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Bengal Act V of 1875
[THE BENGAL SURVEY ACT, 1875.]

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Bengal Act V of 1875

[THE BENGAL SURVEY ACT, 1875.]¹

AMENDED

Act I of 1903.
Ben. Act V of 1915.
Ben. Act I of 1939.

ADAPTED

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
(c) The Adaptation of Laws Order, 1950.

[6th October, 1875.]

An Act to provide for the survey and demarcation of land.

WHEREAS it is expedient, with a view to the definition and identification of lands, the better security of landed property and the prevention of encroachments and disputes, to provide for the survey of lands and for the establishment and maintenance of marks to distinguish boundaries; It is hereby enacted as follows:—

Preamble.

PART I.

Preliminary.

1. This Act may be called the Bengal Survey Act, 1875.

Short title.

[Commencement].—*Rep. by s. 4 and the Third Schedule of the Amending Act, 1903 (1 of 1903).*

It extends to the ²[the States of West Bengal and Bihar and that part of the State of Orissa which on the sixth day of October, 1875, was subject to the Lieutenant-Governor of Bengal].

Local extent.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the "*Calcutta Gazette*" of 1875. Pt. IV, page 41; for Report of Select Committee, see *ibid.* page 305; for further Report of Select Committee, see *ibid.* page 461; and for the Proceedings in Council, see *ibid.* 1875, Supplement, pages 14, 350, 929, and 987.

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see section 1; but there is now a separate Act for Calcutta, which is also applicable to Municipalities—see the Calcutta Survey Act, 1887 (Ben. Act I of 1887).

²The words "the Provinces of West Bengal and Bihar and that part of the Province of Orissa which on the sixth day of October 1875 was subject to the Lieutenant Governor of Bengal" were first substituted for the words "territories subject to the Lieutenant-Governor of Bengal" by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. Thereafter the words "States" and "State" were substituted for the words "Provinces" and "Province", respectively, by para. 4(1) of the Adaptation of Laws Order, 1950.

(Part I.—Preliminary.—Section 2.)

Interpreta-
tion clause.

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

"Collector."

"Collector" means every Collector of a district, and includes every officer either generally or specially vested with the powers of a Collector for the purposes of this Act;

"Deputy
Collector."

"Deputy Collector" includes any Deputy Collector to whom the Collector or Superintendent of Survey may delegate any of his functions under this Act;

"Estate."

"estate" means—

any land which is entered on the revenue-roll as separately assessed with the public revenue,

any land acquired from the ¹[Government] under one title, which is liable to pay land-revenue at any future time,

any *char* or island thrown up in a navigable river or in the sea which under the laws in force is at the disposal of the ¹[Government],

any land which is entered on the Collector's registers as a separate holding, free in perpetuity from liability to pay land-revenue,

any land gained by alluvion or by dereliction of a river or of the sea to any estate as here defined, which under the laws in force, is considered an increment to the tenure to which such land has accreted, shall be deemed a part of such estate;

"Mauza."

"*mauza*" includes every village, hamlet, *tola* and similar sub-division of an estate, *pargana* or village by whatever name such sub-division may be known;

"Occupant."

"occupant" includes every *zamindar*, tenure-holder, farmer and other person entitled to receive rents in respect of land, or holding land on a claim that he is so entitled, and every *raiyyat* in occupation of land;

"Section."

"section" means a section of this Act;

"Survey."

"survey" includes identification of boundaries, and all other operations antecedent to and connected with survey;

"Tenure."

"tenure" includes all permanent interests in land, with the exception of estates as above defined, and with the exception of those of *raiyyats* having a right of occupancy only; it also includes all *gharvati* holdings;

"Tenure-
holder."

"tenure-holder" means all or any of the holders of a tenure;

"Zamindar."

"*zamindar*" means all or any of the holders of an estate.

¹The word "Crown" was first substituted for the word "Government" by para. 3 and Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

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(Part II.—Of the Survey.—Sections 3, 4.)

PART II.

Of the Survey.

3. The ¹[State Government] may, whenever ²[it] shall think fit, order that a survey shall be made of the land situated in any district or in any part of a district or in any specified tract of country, and that the boundaries of estates, tenures, *mauzas* or fields be demarcated on the lands so to be surveyed:

State Government may order survey.

Provided that, in any district of which any survey may have been completed and approved by ³[the State Government], it shall not be lawful for the ¹[State Government] to order a new survey of lands on the banks of rivers or on the sea-shore to be made for the purposes described in ⁴[the Bengal Alluvion and Diluvion Act, 1847.] until ten years shall have expired from the completion and approval of any such previous survey.

IX of 1847.

4. For the purpose of carrying out any survey directed to be made under the last preceding section, or for any or all of the purposes of this Act,

State Government may appoint Superintendent of Survey.

the ¹[State Government] may appoint a Superintendent of Survey, who may exercise all or any of the powers of a Collector under this Act;

and may appoint one or more Assistant Superintendents and Deputy Collectors, who shall exercise all the powers of a Collector in respect to such matters under this Act as may be delegated to such Assistant Superintendents or Deputy Collectors respectively by the Collector or Superintendent of Survey, and not otherwise:

Provided that, notwithstanding the appointment of a Superintendent of Survey for any tract of country, it shall be competent to the Board of Revenue to direct that the Collector shall perform any duties under the Act within the said tract.

