiment—if no longer to the practice—of the people of the Punjab. After the most careful consideration of the subject in communication with the Local Government and Her Majesty's Secretary of State, the Government of India have come to the conclusion that direct remedial measures must be undertaken.

The Bill extends to the whole Province, but power is taken—see clause 15—to exempt any district or part of a district or any person or class of persons from the operation of any or all of its provisions.

To every permanent alienation of agricultural land the sanction of a Revenue-officer is made necessary by clause 3, read with clause 10, of the Bill. Such sanction is to be given as a matter of right where the alienor is not a member of an agricultural tribe, or where a member of an agricultural tribe alienates to an agriculturist in the same village, or to another member of his own tribe residing in the district. In any other case inquiry is to be made by a Revenue-officer not lower in rank than a Deputy Commissioner, into the circumstances of the proposed alienation, and sanction will be given or refused by the officer at his discretion, guided, however, by rules made by the Local Government under clause 16, and a single appeal is, under clause 14, to lie from his decision. The Local Government, with the previous sanction of the Governor-General in Council, will, under

clause 4, define for each district its " agricultural tribe " and may in this connection give to the term " district " an enlarged or restricted significance—see clause 2 (2).

Clause 6 of the Bill is intended to reduce temporary alienations of agricultural land to two forms of mortgage (1) a usufructuary mortgage for not more than fifteen years, after which the mortgage is to be extinguished and the land is to revert to the owner; (2) a mortgage without possession, convertible into a usufructuary mortgage for a period not exceeding fifteen years. During the currency of a mortgage or lease, the debtor is, under clause 8, to be barred from entering into a further mortgage or lease, and under clause, 9, he may, on the expiry of the term of the mortgage or lease, be put into possession of his land by the Revenue-officer. Clause 12 will prohibit the sale of agricultural land in execution of an existing or future decree of the Civil Courts.

Mortgages by way of conditional sale (*bai bil wafa*) whether made before or after the commencement of the Act are to be void—see clause 6 (2). It is considered that the claims of a creditor will be sufficiently met by power being given to the Revenue-officer to convert such a mortgage, on the application of the mortgagor or mortgagee, into a usufructuary one.

Lastly, the practice of hypothecating the produce, or any part of the produce, of agricultural land by an agriculturist will be forbidden by clause II.

The 26th September. 1899.

C, M. RIVAZ.

J. M. MACPHERSON,

Secretary to the Government of India.

PUNJAB ALIENATION OF LAND BILL.

The Hon'ble Mr. Rivaz moved for leave to introduce a Bill to amend the law relating to agricultural land in the Punjab. He said:—" Before asking leave to introduce the Bill for amending the law relating to agricultural land in the Punjab, I am afraid that I must tax the patience of the Council by giving, at some little length, a historical retrospect of the case before us. I will endeavour, however, to be as brief as possible.

" The question of the indebtedness of the agricultural classes in different parts of India has attracted the notice of Government from the early times of British rule, and various schemes have been proposed, from time to time, with the object of protecting land-holders from the effects of debt and the consequent loss of their lands. But, so far as I have been able to ascertain, Mr. Justice West, of the Bombay High Court, was the first, in a pamphlet entitled *the Land and the Law in India*, which he published in 1872, to formulate a plan for imposing some definite limitations on the power to alienate land. The theory he propounded was that, although the British Government had, for the most part, divested itself of that exclusive ownership in land which had been recognized as existing under native rule, still it had retained a right of protective ownership; and that, as experience had proved that the principle of free trade in land, which had been allowed to spring up, was not adapted to the present condition of the agricultural population of India, the Government ought, in the exercise of its protective right, to impose limitations on the further application of this principle, and to pronounce all land to be inalienable except with its assent. His proposed scheme, broadly, was that the power of assent should be delegated to Collectors of districts or other local officers, and that only excess land, above what was necessary for the comfortable maintenance of an agriculturist and his family, should be allowed to be alienated, or be liable at attachment and sale in execution of decrees.

" In 1875, in consequence of agrarian riots in the Bombay Deccan, a Commission was appointed to enquire into the condition of the agricultural population of that part of India. The result of these enquiries was the passing of the Deccan Agriculturists' Relief Act in 1879, by which the ordinary civil law in four of the Bombay Deccan districts was in many respects, amended in favour of agricultural debtors.

“ In 1881, legislation was undertaken for the relief of large land-holders in Sindh and in the Broach and Kaira districts of the Bombay Presidency, and in 1882, for the relief of encumbered estates in the Jhansi division of the North-Western Provinces. A main feature of all these enactments was that, while the estate remained under Government management, the indebted owner was debarred from alienating any portion of it.

“ The question of agricultural indebtedness was included by the Famine Commission of 1878 in the scope of their enquiries, and, in their report, they expressed their views on the desirability of protecting agricultural debtors, among other means of relief, by imposing restrictions on land transfers.

“ In 1886, Mr. Thorburn, now Financial Commissioner of the Punjab, then a District Officer in that Province, wrote a book on the indebtedness of the Muhammadan land-holders of the Western Punjab, entitled *Mussulmans and money-lenders in the Punjab*, which attracted the notice of the Secretary of State for India, and on which he asked for the views of the Government of India. In this book, Mr. Thorburn recommended, among other measures of relief, that it should be made illegal in the west of the Punjab for any person deriving profits from a shop or from money-lending to acquire any interest in land, except (1) in arable or pasture land in the immediate vicinity of a town or large village or (2) in manured and irrigated land elsewhere. The then Lieutenant-Governor of the Punjab, Sir James Lyall, in expressing his views on Mr. Thorburn's proposals, said, as regards the particular recommendation which I have just mentioned, that he was disposed to think that it would probably be necessary to take steps to check the alienation of lands to money-lending classes in the Punjab, but that the remedy suggested by Mr. Thorburn, namely, to make it illegal for the moneyed classes to acquire lands, other than those of two highly artificial descriptions, seemed to him to be impracticable.

“ In 1891, a Commission was appointed to report on the working of the Deccan Agriculturists' Relief Act of 1879 and on the desirability of extending a similar measure to other Provinces. The Government of India, in forwarding this Commission's Report to the Secretary of State in 1894, together with a draft Bill to provide for the relief of the agricultural classes, in which certain changes proposed by

the Commission in the Deccan Act had been incorporated, remarked that such legislation would, however, only partially meet the difficulties connected with the general problem of agricultural indebtedness; that remedies of an entirely different kind, including measures for further restricting the right of land transfer seemed indispensable; and that this part of the subject would be separately and carefully considered.

“ Accordingly, a Circular was addressed to Local Governments in October, 1895, in which it was said that the Government of India were distinctly of opinion that some action in the direction of restriction upon the alienability of land was generally advisable, and even necessary, though the manner and degrees of the restriction must vary from Province to Province. Each Local Government and Administration was requested to take the subject into its most careful consideration, and to communicate its matured views and definite proposals for action in the direction indicated. Two Notes accompanied the Circular, in which the whole subject of Agricultural Indebtedness in India and the various possible remedies for checking transfers of land were exhaustively explained and discussed.

any where else

“ On receipt of the replies to this Circular, it was decided to deal first with the Punjab, as being the Province where the question of agricultural indebtedness was of special importance in its political aspect, and where it was probably possible to go further than elsewhere in respect of imposing direct restrictions on land transfers. The reply from the Punjab had been to the following effect:—“ The Lieutenant-Governor, Sir Dennis Fitzpatrick, recognized that a point might be reached at which the amount of land alienated, and the number of proprietors reduced to the condition of tenants or labourers, would constitute a political danger of formidable dimensions, and that where this danger point was reached, the only remedy was to attack the evil at the root by imposing direct restrictions on alienation—for instance, by prohibiting land-owners of specified castes or tribes from alienating their ancestral lands, without official sanction, beyond their life-time or for a fixed period, to any person not belonging to those castes or tribes.’ While this case was under consideration, a special enquiry, the results of which were highly interesting and instructive, had been made by Mr. Thorburn, the Commissioner of the Rawalpindi Division, regarding the indebtedness of the agricultural classes and the amount of land alienations in

four assessment circles of that portion of the Punjab ; and Sir Dennis Fitzpatrick came to the conclusion that in one at least of these circles a case for legislation had been made out. He was, however, strongly opposed to a law of general application to the whole Province and did not propose to go further than to take power by law to apply restrictions on transfer to any particular tract in which a full enquiry might show that they were required.