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

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

³The words "Provincial Government" were first substituted for the words "the Government" by para. 3 and Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴Substituted for "Act IX of 1847 (an Act regarding the assessment of land gained from the sea or from rivers by alluvion or dereliction with the Provinces of Bengal, Bihar and Orissa)." by section 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Part II.—Of the Survey.—Sections 5-8.)

Collector to publish proclamation before entering on lands.

5. Before entering on any lands for the purpose of a survey the Collector shall cause to be published a proclamation addressed to the occupants of the lands which are about to be surveyed and of the conterminous lands, and to all persons employed on or connected with the management of, or otherwise interested in, such lands, calling upon them to attend, either personally or by agent, before the Collector or any officer authorized by the Collector in that behalf, at such places and at such times as shall be stated in such proclamation, during the demarcation and survey of the land, for the purpose of pointing out the boundaries and of rendering such aid as may be necessary in setting up or repairing such boundary-marks as may be required, and of affording such assistance and information as may be needed for the purposes of this Act.

Such proclamation shall be published by posting a copy thereof—

at the Court of the Judge and at the office of the Collector of every district within which any portion of the lands about to be surveyed may be known to be situated;

at every subdivisional office, police-station, *Munsif's* Court and sub-registrar's office within the jurisdiction of which any portion of the land about to be surveyed may be known to be situated;

at one or more *mal-cutcheries* on each estate;

and at such other place or places as to the Collector may seem fit.

Collector may enter upon land.

6. After issue of a proclamation as aforesaid, the Collector and any person acting under his authority may enter upon such lands, and do all things and make all inquiries necessary for effecting the survey and demarcation of the boundaries thereof.

Collector may serve special notice.

7. The Collector may also, by a special notice, require any such person to attend before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than fifteen days after the service of the notice, at any places, for any of the purposes aforesaid; and every person on whom such special notice may be served shall be legally bound to attend as required by the notice, and to do any of the things mentioned in section 5, and to give any information which may be required, so far as he may be able to give it.

Collector to pay price of materials or labour supplied.

8. When any materials or labour shall have been supplied for any of the purposes mentioned in section 5, the Collector or other officer making a requisition under that section shall forthwith cause the price of such materials or labour to be paid to the person by whom the same were supplied.

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(Part II.—Of the Survey.—Sections 9-11.)

9. The Collector or other survey-officer authorized by the Collector in that behalf may, by a special notice, require any occupant to clear any boundary or other line which it may be necessary to clear for the purposes of the survey, by cutting down and removing any trees, jungle, fences or standing crops.

Collector may require occupants to clear boundary lines.

10. If any demand for compensation be made in respect of the clearance of any line in accordance with a requisition under the last preceding section, the Collector shall ascertain and record the nature and estimated value of any trees, jungle, fences or standing crops which may have been cut down or removed, and shall offer adequate compensation to the owners thereof, together with payment for all expenses incurred in carrying out the said requisition.

Compensation.

11. When the demarcation of a village or other convenient tract has been completed, the *amin* or other survey-officer shall, before sending it to the Collector the maps and papers relating thereto,

Amin or survey-officer to call upon persons to sign maps or papers.

by a general notice, in which the names of all persons required to appear shall be specified and which shall be posted up at a convenient place in the village or tract,

call upon all persons who have pointed out any boundaries in such village or tract on behalf of those interested to attend before him within three days of the publication of the said notice for the purpose of inspecting the maps, field books and similar papers in which any boundary pointed out by any such person has been represented, and, by signing such maps and papers, to certify that the boundaries have been laid down in accordance with the boundaries pointed out by them;

and every person so called upon shall be legally bound to attend before such *amin* or survey-officer, and to inspect the papers, in accordance with such requisition.

Any person so called upon who may object to sign the maps and papers as aforesaid shall be required to state his objections in writing, and such statement shall be attached to the record of the demarcation of the village or tract, and shall be submitted to the Collector together with the maps and papers.

Statement of objections.

The signature affixed to any maps or papers under this section shall be in attestation of the fact that the boundaries thereon represented or any of them have been represented in accordance with those pointed out by the person signing; and the affixing of such signature shall not be held to prejudice the right of any person interested to make any objection to such boundaries on any other ground before the Collector under the next succeeding section.

Effect of signature.

(Part II.—Of the Survey.—Section 12.)

On receipt of maps, Collector to post notification in office.

12. On receipt in the Collector's office of the maps or papers showing any boundaries which have been demarcated, the Collector shall cause a notification to be posted in his office, and in such other places as he may think proper, informing all persons concerned that the maps and papers relating to the boundaries in the village or tract specified are open to inspection; and requiring any person who may have any objections to prefer, to prefer such objections within six weeks of the date of the posting of such notification, after which time the Collector will proceed finally to confirm the boundaries as laid down for the purpose of the survey.

Collector to issue special notice.