“ Both the Financial Commissioners of the Punjab, on the other hand, expressed a decided opinion in favour of restrictive measures of general application, and suggested that all permanent transfers of ancestral land ought to be prohibited unless sanctioned by the Revenue-officer, while temporary transfers ought to be limited to 15 years, the land reverting to the alienor at the end of this period free of all encumbrances. A majority of the Judges of the Chief Court were also in favour of imposing direct restrictions on alienations. My Hon'ble friend Mr. Justice Chatterjee, after discussing the question in an able paper and pointing out that the customary law of the Punjab enables heirs to set aside many alienations, went on to say that he considered that the great recommendation of a measure directly restricting alienations would be that it would exactly define the limits of the land-holders' power of alienation, and would thus have a beneficial effect in checking litigation. He thought that the restriction to life or to 15 years of a land-owner's power of alienating his ancestral lands would be regarded by the bulk of the land-holding class as consistent with the traditions of the Province, and would be agreeable to them. It is not clear, however, whether the Judges advocated a general enactment on these lines, or merely an enabling one, as recommended by Sir Dennis Fitzpatrick.

“ The Government of India, in communicating to the Punjab Government the opinion which they had formed on the evidence and recommendations contained in Sir Dennis Fitzpatrick's minutes and in the reports of Judicial and Revenue Officers of the Punjab, expressed their belief that partial legislation would fail in its object and would produce more difficulty and jealousy than legislation of a general character. It was said that a strong case seemed to have been made out for prohibiting all permanent alienations of agricultural land, except with the sanction of some duly empowered Revenue-officer, and for restricting temporary alienations to the term of the alienor's life, or with the con-

sent of his heirs to a maximum period of 15 years. In inviting the Punjab Government to consider these proposals, it was suggested that the quickest and easiest way of dealing with them would be to have them discussed by a Committee of selected officers.

“ Accordingly, the Lieutenant-Governor, Sir Mackworth Young, circulated to selected officials and non-officials a series of questions framed on the proposals of the Government of India, and followed this up by convening a strong Committee of Revenue-officers, over which His Honour himself presided. The recommendations made by this Committee were that any permanent alienation of agricultural land to a non-agriculturist, if made without the sanction of the Deputy Commissioner of the district, should be void, but that otherwise there should be no restriction on sales or other permanent transfers ; that the definition of an ‘ agriculturist ’ should be, ‘ any person who either in his own name, or in the name of an agnate ancestor, was recorded as an owner of land or as a hereditary tenant in any estate at the first regular settlement,’ and that of ‘ land ’ as in the Punjab Tenancy Act, that is, all agricultural and pastoral land, whether ancestral or self-acquired ; that the only forms of temporary alienations to be allowed in future should be (1) usufructuary mortgage, with delivery of possession to the mortgagee, for a maximum period of 20 years, and on condition that at the end of the period of mortgage the mortgaged land shall revert to the mortgagor or his successor in interest with the mortgage debt extinguished, (2) simple mortgage which, in certain circumstances may be converted into a usufructuary mortgage of the nature I have just mentioned, and (3) leases for 20 years, or for the life of the lessor, whichever is less ; that the form of mortgage which is conditional sale be declared illegal with retrospective effect ; and that the hypothecation of a share of the produce of land should be prohibited for any term exceeding a year. The Committee proposed to make their suggested restrictions on alienations general throughout the Punjab, but to give power to the Local Government to exempt any district or part of a district or any person or class of persons from the operation of the restrictions in whole or in part. They also proposed to amend the existing law of pre-emption in the Punjab, to revise the present order of priority of pre-emption which is laid down in section 12 of the Punjab Laws Act so as to exclude strangers who have bought into the village, and to transfer the hearing of

pre-emption cases, both as regards the fixation of the pre-emption prices and questions of title, from the Civil Courts to Revenue-officers.

“ These proposals of the Punjab Committee constitute the foundation of the scheme which is embodied in the Bill which I am introducing. They have, as I shall explain, been modified in some particulars, but such modifications have been made with the sole object of securing more effectually the intentions of the Committee, and do not affect any question of principle. I turn first to the restrictions to be imposed on sales and other permanent transfers. It appeared to us that the proposal made by the Punjab Committee, that alienations between ‘ agriculturists ’ should continue to be free from all restrictions, was open to objection. In the first place, the definition of ‘ agriculturist ’ which has been framed by the Committee, or indeed any other practicable definition of the term, must necessarily include numerous classes of persons who, although land-holders since the early years of British rule or even prior thereto, are in reality primarily traders and money-lenders by nature and profession, and not true agriculturists in any proper sense of the term. Moreover, since even the *bonâ fide* agriculturist is not infrequently also a money-lender, we think it desirable to retain power to prevent such men from buying up land in a village where they would come in as outsiders and constitute a foreign element in the village community. We recognize, however, that we must guard against unduly narrowing the market for free sales, and we propose to attain this object by the following means. On the analogy of section 45 of the Central Provinces Tenancy Act of last year, we are providing that all permanent transfers must receive the previous sanction of a Revenue-officer, but that sanction shall be given as a matter of right, in cases in which the Revenue-officer is satisfied that the intending transferor is a person who is not a member of an agricultural tribe, or, in cases where the transferor is a member of an agricultural tribe, that the transfer is either to an agriculturist (as defined by the Punjab Committee) holding land as a proprietor or occupancy tenant in the village in which the land sold or otherwise permanently alienated, is situated, or to another member of the same agricultural tribe residing in the same district. Our scheme is thus based in this respect on the feeling in favour of the prior rights of the village community and on the recognition of the principle of tribal organization which are well known powerful factors in the social economy

of the agricultural classes of the Punjab. To prevent difficulties or inequalities in the application of this portion of our scheme, power is being given to the Local Government to specify by notification what are the agricultural tribes in each district, and to extend the definition of 'district' in any particular case beyond the ordinary limits of the revenue district.

" Next, as regards temporary alienations, while we accept the conclusions of the Punjab Committee, that only the two forms of mortgage proposed shall in future be allowed, that existing mortgages by way of conditional sale shall be void, and that leases shall be limited to a fixed term, we have reduced the maximum period of temporary alienation from 20 years as proposed by the Punjab Committee to 15 years. We are providing that any person who has made a permissible mortgage or lease shall be debarred from making any further alienation of his land during the currency of such mortgage or lease, but, after careful consideration, we have decided not to impose any further restrictions on temporary transfers, whether by prescribing an interval between two successive mortgages or leases, or by making the alienor retain a right of cultivation in the alienated land, his rent being fixed by authority, or by prohibiting the mortgage or lease of more than a certain portion of a holding. We are also providing that any permanent alienation made without the required sanction shall take effect as a usufructuary mortgage on the conditions prescribed for such mortgages, and that existing conditional sales and future unauthorized mortgages shall be treated in like manner.

" We have accepted the proposal of the Punjab Committee in regard to prohibiting hypothecations of produce.

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 " We are supplementing our proposed restrictions on voluntary alienations by abolishing the sale of all agricultural or pastoral land in execution of any decree or order. Under the present practice, sale of such land in the Punjab in execution of a decree requires in the case of ancestral land, the sanction of the Financial Commissioner, and, in the case of other land, the sanction of the Commissioner of the Division. Such sanction is very seldom given; still, as the allowance or disallowance of sales depends on the individual judgment of the Financial Commissioner, or the Divisional Commissioner, as the case may be, an undesirable element of uncertainty is thus introduced which it is advisable to remove. Moreover, under our proposed restrictions on

mortgages, land could in future only be sold in execution of decrees for unsecured debts, and not for debts secured by a usufructuary mortgage. We, therefore, consider that sales of agricultural or pastoral land in execution of decrees of the Civil Courts should in future be absolutely prohibited in the Punjab.

“ As regards amending the law of pre-emption in the Punjab, we agree with the Punjab Committee that an amendment of the present law on the lines they mention is desirable, and will be a useful adjunct to our scheme for restricting land alienations. We propose to deal with this matter separately—after further consulting the Punjab Government—either by revising the present pre-emption sections of the Punjab Laws Act, or by cancelling those sections and framing a new enactment.

“ On the all-important question whether the proposed Act shall be an enabling Act or a measure of general application, the Government of India adhere most decidedly to the opinion which they expressed, as I have mentioned, in addressing the Punjab Government, in favour of an enactment of general application. It seems to us self-evident that, if any restrictive scheme is to be worked in the partial manner which was so strongly advocated by Sir Dennis Fitzpatrick, it is inevitably doomed to failure. In the first place the remedy would not be tried till the disease was very largely beyond cure; and in the second place, if the restrictive measures were confined to scattered tracts throughout the Province, the agricultural population in those tracts would be placed at a very serious disadvantage. Their credit would be injuriously impaired, for the money-lenders, while able to look to the land for their security everywhere outside these special areas, would naturally avoid lending to men who were prohibited from giving such security. The agriculturists in these areas would thus stand apart as a proscribed class and would naturally resent their position. If, on the other hand, the restrictive scheme be made of general application, there is no reason to suppose that the credit of the general agricultural community will be materially impaired—not more so, at any rate, than is desirable in their own interests. Take, for instance, the case of the occupancy tenants of Upper India. Alike in the Punjab, the North-Western Provinces, Oudh and the Central Provinces, the occupancy tenant is very materially restricted in his powers of alienation, still it is a well known fact that this class of agriculturists, as a body, is prosperous, and can obtain

accommodation from money-lenders on much the same terms as small proprietors. The fact is that the money-lender must continue to exercise his profession, and the agricultural community must, under the rural conditions of this country, continue to constitute his principal clientele. The money-lender plays a most useful, and even necessary, part in the social economy of village life, and no one wishes to eliminate him or to place unreasonable restrictions upon his transactions. If our proposed scheme is made of general application, he will have to adapt himself to the new conditions, and will be easily able to do so. If, on the other hand, the scheme is applied only to selected and scattered areas, the money-lender will clearly be master of the situation as regards such localities.

“ Such is the plan which the Government of India put forward with the object of checking the transfer of land from the agricultural classes in the Punjab. It certainly goes further in imposing direct restrictions on alienations than has hitherto been attempted in other parts of India, but the circumstances of the Province with which we are dealing are quite special, and I trust that I have shown, although I fear tedious length, that our scheme is the outcome of very careful investigation and deliberation.

“ After all, it must be borne in mind that we are aiming at reverting to some extent to a state of things which prevailed in the Punjab before it came under British rule. It is an arguable question whether the right of free transfer of land was recognized under Native rule, or whether it is what has been called the ‘fatal gift’ of the British Government, but, in any case, the question is for practical purposes one of mere academic interest, for it is an undisputed fact that in former times the exercise of the right of transfer, at all events in favour of money-lenders or other out-siders, even allowing that such right did exist in theory, was for several reasons exceedingly rare, and we know that even in these days in most Native States alienations of land are either absolutely prohibited or largely restricted. We know, too, that in the Punjab the custom of transferring land did not gain a footing for several years after the annexation of the Province, but that, as land has increased in value and become more attractive as a profitable investment, the number of transfers has increased correspondingly and is still increasing. In a letter addressed by the Punjab Government

to the Government of India in 1888, during the Lieutenant-Governorship of Sir James Lyall, it was said that 'after allowing for the greater accuracy of the statistics of later years, Sir James Lyall considers that the statements of sales and mortgages from 1866 to 1886 show a large gradual increase in the area sold and mortgaged in the Punjab, and that, 'in both the east and west of the Province there are districts where the transfers to money-lenders are serious and appear to be increasing, and where the fact requires Government to consider if a remedy cannot be found and applied,' In the following year, His Honour the present Lieutenant-Governor, then Financial Commissioner, recorded his opinion that 'the only safe conclusion is that there is year by year a gradually increasing amount of land being sold and mortgaged.' These opinions have been confirmed as districts have come under settlement during the past ten years, and the question of transfers has been specially investigated by the Settlement Officers, while the enquiries made by Mr. Thorburn in 1895, to which I have already alluded, showed that in one out of the four circles with which he dealt, the amount of the cultivated area which had been purchased or was held in usufructuary mortgage by money-lenders was as much as 28 per cent., while in another circle it was 20 per cent. These facts speak for themselves. The Punjab is pre-eminently a land of yeoman and peasant proprietors, and the expropriation by the money-lending classes of these sturdy land-holders—men who furnish the flower of the Native Army of India, and who look forward, amid all the hardships and glories of a military career, to spend their declining years on their ancestral acres—has, under the influence of conditions which have sprung up under British rule, been progressing, as I have shown, in different degrees of rapidity in all parts of the Province. The sole and entire object of the measure which I have been explaining is, while affording ample facilities and a sufficient market for unobjectionable transfers, to arrest the further progress of this mischief and to check, by remedial action, an ever increasing political danger; and I venture to express a confident hope that our scheme will be received in this spirit by those in whose interests it has been devised."

By the
 Lyall
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**Report of the Select Committee on the Bill to
amend the Law relating to Agricultural
Land in the Punjab.**

WE, the undersigned, Members of the Select Committee to which the Bill to amend the law relating to agricultural land in the Punjab was referred, have considered the Bill and have now the honour to submit this our Preliminary Report, with the Bill as amended by us annexed thereto.

2. *Clause 1.*—We have provided that the Act is to come into force on such day as the Governor General in Council may, by notification in the Gazette of India, direct.

3. *Clause 2.*—We have expanded the definition of “agriculturist” by empowering the Local Government to determine the question of status by reference to an earlier settlement when the first Regular Settlement has been made in or since the year 1870. We have also provided that where a Civil Court or other competent authority has given a decision which involves a rectification of the settlement, the definition is to be construed with due regard to such decision. We have also empowered the Local Government to restrict as well as to extend this definition. Our hon’ble colleague, Sir Harnam Singh, for reasons which are stated in his separate minute, proposed to widen this definition, but we were unable to accept his opinion on the point.

We have provided that all expressions which are defined in the Punjab Tenancy Act, 1887, or in the Punjab Land-revenue Act, 1887, shall, subject to the provisions of this Act, have the meanings assigned to them in these Acts, respectively.

We have expanded the definition of “land” so as to include a share in the profits of an estate or holding, any dues or percentage of land-revenue payable by an inferior landowner to a superior landowner, a right to receive rent and any right to water enjoyed by the owner or occupier of land as such. We have also thought it expedient to define the expressions “permanent alienation” and “usufructuary mortgage.” Our definition of a usufructuary mortgage is substantially identical with the definition in section 58 of the Transfer of Property Act, 1882.

4. *Clause 3.*—In this clause we have amended sub-clause (b) by providing that a person purchasing land as an

agriculturist must actually hold land as such in the village, and we have added a proviso which will restrain a person acquiring land under the same clause from alienating without sanction unless the alienee is a member of an agricultural tribe or an agriculturist holding land in the village. We have further amended sub-clause (1) of this clause by dispensing with the sanction of the Revenue-officer in the cases where it was proposed that such sanction should be given as a matter of course.

In sub-clause (2) of the same clause we propose to enact that a permanent alienation of land shall not take effect as such until the required sanction is given, and we propose to add words which make it clear that the sanction may be given after the act of alienation is otherwise completed.

5. *Clause 4.*—In this clause we have widened the power which it is proposed to confer on the Local Government by enabling it to group districts and tribes for the purposes of the Act.

6. *Clause 5.*—In this clause we think it desirable to extend the saving for rights of pre-emption to reversionary rights and to questions of title generally.

7. *Clause 6.*—In this clause, which provides for the forms or mortgage to be used by members of agricultural tribes raising money on the security of their land, we have recast the opening sentence and we have also redrafted form (b) and have added a new form (c) by which the mortgagor may recognise the mortgagee as a landlord within the meaning of the Tenancy Act, while himself remaining in cultivating occupancy. We think it possible that it may be found necessary to provide additional forms of mortgage, and we have therefore added a new clause (d) which enables the Local Government by general or special order to authorize the adoption of forms not specially set forth in the Act.

8. *Clauses 7 and 8.*—It is in our opinion expedient that the rules which apply to mortgages under clause 6 and the conditions which may be inserted in such mortgages should be prescribed in the Act. We have therefore inserted a new clause, numbered 7, which provides (1) that while the mortgagee remains in possession no interest shall accrue on the mortgage-debt, (2) that in the case of mortgages in form (a) or form (b) the mortgage-debt shall be extinguished at the end of the term for which possession is given, (3)

that the mortgagor may redeem his land at any time, and (4) that in the case of an usufructuary mortgage the mortgagor shall not be deemed to bind himself personally to repay the mortgage-money. The effect of the last-mentioned rule will be that the creditor will have no security for principal or interest beyond the rent or profits of the land for the term of possession permitted by the Act. The new clause, numbered 8, provides for the conditions which may be inserted in mortgages by agreement between the parties. It is not easy to include all the conditions which parties may legitimately desire to insert in any general description. We therefore propose to enact that, in addition to the specific conditions mentioned in the clause, any condition may be inserted which the Local Government by general or special order may declare to be admissible.