Whenever the Collector shall have reason to believe (either from the failure of any person interested or his representatives to sign the maps and papers on the spot when required by the survey-officer to do so under the last preceding section, or for any other reason) that any *zamindar* or person interested is likely to object to any boundary as laid down or as represented in the said papers,

the Collector shall ¹[issue] a special notice, requiring such *zamindar* or other person to attend personally or by duly authorized agent before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than one month after the service of the notice, for the purpose of signing and thereby admitting the correctness of any maps or other papers which have been prepared under this Act in respect of any boundary in which such *zamindar* or other person is interested, or of stating in writing the substance of any objection which he may wish to prefer against the correctness of such maps or papers;

and, if any person so summoned shall fail to attend and to sign the said maps or papers, or to give in a written statement of his objections within the time prescribed, the Collector may proceed finally to confirm the boundaries as represented in such maps and papers, for the purposes of the survey and of this Act:

If agent deposits expenses of making copies. Collector to order them to be prepared.

Provided that, if within the time specified any such duly authorized agent deposits with the Collector the necessary expenses of making copies of the said maps or papers, the Collector shall order such copies to be prepared, and as soon as they are prepared shall cause a notice to that effect to be posted at his office, and the said agent shall be allowed such time as may be specified in such notice, not being less than fifteen days from the posting thereof, for the purpose of signing or of giving in a written statement of objections.

¹This word was substituted for the word "cause" by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

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(Part II.—Of the Survey.—Section 13.—Part III.—
Of Boundary-marks.—Section 14.)

When a written statement of objections has been given in, as in this section provided, the Collector, after holding any further inquiry which he may deem necessary, shall pass such order in respect of such objections as to him shall seem fit; and, if the objections shall seem to him not to be well-founded, shall direct that all expenses of such further inquiry, and all expenses entailed on any other person by such inquiry, shall be recovered from the person who made the objection.

Procedure when objection is stated.

13. Whenever any person, having failed to sign the maps and papers, or to give in his objection in writing within the time prescribed by the notification or by the special notice mentioned in the last preceding section, shall, at any time before the Collector has finally confirmed the boundaries for the purposes of the survey, prefer any subsequent objection against the correctness of any maps or papers in respect of which such notification or notice was issued;

Person making subsequent objection may be required to deposit costs of further inquiry.

the Collector shall require him to deposit the estimated costs of any further inquiry which it may be necessary to make in respect of his objection;

and, if the said person shall fail to deposit such costs within the time specified by the Collector, he shall be deemed for all purposes of this Act to have admitted the correctness of the said maps and papers.

If the costs of any inquiry which may be deemed necessary be deposited, the Collector shall make such further inquiry at the expense of the person so objecting; and, if the objection shall seem to the Collector not to be well-founded, he may pass such order as he shall think fit in respect of the recovery from the objector of any sum expended by the Collector on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other persons on account of such inquiry:

Provided that no person so making an objection after the prescribed time shall, under any circumstances, be entitled to recover the expenses which he is required to deposit before any further inquiry is made in respect of such subsequent objection.

PART III.

Of Boundary-marks.

14. The Collector may cause to be erected temporary boundary-marks of such materials, and in such number and manner, as he may direct, on any lands to be surveyed under this Act;

Collector may erect temporary Boundary-marks.

and may require any occupant of land to maintain and keep in repair such marks or any boundary-marks,

(Part III.—Of Boundary-marks.—Sections 15-18.)

until any survey-operation shall be concluded and a final award given as to any disputed boundary, or

until permanent boundary-mark may be erected in lieu thereof as hereinafter provided.

Collector may erect permanent boundary-marks.

15. The Collector may at any time cause to be erected on any land which is to be, or which has been, surveyed under this Act, permanent boundary-marks of such materials, and in such number and manner, as he may determine to be sufficient to distinguish the boundaries of the estates, tenures, *mauzas* or fields for which the same are to be erected:

Specification of marks and estimate of cost to be posted.

Provided that, seven days before he proceeds to the erection of any permanent boundary-marks, the Collector shall, for the information of all concerned, cause to be posted in his office, and in the *mal-cutcherry* or at some other convenient place on every estate concerned, a specification of the number and character of the marks which he proposes to erect on the estate and an estimate of their cost.

Apportionment of expenses.

16. All expenses incurred by the Collector in erecting temporary or permanent boundary-marks under this Act, shall, in manner hereinafter provided, be apportioned among, and levied from, the *zamindars* and tenure-holders on their estates:

Provided that no tenure-holder shall be liable to pay any portion of the expenses incurred by the erection of boundary-marks on an estate, unless some portion of his tenure is situated within fifteen hundred feet of some such boundary-mark.

Rent-free lands deemed part of tenure.

17. All lands held without payment of rent, not being entered on the Collector's register of revenue-free tenures of the district, shall, for the purposes of this Act, be deemed to form a part of the tenure within the local boundaries of which they may be included; and if they be not included within the local boundary of any tenure, then to be a part of the estate within the local boundaries of which they are included, and if they be not included within the local boundaries of any one estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal, appoint:

Provided that no rent-free holding of which the annual value is less than five rupees shall be liable to pay any portion of the expenses of erecting boundary-marks under this Act.

Procedure when occupant fails to maintain boundary-mark.