9. *Clause 9.*—This new clause empowers the Deputy Commissioner to revise and alter the terms of a mortgage which is not in accordance with the provisions of the Act. In one case we propose that this power shall be retrospective. When a member of an agricultural tribe has mortgaged his land by way of conditional sale, we are of opinion that the condition is mischievous in itself and at variance with the policy of the existing law of the Punjab. We propose that in such a case the Deputy Commissioner shall have power to put the mortgagee to his election whether he will retain his mortgage with the condition struck out or accept in lieu thereof a mortgage in form (a) or in form (b) as permitted by clause 6.

If a suit is instituted in a Civil Court on any mortgage to which this clause applies, we propose to direct the Court to refer the case to the Deputy Commissioner with a view to the exercise of his power of revision.

10. *Clause 10.*—This clause provides that in future mortgages of agricultural land, whether made by members of agricultural tribes or others, any condition which is intended to operate by way of conditional sale shall be void.

11. *Clause 11.*—In clause 11 (being clause 7 of the Bill as referred) we have amended the restrictions on leases by limiting them to cases in which a member of an agricultural tribe is making a lease to a person not a member of the same tribe or of a tribe in the same group. We have, in deference to the opinion of the local officers consulted, struck out the words "if the lessor shall so long live." We have

also added the words "or farm" in order to make it clear that the clause extends to arrangements, which are, we believe, common in parts of the Punjab, by which a person is placed in management of the land of another on an undertaking to hand over the rent or fixed portion of the rent to the owner.

12. *Clause 12.*—In clause 12 (formerly clause 8) we propose to enact that a person who has made a mortgage or lease as permitted by the Act may make a further temporary alienation of his land, provided that he does not exceed the full term of twenty years as permitted by the foregoing clauses.

13. *Clause 13.*—We have altered the language of the clause (formerly clause 9) so as to give effect to the alterations which we propose to make in previous clauses.

14. *Clause 14.*—We have re-drafted this clause (formerly clause 10) but have made no substantial change in its provisions.

15. *Clause 15.*—By clause 11 of the Bill as referred it was proposed to enact that any agreement by which an agriculturist hypothecates the produce of his land should be void. We think the proposed enactment went further than was necessary, and we have altered the clause (now numbered 15) so as to provide that such an agreement shall not take effect for more than one year unless it is sanctioned by a Deputy Commissioner.

16. *Clause 16.*—We have retained the substance of clause 12 in this clause, restricting its operation to land which belongs to a member of an agricultural tribe. We have added a new sub-clause which preserves the right of Government to recover arrears of land-revenue and dues which are recoverable as such arrears in any manner now permitted by law.

17. *Clause 17.*—We have in this clause retained the substance of clause 13, but we have somewhat amplified the language of its provisions.

18. *Clauses 18 and 19.*—We propose to insert a new clause 18 providing that transactions which require the sanction of a Revenue-officer shall not be entered in the record-of-rights or in the annual record under the provisions of the Punjab Land-revenue Act, 1887, until

proof of such sanction is produced, and that no right claimed by reason of a transaction or condition declared by the Act to be null and void shall be entered in the record-of rights or the annual record. By clause 19, which is also new, we propose to apply the provisions of Chapter II of that Act to the proceedings of Revenue-officers under this Act. The chapter in question provides among other matters for appeals, and clause 14 of the Bill as referred may therefore be dispensed with. We have omitted it accordingly.

19. *Clause 20.*—By this new clause we propose to direct that no legal practitioner shall appear on behalf of parties interested in proceedings under the Act. The object of the Act is to confer discretionary powers upon Revenue-officers for the protection of a certain class of land-owners, and we think that the reasons for and against the exercise of such powers may be adequately stated by the parties without the assistance of professional lawyers.

20. *Clause 21.*—This new clause is modelled on section 158 of the Punjab Land Revenue Act, 1887, and provides that the Civil Courts shall not exercise jurisdiction in matters which the Local Government or a Revenue-officer is empowered by the Act to dispose of.

21. *Clause 22.*—This new clause provides that suits to determine the rent to be paid under a mortgage made in form (c) as permitted by clause 6 shall be tried in the same manner as the suits mentioned in the first group of section 77 of the Punjab Tenancy Act, 1887.

22. *Clause 23.*—This clause which is new, indicates the Revenue-officers by whom the powers given by the Act may be exercised.

23. *Clauses 24 and 25.*—These clauses (formerly numbered 15 and 16) have not been materially altered by us.

24. The publication ordered by the Council has been made as follows :—

IN ENGLISH.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	30th September, 1899.
... Punjab Government Gazette...	5th October, 1899.

IN THE VERNACULAR.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
... Punjab . . .	Urdu . . .	14th December, 1899.

25. We consider that the Bill has been so altered as to require republication, and we accordingly recommend that it be republished.

C. M. RIVAZ.

A. C. TREVOR.

T. RALEIGH.

E. F. G. LAW.

HARNAM SINGH, AHLUVALIA.*

C. L. TUPPER.

H. C. FANSHAWE.

MD. HAYAT KHAN.

The 6th August 1900.

MINUTE OF DISSENT.

THE modifications suggested by the Select Committee have not, in my opinion, materially improved the Bill. Its arbitrary character remains unchanged and it may fail to give general satisfaction.

Section (2) (1).—To begin with the definition of “agriculturist.” The definition is not complete. It does not exhaust the full meaning of the word. It excludes from its scope persons who ought to be included, and who have every right to be designated by the term agriculturists.

3. A limit of period has been fixed after which persons, even if their (or their agnate ancestors’) names were recorded at any Regular Settlement, would not be recognised as agriculturists within the meaning of this Act. The year 1870 seems to be an arbitrary limit. The majority of those persons belonging to the artisan and the menial classes who combine an interest in land with other occupations (and their number comes to several hundred thousand) have become landowners, or have become otherwise connected with land within the last thirty years. All these persons would be excluded if this limit be adhered to.

* I sign this Report subject to my Minute of Dissent.

4. This limit has been taken, I understand, with a view to fix a standard of agricultural tribes determined as such immediately after the annexation of the Province. It should be remembered, in the first place, that a considerable number of persons belonging to non-agricultural tribes were recognised as agriculturists at the first Regular Settlement, and they will not now be excluded. In the next place, it should be borne in mind that all agriculturists do not belong exclusively to recognised agricultural tribes, but to various other tribes which probably were not connected with agriculture at their origin, but a considerable proportion of the members of which are now engaged in agriculture. It would be an arbitrary act of the Legislature if these persons be now all cast out from the purview of the Act.

5. It is true that the Bill empowers the Local Authority given to the Government to determine another limit. This limit is to be fixed, at its discretion, either at or before or after 1870. The reason for giving such extensive legislative powers to the Local Government is not quite clear. The Select Committee could have easily determined this limit in consultation with the Local Government. I think that any difficulty that might have been felt could have been obviated if it had been declared that a person whose (or whose agnate ancestor's) name is recorded at any Regular Settlement would be deemed an agriculturist. Had this been done, there would have been no necessity for fixing any arbitrary period of limitation. The object of legislation becomes defeated when a Local Government is authorised, in its executive capacity to exercise legislative powers by rules, orders and notifications, without granting to the public and to those who are vitally interested in the question an ample opportunity to discuss and consider its action in all its bearings. The Legislature, I venture to say, abrogates its function when it delegates to a Local Government its legitimate work. Any rules that the Local Government would propose to make in this connection should, I think, be embodied, with the approval of the Select Committee, in the Act itself. These remarks apply with equal force to section 4, in which the Local Government is empowered to make and notify rules about groups of agricultural tribes and groups of agricultural districts.

6. I have to point out that the definition of agriculturist as it stands will exclude persons who have come to possess land by exchange, purchase or gift; who have inherited land from their cognate ancestors or collateral relatives, whose names were recorded at the first Regular Settlement; as also those who were only cultivators (tenants-at-will at the first Regular Settlement) but subsequently became landowners or acquired occupancy rights.

The definition of agriculturist not exhaustive.

7. It will thus be seen that the definition noticed is neither clear nor exhaustive, and that, therefore as a definition it is defective.

8. *Section 3.*—It would appear from the wording of the proviso to section 3 that, if an agriculturist belonging to a non-agricultural tribe desires to make a permanent alienation of land acquired under clause (b), he would not be at liberty to make such permanent alienation unless he should make it to “a member of an agricultural tribe or an agriculturist holding land in the village.” The effect of such a proviso would be that, if the member of a non-agricultural tribe should sell his land to another member of a non-agricultural tribe, the second purchaser would not be allowed to alienate to any person other than an agriculturist. Such an interference with the proprietary rights of a non-agriculturist cannot be justified.

Restriction of right of second purchaser.

9. *Section 4.*—I am given to understand that the Local Government, in determining what bodies of persons in any district or group of districts are to be deemed agricultural tribes, propose to separate Hindus from Muhammadans, and to place them in separate groups, even though they belong to the same agricultural tribe. The apparent reason for such a distinction is grounded on the apprehension that, if Hindu and Muhammadan agriculturists were allowed to be indiscriminately mixed up in the same group, the former who as a rule are richer than the latter, would be enabled to buy up their impoverished Muhammadan brethren. But it should be borne in mind that the result of such a distinction would be a still greater reduction of the value of the agricultural lands in the possession of the Muhammadans, and they might find it difficult to realise by sale the full value of the lands they alienate to their Muhammadan brethren.

Separation of Hindus from Muhammadans in the same agricultural group.

10. *Sections 6 to 10.*— It will inevitably follow from the operation of the proposed measure that agricultural lands in the Province will be tied to, what may be called, perpetual mortgages. Those who require money to meet urgent domestic and agricultural demands will raise it even at the sacrifice of their property. There will be nothing to prevent a mortgage upon mortgage after the expiry of the term fixed for the first mortgage. It is vain to suppose that the successors of a mortgagor with no increased resources to fall back upon, but with all the ancestral and domestic obligations and agricultural responsibilities intact would either be able to repudiate the mortgagee's rights or be freed from the crushing weight of debt. The mortgaged property, when it is heavily encumbered, will have no chance of being redeemed, and will only be like a dead weight upon the mortgagor and his successors. The period permitted by law will only serve to accumulate interest and render the burden every year more heavy to bear. As a rule, those who own property feel naturally disinclined to part with it. They prefer resort to temporary alienations and hope to redeem the property some time or other. But their hopes are often frustrated and the property which they wish to save brings them to utter ruin. From an economical point of view, therefore, it is a mistaken policy to prolong their distress and allow their property to be encumbered for an indefinite period by forced legislation. Concession of a right of free disposal is in the long run far better than restriction of such a right.

11. The lands under usufructuary mortgages will, no doubt, be freed from all encumbrances after twenty years, and the mortgage-debt extinguished. But few, very few, among the mortgagors would, in their impoverished condition, be prevented from running into debt again, and the consequence will be that the very same lands will be re-mortgaged in order to provide for absolute necessities. Practically, therefore, agricultural lands will be, as I said before, under continuous mortgages.

12. From a political point of view, the consequences of perpetual mortgages would be disastrous. Persons goaded on with debt and under the constant apprehension of losing their property are apt to ascribe all their miseries to the hard, unyielding character of the laws of the

country, and to what they would call the capricious decisions of the administrators of these laws. It is not difficult to conceive what serious results may follow from such mistaken beliefs. I venture to think that the Legislature should not afford ground for such vain imaginings.

13. *Section 7 (3).*—Under this provision the mortgagor may redeem his land at any time during the currency of the mortgage. I am afraid that the feeling of uncertainty, which this provision would be calculated to produce, as to the period when the mortgage might be redeemed, would affect the assurance of the money-lender with regard to the security of his investment, and it cannot be denied that this would be to the disadvantage of the mortgagor.

Uncertainty with regard to period of redemption.

14. *Sections 10-11.*—His Honour the Lieutenant-Governor expressed it as his opinion that there should be a provision in the Bill in regard to improvements on mortgaged lands. His Honour said:—

Improvements on mortgage lands.

“ I draw attention to the suggestions of Mr. Fanshawe, Mr. Wilson, Mr. Field and Mr. Meredith regarding permission to improve land in the hands of a mortgagee and compensation for such improvements, on the analogy of section 64 of the Punjab Tenancy Act. It seems very desirable that some such provision should be made. I would insert between sections 6 and 7 of the (original) Bill the following:—

6-A. (1) No improvements of a permanent nature shall be effected during the currency of a usufructuary mortgage except with the sanction of a Revenue-Officer previously obtained.

(2) At the conclusion of a usufructuary mortgage the value of any improvements effected to the land shall be duly assessed by the Revenue-Officer, who shall make such order as to the payment of compensation as he considers equitable.

His Honour's recommendation has not been accepted by the Select Committee.

15. I am of opinion that, unless improvements, as suggested by His Honour, be permitted on the mortgaged land, the property may be liable to deterioration, or it may be greatly damaged and may consequently be materially depreciated in value. It is unjustifiable, I believe, not to allow improvements to be made by the mortgagee, even with the assent of the mortgagor, or even with the permission of a Revenue-officer.

16. *Section 9 (2).*—The Select Committee has not seen its way to modify the provision relating to mortgages of land by way of conditional sale made before the commencement of this Act. The result of the provision will be the repudiation of all existing deeds of conditional sale. I have the highest authority for stating that this total upsetting of a number of past contracts cannot be defended.

17. Some of the eminent officers of the Punjab Commission, who were consulted, even went so far as to state that people will be justified in considering such a wholesale repudiation of past contracts as a flagrant act of bad faith. To give such a retrospective effect is against principles of justice and is not consistent with the well-recognised spirit of Indian legislation.

18. When people come to realise the fact that all their past contracts have been cancelled by the Legislature and that the assurances of the existing laws have been set at naught, their implicit confidence in the principles of action adopted by the British Government will be greatly shaken, and this from a political point of view is certainly to be deeply regretted. It cannot be too often repeated that the security of British rule should be based on the palladium of British justice.

19. Such repudiation will be viewed in the same light as the repudiation of British loans, or putting aside the *sanads* granted to chiefs or large land-holders in the British territories. Those who urge what is called political necessity in vindication of such an act cannot but admit that political necessity in its strongest form also demands that British faith should be kept intact and that the ordinances of existing British law should never be allowed to be lightly dealt with.

20. There are people who are apt to accept the necessity for such measure (as well as for repudiation of pledges regarding proprietary rights solemnly guaranteed by the British Government half a century ago, and upon which the agricultural classes have hitherto firmly relied) on the strength of opinion expressed by a numerical majority. I venture to say that in the decision of a question of this kind, in which the immutable principles of British

justice are involved, the views which may be expressed by a selected body of officers, who when consulted, were not requested to discuss the principles of the Bill, should not, for obvious reasons, be allowed to have a preponderating value. The question of British justice and British principles of governance should be considered on higher grounds and due weight ought to be given to the policy of maintaining British faith.

21. *Section 9 (2).*—The sub-section 9 (2) as it has been framed will not only apply to the agricultural tribes, but will also affect with equal force the interests of the non-agricultural tribes, and the latter will not have the power, any more than their brethren of the favoured tribes, to make in future mortgages of their lands by way of conditional sale. This does not seem to me to be reasonable.

Restriction of proprietary right of members of non-agricultural tribes.

22. *Section 16.*—Following the Dekkan Agriculturists' Relief Act, the Bill provides that no land shall be sold in execution of any decree or order, whether passed before or after the commencement of this Act. Such a provision, in my opinion, is not necessary in the Punjab. Here no such sale is permitted without the sanction of the Financial Commissioner, and it is well known that this permission is never given without careful consideration. His Honour the Lieutenant-Governor, concurring with the Financial Commissioner's views on the subject, and adhering to the recommendation of the Simla Committee, is of opinion that this section should be omitted. When two such high and competent authorities are in favour of the omission of this provision, I do not think it shall be retained in contravention of recognised principles of justice and equity. In the words of an eminent officer, "a far-reaching measure of this sort is less likely to fail if it does injustice to nobody."

Execution sale of land forbidden.

23. *Section 20.*—Section 20 prohibits legal practitioners from appearing before a Revenue-officer on behalf of agriculturists. It does not seem reasonable to make such a prohibition. There are agriculturists and agriculturists. There are persons among them who are incapable of putting the facts of their cases clearly before a Revenue-officer. In such circumstances, especially when

Appearance of Legal practitioners forbidden.

their opponents are intelligent, shrewd men of business, it is necessary to employ qualified advocates to represent their cases. It may be said that no hardship need be felt when the Revenue-officer would have the power of exercising his executive discretion, and when recognised agents among the relatives of the agriculturists would be allowed to appear on behalf of their kinsmen. I see no reason why the appearance of lawyers should be prohibited when no objection would be made to the appearance of such recognised agents.