18. If any occupant on whom a requisition has been made under section 14 fails to maintain or keep in repair any temporary boundary-mark, the Collector may maintain, keep in repair or restore any such boundary-mark, and the expenses thereby incurred shall be recovered as provided in section 57 from the person so failing to maintain or keep in repair any such boundary-mark.

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(Part III.—Of Boundary-marks.—Sections 19-21.—Part IV.—Of the Apportionment and Recovery of Expenses.—Sections 22, 23.)

19. Every *zamindar*, tenure-holder and farmer of land shall be legally bound to preserve, as far as lies in his power, such of the permanent boundary-marks lawfully erected on his estate, tenure or farm, or on the boundary between his estate, tenure or farm, and any other estate, tenure or farm, as may be assigned to him in that respect entirely, or jointly with other persons, under the provisions of section 29, and shall give immediate notice to the Collector if any such marks are injured, destroyed or removed, or require repairs.

Zamindar, etc., bound to preserve boundary-marks and give notice to Collector when injured.

20. Whenever it shall come to the notice of the Collector that any permanent boundary-mark erected under the provisions of this Act has been injured, destroyed or removed, or requires repairs, the Collector may cause such boundary-mark to be re-erected, restored or repaired, and may recover any expenses, incurred in respect of such re-erection, restoration or repair, in such proportions as he shall think fit, from the *zamindars* and tenure-holders to whom such boundary-mark may have been assigned in that respect under the provision of section 29; and all such expenses shall be recoverable as provided in section 57.

Collector may re-erect injured boundary-marks and recover expenses from zamindar, etc.

21. Nothing contained in this Act shall be held to prohibit the Collector from causing any temporary or permanent marks to be erected, maintained or repaired by any occupant of land under the directions of the said Collector, and with the consent of such occupant.

Collector may cause boundary-mark to be erected by occupant of land with his consent.

The Collector shall repay to such occupant the expenses incurred in such erection or repair, and such expenses shall be apportioned and recovered as provided in Part IV.

PART IV.

Of the Apportionment and Recovery of Expenses.

22. Upon the completion of the erection of boundary-marks on any tract of land of which the survey may have been ordered, or on any convenient portion thereof, the Collector shall forthwith prepare a statement of all expenses incurred in respect of such boundary-marks.

Collector to prepare statement of expenses in respect of boundary-marks.

23. Such statement shall show the total number of marks of each description which have been erected on such tract or portion of such tract, the aggregate cost of erecting all the marks of each description, the names of the estates and *mauzas* within, or on the boundaries of which any marks have been erected, and the total number of marks of each description erected within or on the boundary of each estate.

Contents of statement.

(Part IV.—Of the Apportionment and Recovery of Expenses.—
Sections 24, 25.)

Collector to apportion cost of erecting marks among estates.

24. Upon the completion of such statement the Collector shall provisionally apportion the aggregate expenses of erecting the marks among the estates specified, with reference to the number of boundary-marks of each description which have been erected within or on the boundary of each estate.

Notice to be served.

25. So soon as the provisional apportionment shall have been made as required by the last preceding section, the Collector shall cause a notice to be served on the *zamindar* of every estate on which the expenses have been apportioned—

- (a) specifying the sum which has been apportioned on his estate, and, as far as can be calculated, the sum which he will be required to pay on account of the service of notices on him under this section and section 29;
- (b) informing him that the said statement is open to inspection in the office of the Collector;
- (c) calling on him to appear in person, or by agent properly authorized, at the office of the Collector on a date to be specified in the notice (not being less than two months after the issue of the notice), on which date the Collector will proceed to consider any objections which may be made to the provisional apportionment of expenses;
- (d) warning him that if he does not appear on the date fixed in pursuance of the notice, he will be deemed to have waived all objections to the share of the expenses apportioned to his estate;
and (unless as otherwise hereinafter provided in sections 31, 32 and 33);
- (e) informing him that under this Act, he is entitled to recover a portion of the amount which shall be finally made payable in respect of his estate under section 26, from such tenure-holders on his estate as are made liable to bear a portion of such expenses by sections 16 and 17 (of which sections a copy shall be annexed to the notice); and that in order to enable the Collector to apportion the said amount among the said tenure-holders, he may give in a list of all such tenures, as defined in this Act, held directly from him, with a specification of the number of boundary-marks of each description which are erected within or on the boundary of each tenure;

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(Part IV.—Of the Apportionment and Recovery of Expenses.—
Sections 26-29.)

- (f) and warning him that if he fails to give in a list of tenures as aforesaid on or before the said date, he will be deemed to have given up all claim to recover from the tenure-holders any part of the amount for which he may be held liable under section 26.

26. On the date fixed in such notice the Collector shall proceed to consider all objections which may be made to the provisional apportionment, and to make such final apportionment of the expenses as shall seem to him fit.

Collector to make final apportionment.

In making such final apportionment the costs of serving all notices under section 25 shall be distributed rateably among the estates concerned in proportion to the share of the expenses of erecting boundary-marks which may be apportioned to each estate; and the amount so finally apportioned as payable in respect of each estate, together with the costs of serving notices, rateably distributed as aforesaid, shall be due to the Collector from the *zamindars* of such estates.