24. The effect of the measure will be to restrict the alienation of self-acquired property. Persons who have acquired property, otherwise than from an ancestral source, naturally wish to exercise full proprietary rights over such property. Coparceners can not claim it and tribesmen have not the slightest interest in it. Right of free disposal is an inalienable incident of it, and the law of the country ought not to interfere with it. Those who acquire property have to pay full market-price, and it is not proper to restrict their right of free disposal in such a way as to compel them to part with it at a reduced value. Self-acquired property, it should be remembered, remains as such only during the lifetime of the acquirer and becomes ancestral after his death, so that no great mischief is likely to be done if the owner be permitted to exercise his proprietary rights during the term of his life. I could quote the opinions of eminent officers in support of my view, but I do not think it necessary to do so here. I strongly incline to the belief that interference with the right of free transfer of self-acquired property will be a source of intense dissatisfaction.

25. If we take into account the immense interests at stake, and the drastic and revolutionary character of the changes proposed, it would be a question worthy of serious consideration, before the present scheme becomes law, whether it is likely to prove of any real benefit to these for whose advantage it has been devised. I consider that the measure is not calculated to serve the purpose for which it is intended. It will be powerless to effectively remove the cause of agricultural indebtedness; but on the contrary it will increase the burden of the agricultural classes, curtail their credit, reduce the value of their lands,

and make them liable to sink deeper into debt from which it will not be possible for them to extricate themselves. It will, no doubt, put a stop to permanent alienations from the agricultural to the non-agricultural tribes, but it will enormously increase mortgages of agricultural lands. Those temporary alienations will, as I have said before, take the form of perpetual mortgages, which will prevent landowners from having any control over their property. What good then, may I be permitted to ask, would the proposed measure do to the agricultural community? It should never be forgotten that the irresistible result of the measure will be the creation of a large number of money-lending agriculturists who would be enabled by the power of law to appropriate the holdings of their more indigent brethren at a greatly reduced price. I am led to apprehend that when the measure will be in full operation there will be monster fishes in the agricultural community, who will be encouraged by law to swallow smaller fishes. The Punjab hitherto has gloried in a revenue-settlement which created on a large scale a body of flourishing peasant-proprietors. The existing laws strengthened their status and protected their rights and privileges to the incalculable benefit of the Province. The necessity for having middlemen was sedulously avoided and their interference was rigidly excluded. Under the proposed arrangements, however, the old policy will be reversed, and the rule of middlemen will be established and strengthened.

26. I fear that the majority of peasant-proprietors in the Province will be reduced to the state of serfs of a worse character than that of serfs during the middle ages in Europe. They will be entirely under the power and mercy of their richer brethren. The advocates of the measure suppose that, if the law were to give to the impoverished agriculturists one final chance to redeem their properties and bring them back to their own families, they might be enabled to save themselves from ruin. From my own experience of the agricultural conditions of the Province, and from the knowledge I have of the habits and ideas of the landowners, I feel no hesitation in stating that the proposed measure will not be able to attain the object in view. Under the operation of the proposed law the impoverishment and wretchedness of the landowners will be increased and their condition made worse than it is under the existing arrangements.

27. I can conceive of only one remedy by which the agriculturists may be saved from their own improvidence and utter ruin. If Government sees its way to starting agricultural banks or inducing the existing banks to advance money on valuable security to the agriculturists at a low rate of interest, real help may be rendered to the impoverished landowners, and they may be enabled by careful management to save their properties. But the proposal to leave them at the mercy of their own exacting brethren of the same tribes will accentuate their distress, and render their condition even more deserving of commiseration than it is at present.

28. I cannot ignore the fact that the present legislation has been undertaken to relieve agricultural distress in the Province, and I fully appreciate the benevolent intentions of those by whom the scheme under consideration has been framed. A good deal might be said in favour of the measure, but the main question at issue is whether the proposed measure is calculated to ameliorate the condition of the agricultural classes. For reasons I have given before, my opinion is that the condition of the agriculturists would be no better. Nevertheless, no person would be happier than I should be if I prove to be a false prophet.

29. Strictly speaking, I have perhaps in the last portion of my note transgressed the limits of a minute of dissent from the Report of Select Committee, and if I have done so the importance and far-reaching effects of the measure under consideration must plead my excuse.

HARNAM SINGH, AHLUWALIA.

Speech by the Hon'ble Mr. Rivaz.

The Hon'ble Mr. Rivaz presented the Report of the Select Committee on the Bill to amend the law relating to agricultural land in the Punjab. He said:—"I think it will be convenient if, in presenting the Report of the Select Committee on the Punjab Alienation of Land Bill, I explain somewhat fully the alterations which we propose to make in its main provisions.

"The Bill which I introduced in this Council last September imposed restrictions on permanent and temporary

alienations of land in the following manner. In the first place, as regards permanent alienations, that is, by sale, gift or exchange, the proposal in this respect of the Committee of Punjab Revenue-officers which was convened by His Honour the Lieutenant-Governor in July, 1898, was that any permanent alienation of agricultural or pastoral land, as defined in the Punjab Tenancy Act, to a non-agriculturist, if made without the sanction of the Deputy Commissioner of the district, should be void, but that otherwise there should be no restriction on sales or other permanent transfers. I explained, when introducing the Bill that the Government of India were unable to accept this proposal in its entirety, because it seemed to them that to allow permanent alienations, free from all restrictions between so-called agriculturists was open to objection on two grounds. Firstly, because the definition of 'agriculturist' as framed by the Punjab Committee, that is, 'any person who either in his own name or in the name of his agnate ancestor was recorded as an owner of land or as a hereditary tenant in any estate at the first Regular Settlement, or any other practicable definition of the term, must necessarily include numerous classes of persons who, although landholders since the early years of British rule or even prior thereto, are primarily traders and money-lenders by nature and profession, and not true agriculturists in any proper sense of the term; and, secondly, because even the *bonâ fide* agriculturist is frequently also a money-lender, and it was desirable to retain power to prevent such men from buying up land in a village where they would come in as outsiders and constitute a foreign element in the village-community. In modification, therefore, of the proposals of the Punjab Committee on this all-important part of the scheme under consideration, the Bill, as introduced last September, provided that all permanent transfers must receive the previous sanction of a Revenue-officer, but that sanction should be given, as a matter of right, in cases in which the Revenue-officer was satisfied that the intending transferor was a person who was not a member of an agricultural tribe, or, in cases where the intending transferor was a member of an agricultural tribe, that the transfer was either to an agriculturist (as defined by the Punjab Committee) holding land as a proprietor or occupancy tenant in the village in which the land sold or otherwise permanently alienated was situated, or to another member of the same agricultural tribe residing in the same district.

“ Of these provisions we propose the following modifications. In the first place, in deference to a strong body of opinion on this point, we think that the sanction of a Revenue-officer need not be obtained in cases where such sanction must be given as a matter of right. This was only intended as a precautionary measure, and we agree, on the whole, with those who think that the advantage to be gained in this respect would be outweighed by the inconvenience which would be caused to those with whose free right of permanent alienation there is no necessity for interfering. In one respect, however, we propose to restrict the free right of alienation by members of non-agricultural tribes, namely, when a member of such a tribe acquires land hereafter as an ‘ agriculturist ’ from a member of an agricultural tribe. We think it obviously necessary that a member of a non-agricultural tribe should not have the power to sell or otherwise permanently alienate without sanction any land acquired under such conditions except to another agriculturist in the same village, or to a member of an agricultural tribe, and we propose to make provision accordingly. Then, as regards permanent alienations by members of agricultural tribes, we have been unable to accept a suggestion which has been put forward that no restriction should be placed on such transfers between members of any agricultural tribe, because we think that the widening of the market of free transfer to this extent would be open to the second objection which I have mentioned as applying to unrestricted transfer between agriculturists namely, that the door would thus be opened to the money-lender who belongs to an agricultural tribe buying up land in a village where he would come in as an outsider. At the same time, we recognize the force of the objection which has been taken that if free transfers are limited too strictly to within the same tribe, the market, in the case of some small tribes, will be undesirably narrowed. We propose therefore to meet this objection by empowering the Local Government with the sanction of the Government of India, to group together, when thought advisable, small and what may be called cognate tribes in the same district or in a group of districts and to allow permanent alienation without restriction within such groups.

“ As regards permanent alienations, therefore, the scheme of the Bill, as amended by the Select Committee now stands thus :

“ Any member of a non-agricultural tribe may, without sanction, make a permanent alienation of land to any person, except in respect of any land which he acquires hereafter as an ' agriculturist ' from a member of an agricultural tribe. In this one case he will only be able to alienate, except with the sanction of the Revenue-officer, to another ' agriculturist ' in the same village or to a member of some agricultural tribe.

“ A member of an agricultural tribe may, without sanction, make a permanent alienation of land to a member of the same agricultural tribe, or, in certain cases, to a member of any other agricultural tribe included in the same group as his own tribe in the same district, or, if so notified in a group of districts. In all other cases, every permanent alienation of land by a member of an agricultural tribe will require the sanction of the Revenue-officer.

“ We have revised the definition of ' agriculturist ' so as to enable the Local Government, in cases where the first Regular Settlement has been made within the past thirty years, to go back to the record of some previous settlement; we have amplified the definition of ' land ' ; we have included ' exchanges ' in, but excluded gifts or bequests for religious or charitable purposes from, the definition of ' permanent alienation ' we have made clear that the right of unrestricted purchase allowed to an ' agriculturist ' as such can only be exercised in the actual village or villages in which he has acquired such status; and we have also made clear that the action of a Revenue-officer, when granting or refusing sanction to a permanent alienation, is purely executive, and that any such order sanctioning an alienation is no bar to a suit on any question of title, or to any question relating to any reversionary right, or right of pre-emption, in a Civil Court.

“ And lastly, I may mention under this head that the Punjab Government has at present under consideration a Bill to amend the present law of pre-emption as contained in the Punjab Laws Act, and I hope that the Bill in question will shortly be introduced in the local Legislative Council.

“ I come now to temporary alienations of land, that is alienations by means of mortgage, lease or farm. The Bill as introduced allowed for the future only two forms of mortgage, namely, either a usufructuary mortgage, with

delivery of possession to the mortgagee, for a maximum period of fifteen years, and on the condition that at the end of the period of mortgage the mortgaged land would revert to the mortgagor or his successor in interest with the mortgage-debt extinguished, or a collateral mortgage which, in certain circumstances, might be converted into a usufructuary mortgage of the nature just mentioned. These provisions were in accordance with the recommendations of the Punjab Committee, except that the maximum period of mortgage was reduced from twenty to fifteen years. Existing mortgages were not interfered with, except when any such mortgage was by way of conditional sale. In these cases, the mortgage was to be null and void, but the Revenue-officer was empowered, on the application of either party, to order the mortgagor to execute a fresh mortgage of the usufructuary nature just mentioned, for a period of fifteen years, or for such less term as the Revenue-officer might consider equitable. We now propose the following modifications of these provisions.

“ In the first place, we think that, except as regards conditional sales, which ought, in our opinion, to be absolutely prohibited, there is no reason to impose any restrictions, whether as to form or period, on mortgages made by any member of a non-agricultural tribe to any person, or by a member of an agricultural tribe to a member of the same tribe or of a tribe in the same group. Then, in deference to the opinion expressed by a large number of the officers consulted on the Bill, we have extended the maximum term of usufructuary mortgage to twenty years, as was originally recommended by the Punjab Committee. We also propose in adoption of a valuable suggestion made by Mr. Douie, the present Chief Secretary to the Punjab Government, and supported by the Lieutenant-Governor, to allow a third form of mortgage, whereby the mortgagor will retain an inalienable right of cultivating occupancy of the mortgaged land as the mortgagee's tenant, on payment of a fair rent which will be determined, in case of dispute, by a Revenue Court under the provisions of the Punjab Tenancy Act. A mortgage in this form may be made for any such term as may be agreed on, but the mortgagor will only be liable to ejection from his cultivating occupancy if he uses the land in an improper manner, or, if his rent is payable in kind, if he wilfully fails to cultivate the land, or if a decree for an arrear of rent has been passed against him and remains unsatisfied; but even if so ejected from his cultivating

occupancy as a tenant, the mortgagor will retain the equity of redemption of his proprietary right on payment at any time of the original mortgage-debt. We also propose to give power to the Local Government to allow other forms of mortgage, at its discretion, in addition to the three forms just specified, so as to permit the use of any existing local kinds of mortgage which are of an unobjectionable nature. As regards conditional sales, we propose, as I have already mentioned, to absolutely prohibit the future use of this kind of mortgage in respect of land owned by any class of persons and, as regards existing mortgages of this kind which have been made by any member of an agricultural tribe, we propose, in modification of the provision in this respect of the Bill as introduced, to allow the mortgagee to elect either to keep his present mortgage with this particular condition struck out, or to apply to the Revenue-officer to give him instead a usufructuary or collateral mortgage in one of the forms to be hereafter allowed by the Bill, on such conditions as to the amount of mortgage-debt and period of mortgage as the Revenue-officer may consider reasonable. Except in the cases which I have just specified, no existing mortgages will be interfered with in any respect.

“ As regards mortgages, therefore, the scheme embodied in the Bill, as amended by the Select Committee, stands thus.

“ Any member of a non-agricultural tribe may mortgage his land in any form and on any conditions he pleases except by way of conditional sale. So may a member of an agricultural tribe when the mortgage is to a member of the same tribe, or of a tribe in the same group. But in all other cases a mortgage by a member of an agricultural tribe will have to be in one of the three forms which I have explained, or in some other form permitted by the Local Government.

“ Existing mortgages will not be interfered with in any way, except when any mortgage which has been made by a member of an agricultural tribe contains a condition which is intended to operate by way of conditional sale. In this one class of cases the mortgage will be revised or altered in the manner I have described.

“ The conditions which will apply to all mortgages made under our proposed enactment, and those which may be inserted by agreement between the parties, are specified

in clauses 7 and 8 of the Bill. Some of these conditions I have already mentioned in explaining the forms of mortgage which will be permitted, and I need only say further under this head that in the case of term-limited usufructuary mortgages, the mortgagor will be able to redeem his land at any time during the currency of the mortgage on payment of the mortgage-debt, or of such proportion of it as the Revenue-officer may consider to be equitable, and that in no case will the mortgagor be deemed to bind himself personally to repay the mortgage-money.

“ As regards leases, we have amended the provisions under this head of the Bill as introduced by (1) including temporary alienations of the nature of a farm in the proposed restrictions ; (2) extending the maximum period of a lease or farm to twenty years, and excising (*sic*) the condition that, if the alienor dies within this period, the lease or farm will terminate ; (3) limiting the restrictions to cases where the lease or farm is by a member of an agricultural tribe to a person who is not a member of the same tribe or of a tribe in the same group. Thus the restrictions on leases and farms are brought into harmony with those on mortgages.

“ We have made provision for allowing a person who has made a temporary alienation by mortgage, lease or farm, for less than twenty years, to make a further temporary alienation of the same land during the currency of the first transaction for a term not exceeding twenty years in all, but have retained the provision of the Bill as introduced which bars a further alienation of the same land during the currency of a mortgage, lease or farm, when the first temporary alienation has been made for the full term permitted.

“ We have retained the provision which enables the Revenue-officer, either of his own motion or on the application of the person entitled to possession, to eject a mortgagee, lessee or farmer who remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm.

“ We have also retained the provision of the Bill as introduced that a permanent alienation which requires sanction, but which is made without sanction, shall be treated as a usufructuary mortgage made in the first form prescribed by the Bill, and we have further provided that any mortgage made by a member of an agricultural tribe in any manner

or form not permitted by the Bill shall be revised and altered by the Revenue-officer so as to bring it into accordance with such form of mortgage permitted by the Bill as the mortgagee may appear to be equitably entitled to claim, and that any lease or farm made by a member of an agricultural tribe to a person other than a member of the same tribe or of a tribe in the same group for a longer term than twenty years shall be deemed to have been made for only twenty years.

“ As regards the restrictions on hypothecations of agricultural produce by members of agricultural tribes which were included in the Bill as introduced we have, in modification of the absolute prohibition of such transactions, proposed to allow alienations or charges of this description to be made for a period not exceeding one year, or in special cases for a longer period with the sanction of the Revenue-officer.