27. Notwithstanding anything contained in the last preceding section, the Collector may postpone the final apportionment if it shall appear to him that a notice under section 25 has not been served on the *zamindar* of any estate which should be made liable for a portion of the expenses, or for any other sufficient reason.

Collector may postpone final apportionment.

28. Any *zamindar* failing to appear on the date fixed in the notice served on him under section 25 will be deemed to have waived all objections to the payment of the amount apportioned to his estate, and will not be entitled to prefer any objections thereto on any subsequent date; and any *zamindar* failing to give in a list of tenures (when called upon under section 25 to give in such list), on or before such date, will be deemed to have given up all claim to recover from the tenure-holders any part of the amount which may have been apportioned as payable in respect of his estate under section 26.

Zamindar failing to appear deemed to have waived objections.

29. So soon as the expenses shall have been finally apportioned under section 26 among the estates concerned as hereinbefore provided, the Collector shall issue a notice in respect of every estate, specifying the amount finally apportioned as payable in respect of the estate, and requiring the *zamindars* to pay such amount to the Collector, together with the costs of serving such notice, within one month of the issue of the notice.

Collector to issue notice specifying amount finally apportioned.

(Part IV.—Of the Apportionment and Recovery of Expenses.—
Sections 30, 31.)

If such amount be not paid to the Collector within such period, the same, with interest, at such rate, not exceeding six *per centum per annum*, as the [State Government] may from time to time determine, may be levied as provided in section 57.

Notice shall assign boundary-marks which zamindars are bound to preserve.

The notice issued under this section shall assign to the *zamindar*, or to the *zamindar* jointly with tenure-holders, the boundary-marks which they are legally bound to preserve under the provisions of section 19, and in respect of which they will be held liable to pay the costs of re-erection, maintenance and repair, under the provisions of section 20.

Collector to apportion between *zamindar* and tenure-holders.

30. If the *zamindar* of any estate shall give in a list of tenures, as referred to in section 25, with an application to the Collector to apportion between his estates and the tenures the amount which has been apportioned as payable in respect of his estates as aforesaid, the Collector shall proceed to make a provisional apportionment of the said amount between the *zamindar* and the tenure-holders, to serve notices on the said tenure-holders in the manner provided in section 25, and to make a final apportionment among the said *zamindar* and tenure-holders in the manner provided in sections 26 and 27; and the provisions of section 28 shall be applicable to such tenure-holders:

No separate notice in respect of apportionment of sum less than two rupees.

Provided that no separate notice shall be served under this section in respect of the provisional or final apportionment of the sum payable in respect of any tenure, if such sum be less than two rupees; but in respect of all such sum it shall be sufficient to publish a list showing the sums apportioned as payable.

Such list shall be published by being posted at the office of the subdivisional officer and at a conspicuous place in some village within which lands appertaining to the tenure are situate.

Summary apportionment between *zamindar* and tenure-holders.

31. Notwithstanding anything in this Part contained, whenever the Collector may consider that he has sufficient information (whether derived from papers compiled for the purposes of the road-cess, from inquiries made in the course of proceedings under this Act, or otherwise) to enable him in a summary way to make an apportionment of any expenses recoverable under this Act in respect of any estate, between the *zamindars* of, and the holders of, tenures, in such estate, the Collector may, as soon as possible after he shall have made a provisional apportionment under section 24 of the sum payable in respect of such estate, and without calling on the *zamindar* to give in any list of tenures as provided in clause (e) of section 25, proceed to make a provisional apportionment between the *zamindars* and the tenure-holders of such estates of the sum which has been provisionally apportioned under section 24 as payable in respect of the estate.

¹See foot-note 1 on page 203. *ante*.

of 1875.]

(Part IV.—Of the Apportionment and Recovery of Expenses.—
Sections 32-34.)

32. Whenever any provisional apportionment of the sum payable between the *zamindars* and the tenure-holders may have been made summarily, as provided in the last preceding section,

Notice to *zamindar* when provisional apportionment made summarily.

the notice to be served on the *zamindar* under section 25 shall inform the *zamindar*, in addition to the particulars specified in clauses (a), (b), (c) and (d) of the said section, and instead of those specified in clauses (e) and (f),

that under this Act he is entitled to recover a portion of the amount which shall be finally apportioned as payable in respect of his estate under section 26 from the tenure-holders on his estate; and

that the Collector has made a provisional apportionment of the said sum between the *zamindar* and tenure-holders according to a list which shall be annexed to the said notice;

and shall warn him—

that if he fails to prefer any objection to such provisional apportionment on or before the date specified, he will be deemed to have given up all right to prefer any such objection at any future time; and

that the Collector will proceed to make such apportionment final, or to make any modifications in it which he may think fit.

Provided that the sum finally made payable by the *zamindar* shall not exceed the sum apportioned upon him in the said provisional apportionment between the *zamindars* and the tenure-holders.

33. As soon as a provisional apportionment between the *zamindar* and the tenure-holders shall have been made summarily as provided in section 31, the Collector shall proceed to serve notices on the tenure-holders concerned in the manner provided in section 30, and to do all other things as if the said provisional apportionment upon tenure-holders had been made on a list given in by the *zamindar* under section 30.

Procedure on provisional apportionment.

34. In apportioning the amount among the *zamindars* and the tenure-holders the Collector shall first deduct such sum as he shall consider to be fairly payable by the *zamindar* in respect of lands not included in any tenure, and in respect of his interest in lands which are included in tenures; and in apportioning the remainder among the tenures he shall take into consideration the number of pillars erected within or on the boundary of each tenure, the extent of each tenure, and the distance at which it is situated from the boundary-marks; but no tenure shall be made liable for any portion of the sum so apportioned, unless some part of it be situated within fifteen hundred feet from some boundary-mark.

Made of apportionment among tenures.

(Part IV.—Of the Apportionment and Recovery of Expenses.—
Sections 35-38.)

Notice of apportionment in respect of tenures.

35. So soon as the final apportionment among tenure-holders under section 30 shall be completed, the Collector shall cause to be issued notices to each of the said tenure-holders stating the amount payable in respect of each of their tenures, with interest (if any) calculated at the annual rate of six *per centum* from the date on which the *zaminder* paid to the Collector the sum which was apportioned on his estate under section 26, and the cost of serving upon the tenure-holder the notice under this section and calling upon him to pay the total amount so due to the *zamindar* of the estate of which the tenure is a part, within one month of the date of the notice:

No separate notice to tenure-holder required to pay less than two rupees.

Provided that no separate notice shall be served under this section on any tenure-holder who is required to pay a sum of less than two rupees as his share of the expenses apportioned under this Act; but in respect of such sums it shall be sufficient to publish a list in the manner prescribed by section 30, and no costs incurred in respect of the publication of any such list shall be recoverable from any person mentioned therein as liable to pay less than two rupees.

Collector not to issue notices to tenure-holders until *zamindars* have deposited costs.

36. Notwithstanding anything contained in section 35, the Collector shall not issue the notices therein mentioned to the tenure-holders until the *zamindars* concerned shall have deposited with the Collector the full amount of the costs of serving all the notices, and of publishing the lists as required by that section.

Apportionment between tenure-holder and holder of subordinate tenure.

37. The provisions of sections 25, 26, 27, 28, 29, 30, 34 and 35 shall be applicable, as far as possible, to every case in which any tenure-holder who has been made liable for the payment of any share of expenses under this Act may apply to the Collector to apportion the amount for which he has been made liable between himself and the holders of subordinate tenures direct from himself;

and the provisions of sections 31, 32 and 33, regarding the procedure for making a provisional apportionment in a summary way between a *zamindar* and the tenure-holder on his estate, shall be applicable, as far as possible, to the provisional apportionment of expenses between the holder of a tenure and the holders of under-tenures within his tenure:

Provided always that no such apportionment shall be made in respect of *raiyyats* who have a right of occupancy only, and whose rent is not fixed in perpetuity.

Recovery of sums payable to *zamindar* or tenure holder.

38. Every *zamindar* or tenure-holder to whom any sum is payable under the preceding sections may recover the same with interest as aforesaid in the manner provided by any law for the time being in force for the recovery of arrears of rent in respect of the tenure for which the sum is due.

of 1875.]

(Part IV.—Of the Apportionment and Recovery of Expenses.—
Section 39.—Part V.—Boundary disputes.—Sections 40-44.)

39. The provisions of this Part shall apply to all sums expended by the Government since the first day of November 1874 in erecting boundary-marks.

Recovery of sums expended by Government.

**PART V.
Boundary disputes.**

40. If it shall come to the notice of the Collector in the course of a survey under this Act, that a dispute exists as to any boundary which should be surveyed, the Collector, after holding such inquiry as he may deem necessary, may determine such boundary as hereinafter provided.

Procedure in case of disputes as to boundary.

41. The Collector shall determine the boundary according to actual possession, and cause it to be secured by boundary-marks;

Made of determining boundary.

and the order of the Collector under this section shall, until it be reversed or modified by competent authority, have the force of an order of any Civil Court declaring the parties to be in possession of the land in accordance with the boundary as determined by the Collector.

Force of Collector's order.

42. If, after holding the necessary inquiry, the Collector is unable to discover which party was in possession of the disputed land when he instituted the inquiry under this section, the Collector may take possession of the land in dispute, and retain possession thereof until some party shall have established his right to the said land.

Power of Collector to take possession of land in dispute.

43. Whenever the Collector thinks it necessary to decide a dispute as to any boundary under the last preceding section, he may, with the consent of the parties concerned, refer the same to arbitration.

Power to refer to arbitration.

The procedure laid down in [section 89 of, and Schedule II to, the Code of Civil Procedure, 1908.] shall, so far as may be practicable, be applicable to disputes so referred to arbitration.

Act V of 1908.

44. If the boundary regarding which the dispute exists as mentioned in section 40 shall at any previous time have been determined by any Court of competent jurisdiction, or shall have been laid down and shown on a map in the course of any previous revenue-survey or settlement, and no objection to the boundary as then laid down and mapped shall have been preferred before any authority competent to decide on such objection;

Relaying boundary previously determined by Court or by revenue survey.