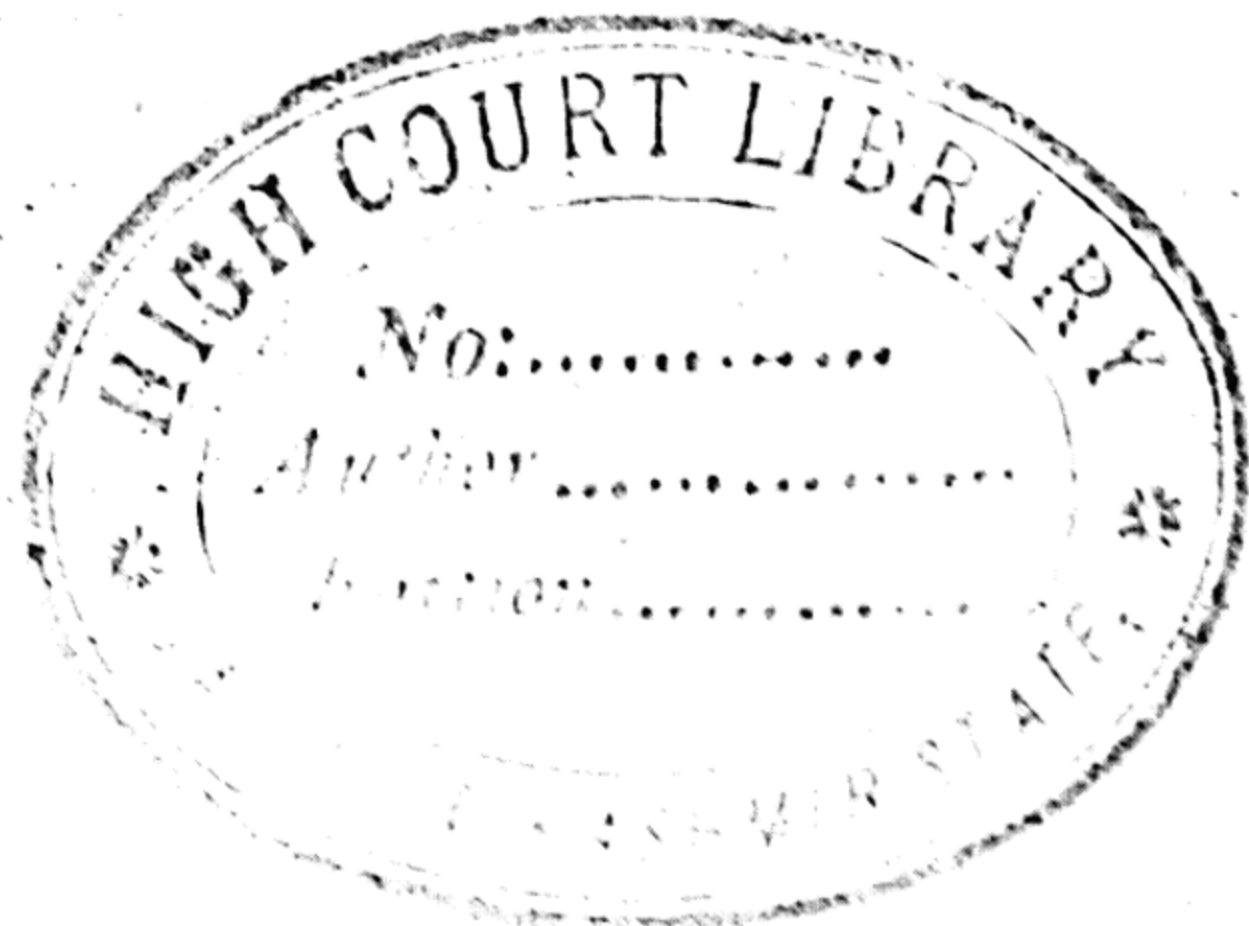
“ We have retained the provision which forbids the sale of land in execution of a decree or order, but have so far modified such provision as to make it applicable only to land belonging to a member of an agricultural tribe, and we have also made clear that the prohibition only applies to a decree or order of a Civil or Revenue Court. The prohibition as to sale will not of course extend to temporary alienations of land for satisfying a decree which are made by the Collector when so authorized by the Civil Court, under Section 326 of the Code of Civil Procedure.

“ We have retained but amplified the clause which prohibits the registration of any instrument contravening the provisions of the Bill ; we propose to prescribe that transactions which require the sanction of a Revenue-officer shall not be entered in the record-of-rights or in the annual record under the Punjab Land-revenue Act until proof of such sanction is produced ; and we have provided for the proceedings of Revenue-officers under the Bill being regulated by the procedure of the Punjab Land-revenue Act. We have also made clear that matter which the Local Government or Revenue-officers are empowered to dispose of under the Bill shall be excluded from the jurisdiction of the Civil Court, and, in order that all proceedings before Revenue-officers under the Bill may be dealt with *promptly* and *inexpensively*, we propose to exclude legal practitioners from appearing in such cases.

"The last point which I need mention is that we propose no alteration in respect of the general application of the scheme embodied in the Bill, subject to any territorial or personal exemptions which the Government of India may from time to time make on the recommendation of the Local Government.

"I trust, my Lord, that I have succeeded in showing that, while the Select Committee have not altered the Bill which I introduced last September on any important point of principle, their proposed modifications of, and additions to, some of its provisions will have the effect of placing the scheme under consideration on a broader and more elastic basis. As regards the main object of the Bill, namely, the restriction of permanent and temporary alienations of land by the agricultural classes, the scheme, as it now stands, will, as regards sales and other permanent transfers, while adhering to the principle of limiting the market of unrestricted transfer to within the same village-community or agricultural tribe, enable the Local Government to meet the case of any tribes which are too small to provide any real market of sale within the tribe, by grouping them with other cognate tribes within the same district or a group of districts; and as regards temporary alienations, the maximum period for which self-redeeming usufructuary mortgages and leases may be made has been extended from fifteen to twenty years, while another form of usufructuary mortgage is proposed under which the mortgagor may mortgage for any period he pleases, but on condition of retaining a cultivating right of occupancy in the mortgaged land on payment of a fair rent, and preserving his right to redeem the proprietary right whenever he may be able to do so

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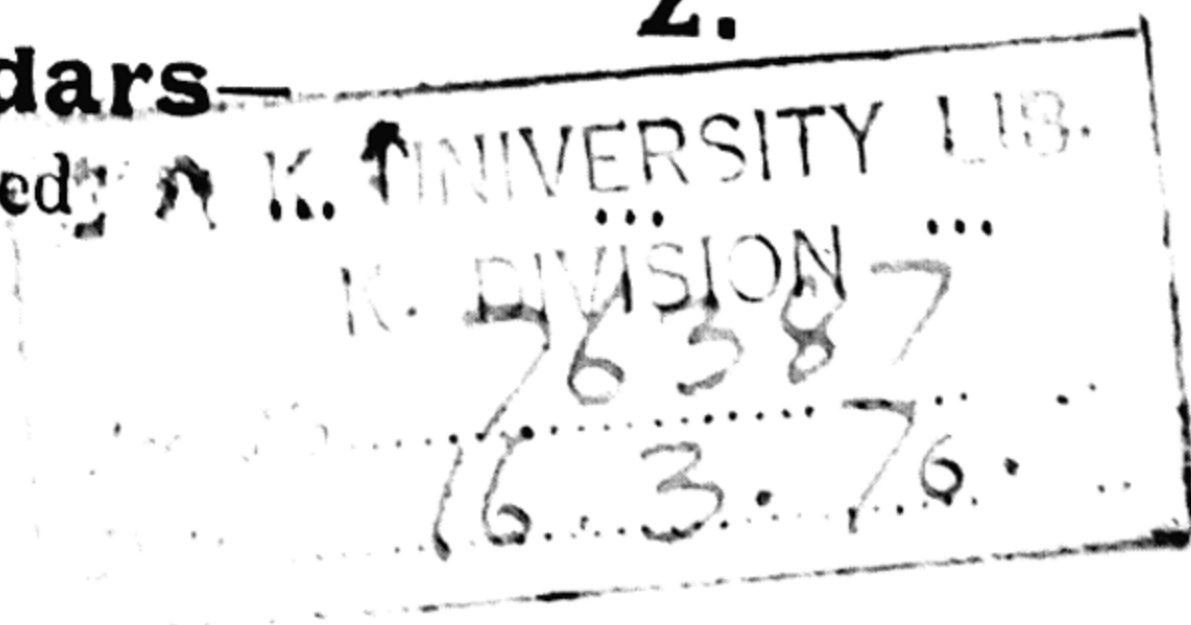
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