¹These words and figures were substituted for the words and figures "Chapter VI of Act VIII of 1859 (the Code of Civil Procedure)" by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

(Part V.—Boundary disputes.—Section 45.)

whenever the dispute relates to the boundary of an estate which is liable for revenue, or to any other boundary by which the interests of the ¹[Government] may be affected, the Collector shall,

and whenever the disputes relates to any other boundary, the Collector may, if he thinks fit,

relay, as nearly as may be possible, the boundary as previously determined or laid down and shown on the map, and cause such boundary to be shown on the survey-map, with an explanatory note to the same:

Provided that the relaying and record of a boundary by the Collector under this section shall not affect the possession of any land by any party, and shall be in addition to the determination and record of the boundary according to actual possession required by section 41.

Nothing contained in this section shall be held to prohibit the Collector from deviating from a boundary as held by actual possession or as shown on a former map, and laying down a new boundary, if all the parties concerned agree to such new boundary, on the ground that the boundary held by actual possession, or as shown on the former map, was incorrect, and if it appears to the Collector that there is no objection to the adoption of such new boundary.

The reason for every such deviation shall be recorded in the Collector's proceedings.

Collector may deviate from boundary if parties agree.

Power of Collector in case of doubt or dispute as to boundary determined by Court or laid down by survey.

45. If it shall come to the notice of the Collector at any time, or in any manner, that a doubt or dispute exists in respect to any boundary—

- (a) which has at any time been determined by a competent Court; or
- (b) which has been laid down and shown on a map, in the course of a previous revenue-survey or settlement, or other proceeding of a revenue-officer for any special purpose, and against which no objection has been preferred to any authority competent to decide upon such objection; or
- (c) which has been laid down by survey under this Act,—

the Collector may, if he thinks it desirable for any reason that the boundary so determined or laid down shall be relaid, proceed to relay the boundary in the manner prescribed in section 44 of this Act,

and for purpose of so relaying the boundary he may make any inquiries and surveys which may be necessary, and such inquiries and surveys shall be deemed to be proceedings under section 6, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of inquiries and surveys under that section.

¹See foot-note 1 on page 202. *ante*.

of 1875.]

(Part V.—Boundary disputes.—Section 46.—Part VI.—Miscellaneous.—Sections 47, 48.)

46. Whenever the Collector shall have determined a boundary which was in dispute, and the order shall have become final.

and whenever a boundary which has been supplied by the survey officers, or has been determined under this Act, has been altered by a decree of any Civil Court which has become final,

and whenever it shall come to the notice of the Collector that any boundary has been determined by a competent Court or authority,

the Collector may cause such marks as he may think fit to be erected in order to secure the boundary permanently, and the provisions of Parts III and IV shall, so far as is possible, be applicable to boundary-marks which are erected under this section and to the apportionment of the cost thereof.

In certain cases Collector may cause marks to be erected.

PART VI.

Miscellaneous.

47. Whenever any estate or tenure is held jointly by two or more *zamindars* or tenure-holders, all such *zamindars* and tenure-holders shall be jointly and severally liable in respect of every liability imposed on *zamindars* or tenure-holders respectively by this Act,

and any shareholder in any estate or tenure who may have paid the amount finally apportioned to such estate or tenure may recover from his co-sharers such sums as may be payable in respect of their shares as arrears of rent, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

Joint *zamindars* subject to every liability imposed on single *zamindars*.

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

- (1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to a general agent of the person to whom such notice is directed; or
- (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode, or to the place where he may be known to reside; or
- (3) by posting a copy of the notice at any *mal-cutchery* of the estate or tenure of the person to whom the notice is directed; or if no such *mal-cutchery* be found, on some conspicuous place on the said estate or tenure to which such notice relates, and by delivering, in the case of estates paying their annual revenue by four instalments, another copy thereof to any agent who shall have paid an instalment of revenue next after the preparation of such notice.

Service of notice.

(Part VI.—Miscellaneous.—Sections 49-52.)

In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

No proceedings under Act affected by mistake or misdescription.

49. No proceedings under this Act shall be affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate or tenure or land in respect of which he is rendered liable to pay, or by reason of any other informality, provided the directions of this Act be in substance and effect complied with; and no proceedings under this Act shall be affected by reason of the omission to serve any notice on any *zamindars* whose name is not recorded on the Collector's registers as owner of the estate in respect of which the notice is required to be served.

Power of Collector to enforce attendance of witnesses.

50. For the purpose of any inquiry under this Act the Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses and compel the production of documents by the same means (as far as may be), and in the same manner, as is provided in the case of a Court under the Code of Civil Procedure ¹[,1908.]

Act V of 1908.

Daily fine for failure to comply with requisition in notice.

51. If any person shall fail to comply with a requisition contained in any special notice served under section 7 of this Act, or in any notice served for the purpose of any inquiry under Part V of this Act, within the time specified in such notice, the Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees, and such fine shall be payable daily until the requisition is complied with; and the Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending:

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

Penalty for not giving notice of injury to boundary-mark.

52. Any person, being bound by the provisions of section 19 to give notice to the Collector in respect of any boundary-mark having been injured, destroyed or removed, or requiring repairs, who shall fail to give such notice, shall be liable to a fine not exceeding one hundred rupees, to be imposed by order of the Collector.

¹This figure was inserted by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1875.]

(Part VI.—Miscellaneous.—Sections 53-58.)

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| Act XLV of 1860. | 53. Any person convicted before a Collector of wilfully erasing, removing or damaging any boundary-mark (not being a land-mark fixed by the authority of a public servant within the meaning of section 434 of the Indian Penal Code) which has been lawfully erected, may be ordered by the convicting officer to pay such sum, not exceeding two hundred rupees, for each marks so erased, removed or damaged, as the said officer may think fit, in addition to such sum as may be necessary to defray the expense of restoring the boundary-mark so erased, removed or damaged. | Penalty for removing boundary-marks. |
| Act V of 1898. | 54. The Collector may award any portion of a fine imposed under either of the two last preceding sections, and which may be realized, to any person who may have given information leading to the imposition of the fine. | Collector may award portion of fine to informer. |
| Act V of 1898. | 55. A fine under sections 51, 52 and 53 may be levied, as far as may be practicable, in the manner provided in ¹ [sections 386, 387 and 389 of the Code of Criminal Procedure, 1898]; but if no movable property belonging to the person from whom the fine is due is found in the district within which the order was passed, then such fine may be levied as if it were an arrear of revenue. | Levy of fine. |
| | 56. Whenever the person erasing, removing or damaging any boundary-mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been so ordered to pay, the boundary-mark shall be restored or repaired by the Collector, and the expenses thereby incurred shall be recovered from the occupants, of such of the conterminous lands and in such proportions, as to the Collector may seem fit. | When person removing boundary-mark cannot be found, Collector may repair. |
| | 57. Every amount which may become due to the Collector under the provisions of this Act in respect of any expenses incurred or of any notices served, or of any costs payable by any party in an appeal, shall be deemed to be a demand ² * * * *. | Every amount due deemed a demand. |
| | 58. Except as provided in sections 59 and 60, no appeal shall lie as of right, against any order passed under this Act by any officer; but the proceedings and orders of Assistant Superintendents and of Deputy Collector under this Act shall be subject to the supervision and control of the Superintendent of Survey or Collector; | Appeal against orders.
Supervision of proceedings. |

¹These words and figures were substituted for the words and figure "section 301 of the Code of Criminal Procedure" by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²The words and figures "under section 2 of Bengal Act VII of 1868 (an Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue), and shall be leviable as such," were repealed by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

(Part VI.—Miscellaneous.—Sections 59-61.)

the proceedings and orders of the Superintendent of Survey and of the Collector, to the supervision and control of the Commissioner of the Division; and

the proceedings and orders of all officers, to the supervision and control of the ¹[State Government]:

Government may restrict functions of Commissioner.

Provided that ²[the State Government] may order that in the course of any survey under this Act, the functions of the Commissioner shall be restricted to the decision of appeals under section 60, and that the general powers of control and supervision over the Superintendent of Survey or Collector and their subordinate officers may be exercised by the ¹[State Government] direct.

Appeal against certain orders of Assistant Superintendent or Deputy Collector.

59. An appeal, if presented within one month of the date of the order appealed against, shall lie to the Collector or Superintendent of Survey against every order of a Deputy Collector or of an Assistant Superintendent—

- (a) determining under section 8 the amount to be paid as the price of materials or labour supplied;
- (b) determining under section 10 the amount to be paid as compensation;
- (c) deciding a boundary-dispute;
- (d) imposing a fine under this Act.

Appeal against certain orders of Collector or Superintendent of Survey.

60. An appeal if presented within one month of the date of the order appealed against, shall lie to the Commissioner of the Division against every order of the Collector or Superintendent of Survey—

- (a) determining under section 8 the amount to be paid as value of materials or labour supplied;
- (b) determining under section 10 the amount to be paid as compensation;
- (c) determining a disputed boundary;
- (d) imposing a fine of more than fifty rupees on any person:

Provided that the order appealed against under clauses (a), (b) and (c) shall not have been passed by the Collector or Superintendent of Survey on an appeal preferred against the order of a subordinate officer.

Orders as to costs on appeal.

61. The Commissioner, Collector or Superintendent of Survey may pass such orders as they shall think fit in respect of the payment of costs incurred by any party in an appeal.

¹The words "Provincial Government" were first substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 3 on page 203. *ante*.

of 1875.]

(Part VI.—Miscellaneous.—Sections 62, 63.)

No suit to be brought unless appeal first preferred.

62. No suit shall be brought to set aside an order of a Superintendent of Survey, Collector, Assistant Superintendent or Deputy Collector deciding a boundary-dispute, unless an appeal shall have been first preferred under section 59 or section 60, or unless the person suing was at the time when such order was passed a minor, or insane or an idiot.

Power of State Government to make rules.

63. The [State Government] may lay down rules not being inconsistent with this Act,—
to provide for the preparation of maps and registers, and for the Collection and record of any information in respect of any land to be surveyed under this Act;
and generally to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Act.

All inquiries ordered to be made for the collection of information under such rules shall be deemed to be inquiries under section 6, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of inquiries under that section.

¹See foot-note 1 on page 220 ante.